

AGENDA

FLOWER MOUND TOWN COUNCIL REGULAR MEETING

12/4/2017

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

6:00 P.M.

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. Announcement and Presentation of 2017 Outstanding Citizenship Award(s)
2. Town of Flower Mound Communications Department Awards Presentation
3. Bands of America Grand National Championship recognition for Marcus High School and Flower Mound High School bands

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. For additional instructions or to complete your speaker form in advance [click here](#).

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. Any item requiring a public hearing will allow the public to speak at the time that item appears on this agenda as indicated as a "Public Hearing." Items that are the subject matter jurisdiction of the Town Council include Town policy and legislative issues. 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.

G. **TOWN MANAGER'S REPORT**

Update and discussion on:

1. Capital improvement projects
2. Economic Development projects
3. Tennis Center options
4. Lighting at The Hound Mound dog park

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H. FUTURE AGENDA ITEMS

The purpose of this item is to allow the Mayor and members of Council an opportunity to bring forward items they wish to discuss at a future meeting, with the understanding a consensus of Council is needed in order for that item to be placed on a future agenda and in accordance with the Town Council Agenda Setting Policy (Ord. 65-15).

I. COORDINATION OF CALENDARS

1. A special work session date is scheduled for Thursday, December 14th.
2. A regular meeting is a scheduled for Monday, December 18th.

J. CONSENT AGENDA - Consent Items

This agenda consists of non-controversial or "housekeeping" items required by law. Items may be removed from the Consent Agenda by any Councilmember by making such request prior to a motion and vote on the Consent Agenda.

1. **Minutes 11/20-** Consider approval of the minutes from a regular meeting of the Town Council held on November 20, 2017.
2. **Air Monitoring PSA-** Consider approval of a Professional Services Agreement for monthly gas well pad site air monitoring by Modern Geosciences, LLC, in the amount of \$141,600.00; and authorization for the Mayor to execute same on behalf of the Town.
3. **CAPER Resolution-** Consider approval of a resolution authorizing the adoption of the Program Year 2016 Consolidated Annual Performance & Evaluation Report for the Community Development Block Grant; and authorization for the Mayor to execute same on behalf of the Town and submit to the U.S. Department of Housing and Urban Development.
4. **Forest Vista - Final Acceptance-** Consider approval for the final acceptance of the Forest Vista Drive Reconstruction project, and authorization of final payment to Tiseo Paving Company, in the amount of \$150,790.04.
5. **McKamy Creek - Final Acceptance-** Consider approval for the final acceptance of the McKamy Creek Road Reconstruction project, and authorization of final payment to Tiseo Paving Company, in the amount of \$63,322.00.
6. **FM1171 @ River Walk Design Award-** Consider approval of the Professional Services Agreement with Kimley-Horn and Associates, Inc., to provide professional engineering services, for the FM 1171 at River Walk Drive Intersection Improvements project in the amount of \$87,500.00; and authorization for the Mayor to execute same on behalf of the Town.
7. **FM2499 Water Line - Final Acceptance-** Consider approval of Change Order No. 1 and final acceptance of the FM 2499 12-Inch Water Line Phase III Section 2 project, amending the contract with Wildstone Construction, LLC, for a decrease to the contract in the amount of \$11,410.80, and authorizing final payment to Saber Development Corporation, in the amount of \$36,462.12; and authorization for the Mayor to execute same on behalf of the Town.
8. **Churchill Drive Design Award-** Consider approval of the Professional Services Agreement with Criado and Associates, Inc., to provide professional engineering services, for the Churchill Drive project in the amount of \$66,706.00; and authorization for the Mayor to execute same on behalf of the Town .

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9. **Road Safety Enhancement-** Consider approval of the award of Request for Bid Number 2018-9-A to the lowest responsive, responsible bidder, Professional Pavement Products, Inc., for an estimated annual expenditure of \$170,000; and authorization for the Mayor to execute same on behalf of the Town. The contract is for one-year with three one-year renewal options. Renewal options will be used for maintenance purposes after year one.
10. **Atrium lease agreement-** Consider approval of the Atrium at F.M. Lease Extension and Termination Agreement
11. **Purchase of SCBA, RIT Packs and Air Packs-** Consider approval of the purchase of a Self-Contained Breathing Apparatus (SCBA) package including spare SCBA bottles, Rapid Intervention Team (RIT) packs and 5500 psi air packs with cylinders, through BuyBoard Purchasing Contract No. 524-17 in the total amount of \$105,300.00; and authorization for the Mayor to approve same on behalf of the Town.
12. **Annual Maintenance Agreement for Outdoor Warning Sirens-** Consider approval of an Annual Preventative Maintenance Agreement with Gifford Electric, Inc. for the Town's Outdoor Warning Siren System in the amount of \$15,660.00; and authorization for the Mayor to execute same on behalf of the Town.
13. **Scofflaw program-** Consider approval of an Interlocal Agreement with the Denton County Tax Assessor-Collector (Denton County) for the continuation of the Scofflaw program, and authorization for the Mayor to execute same on behalf of the Town.

K. REGULAR ITEMS

14. **Public Hearing - Mannatech Inc. Chapter 380-** Public Hearing to consider approval of a Chapter 380 Agreement between the Town of Flower Mound and Mannatech, Inc.
15. **Certificates of Obligation-** Consider approval of a resolution approving and authorizing publication of notice of intention to issue Certificates of Obligation, Series 2018, in the principal amount not to exceed \$10,900,000.
16. **Library design PSA-** Consider approval of a Professional Services Agreement for design services for the renovation and expansion of the Flower Mound Library with Komatsu Architecture., for \$794,963; authorization for the Mayor to execute the same on behalf of the Town; and authorization of the construction manager at risk contracting method for renovation and expansion of the Flower Mound Library.

L. BOARDS/COMMISSIONS *(Bold text represents boards with vacancies)*

Executive Conference Room

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

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M. CLOSED MEETING

The Town Council to convene into closed meeting 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, 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.
- b. Discuss and consider economic development incentives, including retail centers, corporate relocation/expansion/retention, hospitality projects, and performance related to certain incentive agreements.
- 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.
- d. Consultation with Attorney as follows:
 1. Professional Services and Management Agreement between the Town of Flower Mound and DayOne Consulting, LLC. and 650 Parker Square Lease Agreement.

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.

N. 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.

O. 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 also posted on the Town's website in accordance with GC Section 551.056 on the following date and time: November 30, 2017, at 3:25 p.m., at least 72 hours prior to the scheduled time of said meeting.

Theresa Scott, Town Secretary

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: December 4, 2017

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a regular meeting of the Town Council held on November 20, 2017.

BACKGROUND INFORMATION: The Town Council held a regular meeting on November 20, 2017.

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

DRAFT MOTION: Move to approve the minutes from a regular meeting of the Town Council held on November 20, 2017.

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THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 20TH DAY OF NOVEMBER 2017, 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.

[Click here](#) for Meeting Video Link (subject to change)

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

Tom Hayden	Mayor
Don McDaniel	Mayor Pro Tem
Kevin Bryant	Deputy Mayor Pro Tem
Jason Webb	Councilmember Place 1
Bryan Webb	Councilmember Place 2
Claudio Forest	Councilmember Place 5

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

Theresa Scott	Town Secretary
Bryn Meredith	Town Attorney
Jimmy Stathatos	Town Manager
Tommy Dalton	Assistant Town Manager
Doug Powell	Executive Director of Development Services
Tiffany Bruce	Engineering Manager
Matt Hotelling	Traffic Engineer
Matt Woods	Director of Environmental Services
James Hoefert	Environmental Review Analyst
Andrea Roy	Economic Development Director
Wess Griffin	Police Captain

A. CALL REGULAR MEETING TO ORDER

Mayor Hayden called the regular meeting to order at 6:00 p.m.

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

Councilmember Jason Webb gave the invocation and Mayor Hayden led the pledges.

D. PRESENTATIONS

1. Small Business Saturday (November 25, 2017) Proclamation

Ms. Roy accepted the proclamation and provided background information about the initiative and encouraged the public to support small businesses.

2. Update on Crossing Guard program

Captain Griffin provided an implementation update on the Crossing Guard program since changing over to All City Management Services (ACMS).

and he responded to questions or comments from Council as follows:

- How is the morale of the staff
- Does the staff feel well training and equipped
- Is there a survey that could be sent to them to get their feedback
- Appreciation for the efforts of the police department in managing the outsourcing of this program

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.

At the request of Mayor Hayden, Chief Kancel announced that Detective Joe Adcock received the national *Service to the Homeland Award* for exceptional patriotic and distinguished service for his substantial contributions to the mission of the U.S. Immigration and Customs Enforcement.

	Speaker names and address	Subject (as written on the form)
1.	There were no other speakers.	

F. ANNOUNCEMENTS

Deputy Mayor Pro Tem Bryant provided details about the Town's Christmas Parade on December 9th.

Councilmember Jason Webb noted that this week is Thanksgiving and pointed out some ways people can give back to the community.

Councilmember Forest announced that on December 2nd the Community Activity Center will host a breakfast with Santa, and the Summit Club will be there cooking pancakes.

G. TOWN MANAGER'S REPORT

Mr. Stathatos gave an update on the following projects:

1. Capital improvement projects
 - Heritage Park Phase III
 - Rheudasil Pond
 - Wilkerson Pond
2. Economic Development projects
 - North Central Texas College (NCTC) Job fair
 - Retail/Restaurant survey update

H. FUTURE AGENDA ITEMS

1. Deputy Mayor Pro Tem Bryant requested a future agenda item to discuss updating or modifying the Town's policy that would allow resident groups to use the banquet facility at the senior center.

Mr. Stathatos suggested this topic could be discussed at the December 14th work session.

I. COORDINATION OF CALENDARS

1. A regular meeting is scheduled for Monday, December 4th.

Mayor Hayden announced this meeting date and no one indicated being unavailable.

2. Discuss and consider scheduling a work session for Thursday, December 14th.

Councilmember Bryan Webb indicated he asked for this to be on the agenda to identify interest in setting this special work session date (2nd Thursday of month – Thursday, December 14th instead of the 3rd Thursday given the Christmas holiday) for the purpose of discussing the possibility of establishing a TIRZ District in Lakeside.

There was Council consensus to proceed.

3. Discuss and consider scheduling a work session for Thursday, January 25th, 2018.

Mayor Hayden indicated this item coincides with a Lakeside item.

There was Council consensus to proceed.

J. CONSENT ITEMS

1. Consider approval of the minutes from a regular meeting of the Town Council held on November 6, 2017.

DRAFT MOTION: Move to approve the minutes from a regular meeting of the Town Council held on November 6, 2017.

2. Consider approval of a resolution casting the vote of the Town of Flower Mound, Texas, for the election of the Board of Directors of the Denton Central Appraisal District (DCAD).

DRAFT MOTION: Move to approve a resolution casting the vote of the Town of Flower Mound, Texas, for the election of the Board of Directors of the Denton Central Appraisal District (DCAD).

3. Consider approval for the purchase of network switches and routers, to replace aged infrastructure, from Dell and Mojo Systems in the amount of \$69,668.02.

DRAFT MOTION: Move to approve the purchase of network switches and routers, to replace aged infrastructure, from Dell and Mojo Systems in the amount of \$69,668.02.

4. Consider increasing the annual unit price contract to provide minor construction and repair activities from an estimated amount of \$200,000 to \$250,000.

DRAFT MOTION: Move to approve the annual unit price contract to provide minor construction and repair activities from an estimated amount of \$200,000 to \$250,000.

5. Consider approval of the purchase of one (1) Toro GroundMaster Rough Cut Mower from Professional Turf Products in the amount of \$65,086.17.

DRAFT MOTION: Move to approve the purchase of one (1) Toro GroundMaster Rough Cut Mower from Professional Turf Products in the amount of \$65,086.17.

6. Consider approval of the purchase of one (1) Bobcat Compact Track Loader from Bobcat Company in the amount of \$60,534.91.

DRAFT MOTION: Move to approve the purchase of one (1) Bobcat Compact Track Loader from Bobcat Company in the amount of \$60,534.91.

7. Consider approval and final acceptance of the Fire Station No. 1 Facility Upgrades project, for the Central Fire Shower Renovations, and authorization of final payment to Unified Services of Texas Inc.in the amount of \$31,478.64.

DRAFT MOTION: Move to approve the final acceptance of the Fire Station No. 1 Facility Upgrades project, for the Central Fire Shower Renovations, and authorization of final payment to Unified Services of Texas Inc.in the amount of \$31,478.64.

8. Consider approval of Change Order No. 1 and final acceptance of the Long Prairie 12-Inch Water Line project, Section 2, amending the contract with Saber Development Corporation, for a decrease to the contract in the amount of \$9,986.50, and authorizing final payment to Saber Development Corporation, in the amount of \$27,005.02; and authorization for the Mayor to execute same on behalf of the Town.

DRAFT MOTION: Move to approve Change Order No. 1 and final acceptance of the Long Prairie 12-Inch Water Line project, Section 2, amending the contract with Saber Development Corporation, for a decrease to the contract in the amount of \$9,986.50, and authorizing final payment to Saber Development Corporation, in the amount of \$27,005.02; and authorization for the Mayor to execute same on behalf of the Town.

9. Consider adoption of the Town Council Strategic Plan for Fiscal Year 2017-2018.

DRAFT MOTION: Move to approve the Town Council Strategic Plan for Fiscal Year 2017-2018.

10. Consider approval of a subordination agreement between OTD FM2, OTD FM, LLC, First United Bank & Trust, and the Town, and authorization for the Mayor, or his designee, to execute same on behalf of the Town.

DRAFT MOTION: Move to approve a subordination agreement between OTD FM2, OTD FM, LLC, First United Bank & Trust, and the Town, and authorization for the Mayor, or his designee, to execute same on behalf of the Town.

Mayor Pro Tem McDaniel moved to approve by consent Items 1 - 10. Deputy Mayor Pro Tem Bryant seconded the motion. Each item, as approved by consent, is restated above along

with the approved draft motion, and if applicable, the Ordinance or Resolution caption for each, for the record.

VOTE ON MOTION:

Motion passed

AYES: FOREST, J. WEBB, BRYANT, MCDANIEL, B.WEBB

NAYS: NONE

K. REGULAR ITEMS

11. Public Hearing to consider a request for rezoning (ZPD16-0007 - Serenity) from Agricultural District (A) to Planned Development District No. 149 (PD-149) for a cluster development with certain modifications, exceptions and waivers to the Code of Ordinances, and to consider adopting an ordinance providing for said amendment, and acceptance of cash in lieu of land in the amount of \$17,976.00 in place of the otherwise required Park Land dedication and Park Development Fees in the amount of \$22,208.00. The property is generally located south of FM 1171 and west of High Road. (The Planning and Zoning Commission recommended denial by a vote of 6 to 0 at its November 13, 2017, meeting.)

Councilmember Bryan Webb announced that while he lives on High Road, the development project is well outside the parameter allowance and he will be participating in tonight's discussion.

Staff Presentation

Mr. Powell gave a presentation identifying or noting:

- Clarification regarding the inadvertent omission of emails within the packet, and indicated there is a summary handout that includes the full list of emails received
Administrative Note: For the reason indicated above this same summary handout is included in the minutes as Exhibit A
- General location
- Land use and zoning
- Photos of the site
- Conceptual site plan
- Conceptual landscape plan
- PD standards (between agricultural and proposed)
- Topographic slope exception
- Concept plan placed over an aerial
- Opposition and super majority vote requirement

and he, Mr. Woods, or Mr. Hoefert, responded to questions from Council as follows, with some of them being after the public hearing:

- Clarification regarding the reason why the item is before council
- Clarification regarding whether The Conservatory was a conservation or cluster development
- What is the number of lots allowed that wouldn't require a zoning change
- How can the scenic corridor be maintained
- How will the drainage be handled
- How did work begin in the 12% slope area without a permit, and what was the impact

- Clarification regarding the upland habitat differential

Applicant Presentation

Tracy LaPiene, Project Engineer, Ridinger Associates, 550 S. Edmonds Lane, Suite 101, Lewisville, Texas 75067

Mr. LaPiene gave a presentation identifying or noting:

- Identification of the subject property location and adjacent lots
- Their objective and plan
- CTCDD Standards summary
- Trees
- Concept plan
- Slope impacts
- Photos of the site
- Landscape plan
- Entry elevations
- Existing Flower Mound development comparison
- 3 approved CTCDD projects
- Trail plan
- Adjacent entrances/fencing
- Summary (slopes, upland habitat, scenic corridor, 18 lots allowed, cannot back houses to High Rd, minimum street radius required by Town, connect to High Rd in 2 locations, specimen trees, open space)
- Concept plan alternative
- PD vs. existing Ag zoning

and he responded to questions from Council as follows:

- Clarification that the bulk of the upland habitat is in the slope area
- During the process were any of the reiterations presented as a non-gated community
- What necessitated making it a gated community
- Clarification regarding the area designated for wrought iron fencing
- What has changed in the presentation after hearing from the public at the Planning & Zoning (P & Z) meeting
- How will the open space along the road be landscaped

Mayor Hayden opened the Public Hearing at 7:18 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.*

All speaker cards submitted were in opposition and listed as follows:

1.	Guy Mrnustik*, 7330 Fair Lake Rd
2.	Kathryn Wells, 7360 Fair Lake Rd Katy Wells**, 7360 Fair Lake John Wells**, 7360 Fair Lake Rd

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3.	Katy Grote**, 165 Double Oaks, Double Oak
4.	Alfred Zwamenburg, 2631 Briar Patch Ln
5.	Lori Wilkins, 3349 Rolling Hills
6.	KC Walsh, 3525 High Rd
7.	Melissa Wilson, 3200 High Rd
8.	Michelle Talaifar*, 7505 Hickory Springs Rd
9.	Janvier Scott, 2828 Bob White
10.	Peter Perfetti, 7535 Hickory Springs Rd
11.	Mike McCormick, 2740 – 2800 High Rd
12.	Josh Marten, 7604 Emerson Ln
13.	Victor Larsen, 3694 Green Meadow Ln
14.	Carol Kane, 2606 Long Ln
15.	Stephen Kaiser, 3229 High Rd
16.	Fred Howell, 3823 Sunnyview Ln
17.	Heather Webb, 4112 High Rd
18.	Lori Hall*, High Rd
19.	Caroline Finley, 2600 Bourne Ln
20.	Ralph Canlizo, 3337 Rolling Hills
21.	Jon Howes, 7401 Bolo Ln
22.	Shannon Barkett, 7500 Bolo Ln with donated time from: Wendy Barkett, 7500 Bolo Ln
23.	Lori Holland, 3033 High Rd with donated time from: James Wise, 2624 Briar Patch Ln
24.	Leslie Childs**, 7336 Hickory Springs Rd
25.	Sandeep Sharma*, 2504 Stillwater
26.	Jim Pierson, 3209 High Rd with donated time from: Melissa Pierson, 3209 High Rd Tim Runte, 3480 High Rd Dave Wilkins, 3349 Rolling Hills
27.	Sherry Finchar, 3933 Sunnyview Ln with donated time from: Debra Canalizo, 3337 Rolling Hills
28.	Sue Marincel, 2613 Briar Patch with donated time from: Daniel/Tabatha Kirby, 2618 Briar Patch Ln
29.	Michael Coker, 3111 Canton St, Dallas with donated time from: Keith Stewart, 7585 Lost Creek Marc Finley, 2600 Bourne Ln Mary Lonadier, 3221 High Rd Michael Johnson, 7405 Hickory Springs Rd Joe Marincel, 2613 Briar Patch Ln
30.	Michael Myers, 17070 Dallas Pkwy, Ste 100, Dallas with donated time from: Harrison Tobin, 8701 Baltusrol Dr Gerard Tobin, 3031 High Rd Katherine Tobin, 3031 High Rd

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31.	Sandy Fambrough**, 4105 Spring Meadow
32.	Daniel/Afton Fitzer**, 7405 Bolo Ln
33.	Ray Hurst**, 3705 Immel
34.	Kevin Gay**, 7400 Hickory Springs
35.	Matt/Jen Toich**, 7408 Bolo Ln
36.	Charles & Roberta Langran**, 3205 Indian Trl
37.	William Berry**, 3357 Rolling Hills
38.	Clay Barnes**, 3812 Sunnyview Ln
39.	Luke Stokes**, 3320 Rolling Hills
40.	Marvin Holland**, 7400 Bolo Ln
41.	NW Stump**, 3525 High Rd
42.	Jennifer Christmas**, 3443 Shady Oaks Dr
43.	Marc & Annette Barth**, 7380 Lost Creek
44.	Dan & Kay Walder**, 3413 Shady Trl
45.	Patricia Miller**, 3309 Sunnyview
46.	Bernard Nownes**, 7436 Hickory Springs
47.	Bernard Nowness III**, 7530 Hickory Springs
48.	Kim & Joe Knill**, 3225 High Rd
49.	Neil, Jared, Linda Sutter**, 3442 Sunnyview
50.	Randy Penn**, 3429 Shady Trl
51.	Katherine Hawkins**, 3209 Lakewood Ln
52.	Peter Turla**, 3209 Lakewood Ln
53.	Adriana Araya**, 3916 Sunnyview
54.	Amy Lasseigne**, 3512 Sunnyview
55.	Jim McElroy**, 3216 Lakewood Ln
56.	Kathleen Banes**, 2132 Longfellow Ln
57.	Cathy Strathmann**, 2612 Belmont
58.	Peter Collora**, 7336 Hickory Springs
59.	Jim Engel, 5110 Bayberry St
60.	Jerad Tobin, 3031 High Rd
61.	Ciara Berry, 3357 Rolling Hills
62.	Julienne Stewart, 7585 Lost Creek

**Submitted a speaker card but didn't come forward when called*

***Submitted a speaker card but indicated did not wish to speak*

Mayor Hayden closed the Public Hearing at 9:30 pm.

Council Discussion

There was Council discussion related to:

- Past issues and concerns with The Conservatory development
- Concerns regarding the gated fence concept
- How the property is going to be difficult to develop given the encroachments into the slopes
- How the cluster development concept provides options, but it doesn't necessarily apply to every piece of property
- Two of the primary issues with the proposed development has to do with the

way the fence and the gate segregate the property and doesn't allow for that contiguous connectivity of the open spaces, as well as the amount of encroachment with 10 lots on the 12% slope

- Past history with another development in the Cross Timbers Conservation District and what they did different from this project was to listen to the land and let that dictate where the lots go
- The overall objective with the cluster development option
- Uniqueness of the property and the area around it
- Concerns regarding the slope
- How cluster development is a tool to protect the area
- How the proposed concept is not fitting for this site
- How cramming in a bunch of houses is a goal for a developer but it not necessarily a goal for the community and what is good for the Town
- Concerns regarding gated communities in general, and particularly for this area

Mayor Pro Tem McDaniel moved to deny a request for rezoning (ZPD16-0007 - Serenity) from Agricultural District (A) to Planned Development District No. 149 (PD-149) for a cluster development with certain modifications, exceptions and waivers to the Code of Ordinances, and adopt an ordinance providing for said amendment, and accept cash in lieu of land in the amount of \$17,976.00 in place of the otherwise required Park Land dedication and Park Development Fees in the amount of \$22,208.00. Councilmember Jason Webb seconded the motion.

VOTE ON MOTION:

Motion to deny passed

AYES: B.WEBB, MCDANIEL, BRYANT, J.WEBB, FOREST

NAYS: NONE

The Town Council recessed at 9:48 p.m. and reconvened at 9:54 p.m.

12. Public Hearing to consider a request for a Master Plan Amendment (MPA17-0011 – Lake Forest Thoroughfare Plan Amendment) to amend Section 7.0, Thoroughfare Plan, by removing the section of Lake Forest Boulevard between Lakeside Parkway and Silveron Boulevard from the Town's Thoroughfare Plan, and to consider adopting an ordinance providing for said amendment. (The Transportation Commission recommended approval by a vote of 5 to 1 at its September 12, 2017, meeting.) (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its November 13, 2017, meeting.)

Staff Presentation

Mr. Hotelling gave a presentation identifying or noting:

- Location
- History of Lake Forest
- Impetus of request
- Traffic Impact Analysis (TIA) Results
- Transportation Commission (TRC) recommendation
- Recommendation from P & Z

and he or Mr. Powell responded to questions from Council as follows:

- Clarification regarding:
 - o action being requested by Council

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- o local commercial or mutual access roadway options
- o street widths (26 feet) and how parking factors in

Mayor Hayden opened the Public Hearing at 10:00 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
Paul Stone, 4100 Broadway	None	None

Mayor Hayden closed the Public Hearing at 10:03 p.m.

Council Discussion

There was Council discussion as follows:

- How there is flexibility in designating the mutual access to whatever is desired (and that it is safe)
- How now is the time if you want to do something different

Councilmember Bryan Webb moved to approve Master Plan Amendment (MPA17-0011 – Lake Forest Thoroughfare Plan Amendment) to amend Section 7.0, Thoroughfare Plan, by removing the section of Lake Forest Boulevard between Lakeside Parkway and Silveron Boulevard from the Town's Thoroughfare Plan, and adopt an ordinance providing for said amendment. Mayor Pro Tem McDaniel seconded the motion.

ORDINANCE NO. 42-17

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING SECTION 7.0 THOROUGHFARE PLAN OF THE MASTER PLAN BY AMENDING ORDINANCE NO. 24-01, IN PART, WHICH ADOPTED THE MASTER PLAN, THROUGH THE AMENDMENT OF SECTION 7.0 THOROUGHFARE PLAN BY CHANGING THE DESIGNATION OF LAKE FOREST BOULEVARD BETWEEN LAKESIDE PARKWAY AND SILVERON BOULEVARD BY REMOVING IT FROM THE THOROUGHFARE PLAN MAP ATTACHED TO SAID SECTION 7.0 AS AN APPENDIX, REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION:

AYES: FOREST, J.WEBB, BRYANT, MCDANIEL, B.WEBB
NAYS: NONE

Motion passed

13. Public Hearing to consider a request to amend the Land Development Regulations (LDR17-0003 – Tree Ordinance Amendment) by amending Section 94-38, entitled "Per-caliper inch cash value; replacement trees," of Chapter 94, entitled "Trees," of the Town's Code of Ordinances, and to consider adopting an ordinance providing for said amendment. (The Environmental Conservation Commission recommended approval by

a vote of 6 to 0 at its November 7, 2017, meeting.) (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its November 13, 2017, meeting.)

Staff Presentation

Mr. Woods gave a presentation identifying or noting:

- Summary of 85th legislative session and tree ordinance related bills
- House Bill No. 7 language and associated stipulations
- New credit process and change to Chapter 94 "Trees"
- What the house bill did
- Development example

and he, or Mr. Meredith responded to questions from Council as follows:

- Clarification regarding the development example
- What size trees could be affected
- Does the Town even really have a choice

Council Discussion

There was Council discussion as follows:

- Disappointment with state legislation for interfering on the Town's local control as it relates to the Tree Ordinance

Mayor Hayden opened the Public Hearing at 10:18 p.m. No one spoke in support or opposition. Mayor Hayden closed the Public Hearing at 10:18 p.m.

Deputy Mayor Pro Tem Bryant moved to approve an ordinance to amend the Land Development Regulations (LDR17-0003 – Tree Ordinance Amendment) by amending Section 94-38, entitled "Per-caliper inch cash value; replacement trees," of Chapter 94, entitled "Trees," of the Town's Code of Ordinances. Councilmember Forest seconded the motion.

ORDINANCE NO. 43-17

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING SECTION 94-38 "PER-CALIPER-INCH CASH VALUE; REPLACEMENT TREES." OF ARTICLE IV, "PERMITS, MITIGATION, PENALTIES, AND INCENTIVES," OF CHAPTER 94 OF THE TOWN'S CODE OF ORDINANCES BY ADDING TREE MITIGATION FEE CREDIT ALLOWANCES PURSUANT TO SECTION 212.905 OF THE TEXAS LOCAL GOVERNMENT CODE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION:

Motion passed

AYES: MCDANIEL, BRYANT, J.WEBB, FOREST

NAYS: B.WEBB

14. Public Hearing to consider an application for a tree removal permit for one (1) specimen tree located at 1708 Beckwood Court in the Edgewood subdivision. (The Environmental Conservation Commission recommended approval by a vote of 6-0-0 at its November 7, 2017, meeting).

Staff Presentation

Mr. Hoefert gave a presentation identifying or noting:

- Background information
- Aerial image of lot
- Tree #4207 location on map

and he or Mr. Meredith responded to questions from Council as follows:

- Is the Council required to grant the removal permit
- Has the retaining wall already been built

Mayor Hayden opened the Public Hearing at 10:25 p.m. No one spoke in support or opposition. Mayor Hayden closed the Public Hearing at 10:25 p.m.

Councilmember Jason Webb moved to approve the requested permit for the removal of one (1) specimen tree located at 1708 Beckwood Court in the Edgewood subdivision. Councilmember Forest seconded the motion.

VOTE ON MOTION:

AYES: FOREST, J.WEBB, BRYANT, MCDANIEL, B.WEBB

NAYS: NONE

Motion passed

L. BOARDS/COMMISSIONS (Executive Conference Room)

Discuss and consider resignations, appointments, or evaluations for the following boards or commissions: Animal Services Board, Cultural Arts Commission, Environmental Conservation Commission, Parks 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 10:27 p.m. on November 20, 2017, 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 11:02 p.m. on November 20, 2017, 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, including acquisition of real property for economic development purposes, and/or other municipal purposes and all matters incident and related thereto.

Mayor Pro Tem McDaniel moved to authorize staff to purchase the right of way property in association with the FM 1171 Westbound right turn lane project, and to negotiate for the purchase of the right of way property up to the settlement amount as discussed in executive session. Councilmember Forest seconded the motion.

VOTE ON MOTION:

Motion passed

AYES: B.WEBB, MCDANIEL, BRYANT, J.WEBB, FOREST

NAYS: NONE

Mayor Pro Tem McDaniel moved to authorize the Town Manager or his designee to close on the right of way property should a settlement be reached, to pay all costs associated with said closing in addition to the purchase price of the right of way property, and execute all necessary documents at the closing on behalf of the Town. Deputy Mayor Pro Tem Bryant seconded the motion.

VOTE ON MOTION:

Motion passed

AYES: FOREST, J.WEBB, BRYANT, MCDANIEL, B.WEBB

NAYS: NONE

O. ADJOURN REGULAR MEETING

Mayor Hayden adjourned the meeting at 11:03 p.m. on Monday, November 20, 2017, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

THOMAS E. HAYDEN, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY

FLOWER MOUND TOWN COUNCIL MEETING OF NOVEMBER 20, 2017

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EXHIBIT A

Correspondence Summary - Town Council Agenda item 11 (ZPD16-0007)

	FIRST NAME	LAST NAME	ADDRESS	DATE	FOR	AGAINST	P=packet OP=Omitted in packet PP=post packet
1.	Javier	Adriana-Araya		11/9/17		X	P
2.	Shannon & Wendy	Barkett	7500 Bolo Ln	11/19/17		X	OP
3.	Clay & Samantha	Barnes	3812 Sunnyview	11/19/17		X	PP
4.	Patricia	Barry	7308 Stallion Cir	11/14/17		X	P
5.	Marc	Barth	7380 Lost Creek	11/13/17		X	OP
6.	Ciara & William	Berry	3357 Rolling Hills	11/18/17		X	OP
7.	Ericka & Tim	Bushee	3304 Indian Trl	11/9/17		X	P
8.	Julie	Canei	?	11/15/17		X	P
9.	Eilene	Carver	?	11/19/17		X	OP
10.	Leslie	Childs	7336 Hickory Springs	11/18/17		X	OP
11.	Jennifer & Jason	Christmas	3443 Shady Oaks	11/14/17 11/20/17		X	P
12.	Dana	Clark	?	11/9/17		X	P
13.	Peter	Collora	?	11/13/17		X	P
14.	Clint	Cornett	?	11/8/17		X	P
15.	Melanie Andy	DeLeon Hughes	3214 Lakewood Ln	11/16/17		X	P
16.	Sandy	Fambrough	4105 Spring Meadow	11/19/17		X	PP
17.	Sherry	Fincher	3933 Sunnyview	11/20/17		X	OP
18.	Caroline & Mark	Finley	2600 Bourne Ln	11/8/17		X	P
19.	Afton & Daniel	Fitzek	7405 Bolo	11/18/17		X	OP
20.	Kathleen	Hawkins	3209 Lakewood Ln	11/18/17 11/19/17		X	OP
21.	Lori	Holland	High Rd(?)	11/8/17		X	P
22.	Marvin	Holland	7400 Bolo Rd	11/20/17		X	PP
23.	Elizabeth & Fred	Howell	3823 Sunnyview	11/20/17		X	PP

FLOWER MOUND TOWN COUNCIL MEETING OF NOVEMBER 20, 2017

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24.	Jon MaryJane	Howes	7401 Bolo	11/9/17 11/15/17 11/20/17(2)		X	P
25.	Ron	Huebner	Franklin Hills Subd	11/16/17		X	OP
26.	Judy	Johnson	Franklin Hills Subd	11/9/17		X	P
27.	Stephen & Debora Stephen & Debora	Kaiser Kaiser	3229 High Rd	10/4/16 11/18/17		X	OP
28.	Michael & Carol	Kirby	7308 Bolo Ln	10/10/16		X	P
29.	Joe & Kim	Knill	3225 High Rd	10/20/16 10/31/17 11/19/17		X	P
30.	RI	Langran	3205 Indiana Trl	3/30/17		X	P
31.	Victor	Larsen	3694 Green Meadow	11/14/17 11/19/17		X	P
32.	Amy Terry	Lasseigne Lasseigne	?	11/16/17 11/18/17 11/18/17		X	P PP
33.	Mary	Lonadier	?	11/19/17		X	PP
34.	Katie	Lowe	?	11/18/17		X	OP
35.	Susan	Marincel	2613 Briar Patch	7/12/16 11/9/17 11/19/17		X	P
36.	Josh & Sinikka	Marten	7604 Emerson Ln	11/20/17		X	PP
37.	Letha	Morgan	?	9/26/16		X	P
38.		Mrnustick Family	7330 Fair Lake Rd	11/18/17		X	PP
39.	Michael	Myers	The Silvera Firm			X	P
40.	Mary Ann	Olson	3695 High Rd	11/19/17		X	PP
41.	Randy	Penn	Franklin Hills	11/10/17		X	OP
42.	Peter	Perfetti	7535 Hickory Springs Rd	11/19/17		X	PP
43.	Jim	Pierson	3209 High Rd	9/25/16 11/16/17		X	P
44.	Tim	Runte	3480 High Rd	6/20/16		X	P

FLOWER MOUND TOWN COUNCIL MEETING OF NOVEMBER 20, 2017

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				5/31/17			
45.	Robert	Schnee	2710 High Rd	11/11/17		X	OP
46.	Janvier	Scott	2829 Bob White Ln	11/17/17		X	PP
47.	Louis	Shiell	3817 Sunnyview Ln	11/13/17		X	OP
48.	Julianne	Stewart	?			X	P
49.	Keith	Stewart	7585 Lost Creek	11/8/17		X	P
50.	Judah	Stewart	3921 Sunnyview Ln	11/16/17		X	P
51.	Luke	Stokes	?	11/19/17		X	PP
52.	Cathy	Strathmann	2612 Belmont	11/17/17		X	OP
53.	Nick	Stump	3525 High Rd	11/11/17		X	OP
54.	Neil	Sutter	?	8/29/17		X	P
55.	Linda	Sutter	3442 Sunnyview Ln	11/16/17		X	P
56.	Michelle & Bahram	Talaifar	7505 Hickory Springs Rd	10/11/16 11/20/17		X	P
57.	Scott	Tarwater	Newstream Commercial	11/17/17		X	PP
58.	Mark Van	Tilburg	?	11/19/17		X	PP
59.	Jean	Tips	?	11/19/17		X	PP
60.	Jerry	Tobin	3031 High Rd	11/8/17 11/16/17		X	P
61.	Jena	Toich	7408 Bolo	9/26/16		X	P
62.	Marly	Vaughn	?	11/19/17		X	PP
63.	Kay	Walder	3413 Shady Trl	11/20/17 (2)		X	PP
64.	KC	Walsh	3525 High Rd	6/1/17 11/8/17 11/16/17		X	P
65.	Kathryn	Wells	7360 Fair Lake Rd	11/18/17		X	OP
66.	Lori & Dave	Wilkins	?	11/10/17		X	OP

Total: P – 32

OP – 18

PP – 16

 66



TOWN COUNCIL AGENDA ITEM NO. 2

CONSENT ITEM

DATE: December 4, 2017

FROM: Matthew Woods, Director of Environmental Services

ITEM: Consider approval of a Professional Services Agreement for monthly gas well pad site air monitoring by Modern Geosciences, LLC, in the amount of \$141,600.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The Town began conducting air monitoring in 2010 on a quarterly basis to assess the ambient air conditions adjacent to gas well operations and other areas in the Town. In 2011, the Town Council directed staff to implement monthly air monitoring at designated sampling points in the Town which has continued through 2017. The reports from the 2010 through 2017 air sampling and pad site monitoring activities have been provided to the Town and are posted on the Town's webpage.

The 2016-2017 program proposals included a more detailed gas well pad site monitoring approach to more effectively assess the conditions on the pad site and identify potential air quality-related issues. For the 2018 program, Modern Geosciences will continue to conduct upwind and downwind monitoring consistent with EPA methodology, near-equipment inspections to evaluate the operational conditions on the pad sites, and associated subgrade piping monitoring will also be conducted.

Modern Geosciences has provided an acceptable scope of services for the air sampling and pad site monitoring program, and Modern Geosciences has the necessary experience to perform the requested sampling and analysis. The total cost for the monthly monitoring program for 2018 is estimated at \$141,600.00. The costs associated with the pad site monitoring program are covered by gas well pad site monitoring and inspection fees which are assessed to the pad site operators. The Town Council approved the amended gas well pad site inspection fees in September 2010 to cover certain expenses associated with the gas well inspection and monitoring program which includes the air monitoring evaluations. The current Professional Services Agreement for the Town's monitoring and inspection program expires in December 2017.

FISCAL IMPACT: \$141,600.00

Proposed Expenditure:	Account Number(s):
\$106,200.00	100-695-96050-5110 (FY 17-18)
\$ 35,400.00	100-695-96050-5110 (FY 18-19)

Finance Review by: Debra Wallace, Assistant Town Manager/CFO *DW*

LEGAL REVIEW: The Town's standard professional services 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 this Professional Services Agreement.

ATTACHMENTS:

1. Professional Services Agreement

DRAFT MOTION: Move to approve a Professional Services Agreement for monthly gas well pad site air monitoring by Modern Geosciences, LLC, in the amount of \$141,600.00; and authorization for the Mayor to execute same on behalf of the Town.

THE STATE OF TEXAS §
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH
MODERN GEOSCIENCES, LLC.**

This contract is entered into on this 4th day of December, 2017, by and between the **TOWN OF FLOWER MOUND, TEXAS**, a municipal corporation located in Denton County, Texas, (hereinafter referred to as "TOWN"), acting by and through its Mayor, and Modern Geosciences, LLC. ("hereinafter referred to as "CONSULTANT") whose address is 5100 Thompson Terrace, Colleyville, Texas 76034.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to conducting monthly gas well pad site air monitoring inspections in 2018, and provide a final report for each monthly monitoring event to the TOWN; and

WHEREAS, CONSULTANT is an engineering and professional geosciences firm qualified to provide such services and is willing to undertake the performance of such services for the TOWN in exchange for fees hereinafter specified;

TERMS OF AGREEMENT

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter contained and subject to the terms and conditions hereinafter stated, the parties hereto do mutually agree as follows:

I.

Employment of Consultant

CONSULTANT will perform as an independent contractor all services under this Contract to the prevailing professional standards consistent with the level of care and skill ordinarily exercised by members of the engineering and professional geosciences professions, both public and private, currently practicing in the same locality under similar conditions including but not limited to the exercise of reasonable, informed judgments and prompt, timely action. If CONSULTANT has represented or is representing that it has special expertise in one or more areas to be utilized in this Contract, then CONSULTANT agrees to perform those special expertise services to the appropriate local, regional and national professional standards.

II.
Scope of Services

CONSULTANT shall perform such services as are necessary to provide pad site monitoring and inspection services for the project specifically including, but not necessarily limited to, the tasks enumerated more fully in Attachment "A" hereto entitled "Scope of Work" (hereafter referred to as the "Project"). Attachment "A" is hereby incorporated herein by reference and made a part hereof as if written word for word. However, in case of conflict in the language of Attachment "A" and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.

III.
Payment for Services

Total payment for services described herein shall be a sum not to exceed One Hundred and Forty One Thousand Six Hundred and no/100 Dollars(\$141,600.00). This total payment for services includes CONSULTANT's ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT. If CONSULTANT retains any subcontractors to perform any of the work, CONSULTANT acknowledges that payments to such subcontractors are due and payable in accordance with the provisions of Texas Government Code Section 2251.022, and that interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.

Each month CONSULTANT will submit to TOWN an invoice for actual services performed and reimbursable expenses incurred by CONSULTANT during the previous month. Each invoice shall be itemized to show the amount of work performed during that month broken down by the identity of the person(s) performing such work, the amount of time expended by such person(s) in performing that work, the billing rate for each such person, and a brief summary of the work performed by each such person. Each invoice shall also state the percentage of work completed on the Project, the total of the current invoice amount and a running total balance for the Project to date. TOWN shall not be required to pay any amount in excess of the amount identified in the preceding paragraph unless TOWN shall have approved in writing in advance (prior to the performance of additional work) the payment of additional amounts.

Assuming that TOWN agrees with the invoice, that TOWN has not determined any of the work to be unsatisfactory, or that TOWN otherwise does not dispute any of the amounts billed, TOWN shall make payments in the amount shown by CONSULTANT's approved monthly statements and other documentation submitted in compliance with the Texas Prompt Payment Act, Texas Government Code Chapter 2251.

Nothing contained in this Contract shall require TOWN to pay for any work that TOWN has determined has not been successfully completed or is unsatisfactory as determined by TOWN, or which is not otherwise submitted in compliance with the terms of this Contract, nor shall failure to withhold payment pursuant to the provisions of this section constitute a waiver of any right, at law or in equity, which TOWN may have if CONSULTANT is in default, including the right to bring legal action for damages or for specific performance of this Contract. Waiver of any default under this Contract shall not be deemed a waiver of any subsequent default.

IV.

Revisions of the Scope of Services

TOWN reserves the right to revise or expand the scope of services after due approval by TOWN as TOWN may deem necessary, but in such event TOWN shall pay CONSULTANT equitable compensation for such services. In any event, when CONSULTANT is directed to revise or expand the scope of services under this Section of the Contract, CONSULTANT shall provide TOWN a written proposal for the entire costs involved in performing such additional services. Prior to CONSULTANT undertaking any revised or expanded services as directed by TOWN under this Contract, TOWN must authorize in writing the nature and scope of the services and accept the method and amount of compensation and the time involved in all phases of the Project.

It is expressly understood and agreed by CONSULTANT that any compensation not specified in Paragraph III herein above may require Flower Mound Town Council approval and is subject to the current budget year limitations.

V.

Term

This Contract shall begin on the date first written above, and shall terminate when TOWN has approved the Project as being final or otherwise terminates this Contract as provided herein.

VI.

Contract Termination Provision

Notwithstanding any other provision of this Contract, this Contract may be terminated at any time by TOWN for any reason, with or without cause, by providing CONSULTANT thirty (30) days written notice of such termination. Upon receipt of such notice, CONSULTANT shall immediately terminate working on, placing orders or entering into contracts for supplies, assistance, facilities or materials in connection with this Contract and shall proceed to promptly cancel all existing contracts insofar as they are related to this Contract.

VII.

Ownership of Documents

All materials and documents prepared or assembled by CONSULTANT under this Contract shall become the sole property of TOWN and shall be delivered to TOWN without restriction on future use. CONSULTANT shall provide documents in any commonly-used electronic file format as requested by TOWN. CONSULTANT may retain in its files copies of all drawings, specifications and all other pertinent information for the work. CONSULTANT shall have no liability for changes made to any materials or other documents by others subsequent to the completion of the Contract.

VIII. **Insurance**

A. CONSULTANT shall, at its own expense, purchase, maintain and keep in force during the term of this Contract such insurance as set forth below. CONSULTANT shall not commence work under this Contract until CONSULTANT has obtained all the insurance required under this Contract and such insurance has been approved by TOWN, nor shall CONSULTANT allow any subcontractor to commence work on its own subcontract until all similar insurance of the subcontractor has been obtained and approved. All insurance policies provided under this Contract shall be written on an "occurrence" basis save and except the Professional Liability Insurance which may be written on a "claims-made" basis, provided that "tail coverage" or continuation coverage is provided. The insurance requirements shall remain in effect throughout the term of this Contract.

The CONSULTANT shall furnish to TOWN certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Certificates shall reference the Project and be addressed as follows:

Town of Flower Mound
c/o Ebix BPO
Department 97
PO Box 257
Portland, MI 48875-0257
Fax: 517-647-7900
Email: certsonly@periculum.com

The following policies and coverage shall be required:

1. Worker's Compensation Insurance (as required by law) with the policy endorsed to provide a waiver of subrogation as to TOWN; such policy to provide for Employers' Liability Insurance of not less than \$100,000.00 for each accident, \$100,000.00 disease-each employee, \$500,000.00 disease-policy limit;
2. Commercial General Liability Insurance including, but not limited to,

Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractor's and Contractual Liability, including but not limited to coverage for all of the indemnification obligations of CONSULTANT under this Contract to the extent covered by policy form CG0001 or equivalent, and fully insuring CONSULTANT's liability for injury to or death of employees of TOWN and of third parties, extended to include personal injury liability coverage and for damage to property of third parties, with minimum combined single limits of \$1,000,000 per occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate per occurrence. Coverage must be written on an occurrence form.

3. Business Automobile Liability Insurance, covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000.00 per occurrence; and
4. Professional Liability Insurance: CONSULTANT shall obtain and maintain at all times during the prosecution of the work under this Contract professional liability insurance, which may be written on a claims made form provided that "tail coverage" or continuation coverage is provided. Limits of liability shall be \$1,000,000.00 per claim, \$1,000,000.00 annual aggregate.

If any of the foregoing insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than thirty-six (36) months following completion of the Contract and acceptance by the TOWN. All such insurance shall be purchased from an insurance company that meets a financial rating of B+VI or better as assigned by A.M. Best Company or equivalent.

B. Each insurance policy to be furnished by CONSULTANT shall include the following conditions by endorsement to the policy:

1. The TOWN shall be named as an additional insured on the Commercial General Liability policy, by using endorsement CG2026 or equivalent or broader;
2. The TOWN shall also be named as an additional insured as to all other applicable coverage save and except the Worker's Compensation Insurance and Professional Liability Insurance;
3. Each policy will require that thirty (30) days prior to the expiration, cancellation, or nonrenewal, a notice thereof shall be given to TOWN by certified mail to:

Matthew Woods, Director of Environmental Services
Town of Flower Mound

2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6348 Telephone
972-874-6473 Facsimile

However, if the policy is canceled for nonpayment of premium, only ten (10) days advance written notice to TOWN is required. CONSULTANT shall also notify TOWN within twenty-four (24) hours after receipt of any notices of expiration, cancellation, nonrenewal or any reduction in coverage or in limits it receives from its insurer(s);

4. The term "Owner" or "TOWN" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of TOWN and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of TOWN;
5. The policy phrase "Other Insurance" shall not apply to TOWN where TOWN is an additional insured on the policy; and
6. All provisions of the Contract concerning liability, duty and standards of care together with the indemnification provision (with the exception of professional liability coverage) shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

C. Concerning insurance to be furnished by CONSULTANT, it is a condition precedent to acceptability thereof that:

1. Any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by CONSULTANT. The TOWN's decision(s) thereon shall be final;
2. All policies are to be written through companies duly approved to transact that class of insurance in the State of Texas; and
3. All liability policies required herein, save and except Professional Liability Insurance, shall be written with an "occurrence" basis coverage trigger.

D. CONSULTANT agrees to the following:

1. CONSULTANT hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against TOWN, it being the intention that the insurance policies shall protect all parties to this Contract and be primary coverage for all losses covered by the policies;
2. Companies issuing the insurance policies and CONSULTANT shall have

no recourse against TOWN for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of CONSULTANT;

3. Approval, disapproval or failure to act by TOWN regarding any insurance supplied by CONSULTANT (or any subcontractors) shall not relieve CONSULTANT of full responsibility or liability for damages and accidents as set forth in the Contract documents. Neither shall the insolvency or denial of liability by the insurance company exonerate CONSULTANT from liability; and
4. No special payments shall be made for any insurance that the CONSULTANT and subcontractors are required to carry; all are included in the contract price and the contract unit prices.

Any of the insurance policies required under this section may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.

IX.

Right to Inspect Records

CONSULTANT agrees that TOWN shall have access to and the right to examine any directly pertinent books, documents, papers and records of CONSULTANT involving transactions relating to this Contract. CONSULTANT agrees that TOWN shall have access during normal working hours to all necessary CONSULTANT facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. TOWN shall give CONSULTANT reasonable advance notice of intended audits.

If TOWN agrees that CONSULTANT may retain any subcontractors, CONSULTANT further agrees to include in subcontract(s), if any, a provision that any subcontractor or engineer agrees that TOWN shall have access to and the right to examine any directly pertinent books, documents, papers and records of such engineer or sub-contractor involving transactions to the subcontract, and further, that TOWN shall have access during normal working hours to all such engineer or sub-contractor facilities and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of the paragraph. TOWN shall give any such engineer or sub-contractor reasonable advance notice of intended audits.

X.

Successors and Assigns

TOWN and CONSULTANT each bind themselves and their successors, executors, administrators and assigns to the other party to this Contract and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this Contract. Neither TOWN nor CONSULTANT shall assign or transfer

its interest herein without the prior written consent of the other.

XI.
CONSULTANT's Liability

Acceptance of the final plans by the TOWN shall not constitute nor be deemed a release of the responsibility and liability of CONSULTANT, its employees, associates, agents or consultants for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by TOWN for any defect in the designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by TOWN for any defect in the designs, working drawings, specifications or other documents and work prepared by said CONSULTANT, its employees, associates, agents or sub-consultants. In this regard, CONSULTANT acknowledges that TOWN is retaining CONSULTANT to provide the services described herein, in reliance upon CONSULTANT's specialized expertise and experience, and in reliance thereon.

XII.
Indemnification

CONSULTANT DOES HEREBY COVENANT AND CONTRACT TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY AND HOLD HARMLESS TOWN AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS OR CAUSES OF ACTION, INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, THAT MAY ARISE BY REASON OF DEATH OR INJURY TO PERSONS OR DAMAGE TO OR LOSS OF USE OF PROPERTY OCCASIONED BY ANY WRONGFUL INTENTIONAL ACT OR OMISSION OF CONSULTANT AS WELL AS ANY NEGLIGENT OMISSION, ACT OR ERROR OF CONSULTANT, ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, OR OTHER PERSONS FOR WHOM CONSULTANT IS LEGALLY LIABLE WITH REGARD TO THE PERFORMANCE OF THIS CONTRACT, AND CONSULTANT WILL, AT ITS OWN COST AND EXPENSE, DEFEND AND PROTECT TOWN AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS, INCLUDING PAYMENT OF TOWN'S REASONABLE ATTORNEYS' FEES. IN THE EVENT OF A CLAIM IS BROUGHT AGAINST TOWN, TOWN SHALL HAVE THE RIGHT TO RETAIN LEGAL COUNSEL OF ITS CHOOSING IN DEFENSE OF SUCH A CLAIM, AND SUCH ELECTION SHALL NOT RELIEVE CONTRACTOR OF ITS OBLIGATIONS UNDER THIS SECTION.

XIII.
Independent Contractor

CONSULTANT's status shall be that of an Independent Contractor and not an agent, servant, employee or representative of TOWN in the performance of this Contract. No term or provision of or act of CONSULTANT or TOWN under this Contract shall be construed as changing that status. CONSULTANT will have exclusive control of and the exclusive right to control the details of the work performed hereunder, and shall be liable for the acts and omissions of its officers, agents, employees, contractors, subcontractors and engineers and the doctrine of respondent superior shall not apply as between TOWN and CONSULTANT, its officers, agents, employees, contractors, subcontractors and engineers, and nothing herein shall be construed as creating a partnership or joint enterprise between TOWN and CONSULTANT.

XIV. Default

If at any time during the term of this Contract, CONSULTANT shall fail to commence the work in accordance with the provisions of this Contract, or fail to diligently provide services in an efficient, timely and careful manner and in strict accordance with the provisions of this Contract, or fail to use an adequate number or quality of personnel to complete the work or fail to perform any of its obligations under this Contract, then TOWN shall have the right, if CONSULTANT shall not cure any such default after thirty (30) days written notice thereof, to terminate this Contract for cause. Any such act by TOWN shall not be deemed a waiver of any other right or remedy of TOWN. If after exercising any such remedy due to CONSULTANT's nonperformance under this Contract, the cost to TOWN to complete the work to be performed under this Contract is in excess of that part of the Contract sum which has not theretofore been paid to CONSULTANT hereunder, CONSULTANT shall be liable for and shall reimburse TOWN for such excess.

TOWN's remedies for CONSULTANT's default or breach under this Contract shall be limited to one or more of the following remedies which may be exercised separately or in combination at TOWN's sole exclusive choice:

- (a) Specific performance of the Contract;
- (b) Re-performance of this Contract at no extra charge to TOWN; or
- (c) Monetary damages.

XV. Provisions Surviving Termination

The terms of Sections XII entitled Indemnification, and XVII entitled Confidential Information shall survive termination of this Contract.

XVI.
Changes

TOWN may, from time to time, require changes in the scope of services to be performed under this Contract. Such changes as are mutually agreed upon by and between TOWN and CONSULTANT shall be incorporated by written modification to this Contract.

XVII.
Conflicts of Interest

CONSULTANT covenants and agrees that CONSULTANT and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Contract. All activities, investigations and other efforts made by CONSULTANT pursuant to this Contract will be conducted by employees, associates or subcontractors of CONSULTANT.

No officer or employee of TOWN shall have any personal, financial interest, direct or indirect, in this Contract nor have any direct financial interest in the sale to TOWN of any land, materials, supplies, or services under this Contract, except on behalf of TOWN as a TOWN officer or employee. Any violation of this prohibition with knowledge, expressed or implied, of the person or corporation contracting with TOWN shall render the Contract voidable by the Director or the Town Council.

XVIII.
Confidential Information

CONSULTANT hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations in accordance with this Contract, which is of a confidential, non-public or proprietary nature. CONSULTANT shall treat any such information received in full confidence and will not disclose or appropriate such Confidential Information for its own use or the use of any third party at any time during or subsequent to this Contract. As used herein, "Confidential Information" means all oral and written information concerning TOWN, its affiliates and subsidiaries, and all oral and written information concerning TOWN or its activities, that is of a non-public, proprietary or confidential nature including, without limitation, information pertaining to customer lists, services, methods, processes and operating procedures, together with all analyses, compilation, studies or other documents, whether prepared by CONSULTANT or others, which contain or otherwise reflect such information. The term "Confidential Information" shall not include such materials that are or become generally available to the public other than as a result of disclosure of CONSULTANT, or are required to be disclosed by a governmental authority or by law, as determined by TOWN's attorney.

XIX.

Notice Information

All notices and communications under this CONTRACT to be mailed to TOWN shall be sent to the address of TOWN's agent as follows, unless and until CONSULTANT is otherwise notified:

Matthew Woods, Director of Environmental Services
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6348 Telephone
972-874- 6473 Facsimile

Notices and communications to be mailed or delivered to CONSULTANT shall be sent to the address of CONSULTANT as follows, unless and until TOWN is otherwise notified:

Kenneth S. Tramm, PhD, PG, CHMM
Modern Geosciences, LLC,
5100 Thompson Terrace
Colleyville, TX 76034
682-223-1322 Telephone

Any notices and communications required to be given in writing by one party to the other shall be considered as having been given to the addressee on the date the notice or communication is posted, faxed or personally delivered by the sending party.

XX.

Applicable Law

The Contract is entered into subject to the Flower Mound Town Charter and ordinances of TOWN, as same may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and federal laws. CONSULTANT will make any and all reports required per federal, state or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with CONSULTANT's income.

XXI.

Non-Discrimination

CONSULTANT shall not discriminate against any employee, applicant for employment, contractor, or sub-contractor because of the race, age, color, religion, sex, or national origin of such person. Engineer shall take affirmative action to insure that all such persons are treated equally during their employment without regard to their race, age, color, religion, sex, or national origin. If CONSULTANT fails to comply with the federal or state laws relating to Equal Employment Opportunity, it is agreed that TOWN, at its option, may do either or both of the following:

- (a) Cancel, terminate, or suspend the Contract in whole or in part; or
- (b) Declare CONSULTANT ineligible for future TOWN contracts until it is determined to be in compliance.

XXII
Arbitration

CONSULTANT agrees not to enter into any agreement to arbitrate arising out of, or relating to, this Contract which would subject TOWN to being a party to any arbitration without TOWN's prior written consent.

XXIII.
No Waiver of Governmental Immunity

Nothing in this Contract shall be construed as a waiver of TOWN'S governmental immunity, or of any applicable limitation on damages, or any other legal protection or defense or privilege of TOWN, except to the extent expressly provided otherwise herein.

XXIV.
Severability

If any of the terms, provisions, covenants, conditions or any other part of this Contract are for any reason held to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants, conditions or any other part of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

XXV.
Remedies

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Contract may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

XXVI.
Entire Agreement

This Contract embodies the entire agreement of the parties hereto, superseding all oral or written previous and contemporaneous agreements between the parties relating to matters herein, and except as otherwise provided herein cannot be modified without written agreement of the parties.

XXVII.
Non-Waiver

It is further agreed that one (1) or more instances of forbearance by TOWN in the exercise of its rights herein shall in no way constitute a waiver thereof.

XXVIII.
Headings

The headings of this Contract are for the convenience of reference only and shall not affect any of the terms and conditions hereof in any manner.

XXIX.
Venue

Situs of this Contract is agreed to be Denton County, Texas, for all purposes, including performance and execution, and the parties to this Contract agree and covenant that this Contract will be enforceable in Flower Mound, Texas; and that if legal action is necessary to enforce this Contract, exclusive venue will lie in Denton County, Texas.

XXX.
No Third Party Beneficiary

For purposes of this Contract, including its intended operation and effect, the parties (TOWN and CONSULTANT) specifically agree and contract that: (1) the Contract only affects matters/disputes between the parties to this Contract, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship with TOWN or CONSULTANT or both; and (2) the terms of this Contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either TOWN or CONSULTANT.

[The remainder of this page is left blank intentionally]

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: _____
The Honorable Thomas E Hayden
Mayor, Town of Flower Mound

Date Signed: _____

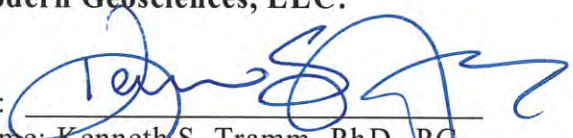
Attest:

Town Secretary

Approved:

Town Attorney

CONSULTANT:
Modern Geosciences, LLC.

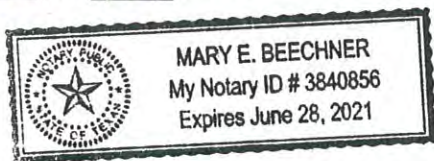
By: 
Name: Kenneth S. Tramm, PhD, PG
Title: GENERAL MANAGER

Date Signed: 11/16/17

State of Texas §
 §
County of Tarrant §

This instrument was acknowledged before me on the 16th day of November, 2017, by Kenneth S. Tramm, PhD, PG, in his capacity as Principal of Modern Geosciences, LLC., a Texas Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of Modern Geosciences, LLC.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 16th DAY OF Nov, 2017.



Mary Beechner
Notary Public, State of Texas

My Commission Expires:

6-28-2021



DATE November 15, 2017

PROPOSAL P17236

ATTN **Mr. Matthew Woods**
1001 Cross Timbers Road, Suite 2330
Flower Mound, Texas 75208

SUBJECT **Padsite Inspection and Air Monitoring Program - 2018**
Flower Mound, Texas

Dear Mr. Woods:

Modern Geosciences, LLC (Modern) is pleased to submit this proposal to the Town of Flower Mound (Town) to perform Monthly Padsite Inspection and Air Monitoring in 2018.

The following sections provide our understanding of the proposed project, scope of work, fee and schedule. Modern's consulting services will be conducted in accordance with the scope of services detailed below and Professional Services Agreement (PSA) as provided by the Town.

BACKGROUND AND PROJECT UNDERSTANDING

Modern understands the Town would like to continue detailed padsite inspection and air monitoring in 2018. Prior sampling and monitoring has been completed by the Town since 2010 with individual padsite inspection begun in 2013. Since padsite inspections have been implemented, hundreds of leaks have been identified and addressed by operators, which in turn minimize impact to off-site properties. Dr. Kenneth Tramm with Modern has been the Program Manager since 2010 for the Town and will continue in this capacity.

Our padsite inspection and air monitoring approach includes two distinct steps that will occur simultaneously and produce padsite-specific data to aid in the identification of concerns before significant releases or emissions become a greater concern off the padsite. Modern has worked with the Town to tailor our approach and expand our inspection parameters each year monitoring has been performed. For 2018, expanded elements include continued evaluation of subgrade piping during padsite efforts, expanding our individual volatile organic compound list, and the development of GIS-based layers to document padsite inspection data.

Additional detail on the Fenceline Monitoring and Near-Equipment Inspection is presented below.

Fenceline Monitoring

Modern will continue to perform up and downwind air sampling for each padsite. This will utilize our Gas Chromatograph/Mass Spectrometer (GC/MS) to analyze samples collected upwind and downwind of each padsite for volatile organic compounds (VOCs). Additionally, Modern will deploy high-resolution particulate



matter (PM) monitors to evaluate up and downwind levels of PM_{2.5} (fine particles) and PM₁₀ (coarse particles) in addition to a high-resolution hydrogen sulfide meter (3 ppbv detection limit).

GC/MS System

The GC/MS will allow collection of discrete samples analyzed using a modified EPA Method TO-15 or TO-17 for broad range of volatile organic compounds (VOCs). This is consistent with the ambient monitoring approach described below, but will be processed within 12 hours of collection to allow us the ability to respond to concerns in an expedited manner. This approach will yield high resolution data in the low parts per billion.

Particulate Matter

Modern will collect PM data within 60 second intervals to allow multiple observations both up and downwind of padsites. The samples will be analyzed using light-scattering methods to allow differentiation of specific mass sizes. This allows estimation of both coarse and fine particle contribution to ambient air from multiple emission sources that may be present at a padsite (compressor exhaust, diesel engine exhaust, elevated SVOCs). Temperature and humidity will be recorded to allow adjustment to observations as appropriate.

Discrete Meters

Handheld meters (further detailed below) monitoring hydrogen sulfide, VOCs, methane, and radiation will also be utilized at the fenceline locations. Additionally, Modern will record meteorological data such as wind speed, direction, and barometric pressure.

Near-Equipment Inspection

During the monitoring event, Modern will perform an Audio, Visual, and Olfactory (AVO) field inspection as well as record monitoring results with the use of optical gas imaging systems (e.g., FLIR cameras) and handheld meters. The goal of near-equipment inspection activities is to visually evaluate operational conditions of well heads, well connections, flanges, valves, pumps, well head fluids (i.e., corrosion inhibitors), production piping, visible system pressure gauges, separator systems, above-ground storage tanks (i.e., thief hatch, ventilation), fluid disposal transfer points, compressor system connections, chemical storage areas, and identify obvious signs of staining, spills, or releases.

Modern uses a FLIR GF320 Optical Gas Imaging (OGI) system to determine if a potential leak is indicated. When emissions are identified, handheld equipment is used to quantify the emissions for leak determination at the point of release. Our instrumentation includes optical methane sensors (ppmv resolution), radiological survey meters (uR/hr resolution), photo-ionization detectors (ppbv resolution), and hydrogen sulfide monitors (ppbv resolution).

Our proposed leak definitions are set at either positive visual observation with the OGI equipment, or if accessible, direct measurement for quantification. An example of typical leak definition thresholds are outlined below.



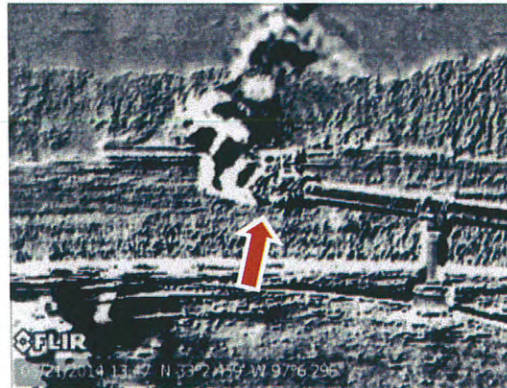
Measured Compound	On-Site Criteria	Fenceline Criteria
Methane	10,000 ppmv ¹	500 ppmv ²
Hydrogen Sulfide (H ₂ S)	5 ppmv ³	0.08 ppmv ⁴
Total VOCs (tVOCs)	500 ppmv ^{2,5}	5 ppmv ⁶
Radiation (NORM)	50 µR/hr ⁷	20 µR/hr ⁷
Individual VOCs, Ozone, others	OSHA, NIOSH, ACGIH levels	TCEQ Short-term AMCV or ESL, NAAQS
Particulates	PM _{2.5} - 5,000 ug/m ³ ⁸ PM ₁₀ - 15,000 ug/m ³	PM _{2.5} - 35 ug/m ^{3,9} PM ₁₀ - 150 ug/m ^{3,9}

1. Utilizes the Interstate Natural Gas Association of America (INGAA) recommended leak definition within their December 4, 2015 response to EPA Docket No. EPA-HQ-OAR-2010-0505 – “Oil and Natural Gas Sector: Emission Standards for New and Modified Sources,” dated September 18, 2015 (80 FR 56593). Also represents 20% of the Lower Explosive Limit. A lower leak definition and additional inspection and reporting may be required at facilities subject to 40 CFR §60 Subpart OOOOa
2. NSPS; 40 CFR Part 40 Subpart OOOOa; Represent half of the American Conference of Governmental Industrial Hygienists (ACGIH) 8-hour threshold limit value (TLV) of 1,000 ppmv (0.1% by volume) set for potential cardiac sensitization and central nervous system depression.
3. 50% NIOSH 10-minute IDLH ceiling (29 CFR 1910.1000 Table Z-2)
4. 30-minute criteria set at 30 TAC §112.31
5. EPA 20102; 40 CFR Part 63 (EPA-HQ-OAR-2010-0505; FRL-RIN 2060-AP76)
6. Used as an indicator elevated VOCs may approach or exceed ambient air quality criteria
7. 16 TAC §4; Environmental Protection, Subchapter F, Oil and Gas NORM; EPA average background criteria established under Document No. 402-R-08-005; April 2008. Reported background ranged from 10 µR/hr to 85 µR/hr.
8. Utilizes OSHA Total and Respirable Limits
9. Utilizes the 24-hour Average Criteria set under NAAQS

The above references represent non-ambient conditions that would typically indicate a significant contribution of COC emissions from production equipment. If “new, modified, or reconstructed” equipment as defined within NSPS OOOOa is present on a padsite, the methane (as a part of the VOC definition) leak criteria will be adjusted to match NSPS requirements of 500 ppmv.



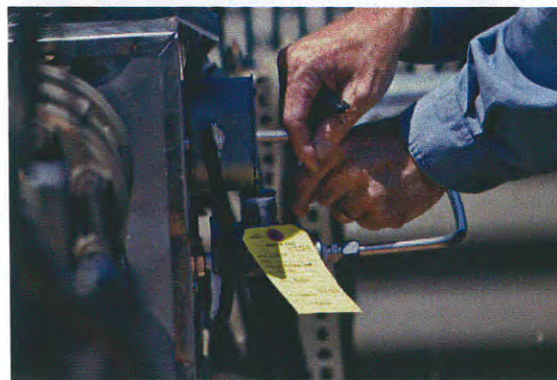
Near-Equipment Inspection efforts during a padsite inspection event using an Optical Gas Imaging (OGI) Camera to record a leak.



Example image for a leaking pressure control valve from a tank battery system. The leak is video recorded for the operator to repair.



Example of infrared methane monitoring after a leak has been identified with the OGI equipment.



Example of tagged equipment in need of repair or replacement. Modern can tag each accessible component noted above monitoring goals.

SCOPE OF SERVICES

TASK 1: PADSITE INSPECTION AND FENCELINE AIR MONITORING

Modern will coordinate with Town staff and padsite representatives to obtain access to each of the padsites. Flame Resistant clothing will be worn during access to areas where flammable environments are anticipated. It is anticipated that the services will be performed under Level D safety requirements and no other protective gear is required.



Modern will perform upwind and downwind monitoring by collecting discrete samples for VOC analysis as well as particulate matter evaluation. During the fenceline monitoring events, Modern will also complete Near-Equipment Inspection activities as detailed earlier.

Inspection Schedule

Modern will coordinate with Town staff to inspect each of the padsites every six months (twice annually). We understand Town staff will continue to verify the identified leaks are addressed by the operator, but have anticipated periodic assistance and re-inspections as directed by Town staff. Modern will coordinate with Town staff on the final schedule for inspections and monitoring.

TASK 2: SUBGRADE PIPING INSPECTION

Modern will coordinate with Town staff and padsite representatives to obtain access to the areas of subgrade piping between padsites. Modern will utilize OGI and IR equipment to evaluate known subgrade piping alignments for potential leaks between/at padsites. We understand Town staff will continue to verify the identified leaks are addressed by the operator, but have anticipated periodic assistance and re-inspections as directed by Town staff. Modern will coordinate with Town staff on the final schedule for inspections and monitoring.

TASK 3: MONTHLY REPORTING

The preliminary results of our assessment will be verbally reported during the course of the project. Modern's scope of services for this assessment is based on the production of brief reports issued after each sampling and inspection period.

The reports will include:

- Results of Near-Equipment inspections and notation of changing conditions identified;
- Results of Fenceline Monitoring and notation of changing conditions identified;
- Subgrade piping inspection results; and
- Findings and Conclusions

The ambient air sampling and monitoring results will be compared to the current Texas Commission on Environmental Quality (TCEQ) Short Term Air Monitoring Comparison Values (AMCVs) and if warranted, additional related risk criteria developed by the TCEQ Toxicology Division and/or other appropriate regulatory entities.

ESTIMATED BUDGET

Modern will perform the above described scope of services on a lump sum of **\$11,800** per month with annual budget of **\$141,600**. Additional costs might be incurred if the assumptions presented earlier are not correct or



further monitoring assistance is needed outside the above scope. In the event that additional costs and services are required, Modern will notify the town immediately and prepare an estimate of the additional cost. Modern will not exceed the authorized amount until written approval from town has been received. The estimated project budget is summarized in the table below.

MONTHLY PROJECT BUDGET	
TASK 1: MONTHLY PADSITE INSPECTION AND FENCELINE AIR MONITORING	
Consulting Labor	\$ 3,150
Equipment/Analysis/Expenses	\$ 3,800
Task Expenses	\$ 750
Subtotal:	\$ 7,700
TASK 2: MONTHLY SUBGRADE PIPING INSPECTION	
Consulting Labor	\$ 500
Equipment Expenses	\$ 500
Task Expenses	\$ 100
Subtotal:	\$ 1,100
TASK 3: MONTHLY REPORTING	
Consulting Labor (Reporting and Data Processing)	\$ 2,800
Task Expenses	\$ 200
Subtotal:	\$ 3,000
MONTHLY TOTAL (2-3 PADSITES):	\$ 11,800
ANNUAL TOTAL:	\$141,600

General costs for additional scope outside the above inspection events is provided for informational purposes. If these services are needed, Modern understands authorization would be given separately by the Town.

PROJECT SCHEDULE

Modern is ready to begin project activities within 10 days of authorization. Each monthly sampling event will include coordination with Town staff and padsite operators (as authorized by Town).

ASSUMPTIONS AND LIMITATIONS

- Our client will coordinate all access and site personnel/equipment requirements to allow the above scope of services to be executed;



- Our work will be performed in a manner consistent with that level of care and skill ordinarily exercised by other members of our profession practicing in the same locality, under similar conditions and at the time the services are performed;
- Our findings and conclusions will be based on the information available for review. This will only include a limited number of observations and data points. It is likely that conditions will vary between or beyond the specific points evaluated. Modern makes no guarantee or warranty, express or implied, regarding the services, communication (oral or written), report, opinion, or instrument of service provided. The final report will be submitted electronically. Hard copies can be provided for an additional fee;
- The samples collected as part of these services will represent conditions at the time of sampling only as future conditions can vary based on changing conditions, such as: work schedules of oil and gas exploration, production, and transmission, temperature, weather factors and other industrial activities within the Town; and
- This proposal is valid for a period of 60 days from the date of issuance.

AUTHORIZATION

If this proposal meets your needs please submit provide us written authorization and the PSA as required by the Town. If there is a need for any change in the scope of services described in this proposal, please contact us immediately. Any requested changes may require revision of the proposed fee and schedule. All terms and conditions indicated in this proposal will be considered by both parties to be in effect from the effective date of the executed contract through completion of the project.

CLOSING

We thank you for the opportunity to provide this proposal for environmental services and look forward to working with you on this project. If you have any comments or questions concerning this proposal please contact us at your earliest convenience.

Respectfully submitted,

Kenneth S. Tramm, PhD, PG, CHMM
PROGRAM MANAGER

MODERN GEOSCIENCES

TEXAS REGISTERED GEOSCIENCE FIRM 50411

TEXAS REGISTERED ENGINEERING FIRM F-16201



TOWN COUNCIL AGENDA ITEM NO. 3

CONSENT ITEM

DATE: December 4, 2017

FROM: Brittni Barnett, Grants & Financial Analyst

ITEM: **Consider approval of a resolution authorizing the adoption of the Program Year 2016 Consolidated Annual Performance & Evaluation Report for the Community Development Block Grant; and authorization for the Mayor to execute same on behalf of the Town and submit to the U.S. Department of Housing and Urban Development.**

BACKGROUND INFORMATION: This item is to consider approval of a resolution adopting Flower Mound's Program Year 2016 Consolidated Annual Performance & Evaluation Report (CAPER). The CAPER is required under the Town's Community Development Block Grant (CDBG). It describes the Town's progress in carrying out the housing and community development strategies identified in the Program Year 2015-2019 Consolidated Plan, which was submitted to the U. S. Department of Housing and Urban Development (HUD) in August of 2015. In 2002, HUD recognized Flower Mound (the Town) as an Entitlement Community and awarded the Town a Community Development Block Grant (CDBG). Since that time, Flower Mound has received \$3,314,201 in funding under this CDBG, which includes the total for the 2017 Program year.

Receipt of grant funding is conditioned upon Flower Mound implementing and adhering to the Consolidated Plan, which identifies long-term strategies and annual activities that assist the Town's low- and moderate-income residents. Flower Mound's Program Year 2016 Annual Plan was approved by the Town Council on August 4, 2016. During this period, the Council designated available CDBG funds to be used: (1) for planning and administration; (2) the Residential Rehabilitation Program; (3) the Minor Home Repair Program and (4) to subsidize a call-in transportation service for the Town's elderly and those with disabilities. The CAPER describes the ways in which the Town leveraged both federal and non-federal dollars to achieve these goals.

BOARD REVIEW/CITIZEN FEEDBACK: Grant staff held a public hearing on November 9, 2017 to discuss the CAPER. The CAPER was also available for public comment for 30 days. Staff received one comment and one individual attended the public hearing.

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

Finance Review by: N/A

LEGAL REVIEW: Stacie S. White, of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the resolution and the proposed Program Year 2016 CAPER as to form and legality.

ATTACHMENTS:

1. CAPER 2016 Resolution
2. Proposed Program Year 2016 CAPER

DRAFT MOTION: Move to approve a resolution authorizing the adoption of the Program Year 2016 Consolidated Annual Performance & Evaluation Report, which is required under Flower Mound's Community Development Block Grant; and authorize the Mayor to execute same on behalf of the Town and submit to the U.S. Department of Housing and Urban Development.

RESOLUTION NO. _____

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

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, PROVIDING FOR THE ADOPTION OF FLOWER MOUND'S PROGRAM YEAR 2016 CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT UNDER THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM; PROVIDING AUTHORIZATION FOR THE MAYOR TO EXECUTE SAID REPORT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, a Consolidated Annual Performance and Evaluation Report must be adopted by the Town of Flower Mound in fulfillment of the requirements of the Housing and Community Development Act of 1974, as amended, the National Affordable Housing Act of 1990, as amended, the Stewart B. McKinney Act of 1987, as amended, and 24 Code of Federal Regulations Part 91.520; and

WHEREAS, the Consolidated Annual Performance and Evaluation Report has been made available for public review and comment for a 30-day period; and

WHEREAS, Flower Mound Community Development Block Grant staff held a public hearing to allow for public comments regarding the Consolidated Annual Performance and Evaluation Report; and

WHEREAS, the Town Council of the Town of Flower Mound has determined that it is in the best interest of the residents of the Town to adopt the Consolidated Annual Performance and Evaluation Report for 2016 in order to comply with the requirements of the Housing and Community Development Act of 1974, as amended, the National Affordable Housing Act of 1990, as amended, the Stewart B. McKinney Act of 1987, as amended, and 24 Code of Federal Regulations Part 91.520, and to authorize the Mayor to execute said report on behalf of the Town of Flower Mound.

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

SECTION 1

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

SECTION 2

The Town of Flower Mound's Program Year 2016 Consolidated Annual Performance and Evaluation Report, attached hereto as "Attachment 2" is hereby adopted.

RESOLUTION NO. _____

SECTION 3

The Mayor is authorized to execute the Program Year 2016 Consolidated Annual Performance and Evaluation Report on behalf of the Town and submit it to the U. S. Department of Housing and Urban Development prior to December 31, 2017.

SECTION 4

This Resolution shall become effective on and after its date of adoption.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ON THIS THE _____ DAY OF _____, 2017.

APPROVED:

Thomas E. Hayden, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY



Program Year 2016

**Consolidated Annual
Performance & Evaluation Report (CAPER)**

**For the period
October 1, 2016 – September 30, 2017**

**Prepared for the U. S. Dept. of Housing and Urban
Development (HUD)**

GOALS AND OUTCOMES

Summary of Progress Narrative

The Consolidated Annual Performance and Evaluation Report contains information about the Town of Flower Mound's accomplishments during the second year of our community's five-year Consolidated Plan (2015-2019) for Housing and Community Development. The report reflects Flower Mound's implementation of outcome performance measurement requirements described in the Federal Register Notice dated March 7, 2006. It also provides a description of how our jurisdiction's program provided new or improved availability/accessibility, affordability, sustainability of decent housing; a suitable living environment; and economic opportunity for Flower Mound's low-and moderate-income residents.

The Town of Flower Mound is an entitlement community under the U.S. Department of Housing and Urban Development's (HUD) Community Development Block Grant (CDBG) Program. During the 2016 Program Year (PY), October 1, 2016 through September 30, 2017, \$177,455.00 in CDBG funds was made available to the Town of Flower Mound to further the objectives of our Consolidated Plan, which started in Program Year 2015 and will end in Program Year 2019. No program income was received.

Flower Mound expended \$165,760.94 of CDBG funds and leveraged Town General funds during the year to help address identified housing, homeless, community development, anti-poverty and other special needs. The investments were allocated based on citizen input; research and analysis to identify service level weaknesses and areas of need; and Town Council goals and priorities. The Town's Program Year 2016 Annual Action Plan identified three specific objectives that were to be achieved during the year, using CDBG funds, and are reaffirmed in this annual report:

- Preserve the Town's existing housing stock through the Residential Rehabilitation Program and the Minor Home Repair Program.
- Offer transportation services for the Town's elderly who are 65 years or older and adults with severe disabilities who are 21 years or older.
- Carry out planning and program administration activities.

Assessment on the Use of Funds to Meet Highest Priorities Narrative

In PY 2016, the Town of Flower Mound accomplished the vast majority of the proposed outcomes and goals identified in the 2015-2019 Consolidated Plan and 2016 Annual Action Plan.

Preserve the Town's Existing Housing Stock:

- Residential Rehabilitation Program: Successfully completed two projects to assist low-to moderate-income homeowners with interior and exterior home rehabilitation.
- Minor Home Repair Program: Successfully completed one project to assist low-to moderate-income homeowners with minor interior and exterior home repairs.

Town-wide Transportation Service: Subsidized 1,281 one-way rides to 27 of the Town's elderly residents who are 65 or older or residents with severe disabilities who are 21 or older.

Planning and Administration: Continued to fund the administration costs of the CDBG Program, including contract administration, publication of public notices, office equipment and supplies, planning, monitoring, and all other related expenses. While the Town accomplished the vast majority of what it planned to during the Program Year, no funds from the PY 2016 allocation from HUD have been spent for Planning and Administration. The Town is working diligently to ensure that it spends and draws down funds in a timely manner and has significantly reduced the funds allocated to Planning and Administration in order to utilize these funds in a more efficient manner.

Assist Social Service and Cultural Arts Providers: Allocated \$272,250 in Town General Funds to 22 agencies and organizations that are actively engaged in the provision of social services and cultural arts in Flower Mound.

RACIAL AND ETHNIC COMPOSITION OF FAMILIES ASSISTED

Narrative

The Town offers two housing rehabilitation programs, which accounted for about 84 percent of the total CDBG funding allocated to the Town in PY 2016. In PY 2016, three homes were rehabilitated using CDBG funds. All three of the households assisted were White.

Additionally, the Town's transportation service helped subsidize 1,281 one-way rides to 27 of the Town's elderly residents who are 65 or older and/or residents with severe disabilities who are 21 or older. Of these riders, 20 were White, three were African American and four were Asian.

RESOURCES AND INVESTMENTS

Resources Made Available Narrative

In the 2015-2019 Consolidated Plan, the Town of Flower Mound identified the preservation of existing housing stock as a priority. The Town currently offers two housing rehabilitation programs that are funded by CDBG: the Minor Home Repair Program and the Residential Rehabilitation Program. These programs are not limited to a specific geographic area, but are only for low-to-moderate income homeowners that live within the Town of Flower Mound city limits. \$148,385 or about 84 percent of the Town's total 2016 CDBG allocation was dedicated to housing rehabilitation projects for low-to-moderate income homeowners.

In PY 2016, the CDBG funding allocated for housing rehabilitation was:

- **67% for Residential Rehabilitation**

The Residential Rehabilitation Program is designed to assist low-and moderate-income homeowners in Flower Mound with the rehabilitation of their single-family, owner-occupied houses. The program pays for rehabilitation up to \$60,000. In PY 2016, \$118,385 was allocated for the program, and a total of two homes were completed.

- **17% for Minor Home Repair**

The Minor Home Repair Program is designed to assist low-and moderate-income homeowners in Flower Mound with minor repairs of their single-family, owner-occupied houses. The program pays for minor repairs up to \$15,000. In PY 2016, \$30,000 was allocated for the program and one home was repaired.

Additionally, in the 2015-2019 Consolidated Plan, the Town of Flower Mound identified Town-wide transportation as a priority. The Town-wide transportation program provides transportation to locations within the Town of Flower Mound, the City of Lewisville and the City of Highland Village and is only for Town of Flower Mound residents age 65 or older and/or residents who are 21 or older with a severe disability. In PY 2016, \$26,615 or 15 percent of the Town's total 2016 CDBG allocation was dedicated to the Town-wide Transportation Program. The Town contracts with Special Programs for Aging Needs (SPAN) to provide the service and, if needed, supplements the CDBG funds with Town General Funds.

Geographic Distribution and Location of Investments Narrative

Because of the size of the Town's allocation of CDBG funding, the Town's Community Development Block Grant Executive Advisory Committee decided not to target a certain area or region of the Town to focus its programming efforts. All of the activities implemented using CDBG funds are open to all qualified residents of Flower Mound and are intended to have a town-wide benefit.

Leveraging and Match Narrative

The Town of Flower Mound's Financial Services Division is the lead agency for the administration of CDBG funding. To effectively implement the Community Development Plan, Financial Services utilizes CDBG funds as well as resources allocated by the Town Council. The Town Council makes available more than \$200,000 a year in General Fund resources to fund agencies that are actively engaged in the provision of social services and cultural arts in Flower Mound.

There are no match requirements for CDBG funds.

AFFORDABLE HOUSING

Discuss the difference between goals and outcomes and problems encountered in meeting these goals.

The Town of Flower Mound proposed to use 84 percent of its 2016 CDBG allocation to fund the rehabilitation of homes owned and occupied by low-to-moderate income households. It was anticipated that two households would be served through the Town's Residential Rehabilitation Program and two households would be served through its new Minor Home Repair Program.

Two households were assisted through the Residential Rehabilitation Program, and one household was assisted through the new Minor Home Repair Program. We did not meet our projection of two homes for the year for the Minor Home Repair Program, due to a lack of applicants for the program. We also had a few applicants who decided to pull their applications. However, in an effort to solve this problem, we publicized the program through our utility billing newsletter and on the Town's website. We also spoke with the Town's Code Enforcement Division to make them aware of the program and to ask for their assistance in identifying potential applicants. We believe these efforts will help us to garner more applicants for the program and meet our projection for PY 2017.

Discuss how these outcomes will impact future annual action plans.

The Town of Flower Mound will stay on track to meet its goals. In an effort to make up for only completing one of our two projected Minor Home Repair Projects this year, we plan to complete three projects in one of the upcoming years to get us back on track to meet our Consolidated Plan goal.

Narrative for Number of Persons Served at Each Income Level

The Town of Flower Mound expanded its housing rehabilitation program in PY 2015. The Minor Home Repair Program was instituted to provide an additional outlet for accomplishing the Town's goal of supplying decent, safe, sanitary and affordable housing; correcting health and safety hazards in deteriorated housing; and expanding the useful life of existing housing units. The addition of the Minor Home Repair program continued to allow the Town the opportunity to assist more low-and moderate income homeowners during PY 2016.

One hundred percent of all CDBG funding for the housing rehabilitation programs was dedicated to persons of low-to-moderate income. Three homes were completed in PY 2016. Of the three homes completed, 100% were occupied by moderate-income homeowners. Two out of the three homes (67%) were owned by female head of households.

HOMELESS AND OTHER SPECIAL NEEDS

Evaluate the jurisdiction's progress in meeting its specific objectives for reducing and ending homelessness through:

- **Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs:**

Outreach to persons experiencing homelessness continued to be carried out by the Town's partners, such as Christian Community Action (CCA). Flower Mound continued to allocate a portion of its General Funds to support Christian Community Action and its efforts to prevent homelessness and provide needed services to the homeless population. At CCA, the needs of persons who are homeless are assessed routinely as part of program provision. In PY 2016, the Town allocated \$272,250 of general funds to fund agencies that are actively engaged in the provision of social services and cultural arts in Flower Mound.

The Town also continued its involvement with the Denton County Homeless Coalition (DCHC). DCHC conducts quarterly general body meetings and monthly steering committee meetings, both of which are attended by representatives from area cities, service providers and faith-based groups. The meetings provide a forum for problem solving, information sharing and referral services. Agencies that serve a wide variety of special needs in locations throughout the cities of Flower Mound, Lewisville and Denton regularly attend and participate. These meetings provide an opportunity for collaboration between the Town of Flower Mound and these organizations that work to assist the homeless and address their needs.

- **Addressing the emergency shelter and transitional housing needs of homeless persons:**
The Town of Flower Mound does not receive Emergency Shelter Grant (ESG) funding. However, the Town continued to participate in the Denton County Homeless Coalition. This network of service providers and other relevant parties serves as a catalyst for developing and providing needed services to those individuals and families who are homeless or at risk of homelessness in the county, such as emergency shelter and transitional housing.
- **Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are: likely to become homeless after being discharged from publically funded institutions and systems of care (such as health care facilities, mental health facilities, foster care and other youth facilities, and corrections**

programs and institutions); and, receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs:

The Town of Flower Mound made available \$272,250 in General Fund resources to fund agencies that are actively engaged in the provision of social services and cultural arts in, and for, the residents of Flower Mound. Some of these organizations included Christian Community Action, an organization that strives to assist the homeless and those at risk of becoming homeless by providing comprehensive services that alleviate suffering; PediPlace, an organization that provides primary care pediatric health services to children with limited access to care; and Denton County Friends of the Family, an organization that provides supportive services to those impacted by relationship violence and sexual assault.

Additionally, the Town of Flower Mound continued to participate in the Denton County Homeless Coalition. This network of service providers and other relevant parties serves as a catalyst for developing and providing needed services to those individuals and families who are homeless or at risk of homelessness in the county.

- **Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again:**

The Town continued its support of helping homeless and potentially homeless individuals by allocating General Funds to local social service agencies that are working to address this challenge, such as Christian Community Action. The Town also continued its participation in the Denton County Homeless Coalition, which brings together those fighting to end homelessness in Denton County, such as local service providers, churches and governments.

The Town of Flower Mound also supplements the work of various Town-funded social service agencies to end chronic homelessness by promoting the preservation and maintenance of existing homes through its Minor Home Repair Program and Residential Rehabilitation Program.

The Town continues to carry out these programs and support these various organizations and agencies in order to address this challenge in a coordinated and proactive manner that reduces duplication of effort as much as possible.

PUBLIC HOUSING

Actions taken to address the needs of public housing:

This section is not applicable, as the Town of Flower Mound does not have a public housing authority. The Town also does not receive or administer funds for assisted housing. There are no plans for public housing in Flower Mound at this time. However, surrounding communities do administer assisted housing programs to residents of Flower Mound, such as the Denton Housing Authority, which is currently providing assistance to 15 clients in Flower Mound.

Actions taken to encourage public housing residents to become more involved in management and participate in homeownership:

N/A

Actions taken to provide assistance to troubled PHAs:

N/A

OTHER ACTIONS**Actions taken to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment:**

During the 2016 Program Year, the Town's SMARTGrowth Commission and Planning and Zoning Commission continued their periodic review of development criteria to help mitigate the ill effects of overcrowding and congestion, including overburdened infrastructure, facilities, schools and services. Examples of these efforts include:

- The Planning and Zoning Commission met regularly throughout the year. The members used Flower Mound's SMARTGrowth criteria to ensure growth does not occur at the expense of environmental quality, community character, or quality of life of the Town's residents. Commission members followed residential density criterion and the Town's Master Plan when reviewing residential development requests, which allowed for a wide range of housing opportunities.
- The SMARTGrowth Commission also met during the year, which provided an opportunity for members to discuss any potential issues with the SMARTGrowth criteria.

Additionally, The Fair Housing Committee continued its routine review of the Town's zoning and subdivision ordinances, building codes and impact fees; and when necessary, will bring any potential impediments to the attention of management and the Town Council. Examples of these efforts include:

- The Town's Planning Services Division is represented on the Town's Fair Housing Committee. This division reviews, administers and enforces Town codes and regulations pertaining to the development of commercial and residential property through the planning and zoning process. During the year, no impediments were identified that needed to be brought to the attention of management and the Town Council.
- The Town's Building and Inspections Division is represented on the Fair Housing Committee. This Division reviews building codes and enforces building, electrical, plumbing and mechanical code regulations within Flower Mound. Permits are required before performing any new construction or addition, alteration or repair of existing buildings, structures, plumbing, electrical or mechanical work. During the year, no impediments were identified that needed to be brought to the attention of management and the Town Council.
- The Developmental Services Department is represented on the Fair Housing Committee. This Department reviews impact fees and provides planning, design review, implementation, quality control and maintenance for the Town's infrastructure system and improvement projects. During the year, no impediments were identified that needed to be brought to the attention of management and the Town Council.

Actions taken to address obstacles to meeting underserved needs:

Limited funding and resources to address the most complicated situations are the primary obstacles to meeting underserved needs in Flower Mound. The Town allocated more than \$250,000 in General Fund dollars to its social service partners to help meet the basic unmet needs of residents, including food, medical care, clothing and emergency housing assistance.

Actions taken to reduce lead-based paint hazards:

During the 2016 Program Year, the Town of Flower Mound continued to demonstrate its commitment to the eradication of lead-based paint hazards in the community.

In 2003, the Town formed a Lead-based Paint Task Force to determine what activities needed to be taken to reduce any existing or potential lead-based paint hazards and ensure compliance with the Lead-based Paint Hazard Reduction Act of September 15, 2000. During the year, the Task Force (a) researched and analyzed Flower Mound's ordinances, laws, regulations, public policies, practices, procedures, records and reports for any references to lead-based paint; (b) identified the locations of the 859 homes in Flower Mound built before 1978; and (c) obtained and developed educational materials about the dangers of lead-based paint. These materials were made available for public access at Town Hall and posted on the Town's website.

Based on the Task Force recommendations, the Town's Environmental Services Division was identified as Flower Mound's point of contact for lead-based paint issues. This Division continued to maintain and update the supply of educational materials available at Town Hall, as well as information on the Town website.

The Town currently sponsors two housing activities (the Residential Rehabilitation Program and the Minor Home Repair Program) that are carried out through the Community Development Block Grant Program. For these two programs, occupants of units constructed prior to 1978 receive proper notification of Lead-Based Paint (LBP) hazards and all projects are subject to the implementation of the Federal Lead-Based Paint Regulations in accordance with the most recently published CDBG grant management manual chapter on Lead-Based Paint.

During the 2016 Program Year, none of the homes assisted through the Town's housing activities required lead hazard remediation actions.

Actions taken to reduce the number of poverty-level families:

The Town of Flower Mound's actions to help reduce the number of poverty-level families during the 2016 Program Year included economic development activities, tax exemptions for the disabled and senior citizens, leveraging resources and serving as a referral source:

- **Economic Development:** 2.7% of Flower Mound families live below the poverty level (compared to 8.8% in Denton County, 17.3% in Texas and 15.5% in the United States) and the Town's unemployment rate of 4.5% is lower than Denton County's rate of 5.7%, the State's rate of 7.0%, and the Nation's rate of 8.3%, according to the American Community Survey 5-Year Estimates. Flower Mound's lower rate can be attributed to the Town's proximity to numerous major employers and educational institutions throughout the Dallas-Fort Worth area. However, within Town limits, only 20.52% of the tax base is commercial. While Flower Mound's property, county and school taxes are among the lowest in the surrounding area, 76.73% of the Town's tax base is comprised of residential development, placing a disproportionate tax burden on

homeowners. Community efforts during the past few years have resulted in an increase in commercial properties in Flower Mound. During the 2016 Program Year, Town staff continued its efforts, with the help of the local Chamber of Commerce, to provide business and retention development programs with incentives for economic development. As a result, in 2016, 82 new commercial permits were issued representing approximately \$365,899,403 in value.

- **Tax Exemptions:** The Town maintained the exempted amount of the appraised value of residence homesteads for those with disabilities and individuals 65 years of age or older at \$100,000.
- **Leveraging Resources:** Town staff continued to liaison with community agencies established to provide the necessary resources for affordable housing and other needed services through outlets such as the Denton County Homeless Coalition. Some of these organizations include the Denton Housing Authority, which offers rental assistance and self-sufficiency training; the Denton Workforce Center/Texas Workforce Commission, which offers training and supportive services leading to employment; the Texas Department of Housing and Community Affairs; and the Denton County Housing Finance Corp., which offers homebuyer assistance.
- **Referral Source:** To help ensure that residents needing services are aware of available local providers, Town staff maintained established links to service providers on the Town website. In addition, the Town continued to post information about available job training, job search and financial management workshop opportunities on the Town's website, at the Town library and on the Town's cable television station. During the 2016 Program Year, 13 workshops were hosted by the Town Library. In total, 153 residents attended these workshops.

These actions assisted in reducing the number of poverty-level families in Flower Mound by increasing local employment opportunities, reducing homeowner costs for senior citizens and those with disabilities and providing a referral network for those families seeking rental and other assistance.

Actions taken to develop institutional structure:

The Town continued to promote and emphasize the need for greater coordination between all social service agencies active in the Flower Mound area so as to minimize duplication of efforts. This was carried out through outlets such as the Denton County Homeless Coalition meetings. Efforts to enhance coordination between local agencies, both public and private, will ensure that the information available is comprehensive, needs are being properly addressed and resources are being maximized.

Actions taken to enhance coordination between public and private housing and social service agencies:

The Town of Flower Mound continued to share information and leverage funds with area public and private housing, health and social service agencies. This helps ensure that access to needed services is available. The Town also continued to liaison with the Denton County Housing Authority, the Denton County Housing Finance Corporation and area lenders, through means such as the meetings of the Denton County Homeless Coalition, an organization that includes a network of public and private housing, health and social service representatives throughout Denton County.

The Town continues to make staff available as a referral source for families with low-to-moderate incomes to assist them in obtaining rental assistance or below-market interest rate mortgage loans and

down payment assistance through local lenders. Additionally, the Town continued to maintain the links to housing rights, access groups and other service providers on the Flower Mound website.

Finally, the Town continued its participation in HUD-sponsored activities, which are informative and offer a ready network of Community Development Block Grant representatives and advisors.

Identify actions taken to overcome the effects of any impediments in the jurisdictions' analysis of impediments to fair housing choice:

The Town of Flower Mound continues to demonstrate its commitment to overcoming the effects of impediments to fair housing choice. This position was solidified in 2012 when the Town passed a Fair Housing Ordinance, which declared the Town's commitment to ensure fair housing opportunities for all citizens, regardless of race, color, religion, handicap, sex, familial status or national origin. This ordinance was unanimously approved by the Town Council.

During the 2016 Program Year, The Fair Housing Committee conducted its annual review of the Town's Analysis of Impediments to Fair Housing Choice. No overt barriers to fair housing were identified in the analysis. However, the Fair Housing Committee discussed a few items that the Town should do to ensure that unanticipated barriers do not develop in the future. These items and the efforts the Town took to address them in the 2016 Program Year are listed below.

- The SMARTGrowth Commission continued its periodic review of development criteria to help mitigate the ill effects of overcrowding and congestion, including overburdened infrastructure, facilities, and services.
- The Fair Housing Committee continued its routine review of the Town's zoning and subdivision ordinances, building codes and impact fees; and when necessary, commits to bringing any potential impediments to the attention of management and the Town Council.
- The Economic Development Department continued to work closely with the Chamber of Commerce to provide business and retention development programs with incentives for economic development. As a result, in PY 2016, 82 new commercial permits were issued representing approximately \$365,899,403 in value.
- The Financial Services Department continued to foster partnerships with community agencies established to provide the necessary resources for affordable housing and identifying populations such as the elderly, youth, and female head-of-households living below the poverty level. This was done through the outlet of the Denton County Homeless Coalition, where the Town's Grants and Financial Analyst serves as the Town's representative. The Grants and Financial Analyst also sits on the Denton County Homeless Coalition Steering Committee. Flower Mound's Community Outreach Committee, chaired by Finance staff, includes members who represent church, private sector, banking and social service organizations. Many of these members provided services to Flower Mound residents during the year. For example, Christian Community Action (CCA) provided \$108,487 in financial relief and non-financial services to residents of the Town of Flower Mound, including family assistance services, food pantry visits, access to an adult health center, a back-to-school program and a Christmas program.

- The Community Services Department continued to ensure that residents with poverty-level incomes are made aware of job training, financial management and job search workshop opportunities at the Town of Flower Mound Library. One hundred and fifty-three individuals attended these various workshops during the 2016 Program Year. Additionally, the Library provides online databases related to the job search process that 100 users accessed during the program year. These databases were available both onsite and remotely, which allowed residents access any time of day. Finally, the Library continued to purchase new books that relate to resume writing, interviewing, testing and starting a small business.

MONITORING

Evaluate the jurisdiction's progress in meeting its specific objectives for reducing and ending homelessness through:

- **Describe the standards and procedures used to monitor activities carried out in furtherance of the plan and used to ensure long-term compliance with requirements of the programs involved, including minority business outreach and the comprehensive planning requirements.**

The Town of Flower Mound continually monitors programs and projects to ensure compliance with all applicable laws and regulations.

Financial Services staff administers financial monitoring for all projects, programs and activities funded by CDBG. They ensure that all drawdowns are made after all ledgers and records have been reconciled and approved. Additionally, the financial operations and expenditures of the Town are audited on an annual basis by an independent accounting firm.

To ensure compliance with grant requirements, effectiveness in solving neighborhood and community problems, as well as adherence to the goals laid out in the Town's five-year Consolidated Plan and 2016 Annual Plan, Town staff conducted monitoring of all operational projects identified in the Annual Plan. Technical assistance is provided on a continuing basis.

During the 2016 Program Year, no problems or issues were identified in any of the three CDBG projects that needed to be corrected during the review.

Additionally, under the Town's Residential Rehabilitation Program and Minor Home Repair Program, Town staff administers and continuously monitors all projects implemented under these programs. Projects requested by residents are thoroughly evaluated for adherence to the program guidelines, including income eligibility. An environmental compliance checklist is completed for each project and the potential repairs are assessed for eligibility during an on-site evaluation by staff.

As a result of this careful management and monitoring, Flower Mound's CDBG-funded programs continue to have a positive effect on solving neighborhood and community problems, especially in regards to reducing the potential for homelessness. While progress is slow due to a lack of available funding, our community is meeting priority needs and specific objectives that will help to make Flower Mound's vision of the future a reality. By collaborating and leveraging funds, we were able to provide opportunities for our low-and moderate-income residents to have access to decent housing, a suitable living environment, and expanded economic opportunity.

- **Description of the efforts to provide citizens with reasonable notice and an opportunity to comment on performance reports.**

The Town's Citizen Participation Plan requires the Town to post public notices for performance reports in the newspaper and on the Town website to ensure that interested groups, agencies, organizations and individuals have an opportunity to provide comments regarding Flower Mound's use of federal grant funds under the Community Development Block Program. These requirements were designed especially to encourage participation by low- and moderate-income residents.

During the comment period, a copy of the report was posted on the Town website, www.flower-mound.com, at the Town Library, located at 3030 Broadmoor Lane, and at Town Hall, located at 2121 Cross Timbers Road. Additionally, on November 9, 2017, a public hearing was held at Flower Mound's Town Hall in the Council Chambers. This meeting place is easily accessible to all Town residents, including those with disabilities. All meeting notices and the Town website noted that translation services were available upon request, and that persons with disabilities would also be accommodated upon request. Public notices announcing the hearing were issued two weeks prior to the hearing date. Information about the public hearing was published in the Denton Record-Chronicle, displayed at Town Hall in an area easily visible to all who entered the building, and posted on the Town website.

One individual attended the public hearing and staff received one emailed comment, which are summarized below.

11/09/2017 CDBG CAPER Public Hearing	
<u>Comment</u>	<u>Response</u>
One citizen attended. No comments received.	N/A
10/26/2017 Emailed Comment	
<u>Comment</u>	<u>Response</u>
Citizen requested that funds be used for expansion of mass transit in Flower Mound.	Staff will bring the suggestion to its annual CDBG Advisory Committee Meeting and advised the resident that a portion of CDBG funds are currently used to subsidize public transportation for the Town's elderly and those with disabilities.

CDBG

Specify the nature of, and reasons for, any changes in the jurisdiction's program objectives and indications of how the jurisdiction would change its programs as a result of its experiences.

There were no changes to the Town of Flower Mound's program objectives. The Town of Flower Mound will continue to stay on track to meet the goals established in its 2015-2019 Consolidated Plan and annual Action Plans. No changes are needed at this time.

Does this jurisdiction have any open Brownsfields Economic Development Initiative (BEDI) grants?

No.



TOWN COUNCIL AGENDA ITEM NO. 4

CONSENT ITEM

DATE: December 4, 2017

FROM: Brian Waltenburg, Sr. Project Engineer

ITEM: Consider approval for the final acceptance of the Forest Vista Drive Reconstruction project, and authorization of final payment to Tiseo Paving Company, in the amount of \$150,790.04.

BACKGROUND INFORMATION: Final Payment consists of \$144,790.04 of retainage, and \$6,000.00 of work completed, for a total of \$150,790.04; for a final contract amount of \$2,905,832.18.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$150,790.04

Proposed Expenditure:	Account Number(s):
\$150,790.04	316-560-78022

Finance Review by: Debra Wallace, Deputy Town Manager /CFO *DW*

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Final Pay Application
2. Consent of Surety
3. Affidavit of All-Bills Paid

DRAFT MOTION: Move to approve the final acceptance of the Forest Vista Drive Reconstruction project, and authorization of final payment to Tiseo Paving Company, in the amount of \$150,790.04.

CONTRACT ESTIMATE FOR PAYMENT

Project: Forest Vista Reconstruction Phase I Estimate No.: 16 & 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	MOBILIZATION	LS	1	\$ 120,000.00	\$ 120,000.00	0.95	0.05	1.00	\$ 114,000.00	\$ 6,000.00	\$ 120,000.00	100.00%
2 CO1	TRAFFIC CONTROL	LS	0.00	\$ 398,000.00	\$ -	0.00	0.00	0.00	\$ -	\$ -	\$ -	#DIV/0!
3	TEMPORARY EROSION, SEDIMENTATION AND WATER POLLUTION PREVENTION (SWPPP)	LS	1	\$ 13,500.00	\$ 13,500.00	1.00	0.00	1.00	\$ 13,500.00	\$ -	\$ 13,500.00	100.00%
4	SITE PREPARATION (INCLUDES TREE/SHRUB REMOVAL)	LS	1	\$ 272,000.00	\$ 272,000.00	1.00	0.00	1.00	\$ 272,000.00	\$ -	\$ 272,000.00	100.00%
5 CO4	PROJECT SIGNS	EA	2.00	\$ 550.00	\$ 1,100.00	2.00	0.00	2.00	\$ 1,100.00	\$ -	\$ 1,100.00	100.00%
6	REMOVE SIGNS	EA	22	\$ 200.00	\$ 4,400.00	22.00	0.00	22.00	\$ 4,400.00	\$ -	\$ 4,400.00	100.00%
7	INSTALL SIGNS	EA	22	\$ 590.00	\$ 12,980.00	22.00	0.00	22.00	\$ 12,980.00	\$ -	\$ 12,980.00	100.00%
8 CO4	FURNISH AND PLACE 6" TOP SOIL	SY	3,295.00	\$ 9.50	\$ 31,302.50	3295.00	0.00	3295.00	\$ 31,302.50	\$ -	\$ 31,302.50	100.00%
9 CO4	FURNISH AND PLACE SODDING	SY	3,295.00	\$ 5.75	\$ 18,946.25	3295.00	0.00	3295.00	\$ 18,946.25	\$ -	\$ 18,946.25	100.00%
10	UNCLASSIFIED ROADWAY EXCAVATION	CY	3,350.00	\$ 30.00	\$ 100,500.00	3350.00	0.00	3350.00	\$ 100,500.00	\$ -	\$ 100,500.00	100.00%
11 CO4	8" PORTLAND CEMENT CONCRETE PAVEMENT	SY	13,390.00	\$ 72.90	\$ 976,131.00	13390.00	0.00	13390.00	\$ 976,131.00	\$ -	\$ 976,131.00	100.00%
12 CO4	10" LIME OR CEMENT TREATED SUBGRADE	SY	15,028.50	\$ 10.75	\$ 161,556.38	15028.50	0.00	15028.50	\$ 161,556.38	\$ -	\$ 161,556.38	100.00%
13 CO2 CO4	LIME OR CEMENT MATERIAL FOR TREATED SUBGRADE	TON	450.80	\$ 213.00	\$ 96,020.40	450.80	0.00	450.80	\$ 96,020.40	\$ -	\$ 96,020.40	100.00%
14 CO4	4' WIDE CONCRETE SIDEWALK (4" THICK)	SY	1,821.50	\$ 46.00	\$ 83,789.00	1821.50	0.00	1821.50	\$ 83,789.00	\$ -	\$ 83,789.00	100.00%
15	BARRIER FREE RAMPS	EA	30	\$ 1,450.00	\$ 43,500.00	30.00	0.00	30.00	\$ 43,500.00	\$ -	\$ 43,500.00	100.00%
16 CO4	6" INTEGRAL CONCRETE CURB	LF	7,456.90	\$ 1.00	\$ 7,456.90	7456.90	0.00	7456.90	\$ 7,456.90	\$ -	\$ 7,456.90	100.00%
17 CO4	STAMPED CONCRETE FOR MEDIAN NOSE (4" THICK)	SY	345.40	\$ 115.00	\$ 39,721.00	345.40	0.00	345.40	\$ 39,721.00	\$ -	\$ 39,721.00	100.00%
18 CO4	CONCRETE FOR MEDIAN NOSE (4" THICK)	SY	0.00	\$ 46.00	\$ -	0.00	0.00	0.00	\$ -	\$ -	\$ -	#DIV/0!
19 CO4	6" CONCRETE DRIVEWAY APPROACH (HIGH EARLY STRENGTH TYPE K)	SY	756.30	\$ 125.00	\$ 94,537.50	756.30	0.00	756.30	\$ 94,537.50	\$ -	\$ 94,537.50	100.00%
20 CO4	PAAVEMENT HEADER AT EXISTING PAVEMENT (INCULDES SAWCUT)	LF	211.10	\$ 20.00	\$ 4,222.00	211.10	0.00	211.10	\$ 4,222.00	\$ -	\$ 4,222.00	100.00%
21	LIGHT POLE COORDINATION	LS	1	\$ 76,000.00	\$ 76,000.00	1.00	0.00	1.00	\$ 76,000.00	\$ -	\$ 76,000.00	100.00%
22	REFLECTORIZED RAISED PAVEMENT MARKER - 4" Type II-C-R	EA	67	\$ 4.50	\$ 301.50	67.00	0.00	67.00	\$ 301.50	\$ -	\$ 301.50	100.00%
23	REFLECTORIZED RAISED PAVEMENT MARKER - 4" TYPE II-A-A	EA	52	\$ 4.50	\$ 234.00	52.00	0.00	52.00	\$ 234.00	\$ -	\$ 234.00	100.00%
24	4" SOLID WHITE THERMOPLASTIC (120-MIL) PAVEMENT MARKING	LF	4,357.00	\$ 1.10	\$ 4,792.70	4357.00	0.00	4357.00	\$ 4,792.70	\$ -	\$ 4,792.70	100.00%
25 CO4	4" BROKEN WHITE THERMOPLASTIC (120-MIL PAVEMENT MARKING	LF	3,938.00	\$ 0.55	\$ 2,165.90	3938.00	0.00	3938.00	\$ 2,165.90	\$ -	\$ 2,165.90	100.00%
26	4" SOLID YELLOW THERMOPLASTIC (120-MIL) PAVEMENT MARKING	LF	4,357.00	\$ 1.10	\$ 4,792.70	4357.00	0.00	4357.00	\$ 4,792.70	\$ -	\$ 4,792.70	100.00%
27 CO4	8" SOLID WHITE THERMOPLASTIC (120-MIL) PAVEMENT MARKING	LF	969.00	\$ 2.00	\$ 1,938.00	969.00	0.00	969.00	\$ 1,938.00	\$ -	\$ 1,938.00	100.00%
28	12" SOLID WHITE THERMOPLASTIC (120-MIL) PAVEMENT MARKING - CROSSWALK AND YIELD MARKING	LF	486	\$ 4.20	\$ 2,041.20	486.00	0.00	486.00	\$ 2,041.20	\$ -	\$ 2,041.20	100.00%
29	24" SOLID WHITE THERMOPLASTIC (120-MIL) PAVEMENT MARKING - STOP BAR	LF	228	\$ 6.60	\$ 1,504.80	228.00	0.00	228.00	\$ 1,504.80	\$ -	\$ 1,504.80	100.00%
30	PAVEMENT MARKING (ARROW)	EA	8	\$ 150.00	\$ 1,200.00	8.00	0.00	8.00	\$ 1,200.00	\$ -	\$ 1,200.00	100.00%
31	PAVEMENT MARKING (WORD)	EA	8	\$ 150.00	\$ 1,200.00	8.00	0.00	8.00	\$ 1,200.00	\$ -	\$ 1,200.00	100.00%
32	8" TYPE "K" HIGH EARLY STRENGTH CONCRETE PAVEMENT	SY	583	\$ 150.00	\$ 87,450.00	583.00	0.00	583.00	\$ 87,450.00	\$ -	\$ 87,450.00	100.00%
33	IRRIGATION SYSTEM	LS	1	\$ 43,000.00	\$ 43,000.00	1.00	0.00	1.00	\$ 43,000.00	\$ -	\$ 43,000.00	100.00%
34 CO4	TREES	EA	32.00	\$ 425.00	\$ 13,600.00	32.00	0.00	32.00	\$ 13,600.00	\$ -	\$ 13,600.00	100.00%
35 CO4	SHRUBS	EA	70.00	\$ 21.00	\$ 1,470.00	70.00	0.00	70.00	\$ 1,470.00	\$ -	\$ 1,470.00	100.00%
36 CO4	GROUND COVER	EA	9,200.00	\$ 1.40	\$ 12,880.00	9200.00	0.00	9200.00	\$ 12,880.00	\$ -	\$ 12,880.00	100.00%
37 CO4	3" BARK MULCH	SF	9,037.00	\$ 0.50	\$ 4,518.50	9037.00	0.00	9037.00	\$ 4,518.50	\$ -	\$ 4,518.50	100.00%
38	18" REINFORCED CONCRETE CLASS III PIPE	LF	579	\$ 126.00	\$ 72,954.00	579.00	0.00	579.00	\$ 72,954.00	\$ -	\$ 72,954.00	100.00%
39	24" REINFORCED CONCRETE CLASS III PIPE	LF	410	\$ 151.00	\$ 61,910.00	410.00	0.00	410.00	\$ 61,910.00	\$ -	\$ 61,910.00	100.00%
40	36" REINFORCED CONCRETE CLASS III PIPE	LF	163	\$ 225.00	\$ 36,675.00	163.00	0.00	163.00	\$ 36,675.00	\$ -	\$ 36,675.00	100.00%
41	5' RECESSED CURB INLET	EA	4	\$ 4,200.00	\$ 16,800.00	4.00	0.00	4.00	\$ 16,800.00	\$ -	\$ 16,800.00	100.00%
42	10' RECESSED CURB INLET	EA	3	\$ 5,100.00	\$ 15,300.00	3.00	0.00	3.00	\$ 15,300.00	\$ -	\$ 15,300.00	100.00%
43 CO2	STANDARD STORM DRAIN MANHOLE	EA	5.00	\$ 4,000.00	\$ 20,000.00	5.00	0.00	5.00	\$ 20,000.00	\$ -	\$ 20,000.00	100.00%
44	INLET TOP REPLACEMENT	EA	2	\$ 3,000.00	\$ 6,000.00	2.00	0.00	2.00	\$ 6,000.00	\$ -	\$ 6,000.00	100.00%
45	REMOVE INLETS	EA	3	\$ 1,250.00	\$ 3,750.00	3.00	0.00	3.00	\$ 3,750.00	\$ -	\$ 3,750.00	100.00%
46	TRENCH SAFETY	LF	989	\$ 3.25	\$ 3,214.25	989.00	0.00	989.00	\$ 3,214.25	\$ -	\$ 3,214.25	100.00%
47 CO4	12" PVC WATER MAIN (AWWA C900, DR-18)	LF	0.00	\$ 95.00	\$ -	0.00	0.00	0.00	\$ -	\$ -	\$ -	#DIV/0!
48 CO4	4" PVC WATER MAIN (AWWA C900, DR-18)	LF	0.00	\$ 77.00	\$ -	0.00	0.00	0.00	\$ -	\$ -	\$ -	#DIV/0!

CONTRACT ESTIMATE FOR PAYMENT

Project: Forest Vista Reconstruction Phase I Estimate No.: 16 & 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
49 CO4	DUCTILE IRON FITTINGS	TON	0.00	\$ 14,200.00	\$ -	0.00	0.00	0.00	\$ -	\$ -	\$ -	#DIV/0!
50 CO4	CONNECT TO EXISTING WATER MAIN	EA	0.00	\$ 1,800.00	\$ -	0.00	0.00	0.00	\$ -	\$ -	\$ -	#DIV/0!
51 CO4	8" WATER LOWERING	EA	0.00	\$ 6,750.00	\$ -	0.00	0.00	0.00	\$ -	\$ -	\$ -	#DIV/0!
52	ADJUST FIRE HYDRANT	EA	3	\$ 450.00	\$ 1,350.00	3.00	0.00	3.00	\$ 1,350.00	\$ -	\$ 1,350.00	100.00%
53 CO4	DRILL SHAFT (TRF SIG POLE)(24 IN)	LF	30.00	\$ 220.00	\$ 6,600.00	30.00	0.00	30.00	\$ 6,600.00	\$ -	\$ 6,600.00	100.00%
54	CONDUIT (PVC)(SCHD 40)(3") (TRENCH)	LF	130	\$ 14.00	\$ 1,820.00	130.00	0.00	130.00	\$ 1,820.00	\$ -	\$ 1,820.00	100.00%
55 CO4	ELEC CONDUCTOR (NO. 6) BARE	LF	120.00	\$ 1.25	\$ 150.00	120.00	0.00	120.00	\$ 150.00	\$ -	\$ 150.00	100.00%
56	REMOVE SM RD SN SUP&AM (SIGN ONLY)	EA	2	\$ 55.00	\$ 110.00	2.00	0.00	2.00	\$ 110.00	\$ -	\$ 110.00	100.00%
57	TRF SIG CBL (TY C)(14 AWG)(5 CONDR)	LF	145	\$ 2.20	\$ 319.00	145.00	0.00	145.00	\$ 319.00	\$ -	\$ 319.00	100.00%
58	TRF SIG CBL (TY C)(12 AWG)(2 CONDR)	LF	930	\$ 2.20	\$ 2,046.00	930.00	0.00	930.00	\$ 2,046.00	\$ -	\$ 2,046.00	100.00%
59	PED DETECT PUSH BUTTON (APS)	EA	2	\$ 2,000.00	\$ 4,000.00	2.00	0.00	2.00	\$ 4,000.00	\$ -	\$ 4,000.00	100.00%
60	RELOCATE PEDESTRIAN PUSH BUTTONS	EA	6	\$ 275.00	\$ 1,650.00	6.00	0.00	6.00	\$ 1,650.00	\$ -	\$ 1,650.00	100.00%
61 CO4	CONDUIT (PREPARE)	LF	0.00	\$ 3.30	\$ -	0.00	0.00	0.00	\$ -	\$ -	\$ -	#DIV/0!
62	GROUND BOX (PREPARE)	EA	4	\$ 350.00	\$ 1,400.00	4.00	0.00	4.00	\$ 1,400.00	\$ -	\$ 1,400.00	100.00%
63	PED SIG SEC (12 IN) LED (COUNTDOWN)(INSTALL ONLY)	EA	2	\$ 400.00	\$ 800.00	2.00	0.00	2.00	\$ 800.00	\$ -	\$ 800.00	100.00%
64	PEDESTRIAN PUSH BUTTON POLE (SP REQUIRED)(INSTALL ONLY)	EA	7	\$ 900.00	\$ 6,300.00	7.00	0.00	7.00	\$ 6,300.00	\$ -	\$ 6,300.00	100.00%
65	PEDESTRIAN PUSH BUTTON POLE (SP REQUIRED)(INSTALL ONLY)	EA	1	\$ 900.00	\$ 900.00	1.00	0.00	1.00	\$ 900.00	\$ -	\$ 900.00	100.00%
CO1-A	REVISED TRAFFIC CONTROL	LS	1.00	\$ 248,000.00	\$ 248,000.00	1.00	0.00	1.00	\$ 248,000.00	\$ -	\$ 248,000.00	100.00%
CO2-A	TEMPORARY TRAFFIC SIGNAL	LS	1.00	\$ 30,575.20	\$ 30,575.20	1.00	0.00	1.00	\$ 30,575.20	\$ -	\$ 30,575.20	100.00%
CO2-B	IRRIGATIONSYSTEM - FREEZE BAG & COVER FOR BACKFLOW DEVICE	EA	3.00	\$ 1,420.00	\$ 4,260.00	3.00	0.00	3.00	\$ 4,260.00	\$ -	\$ 4,260.00	100.00%
CO2-C	SAW CUT	LF	49.50	\$ 5.00	\$ 247.50	49.50	0.00	49.50	\$ 247.50	\$ -	\$ 247.50	100.00%
CO2-D	PAVEMENT REMOVAL	SY	74.50	\$ 22.00	\$ 1,639.00	74.50	0.00	74.50	\$ 1,639.00	\$ -	\$ 1,639.00	100.00%
CO2-E	STANDARD STORM DRAIN MANHOLE ADJUSTMENT	LS	1.00	\$ 685.00	\$ 685.00	1.00	0.00	1.00	\$ 685.00	\$ -	\$ 685.00	100.00%
CO3-A	ADDITIONAL IRRIGATION INSTALLATION	LS	1.00	\$ 10,900.00	\$ 10,900.00	1.00	0.00	1.00	\$ 10,900.00	\$ -	\$ 10,900.00	100.00%
CO4-A	IRRIGATION CONTROLLER	EA	1.00	\$ 4,725.00	\$ 4,725.00	1.00	0.00	1.00	\$ 4,725.00	\$ -	\$ 4,725.00	100.00%
TOTAL					2,905,832.18				2,899,832.18	6,000.00	2,905,832.18	100.00%

**CONSENT OF
SURETY COMPANY
TO FINAL PAYMENT**
AIA DOCUMENT G707

Owner
Architect
Contractor
Surety
Other

☐
☐
☐
☒
☐

Bond No. 35BCSHK3882

PROJECT: Forest Vista Reconstruction Phase I - Bid #2016-49
(name, address)

TO: (Owner)

Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, TX 75028

ARCHITECT'S PROJECT NO:

CONTRACT FOR: Contract Bond

CONTRACT DATE: 5/2/2016

CONTRACTOR:

Tiseo Paving Company
P. O. Box 270040
Dallas, TX 75227-0040

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the

Hartford Fire Insurance Company
One Hartford Plaza, T-4
Hartford, CT 06115

, SURETY COMPANY

on bond of (here insert name and address of Contractor)

Tiseo Paving Company
P. O. Box 270040
Dallas, TX 75227-0040

, 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 Road
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 19th day of October, 2017

Surety Company
Hartford Fire Insurance Company

Signature of Authorized Representative

Attest:
(Seal):

Charles Vaughn

Susan L. Small, Attorney-in-Fact
Title

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

POWER OF ATTORNEY

Direct Inquiries/Claims to:

THE HARTFORD

BOND, T-12

One Hartford Plaza

Hartford, Connecticut 06155

Bond.Claims@thehartford.com

call: 888-266-3488 or fax: 860-757-5835

Agency Name: VTC INSURANCE GROUP

Agency Code: 35-351225

KNOW ALL PERSONS BY THESE PRESENTS THAT:

- ☒ Hartford Fire Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- ☒ Hartford Casualty Insurance Company, a corporation duly organized under the laws of the State of Indiana
- ☒ Hartford Accident and Indemnity Company, a corporation duly organized under the laws of the State of Connecticut
- ☐ Hartford Underwriters Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- ☐ Twin City Fire Insurance Company, a corporation duly organized under the laws of the State of Indiana
- ☐ Hartford Insurance Company of Illinois, a corporation duly organized under the laws of the State of Illinois
- ☐ Hartford Insurance Company of the Midwest, a corporation duly organized under the laws of the State of Indiana
- ☐ Hartford Insurance Company of the Southeast, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, **up to the amount of Unlimited :**

Susan L. Small of Farmington Hills MI, Jeffrey A. Chandler, Alan P. Chandler, Ian J. Donald, Wendy L. Kingson, Kathleen M. Irelan, Meagan Kress, Robert Trobec of TROY, Michigan

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by ☒, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on May 6, 2015 the Companies have caused these presents to be signed by its Senior Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



John Gray

John Gray, Assistant Secretary

M. Ross Fisher

M. Ross Fisher, Senior Vice President

STATE OF CONNECTICUT

COUNTY OF HARTFORD

ss. Hartford

On this 11th day of January, 2016, before me personally came M. Ross Fisher, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Senior Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.



CERTIFICATE

Nora M. Stranko

Nora M. Stranko
Notary Public

My Commission Expires March 31, 2018

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of October 19th, 2017
Signed and sealed at the City of Hartford.



Kevin Heckman

Kevin Heckman, Assistant Vice President

Contractor's Affidavit of Final Payment

THE STATE OF TEXAS)
)
 COUNTY OF DALLAS)

**CONTRACTOR'S AFFIDAVIT OF
 FINAL PAYMENT AND RELEASE**

BEFORE ME, the undersigned authority, on this day personally appeared (Affiant"), who, after being by me duly sworn, deposes and says that he Louis Tiseo, Secretary Treasurer for Tiseo Paving Co., a Corporation (corporation, partnership, trade name) of Dallas County, State of Texas (the "Contractor", which said Contractor was awarded the contract for Forest Vista Reconstruction (the Work"), for a total consideration Two Million Nine Hundred One Thousand Eight Hundred Dollars and 66 Cents (2,901,800.66) to be paid to the said Contractor (the "Contract"), and that Affiant has full power of authority to make this affidavit.

That The Town of Flower Mound (the "Owner") has approved the final estimate on said Work, and that the said Contractor has fully satisfied and paid any and all claims that may be covered by Chapter 53 of the Texas Property Code, and Article 5160 of the Revised Civil Statutes of the State of Texas, or any other applicable statutes or charter provisions, and that all just bills for labor and materials have been paid and discharged by said Contractor insofar as they pertain to the Work in question.

That in addition to any funds which may have been previously paid by the Owner, the Contractor hereby accepts the amount of One Hundred Forty One Thousand Eight Hundred Twenty Three Dollars and 5 Cents (141,823.05) as FULL AND FINAL PAYMENT under the aforementioned Contract, and hereby waives and releases any right Affiant and/or the Contractor may have to pursue claims of any nature against the Owner arising out of or in any manner connected with the performance of the Work and/or the Contract, including but not limited to claims of third parties that supplied material and/or labor for the Work for or through the Contractor ("Subcontractors"), as well as claims for delay, additional compensation or for recovery of liquidated damages which may have been withheld by the Owner. The Contractor shall defend, hold harmless and indemnify the Owner from any such claims of such Subcontractors. The Contractor further releases the Owner from any claim or liability arising from any act or neglect of the Owner related to or connected with the Contract. This affidavit is given pursuant to the final payment provisions of the Contract, and shall not be deemed to alter or modify the terms and provisions of said Contract.

Tiseo Paving Co.

By [Signature]

(Affiant)

Louis Tiseo, Secretary Treasurer

(Print Name)

SUBSCRIBED AND SWORN TO BEFORE ME, this the 24th day of October, A. D. 2017

[Signature]
 (Notary Public, in and for the State of Texas)

Melanie R. Taylor

(Printed Name of Notary)

My commission expires November 2, 2018





TOWN COUNCIL AGENDA ITEM NO. 5

CONSENT ITEM

DATE: December 4, 2017

FROM: Brian Waltenburg, Sr. Project Engineer

ITEM: Consider approval for the final acceptance of the McKamy Creek Road Reconstruction project, and authorization of final payment to Tiseo Paving Company, in the amount of \$63,322.00.

BACKGROUND INFORMATION: Final Payment consists of \$63,322.00 of retainage, for a final contract amount of \$1,267,758.83.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$63,322.00

Proposed Expenditure:	Account Number(s):
\$63,322.00	316-560-78023

Finance Review by: Debra Wallace, Deputy Town Manager /CFO *DW*

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Final Pay Application
2. Consent of Surety
3. Affidavit of All-Bills Paid

DRAFT MOTION: Move to approve final acceptance of the McKamy Creek Road Reconstruction project, and authorization of final payment to Tiseo Paving Company, in the amount of \$63,322.00.

CONTRACT ESTIMATE FOR PAYMENT

Project: McKamy Creek Road Estimate No.: 8 & 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
	MCKAMY CREEK ROAD											
1	MOBILIZATION	LS	1	\$ 5,000.00	\$ 5,000.00	1.00	0.00	1.00	\$ 5,000.00	\$ -	\$ 5,000.00	100.00%
2	PREPARATION OF RIGHT-OF-WAY	STA	6.6	\$ 14,000.00	\$ 92,400.00	6.60	0.00	6.60	\$ 92,400.00	\$ -	\$ 92,400.00	100.00%
3 CO2	SAWCUT, REMOVE & DISPOSE EXISTING PAVEMENT	SY	3,720.00	\$ 14.10	\$ 52,452.00	3720.00	0.00	3720.00	\$ 52,452.00	\$ -	\$ 52,452.00	100.00%
4	REMOVE EXISTING SIDEWALK	SY	568	\$ 6.40	\$ 3,635.20	568.00	0.00	568.00	\$ 3,635.20	\$ -	\$ 3,635.20	100.00%
5	UNCLASSIFIED STREET EXCAVATION	CY	153	\$ 18.30	\$ 2,799.90	153.00	0.00	153.00	\$ 2,799.90	\$ -	\$ 2,799.90	100.00%
6	COMPACTED FILL	CY	163	\$ 23.10	\$ 3,765.30	163.00	0.00	163.00	\$ 3,765.30	\$ -	\$ 3,765.30	100.00%
7 CO2	LIME/CEMENT TREATMENT MATERIALS	TON	82.00	\$ 260.00	\$ 21,320.00	82.00	0.00	82.00	\$ 21,320.00	\$ -	\$ 21,320.00	100.00%
8 CO2	8" LIME/CEMENT TREATMENT AT 54 LBS/SY	SY	3,740.00	\$ 19.95	\$ 74,613.00	3740.00	0.00	3740.00	\$ 74,613.00	\$ -	\$ 74,613.00	100.00%
9 CO2	10" CONCRETE PAVEMENT (4,200 PSI AT 28 DAYS)	SY	3,231.00	\$ 149.95	\$ 484,488.45	3231.00	0.00	3231.00	\$ 484,488.45	\$ -	\$ 484,488.45	100.00%
10 CO2	6" CONCRETE DRIVEWAY PAVEMENT	SY	257.00	\$ 84.80	\$ 21,793.60	257.00	0.00	257.00	\$ 21,793.60	\$ -	\$ 21,793.60	100.00%
11 CO2	6" STAMPED CONCRETE PAVEMENT (3,600 PSI AT 28 DAYS)	SY	0.00	\$ 423.50	\$ -	0.00	0.00	0.00	\$ -	\$ -	\$ -	#DIV/0!
12 CO3	STONE CLAD REINFORCED CONCRETE RETAINING WALL	LF	101.50	\$ 352.00	\$ 35,728.00	101.50	0.00	101.50	\$ 35,728.00	\$ -	\$ 35,728.00	100.00%
13 CO2	4" THICK CONCRETE SIDEWALK (WIDTH VARIES)	SF	4,804.00	\$ 6.33	\$ 30,409.32	4804.00	0.00	4804.00	\$ 30,409.32	\$ -	\$ 30,409.32	100.00%
14 CO2	BARRIER FREE RAMP	EA	8.00	\$ 1,925.00	\$ 15,400.00	8.00	0.00	8.00	\$ 15,400.00	\$ -	\$ 15,400.00	100.00%
15 CO2	ROOT BARRIER	LF	0.00	\$ 30.00	\$ -	0.00	0.00	0.00	\$ -	\$ -	\$ -	#DIV/0!
16	SOLID SOD	SY	1250	\$ 10.70	\$ 13,375.00	1250.00	0.00	1250.00	\$ 13,375.00	\$ -	\$ 13,375.00	100.00%
17	PARKWAY RESTORATION	LS	1	\$ 15,000.00	\$ 15,000.00	1.00	0.00	1.00	\$ 15,000.00	\$ -	\$ 15,000.00	100.00%
18	POST WITH SIGNAGE	EA	8	\$ 4,700.00	\$ 37,600.00	8.00	0.00	8.00	\$ 37,600.00	\$ -	\$ 37,600.00	100.00%
19	TRAFFIC CONTROL	LS	1	\$ 17,000.00	\$ 17,000.00	1.00	0.00	1.00	\$ 17,000.00	\$ -	\$ 17,000.00	100.00%
20	EROSION CONTROL	LS	1	\$ 2,200.00	\$ 2,200.00	1.00	0.00	1.00	\$ 2,200.00	\$ -	\$ 2,200.00	100.00%
21	PROJECT SIGN	EA	2	\$ 600.00	\$ 1,200.00	2.00	0.00	2.00	\$ 1,200.00	\$ -	\$ 1,200.00	100.00%
22	ADJUST WATER METER BOX	EA	1	\$ 1,650.00	\$ 1,650.00	1.00	0.00	1.00	\$ 1,650.00	\$ -	\$ 1,650.00	100.00%
23 CO2	ADJUST WATER VALVE, COVER & CONCRETE PAD	EA	5.00	\$ 2,750.00	\$ 13,750.00	5.00	0.00	5.00	\$ 13,750.00	\$ -	\$ 13,750.00	100.00%
24	ADJUST EXISTING SANITARY SEWER MANHOLE RING & COVER	EA	1	\$ 2,750.00	\$ 2,750.00	1.00	0.00	1.00	\$ 2,750.00	\$ -	\$ 2,750.00	100.00%
25	8" IPS DR-26 POLYETHYLENE PIPE BY TRENCHLESS EXCAVATION	LF	781	\$ 165.00	\$ 128,865.00	781.00	0.00	781.00	\$ 128,865.00	\$ -	\$ 128,865.00	100.00%
26 CO2	SANITARY SEWER SERVICE CONNECTIONS	EA	0.00	\$ 3,300.00	\$ -	0.00	0.00	0.00	\$ -	\$ -	\$ -	#DIV/0!
27 CO2	TRENCH SAFETY	LF	0.00	\$ 3.30	\$ -	0.00	0.00	0.00	\$ -	\$ -	\$ -	#DIV/0!
28 CO2	TEMPORARY FLEXIBLE BASE (FOR DRIVEWAY ACCESS)	SY	175.00	\$ 28.00	\$ 4,900.00	175.00	0.00	175.00	\$ 4,900.00	\$ -	\$ 4,900.00	100.00%
29	PAVEMENT MARKING & MARKERS	LS	1	\$ 6,000.00	\$ 6,000.00	1.00	0.00	1.00	\$ 6,000.00	\$ -	\$ 6,000.00	100.00%
	MCKAMY CREEK RIGHT TURN LANE											
30	MOBILIZATION	LS	1	\$ 2,500.00	\$ 2,500.00	1.00	0.00	1.00	\$ 2,500.00	\$ -	\$ 2,500.00	100.00%
31	PREPARATION OF RIGHT-OF-WAY	STA	2.4	\$ 2,500.00	\$ 6,000.00	2.40	0.00	2.40	\$ 6,000.00	\$ -	\$ 6,000.00	100.00%
32	SAWCUT, REMOVE & DISPOSE EXISTING PAVEMENT	SY	134	\$ 20.60	\$ 2,760.40	134.00	0.00	134.00	\$ 2,760.40	\$ -	\$ 2,760.40	100.00%
33	REMOVE EXISTING SIDEWALK	SY	120	\$ 6.40	\$ 768.00	120.00	0.00	120.00	\$ 768.00	\$ -	\$ 768.00	100.00%
34	UNCLASSIFIED STREET EXCAVATION	CY	50	\$ 22.00	\$ 1,100.00	50.00	0.00	50.00	\$ 1,100.00	\$ -	\$ 1,100.00	100.00%
35	LIME/CEMENT TREATMENT MATERIALS	TON	8	\$ 260.00	\$ 2,080.00	8.00	0.00	8.00	\$ 2,080.00	\$ -	\$ 2,080.00	100.00%
36 CO2	8" LIME/CEMENT TREATMENT AT 54 LBS/SY	SY	380.00	\$ 19.95	\$ 7,581.00	380.00	0.00	380.00	\$ 7,581.00	\$ -	\$ 7,581.00	100.00%
37	10" CONCRETE PAVEMENT (4,200 PSI AT 28 DAYS)	SY	364	\$ 149.95	\$ 54,581.80	364.00	0.00	364.00	\$ 54,581.80	\$ -	\$ 54,581.80	100.00%
38	4" THICK CONCRETE SIDEWALK (WIDTH VARIES)	SF	817	\$ 6.33	\$ 5,171.61	817.00	0.00	817.00	\$ 5,171.61	\$ -	\$ 5,171.61	100.00%
39	BARRIER FREE RAMP	EA	1	\$ 1,925.00	\$ 1,925.00	1.00	0.00	1.00	\$ 1,925.00	\$ -	\$ 1,925.00	100.00%
40 CO2	ROOT BARRIER	LF	0.00	\$ 30.00	\$ -	0.00	0.00	0.00	\$ -	\$ -	\$ -	#DIV/0!
41	SOLID SOD	SY	350	\$ 10.70	\$ 3,745.00	350.00	0.00	350.00	\$ 3,745.00	\$ -	\$ 3,745.00	100.00%
42	PARKWAY RESTORATION	LS	1	\$ 6,000.00	\$ 6,000.00	1.00	0.00	1.00	\$ 6,000.00	\$ -	\$ 6,000.00	100.00%
43 CO2	POST WITH SIGNAGE	EA	1.00	\$ 700.00	\$ 700.00	1.00	0.00	1.00	\$ 700.00	\$ -	\$ 700.00	100.00%
44	TRAFFIC CONTROL	LS	1	\$ 1,000.00	\$ 1,000.00	1.00	0.00	1.00	\$ 1,000.00	\$ -	\$ 1,000.00	100.00%
45	EROSION CONTROL	LS	1	\$ 1,400.00	\$ 1,400.00	1.00	0.00	1.00	\$ 1,400.00	\$ -	\$ 1,400.00	100.00%
46 CO2	PROJECT SIGN	EA	0.00	\$ 600.00	\$ -	0.00	0.00	0.00	\$ -	\$ -	\$ -	#DIV/0!
47	ADJUST EXISTING SANITARY SEWER CLEANOUT	EA	1	\$ 2,420.00	\$ 2,420.00	1.00	0.00	1.00	\$ 2,420.00	\$ -	\$ 2,420.00	100.00%
48	ADJUST EXISTING SANITARY SEWER MANHOLE RING & COVER	EA	1	\$ 2,750.00	\$ 2,750.00	1.00	0.00	1.00	\$ 2,750.00	\$ -	\$ 2,750.00	100.00%
49	RELOCATE TRAFFIC POLE	EA	1	\$ 67,100.00	\$ 67,100.00	1.00	0.00	1.00	\$ 67,100.00	\$ -	\$ 67,100.00	100.00%
50	PAVEMENT MARKING & MARKERS	LS	1	\$ 3,100.00	\$ 3,100.00	1.00	0.00	1.00	\$ 3,100.00	\$ -	\$ 3,100.00	100.00%
CO2-A	LANDSCAPE AND IRRIGATION	LS	1.00	\$ 6,981.25	\$ 6,981.25	1.00	0.00	1.00	\$ 6,981.25	\$ -	\$ 6,981.25	100.00%
TOTAL					1,267,758.83				1,267,758.83	-	1,267,758.83	100.00%

**CONSENT OF
SURETY COMPANY
TO FINAL PAYMENT**
AIA DOCUMENT G707

Owner
Architect
Contractor
Surety
Other

X

Bond No. 35BCSHO0029

PROJECT: 2015 Street Reconstruction Mckamy Creek Road Bld #2016-77
(name, address)

TO: (Owner)

Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, TX 75028

ARCHITECT'S PROJECT NO:

CONTRACT FOR: Contract Bond

CONTRACT DATE: 11/7/2016

CONTRACTOR:

Tiseo Paving Company
P. O. Box 270040
Dallas, TX 75227-0040

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the

Hartford Fire Insurance Company
One Hartford Plaza, T-4
Hartford, CT 06115

, SURETY COMPANY

on bond of (here insert name and address of Contractor)

Tiseo Paving Company
P. O. Box 270040
Dallas, TX 75227-0040

, 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 Road
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 19th day of October, 2017

Surety Company
Hartford Fire Insurance Company

Signature of Authorized Representative

Attest:
(Seal):

Charles Vaughn

Susan L. Small, Attorney-in-Fact
Title

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

POWER OF ATTORNEY

Direct Inquiries/Claims to:

THE HARTFORD

BOND, T-12

One Hartford Plaza

Hartford, Connecticut 06155

Bond.Claims@thehartford.com

call: 888-266-3488 or fax: 860-757-5835

KNOW ALL PERSONS BY THESE PRESENTS THAT:

Agency Name: VTC INSURANCE GROUP

Agency Code: 35-351225

- ☒ Hartford Fire Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- ☒ Hartford Casualty Insurance Company, a corporation duly organized under the laws of the State of Indiana
- ☒ Hartford Accident and Indemnity Company, a corporation duly organized under the laws of the State of Connecticut
- ☐ Hartford Underwriters Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- ☐ Twin City Fire Insurance Company, a corporation duly organized under the laws of the State of Indiana
- ☐ Hartford Insurance Company of Illinois, a corporation duly organized under the laws of the State of Illinois
- ☐ Hartford Insurance Company of the Midwest, a corporation duly organized under the laws of the State of Indiana
- ☐ Hartford Insurance Company of the Southeast, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, **up to the amount of Unlimited :**

Susan L. Small of Farmington Hills MI, Jeffrey A. Chandler, Alan P. Chandler, Ian J. Donald, Wendy L. Hingson, Kathleen M. Irelan, Meagan Kress, Robert Trobec of TROY, Michigan

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by ☒, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on May 6, 2015 the Companies have caused these presents to be signed by its Senior Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



John Gray

John Gray, Assistant Secretary

M. Ross Fisher

M. Ross Fisher, Senior Vice President

STATE OF CONNECTICUT

COUNTY OF HARTFORD

ss. Hartford

On this 11th day of January, 2016, before me personally came M. Ross Fisher, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Senior Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.



CERTIFICATE

Nora M. Stranko

Nora M. Stranko
Notary Public

My Commission Expires March 31, 2018

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of October 19th, 2017
Signed and sealed at the City of Hartford.



Kevin Heckman

Kevin Heckman, Assistant Vice President

Contractor's Affidavit of Final Payment

THE STATE OF TEXAS)
)
 COUNTY OF DALLAS)

**CONTRACTOR'S AFFIDAVIT OF
FINAL PAYMENT AND RELEASE**

BEFORE ME, the undersigned authority, on this day personally appeared (Affiant"), who, after being by me duly sworn, deposes and says that he Louis Tiseo, Secretary Treasurer for Tiseo Paving Co., a Corporation (corporation, partnership, trade name) of Dallas County, State of Texas (the "Contractor", which said Contractor was awarded the contract for McKamy Creek Road (the Work"), for a total consideration One Million Two Hundred Sixty Six Thousand Four Hundred Thirty Nine Dollars and 82 Cents (1,266,439.82) to be paid to the said Contractor (the "Contract"), and that Affiant has full power of authority to make this affidavit.

That The Town of Flower Mound (the "Owner") has approved the final estimate on said Work, and that the said Contractor has fully satisfied and paid any and all claims that may be covered by Chapter 53 of the Texas Property Code, and Article 5160 of the Revised Civil Statutes of the State of Texas, or any other applicable statutes or charter provisions, and that all just bills for labor and materials have been paid and discharged by said Contractor insofar as they pertain to the Work in question.

That in addition to any funds which may have been previously paid by the Owner, the Contractor hereby accepts the amount of Seventy Two Thousand Two Hundred Eighty Eight Dollars and 99 Cents (72,288.99) as FULL AND FINAL PAYMENT under the aforementioned Contract, and hereby waives and releases any right Affiant and/or the Contractor may have to pursue claims of any nature against the Owner arising out of or in any manner connected with the performance of the Work and/or the Contract, including but not limited to claims of third parties that supplied material and/or labor for the Work for or through the Contractor ("Subcontractors"), as well as claims for delay, additional compensation or for recovery of liquidated damages which may have been withheld by the Owner. The Contractor shall defend, hold harmless and indemnify the Owner from any such claims of such Subcontractors. The Contractor further releases the Owner from any claim or liability arising from any act or neglect of the Owner related to or connected with the Contract. This affidavit is given pursuant to the final payment provisions of the Contract, and shall not be deemed to alter or modify the terms and provisions of said Contract.

Tiseo Paving Co.
 By [Signature] (Affiant)
Louis Tiseo, Secretary Treasurer
 (Print Name)

SUBSCRIBED AND SWORN TO BEFORE ME, this the 18th day of October, A. D. 2017



[Signature]
 (Notary Public, in and for the State of Texas)
Melanie R. Taylor
 (Printed Name of Notary)

My commission expires November 2, 2018



TOWN COUNCIL AGENDA ITEM NO. 6

CONSENT ITEM

DATE: December 4, 2017

FROM: Clay Riggs, P.E., C.F.M., Senior Project Engineer

ITEM: Consider approval of the Professional Services Agreement with Kimley-Horn and Associates, Inc., to provide professional engineering services, for the FM 1171 at River Walk Drive Intersection Improvements project in the amount of \$87,500.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The FM 1171 at River Walk Drive Intersection Improvements project will provide a westbound right-turn lane, northbound left-turn lane, and southbound left-turn lane at FM 1171 and River Walk Drive. The project will also include approximately 400 feet of new sidewalk along the westbound right-turn lane and traffic signal improvements at the intersection. The scope of the professional services agreement includes the preparation of design plans, specifications, cost estimating, easement preparation, and contract documents for bidding.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$87,500.00

Proposed Expenditure:	Account Number(s):
\$87,500.00	550-117-70630

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

LEGAL REVIEW: The Town's standard professional services 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 this Professional Services Agreement.

ATTACHMENTS:

1. Professional Services Agreement

DRAFT MOTION: Move to approve the Professional Services Agreement with Kimley-Horn and Associates, Inc., to provide professional engineering services, for the FM 1171 at River Walk Drive Intersection Improvements project in the amount of \$87,500.00; and authorization for the Mayor to execute same on behalf of the Town.

THE STATE OF TEXAS §
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH
Kimley-Horn and Associates, Inc.**

This contract is entered into on this 4th day of December, 2017, by and between the **TOWN OF FLOWER MOUND, TEXAS**, a municipal corporation located in Denton County, Texas, (hereinafter referred to as "TOWN"), acting by and through its Mayor, and **Kimley-Horn and Associates, Inc.**, ("hereinafter referred to as "CONSULTANT") whose address is 2201 West Royal Lane, Suite 275, Irving, Texas 75063.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to surveying, design, easement preparation, and providing construction documents for the FM 1171 at River Walk Drive Intersection Improvements project; and

WHEREAS, CONSULTANT is an engineering firm qualified to provide such services and is willing to undertake the performance of such services for the TOWN in exchange for fees hereinafter specified;

TERMS OF AGREEMENT

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter contained and subject to the terms and conditions hereinafter stated, the parties hereto do mutually agree as follows:

I.

Employment of Consultant

CONSULTANT will perform as an independent contractor all services under this Contract to the prevailing professional standards consistent with the level of care and skill ordinarily exercised by members of the architectural, engineering and planning professions, both public and private, currently practicing in the same locality under similar conditions including but not limited to the exercise of reasonable, informed judgments and prompt, timely action. If CONSULTANT has represented or is representing that it has special expertise in one or more areas to be utilized in this Contract, then CONSULTANT agrees to perform those special expertise services to the appropriate local, regional and national professional standards.

II.

Scope of Services

CONSULTANT shall perform such services as are necessary to provide services for the FM 1171 at River Walk Drive Intersection Improvements project specifically including, but not necessarily limited to, the tasks enumerated more fully in Attachment "A" hereto entitled "Scope of Work" (hereafter referred to as the "Project"). Attachment "A" is hereby incorporated herein by reference and made a part hereof as if written word for word. However, in case of conflict in the language of Attachment "A" and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.

III.

Payment for Services

Total payment for services described herein shall be a sum not to exceed Eighty Seven Thousand Five Hundred and No/100 Dollars (\$87,500.00). This total payment for services includes CONSULTANT's ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT. If CONSULTANT retains any subcontractors to perform any of the work, CONSULTANT acknowledges that payments to such subcontractors are due and payable in accordance with the provisions of Texas Government Code Section 2251.022, and that interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.

CONSULTANT will bill TOWN on a lump sum basis in accordance with Attachment "B"; provided however that this Contract shall control in the event of any conflict between the language in Attachment "B" and the language in this Contract. If additional services, trips or expenses are requested, CONSULTANT will not provide such additional services until authorized by TOWN in writing to proceed. The scope of services shall be strictly limited. TOWN shall not be required to pay any amount in excess of the amount identified in the preceding paragraph unless TOWN shall have approved in writing in advance (prior to the performance of additional work) the payment of additional amounts.

Each month CONSULTANT will submit to TOWN an invoice for supporting the percentage for which payment is sought by CONSULTANT during the previous month for which payment is sought. Each invoice shall also state the percentage of work completed on the Project, the total of the current invoice amount and a running total balance for the Project to date.

Assuming that TOWN agrees with the invoice, that TOWN has not determined any of the work to be unsatisfactory, or that TOWN otherwise does not dispute any of the amounts billed, TOWN shall make payments in the amount shown by CONSULTANT's approved monthly statements and other documentation submitted in compliance with the Texas Prompt Payment Act, Texas Government Code Chapter 2251.

Nothing contained in this Contract shall require TOWN to pay for any work that TOWN has determined has not been successfully completed or is unsatisfactory as determined by TOWN, or which is not otherwise submitted in compliance with the terms of this Contract, nor shall failure to withhold payment pursuant to the provisions of this section constitute a waiver of any right, at law or in equity, which TOWN may have if CONSULTANT is in default, including the right to bring legal action for damages or for specific performance of this Contract. Waiver of any default under this Contract shall not be deemed a waiver of any subsequent default.

IV. Revisions of the Scope of Services

TOWN reserves the right to revise or expand the scope of services after due approval by TOWN as TOWN may deem necessary, but in such event TOWN shall pay CONSULTANT equitable compensation for such services. In any event, when CONSULTANT is directed to revise or expand the scope of services under this Section of the Contract, CONSULTANT shall provide TOWN a written proposal for the entire costs involved in performing such additional services. Prior to CONSULTANT undertaking any revised or expanded services as directed by TOWN under this Contract, TOWN must authorize in writing the nature and scope of the services and accept the method and amount of compensation and the time involved in all phases of the Project.

It is expressly understood and agreed by CONSULTANT that any compensation not specified in Paragraph III herein above may require Flower Mound Town Council approval and is subject to the current budget year limitations.

V. Term

This Contract shall begin on the date first written above, and shall terminate when TOWN has approved the Project as being final or otherwise terminates this Contract as provided herein.

VI. Contract Termination Provision

Notwithstanding any other provision of this Contract, this Contract may be terminated at any time by TOWN for any reason, with or without cause, by providing CONSULTANT thirty (30) days written notice of such termination. Upon receipt of such notice, CONSULTANT shall immediately terminate working on, placing orders or entering into contracts for supplies, assistance, facilities or materials in connection with this Contract and shall proceed to promptly cancel all existing contracts insofar as they are related to this Contract.

VII.

Ownership of Documents

All materials and documents prepared or assembled by CONSULTANT under this Contract shall become the sole property of TOWN and shall be delivered to TOWN without restriction on future use. CONSULTANT shall provide documents in any commonly-used electronic file format as requested by TOWN. CONSULTANT may retain in its files copies of all drawings, specifications and all other pertinent information for the work. CONSULTANT shall have no liability for changes made to any materials or other documents by others subsequent to the completion of the Contract.

VIII.

Insurance

A. CONSULTANT shall, at its own expense, purchase, maintain and keep in force during the term of this Contract such insurance as set forth below. CONSULTANT shall not commence work under this Contract until CONSULTANT has obtained all the insurance required under this Contract and such insurance has been approved by TOWN, nor shall CONSULTANT allow any subcontractor to commence work on its own subcontract until all similar insurance of the subcontractor has been obtained and approved. All insurance policies provided under this Contract shall be written on an “occurrence” basis save and except the Professional Liability Insurance which may be written on a “claims-made” basis, provided that “tail coverage” or continuation coverage is provided. The insurance requirements shall remain in effect throughout the term of this Contract.

The CONSULTANT shall furnish to TOWN certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Certificates shall reference the Project and be addressed as follows:

Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, TX 75028
Email: purchasing@flower-mound.com

The following policies and coverage shall be required:

1. Worker's Compensation Insurance (as required by law) with the policy endorsed to provide a waiver of subrogation as to TOWN; such policy to provide for Employers' Liability Insurance of not less than \$100,000.00 for each accident, \$100,000.00 disease-each employee, \$500,000.00 disease-policy limit;
2. Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractor's and Contractual Liability, including but not limited to coverage for all of the indemnification obligations of CONSULTANT under this Contract, and fully insuring CONSULTANT's liability for injury to or death of employees of TOWN and of third parties, extended to include personal injury liability coverage and for damage to property of third parties, with minimum combined single limits of \$1,000,000 per occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate per occurrence. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis;
3. Business Automobile Liability Insurance, covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000.00 per occurrence; and
4. Professional Liability Insurance: CONSULTANT shall obtain and maintain at all times during the prosecution of the work under this Contract professional liability insurance, which may be written on a claims made form provided that "tail coverage" or continuation coverage is provided. Limits of liability shall be \$1,000,000.00 per claim, \$1,000,000.00 annual aggregate. The coverage under this policy shall include a contractual liability endorsement.

If any of the foregoing insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than thirty-six (36) months following completion of the Contract and acceptance by the TOWN. All such insurance shall be purchased from an insurance company that meets a financial rating of B+VI or better as assigned by A.M. Best Company or equivalent.

B. Each insurance policy to be furnished by CONSULTANT shall include the following conditions by endorsement to the policy

1. The TOWN shall be named as an additional insured on the Commercial General Liability policy, by using endorsement CG2026 or broader;

2. The TOWN shall also be named as an additional insured as to all other applicable coverage save and except the Worker's Compensation Insurance and Professional Liability Insurance;
3. Each policy will require that thirty (30) days prior to the expiration, cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to TOWN by certified mail to:

Clay Riggs, PE
Senior Project Engineer
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6302 Telephone

However, if the policy is canceled for nonpayment of premium, only ten (10) days advance written notice to TOWN is required. CONSULTANT shall also notify TOWN within twenty-four (24) hours after receipt of any notices of expiration, cancellation, nonrenewal or any material change in coverage it receives from its insurer(s);

4. The term "Owner" or "TOWN" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of TOWN and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of TOWN;
5. The policy phrase "Other Insurance" shall not apply to TOWN where TOWN is an additional insured on the policy; and
6. All provisions of the Contract concerning liability, duty and standards of care together with the indemnification provision shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

C. Concerning insurance to be furnished by CONSULTANT, it is a condition precedent to acceptability thereof that:

1. Any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by CONSULTANT. The TOWN's decision(s) thereon shall be final;
2. All policies are to be written through companies duly approved to transact that class of insurance in the State of Texas; and

3. All liability policies required herein, save and except Professional Liability Insurance, shall be written with an "occurrence" basis coverage trigger.

D. CONSULTANT agrees to the following:

1. CONSULTANT hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against TOWN, it being the intention that the insurance policies shall protect all parties to this Contract and be primary coverage for all losses covered by the policies;
2. Companies issuing the insurance policies and CONSULTANT shall have no recourse against TOWN for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of CONSULTANT;
3. Approval, disapproval or failure to act by TOWN regarding any insurance supplied by CONSULTANT (or any subcontractors) shall not relieve CONSULTANT of full responsibility or liability for damages and accidents as set forth in the Contract documents. Neither shall the insolvency or denial of liability by the insurance company exonerate CONSULTANT from liability; and
4. No special payments shall be made for any insurance that the CONSULTANT and subcontractors are required to carry; all are included in the contract price and the contract unit prices.

Any of the insurance policies required under this section may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.

IX.

Right to Inspect Records

CONSULTANT agrees that TOWN shall have access to and the right to examine any directly pertinent books, documents, papers and records of CONSULTANT involving transactions relating to this Contract. CONSULTANT agrees that TOWN shall have access during normal working hours to all necessary CONSULTANT facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. TOWN shall give CONSULTANT reasonable advance notice of intended audits.

If TOWN agrees that CONSULTANT may retain any subcontractors, CONSULTANT further agrees to include in subcontract(s), if any, a provision that any subcontractor or engineer agrees that TOWN shall have access to and the right to

examine any directly pertinent books, documents, papers and records of such engineer or sub-contractor involving transactions to the subcontract, and further, that TOWN shall have access during normal working hours to all such engineer or sub-contractor facilities and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of the paragraph. TOWN shall give any such engineer or sub-contractor reasonable advance notice of intended audits.

X.

Successors and Assigns

TOWN and CONSULTANT each bind themselves and their successors, executors, administrators and assigns to the other party to this Contract and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this Contract. Neither TOWN nor CONSULTANT shall assign or transfer its interest herein without the prior written consent of the other.

XI.

CONSULTANT's Liability

Acceptance of the final plans by the TOWN shall not constitute nor be deemed a release of the responsibility and liability of CONSULTANT, its employees, associates, agents or consultants for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by TOWN for any defect in the designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by TOWN for any defect in the designs, working drawings, specifications or other documents and work prepared by said CONSULTANT, its employees, associates, agents or sub-consultants. In this regard, CONSULTANT acknowledges that TOWN is retaining CONSULTANT to provide the services described herein, in reliance upon CONSULTANT's specialized expertise and experience, and in reliance thereon.

XII.

Indemnification

THE PROVISIONS OF THIS SECTION ARE SUBJECT TO THE LIMITATIONS OF TEXAS LOCAL GOVERNMENT CODE SECTION 271.904 AND SHALL BE CONSTRUED TO THAT EFFECT. THE CONSULTANT AS ALLOWED BY TEXAS LOCAL GOVERNMENT CODE SECTION 271.904 WILL STILL NAME TOWN AS ADDITIONAL INSURED IN ITS GENERAL LIABILITY POLICY AND PROVIDE ANY DEFENSE AS ALLOWED BY THE POLICY. CONSULTANT DOES HEREBY COVENANT AND CONTRACT TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY AND HOLD HARMLESS TOWN AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS OR CAUSES OF

ACTION, INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, THAT MAY ARISE BY REASON OF DEATH OR INJURY TO PERSONS OR DAMAGE TO OR LOSS OF USE OF PROPERTY OCCASIONED BY ANY WRONGFUL INTENTIONAL ACT OR OMISSION OF CONSULTANT AS WELL AS ANY NEGLIGENT OMISSION, ACT OR ERROR OF CONSULTANT, ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, OR OTHER PERSONS FOR WHOM CONSULTANT IS LEGALLY LIABLE WITH REGARD TO THE PERFORMANCE OF THIS CONTRACT, REGARDLESS OF WHETHER SUCH LIABILITY, CLAIMS, SUITS, DEMANDS OR CAUSES OF ACTION IS THE RESULT IN PART OF TOWN'S NEGLIGENCE OR FAULT, AND CONSULTANT WILL, AT ITS OWN COST AND EXPENSE, DEFEND AND PROTECT TOWN AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS, INCLUDING PAYMENT OF TOWN'S REASONABLE ATTORNEYS' FEES. IN THE EVENT OF A CLAIM IS BROUGHT AGAINST TOWN, TOWN SHALL HAVE THE RIGHT TO RETAIN LEGAL COUNSEL OF ITS CHOOSING IN DEFENSE OF SUCH A CLAIM, AND SUCH ELECTION SHALL NOT RELIEVE CONTRACTOR OF ITS OBLIGATIONS UNDER THIS SECTION.

XIII.

Independent Contractor

CONSULTANT's status shall be that of an Independent Contractor and not an agent, servant, employee or representative of TOWN in the performance of this Contract. No term or provision of or act of CONSULTANT or TOWN under this Contract shall be construed as changing that status. CONSULTANT will have exclusive control of and the exclusive right to control the details of the work performed hereunder, and shall be liable for the acts and omissions of its officers, agents, employees, contractors, subcontractors and engineers and the doctrine of respondeat superior shall not apply as between TOWN and CONSULTANT, its officers, agents, employees, contractors, subcontractors and engineers, and nothing herein shall be construed as creating a partnership or joint enterprise between TOWN and CONSULTANT.

XIV.

Default

If at any time during the term of this Contract, CONSULTANT shall fail to commence the work in accordance with the provisions of this Contract, or fail to diligently provide services in an efficient, timely and careful manner and in strict accordance with the provisions of this Contract, or fail to use an adequate number or quality of personnel to complete the work or fail to perform any of its obligations under this Contract, then TOWN shall have the right, if CONSULTANT shall not cure any such default after thirty (30) days written notice thereof, to terminate this Contract for cause. Any such act by TOWN shall not be deemed a waiver of any other right or remedy of TOWN. If after exercising any such remedy due to CONSULTANT's

nonperformance under this Contract, the cost to TOWN to complete the work to be performed under this Contract is in excess of that part of the Contract sum which has not theretofore been paid to CONSULTANT hereunder, CONSULTANT shall be liable for and shall reimburse TOWN for such excess.

TOWN's remedies for CONSULTANT's default or breach under this Contract shall be limited to one or more of the following remedies which may be exercised separately or in combination at TOWN's sole exclusive choice:

- (a) Specific performance of the Contract;
- (b) Re-performance of this Contract at no extra charge to TOWN; or
- (c) Monetary damages.

XV. Provisions Surviving Termination

The terms of Sections XII entitled Indemnification, and XVIII entitled Confidential Information shall survive termination of this Contract.

XVI. Changes

TOWN may, from time to time, require changes in the scope of services to be performed under this Contract. Such changes as are mutually agreed upon by and between TOWN and CONSULTANT shall be incorporated by written modification to this Contract.

XVII. Conflicts of Interest

CONSULTANT covenants and agrees that CONSULTANT and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Contract. All activities, investigations and other efforts made by CONSULTANT pursuant to this Contract will be conducted by employees, associates or subcontractors of CONSULTANT.

No officer or employee of TOWN shall have any personal, financial interest, direct or indirect, in this Contract nor have any direct financial interest in the sale to TOWN of any land, materials, supplies, or services under this Contract, except on behalf of TOWN as a TOWN officer or employee. Any violation of this prohibition with knowledge, expressed or implied, of the person or corporation contracting with TOWN shall render the Contract voidable by the Director or the Town Council.

XVIII.
Confidential Information

CONSULTANT hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations in accordance with this Contract, which is of a confidential, non-public or proprietary nature. CONSULTANT shall treat any such information received in full confidence and will not disclose or appropriate such Confidential Information for its own use or the use of any third party at any time during or subsequent to this Contract. As used herein, "Confidential Information" means all oral and written information concerning TOWN, its affiliates and subsidiaries, and all oral and written information concerning TOWN or its activities, that is of a non-public, proprietary or confidential nature including, without limitation, information pertaining to customer lists, services, methods, processes and operating procedures, together with all analyses, compilation, studies or other documents, whether prepared by CONSULTANT or others, which contain or otherwise reflect such information. The term "Confidential Information" shall not include such materials that are or become generally available to the public other than as a result of disclosure of CONSULTANT, or are required to be disclosed by a governmental authority or by law, as determined by TOWN's attorney.

XIX.
Notice Information

All notices and communications under this CONTRACT to be mailed to TOWN shall be sent to the address of TOWN's agent as follows, unless and until CONSULTANT is otherwise notified:

Clay Riggs, P.E.,
Senior Project Engineer
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6302 Telephone

Notices and communications to be mailed or delivered to CONSULTANT shall be sent to the address of CONSULTANT as follows, unless and until TOWN is otherwise notified:

Nathan Ante, P.E.
Kimley-Horn and Associates, Inc.
2201 West Royal Lane, Suite 275
Irving, Texas 75063-3206
214-420-5603 Telephone

Any notices and communications required to be given in writing by one party to the other shall be considered as having been given to the addressee on the date the notice or communication is posted, faxed or personally delivered by the sending party.

XX.
Applicable Law

The Contract is entered into subject to the Flower Mound Town Charter and ordinances of TOWN, as same may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and federal laws. CONSULTANT will make any and all reports required per federal, state or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with CONSULTANT's income.

XXI.
Non-Discrimination

CONSULTANT shall not discriminate against any employee, applicant for employment, contractor, or sub-contractor because of the race, age, color, religion, sex, or national origin of such person. Engineer shall take affirmative action to insure that all such persons are treated equally during their employment without regard to their race, age, color, religion, sex, or national origin. If CONSULTANT fails to comply with the federal or state laws relating to Equal Employment Opportunity, it is agreed that TOWN, at its option, may do either or both of the following:

- (a) Cancel, terminate, or suspend the Contract in whole or in part; or
- (b) Declare CONSULTANT ineligible for future TOWN contracts until it is determined to be in compliance.

XXII.
Arbitration

CONSULTANT agrees not to enter into any agreement to arbitrate arising out of, or relating to, this Contract which would subject TOWN to being a party to any arbitration without TOWN's prior written consent.

XXIII.
No Waiver of Governmental Immunity

Nothing in this Contract shall be construed as a waiver of TOWN'S governmental immunity, or of any applicable limitation on damages, or any other legal protection or defense or privilege of TOWN, except to the extent expressly provided otherwise herein.

XXIV.
Severability

If any of the terms, provisions, covenants, conditions or any other part of this Contract are for any reason held to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants, conditions or any other part of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

XXV.
Remedies

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Contract may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

XXVI.
Entire Agreement

This Contract embodies the entire agreement of the parties hereto, superseding all oral or written previous and contemporaneous agreements between the parties relating to matters herein, and except as otherwise provided herein cannot be modified without written agreement of the parties.

XXVII.
Non-Waiver

It is further agreed that one (1) or more instances of forbearance by TOWN in the exercise of its rights herein shall in no way constitute a waiver thereof.

XXVIII.
Headings

The headings of this Contract are for the convenience of reference only and shall not affect any of the terms and conditions hereof in any manner.

XXIX.
Venue

Situs of this Contract is agreed to be Denton County, Texas, for all purposes, including performance and execution, and the parties to this Contract agree and

covenant that this Contract will be enforceable in Flower Mound, Texas; and that if legal action is necessary to enforce this Contract, exclusive venue will lie in Denton County, Texas.

XXX.

No Third Party Beneficiary

For purposes of this Contract, including its intended operation and effect, the parties (TOWN and CONSULTANT) specifically agree and contract that: (1) the Contract only affects matters/disputes between the parties to this Contract, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship with TOWN or CONSULTANT or both; and (2) the terms of this Contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either TOWN or CONSULTANT.

[The remainder of this page is left blank intentionally]

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: _____
The Honorable Thomas E Hayden
Mayor, Town of Flower Mound

Date Signed: _____

Attest:

Town Secretary

CONSULTANT:
Kimley-Horn and Associates, Inc.

By: Scott R. Arnold
Name: Scott R. Arnold
Title: Assistant Secretary

Date Signed: November 8, 2017

State of Texas §
 §
County of Tarrant §

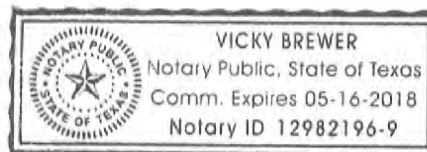
This instrument was acknowledged before me on the 8 day of November, 2017, by Scott R. Arnold in his capacity as Assistant Secretary of Kimley-Horn and Associates, Inc., a Private Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of Kimley-Horn and Associates, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 8
DAY OF Nov, 2017.

Vicky Brewer
Notary Public, State of Texas

My Commission Expires:

May 16, 2018



ATTACHMENT A

SCOPE OF SERVICES

PROJECT NAME: FM 1171 at River Walk Drive Intersection Improvements

PROJECT UNDERSTANDING

This project consists of the design of a westbound right-turn lane, northbound left-turn lane, and southbound left-turn lane at the intersection of FM 1171 and River Walk Drive. Additionally, traffic signal improvements will be made at the intersection.

The following Scope of Professional Services includes Data Collection and Survey, Paving Design, Traffic Signal Design, Bidding Phase Services, and Record Drawings. If required and authorized by the Town ROW/Easement Instruments of Conveyance and SUE (Level A) may also be performed.

SCOPE OF PROFESSIONAL SERVICES

TASK 1: DATA COLLECTION AND SURVEY

Gather existing record drawings, including roadway, utility, and traffic signal plans, plats, and improvements associated with the properties adjacent to the proposed improvements.

Topographic survey performed in 2014 as part of a previous project will be supplemented with the following:

- An 80' swath along River Walk Drive, from north of FM 1171 to Olympia Drive, approximately 250 linear feet
- A 50' swath along River Walk Drive, from south of FM1171 for a distance of approximately 50 linear feet
- A 30' swath along FM 1171, from the northwest corner of FM 1171 and River Walk Drive, east approximately 600 linear feet
- A 30 swath along FM 1171, from the southwest corner of FM 1171 and River Walk Drive to the southeast corner of FM 1171 and River Walk Drive

Topographic elements may include, but are not limited to, the following:

- Property pins
- Existing pavement, curbs, sidewalks, and barrier free ramps
- Lane striping
- Existing storm sewer inlets, manholes, and junction boxes
- Utility manholes, vaults, water valves, water meters, sprinkler heads, telephone poles, power poles, utility markers, other public utilities,

and franchise utilities (Texas 811 will be contacted prior to surveying to flag existing franchise utilities)

- Traffic signal poles, cabinets, and other signal equipment
- Signs (excluding temporary signs)
- Retaining walls
- Fence limits and material types
- Landscaping
- Other applicable physical features that may impact design

Review the final topographic drawing in digital format (including one foot contours and break lines) showing the features located in the field as well as right-of-way and easement information.

Prepare a base map utilizing the survey information and record drawings.

TASK 2: PAVING DESIGN

A. Design

Conduct kick-off meeting with the Town

Prepare 30% design identifying limits of proposed turn lanes, typical sections, striping, sidewalk and wall limits (if needed), grading limits, impacts to existing utilities, impacts to adjacent property, impacts to existing traffic signal, and right-of-way and easement needs. If required and authorized by the Town, ROW/Easement Instruments of Conveyance, and SUE (Level A) may also be performed via separate Tasks.

Upon Town and TxDOT approval of the 30% design, prepare plan sheets of the proposed improvements. Plan sheets will consist of 22"x34" sheets at a scale of 1"=40' horizontal. Plan set is anticipated to include the following plan sheets:

- Cover
- Sheet Index
- General Notes
- Paving Plan with Typical Sections for each of the three turn lanes. Paving Plan will also identify storm drain improvements within the limits of the project.
- Curb Ramp Detail and Grading Layout
- Pavement Markings and Sign Layout
- Wall Improvements (if necessary). Wall will be limited to 3-ft in height and anticipated to be integral with the sidewalk utilizing applicable Standard Details. Structural design is not included.
- Water Line adjustments (if necessary)
- Sanitary Sewer adjustments (if necessary)
- Storm Drain adjustments (if necessary)
- Traffic Control Plan (as required by TxDOT)

- Erosion Control
- Town Standards
- TxDOT Standards

Prepare Construction Specifications and Contract Documents, which include applicable technical specifications. The Town will provide the latest approved front-end documents to use as a template.

Submit to the Town 95% plans, specifications, contract documents, and opinion of probable construction cost for review and comments.

Submit to the franchise utility companies 95% complete plans for review and comment.

Conduct meeting with Town to review 95% plans during monthly progress meetings

Make revisions based on the Town's review of the 95% submittal

Town to submit final plans to TxDOT for review and final permitting.

B. Design Deliverables

- Three (3) copies of the 30% Design Roll Plot
- Three (3) copies of the 95% Construction Plans
- Three (3) copies of the 95% Construction Specifications and Contract Documents
- Three (3) copies of the Opinion of Probable Construction Cost

C. Final Design

Make revisions based on the Town's review of the 95% submittal

D. Final Design Deliverables

- Five (5) copies of the Final Construction Plans
- Five (5) copies of the Final Construction Specifications and Contract Documents
- One (1) copy of Reproducible Bidding Documents (Plans)
- One (1) copy of Reproducible Bidding Documents (Final Construction Specifications and Contract Documents)

E. Meetings

- Kick-off meeting with the Town
- Meet with Town to review 30% plans
- Meet with Town to review 95% plans

F. Services provided by the Town

- Review and comment on 30% and 95% plans, specifications, contract documents, and opinion of probable construction cost
- Submit plans to TxDOT for permitting

TASK 3: TRAFFIC SIGNAL DESIGN

Traffic Signal improvements will be identified at the 30% design milestone. The Traffic Signal improvements will be incorporated into the deliverables identified under Task 2. The following plan sheets will be incorporated into the plan set:

- Traffic Signal General Notes
- Traffic Signal Removal Layout
- Traffic Signal Layout
- Traffic Signal Summary Charts
- TxDOT Standard Details

TASK 4: BIDDING PHASE SERVICES

- A. Print and issue seven (7) sets of bidding documents. Additional sets of bidding documents shall be printed, only upon the Town's authorization, as Additional Professional Services. Bidding documents will be issued to potential bidders upon the payment of a non-refundable fee to cover the cost of printing those documents.
- B. Issue addenda as required.
- C. In this phase, the Consultant will provide the following deliverables:
- Notice to Bidders for Advertising by the Town
 - Addenda as required
 - Print and deliver to the Town up to seven (7) sets of bid documents

TASK 5: RECORD DRAWINGS

A. Record Drawing Preparation

Prepare record drawings from contractor's marks showing changes made during construction. Transfer contractor's marks to digital format. The Consultant will be provided the contractor's revisions and shall not be responsible for verifying their completeness or accuracy.

B. Deliverables

One (1) compact disc containing Record Drawing in digital format (PDF, TIFF, CAD)

C. Services Provided by the Town

Review of contractor's marks for completeness and accuracy

TASK 6: ROW AND EASEMENTS, if necessary

ROW and Easement needs will be identified at the 30% design milestone. If required and authorized by the Town, preparation of the ROW and Easement Instruments of Conveyance will be performed under this Task, \$2,000/each.

Individual parcel exhibits shall be on 8 ½" x 11" paper, shall be sealed, dated, and signed by a Registered Professional Land Surveyor

TASK 7: SUE – LEVEL A, if necessary

Approximate location of utilities will be identified during Tasks 1 and 2. If required and authorized by the Town, perform SUE (Subsurface Utility Engineering) Quality Level "A" to identify existing Town and franchise utility at critical locations within the limits of the construction by exposing specific utilities, \$3,500/each. Non-destructive vacuum excavation equipment may be used to expose the utilities at specific points which will then be field surveyed.

Evaluate the SUE results and provide a summary of potential utility conflicts to the Town.

ADDITIONAL SERVICES

Any services not specifically provided for in the above scope will be considered additional services and can be performed at our then current hourly rates.

Additional services we can provide include, but are not limited to, the following:

- Assisting Town or contractor in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, shall be furnished by the Consultant on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
- Sampling, testing, or analysis beyond that specifically included in the Scope of Services referenced herein above.
- Preparing applications and supporting documents for government grants, loans, or planning advances, and providing data for detailed applications.
- Appearing before regulatory agencies or courts as an expert witness in any litigation with third parties or condemnation proceedings arising from the development or construction of the Project, including the preparation of engineering data and reports for assistance to the Town.
- Providing professional services associated with the discovery of any hazardous waste or materials in the project route.

- Providing presentations to the Town Council.
- TDLR submittal.
- Additional ADA improvements.
- Providing construction staking, additional platting, or other surveying services not identified in the above Scope of Services.
- Providing additional documentation required by the Town's legal representative during condemnation proceedings.
- Providing any right-of-way or easement acquisition services.
- Attending public meetings during the project.
- Providing professional services associated with the construction phase of the project.
- Preparing a Bid Tabulation or Recommendation Letter.
- Reviewing Contractor's References.
- Any services not listed in the Scope of Services.

ATTACHMENT B**COMPENSATION**

The Consultant will provide Tasks 1-7 for a lump sum fee:

TASK 1 – Data Collection and Survey	\$6,500
TASK 2 – Paving Design	\$55,000
TASK 3 – Traffic Signal Design	\$11,500
TASK 4 – Bidding Phase Services	\$2,000
TASK 5 – Record Drawings	\$1,500
TASK 6 – ROW and Easements (2 @ \$2,000/each)	\$4,000
TASK 7 – SUE – Level A (2 @ \$3,500/each)	\$7,000
<u>TOTAL</u>	<u>\$87,500</u>

Additional services will be negotiated at the time they are identified.



TOWN COUNCIL AGENDA ITEM NO. 7

CONSENT ITEM

DATE: December 4, 2017

FROM: Clay Riggs, Senior Project Engineer

ITEM: Consider approval of Change Order No. 1 and final acceptance of the FM 2499 12-Inch Water Line Phase III Section 2 project, amending the contract with Wildstone Construction, LLC, for a decrease to the contract in the amount of \$11,410.80, and authorizing final payment to Saber Development Corporation, in the amount of \$36,462.12; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: Change Order No. 1 provides for the line item adjustments to match in-place quantities. Final payment consists of \$36,162.12 of retainage and final payment of \$300.00, for a final contract amount of \$361,974.20.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

FISCAL IMPACT: \$36,462.12

Proposed Expenditure:	Account Number(s):
\$36,462.12	601-900-98840

Finance Review by: Debra Wallace, Deputy Town Manager/CFO *DW*

LEGAL REVIEW: N/A

ATTACHMENTS:

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

DRAFT MOTION: Move to approve Change Order No. 1 and final acceptance of the FM 2499 12-Inch Water Line Phase III Section 2 project, amending the contract with Wildstone Construction, LLC, for a decrease to the contract in the amount of \$11,410.80, and authorizing final payment to Saber Development Corporation, in the amount of \$36,462.12; and authorization for the Mayor to execute same on behalf of the Town.

CHANGE ORDER 1

Effective Date: Upon execution by the Mayor

Owner: Town of Flower Mound
 Contractor: Wildstone Construction, LLC
 Attn: April Seleska
 12850 Hwy. 287
 Fort Worth, Texas 76052

Project: **FM2499 12-Inch Water Line Phase III****CHANGE ORDER NO. 1**

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
8	TRENCH SAFETY	LF	Deduct	12.00	\$0.90	(\$10.80)
13	REMOVE AND REPLACE TXDOT TYPE 1 MODIFIED CURB RAMP	EA	Deduct	2.00	\$2,500.00	(\$5,000.00)
18	REMOVE AND REPLACE TXDOT STORM SEWER INLET	EA	Deduct	1.00	\$6,400.00	(\$6,400.00)
Subtotal						(\$11,410.80)

Contract Price

Change Order No. 1

Revised Contract Price

\$	373,385.00
\$	(11,410.80)
\$	361,974.20

JUSTIFICATION

Allows for bid items 8, 13, & 18 to be reconciled based on actual quantities installed.

Recommended for Approval Clay Riggs, PE, CFM 10-19-17
 Clay Riggs, P.E. Date
 Senior Project Engineer

April D. Seleska 10-19-17
 Date
Wildstone Construction, LLC
 Contractor

Approved _____
 Thomas E. Hayden Date
 Mayor

Project: FM 2499 12-Inch Water Line Phase III

Estimate No.: 6 & 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	MOBILIZATION, BONDS AND INSURANCE	LS	1	\$ 6,000.00	\$ 6,000.00	0.95	0.05	1.00	\$ 5,700.00	\$ 300.00	\$ 6,000.00	100.00%
2	8" AWWA C900 DR 14 PVC WATER LINE BY OPEN CUT	LF	12	\$ 67.00	\$ 804.00	12.00	0.00	12.00	\$ 804.00	\$ -	\$ 804.00	100.00%
3	12" AWWA C900 DR 14 PVC WATER LINE BY OPEN CUT	LF	3,883.00	\$ 53.00	\$ 205,799.00	3883.00	0.00	3883.00	\$ 205,799.00	\$ -	\$ 205,799.00	100.00%
4	8" GATE VALVE	EA	2	\$ 2,000.00	\$ 4,000.00	2.00	0.00	2.00	\$ 4,000.00	\$ -	\$ 4,000.00	100.00%
5	12" GATE VALVE	EA	12	\$ 3,000.00	\$ 36,000.00	12.00	0.00	12.00	\$ 36,000.00	\$ -	\$ 36,000.00	100.00%
6	FIRE HYDRANT ASSEMBLY	EA	8	\$ 4,900.00	\$ 39,200.00	8.00	0.00	8.00	\$ 39,200.00	\$ -	\$ 39,200.00	100.00%
7	CONNECT TO EXISTING WATER LINE	EA	4	\$ 2,400.00	\$ 9,600.00	4.00	0.00	4.00	\$ 9,600.00	\$ -	\$ 9,600.00	100.00%
8 CO1	TRENCH SAFETY	LF	3,883.00	\$ 0.90	\$ 3,494.70	3883.00	0.00	3883.00	\$ 3,494.70	\$ -	\$ 3,494.70	100.00%
9	SEED, FERTILIZER, AND EROSION CONTROL	LF	3,895.00	\$ 5.00	\$ 19,475.00	3895.00	0.00	3895.00	\$ 19,475.00	\$ -	\$ 19,475.00	100.00%
10	REMOVE AND REPLACE 6" CONCRETE PAVEMENT	SY	38	\$ 94.00	\$ 3,572.00	38.00	0.00	38.00	\$ 3,572.00	\$ -	\$ 3,572.00	100.00%
11	REMOVE AND REPLACE 8" CONCRETE PAVEMENT	SY	84	\$ 100.00	\$ 8,400.00	84.00	0.00	84.00	\$ 8,400.00	\$ -	\$ 8,400.00	100.00%
12	REMOVE AND REPLACE BARB WIRE FENCE	LF	456	\$ 7.50	\$ 3,420.00	456.00	0.00	456.00	\$ 3,420.00	\$ -	\$ 3,420.00	100.00%
13 CO1	REMOVE AND REPLACE TXDOT TYPE 1 MODIFIED CURB RAMP	EA	0.00	\$ 2,500.00	\$ -	0.00	0.00	0.00	\$ -	\$ -	\$ -	#DIV/0!
14	REMOVE AND REPLCE TXDOT TYPE 3 CURB RAMP	EA	1	\$ 2,100.00	\$ 2,100.00	1.00	0.00	1.00	\$ 2,100.00	\$ -	\$ 2,100.00	100.00%
15	TEMPORARY FENCE	LF	1,497.00	\$ 3.50	\$ 5,239.50	1497.00	0.00	1497.00	\$ 5,239.50	\$ -	\$ 5,239.50	100.00%
16	TREE REMOVAL	LS	1	\$ 5,500.00	\$ 5,500.00	1.00	0.00	1.00	\$ 5,500.00	\$ -	\$ 5,500.00	100.00%
17	PROJECT SIGN	EA	1	\$ 990.00	\$ 990.00	1.00	0.00	1.00	\$ 990.00	\$ -	\$ 990.00	100.00%
18 CO1	REMOVE AND REPLACE TXDOT STORM SEWER INLET	EA	0.00	\$ 6,400.00	\$ -	0.00	0.00	0.00	\$ -	\$ -	\$ -	#DIV/0!
19	TRAFFIC CONTROL	LS	1	\$ 5,390.00	\$ 5,390.00	1.00	0.00	1.00	\$ 5,390.00	\$ -	\$ 5,390.00	100.00%
20	CONTROLLED LOW STRENGTH MATERIAL (CLSM)	LF	20	\$ 82.00	\$ 1,640.00	20.00	0.00	20.00	\$ 1,640.00	\$ -	\$ 1,640.00	100.00%
21	STORM WATER POLLUTION PREVENTION PLAN	LS	1	\$ 1,350.00	\$ 1,350.00	1.00	0.00	1.00	\$ 1,350.00	\$ -	\$ 1,350.00	100.00%
TOTAL					361,974.20				361,674.20	300.00	361,974.20	100.00%

**CONSENT OF
SURETY COMPANY
TO FINAL PAYMENT**

Bond #8244-67-31

Project: FM 2499 12-Inch Water Line Phase III – Bid #2016-67

To (Owner):

**Town of Flower Mound, Texas
2121 Cross Timbers Road
Flower Mound, TX 75028**

Contract For: See above

Contract Date: July 18, 2016

Contractor:

Wildstone Construction, LLC

In accordance with the provision of the Contract between the Owner and the Contractor as defined above, the **Federal Insurance Company**

15 Mountain View Road
Warren, NJ 07059

,Surety Company,

on bond of **Wildstone Construction, LLC**

12850 Hwy 287
Ft Worth, TX 76052

,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 the

**Town of Flower Mound, Texas
2121 Cross Timbers Road
Flower Mound, TX 75028**

,Owner

as set forth in the said Surety Company's bond.

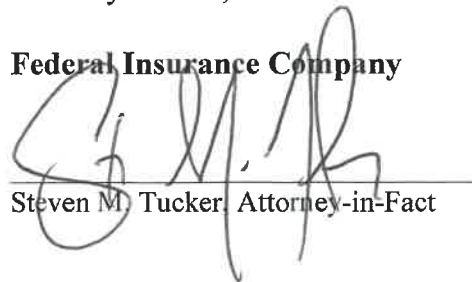
IN WITNESS WHEREOF,

the Surety Company has hereunto set its hand this **7th** day of **June**, 2017.

Witness:



Federal Insurance Company


Steven M. Tucker, Attorney-in-Fact

Power of Attorney

Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company

Know All by These Presents, That **FEDERAL INSURANCE COMPANY**, an Indiana corporation, **VIGILANT INSURANCE COMPANY**, a New York corporation, and **PACIFIC INDEMNITY COMPANY**, a Wisconsin corporation, do each hereby constitute and appoint **W. Lawrence Brown, Steven M. Tucker and Tracy Tucker of Fort Worth, Texas** -----

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** have each executed and attested these presents and affixed their corporate seals on this 10th day of March, 2017.

Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

Stephen M. Haney

Stephen M. Haney, Vice President



STATE OF NEW JERSEY

County of Hunterdon

SS.

On this 10th day of March, 2017 before me, a Notary Public of New Jersey, personally came Dawn M. Chloros, to me known to be Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros, being by me duly sworn, did depose and say that she is Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that she signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that she is acquainted with Stephen M. Haney, and knows him to be Vice President of said Companies; and that the signature of Stephen M. Haney, subscribed to said Power of Attorney is in the genuine handwriting of Stephen M. Haney, and was thereto subscribed by authority of said Companies and in deponent's presence.

Notarial Seal



KATHERINE J. ADELAAR
NOTARY PUBLIC OF NEW JERSEY
No. 231885
Commission Expires July 16, 2019

Katherine J. Adelaar
Notary Public

CERTIFICATION

Resolutions adopted by the Boards of Directors of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY on August 30, 2016:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
- (2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.
- (3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (4) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Dawn M. Chloros, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY (the "Companies") do hereby certify that

- (i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,
- (ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in the U.S. Virgin Islands, and Federal is licensed in Guam, Puerto Rico, and each of the Provinces of Canada except Prince Edward Island; and
- (iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this 7th day of June, 2017.



Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT:

Telephone (908) 903-3493

Fax (908) 903-3656

e-mail: surety@chubb.com

AFFIDAVIT

STATE OF Texas

COUNTY OF Tarrant

Before me, the undersigned authority, a notary public in the state and county aforesaid, on this day personally appeared John Kolb, President of Wildstone Construction, LLC, known to me to be a credible person, who being by me duly sworn, upon his oath deposed and said;

That all persons, firms, associations, corporations, or other organizations furnishing labor and/or materials have been paid in full;

That the wage scale established by the City Council in the Town of Flower Mound has been paid in full;

That there are no claims pending for personal injury and/or property damages;

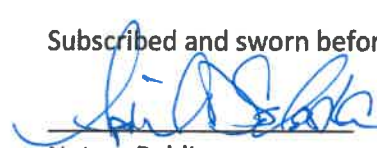
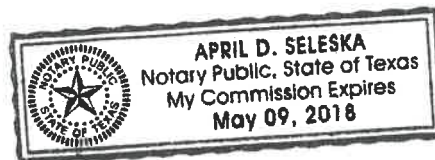
On Contract described as:

FM 2499 12-inch Water Line Phase III BID # 2016-67

BY


John Kolb/President

Subscribed and sworn before me on this date 28 of February, 2017.


Notary Public
Tarrant, Texas

12850 Highway 287
Fort Worth, TX 76052

Office: 817-847-8660
Fax: 817-847-8019

Wildstone Construction, LLC



TOWN COUNCIL AGENDA ITEM NO. 8

CONSENT ITEM

DATE: December 4, 2017

FROM: Clay Riggs, P.E., C.F.M., Senior Project Engineer

ITEM: Consider approval of the Professional Services Agreement with Criado and Associates, Inc., to provide professional engineering services, for the Churchill Drive project in the amount of \$66,706.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The Churchill Drive project will extend an urban collector street section approximately 400 linear feet from the existing Churchill Drive to Yucca Drive as part of the Town's Master Thoroughfare Plan. The scope of the professional services agreement includes the preparation of design plans, specifications, cost estimating, easement preparation, and contract documents for bidding.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$66,706.00

Proposed Expenditure:	Account Number(s):
\$ 66,706.00	550-117-70531

Finance Review by: Debra Wallace, Deputy Town Manager/CFO *DW*

LEGAL REVIEW: The Town's standard professional services 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 this Professional Services Agreement.

ATTACHMENTS:

1. Professional Services Agreement

DRAFT MOTION: Move to approve the Professional Services Agreement with Criado and Associates, Inc., to provide professional engineering services, for the Churchill Drive project in the amount of \$66,706.00; and authorization for the Mayor to execute same on behalf of the Town.

THE STATE OF TEXAS §
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH
Criado and Associates, Inc.**

This contract is entered into on this 4th day of December, 2017, by and between the **TOWN OF FLOWER MOUND, TEXAS**, a municipal corporation located in Denton County, Texas, (hereinafter referred to as “TOWN”), acting by and through its Mayor, and **Criado and Associates, Inc.**, (“hereinafter referred to as “CONSULTANT”) whose address is 4100 Spring Valley Road, Suite 1001, Dallas, Texas 75244.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to surveying, design and providing construction documents for the Churchill Drive project; and

WHEREAS, CONSULTANT is an engineering firm qualified to provide such services and is willing to undertake the performance of such services for the TOWN in exchange for fees hereinafter specified;

TERMS OF AGREEMENT

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter contained and subject to the terms and conditions hereinafter stated, the parties hereto do mutually agree as follows:

I.

Employment of Consultant

CONSULTANT will perform as an independent contractor all services under this Contract to the prevailing professional standards consistent with the level of care and skill ordinarily exercised by members of the architectural, engineering and planning professions, both public and private, currently practicing in the same locality under similar conditions including but not limited to the exercise of reasonable, informed judgments and prompt, timely action. If CONSULTANT has represented or is representing that it has special expertise in one or more areas to be utilized in this Contract, then CONSULTANT agrees to perform those special expertise services to the appropriate local, regional and national professional standards.

II.

Scope of Services

CONSULTANT shall perform such services as are necessary to provide services for the Churchill Drive project specifically including, but not necessarily limited to, the tasks enumerated more fully in Attachment "A-1" hereto entitled "Scope of Work" (hereafter referred to as the "Project"). Attachment "A" is hereby incorporated herein by reference and made a part hereof as if written word for word. However, in case of conflict in the language of Attachment "A-1" and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.

III.

Payment for Services

Total payment for services described herein shall be a sum not to exceed Sixty Six Thousand Seven Hundred Six and No/100 Dollars (\$66,706.00). This total payment for services includes CONSULTANT's ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT. If CONSULTANT retains any subcontractors to perform any of the work, CONSULTANT acknowledges that payments to such subcontractors are due and payable in accordance with the provisions of Texas Government Code Section 2251.022, and that interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.

CONSULTANT will bill TOWN on a lump sum basis in accordance with Attachment "B"; provided however that this Contract shall control in the event of any conflict between the language in Attachment "B-1" and the language in this Contract. If additional services, trips or expenses are requested, CONSULTANT will not provide such additional services until authorized by TOWN in writing to proceed. The scope of services shall be strictly limited. TOWN shall not be required to pay any amount in excess of the amount identified in the preceding paragraph unless TOWN shall have approved in writing in advance (prior to the performance of additional work) the payment of additional amounts.

Each month CONSULTANT will submit to TOWN an invoice for supporting the percentage for which payment is sought by CONSULTANT during the previous month for which payment is sought. Each invoice shall also state the percentage of work completed on the Project, the total of the current invoice amount and a running total balance for the Project to date.

Assuming that TOWN agrees with the invoice, that TOWN has not determined any of the work to be unsatisfactory, or that TOWN otherwise does not dispute any of the amounts billed, TOWN shall make payments in the amount shown by CONSULTANT's approved monthly statements and other documentation submitted in compliance with the Texas Prompt Payment Act, Texas Government Code Chapter 2251.

Nothing contained in this Contract shall require TOWN to pay for any work that TOWN has determined has not been successfully completed or is unsatisfactory as determined by TOWN, or which is not otherwise submitted in compliance with the terms of this Contract, nor shall failure to withhold payment pursuant to the provisions of this section constitute a waiver of any right, at law or in equity, which TOWN may have if CONSULTANT is in default, including the right to bring legal action for damages or for specific performance of this Contract. Waiver of any default under this Contract shall not be deemed a waiver of any subsequent default.

IV. Revisions of the Scope of Services

TOWN reserves the right to revise or expand the scope of services after due approval by TOWN as TOWN may deem necessary, but in such event TOWN shall pay CONSULTANT equitable compensation for such services. In any event, when CONSULTANT is directed to revise or expand the scope of services under this Section of the Contract, CONSULTANT shall provide TOWN a written proposal for the entire costs involved in performing such additional services. Prior to CONSULTANT undertaking any revised or expanded services as directed by TOWN under this Contract, TOWN must authorize in writing the nature and scope of the services and accept the method and amount of compensation and the time involved in all phases of the Project.

It is expressly understood and agreed by CONSULTANT that any compensation not specified in Paragraph III herein above may require Flower Mound Town Council approval and is subject to the current budget year limitations.

V. Term

This Contract shall begin on the date first written above, and shall terminate when TOWN has approved the Project as being final or otherwise terminates this Contract as provided herein.

VI. Contract Termination Provision

Notwithstanding any other provision of this Contract, this Contract may be terminated at any time by TOWN for any reason, with or without cause, by providing

CONSULTANT thirty (30) days written notice of such termination. Upon receipt of such notice, CONSULTANT shall immediately terminate working on, placing orders or entering into contracts for supplies, assistance, facilities or materials in connection with this Contract and shall proceed to promptly cancel all existing contracts insofar as they are related to this Contract.

VII.

Ownership of Documents

All materials and documents prepared or assembled by CONSULTANT under this Contract shall become the sole property of TOWN and shall be delivered to TOWN without restriction on future use. CONSULTANT shall provide documents in any commonly-used electronic file format as requested by TOWN. CONSULTANT may retain in its files copies of all drawings, specifications and all other pertinent information for the work. CONSULTANT shall have no liability for changes made to any materials or other documents by others subsequent to the completion of the Contract.

VIII.

Insurance

A. CONSULTANT shall, at its own expense, purchase, maintain and keep in force during the term of this Contract such insurance as set forth below. CONSULTANT shall not commence work under this Contract until CONSULTANT has obtained all the insurance required under this Contract and such insurance has been approved by TOWN, nor shall CONSULTANT allow any subcontractor to commence work on its own subcontract until all similar insurance of the subcontractor has been obtained and approved. All insurance policies provided under this Contract shall be written on an “occurrence” basis save and except the Professional Liability Insurance which may be written on a “claims-made” basis, provided that “tail coverage” or continuation coverage is provided. The insurance requirements shall remain in effect throughout the term of this Contract.

The CONSULTANT shall furnish to TOWN certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Certificates shall reference the Project and be addressed as follows:

Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, TX 75028
Email: purchasing@flower-mound.com

The following policies and coverage shall be required:

1. Worker's Compensation Insurance (as required by law) with the policy endorsed to provide a waiver of subrogation as to TOWN; such policy to provide for Employers' Liability Insurance of not less than \$100,000.00 for each accident, \$100,000.00 disease-each employee, \$500,000.00 disease-policy limit;
2. Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractor's and Contractual Liability, including but not limited to coverage for all of the indemnification obligations of CONSULTANT under this Contract, and fully insuring CONSULTANT's liability for injury to or death of employees of TOWN and of third parties, extended to include personal injury liability coverage and for damage to property of third parties, with minimum combined single limits of \$1,000,000 per occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate per occurrence. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis;
3. Business Automobile Liability Insurance, covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000.00 per occurrence; and
4. Professional Liability Insurance: CONSULTANT shall obtain and maintain at all times during the prosecution of the work under this Contract professional liability insurance, which may be written on a claims made form provided that "tail coverage" or continuation coverage is provided. Limits of liability shall be \$1,000,000.00 per claim, \$1,000,000.00 annual aggregate. The coverage under this policy shall include a contractual liability endorsement.

If any of the foregoing insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than thirty-six (36) months following completion of the Contract and acceptance by the TOWN. All such insurance shall be purchased from an insurance company that meets a financial rating of B+VI or better as assigned by A.M. Best Company or equivalent.

B. Each insurance policy to be furnished by CONSULTANT shall include the following conditions by endorsement to the policy

1. The TOWN shall be named as an additional insured on the Commercial General Liability policy, by using endorsement CG2026 or broader;

2. The TOWN shall also be named as an additional insured as to all other applicable coverage save and except the Worker's Compensation Insurance and Professional Liability Insurance;
3. Each policy will require that thirty (30) days prior to the expiration, cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to TOWN by certified mail to:

Clay Riggs, PE
Senior Project Engineer
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6302 Telephone

However, if the policy is canceled for nonpayment of premium, only ten (10) days advance written notice to TOWN is required. CONSULTANT shall also notify TOWN within twenty-four (24) hours after receipt of any notices of expiration, cancellation, nonrenewal or any material change in coverage it receives from its insurer(s);

4. The term "Owner" or "TOWN" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of TOWN and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of TOWN;
5. The policy phrase "Other Insurance" shall not apply to TOWN where TOWN is an additional insured on the policy; and
6. All provisions of the Contract concerning liability, duty and standards of care together with the indemnification provision shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

C. Concerning insurance to be furnished by CONSULTANT, it is a condition precedent to acceptability thereof that:

1. Any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by CONSULTANT. The TOWN's decision(s) thereon shall be final;
2. All policies are to be written through companies duly approved to transact that class of insurance in the State of Texas; and
3. All liability policies required herein, save and except Professional Liability Insurance, shall be written with an "occurrence" basis coverage trigger.

D. CONSULTANT agrees to the following:

1. CONSULTANT hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against TOWN, it being the intention that the insurance policies shall protect all parties to this Contract and be primary coverage for all losses covered by the policies;
2. Companies issuing the insurance policies and CONSULTANT shall have no recourse against TOWN for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of CONSULTANT;
3. Approval, disapproval or failure to act by TOWN regarding any insurance supplied by CONSULTANT (or any subcontractors) shall not relieve CONSULTANT of full responsibility or liability for damages and accidents as set forth in the Contract documents. Neither shall the insolvency or denial of liability by the insurance company exonerate CONSULTANT from liability; and
4. No special payments shall be made for any insurance that the CONSULTANT and subcontractors are required to carry; all are included in the contract price and the contract unit prices.

Any of the insurance policies required under this section may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.

IX.

Right to Inspect Records

CONSULTANT agrees that TOWN shall have access to and the right to examine any directly pertinent books, documents, papers and records of CONSULTANT involving transactions relating to this Contract. CONSULTANT agrees that TOWN shall have access during normal working hours to all necessary CONSULTANT facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. TOWN shall give CONSULTANT reasonable advance notice of intended audits.

If TOWN agrees that CONSULTANT may retain any subcontractors, CONSULTANT further agrees to include in subcontract(s), if any, a provision that any subcontractor or engineer agrees that TOWN shall have access to and the right to examine any directly pertinent books, documents, papers and records of such engineer or sub-contractor involving transactions to the subcontract, and further, that TOWN shall have access during normal working hours to all such engineer or sub-contractor

facilities and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of the paragraph. TOWN shall give any such engineer or sub-contractor reasonable advance notice of intended audits.

X.
Successors and Assigns

TOWN and CONSULTANT each bind themselves and their successors, executors, administrators and assigns to the other party to this Contract and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this Contract. Neither TOWN nor CONSULTANT shall assign or transfer its interest herein without the prior written consent of the other.

XI.
CONSULTANT's Liability

Acceptance of the final plans by the TOWN shall not constitute nor be deemed a release of the responsibility and liability of CONSULTANT, its employees, associates, agents or consultants for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by TOWN for any defect in the designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by TOWN for any defect in the designs, working drawings, specifications or other documents and work prepared by said CONSULTANT, its employees, associates, agents or sub-consultants. In this regard, CONSULTANT acknowledges that TOWN is retaining CONSULTANT to provide the services described herein, in reliance upon CONSULTANT's specialized expertise and experience, and in reliance thereon.

XII.
Indemnification

THE PROVISIONS OF THIS SECTION ARE SUBJECT TO THE LIMITATIONS OF TEXAS LOCAL GOVERNMENT CODE SECTION 271.904 AND SHALL BE CONSTRUED TO THAT EFFECT. THE CONSULTANT AS ALLOWED BY TEXAS LOCAL GOVERNMENT CODE SECTION 271.904 WILL STILL NAME TOWN AS ADDITIONAL INSURED IN ITS GENERAL LIABILITY POLICY AND PROVIDE ANY DEFENSE AS ALLOWED BY THE POLICY. CONSULTANT DOES HEREBY COVENANT AND CONTRACT TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY AND HOLD HARMLESS TOWN AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS OR CAUSES OF ACTION, INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, THAT MAY ARISE BY REASON OF DEATH OR INJURY TO PERSONS OR DAMAGE TO OR LOSS OF USE OF PROPERTY OCCASIONED

BY ANY WRONGFUL INTENTIONAL ACT OR OMISSION OF CONSULTANT AS WELL AS ANY NEGLIGENT OMISSION, ACT OR ERROR OF CONSULTANT, ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, OR OTHER PERSONS FOR WHOM CONSULTANT IS LEGALLY LIABLE WITH REGARD TO THE PERFORMANCE OF THIS CONTRACT, REGARDLESS OF WHETHER SUCH LIABILITY, CLAIMS, SUITS, DEMANDS OR CAUSES OF ACTION IS THE RESULT IN PART OF TOWN'S NEGLIGENCE OR FAULT, AND CONSULTANT WILL, AT ITS OWN COST AND EXPENSE, DEFEND AND PROTECT TOWN AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS, INCLUDING PAYMENT OF TOWN'S REASONABLE ATTORNEYS' FEES. IN THE EVENT OF A CLAIM IS BROUGHT AGAINST TOWN, TOWN SHALL HAVE THE RIGHT TO RETAIN LEGAL COUNSEL OF ITS CHOOSING IN DEFENSE OF SUCH A CLAIM, AND SUCH ELECTION SHALL NOT RELIEVE CONTRACTOR OF ITS OBLIGATIONS UNDER THIS SECTION.

XIII.

Independent Contractor

CONSULTANT's status shall be that of an Independent Contractor and not an agent, servant, employee or representative of TOWN in the performance of this Contract. No term or provision of or act of CONSULTANT or TOWN under this Contract shall be construed as changing that status. CONSULTANT will have exclusive control of and the exclusive right to control the details of the work performed hereunder, and shall be liable for the acts and omissions of its officers, agents, employees, contractors, subcontractors and engineers and the doctrine of respondeat superior shall not apply as between TOWN and CONSULTANT, its officers, agents, employees, contractors, subcontractors and engineers, and nothing herein shall be construed as creating a partnership or joint enterprise between TOWN and CONSULTANT.

XIV.

Default

If at any time during the term of this Contract, CONSULTANT shall fail to commence the work in accordance with the provisions of this Contract, or fail to diligently provide services in an efficient, timely and careful manner and in strict accordance with the provisions of this Contract, or fail to use an adequate number or quality of personnel to complete the work or fail to perform any of its obligations under this Contract, then TOWN shall have the right, if CONSULTANT shall not cure any such default after thirty (30) days written notice thereof, to terminate this Contract for cause. Any such act by TOWN shall not be deemed a waiver of any other right or remedy of TOWN. If after exercising any such remedy due to CONSULTANT's nonperformance under this Contract, the cost to TOWN to complete the work to be performed under this Contract is in excess of that part of the Contract sum which has

not theretofore been paid to CONSULTANT hereunder, CONSULTANT shall be liable for and shall reimburse TOWN for such excess.

TOWN's remedies for CONSULTANT's default or breach under this Contract shall be limited to one or more of the following remedies which may be exercised separately or in combination at TOWN's sole exclusive choice:

- (a) Specific performance of the Contract;
- (b) Re-performance of this Contract at no extra charge to TOWN; or
- (c) Monetary damages.

XV.

Provisions Surviving Termination

The terms of Sections XII entitled Indemnification, and XVIII entitled Confidential Information shall survive termination of this Contract.

XVI.

Changes

TOWN may, from time to time, require changes in the scope of services to be performed under this Contract. Such changes as are mutually agreed upon by and between TOWN and CONSULTANT shall be incorporated by written modification to this Contract.

XVII.

Conflicts of Interest

CONSULTANT covenants and agrees that CONSULTANT and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Contract. All activities, investigations and other efforts made by CONSULTANT pursuant to this Contract will be conducted by employees, associates or subcontractors of CONSULTANT.

No officer or employee of TOWN shall have any personal, financial interest, direct or indirect, in this Contract nor have any direct financial interest in the sale to TOWN of any land, materials, supplies, or services under this Contract, except on behalf of TOWN as a TOWN officer or employee. Any violation of this prohibition with knowledge, expressed or implied, of the person or corporation contracting with TOWN shall render the Contract voidable by the Director or the Town Council.

XVIII.
Confidential Information

CONSULTANT hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations in accordance with this Contract, which is of a confidential, non-public or proprietary nature. CONSULTANT shall treat any such information received in full confidence and will not disclose or appropriate such Confidential Information for its own use or the use of any third party at any time during or subsequent to this Contract. As used herein, "Confidential Information" means all oral and written information concerning TOWN, its affiliates and subsidiaries, and all oral and written information concerning TOWN or its activities, that is of a non-public, proprietary or confidential nature including, without limitation, information pertaining to customer lists, services, methods, processes and operating procedures, together with all analyses, compilation, studies or other documents, whether prepared by CONSULTANT or others, which contain or otherwise reflect such information. The term "Confidential Information" shall not include such materials that are or become generally available to the public other than as a result of disclosure of CONSULTANT, or are required to be disclosed by a governmental authority or by law, as determined by TOWN's attorney.

XIX.
Notice Information

All notices and communications under this CONTRACT to be mailed to TOWN shall be sent to the address of TOWN's agent as follows, unless and until CONSULTANT is otherwise notified:

Clay Riggs, PE
Senior Project Engineer
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6302 Telephone

Notices and communications to be mailed or delivered to CONSULTANT shall be sent to the address of CONSULTANT as follows, unless and until TOWN is otherwise notified:

James Pruitt, P.E.
Criado and Associates, Inc.
4100 Spring Valley Road, Suite 1001
Dallas, Texas 75244
972-392-9092 Telephone

Any notices and communications required to be given in writing by one party to the other shall be considered as having been given to the addressee on the date the notice or communication is posted, faxed or personally delivered by the sending party.

XX.
Applicable Law

The Contract is entered into subject to the Flower Mound Town Charter and ordinances of TOWN, as same may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and federal laws. CONSULTANT will make any and all reports required per federal, state or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with CONSULTANT's income.

XXI.
Non-Discrimination

CONSULTANT shall not discriminate against any employee, applicant for employment, contractor, or sub-contractor because of the race, age, color, religion, sex, or national origin of such person. Engineer shall take affirmative action to insure that all such persons are treated equally during their employment without regard to their race, age, color, religion, sex, or national origin. If CONSULTANT fails to comply with the federal or state laws relating to Equal Employment Opportunity, it is agreed that TOWN, at its option, may do either or both of the following:

- (a) Cancel, terminate, or suspend the Contract in whole or in part; or
- (b) Declare CONSULTANT ineligible for future TOWN contracts until it is determined to be in compliance.

XXII.
Arbitration

CONSULTANT agrees not to enter into any agreement to arbitrate arising out of, or relating to, this Contract which would subject TOWN to being a party to any arbitration without TOWN's prior written consent.

XXIII.
No Waiver of Governmental Immunity

Nothing in this Contract shall be construed as a waiver of TOWN'S governmental immunity, or of any applicable limitation on damages, or any other legal protection or defense or privilege of TOWN, except to the extent expressly provided otherwise herein.

XXIV.
Severability

If any of the terms, provisions, covenants, conditions or any other part of this Contract are for any reason held to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants, conditions or any other part of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

XXV.
Remedies

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Contract may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

XXVI.
Entire Agreement

This Contract embodies the entire agreement of the parties hereto, superseding all oral or written previous and contemporaneous agreements between the parties relating to matters herein, and except as otherwise provided herein cannot be modified without written agreement of the parties.

XXVII.
Non-Waiver

It is further agreed that one (1) or more instances of forbearance by TOWN in the exercise of its rights herein shall in no way constitute a waiver thereof.

XXVIII.
Headings

The headings of this Contract are for the convenience of reference only and shall not affect any of the terms and conditions hereof in any manner.

XXIX.
Venue

Situs of this Contract is agreed to be Denton County, Texas, for all purposes, including performance and execution, and the parties to this Contract agree and

covenant that this Contract will be enforceable in Flower Mound, Texas; and that if legal action is necessary to enforce this Contract, exclusive venue will lie in Denton County, Texas.

XXX.

No Third Party Beneficiary

For purposes of this Contract, including its intended operation and effect, the parties (TOWN and CONSULTANT) specifically agree and contract that: (1) the Contract only affects matters/disputes between the parties to this Contract, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship with TOWN or CONSULTANT or both; and (2) the terms of this Contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either TOWN or CONSULTANT.

[The remainder of this page is left blank intentionally]

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: _____
The Honorable Thomas E Hayden
Mayor, Town of Flower Mound

Date Signed: _____

Attest:

Town Secretary

CONSULTANT:
Criado and Associates, Inc.

By: [Signature]
Name: JAMES D. PRUITT
Title: SENIOR VICE PRESIDENT
Date Signed: Nov. 11, 2017

State of Texas §
County of Dallas §
 §

This instrument was acknowledged before me on the 11th day of November, 2017, by James D. Pruitt in his capacity as Sr. Vice President of Criado & Associates, a Texas Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of Senior Vice President.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 11th DAY OF Nov., 2017.

[Signature]
Notary Public, State of Texas

My Commission Expires:
7/18/18

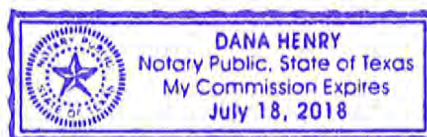


EXHIBIT A-1
SCOPE OF SERVICES

CHURCHILL DRIVE
TOWN OF FLOWER MOUND, TEXAS

0.0 GENERAL

0.1 Project Description

The services to be provided for this project include the preliminary and final design, development of construction plans, specifications, and estimates for the construction of the extension of Churchill Drive from the existing Churchill Drive to Yucca Drive (Approximately 400 lf) in the Town of Flower Mound, Denton County, Texas. Services to be provided for this project also include revisions to the construction plans and specifications for Yucca Drive to incorporate Churchill Drive improvements.

All work will be performed within the existing right of way. Plans will be prepared using conventional ground topographic surveying tied to the Town of Flower Mound Geodetic Control Network to produce 1" = 20' scale construction documents.

0.2 Project Phasing

This project shall be divided into five phases:

- Topographic Survey for Design
- Preliminary Design Phase
- Final Design Phase
- Bid Phase Services
- Construction Phase Services

0.3 Design Standards

Design and preparation of construction drawings and technical specifications required for the project shall be in accordance with the following standards.

- a. Town of Flower Mound Design Standards
- b. NCTCOG Construction Specifications and Details
- c. AASHTO Design Criteria
- d. TDLR Architectural Barriers Act / Texas Accessibility Standards
- e. TxDOT Design and Construction Standards

1.0 Topographic Survey for Design

Obtain topographic survey data within the limits of the right-of-way of Churchill Drive including visible utility appurtenances and utility manhole flowlines. The topographic survey will include capturing all trees and visible improvements along the alignment necessary for design. The survey will include the combined performance of research, field work, analysis, computation, and documentation necessary to provide detailed topographic (3-dimensional) mapping of a project site. A design survey may include, but need not be limited to, cross-sections or data to create cross-sections and Digital Terrain Models (DTM), horizontal and

vertical location of utilities and improvements, detailing of bridges and other structures, review of right-of-way maps, and establishing control points.

2.0 PRELIMINARY DESIGN

2.1 Data Collection

Obtain and review available reports, pertinent utility plans, street plans, plats and right-of-way maps, existing easement information, and other features within the project area from the Town of Flower Mound. Contact private utilities along the project for information on existing and proposed facilities.

2.2 Design Meeting

Meet with the Town of Flower Mound staff to review and discuss the primary design criteria, operational concerns, traffic information and other preliminary data. Prepare a record of the preliminary design meeting and distribute it to all attendees.

2.3 Preliminary Design

- a. Work with affected utilities such as water, gas, telephone, cable TV, and electric to obtain accurate information for horizontal and vertical data for their facilities.
- b. Distribute the plans to local utility companies to obtain information regarding impacts to their facilities.
- c. Prepare the following sheets at the engineering scale indicated:
 - Cover sheet (Modifications to previously prepared Yucca plans).
 - Quantity sheet (Modifications to previously prepared Yucca plans).
 - General notes sheet (Modifications to previously prepared Yucca plans).
 - Typical sections and detail sheets.
 - Project Layout, Alignment, and ROW Map Sheets (Modifications to previously prepared Yucca plans).
 - Removal sheet. Scale 1" = 20'.
 - Construction phasing and temporary traffic control sheets. (Modifications to previously prepared Yucca plans). Scale 1" = 40'.
 - Paving plan & profile sheet for street improvements. Scale 1" = 20' vertical and 1" = 2' horizontal.
 - Cross sections for street improvements.
 - Drainage Area Map, Calculations and Plan & Profile Sheets (Modifications to previously prepared Yucca plans).
 - Final signage and striping plan sheets. (Modifications to previously prepared Yucca plans). Scale 1" = 20'.
 - Erosion control plan sheets. Scale 1" = 40'.
 - Plan & profile sheet for water improvements. Scale 1" = 20'.

2.4 Preliminary Cost Estimate

Prepare a preliminary estimate of construction quantities and develop preliminary statement of probable construction cost.

2.5 Construction Specifications

Prepare modification of previously prepared construction specifications for Yucca Drive.

2.6 Preliminary Submittal

Submit three (3) sets of preliminary plans, outline of specifications, and preliminary estimates to the Town for review.

2.7 Town Review Meeting

Meet with the Town of Flower Mound to discuss preliminary plans, outline of specifications, estimates, and drainage requirements.

3.0 FINAL DESIGN

3.1 Address Town Comments

Revise preliminary plans incorporating comments from the Town of Flower Mound.

3.2 Franchise Utility Coordination

Incorporate comments from the utility companies.

3.3 Right of Way Parcel / Easement Preparation – Not in Contract

3.4 Prepare Final Plans

Prepare final plans for the proposed improvements, including paving plans, details, notes and related information required for bidding.

3.5 Final Construction Cost Estimate

Prepare a final estimate of construction quantities and develop final statement of probable construction cost.

3.6 Construction Specifications

Finalize the technical special provisions. Prepare additional technical specifications, if necessary, for the proposed improvements to supplement the North Central Texas Council of Governments Specifications for Public Works Construction, Town of Flower Mound standards, and other applicable standard specifications.

3.7 Contract Bid Documents

Assist the Town in preparing final bid documents using existing Town of Flower Mound standard documents as directed by the Town staff. Bid documents shall include bid proposal forms, construction plans, specifications, and other documents required by the Town of Flower Mound.

3.8 Review Submittals and Meetings

Provide 60% and 95% plan submittals (3 sets each submittal) and meet with the Town of Flower Mound staff during final design to review progress, discuss design issues, obtain additional design information,

review plans and specifications, and coordinate final details. Prepare a record of all review meetings and distribute it to attendees.

3.9 Final Review Submittal

Submit three sets of prints, contract documents, and bid proposal forms prepared by the Engineer to the Town of Flower Mound.

4.0 BID PHASE SERVICES

4.1 Advertising and Pre-bid Meeting – Not in Contract

Assist Town staff in advertising for bids.

4.2 Plan Distribution

Furnish seven (7) sets of plans and specifications for bidding.

4.3 Addenda

Prepare addendum required to modify the requirements of the project during bidding, respond to requests for clarification, and issue instructions to bidders as directed by the Town of Flower Mound.

4.4 Receive Bids – Not in Contract

Assist the Town of Flower Mound in receiving and opening bids for construction of the project.

4.5 Bid Tabulation – Not in Contract

Prepare a tabulation of bids for the project and verify the bid amounts. Evaluate the lowest and second lowest bidder, including obtaining information on past work history and physical resources.

4.6 Recommendation for Award – Not in Contract

Prepare a recommendation for award of contract or other action and notify bidders of the action taken by the Town of Flower Mound.

4.7 Prepare Final Specifications

A final specification and contract book will be prepared incorporating the contractors executed contract documents and unit bid prices.

5.0 CONTRACT ADMINISTRATION

5.1 Pre-construction Meeting

Attend the pre-construction meeting with the selected contractor. Provide 6 sets of half size plans and 3 sets of the specifications to the Town of Flower Mound for construction.

5.2 Site Visits – Not in Contract

5.3 Shop Drawing Review – Not in Contract

5.4 Request for Information

Respond to Request for Information received from the Contractor as directed by the Town of Flower Mound.

5.5 Final Inspection – Not in Contract

Assist the Town of Flower Mound in conducting a final inspection of the completed construction. Prepare a record of observations and items requiring correction by the contractor prior to final payment.

5.6 Prepare Record Drawings

Utilizing Contractor construction record information, prepare and provide a CD containing Record Drawing in digital format (PDF and CAD).

6.0 EXCLUSIONS

The intent of the scope is to include only the services specifically listed above and none others. Services specifically excluded from this Scope of Services include, but are not necessarily limited to the following:

- Computer modeling and routing of wastewater flows.
- Title searches.
- Fees for permits and advertising.
- Traffic engineering report or studies.
- Floodplain reclamation plans.
- Full time inspection.
- Designs for trench safety.
- Retaining walls, etc., not included in proposal.
- Revisions to plans as a result of revisions after completion of original final design (unless to correct error on plans).
- Consulting services by others not included in proposal.
- Quality control and testing services during construction.
- Prints furnished after acceptance of the required sets for construction in accordance with this Agreement.
- Environmental Services / Archeological Research.

- Prepare to serve or serve as an expert witness on behalf of the Town in connection with any public hearings or legal proceedings.
- Sanitary sewer system improvements in Churchill Drive.
- Review monthly requests for payment from the contractor and prepare a recommendation for action by the Town of Flower Mound.
- Review the contractor's monthly progress reports and provide review comments to the Town of Flower Mound.
- Final TDLR call for inspection of constructed improvements. Associated TDLR inspection fees were included in the fee schedule for Yucca Drive.
- This project includes the design of on-site facilities only. Design of any off-site road, utility or drainage facility extensions which may be required to serve the project is not included in the engineer's scope
- Street lighting and electrical design and layout.
- Landscape and Irrigation Design.
- Subsurface Utility Engineering Quality Level (QL) A and B.
- Right-of –Way Determination or Acquisition Services.
- Environmental site assessments.
- Wastewater capacity analysis or flow study.

EXHIBIT B-1

**TOWN OF FLOWER MOUND
CHURCHILL DRIVE
FROM CHURCHILL DRIVE EAST TO YUCCA DRIVE (APPROX. 400 LF)**

TASK/DESCRIPTION	TOTAL FEE FOR TASK
BASIC SERVICES	
TASK 1 - TOPOGRAPHIC SURVEY FOR DESIGN	\$2,792
TASK 2 - PRELIMINARY DESIGN	\$33,746
TASK 3 - FINAL DESIGN	\$17,643
TASK 4 - BID PHASE SERVICES	\$3,564
TASK 5 - CONSTRUCTION ADMINISTRATION	\$6,961
TASK 6 - REIMBURSABLES	\$2,000
TOTAL FEE	\$66,706



TOWN COUNCIL AGENDA ITEM NO. 9

CONSENT ITEM

DATE: December 4, 2017

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

ITEM: Consider approval of the award of Request for Bid Number 2018-9-A to the lowest responsive, responsible bidder, Professional Pavement Products, Inc., for an estimated annual expenditure of \$170,000.00; and authorization for the Mayor to execute same on behalf of the Town. The contract is for one-year with three one-year renewal options. Renewal options will be used for maintenance purposes after year one.

BACKGROUND INFORMATION: On October 5, 2017, a Request for Bid was issued and a notice to bidders was advertised. One (1) response was received by the due date of November 7, 2017. The bid was reviewed for compliance with submission requirements and a decision was made to award to Professional Pavement Products, Inc. as this option is in the best interest of the Town. The items will be purchased on an 'as-needed' basis and funds are budgeted each fiscal year. This estimated amount of expenditure will complete all of the median nose markings for the remaining Arterial/Collector with Residential street intersections within a one year timeframe as part of the proposed Road Safety Enhancement Program. After year one, the three one-year renewals will be used for maintenance of existing median alert locations.

The Traffic Services Division maintains the Town's traffic signals, signs, and street markings including median alert. These materials are used to mark the median noses throughout the Town.

FISCAL IMPACT: \$170,000

Proposed Expenditure:	Account Number(s):
\$170,000	100-690-95100-4080

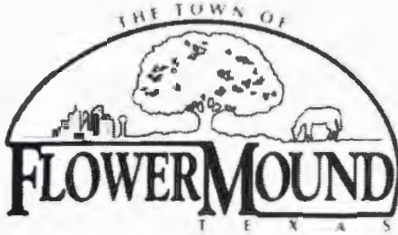
Finance Review by: Debra Wallace, Deputy Town Manager/CFO *DW*

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Bid No.2018-9-A Agreement
2. Professional Pavement Products, Inc. Response

RECOMMENDATION: Move to approve the award of Request for Bid Number 2018-9-A to the lowest responsive, responsible bidders, Professional Pavement Products, Inc. at the unit prices bid, for an estimated annual expenditure of \$170,000; and authorization for the Mayor to execute same on behalf of the Town. The contract is for one-year with three one-year renewal options. Renewal options will be used for maintenance purposes after year one.



Purchasing & General Services

November 8, 2017

Monika Thompson, Sales
Professional Pavement Products, Inc.
9556 Historic Kings Road S #315
Jacksonville, FL 32257

RE: **BID NO. 2018-9-A**

Contract Term:

Median Nose Marking System

December 4, 2017 thru December 4, 2018

One year with three (3) one-year renewal options

Monika Thompson:

The Town of Flower Mound has elected to award the contract for the above referenced subject to your firm. It is understood all terms, conditions, prices, and guaranteed discounts will be held firm during the contract period. The initial term and services under this agreement are to begin on December 4, 2017.

Please acknowledge receipt of this letter as indicated below and return to the Purchasing Office. If you wish, you may fax to (972) 874-6478 or email to marquita.shamlin@flower-mound.com.

Thank you for your interest in serving our needs. We look forward to doing business with you. Please feel free to contact me should you have any questions.

Sincerely,

Marquita Shamlin
Town of Flower Mound - Buyer

cc: David Stallings
File: 2018-9-A

Professional Pavement Products, Inc.

Date

"PROVIDE EXCEPTIONAL CUSTOMER SERVICE TO PROMOTE LASTING SUCCESS"

2121 Cross Timbers Road, Flower Mound, Texas 75028

Office 972/874-6009 Fax 972/874-6478

TOWN OF FLOWER MOUND STANDARD TERMS & CONDITIONS FOR PROCUREMENTS

1. **APPLICABILITY:** These standard terms and conditions apply to all goods or services procured by the Town of Flower Mound, unless otherwise stated in the specifications. The instructions contained herein shall be incorporated into the contract as well as any subsequent purchase order(s) issued for goods or services, and shall be included as part of the specifications issued herewith.
2. **NOTIFICATION:** The Town of Flower Mound advertises procurement opportunities through www.flower-mound.com, [www.IonWave Technologies, Inc..com](http://www.IonWaveTechnologies, Inc..com) and the *Denton Record Chronicle*. The Town shall not be responsible for information distributed by sources other than those listed.
3. **ADDENDA:** Any revisions to the information contained herein will be issued in the form of addenda. The sole issuing authority shall be vested in the Town of Flower Mound Purchasing Division. If addenda contain material changes to the specifications or pricing form, the respondent shall acknowledge receipt of addenda in the designated section on the Bid/Proposal Certification Form. It is the responsibility of the bidder/respondent to obtain and acknowledge any and all addenda. Failure to acknowledge receipt of addenda may be cause to deem such submission non-responsive.
4. **SILENCE OF SPECIFICATION:** The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.
5. **MINOR DEFECT:** The Town of Flower Mound reserves the right to waive any minor defect, irregularity, or informality in any bid/proposal. Minor defects, irregularities or informalities will not affect the end product/performance intended by the specifications. The Town also reserves the right to reject any or all bids/proposals with or without cause prior to award.
6. **ELECTRONIC SUBMISSIONS:** The Town of Flower Mound utilizes IonWave Technologies, Inc. to advertise and receive bids and proposals electronically over the Internet. Electronic submissions through IonWave Technologies, Inc. shall be electronically signed and dated by a duly designated representative or agent of the company submitting the bid/proposal. Respondents should clearly and concisely provide all requested information as stated in the bid/proposal document. Failure to provide the requested information may be reason to deem such submission non-responsive.

The Town of Flower Mound has elected to fund a monthly fee to IonWave Technologies, Inc. in order to eliminate all costs for vendors to utilize the system for standard bids and proposals solicited by the Town. For **Cooperative Procurements and Reverse Auctions ONLY**, respondent agrees to pay to IonWave Technologies, Inc. a transaction fee of one percent (1%) of the total awarded amount of all contracts for goods or services awarded to the respondent. Cooperative procurements and Reverse Auctions will be clearly identified in the bid/proposal documents. To assure that all respondents are treated equally, the fee will be payable whether the bid/proposal is submitted electronically, or by paper means. Refer to [www.IonWave Technologies, Inc..com](http://www.IonWaveTechnologies, Inc..com) for further information.
7. **PAPER SUBMISSIONS:** Paper submissions shall be submitted on the forms provided by the Town of Flower Mound and must be signed and dated by a duly designated representative or agent of the company submitting the bid/proposal. Respondents shall clearly and concisely provide all requested information as stated in the bid/proposal document. Failure to provide the requested information may be reason to deem such submission non-responsive.
8. **PRESENTATION OF BIDS/PROPOSALS:** Paper submissions shall be presented to The Town of Flower Mound Purchasing Division, 2121 Cross Timbers Road, Flower Mound, Texas 75028 by the stated deadline. Paper submissions shall be presented in a sealed envelope with respondent's name and the bid/proposal number clearly identified on the outside of the envelope.
9. **LATE SUBMISSIONS:** The date/time stamp located in the Town of Flower Mound Purchasing Division serves as the official time clock. Submissions received in the Purchasing Division after the stated deadline shall be refused and returned unopened. The Town of Flower Mound is not responsible for issues encountered with methods of delivery.
10. **PRICING:** Prices offered shall be submitted for units of quantity as specified in the bid/proposal document, extended and totaled. In the case of a discrepancy in the extended price, the unit price shall govern and control. Any alteration, strike-through or erasure made prior to bid/proposal opening shall be initialed by the signer of the bid/proposal, guaranteeing authenticity.

FOR BIDS ONLY: Prices offered **cannot** be altered or amended after the submission deadline. Bids may not be changed for the purpose of correcting minor errors in bid price after bid opening. However, a bidder may be able to withdraw a bid only if it contains a substantial mistake that would, in the sole opinion of the Town, cause a great hardship if enforced against the bidder.

11. **TAXES:** The Town of Flower Mound is exempt from paying federal excise and transportation taxes and Texas State or local sales and use taxes. **Tax shall not be included in prices offered.** A Tax Exempt Form will be provided by the Town of Flower Mound upon request. A request for a Tax Exempt Form can be submitted in writing to purchasing@flower-mound.com or by contacting the Purchasing Division at 972.874.6006. In no event is it the Town's responsibility to provide a tax exempt form without a request for the same.
12. **WITHDRAWAL OF OFFER:** Respondent agrees that an offer may not be withdrawn or cancelled for a period of one hundred twenty (120) days following the date and time designated for the receipt of bid/proposal without written approval of the Purchasing Manager.
13. **F.O.B./DAMAGE:** Prices offered shall be F.O.B. Final Destination, Town of Flower Mound, Texas, and shall be all inclusive of shipping, handling and packaging costs. The Town accepts and assumes no liability for goods delivered in damaged or unacceptable condition. The successful respondent shall be responsible for handling all claims with carriers, and in case of damaged or unacceptable goods, shall ship replacement goods immediately upon notification by the Town.
14. **PREPARATION COST:** All costs associated with the preparation of an offer shall be borne by the respondent. The Town of Flower Mound will not be liable for any costs associated with the preparation, transmittal, or presentation of submissions, or with any materials submitted in response to the same.
15. **TESTING:** At the Town of Flower Mound's discretion, testing may be required prior to award of bid/proposal or prior to delivery of goods or services. Testing shall be performed without expense to the Town.
16. **SAMPLES:** At the Town of Flower Mound's discretion, samples may be required prior to award of bid/proposal, or prior to delivery of goods or services. Samples shall be provided at no cost to the Town. Samples should not be enclosed with submission unless specifically requested.
17. **QUALITY:** Any catalog, brand names, or manufacturer's reference in this bid/proposal packet is descriptive and **not** restrictive, and is intended to indicate type and minimum quality level desired for comparison purposes, unless otherwise stated herein. All products and/or optional equipment offered shall be new and of current manufacture. No items of a demonstrator, leased, reconditioned, rebuilt, repossessed or used nature shall be considered, unless otherwise specifically stated herein.
18. **BID/PROPOSAL OPENINGS:** All offers will be read aloud at the Town of Flower Mound's scheduled opening for the designated bid/proposal. However, the reading of an offer shall not be construed as a comment on the responsiveness of such offer, or as any indication that the Town accepts such offer as responsive.

The Town of Flower Mound will make a determination regarding the responsiveness of offers submitted based upon compliance with all applicable laws and the Town of Flower Mound's purchasing guidelines and project documents including, but not necessarily limited to, the bid/proposal specifications and contract documents. The Town will notify the successful respondent upon award of the contract; and, if required by State law, all offers received will be available for inspection after award.

For processes other than low bid or best value bid, only the names of respondents will be read aloud at the scheduled opening. Pricing information will not be released until after award of the contract.
19. **SUMMARY SHEET:** Bid/Proposal summary results are typically published within one (1) business day after the scheduled opening. Bid/Proposal summary results will be available for public viewing at www.flower-mound.com and [www.IonWave Technologies, Inc..com](http://www.IonWaveTechnologies.com). Interested parties desiring a copy of a bid/proposal summary sheet may request the same by submitting a written request to purchasing@flower-mound.com. **RESULTS WILL NOT BE RELAYED OVER THE TELEPHONE.**
20. **ANTI-COLLUSION:** In submitting an offer, respondent certifies that they have not participated in nor have they been party to any collusion, price fixing or any other illegal or unethical agreements with any company, firm or person concerning the pricing offered.
21. **NO PROHIBITED INTEREST:** Respondent acknowledges awareness of the state laws including chapter 176 of the Local Government Code, the Town Charter, and the Town Code of Ethics regarding conflicts of interest and agrees to comply with each. No officer, employee or agent of the Town of Flower Mound shall participate in the negotiation, selection, discussion, award or administration of a contract or procurement supported by public funds if: 1) that individual has a substantial interest in a person or entity, as defined by Section 13.00, Chapter 1 of the Town's Code of Ordinances and/or Chapter 171 of the Texas Local Government Code, that is the subject of the contract or procurement; or 2) a conflict of interest, either real or apparent, would be involved, as defined herein.
22. **NON-RESIDENT BIDDERS:** Texas Government Code, Chapter 2252: Non-Resident Bidders. Texas law prohibits city and governmental units from awarding contracts to a non-resident unless the amount of such bid is lower than the lowest bid by a Texas

resident by the amount a Texas resident would be required to underbid the non-resident bidder on a bid/proposal for goods and services in the non-resident bidder's state, or the amount by which a resident bidder would be required to underbid the non-resident bidder to obtain a comparable contract in the state in which a majority of the manufacturing related to the contract will be performed.

23. **DELINQUENT TAXES:** Any person, firm, or corporation that is in arrears to the Town of Flower Mound for delinquent taxes or otherwise, will not be recommended for award of any bid/proposal until the arrearage has been cleared in writing. If a contractor or vendor becomes delinquent while a contract is in force, payment for goods or services provided to the Town under said contract or purchase order may be withheld until the arrearage has been cleared in writing.
24. **MINIMUM STANDARDS FOR RESPONSIBILITY:** A prospective vendor must affirmatively demonstrate responsibility. The Town of Flower Mound may request representation and other information sufficient to determine respondent's ability to meet the minimum standards including but not limited to:
- A. Have adequate financial resources, or the ability to obtain such resources as required;
 - B. Ability to comply with the required or proposed delivery schedule;
 - C. Have satisfactory record of performance;
 - D. Have a satisfactory record of integrity and ethics;
 - E. Be otherwise qualified and eligible to receive an award.

25. **AWARD OF CONTRACT:** The Town of Flower Mound reserves the right to award single or multiple contracts for the goods or services as stated herein. Furthermore, the Town reserves the right to take administration costs into consideration when awarding to multiple vendors.

The Town may award bids/proposals to the lowest responsive responsible vendor(s), or to the vendor(s) who provides goods or services at the best value to the Town. If using the best value method, the selection criteria will be clearly identified in the bid/proposal document. The best value method may take into consideration, in whole or in part, by way of illustration and not limitation, the following criteria:

- A. The purchase price;
 - B. The reputation of the respondent and of the respondent's goods or services;
 - C. The quality of the respondent's goods or services;
 - D. The extent to which the goods or services meet the Town's needs;
 - E. The respondent's past relationship with the Town;
 - F. The total long-term cost to the Town to acquire the respondent's goods or services;
 - G. Any relevant criteria specifically listed herein or in the contract documents.
26. **ACCEPTANCE:** Respondent agrees that acceptance of any or all items by the Town of Flower Mound, Texas within a reasonable period of time, not to exceed one hundred twenty (120) days following the date and time designated for the receipt of the bid/proposal, shall be binding upon respondent. Respondent shall thereafter execute all documents necessary to enter into a contract in a form acceptable to and properly executed by the Town to provide such goods and services.
27. **CONTRACT PERIOD:** Unless otherwise stated in the specifications contained herein, the contract period for the bid/proposal will be for one (1) year upon Town approval, with three (3) optional one (1) year renewal periods if agreeable to both parties. Renewal periods will be subject to the Town's availability of funds.
28. **FUNDING:** The Town of Flower Mound is a home-rule municipal corporation operated and funded on a fiscal year basis from October 1 to September 30. Accordingly, the Town reserves the right to terminate at any time, without liability to the Town, any contract for which funding is not available.
29. **ASSIGNMENT:** The successful vendor shall not sell, assign, transfer or convey any contract, in whole or in part, without the prior written consent of the Town obtained through the Town's Purchasing Division.
30. **INTERLOCAL AGREEMENT:** The successful vendor agrees to extend prices for goods and services under the same terms and conditions of this bid/proposal to all governmental entities that have entered into, or will enter into, interlocal cooperative purchasing agreements with the Town of Flower Mound.
31. **CHANGE ORDER:** The Town of Flower Mound reserves the right to modify or change plans and specifications as deemed necessary after the performance of the contract has commenced, to decrease or increase the quantity of work to be performed, materials, equipment or supplies to be furnished, or address other provisions of the contract as approved by the Town Manager or Town Council, and as appropriate under state law. No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the contract. All change orders or modifications to the contract will be documented in

written form by the Town of Flower Mound and acknowledged by the contracted vendor. **All change orders and modifications to the contract shall be processed through the Purchasing Division only.**

32. **DELIVERY PROMISE – PENALTIES:** Where indicated, respondents must provide number of calendar days required to deliver goods or services to the Town of Flower Mound after receipt of order (ARO). **Do not quote shipping dates.** When delivery delay can be foreseen, the vendor shall provide advance notice to the Purchasing Manager, who shall have the right to extend the delivery date if reasons for delay are acceptable. Default in promised delivery, without acceptable reason(s), or failure to meet specifications as contained herein or in the contract documents, authorizes the Purchasing Division to purchase goods or services from an alternate source. The defaulting vendor may be subject to re-procurement costs.
33. **DELIVERY TIMES:** Unless otherwise specified herein, deliveries will only be accepted during normal working hours at the designated Town of Flower Mound location(s).
34. **INSPECTION:** Upon receipt of goods or services, the same will be inspected for compliance with the specifications contained herein or in the contract documents. If the goods or services do not pass inspection, the vendor will be required to remedy the situation at the vendor's sole expense. The vendor will be required to retrieve the rejected goods at the delivery point and provide the necessary repairs of or replacement and return of the goods in new condition to the original point of delivery; or re-perform services in accordance with the terms and conditions of the contract and to the Town of Flower Mound's satisfaction.
34. **INVOICES:** Invoices shall be submitted to the attention of Accounts Payable Department, 2121 Cross Timbers Road, Flower Mound, Texas 75028, or electronically to accountspayable@flower-mound.com.
36. **PAYMENT TERMS:** Payment terms are net 30 days, unless otherwise specified by the Town in the bid/proposal document.
37. **AUDIT:** The Town of Flower Mound shall have access to, and the right to examine, monitor and audit all records, documents, conditions and activities related to contracts awarded by the Town. It shall be the responsibility of the vendor to maintain records associated with this procurement for a period of three (3) years after completion of the contract, or in the event of litigation, a claim or audit, the records shall be retained until the resolution of such litigation, claim or audit.
38. **INSURANCE:** The Town of Flower Mound requires vendor(s) to carry the minimum insurance as required by the greater of the requirements contained in state laws or the insurance requirements contained in the contract documents.
39. **PRICE ESCALATION:** Unless otherwise stated in the specifications herein, prices must remain firm for the initial term of the contract. The contracted vendor may request an adjustment at the time of contract renewal by submitting a request in written form to the Purchasing Manager. Basis for price escalation should be based on the Consumer Price Index for the most recent twelve-month period reported for the Dallas-Fort Worth area. The contracted vendor shall provide the Town with copies of the appropriate indices for verification purposes. The Town of Flower Mound reserves the right to approve or reject any and all requests for price escalations.
40. **PRICE REDUCTION:** If during the life of the contract, the contracted vendor's net prices to other customers for the same goods or services are lower than the Town of Flower Mound's contracted prices, an equitable adjustment shall be made in the contract price in favor of the Town.
41. **INDEMNITY:** The bidder shall defend, indemnify and hold the Town of Flower Mound, its officers, agents and employees harmless from any and all costs, expenses, suits, demands, claims, liabilities, liens, encumbrances or damages, including attorneys' fees and costs of suit, of any character, name and description, incurred or resulting from any injuries or damages received or sustained by any person, persons or property on account of any intentional wrongful conduct or negligent act or fault of the successful bidder, or of any agent, employee, subcontractor or supplier in the execution of, or performance under, any contract which may result from bid award and the bidder so agrees upon the submission of the bid. The bidder shall deliver, if so requested by the Town of Flower Mound, a written release of all liens or other proper evidence of same, to the satisfaction of the Town prior to the issuance of final payment by the Town.
41. **PATENT RIGHTS:** Respondent agrees to indemnify and hold harmless the Town of Flower Mound from any claim involving patent right infringement or copyright infringement on goods or services supplied to the Town.
43. **PROTESTS:** All protests regarding the solicitation process must be submitted in written form to the Purchasing Manager within five (5) working days following the opening of bids/proposals. This includes all protests relating to legal advertisements, deadlines, bid/proposal openings, and all other related procedures under the Local Government Code, as well as any protests relating to alleged improprieties or ambiguities in the specifications contained herein or in the contract documents.

Post-award protests must be submitted in written form to the Purchasing Manager within five (5) working days after award.

The protest must include, at a minimum, the name of protester, bid/proposal number or description of goods or services, and a statement of grounds for protest. The Purchasing Manager, having authority to make the final determination, will respond within ten (10) working days to each substantive issue raised in the protest. Allowances for reconsiderations shall be made only if data becomes available that was not previously known, or if there has been an error of law or regulation.

44. **TERMINATION FOR DEFAULT:** The Town of Flower Mound reserves the right to enforce the performance of the contract in any manner prescribed by law or deemed to be in the best interest of the Town in the event of breach or default of the contract. The Town reserves the right to terminate the contract immediately in the event the contracted vendor fails to meet delivery schedules, or otherwise perform in accordance with the specifications contained herein or in the contract documents. Breach of contract or default authorizes the Town to award the contract to another vendor, or purchase from an alternate source, and charge the full increase in cost to the defaulting contracted vendor.
45. **TERMINATION FOR TOWN CONVENIENCE:** Whenever the Town, in its discretion, deems it to be in the Town's best interests, it may terminate this contract for the Town's convenience. Such termination shall be effective thirty (30) days after Town delivers written notice of such termination for convenience to the contracted vendor. Upon receipt of such notice from the Town, Vendor shall not thereafter incur, and Town shall have no liability for, any costs under this contract that are not necessary for actual performance of the contract between the date of the notice of termination for convenience and the effective date of that termination for convenience. In the event of a termination for convenience hereunder, Town shall have no liability to Vendor for lost or anticipated profit resulting therefrom.
46. **REMEDIES:** The successful vendor and the Town of Flower Mound agree that each party may have rights, duties, and remedies available as stated in the Uniform Commercial Code and any other available remedy, whether in law or equity.
47. **VENUE:** The validity of the contract and of any of its terms or provisions, as well as the rights and duties hereunder or the contract documents, shall be governed by and construed in accordance with the laws of the State of Texas. Exclusive venue for any legal action shall lie in Denton County, Texas.
48. **DETERMINATION OF NON-RESPONSIBLE BIDDER:** The Town may disqualify a vendor as non-responsible and its bid shall not be considered for reasons including, but not limited to, the following:
 - A. Reason for believing collusion exists among vendors.
 - B. Where the vendor, any subcontractor, supplier, or the Surety on any bond given, or to be given, is in litigation with the Town, or where such litigation is contemplated or imminent, in the sole opinion of the town.
 - C. The vendor being in arrears on any existing contract or having defaulted on a previous contract.
 - D. Lack of competency, in the judgment of the Town, as revealed by pertinent factors, including but not necessarily limited to, experience and equipment, financial statement and questionnaires.
 - E. Uncompleted work that, in the judgment of the Town, will prevent or hinder the prompt completion of additional work if awarded.
 - F. Where the vendor, or subcontractor thereof, in the judgment of the Town, has failed to perform in a satisfactory manner on a previous contract.
 - G. Where a vendor or subcontractor thereof has failed to disclose a potential conflict of interest or discovered to have a conflict of interest in accordance with the Town's Code of Business Ethics.
 - H. Where a vendor, its subcontractor, or individual officer/principal of the bidder or subcontractor is under criminal indictment or been convicted of a criminal offense.
49. **DETERMINATION OF NON-RESPONSIVE BID:** The Town may disqualify a bid as non-responsive and it shall not be considered for reasons including, but not limited to, the following:
 - A. The bid shows any omissions, alterations of form, additions, or conditions not called for, unauthorized alternate bids, or irregularities of any kind, in the sole determination of the Town.
 - B. Bid received after the time limit for receiving bids.
 - C. Bid was not signed.
 - D. Unbalanced value of any items.
 - E. Improper or insufficient bid guaranty, if required.
 - F. Bid did not meet specifications.
 - G. Bid did not contain all requested/required documents, submittals and/or samples.



Professional Pavement Products, Inc
9556 Historic Kings Rd S #315
Jacksonville FL 32257
United States
904-733-2121

Quote

Date	Estimate #
10/25/2017	Q3657027

Bill To			Ship To		
Accounts Payable Town of Flower Mound 2121 Cross Timbers Road Flower Mound TX 75028 United States			Traffic Operations Town of Flower Mound 201 Spinks Road Flower Mound TX 75028 United States		
Customer ID	Expires	Exp. Close	Sales Rep	Partner	PO #
F301-Town of Flo...	11/24/2017	10/25/2017	27-Monika Thom...		
Job Location		Terms	Shipping Met...	Note -	
		09-Gov't PO Net ...	Ground		

Item	Quantity	Description	Disc. P...	Amount
I2-8-8-1Y	1,800	4-FT MEDIAN ALERT YELLOW - COMPLETE. . Extruded Vinyl with 16-pcs of 1"x2.75" Yellow Abrasion Resistant Reflective Sheetings, V-notches, Butyl Adhesive Backing, and 17-anchors	32.50	58,500.00
			Subtotal	58,500.00
			Shipping Cost (Ground)	0.00
			Total	\$58,500.00

Jacksonville Branch
 9556 Historic Kings
 Suite 315
 Jacksonville, FL 32...
 Ph: 904.733.2121
 Fx: 904.448.4076

Miami Branch
 10250 NW 89th ...
 Unit 1
 Medley FL 33178
 Ph: 305-885-4274
 Fx: 305-885-4273

Orlando Branch
 6441 Pinecastle Blvd
 Orlando, FL 32809
 Ph: 407.888.2080
 Fx: 407.888.2425

Charlotte Branch
 1955 Scott Futrell Dr
 Charlotte NC 28208
 Ph: 704-697-9577
 Fx: 704-697-9576

Raleigh Branch
 200 Travis Park
 Cary NC 27511
 Ph 919.851.0799
 Fx 919.851.1294

Houston Branch
 7115 Belgold St
 Suite 1
 Houston, Tx 77066
 Ph: 713.864.0906
 Fx: 713.864.0833

Tulsa Branch
 2732 N Sheridan
 Tulsa, OK 74115
 Ph: 918-398-0500
 Fx: 918-730-9744

**Town of Flower Mound
Bid No. 2018-9-A
Median Nose Marking System**

I. Introduction

The Town of Flower Mound is accepting bids for Median Nose Markings System, in accordance with the specifications herein. The initial term of the contract will be one (1) year with three (3) optional renewal periods.

II. Scope of Services

- A. The purpose of this document is to identify the minimum acceptable requirements for a median nose marking system. The assembly shall be complete and include all components necessary for installation.

All materials and equipment furnished for installation under this contract shall be new and unused, unless otherwise specified.

Estimated Annual Quantity is expected to be 1800 each 4 foot sections

- B. The following items listed will be described in this specification:

Median Nose Marking System

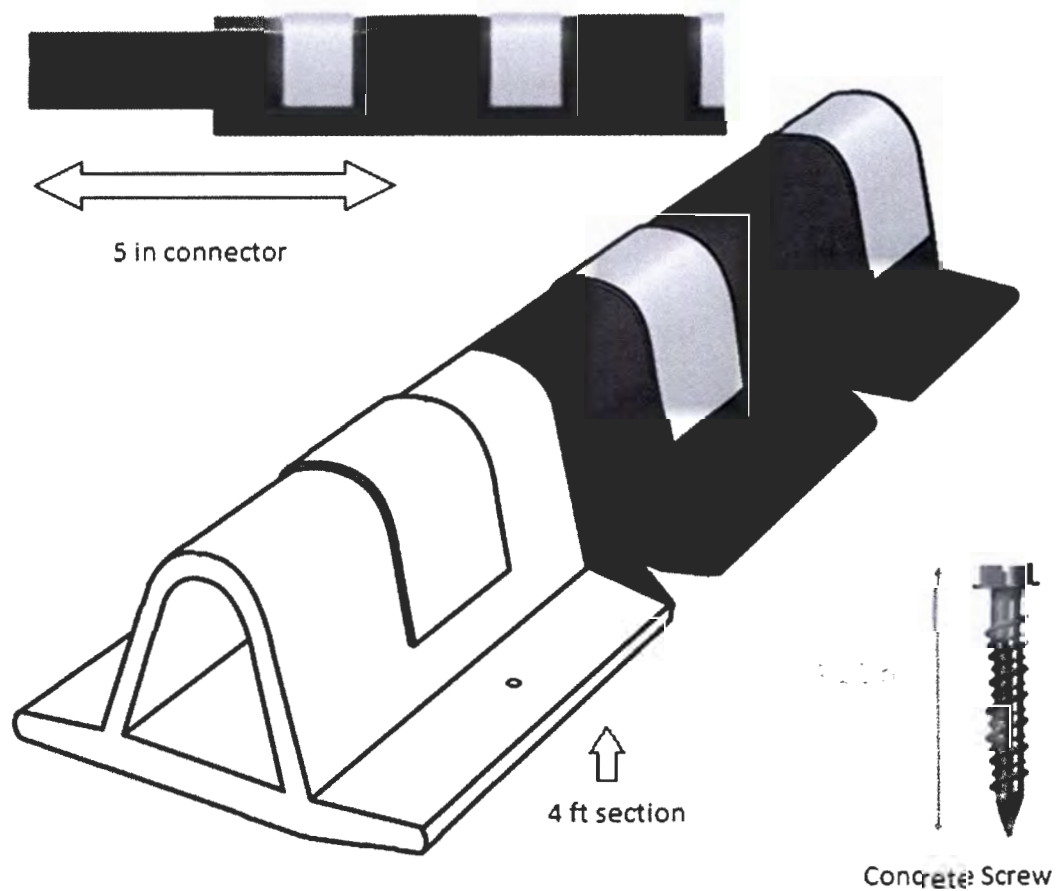
PART 2 –MEDIAN NOSE MARKING SYSTEM– PHYSICAL

- a. Flexible elongated design in order to be able to adapt to any median radius.
- b. Rebound structure to reduce damage to the device when impacted by a vehicle.
- c. Elongated spline with an inner and outer flange composed with a hollow channel.
- d. Flexible continuous D-shaped semi-circular protrusion.
- e. Evenly spaced composite reflective elements for night visibility.
- f. Composite retroreflective elements that surround protrusion.
- g. V-shaped notch with circular stress relief
- h. Connector extends into channel to engage protrusions

- i. Attached by pressure sensitive butyl elastomer adhesive and concrete screws through inner and outer flange attachment holes.
- j. Flexible high strength adhesive membrane with peel away backing.
- k. Ability to withstand temperature variations of -15°F to $+150^{\circ}\text{F}$
- l. Retroreflective elements shall be composed of Type V retroreflective, abrasion, solvent and impact resistant, micro-prismatic strips with flexible high strength adhesive color.

DIAGRAM FOR REFERENCE

Connector



**Town of Flower Mound, Texas
Bid No. 2018-9-A
Certification Form**

Company Information

The following information must be provided in its entirety for your submission to be considered:

Company Name: Professional Pavement Products, Inc.
 Principal Place of Business Address: 9556 Historic Vinip Rd S #315
 Principal Place of Business City, State, Zip: Jacksonville FL 32257
 Principal Place of Business Phone Number: 904-448-4074
 Principal Place of Business Fax Number: 904-448-4076
 Remittance Address (if different from above): SAME AS ABOVE
 Remittance City, State, Zip: SAME AS ABOVE
 Tax Identification No: 65-0717170

Addendums

If an addendum to this RFQ is issued, acknowledge addendum by initialing beside the addendum number:

Add. No. 1 ☒ Add. No. 2 ☐ Add. No. 3 ☐ Add. No. 4 ☐ Add. No. 5 ☐

Certification

The undersigned hereby certifies that he/she understands the scope of work, has read the document in its entirety and that the information submitted has been carefully reviewed and is submitted as correct and final. Provider further certifies and agrees to furnish any or all services in accordance with the terms and conditions contained herein. Provider agrees that acceptance of submission by the Town of Flower Mound, Texas, within the time frame indicated in this RFQ constitutes a contract.

The individual signing this RFQ certifies that he/she is a legal agent of the company, authorized to submit on behalf of the company, and is legally responsible for the decisions as to the supporting documentation provided.

Authorized Representative:

Monika Thompson 10/25/17
 Signature Date

Monika Thompson
 Printed Name

SALES
 Title

monika.thompson@pppcatalog.com
 Email Address

CONFLICT OF INTEREST QUESTIONNAIRE**FORM CIQ****For vendor or other person doing business with local governmental entity**

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

RFB / RFP / Contract #

1. Name of person doing business with local governmental entity.Professional Payment Products, Inc**2. ☐ Check this box if you are filing an update to a previously filed questionnaire.**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3. Name of local government officer with whom filer has employment or business relationship.NONE

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

☐

Yes

☒

No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐

Yes

☒

No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐

Yes

☒

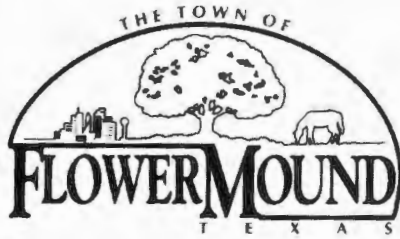
No

D. Describe each employment or business relationship with the local government officer named in this section.

NONE**4.**

Monika Thompson (Monika Thompson)
Signature of person doing business with governmental entity

11/7/17
Date Signed



Purchasing & General Services Request for Bids

Solicitation No:	2018-9-A
Solicitation Title:	Median Nose Marking System
Questions Deadline:	11/01/17 @12:00pm
Submittals Due:	11/07/17 @11:00am

Bids for the materials or services specified will be received by the Town of Flower Mound until the date and time as indicated above. Please submit one (1) original bid and one (1) copy of the bid in hard copy only in a sealed envelope to the address listed below. Please include a completed copy of the enclosed Conflict of Interest Form and Bid Certification Form in the sealed envelope.

Delivery and Mailing Address:

**Town of Flower Mound
Attn: Purchasing Office
2121 Cross Timbers Rd.
Flower Mound, Texas 75028**

Late submissions will not be considered. Bids must be submitted with the solicitation number and the respondent's name and address clearly indicated on the front of the **sealed** envelope. Additional instructions for preparing a response are provided within.

RESPONDENTS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE DOCUMENT PRIOR TO SUBMITTING A RESPONSE.

For questions regarding this Bid contact:

**Marquita Shamlin
Town of Flower Mound - Buyer
(972) 874-6006
marquita.shamlin@flower-mound.com**

The Town of Flower Mound appreciates your time and effort in preparing a bid. Please note that bids must be received by the deadline shown. Bids received after the deadline will not be considered for the award of the bid and will be returned unopened.

The Town of Flower Mound requires that all questions relating to this bid be sent via email to Marquita Shamlin, Buyer at marquita.shamlin@flower-mound.com by 12:00PM on Wednesday, November 1, 2017. Questions will only be accepted until the stated deadline.

TOWN OF FLOWER MOUND STANDARD TERMS & CONDITIONS FOR PROCUREMENTS

1. **APPLICABILITY:** These standard terms and conditions apply to all goods or services procured by the Town of Flower Mound, unless otherwise stated in the specifications. The instructions contained herein shall be incorporated into the contract as well as any subsequent purchase order(s) issued for goods or services, and shall be included as part of the specifications issued herewith.
2. **NOTIFICATION:** The Town of Flower Mound advertises procurement opportunities through www.flower-mound.com, [www.IonWave Technologies, Inc..com](http://www.IonWaveTechnologies, Inc..com) and the *Denton Record Chronicle*. The Town shall not be responsible for information distributed by sources other than those listed.
3. **ADDENDA:** Any revisions to the information contained herein will be issued in the form of addenda. The sole issuing authority shall be vested in the Town of Flower Mound Purchasing Division. If addenda contain material changes to the specifications or pricing form, the respondent shall acknowledge receipt of addenda in the designated section on the Bid/Proposal Certification Form. It is the responsibility of the bidder/respondent to obtain and acknowledge any and all addenda. Failure to acknowledge receipt of addenda may be cause to deem such submission non-responsive.
4. **SILENCE OF SPECIFICATION:** The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.
5. **MINOR DEFECT:** The Town of Flower Mound reserves the right to waive any minor defect, irregularity, or informality in any bid/proposal. Minor defects, irregularities or informalities will not affect the end product/performance intended by the specifications. The Town also reserves the right to reject any or all bids/proposals with or without cause prior to award.
6. **ELECTRONIC SUBMISSIONS:** The Town of Flower Mound utilizes IonWave Technologies, Inc. to advertise and receive bids and proposals electronically over the Internet. Electronic submissions through IonWave Technologies, Inc. shall be electronically signed and dated by a duly designated representative or agent of the company submitting the bid/proposal. Respondents should clearly and concisely provide all requested information as stated in the bid/proposal document. Failure to provide the requested information may be reason to deem such submission non-responsive.

The Town of Flower Mound has elected to fund a monthly fee to IonWave Technologies, Inc. in order to eliminate all costs for vendors to utilize the system for standard bids and proposals solicited by the Town. For **Cooperative Procurements and Reverse Auctions ONLY**, respondent agrees to pay to IonWave Technologies, Inc. a transaction fee of one percent (1%) of the total awarded amount of all contracts for goods or services awarded to the respondent. Cooperative procurements and Reverse Auctions will be clearly identified in the bid/proposal documents. To assure that all respondents are treated equally, the fee will be payable whether the bid/proposal is submitted electronically, or by paper means. Refer to [www.IonWave Technologies, Inc..com](http://www.IonWaveTechnologies, Inc..com) for further information.

7. **PAPER SUBMISSIONS:** Paper submissions shall be submitted on the forms provided by the Town of Flower Mound and must be signed and dated by a duly designated representative or agent of the company submitting the bid/proposal. Respondents shall clearly and concisely provide all requested information as stated in the bid/proposal document. Failure to provide the requested information may be reason to deem such submission non-responsive.
8. **PRESENTATION OF BIDS/PROPOSALS:** Paper submissions shall be presented to The Town of Flower Mound Purchasing Division, 2121 Cross Timbers Road, Flower Mound, Texas 75028 by the stated deadline. Paper submissions shall be presented in a sealed envelope with respondent's name and the bid/proposal number clearly identified on the outside of the envelope.
9. **LATE SUBMISSIONS:** The date/time stamp located in the Town of Flower Mound Purchasing Division serves as the official time clock. Submissions received in the Purchasing Division after the stated deadline shall be refused and returned unopened. The Town of Flower Mound is not responsible for issues encountered with methods of delivery.
10. **PRICING:** Prices offered shall be submitted for units of quantity as specified in the bid/proposal document, extended and totaled. In the case of a discrepancy in the extended price, the unit price shall govern and control. Any alteration, strike-through or erasure made prior to bid/proposal opening shall be initialed by the signer of the bid/proposal, guaranteeing authenticity.

FOR BIDS ONLY: Prices offered **cannot** be altered or amended after the submission deadline. Bids may not be changed for the purpose of correcting minor errors in bid price after bid opening. However, a bidder may be able to withdraw a bid only if it contains a substantial mistake that would, in the sole opinion of the Town, cause a great hardship if enforced against the bidder.

11. **TAXES:** The Town of Flower Mound is exempt from paying federal excise and transportation taxes and Texas State or local sales and use taxes. **Tax shall not be included in prices offered.** A Tax Exempt Form will be provided by the Town of Flower Mound upon request. A request for a Tax Exempt Form can be submitted in writing to purchasing@flower-mound.com or by contacting the Purchasing Division at 972.874.6006. In no event is it the Town's responsibility to provide a tax exempt form without a request for the same.
12. **WITHDRAWAL OF OFFER:** Respondent agrees that an offer may not be withdrawn or cancelled for a period of one hundred twenty (120) days following the date and time designated for the receipt of bid/proposal without written approval of the Purchasing Manager.
13. **F.O.B./DAMAGE:** Prices offered shall be F.O.B. Final Destination, Town of Flower Mound, Texas, and shall be all inclusive of shipping, handling and packaging costs. The Town accepts and assumes no liability for goods delivered in damaged or unacceptable condition. The successful respondent shall be responsible for handling all claims with carriers, and in case of damaged or unacceptable goods, shall ship replacement goods immediately upon notification by the Town.
14. **PREPARATION COST:** All costs associated with the preparation of an offer shall be borne by the respondent. The Town of Flower Mound will not be liable for any costs associated with the preparation, transmittal, or presentation of submissions, or with any materials submitted in response to the same.
15. **TESTING:** At the Town of Flower Mound's discretion, testing may be required prior to award of bid/proposal or prior to delivery of goods or services. Testing shall be performed without expense to the Town.
16. **SAMPLES:** At the Town of Flower Mound's discretion, samples may be required prior to award of bid/proposal, or prior to delivery of goods or services. Samples shall be provided at no cost to the Town. Samples should not be enclosed with submission unless specifically requested.
17. **QUALITY:** Any catalog, brand names, or manufacturer's reference in this bid/proposal packet is descriptive and **not** restrictive, and is intended to indicate type and minimum quality level desired for comparison purposes, unless otherwise stated herein. All products and/or optional equipment offered shall be new and of current manufacture. No items of a demonstrator, leased, reconditioned, rebuilt, repossessed or used nature shall be considered, unless otherwise specifically stated herein.
18. **BID/PROPOSAL OPENINGS:** All offers will be read aloud at the Town of Flower Mound's scheduled opening for the designated bid/proposal. However, the reading of an offer shall not be construed as a comment on the responsiveness of such offer, or as any indication that the Town accepts such offer as responsive.

The Town of Flower Mound will make a determination regarding the responsiveness of offers submitted based upon compliance with all applicable laws and the Town of Flower Mound's purchasing guidelines and project documents including, but not necessarily limited to, the bid/proposal specifications and contract documents. The Town will notify the successful respondent upon award of the contract; and, if required by State law, all offers received will be available for inspection after award.

For processes other than low bid or best value bid, only the names of respondents will be read aloud at the scheduled opening. Pricing information will not be released until after award of the contract.
19. **SUMMARY SHEET:** Bid/Proposal summary results are typically published within one (1) business day after the scheduled opening. Bid/Proposal summary results will be available for public viewing at www.flower-mound.com and [www.IonWave Technologies, Inc..com](http://www.IonWaveTechnologies.com). Interested parties desiring a copy of a bid/proposal summary sheet may request the same by submitting a written request to purchasing@flower-mound.com. **RESULTS WILL NOT BE RELAYED OVER THE TELEPHONE.**
20. **ANTI-COLLUSION:** In submitting an offer, respondent certifies that they have not participated in nor have they been party to any collusion, price fixing or any other illegal or unethical agreements with any company, firm or person concerning the pricing offered.
21. **NO PROHIBITED INTEREST:** Respondent acknowledges awareness of the state laws including chapter 176 of the Local Government Code, the Town Charter, and the Town Code of Ethics regarding conflicts of interest and agrees to comply with each. No officer, employee or agent of the Town of Flower Mound shall participate in the negotiation, selection, discussion, award or administration of a contract or procurement supported by public funds if: 1) that individual has a substantial interest in a person or entity, as defined by Section 13.00, Chapter 1 of the Town's Code of Ordinances and/or Chapter 171 of the Texas Local Government Code, that is the subject of the contract or procurement; or 2) a conflict of interest, either real or apparent, would be involved, as defined herein.
22. **NON-RESIDENT BIDDERS:** Texas Government Code, Chapter 2252: Non-Resident Bidders. Texas law prohibits city and governmental units from awarding contracts to a non-resident unless the amount of such bid is lower than the lowest bid by a Texas

resident by the amount a Texas resident would be required to underbid the non-resident bidder on a bid/proposal for goods and services in the non-resident bidder's state, or the amount by which a resident bidder would be required to underbid the non-resident bidder to obtain a comparable contract in the state in which a majority of the manufacturing related to the contract will be performed.

23. **DELINQUENT TAXES:** Any person, firm, or corporation that is in arrears to the Town of Flower Mound for delinquent taxes or otherwise, will not be recommended for award of any bid/proposal until the arrearage has been cleared in writing. If a contractor or vendor becomes delinquent while a contract is in force, payment for goods or services provided to the Town under said contract or purchase order may be withheld until the arrearage has been cleared in writing.
24. **MINIMUM STANDARDS FOR RESPONSIBILITY:** A prospective vendor must affirmatively demonstrate responsibility. The Town of Flower Mound may request representation and other information sufficient to determine respondent's ability to meet the minimum standards including but not limited to:
 - A. Have adequate financial resources, or the ability to obtain such resources as required;
 - B. Ability to comply with the required or proposed delivery schedule;
 - C. Have satisfactory record of performance;
 - D. Have a satisfactory record of integrity and ethics;
 - E. Be otherwise qualified and eligible to receive an award.
25. **AWARD OF CONTRACT:** The Town of Flower Mound reserves the right to award single or multiple contracts for the goods or services as stated herein. Furthermore, the Town reserves the right to take administration costs into consideration when awarding to multiple vendors.

The Town may award bids/proposals to the lowest responsive responsible vendor(s), or to the vendor(s) who provides goods or services at the best value to the Town. If using the best value method, the selection criteria will be clearly identified in the bid/proposal document. The best value method may take into consideration, in whole or in part, by way of illustration and not limitation, the following criteria:

- A. The purchase price;
 - B. The reputation of the respondent and of the respondent's goods or services;
 - C. The quality of the respondent's goods or services;
 - D. The extent to which the goods or services meet the Town's needs;
 - E. The respondent's past relationship with the Town;
 - F. The total long-term cost to the Town to acquire the respondent's goods or services;
 - G. Any relevant criteria specifically listed herein or in the contract documents.
26. **ACCEPTANCE:** Respondent agrees that acceptance of any or all items by the Town of Flower Mound, Texas within a reasonable period of time, not to exceed one hundred twenty (120) days following the date and time designated for the receipt of the bid/proposal, shall be binding upon respondent. Respondent shall thereafter execute all documents necessary to enter into a contract in a form acceptable to and properly executed by the Town to provide such goods and services.
27. **CONTRACT PERIOD:** Unless otherwise stated in the specifications contained herein, the contract period for the bid/proposal will be for one (1) year upon Town approval, with three (3) optional one (1) year renewal periods if agreeable to both parties. Renewal periods will be subject to the Town's availability of funds.
28. **FUNDING:** The Town of Flower Mound is a home-rule municipal corporation operated and funded on a fiscal year basis from October 1 to September 30. Accordingly, the Town reserves the right to terminate at any time, without liability to the Town, any contract for which funding is not available.
29. **ASSIGNMENT:** The successful vendor shall not sell, assign, transfer or convey any contract, in whole or in part, without the prior written consent of the Town obtained through the Town's Purchasing Division.
30. **INTERLOCAL AGREEMENT:** The successful vendor agrees to extend prices for goods and services under the same terms and conditions of this bid/proposal to all governmental entities that have entered into, or will enter into, interlocal cooperative purchasing agreements with the Town of Flower Mound.
31. **CHANGE ORDER:** The Town of Flower Mound reserves the right to modify or change plans and specifications as deemed necessary after the performance of the contract has commenced, to decrease or increase the quantity of work to be performed, materials, equipment or supplies to be furnished, or address other provisions of the contract as approved by the Town Manager or Town Council, and as appropriate under state law. No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the contract. All change orders or modifications to the contract will be documented in

written form by the Town of Flower Mound and acknowledged by the contracted vendor. **All change orders and modifications to the contract shall be processed through the Purchasing Division only.**

32. **DELIVERY PROMISE – PENALTIES:** Where indicated, respondents must provide number of calendar days required to deliver goods or services to the Town of Flower Mound after receipt of order (ARO). **Do not quote shipping dates.** When delivery delay can be foreseen, the vendor shall provide advance notice to the Purchasing Manager, who shall have the right to extend the delivery date if reasons for delay are acceptable. Default in promised delivery, without acceptable reason(s), or failure to meet specifications as contained herein or in the contract documents, authorizes the Purchasing Division to purchase goods or services from an alternate source. The defaulting vendor may be subject to re-procurement costs.
33. **DELIVERY TIMES:** Unless otherwise specified herein, deliveries will only be accepted during normal working hours at the designated Town of Flower Mound location(s).
34. **INSPECTION:** Upon receipt of goods or services, the same will be inspected for compliance with the specifications contained herein or in the contract documents. If the goods or services do not pass inspection, the vendor will be required to remedy the situation at the vendor's sole expense. The vendor will be required to retrieve the rejected goods at the delivery point and provide the necessary repairs of or replacement and return of the goods in new condition to the original point of delivery; or re-perform services in accordance with the terms and conditions of the contract and to the Town of Flower Mound's satisfaction.
34. **INVOICES:** Invoices shall be submitted to the attention of Accounts Payable Department, 2121 Cross Timbers Road, Flower Mound, Texas 75028, or electronically to accountspayable@flower-mound.com.
36. **PAYMENT TERMS:** Payment terms are net 30 days, unless otherwise specified by the Town in the bid/proposal document.
37. **AUDIT:** The Town of Flower Mound shall have access to, and the right to examine, monitor and audit all records, documents, conditions and activities related to contracts awarded by the Town. It shall be the responsibility of the vendor to maintain records associated with this procurement for a period of three (3) years after completion of the contract, or in the event of litigation, a claim or audit, the records shall be retained until the resolution of such litigation, claim or audit.
38. **INSURANCE:** The Town of Flower Mound requires vendor(s) to carry the minimum insurance as required by the greater of the requirements contained in state laws or the insurance requirements contained in the contract documents.
39. **PRICE ESCALATION:** Unless otherwise stated in the specifications herein, prices must remain firm for the initial term of the contract. The contracted vendor may request an adjustment at the time of contract renewal by submitting a request in written form to the Purchasing Manager. Basis for price escalation should be based on the Consumer Price Index for the most recent twelve-month period reported for the Dallas-Fort Worth area. The contracted vendor shall provide the Town with copies of the appropriate indices for verification purposes. The Town of Flower Mound reserves the right to approve or reject any and all requests for price escalations.
40. **PRICE REDUCTION:** If during the life of the contract, the contracted vendor's net prices to other customers for the same goods or services are lower than the Town of Flower Mound's contracted prices, an equitable adjustment shall be made in the contract price in favor of the Town.
41. **INDEMNITY:** The bidder shall defend, indemnify and hold the Town of Flower Mound, its officers, agents and employees harmless from any and all costs, expenses, suits, demands, claims, liabilities, liens, encumbrances or damages, including attorneys' fees and costs of suit, of any character, name and description, incurred or resulting from any injuries or damages received or sustained by any person, persons or property on account of any intentional wrongful conduct or negligent act or fault of the successful bidder, or of any agent, employee, subcontractor or supplier in the execution of, or performance under, any contract which may result from bid award and the bidder so agrees upon the submission of the bid. The bidder shall deliver, if so requested by the Town of Flower Mound, a written release of all liens or other proper evidence of same, to the satisfaction of the Town prior to the issuance of final payment by the Town.
41. **PATENT RIGHTS:** Respondent agrees to indemnify and hold harmless the Town of Flower Mound from any claim involving patent right infringement or copyright infringement on goods or services supplied to the Town.
43. **PROTESTS:** All protests regarding the solicitation process must be submitted in written form to the Purchasing Manager within five (5) working days following the opening of bids/proposals. This includes all protests relating to legal advertisements, deadlines, bid/proposal openings, and all other related procedures under the Local Government Code, as well as any protests relating to alleged improprieties or ambiguities in the specifications contained herein or in the contract documents.

Post-award protests must be submitted in written form to the Purchasing Manager within five (5) working days after award.

The protest must include, at a minimum, the name of protester, bid/proposal number or description of goods or services, and a statement of grounds for protest. The Purchasing Manager, having authority to make the final determination, will respond within ten (10) working days to each substantive issue raised in the protest. Allowances for reconsiderations shall be made only if data becomes available that was not previously known, or if there has been an error of law or regulation.

44. **TERMINATION FOR DEFAULT:** The Town of Flower Mound reserves the right to enforce the performance of the contract in any manner prescribed by law or deemed to be in the best interest of the Town in the event of breach or default of the contract. The Town reserves the right to terminate the contract immediately in the event the contracted vendor fails to meet delivery schedules, or otherwise perform in accordance with the specifications contained herein or in the contract documents. Breach of contract or default authorizes the Town to award the contract to another vendor, or purchase from an alternate source, and charge the full increase in cost to the defaulting contracted vendor.
45. **TERMINATION FOR TOWN CONVENIENCE:** Whenever the Town, in its discretion, deems it to be in the Town's best interests, it may terminate this contract for the Town's convenience. Such termination shall be effective thirty (30) days after Town delivers written notice of such termination for convenience to the contracted vendor. Upon receipt of such notice from the Town, Vendor shall not thereafter incur, and Town shall have no liability for, any costs under this contract that are not necessary for actual performance of the contract between the date of the notice of termination for convenience and the effective date of that termination for convenience. In the event of a termination for convenience hereunder, Town shall have no liability to Vendor for lost or anticipated profit resulting therefrom.
46. **REMEDIES:** The successful vendor and the Town of Flower Mound agree that each party may have rights, duties, and remedies available as stated in the Uniform Commercial Code and any other available remedy, whether in law or equity.
47. **VENUE:** The validity of the contract and of any of its terms or provisions, as well as the rights and duties hereunder or the contract documents, shall be governed by and construed in accordance with the laws of the State of Texas. Exclusive venue for any legal action shall lie in Denton County, Texas.
48. **DETERMINATION OF NON-RESPONSIBLE BIDDER:** The Town may disqualify a vendor as non-responsible and its bid shall not be considered for reasons including, but not limited to, the following:
 - A. Reason for believing collusion exists among vendors.
 - B. Where the vendor, any subcontractor, supplier, or the Surety on any bond given, or to be given, is in litigation with the Town, or where such litigation is contemplated or imminent, in the sole opinion of the town.
 - C. The vendor being in arrears on any existing contract or having defaulted on a previous contract.
 - D. Lack of competency, in the judgment of the Town, as revealed by pertinent factors, including but not necessarily limited to, experience and equipment, financial statement and questionnaires.
 - E. Uncompleted work that, in the judgment of the Town, will prevent or hinder the prompt completion of additional work if awarded.
 - F. Where the vendor, or subcontractor thereof, in the judgment of the Town, has failed to perform in a satisfactory manner on a previous contract.
 - G. Where a vendor or subcontractor thereof has failed to disclose a potential conflict of interest or discovered to have a conflict of interest in accordance with the Town's Code of Business Ethics.
 - H. Where a vendor, its subcontractor, or individual officer/principal of the bidder or subcontractor is under criminal indictment or been convicted of a criminal offense.
49. **DETERMINATION OF NON-RESPONSIVE BID:** The Town may disqualify a bid as non-responsive and it shall not be considered for reasons including, but not limited to, the following:
 - A. The bid shows any omissions, alterations of form, additions, or conditions not called for, unauthorized alternate bids, or irregularities of any kind, in the sole determination of the Town.
 - B. Bid received after the time limit for receiving bids.
 - C. Bid was not signed.
 - D. Unbalanced value of any items.
 - E. Improper or insufficient bid guaranty, if required.
 - F. Bid did not meet specifications.
 - G. Bid did not contain all requested/required documents, submittals and/or samples.

Quote



Professional Pavement Products, Inc
 9556 Historic Kings Rd S #315
 Jacksonville FL 32257
 United States
 904-733-2121

Date	Estimate #
10/25/2017	Q3657027

Bill To			Ship To		
Accounts Payable Town of Flower Mound 2121 Cross Timbers Road Flower Mound TX 75028 United States			Traffic Operations Town of Flower Mound 201 Spinks Road Flower Mound TX 75028 United States		
Customer ID	Expires	Exp. Close	Sales Rep	Partner	PO #
F301-Town of Flo...	11/24/2017	10/25/2017	27-Monika Thom...		

Job Location	Terms	Shipping Met...	Note -
	09-Gov't PO Net ...	Ground	

Item	Quantity	Description	Disc. P...	Amount
I2-8-8-1Y	1,800	4-FT MEDIAN ALERT YELLOW - COMPLETE. . Extruded Vinyl with 16-pcs of 1"x2.75" Yellow Abrasion Resistant Reflective Sheetings, V-notches, Butyl Adhesive Backing, and 17-anchors	32.50	58,500.00
			Subtotal	58,500.00
			Shipping Cost (Ground)	0.00
			Total	\$58,500.00

Jacksonville Branch
 9556 Historic Kings
 Suite 315
 Jacksonville, FL 32...
 Ph: 904.733.2121
 Fx: 904.448.4076

Miami Branch
 10250 NW 89th ...
 Unit 1
 Medley FL 33178
 Ph: 305-885-4274
 Fx: 305-885-4273

Orlando Branch
 6441 Pinecastle Blvd
 Orlando, FL 32809
 Ph: 407.888.2080
 Fx: 407.888.2425

Charlotte Branch
 1955 Scott Futrell Dr
 Charlotte NC 28208
 Ph: 704-697-9577
 Fx: 704-697-9576

Raleigh Branch
 200 Travis Park
 Cary NC 27511
 Ph 919.851.0799
 Fx 919.851.1294

Houston Branch
 7115 Belgold St
 Suite 1
 Houston, Tx 77066
 Ph: 713.864.0906
 Fx: 713.864.0833

Tulsa Branch
 2732 N Sheridan
 Tulsa, OK 74115
 Ph: 918-398-0500
 Fx: 918-730-9744

**Town of Flower Mound
Bid No. 2018-9-A
Median Nose Marking System**

I. Introduction

The Town of Flower Mound is accepting bids for Median Nose Markings System, in accordance with the specifications herein. The initial term of the contract will be one (1) year with three (3) optional renewal periods.

II. Scope of Services

- A. The purpose of this document is to identify the minimum acceptable requirements for a median nose marking system. The assembly shall be complete and include all components necessary for installation.

All materials and equipment furnished for installation under this contract shall be new and unused, unless otherwise specified.

Estimated Annual Quantity is expected to be 1800 each 4 foot sections

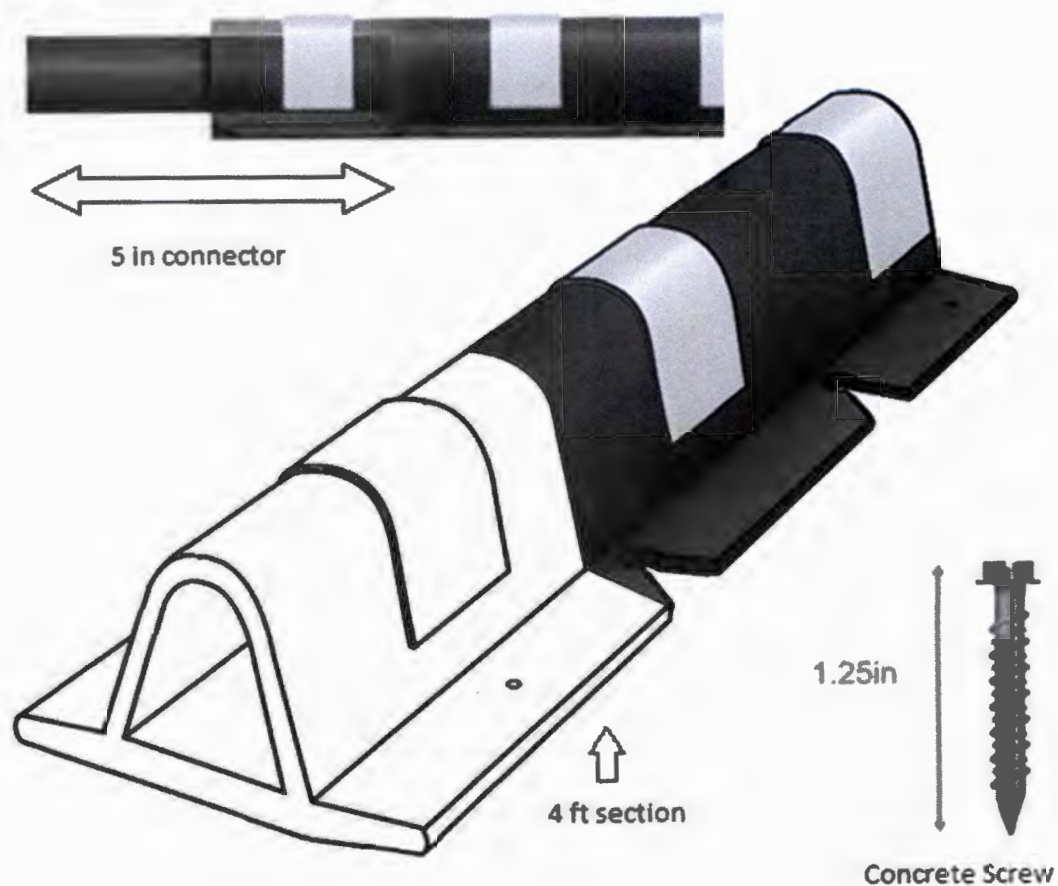
- B. The following items listed will be described in this specification:

Median Nose Marking System

PART 2 –MEDIAN NOSE MARKING SYSTEM– PHYSICAL

- a. Flexible elongated design in order to be able to adapt to any median radius.
- b. Rebound structure to reduce damage to the device when impacted by a vehicle.
- c. Elongated spline with an inner and outer flange composed with a hollow channel.
- d. Flexible continuous D-shaped semi-circular protrusion.
- e. Evenly spaced composite reflective elements for night visibility.
- f. Composite retroreflective elements that surround protrusion.
- g. V-shaped notch with circular stress relief
- h. Connector extends into channel to engage protrusions

- i. Attached by pressure sensitive butyl elastomer adhesive and concrete screws through inner and outer flange attachment holes.
- j. Flexible high strength adhesive membrane with peel away backing.
- k. Ability to withstand temperature variations of -15°F to $+150^{\circ}\text{F}$
- l. Retroreflective elements shall be composed of Type V retroreflective, abrasion, solvent and impact resistant, micro-prismatic strips with flexible high strength adhesive color.

DIAGRAM FOR REFERENCE**Connector**

**Town of Flower Mound, Texas
Bid No. 2018-9-A
Certification Form**

Company Information

The following information must be provided in its entirety for your submission to be considered:

Company Name: Professional Pavement Products, Inc.
 Principal Place of Business Address: 9556 Historic Kimp Rd S #315
 Principal Place of Business City, State, Zip: Jacksonville FL 32257
 Principal Place of Business Phone Number: 904-448-4074
 Principal Place of Business Fax Number: 904-448-4076
 Remittance Address (if different from above): SAME AS ABOVE
 Remittance City, State, Zip: SAME AS ABOVE
 Tax Identification No: 65-0710170

Addendums

If an addendum to this RFQ is issued, acknowledge addendum by initialing beside the addendum number:

Add. No. 1 ☒ Add. No. 2 ☐ Add. No. 3 ☐ Add. No. 4 ☐ Add. No. 5 ☐

Certification

The undersigned hereby certifies that he/she understands the scope of work, has read the document in its entirety and that the information submitted has been carefully reviewed and is submitted as correct and final. Provider further certifies and agrees to furnish any or all services in accordance with the terms and conditions contained herein. Provider agrees that acceptance of submission by the Town of Flower Mound, Texas, within the time frame indicated in this RFQ constitutes a contract.

The individual signing this RFQ certifies that he/she is a legal agent of the company, authorized to submit on behalf of the company, and is legally responsible for the decisions as to the supporting documentation provided.

Authorized Representative:

Monika Thompson 10/25/17
 Signature Date

Monika Thompson
 Printed Name

SALES
 Title

Monika.Thompson@pppcatalog.com
 Email Address

CONFLICT OF INTEREST QUESTIONNAIRE**FORM CIQ****For vendor or other person doing business with local governmental entity**

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

RFB / RFP / Contract #

1. Name of person doing business with local governmental entity.Professional Assessment Products, Inc**2. ☐ Check this box if you are filing an update to a previously filed questionnaire.**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3. Name of local government officer with whom filer has employment or business relationship.NONE

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

☐

Yes

☒

No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐

Yes

☒

No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐

Yes

☒

No

D. Describe each employment or business relationship with the local government officer named in this section.

NONE**4.**Monika Thompson (Monika Thompson)

Signature of person doing business with governmental entity

11/7/17

Date Signed

Please Record Missing Information on this page



TOWN COUNCIL AGENDA ITEM NO. 10

CONSENT ITEM

DATE: December 4, 2017

FROM: Jeff Garner, Director of Facilities Management

ITEM: Consider approval of the Atrium at F.M. Lease Extension and Termination Agreement.

BACKGROUND INFORMATION: The Town of Flower Mound has leased space in the Atrium building under multiple agreements since 1997 for various departments. Total square footage leased is 19,067 square feet. The Town is currently building a new town hall located at the intersection of FM 1171 and Morris Road. It is anticipated the new town hall and related parking will be complete in January 2019.

After the new Town Hall is complete, the Town will no longer require space at the Atrium building. The attached agreement terminates all the leases as of March 2019, and in consideration for the execution of the agreement, the Town will pay \$26,820.91 for following sixteen months. The March date allows additional time if needed to move equipment, record storage etc. Additionally, the agreement releases the Town and the Landlord from their respective obligations under the old leases, except as otherwise provided in this agreement.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$321,850.92

Proposed Expenditure:	Account Number(s):
\$212,354.64	100-680-81000-5020
\$109,496.28	200-680-83000-5020

Finance Review by: Debra Wallace, Deputy Town Manager /CFO *DW*

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

ATTACHMENTS:

1. Agreement

DRAFT MOTION: Move to approve the Atrium at F.M. Lease Extension and Termination Agreement.

**LEASE TERMINATION AGREEMENT BETWEEN
THE TOWN OF FLOWER MOUND AND THE ATRIUM AT F.M.
REGARDING LEASES AT THE ATRIUM, 1001 CROSS TIMBERS ROAD**

This Lease Extension and Termination Agreement (**Agreement**) is entered in as of November 16, 2017 by and between THE ATRIUM AT F.M. (**Landlord**) and THE TOWN OF FLOWER MOUND, TEXAS, a Texas home-rule municipal government organized under its charter and Chapter 9 of the Texas Local Government Code (**Tenant**).

RECITALS

A. Since at least 1997, Tenant has leased space in the building known as The Atrium, located at 1001 Cross Timbers Road, in Flower Mound for office and storage space for certain Town departments. Since 1997, the specific suites, square-footage, and leases have changed a number of times. There have been several new, modified, and amended lease agreements between Landlord and Tenant concerning lease of office space from Landlord at The Atrium over that time.

B. Most recently, on or about September 4, 2012, Landlord and Tenant entered into a Second Amended Commercial Lease Agreement, in which Landlord leased to Tenant approximately 17,505 of rentable square feet commonly referred to as Suites 2274, 2275, 2330, and 2280. The Second Amended Commercial Lease is incorporated in to this Agreement by reference.

C. Tenant is currently building a new, approximately 42,000-square-foot town hall located at the intersection of F.M. 1171 and Morriss Road. It is anticipated the new town hall will be complete in January of 2019. After March of 2019, Tenant will no longer require space at The Atrium.

D. Tenant and Landlord desire to enter into this Agreement to terminate the Second Amended Commercial Lease dated September 4, 2012, and any other leases which might still be in effect between Landlord and Tenant concerning The Atrium, effective March 31, 2019, and to release one another from their respective obligations under those leases, except as otherwise provided in this Agreement.

AGREEMENT

In consideration of the foregoing recitals and the conditions and the covenants hereinafter contained, and for other consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Definitions. In this Agreement:

- a. the term "Leases" shall mean:
 - i. the Second Amended Commercial Lease dated September 4, 2012, concerning suites 2274, 2275, 2330, and 2280;
 - ii. the Commercial Lease Agreement dated August 17, 2009, concerning suite 1030;
 - iii. the Commercial Lease Agreement dated August 17, 2009, concerning suite 2274;
 - iv. the Commercial Lease Agreement dated June 18, 2007, concerning suites 2330, 2280, and 2275;
 - v. the Commercial Lease Agreement effective on or about March 9 0, 1998, concerning suite 2270;
 - vi. the Commercial Lease Agreement effective March 10, 1997, concerning suites 1040, 2014, and 2020;
 - vii. the Commercial Lease Agreement dated December 31, 1996, concerning suites 1040, 2014, and 2020;
 - viii. any other oral or written lease agreement between Tenant and Landlord, or any of Landlord's successors, concerning any suite or portion of the Premises; and
 - ix. any other modification or amendment to any of the foregoing Leases.
- b. the term "Premises" shall mean the structure and real property located at 1001 Cross Timbers Road, Flower Mound, Texas 75028.
- c. the term "2012 Lease" shall mean the Second Amended Commercial Lease dated September 4, 2012, concerning suites 2274, 2275, 2330, and 2280.

2. Termination of the Leases. The intent of this Agreement is for Tenant to fully vacate the Premises, and to terminate all remaining leases between Landlord and Tenant concerning the Premises. Landlord and Tenant hereby agree that the Leases shall terminate and be of no further force or effect after March 31, 2019 (**Termination Date**). Only to the extent necessary and only to the extent consistent with this Agreement, the 2012 Lease is hereby extended until and including the Termination Date. To the extent of any conflict between this Agreement and the 2012 Lease, this Agreement shall control. The parties understand and agree that this Agreement is not intended and shall not be construed to create or extend any rights in any lease or other agreement which has previously terminated, expired, or been abandoned, or amended. The purpose of this Agreement is to ensure that, after the Termination Date, Tenant shall have no active leases concerning the Premises or any part of the Premises.

3. Consideration to Landlord. In consideration for Landlord's execution of this Agreement, Tenant shall pay to Landlord \$12.00 per square foot per year, and \$4.88 per square foot per year NNN (taxes, insurance, and common area maintenance) fees on the 19,067 square feet of suites 2274, 2275, 2330, 2280, and 1080. Effective for November of 2017 and for the

sixteen subsequent months including March of 2019, until the Termination Date, the monthly rent, which includes the NNN fees, shall be \$26,820.91. Tenant shall not be required to pay any additional amounts or fees in excess of the monthly rent. Further, Tenant, on or before the Termination Date, shall vacate the Premises, return all keys to Landlord, remove all personal property from the Premises and deliver the Premises to Landlord free of any occupancy. The Tenant will clean Premises prior to turn over to the Landlord.

4. Condition of Premises on Surrender. Notwithstanding any provision in the Leases to the contrary, including the paragraph labeled "Surrender of Premises" on page 18 of the 2012 Lease, Tenant shall not be required to remove any fixtures, alterations, additions, or improvements constructed or installed in the Premises. Tenant shall not be liable for any costs of removal of any such fixtures alteration, additions, or improvements.

5. Release of Liability. Except as otherwise provided in Paragraph 4 below, and conditioned on the performance by the parties of the provisions of this Agreement:

(a) Landlord, and Tenant to the extent permitted by law, do hereby release and discharge each other, including their respective officers, board members, agents, successors, assigns, servants, and employees from any and all claims or causes of action of any kind whatsoever, whether currently known or unknown relating in any way to the Premises or the Leases.

(b) This Agreement shall fully and finally settle all demands, charges, claims, accounts or causes of action of any nature, including, without limitation, both known and unknown claims and causes of action that may arise out of or in connection with the obligations of the parties under the Leases before or after the Termination Date.

6. Representation of Tenant. Tenant represents and warrants to Landlord that (a) Tenant has not previously assigned or sublet all or any portion of its interest in the Leases; (b) no other person, firm, or entity has any right, title or interest in the Leases; (c) Tenant has the full right, legal power and actual authority to enter in this Agreement and to terminate the Leases without the consent of any person, firm or entity; and (d) Tenant has the full right, legal power and actual authority to bind Tenant to the terms and conditions of this Agreement. Tenant further represents and warrants to Landlord that as of the date of this Agreement there are no, and as of the Termination Date there shall not be any, mechanics' liens or other liens encumbering all or any portion of the Premises as the result of any act or omission on the part of Tenant, its predecessors, contractors, agents, employees, successors, or assigns.

7. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Texas, without regard to choice of law rules. This Agreement is to be performed entirely in Denton County, Texas, and in the event of any dispute, venue shall be in the states courts located in Denton County, Texas.

8. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but such counterparts, when taken together, shall constitute one agreement.

Rc.

9. Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective legal representatives, successors and assigns.

10. Time of the Essence. Time is of the essence of this Agreement and the provisions contained herein.

11. Voluntary Agreement. The parties have read this Agreement and mutual release as contained herein, and on the advice of counsel they have freely and voluntarily entered into this Agreement.

Landlord and Tenant have executed this Agreement as of the day and year first above written.

LANDLORD:

The Atrium at F.M.,

By: 
Print Name: Rene Cassar
Its: Managing Member

TENANT:

The Town of Flower Mound, Texas

By: _____
Print Name: Thomas E. Hayden
Its: Mayor



TOWN COUNCIL AGENDA ITEM NO. 11

CONSENT ITEM

DATE: December 4, 2017

FROM: Eric Greaser, Fire Chief *EG*

ITEM: Consider approval of the purchase of a Self-Contained Breathing Apparatus (SCBA) package including spare SCBA bottles, Rapid Intervention Team (RIT) packs and 5500 psi air packs with cylinders, through BuyBoard Purchasing Contract No. 524-17 in the total amount of \$105,183.60; and authorization for the Mayor to approve same on behalf of the Town.

BACKGROUND INFORMATION: With the increase in the size of the Fire and Emergency Service fleet, there have at times not been enough spare bottles to utilize for replenishing air supply until the Special Ops 504 (6300-17) unit arrived on scene. With this purchase of twenty spare SCBA cylinders, the department will be able to equip each apparatus with an adequate number of bottles and have spares on Special Ops 504 (6300-17). The cost for twenty-three spare SCBA bottles with logo is \$25,493.20.

The Rapid Intervention Team (RIT) packs are vital pieces of equipment that are utilized in the event a firefighter becomes trapped or needs rescue. The department's current RIT packs are approaching ten years old and reaching their serviceable life limit. The current RIT packs are 4500 psi and with the replacement of our air packs to 5500 psi we are losing 1000 psi of air supply should the RIT units be needed at an emergency incident. The cost for six RIT packs is \$23,717.64.

Again, with the increase in the size of the department's fleet, we have decreased the amount of spare air packs that are available to be put in service when one is out of service. By purchasing eight new packs, we will be able to place a spare air pack at each station to be put in service in a timely manner when others malfunction. Cost for eight SCBA packs is \$55,972.76.

FISCAL IMPACT: \$105,183.60

Proposed Expenditure:	Account Number(s):
SCBA Bottles \$25,493.20	319-560-63000-2300
RIT Packs \$23,717.64	319-560-63000-2300
SCBA Packs \$55,972.76	319-560-63000-6120

Finance Review by: Debra Wallace, Deputy Town Manager /CFO *DW*

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Municipal Emergency Services Quote

DRAFT MOTION: Move to approve the purchase of a Self-Contained Breathing Apparatus (SCBA) package including spare SCBA bottles, Rapid Intervention Team (RIT) packs and 5500 psi air packs with cylinders, through BuyBoard Purchasing Contract No. 524-17 in the total amount of \$105,183.60; and authorize the Mayor to approve same on behalf of the Town.



MES - Texas
16511 Hedgecroft
Suite 200
Houston, TX 77060

Quote

ATTACHMENT 1

Date	10/4/2017
Quote #	QT1078862
Expires	12/11/2017
Sales Rep	Herron, Jason R
PO #	
Shipping Method	FedEx Ground

Bill To

FLOWER MOUND FIRE DEPT
2121 CROSSTIMBERS
FLOWERMOUND TX 75028
United States

Ship To

FLOWER MOUND FIRE DEPT
2121 CROSSTIMBERS
FLOWERMOUND TX 75028
United States

Item	Alt. Item #	Units	Description	QTY	Unit Sales Pri...	Amount
X3315022200302			X3 5.5 CBRN, EZ FLO, QUICK DISCONNECT, DUAL EBSS, PKTKR	8	5,613.67	44,909.36
201215-05			AV-3000 HT (M), KVLR w/ R BRKT	8	274.525	2,196.20
200969-01			CYL&VALV,CGA,CARB,45/5500 ASSY	31	1,108.40	34,360.40
200954-05			RIT-PAK III ASSY,5500 PSI	6	2,722.08	16,332.48
200972-01			CYL&VALV,CGA,CARB,60/5500 ASSY	6	1,230.86	7,385.16

Chief Scott Funderburg 972-874-6212
BUYBOARD CONTRACT: 524-17

Subtotal	105,183.60
Shipping Cost (FedEx Ground)	0.00
Total	\$105,183.60

This Quotation is subject to any applicable sales tax and shipping & handling charges that may apply. Tax and shipping charges are considered estimated and will be recalculated at the time of shipment to ensure they take into account the most current local tax information.

All returns must be processed within 30 days of receipt and require a return authorization number and are subject to a restocking fee.

Custom orders are not returnable. Effective tax rate will be applicable at the time of invoice.



QT1078862



TOWN COUNCIL AGENDA ITEM NO. 12

CONSENT ITEM

DATE: December 4, 2017

FROM: Eric Greaser, Fire Chief *EG*

ITEM: Consider approval of an Annual Preventative Maintenance Agreement with Gifford Electric, Inc. for the Town's Outdoor Warning Siren System in the amount of \$15,660.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: Gifford Electric, Inc. has been providing maintenance to the Town's outdoor warning sirens, encoders and associated software since 2002. Approval of the Annual Preventative Maintenance Agreement will provide annual maintenance of the outdoor warning siren network including inspection of the equipment, cleaning of the sirens and associated cabinets and electronics and costs of parts and labor to repair the sirens.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$15,660.00

Proposed Expenditure:	Account Number(s):
\$15,660.00	100-660-64000-4100

Finance Review by: Debra Wallace, Deputy Town Manager /CFO *DW*

LEGAL REVIEW: Rob Allibon of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the agreement as to form and legality.

ATTACHMENTS:

1. Annual Preventative Maintenance of Outdoor Warning System with Batteries with Gifford Electric, Inc.

DRAFT MOTION: Move to approve an Annual Preventative Maintenance Agreement with Gifford Electric, Inc. for the Town's Outdoor Warning Siren System in the amount of \$15,660.00; and authorize the Mayor to execute same on behalf of the Town.



GIFFORD ELECTRIC, INC.

Annual Preventative Maintenance of Outdoor Warning System W/Batteries

Between

City of Flower Mound

And

Gifford Electric, Inc

This Document is for the period of **OCTOBER 1, 2017** to **SEPTEMBER 30, 2018** and is for the Annual Preventative Maintenance of Outdoor Warning System between the **City of Flower Mound** and Gifford Electric, Inc. for the **(19) Sirens (2) Encoders**. For the total price of **\$15660.00,** the following work at each siren location will be done.

Checking of the Siren Motors and related gearbox assembly

- Inspect chopper motors and electrical connections, adjust if necessary.
- Inspect rotator motors and electrical connections, adjust if necessary
- Inspect any drive belts for signs of wear and proper tension, replace if necessary.
- Re-torque terminal connections at the terminal block inside rotor housing or other applicable locations.
- Inspect all gears for wear, recommend replacement or repair if necessary.
- Provide proper lubrication, if needed, for gears.
- Lubricate as recommended by manufacturer, any grease fittings, grease cups, etc.
- Inspect any screening for damage and repair as needed.
- Inspect all mounting hardware to insure that the siren is tight and secure.

Control Cabinet

- Inspect cabinet for signs of corrosion or water damage and make minor repairs as necessary.
- Inspect door gaskets and ensure that a tight seal is made, replace if faulty.
- Inspect any locking mechanisms and ensure that doors, plates, etc. have proper screws, bolts, etc. required to hold such devices in place.
- Ensure that cabinetry is securely fastened to the mounting surface, tighten as necessary.
- Lubricate locks, security bolts, hinges, or other moving parts that allow cabinets to operate properly.
- Provide matching paint and apply paint if necessary to prevent corrosion.
- Check compressor housings on applicable units for the same items listed previously, grease gears, fittings, etc. and check belts and pulleys and replace if necessary.

Poles

- Inspect poles for damage to the corrosion resistant coating.
- Re-seal any holes in the pole to ensure the water can not enter the pole.
- Check tightness on access panels and repair if necessary.
- Ensure any bolts, nuts, etc. used to secure the pole are free of corrosion and tight.

3801 E. First Street * P.O. Box 7441 * Fort Worth, Texas 76111 * (817) 834-6308
 * Fax (817) 831-8245 * TECL#19365

Regulated by The Texas Department of Licensing and Regulation. P.O. Box 12157, Austin, Texas 78711 1-800-803-9202, 512-463-6599; website: <https://www.license.state.tx.us/complaints>



GIFFORD ELECTRIC, INC.

Radio Equipment

- Verify that the RF antenna is securely mounted and coaxial cable has no damage and is properly secured to the pole, etc.
- Ensure connections to antenna and radio are tight and corrosion free.
- Check visible wiring on the radio and decoder to ensure that there is no damage to shielding and all connections are tight.

Electrical Circuit Testing

- Record readings on the time meters, if applicable.
- Run siren and check motor amperage, Verify proper amperage, voltage record report.
- Use siren activation on control board for testing, record successful/unsuccessful operation on report.
- Check contacts, relays, etc. for wear and suggest replacement if needed.
- Remain in contact with the City during any audible testing.
- Verify Change over Relay, if applicable, for proper operation.
- Re-torque, as necessary, all terminal connectors, etc. for proper tightness.
- Measure transformer rectifier voltage, if applicable.
- Check compressor voltages, amperages, etc. to ensure proper operation, if applicable.

Batteries (If applicable)

- Measure charger input and output voltages and record.
- Measure the voltage of each battery separately and record findings on reports.
- Load test each battery separately and replace as necessary.
- Ensure that all batteries are properly marked with installation, date and suggested replacement date.

Reports

- Provide an individual report on each siren with the following information:
- Siren number
- Location
- Make and model of siren
- Time and date of inspection
- Check boxes showing that all applicable items previously listed were inspected and each item's disposition (i.e. okay/repair/see notes, etc.).
- Signature of inspector certifying that inspection was adequate and all repairs, adequacies, etc. are true and correct.
- Provide a comments section on the report to list any items that may need attention in the future.

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GIFFORD ELECTRIC, INC.

- Provide any additional information that may be necessary to ensure that preventative maintenance is effective and important to continued successful operation.
- A separate individual report shall be provided for each event of maintenance or repair on a non-functioning siren, indicating the cause of the failure, the total time the siren was out of service, the maintenance or repair work performed to return the siren to working condition, and any future repairs or maintenance that may be required on that siren. Such report shall be provided to the Town within ten (10) days after the maintenance or repair work has been performed.

"Response Time":

- Gifford represents and warrants that it shall maintain an average of ninety percent (90%) operational status of the entire Town outdoor warning siren system at all times. This requires that no more than three (3) sirens are down for repair at any given time.
- The Town shall provide written notice to Gifford of any siren which is not functioning properly. Gifford shall commence and complete any required maintenance or repair work to a non-functioning siren within ten (10) calendar days of its receipt of such written notice. In the event Gifford is not able to complete the maintenance or repairs needed to return the siren to functional status within that time frame, Gifford shall so notify the Town in writing before the expiration of the ten (10) day period, including the reasons for the sirens inoperability, the maintenance or repair work needed, the reasons such work cannot be completed within the designated response time, and the estimated time to complete the work to restore the operability of the siren.
- In the event that Gifford fails to maintain the average operational status set forth above, fails to timely repair an inoperable siren, or fails to provide the Town with notice as to why it cannot be repaired within that time frame, an event of default will occur. In an event of default, Gifford will rebate to the Town the pro-rated portion of Gifford's annual fee for the number days that such default continues to exist.

This work includes the cost of **parts** and **labor** for the 12 months & at the time of the inspection.

The following work is not included in this price.

- Replacement of major components, such as motors, and poles.
- Repairs to Decoders or the Encoder that are not ASC CompuLert
- Any repairs or replacement caused by vandalism, misuse, vehicle wrecks, lightning and/or "acts of God".

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GIFFORD ELECTRIC, INC.

- Bee removal from siren

This agreement will go into effect upon acknowledgement of this agreement by the signatures of an authorized person representing both parties.

➤ Note: For Gifford Electric to do its job as listed we need the city to furnish us with the monthly report on the CompuLert program. Send this report to David Babcock's attention or email to david@giffordtx.com

City of Flower Mound _____ Date _____

Typed or Printed Name _____

Title _____

Gifford Electric, Inc. _____ *[Signature]* _____

Date 9-11-2017

Additional amendments in red 11-10-2017 DWB

Typed or Printed Name David W Babcock _____

Title _____ President _____

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* Fax (817) 831-8245 TECL#19365

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TOWN COUNCIL AGENDA ITEM NO. 13

CONSENT ITEM

DATE: December 4, 2017

FROM: Lori Gosser, Court Administrator

ITEM: **Consider approval of an Interlocal Agreement with the Denton County Tax Assessor-Collector (Denton County) for the continuation of the Scofflaw program, and authorization for the Mayor to execute same on behalf of the Town.**

BACKGROUND INFORMATION: The Scofflaw program is authorized by the Texas Transportation Code, Section 702.003. Under the Scofflaw program, if a defendant fails to resolve a traffic violation, the license plate for the defendant's motor vehicle will be flagged which may prevent the defendant from renewing the registration for that vehicle until the outstanding delinquency is resolved. The Scofflaw program is another tool used to compel compliance from delinquent defendants.

The Town contracts with Denton County, to refuse to register or re-register vehicles that TxDMV records show that the owner of the vehicle has an outstanding warrant that involves a violation of a traffic law as defined by Section 702.001 of the Transportation Code.

On March 8, 2011, the Town of Flower Mound and Denton County entered into an Interlocal Scofflaw Agreement. The agreement currently held with Denton County is hereby terminated effective December 31, 2017. This agreement will allow for the continuation of the scofflaw program effective January 1, 2018. The agreement shall automatically renew for successive one-year terms. This agreement may be terminated at any time by either party upon sixty (60) days written notice to the other parties

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: George Staples of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the agreement as to form and legality.

ATTACHMENTS:

1. Proposed Interlocal Agreement

DRAFT MOTION: Consider approval of an Interlocal Agreement with the Denton County Tax Assessor-Collector (Denton County) for the implementation of the Scofflaw program, and authorize the Mayor to execute same on behalf of the Town.

STATE OF TEXAS §
 § INTERLOCAL AGREEMENT
 COUNTY OF DENTON §

This Agreement made and entered into by and between the County of Denton, hereinafter referred to as "County", with the agreement, consent, and participation of the Denton County Tax Assessor-Collector, hereinafter referred to as the "County or County Tax Assessor-Collector", and the Town of _____, a Texas home-rule municipal corporation hereinafter referred to as "Town", under the authority and in accordance with the Interlocal Cooperation Act, as set out in Chapter 791, Texas Government Code, and as authorized by Texas Transportation Code, Chapter 702.

WITNESSETH:

WHEREAS, Texas Government Code, Chapter 791, authorizes local governments of the state to enter into contracts for governmental functions and services to increase their efficiency and effectiveness; and

WHEREAS, the County and the Town are local governments as defined in Texas Government Code, Section 791.003(4), have the authority to enter into this agreement, and have each entered into this agreement by the action of its governing body in the appropriate manner prescribed by law; and

WHEREAS, Transportation Code §702.003 allows a county tax assessor-collector, upon receipt of information from a municipality by and through the Texas Department of Motor Vehicles (hereinafter "Department") motor vehicle registration system, to refuse to register or re-register a motor vehicle for which a municipality has notified the Department of outstanding warrants of arrest for the failure to appear or the failure to pay a fine on a complaint that involves the violation of a traffic offense ; and

WHEREAS, Transportation Code §702.003 further allows a municipality to contract to provide the necessary information to the Department for the above determination under which the county tax assessor-collector may deny motor vehicle registration or re-registration to certain persons; and

WHEREAS, such a consolidated effort in the effectuation of Texas Transportation Code Chapter 702 is in each party's best interest and that of the public and that this agreement will increase the effective and efficient functioning of each party; and

WHEREAS, both the Town and County represent to one another that each respective party has the authority to enter into this agreement and perform the obligations and duties stated herein; and

WHEREAS, the County and the Town specify that each party paying for the performance of said functions of government shall make those payments from current funds available to the paying party.

NOW THEREFORE, this contract is made and entered into by County and Town in consideration of the aforementioned recitals and for the mutual consideration stated herein (“the Agreement”):

1. **PURPOSE OF AGREEMENT.**

The purpose of the Agreement is to state the terms and conditions under which the County Tax Assessor-Collector will refuse to register or re-register certain motor vehicles when the County Tax Assessor-Collector receives information from the Texas Department of Motor Vehicles registration system that the owner of the vehicle has an outstanding warrant from the Town for failure to appear or failure to pay a fine on a complaint that involves a violation of a traffic law, as defined by section 702.001 of the Transportation Code, as authorized and specifically set out under section 702.003 of the Texas Transportation Code.

2. **DUTIES OF THE TOWN.**

2.1 Town shall enter into the attached Interlocal Agreement with the Department to transmit all necessary vehicle information received from the Town to the Department which will enable the Department to flag eligible vehicle records in the Department motor vehicle registration system so that the County may withhold registration pursuant to the Agreement.

2.2 The Town shall notify the Department within fifteen (15) days when a traffic law matter is cleared regarding a person:

- 2.2.1 Against whom a judgment has been entered and who has paid the municipal court the full amount of the fine or civil penalty and all court costs; or
- 2.2.2 Who has perfected an appeal of the case for which the arrest warrant was issued; or
- 2.2.3 Whose charge for which the arrest warrant was issued has been dismissed; or
- 2.2.4 Whose charge for which the arrest warrant was issued has been cleared through judicial action or clerical correction.

2.3 The Town shall provide owners cleared for registration with a “cleared” receipt that may be presented by the owner to the County Tax Assessor-Collector. Written instructions shall be included on the receipt directing the cleared owner to maintain it for 30 days. Town shall enable the generation of the cleared receipt through its online payment system as well.

2.4. Town shall designate _____ to aid County in providing kiosk access to Town’s online payment system.

2.5 Town shall be solely responsible for placing or clearing registration flags. The Town shall be solely liable for any damages that arise out of any registration or refusal to register vehicles based on the absence or appearance of registration flags.

2.6 The Town has the sole discretion to flag vehicle records. However, the County may refuse registration only for vehicle records that involve a violation of a “traffic law” as defined by section 702.001 of the Texas Transportation Code.

2.7 The Town shall enter into the attached and included Interlocal Agreement with the Department to (included herein as Exhibit A).

3. **DUTIES OF THE COUNTY**

3.1 The County Tax Assessor-Collector shall:

- 3.1.1 Review the Department of Motor Vehicle registration system for traffic violation flags for all individuals who attempt to register any vehicle.
- 3.1.2 Refuse to register or re-register all motor vehicles which are flagged in the Department of Motor Vehicle registration system as having outstanding Town warrants for traffic violations, unless the receipt described in Section 2.3 is presented.
- 3.1.3 Provide flagged owners with access to a computer terminal at the Tax Office that is linked to the Town’s online payment system.
- 3.1.4 Provide owners who pay online via the Tax Office terminal with printouts of any clearance receipts generated by the Town’s online payment system.

3.2 The County Tax Assessor-Collector shall at any time have the sole authority and prerogative to register or re-register a motor vehicle

4. **TERM AND TERMINATION.**

This Interlocal Agreement shall be effective upon execution by the last party to execute the Agreement and shall terminate one year from that date. The agreement shall automatically renew for successive one-year terms. This agreement may be terminated at any time by either party upon sixty (60) days written notice to the other parties.

5. **NOTICE.**

Official notice shall be by written notice and delivery to all of the parties to this Agreement. Delivery shall be by fax or deposit in the United States Postal Service, first class, return receipt requested to:

TO THE COUNTY TAX
ASSESSOR-COLLECTOR:

Michelle French
Denton County Tax Assessor/Collector
1505 E. McKinney St.
Denton, Texas 76209-4525

TO THE TOWN:

The Town of

Address_____

6. **INDEMNIFICATION.**

County and Town agree that both County and Town shall each be responsible for their own negligent acts or omissions or other tortious conduct in the course of performance of this Agreement, without waiving any sovereign or governmental immunity available to either County or Town under Texas law and without waiving any available defenses under Texas law. Nothing in this paragraph shall be construed to create or grant any rights, contractual or otherwise, in or to any third persons or entities.

7. **FISCAL FUNDING.**

Notwithstanding anything to the contrary herein, this Agreement is expressly contingent upon the availability of county funding for each item and obligation contained herein. Town shall have no right of action against the County as regards this Agreement, specifically including any funding by County of this Agreement in the event that the County is unable to fulfill its obligations under this Agreement as a result of the lack of sufficient funding for any item or obligation from any source utilized to fund this Agreement or failure of any funding party to budget or authorize funding for this Agreement during the current or future fiscal years. In the event of insufficient funding, or if funds become unavailable in whole or part, the County, at its sole discretion, may provide funds from a separate source or terminate this Agreement. In the event that

payments or expenditures are made, they shall be made from current funds as required by Chapter 791, Texas Government Code.

Notwithstanding anything to the contrary herein, this Agreement is expressly contingent upon the availability of Town funding for each item and obligation contained herein. County shall have no right of action against the Town as regards this Agreement, specifically including any funding by Town of this Agreement in the event that the Town is unable to fulfill its obligations under this Agreement as a result of the lack of sufficient funding for any item or obligation from any source utilized to fund this Agreement or failure of any funding party to budget or authorize funding for this Agreement during the current or future fiscal years. In the event of insufficient funding, or if funds become unavailable in whole or part, the Town, as its sole discretion, may provide funds from a separate source or terminate this Agreement. In the event that payments or expenditures are made, they shall be made from current funds as required by Chapter 791, Texas Government Code.

8. **VENUE.**

Venue to enforce this Agreement shall lie exclusively in Denton County, Texas.

9. **NONDISCRIMINATION.**

Parties to this Agreement shall not discriminate on the basis of race, color, national origin, sex, religion, age, disability, sexual orientation.

10. **ENTIRE AGREEMENT.**

This Agreement constitutes the entire agreement between the parties hereto and may not be modified except by an instrument in writing executed by the parties hereto as herein provided.

11. **SEVERABILITY.**

If any provision of this Agreement shall be held invalid, void or unenforceable, the remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.

12. **DEFAULT/WAIVER/MITIGATION.**

It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Agreement does not preclude pursuit of other remedies in this Agreement or provided by law.

13. **FEDERAL OR STATE OF TEXAS FUNDING.**

In the event that any work or part thereof is funded by State of Texas or U. S. Government funding and any statute, rule, regulation, grant, contract provision or other State of Texas or U. S. Government law, rule, regulation or other provision imposes additional or greater requirement(s) than stated herein, Town agrees to timely comply therewith without additional cost or expense to County.

14. **HEADINGS.**

The titles which are used following the number of each paragraph are only for convenience in locating various provisions of this AGREEMENT and shall not be deemed to affect the interpretation or construction of such provision.

15. **NUMBER AND GENDER.**

Words of any gender used in this Agreement shall be held and construed to include any other gender; and words in the singular shall include the plural and vice versa, unless the text clearly requires otherwise.

16. **COUNTERPARTS.**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

17. **REMEDIES.**

This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

18. **APPROVAL**

This agreement is expressly subject to and contingent upon formal approval by the Denton Commissioners Court and by resolution of the respective Town Council.

IN WITNESS WHEREOF this Agreement has been executed on behalf of the County of Denton and the Town of _____ in the manner provided by law.

THE TOWN OF _____

By _____
Mayor _____
Date: _____

THE COUNTY OF DENTON

By _____
Mary Horn, County Judge
Date: _____

ATTEST

Town Secretary

APPROVED AS TO FORM:

By _____
Assistant Town Attorney

APPROVED AS TO FORM :

By _____
Michelle French, Tax Assessor/Collector

APPROVED AS TO FORM:

Assistant District Attorney



TOWN COUNCIL AGENDA ITEM NO. 14

REGULAR ITEM

DATE: December 4, 2017

FROM: Andrea Roy, Economic Development Director

ITEM: **Public Hearing to consider approval of a Chapter 380 Agreement between the Town of Flower Mound and Mannatech, Inc.**

BACKGROUND INFORMATION: The subject request relates to the proposed Chapter 380 Agreement between the Town and Mannatech, Inc., a dietary supplement and personal care product business, in exchange for Mannatech relocating its global headquarters to the Town. Mannatech, a publicly traded company on the NASDAQ, will operate its retail and direct sales, corporate support functions, and call center and customer service operations, out of this location.

Mannatech plans to occupy approximately 52,992 sq. ft. of existing space (formerly occupied by Stryker and adjacent to Haag Engineering) at 1410 Lakeside, and will make an approximately \$3.4 million capital investment to the space. As its new global headquarters, Mannatech will host multiple corporate events annually that will bring visitors from all over the world, thus generating additional dollars for the local economy. Mannatech will employ approximately 166 FTEs, with an average annual salary of over \$80,000. Mannatech will also generate a significant amount of sales tax to the Town (approximately \$180,000 annually).

The proposed Chapter 380 Agreement provides for a roadway impact fee rebate, sales tax grant up to \$51,225 (1% General Fund), and 5-year, 50% tangible personal property grant. Per the Town's Impact Fee Ordinance, and due to the defined "change of use" of the lease space from predominantly warehouse (when occupied by Stryker) to office (as planned by Mannatech), additional roadway impact fees (estimated at \$60,000) are due to the Town, and have been incorporated into the incentive agreement. The proposed incentives will assist in offsetting the cost of the company's relocation and needed tenant improvements.

Mannatech will be required to provide proof of a minimum taxable value of the personal property and improvements of at least \$1 million by December 31, 2019, employ a minimum of 125 full time equivalent positions throughout the established term, and to comply with other established audit and operations terms, as outlined.

A 10-year cost-benefit analysis indicates a total cost to the Town of \$134,738, providing a net benefit of over \$2.1 million. The payback period to the Town is less than one-year.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: One time rebate of roadway impact fees estimated at \$60,000.

Proposed Expenditure:	Account Number(s):
\$60,000	100-600-57000-5320

Finance Review by: Debra Wallace, Deputy Town Manager /CFO *DW*

LEGAL REVIEW: Drew Larkin of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the proposed Chapter 380 Agreement as to form and legality.

ATTACHMENTS:

1. Mannatech Chapter 380 Agreement
2. Cost-Benefit Analysis

DRAFT MOTION: Move to approve to the Chapter 380 Agreement between the Town of Flower Mound and Mannatech, Inc., and authorize the Mayor to execute same on behalf of the Town.

**CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE TOWN OF FLOWER MOUND, TEXAS
AND
MANNATECH, INC.**

This Chapter 380 Economic Development Agreement (“**Agreement**”) is made by and between the Town of Flower Mound, Texas (“**Town**”) and Mannatech, Inc., a Texas Corporation (“**Company**”). Town and Company are sometimes hereafter referred to individually as a “party” and collectively as the “parties.”

RECITALS

WHEREAS, the Company intends to lease approximately 52,992 square feet of office and warehouse space in the building located at 1410 Lakeside Parkway, Town of Flower Mound, Texas; and

WHEREAS, the Company intends to make improvements to and locate and maintain Tangible Personal Property (hereinafter defined) at the leased space; and

WHEREAS, the Town is authorized by Article 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code to establish programs to promote local economic development and to stimulate business and commercial activity in the Town; and

WHEREAS, the Town has determined that establishing a program to bring the Company to the Town in accordance with this Agreement will further the objectives of the Town, benefit the Town and the Town’s inhabitants, and promote economic development and stimulate business and commercial activity in the Town.

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions set forth below, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**ARTICLE 1
DEFINITIONS**

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Bankruptcy or Insolvency” shall mean the dissolution or termination of a party’s existence as a going business, insolvency, appointment of receiver for any part of such party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“CO Date” shall mean the date a certificate of occupancy is issued by the Town for the occupancy of the Leased Premises by Company.

“Company” shall mean Mannatech, Inc., a Texas Corporation.

“Company Records” shall have the meaning as defined in Section 3.7 of this Agreement.

“Effective Date” shall mean the last date this Agreement is executed by the parties.

“Expiration Date” shall mean the date of payment of the last of the Grants, unless sooner terminated as provided herein.

“Facility” means the building located at 1410 Lakeside Parkway, Flower Mound, Texas, 75028.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or inaction (unless caused by the intentionally wrongful acts or omissions of the party), fires, earthquake, tornado, hurricane, explosions, floods, strikes, slowdowns or work stoppages.

“FTE” shall mean any employee working for Company at the Leased Premises on a forty (40) hour or more per week schedule, or a combination of two (2) or more employees on part time schedules that equal forty (40) hours.

“Grants” shall collectively mean the TPP Grants, Sales Tax Grants, and Impact Fee Grant.

“Impact Fee Grant” means a grant from Town in an amount equal to 100% of the Town roadway impact fees paid by Company and received by Town, which are attributable to Company’s occupancy of the Leased Premises.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Company or any property or any business owned by Company within Town.

“Leased Premises” shall mean approximately 52,992 square feet of space in the Facility.

“Payment Request” means a written request from Company to Town for payment of the TPP Grants, Sales Tax Grants, and Impact Fee Grant, as the case may be, which request shall be accompanied by evidence reasonably satisfactory to Town to establish that Company is in compliance with this Agreement. The Payment Request must be submitted in accordance with the notice provisions of this Agreement.

“Related Agreement” shall mean any agreement (other than this Agreement) by and between Town and Company.

“Required Use” shall mean the continuous operation of Company’s global headquarters conducting retail and direct sales, corporate support functions, and call center and customer service operations.

“Sales Tax Grants” means the grants as described in Section 4.3.

“Sales Tax Report” has the meaning as set forth in Section 3.6.

“Sales and Use Tax” means the Town’s municipal sales and use tax, currently at the rate of one percent (1.0%) pursuant to Chapter 321 of the Texas Tax Code, as amended; provided, however, should the electors of the City reallocate the Sales and Use Tax or should the Texas Legislature amend the applicable tax code provision to increase or decrease the amount of allowed municipal sales and use tax, then in the event of a decrease, Sales and Use Tax shall mean the actual amount of sales and use tax received by the Town, and in the event of an increase, the Sales and Use Tax shall mean one percent (1.0%). Sales and Use Tax does not include any dedicated sales and use tax collected by the Town.

“Tangible Personal Property” shall have the same meaning assigned by Texas Tax Code, Section 1.04, and shall mean Tangible Personal Property owned by Company and located at the Leased Premises. Tangible Personal Property does not include inventory, supplies, Freeport Goods or Goods in Transit.

“Tax Year” shall have the meaning assigned to such term in Section 1.04 of the Texas Tax Code (i.e., the calendar year).

“Taxable Value” shall mean the appraised value as certified by the Denton County Appraisal District, or its successor, for a given year.

“Term” shall have the meaning as defined in Article 2 of this Agreement.

“Town” shall mean Town of Flower Mound, Texas.

“TPP Grants” shall mean five (5) consecutive annual economic development grants to be provided by Town to Company, each in an amount equal to fifty percent (50%) of the TPP Tax. Each annual individual grant shall be referred to hereafter as a “TPP Grant.”

“TPP Tax” shall mean the ad valorem taxes assessed by Town against the Tangible Personal Property located at the Property and collected by Town for the applicable Tax Year.

ARTICLE 2 PROGRAM AND TERM

2.1 Program. A program authorized under Chapter 380 of the Texas Local Government Code is hereby established to bring the Company to the Town. The terms of this Agreement shall implement the program.

2.2 Term. The term of this Agreement (“**Term**”) will commence on the Effective Date and will continue until the Expiration Date, unless sooner terminated as provided herein.

ARTICLE 3 COMPANY OBLIGATIONS

The obligation of Town to pay the Grants shall be conditioned upon the compliance and satisfaction by Company of the terms and conditions of this Agreement and each of the conditions set forth in this Article 3.

3.1 Good Standing. Company shall not have an uncured breach or default of this Agreement or a Related Agreement.

3.2 Minimum Taxable Value. No later than December 31, 2019, Company’s Tangible Personal Property must have a Taxable Value of at least \$1,000,000.

3.3 Required Use. During the Term following the CO Date and continuing thereafter until the Expiration Date, the Leased Premises shall not be used for any purpose other than the Required Use, and the operation and occupancy of the Leased Premises in conformance with the Required Use shall not cease for more than thirty (30) days, except in connection with and to the extent of an event of Force Majeure.

3.4 Continuous Occupancy. During the Term following the CO Date and continuing thereafter until the Expiration Date, Company shall continuously lease and occupy the Leased Premises.

3.5 FTEs. The Company shall, within one (1) year of the CO Date and continuing until the Expiration Date, maintain at least one hundred twenty-five (125) FTEs at the Leased Premises. The Company shall, within one year after the CO Date and annually thereafter, supply the Town with copies of employment records and such other information as may be reasonably requested by the Town to document the compliance of the Company with the FTE requirements of this section.

3.6 Sales Tax Reports. Company will provide Town, on a monthly basis, a copy of the financial report it submits to the State Comptroller relating to the remission of Sales and Use Taxes collected in the Town as a result of the operation of the Development (“**Sales Tax Report**”). Additionally, Company hereby grants consent for the State Comptroller’s office to release the monthly reported figures along with any State audit adjustments to the Town. The parties designate this Agreement as a revenue sharing agreement entitling the Town to request sales tax information from the Comptroller, pursuant to section 321.3022, Texas Tax Code, as amended. Company further agrees to provide Town any other reasonable documentation in a form acceptable to Town

that establishes and proves amounts necessary for Town to make the Sales Tax Grants as provided in this Agreement.

3.7 Audit. Company shall grant access to Town, or such other persons or entities designated by Town for the purposes of inspecting, at Company's office, during Company's normal business hours, paper and electronic records, books, documents, tangible accounting procedures, tangible practices or any other items related to Company's performance of this Agreement ("**Company Records**"), provided that Town has provided five (5) business days prior notice, and Town or its representatives shall not unduly disrupt Company's operations. The foregoing notwithstanding, all records, books, documents, accounting procedures, practices or any other items relevant to the performance of this Agreement shall be subject to examination or audit by Town, or such other persons or entities designated by Town in accordance with state and federal laws, regulations or directives applicable to Company's performance of this Agreement. Town agrees, to the extent allowed by law, to maintain the confidentiality of the Company Records.

ARTICLE 4 TOWN OBLIGATIONS

4.1 Impact Fee Grant. The Town will pay Company the Impact Fee Grant within thirty (30) days of the Town receiving the latter of: (i) payment of the roadway impact fees; and (ii) a Payment Request.

4.2 TPP Grants. For a term of five (5) consecutive years commencing on January 1 following the CO Date, the Town will provide an annual TPP Grant to Company. Each annual TPP Grant is due and payable by the Town forty-five (45) days after the Town receives the latter of: (i) payment of the TPP Tax; and (ii) a Payment Request.

4.3 Sales Tax Grants.

(a) Sales. Town agrees to pay Company an amount equal to one hundred percent (100%) of the Sales and Use Tax received by Town and attributed solely to the sale of taxable items sourced at the Leased Premises for a period beginning on the CO Date and continuing thereafter until the Company has received \$51,225. Under no circumstances will the aggregate of the Sales Tax Grants to Company exceed \$51,225.

(b) Timing of Payments. The Sales Tax Grants will be paid on a quarterly basis. The Town covenants and agrees to make quarterly payments to Company within forty-five (45) days following its receipt of the latter of: (i) the Sales Tax Reports each month of the applicable calendar quarter; (ii) the reports or other information establishing the amounts of received Sales and Use Tax from the Comptroller's office for each month in the applicable calendar quarter; (iii) the Town's receipt of the Sales and Use Tax from the Comptroller's office for each month of the applicable calendar quarter; and (iv) a Payment Request.

(c) Erroneously Paid Sales Tax. In the event the Comptroller determines, for any reason, that any Sales and Use Taxes were erroneously paid to Town from the sales

provided for herein and Town is required to rebate or repay any portion of such taxes, the amount of such rebate or repayment shall be deducted from the calculation of the Sales and Use Taxes received by Town under this Agreement, and in the event the calculation of Sales and Use Taxes paid for a Sales Tax Grant shall reflect an overpayment by Town to Company, Company agrees to reimburse Town the amount of such overpayment. Notification of any such required adjustment will be provided to Company at the earliest practical date. This section will survive termination of this Agreement.

ARTICLE 5 TERMINATION; REPAYMENT; OFFSET

5.1 Termination. This Agreement terminates on the Expiration Date, and may, prior to the Expiration Date, be terminated upon any one or more of the following:

- (a) by mutual written agreement of the parties;
- (b) upon written notice by either party, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof;
- (c) upon written notice by Town, if any Impositions owed to Town or the State of Texas by Company shall have become delinquent (provided, however, Company retains the right to timely and properly protest and contest any such taxes or Impositions);
- (d) upon written notice by Town, if Company suffers an event of Bankruptcy or Insolvency; or
- (e) upon written notice by either party if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

5.2 Repayment. In the event this Agreement is terminated by Town pursuant to Section 5.1 (b), (c), or (d), Company shall immediately refund to Town an amount equal to the amount of all of the Grants that have been provided by Town to Company prior the date of such termination, plus interest at the rate of interest periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by Town) as its prime or base commercial lending rate, from the Effective Date until paid. The repayment obligation of Company set forth in this Section 5.2 hereof shall survive termination of this Agreement.

5.3 Offsets. Town may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to Town from Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement or otherwise, and regardless of whether or not the debt due Town has been reduced to judgment by a court.

ARTICLE 6 MISCELLANEOUS

6.1 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties hereto.

6.2 Limitation on Liability. It is understood and agreed between the parties that Company and Town, in satisfying the conditions of this Agreement, have acted independently, and Town assumes no responsibilities or liabilities to third parties in connection with these actions.

6.3 No Joint Venture. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties.

6.4 Authorization. Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement. The undersigned officers and/or agents of the parties are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties.

6.5 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for Town, to:

Town of Flower Mound, Texas
Attn: Economic Development Director
2121 Cross Timbers Rd.
Flower Mound, TX 75028

If intended for Company, to:

Mannatech, Inc.
Attn: Landen Fredrick, Senior VP, Global Operations
600 S. Royal Lane, Suite 200
Coppell, Texas 75019

6.6 Entire Agreement. This Agreement is the entire agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

6.7 Governing Law. The Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of

the laws of another jurisdiction; and exclusive venue for any action concerning this Agreement shall be in Denton County, Texas.

6.8 Amendment. This Agreement may only be amended by the mutual written agreement of the parties.

6.9 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.10 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

6.11 Successors and Assigns. This Agreement may not be assigned without the prior written consent of the Town.

6.12 Recitals. The recitals to this Agreement are incorporated herein.

6.13 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.14 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.15 Employment of Undocumented Workers. During the term of this Agreement, Company agrees not to knowingly employ any undocumented workers, and if convicted of a violation under 8 U.S.C. Section 1324a (f) Company shall repay the Grants herein and any other funds received by Company from Town as of the date of such violation within one hundred twenty (120) days after the date Company is notified by Town of such violation, plus interest at the rate of four percent (4%) compounded annually from the date of violation until paid.

6.16 Consequential Damages. The parties agree that the parties will never be liable under this Agreement for consequential damages (including lost profits) or exemplary damages.

6.17 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).

6.18 Governmental Function. The parties agree that this Agreement serves the public purpose of assisting in the development and diversification of the economy of the Town and the State of

Texas, eliminating unemployment or underemployment of the State, and developing and expanding commerce in the State, and is for all purposes a governmental function of Town for the benefit of the citizens of Town and the State of Texas. The parties further agree that this Agreement is entered into for the purpose of carrying out governmental functions which are enjoined on the Town by law and given to it by the State of Texas as part of the State's sovereignty.

TOWN:

TOWN OF FLOWER MOUND, TEXAS

Thomas E. Hayden, Mayor

Date: _____

ATTEST:

Theresa Scott, Town Secretary

STATE OF TEXAS §
 §
COUNTY OF DENTON §

This instrument was acknowledged before me on the ____ day of _____, 2017, Thomas E. Hayden, Mayor of the Town of Flower Mound, Texas, a Texas home rule municipality, on behalf of said Town.

Notary Public, State of Texas

COMPANY:

MANNATECH, INC.

By: Mannatech, Inc., a Texas Corporation

By: _____
Landen Fredrick, VP Global Operations

Date: _____

STATE OF TEXAS §
 §
COUNTY OF DENTON §

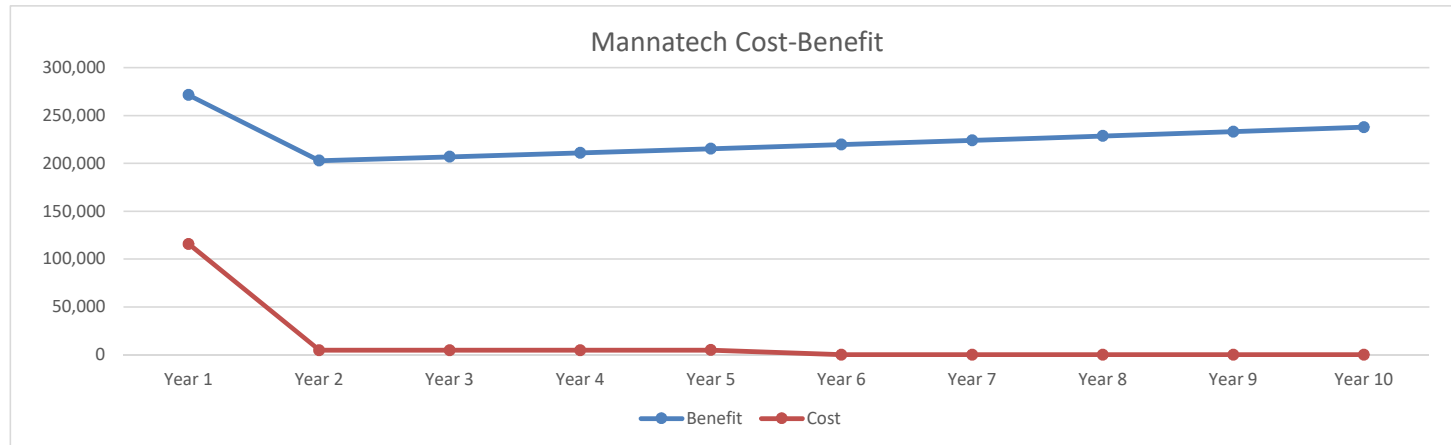
This instrument was acknowledged before me on the ____ day of _____, 2017, by Landen Fredrick, the Vice President of Global Operations of Mannatech, Inc., a Texas Corporation, on behalf of said Texas Corporation.

Notary Public, State of Texas

Attachment #2

Mannatech Cost-Benefit Analysis

Benefit		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
+3% rate	Real Property Value (65% of cap inv.)	2,210,000	2,276,300	2,344,589	2,414,927	2,487,374	2,561,996	2,638,856	2,718,021	2,799,562	2,883,549	
	Real Property Tax Revenue	9,702	9,993	10,293	10,602	10,920	11,247	11,585	11,932	12,290	12,659	111,221
+1% rate	Business Personal Property Value	2,100,000	2,121,000	2,142,210	2,163,632	2,185,268	2,207,121	2,229,192	2,251,484	2,273,999	2,296,739	
	Business Personal Property Tax Revenue	9,219	9,311	9,404	9,498	9,593	9,689	9,786	9,884	9,983	10,083	96,451
+2% rate	Annual Taxable Sales	9,000,000	9,180,000	9,363,600	9,550,872	9,741,889	9,936,727	10,135,462	10,338,171	10,544,934	10,755,833	
	Annual Taxable Sales Revenue	180,000	183,600	187,272	191,017	194,838	198,735	202,709	206,763	210,899	215,117	1,970,950
	Building Permit Fees	12,500										
	Roadway Impact Fees	60,000										\$72,500
Cost		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
50%	Business Personal Property Rebate	4,610	4,656	4,702	4,749	4,797	0	0	0	0	0	23,513
100%	Roadway Impact Fee Rebate	60,000	0	0	0	0	0	0	0	0	0	60,000
	Sales Tax Rebate	51,225	0	0	0	0	0	0	0	0	0	51,225
Analysis		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
Benefit		271,421	202,904	206,969	211,117	215,351	219,671	224,080	228,580	233,172	237,858	2,251,122
Cost		115,835	4,656	4,702	4,749	4,797	0	0	0	0	0	134,738
Net Benefit		155,586	198,249	202,267	211,117	215,351	219,671	224,080	228,580	233,172	237,858	2,116,384





TOWN COUNCIL AGENDA ITEM NO. 15

REGULAR ITEM

DATE: December 4, 2017

FROM: Julie Taylor, Director of Treasury Operations *Jat*

ITEM: Consider approval of a resolution approving and authorizing publication of notice of intention to issue Certificates of Obligation, Series 2018, in the principal amount not to exceed \$10,900,000.

BACKGROUND INFORMATION: The attached resolution will authorize the publication of notice of intention to issue Certificates of Obligation, Series 2018, (Certificates) in the principal amount not to exceed \$10,900,000, to be published in a newspaper of general circulation in the Town, once a week for two consecutive weeks, with the first publication at least 31 days prior to the date stated in the ordinance authorizing the issuance of the certificates of obligation.

The Certificates will pay for the contractual obligations incurred for constructing, equipping and improving Town library facilities and professional services rendered in connection with the project, as approved on the FY 17-18 Five-Year Capital Improvement Program.

In order to efficiently complete the issuance, a parameters ordinance will be presented for Town Council's approval on January 16, 2018. The ordinance will establish parameters specific to the issuance and delegate the Town Manager and Deputy Town Manager/CFO the authority to approve all necessary documents and finalize the sale. Please see Attachment 2 for a schedule of the events.

BOARD REVIEW/CITIZEN FEEDBACK: On August 9, 2016 the Flower Mound Tax Increment Reinvestment Zone #1 (TIRZ #1) Board of Directors held a public meeting and approved the annual debt service for the Certificates to be backed by TIRZ #1 revenue.

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$10,900,000

Proposed Expenditure:

\$10,900,000

Account Number(s):

Tax Increment Reinvestment Zone revenue will pay debt service

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

LEGAL REVIEW: The Town's Bond Counsel, Norton Rose Fulbright US LLP, prepared the proposed resolution. This standard notice of intent was approved in the past by Taylor, Olson, Adkins, Sralla, & Elam L.L.P. No alteration to the legal content of this form document was made in preparation of this document.

ATTACHMENTS:

1. Resolution
2. Preliminary Schedule of Events – Series 2018

DRAFT MOTION: Consider approval a resolution approving and authorizing publication of notice of intention to issue Certificates of Obligation, Series 2018, in the principal amount not to exceed \$10,900,000.

**TOWN OF FLOWER MOUND, TEXAS
RESOLUTION NO. ____-2017**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS,
APPROVING AND AUTHORIZING PUBLICATION OF NOTICE OF INTENTION TO ISSUE
CERTIFICATES OF OBLIGATION.**

WHEREAS, the Town Council of the Town of Flower Mound, Texas (the "Town") has determined that certificates of obligation should be issued under and pursuant to the provisions of Texas Local Government Code, Subchapter C of Chapter 271, as amended, for the purpose of paying contractual obligations to be incurred for (i) constructing, equipping and improving Town library facilities and (ii) professional services rendered in connection therewith; and

WHEREAS, prior to the issuance of such certificates, the Town Council is required to publish notice of its intention to issue the same in a newspaper of general circulation in the Town, said notice stating (i) the time and place the Council tentatively proposes to pass the ordinance authorizing the issuance of the certificates; (ii) the maximum amount proposed to be issued; (iii) the purposes for which the certificates are to be issued; and (iv) the manner in which the Council proposes to pay the certificates.

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

SECTION 1

The Town Secretary is hereby authorized and directed to cause notice to be published of the Council's intention to issue certificates of obligation, in one or more series, in the principal amount not to exceed TEN MILLION NINE HUNDRED THOUSAND DOLLARS (\$10,900,000) for the purpose of paying contractual obligations to be incurred for (i) constructing, equipping and improving Town library facilities and (ii) professional services rendered in connection therewith, such certificates to be payable from ad valorem taxes and a limited pledge of the net revenues of the Town's water and sewer system. The notice hereby approved and authorized to be published shall read substantially in the form and content of **Exhibit A** hereto attached and incorporated herein by reference as a part of this resolution for all purposes.

SECTION 2

The Town Secretary shall cause the aforesaid notice to be published in a newspaper of general circulation in the Town, once a week for two consecutive weeks, the date of the first publication to be at least thirty-one (31) days prior to the date stated therein for the passage of the ordinance authorizing the issuance of the certificates of obligation.

SECTION 3

This resolution shall take effect on the date of its passage.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ON THIS 4th DAY OF DECEMBER, 2017.

APPROVED:

Thomas E. Hayden, MAYOR

(Town Seal)

ATTEST:

Theresa Scott, TOWN SECRETARY

EXHIBIT A

**NOTICE OF INTENTION TO ISSUE TOWN OF
FLOWER MOUND, TEXAS
CERTIFICATES OF OBLIGATION**

TAKE NOTICE that the Town Council of the Town of Flower Mound, Texas, shall convene at a regular meeting at 6:00 o'clock P.M. on January 16, 2018, at the regular meeting place of the Town Council at Town Hall, 2121 Cross Timbers Road, Flower Mound, Texas 75028, and, during such meeting, the Town Council will consider the passage of an ordinance authorizing the issuance of certificates of obligation, in one or more series, in an amount not to exceed TEN MILLION NINE HUNDRED THOUSAND DOLLARS (\$10,900,000) for the purpose of paying contractual obligations to be incurred for (i) constructing, equipping and improving Town library facilities and (ii) professional services rendered in connection therewith, such certificates to be payable from ad valorem taxes and a limited pledge of the net revenues of the Town's water and sewer system. The certificates are to be issued, and this notice is given, under and pursuant to the provisions of Texas Local Government Code, Subchapter C of Chapter 271, as amended.

Theresa Scott,
TOWN SECRETARY

TOWN OF FLOWER MOUND
(Denton and Tarrant Counties, Texas)

Certificates of Obligation, Series 2018

Proposed Schedule of Events

December 2017						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

January 2018						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

February 2018						
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Proposed Date	Action
December 4, 2017	Town Council considers Resolution of Intent to Issue Certificates of Obligation (6:00 pm Regular Meeting)
December 12, 2017	Hilltop sends "Request for Information" for completion of Notice of Sale and Preliminary Official Statement ("NOS/POS").
December 14, 2017	Initial publication of Notice of Intent to Issue CO's (at least 30 days prior to sale).
December 19, 2017	City returns information necessary for preparation of NOS/POS to Hilltop.
December 21, 2017	Second publication of Notice of Intent to Issue CO's. Hilltop sends out initial draft of NOS/POS for review and comment. Hilltop sends necessary information to Standard & Poors (S&P) and Fitch Ratings (Fitch).
January 2, 2018	Comments on initial draft of NOS/POS due to Hilltop. Hilltop notifies Municipal Advisory Council of pending sale.
January 4, 2018	Hilltop sends second draft of NOS/POS to parties for review and comment.
January 9, 2018	Conference Calls with S&P and Fitch. Comments on second draft of NOS/POS due to Hilltop.
January 11, 2018	Hilltop submits NOS/POS for electronic distribution via internet. Hilltop arranges internet bidding and makes application for CUSIP numbers.
January 16, 2018	Receive ratings. Town Council considers Ordinance Authorizing Issuance of Certificates (6:00 pm Regular Meeting)
January 18, 2018	Bids due for Certificates at 11:00 am. Sign Pricing Certificate and BPA.
January 19, 2018	Draft of Final Official Statement distributed for review.
January 22, 2018	Bond Counsel submits documentation to Attorney General's Office. Comments due on Final Official Statement.
January 23, 2018	Final Official Statement posted to internet and sent to printer.
January 25, 2018	Written Final Official Statement received by all parties.
February 8, 2018	Hilltop to notify all parties of closing and delivery instructions.
February 14, 2018	Closing and Delivery.



TOWN COUNCIL AGENDA ITEM NO. 16

REGULAR ITEM

DATE: December 4, 2017

FROM: Debra Wallace, Deputy Town Manager/CFO *DW*

ITEM: Consider approval of a Professional Services Agreement for design services for the renovation and expansion of the Flower Mound Library with Komatsu Architecture., for \$794,963; authorization for the Mayor to execute the same on behalf of the Town; and authorization of the construction manager at risk contracting method for renovation and expansion of the Flower Mound Library.

BACKGROUND INFORMATION: The TIRZ #1 board approved the use of TIRZ funds for the Library at their June 19, 2017 board meeting. This item is to consider approval of a Professional Services Agreement with Komatsu Architecture., for design services for the renovation and expansion of the Flower Mound Library.

This project consists of a renovation of the existing 25,000 sq. foot Library and an expansion of approximately 15,000 sq. ft. as well as associated site improvements. The Library is located at 3030 Broadmoor Ln. The project will utilize the Construction Manager at Risk (CMAR) delivery method. The Town's desire is to have design complete and construction began by September 2018. Komatsu Architecture is the same architect who designed the Library originally.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$794,963

Proposed Expenditure:	Account Number(s):
\$794,963	533-111-32001-5110

Finance Review by: Debra Wallace, Deputy Town Manager/CFO *DW*

LEGAL REVIEW: The Town's standard AIA documents, approved 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 this document.

ATTACHMENTS:

1. Professional Services Agreement

DRAFT MOTION: Move to approve a Professional Services Agreement for design services for the renovation and expansion of the Flower Mound Library with Komatsu Architecture., for \$794,963; authorization for the Mayor to execute the same on behalf of the Town; and authorization of the construction manager at risk contracting method for renovation and expansion of the Flower Mound Library.

AIA® Document B101™ – 2007
Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 6 day of November in the year 2017
(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 Road
 Flower Mound, Texas 75028
 Telephone Number: (972) 874-6000

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

Komatsu/Rangel, Inc., dba Komatsu Architecture
 3880 Hulen Street Suite 300
 Fort Worth, Texas 76107
 Telephone Number: (817) 332-1914
 Fax Number: 817 877-4754

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

Flower Mound Library Expansion and Renovation
 3030 Broadmoor Lane
 Flower Mound, Texas 75022
 Expansion and Renovation of the existing Flower Mound Public Library

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
- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES
- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 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 as described in Exhibit A, *Komatsu Architecture Scope of Work*. It is understood that the Owner will utilize the Construction Manager at Risk project delivery method. The initial budget for construction cost of work is estimated at approximately \$9,552,500.

§ 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:

The Owner desires to begin construction by September 2018. The schedule will be as mutually agreed upon by Owner and Architect

.2 Substantial Completion date:

As agreed upon by Owner and Construction Manager

§ 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.

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§ 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

\$1,000,000 each occurrence, \$2,000,000 general aggregate

.2 Automobile Liability

\$1,000,000 combined single limit

.3 Workers' Compensation

\$1,000,000 in each instance

.4 Professional Liability

\$2,000,000 per claim, \$2,000,000 aggregate

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 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.

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§ 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.

§ 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.

(Paragraphs Deleted)

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(Paragraphs Deleted)

3.5 CONSTRUCTION PHASE SERVICES

§ 3.5.1 GENERAL

§ 3.5.1.1 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.

§ 3.5.1.2 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.

§ 3.5.1.3 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.

§ 3.5.2 EVALUATIONS OF THE WORK

§ 3.5.2.1 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.

§ 3.5.2.2 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 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.

§ 3.5.2.3 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.

§ 3.5.2.4 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.

§ 3.5.2.5 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.

§ 3.5.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.5.3.1 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.

§ 3.5.3.2 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.

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

§ 3.5.4 SUBMITTALS

§ 3.5.4.1 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.

§ 3.5.4.2 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.

§ 3.5.4.3 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 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.

§ 3.5.4.4 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.

§ 3.5.4.5 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.

§ 3.5.5 CHANGES IN THE WORK

§ 3.5.5.1 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.

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

§ 3.5.6 PROJECT COMPLETION

§ 3.5.6.1 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.

§ 3.5.6.2 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.

§ 3.5.6.3 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.

§ 3.5.6.4 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.

§ 3.5.6.5 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 are services that are not included in Basic Services outlined in Exhibit A, but may be required for the Project.

(Paragraph Deleted)

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)
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(Paragraph Deleted)

Services outside the scope of the attached Exhibit A, Komatsu Architecture Scope of Work.

§ 4.2 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 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 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;
- .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.

§ 4.2.2 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

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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.

§ 4.2.3 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 Thirty (30) 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

§ 4.2.4 If the services covered by this Agreement have not been completed within Twenty-Three (23) 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.

§ 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.

§ 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 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 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.

§ 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.

§ 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)

Init.

(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 and all Termination Expenses as defined in Section 9.7.

§ 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.

§ 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 place where the Project is located.

§ 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.

§ 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

Init.

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.

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.)

\$794,963.00

(Paragraphs Deleted)

§ 11.2 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.)

See Exhibit B, Komatsu Architecture Hourly Rates

§ 11.3 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 %).

§ 11.4 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 (note that FF&E Selection is included in the Construction Documents Phase below):

Schematic Design Phase	Fifteen	percent (	15	%)
	percent (		%)	
Construction Documents Phase	Sixty-Five	percent (	65	%)
Construction Phase	Twenty	percent (	20	%)

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Total Basic Compensation	one hundred	percent (	100	%)
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§11.5 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.

§ 11.6 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.)

See Exhibit B, Komatsu Architecture Hourly Rates

Employee or Category	Rate
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§ 11.7 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.7.1 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.

§ 11.7.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Zero percent (0.00 %) of the expenses incurred.

§ 11.8 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:

N/A

§ 11.9 PAYMENTS TO THE ARCHITECT

§ 11.9.1 An initial payment of Zero Dollars and Zero Cents (\$ 0.00) 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.

§ 11.9.2 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 Forty-five (45) days after the invoice date 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.)

5.00 % per annum

§ 11.9.3 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.

§ 11.9.4 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:

There are no special terms and conditions.

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:

- .3 Other documents:

(Paragraph Deleted)

Exhibit A, Komatsu Architecture Scope of Work
Exhibit B, Komatsu Architecture Hourly Rates
Exhibit C, Komatsu Architecture Certificate of Insurance

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

OWNER

ARCHITECT

(Signature)

(Signature)

(Printed name and title)

Karl A. Komatsu, President, Komatsu Architecture

(Printed name and title)

Init.

Flower Mound Public Library Expansion and Renovation

Project Scope – October 2017

SCOPE OF WORK

1. Confirm and verify Library needs and program requirements
2. Provide schematic documentation for initial budget estimate confirmation
3. Provide 1 schematic estimate to establish/confirm project budget
4. Provide bidding documentation required to implement library expansion project including building code and life safety exiting and occupancy plan
5. Provide mechanical, plumbing and electrical engineering. To include performance scope/specification for fire suppression.
6. Provide civil engineering
7. Provide pricing submittals at 30%, 60% and 90% - for CMAR provision of interim estimates
8. On-site Meetings
 - a. Kick-off
 - i. Determine existing functions, cabinetry and furnishings to remain and planned for
 - ii. Review and confirm library program
 - b. Schematic Review and budget confirmation
 - c. 35% Review
 - d. 65% Review
 - e. 95% Review
 - f. Pre-Construction
 - g. Construction progress – 1 person = 1 site visit with minutes – see CA for quantity
 - h. Final inspection
9. Construction Administration
 - a. Review of construction submittals and contractor requests for information
 - i. Includes 1 initial review and 1 revision
 - b. Monthly review of contractor's pay application
 - c. Up to KA 30 site visits during construction – 1 person = 1 site visit with monthly field reports. Quantity assumes meetings every two weeks during construction.
 - i. Includes field observation reports per site visit
 - ii. Includes 1 site visit for RAS inspection
 - d. Up to 3 site visits by Structural consultant during construction in addition to final inspection
 - e. Up to 6 site visits by MEP consultant during construction in addition to final inspection
 - f. 1 final inspection and report
 - g. 1 final review for final inspection compliance
 - h. Review of contractor provided closeout document submittal for completeness and compliance with contractor submittals
10. Furniture selection and specification
 - a. Review end user needs
 - i. Kick-off to establish/confirm user needs and reuse of existing items
 - b. Present options and finishes for approval
 - i. Initial review of proposed furniture selections
 - ii. Progress review of proposed furniture and finishes selections
 - iii. Final review and approval
 - c. Develop specifications for City purchasing use in acquisition
 - d. Coordinate installation
 - e. 1 final inspection and report
 - f. 1 final review for final inspection compliance

ANTICIPATED CONSULTANTS

Structural
MEP
Civil
Landscape

Flower Mound Public Library Expansion and Renovation

Project Scope – October 2017

Cost Consultant for schematic estimate
Technology
RAS

CITY PROVIDED ITEMS

Library Collection by area
Geotechnical
Topographic Survey
Materials Testing
Test and Balance

BASIS OF PROPOSAL

1. Assumes phased construction with some limited Library closure as required.
2. Owner generated and approved changes requiring modified project design documentation (drawings and/or specifications) not accommodated via additional service proposal during construction will be invoiced at 6% of construction cost.

DELIVERABLES

Schematic Submittal

1. Schematic floor plan and site plan in PDF electronic format
2. Statement of probable cost

Construction Documentation

1. 4 half size sets at 30%, 60% and 90% submittals for City review and comment. Project specifications will be provided electronically
2. Progress documentation in PDF electronic format for CMAR use in developing statement of probable cost at 30%, 60% and 90% submittals
3. Electronic bidding documents to include drawings and specifications at final submittal
4. Color board of interior finishes
5. 1 full size set drawings for TAS review

EXCLUDED FROM FEE

1. Hazardous materials survey
2. Engineering services not identified in scope
3. Construction administrative services not identified above
4. Record/As-built documentation
5. Engineering or Sub Consultant services not identified above
6. TAS registration, review, and inspection fees – will be invoiced as reimbursable expense
7. Documentation necessary for LEED certification – project will not be LEED

KOMATSU ARCHITECTURE
LABOR COSTS & BILLING RATES
Effective January 2017

POSITION	LABOR COST*		BILLING RATE	
Project Management				
Vice President, Principal	\$68.07	\$85.05	\$187.28	\$250.00
Prog Director, Proj Mgr	\$57.01	\$68.07	\$156.86	\$187.28
Proj Architect I	\$53.10		\$146.09	\$0.00
			\$0.00	
Project Coordinator Level				
Architect II	\$48.78		\$134.23	\$0.00
Senior Technical I	\$41.63		\$114.54	\$0.00
Technical Staff Level				
Drafter II	\$41.00		\$112.80	\$0.00
Drafter III	\$34.37		\$94.56	\$0.00
Tech Spec Support	\$29.70		\$81.70	\$0.00
Project Specialist Level				
Estimator	\$60.00		\$165.08	\$0.00
LEED Mgt Prog Mgr	\$30.89		\$85.00	\$0.00
Interior Designer	\$46.40		\$127.67	\$0.00
Facility Mgt Data Coord	\$37.12		\$102.14	\$0.00
Space Planner	\$29.70		\$81.70	\$0.00
Construction Administrator	\$53.00		\$145.82	\$0.00
Construction Field Observer	\$30.93		\$85.10	\$0.00
Quality Control Reviewer	\$37.12		\$102.14	\$0.00

*Labor rates are Salary/Hr plus mandatory Payroll Additives



KOMAINC-01

CBARTON

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

07/20/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Brush Creek Partners LLC 4444 Broadway Kansas City, MO 64111	CONTACT NAME: PHONE (A/C, No, Ext): (816) 523-2323		FAX (A/C, No): (913) 800-8249
	E-MAIL ADDRESS: info@brushkc.com		
INSURER(S) AFFORDING COVERAGE			NAIC #
INSURER A : Hanover Insurance Group			22292
INSURED Komatsu/Rangel, Inc; Komatsu Architecture 3880 Hulen St., Suite 300 Fort Worth, TX 76107	INSURER B :		
	INSURER C :		
	INSURER D :		
	INSURER E :		
	INSURER F :		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PROJECT ☐ LOC OTHER:			ODK A589554	04/01/2017	04/01/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY OTHER:			AWKA589531 02	04/01/2017	04/01/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION \$			ODK A589554 02	04/01/2017	04/01/2018	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
A	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N / A	W2K A589538 02	04/01/2017	04/01/2018	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Prof. Liability			LHKA702109-01	08/06/2016	08/06/2017	Per Claim \$ 2,000,000
A	Prof. Liability			LHKA702109-01	08/06/2016	08/06/2017	Aggregate \$ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Flower Mound Public Library Expansion and Renovation

CERTIFICATE HOLDER

CANCELLATION

Town of Flower Mound 2121 Cross Timbers Road Flower Mound, TX 75028	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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 6 day of November in the year 2017

...

Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
Telephone Number: (972) 874-6000

...

Komatsu/Rangel, Inc., dba Komatsu Architecture
3880 Hulen Street Suite 300
Fort Worth, Texas 76107
Telephone Number: (817) 332-1914
Fax Number: 817 877-4754

...

Flower Mound Library Expansion and Renovation
3030 Broadmoor Lane
Flower Mound, Texas 75022
Expansion and Renovation of the existing Flower Mound Public Library

PAGE 2

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and as described 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.) Komatsu Architecture Scope of Work. It is understood that the Owner will utilize the Construction Manager at Risk project delivery method. The initial budget for construction cost of work is estimated at approximately \$9,552,500.

...

The Owner desires to begin construction by September 2018. The schedule will be as mutually agreed upon by Owner and Architect

As agreed upon by Owner and Construction Manager

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\$1,000,000 each occurrence, \$2,000,000 general aggregate

\$1,000,000 combined single limit

\$1,000,000 in each instance

\$2,000,000 per claim, \$2,000,000 aggregate

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§ 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

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 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.

...

§ 3.6.3.5 CONSTRUCTION PHASE SERVICES

...

§ 3.6.4.3.5.1 GENERAL

...

§ 3.6.4.1-3.5.1.1 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.

...

§ 3.6.4.2-3.5.1.2 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.

...

§ 3.6.4.3-3.5.1.3 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.

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§ 3.6.2.3.5.2 EVALUATIONS OF THE WORK

...

§ 3.6.2.1-3.5.2.1 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.

...

§ 3.6.2.2-3.5.2.2 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 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.

...

§ 3.6.2.3-3.5.2.3 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.

...

§ 3.6.2.4-3.5.2.4 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.

...

§ 3.6.2.5-3.5.2.5 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.

...

§ 3.6.3-3.5.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

...

§ 3.6.3.1-3.5.3.1 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.

...

§ 3.6.3.2-3.5.3.2 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.

...

§ 3.6.3.3-3.5.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

...

§ 3.6.4.3.5.4 SUBMITTALS**PAGE 7**

§ 3.6.4.1-3.5.4.1 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.

...

§ 3.6.4.2-3.5.4.2 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.

...

§ 3.6.4.3-3.5.4.3 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 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.

...

§ 3.6.4.4-3.5.4.4 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.

...

§ 3.6.4.5-3.5.4.5 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.

...

§ 3.6.5-3.5.5 CHANGES IN THE WORK

...

§ 3.6.5.1-3.5.5.1 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.

§ 3.6.5.2-3.5.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6-3.5.6 PROJECT COMPLETION

§ 3.6.6.1-3.5.6.1 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.

§ 3.6.6.2-3.5.6.2 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.

§ 3.6.6.3-3.5.6.3 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.

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§ 3.6.6.4-3.5.6.4 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.

§ 3.6.6.5-3.5.6.5 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.

§ 4.1 Additional Services ~~listed below are services that~~ are not included in Basic Services ~~outlined in Exhibit A, 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.~~

(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 <i>(Architect, Owner or Not Provided)</i>	Location of Service Description <i>(Section 4.2 below or in an exhibit attached to this document and identified below)</i>
----------------------------	--	--

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

...

~~§ 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.

...

Services outside the scope of the attached Exhibit A, Komatsu Architecture Scope of Work.

...

~~§ 4.3.4.2~~ 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 4.3.4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

...

§ 4.3.4.2.1 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:

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§ 4.3.2.4.2.2 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:

...

§ 4.3.3.4.2.3 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 Thirty (30) 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

...

§ 4.3.4.4.2.4 If the services covered by this Agreement have not been completed within Twenty-Three (23) 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.

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[X] Litigation in a court of competent jurisdiction

PAGE 13

§ 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.~~

...

~~§ 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.~~

...

§ 9.7 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 compensated.~~

...

§ 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. located.~~

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\$794,963.00

...

§ 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.)

...

§ ~~11.3~~ 11.2 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:

...

See Exhibit B, Komatsu Architecture Hourly Rates

...

§ ~~11.4~~ 11.3 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 (%), ~~or as otherwise stated below: 10.00 %~~.

...

§ ~~11.5~~ 11.4 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: follows (note that FF&E Selection is included in the Construction Documents Phase below):

PAGE 15

<u>Schematic Design Phase</u>	<u>Fifteen</u>	<u>percent (</u>	<u>15</u>	<u>%)</u>
	<u>percent (</u>		<u>%)</u>	
<u>Construction Documents Phase</u>	<u>Sixty-Five</u>	<u>percent (</u>	<u>65</u>	<u>%)</u>
<u>Construction Phase</u>	<u>Twenty</u>	<u>percent (</u>	<u>20</u>	<u>%)</u>
<u>Total Basic Compensation</u>	<u>one hundred</u>	<u>percent (</u>	<u>100</u>	<u>%)</u>

Schematic Design Phase	percent (	%)
Design Development Phase	percent (	%)
Construction Documents Phase	percent (	%)
Bidding or Negotiation Phase	percent (	%)
Construction Phase	percent (	%)
Total Basic Compensation	one hundred percent (	100 %)

...

§ 11.6-11.5 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.

...

§ 11.7-11.6 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.

...

See Exhibit B, Komatsu Architecture Hourly Rates

...

§ 11.8-11.7 COMPENSATION FOR REIMBURSABLE EXPENSES

...

§ 11.8.1-11.7.1 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:

...

§ 11.8.2-11.7.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Zero percent (0.00 %) of the expenses incurred.

...

§ 11.9-11.8 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

...

N/A

...

§ 11.10-11.9 PAYMENTS TO THE ARCHITECT

...

~~§ 11.9.1~~ § 11.10.1 An initial payment of Zero Dollars and Zero Cents (\$ 0.00) 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.

~~§ 11.9.2~~ § 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 Forty-five (45) days after the invoice date 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.

PAGE 16

5.00 % per annum

~~§ 11.9.3~~ § 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.

~~§ 11.9.4~~ § 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.

There are no special terms and conditions.

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

Exhibit A, Komatsu Architecture Scope of Work

Exhibit B, Komatsu Architecture Hourly Rates

Exhibit C, Komatsu Architecture Certificate of Insurance

Karl A. Komatsu, President, Komatsu Architecture

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Karl Komatsu, President, 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 14:49:45 on 10/30/2017 under Order No. 7125328880 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)

(Title)

(Dated)

Town Council Future Agenda Items



SCHEDULED	12/14/2017	Work Session	PLACEHOLDER: 1. Discuss possible creation of a TIRZ District in Lakeside; 2. Discuss updating or modifying the Town's room reservation policy that would allow residents to use the senior center banquet facilities.
	12/18/2017	Consent	Consider approval of a contract with Blue Cross Blue Shield of Texas in the amount of \$441,241 for reinsurance coverage for the Town's Group Health Plan; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of an Extended Five Year Warranty and Preventative Maintenance Contract with Zoll Medical Corporation for the Fire Department's heart monitors in the amount of \$80,430.00 due to five equal annual payments; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of the 2017 Annual Report for the Flower Mound Tax Increment Reinvestment Zone #1 (TIRZ #1) in accordance with Chapter 311 of the Texas Tax Code.
		Consent	Oak Street Lift Station and Force Main Change Order No. 3 and Final Acceptance.
		Consent	Skilern Road Design Award.
		Consent	Consider approval of the minutes from a regular meeting of the Town Council held on December 4, 2017.
		Consent	Consider approval of Standards of Care for Youth Recreation Programs operated by the Town, in accordance with the Texas Human Resources Code - Section 42.041 and to adopt an ordinance providing for said Standards.
		Consent	Consider approval of the minutes from a work session of the Town Council held on December 14, 2017.
		Consent	Consider approval of the consumption of alcoholic beverages at the Flower Mound Senior Center during the SIM Auxiliary's Elite Chef Competition.
		Consent	Consider approval of the sale and consumption of alcoholic beverages (beer and wine) at Bakersfield Park, during the 2018 Independence Fest.

SCHEDULED	12/18/2017	Consent	Consider approval of an ordinance amending the Town of Flower Mound's Annual Budget for the fiscal year beginning October 1, 2016 and ending on September 30, 2017, as adopted by Ordinance No. 52-16 and amended by Ordinance No. 70-16, 02-17, 10-17, 17-17 and 22-17 for adjustments to the _____ Fund and the _____ Fund.
		Consent	Consider approval of an ordinance amending the Town of Flower Mound's Annual Budget for the fiscal year beginning October 1, 2017 and ending on September 30, 2018, as adopted by Ordinance No. ??-17 for adjustments to the _____ Fund, _____ Fund, and _____ Fund.
		Consent	Upper Timber Creek Interceptor Phase IV Design Amendment 1.
		Consent	SOQ Selections for Appraisers.
		Consent	Inflow-Infiltration Evaluation & Repair (2016 Manhole Repair) Change Order No. 1 and Final Acceptance.
		Consent	RFQ Selections for ADA Inspectors.
		Regular	Consider amending Chapter 2, Article III, Division 2, Sec. 2-114, entitled "Powers and duties," of the Parks Board, of the Town's Code of Ordinances.
		Regular	Placeholder: Oakbridge, Ph. 2 Tree Removal Permit.
		Regular	Public Hearing to consider a request to amend the Land Development Regulations (LDR17-0002 – Parks and Recreational Areas) by amending Chapter 90, Article VI, Division 8, entitled "Parks and Recreational Areas," of the Town's Code of Ordinances, and to consider adopting an ordinance providing for said amendment. (The Planning and Zoning Commission recommended by a vote of to at its December 11, 2017, meeting.)
		Regular	Public Hearing to consider a request for rezoning (ZPD17-0007 - The Point) from Planned Development District No. 31 (PD-31) with Campus Commercial District (CC) uses to Planned Development District No.156 (PD-156) with both non-residential and residential uses in compliance with the Campus Commercial land use designation within the Lakeside Business District Area Plan, including a Comprehensive Sign Package, and with certain exceptions and modifications to the Code of Ordinances, and to consider adopting an ordinance providing for said amendment, subject to the terms and conditions in the attached Development Agreement and authorization for Mayor to execute same on behalf of the Town. The property is generally located east of Long Prairie Road and north of Silveron Boulevard. (The Planning and Zoning recommended by a vote of to at its December 11, 2017, meeting.)
		Regular	Consider establishing rules for electioneering at polling locations.
	1/18/2018	Consent	FM 2499 @ Ladeside North Right Turn Lane Design Award.

SCHEDULED	1/18/2018	Consent	Temporary Fire Station No.6 Fencing and Landscaping Change Order 1 and Final Acceptance.
		Consent	Bruton Elevated Storage Tank Change Order No. 1 and Final Acceptance
		Consent	Lakeside Lift Station and Force Main Change Order 3 and Final Acceptance.
		Consent	FM 2499 Waterline Phase I Design Award.
		Consent	Kirkpatrick Water Line Phase II Design Award.
		Consent	Pintail Pump Station (Auxiliary Power & Upgrades) Design Award.
		Consent	WWTP Rehabilitation Phase IV Solids Facility Part 2 Design Amendment No. 1
		Consent	Fire Station #7 Design Award.
		Consent	2013 Street Reconstruction - Sheffield Court and Colonial Drive Change Order No. 1 and Final Acceptance.
		Regular	Discuss and consider appointment of Chair to the Tax Increment Reinvestment Zone (TIRZ)
	2/5/2018	Consent	2017 - 2018 CIP Amendment No. 2.
		Consent	Western Pump Station Chlorination Design Award.
	2/6/2018	Consent	Consider approval of a resolution of the Town of Flower Mound, Texas calling for a general election to be held on May 8, 2018, for the offices of Mayor, Town Council Place 2, and Town Council Place 4; establishing procedures for those elections; and providing an effective date.