

AGENDA

FLOWER MOUND TOWN COUNCIL REGULAR MEETING

6/18/2018

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. Certificate of Appreciation for the State Champions FMHS Water Polo Team
2. Proclamation for National Parks and Recreation Month
3. Friends of the Flower Mound Public Library donation

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

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).

Town Council Meeting Agenda**June 18, 2018****Page 2****I. COORDINATION OF CALENDARS**

1. A special meeting is a scheduled for Tuesday, June 26, to canvass the election.
2. A regular meeting is a scheduled for Monday, July 16.

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 6/4-** Consider approval of the minutes from a regular meeting of the Town Council held on June 4, 2018.
2. **Town Hall furniture and set up-** Consider approval to purchase furniture, fixtures, and equipment, from Plano Office Supply, for the new Town Hall, at a cost not to exceed of \$400,000.00.
3. **Tree Services Contract-** Consider approval of the award of Best Value Bid No. 2018-95-B Tree Services to Arbor Masters Tree Service, and to establish an annual bid price contract for Tree Services throughout the Town in an annual estimated amount of \$50,000.00; and authorization for the Mayor to execute same on behalf of the Town. The contract is for one-year with four one-year renewal options.
4. **Engineering Firms Selection-** Consider approval of fourteen engineering firms to provide professional engineering services, and five geotechnical engineering firms to provide professional material testing services for the Town, for a two-year term ending June 18, 2020.
5. **FM 1171 (Green Ribbon) Design-** Consider approval of the Professional Services Agreement with Mesa Design Associates, Inc., for the design services associated with the TxDOT 1171 Phase 2 Green Ribbon project, in the amount of \$40,500.00; and authorization for the Mayor to execute same on behalf of the Town.
6. **Library Expansion-** Consider approval of a Construction Manager at Risk Agreement for the construction of Library Expansion Project with Steele and Freeman, Inc., for a construction manager's fee of \$632,500.00; and authorization for the Mayor to execute the same on behalf of the Town.
7. **CIP Amendment #4-** Consider approval of Amendment No. 4, to the Fiscal Year 2017-2018 Capital Improvement Program.
8. **Firewheel Dr Construction-** Consider approval to award Bid No. 2018-74-B to Cam-Crete Contracting, Inc., for the Firewheel Drive Roadway project, in the amount of \$393,734.00; and authorization for the Mayor to execute same on behalf of the Town.
9. **Pink Evening Primrose Trail-** Consider approval of a Construction Agreement with West Texas Rebar Placers, Inc., for Segment 1 of the Pink Evening Primrose Trail project, in the amount of \$290,586.89; and authorization for the Mayor to execute same on behalf of the Town.

K. REGULAR ITEMS

10. **Tree Removal Permit- Hillside-** Public Hearing to consider an application for a tree removal permit for four (4) specimen trees on the Hillside of Flower Mound residential development. The four (4) specimen trees are located at 4305 Belle Drive. (The Environmental Conservation Commission recommended approval by a vote of 6-0-0 at its June 5, 2018, meeting).

Town Council Meeting Agenda

June 18, 2018

Page 3

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**.

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.

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: June 14, 2018, at 4:35 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: June 18, 2018

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a regular meeting of the Town Council held on June 4, 2018.

BACKGROUND INFORMATION: The Town Council held a regular meeting on June 4, 2018.

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 June 4, 2018.

FLOWER MOUND TOWN COUNCIL MEETING OF JUNE 4, 2018**PAGE 1**

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 4TH DAY OF JUNE 2018, 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
Jason Webb	Mayor Pro Tem
Claudio Forest	Deputy Mayor Pro Tem
Sandeep Sharma	Councilmember Place 2
Kevin Bryant	Councilmember Place 3
Jim Engel	Councilmember Place 4

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

Theresa Scott	Town Secretary
Bryn Meredith	Town Attorney
Jimmy Stathatos	Town Manager
Debra Wallace	Deputy Town Manager/CFO
Tommy Dalton	Assistant Town Manager
Tiffany Bruce	Exec. Dir. of Public Works/Engineering Manager
Andy Kancel	Police Chief
Eric Greaser	Fire Chief
Shelly Willson	Customer Service Manager

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

Chaplain Russ McNamer gave the invocation and Mayor Hayden led the pledges.

D. PRESENTATIONS

1. Proclamation honoring Women Veterans

Mayor Hayden recited the Women Veterans Proclamation and presented it to Ginger Simonson.

2. Christian Community Action (CCA) & Recycle 2 Support Textiles Recycling Program for Flower Mound

Nick Panza, Board of Directors – CCA, provided an organizational change update and a new approach for recycling. Tammy Wallace with Recycle2Support (R2S), gave an overview of the program.

Ms. Tammy Wallace responded to the following questions from Council:

- Does taking items to CCA remain an option

FLOWER MOUND TOWN COUNCIL MEETING OF JUNE 4, 2018

PAGE 2

- What type of items can be donated
- Clarification about the home pick up/on demand option
- How the items should be packed up (i.e. boxes, bags, etc.)
- Is there enough of a recycling need to pick a day that coincides with the regular trash pick-up day
- What is the turnaround time for the pick up
- Is what they are offering considered complementary or competition for Republic
- Whether or not there are any restrictions for other companies that offer similar services

Ms. Willson provided background information about the program and indicated staff wanted to present the program to Council prior to rolling it out in the community.

3. Presentation and introduction from Denton County Friends of the Family

Kimberly Shield, Development Coordinator, and Nathan Richardson, Friends of the Family, provided information about services that Friends of the Family offers.

E. PUBLIC PARTICIPATION

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

	Speaker names and address	Subject (as written on the form)
1.	James Naylor, 10843 Smoky Oak Trl	Agenda Item J 7
2.	Nancy Kleckner, 2608 Wisdom Creek Dr	Tennis Center

F. ANNOUNCEMENTS

Councilmember Sharma announced Early Voting is underway for the Mayoral Runoff Election.

Mayor Pro Tem Webb announced that the Town recently celebrated its 10th anniversary at the Community Activity Center (CAC), and also announced the Town's upcoming Independence Fest.

Councilmember Engel reported on the recently attended Memorial Day Ceremony program.

G. TOWN MANAGER'S REPORT

Mr. Stathatos provided an update on the following projects:

1. Capital improvement projects:
 - The traffic signal at FM 2499 @ College will be operational tomorrow
2. Economic Development projects:
 - Duke Realty ground breaking
 - Midwestern State University grand opening this week
 - Shape's Fitness For Women coming to Robertson's Creek

FLOWER MOUND TOWN COUNCIL MEETING OF JUNE 4, 2018**PAGE 3**

Chief Kancel or Mr. Stathatos provided an update on the following program:

3. School Crossing Guards:

- 45% of the crossing guards are Flower Mound residents
- Savings gained by ACMS
- Crossing guard turnover
- Process utilized in a vacancy situation (past and present)

and Chief Kancel, Mr. Stathatos, along with Mr. Meredith, answered questions or responded to comments from Council as follows:

- How the reporting element by the crossing guards is critical on a go forward basis
- How would the check in app work for the crossing guards
- How is the reporting handled in a situation where, for example, 3 crossing guards are supposed to be at a set location and only 1 person shows up
- Prior to outsourcing what did the Town do for background checks versus what ACMS does now
- What are the opportunities to make changes in the current contract between renewals

H. FUTURE AGENDA ITEMS

There were no requests for future agenda items.

I. COORDINATION OF CALENDARS

The next Town Council regular meeting is scheduled for Monday, June 18, 2018.

Mayor Hayden announced that the next meeting is scheduled for Monday, June 18, 2018.

J. CONSENT ITEMS

1. Consider approval of the minutes from a regular meeting of the Town Council held on May 21, 2018.

DRAFT MOTION: Move to approve the minutes from a regular meeting of the Town Council held on May 21, 2018.

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

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

RESOLUTION NO. 12 -18

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, NOMINATING ONE CANDIDATE TO A SLATE OF NOMINEES FOR THE BOARD OF MANAGERS OF THE DENCO AREA 9-1-1 DISTRICT.

FLOWER MOUND TOWN COUNCIL MEETING OF JUNE 4, 2018

PAGE 4

3. Consider approval to fund 19 network switches for the new Town Hall through our Dell DIR Contract in the amount of \$58,723.84.

DRAFT MOTION: Move to fund network switches for the new Town Hall through our Dell DIR Contract, in the amount of \$58,723.84.

4. Consider approval of the award of Best Value Bid No. 2018-56-A Municipal Grounds Maintenance to American Landscape Systems, Inc., at the unit prices bid and to establish an annual bid price contract for routine Municipal Grounds Maintenance at specified facilities throughout the Town in an annual estimated amount of \$175,000.00; and authorization for the Mayor to execute same on behalf of the Town. The contract is for one-year with four one-year renewal options.

DRAFT MOTION: Move to approve the award of Best Value Bid No. 2018-56-A Municipal Grounds Maintenance to American Landscape Systems, Inc., at the unit prices bid and to establish an annual bid price contract for routine Municipal Grounds Maintenance at specified facilities throughout the Town in an annual estimated amount of \$175,000.00; and authorization for the Mayor to execute same on behalf of the Town.

Item 5 was moved from consent to regular items.

6. Consider approval of the engagement letter with Pattillo, Brown & Hill, L.L.P., to perform external auditing services for the fiscal year ending September 30, 2018; and authorization for the Mayor to execute same on behalf of the Town.

DRAFT MOTION: Move to approve the engagement letter with Pattillo, Brown & Hill, L.L.P., to perform external auditing services for the fiscal year ending September 30, 2018; and authorize the Mayor to execute same on behalf of the Town.

7. Consider approval of an Interlocal Agreement with the Town of Argyle, for Argyle to utilize a Flower Mound sanitary sewer main, for the transportation of sewage produced from, plus or minus 92 residential lots, located in the Canyon Falls subdivision, in either Argyle or the extraterritorial jurisdiction of Argyle to the Trinity River Authority (TRA) Meter Station 3.0GG.

DRAFT MOTION: Move to approve an Interlocal Agreement with the Town of Argyle, for Argyle to utilize a Flower Mound sanitary sewer main, for the transportation of sewage produced from, plus or minus 92 residential lots, located in the Canyon Falls subdivision, in either Argyle or the extraterritorial jurisdiction of Argyle to the Trinity River Authority (TRA) Meter Station 3.0GG.

8. Consider approval of change order number one for an increase of \$51,789.00, and final acceptance of the Heritage Park of Flower Mound Phase III project, with Northstar Construction LLC, authorization for final payment in the amount of \$166,274.51; and authorization for the Mayor to execute same on behalf of the Town.

DRAFT MOTION: Move to approve Change Order No. 1 for an increase of \$51,789.00, and final acceptance of the Heritage Park of Flower Mound Phase III project, with Northstar Construction LLC, authorize final payment in the amount of \$166,274.51; and authorize the Mayor to execute same on behalf of the Town.

FLOWER MOUND TOWN COUNCIL MEETING OF JUNE 4, 2018

PAGE 5

9. Request Approval for Change Order No. 1, for the New Town Hall Audio-Visual system, with Intent Digital for \$51,300.00.

DRAFT MOTION: Move to approve Change Order No. 1, for the new Town Hall Audio-Visual system, with Intent Digital for \$51,300.00.

10. Consider approval to award the Town Hall move to Daryl Flood Relocation & Logistics, in the amount of \$76,724.00

DRAFT MOTION: Move to approve the Town Hall move to Daryl Flood Relocation & Logistics, in the amount of \$76,724.00.

Councilmember Bryant moved to approve by consent Items 1 – 4; 6 – 10. Councilmember Forest 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, ENGEL, BRYANT, WEBB, SHARMA

NAYS: NONE

K. REGULAR ITEMS

5. 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. 33-17 and amended by Ordinance No. 46-17 for adjustments to the General Fund, Parks and Recreation Special Activities Fund, Hotel Occupancy Tax Fund, Vehicle and Equipment Replacement Fund, and Technology Replacement Fund.

Staff Presentation

Ms. Wallace gave a presentation identifying or noting:

- Clarification on the \$75,000 expense for TrakIt
- Clarification on the \$23,000 for Parks and Recreation
- Clarification on the \$325,000 for the Central Fire Station renovations

and she or Chief Greaser responded to the following questions from Council:

- Clarification regarding the Central Fire Station renovations
- Whether or not maintenance support is offered with TrakIt, and if so, aren't upgrades provided as a component of that agreement

ORDINANCE NO. 20-18

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE TOWN'S BUDGET FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2017, AND ENDING ON SEPTEMBER 30, 2018, AS ADOPTED BY ORDINANCE NO. 33-17 AND AMENDED BY ORDINANCE NO. 46-17, BY PROVIDING FOR ADJUSTMENTS TO THE GENERAL FUND, PARKS AND RECREATION SPECIAL ACTIVITIES FUND, HOTEL OCCUPANCY TAX FUND, VEHICLE AND EQUIPMENT REPLACEMENT FUND, AND TECHNOLOGY REPLACEMENT FUND; PROVIDING THAT EXPENDITURES FOR SAID FISCAL YEAR SHALL BE MADE IN ACCORDANCE WITH SAID BUDGET, AS AMENDED;

FLOWER MOUND TOWN COUNCIL MEETING OF JUNE 4, 2018

PAGE 6

REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

Deputy Mayor Pro Tem Forest moved to approve 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. 33-17 and amended by Ordinance 46-17 for adjustments to the General Fund, Parks and Recreation Special Activities Fund, Hotel Occupancy Tax Fund, Vehicle and Equipment Replacement Fund, and Technology Replacement Fund. Councilmember Bryant seconded the motion.

VOTE ON MOTION:*Motion passed***AYES: SHARMA, WEBB, BRYANT, ENGEL, FOREST****NAYS: NONE**

11. Consider approval of a resolution approving and authorizing publication of notice of intention to issue Certificates of Obligation, Series 2018A, in the principal amount not to exceed \$10,900,000.

Staff Presentation

Ms. Wallace gave a presentation identifying or noting:

- purpose of the agenda item

and she responded to the following questions from Council:

- what is the purpose of the storage warehouse
- explanation of the signal project
- debt levels and how quickly we're paying down debt as opposed to issuing new debt

Councilmember Bryant moved to approve a resolution approving and authorizing publication of notice of intention to issue Certificates of Obligation, Series 2018A, in the principal amount not to exceed \$10,900,000. Deputy Mayor Pro Tem Forest seconded the motion.

RESOLUTION NO. 13-18**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.****VOTE ON MOTION:***Motion passed***AYES: FOREST, ENGEL, BRYANT, WEBB, SHARMA****NAYS: NONE****L. BOARDS/COMMISSIONS (Executive Conference Room)**

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

FLOWER MOUND TOWN COUNCIL MEETING OF JUNE 4, 2018**PAGE 7**

No action taken.

M./N. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 7:30 p.m. on June 4, 2018, pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.074, 551.087, 551.072, and 551.071 to discuss matters relating to personnel, economic development negotiations, real property, and consultation with attorney, and reconvened into an open meeting at 9:36 p.m. on June 4, 2018, 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, senior housing, hospitality projects, and performance related to certain incentive agreements.

No action taken.

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

No action taken.

- d. Deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the Presiding and Alternate Municipal Court Judge.

No action taken.

- e. Consultation with Attorney as follows:

1. The Point Development Agreement

No action taken.

O. ADJOURN REGULAR MEETING

Mayor Hayden adjourned the meeting at 9:37 p.m. on Monday, June 4, 2018, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

THOMAS E. HAYDEN, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 2

CONSENT ITEM

DATE: June 18, 2018

FROM: Jeff Garner, Director of Facility Management

ITEM: Consider approval to purchase furniture, fixtures, and equipment, from Plano Office Supply, for the new Town Hall, at a cost not to exceed of \$400,000.00.

BACKGROUND INFORMATION: Construction of the New Town Hall building is expected to be completed and ready for occupancy by October 2018. A significant portion of the existing furniture, fixtures, and equipment (FF&E) will be relocated from the Atrium and existing Town Hall. There are areas in the new building where existing FF&E will not fit; additionally certain areas were planned to accept modular furniture. In order to correctly furnish the new building some new FF&E is required. The Facilities Management Division has inventoried all existing furniture at the existing Town Hall and the Atrium to determine what items can and cannot be reused. The Town has been using Plano Office Supply for our standardized furniture needs for the past 12 months. Plano Office supply offers the Town significant savings on new FF&E through their relationships with national purchasing networks like TCPN and National IPA purchasing networks. The Town has received quotes for most of the new FF&E from Plano Office Supply in the amount of \$353,763.39, however additional FF&E may be needed. Facilities Management is requesting approval for a \$400,000 not to exceed amount, to allow the purchase of the other items as they are needed.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: Not to exceed \$400,000.00

Proposed Expenditure:	Account Number(s):
\$400,000.00	533-111-62017-6040

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

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Plano Office Supply Quote
2. TH – 1st Floor Drawing
3. TH – 2nd Floor Drawing
4. Cubicle Desk Template

DRAFT MOTION: Move to approve the purchase of Furniture, Fixtures, and Equipment, from Plano Office Supply, for the new Town Hall, at a cost not to exceed of \$400,000.00.

TOWN OF FLOWER MOUND
ATTN: JEFF GARNER
ALLSTEEL TCPN CONTRACT# R142201
HON NATIONAL IPA CONTRACT # 142208
APPROXIMATE DELIVERY IS SIX WEEKS

PLANO
office supply

705 AVENUE K
 PLANO, TEXAS 75074
 Phone 972-424-8561 Fax 972-422-9936
 www.planoofficesupply.com

Qty	Product	Description	List/Sell	Ext. List/Sell
84	801082P	Straight Conn Kit 82H Low Profile Painted	\$111.00	\$9,324.00
		\$(A) Grd A FAB	\$32.19	\$2,703.96
		.TP9 FAB: Tempest		
		35 CLR: Zebra		
		\$(P1) P1 Paint Opts		
		.P02 CLR: Flint		
39	801182P	Ell Conn Kit 82H Low Profile Painted	\$173.00	\$6,747.00
		\$(A) Grd A FAB	\$50.17	\$1,956.63
		.TP9 FAB: Tempest		
		35 CLR: Zebra		
		\$(P1) P1 Paint Opts		
		.P02 CLR: Flint		
15	801282P	Tee Conn Kit 82H Low Profile Painted	\$287.00	\$4,305.00
		\$(A) Grd A FAB	\$83.23	\$1,248.45
		.TP9 FAB: Tempest		
		35 CLR: Zebra		
		\$(P1) P1 Paint Opts		
		.P02 CLR: Flint		
4	801382P	Cross Conn Kit 82H Low Profile Painted	\$287.00	\$1,148.00
		\$(A) Grd A FAB	\$83.23	\$332.92
		.TP9 FAB: Tempest		
		35 CLR: Zebra		
		\$(P1) P1 Paint Opts		
		.P02 CLR: Flint		
35	801482P	Panel End Cover-Fabric 82H Low Profile Painted	\$111.00	\$3,885.00
		\$(A) Grd A FAB	\$32.19	\$1,126.65

		.TP9	FAB: Tempest		
		35	CLR: Zebra		
		\$(P1)	P1 Paint Opts		
		.P02	CLR: Flint		
39	831324	Worksurface-to-Panel Bracket 24D		\$66.00	\$2,574.00
		\$(P1)	P1 Paint Opts	\$19.14	\$746.46
		.P02	CLR: Flint		
9	83222ELM	Corner Cove 36x72-24L/24R Extd LH Flat w/Grom		\$722.00	\$6,498.00
		\$(L3WDGRN)	L3 Woodgrain Lam Opts	\$209.38	\$1,884.42
		.LWC	Lam: Cafelle		
		.DG	Edg: Cafelle *Prev EDG*		
		.P	Plastic Grommet		
17	83222ELM	Corner Cove 36x72-24L/24R Extd LH Flat w/Grom		\$722.00	\$12,274.00
		\$(L3WDGRN)	L3 Woodgrain Lam Opts	\$209.38	\$3,559.46
		.LWC	Lam: Cafelle		
		.E9	Edg: Flint		
		.P	Plastic Grommet		
3	83222ERM	Corner Cove 36x72-24L/24R Extd RH Flat w/Grom		\$722.00	\$2,166.00
		\$(L3WDGRN)	L3 Woodgrain Lam Opts	\$209.38	\$628.14
		.LWC	Lam: Cafelle		
		.DG	Edg: Cafelle *Prev EDG*		
		.P	Plastic Grommet		
11	83222ERM	Corner Cove 36x72-24L/24R Extd RH Flat w/Grom		\$722.00	\$7,942.00
		\$(L3WDGRN)	L3 Woodgrain Lam Opts	\$209.38	\$2,303.18
		.LWC	Lam: Cafelle		
		.E9	Edg: Flint		
		.P	Plastic Grommet		
10	832424M	Primary 24Dx24W Flat Eg Lam w/Grommet		\$288.00	\$2,880.00
		\$(L3WDGRN)	L3 Woodgrain Lam Opts	\$83.52	\$835.20
		.LWC	Lam: Cafelle		
		.DG	Edg: Cafelle *Prev EDG*		
		.P	Plastic Grommet		
6	832424M	Primary 24Dx24W Flat Eg Lam w/Grommet		\$288.00	\$1,728.00
		\$(L3WDGRN)	L3 Woodgrain Lam Opts	\$83.52	\$501.12
		.LWC	Lam: Cafelle		
		.E9	Edg: Flint		
		.P	Plastic Grommet		

6	832436M	Primary 24Dx36W Flat Eg Lam w/Grommet	\$340.00	\$2,040.00
		\$(L3WDGRN) L3 Woodgrain Lam Opts	\$98.60	\$591.60
		.LWC Lam: Cafelle		
		.DG Edg: Cafelle *Prev EDG*		
		.P Plastic Grommet		
26	832436M	Primary 24Dx36W Flat Eg Lam w/Grommet	\$340.00	\$8,840.00
		\$(L3WDGRN) L3 Woodgrain Lam Opts	\$98.60	\$2,563.60
		.LWC Lam: Cafelle		
		.E9 Edg: Flint		
		.P Plastic Grommet		
7	832460M	Primary 24Dx60W Flat Eg Lam w/Grommets	\$502.00	\$3,514.00
		\$(L3WDGRN) L3 Woodgrain Lam Opts	\$145.58	\$1,019.06
		.LWC Lam: Cafelle		
		.DG Edg: Cafelle *Prev EDG*		
		.P Plastic Grommet		
2	832460M	Primary 24Dx60W Flat Eg Lam w/Grommets	\$502.00	\$1,004.00
		\$(L3WDGRN) L3 Woodgrain Lam Opts	\$145.58	\$291.16
		.LWC Lam: Cafelle		
		.E9 Edg: Flint		
		.P Plastic Grommet		
16	851500	Cntp Brackets Low Profile Painted (1Pr)	\$42.00	\$672.00
		\$(P1) P1 Paint Opts	\$12.18	\$194.88
		.P02 CLR: Flint		
4	851536M	Straight 15Dx36W Cntp Flat Eg	\$313.00	\$1,252.00
		\$(L3WDGRN) L3 Woodgrain Lam Opts	\$90.77	\$363.08
		.LWC Lam: Cafelle		
		.DG Edg: Cafelle *Prev EDG*		
3	851560M	Straight 15Dx60W Cntp Flat Eg	\$421.00	\$1,263.00
		\$(L3WDGRN) L3 Woodgrain Lam Opts	\$122.09	\$366.27
		.LWC Lam: Cafelle		
		.DG Edg: Cafelle *Prev EDG*		
1	851572M	Straight 15Dx72W Cntp Flat Eg	\$462.00	\$462.00
		\$(L3WDGRN) L3 Woodgrain Lam Opts	\$133.98	\$133.98
		.LWC Lam: Cafelle		
		.DG Edg: Cafelle *Prev EDG*		
7	860536M	Corner Laminate Shelf Flat Edge 36 X 36	\$474.00	\$3,318.00
		\$(L3WDGRN) L3 Woodgrain Lam Opts	\$137.46	\$962.22

		.LWC	Lam: Cafelle		
		\$(P1)	P1 Paint Opts		
		.P02	CLR: Flint		
		.DG	Edg: Cafelle *Prev EDG*		
28	860536M	Corner Laminate Shelf Flat Edge 36 X 36		\$474.00	\$13,272.00
		\$(L3WDGRN)	L3 Woodgrain Lam Opts	\$137.46	\$3,848.88
		.LWC	Lam: Cafelle		
		\$(P1)	P1 Paint Opts		
		.P02	CLR: Flint		
		.E9	Edg: Flint		
1	870073P	Trim/Conn Kits "TEE" Low Profile Top		\$134.00	\$134.00
		\$(P1)	P1 Paint Opts	\$38.86	\$38.86
		.P02	CLR: Flint		
69	891324SG	Stacking Glass Panel 13H X 24W		\$513.00	\$35,397.00
		\$(P1)	P1 Paint Opts	\$148.77	\$10,265.13
		.P27	TRIM: Matte Black		
81	891336SG	Stacking Glass Panel 13H X 36W		\$603.00	\$48,843.00
		\$(P1)	P1 Paint Opts	\$174.87	\$14,164.47
		.P27	TRIM: Matte Black		
3	891360SG	Stacking Glass Panel 13H X 60W		\$827.00	\$2,481.00
		\$(P1)	P1 Paint Opts	\$239.83	\$719.49
		.P27	TRIM: Matte Black		
8	894324P	Acoustical Panel 43H x 24W Low Profile Painted		\$435.00	\$3,480.00
		\$(A)	Grd A FAB	\$126.15	\$1,009.20
		.TP9	FAB: Tempest		
		35	CLR: Zebra		
		\$(P1)	P1 Paint Opts		
		.P02	CLR: Flint		
8	894336P	Acoustical Panel 43H x 36W Low Profile Painted		\$541.00	\$4,328.00
		\$(A)	Grd A FAB	\$156.89	\$1,255.12
		.TP9	FAB: Tempest		
		35	CLR: Zebra		
		\$(P1)	P1 Paint Opts		
		.P02	CLR: Flint		
2	894360P	Acoustical Panel 43H x 60W Low Profile Painted		\$735.00	\$1,470.00
		\$(A)	Grd A FAB	\$213.15	\$426.30
		.TP9	FAB: Tempest		

		35	CLR: Zebra		
		\$(P1)	P1 Paint Opts		
		.P02	CLR: Flint		
74	896924P	Acoustical Panel 69H x 24W Low Profile Painted		\$514.00	\$38,036.00
		\$(A)	Grd A FAB	\$149.06	\$11,030.44
		.TP9	FAB: Tempest		
		35	CLR: Zebra		
		\$(P1)	P1 Paint Opts		
		.P02	CLR: Flint		
90	896936P	Acoustical Panel 69H x 36W Low Profile Painted		\$652.00	\$58,680.00
		\$(A)	Grd A FAB	\$189.08	\$17,017.20
		.TP9	FAB: Tempest		
		35	CLR: Zebra		
		\$(P1)	P1 Paint Opts		
		.P02	CLR: Flint		
5	896960P	Acoustical Panel 69H x 60W Low Profile Painted		\$837.00	\$4,185.00
		\$(A)	Grd A FAB	\$242.73	\$1,213.65
		.TP9	FAB: Tempest		
		35	CLR: Zebra		
		\$(P1)	P1 Paint Opts		
		.P02	CLR: Flint		
11	898224P	Acoustical Panel 82H x 24W Low Profile Painted		\$827.00	\$9,097.00
		\$(A)	Grd A FAB	\$239.83	\$2,638.13
		.TP9	FAB: Tempest		
		35	CLR: Zebra		
		\$(P1)	P1 Paint Opts		
		.P02	CLR: Flint		
4	898230P	Acoustical Panel 82H x 30W Low Profile Painted		\$888.00	\$3,552.00
		\$(A)	Grd A FAB	\$257.52	\$1,030.08
		.TP9	FAB: Tempest		
		35	CLR: Zebra		
		\$(P1)	P1 Paint Opts		
		.P02	CLR: Flint		
50	898236P	Acoustical Panel 82H x 36W Low Profile Painted		\$1,023.00	\$51,150.00
		\$(A)	Grd A FAB	\$296.67	\$14,833.50
		.TP9	FAB: Tempest		
		35	CLR: Zebra		

		\$(P1)	P1 Paint Opts		
		.P02	CLR: Flint		
1	A870071	Power Feed In Pole		\$226.00	\$226.00
		\$(P1)	P1 Paint Opts	\$65.54	\$65.54
		.P02	CLR: Flint		
33	A871124	Pass-Thru Harness w/Power Block 24W		\$141.00	\$4,653.00
		.P	CLR: Black	\$40.89	\$1,349.37
4	A871130	Pass-Thru Harness w/Power Block 30W		\$141.00	\$564.00
		.P	CLR: Black	\$40.89	\$163.56
104	A871136	Pass-Thru Harness w/Power Block 36W		\$141.00	\$14,664.00
		.P	CLR: Black	\$40.89	\$4,252.56
7	A871160	Pass-Thru Harness w/Power Block 60W		\$149.00	\$1,043.00
		.P	CLR: Black	\$43.21	\$302.47
40	A871236	Power Harness 36W		\$228.00	\$9,120.00
		.P	CLR: Black	\$66.12	\$2,644.80
51	A871501	Duplex Recept Circuit 1: 3+1 or 2+2 System		\$43.00	\$2,193.00
		.E9	CLR: Flint	\$12.47	\$635.97
10	A871502	Duplex Recept Circuit 2: 3+1 or 2+2 System		\$43.00	\$430.00
		.E9	CLR: Flint	\$12.47	\$124.70
26	A871503	Duplex Recept Circuit 3: 3+1 or 2+2 System		\$43.00	\$1,118.00
		.E9	CLR: Flint	\$12.47	\$324.22
41	A871504	Duplex Recept Circuit 4: 3+1 or 2+2 System		\$43.00	\$1,763.00
		.E9	CLR: Flint	\$12.47	\$511.27
17	A879072	Base Power In-Feed Cable 3+1 & 2+2 Systems		\$256.00	\$4,352.00
		.P	CLR: Black	\$74.24	\$1,262.08
1	A879168	Power In-Feed Conduit 3+1 & 2+2 Systems		\$618.00	\$618.00
		.P	CLR: Black	\$179.22	\$179.22
32	ALED31U	31" Undercabinet LED Light w/ Power Supply		\$921.00	\$29,472.00
				\$267.09	\$8,546.88
21	ALED31U60	31" Daisy Chain Starter w/ Power Supply		\$970.00	\$20,370.00
				\$281.30	\$5,907.30
15	CCB24L	Cantilever Bkt 24D LH Concensys		\$56.00	\$840.00
		\$(P1)	P1 Paint Opts	\$16.24	\$243.60
		.P02	CLR: Flint		
32	CCB24R	Cantilever Bkt 24D RH Concensys		\$56.00	\$1,792.00
		\$(P1)	P1 Paint Opts	\$16.24	\$519.68
		.P02	CLR: Flint		

12	ET52424LFFB	Ess Personal Twr 64-1/4H LH Wrdrb FF Bev Pull	\$2,418.00	\$29,016.00
		\$(P1) P1 Paint Opts	\$846.30	\$10,155.60
		.P02 CLR: Flint		
		.STD Standard Random key		
10	ET52424RFFB	Ess Personal Twr 64-1/4H RH Wrdrb FF Bev Pull	\$2,418.00	\$24,180.00
		\$(P1) P1 Paint Opts	\$846.30	\$8,463.00
		.P02 CLR: Flint		
		.STD Standard Random key		
20	ETB2W1	Essentials Tower to Worksurface Bracket	\$70.00	\$1,400.00
		\$(P1) P1 Paint Opts	\$24.50	\$490.00
		.P02 CLR: Flint		
8	H2111	Invitation 2110 Series Guest Leg Base Arms	\$694.00	\$5,552.00
		.MOCH FINISH: Mocha	\$270.66	\$2,165.28
		\$(5) GRADE: V Upholstery		
		.SCFSOUT Outlander		
		~ Undecided FABRIC Option		
2	H38170	38000 30D x 66W 2/2 w/Locks Dbl Ped Desk	\$1,669.00	\$3,338.00
		\$(L1STD) Grd L1 Standard Laminates	\$650.91	\$1,301.82
		.MOCH LAM: Mocha		
		\$(CORE) PAINT: Select Core Paint		
		.S PAINT: Charcoal		
5	H38217R	38000 24D x 60W x 29-1/2H 2/R w/Lock Flush Return	\$1,032.00	\$5,160.00
		\$(L1STD) Grd L1 Standard Laminates	\$402.48	\$2,012.40
		.MOCH LAM: Mocha		
		\$(CORE) PAINT: Select Core Paint		
		.S PAINT: Charcoal		
9	H38218L	38000 24D x 60W x 29-1/2H 2L w/Lock Flush Rtn	\$1,032.00	\$9,288.00
		\$(L1STD) Grd L1 Standard Laminates	\$402.48	\$3,622.32
		.MOCH LAM: Mocha		
		\$(CORE) PAINT: Select Core Paint		
		.S PAINT: Charcoal		
1	H38220	38000 Series Bridge 24D x 42W	\$497.00	\$497.00
		\$(L1STD) Grd L1 Standard Laminates	\$193.83	\$193.83
		.MOCH LAM: Mocha		
		\$(CORE) PAINT: Select Core Paint		
		.S PAINT: Charcoal		

7	H38291R	38000 30D x 66W - 2R w/Lock Single Ped Desk	\$1,432.00	\$10,024.00
		\$(L1STD) Grd L1 Standard Laminates	\$558.48	\$3,909.36
		.MOCH LAM: Mocha		
		\$(CORE) PAINT: Select Core Paint		
		.S PAINT: Charcoal		
5	H38292L	38000 30D x 66W - 2L w/Lock Single Ped Desk	\$1,432.00	\$7,160.00
		\$(L1STD) Grd L1 Standard Laminates	\$558.48	\$2,792.40
		.MOCH LAM: Mocha		
		\$(CORE) PAINT: Select Core Paint		
		.S PAINT: Charcoal		
2	H38293R	38000 36D 72W 2/R w/Lock Single Ped Desk	\$1,554.00	\$3,108.00
		\$(L1STD) Grd L1 Standard Laminates	\$606.06	\$1,212.12
		.MOCH LAM: Mocha		
		\$(CORE) PAINT: Select Core Paint		
		.S PAINT: Charcoal		
1	H38294L	38000 36D x 72W - 2L w/Lock Single Ped Desk	\$1,554.00	\$1,554.00
		\$(L1STD) Grd L1 Standard Laminates	\$606.06	\$606.06
		.MOCH LAM: Mocha		
		\$(CORE) PAINT: Select Core Paint		
		.S PAINT: Charcoal		
13	H386015	38000 2 with 30w x 15h flipper doors w/ lock	\$483.00	\$6,279.00
		.L Standard Random Key Lock	\$188.37	\$2,448.81
		\$(CORE) PAINT: Select Core Paint		
		.S PAINT: Charcoal		
13	H386560N	Stack-on Full Clearance 13 1/2Dx60Wx34 3/4x25H	\$720.00	\$9,360.00
		\$(CORE) PAINT: Select Core Paint	\$280.80	\$3,650.40
		.S PAINT: Charcoal		
2	H386566N	Stack-on Full Clearance 13 1/2Dx66Wx34 3/4x25H	\$776.00	\$1,552.00
		\$(CORE) PAINT: Select Core Paint	\$302.64	\$605.28
		.S PAINT: Charcoal		
2	H386572N	Stack-on Full Clearance 13 1/2Dx72Wx34 3/4x25H	\$820.00	\$1,640.00
		\$(CORE) PAINT: Select Core Paint	\$319.80	\$639.60
		.S PAINT: Charcoal		
2	H386615	38000 2 with 33w x 15h flipper doors w/ lock	\$498.00	\$996.00
		.L Standard Random Key Lock	\$194.22	\$388.44
		\$(CORE) PAINT: Select Core Paint		
		.S PAINT: Charcoal		

2	H387215	38000 2 with 36w x 15h flipper doors w/ lock	\$509.00	\$1,018.00
		.L Standard Random Key Lock	\$198.51	\$397.02
		\$(CORE) PAINT: Select Core Paint		
		.S PAINT: Charcoal		
1	H38856R	38000 24D x 72W 2R w/Lock Single Ped Credenza	\$1,290.00	\$1,290.00
		\$(L1STD) Grd L1 Standard Laminates	\$503.10	\$503.10
		.MOCH LAM: Mocha		
		\$(CORE) PAINT: Select Core Paint		
		.S PAINT: Charcoal		
1	H885	Brigade 800 Series Lat File 5 Drawer w/Posting Shelf	\$1,827.00	\$1,827.00
		.L Standard Random Key Lock	\$639.45	\$639.45
		\$(CORE) PAINT: Select Core Paint		
		.S PAINT: Charcoal		
3	H90056	10500 Series Tckbd for 72"W Stack on Strg Bck Enclosure	\$283.00	\$849.00
		\$(A) Gr A Fab	\$110.37	\$331.11
		.TP FABRIC: Tempest		
		35 COLOR: Zebra		
2	HFTLD26	Flock 26 Cylinder Table Laminate	\$631.00	\$1,262.00
		.N No Grommet	\$246.09	\$492.18
		.0 No Ports		
		\$(L1STD) Grd L1 Standard Laminates		
		.MOCH LAM: Mocha		
		.TS Tapered Square Leg		
		.P6N Textured Satin Chrome		
20	HH870960	Tasklight 60W	\$246.00	\$4,920.00
			\$95.94	\$1,918.80
20	HISB6	Ignition Sled Bse Guest Chair	\$595.00	\$11,900.00
		.F Arm: Fixed	\$232.05	\$4,641.00
		.E Nylon Glide		
		.IM Back: Black		
		\$(5) GRADE: V UPHOLSTERY		
		.SCFSOUT Outlander		
		~ Undecided FABRIC Option		
		.PR8T Frame: Textured Titanium		
47	HISB6	Ignition Sled Bse Guest Chair	\$565.00	\$26,555.00
		.N Arm: Armless	\$220.35	\$10,356.45
		.E Nylon Glide		
		.IM Back: Black		

		\$(5)	GRADE: V UPHOLSTERY		
		.SCFSOUT	Outlander		
		~	Undecided FABRIC Option		
		.PR8T	Frame: Textured Titanium		
152	HLWM	Endorse Work Mid-back Mesh Back		\$897.00	\$136,344.00
		.Y2	Synchro Tilt	\$349.83	\$53,174.16
		.A	Arm: Height and Width Adj		
		.H	CASTER: Hard (Standard)		
		.IM	Black Mesh		
		\$(5)	Grade 5 Fabric		
		.SCFSOUT	Outlander		
		~	Undecided FABRIC Option		
		.SB	Base: Standard Plastic Black		
		.N	No Head Rest		
1	HLWMBT	Endorse Work Mid-back Mesh Back Big and Tall		\$1,321.00	\$1,321.00
		.Y4	Synchro Tilt	\$515.19	\$515.19
		.A	Arm: Height and Width Adj		
		.A	CASTER: All Surface		
		.IM	Black Mesh		
		\$(5)	Grade 5 Fabric		
		.SCFSOUT	Outlander		
		~	Undecided FABRIC Option		
		.SB	Base: Standard Plastic Black		
		.N	No Head Rest		
1	HMACABLE	4-Trac Elect Power Entry Cable		\$131.00	\$131.00
				\$51.09	\$51.09
1	HMAPLATE	4-Trac Elect Power Entry Plate		\$84.00	\$84.00
				\$32.76	\$32.76
1	HMAPOWER96	4-Trac Elect 1st Circuit Power kit for 96W Table		\$275.00	\$275.00
				\$107.25	\$107.25
4	HML1S	Grove Single Seat Lounge		\$1,506.00	\$6,024.00
		.N	Arm: Armless	\$587.34	\$2,349.36
		\$(5)	Grade 5 Upholstery		
		.SCFSOUT	Outlander		
		~	Undecided FABRIC Option		
		.TS	Tapered Square Leg		
		.MOCH	Color: Mocha		
4	HML1S	Grove Single Seat Lounge		\$1,406.00	\$5,624.00
		.N	Arm: Armless	\$548.34	\$2,193.36
		\$(5)	Grade 5 Upholstery		

		.SCFSOUT	Outlander		
		~	Undecided FABRIC Option		
		.TS	Tapered Square Leg		
		.P6N	Color: Text Satin Chrome		
1	HML2ST	Grove Two Seat w/Table		\$3,067.00	\$3,067.00
		.N	Arm: Armless	\$1,196.13	\$1,196.13
		\$(5)	Grade 5 Upholstery		
		.SCFSOUT	Outlander		
		~	Undecided FABRIC Option		
		.TS	Tapered Square Leg		
		.P6N	Color: Text Satin Chrome		
		\$(L1STD)	Grd L1 Standard Laminates		
		.MOCH	LAM: Mocha		
		.N	No Grommets		
		.0	No Ports		
1	HML3S	Grove Three Seat Lounge		\$2,988.00	\$2,988.00
		.N	Arm: Armless	\$1,165.32	\$1,165.32
		\$(5)	Grade 5 Upholstery		
		.SCFSOUT	Outlander		
		~	Undecided FABRIC Option		
		.TS	Tapered Square Leg		
		.P6N	Color: Text Satin Chrome		
3	HNL243679WLB	36x24x78-1/8 Wardrobe w/ lam dr Lf/Bookcase Rt		\$2,356.00	\$7,068.00
		~	Undecided PULL Option	\$918.84	\$2,756.52
		\$(L1STD)	Grd L1 Standard Laminates		
		.MOCH	LAM: Mocha		
		\$(L1STD)	Grd L1 Standard Laminates		
		.MOCH	LAM: Mocha		
2	HNL2448BF	48x24x29-1/2 Bridge w/full mod		\$415.00	\$830.00
		.G	Smooth, Flat	\$161.85	\$323.70
		MOCH	Mocha		
		~	Undecided GROMMET Option		
		\$(L1STD)	Grd L1 Standard Laminates		
		.MOCH	LAM: Mocha		
		\$(L1STD)	Grd L1 Standard Laminates		
		.MOCH	LAM: Mocha		
1	HNL2472DPK	72x24x29-1/2 Credenza w/ Kneespace		\$1,691.00	\$1,691.00
		.G	Smooth, Flat	\$659.49	\$659.49

		MOCH	Mocha		
		~	Undecided PULL Option		
		~	Undecided GROMMET Option		
		\$(L1STD)	Grd L1 Standard Laminates		
		.MOCH	LAM: Mocha		
		\$(L1STD)	Grd L1 Standard Laminates		
		.MOCH	LAM: Mocha		
		\$(L1STD)	Grd L1 Standard Laminates		
		.MOCH	LAM: Mocha		
1	HNL2472RLC	72x24x29-1/2 Credenza w/Lateral Rt		\$1,473.00	\$1,473.00
		.G	Smooth, Flat	\$574.47	\$574.47
		MOCH	Mocha		
		~	Undecided PULL Option		
		~	Undecided GROMMET Option		
		\$(L1STD)	Grd L1 Standard Laminates		
		.MOCH	LAM: Mocha		
		\$(L1STD)	Grd L1 Standard Laminates		
		.MOCH	LAM: Mocha		
		\$(L1STD)	Grd L1 Standard Laminates		
		.MOCH	LAM: Mocha		
1	HNL2472RP	72x24x29-1/2 Rt Ped Credenza		\$1,348.00	\$1,348.00
		.G	Smooth, Flat	\$525.72	\$525.72
		MOCH	Mocha		
		~	Undecided PULL Option		
		~	Undecided GROMMET Option		
		\$(L1STD)	Grd L1 Standard Laminates		
		.MOCH	LAM: Mocha		
		\$(L1STD)	Grd L1 Standard Laminates		
		.MOCH	LAM: Mocha		
		\$(L1STD)	Grd L1 Standard Laminates		
		.MOCH	LAM: Mocha		
1	HNL3672DPBBF	72x36x29-1/2 DP Desk bow top bkft frost mod		\$2,683.00	\$2,683.00
		.G	Smooth, Flat	\$1,046.37	\$1,046.37
		MOCH	Mocha		
		~	Undecided PULL Option		
		~	Undecided GROMMET Option		
		\$(L1STD)	Grd L1 Standard Laminates		
		.MOCH	LAM: Mocha		

		\$(L1STD)	Grd L1 Standard Laminates		
		.MOCH	LAM: Mocha		
		\$(L1STD)	Grd L1 Standard Laminates		
		.MOCH	LAM: Mocha		
2	HNL3672LPBBF	72x36x29-1/2 LP Desk bow top bkft frost mod		\$2,396.00	\$4,792.00
		.G	Smooth, Flat	\$934.44	\$1,868.88
		MOCH	Mocha		
		~	Undecided PULL Option		
		~	Undecided GROMMET Option		
		\$(L1STD)	Grd L1 Standard Laminates		
		.MOCH	LAM: Mocha		
		\$(L1STD)	Grd L1 Standard Laminates		
		.MOCH	LAM: Mocha		
		\$(L1STD)	Grd L1 Standard Laminates		
		.MOCH	LAM: Mocha		
3	HNL4972FD	72x15x48-5/8 Stack-on Storage frosted drs		\$2,427.00	\$7,281.00
		\$(L1STD)	Grd L1 Standard Laminates	\$946.53	\$2,839.59
		.MOCH	LAM: Mocha		
1	HS72ABC	Brigade Bookcase 5-Shelf 12-5/8D x 34-1/2W x 71H		\$454.00	\$454.00
		\$(CORE)	PAINT: Select Core Paint	\$158.90	\$158.90
		.S	PAINT: Charcoal		
13	HT60ND	60Tack Board for 60W Hutch		\$429.00	\$5,577.00
		\$(A)	Gr A Fab	\$167.31	\$2,175.03
		.TP	FABRIC: Tempest		
		35	COLOR: Zebra		
		\$(CORE)	PAINT: Select Core Paint		
		.S	PAINT: Charcoal		
2	HT66ND	66 Tack Board for 66W Hutch		\$443.00	\$886.00
		\$(A)	Gr A Fab	\$172.77	\$345.54
		.TP	FABRIC: Tempest		
		35	COLOR: Zebra		
		\$(CORE)	PAINT: Select Core Paint		
		.S	PAINT: Charcoal		
2	HT72ND	72 Tack Board for 72W Hutch		\$461.00	\$922.00
		\$(A)	Gr A Fab	\$179.79	\$359.58
		.TP	FABRIC: Tempest		
		35	COLOR: Zebra		

		\$(CORE)	PAINT: Select Core Paint		
		.S	PAINT: Charcoal		
1	HTLA3672	Preside 72W x 36D Racetrack Shaped Laminate Top		\$578.00	\$578.00
		.E	T-Mold	\$225.42	\$225.42
		MOCH	Edge: Mocha		
		.G2	Cut out for Flip Top Port		
		\$(L1STD)	Grd L1 Standard Laminates		
		.MOCH	LAM: Mocha		
1	HTLA48168	Preside 168W x 48D Racetrack Shaped Laminate Top		\$1,390.00	\$1,390.00
		.E	T-Mold	\$542.10	\$542.10
		MOCH	Edge: Mocha		
		.G2	Cut out for Flip Top Port		
		\$(L1STD)	Grd L1 Standard Laminates		
		.MOCH	LAM: Mocha		
2	HTLA4896	Preside 96W x 48D Racetrack Shaped Laminate Top		\$844.00	\$1,688.00
		.E	T-Mold	\$329.16	\$658.32
		MOCH	Edge: Mocha		
		.G2	Cut out for Flip Top Port		
		\$(L1STD)	Grd L1 Standard Laminates		
		.MOCH	LAM: Mocha		
7	HTLD36	Preside 36" Round Shaped Laminate Top		\$352.00	\$2,464.00
		.E	T-Mold	\$137.28	\$960.96
		MOCH	Edge: Mocha		
		.N	No Grommets		
		\$(L1STD)	Grd L1 Standard Laminates		
		.MOCH	LAM: Mocha		
7	HTLR36	Preside Laminate Cylinder base for 36" Tops		\$646.00	\$4,522.00
		\$(L1STD)	Grd L1 Standard Laminates	\$251.94	\$1,763.58
		.MOCH	LAM: Mocha		
1	HTLRC168	Lam. Cylinder Base w/ Cord Mgmt For 168" W Tops		\$2,357.00	\$2,357.00
		\$(L1STD)	Grd L1 Standard Laminates	\$919.23	\$919.23
		.MOCH	LAM: Mocha		
2	HTLRC96	Lam. Cyl Base w/ Cord Mgmt For 96" W Tops		\$1,982.00	\$3,964.00
		\$(L1STD)	Grd L1 Standard Laminates	\$772.98	\$1,545.96
		.MOCH	LAM: Mocha		
9	HTPWRGROM2	Preside Flip Top Port-Ellora		\$509.00	\$4,581.00
				\$198.51	\$1,786.59

1	HTTLEG72	Preside Aluminum T leg for 72" Table Tops	\$586.00	\$586.00
		\$(CORE) PAINT: Select Core Paint	\$228.54	\$228.54
		.S Color: Charcoal		
32	OH1536FD	15H x36W Flipper Door Overhead-No Pull	\$625.00	\$20,000.00
		.CM System: On Modular Concensys	\$181.25	\$5,800.00
		\$(P1) P1 Paint Opts		
		.P02 CLR: Flint		
		.STD Standard Random key		
21	OH1560FD	15H x60W Flipper Door Overhead-No Pull	\$901.00	\$18,921.00
		.CM System: On Modular Concensys	\$261.29	\$5,487.09
		\$(P1) P1 Paint Opts		
		.P02 CLR: Flint		
		.STD Standard Random key		
40	PM187-183B	Essentials Mobile Ped BBF 28Hx18Dx15W Bevel Pull	\$701.00	\$28,040.00
		\$(P1) P1 Paint Opts	\$245.35	\$9,814.00
		.P02 CLR: Flint		
		.STD Standard Random key		
18	PM188-182B	Essentials Mobile Ped FF 28Hx18Dx15W Bevel Pull	\$701.00	\$12,618.00
		\$(P1) P1 Paint Opts	\$245.35	\$4,416.30
		.P02 CLR: Flint		
		.STD Standard Random key		
53	T624CB	Cantilever Bracket 24D/30D Universal	\$135.00	\$7,155.00
		\$(P1) P1 Paint Opts	\$39.15	\$2,074.95
		.P02 CLR: Flint		
6	Z-CUSTOM CUT	CUT GROMMET IN TABLES	\$0.00	\$0.00
			\$250.00	\$1,500.00
1	Z-INSTALL	INSTALLATION&REMOVAL OF DEBRIS UNDER CONTRACT	\$0.00	\$0.00
			\$42,875.00	\$42,875.00
1	Z-INVENTORY	INVENTORY	\$0.00	\$0.00
			\$875.00	\$875.00
62	Z-SPACEPLAN	SPACEPLANNING	\$0.00	\$0.00
			\$50.00	\$3,100.00
			Sub Total List:	\$920,611.00
			Sub Total Sell:	\$353,763.39
			Total List:	\$920,611.00
			Total Sell:	\$353,763.39

Please note the following:

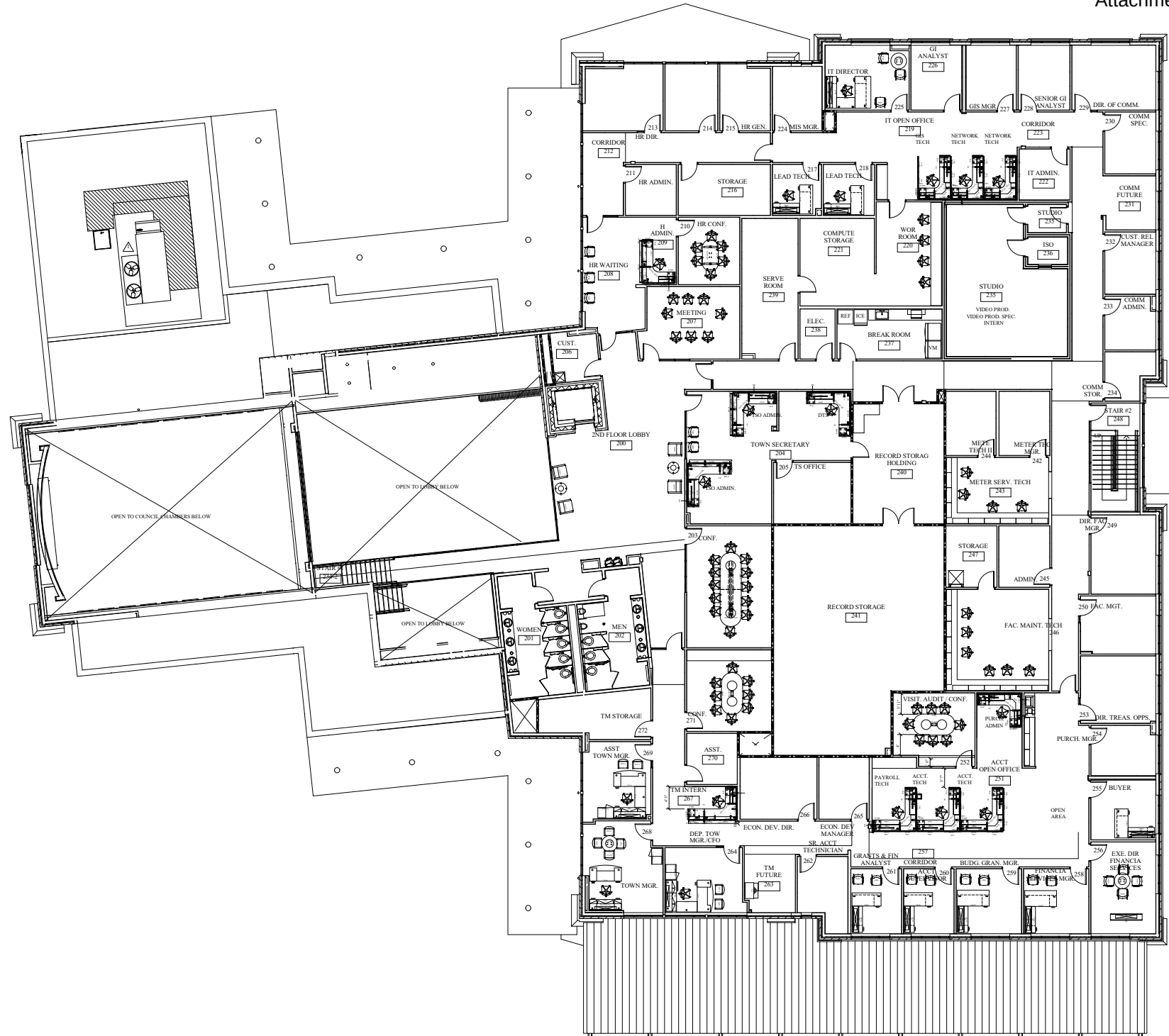
Terms: Net 30 days.
Pricing includes freight, delivery and installation; Mon. - Fri., 8:00 - 5:00.
Pricing does not include relocation of existing furniture, electronic equipment or personal items.
Pricing does not include sales tax, if applicable.
Pricing does not include electrician's fee to access building power or data cable routing pertaining to modular furniture.
Custom or special order items cannot be cancelled or returned; Deposits are non-refundable.
This proposal is valid for 30 days, unless noted otherwise.

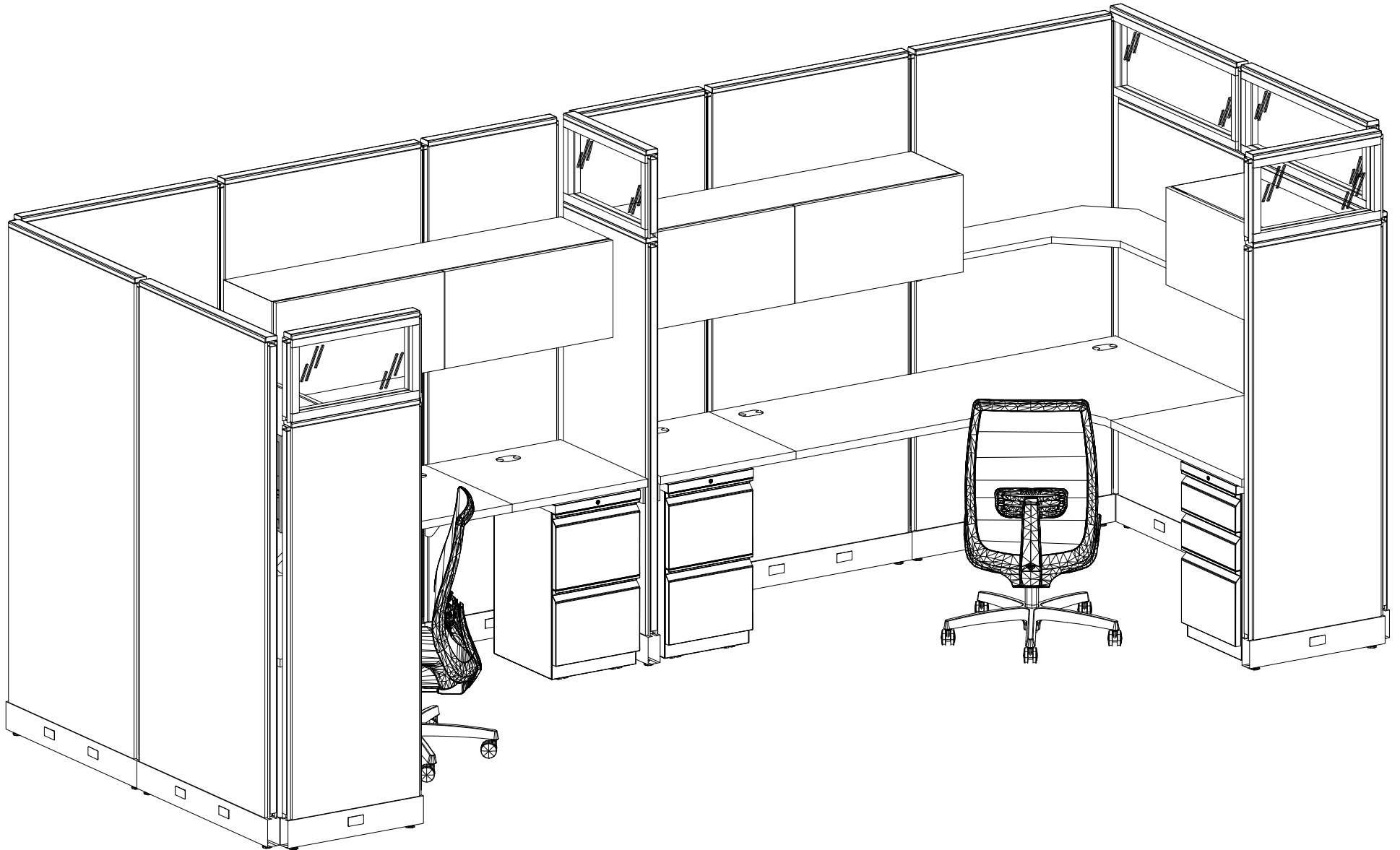
We appreciate the opportunity to offer our services and look forward to working with you on this project.
If you have any further questions, please contact me at 972-424-8561.

Tom Lowe

Approved by: _____ **Date:** _____









TOWN COUNCIL AGENDA ITEM NO. 3

CONSENT ITEM

DATE: June 18, 2018

FROM: Clayton Litton, Parks Superintendent

ITEM: Consider approval of the award of Best Value Bid No. 2018-95-B Tree Services to Arbor Masters Tree Service, and to establish an annual bid price contract for Tree Services throughout the Town in an annual estimated amount of \$50,000.00; and authorization for the Mayor to execute same on behalf of the Town. The contract is for one-year with four one-year renewal options.

BACKGROUND INFORMATION: The Town of Flower Mound solicited bids for Tree Services to be performed at various locations throughout the Town of Flower Mound. Services to be performed vary and include: tree removal and tree pruning.

The bid specifications were developed, and a notice to bidders was advertised. Bids were evaluated by representatives from Facilities Management based on the following evaluation criteria:

1. Equipment
2. Safety Program
3. Work History and References
4. Cost

Staff recommends award of bid to Arbor Masters Tree Service the best value bidder.

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$50,000.00 per year

Proposed Expenditure:	Account Number(s):
\$50,000.00	100-630-33000-5110

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

LEGAL REVIEW: No alteration to the legal content of this contract was made, which had originally been approved by Taylor, Olson, Adkins, Sralla, & Elam L.L.P.

ATTACHMENTS:

1. Evaluation Matrix
2. Contract

DRAFT MOTION: Move to approve the award of Best Value Bid No. 2018-95-B Tree Services to Arbor Masters Tree Service, and to establish an annual bid price contract for Tree Services throughout the Town in an annual estimated amount of \$50,000.00; and authorization for the Mayor to execute same on behalf of the Town.

Bid No. 2018-95-B
Best Value Bid for Tree Services

Attachment 1

EVALUATION MATRIX		POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE
Evaluation Criteria	Weighting	Marathon Resource Management		Arbor Masters Tree Services		Preservation Tree		SRH Landscapes, LLC		Smith Lawn & Tree	
Equipment	20%	2.00	0.40	5.00	1.00	4.00	0.80	2.00	0.40	4.00	0.80
Safety Program	5%	0.00	0.00	0.00	0.00	0.00	0.00	3.00	0.15	3.00	0.15
Work History and References	25%	2.00	0.50	5.00	1.25	4.00	1.00	2.00	0.50	4.00	1.00
Cost	50%	1.00	0.50	4.00	2.00	2.00	1.00	5.00	2.50	3.00	1.50
TOTAL	100%		1.40		4.25		2.80		3.55		3.45

**TOWN OF FLOWER MOUND
CONTRACT FOR SERVICES
BID NO 2018-95-B**

This Contract is made by the Town of Flower Mound, Texas, a municipal Corporation ("Town") and Arbor Masters Tree Service ("Contractor"). The Town and Contractor agree:

1. **EMPLOYMENT OF THE CONTRACTOR.** The Town agrees to retain the Contractor, and the Contractor agrees to provide services relative to: Tree Services (hereinafter referred to as "Services") in connection with the terms and conditions as set forth in the Contract Documents, attached hereto and incorporated by reference.
2. **SCOPE OF SERVICES.** The Services to be performed are specified in the solicitation. Deviations from the scope of work may be authorized from time to time by the Town in writing.
3. **SCHEDULE OF WORK.** The Contractor agrees to begin work upon receipt of written authorization from the Town. Time is of the essence for this Contract and work is to commence immediately.
4. **CONTRACT PERIOD.** The initial contract period is for twelve (12) months from date of award of contract. All pricing is to remain firm during the contract period. The contract is renewable for up to an additional four (4) twelve (12) month periods at the Town's sole option, if written notice of the intent to renew is provided to the Contractor not less than sixty (60) days prior to the termination date of the initial contract period or then current extension.
5. **COMPENSATION.** Contractor's total compensation for services to be performed and expenses to be incurred is specified in Attachment A.
6. **PAYMENTS.** Payments will be processed on a monthly basis with payment available within 30 days after receipt of the invoice for the previous month's service or as set forth in Exhibit B.
7. **INVOICING.** Invoices should be prepared and submitted to the Town for payment in accordance with the Contract Documents. Invoices should be mailed to Accounts Payable, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, TX 75028 or accountspayable@flower-mound.com.
8. **RIGHTS OF WITHHOLDING.** The Town may withhold any payment or partial payment otherwise due the Contractor on account of unsatisfactory performance by the Contractor. The amount to be withheld will be calculated based on the work not performed and the impact to the Town.

Any payment or partial payment that may be withheld for unsatisfactory performance can be used to remedy the lack of performance and will not be paid to the Contractor.

9. **INFORMATION PROVIDED BY THE TOWN.** Although every effort has been or will be made to furnish accurate information, the Town does not guarantee the accuracy of information it furnishes to Contractor.
10. **INSURANCE.** The Contractor shall provide proof that it has obtained and will continue to maintain throughout the duration of the Contract the insurance requirements set forth in Exhibit A, Insurance Requirements. Failure to maintain the required insurance may result in immediate termination of the Contract.
11. **INDEMNIFICATION.** As specified in Exhibit A.
12. **TRANSFER OF INTEREST.** Neither Town nor Contractor may assign or transfer their interests in the Contract without the written consent of the other party. Such consent shall not be unreasonably withheld. This Contract is binding on Town, Contractor, and their successors and assigns. Nothing herein is to be construed as creating a personal liability on the part of any Town officer, employee or agent.
13. **AUDITS AND RECORDS.** At any time during normal business hours and as often as the Town may deem necessary, the Contractor shall make available to the Town for examination all of its records with respect to all matters covered by the Contract and will permit the Town to audit, examine and make copies, excerpts, or transcripts from such records. The Town may also audit all contracts, invoices, payroll records of personnel, conditions of employment and other data relating to the Contract.
14. **EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such actions shall include, but not be limited to the following: employment, promotions, demotion, transfers, recruitment or recruitment advertising, layoffs, terminations, selection for training (including apprenticeships), and participation in recreational activities.

The Contractor agrees to post in conspicuous places, accessible to employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause. The Contractor will, in all

solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by the Contract so that such provisions will be binding upon each subcontractor, except that the foregoing provisions shall not apply to contracts or subcontracts for customary office supplies.

The Contractor shall keep records and submit reports concerning the racial and ethnic origin(s) of applicants form employment and employees as the law may require.

15. **TERMINATION OF CONTRACT.** Town may terminate this contract upon sixty (60) days written notice to Contractor, except in the event (i) Contractor is in breach of this Contract or (ii) Contractor fails to comply with the terms of Exhibit A. If either of the foregoing conditions exists, Town shall notify Contractor and Contractor shall be given two (2) days to cure such breach. Should Contractor fail to cure to the satisfaction of the Town, Town may terminate this Contract upon written notice.

Furthermore, the Town retains the right to terminate this Contract at the expiration of each Town budget period (September 30) during the term of this Contract, even without prior notice as described in the preceding sentence.

In the event of any termination hereunder, the Contractor consents to Town's selection of another Contractor to assist the Town in any way in completing the Services. Contractor further agrees to cooperate and provide any information requested by Town in connection with the completion of the Services.

Contractor shall be compensated for Services performed and expenses incurred for satisfactory work up to the termination date in that Contractor shall receive a portion of fees and expenses permitted under this Contract in direct proportion to percentage of work actually completed up to the termination date. This provision shall not deprive the Town of any remedies against Contractor that may be available under applicable law.

16. **CONTRACTOR'S REPRESENTATIONS.** Contractor hereby represents to Town that Contractor is financially solvent and possesses sufficient experience, licenses, authority, personnel, and working capital to complete the Services required.

17. **TOWN APPROVAL FOR ADDITIONAL WORK.** No payment, of any nature whatsoever, will be made to Contractor for additional work without the Town's written approval before such work begins.
18. **PERFORMANCE BY CONTRACTOR.** All Services provided by the Contractor hereunder shall be performed in accordance with the highest professional standards and in accordance with the Contract Documents, and Contractor shall be responsible for all Services provided hereunder whether such services are provided directly by contractor or by any contractors hired by Contractor. The Contractor shall perform all duties and Services and make all decisions called for hereunder promptly and without unreasonable delay. Contractor shall not utilize subcontractors to perform Services without the Town's prior written consent.
19. **DAMAGE.** In all instances where Town property and/or equipment is damaged by the Contractor's employees, a full report of the facts, extent of the damage and estimated impact on the Contractor's schedule shall be submitted to the Town's Public Works Division by 8 a.m. of the following Town business day after the incident. If damage may result in further damages to the Town or loss of Town property, the Contractor must notify Police Dispatch immediately. The Contractor shall be fully liable for all damage to Town property or equipment caused by the Contractor's officers, employees or agents.
20. **TOWN OBJECTION TO PERSONNEL.** If at any time after entering into this Contract, Town has any reasonable objection to any of Contractor's personnel, or any personnel retained by Contractor, then Contractor shall promptly propose substitutes to whom the Town has no reasonable objection, and the Contractor's compensation shall be equitably adjusted to reflect any difference in the Contractor's costs occasioned by such substitution.
21. **COMPLIANCE WITH LAWS.** The Contractor warrants and covenants to the Town that all Services will be performed in compliance with all applicable federal, state, county and Town laws, rules, and regulations including, but not limited to, the Texas Industrial Safety and Health Act and the Workers Right-to-Know Law. All necessary precautions shall be taken to assure that safety regulations prescribed by OSHA and the Town's Representative are followed.

23. **ENTIRE CONTRACT.** This instrument together with the Contract Documents of which this Contract is a part contains the entire Contract between the Town and Contractor concerning the Services. There will be no understandings or contracts other than those incorporated herein. The Contract may not be modified except by an instrument in writing signed by the parties hereto. In the event of a conflict between an attachment to this Contract and this Contract, this Contract shall control.
24. **MAILING ADDRESSES.** All notices and communications concerning this Contract to be mailed or delivered to the Town shall be sent to the address of the Town as follow, unless and until the Contractor is otherwise notified:

Sabrina Zadow
Purchasing Manager
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, TX 75028

All notices and communications under this Contract to be mailed or delivered to the Contractor shall be sent to the address listed below until the Town is otherwise notified:

Name: Steve Driskill
Title: Manager
Company Name: Arbor Masters Tree Service
Address: 1510 Jelmak St
City, State, Zip: Grand Prairie, TX 75050

Any notices and communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date in the notice or communication is placed in the United States Mail or hand-delivered.

25. **LEGAL CONSTRUCTION.** If any one or more of the provisions contained in the Contract for any reason is held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Contract shall be construed as if such invalid, illegal or unenforceable provision had never been included.
26. **GOVERNING LAW.** The validity of this Contract and of any of its terms or provisions as well as the rights and duties hereunder, shall be governed by and construed in accordance with Texas law. Venue for this Contract shall be located in Denton County, Texas.

27. **COUNTERPARTS.** The Contract may be signed in counterparts, each of which shall be deemed to be an original.
28. **EFFECTIVE DATE.** This contract shall be effective once it is signed by the Town and Contractor.

AGREED TO BY:**Arbor Masters Tree Service****TOWN OF FLOWER MOUND, TEXAS**

By: 
Name: Jerry Day
Title: President

By: _____
Honorable Mayor

Date: 05/18/2018

Date: _____

**RFQ No 2018-95-B
Attachment A
Pricing Worksheet**

Provide all costs associated to perform the services as indicated below. **The prices quoted must be all inclusive in order to be considered.**

Item #	Quantity	Description of Products/Services	Unit Cost
1.	Per Svc	Class One (1) Tree Pruning Services Per Scope of Services	\$ 160.00 Per Hr
2.	Per Svc	Class Two (2) Tree Pruning Services Per Scope of Services	\$ 160.00 Per Hr
3.	Per Svc	Class Three (3) Tree Pruning Services Per Scope of Services	\$ 160.00 Per Hr
4.	Per Svc	Roadway Right of Way Clearing Per Scope of Services	\$ 160.00 Per Hr
5.		Tree Removal Services By Diameter Per Scope of Services	
5.a.	Per Svc	Tree Removal Services Per Scope of Services for Tree Sizes up to Ten (10) Inches in Diameter.	\$ 160.00 Per Hr
5.b.	Per Svc	Tree Removal Services Per Scope of Services for Tree Sizes Between Eleven and Fifteen (11-15) Inches in Diameter.	\$ 160.00 Per Hr
5.c.	Per Svc	Tree Removal Services Per Scope of Services for Tree Sizes Between Sixteen and Twenty (16-20) Inches in Diameter	\$ 160.00 Per Hr
5.d.	Per Svc	Tree Removal Services Per Scope of Services for Tree Sizes Between Twenty One and Twenty Five (21-25) Inches in Diameter	\$ 160.00 Per Hr
5.e.	Per Svc	Tree Removal Services Per Scope of Services for Tree Sizes Between Twenty Six and Thirty (26-30) Inches in Diameter	\$ 160.00 Per Hr
5.f.	Per Svc	Tree Removal Services Per Scope of Services for Tree Sizes Between Thirty One and Thirty Six (31-36) Inches in Diameter	\$ 160.00 Per Hr
5.g.	Per Svc	Tree Removal Services Per Scope of Services for Tree Sizes Between Thirty Seven and Forty (37-40) Inches in Diameter	\$ 160.00 Per Hr
5.h.	Per Svc	Tree Removal Services Per Scope of Services for Tree Sizes Between Forty One and Sixty (41-60) Inches in Diameter	\$ 160.00 Per Hr
5.i.	Per Svc	Tree Removal Services Per Scope of Services for Tree Sizes Above Sixty (60) Inches in Diameter	\$ 160.00 Per Hr
6.	Per Svc	Stump Grinding to Include All Stumps Regardless of Diameter Per Scope of Services	\$ 160.00 Per Hr
7.	Per Svc	Other Vendor Fees as Required. Please Describe.	

Emergency Call Outs	
\$150.00 Each	
Grapple for debris greater than 15"	
\$185.00 Per hour	\$

Arbor Masters Equipment List and Condition for Bid

Year	Make	Model	Description	Condition
2012	Freightliner	M2	Bucket Truck	Good
2015	Freightliner	MB2	Bucket Truck	Good
2014	Freightliner	MB2	Bucket Truck	Good
2018	Freightliner	M2-106	Bucket Truck	Good
2008	Ford	F550	Chip Truck	Good
2008	Vermeer	BC1500	Chipper	Good
2007	Vermeer	BC-1000	Chipper	Good
2014	Bandit	1390XP	Chipper	Good
2005	International	4200	Chipper Truck	Good
2001	Western Star	4964 EX	Claw Truck 40 cu yds	Good
1999	Volvo	686	Claw Truck 50 cu yds	Good
2013	Freightliner	114SD	Claw Truck 60 cu yds	Good
2006	Bandit	1590	Drum Chipper	Good
2004	GMC	C7C	Forestry Bucket Truck	Good
2005	GMC	C7C	Forestry Bucket Truck	Good
2014	Bandit	990XP-N	N Chipper	Good
2004	Ford	F550	Spray Rig	Good
2012	Bandit	2550	Stump Grinder	Good
2010	Rayco	C100LGP	Forestry Mulcher	Good
2011	Rayco	C200T	Forestry Mulcher	Good
2008	Chevrolet	2500	Tool Truck	Good

**RFQ No 2018-95-B
Attachment C
Vendor Information Form**

VENDOR INFORMATIONNumber of employees: Full time 175Number of employees: Part time: 0Length of time in business: 62 years

Physical location of business (full address, including city, state & zip code):

1510 Jelmak Street, Grand Prairie, TX 75050**VENDOR CONTACTS**

The successful vendor must provide, to a designated Parks Representative, a valid telephone number and name of a designated company representative. The telephone number must be answered on workdays, Monday-Friday, 7:00 AM to 5:00 PM. An alternate or emergency telephone number must also be provided to the Parks Representative. Failure to provide this information may be considered reason to terminate the contract.

Company Representative: Steve DriskillCompany Telephone Number (including are code): 214-277-9872Emergency Telephone Number (including are code): 817-919-4866**SUBCONTRACTOR INFORMATION**

Vendors must provide the following information for any portion of work under this contract being subcontracted. **All subcontractors will be approved by the Town of Flower Mound prior to commencement of work.**

Name: N/AType of Work: Amount: Portion of work by bidder: %Portion of work by sub-contractor. %

**RFQ No 2018-95-B
Attachment D
References**

Please provide at least three (3) references for same or similar services as the Town has specified in the quote in the spaces provided below.

Company Name: City of Grapevine, TX
 Contact Name: Mike Hooker
 Address: 501 Shady Brook Drive
Grapevine, TX 76051
 Phone: 817-343-1536
 Fax: 817-410-3051
 Effective Dates: 2011 - Present
 Description of Services: Routine tree maintenance, tree removal, storm clean up, stump grinding.

Company Name: City of Dallas, TX
 Contact Name: Karen Woodard
 Address: 320 E. Jefferson
Dallas, TX 75203
 Phone: 217-671-4491
 Fax: 214-670-3226
 Effective Dates: 2013 - Present
 Description of Services: Routine tree maintenance, tree removal, storm clean up.

Company Name: City of Arlington, TX
 Contact Name: Wendy Pappas
 Address: 924 Randol Mill Road
Arlington, TX 76004
 Phone: 817-575-8311
 Fax: 817-801-5762
 Effective Dates: 2014 - Present
 Description of Services: Routine tree maintenance, tree removal, storm clean up, forestry mowing.

**Bid Certification Form
RFQ No. 2018-95-B
Tree Services**

Company Information

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

Company Name: Shawnee Mission Tree Service, Inc. DBA Arbor Masters Tree Service

Principal Place of Business Address: 1510 Jelmak Street

Principal Place of Business City, State, Zip: Grand Prairie, TX 75050

Principal Place of Business Phone Number: 469-586-5829

Principal Place of Business Fax Number: 469-586-5780

Remittance Address (if different from above): _____

Remittance City, State, Zip: _____

Tax Identification No: 48-0833928

Addendums

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

Add. No. 1 AD Add. No. 2 _____ Add. No. 3 _____ Add. No. 4 _____ Add. No. 5 _____

Certification

The undersigned hereby certifies that he/she understands the specifications, has read the document in its entirety and that the prices contained in this quote have been carefully reviewed and are submitted as correct and final. Vendor further certifies and agrees to furnish any or all products/services upon which prices are extended at the price offered, in accordance with the terms and conditions contained herein. Vendor agrees that acceptance of any or all items by the Town of Flower Mound, Texas, within the time frame indicated in this quote constitutes a contract.

The individual signing this quote 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 prices and supporting documentation provided.

Authorized Representative: _____
Signature _____ Date 5/14/18

Printed Name Jerry Day

Title President

Email Address Jday@arbormasters.com

CONFLICT OF INTEREST QUESTIONNAIRE For vendor or other person doing business with local governmental entity		FORM CIQ
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 	
1 Name of person who has a business relationship with local governmental entity. Shawnee Mission Tree Service, Inc. DBA Arbor Masters Tree Service		
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. <u>N/A</u> 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.		
4 Signature of person doing business with the governmental entity <u>5/14/18</u> Date		

Adopted 06/29/2007

Arbor Masters Ft. Worth Equipment			Major Mechanical
Oil Change and general maintenance			
2013 Freightliner Grapple	2/21/17, 6/5/17, 9/1/17		9/1/17 replaced two shocks on rear/front axle, installed new tie rod
2001 Westernstar Grapple	4/13/17, 11/15/17		11/15/17 replaced hydraulic lines. 12/14/17 replaced 2" hydraulic line and one on boom
1999 Volvo Grapple	1/10/17, 4/20/17		4/20/17 new batteries, wiper blades, and 2 hydraulic hoses
2014 Freightliner Bucket	3/10/17, 5/9/17, 11/1/17		9/1/17 replaced rear/right side rotor, brake pads, new hub seal, caliper cylinder seal
2015 Freightliner Bucket	2/21/17, 5/18/17, 8/4/17		
2012 Freightliner Bucket	3/7/17, 12/1/17		
2017 Freightliner Bucket	5/9/17, 12/19/17		4/3/17 replaced water pump and belt. 12/1/17 new wiper blades
2005 Gmc Bucket	3/6/17, 12/1/17		
2005 International Chip truck	12/21/16, 7/31/17		3/6/17 fixed strobe and hour gauge. 12/1/17 repaired air leak and replaced starter
2002 Ford Chip truck	8/15/2017		
2008 Ford Chip truck	2/23/17, 7/27/17, 10/25/17		
2007 12" chipper	1/4/17, 7/14/17		7/14/17 flipped blades and adjusted clutch
2007 12" chipper	2/23/17, 11/3/17		10/4/17 replaced both the back brake plates and right rotor. 11/3/17 sharpened blades and welded on chute
2008 12" chipper	2/20/17, 10/10/17		10/10/17 4 new motor mounts, arm for the roll feeder
2014 12" chipper	1/4/17, 6/9/17		1/4/17 new drum and elec. Brake. 6/9/17 flipped blades
2014 12" chipper	2/15/17, 10/25/17		1/26/17 flipped blades. 10/25/17 adjust clutch
2008 15" chipper	2/24/17, 6/25/17		3/2/17 replaced blades and new ignition. 10/9/17 sharpened blades
2006 15" chipper	1/27/17, 6/13/17,		1/27/17 new starter and clutch. 4/6/17 replaced throttle cable. 12/7/17 new starter
2012 Stump Grinder	1/4/17, 9/20/17		9/20/17 repaired front axle and greased
Forestry Mower	2/23/17, 8/28/17, 12/15/17		8/28/17 replaced hydraulic line. 11/25/17 new module pressure monitor
2017 Storm Trailer			

**Arbor Masters Tree Service
Grand Prairie, Texas**

Is Accredited by the Tree Care Industry Association for:



- ☒ Adherence to ethical business practices;
- ☒ Compliance with industry standards for safety and performance; and,
- ☒ Provision of quality service.

*Arbor Masters Tree Service
Grand Prairie, Texas*

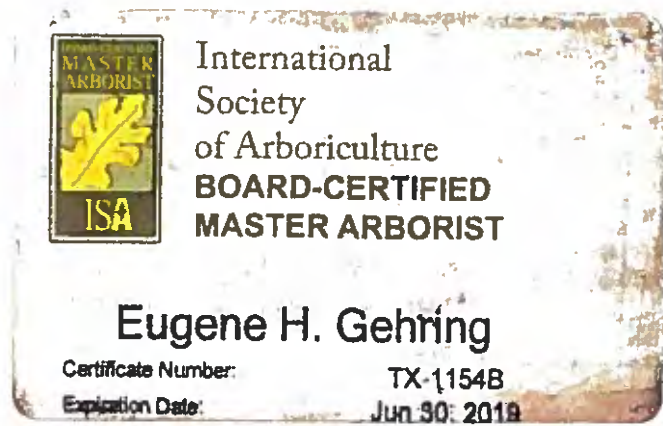
has maintained Accredited status in good standing since 5/20/2009.
This annual Accreditation certificate is valid through 5/20/2018.

July 5, 2017

Date

Robert Rouse, Chief Program Officer

Robert Rouse



International Society of Arboriculture™ Tree Risk Assessment Qualification

Eugene H. Gehring

Having successfully completed the requirements established by the Certification Board of the International Society of Arboriculture™, the above named is hereby recognized as ISA Tree Risk Assessment Qualified.



Skip Kincaid

Skip Kincaid, Certification Board Chair
International Society of Arboriculture

Jim Skiera

Jim Skiera, Executive Director
International Society of Arboriculture

March 18, 2015

Issue Date

March 18, 2020

Term of Validity End Date



Applicators are required to keep certificates of completion for 12 months following renewal of a license. 4 TAC§7.24(s)

Regulations and statutory provisions governing pesticide applicator licensees and their use of pesticides may be found in Chapter 7, Title 4, of the Texas Administrative Code and Chapter 76 of the Texas Agriculture Code, respectively. TDA's web site provides convenient links to these laws. Failure to comply with these laws, including misuse of any pesticide, may result in revocation, suspension, modification, or probation of your license and/or assessment of monetary administrative penalties.

If you have any questions regarding your license, please contact our Austin headquarters toll free at (877) LIC-AGRI (877-542-2474), or visit our web site at www.TexasAgriculture.gov. For the hearing impaired, you may call Relay Texas (800) 735-2988 (voice) or (800) 735-2989 (TDD) or visit our web site.

TEXAS DEPARTMENT OF AGRICULTURE	
P. O. BOX 12847 AUSTIN, TEXAS 78711-2847	
COMMERCIAL PESTICIDE APPLICATOR LICENSE	
H EUGENE GEHRING	
PO BOX 13764 ARLINGTON TX 76094	TDA Client No: 00271740 License No: 0282744 Effective Date: 02/28/2018 Expires: 02/28/2019
	

Front side

Categories: 3A	
Descriptions:	
1A Field Crop	3A Landscape Maint
1B Fruit, Nut, & Veg	3B Nursery Plant Prod
1C Pasture & Rangeland	4 Seed Treatment
1D Vertebrate Pest	5 Vegetation Mgmt
1E Farm Commodity Pest Control	6 Aquatic
1F Animal Health	7 Demonstr & Research
1G Citrus	8 Reg Pest Control
1H Livestock Prot Collar	9 Aerial Application
1I M-44 Device	11 Soil Fumigation
2 Forest Pest Control	12 Public Health Pest Control (Vector)

Back side

LAMINATION ADVISED: Please cut out along heavy black lines, placing front and back sides together, and laminate.

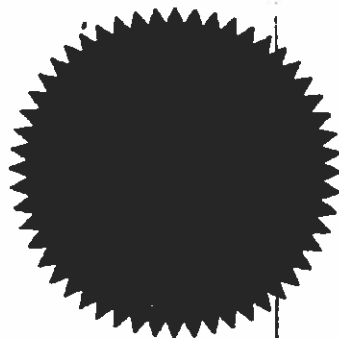
TEXAS DEPARTMENT OF AGRICULTURE		
COMMISSIONER SID MILLER		
P. O. BOX 12847 AUSTIN, TEXAS 78711-2847		
(877) LIC-AGRI (877-542-2474)		
For the hearing impaired: (800) 735-2989 TDD (800) 735-2988 VOICE		
www.TexasAgriculture.gov		
COMMERCIAL PESTICIDE APPLICATOR LICENSE		
This is to certify that the person whose name appears below has met the requirements of Texas Agriculture Code Chapter 76, relating to application of restricted-use or state-limited-use pesticides or regulated herbicides. This license is issued for purchase and application of restricted-use or state-limited-use pesticides or regulated herbicides to be used according to label directions consistent with the use categories listed below.		
H EUGENE GEHRING PO BOX 13764 ARLINGTON TX 76094	TDA Client No: License No: Effective Date: Expires: Categories:	00271740 0282744 February 28, 2018 February 28, 2019 3A
		

INTERNATIONAL SOCIETY OF ARBORICULTURE

CERTIFIED ARBORIST™

Steve Driskill

Having successfully completed the requirements set by the Arborist Certification
Board of the International Society of Arboriculture,
the above named is hereby recognized as an ISA Certified Arborist®



Jim Skiera, Executive Director
International Society of Arboriculture

Steph Kieran
Certification Board, Chair
International Society of Arboriculture

MW-5358A	Nov 03, 2012	Dec 31, 2018
Certification Number	Certified Since	Expiration Date

Applicators are required to keep certificates of completion for 12 months following renewal of a license. 4 TAC§7.24(s)

Regulations and statutory provisions governing pesticide applicator licensees and their use of pesticides may be found in Chapter 7, Title 4, of the Texas Administrative Code and Chapter 76 of the Texas Agriculture Code, respectively. TDA's web site provides convenient links to these laws. Failure to comply with these laws, including misuse of any pesticide, may result in revocation, suspension, modification, or probation of your license and/or assessment of monetary administrative penalties.

If you have any questions regarding your license, please contact our Austin headquarters toll free at (877) LIC-AGRI (877-542-2474), or visit our web site at www.TexasAgriculture.gov. For the hearing impaired, you may call Relay Texas (800) 735-2988 (voice) or (800) 735-2989 (TDD) or visit our web site.

TEXAS DEPARTMENT OF AGRICULTURE P. O. BOX 12847 AUSTIN, TEXAS 78711-2847	
COMMERCIAL PESTICIDE APPLICATOR LICENSE STEVE DRISKILL II	
1510 JELMAK GRAND PRAIRIE TX 75050	TDA Client No: 00568725 License No: 0749544 Effective Date: 11/30/2017 Expires: 11/30/2018
	

Front side

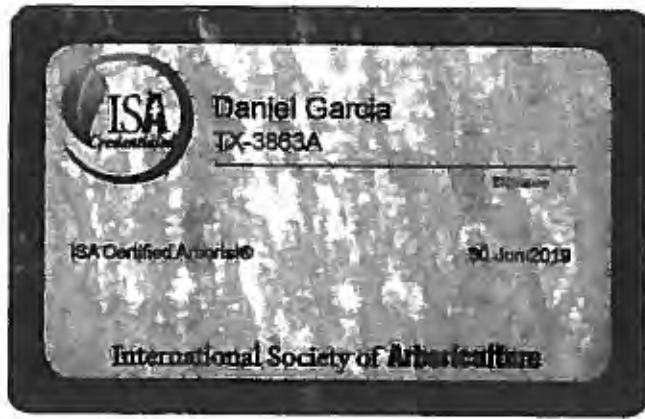
Categories: 3A	
Descriptions:	
1A Field Crop 1B Fruit, Nut, & Veg 1C Pasture & Rangeland 1D Vertebrate Pest 1E Farm Commodity Pest Control 1F Animal Health 1G Citrus 1H Livestock Prot Collar 1I M-44 Device 2 Forest Pest Control	3A Landscape Maint 3B Nursery Plant Prod 4 Seed Treatment 5 Vegetation Mgmt 6 Aquatic 7 Demonstr & Research 8 Reg Pest Control 9 Aerial Application 11 Soil Fumigation 12 Public Health Pest Control (Vector)

Back side

LAMINATION ADVISED: Please cut out along heavy black lines, placing front and back sides together, and laminate.

TEXAS DEPARTMENT OF AGRICULTURE COMMISSIONER SID MILLER P. O. BOX 12847 AUSTIN, TEXAS 78711-2847 (877) LIC-AGRI (877-542-2474) For the hearing impaired: (800) 735-2989 TDD (800) 735-2988 VOICE www.TexasAgriculture.gov		
COMMERCIAL PESTICIDE APPLICATOR LICENSE		
This is to certify that the person whose name appears below has met the requirements of Texas Agriculture Code Chapter 76, relating to application of restricted-use or state-limited-use pesticides or regulated herbicides. This license is issued for purchase and application of restricted-use or state-limited-use pesticides or regulated herbicides to be used according to label directions consistent with the use categories listed below.		
STEVE DRISKILL II 1510 JELMAK GRAND PRAIRIE TX 75050	TDA Client No: License No: Effective Date: Expires: Categories:	00568725 0749544 November 30, 2017 November 30, 2018
		

3A





Heather Dirksen
MW-5859A

Expiration

ISA Certified Arborist®

30 Jun 2020

International Society of Arboriculture

EXHIBIT A

INSURANCE REQUIREMENTS CONSTRUCTION SERVICES

Services for construction projects, including but not limited to: General Contractors, Demolition Contractors, Utility Contractors, Building Contractors, Street and Road Contractors, etc.

Contractor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the vendor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the contractor's bid. A certificate of insurance meeting all requirements and provisions outlined herein shall be provided to the Town prior to any services being performed or rendered. Renewal certificates shall also be supplied upon expiration.

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. ISO Form Number GL 00 01 (or similar form) covering Comprehensive General Liability. "Occurrence" form only, "claims made" forms are unacceptable.
2. Workers Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.
3. Automobile Liability as required by the State of Texas, covering all owned, hired, or non-owned vehicles. Automobile Liability is only required if vehicle(s) will be used under this contract.

B. MINIMUM LIMITS OF INSURANCE

Contractor shall maintain throughout contract limits not less than:

1. Commercial General Liability: \$1,000,000 per occurrence / \$2,000,000 in the aggregate for third party bodily injury, personal injury and property damage. Policy will include coverage for:
 - a. Premises / Operations
 - b. Broad Form Contractual Liability
 - c. Products and Completed Operations
 - d. Personal Injury
 - e. Broad Form Property Damage
 - f. Explosion Collapse and Underground (XCU) Coverage.
2. Workers Compensation and Employer's Liability: Workers Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability minimum limits of \$100,000 per injury, \$300,000 per occurrence, and \$100,000 per occupational disease.
3. Automobile Liability: \$1,000,000 Combined Single Limit. Limits can only be reduced if approved by the Town. Automobile liability shall apply to all owned, hired and non-owned autos.
4. Builders' Risk Insurance: Completed value form, insurance carried must be equal to the completed value of the structure. Town shall be listed as Loss Payee.
5. \$1,000,000 Umbrella Liability Limit that follows form over underlying Automobile Liability, General Liability, and Employers Liability coverages.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductible or self-insured retentions in excess of \$10,000 must be declared to and approved by the Town

D. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain the following provisions:

1. General Liability and Automobile Liability Coverages:

- a. The Town, its officers, officials, employees, boards and commissions and volunteers are to be added as "Additional Insured's" relative to liability arising out of activities performed by or on behalf of the contractor, products and completed operations of the contractor, premises owned, occupied or used by the contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Town, its officers, officials, employees or volunteers.
- b. The contractor's insurance coverage shall be primary insurance in respects to the Town, its officers, officials, employees and volunteers. Any insurance or self- insurance maintained by the Town, its officers, officials, employees or volunteers shall be in excess of the contractor's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Town, its officers, officials, employees, boards and commissions or volunteers.
- d. The contractor's insurance shall apply separately to each insured against whom the claim is made or suit is brought, except to the limits of the insured's limits of liability.

2. Workers Compensation and Employer's Liability Coverage:

The insurer shall agree to waive all rights of subrogation against the Town, its officers, officials, employees and volunteers for losses arising from work performed by the contractor for the Town.

3. All Coverages:

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given the Town.

E. ACCEPTABILITY OF INSURERS

The Town prefers that Insurance be placed with insurers with an A.M. Best's rating of no less than A- VI, or better.

F. VERIFICATION OF COVERAGE

Contractor shall provide the Town with certificates of insurance indicating coverage's required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates of Insurance similar to the ACORD Form are acceptable. Town will not accept Memorandums of Insurance or Binders as proof of insurance. The Town reserves the right to require complete, certified copies of all required insurance policies at any time.



ARBOMAS-04

KBOOTH

CERTIFICATE OF LIABILITY INSURANCE

 DATE (MM/DD/YYYY)
 05/10/2018

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 The Robert E Miller Group 6363 College Blvd., Suite 400 Overland Park, KS 66211		CONTACT NAME: PHONE (A/C, No, Ext): (816) 333-3000 FAX (A/C, No): (816) 822-1641 E-MAIL ADDRESS:	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A : Zurich America Ins Co. (AC)	
		INSURER B : Navigators Insurance Company	
		INSURER C : Western World Insurance Group	
		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 GENL AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☒ LOC ☐ OTHER	X	X	GLO581802205	03/01/2018	03/01/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 EMP BENEFIT AGG \$ 1,000,000
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS ONLY	X	X	BAP581802305	03/01/2018	03/01/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION \$	X	X	HO18EXC799733IV	03/01/2018	03/01/2019	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WC581802105	03/01/2018	03/01/2019	☒ PER STATUTE ☐ OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Excess Umbrella			GLX100026700	03/01/2018	03/01/2019	Limit 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Town of Flower Mound is an additional insured as respects to liability coverage, excluding Workers Compensation and Employers Liability, for ongoing and completed operations, as required by contract. Waiver of subrogation applies where allowed by law. Coverage is primary and noncontributory. 30 Day Notice of Cancellation applies

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

MT Miller

RELEASE AND INDEMNIFICATION OF LIABILITY

STATE OF TEXAS

)

)

KNOWN ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON

)

This release of liability and indemnity agreement (hereinafter called "Release"), is entered into by the undersigned, as an independent contractor, or as an agent or authorized representative of an independent contractor of the Town of Flower Mound, Texas (hereinafter called "Undersigned Contractor").

WHEREAS, the Undersigned Contractor has entered into a contractual relationship with the Town of Flower Mound, Texas (hereinafter called "Town") and has been engaged by the Town to perform certain work for the Town (hereinafter called "Work"); and

WHEREAS, the Undersigned Contractor, in consideration for being awarded the Work by the Town, agrees to release the Town from all liability that might result from the Work or activities related to the Work, and to indemnify the Town from all liability that might result from the Work or activities related to the Work.

NOW, THEREFORE, for and in consideration of the Town engaging the Undersigned Contractor as an independent contractor of the Town to perform the Work, including the recitals set forth above, the Undersigned Contractor agrees as follows:

1. The Undersigned Contractor, on his/her behalf, and on behalf of his/her personal representatives, heirs, successors, contractors, subcontractors, agents, servants, and employees, and all persons, natural or corporate, in privity with them or any of them, does hereby release, acquit, and forever discharge the Town, its officers, agents, servants and employees, from all liability and from any and all claims or causes of action of any kind whatsoever, at common law, statutory or otherwise, attributable to the acts of omissions of the Undersigned Contractor, the Undersigned Contractor's personal representatives, successors, contractors, subcontractors and employees, and from any and all losses, damages and any claim of damages on account of injury to the person or property of the Undersigned

Contractor or others, or the death of the Undersigned Contractor or others, arising out of the Work or activities related to the Work.

2. The Undersigned Contractor assumes full responsibility for any and all bodily injury, death, property damage or any other damage or injury of any kind due to the negligence of the Undersigned Contractor and the Undersigned Contractor's personal representatives, successors, contractors, subcontractors, employees and others, including any act of negligence by the Town, its officers, agents and employees.

3. The Undersigned Contractor agrees to indemnify and hold harmless the Town, its officers, agents and employees, and any other person, firm, or corporation bound to defend or pay judgments against the Town, its officers, agents, employees, from and against any and all claims, demands, or causes of action, including claims for contribution or indemnity, and the reasonable and necessary costs, including attorney's fees, incurred in defense of any claim that any person has or may have arising out of or resulting from the Work, or activities related to the Work.

4. This Release shall be construed according to the laws of the State of Texas. Venue for any suit shall be in Denton County, Texas, in the appropriate federal or state court having jurisdiction over the matters and facts in controversy.

5. This Release contains the entire agreement between the Undersigned Contractor and the Town regarding the Undersigned Contractor's indemnification of the Town and release of the Town from all liability. The terms of this Release are contractual and not a mere recital.

6. This Release shall be binding upon the Undersigned Contractor's heirs, assigns, administrators, executors and legal representatives forever.

7. In making this Release, the Undersigned Contractor has not relied upon any statement or representation pertaining to this matter made by other persons, firms, organizations or corporation, or by any person or persons representing them, and states that he/she is making this Release and executing this Release solely of his/her own judgment. The Undersigned Contractor understands fully that this Release covers and includes every claim of every kind which he/she has or may have in the future arising out of the Undersigned Contractor's performance of the Work, or activities related to the Work.

8. The Undersigned Contractor expressly agrees that this Release is intended to be as broad and inclusive as permitted by the laws of the State of Texas and that if any portion of this Release is held to be invalid by a court of competent jurisdiction, the Undersigned Contractor agrees that all remaining provisions of the Release shall remain and continue in full force and legal effect.

9. It is the intent of all parties hereto that all indemnity obligations and liability are assumed by the Undersigned Contractor without regard to the causes thereof or the negligence of any party or parties, including any negligence of the Town, its officers, agents and employees, whether the negligence by sole, joint or concurrent, active or passive.

10. The Undersigned Contractor states that he/she has carefully read the foregoing Release and knows the contents thereof and signs the same as his/her own free act.

Witness my hand this 14th day of May, 20 18

Arbor Masters Tree Service
An independent contractor of the
Town of Flower Mound

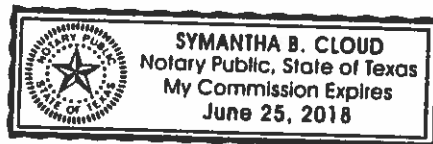
By: [Signature]

Its: President
(Title)

Subscribed and sworn to before me on this 14 day of May, 20 18

Symant B Cloud
Notary Public in and for the State of Texas

My commission expires June 25, 2018





Purchasing & General Services

Addendum No. 1

Issued April 23, 2018

Bid No:	2018-95-B
Bid Title:	Tree Services
Bids Due:	05/15/2018 @ 11:00 am (CT)

Addendum #1 is issued by the Town of Flower Mound Purchasing Office. The following revisions are hereby made to the bid documents for this project.

GENERAL QUESTIONS AND CLARIFICATIONS

Q: Is there a mandatory crew size?

A: It is up to the bidder to determine how many crew members that they wish to have and price it per hour.

Q: Could you please share the current contract rates to help provide context? What has the average budget for contract pruning been over the last several years?

A: The price can vary a lot year to year depending on several factors, but to answer the question over the last 3 years we have spent an average of \$25,000 per year.

All other provisions of the contract documents, plans and specifications shall remain the same.

For questions regarding this addendum contact:

Marquita Shamlin

Purchasing Buyer

(972) 874-6006

marquita.shamlin@flower-mound.com



Purchasing & General Services Competitive Sealed Bid

Bid No:	2018-95-B
Bid Title:	Tree Services
Questions Deadline:	5/9/2018 @ 12:00PM
Due Date and Time:	5/15/2018 @ 11:00AM

Sealed 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 bid in hard copy only, in a sealed envelope to the address listed below.

Delivery and Mailing Address:

**Town of Flower Mound
Attn.: Purchasing Division
2121 Cross Timbers Road
Flower Mound, Texas 75028**

Late submissions will not be considered. Responses must be submitted with the bid number and the respondent's name and address clearly indicated on the front of the 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, Buyer
(972) 874-6006
marquita.shamlin@flower-mound.com

The Town of Flower Mound appreciates your time and effort in preparing a response. **Please note that responses must be received by the deadline shown.** Responses received after the deadline will not be considered for the award of the bid and will be returned unopened. Responses will be publicly opened and read aloud on the bid due date and time at the Town of Flower Mound, Town Hall, 2121 Cross Timbers Road, Flower Mound, Texas, 75028.

**Town of Flower Mound
RFQ No. 2018-95-B
Tree Services**

I. Introduction

The Town of Flower Mound is soliciting quotes to establish an annual fixed price contract for tree services, as described in the following specifications. The term of the contract will be one year, with four (4) optional one-year renewal periods. The contract will be awarded to the vendor(s) providing the best value to the Town of Flower Mound, as determined by the evaluation criteria as stated herein.

This contract will contain a fixed pricing structure for the term of the contract. Any quantities stated herein are estimates only and not a commitment to purchase. The department will order on a non-exclusive, as needed basis only.

II. Scope of Services

The successful vendor will provide tree pruning and brush maintenance services, tree removal services, tree debris removal services, stump grinding services and roadway right of way clearing services for Town properties. While vendor is performing any and all tree related services the following condition shall be met. Vendor will supply and be responsible for all required personnel, materials, equipment, traffic control devices, flaggers, signage, safety equipment, debris clean up and haul-off connected with these services.

A. Tree Pruning and Brush Maintenance Services

1. These services will include up limbing, fine, medium and large thinning and dead wood removal services for:
 - a. Class One (1) to include up limbing, fine thinning and dead wood removal.
 - b. Class Two (2) to Include up limbing, medium thinning and dead wood removal.
 - c. Class Three (3) to Include up limbing, large thinning and dead wood removal.
2. Pruning or removal of branches or entire trees in medians, right-of-ways and Town parks.
3. Vendor shall supervise and direct all work.
4. Vendor shall be solely responsible for trimming and/or removal of trees, brush, vines or other foliage as needed or requested by Town.
5. All locations must be left undisturbed, except for the actual trimming or cutting required.
6. Limbs, leaves, bushes, etc. will be chipped and hauled off of the work site and legally disposed of by the successful vendor.

B. Roadway Right of Way Clearing

1. These services shall include cut back limbs and other woody brush to a minimum distance of five (5) linear feet from edge of roadway pavements and to a height of fourteen (14) vertical feet above roadway surface.

C. Tree Removal Services

1. These services shall include removal of predetermined trees of varying diameters in Town Right of Way, with tree stumps to be left at surrounding ground levels, unless otherwise directed by authorized Town personnel.

D. Stump Grinding

1. These services shall include tree stump grinding regardless of diameter to a minimum of six (6) inches below surrounding ground levels.

III. Response Time

A. Emergency Tree Services

1. Vendor shall respond and tree services shall commence within forty eight (48) hours for emergency tree services, after initial notification by Town personnel.

B. Non-Emergency Tree Services

1. Vendor shall respond and tree services shall commence within seventy two (72) hours for non-emergency tree services, after initial notification by Town personnel.

IV. Experience

A. Project Related Experience

1. Vendor must have proven and verifiable experience in providing the requested services.

V. Insurance

ALL RESPONDENTS: Must submit, with the quote, proof of insurance coverage as indicated in Exhibit A. Proof shall be by submission of copies of current policies or current Certificates of Insurance, including the effective dates of coverage.

SUCCESSFUL VENDOR: Prior to the execution of this contract, the Town of Flower Mound Purchasing Office shall be supplied with an original certificate of insurance evidencing the stated requirements. This insurance shall be effective for the contract duration and renewal certificates shall also be supplied upon expiration.

VI. Invoicing

The Town of Flower Mound will render payment after delivery and acceptance of service, and in accordance with the Standard Terms and Conditions contained herein.

VII. Submittals

In order for your quote to be considered responsive, the following information should be submitted with your quote:

- A. Bid Pricing Worksheet (Attachment A)
- B. Machinery and Equipment Worksheet (Attachment B)
 - 1. List the type of equipment to be utilized to service the contract, including the age of equipment.
 - 2. Provide details of established Preventative Equipment Maintenance Program
- C. Vendor Information Worksheet (Attachment C)
- D. Safety Program
 - 1. Provide a description of current Safety Program, to include topics, frequency of training, etc.
- E. Work History and References (Attachment D)

Bidder should provide a minimum of three (3) current references for same or similar service as described in this bid document, preferably for a municipality. Please provide the following information for each reference provided on the References Worksheet (Attachment D):

- 1. Company Name
 - 2. Contact Person
 - 3. Company Address
 - 4. Contact Phone Number
 - 5. Contact Fax Number
 - 6. Effective Dates
 - 7. Description of Services
- F. Additional Forms
 - 1. Proof of Insurance
 - 2. Certification Form

VIII. Evaluation Criteria

A review committee will judge the merit of quotes received in accordance with the requirements defined herein. Failure of vendor to provide in their quote any information requested in this RFQ may result in disqualification of the quote. The sole objective of the review committee will be to select the quote that provides the best value to the Town of Flower Mound.

The contract will be awarded based on the following evaluation criteria:

- A. Cost as evidenced in VII. Submittals, Section A. (50%)

- B. Equipment as evidenced in VII. Submittals, Section B. (20%)
- C. Safety Program as evidence in VII. Submittals, Section D. (5%)
- D. Work History and References as evidenced in VII. Submittals, Section E. (25%)

IX. Questions Deadline

The Town of Flower Mound requires that all questions relating to this bid be directed via email to Marquita Shamlin, Buyer, at marquita.shamlin@flower-mound.com by **12:00pm on May 9, 2018. No questions will be answered over the phone.** Questions will only be accepted until the stated deadline.



TOWN COUNCIL AGENDA ITEM NO. 4

CONSENT ITEM

DATE: June 18, 2018

FROM: Tiffany Bruce, P.E., Executive Director of Public Works/Town Engineer

ITEM: **Consider approval of fourteen engineering firms to provide professional engineering services, and five geotechnical engineering firms to provide professional material testing services for the Town, for a two-year term ending June 18, 2020.**

BACKGROUND INFORMATION: A request for Statement of Qualifications (SOQ) from prospective engineering firms was advertised in the Denton Record Chronicle (DRC) on April 1, 2018, and April 8, 2018. Each firm was requested to submit their professional engineering qualifications for master plans, roadway, water, wastewater, project cost estimating, property acquisition, modeling for water and wastewater systems, parks design and facilities design. The selection team reviewed each submittal based upon qualifications, experience, office location, and previous experience with the Town.

Forty-two firms responded to the request for SOQ for Professional Engineering Services for Various Projects (No. 2018-70-B). A selection team, comprised of Project Managers and Project Engineers in the Town's Capital Improvement Program (CIP) group, reviewed the submittals and chose the following fourteen firms as qualified:

- | | |
|-------------------------------------|---|
| 1. Alan Plummer Associates, Inc. | 8. Nathan D. Maier Consulting Engineers, Inc. |
| 2. CP&Y, Inc. | 9. Pacheco Koch, LLC. |
| 3. Criado & Associates, Inc. | 10. RJN Group |
| 4. Halff & Associates, Inc. | 11. Schrickel, Rollins & Associates |
| 5. Kimley-Horn and Associates, Inc. | 12. Stantec Consulting Svcs., Inc. |
| 6. Mesa Design Associates, Inc. | 13. Studio Outside, LLC. |
| 7. MHS Planning & Design | 14. Wade-Trim Associates, Inc. |

Upon approval by the Town Council, staff will have the authority to initiate negotiations with any of the fourteen firms to perform professional engineering services for individual Town projects. Each time staff negotiates with one of the selected firms, the professional services agreement will be submitted to the Town Council or the Town Manager for approval.

Also advertised on April 1, 2018, and April 8, 2018, in the DRC was a request for SOQ for Professional Material Testing Services. The selection team reviewed each submittal based upon qualifications, experience, office location, and previous experience with the Town.

Eighteen firms responded to a request for SOQ for Professional Material Testing Services for Various Projects (No. 2018-69-B). A selection team, comprised of Project Managers and Project Engineers in the Town's CIP group, reviewed the submittals and chose the following five firms as qualified:

- | | |
|--------------------------------------|-------------------|
| 1. Alliance Geotechnical Group, Inc. | 4. HVJ Associates |
| 2. Braun Intertec | 5. Terracon |
| 3. ECS Southwest | |

Upon approval by the Town Council, staff will have the authority to initiate negotiations with any of the five firms to perform professional materials testing services for individual Town projects. Each time staff negotiates with one of the selected firms, the Professional Services Agreement will be submitted to the Town Council or the Town Manager for approval.

DRAFT MOTION: Consider approval of fourteen engineering firms to provide professional engineering services, and five geotechnical engineering firms to provide professional material testing services for the Town, for a two-year term ending June 18, 2020.



TOWN COUNCIL AGENDA ITEM NO. 5

CONSENT ITEM

DATE: June 18, 2018

FROM: Kari Biddix, Park Development Manager

ITEM: Consider approval of the Professional Services Agreement with Mesa Design Associates, Inc., for the design services associated with the TxDOT 1171 Phase 2 Green Ribbon project, in the amount of \$40,500.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: This item provides for a Professional Services Agreement (PSA) with Mesa Design Associates, Inc., to provide design services for the TxDOT 1171 Phase 2 Green Ribbon project. Phase 2 includes an approximate distance of 2.60 miles along FM 1171 extending west from the end of Phase 1 to the Town limit (Whites Branch Creek to west of Canyon Falls Drive). This project will include medians areas only.

FISCAL IMPACT: \$40,500.00

Proposed Expenditure:	Account Number(s):
\$16,421.25	531-220-70622-6160
24,078.75	531-220-70090-6070

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 Mesa Design Associates, Inc., for the design services associated with the TxDOT 1171 Phase 2 Green Ribbon project, in the amount of \$40,500.00; and authorize the Mayor to execute same on behalf of the Town.

THE STATE OF TEXAS §
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH
MESA DESIGN ASSOCIATES, INC.**

This contract is entered into on this 18th day of June, 2018, 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 **MESA Design Associates, Inc.**, ("hereinafter referred to as "CONSULTANT") whose address is 2001 North Lamar Street, Suite 100, Dallas, TX 75202.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to design services for the TxDOT 1171 Phase 2 Green Ribbon project; and

WHEREAS, CONSULTANT is a Landscape Architecture, Planning, and Urban Design 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 TxDOT 1171Phase 2 Green Ribbon project 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 Forty Thousand Five Hundred and No/100 Dollars (\$40,500.00). 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 an hourly 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:

Kari Biddix, RLA, LI
 Park Development Manager
 Town of Flower Mound
 2121 Cross Timbers Road
 Flower Mound, Texas 75028
 972-874-6278 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:

Kari Biddix, RLA, LI
Park Development Manager
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6278 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:

Fred Walters
Principal
MESA Design Associates, Inc.
2001 North Lamar Street, Suite 100
Dallas, Texas 75202
214-871-4411 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: _____
Honorable Mayor, Town of Flower Mound

Date Signed: _____

Attest:

Town Secretary

CONSULTANT:
MESA Design Associates, Inc.

By: [Signature]
Name: Fred Waters
Title: Principal
Date Signed: 5.30.18

State of Texas §
 §
County of Dallas §

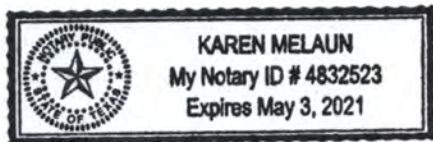
This instrument was acknowledged before me on the 30 day of May, 2018, by Fred Waters in his capacity as Principal of Mesa Design Assoc., a Texas Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of Principal.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 30th DAY OF May 2018.

Karen Melaun
Notary Public, State of Texas

My Commission Expires:

5-3-2021



ATTACHMENT A – SCOPE OF SERVICES

May 16, 2018

Town of Flower Mound
Kari Biddix, Parks Development Manager
1001 Cross Timbers Rd., # 2330
Flower Mound, TX 75028

Project: FM 1171 Green Ribbon – Phase 2
Flower Mound, Texas

Dear Kari,

This proposal and contract describes the landscape architectural services to be provided by MESA, the costs of these services and general terms and conditions under which these services would be executed for Phase 2 of the FM 1171 Green Ribbon project. Phase 2 shall include the following items outlined below for an approximate distance of 2.60 miles of FM 1171 beginning at the limits of Phase 1 and extending west to the city limits of Flower Mound.

SCOPE OF SERVICES

Task One: Data Collection and Documentation

MESA will collect from Client and other sources made available by the Client the following graphic materials necessary for preparation of the following described plan documents. MESA has the right to rely on this information and any information provided by others. These materials include, but are not limited to:

1. Site Survey
2. As-built drawings
3. Existing irrigation as-built plans.
4. Location of existing landscape, utilities, easements, right of ways, and other conditions imposed upon the site by plat, deed restriction, or restrictive covenant.
5. Connections to offsite elements
6. Overlay requirements
7. Streetscape guidelines
8. Identification of the geographic limits of the Project Area
9. Any other plans or development initiatives not mentioned above

Product: Base information encompassing, but not limited to, all of the above listed items.

Meetings: None assumed for this task

Task Two: Schematic Design

After collection of base data, MESA will prepare two (2) schematic design plan options with associated cost projections for review with the client. Scope includes presentation meeting with Client to discuss schematic designs, site conditions, and project budget. Schematic design shall include two (2) schematic design plan studies for the following area:

1. FM 1171 medians from the limits of Phase 1 heading west to the city limits of Flower Mound (approximately 2.60 miles)

- A. Demolition as necessary
- B. Landscape improvements
- C. Irrigation improvements as necessary
- 2. Preliminary cost projections for each design concept (spreadsheet)
- 3. Review with client for approval

Product: MESA will prepare two (2) rendered schematic design plan options with photographic imagery and cost projections. Five (5) hard copies and (1) digital copy for Town's record.

Meetings: One (1) presentation with the client for review and comment prior to design development. Additional meetings will be charged hourly per the attached hourly rate schedule.

Task Three: Design Development

Upon completion and written authorization of schematic design approval by Client, MESA will precede with design development. Changes to design direction after approval may require additional services.

- 1. Provide detailed design studies of planting plan as needed.
- 2. Develop irrigation master plan. Irrigation plans shall coordinate water source configuration, meter and backflow locations, main line loop, controller locations, and pressure requirements.
- 3. Develop hardscape design studies for areas identified above. Identifying paving materials, color, and textures.
- 4. Refine cost projection.
- 5. One (1) team meeting with Client for planting design coordination and approval.

Product: MESA will prepare one (1) refined plan of project area to confirm design direction and cost projection for incorporation into the project budget. TxDOT comments/design revisions from the previous schematic design Bid Documents will be corrected at this time. (See Task 5). Five (5) hard copies and (1) digital copy for Town's record.

Meetings: One (1) presentation with the client for review and comment prior to construction documents. Additional meetings will be charged hourly per the attached hourly rate schedule.

Task Four: Landscape Construction Documents

MESA will prepare construction documents and specifications for both exterior landscape and interior lobby including hardscape, site furnishings, planting, and irrigation per design development plans. Meet with Owner to finalize and coordinate landscape elements with utilities and other site conditions. Task includes submittal of plans for review by City of Dallas departments (if required). Preparation of final cost projection based on construction document plans. Prepare colored rendering of the final landscape plan.

- 1. Demolition Plans, if required
- 2. Grading Plans, if required
- 3. Planting Plans
- 4. Irrigation Plans
- 5. Landscape and Irrigation Details.
- 6. Tree Mitigation Plan (if required, as additional service)

Note: SWPPP is not anticipated nor included in this task

Product: Construction document plans and specifications for planting, and irrigation including details, City Submittal (if required) and Cost Projection for landscape/hardscape improvements. Five (5) hard copies and (1) digital copy for Town's record.

Meeting: One (1) review prior to submission for permit and bidding. Additional meetings will be charged hourly per the attached hourly rate schedule.

Task Five: TxDOT P, S, & E Submittal Process

In conjunction with the previous tasks, MESA will prepare submission of 60%, 90%, and 100% Design and Bid Documents to TxDOT, (Plans, Specifications, and Estimates). Submissions will include plan(s) of the final design, specifications, and associated preliminary cost projections. Intermediate submissions will also be provided as outlined in TxDOT's Green Ribbon Funding FY2019 presentation. Responses to TxDOT comments/design revisions from the reviews will be executed during the next appropriate design task. The goal of the submissions will be to satisfy the Town's responsibility to the project grant conditions in a manner most advantageous to the Town of Flower Mound in terms of project cost and schedule. Any formal submissions and/or variance applications will be covered under this task, with any fees associated being paid by the Town of Flower Mound.

Product: Design submittals to TxDOT for review and comment. The fee as outlined in the Cost of Services schedule listed below is based upon the completion of the project as described in this contract and associated review(s). The development of the Site Plan submittal includes one (1) base submittal and a maximum of one (1) subsequent re-submittal (including revisions and corrections) as required during the approval process. Authorizations for Additional Services will be submitted for approval prior to commencement of additional re-submittals as necessary.

Meeting: As needed. Additional meetings will be charged hourly per the attached hourly rate schedule.

Task Six: Bidding and Negotiation Assistance

Bid documents for the project will be formulated for public bid, to be advertised by the Town of Flower Mound. MESA will assist the Client in its implementation of the bidding process as follows:

1. Prepare and submit 100% Bid Documents to Town staff including plan(s) of the final design, specifications, and associated cost projection. (One (1) hard copy and one (1) digital copy for the Town to print as need for bidding and distribution)
2. Attend pre-bid meetings
3. Answer questions and interpret drawings and specifications during the bidding period
4. Prepare and distribute any required addendum
5. Attend bid opening
6. Provide review and analysis of the bids as submitted

Task Seven: Contract Administration / Construction Observation

MESA will conduct periodic construction observation services as related to the implementation of the construction documents described in this proposal, as follows:

1. Conduct site visits as it progresses to determine general conformance of the work to the design as portrayed in the construction documents, and assist the Owner in observing the progress, process, and quality of the installation of site landscape/hardscape elements. Site visits will be documented in field memos provided to the Owner. These memos will generally describe the Consultant's response to issues identified by the Owner and other issues, which the Architect feels merit consideration by the Owner.
2. Clarify questions regarding the construction as the Owner or Contractor presents such questions, provide consultation and advise to the Owner, and prepare supplementary sketches where such sketches are needed to resolve conflicts between field conditions and the requirements of the drawings.
3. Review of Contractor material submittals and shop drawings as submitted by the contractor, for conformance with the project Design. An evaluation of the submittal will be provided.
4. Tagging and inspection of plant materials (at the nursery or on site as appropriate) to assure conformance with the plans and specifications.
5. Approve the staking of tree locations, plant material layout, and quality of material installation.
6. Approve the placement of irrigation head locations, materials layout, and quality of the irrigation system installed.
7. Review certificates for payment submitted by the contractor

8. Preparation of change orders agreed to by the Owner for the Owner's approval and execution that pertains to the construction scope.
9. Coordinate final site walk-through with the Owner (at the conclusion of construction) and provide a punch list to the Contractor to complete the project.
10. Perform a post completion construction inspection within one year after final acceptance and issue a punch list prior to release of maintenance agreement.

Note: The services specified above are intended to supplement the daily observation and administration activities of the Construction Superintendent, and ensure realization of the design intent of the final construction plans. It is assumed the Construction Superintendent will observe and insure proper installation of all necessary utilities and street lighting, site and street grading, sidewalk along streets, concrete trail and grading, landscape, and irrigation. The Construction Superintendent shall observe excavation, grading, forming, & plumbing to assure compliance with construction plans. Any conditions observed or anticipated contrary to the plans are to be reported to MESA immediately.

Field changes to the construction plans without the Landscape Architect's written approval invalidates the Landscape Architect's responsibility to the built work. MESA is not responsible for changes/ revisions resulting from the continuation of construction activities without reviews/ input from MESA regarding the aforementioned observations.

ATTACHMENT B – COST OF SERVICES

COST OF SERVICES

The below scope of services will be billed on a percentage completion basis or hourly not to exceed as applicable (in accordance with the fee schedule specified below) with the total cost of services not to exceed the amount specified for each without a written addendum to this contract. The below tasks shall be billed as follows:

Task	Base Fees	Optional Fees
Task One: Data Collection and Documentation Lump Sum Fee	\$2,500.00	
Task Two: Schematic Design Lump Sum	\$5,500.00	
Task Three: Design Development Lump Sum	\$5,000.00	
Task Four: Landscape Construction Documents Lump Sum	\$10,000.00	
Task Five: TxDot P, S, & E Submittal Process Lump Sum	\$10,000.00	
Task Six: Bidding and Negotiation Assistance Lump Sum	\$2,500.00	
Task Seven: Contract Administration/ Construction Observation Lump Sum	\$5,000.00	
Total Cost of Base Services:	\$40,500.00	

REIMBURSABLE Expenses are included in the Fee. Estimated at \$2,900.00

We have not included any Sub-Consultant fees at this time other than irrigation. No other sub-consultants are anticipated at this time for the project.

ADDITIONAL SERVICES/HOURLY FEE SCHEDULE

Services requested, but not specifically included in the scope of services listed above, will be considered additional services. Modifications to drawings, after approval by Owner, as a result of changes requested by Owner or other consultant will be considered additional services and billed at an hourly rate as follows:

Senior Principal	\$235.00
Principal	\$180.00
Associate Principal	\$150.00
Associate	\$130.00
Senior Project Manager	\$110.00
Project Manager	\$100.00
Senior Designer	\$ 90.00
Designer	\$ 75.00
Marketing/Acct./Admin	\$ 75.00
Intern	\$ 50.00

1. The client will provide the following and MESA has the right to rely on this information and rely on any information provided by others:
 - a. Boundary and general survey locating structures, property lines, utilities that cross the property and interior lobby plans in AutoCAD format.
 - b. Soils Report (if required).
 - c. Budgetary Considerations.
2. Not included are the following:
 - a. Vehicular Paving Improvements
 - b. Utilities (water, sewer, storm, electrical, cable, telephone, etc.)
 - c. Architectural, Civil, Structural, Mechanical and Electrical Engineering
 - d. Hardscape and Flatwork Design
 - e. Landscape Lighting Electrical Plans
 - f. Project Signage and Graphics
 - g. Design of new or additional elements added to the scope of work or any related off-site improvements
 - h. Redesign of elements due to site plan changes (i.e., buildings relocated, site grading changes)
 - i. Geotechnical Information
 - j. Water features
 - k. Illustrative plans, models and drawings not specifically described in the Scope of Services
 - l. TDLR Submittal
 - m. As Built Drawings
 - n. On-Site Construction Management
3. MESA Design Associates may subcontract consultants in the performance of any services described in this agreement.
4. MESA Design Associates does not act as General Contractor in any way, or accept responsibility for poor craftsmanship.



TOWN COUNCIL AGENDA ITEM NO. 6

CONSENT ITEM

DATE: June 18, 2018

FROM: David Bauer, Construction Manager

ITEM: Consider approval of a Construction Manager at Risk Agreement for the construction of the Library Expansion Project with Steele and Freeman, Inc., for a construction manager's fee of \$632,500.00; and authorization for the Mayor to execute the same on behalf of the Town.

BACKGROUND INFORMATION: The Library Expansion construction project consists of an approximately 15,000 sq. foot municipal multi-purpose building and associated site improvements on approximately 3 acres located at 3030 Broadmoor Lane. The project is using the Construction Manager at Risk (CMR) delivery method.

A request for Statement of Qualifications (SOQ) from prospective Construction Manager at Risk (CMR) firms was advertised on April 28, 2018, and May 5, 2018. Each firm was requested to submit their qualifications. Eight firms responded to the request for SOQ. The project team reviewed each submittal based upon qualifications, experience, financial viability, and previous experience with the Town. Of those responses two were selected to submit a best and final offer or Request for Proposals (RFP) for the project.

The project team reviewed the submittals and recommends Steele and Freeman, Inc., as the CMR for the library project. The CMR shall prepare a Guaranteed Maximum Price (GMP) proposal for the Town's review and acceptance. The GMP in the proposal will be the sum of the construction manager's estimate of the cost of the work, including contingencies described in section 2.24 of the agreement, and the construction manager's fee \$632,500.00.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$632,500.00

Proposed Expenditure:	Account Number(s):
\$632,500.00	533-111-32001

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

LEGAL REVIEW: Alicia Kreh of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the agreement as to form and legality.

ATTACHMENTS:

1. CMAR 133 agreement
2. CMAR 201 agreement
3. Additions, deletions and certification for CMR agreement
4. Supplementary conditions to CMR agreement
5. SOQ 2018-105-B

DRAFT MOTION: Move to approve the Agreement for the Construction Manager at Risk Agreement for the construction of the Library Expansion project with Steele Freeman Inc., for a construction manager's fee of \$632,500.00; and authorize the Mayor to execute same on behalf of the Town.

AIA® Document A133™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the Eighteenth day of June in the year Two Thousand Eighteen
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028

and the Construction Manager:
(Name, legal status and address)
Steele & Freeman, Inc.
1301 Lawson Road
Fort Worth, Texas 76131

for the following Project:
(Name and address or location)
Town of Flower Mound Library Expansion

The Architect:
(Name, legal status and address)
Komatsu Architecture
3880 Hulen Street, Suite 300
Fort Worth, Texas 76107

The Owner's Designated Representative:
(Name, address and other information)
Debra Wallace
Deputy Town Manager/CFO
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028-2602
Telephone Number: 972.874.6000

The Construction Manager's Designated Representative:
(Name, address and other information)
Michael D. Freeman
Steele & Freeman, Inc.
1301 Lawson Road
Fort Worth, Texas 76131
Telephone Number: 817.232.4742

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.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

The Architect's Designated Representative:
(Name, address and other information)

Karl A. Komatsu, AIA
Komatsu Architecture
3880 Hulent Street, Suite 300
Fort Worth, Texas 76107
Telephone Number: 817.332.1914

The Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	OWNER'S RESPONSIBILITIES
4	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
6	COST OF THE WORK FOR CONSTRUCTION PHASE
7	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
8	INSURANCE AND BONDS
9	DISPUTE RESOLUTION
10	TERMINATION OR SUSPENSION
11	MISCELLANEOUS PROVISIONS
12	SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 shall mean the Construction Manager.

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ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the

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items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following

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acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

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§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 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 6.1.1, (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 Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

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§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a 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.

§ 3.1.4.3 The Owner, when such services are requested, 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.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. 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.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™-2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

No Charge (\$0.00)

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within Not Applicable (N/A) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

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§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid Not Applicable (N/A) 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 Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

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ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

Profit part of the Construction Phase Fee:	2.50% of the GMP
Overhead part of the Construction Phase Fee:	\$400,000.00
Performance and Payment Bonds:	0.86% of the GMP
General Liability, Automobile Liability and Umbrella Liability Insurance:	0.38% of the GMP
Builders Risk Insurance:	0.16% of the GMP

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

Two and One-Half Percent (2.50%) for any changes in excess of the original GMP

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed One Hundred percent (100 %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General

Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager

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resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make

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payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the last day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those

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payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of five percent (5 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent (5 %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

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§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
Performance and Payment Bonds	100% of Contract Amount
General Liability	\$ 2,000,000.00 General Aggregate
Automobile Liability	\$ 1,000,000.00 Combined Single Limit
Workers' Compensation	\$ 1,000,000.00 Each Accident/Disease/Employee
Umbrella/Excess Liability	\$ 10,000,000.00 Occurrence/Aggregate

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ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager 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, Claims will be resolved by litigation in a court of competent jurisdiction.)

☒ [X] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

☐ [] Litigation in a court of competent jurisdiction

☐ [] Other: *(Specify)*

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

ARTICLE 10 TERMINATION OR SUSPENSION**§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price**

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not

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otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager 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. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

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ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager 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 Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
- .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- .5 Other documents:
(List other documents, if any, forming part of the Agreement.)
 - Supplementary Conditions to AIA Document A133-2009
 - Amendments to AIA Document A201-2007 Edition (General Conditions of the Contract for Construction)

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

OWNER (Signature)

Thomas E. Hayden, Mayor of Flower Mound
(Printed name and title)

CONSTRUCTION MANAGER (Signature)

Michael D. Freeman, President
(Printed name and title)

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Additions and Deletions Report for **AIA® Document A133™ – 2009**

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PAGE 1

AGREEMENT made as of the Eighteenth day of June in the year Two Thousand Eighteen

...

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

...

Steele & Freeman, Inc.
1301 Lawson Road
Fort Worth, Texas 76131

...

Town of Flower Mound Library Expansion

...

Komatsu Architecture
3880 Hulen Street, Suite 300
Fort Worth, Texas 76107

...

Debra Wallace
Deputy Town Manager/CFO
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028-2602
Telephone Number: 972.874.6000

...

Michael D. Freeman
Steele & Freeman, Inc.
1301 Lawson Road
Fort Worth, Texas 76131
Telephone Number: 817.232.4742

PAGE 2

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User Notes:

(1164331631)

Karl A. Komatsu, AIA
 Komatsu Architecture
 3880 Hulent Street, Suite 300
 Fort Worth, Texas 76107
 Telephone Number: 817.332.1914
PAGE 8

No Charge (\$0.00)

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within Not Applicable (N/A) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

PAGE 9

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid Not Applicable (N/A) 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 Construction Manager.

...

<u>Profit part of the Construction Phase Fee:</u>	<u>2.50% of the GMP</u>
<u>Overhead part of the Construction Phase Fee:</u>	<u>\$400,000.00</u>
<u>Performance and Payment Bonds:</u>	<u>0.86% of the GMP</u>
<u>General Liability, Automobile Liability and Umbrella Liability Insurance:</u>	<u>0.38% of the GMP</u>
<u>Builders Risk Insurance:</u>	<u>0.16% of the GMP</u>

...

Two and One-Half Percent (2.50%) for any changes in excess of the original GMP

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed One Hundred percent (100 %) of the standard rate paid at the place of the Project.

PAGE 13

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the last day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

PAGE 14

- .3 Add the Construction Manager's Fee, less retainage of five percent (5 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent (5 %) from that portion of the Work that the Construction Manager self-performs;

PAGE 15

<u>Performance and Payment Bonds</u>	<u>100% of Contract Amount</u>
<u>General Liability</u>	<u>\$ 2,000,000.00 General Aggregate</u>
<u>Automobile Liability</u>	<u>\$ 1,000,000.00 Combined Single Limit</u>
<u>Workers' Compensation</u>	<u>\$ 1,000,000.00 Each Accident/Disease/Employee</u>
<u>Umbrella/Excess Liability</u>	<u>\$ 10,000,000.00 Occurrence/Aggregate</u>

PAGE 16

PAGE 18 ☒ Arbitration pursuant to Section 15.4 of AIA Document A201-2007

- Supplementary Conditions to AIA Document A133-2009
- Amendments to AIA Document A201-2007 Edition (General Conditions of the Contract for Construction)

...

Thomas E. Hayden , Mayor of Flower Mound

Michael D. Freeman , President

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , 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 14:35:32 on 05/29/2018 under Order No. 0965820261 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, 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)



AIA[®] Document A201[™] – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Town of Flower Mound Library Expansion

THE OWNER:

(Name, legal status and address)

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

THE ARCHITECT:

(Name, legal status and address)

Komatsu Architecture
3880 Hulen Street, Suite 300
Fort Worth, Texas 76107

TABLE OF ARTICLES

- | | |
|----|--|
| 1 | GENERAL PROVISIONS |
| 2 | OWNER |
| 3 | CONTRACTOR |
| 4 | ARCHITECT |
| 5 | SUBCONTRACTORS |
| 6 | CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS |
| 7 | CHANGES IN THE WORK |
| 8 | TIME |
| 9 | PAYMENTS AND COMPLETION |
| 10 | PROTECTION OF PERSONS AND PROPERTY |
| 11 | INSURANCE AND BONDS |
| 12 | UNCOVERING AND CORRECTION OF WORK |
| 13 | MISCELLANEOUS PROVISIONS |
| 14 | TERMINATION OR SUSPENSION OF THE CONTRACT |
| 15 | CLAIMS AND DISPUTES |

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

INDEX

(Topics and numbers in bold are section headings.)

Acceptance of Nonconforming Work9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3****Access to Work****3.16**, 6.2.1, **12.1**

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,
10.2.8, 13.4.2, 13.7, 14.1, 15.2

Addenda

1.1.1, 3.11

Additional Costs, Claims for

3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, 15.1.4

Additional Inspections and Testing9.4.2, 9.8.3, 12.2.1, **13.5**

Additional Insured

11.1.4

Additional Time, Claims for3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.5****Administration of the Contract**3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances**3.8**, 7.3.8

All-risk Insurance

11.3.1, 11.3.1.1

Applications for Payment4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7, 9.10, 11.1.3

Approvals

2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10,
4.2.7, 9.3.2, 13.5.1**Arbitration**8.3.1, 11.3.10, 13.1, 15.3.2, **15.4****ARCHITECT****4****Architect**, Definition of**4.1.1**

Architect, Extent of Authority

2.4, 3.12.7, 4.1, 4.2, 5.2, 6.3, 7.1.2, 7.3.7, 7.4, 9.2,
9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,
13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3,
4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2,
9.5.3, 9.6.4, 15.1.3, 15.2

Architect's Additional Services and Expenses

2.4, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 4.2, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.4, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,
7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,
13.5.2, 15.2, 15.3

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.5

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.5.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5,
3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18,
4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,
9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, 13.5, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3.7

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work**5.2****Basic Definitions****1.1**

Bidding Requirements

1.1.1, 5.2.1, 11.4.1

Binding Dispute Resolution

9.7, 11.3.9, 11.3.10, 13.1, 15.2.5, 15.2.6.1, 15.3.1,
15.3.2, 15.4.1**Boiler and Machinery Insurance****11.3.2**

Bonds, Lien

7.3.7.4, 9.10.2, 9.10.3

Bonds, Performance, and Payment7.3.7.4, 9.6.7, 9.10.3, 11.3.9, **11.4**

Building Permit

3.7.1

Capitalization**1.3**

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7,

9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3

Certificates of Inspection, Testing or Approval

13.5.4

Certificates of Insurance

9.10.2, 11.1.3

Change Orders

1.1.1, 2.4, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8,

5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1,

9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2,

15.1.3

Change Orders, Definition of

7.2.1**CHANGES IN THE WORK**

2.2.1, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1,

11.3.9

Claims, Definition of

15.1.1**CLAIMS AND DISPUTES**

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4

Claims and Timely Assertion of Claims

15.4.1

Claims for Additional Cost

3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, 15.1.4

Claims for Additional Time

3.2.4, 3.7.4, 6.1.1, 8.3.2, 10.3.2, 15.1.5

Concealed or Unknown Conditions, Claims for

3.7.4

Claims for Damages

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1,

11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Claims Subject to Arbitration

15.3.1, 15.4.1

Cleaning Up**3.15, 6.3**

Commencement of the Work, Conditions Relating to

2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3,

6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1,

15.1.4

Commencement of the Work, Definition of

8.1.2

Communications Facilitating Contract

Administration

3.9.1, 4.2.4

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1,

9.10, 12.2, 13.7, 14.1.2

COMPLETION, PAYMENTS AND**9**

Completion, Substantial

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2,

13.7

Compliance with Laws

1.6, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2,

11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1,

14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1,

9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2

Consolidation or Joinder

15.4.4**CONSTRUCTION BY OWNER OR BY
SEPARATE CONTRACTORS**

1.1.4, 6

Construction Change Directive, Definition of

7.3.1

Construction Change Directives

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3,

9.3.1.1

Construction Schedules, Contractor's

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance

15.1.3

Contract, Definition of

1.1.2**CONTRACT, TERMINATION OR
SUSPENSION OF THE**

5.4.1.1, 11.3.9, 14

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating

to

3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1

Contract Documents, Copies Furnished and Use of

1.5.2, 2.2.5, 5.3

Contract Documents, Definition of

1.1.1

Contract Sum

3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, 9.1, 9.4.2, 9.5.1.4, 9.6.7,

9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4, 15.2.5

Contract Sum, Definition of

9.1

Contract Time

3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4,

8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 14.3.2,

15.1.5.1, 15.2.5

Contract Time, Definition of

8.1.1**CONTRACTOR****3**

Contractor, Definition of

3.1, 6.1.2

Contractor's Construction Schedules

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Contractor's Employees

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

Contractor's Liability Insurance**11.1****Contractor's Relationship with Separate Contractors and Owner's Forces**

3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4

Contractor's Relationship with Subcontractors

1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8

Contractor's Relationship with the Architect

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1

Contractor's Representations

3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the Work

3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents

3.2

Contractor's Right to Stop the Work

9.7

Contractor's Right to Terminate the Contract

14.1, 15.1.6

Contractor's Submittals

3.10, 3.11, 3.12.4, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2

Contractor's Superintendent

3.9, 10.2.6

Contractor's Supervision and Construction**Procedures**

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3

Contractual Liability Insurance

11.1.1.8, 11.2

Coordination and Correlation

1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications

1.5, 2.2.5, 3.11

Copyrights

1.5, 3.17

Correction of Work

2.3, 2.4, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2

Correlation and Intent of the Contract Documents**1.2****Cost, Definition of****7.3.7****Costs**

2.4, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14

Cutting and Patching**3.14, 6.2.5****Damage to Construction of Owner or Separate Contractors**

3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4

Damage to the Work

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 11.3.1, 12.2.4

Damages, Claims for

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Damages for Delay

6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2

Date of Commencement of the Work, Definition of 8.1.2**Date of Substantial Completion, Definition of 8.1.3****Day, Definition of****8.1.4****Decisions of the Architect**

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2

Decisions to Withhold Certification

9.4.1, 9.5, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance, Rejection and Correction of

2.3, 2.4, 3.5, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

Definitions

1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1

Delays and Extensions of Time

3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.5, 15.2.5

Disputes

6.3, 7.3.9, 15.1, 15.2

Documents and Samples at the Site**3.11****Drawings, Definition of****1.1.5****Drawings and Specifications, Use and Ownership of 3.11****Effective Date of Insurance**

8.2.2, 11.1.2

Emergencies

10.4, 14.1.1.2, 15.1.4

Employees, Contractor's

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

Equipment, Labor, Materials or

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Execution and Progress of the Work

1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5,

3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3

Extensions of Time

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4, 14.3, 15.1.5, 15.2.5

Failure of Payment

9.5.1.3, 9.7, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2

Faulty Work

(See Defective or Nonconforming Work)

Final Completion and Final Payment

4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.3.1, 11.3.5, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's

2.2.1, 13.2.2, 14.1.1.4

Fire and Extended Coverage Insurance

11.3.1.1

GENERAL PROVISIONS

1

Governing Law

13.1

Guarantees (See Warranty)

Hazardous Materials

10.2.4, 10.3

Identification of Subcontractors and Suppliers

5.2.1

Indemnification

3.17, 3.18, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2, 11.3.7

Information and Services Required of the Owner

2.1.2, 2.2, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3

Initial Decision

15.2

Initial Decision Maker, Definition of

1.1.8

Initial Decision Maker, Decisions

14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority

14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Injury or Damage to Person or Property

10.2.8, 10.4

Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.5

Instructions to Bidders

1.1.1

Instructions to the Contractor

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2

Instruments of Service, Definition of

1.1.7

Insurance

3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 11

Insurance, Boiler and Machinery

11.3.2

Insurance, Contractor's Liability

11.1

Insurance, Effective Date of

8.2.2, 11.1.2

Insurance, Loss of Use

11.3.3

Insurance, Owner's Liability

11.2

Insurance, Property

10.2.5, 11.3

Insurance, Stored Materials

9.3.2

INSURANCE AND BONDS

11

Insurance Companies, Consent to Partial Occupancy

9.9.1

Intent of the Contract Documents

1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4

Interest

13.6

Interpretation

1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written

4.2.11, 4.2.12, 15.1.4

Judgment on Final Award

15.4.2

Labor and Materials, Equipment

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3,

9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes

8.3.1

Laws and Regulations

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6,

14, 15.2.8, 15.4

Liens

2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of

12.2.5, 13.7, 15.4.1.1

Limitations of Liability

2.3, 3.2.2, 3.5, 3.12.10, 3.17, 3.18.1, 4.2.6, 4.2.7,

4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3, 11.1.2, 11.2, 11.3.7, 12.2.5, 13.4.2

Limitations of Time

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,

9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5, 11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15

Loss of Use Insurance

11.3.3

Material Suppliers

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5

Materials, Hazardous

10.2.4, 10.3

Materials, Labor, Equipment and
1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13,
3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3,
9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2
Means, Methods, Techniques, Sequences and
Procedures of Construction
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2
Mechanic's Lien
2.1.2, 15.2.8
Mediation
8.3.1, 10.3.5, 10.3.6, 15.2.1, 15.2.5, 15.2.6, **15.3**,
15.4.1
Minor Changes in the Work
1.1.1, 3.12.8, 4.2.8, 7.1, 7.4
MISCELLANEOUS PROVISIONS
13
Modifications, Definition of
1.1.1
Modifications to the Contract
1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7,
10.3.2, 11.3.1
Mutual Responsibility
6.2
Nonconforming Work, Acceptance of
9.6.6, 9.9.3, **12.3**
Nonconforming Work, Rejection and Correction of
2.3, 2.4, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4,
12.2.1
Notice
2.2.1, 2.3, 2.4, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, 9.7,
9.10, 10.2.2, 11.1.3, 12.2.2.1, 13.3, 13.5.1, 13.5.2,
14.1, 14.2, 15.2.8, 15.4.1
Notice, Written
2.3, 2.4, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.7, 9.10,
10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, **13.3**, 14, 15.2.8,
15.4.1
Notice of Claims
3.7.4, 10.2.8, **15.1.2**, 15.4
Notice of Testing and Inspections
13.5.1, 13.5.2
Observations, Contractor's
3.2, 3.7.4
Occupancy
2.2.2, 9.6.6, 9.8, 11.3.1.5
Orders, Written
1.1.1, 2.3, 3.9.2, 7, 8.2.2, 11.3.9, 12.1, 12.2.2.1, 13.5.2,
14.3.1
OWNER
2
Owner, Definition of
2.1.1
Owner, Information and Services Required of the
2.1.2, **2.2**, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2,
9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.3, 13.5.1,
13.5.2, 14.1.1.4, 14.1.4, 15.1.3

Owner's Authority
1.5, 2.1.1, 2.3, 2.4, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2,
4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1,
7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1,
9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, 12.3,
13.2.2, 14.3, 14.4, 15.2.7
Owner's Financial Capability
2.2.1, 13.2.2, 14.1.1.4
Owner's Liability Insurance
11.2
Owner's Relationship with Subcontractors
1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2
Owner's Right to Carry Out the Work
2.4, 14.2.2
Owner's Right to Clean Up
6.3
Owner's Right to Perform Construction and to
Award Separate Contracts
6.1
Owner's Right to Stop the Work
2.3
Owner's Right to Suspend the Work
14.3
Owner's Right to Terminate the Contract
14.2
Ownership and Use of Drawings, Specifications
and Other Instruments of Service
1.1.1, 1.1.6, 1.1.7, **1.5**, 2.2.5, 3.2.2, 3.11, 3.17, 4.2.12,
5.3
Partial Occupancy or Use
9.6.6, **9.9**, 11.3.1.5
Patching, Cutting and
3.14, 6.2.5
Patents
3.17
Payment, Applications for
4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1,
14.2.3, 14.2.4, 14.4.3
Payment, Certificates for
4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1,
9.10.3, 13.7, 14.1.1.3, 14.2.4
Payment, Failure of
9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2
Payment, Final
4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 12.3,
13.7, 14.2.4, 14.4.3
Payment Bond, Performance Bond and
7.3.7.4, 9.6.7, 9.10.3, **11.4**
Payments, Progress
9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3
PAYMENTS AND COMPLETION
9
Payments to Subcontractors
5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2
PCB
10.3.1

Performance Bond and Payment Bond

7.3.7.4, 9.6.7, 9.10.3, 11.4

Permits, Fees, Notices and Compliance with Laws

2.2.2, 3.7, 3.13, 7.3.7.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION OF

10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, 3.12, 4.2.7

Progress and Completion

4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.3

Progress Payments

9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

Project, Definition of

1.1.4

Project Representatives

4.2.10

Property Insurance

10.2.5, 11.3

PROTECTION OF PERSONS AND PROPERTY

10

Regulations and Laws

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14, 15.2.8, 15.4

Rejection of Work

3.5, 4.2.6, 12.2.1

Releases and Waivers of Liens

9.10.2

Representations

3.2.1, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2, 9.10.1

Representatives

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1, 5.1.2, 13.2.1

Responsibility for Those Performing the Work

3.3.2, 3.18, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

Review of Contract Documents and Field**Conditions by Contractor**

3.2, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and Architect

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and Samples by Contractor

3.12

Rights and Remedies

1.1.2, 2.3, 2.4, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, 13.4, 14, 15.4

Royalties, Patents and Copyrights

3.17

Rules and Notices for Arbitration

15.4.1

Safety of Persons and Property

10.2, 10.4

Safety Precautions and Programs

3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4

Samples, Definition of

3.12.3

Samples, Shop Drawings, Product Data and

3.11, 3.12, 4.2.7

Samples at the Site, Documents and

3.11

Schedule of Values

9.2, 9.3.1

Schedules, Construction

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

Shop Drawings, Definition of

3.12.1

Shop Drawings, Product Data and Samples

3.11, 3.12, 4.2.7

Site, Use of

3.13, 6.1.1, 6.2.1

Site Inspections

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5

Site Visits, Architect's

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Special Inspections and Testing

4.2.6, 12.2.1, 13.5

Specifications, Definition of

1.1.6

Specifications

1.1.1, 1.1.6, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14

Statute of Limitations

13.7, 15.4.1.1

Stopping the Work

2.3, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4

Subcontractor, Definition of

5.1.1

SUBCONTRACTORS

5

Subcontractors, Work by

1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

Subcontractual Relations

5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1

Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3

Submittal Schedule

3.10.2, 3.12.5, 4.2.7

Subrogation, Waivers of

6.1.1, 11.3.7

Substantial Completion4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 13.7**Substantial Completion, Definition of****9.8.1**

Substitution of Subcontractors

5.2.3, 5.2.4

Substitution of Architect

4.1.3

Substitutions of Materials

3.4.2, 3.5, 7.3.8

Sub-subcontractor, Definition of**5.1.2**

Subsurface Conditions

3.7.4

Successors and Assigns**13.2****Superintendent**

3.9, 10.2.6

Supervision and Construction Procedures1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3

Surety

5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7

Surety, Consent of

9.10.2, 9.10.3

Surveys

2.2.3

Suspension by the Owner for Convenience**14.3**

Suspension of the Work

5.4.2, 14.3

Suspension or Termination of the Contract

5.4.1.1, 14

Taxes

3.6, 3.8.2.1, 7.3.7.4

Termination by the Contractor

14.1, 15.1.6

Termination by the Owner for Cause5.4.1.1, **14.2**, 15.1.6**Termination by the Owner for Convenience****14.4**

Termination of the Architect

4.1.3

Termination of the Contractor

14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT**14****Tests and Inspections**3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 11.4.1, 12.2.1, **13.5****TIME****8****Time, Delays and Extensions of**3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.5, 15.2.5**Time Limits**

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 12.2, 13.5, 13.7, 14, 15.1.2, 15.4

Time Limits on Claims3.7.4, 10.2.8, **13.7**, 15.1.2

Title to Work

9.3.2, 9.3.3

Transmission of Data in Digital Form**1.6****UNCOVERING AND CORRECTION OF WORK****12****Uncovering of Work****12.1**

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 7.3.4

Use of Documents

1.1.1, 1.5, 2.2.5, 3.12.6, 5.3

Use of Site

3.13, 6.1.1, 6.2.1

Values, Schedule of

9.2, 9.3.1

Waiver of Claims by the Architect

13.4.2

Waiver of Claims by the Contractor

9.10.5, 13.4.2, 15.1.6

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6

Waiver of Consequential Damages

14.2.4, 15.1.6

Waiver of Liens

9.10.2, 9.10.4

Waivers of Subrogation6.1.1, **11.3.7****Warranty**

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, 13.7

Weather Delays

15.1.5.2

Work, Definition of**1.1.3**

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Notice

2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 12.2.2, 12.2.4, **13.3**, 14, 15.4.1

Written Orders

1.1.1, 2.3, 3.9, 7, 8.2.2, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2

ARTICLE 1 GENERAL PROVISIONS**§ 1.1 BASIC DEFINITIONS****§ 1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 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 will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties 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, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the

portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall

continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required

submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop

Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and 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, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a

party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, 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 will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will 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. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, 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.

§ 4.2.7 The Architect will 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. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect 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. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. 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.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will 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 will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK**§ 7.1 GENERAL**

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION**§ 9.1 CONTRACT SUM**

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon

compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the 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 to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will 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) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the

Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract

Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in

whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional

insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be

sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract 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 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time 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 Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE**§ 14.2.1** The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES**§ 15.1 CLAIMS****§ 15.1.1 DEFINITION**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

Init.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims 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 Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings 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 is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

Init.

§ 15.3.3 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.

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim 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 the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 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 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.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

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

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 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).

§ 15.4.4.2 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.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

Additions and Deletions Report for AIA® Document A201™ – 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

Town of Flower Mound Library Expansion

...

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

...

Komatsu Architecture
3880 Hulen Street, Suite 300
Fort Worth, Texas 76107

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , 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 14:35:23 on 05/29/2018 under Order No. 0965820261 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, 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)

**Amendments to AIA Document
A201-2007 Edition
(General Conditions of the Contract for Construction)**

Owner: Town of Flower Mound, Texas

Project: Town of Flower Mound Library Expansion

Architect: Komatsu Architecture

Construction Manager: Steele and Freeman, Inc.

- Amend Section 1.1.2 by adding the following after the second sentence:

1.1.2 As a material consideration for the making of the Contract Documents, modification to this Contract shall not be construed against the maker of said modifications.

- Add the following to Section 1.2:

1.2.4 In case of discrepancy between two or more drawings (Architectural, Structural, Mechanical, etc.) or drawings and specifications, the Architect shall be the sole judge as to which takes precedence, but in any case it shall be assumed that bids are based on the most expensive procedure shown.

1.2.5 Do not scale drawings for dimensions. Accurately lay out such work from dimensions indicated on architectural drawings unless such is found in error. Dimensions found in error should be submitted to Architect for resolution before proceeding with the Work. Consult Architect for interpretations concerning locations of equipment, fixtures, and access panels not dimensioned on drawings.

- Amend 1.5.2 by adding the following at the end of the existing paragraph:

1.5.2 Should the Contractor find discrepancies, omissions or conflicts within the Contract Documents, or be in doubt as to their meaning, the Contractor shall at once notify in writing the Architect and Owner, and Architect will issue a written addendum to all parties that is consistent with the Owner's Scope of the Work.

- Add the following new Section 1.7:

1.7 Property of Political Subdivision. It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialmen, artisan, laborer, or subcontractor, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the project of whatever nature or kind so erected or to be erected by virtue of this Contract, nor upon any of the land upon which said improvements are so erected, built,

or situated, such property being public property belonging to a political subdivision of the State of Texas.

- Delete second sentence of Section 2.1.1 and replace it with the following:

2.1.1 The Owner shall designate a representative with respect to the Project. Such representative shall not have authority to make final decisions on behalf of the Owner concerning Change Orders, changing the Guaranteed Maximum Price, extending the date of Substantial or Final Completion, or other items requiring City Council approval; however, the Owner or such authorized representative, shall render decisions in a timely manner in order to avoid unreasonable delay in the service or Work of the Contractor.

- Delete Section 2.1.2.

- Delete Section 2.2.3 and replace with the following:

2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a legal description of the site. Owner does not guarantee the accuracy of the survey as describing the site of the Project and Contractor should determine the sufficiency of same before beginning the work. The Owner does not guarantee the utility lines to be in the exact locations as shown on plans and surveys. Contractor shall verify with the utilities the location of utility lines. Any water, gas or sewer line, telephone, telegraph or electric wire, or cable broken or cut by the Contractor or any of his workmen or subcontractors, shall be replaced by the Contractor at his own expense, or by the responsible subcontractor at its own expense, and will not be paid for by the Owner. Repairs shall be made immediately and no other work shall be done until breaks or damages have been repaired and service restored. Any delay caused by the cut or break shall be solely attributed to the Contractor.

- Add the following sentence at the end of the existing Section 2.2.4:

Absent such written request, any Claim based upon lack of such information or service shall be waived.

- Add Section 3.1.4 as follows:

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

.1 that it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

.2 that it is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

.3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental, public and quasi-public authorities having jurisdiction over it, the Work, or the site of the Project; and

.4 that the execution of the Contract and its performance thereof are within its duly-authorized powers.

➤ Add Section 3.3.4 as follows:

3.3.4 The Contractor shall properly and efficiently coordinate the timing, scheduling and routing of all Work performed by all trades and sub-contractors.

➤ Add the following to Section 3.4.2:

3.4.2.1 After the Contract has been executed, the Owner and Architect will consider requests for the substitution of products in place of those specified only under conditions set forth in the General Requirements (Division 1 of the Specifications). Requests for substitution, when forwarded by the Contractor to the Architect, are understood to mean that the Contractor:

.1 Represents that he has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified.

.2 Will provide the same guarantee for the substitution that he would for that specified;

.3 Certified that the cost data presented is complete and includes all related costs under this Contract, but excludes costs under separate contracts and the Architect's redesign costs, and that he waives all claims for additional costs related to the substitution which subsequently becomes apparent; and

.4 Will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

3.4.2.2 Substitutions will not be considered if they are indicated or implied on shop drawing submissions without the formal request required in Section 3.4.2.1.

➤ Add the following Sections 3.4.4 and 3.4.5:

3.4.4 Prevailing Wages. Attention is called to the Government Code, Chapter 2258, Prevailing Wage Rates. Among other things, this Article provides that it shall be

mandatory upon the Contractor and upon any subcontractor under him to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the Contract. The Owner has established such prevailing wage rates. No claims for additional compensation shall be considered by Owner because of payments of wage rates in excess of the applicable rate provided herein. A contractor or subcontractor who fails to pay the required prevailing wage rate shall be subject to the penalty specified in Chapter 2258.

3.4.5 Owner reserves the right to receive and review payroll records, payment records, and earnings statements of employees of Contractor, and of Contractor's Subcontractors, and of Sub-Subcontractors.

➤ Add the following Subparagraphs 3.5.1 and 3.5.2:

3.5.1 Except where otherwise stipulated in the Contract Documents, the Contractor shall, as per its Contract, warranty all materials and workmanship furnished under this Contract for a period of two years after the date of Substantial Completion and shall repair and make good, without expense to the Owner, any and all defects in his work which may develop within that time. If within two years after the date of Substantial Completion, any Work is found to be defective, the Contractor shall promptly, without cost to the Owner and in accordance with the Owner's written instructions, either correct such defective Work, or, if it has been rejected by the Owner, remove it from the Site and replace it with non-defective Work. If the Contractor does not promptly comply with the terms of such instructions, or in any emergency where delay could cause serious risk of loss or damage, the Owner may have the defective Work corrected by others and the Contractor shall reimburse the Owner its actual costs for such corrections (such costs to include but not limited to fees and charges of engineers, architects, attorneys and other professionals).

3.5.2 All required warranties on equipment, machinery, materials, or components shall be submitted to the Architect on the manufacturer's or supplier's approved forms at the time of Substantial Completion.

➤ Add the following to Section 3.6:

3.6.1 This Project is eligible for exemption from the State Sales Tax on materials incorporated in the Project, provided that Contractor fulfills the requirements of State Tax Laws. For the purpose of establishing exemption, it is understood and agreed that Contractor will be required to segregate materials and labor costs at the time a Contract is awarded, and will accept an exemption certificate from Owner. The Contractor shall pay any taxes otherwise assessed because of Contractor's failure to comply with the requirements of State Law to qualify for that tax exemption.

➤ Add the following to Section 3.12:

3.12.11 The Architect's review of Contractor's submittals will be limited to examination of an initial submittal and one (1) resubmittal. The Owner is entitled to obtain reimbursement from the Contractor for amounts paid to the Architect for evaluation of additional submittals.

- Add the following to the end of Section 3.16:

Contractor shall ensure that the Work, at all times, is performed in a manner that affords Owner reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed in such a manner that public areas adjacent to the Site of the Work shall be free from all debris, building material and equipment likely to cause hazardous conditions. Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of any area or building adjacent to the site of the Work, or the building, in the event of partial occupancy. The presence of the Owner, Architect or their representatives does not constitute acceptance or approval of the Work.

- Add Section the following to Section 4.2.2:

4.2.2.1 The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for site visits made necessary by the fault of the Contractor or by defects and deficiencies in the work.

- Amend Section 4.2.4 by adding the following new sentence after the second sentence:

However, Owner reserves the right to communicate directly with the Contractor.

- Revise Section 4.2.13 to read as follows:

The Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents. The Architect shall be the sole interpreter of the design intent with respect to such matters, but the Architect's authority with respect thereto shall not contravene any other rights of the Owner ascribed to the Owner by other provisions of the Contract.

- Add the following Sections 5.3.1 and 5.3.2:

5.3.1 Contractor shall promptly notify Owner and Architect of any material defaults by any Subcontractor. Notwithstanding any provision contained in Article 5 to the contrary, it is hereby acknowledged and agreed that Owner has in no way agreed, expressly or implicitly, nor will Owner agree, to allow any Subcontractor or other materialman or workman employed by Contractor the right to obtain a personal judgment or to create a lien against Owner for the amount due from the Contractor.

5.3.2 In the event of any termination of the Contract in accordance with Article 14, Owner shall not be liable to any subcontractor. Contractor shall be responsible for any claim of a subcontractor for Work executed under the Contract.

➤ Add Section 5.4.4 as follows:

5.4.4 Such assignment shall not constitute a waiver by Owner of its rights against Contractor, including, but not limited to, claims for defaults, delays or defects for which a subcontractor or material vendor may also be liable. Owner shall only be responsible for compensating subcontractors for Work performed or material furnished from and after the date on which the Owner gives written notice of its acceptance of the subcontract agreement. Owner shall not be responsible for any Work performed or materials furnished by subcontractors prior to the date of Owner's written notice of acceptance.

➤ Section 8.3.1 shall be amended by replacing the word "shall" with the word "may".

➤ Add Section 9.5.4 as follows:

9.5.4 Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion or Final Completion by the required dates, subject to extensions of time allowed under these Conditions, then Architect may withhold any further payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damage. The Owner shall not be deemed in default by reason of withholding such payment.

➤ Delete Section 9.6.7 and replace with the following language:

9.6.7 Payments received by the Contractor for Work properly performed by Subcontractors or materials properly provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor of which payment was made by the Owner.

➤ Add Section 9.7.1 as follows:

9.7.1 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, then such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due to Owner, or the Owner incurs any costs and expense to cure any default of the Contractor or to correct defective Work, pursuant to the Contract, the Owner shall have an absolute right to offset such amount against the Contract Sum and, in the Owner's sole discretion and without waiving any other remedies, may elect either to:

.1 deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due to Contractor from the Owner, or

.2 issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

➤ Add the following to Section 9.8.3:

9.8.3.1 The Architect will perform no more than two (2) inspections to determine whether the Work or a designated portion thereof has attained Substantial Completion in accordance with the Contract Documents. The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for any additional inspections.

➤ Add the following to Section 9.8.5:

9.8.5.1 The application for payment to release retainage will not be approved by the Architect until the completed and corrected closeout documents are provided to the Architect by the Contractor. Closeout documents shall be delivered to the Architect under conditions and times set forth in the contract documents and specifications.

➤ Add the following new Section 9.8.6:

9.8.6 Notwithstanding any provision contained within this Article, if the work has not attained Substantial Completion with the contract time, subject to extensions of time allowed under these Conditions, Architect may withhold any further payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages assessed against Contractor up to the time of Application for Payment and to the time it is reasonably anticipated that Substantial Completion will be achieved.

➤ Add the following to Section 9.10.1:

9.10.1.1 The Architect will perform no more than one (1) inspection to determine whether the Work or a designated portion thereof has attained Final Completion in accordance with the Contract Documents. The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for any additional inspections.

➤ Replace 9.10.4 in its entirety with the following language:

9.10.4 The making of final payment shall not constitute a waiver of any Claims by the Owner.

➤ Add Sections 11.1.5, 11.1.6 and 11.1.7 as follows:

11.1.5 By signing this Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the project will be covered by workers'

compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor for administrative penalties, criminal penalties, civil penalties, or other civil actions.

11.1.6 The Contractors' failure to comply with any of these provision is a breach of contract by the Contractor which entitles the Owner to declare the Contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the Owner.

11.1.7 Any failure of Contractor to comply with the reporting provisions of the policies shall not affect the coverage provided to the Owner, its officers, employees, or volunteers.

➤ Delete Section 11.4 and replace with the following:

11.4.1 With the execution and delivery of the Contract, the Contractor shall furnish and file with the Owner, the surety bonds specified in this Section. Without exception, the Owner's bond forms must be used, and exclusive venue for any lawsuit in connection with the bonds shall be Tarrant County. The surety bonds shall be in accordance with the provisions of Chapter 2253, Government Code, Vernon's Texas Codes Annotated. These bonds shall automatically be increased by the amount of any change order or supplemental agreement which increases the Contract Sum with or without notice to the surety, but in no event shall a change which reduces the Contract Sum reduce the penal amount of such bonds.

11.4.2 The Contractor shall provide a good and sufficient performance bond in an amount not less than one hundred (100) percent of the approximate total amount of the Contract, as evidenced by the proposal tabulation, or otherwise guaranteeing the full and faithful execution of the Work and performance of the Contract in accordance with the Contract Documents, including any extensions, for the protection of the Owner.

11.4.3 The Contractor shall provide a good and sufficient payment bond in an amount not less than one hundred (100) percent of the approximate total amount of the Contract, as evidenced by the proposal tabulation, or otherwise guaranteeing the full and proper protection of all claimants supplying labor and material in the execution of the Work provided for in this Contract and for the use of each claimant.

11.4.4 The Contractor shall provide a good and sufficient maintenance bond in an amount not less than one hundred percent (100%) of the approximate total amount of the Contract, as evidenced by the bid tabulation, providing for the repair and/or replacement of all defects due to faulty materials and workmanship that appear within a period of two years from the date of completion and acceptance of the improvement by the Owner or such lesser or greater period as may be designated in the Contract Documents.

11.4.5 No sureties shall be accepted by the Owner who are now in default or delinquent on any bonds or who are interested in any litigation against the Owner. All bonds shall be made on forms furnished by the Owner, and shall be executed by not less than one corporate surety authorized to do business in the State of Texas and acceptable to the Owner. Each bond shall be executed by the Contractor and surety. Each surety shall designate an agent resident in the Owner's jurisdictional area acceptable to the Owner to whom any requisite notices may be delivered and on whom service of process may be obtained in matters arising out of the suretyship.

11.4.6 If at any time the Owner determines that the Contractor's surety has experienced financial losses such that the Owner's ability to enforce the bond obligations is substantially at risk, the Contractor shall within thirty (30) days after notice from the Owner to do so, substitute an acceptable bond (or bonds), or provide an additional bond, in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The premiums on such bonds shall be paid by the Contractor without recourse to the Owner. No further progress payments under the contract shall be deemed due or payable until the substitute or additional bonds shall have been furnished and accepted by the Owner; however, in such event, final payment shall be due and payable as provided in this Contract whether or not such additional bonds are obtained, to the extent that the project is complete and the Owner is not exposed to liability for payment bond claims.

➤ Add the following to Section 12.2.2:

12.2.2.4 Upon request by the Owner or prior to the expiration of one year from the date of Substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

➤ Delete Section 13.6 and replace with the following:

13.6 Payments under the Contract Documents shall be due and payable in accordance with Section 2251.022 of the Texas Government Code. Interest and any unpaid and overdue amount shall accrue in accordance with Section 2251.025, Texas Government Code.

➤ Add the following new Section 13.8:

13.8 EQUAL OPPORTUNITY

13.8.1 The Contractor shall maintain policies of employment as follows:

13.8.1.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. The Contractor agrees to post in conspicuous

places, available to employees and applicants, notices setting forth the nondiscrimination policies.

13.8.1.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

➤ Add Section 13.9 as follows:

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

➤ Add Section 13.10 as follows:

13.10 Contractor warrants and represents it does not boycott Israel currently and will not boycott Israel during the term of the contract, in accordance with House Bill 89.

➤ Add Section 13.11 as follows:

13.11 Contractor warrants and represents it does not engage in business operations with Sudanese or Iranian Governments, or a foreign terrorist organization designated by the U.S. State Department, in accordance with Senate Bill 252.

➤ Amend Section 14.1.3 as follows:

Add "incurred to the date of termination" after the phrase ", including reasonable overhead and profit" at the end of the paragraph, and delete the remainder of the paragraph.

➤ Add the following subsections to Section 14.2.1:

.5 fails to furnish the Owner, upon request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;

.6 engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the law prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or

.7 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents.

- Amend Section 14.3.2 as follows:

Delete "shall" and replace it with "may" after "Contract Time".

- Delete Section 14.4.1 and replace with the following:

14.4.1 The Owner may, at any time, terminate the Contract, or any part or portion thereof, for the Owner's convenience and without cause.

- Delete Section 14.4.3 and replace with the following:

14.4.3 In the case of such termination for the Owner's convenience, the Contractor shall only be entitled to receive payment for work properly executed, and costs directly attributable to such termination.

- Add the following Section 14.4.4:

14.4.4 Owner shall be entitled to delete or terminate any portion of the Contract bid as an alternate component, at any time at the Owner's convenience and without cause. In the event of such termination, the Contractor shall only be entitled to receive payment for Work properly executed on the alternate component, if any, through the date of termination.

- Add the following to Section 15.1.5:

15.1.5.3 Claims for increase in the Contract Time shall set forth in detail the circumstances that form the basis for the Claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work and the number of days' increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall provide such supporting documentation as the Owner may require including, where appropriate, a revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Claim.

15.1.5.4 Extension of time for completion of the work on account of weather or other circumstances beyond the Contractor's control will be subject to submission of verifiable data. Request for extension of time shall be submitted in writing with each Request for Payment. If Contractor fails to submit request, time extension will not be approved for the pay period.

15.1.5.5 No extension of time shall be made to the Contractor because of hindrances or delays from any cause which is the fault of Contractor or Contractor's Subcontractors or under Contractor's control. Claims for extension of time may only be considered because of rain delays, or hindrances or delays which are the fault of Owner and/or under Owner's control, but only to the extent that Substantial Completion of the Project is adjusted beyond the original Substantial Completion date. City Council approval shall be required for any extension of time. No damages shall be paid for delays. Contractor shall

only be entitled to time extensions per the terms of the Contract Documents.

THE TOWN OF FLOWER MOUND, TEXAS**SUPPLEMENTARY CONDITIONS**
TO AIA DOCUMENT A133-2009

These Supplementary Conditions are incorporated into the Construction Manager at Risk Agreement between Steele & Freeman, Inc. ("Contractor") and the TOWN OF FLOWER MOUND, TEXAS ("Town" or "Owner"), dated June 18, 2018. The following terms and conditions supplement and modify the "Standard Form of Agreement Between Owner and Construction Manager as Constructor," AIA Document A133-2009. Where a portion of AIA Document A133-2009 is modified or deleted by these Supplementary Conditions, the unaltered portions of AIA Document A133-2009 shall remain in effect.

SUPPLEMENTARY CONDITIONS TO AIA DOCUMENT A133-2009**ARTICLE 1 GENERAL PROVISIONS****§1.1 The Contract Documents**

Delete the last sentence of this section.

§1.2 shall be amended as follows:

At the end of the first sentence add ", and to perform the Work defined in the Contract Documents, in accordance with the Owner's requirements and construction cost limitations, as approved by the Owner and set forth in the Contract Document."

§1.3 shall be amended as follows:

Any reference to the AIA Document A201-2007, General Conditions of the Contract for Construction, shall mean "as amended by the parties."

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES**§2.1 Preconstruction Phase**

§2.1.3 In the first sentence, after the word "shall," add: "coordinate with the Project schedule already developed by the Architect" and delete the rest of the sentence. Delete the second sentence of this section. In the last sentence, delete the word "and" between "advance of construction;" and "the occupancy requirements" and add the following to the end of the sentence:

"and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect."

§2.1.5.2 shall be amended by adding the following language at the end of the section:

“ . . . , including but not limited to, substitution of materials, or revisions or alterations to the Design Development Documents or the Construction Documents, to bring the Project within the Owner’s budget, but shall not delete necessary components of the Project without Owner’s consent, In the event that the quality or scope identified in the estimates are unacceptable or exceed the Owner’ identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner and are within the Owner’s budget to the extent feasible.”

§2.1.8 Extent of Responsibility

Add the following language at the end of this section: “The Construction Manager shall certify to the Owner that the facility, to the best of his knowledge, has been constructed in accordance with the Architect’s construction documents. The certification shall be in a form which is acceptable to the Owner and Construction Manager.”

§2.2 Guaranteed Maximum Price Proposal and Contract Time

§2.2.2 In the last sentence of this section, replace “shall” with “may.”

§2.2.3.5 Add the following language at the end of this subsection: “, but in any event not less than sixty (60) days.”

Add the following new subsection after subsection §2.2.3.5:

§2.2.3.6 If Owner requests, Construction Manager shall make available for inspection the background documents and information that form the basis of the Construction Manager’s Guaranteed Maximum Price proposal.”

§2.2.4 Delete this section in its entirety.

§2.2.9 Delete this section in its entirety and replace it with the following: “The Guaranteed Maximum Price shall not include in the Cost of the Work any taxes from which the Owner is exempt by virtue of its status as a governmental entity. In the event that the Contractor is required to pay or bear the burden of any new federal, state, or local tax, or if any rate increase of an existing tax (except a tax on net profits), as a result of any statute, court decision, written ruling, or regulation takes effect after the contract date, the Guaranteed Maximum Price shall be increased by the amount of the new tax, or tax increase.”

§2.3 Construction Phase

§2.3.1 General

§2.3.1.2 At the end of the section, replace “earlier” with “later.” Add the following language at the end of the section: “Other than services normally associated with Construction

Manager's performance of the General Conditions, Construction Manager shall not perform any portions of the Work unless it has been awarded such portion in accordance with the same procedures imposed upon all other trade contractors or subcontractors, and then, only if the Owner has determined that the Construction Manager's bid or proposal provides the best value for the Owner."

§2.3.2 Administration

§2.3.2.1 Delete this section in its entirety and replace it with the following: "All portions of the Work, other than minor work, site clean-up, etc. ("General Conditions"), shall be performed by trade contractors or subcontractors, including the Construction Manager, who have been selected using competitive bids or competitive sealed proposals. With the Owner's approval, the Construction Manager shall publicly advertise and solicit either competitive bids or competitive sealed proposals in accordance with the policies and procedures approved by Owner. On all portions of the Work for which the Construction Manager does not submit a bid or proposal, the Construction Manager and the Owner shall receive and open all trade contractor and subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process. On any portion of the Work for which the Construction Manager submits a bid or proposal, the Owner shall receive and open the trade contractors', subcontractors' and Construction Manager's bids or proposals, but shall not disclose the contents of the bids or proposals until the selection process therefore is completed. All bids or proposals shall be made public within seven (7) days after the date of final selection."

§2.3.2.2 In the first sentence of this section, delete "and" from between "Work" and "(3)" and insert the following in between "exceptions," and "but": "and (4) offers the best value to the Owner."

§2.3.2.5 shall be amended by adding the following language at the end of the existing section:

"The Construction Manager shall provide periodic presentations updating the progress, quality and status of the Work to Owner's Town Council, at Owner's request, at no additional cost to Owner."

Add the following new subsections after §2.3.2.8:

"§2.3.2.9 Liquidated Damages for Failure to Complete on Time. The time of completion is of the essence of this Agreement. For each day that any work shall remain uncompleted after the time specified in the Contract Documents, or the increased time granted by the Owner, or as agreed upon to be increased by additional Work or materials ordered after this Agreement is signed, the sum of One Thousand and No/100 Dollars (\$1,000.00) shall be deducted from the monies due the Construction Manager. The sum of money thus deducted for such delay, failure or non-completion is not to be considered as a penalty, but shall be deemed, taken and treated as reasonable liquidated damages per day that the Construction Manager shall be in default after the time stipulated in the Contract Documents for completing the Work. The said amount is fixed and agreed upon by and between the Owner and Construction Manager

because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner in such event would sustain; and said amount is agreed to be the amount of damages which the Owner would sustain and which shall be retained from the monies due, or that may become due, the Construction Manager under this Agreement; and if said monies are insufficient to cover the amount owing, then the Construction Manager or its surety shall pay any additional amounts due. In the event that the actual damages incurred by the Owner exceed the amount of liquidated damages, Owner shall be entitled to recover its actual damages.

§2.3.2.10 Claims for Additional Time. The Construction Manager shall be entitled to an extension of the contract time for delays or disruptions due to unusually severe weather in excess of that normally experienced at the job site only as determined from climatological data set forth in this subsection. The Construction Manager shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Guaranteed Maximum Price by reason of such delays or disruptions. Rainy days shall not be considered an abnormal or adverse weather condition for which an extension of time will be granted unless and except in those months during which the actual cumulative number of rainy days within the month exceed the historical average cumulative number of rainy days for said month, provided that the rainfall prevented the execution of major items of work on normal working days. A rain day is defined as a day when rainfall exceeds one-tenth (.1) inch during a twenty-four (24) hour period. The historical average cumulative number of rainy days per calendar month is agreed by the Owner and Construction Manager to be as set forth in the following Rainfall Table:

Rainfall Table

JAN	7 calendar days	APR	7 calendar days	JUL	4 calendar days	OCT	7 calendar days
FEB	6 calendar days	MAY	9 calendar days	AUG	4 calendar days	NOV	6 calendar days
MAR	8 calendar days	JUN	7 calendar days	SEP	6 calendar days	DEC	6 calendar days

The number of rain days shown in the Rainfall Table for the first and last months of this Agreement will be prorated in determining the total number of rain days expected during the period of this Agreement. Time extensions may also be granted for any day following a period of precipitation during which muddy conditions exist and prevent performance of major items of work conducted on normal working days, which muddy conditions are subject to confirmation by the Owner.

Requests for an extension of time pursuant to this subsection shall be submitted to the Owner and Architect not later than the fifteenth (15th) day of the month following the month during which the delays or disruptions occurred, and shall include documentation demonstrating the nature and duration of the delays or disruptions and the anticipated effect it will have on the Construction Manager's abilities to perform its obligations along with a plan to deal with the effects of such abnormal or adverse weather conditions and proposed amendments to all affected schedules and the Gantt Chart necessarily resulting therefrom. Failure to timely submit a complete notice of claim for delays and extension of time for completion due to abnormal or adverse weather conditions or rainy days pursuant to this subsection shall result in the denial of a

request for extra time for performance under the Contract Documents. In the event of such failure, no adjustment shall be made to the Guaranteed Maximum Price, and the Construction Manager shall not be entitled to claim or receive any additional compensation as a result of or arising out of any delay resulting in the adjustment of the working time, due to any of the factors outlined within this subsection.

No payment, compensation, or adjustment of any kind (other than the extensions of time provided for in the Contract Documents) shall be made to the Construction Manager for damages because of hindrances or delays from any cause other than intentional interference of the Owner, whether such hindrances or delays be avoidable or unavoidable, and the Construction Manager agrees that he will make no claim for compensation, damages or mitigation of liquidated damages for any such delays.”

Add the following new section after section §2.5:

“§2.6 The Construction Manager shall be responsible for all construction surveys and staking. Dimensions of Work shall not be determined by scale or rule, but figured dimensions shall be followed at all times. The Construction Manager shall compare all drawings and verify all dimensions, and shall take any and all measurements necessary to verify the Drawing dimensions in relation to conditions already established at the Project site before laying out the Work. Any discrepancy will be immediately called to the attention of the Architect and Owner by the Construction Manager. The Construction Manager will be held responsible for subsequent errors which could have been avoided.”

ARTICLE 3 OWNER’S RESPONSIBILITIES

§3.1 Information and Services Required of the Owner

§3.1.2 Delete this section in its entirety.

§3.1.3 Delete this section in its entirety.

§3.1.4 shall be amended by deleting the third sentence and replacing it with the following:

“Such information or services shall be provided for informational purposes only and are not warranted or represented to accurately show the conditions at the Project site. Construction Manager may use the information at its own risk and shall use customary precaution relating to the performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall perform all work in such a non-negligent manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. Contractor shall be responsible for any damage done to such lines, cables, pipes and pipelines during the Work.”

§3.2 Owner’s Designated Representative

§3.2 shall be deleted and replaced with the following language:

"The Owner shall designate a representative with respect to the Project. Such representative shall not have authority to make final decisions on behalf of the Owner concerning Change Orders, changing the Guaranteed Maximum Price, extending the date of Substantial or Final Completion, or other items requiring Town Council approval; however, the Owner or such authorized representative, shall render decisions in a timely manner in order to avoid unreasonable delay in the service or Work of the Contractor."

§3.2.1 Legal Requirements

Delete this section in its entirety.

§3.3 Architect

Substitute "B101-2007" for "B103-2007" in the second line.

Add the following language at the end of the first sentence:

“, unless such Additional Services are caused by or attributable to the fault of the Construction Manager, in which case the Construction Manager shall be responsible for the cost of such Additional Services. Upon request, . . .”

Add the following new section after §3.3:

“§3.4 Inspection and Testing

The Owner shall provide or contract for, independently of the Construction Manager, the inspection services, the testing of construction materials engineering and the verification testing services necessary for acceptance of the Work by the Owner.”

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§4.2.2 shall be amended by deleting all original language after the first sentence, and replacing it with the following language:

“, in accordance with the provisions of Texas Government Code section 2251.021, including computation of interest on unpaid amounts.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§5.2 Guaranteed Maximum Price

§5.2.1 Add the following language at the end of this section: “In case of any “buy out” transaction or agreement by the Construction Manager with a subcontractor for the

subcontractor's cost of its portion of the Work, then such savings shall be shared with the Owner in the following percentages: one hundred percent (100%) to Owner, zero percent (0%) to Construction Manager. Said savings shall be memorialized by appropriate change order. Documentation regarding such "buy out" transactions/agreements shall be subject to the Owner's audit and inspection rights set forth in §6.11."

§5.3 Changes in the Work

§5.3.2 shall be amended by adding the following to the end of the existing sentence:

“, unless such costs are caused by or attributable to the fault of the Construction Manager.”

§5.3.3 shall be amended by adding the following to the end of the first sentence in this section:

“, except that the term shall take into account the limitations provided in §5.1.3 of this Agreement.”

§5.3.5 Delete this section in its entirety and replace with: “In the case of changes in the Work, the fee will be adjusted as provided for in Section 5.1.1, if both parties agree that the scope of services has changed significantly. No change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Guaranteed Maximum Price or a change in the Contract Time unless and until such alteration or addition has been authorized by a change order executed and issued in accordance with and in strict compliance with the requirements of the Contract Documents. This requirement is of the essence of the Contract Documents. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is in fact any such unjust enrichment, shall be the basis for any claim to an increase in the Guaranteed Maximum Price or change in the Contract Time.”

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§6.1.1 shall be amended by adding after the second “Work”:

“, unless such costs are caused by or attributable to the fault of the Construction Manager.”

§6.2 Labor Costs

§6.2.4 Delete this section in its entirety, and replace it with the following language: “Costs paid or incurred by the Construction Manager for payroll taxes, insurance, and customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions,

provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3, and provided that such costs do not exceed thirty percent (30%) of such wages and salaries.”

§6.2.5 Delete this section in its entirety.

§6.3 Subcontract Costs

Delete from this section the last word “subcontracts” and replace it with “Guaranteed Maximum Price Amendment.”

§6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§6.5.5 Add at the end of this section, after the word “Work,” the following language: “subject to the Owner’s approval.”

§6.6 Miscellaneous Costs

§6.6.2 Delete this section in its entirety.

§6.6.5 Delete this section in its entirety.

§6.6.6 Delete this section in its entirety.

§6.6.7 Delete this section in its entirety.

§6.6.8 Delete this section in its entirety.

§6.6.9 Delete this section in its entirety.

§6.7 Other Costs and Emergencies

§6.7.3 Delete this section in its entirety.

§6.7.4 Delete this section in its entirety.

§6.8 Costs Not To Be Reimbursed

§6.8.1 In the first line of this section, delete the phrase “The Cost of the Work shall not include the items listed below” and replace it with the following: “The Cost of the Work shall exclude items including, but not limited to, those items listed below:”

§6.9.1 shall be amended as follows:

At the beginning of this section add “Construction Manager shall take advantage of all available discounts, rebates and refunds for supplies, materials and equipment connected with the Work and which conform to the Contract Documents, which discounts, rebates and refunds shall accrue to the benefit of the Owner.”

Place a period after “Owner” in the original first sentence and delete the remainder of that sentence.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§7.1 Progress Payments

§7.1.3 shall be amended by adding the following sentence to the end of the section:

“Payments are due and payable in accordance with the provisions of Texas Government Code Chapter 2251.”

§7.1.5 Add the following at the end of this section: “Construction Manager shall use AIA Document G702 for Application and Certificate for Payments, and shall use AIA Document G703 for necessary continuation sheets related to AIA Document G702, or shall use such documents in a similar format approved by the Owner.”

Add the following new subsection after §7.1.10:

“§7.1.11 In conjunction with any application for payment submitted by the Construction Manager, the Construction Manager shall comply with the release, lien waiver and other documentation requirements set forth in, but not limited to, AIA Document A201-2007, §9.3.3 and §9.10.2.”

§7.2 Final Payment

§7.2.1 shall be amended by deleting the word “and” at the end of subsection .2, replacing the period at the end of subsection .3 with “; and”, and adding a subsection .4 as follows:

“.4 Owner’s receipt of an “All Bills Paid” affidavit signed by the Construction Manager affirming that all indebtedness associated with the Work and all sums of money due for labor, materials, fixtures, equipment and machinery have been paid in full.”

§7.2.1 shall be further amended by adding the following to the end of the section:

“The amount of final payment shall be calculated as follows:

- .1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's fee, but not more than the Guaranteed Maximum Price.

- .2 Subtract amounts, if any, for which the Architect or Owner disputes, refuses or withholds payment, including liquidated damages, if any.
- .3 Subtract the aggregate of previous payments made by Owner.
- .4 The final payment amount determined in accordance with this Section shall be further modified under the following circumstances:
 - .1 If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees due Construction Manager at any time.
 - .2 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, any final payment to Construction Manager shall be subject to deduction for such amounts as the Architect shall determine as the cost for completing incomplete Work and the value of unsettled claims."

§7.2.3 In the first sentence after word "amount" add the following: "in accordance with the Contract Documents" and delete the remainder of the sentence. Delete the second and third sentences of this section.

ARTICLE 8 INSURANCE AND BONDS

Add to the table in Article 8, in the Type of Insurance or Bond column, an entry that reads "Builders' Risk Insurance". Add to the Limit of Liability or Bond Amount column in the table in Article 8 the following entry, which corresponds to the "Builders Risk Insurance" entry: "Completed value form, insurance carried must be equal to the completed value of the structure. Town shall be listed as Loss Payee."

ARTICLE 9 DISPUTE RESOLUTION

§9.2 shall be amended to select the option for "Litigation in a court of competent jurisdiction" as the method of binding dispute resolution.

ARTICLE 10 TERMINATION OR SUSPENSION

§10.1.3 shall be amended by deleting the words "or indemnify" in the final paragraph of the section.

§10.2.2 shall be amended by deleting the remainder of the sentence after the word "above".

ARTICLE 11 MISCELLANEOUS PROVISIONS

The following provisions shall be added to Section 11.5:

“§11.5.1 No delay or omission by either of the parties hereto in exercising any right or power accruing upon the noncompliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

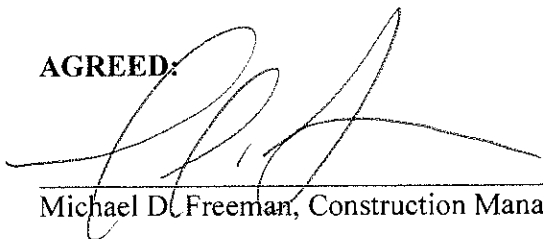
§11.5.2 Construction Manager stipulates that Owner is a political subdivision of the State of Texas, and as such, may enjoy immunities from suit and liability under the Constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or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

§11.5.3 If any portion of this Agreement is determined to be invalid, unenforceable, or void, then that portion shall be severed, and all other portions of this Agreement shall remain in full force and effect.”

ARTICLE 12 SCOPE OF THE AGREEMENT

§12.2 The first sentence shall be amended to add ", as amended by the parties:" after the word "Agreement".

AGREED:



Michael D. Freeman, Construction Manager

Thomas E. Hayden, Mayor, Town of Flower Mound

**TOWN OF FLOWER MOUND SOQ NO. 2018-105-B****REQUEST FOR STATEMENT OF QUALIFICATIONS FOR CONSTRUCTION
MANAGER-AT-RISK SERVICES FOR THE CONSTRUCTION OF THE TOWN OF
FLOWER MOUND LIBRARY EXPANSION**

The Town of Flower Mound will accept Statements of Qualifications (SOQ) for Construction Manager-At-Risk services for Construction of the Town Of Flower Mound Library Expansion until 11:00AM CT on May 17, 2018. All submittals and SOQ should be delivered to:

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

Qualification submittal packets shall be plainly marked on outside of envelope as follows:

CONSTRUCTION MANAGER-AT-RISK FOR:
CONSTRUCTION OF THE TOWN OF FLOWER MOUND LIBRARY EXPANSION
SOQ NO. 2018-105-B
ATTENTION: PURCHASING OFFICE
DO NOT OPEN UNTIL: 11:00AM ON MAY 17, 2018

Any qualification packets received later than the specified time, whether delivered in person or by mail, will not be accepted, and shall be returned unopened.

The Town of Flower Mound reserves the right to waive any informality and to reject any or all qualifications/proposals.

The Town of Flower Mound appreciates your time and effort in preparing a response. Please note that all submissions must be received at the designated location by the deadline shown. Submissions will not be publicly opened, but the names of the offerors will be read aloud, on the due date and time at the Town of Flower Mound, Town Hall, 2121 Cross Timbers Road, Flower Mound, Texas, 75028. Submissions received after the deadline will not be considered for the award of the contract and will be returned unopened. Submissions may not be altered, amended or withdrawn after the due date and time.

A qualified Construction Manager at Risk (CMR) will be chosen in a two-step process to work alongside the Town's selected Architect or Engineer for the construction of the Town Of Flower Mound Library Expansion located in Flower Mound, Texas. The selection will be determined solely by the Town of Flower Mound, Texas. The Town will select the SOQ submitted that provides the best value to the Town. The CMR will provide construction services at a contracted fee.

Town of Flower Mound
Vendor Information Form
SOQ No. 2018-105-B

Bid Title: SOQ For Construction Manager-At-Risk Services for the Construction of the Town of
Flower Mound Library Expansion

Company Information

Please complete the following and include with your bid submittal:

Company Name: _____

Principal Place of Business Address: _____

Principal Place of Business City, State, Zip: _____

Principal Place of Business Phone Number: _____

Principal Place of Business Fax Number: _____

Email Address: _____

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.
35. 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.
42. 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.

CONFLICT OF INTEREST QUESTIONNAIRE For vendor or other person doing business with local governmental entity		FORM CIQ
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 _____	
1 Name of person who has a business relationship with local governmental entity.		
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. _____ 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.		
4 _____ Signature of person doing business with the governmental entity _____ Date		

Adopted 06/29/2007

SOQ No. 2018-105-B
**Bid Title: SOQ For Construction Manager-At-Risk Services for the Construction
of the Town of Flower Mound Library Expansion**

PROJECT, SCOPE OF WORK, AND ANTICIPATED SCHEDULE:

The Town invites the submittal of responses to this Request for Construction Manager at Risk Statement of Qualifications from firms who can adequately demonstrate they have the resources, experience, and qualifications necessary to provide "Construction Management at Risk" services in connection with the design and construction of the Town Hall Facility. The following project narratives are to assist you in responding to this request for SOQ.

The Town will evaluate the submittals and will select the highest ranking submittal pursuant to the criteria outlined herein. The statements of qualifications received will be one part of the selection process utilized by the Town, together with an interview as needed, to determine if a consulting contract shall be pursued. After the Town selects the highest ranking Construction Manager at Risk (CMR), the Town will attempt to negotiate a contract with the CMR for performing general construction of the project. However, the Town reserves the right to terminate its negotiations with the CMR in writing if it appears to the Town that the negotiations will not result in the execution of a contract. In such event, the Town will select the next highest ranking CMR and attempt to negotiate a contract with that CMR, and so on and so forth until the Town has successfully negotiated a contract with a selected CMR.

The Town reserves the right to disqualify any submittal without cause. By submission of a response, Proposers waive any rights to make a claim against the Town, its employees, agents and consultants related in any way to the submission of the proposal or the Owner's disqualification of the proposal as a result.

For purposes of this Request for SOQ, terms of the future contract will be based on the Construction Agreement and General Conditions respectively, as modified for this project. The finalized and signed Agreement and Conditions will include such language and modifications agreed upon by the Town of Flower Mound, Texas and the CMR.

Payment and performance bonds will be required of the CMR for the entire project. If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the Town must each be in an amount equal to the project budget, as specified in this request for statements of qualifications. The CMR shall deliver the bonds to the Town not later than the 10th day after the date the CMR executes the contract unless the CMR furnishes a bid bond or other financial security acceptable to the Town to ensure that the CMR will furnish the required performance and payment bonds when a guaranteed maximum price is established.

The project consists of an approximately 16,000 square foot expansion of the existing library located at 3030 Broadmoor Lane. The work includes additional parking, paving and relocation of existing utilities. The structure will be a one story expansion on the east and west sides of the existing facility and of conventional steel and/or masonry construction with all related MEP. Interior renovations to the existing building will also be included. The program for the building will be phased construction. The library will be open to the public during construction with minimal impact to library operations and will include class rooms, common areas, additional storage, administrative areas, restrooms and offices. The Architect will further develop the program with the Owner. The building will be of a design style similar to the existing building and compatible with, other Town of Flower Mound municipal buildings. Furniture, fixtures and some equipment will be provided and coordinated by the Town of Flower Mound.

Construction Budget: \$9,300,000.00

Anticipated Construction Start: October 2018

Anticipated Construction Completion: January 2020

The following describes the anticipated services expected during design and construction:

- Manage the Guaranteed Maximum Price (GMP) Documentation
- Establish budget by bid package for design phases
- Prepare sub-contractor bid or proposal packages
- Conduct pre-bid meetings
- Receive bids
- Conduct award of contracts/purchase orders
- Provide coordination and management of sub-contractors
- Summarize monthly reports
- Provide change order and contingency funds control
- Establish a quality management program
- Provide for job safety functions
- Provide accounting functions
- Provide jobsite security functions
- Provide post construction services
- Provide value engineering and management of construction schedule
- Attend pre-construction meeting with Town personnel

CONSTRUCTION MANAGER SELECTION SCHEDULE

- Statement of Qualifications
First advertisement April 29, 2018
- Statement of Qualifications
Second advertisement May 6, 2018
- Receive sealed qualifications May 17, 2018
- Interviews (if deemed beneficial to the Town) To Be Determined
- Received Sealed Proposals and negotiate fee May 30, 2018
- Recommendation to Town Council June 18, 2018

STATEMENT OF QUALIFICATIONS:

Pursuant to the provisions of the Chapter 2269, Subchapter F. of the Government Code, it is the intention of the Town of Flower Mound to select a Construction Manager-At-Risk in a two-step process for the construction the Town Of Flower Mound Library Expansion. Sealed submittals are to include the information requested in this package in the sequence and format prescribed herein. In addition to and separate from the requested information, submitting organizations may provide supplementary materials further describing their capabilities and experience (under separate cover).

Selected short-list proposers may be requested to submit additional information indicating fees.

One original and five (5) copies are to be submitted to:

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

No later than: 11:00AM CT ON MAY 17, 2018

Immediately thereafter, the Town will review the information. The Town of Flower Mound will use a two-step selection process.

The Town Council of the Town of Flower Mound, Texas, reserves the right to accept or reject any submittal, or any part thereof, or any combination of submittals, and to waive any or all formalities.

Receipt of a submittal does not bind the Town to any contract for said services, nor does it give any guarantee that a contract will be awarded. Receipt of submittals shall be received and acknowledged only so as to avoid disclosure of the contents to competing offerors and kept strictly confidential during the negotiation/evaluation process. However, all documents shall be open for public inspection after a contract is awarded to the extent required under Texas law.

Queries about the project should be addressed to:

David Bauer
Construction Manager
Town of Flower Mound, Texas
Phone: (972) 874-6308
Email: david.bauer@flower-mound.com

REQUEST FOR QUALIFICATIONS CONTENT OF SUBMITTALS:

To enable the Town to efficiently evaluate the responses, it is IMPORTANT that respondents follow the required format in preparing responses and submittals. SUBMITTALS THAT DO NOT CONFORM TO THE PRESCRIBED FORMAT MAY NOT BE EVALUATED. The aesthetics of the submittals will play no part in the award of a contract for the work. Clarity and completeness are required.

Please provide the following information in the sequence and format prescribed by this request. Supplemental materials providing additional information may be included under separate cover attached, but the information requested below is to be provided in this format.

1. FIRM INFORMATION

- 1.1 Name of firm
- 1.2 Address of Principal office
- 1.3 Phone
- 1.4 Fax
- 1.5 Form of Business Organization (Corporation, Partnership, Individual, etc.)
- 1.6 Year founded
- 1.7 Primary individual to contact

2. ORGANIZATION

- 2.1 How many years has your organization been in business in its current capacity?
- 2.2 How many years has your organization been in business under its present name? Under what other or former name(s) has your organization operated?
- 2.3 If your organization is a corporation, please provide date of incorporation, State of incorporation and list all officers of the corporation.
- 2.4 If your organization is a partnership, answer the following: Date of

organization, type of partnership (if applicable), and names of managing partner(s).

- 2.5 If your organization is individually owned, answer the following: Date of organization, name of owner.
- 2.6 If the form of your organization is other than those listed above, describe it and name the principals.
- 2.7 Information of the individual that will be the lead on this project.

3. LICENSING

- 3.1 List jurisdictions and trade categories in which your organization is legally qualified to do business and indicate registration or license numbers, if applicable.
- 3.2 List jurisdictions in which your organization's partnership or trade name is filed.

4. EXPERIENCE

- 4.1 List the categories of work that your organization normally performs with its own forces. Would you propose to do any work with your own forces or to bid all work to subcontractors?
- 4.2 List any subcontractors in which your organization has some ownership and list the categories of work those subcontractors normally perform.
- 4.3 Claims and suits (if the answer to any of the questions below is yes, please attach details).
 - 4.3.1 Has your organization ever failed to complete any work awarded to it?
 - 4.3.2 Are there any judgments, claims, arbitration proceedings or suits filed or outstanding against your organization or its officers for the last 5 years?
 - 4.3.3 Has your organization filed any lawsuits or requested arbitration with regards to construction contracts within the last 5 years?
- 4.4 Within the last 5 years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract? (if the answer is yes, please attach details).
- 4.5 Current work:
List the major construction projects your organization has in progress (noting method of selection, i.e.: CM at Risk, Bid, Proposal or other), giving the name and location of project owner, architect, contract amount, percent complete, and scheduled completion date.
- 4.6 Work over last 5 years:
List major projects (particularly public facilities) constructed by your firm. For each project, provide the name, nature of the project/function of the building, size of building (SF), location, cost, completion date, owner, architect, and method selection (i.e.: CM @ Risk, Bid, Proposal or other).

- 4.7 List of similar projects to this one and a detailed example of the level of scheduling quality to be expected on the project by submission of a schedule for another project of similar complexity.

5. FINANCIAL INFORMATION

- 5.1 Attach a financial statement, preferable audited, including your organization's latest balance sheet and income statement showing the following items:
- Current assets (e.g., cash, joint venture accounts, accounts receivable, notes receivable, accrued income, deposits, materials inventory, and prepaid expenses).
 - Non-current assets (e.g., net fixed assets, other assets).
 - Current liabilities (e.g., account payable, notes payable (current), accrued expenses, provisions for income taxes, advances, accrued salaries, and accrued payroll taxes).
 - Non-current liabilities (e.g., notes payable).
 - Capital accounts and retained earnings (e.g., capital, capital stock, authorized and outstanding shares par value, earned surplus, and retained earnings).
- 5.2 Name and address of firm preparing attached financial statement and date thereof.
- 5.3 Is the attached financial statement for the identical organization named under item 1 above? If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent, subsidiary).
- 5.4 Will the organization whose financial statement is attached act as guarantor of the contract for construction?
- 5.5 Provide name, address, and phone number for bank reference.

6. INSURANCE AND BOND INFORMATION

- 6.1 Certificates of Insurance for both Liability and Worker's Compensation showing the Town as an additional insured party will be required upon submission of the GMP. Minimum coverage will be up to \$15,000,000. The Certificate of Insurance shall be provided on an ACORD form itemizing the firm's normal coverage at the time of the submittal. The firm shall provide evidence of any additional insurance coverage available to the Town. Additional insurance coverage available to the Town without increase in cost (due to normal coverage carried by the company) will be considered of benefit to the Town. Show available excess or umbrella coverage on the insurance certificate, should such coverage be in place. **See Exhibit A at end of this solicitation.**
- 6.2 Worker's Compensation coverage shall be based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
- 6.3 Performance

and Payment Bonds for 100% of the construction cost will be required upon submission of the GMP.

7. EXPERIENCE WITH CONCEPTS FOR WORKING AS A CONSTRUCTION MANAGER-AT-RISK

7.1 Describe your organization's concepts for working in a team relationship with the Owner and Architect during the design and construction of major projects. Describe your organization's methods for estimating costs, and for scheduling during the design/document phases. Describe how your company will benefit this project using Construction Manager at Risk.

7.2 Cost Estimates:

Provide an example of a proposed accounting method for a Construction Manager at Risk contract and a preconstruction and FGMP cost estimate on similar work. Attach a sample conceptual cost estimate prepared during the design phase of the project and a sample of the final cost estimate/breakdown used to fix the contract amount for the construction of the same project. (The identity of the project may be concealed. The intent is to see the nature and format of the cost information provided).

7.3 Fees:

Pre-construction phase service fee:

Describe your organization's ideology as it pertains to the pre-construction phase fee, i.e., items and services to be included in the fee. DO NOT INCLUDE A DESCRIPTION OF YOUR ESTIMATED FEES IN THIS SECTION, ONLY INCLUDE A DESCRIPTION OF WHAT ITEMS AND SERVICES WILL BE INCLUDED IN THE FEE. Selected short-list proposers may be requested to submit additional information indicating fees.

Construction phase service fee:

Describe your organization's ideology as it pertains to the construction phase fee, i.e., fixed fee, percentage fee, and particular items to be included and/or excluded from the fee. DO NOT INCLUDE A DESCRIPTION OF YOUR ESTIMATED FEES IN THIS SECTION, ONLY INCLUDE A DESCRIPTION OF WHAT ITEMS AND SERVICES WILL BE INCLUDED IN THE FEE AND HOW THAT FEE WILL BE CALCULATED (FIXED FEE VERSUS PERCENTAGE FEE). Selected short-list proposers may be requested to submit additional information indicating fees.

7.4 Savings:

Describe your organization's concept for the disposition of savings realized during construction. Is the full amount or a percentage thereof returned to the Owner?

7.5 Contingencies:

Describe your organization's concept for cost contingencies during design? During construction? What is your organization's concept for the

disposition of contingency funds after the completion of the project? Give a history of project cost based on bid cost versus final cost noting reasons and amounts of change orders. What percentage contractor contingency do you carry with 100% construction documents?

7.6 **Cost Information:**

Your firm would be required to make all cost information during design and construction available to the Town and the Town's Architect. Describe how this information would be furnished and how the Town and architect would be assured that it is complete and accurate.

8. SAFETY

8.1 Provide information as pertains to your firm's accident frequency rate and modifier for the last five years. List any OSHA citations in the last five years. List any deaths that have occurred on your projects in the last five years.

9. SCHEDULES

9.1 Provide samples of schedules that will be used to control various project phases. Give a history of your ability to deliver projects on time for the past 5 years. Describe methods employed to keep projects on schedule and methods of corrective action to overcome schedule deficiencies.

10. PAYMENT

10.1 The Town will authorize progress payments, only after Town officials have personally inspected and signed the request for payment (invoice) from said Construction Manager at Risk. Upon completion of project, the Town may withhold a semi-final payment if there are any unsettled claims connected with this project.

11. REFERENCES

11.1 For the projects listed above (re: item 4.6), identify a representative of the owner and a representative of the architect (provide name, phone/fax numbers) whom we could contact as references regarding your organization's services. Ideally, some of the references should be for municipal projects of comparable scope.

12. PERSONNEL

12.1 Given the scope and schedule of the project, identify the specific Project Manager, Estimator, and Superintendent who would work on the project. Provide a resume for each individual.

13. OWNER/CONTRACTOR AGREEMENT

13.1 The Town will only accept a submittal based on the Owner/Construction Manager Agreement on the AIA Document A133/CMc - 2009, with AIA A133-2009 Exhibit A and the AIA Document A201 – 2007, General Conditions of the Contract, all as modified for this project.

CRITERIA FOR SELECTION:

Per Chapter 2269, Subchapter F of the Government Code, the Town of Flower Mound may consider the following in determining to whom to award the contract for Construction Manager-At-Risk services. The selection process is weighted heavily on important issues critical to the success of the project. In determining the best value to the Town, the following are key issues that will be evaluated in the Town's selection decision:

- a) The reputation of the vendor and of the vendor's goods or services;
- b) The relevant experience of the vendor;
- c) The quality of the vendor's goods and services;
- d) Past performance of the vendor;
- e) The vendor's past relationship with the Town;
- f) The extent to which the goods and services meet the Town's needs;
- g) Vendors methodology for the project;
- h) The impact on the ability of the Town to comply with laws and rules relating to historically under-utilized businesses;
- i) Vendors safety record;
- j) Proposed personnel for the project;
- k) The total long-term cost to the Town to acquire the vendor's goods and services; and
- l) Any other relevant factor that a private business entity would consider in selecting a vendor.

The following weighted criteria will be considered in selecting the Construction Manager:

EXPERIENCE - (50% of scoring)

- a) The reputation of the vendor and of the vendor's services;
 - b) The relevant experience of the vendor;
 - c) The quality of the vendor's goods and services;
 - d) Past performance of the vendor; and
 - e) The vendor's past relationship with the Town.
- How substantial is the firm's recent experience in the construction of projects of comparable size and complexity?
 - How substantial is the firm's experience in providing construction services for municipal facilities of comparable size and complexity?
 - Is the firm knowledgeable about or experienced in the North Texas construction market?
 - How substantial is the firm's recent experience in providing pre-construction services for projects of comparable size and complexity?

TOWN'S NEEDS - (25% of scoring)

- a) The extent to which the goods and services meet the Town's needs;
- b) Vendors methodology for the project; and

- c) The impact on the ability of the Town to comply with laws and rules relating to historically under-utilized businesses.
- Does the description provided by the firm of its pre-construction services evidence both understanding and capabilities of the process in general and as it applies to these projects for the municipality?
- Does the construction manager appear to have the capability to meet the Town's schedule objectives?

ORGANIZATION, LICENSING, FINANCIAL INFORMATION, PERSONNEL, REFERENCES, SAMPLE CONTACT –

(25% of scoring)

- a) Vendor's safety record;
 - b) Proposed personnel for the project;
 - c) The total long-term cost to the Town to acquire the vendor's goods and services; and
 - d) Any other relevant factor that a private business entity would consider in selecting a vendor.
- Does the vendor have a good safety record and active safety program?
 - How long has the firm been in business providing the type of services sought by the Town?
 - Does the firm's organizational structure, licensing and financial information indicate that the firm is capable of undertaking these projects?
 - Do the personnel proposed for the project appear to have the appropriate experience, capabilities?
 - Did the reference list (both owners and architects) have a favorable experience with the organization? Would they work with them again? How comparable was their project to these projects?

SELECTION SCHEDULE:

Submittals are due to be received not later than 11:00AM ON MAY 17, 2018 Firms should be prepared to attend a final Selection Interview, if necessary, to be held at the Flower Mound Town Hall to review proposals, strategies and proposed staff. A selection is anticipated to be made on or by June 18, 2018.

Each candidate should submit one (1) original and five (5) copies of submittal packets to arrive on or before the date/time identified above.

INTERVIEWS:

Submittals will be taken and reviewed after receipt. It is anticipated a short list of up to three (3) candidates may be interviewed, but the Town reserves the right to not conduct any interviews and to base the selection strictly on the SOQ submitted or to eliminate any Construction Manager(s) from the selection as late as the day prior to any potential

interview if the Town determines the submittal is insufficiently responsive to merit further consideration.

Interviews, if conducted, will be 60 minutes, with 30 minutes for the candidate presentation and remaining time for questions and discussion. As to the Project Team, the Project Manager, Superintendent, and Lead Estimator should be in attendance for the Project Team at a minimum. The chemistry and comfort of the team is vital to the selection. The candidate's focus in the interview should be specific to this project and the Town's concerns, including, but not limited to, the following:

- What has the Contractor done recently that is similar to this project in schedule, complexity, scope?
- What experience do the individuals proposed for the project have, particularly in recreation and park projects?
- What are your thoughts on the schedule? Issues? Most problematic portions? What strategies or tactics can be used to expedite off site work/ preparation prior to onsite access, onsite tactics or strategies?
- How will you estimate earthwork and other major trades before they are brought onto the team? How do we get them onboard as early as we need them, and keep them competitive?
- What is your experience in early procurement of equipment? How is it best done? Schedule lead times?
- What unique leverages/advantages do you offer the project including but not limited to knowledge, experience, subcontractor market issues, vendor/equipment supplier issues, Town processes, etc.?
- Use of local sub-contractors? Your ability to perform work using CMR staff.

EXHIBIT A

INSURANCE REQUIREMENTS CONSTRUCTION SERVICES

Services for construction projects, including but not limited to: General Contractors, Demolition Contractors, Utility Contractors, Building Contractors, Street and Road Contractors, etc.

Contractor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the vendor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the contractor's bid. A certificate of insurance meeting all requirements and provisions outlined herein shall be provided to the Town prior to any services being performed or rendered. Renewal certificates shall also be supplied upon expiration.

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. ISO Form Number GL 00 01 (or similar form) covering Comprehensive General Liability. "Occurrence" form only, "claims made" forms are unacceptable.
2. Workers Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.
3. Automobile Liability as required by the State of Texas, covering all owned, hired, or non-owned vehicles. Automobile Liability is only required if vehicle(s) will be used under this contract.

B. MINIMUM LIMITS OF INSURANCE

Contractor shall maintain throughout contract limits not less than:

1. Commercial General Liability: \$1,000,000 per occurrence / \$2,000,000 in the aggregate for third party bodily injury, personal injury and property damage. Policy will include coverage for:
 - a. Premises / Operations
 - b. Broad Form Contractual Liability
 - c. Products and Completed Operations
 - d. Personal Injury
 - e. Broad Form Property Damage
 - f. Explosion Collapse and Underground (XCU) Coverage.
2. Workers Compensation and Employer's Liability: Workers Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability minimum limits of \$100,000 per injury, \$300,000 per occurrence, and \$100,000 per occupational disease.
3. Automobile Liability: \$1,000,000 Combined Single Limit. Limits can only be reduced if approved by the Town. Automobile liability shall apply to all owned, hired and non-owned autos.
4. Builders' Risk Insurance: Completed value form, insurance carried must be equal to the completed value of the structure. Town shall be listed as Loss Payee.

5. \$1,000,000 Umbrella Liability Limit that follows form over underlying Automobile Liability, General Liability, and Employers Liability coverages.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductible or self-insured retentions in excess of \$10,000 must be declared to and approved by the Town.

D. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain the following provisions:

1. General Liability and Automobile Liability Coverages:

- a. The Town, its officers, officials, employees, boards and commissions and volunteers are to be added as "Additional Insured's" relative to liability arising out of activities performed by or on behalf of the contractor, products and completed operations of the contractor, premises owned, occupied or used by the contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Town, its officers, officials, employees or volunteers.
- b. The contractor's insurance coverage shall be primary insurance in respects to the Town, its officers, officials, employees and volunteers. Any insurance or self- insurance maintained by the Town, its officers, officials, employees or volunteers shall be in excess of the contractor's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Town, its officers, officials, employees, boards and commissions or volunteers.
- d. The contractor's insurance shall apply separately to each insured against whom the claim is made or suit is brought, except to the limits of the insured's limits of liability.

2. Workers Compensation and Employer's Liability Coverage:

The insurer shall agree to waive all rights of subrogation against the Town, its officers, officials, employees and volunteers for losses arising from work performed by the contractor for the Town.

3. All Coverages:

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after 30 days written notice to the Town for all occurrences, except 10 days written notice to the Town for non-payment.

E. ACCEPTABILITY OF INSURERS

The Town prefers that Insurance be placed with insurers with an A.M. Best's rating of no less than A- VI, or better.

F. VERIFICATION OF COVERAGE

Contractor shall provide the Town with certificates of insurance indicating coverage's required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates of Insurance similar to the ACORD Form are acceptable. Town will not accept Memorandums of Insurance or Binders as proof of insurance. The Town reserves the right to require complete, certified copies of all required insurance policies at any time.



TOWN COUNCIL AGENDA ITEM NO. 7

CONSENT ITEM

DATE: June 18, 2018

FROM: Tiffany Bruce, P.E., Executive Director of Public Works/Town Engineer

ITEM: Consider approval of Amendment No. 4, to the Fiscal Year 2017-2018 Capital Improvement Program.

BACKGROUND INFORMATION: The Fiscal Year (FY) 2017-2018 Capital Improvement Program (CIP) Amendment 3, was approved by Town Council on February 19, 2018. Amendment No. 4 is proposed to decrease the adopted General and Utility Fund budgets. The proposed CIP Amendment No. 4 for FY 2017-2018 would reduce the General Fund budget, from \$31,846,749 to \$22,930,593, and reduce the Utility Fund budget from \$23,365,000 to \$7,435,625.

FISCAL IMPACT:

Proposed CIP:

FY 2017-2018:	General Capital Projects	\$22,930,593
	Utility Capital Projects	\$ 7,435,625

Ten-Year CIP Plan:	General Capital Projects	\$190,300,251
	Utility Capital Projects	\$145,335,815

Proposed Funding: Upon approval of this item, transfers will be required to adjust the project funding as shown on the attached FY 2017-2018 CIP Amendment No. 4 Changes.

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

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Project Modification Listing
2. CIP Amendment 4 Changes
3. CIP Amendment 4

DRAFT MOTION: Move to approve Amendment No. 4, to the Fiscal Year 2017-2018 Capital Improvement Program.

Project Modification Listing
CIP Amendment 4

Street (General Fund - Increase)

- Morriss/Gerault Improvement – Remove all three phases of the Morriss/Gerault capacity improvements projects
- Roadway Amenities – Increase this CIP project by \$115,000 to accommodate the 2017-18 Street Light Decision Package. Due to construction by Developers in the Aberdeen area, some of the locations identified for new street lights will not be ready for street light installation this fiscal year but will be ready early 2018-19. The FY 2017-18 street light decision package budget, is \$115,000, the unused balance will be transferred to the Roadway Amenities CIP project for FY 2018-19 implementation for those lights

Street Reconstruction (General Funds)

- Morriss Road Panel Replacement – Add this new project to replace the roadway panels identified, from FM 3040 to FM 1171 with a budget of \$4,040,000 in FY 2018-19

Facilities (General Fund – Increase)

- Town Hall – Increase budget by \$119,000 due to higher than planned Audio Visual equipment costs, utilizing PEG Funds that can only be used for this purpose

Water (Utility Fund-New Project):

- Patriot Way Water Line – Development Agreement for Water Line Upsize, 8-inch to 12-inch from Old Gerault Road to Glenview, \$20,625

Wastewater (Utility Fund - Increase):

- Lift Station Improvements and Decommissioning – Due to higher than anticipated bid award, staff requests an increase of \$60,000 of Project Savings; added to the \$17,000 balance, it will provide a 5% contingency for the \$1,492,656.00 construction project awarded on Mar 19, 2018

FY 2017-78 Project Debt Reductions

Street - General Fund 2017-18 Debt Reductions:

- ADA Transition Plan and Implementation – Defer \$350,000 to 2018-19
- FM 1171 at River Walk Dr. Intersection Improvements – Defer \$600,000 to 2018-19
- FM 2499 at Lakeside North Right Turn Lane – Defer \$200,000 to 2018-19

Signal - General Fund 2017-18 Debt Reductions:

- FM 407 at Browning Signal Reconstruction – Defer \$300,000 to 2018-19

Water - Utility Fund 2017-18 Debt Reductions:

- Canyon Falls 20-Inch Water Line – Defer \$560,000 of Debt, and \$100,000 of Impact Fees to 2019-20
- Denton Creek Boulevard 12-Inch Water Line – Defer \$880,000 of Debt, and 420,000 of Impact Fees to 2018-19
- FM 2499 12-Inch Water Line Phase I – Defer \$800,000 of Debt, and \$1,700,000 of TIRZ to 2018-19
- High Road Water Line Replacement Phase II – Defer Debt \$350,000 to 2018-19
- Kirkpatrick Lane 12-Inch Water Line Phase II – Reduce 2017-18 Debt by \$1,100,000, and increased Impact Fees from \$265,000 to \$665,000, this FY, which reduces FY 2018-19 Debt sale from \$1,100,000 to \$700,000
- Morriss Road Water Line Phase II – Defer 2017-18 Debt by \$1,000,000, and add \$100,000 of Project Savings this FY, which reduces FY 2018-19 Debt sale from \$1,000,000 to \$900,000
- Utility Asset Management & Utility Replacement – Defer Debt \$300,000 to 2018-19
- Water System Leak Detection & Repair – Defer Debt \$50,000 to 2018-19

Wastewater - Utility Fund 2017-18 Debt Reductions:

- Inflow-Infiltration/Evaluation and Repair – Defer Debt \$250,000 to 2018-19
- Justin Road Lift Station Outfall – Defer Debt \$450,000 to 2018-19
- Lower Timber Interceptor (Teakwood to Pintail Park) – Defer \$750,000 to 2018-19
- Upper Timber Creek Interceptor Phase III – Defer \$1,700,000 to 2018-19
- Upper Timber Creek Interceptor Phase IV – Defer \$3,350,000 to 2018-19
- Wastewater Treatment Plant Ultraviolet System Update – Defer \$2,750,000 to 2018-19

Page 202 of 255

TOWN OF FLOWER MOUND
SUMMARY OF FIVE YEAR CIP PLAN
FY 2017-2018
Amendment 4
06/18/2018

STREET PROJECTS	PRIOR FISCAL YEARS	CONSTRUCTION SCHEDULE						TOTAL PROJECT COSTS	OTHER SOURCES		ISSUED DEBT GO's & CO's	AUTHORIZED UNISSUED GO's	NEW DEBT		DEBT SCHEDULE					
		2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2027								2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2027
Aberdeen Drive Phase I (2 Lanes FM 2499 to Lake Forest) **	\$ 1,650,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,650,000	\$ 1,000,000	0,2,5	\$ 650,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Aberdeen Drive Phase II (2 additional Lanes FM 2499 to 700 ft. North of Spinks) **	-	-	-	-	-	2,463,000	-	2,463,000	1,063,000	0,2,5	-	-	1,400,000	-	-	-	-	1,400,000	-	-
ADA Transition Plan and Implementation **	533,000	465,000	150,000	150,000	150,000	150,000	-	1,598,000	3,000	2,5	530,000	-	1,065,000	465,000	150,000	150,000	150,000	150,000	150,000	-
ADA Transition Plan and Implementation **	533,000	115,000	500,000	150,000	150,000	150,000	-	1,598,000	3,000	2,5	530,000	-	1,065,000	115,000	500,000	150,000	150,000	150,000	150,000	-
Churchill Drive (FM 2499 to Yucca) **	525,000	475,000	-	-	-	-	-	1,000,000	1,000,000	0,2,7	-	-	-	-	-	-	-	-	-	-
Cowboy Lane **	-	-	-	-	-	-	433,337	433,337	193,337	3	-	-	240,000	-	-	-	-	-	-	240,000
Denton Creek Boulevard Bridge (Graham Branch crossing)	80,000	600,000	6,320,000	-	-	-	-	7,000,000	1,100,000	0,1,2,5	-	-	5,900,000	-	5,900,000	-	-	-	-	-
Firewheel Drive (complete 4 lane gap, to 340 feet north of Garden Rd) **	555,000	-	-	-	-	-	-	555,000	555,000	0	-	-	-	-	-	-	-	-	-	-
FM 1171 at FM 2499 Eastbound Right Turn Lane **	885,000	-	-	-	-	-	-	885,000	785,000	2,7	100,000	-	-	-	-	-	-	-	-	-
FM 1171 at FM 2499 Westbound Right Turn Lane **	998,000	-	-	-	-	-	-	998,000	998,000	2,7	-	-	-	-	-	-	-	-	-	-
FM 1171 at River Walk Dr Intersection Improvements **	-	950,000	-	-	-	-	-	950,000	350,000	0,2,3,5,7	-	-	600,000	600,000	-	-	-	-	-	-
FM 1171 at River Walk Dr Intersection Improvements **	-	350,000	600,000	-	-	-	-	950,000	350,000	0,2,3,5,7	-	-	600,000	-	600,000	-	-	-	-	-
FM 2499 at Lakeside North Right Turn Lane **	-	300,000	-	-	-	-	-	300,000	-	2,5	-	-	300,000	300,000	-	-	-	-	-	-
FM 2499 at Lakeside North Right Turn Lane **	-	100,000	200,000	-	-	-	-	300,000	-	2,5	-	-	300,000	100,000	200,000	-	-	-	-	-
FM 2499 Roadway, Traffic Signal, and Drainage	8,200,000	-	-	-	-	-	-	8,200,000	7,000,000	1,2	1,200,000	-	-	-	-	-	-	-	-	-
Garden Ridge Through Lane (at FM 3040)	-	-	-	400,000	-	-	-	400,000	200,000	0,2	-	-	200,000	-	-	200,000	-	-	-	-
I 35W Interchange at Denton Creek	-	-	-	-	-	-	5,000,000	5,000,000	5,000,000	0,1,5	-	-	-	-	-	-	-	-	-	-
Impact Fee Update	-	-	-	120,000	-	-	-	120,000	120,000	0	-	-	-	-	-	-	-	-	-	-
Kirkpatrick Lane Phase III (South of FM 1171)	-	-	-	-	-	-	8,718,000	8,718,000	6,036,000	0,1,2,3,5	-	-	2,682,000	-	-	-	-	-	-	2,682,000
Lake Forest Boulevard Roadway Improvements	200,000	1,800,000	-	-	-	-	-	2,000,000	600,000	0,2	-	-	1,400,000	1,400,000	-	-	-	-	-	-
Lakeside Dual Left turn Lane at Gerault **	-	-	140,250	-	-	-	-	140,250	100,250	0,2,5	-	-	40,000	-	40,000	-	-	-	-	-
Lusk/Red Oak East-West Connector	-	-	-	-	-	-	7,232,000	7,232,000	732,000	0,2	-	-	6,500,000	-	-	-	-	-	-	6,500,000
McKamy Creek Turn Lane at Flower Mound Rd **	350,000	-	-	-	-	-	-	350,000	-	0,2	350,000	-	-	-	-	-	-	-	-	-
Morriss/Gerault Improvement Phase II (FM 407 - 3040) ** REMOVE	399,844	2,400,156	-	-	-	-	-	2,800,000	2,800,000	0,1	-	-	-	-	-	-	-	-	-	-
Morriss/Gerault Improvement Phase III (FM 407 - 3040) ** REMOVE	-	-	3,600,000	-	-	-	-	3,600,000	3,600,000	0,7	-	-	-	-	-	-	-	-	-	-
Morriss/Gerault Improvement Phase IV (FM 407 - 3040) ** REMOVE	-	-	-	3,900,000	-	-	-	3,900,000	-	-	-	-	3,900,000	-	-	3,900,000	-	-	-	-
Rippy Road (Waketon to FM 2499)**	-	800,000	-	1,315,000	-	-	-	2,115,000	2,115,000	2,7	-	-	-	-	-	-	-	-	-	-
Roadway Amenities	185,000	90,000	90,000	90,000	90,000	90,000	-	635,000	80,000	2	105,000	-	450,000	90,000	90,000	90,000	90,000	90,000	90,000	-
Roadway Amenities	185,000	205,000	90,000	90,000	90,000	90,000	-	750,000	195,000	2,4	105,000	-	450,000	90,000	90,000	90,000	90,000	90,000	90,000	-
Sidewalk Links **	811,000	150,000	-	-	-	-	-	961,000	961,000	2,4	-	-	-	-	-	-	-	-	-	-
Skillem Road (Flower Mound Rd to Riverhill) **	-	905,000	-	-	-	-	-	905,000	5,000	2	-	-	900,000	900,000	-	-	-	-	-	-
SPA 2 Connector (Bob White)	260,000	-	-	-	-	-	-	260,000	85,000	2	175,000	-	-	-	-	-	-	-	-	-
Stonecrest Road (500 ft. North of Canyon Falls Dr. to Town Limit) **	1,050,000	-	-	-	-	-	-	1,050,000	150,000	2,5	900,000	-	-	-	-	-	-	-	-	-
Waketon Road **	5,270,000	230,000	-	-	-	-	-	5,500,000	4,670,000	2,3,5,7	600,000	-	230,000	230,000	-	-	-	-	-	-
SUBTOTAL - OLD	\$ 21,951,844	\$ 9,165,156	\$ 10,300,250	\$ 5,975,000	\$ 240,000	\$ 2,703,000	\$ 21,383,337	\$ 71,718,587	\$ 41,301,587		\$ 4,610,000	\$ -	\$ 25,807,000	\$ 3,985,000	\$ 6,180,000	\$ 4,340,000	\$ 240,000	\$ 1,640,000	\$ 9,422,000	
SUBTOTAL - NEW	\$ 21,552,000	\$ 5,730,000	\$ 7,850,250	\$ 2,075,000	\$ 240,000	\$ 2,703,000	\$ 21,383,337	\$ 61,533,587	\$ 35,016,587		\$ 4,610,000	\$ -	\$ 21,907,000	\$ 2,835,000	\$ 7,330,000	\$ 440,000	\$ 240,000	\$ 1,640,000	\$ 9,422,000	

*General Obligation Bonds
** Project Includes ADA Improvements

Other Sources

0. Impact Fees

1. Grant and Interlocal Funds

2. Other Sources (Proj. Sav.,Fund Bal.,Interest Inc.)

3. Escrow

4. Decision Package

5. Developer Agreement(s)

6. Park Development Fund

7. Tax Increment Reinvestment Zone (TIRZ)

8. Dedicated Sales Tax

9. SH 121 Regional Toll Revenue (RTR)

Page 203 of 255

TOWN OF FLOWER MOUND
SUMMARY OF FIVE YEAR CIP PLAN
FY 2017-2018
Amendment 4
06/18/2018

SIGNAL PROJECTS	PRIOR FISCAL YEARS	CONSTRUCTION SCHEDULE						TOTAL PROJECT COSTS	OTHER SOURCES		ISSUED DEBT GO's & CO's		AUTHORIZED UNISSUED GO's		NEW DEBT		DEBT SCHEDULE					
		2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2027										2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2027
College Parkway at Timber Creek	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 215,000	215,000	\$ 215,000	0,2,4	\$ -		\$ -		\$ -		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Bruton Orand at Kenwood	-	-	-	-	-	-	215,000	215,000	215,000	0,2,4	-		-		-		-	-	-	-	-	-
Bruton Orand at Quail Run	-	-	-	-	-	-	215,000	215,000	215,000	0,2,4	-		-		-		-	-	-	-	-	-
FM 2499 at College Parkway	230,000	110,000	-	-	-	-	-	340,000	340,000	0,2,7	-		-		-		-	-	-	-	-	-
FM 2499 at Silveron	240,000	-	-	-	-	-	-	240,000	240,000	0,2	-		-		-		-	-	-	-	-	-
FM 407 at Browning - Reconstruction	25,000	300,000	-	-	-	-	-	325,000	25,000	2,4	-		-		300,000		300,000	-	-	-	-	-
FM 407 at Browning - Reconstruction	25,000	-	300,000	-	-	-	-	325,000	25,000	2,4	-		-		300,000		-	300,000	-	-	-	-
Garden Ridge at Forest Vista	-	-	-	-	-	-	215,000	215,000	215,000	0,2,4	-		-		-		-	-	-	-	-	-
Garden Ridge at Kirkpatrick	-	-	-	-	-	-	215,000	215,000	215,000	0,2,4	-		-		-		-	-	-	-	-	-
Lakeside at Silveron	-	-	-	-	-	-	215,000	215,000	215,000	0,2,4,5	-		-		-		-	-	-	-	-	-
Morriss at Eaton	-	-	215,000	-	-	-	-	215,000	215,000	2,4	-		-		-		-	-	-	-	-	-
Peters Colony at Churchill	-	-	-	-	-	-	215,000	215,000	215,000	0,2,4	-		-		-		-	-	-	-	-	-
Traffic Detection Rehabilitation	375,000	125,000	125,000	125,000	125,000	125,000	-	1,000,000	-	2	375,000		-		625,000		125,000	125,000	125,000	125,000	125,000	-
Traffic Signal Rehabilitation	-	-	-	-	-	-	500,000	500,000	-	2	-		-		500,000		-	-	-	-	-	500,000
U.S 377 at Canyon Falls Drive	250,000	25,000	-	-	-	-	-	275,000	275,000	0,2,4	-		-		-		-	-	-	-	-	-
SUBTOTAL - OLD	\$ 1,120,000	\$ 560,000	\$ 340,000	\$ 125,000	\$ 125,000	\$ 125,000	\$ 2,005,000	\$ 4,400,000	\$ 2,600,000		\$ 375,000		\$ -		\$ 1,425,000		\$ 425,000	\$ 125,000	\$ 125,000	\$ 125,000	\$ 125,000	\$ 500,000
SUBTOTAL - NEW	\$ 1,120,000	\$ 260,000	\$ 640,000	\$ 125,000	\$ 125,000	\$ 125,000	\$ 2,005,000	\$ 4,400,000	\$ 2,600,000		\$ 375,000		\$ -		\$ 1,425,000		\$ 125,000	\$ 425,000	\$ 125,000	\$ 125,000	\$ 125,000	\$ 500,000

*General Obligation Bonds
** Project Includes ADA Improvements

Other Sources

0. Impact Fees

1. Grant and Interlocal Funds

2. Other Sources (Proj. Sav.,Fund Bal.,Interest Inc.)

3. Escrow

4. Decision Package

5. Developer Agreement(s)

6. Park Development Fund

7. Tax Increment Reinvestment Zone (TIRZ)

8. Dedicated Sales Tax

9. SH 121 Regional Toll Revenue (RTR)

(300,000)

0

(300,000)

Page 204 of 255

TOWN OF FLOWER MOUND
SUMMARY OF FIVE YEAR CIP PLAN
FY 2017-2018
Amendment 4
06/18/2018

STREET RECONSTRUCTION PROJECTS	PRIOR FISCAL YEARS	CONSTRUCTION SCHEDULE						TOTAL PROJECT COSTS	OTHER SOURCES		ISSUED DEBT GO's & CO's		AUTHORIZED UNISSUED GO's		NEW DEBT		DEBT SCHEDULE					
		2017- 2018	2018- 2019	2019- 2020	2020- 2021	2021- 2022	2022- 2027										2017- 2018	2018- 2019	2019- 2020	2020- 2021	2021- 2022	2022- 2027
Canterbury Drive Reconstruction (Churchill to Dover) **	\$ 350,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 350,000	\$ 350,000	8	\$ -		\$ -		\$ -		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Flower Mound Road Reconstruction Phase II (Old Settlers to Bruton Orand) **	-	-	-	-	-	-	2,344,000	2,344,000	2,344,000	8	-		-		-		-	-	-	-	-	-
Forest Vista Reconstruction Phase I (Lake Shore to FM 2499) **	3,400,000	-	-	-	-	-	-	3,400,000	3,400,000	8	-		-		-		-	-	-	-	-	-
Forest Vista Reconstruction Phase II (Morriss to Chancellor) **	-	-	335,000	2,400,000	-	-	-	2,735,000	2,735,000	8	-		-		-		-	-	-	-	-	-
Forest Vista Reconstruction Phase III (Chancellor to Lake Shore) **	-	-	-	-	-	350,000	2,300,000	2,650,000	2,650,000	8	-		-		-		-	-	-	-	-	-
Grady Court	-	-	675,000	-	-	-	-	675,000	675,000	8	-		-		-		-	-	-	-	-	-
Lopo Road Reconstruction (River oak to 330-ft west of Garden Ridge) **	-	-	950,000	-	-	-	-	950,000	950,000	8	-		-		-		-	-	-	-	-	-
McKamy Creek Road Reconstruction (Flower Mound Rd. to Woodhill Dr.) **	1,400,000	-	-	-	-	-	-	1,400,000	1,400,000	8	-		-		-		-	-	-	-	-	-
Morriss Road Panel Replacement (FM 3040 to FM 1171) ** - NEW	-	-	4,040,000	-	-	-	-	4,040,000	4,040,000	8	-		-		-		-	-	-	-	-	-
Morriss Road Reconstruction Phase II (FM 3040 to Forest Vista Drive) ** REMOVE	-	5,300,000	-	-	-	-	-	5,300,000	5,300,000	8	-		-		-		-	-	-	-	-	-
Morriss Road Reconstruction Phase III (Forest Vista Drive to Firewheel) ** REMOVE	-	-	900,000	-	-	-	-	900,000	900,000	8	-		-		-		-	-	-	-	-	-
Old Long Prairie Road Reconstruction **	1,100,000	-	-	-	-	-	-	1,100,000	1,100,000	8	-		-		-		-	-	-	-	-	-
Superior Place Reconstruction (Colonial to 1545 Superior Pl) **	625,000	-	-	-	-	-	-	625,000	625,000	8	-		-		-		-	-	-	-	-	-
Timber Creek Road Reconstruction Phase II (5000 Timbercreek Rd. to Homestead St.) **	-	-	-	250,000	2,000,000	-	-	2,250,000	2,250,000	8	-		-		-		-	-	-	-	-	-
Timber Creek Road Reconstruction Phase III (Homestead St. to Kirkpatrick Ln.) **	-	-	-	-	300,000	2,925,000	-	3,225,000	3,225,000	8	-		-		-		-	-	-	-	-	-
Timber Creek Road Reconstruction Phase IV (Timber Creek Bridge to Eaton) **	-	-	-	-	-	-	3,600,000	3,600,000	3,600,000	8	-		-		-		-	-	-	-	-	-
West Windsor and Mulberry Connection **	100,000	-	-	-	-	-	-	100,000	100,000	8	-		-		-		-	-	-	-	-	-
Woodbine Street Reconstruction (Timber Creek to Hieden Ct.) **	1,350,000	-	-	-	-	-	-	1,350,000	1,350,000	8	-		-		-		-	-	-	-	-	-
Wood Creek Circle Reconstruction (Wood Creek Dr to end of Cul-de-Sac) **	-	-	400,000	-	-	-	-	400,000	400,000	8	-		-		-		-	-	-	-	-	-
Yucca Drive Reconstruction (Sagebrush to 700 ft South of FM 1171) **	1,300,000	-	-	-	-	-	-	1,300,000	1,300,000	8	-		-		-		-	-	-	-	-	-
SUBTOTAL	\$ 9,625,000	\$ 5,300,000	\$ 3,260,000	\$ 2,650,000	\$ 2,300,000	\$ 3,275,000	\$ 8,244,000	\$ 34,654,000	\$ 34,654,000	###	\$ -	\$ -	\$ -	#	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
SUBTOTAL	\$ 9,625,000	\$ -	\$ 6,400,000	\$ 2,650,000	\$ 2,300,000	\$ 3,275,000	\$ 8,244,000	\$ 32,494,000	\$ 32,494,000	###	\$ -	\$ -	\$ -	#	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

*General Obligation Bonds
** Project Includes ADA Improvements
Other Sources
0. Impact Fees
1. Grant and Interlocal Funds
2. Other Sources (Proj. Sav.,Fund Bal.,Interest Inc.)
3. Escrow
4. Decision Package
5. Developer Agreement(s)
6. Park Development Fund
7. Tax Increment Reinvestment Zone (TIRZ)
8. Dedicated Sales Tax
9. SH 121 Regional Toll Revenue (RTR)

Page 205 of 255

TOWN OF FLOWER MOUND
SUMMARY OF FIVE YEAR CIP PLAN
FY 2017-2018
Amendment 4
06/18/2018

FACILITY PROJECTS	PRIOR FISCAL YEARS	CONSTRUCTION SCHEDULE						TOTAL PROJECT COSTS	OTHER SOURCES	ISSUED DEBT GO's & CO's	AUTHORIZED UNISSUED GO's	NEW DEBT		DEBT SCHEDULE					
		2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2027							2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2027
Storage Warehouse	-	650,000	-	-	-	-	-	650,000	-	2	-	-	650,000	650,000	-	-	-	-	-
Fire and Police Training Center	-	-	-	-	-	-	2,235,000	2,235,000	-	2	-	-	2,235,000	-	-	-	-	-	2,235,000
Fire Station No. 1 Facility Upgrades **	1,223,375	-	-	-	-	-	-	1,223,375	243,375	2.4	980,000	-	-	-	-	-	-	-	-
Fire Station No. 6 and Apparatus (West Flower Mound) **	-	-	300,000	6,500,000	-	-	-	6,800,000	-	2	-	-	6,800,000	-	300,000	6,500,000	-	-	-
Fire Station No. 7 and Apparatus (Wichita Trail) **	-	1,470,000	5,050,000	-	-	-	-	6,520,000	500,000	2	-	-	6,020,000	1,470,000	4,550,000	-	-	-	-
Library Expansion**	-	12,400,000	-	-	-	-	-	12,400,000	-	2.7	-	-	12,400,000	12,400,000	-	-	-	-	-
Log Cabin	-	51,593	-	-	-	-	-	51,593	51,593	1.2	-	-	-	-	-	-	-	-	-
Mechanical Screen Wall (Police Dept.)	90,000	-	-	-	-	-	-	90,000	90,000	1.2	-	-	-	-	-	-	-	-	-
Police and Courts Facility Upgrades **	3,331,000	-	-	-	-	-	-	3,331,000	1,571,000	2.4	1,760,000	-	-	-	-	-	-	-	-
Town Hall **	18,800,000	-	-	-	-	-	-	18,800,000	600,000	2.7	18,200,000	-	-	-	-	-	-	-	-
Town Hall **	18,800,000	119,000	-	-	-	-	-	18,919,000	719,000	2.7	18,200,000	-	-	-	-	-	-	-	-
Western Operations and Maintenance Facility (Temporaty FS #6)**	600,000	-	-	-	-	-	-	600,000	600,000	2.4	-	-	-	-	-	-	-	-	-
SUBTOTAL - OLD	\$ 24,044,375	\$ 14,571,593	\$ 5,350,000	\$ 6,500,000	\$ -	\$ -	\$ 2,235,000	\$ 52,700,968	\$ 3,655,968		\$ 20,940,000	\$ -	\$ 28,105,000	\$ 14,520,000	\$ 4,850,000	\$ 6,500,000	\$ -	\$ -	\$ 2,235,000
SUBTOTAL - NEW	\$ 24,044,375	\$ 14,690,593	\$ 5,350,000	\$ 6,500,000	\$ -	\$ -	\$ 2,235,000	\$ 52,819,968	\$ 3,774,968		\$ 20,940,000	\$ -	\$ 28,105,000	\$ 14,520,000	\$ 4,850,000	\$ 6,500,000	\$ -	\$ -	\$ 2,235,000

*General Obligation Bonds
** Project Includes ADA Improvements

- Other Sources
0. Impact Fees
1. Grant and Interlocal Funds
2. Other Sources (Proj. Sav.,Fund Bal.,Interest Inc.)
3. Escrow
4. Decision Package
5. Developer Agreement(s)
6. Park Development Fund
7. Tax Increment Reinvestment Zone (TIRZ)
8. Dedicated Sales Tax
9. SH 121 Regional Toll Revenue (RTR)

Page 206 of 255

TOWN OF FLOWER MOUND
SUMMARY OF FIVE YEAR CIP PLAN
FY 2017-2018
Amendment 4
06/18/2018

PARK PROJECTS	PRIOR FISCAL YEARS	CONSTRUCTION SCHEDULE						TOTAL PROJECT COSTS	OTHER SOURCES		ISSUED DEBT GO's & CO's		AUTHORIZED UNISSUED GO's		NEW DEBT		DEBT SCHEDULE					
		2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2027										2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2027
2016-17 Playground Replacements(Bluebonnet, Gaston, Glenwick, Grove, Oak, & Spring Meadow parks) **	1,200,000	-	-	-	-	-	-	1,200,000	1,200,000	8	-	-	-	-	-	-	-	-	-	-	-	-
2018-19 Playground Replacements (Lakewood, Stone Creek, Thrush West, & Gerault parks) **	-	-	1,000,000	-	-	-	-	1,000,000	1,000,000	8	-	-	-	-	-	-	-	-	-	-	-	-
2019-20 Playground Replacements (Chinn Chapel, & Pecan Orchard parks) **	-	-	-	350,000	-	-	-	350,000	350,000	8	-	-	-	-	-	-	-	-	-	-	-	-
2020-21 Playgrouda Replacements (Cortadera, Wilkerson, Grand, & Possum parks) **	-	-	-	-	1,000,000	-	-	1,000,000	1,000,000	8	-	-	-	-	-	-	-	-	-	-	-	-
2021-22 Playground Replacements (Peacock Park) **	-	-	-	-	-	250,000	-	250,000	250,000	8	-	-	-	-	-	-	-	-	-	-	-	-
2023-24 Playground Replacements (Northshore, Jakes Hilltop, & Rustic Timbers parks) **	-	-	-	-	-	-	600,000	600,000	600,000	8	-	-	-	-	-	-	-	-	-	-	-	-
2024-25 Playground Replacements (Thrush East, & Westchester parks) **	-	-	-	-	-	-	400,000	400,000	400,000	8	-	-	-	-	-	-	-	-	-	-	-	-
Bakersfield Park Lighting Upggrade	-	-	-	-	-	1,000,000	-	1,000,000	1,000,000	8	-	-	-	-	-	-	-	-	-	-	-	-
Bakersfield Park Restroom	-	-	450,000	-	-	-	-	450,000	450,000	8	-	-	-	-	-	-	-	-	-	-	-	-
Bella Lago Master Plan	-	-	50,000	-	-	-	-	50,000	50,000	8	-	-	-	-	-	-	-	-	-	-	-	-
Canyon Falls Park Design	-	-	150,000	-	-	-	-	150,000	150,000	8	-	-	-	-	-	-	-	-	-	-	-	-
Canyon Falls Park Development	-	-	-	-	-	-	2,500,000	2,500,000	2,500,000	8	-	-	-	-	-	-	-	-	-	-	-	-
Comunity Activity Center Improvements	257,000	-	-	-	-	-	-	257,000	-	2	257,000	-	-	-	-	-	-	-	-	-	-	-
Chinn Chapel Lighting Improvements	-	-	-	-	-	250,000	-	250,000	250,000	8	-	-	-	-	-	-	-	-	-	-	-	-
Equestrian (Trail Head & Trails)	-	-	-	-	-	-	900,000	900,000	900,000	8	-	-	-	-	-	-	-	-	-	-	-	-
Green Acres Memorial Farm	-	-	-	-	-	-	2,200,000	2,200,000	2,200,000	8	-	-	-	-	-	-	-	-	-	-	-	-
Heritage Park (Lighting Improvements, Restroom at Dog Park, Upgrade Srufaces)	-	-	-	-	750,000	-	-	750,000	750,000	8	-	-	-	-	-	-	-	-	-	-	-	-
Heritage Park of Flower Mound Phase II	2,590,000	-	-	-	-	-	-	2,590,000	2,590,000	8,6	-	-	-	-	-	-	-	-	-	-	-	-
Heritage Park of Flower Mound Phase III	2,181,000	-	-	-	-	-	-	2,181,000	2,181,000	8	-	-	-	-	-	-	-	-	-	-	-	-
Heritage Park of Flower Mound Phase IV	200,000	2,200,000	-	-	-	-	-	2,400,000	2,400,000	8	-	-	-	-	-	-	-	-	-	-	-	-
Lakewood Park - Pavilion	-	-	75,000	-	-	-	-	75,000	75,000	8	-	-	-	-	-	-	-	-	-	-	-	-
Individual Park Improvements (Bluebonnet, Colony, Lakewood FY 2020-21) & (Shadow Ridge, Oak, Grand, Culwell Parker FY 2021-22)	-	-	-	-	425,000	375,000	-	800,000	800,000	8	-	-	-	-	-	-	-	-	-	-	-	-
Park and Trail Amenities	460,000	50,000	50,000	50,000	50,000	50,000	-	710,000	710,000	2,6,8	-	-	-	-	-	-	-	-	-	-	-	-
Park and Trails Master Plan	200,000	-	-	-	-	-	-	200,000	200,000	2,6	-	-	-	-	-	-	-	-	-	-	-	-
Pink Evening Primrose Trails (Section 1 & 3)	800,000	-	-	-	-	-	-	800,000	800,000	2,6	-	-	-	-	-	-	-	-	-	-	-	-
Rheudasil Park Improvements	200,000	-	200,000	1,600,000	-	-	-	2,000,000	2,000,000	2,8	-	-	-	-	-	-	-	-	-	-	-	-
Rheudasil, Wilkerson, & Cortadera Parks Pond Dredging and Bank Stabilization	3,429,696	-	-	-	-	-	-	3,429,696	1,379,696	8	2,050,000	-	-	-	-	-	-	-	-	-	-	-
Tennis Center (Master Plan, Design, Construction)	-	-	-	-	-	-	5,560,000	5,560,000	5,560,000	8	-	-	-	-	-	-	-	-	-	-	-	-
Trail Connections (Bluebonnet,Indian Blanket, Pink Evening Primrose, Purple Coneflower, Texas Yellow Star, & White Lazy Daisy Trails)	-	-	-	-	-	-	4,700,000	4,700,000	4,700,000	8	-	-	-	-	-	-	-	-	-	-	-	-
Trails Master Plan	-	-	-	300,000	-	-	-	300,000	300,000	2,8	-	-	-	-	-	-	-	-	-	-	-	-
SUBTOTAL	\$ 11,517,696	\$ 2,250,000	\$ 1,975,000	\$ 2,300,000	\$ 2,225,000	\$ 1,925,000	\$ 16,860,000	\$ 39,052,696	\$ 36,745,696		\$ 2,307,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
GRAND TOTAL GENERAL FUND - OLD	\$ 68,258,916	\$ 31,846,749	\$ 21,225,250	\$ 17,550,000	\$ 4,890,000	\$ 8,028,000	\$ 50,727,337	\$ 202,526,251	\$ 118,957,251		\$ 28,232,000	\$ -	\$ 55,337,000	\$ 18,930,000	\$ 11,155,000	\$ 10,965,000	\$ 365,000	\$ 1,765,000	\$ 12,157,000			
GRAND TOTAL GENERAL FUND - NEW	\$ 67,859,071	\$ 22,930,593	\$ 22,215,250	\$ 13,650,000	\$ 4,890,000	\$ 8,028,000	\$ 50,727,337	\$ 190,300,251	\$ 110,631,251		\$ 28,232,000	\$ -	\$ 51,437,000	\$ 17,480,000	\$ 12,605,000	\$ 7,065,000	\$ 365,000	\$ 1,765,000	\$ 12,157,000			

** Project Includes ADA Improvements

Other Sources

0. Impact Fees

1. Grant and Interlocal Funds

2. Other Sources (Proj. Sav.,Fund Bal.,Interest Inc.)

3. Escrow

4. Decision Package

5. Developer Agreement(s)

6. Park Development Fund

7. Tax Increment Reinvestment Zone (TIRZ)

8. Dedicated Sales Tax

9. SH 121 Regional Toll Revenue (RTR)

TOWN OF FLOWER MOUND
SUMMARY OF FIVE YEAR CIP PLAN
FY 2017-2018
Amendment 4
06/18/2018

WATER PROJECTS	PRIOR FISCAL YEARS	CONSTRUCTION SCHEDULE						TOTAL PROJECT COSTS	OTHER SOURCES		ISSUED DEBT	AUTHORIZED UNISSUED GO's	NEW DEBT	DEBT SCHEDULE					
		2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2027							2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2027
Aberdeen Water Line (FM 2499 to Lake Forest)	\$ 300,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 300,000	\$ 190,000	0.2	\$ 110,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Bruton Orand Elevated Storage Tank Rehabilitation	1,880,000	-	-	-	-	-	-	1,880,000	80,000	2	1,800,000	-	-	-	-	-	-	-	-
Canyon Falls 20-Inch Water Line	2,000,000	660,000	-	-	-	-	-	2,660,000	400,000	0.2	1,700,000	-	560,000	560,000	-	-	-	-	-
Canyon Falls 20-Inch Water Line	2,000,000	-	-	660,000	-	-	-	2,660,000	400,000	0.2	1,700,000	-	560,000	-	-	560,000	-	-	-
Cowboy Lane Water Line	-	-	-	-	-	-	670,000	670,000	140,000	0.3	-	-	530,000	-	-	-	-	-	530,000
Denton Creek Boulevard 12-Inch Water Line	-	1,500,000	-	-	-	-	-	1,500,000	620,000	0.5	-	-	880,000	880,000	-	-	-	-	-
Denton Creek Boulevard 12-Inch Water Line	-	200,000	1,300,000	-	-	-	-	1,500,000	620,000	0.5	-	-	880,000	-	880,000	-	-	-	-
Denton Creek District - Water Reuse Master Plan	100,000	-	-	-	-	-	-	100,000	100,000	0.2	-	-	-	-	-	-	-	-	-
Denton Creek Spine Road 12-inch Water Line	-	100,000	600,000	1,700,000	-	-	-	2,400,000	100,000	0.2	-	-	2,300,000	-	600,000	1,700,000	-	-	-
Denton Creek District - Reuse Waterlines	650,000	250,000	250,000	250,000	-	-	-	1,400,000	1,400,000	0.2	-	-	-	-	-	-	-	-	-
FM 1171 to Hwy. 377 Water Line Phase II	-	-	-	-	-	-	5,880,000	5,880,000	290,000	0.2	-	-	5,590,000	-	-	-	-	-	5,590,000
FM 1171 12-inch Water Line (Karnes Rd. to Churchill Dr.)	-	-	-	-	-	-	210,000	210,000	210,000	0.2	-	-	-	-	-	-	-	-	-
FM 2499 12-Inch Water Line Phase I (Dixon to South of FM 1171)	-	3,100,000	-	-	-	-	-	3,100,000	2,300,000	0.2,7	-	-	800,000	800,000	-	-	-	-	-
FM 2499 12-Inch Water Line Phase I (Dixon to South of FM 1171)	-	600,000	2,500,000	-	-	-	-	3,100,000	2,300,000	0.2,7	-	-	800,000	-	800,000	-	-	-	-
Garden Ridge Blvd. Ph. II Water Line	-	-	-	790,000	-	-	-	790,000	390,000	0.2	-	-	400,000	-	-	400,000	-	-	-
High Road Water Line Replacement Phase I	350,000	1,900,000	-	-	-	-	-	2,250,000	-	2	350,000	-	1,900,000	1,900,000	-	-	-	-	-
High Road Water Line Replacement Phase II	-	350,000	3,000,000	-	-	-	-	3,350,000	-	2	-	-	3,350,000	350,000	3,000,000	-	-	-	-
High Road Water Line Replacement Phase II	-	-	350,000	3,000,000	-	-	-	3,350,000	-	2	-	-	3,350,000	-	350,000	3,000,000	-	-	-
Highway 377/UPRR Water Line Phase II	137,620	-	-	-	-	-	2,310,000	2,447,620	87,620	0.2	50,000	-	2,310,000	-	-	-	-	-	2,310,000
Impact Fee Update	-	-	-	80,000	-	-	-	80,000	80,000	0.2	-	-	-	-	-	-	-	-	-
Kirkpatrick Lane 12-Inch Water Line Phase II (Valley Ridge - FM 1171)	35,000	1,365,000	-	-	-	-	-	1,400,000	300,000	0.2	-	-	1,100,000	1,100,000	-	-	-	-	-
Kirkpatrick Lane 12-Inch Water Line Phase II (Valley Ridge - FM 1171)	35,000	665,000	700,000	-	-	-	-	1,400,000	700,000	0.2	-	-	700,000	-	700,000	-	-	-	-
Kirkpatrick Lane 12-Inch Water Line Phase III (South of FM1171)	-	-	-	-	-	-	320,000	320,000	320,000	0.2	-	-	-	-	-	-	-	-	-
Lake Forest 12-inch Water Line (Bridge Gap)	50,000	85,000	-	-	-	-	-	135,000	135,000	0.2	-	-	-	-	-	-	-	-	-
Lake Forest 12-inch Water Line (FM 3040 to Spinks)	-	-	-	-	-	-	1,380,000	1,380,000	500,000	0.2	-	-	880,000	-	-	-	-	-	880,000
Lakeside Business District - Water Reuse Master Plan	120,000	-	-	-	-	-	-	120,000	120,000	0.2	-	-	-	-	-	-	-	-	-
Lusk/Red Oak East-West Connector	-	-	-	-	-	-	3,240,000	3,240,000	240,000	0.2	-	-	3,000,000	-	-	-	-	-	3,000,000
Morris Road Water Lines Phase II	-	1,000,000	-	-	-	-	-	1,000,000	-	2	-	-	1,000,000	1,000,000	-	-	-	-	-
Morris Road Water Lines Phase II	-	100,000	900,000	-	-	-	-	1,000,000	100,000	2	-	-	900,000	-	900,000	-	-	-	-
Morris Road Water Lines Phase III	-	-	3,000,000	-	-	-	-	3,000,000	2,200,000	0.2,7	-	-	800,000	-	800,000	-	-	-	-
Morris Road Water Lines Phase IV	-	-	-	4,900,000	-	-	-	4,900,000	-	0.2,7	-	-	4,900,000	-	-	4,900,000	-	-	-
Pintail Pump Station (Auxiliary Power & Upgrades)	-	400,000	1,700,000	-	-	-	-	2,100,000	400,000	0.2,5	-	-	1,700,000	-	1,700,000	-	-	-	-
Patriot Way Water Line (8-inch to 12-inch, Old Gerault to Glenview) - NEW	-	20,625	-	-	-	-	-	20,625	20,625	2.5	-	-	-	-	-	-	-	-	-
Pressure Reducing Valves	-	-	-	-	-	-	560,000	560,000	300,000	0.2	-	-	260,000	-	-	-	-	-	260,000
Rippy Road Water line Improvements (FM 2499-Waketon)	730,000	20,000	-	-	-	-	-	750,000	350,000	0.2	400,000	-	-	-	-	-	-	-	-
Scenic Drive Water Line (South of FM 1171 to River Hill Dr.)	-	-	-	-	-	-	1,490,000	1,490,000	490,000	0.2	-	-	1,000,000	-	-	-	-	-	1,000,000
Shady Point Acres Water Line Replacement	1,300,000	-	-	-	-	-	-	1,300,000	-	2	1,300,000	-	-	-	-	-	-	-	-
Stonecrest Pump Station Phase I (Auxiliary Power)	-	-	-	2,120,000	-	-	-	2,120,000	300,000	0.2	-	-	1,820,000	-	-	1,820,000	-	-	-
Stonecrest Pump Station Phase II	-	-	-	-	-	-	5,140,000	5,140,000	250,000	0.2	-	-	4,890,000	-	-	-	-	-	4,890,000
Stonecrest Pump Station Phase III	-	-	-	-	-	-	840,000	840,000	-	2	-	-	840,000	-	-	-	-	-	840,000
Stonehill Pump Station 10MG Ground Storage Tank Modification	50,000	-	300,000	-	-	-	-	350,000	-	1.2	50,000	-	300,000	-	300,000	-	-	-	-
Stonehill 10MG Ground Storage Tank Rehabilitation	40,000	-	-	-	-	-	-	40,000	40,000	2	-	-	-	-	-	-	-	-	-
Stonehill Pump Station Discharge Valve Replacement	-	60,000	500,000	-	-	-	-	560,000	60,000	2	-	-	500,000	-	500,000	-	-	-	-
Timber Creek 20-inch Water Line	-	-	-	-	-	-	370,000	370,000	250,000	2	-	-	120,000	-	-	-	-	-	120,000
Trailwood Terrace 12-inch Water Line	400,000	-	-	-	-	-	-	400,000	400,000	0.2	-	-	-	-	-	-	-	-	-
Utility Asset Management & Utility Replacement	300,000	300,000	300,000	300,000	300,000	300,000	-	1,800,000	-	2	300,000	-	1,500,000	300,000	300,000	300,000	300,000	300,000	-
Utility Asset Management & Utility Replacement	300,000	-	300,000	300,000	300,000	300,000	-	1,500,000	-	2	300,000	-	1,200,000	-	300,000	300,000	300,000	300,000	-
Water Master Plan	-	-	-	150,000	-	-	-	150,000	150,000	0.2	-	-	-	-	-	-	-	-	-
Water Reuse System Phase I	-	-	-	-	-	-	3,186,000	3,186,000	-	0.2	-	-	3,186,000	-	-	-	-	-	3,186,000
Water Reuse System Phase II	-	-	-	-	-	-	760,000	760,000	-	0.2	-	-	760,000	-	-	-	-	-	760,000
Water Reuse System Phase III	-	-	-	-	-	-	1,100,000	1,100,000	-	0.2	-	-	1,100,000	-	-	-	-	-	1,100,000
Water Reuse System Phase IV	-	-	-	-	-	-	820,000	820,000	820,000	0.2	-	-	-	-	-	-	-	-	-
Water System Leak Detection & Repair	650,000	50,000	50,000	50,000	50,000	50,000	-	900,000	-	2	650,000	-	250,000	50,000	50,000	50,000	50,000	50,000	-
Water System Leak Detection & Repair	650,000	-	50,000	50,000	50,000	50,000	-	850,000	-	2	650,000	-	200,000	-	50,000	50,000	50,000	50,000	-
Water System Model Update	135,785	5,000	5,000	5,000	5,000	5,000	-	160,785	160,785	0.2	-	-	-	-	-	-	-	-	-
West Side Water Lines (East)	-	-	-	-	-	-	2,610,000	2,610,000	300,000	0.2	-	-	2,310,000	-	-	-	-	-	2,310,000
West Side Water Lines (South)	-	-	-	-	-	-	3,440,000	3,440,000	350,000	0.2	-	-	3,090,000	-	-	-	-	-	3,090,000
West Side Water Lines (West)	-	-	-	-	-	-	1,390,000	1,390,000	150,000	0.2	-	-	1,240,000	-	-	-	-	-	1,240,000
Western Operations and Maintenance Facility (Temporaty FS #6) **	1,225,000	-	-	-	-	-	-	1,225,000	975,000	2	250,000	-	-	-	-	-	-	-	-
Western Operations and Maintenance Facility (Buildout)	-	-	-	100,000	-	-	-	100,000	100,000	2	-	-	-	-	-	-	-	-	-
Woodbine Water Line Replacement	-	410,000	-	-	-	-	-	410,000	410,000	2	-	-	-	-	-	-	-	-	-
Yucca Drive Utilities (Sagebrush to 700 ft South of FM 1171)	870,000	-	-	-	-	-	-	870,000	220,000	2	650,000	-	-	-	-	-	-	-	-
SUBTOTAL - OLD	\$ 11,323,405	\$ 11,555,000	\$ 9,705,000	\$ 10,445,000	\$ 355,000	\$ 355,000	\$ 35,716,000	\$ 79,454,405	\$ 16,678,405		\$ 7,610,000	\$ -	\$ 55,166,000	\$ 6,940,000	\$ 7,250,000	\$ 9,170,000	\$ 350,000	\$ 350,000	\$ 31,106,000
SUBTOTAL - NEW	\$ 11,323,405	\$ 4,815,625	\$ 12,455,000	\$ 14,105,000	\$ 355,000	\$ 355,000	\$ 35,716,000	\$ 79,125,030	\$ 17,199,030		\$ 7,610,000	\$ -	\$ 54,316,000	\$ 1,900,000	\$ 7,880,000	\$ 12,730,000	\$ 350,000	\$ 350,000	\$ 31,106,000

** Project Includes ADA Improvements

Other Sources

0. Impact Fees
1. Grant and Interlocal Funds
2. Other Sources (Proj. Sav., Fund Bal., Interest Inc.)
3. Escrow
4. Decision Package
5. Developer Agreement(s)
6. Park Development Fund
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8. Dedicated Sales Tax
9. SH 121 Regional Toll Revenue (RTR)

TOWN OF FLOWER MOUND
SUMMARY OF FIVE YEAR CIP PLAN
FY 2017-2018
Amendment 4
06/18/2018

STORMWATER PROJECTS	PRIOR FISCAL YEARS	CONSTRUCTION SCHEDULE						TOTAL PROJECT COSTS	OTHER SOURCES		ISSUED DEBT		AUTHORIZED UNISSUED GO's		NEW DEBT		DEBT SCHEDULE					
		2017- 2018	2018- 2019	2019- 2020	2020- 2021	2021- 2022	2022- 2027										2017- 2018	2018- 2019	2019- 2020	2020- 2021	2021- 2022	2022- 2027
Bakers Branch Stabilization at Cedar Bluff (Strait Lane)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 75,000	\$ 75,000	\$ 75,000	2	\$ -		\$ -		\$ -		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Bakers Branch Stabilization at 621 Somerset Drive	-	150,000	225,000	-	-	-	-	375,000	375,000	2	-		-		-		-	-	-	-	-	-
Bakers Branch Stabilization at 160 & 1612 Strait Lane	-	-	-	-	-	200,000	-	200,000	200,000	2	-		-		-		-	-	-	-	-	-
Creek Bank Stabilization at 1104 & 1108 Big Canyon Drive	-	-	-	175,000	200,000	-	-	375,000	375,000	2	-		-		-		-	-	-	-	-	-
Creek Bank Stabilizatn at 1540 Echo Bluff	-	-	-	-	-	-	75,000	75,000	75,000	2	-		-		-		-	-	-	-	-	-
Creek Bank Stabilization at 3100 River Hill Court	20,000	80,000	-	-	-	-	-	100,000	100,000	2	-		-		-		-	-	-	-	-	-
East Waketon Road Drainage Improvements	50,000	100,000	-	-	-	-	-	150,000	150,000	1,2	-		-		-		-	-	-	-	-	-
FM 2499 Roadway, Traffic Signal, and Drainage	500,000	-	-	-	-	-	-	500,000	500,000	1,2	-		-		-		-	-	-	-	-	-
McKamy Creek Stabilization & Drop Structure at 1900 Winding Creek Blvd	-	-	-	50,000	-	-	-	50,000	50,000	2	-		-		-		-	-	-	-	-	-
Pecan Acres Drainage Improvements	-	-	-	-	-	-	500,000	500,000	500,000	2	-		-		-		-	-	-	-	-	-
Timber Creek Stabilization at Timber Creek Rd (North & South Bridges)	-	-	-	-	-	-	400,000	400,000	400,000	2	-		-		-	-	-	-	-	-	-	-
SUBTOTAL	\$ 570,000	\$ 330,000	\$ 225,000	\$ 225,000	\$ 200,000	\$ 200,000	\$ 1,050,000	\$ 2,800,000	\$ 2,800,000		\$ -		\$ -		\$ -		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

** Project Includes ADA Improvements

- Other Sources
- 0. Impact Fees
 - 1. Grant and Interlocal Funds
 - 2. Other Sources (Proj. Sav.,Fund Bal.,Interest Inc.)
 - 3. Escrow
 - 4. Decision Package
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 - 7. Tax Increment Reinvestment Zone (TIRZ)
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 - 9. SH 121 Regional Toll Revenue (RTR)

Attach 2 - CIP Amend 4 Changes(a).xlsx

Other Sources

0. Impact Fees
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Page 210 of 255

TOWN OF FLOWER MOUND
SUMMARY OF FIVE YEAR CIP PLAN
FY 2017-2018
Amendment 4
06/18/2018

STREET PROJECTS	PRIOR FISCAL YEARS	CONSTRUCTION SCHEDULE						TOTAL PROJECT COSTS	OTHER SOURCES		ISSUED DEBT GO's & CO's	AUTHORIZED UNISSUED GO's	NEW DEBT	DEBT SCHEDULE					
		2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2027							2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2027
Aberdeen Drive Phase I (2 Lanes FM 2499 to Lake Forest) **	\$ 1,650,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,650,000	\$ 1,000,000	0,2,5	\$ 650,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Aberdeen Drive Phase II (2 additional Lanes FM 2499 to 700 ft. North of Spinks) **	-	-	-	-	-	2,463,000	-	2,463,000	1,063,000	0,2,5	-	-	1,400,000	-	-	-	-	1,400,000	-
ADA Transition Plan and Implementation **	533,000	115,000	500,000	150,000	150,000	150,000	-	1,598,000	3,000	2,5	530,000	-	1,065,000	115,000	500,000	150,000	150,000	150,000	-
Churchill Drive (FM 2499 to Yucca) **	525,000	475,000	-	-	-	-	-	1,000,000	1,000,000	0,2,7	-	-	-	-	-	-	-	-	-
Cowboy Lane **	-	-	-	-	-	-	433,337	433,337	193,337	3	-	-	240,000	-		-	-	-	240,000
Denton Creek Boulevard Bridge (Graham Branch crossing)	80,000	600,000	6,320,000	-	-	-	-	7,000,000	1,100,000	0,1,2,5	-	-	5,900,000	-	5,900,000	-	-	-	-
Firewheel Drive (complete 4 lane gap, to 340 feet north of Garden Rd) **	555,000	-	-	-	-	-	-	555,000	555,000	0	-	-	-	-	-	-	-	-	-
FM 1171 at FM 2499 Eastbound Right Turn Lane **	885,000	-	-	-	-	-	-	885,000	785,000	2,7	100,000	-	-	-	-	-	-	-	-
FM 1171 at FM 2499 Westbound Right Turn Lane **	998,000	-	-	-	-	-	-	998,000	998,000	2,7	-	-	-	-	-	-	-	-	-
FM 1171 at River Walk Dr Intersection Improvements **	-	350,000	600,000	-	-	-	-	950,000	350,000	0,2,3,5,7	-	-	600,000	-	600,000	-	-	-	-
FM 2499 at Lakeside North Right Turn Lane **	-	100,000	200,000	-	-	-	-	300,000		2,5	-	-	300,000	100,000	200,000	-	-	-	-
FM 2499 Roadway, Traffic Signal, and Drainage	8,200,000	-	-	-	-	-	-	8,200,000	7,000,000	1,2	1,200,000	-	-	-	-	-	-	-	-
Garden Ridge Through Lane (at FM 3040)	-	-	-	400,000	-	-	-	400,000	200,000	0,2	-	-	200,000	-	-	200,000	-	-	-
I 35W Interchange at Denton Creek	-	-	-	-	-	-	5,000,000	5,000,000	5,000,000	0,1,5	-	-	-	-	-	-	-	-	-
Impact Fee Update	-	-	-	120,000	-	-	-	120,000	120,000	0	-	-	-	-	-	-	-	-	-
Kirkpatrick Lane Phase III (South of FM 1171)	-	-	-	-	-	-	8,718,000	8,718,000	6,036,000	0,1,2,3,5	-	-	2,682,000	-	-	-	-	-	2,682,000
Lake Forest Boulevard Roadway Improvements	200,000	1,800,000	-	-	-	-	-	2,000,000	600,000	0,2	-	-	1,400,000	1,400,000	-	-	-	-	-
Lakeside Dual Left turn Lane at Gerault **	-	-	140,250	-	-	-	-	140,250	100,250	0,2,5	-	-	40,000	-	40,000	-	-	-	-
Lusk/Red Oak East-West Connector	-	-	-	-	-	-	7,232,000	7,232,000	732,000	0,2	-	-	6,500,000	-	-	-	-	-	6,500,000
McKamy Creek Turn Lane at Flower Mound Rd **	350,000	-	-	-	-	-	-	350,000		0,2	350,000	-	-	-	-	-	-	-	-
Rippy Road (Waketon to FM 2499)**	-	800,000	-	1,315,000	-	-	-	2,115,000	2,115,000	2,7	-	-	-	-	-	-	-	-	-
Roadway Amenities	185,000	205,000	90,000	90,000	90,000	90,000	-	750,000	195,000	2,4	105,000	-	450,000	90,000	90,000	90,000	90,000	90,000	-
Sidewalk Links **	811,000	150,000	-	-	-	-	-	961,000	961,000	2,4	-	-	-	-	-	-	-	-	-
Skillern Road (Flower Mound Rd to Riverhill) **	-	905,000	-	-	-	-	-	905,000	5,000	2	-	-	900,000	900,000	-	-	-	-	-
SPA 2 Connector (Bob White)	260,000	-	-	-	-	-	-	260,000	85,000	2	175,000	-	-	-	-	-	-	-	-
Stonecrest Road (500 ft. North of Canyon Falls Dr. to Town Limit) **	1,050,000	-	-	-	-	-	-	1,050,000	150,000	2,5	900,000	-	-	-	-	-	-	-	-
Waketon Road **	5,270,000	230,000	-	-	-	-	-	5,500,000	4,670,000	2,3,5,7	600,000	-	230,000	230,000	-	-	-	-	-
SUBTOTAL	\$ 21,552,000	\$ 5,730,000	\$ 7,850,250	\$ 2,075,000	\$ 240,000	\$ 2,703,000	\$ 21,383,337	\$ 61,533,587	\$ 35,016,587		\$ 4,610,000	\$ -	\$ 21,907,000	\$ 2,835,000	\$ 7,330,000	\$ 440,000	\$ 240,000	\$ 1,640,000	\$ 9,422,000

*General Obligation Bonds
** Project Includes ADA Improvements

Other Sources

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#REF!

Page 211 of 255

TOWN OF FLOWER MOUND
SUMMARY OF FIVE YEAR CIP PLAN
FY 2017-2018
Amendment 4
06/18/2018

SIGNAL PROJECTS	PRIOR FISCAL YEARS	CONSTRUCTION SCHEDULE						TOTAL PROJECT COSTS	OTHER SOURCES		ISSUED DEBT GO's & CO's		AUTHORIZED UNISSUED GO's		NEW DEBT		DEBT SCHEDULE					
		2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2027										2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2027
College Parkway at Timber Creek	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 215,000	215,000	\$ 215,000	0,2,4	\$ -		\$ -		\$ -		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Bruton Orand at Kenwood	-	-	-	-	-	-	215,000	215,000	215,000	0,2,4	-		-		-		-	-	-	-	-	-
Bruton Orand at Quail Run	-	-	-	-	-	-	215,000	215,000	215,000	0,2,4	-		-		-		-	-	-	-	-	-
FM 2499 at College Parkway	230,000	110,000	-	-	-	-	-	340,000	340,000	0,2,7	-		-		-		-	-	-	-	-	-
FM 2499 at Silveron	240,000	-	-	-	-	-	-	240,000	240,000	0,2	-		-		-		-	-	-	-	-	-
FM 407 at Browning - Reconstruction	25,000	-	300,000	-	-	-	-	325,000	25,000	2,4	-		-		300,000		-	300,000	-	-	-	-
Garden Ridge at Forest Vista	-	-	-	-	-	-	215,000	215,000	215,000	0,2,4	-		-		-		-	-	-	-	-	-
Garden Ridge at Kirkpatrick	-	-	-	-	-	-	215,000	215,000	215,000	0,2,4	-		-		-		-	-	-	-	-	-
Lakeside at Silveron	-	-	-	-	-	-	215,000	215,000	215,000	0,2,4,5	-		-		-		-	-	-	-	-	-
Morriss at Eaton	-	-	215,000	-	-	-	-	215,000	215,000	2,4	-		-		-		-	-	-	-	-	-
Peters Colony at Churchill	-	-	-	-	-	-	215,000	215,000	215,000	0,2,4	-		-		-		-	-	-	-	-	-
Traffic Detection Rehabilitation	375,000	125,000	125,000	125,000	125,000	125,000	-	1,000,000	-	2	375,000		-		625,000		125,000	125,000	125,000	125,000	125,000	-
Traffic Signal Rehabilitation	-	-	-	-	-	-	500,000	500,000	-	2	-		-		500,000		-	-	-	-	-	500,000
U.S 377 at Canyon Falls Drive	250,000	25,000	-	-	-	-	-	275,000	275,000	0,2,4	-		-		-		-	-	-	-	-	-
SUBTOTAL	\$ 1,120,000	\$ 260,000	\$ 640,000	\$ 125,000	\$ 125,000	\$ 125,000	\$ 2,005,000	\$ 4,400,000	\$ 2,600,000		\$ 375,000		\$ -		\$ 1,425,000		\$ 125,000	\$ 425,000	\$ 125,000	\$ 125,000	\$ 125,000	\$ 500,000

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Page 212 of 255

TOWN OF FLOWER MOUND
SUMMARY OF FIVE YEAR CIP PLAN
FY 2017-2018
Amendment 4
06/18/2018

STREET RECONSTRUCTION PROJECTS	PRIOR FISCAL YEARS	CONSTRUCTION SCHEDULE						TOTAL PROJECT COSTS	OTHER SOURCES		ISSUED DEBT GO's & CO's		AUTHORIZED UNISSUED GO's	NEW DEBT		DEBT SCHEDULE					
		2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2027									2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2027
Canterbury Drive Reconstruction (Churchill to Dover) **	\$ 350,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 350,000	\$ 350,000	8	\$ -		\$ -		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Flower Mound Road Reconstruction Phase II (Old Settlers to Bruton Orand) **	-	-	-	-	-	-	2,344,000	2,344,000	2,344,000	8	-		-		-	-	-	-	-	-	-
Forest Vista Reconstruction Phase I (Lake Shore to FM 2499) **	3,400,000	-	-	-	-	-	-	3,400,000	3,400,000	8	-		-		-	-	-	-	-	-	-
Forest Vista Reconstruction Phase II (Morriss to Chancellor) **	-	-	335,000	2,400,000	-	-	-	2,735,000	2,735,000	8	-		-		-	-	-	-	-	-	-
Forest Vista Reconstruction Phase III (Chancellor to Lake Shore) **	-	-	-	-	-	350,000	2,300,000	2,650,000	2,650,000	8	-		-		-	-	-	-	-	-	-
Grady Court	-	-	675,000	-	-	-	-	675,000	675,000	8	-		-		-	-	-	-	-	-	-
Lopo Road Reconstruction (River oak to 330-ft west of Garden Ridge) **	-	-	950,000	-	-	-	-	950,000	950,000	8	-		-		-	-	-	-	-	-	-
McKamy Creek Road Reconstruction (Flower Mound Rd. to Woodhill Dr.) **	1,400,000	-	-	-	-	-	-	1,400,000	1,400,000	8	-		-		-	-	-	-	-	-	-
Morriss Road Panel Replacement (FM 3040 to FM 1171) **	-	-	4,040,000	-	-	-	-	4,040,000	4,040,000	8	-		-		-	-	-	-	-	-	-
Old Long Prairie Road Reconstruction **	1,100,000	-	-	-	-	-	-	1,100,000	1,100,000	8	-		-		-	-	-	-	-	-	-
Superior Place Reconstruction (Colonial to 1545 Superior Pl) **	625,000	-	-	-	-	-	-	625,000	625,000	8	-		-		-	-	-	-	-	-	-
Timber Creek Road Reconstruction Phase II (5000 Timbercreek Rd. to Homestead St.) **	-	-	-	250,000	2,000,000	-	-	2,250,000	2,250,000	8	-		-		-	-	-	-	-	-	-
Timber Creek Road Reconstruction Phase III (Homestead St. to Kirkpatrick Ln.) **	-	-	-	-	300,000	2,925,000	-	3,225,000	3,225,000	8	-		-		-	-	-	-	-	-	-
Timber Creek Road Reconstruction Phase IV (Timber Creek Bridge to Eaton) **	-	-	-	-	-	-	3,600,000	3,600,000	3,600,000	8	-		-		-	-	-	-	-	-	-
West Windsor and Mulberry Connection **	100,000	-	-	-	-	-	-	100,000	100,000	8	-		-		-	-	-	-	-	-	-
Woodbine Street Reconstruction (Timber Creek to Hieden Ct.) **	1,350,000	-	-	-	-	-	-	1,350,000	1,350,000	8	-		-		-	-	-	-	-	-	-
Wood Creek Circle Reconstruction (Wood Creek Dr to end of Cul-de-Sac) **	-	-	400,000	-	-	-	-	400,000	400,000	8	-		-		-	-	-	-	-	-	-
Yucca Drive Reconstruction (Sagebrush to 700 ft South of FM 1171) **	1,300,000	-	-	-	-	-	-	1,300,000	1,300,000	8	-		-		-	-	-	-	-	-	-
SUBTOTAL	\$ 9,625,000	\$ -	\$ 6,400,000	\$ 2,650,000	\$ 2,300,000	\$ 3,275,000	\$ 8,244,000	\$ 32,494,000	\$ 32,494,000		\$ -		\$ -		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

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Page 213 of 255

TOWN OF FLOWER MOUND
SUMMARY OF FIVE YEAR CIP PLAN
FY 2017-2018
Amendment 4
06/18/2018

FACILITY PROJECTS	PRIOR FISCAL YEARS	CONSTRUCTION SCHEDULE						TOTAL PROJECT COSTS	OTHER SOURCES		ISSUED DEBT GO's & CO's		AUTHORIZED UNISSUED GO's		NEW DEBT		DEBT SCHEDULE					
		2017- 2018	2018- 2019	2019- 2020	2020- 2021	2021- 2022	2022- 2027										2017- 2018	2018- 2019	2019- 2020	2020- 2021	2021- 2022	2022- 2027
Storage Warehouse	-	650,000	-	-	-	-	-	650,000	-	2	-	-	-	-	650,000	-	650,000	-	-	-	-	-
Fire and Police Training Center	-	-	-	-	-	-	2,235,000	2,235,000	-	2	-	-	-	-	2,235,000	-	-	-	-	-	-	2,235,000
Fire Station No. 1 Facility Upgrades **	1,223,375	-	-	-	-	-	-	1,223,375	243,375	2,4	980,000	-	-	-	-	-	-	-	-	-	-	-
Fire Station No. 6 and Apparatus (West Flower Mound) **	-	-	300,000	6,500,000	-	-	-	6,800,000	-	2	-	-	-	-	6,800,000	-	300,000	6,500,000	-	-	-	-
Fire Station No. 7 and Apparatus (Wichita Trail) **	-	1,470,000	5,050,000	-	-	-	-	6,520,000	500,000	2	-	-	-	-	6,020,000	1,470,000	4,550,000	-	-	-	-	-
Library Expansion**	-	12,400,000	-	-	-	-	-	12,400,000	-	2,7	-	-	-	-	12,400,000	12,400,000	-	-	-	-	-	-
Log Cabin	-	51,593	-	-	-	-	-	51,593	51,593	1,2	-	-	-	-	-	-	-	-	-	-	-	-
Mechanical Screen Wall (Police Dept.)	90,000	-	-	-	-	-	-	90,000	90,000	1,2	-	-	-	-	-	-	-	-	-	-	-	-
Police and Courts Facility Upgrades **	3,331,000	-	-	-	-	-	-	3,331,000	1,571,000	2,4	1,760,000	-	-	-	-	-	-	-	-	-	-	-
Town Hall **	18,800,000	119,000	-	-	-	-	-	18,919,000	719,000	2,7	18,200,000	-	-	-	-	-	-	-	-	-	-	-
Western Operations and Maintenance Facility (Temporaty FS #6)**	600,000	-	-	-	-	-	-	600,000	600,000	2,4	-	-	-	-	-	-	-	-	-	-	-	-
SUBTOTAL	\$ 24,044,375	\$ 14,690,593	\$ 5,350,000	\$ 6,500,000	\$ -	\$ -	\$ 2,235,000	\$ 52,819,968	\$ 3,774,968		\$ 20,940,000	\$ -	\$ 28,105,000	\$ 14,520,000	\$ 4,850,000	\$ 6,500,000	\$ -	\$ -	\$ 2,235,000			

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Page 214 of 255

TOWN OF FLOWER MOUND
SUMMARY OF FIVE YEAR CIP PLAN
FY 2017-2018
Amendment 4
06/18/2018

PARK PROJECTS	PRIOR FISCAL YEARS	CONSTRUCTION SCHEDULE						TOTAL PROJECT COSTS	OTHER SOURCES		ISSUED DEBT GO's & CO's		AUTHORIZED UNISSUED GO's	NEW DEBT		DEBT SCHEDULE					
		2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2027									2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2027
2016-17 Playground Replacements(Bluebonnet, Gaston, Glenwick, Grove, Oak, & Spring Meadow parks) **	1,200,000	-	-	-	-	-	-	1,200,000	1,200,000	8	-	-	-	-	-	-	-	-	-	-	-
2018-19 Playground Replacements (Lakewood, Stone Creek, Thrush West, & Gerault parks) **	-	-	1,000,000	-	-	-	-	1,000,000	1,000,000	8	-	-	-	-	-	-	-	-	-	-	-
2019-20 Playground Replacements (Chinn Chapel, & Pecan Orchard parks) **	-	-	-	350,000	-	-	-	350,000	350,000	8	-	-	-	-	-	-	-	-	-	-	-
2020-21 Playgrouna Replacements (Cortadera, Wilkerson, Grand, & Possum parks) **	-	-	-	-	1,000,000	-	-	1,000,000	1,000,000	8	-	-	-	-	-	-	-	-	-	-	-
2021-22 Playground Replacements (Peacock Park) **	-	-	-	-	-	250,000	-	250,000	250,000	8	-	-	-	-	-	-	-	-	-	-	-
2023-24 Playground Replacements (Northshore, Jakes Hilltop, & Rustic Timbers parks) **	-	-	-	-	-	-	600,000	600,000	600,000	8	-	-	-	-	-	-	-	-	-	-	-
2024-25 Playground Replacements (Thrush East, & Westchester parks) **	-	-	-	-	-	-	400,000	400,000	400,000	8	-	-	-	-	-	-	-	-	-	-	-
Bakersfield Park Lighting Upggrade	-	-	-	-	-	1,000,000	-	1,000,000	1,000,000	8	-	-	-	-	-	-	-	-	-	-	-
Bakersfield Park Restroom	-	-	450,000	-	-	-	-	450,000	450,000	8	-	-	-	-	-	-	-	-	-	-	-
Bella Lago Master Plan	-	-	50,000	-	-	-	-	50,000	50,000	8	-	-	-	-	-	-	-	-	-	-	-
Canyon Falls Park Design	-	-	150,000	-	-	-	-	150,000	150,000	8	-	-	-	-	-	-	-	-	-	-	-
Canyon Falls Park Development	-	-	-	-	-	-	2,500,000	2,500,000	2,500,000	8	-	-	-	-	-	-	-	-	-	-	-
Comunity Activity Center Improvements	257,000	-	-	-	-	-	-	257,000	-	2	257,000	-	-	-	-	-	-	-	-	-	-
Chinn Chapel Lighting Improvements	-	-	-	-	-	250,000	-	250,000	250,000	8	-	-	-	-	-	-	-	-	-	-	-
Equestrian (Trail Head & Trails)	-	-	-	-	-	-	900,000	900,000	900,000	8	-	-	-	-	-	-	-	-	-	-	-
Green Acres Memorial Farm	-	-	-	-	-	-	2,200,000	2,200,000	2,200,000	8	-	-	-	-	-	-	-	-	-	-	-
Heritage Park (Lighting Improvements, Restroom at Dog Park, Upgrade Srufaces)	-	-	-	-	750,000	-	-	750,000	750,000	8	-	-	-	-	-	-	-	-	-	-	-
Heritage Park of Flower Mound Phase II	2,590,000	-	-	-	-	-	-	2,590,000	2,590,000	8,6	-	-	-	-	-	-	-	-	-	-	-
Heritage Park of Flower Mound Phase III	2,181,000	-	-	-	-	-	-	2,181,000	2,181,000	8	-	-	-	-	-	-	-	-	-	-	-
Heritage Park of Flower Mound Phase IV	200,000	2,200,000	-	-	-	-	-	2,400,000	2,400,000	8	-	-	-	-	-	-	-	-	-	-	-
Lakewood Park - Pavilion	-	-	75,000	-	-	-	-	75,000	75,000	8	-	-	-	-	-	-	-	-	-	-	-
Individual Park Improvements (Bluebonnet, Colony, Lakewood FY 2020-21) & (Shadow Ridge, Oak, Grand, Culwell Parker FY 2021-22)	-	-	-	-	425,000	375,000	-	800,000	800,000	8	-	-	-	-	-	-	-	-	-	-	-
Park and Trail Amenities	460,000	50,000	50,000	50,000	50,000	50,000	-	710,000	710,000	2,6,8	-	-	-	-	-	-	-	-	-	-	-
Park and Trails Master Plan	200,000	-	-	-	-	-	-	200,000	200,000	2,6	-	-	-	-	-	-	-	-	-	-	-
Pink Evening Primrose Trails (Section 1 & 3)	800,000	-	-	-	-	-	-	800,000	800,000	2,6	-	-	-	-	-	-	-	-	-	-	-
Rheudasil Park Improvements	200,000	-	200,000	1,600,000	-	-	-	2,000,000	2,000,000	2,8	-	-	-	-	-	-	-	-	-	-	-
Rheudasil, Wilkerson, & Cortadera Parks Pond Dredging and Bank Stabilization	3,429,696	-	-	-	-	-	-	3,429,696	1,379,696	8	2,050,000	-	-	-	-	-	-	-	-	-	-
Tennis Center (Master Plan, Design, Construction)	-	-	-	-	-	-	5,560,000	5,560,000	5,560,000	8	-	-	-	-	-	-	-	-	-	-	-
Trail Connections (Bluebonnet,Indian Blanket, Pink Evening Primrose, Purple Coneflower, Texas Yellow Star, & White Lazy Daisy Trails)	-	-	-	-	-	-	4,700,000	4,700,000	4,700,000	8	-	-	-	-	-	-	-	-	-	-	-
Trails Master Plan	-	-	-	300,000	-	-	-	300,000	300,000	2,8	-	-	-	-	-	-	-	-	-	-	-
SUBTOTAL	\$ 11,517,696	\$ 2,250,000	\$ 1,975,000	\$ 2,300,000	\$ 2,225,000	\$ 1,925,000	\$ 16,860,000	\$ 39,052,696	\$ 36,745,696		\$ 2,307,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
GRAND TOTAL GENERAL FUND	\$ 67,859,071	\$ 22,930,593	\$ 22,215,250	\$ 13,650,000	\$ 4,890,000	\$ 8,028,000	\$ 50,727,337	\$ 190,300,251	\$ 110,631,251		\$ 28,232,000	\$ -	\$ 51,437,000	\$ 17,480,000	\$ 12,605,000	\$ 7,065,000	\$ 365,000	\$ 1,765,000	\$ 12,157,000		

** Project Includes ADA Improvements

Other Sources

0. Impact Fees

1. Grant and Interlocal Funds

2. Other Sources (Proj. Sav.,Fund Bal.,Interest Inc.)

3. Escrow

4. Decision Package

5. Developer Agreement(s)

6. Park Development Fund

7. Tax Increment Reinvestment Zone (TIRZ)

8. Dedicated Sales Tax

9. SH 121 Regional Toll Revenue (RTR)

TOWN OF FLOWER MOUND
SUMMARY OF FIVE YEAR CIP PLAN
FY 2017-2018
Amendment 4
06/18/2018

WATER PROJECTS	PRIOR FISCAL YEARS	CONSTRUCTION SCHEDULE						TOTAL PROJECT COSTS	OTHER SOURCES		ISSUED DEBT	AUTHORIZED UNISSUED GO's	NEW DEBT	DEBT SCHEDULE					
		2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2027							2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2027
Aberdeen Water Line (FM 2499 to Lake Forest)	\$ 300,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 300,000	\$ 190,000	0,2	\$ 110,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Bruton Orand Elevated Storage Tank Rehabilitation	1,880,000	-	-	-	-	-	-	1,880,000	80,000	2	1,800,000	-	-	-	-	-	-	-	-
Canyon Falls 20-Inch Water Line	2,000,000	-	-	660,000	-	-	-	2,660,000	400,000	0,2	1,700,000	-	560,000	-	-	560,000	-	-	-
Cowboy Lane Water Line	-	-	-	-	-	-	670,000	670,000	140,000	0,3	-	-	530,000	-	-	-	-	-	530,000
Denton Creek Boulevard 12-Inch Water Line	-	200,000	1,300,000	-	-	-	-	1,500,000	620,000	0,5	-	-	880,000	-	880,000	-	-	-	-
Denton Creek District - Water Reuse Master Plan	100,000	-	-	-	-	-	-	100,000	100,000	0,2	-	-	-	-	-	-	-	-	-
Denton Creek Spine Road 12-inch Water Line	-	100,000	600,000	1,700,000	-	-	-	2,400,000	100,000	0,2	-	-	2,300,000	-	600,000	1,700,000	-	-	-
Denton Creek District - Reuse Waterlines	650,000	250,000	250,000	250,000	-	-	-	1,400,000	1,400,000	0,2	-	-	-	-	-	-	-	-	-
FM 1171 to Hwy. 377 Water Line Phase II	-	-	-	-	-	-	5,880,000	5,880,000	290,000	0,2	-	-	5,590,000	-	-	-	-	-	5,590,000
FM 1171 12-inch Water Line (Karnes Rd. to Churchill Dr.)	-	-	-	-	-	-	210,000	210,000	210,000	0,2	-	-	-	-	-	-	-	-	-
FM 2499 12-Inch Water Line Phase I (Dixon to South of FM 1171)	-	600,000	2,500,000	-	-	-	-	3,100,000	2,300,000	0,2,7	-	-	800,000	-	800,000	-	-	-	-
Garden Ridge Blvd. Ph. II Water Line	-	-	-	790,000	-	-	-	790,000	390,000	0,2	-	-	400,000	-	-	400,000	-	-	-
High Road Water Line Replacement Phase I	350,000	1,900,000	-	-	-	-	-	2,250,000	-	2	350,000	-	1,900,000	1,900,000	-	-	-	-	-
High Road Water Line Replacement Phase II	-	-	350,000	3,000,000	-	-	-	3,350,000	-	2	-	-	3,350,000	-	350,000	3,000,000	-	-	-
Highway 377/UPRR Water Line Phase II	137,620	-	-	-	-	-	2,310,000	2,447,620	87,620	0,2	50,000	-	2,310,000	-	-	-	-	-	2,310,000
Impact Fee Update	-	-	-	80,000	-	-	-	80,000	80,000	0,2	-	-	-	-	-	-	-	-	-
Kirkpatrick Lane 12-Inch Water Line Phase II (Valley Ridge - FM 1171)	35,000	665,000	700,000	-	-	-	-	1,400,000	700,000	0,2	-	-	700,000	-	700,000	-	-	-	-
Kirkpatrick Lane 12-Inch Water Line Phase III (South of FM1171)	-	-	-	-	-	-	320,000	320,000	320,000	0,2	-	-	-	-	-	-	-	-	-
Lake Forest 12-inch Water Line (Bridge Gap)	50,000	85,000	-	-	-	-	-	135,000	135,000	0,2	-	-	-	-	-	-	-	-	-
Lake Forest 12-inch Water Line (FM 3040 to Spinks)	-	-	-	-	-	-	1,380,000	1,380,000	500,000	0,2	-	-	880,000	-	-	-	-	-	880,000
Lakeside Business District - Water Reuse Master Plan	120,000	-	-	-	-	-	-	120,000	120,000	0,2	-	-	-	-	-	-	-	-	-
Lusk/Red Oak East-West Connector	-	-	-	-	-	-	3,240,000	3,240,000	240,000	0,2	-	-	3,000,000	-	-	-	-	-	3,000,000
Morriss Road Water Lines Phase II	-	100,000	900,000	-	-	-	-	1,000,000	100,000	2	-	-	900,000	-	900,000	-	-	-	-
Morriss Road Water Lines Phase III	-	-	3,000,000	-	-	-	-	3,000,000	2,200,000	0,2,7	-	-	800,000	-	800,000	-	-	-	-
Morriss Road Water Lines Phase IV	-	-	-	4,900,000	-	-	-	4,900,000	-	0,2,7	-	-	4,900,000	-	-	4,900,000	-	-	-
Pintail Pump Station (Auxiliary Power & Upgrades)	-	400,000	1,700,000	-	-	-	-	2,100,000	400,000	0,2,5	-	-	1,700,000	-	1,700,000	-	-	-	-
Patriot Way Water Line (8-inch to 12-inch, Old Gerault to Glenview)	-	20,625	-	-	-	-	-	20,625	20,625	2,5	-	-	-	-	-	-	-	-	-
Pressure Reducing Valves	-	-	-	-	-	-	560,000	560,000	300,000	0,2	-	-	260,000	-	-	-	-	-	260,000
Rippy Road Water line Improvements (FM 2499-Waketon)	730,000	20,000	-	-	-	-	-	750,000	350,000	0,2	400,000	-	-	-	-	-	-	-	-
Scenic Drive Water Line (South of FM 1171 to River Hill Dr.)	-	-	-	-	-	-	1,490,000	1,490,000	490,000	0,2	-	-	1,000,000	-	-	-	-	-	1,000,000
Shady Point Acres Water Line Replacement	1,300,000	-	-	-	-	-	-	1,300,000	-	2	1,300,000	-	-	-	-	-	-	-	-
Stonecrest Pump Station Phase I (Auxiliary Power)	-	-	-	2,120,000	-	-	-	2,120,000	300,000	0,2	-	-	1,820,000	-	-	1,820,000	-	-	-
Stonecrest Pump Station Phase II	-	-	-	-	-	-	5,140,000	5,140,000	250,000	0,2	-	-	4,890,000	-	-	-	-	-	4,890,000
Stonecrest Pump Station Phase III	-	-	-	-	-	-	840,000	840,000	-	2	-	-	840,000	-	-	-	-	-	840,000
Stonehill Pump Station 10MG Ground Storage Tank Modification	50,000	-	300,000	-	-	-	-	350,000	-	1,2	50,000	-	300,000	-	300,000	-	-	-	-
Stonehill 10MG Ground Storage Tank Rehabilitation	40,000	-	-	-	-	-	-	40,000	40,000	2	-	-	-	-	-	-	-	-	-
Stonehill Pump Station Discharge Valve Replacement	-	60,000	500,000	-	-	-	-	560,000	60,000	2	-	-	500,000	-	500,000	-	-	-	-
Timber Creek 20-inch Water Line	-	-	-	-	-	-	370,000	370,000	250,000	2	-	-	120,000	-	-	-	-	-	120,000
Trailwood Terrace 12-inch Water Line	400,000	-	-	-	-	-	-	400,000	400,000	0,2	-	-	-	-	-	-	-	-	-
Utility Asset Management & Utility Replacement	300,000	-	300,000	300,000	300,000	300,000	-	1,500,000	-	2	300,000	-	1,200,000	-	300,000	300,000	300,000	300,000	-
Water Master Plan	-	-	-	150,000	-	-	-	150,000	150,000	0,2	-	-	-	-	-	-	-	-	-
Water Reuse System Phase I	-	-	-	-	-	-	3,186,000	3,186,000	-	0,2	-	-	3,186,000	-	-	-	-	-	3,186,000
Water Reuse System Phase II	-	-	-	-	-	-	760,000	760,000	-	0,2	-	-	760,000	-	-	-	-	-	760,000
Water Reuse System Phase III	-	-	-	-	-	-	1,100,000	1,100,000	-	0,2	-	-	1,100,000	-	-	-	-	-	1,100,000
Water Reuse System Phase IV	-	-	-	-	-	-	820,000	820,000	820,000	0,2	-	-	-	-	-	-	-	-	-
Water System Leak Detection & Repair	650,000	-	50,000	50,000	50,000	50,000	-	850,000	-	2	650,000	-	200,000	-	50,000	50,000	50,000	50,000	-
Water System Model Update	135,785	5,000	5,000	5,000	5,000	5,000	-	160,785	160,785	0,2	-	-	-	-	-	-	-	-	-
West Side Water Lines (East)	-	-	-	-	-	-	2,610,000	2,610,000	300,000	0,2	-	-	2,310,000	-	-	-	-	-	2,310,000
West Side Water Lines (South)	-	-	-	-	-	-	3,440,000	3,440,000	350,000	0,2	-	-	3,090,000	-	-	-	-	-	3,090,000
West Side Water Lines (West)	-	-	-	-	-	-	1,390,000	1,390,000	150,000	0,2	-	-	1,240,000	-	-	-	-	-	1,240,000
Western Operations and Maintenance Facility (Temporaty FS #6) **	1,225,000	-	-	-	-	-	-	1,225,000	975,000	2	250,000	-	-	-	-	-	-	-	-
Western Operations and Maintenance Facility (Buildout)	-	-	-	100,000	-	-	-	100,000	100,000	2	-	-	-	-	-	-	-	-	-
Woodbine Water Line Replacement	-	410,000	-	-	-	-	-	410,000	410,000	2	-	-	-	-	-	-	-	-	-
Yucca Drive Utilities (Sagebrush to 700 ft South of FM 1171)	870,000	-	-	-	-	-	-	870,000	220,000	2	650,000	-	-	-	-	-	-	-	-

SUBTOTAL	\$ 11,323,405	\$ 4,815,625	\$ 12,455,000	\$ 14,105,000	\$ 355,000	\$ 355,000	\$ 35,716,000	\$ 79,125,030	\$ 17,199,030		\$ 7,610,000	\$ -	\$ 54,316,000	\$ 1,900,000	\$ 7,880,000	\$ 12,730,000	\$ 350,000	\$ 350,000	\$ 31,106,000
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** Project Includes ADA Improvements

Other Sources

- 0. Impact Fees
- 1. Grant and Interlocal Funds
- 2. Other Sources (Proj. Sav.,Fund Bal.,Interest Inc.)
- 3. Escrow
- 4. Decision Package
- 5. Developer Agreement(s)
- 6. Park Development Fund
- 7. Tax Increment Reinvestment Zone (TIRZ)
- 8. Dedicated Sales Tax
- 9. SH 121 Regional Toll Revenue (RTR)

Page 216 of 255

TOWN OF FLOWER MOUND
SUMMARY OF FIVE YEAR CIP PLAN
FY 2017-2018
Amendment 4
06/18/2018

STORMWATER PROJECTS	PRIOR FISCAL YEARS	CONSTRUCTION SCHEDULE						TOTAL PROJECT COSTS	OTHER SOURCES		ISSUED DEBT		AUTHORIZED UNISSUED GO's	NEW DEBT		DEBT SCHEDULE					
		2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2027									2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2027
Bakers Branch Stabilization at Cedar Bluff (Strait Lane)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 75,000	\$ 75,000	\$ 75,000	2	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Bakers Branch Stabilization at 621 Somerset Drive	-	150,000	225,000	-	-	-	-	375,000	375,000	2	-	-	-	-	-	-	-	-	-	-	-
Bakers Branch Stabilization at 160 & 1612 Strait Lane	-	-	-	-	-	200,000	-	200,000	200,000	2	-	-	-	-	-	-	-	-	-	-	-
Creek Bank Stabilization at 1104 & 1108 Big Canyon Drive	-	-	-	175,000	200,000	-	-	375,000	375,000	2	-	-	-	-	-	-	-	-	-	-	-
Creek Bank Stabilizatn at 1540 Echo Bluff	-	-	-	-	-	-	75,000	75,000	75,000	2	-	-	-	-	-	-	-	-	-	-	-
Creek Bank Stabilization at 3100 River Hill Court	20,000	80,000	-	-	-	-	-	100,000	100,000	2	-	-	-	-	-	-	-	-	-	-	-
East Waketon Road Drainage Improvements	50,000	100,000	-	-	-	-	-	150,000	150,000	1,2	-	-	-	-	-	-	-	-	-	-	-
FM 2499 Roadway, Traffic Signal, and Drainage	500,000	-	-	-	-	-	-	500,000	500,000	1,2	-	-	-	-	-	-	-	-	-	-	-
McKamy Creek Stabilization & Drop Structure at 1900 Winding Creek Blvd	-	-	-	50,000	-	-	-	50,000	50,000	2	-	-	-	-	-	-	-	-	-	-	-
Pecan Acres Drainage Improvements	-	-	-	-	-	-	500,000	500,000	500,000	2	-	-	-	-	-	-	-	-	-	-	-
Timber Creek Stabilization at Timber Creek Rd (North & South Bridges)	-	-	-	-	-	-	400,000	400,000	400,000	2	-	-	-	-	-	-	-	-	-	-	-
SUBTOTAL	\$ 570,000	\$ 330,000	\$ 225,000	\$ 225,000	\$ 200,000	\$ 200,000	\$ 1,050,000	\$ 2,800,000	\$ 2,800,000		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

** Project Includes ADA Improvements

Other Sources

- 0. Impact Fees
- 1. Grant and Interlocal Funds
- 2. Other Sources (Proj. Sav.,Fund Bal.,Interest Inc.)
- 3. Escrow
- 4. Decision Package
- 5. Developer Agreement(s)
- 6. Park Development Fund
- 7. Tax Increment Reinvestment Zone (TIRZ)
- 8. Dedicated Sales Tax
- 9. SH 121 Regional Toll Revenue (RTR)

WASTEWATER PROJECTS	PRIOR FISCAL YEARS	CONSTRUCTION SCHEDULE						TOTAL PROJECT COSTS	OTHER SOURCES		ISSUED DEBT		AUTHORIZED UNISSUED GO's		NEW DEBT		DEBT SCHEDULE					
		2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2027										2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2027
Bakers Branch Collector Phase II (Lexington to Gerault)	350,000	1,500,000	-	-	-	-	-	1,850,000	350,000	0,2	-	-	-	-	1,500,000	-	1,500,000	-	-	-	-	-
Canterbury Lane Sewer Line Replacement	130,000	-	-	-	-	-	-	130,000	130,000	2	-	-	-	-	-	-	-	-	-	-	-	-
Inflow-Infiltration/Evaluation and Repair	1,980,000	-	250,000	250,000	250,000	250,000	-	2,980,000	130,000	2	1,850,000	-	-	-	1,000,000	-	250,000	250,000	250,000	250,000	-	-
Justin Road Lift Station Outfall (Justin Rd. to Cottage Ln.)	-	400,000	450,000	-	-	-	-	850,000	400,000	0,2	0	-	-	-	450,000	-	450,000	-	-	-	-	-
Lakeside Lift Station and Force Main Phase II	-	-	2,400,000	-	-	-	-	2,400,000	400,000	0,2,3,5	-	-	-	-	2,000,000	-	2,000,000	-	-	-	-	-
Lift Station Improvements and Decommissioning	1,775,000	60,000	-	-	-	-	-	1,835,000	110,000	2	1,725,000	-	-	-	-	-	-	-	-	-	-	-
Long Prairie Interceptor (North of Woodway Drive)	-	-	-	-	-	330,000	-	330,000	-	0,2	-	-	-	-	330,000	-	-	-	-	330,000	-	-
Lower Timber Interceptor (Teakwood to Pintail Park)	-	-	750,000	-	-	-	-	750,000	-	0,2	-	-	-	-	750,000	-	750,000	-	-	-	-	-
Oak Street Lift Station and Force Main Phase IV	-	-	-	3,300,000	-	-	-	3,300,000	150,000	0,2	-	-	-	-	3,150,000	-	-	3,150,000	-	-	-	-
Oak Street Lift Station and Force Main Phase V	-	-	-	-	-	-	2,500,000	2,500,000	-	0,2	-	-	-	-	2,500,000	-	-	-	-	-	-	2,500,000
Riverwalk Collector (Morriess Rd. to Windsor Dr.)	-	-	-	-	430,000	-	-	430,000	230,000	0,2	-	-	-	-	200,000	-	-	-	-	200,000	-	-
Southside Force Main Extension	-	-	-	-	-	-	1,710,000	1,710,000	710,000	0,2	-	-	-	-	1,000,000	-	-	-	-	-	-	1,000,000
Southside Gravity Improvements	-	-	-	-	-	-	2,970,000	2,970,000	600,000	0,2,3,5	-	-	-	-	2,370,000	-	-	-	-	-	-	2,370,000
Southside Pump Upgrade	-	-	-	-	-	-	780,000	780,000	400,000	0,2	-	-	-	-	380,000	-	-	-	-	-	-	380,000
Upper Timber Creek Interceptor (South of College Pkw.)	-	-	-	-	-	300,000	-	300,000	-	0,2	-	-	-	-	300,000	-	-	-	-	300,000	-	-
Upper Timber Creek Interceptor Phase III (FM 1171 to Hidden Forest Drive)	960,000	-	1,700,000	-	-	-	-	2,660,000	410,000	0,2	550,000	-	-	-	1,700,000	-	1,700,000	-	-	-	-	-
Upper Timber Creek Interceptor Phase IV (Hidden Forest Drive to Oak Street Lift Station)	350,000	-	3,350,000	-	-	-	-	3,700,000	-	2	350,000	-	-	-	3,350,000	-	3,350,000	-	-	-	-	-
Wastewater Master Plan	-	-	-	150,000	-	-	-	150,000	150,000	0,2	-	-	-	-	-	-	-	-	-	-	-	-
Wastewater System Model Update	205,785	5,000	5,000	5,000	5,000	5,000	-	230,785	230,785	0,2	-	-	-	-	-	-	-	-	-	-	-	-
Wastewater Treatment Plant Capacity Study	-	75,000	-	-	-	-	-	75,000	75,000	0,2	-	-	-	-	-	-	-	-	-	-	-	-
Wastewater Treatment Plant Expansion	-	-	-	-	-	-	150,000	150,000	150,000	0,2	-	-	-	-	-	-	-	-	-	-	-	-
Wastewater Treatment Plant Final Clarification Rehabilitation	780,000	-	-	-	-	-	-	780,000	430,000	2	350,000	-	-	-	-	-	-	-	-	-	-	-
Wastewater Treatment Plant Rehabilitation Phase IV (Dewatering, B&L)	5,540,000	-	-	-	-	-	-	5,540,000	780,000	2	4,760,000	-	-	-	-	-	-	-	-	-	-	-
Wastewater Treatment Plant Rehabilitation Phase V (Sludge Holding and Thickening)	800,000	-	6,000,000	-	-	-	-	6,800,000	-	2	800,000	-	-	-	6,000,000	-	6,000,000	-	-	-	-	-
Wastewater Treatment Plant Rehabilitation Phase VI (Thermal Drying)	-	-	-	-	-	-	13,000,000	13,000,000	-	2	-	-	-	-	13,000,000	-	-	-	-	-	-	13,000,000
Wastewater Treatment Plant Rehabilitation Phase VII (Phosphorus Removal)	-	-	-	-	-	-	1,000,000	1,000,000	-	2	-	-	-	-	1,000,000	-	-	-	-	-	-	1,000,000
Wastewater Treatment Plant Ultraviolet System Update	-	250,000	2,750,000	-	-	-	-	3,000,000	250,000	2	-	-	-	-	2,750,000	-	2,750,000	-	-	-	-	-
Wellington Interceptor Phase IV Section I (Vail Lane to Oak Street Lift Station)	-	-	420,000	-	-	-	-	420,000	95,000	0,2	-	-	-	-	325,000	-	325,000	-	-	-	-	-
Wellington Interceptor Phase V (Ridgemere Dr. to Woodway Dr.)	-	-	-	-	-	720,000	-	720,000	-	0,2	-	-	-	-	720,000	-	-	-	-	720,000	-	-
Wellington Interceptor (Fieldcrest Rd. to FM 3040)	-	-	-	-	-	410,000	-	410,000	-	0,2	-	-	-	-	410,000	-	-	-	-	410,000	-	-
Wichita Trail Lift Station Improvements	-	-	-	-	-	780,000	-	780,000	-	0,2	-	-	-	-	780,000	-	-	-	-	780,000	-	-
Woodbine Street Sewer Line	800,000	-	-	-	-	-	-	800,000	200,000	2	600,000	-	-	-	-	-	-	-	-	-	-	-
SUBTOTAL	\$ 13,670,785	\$ 2,290,000	\$ 18,075,000	\$ 3,705,000	\$ 685,000	\$ 2,795,000	\$ 22,110,000	\$ 63,330,785	\$ 6,380,785		\$ 10,985,000	\$ -		\$ 45,965,000	\$ 1,500,000	\$ 17,575,000	\$ 3,400,000	\$ 250,000	\$ 2,990,000	\$ 20,250,000		
GRAND TOTAL UTILITY FUND	\$ 25,564,190	\$ 7,435,625	\$ 30,755,000	\$ 18,035,000	\$ 1,240,000	\$ 3,350,000	\$ 58,876,000	\$ 145,255,815	\$ 26,379,815		\$ 18,595,000	\$ -		\$ 100,281,000	\$ 3,400,000	\$ 25,455,000	\$ 16,130,000	\$ 600,000	\$ 3,340,000	\$ 51,356,000		

** Project Includes ADA Improvements

Other Sources

0. Impact Fees

1. Grant and Interlocal Funds

2. Other Sources (Proj. Sav.,Fund Bal.,Interest Inc.)

3. Escrow

4. Decision Package

5. Developer Agreement(s)

6. Park Development Fund

7. Tax Increment Reinvestment Zone (TIRZ)

8. Dedicated Sales Tax

9. SH 121 Regional Toll Revenue (RTR)



TOWN COUNCIL AGENDA ITEM NO. 8

CONSENT ITEM

DATE: June 18, 2018

FROM: Clay Riggs, Assistant Director of Public Works

ITEM: Consider approval to award Bid No. 2018-74-B to Cam-Crete Contracting, Inc., for the Firewheel Drive Roadway project, in the amount of \$393,734.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On May 15, 2018, bids were received and opened (Bid No. 2018-74-B) for the Firewheel Drive Roadway Improvements project. Cam-Crete Contracting, Inc., submitted the lowest qualified bid of the six responding bidders, for a total base bid of \$393,734.00.

The project will provide approximately 900 feet of two northbound traffic lanes and sidewalk along the east side of Firewheel Drive from Milford Drive to Garden Road. The improvements to the eastern side of Firewheel Drive will provide a 4 lane section to link the previously improved section of Firewheel Drive.

FISCAL IMPACT: \$393,734.00

Proposed Expenditure:	Account Number(s):
\$393,734.00	550-117-78033

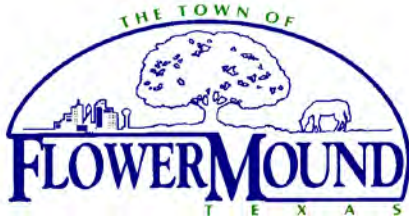
Finance Review by: Debra Wallace, Deputy Town Manager/CFO *DW*

LEGAL REVIEW: The Town's standard contract 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 Contract Agreement.

ATTACHMENTS:

1. Bid Tab
2. Construction Agreement

DRAFT MOTION: Move to award Bid No. 2018-74-B to Cam-Crete Contracting, Inc., for the Firewheel Drive Roadway project, in the amount of \$393,734.00; and authorize the Mayor to execute same on behalf of the Town.



Town of Flower Mound Bid Tabulation

Bid No: 2018-74-B - Firewheel Drive Roadway Improvements	
Bid Opening: 5/15/2018 at 11:00 AM	
Company	Total Bid
Ed Bell Construction Company	\$ 449,823.00
Cam-Crete Contracting Inc	\$ 393,734.00
PaveCon Public Works	\$ 532,300.20
Joe Funk Construction	\$ 583,503.70
Axis Contracting Inc	\$ 448,249.97
Tiseo Paving Company	\$ 472,261.00
**All bids/proposals submitted for the designated project are reflected on this tabulation sheet. However, the listing of the bid/proposal on this tabulation sheet shall not be construed as a comment on the responsiveness of such bid/proposal or as any indication that the agency accepts such bid/proposal as being responsive. The agency will make a determination as to the responsiveness of the vendor responses submitted based upon compliance with all applicable laws, purchasing guidelines and project documents, including but not limited to the project specifications and contract documents. The agency will notify the successful vendor upon award of the contract and, as according to the law, all bid/proposal responses received will be available for inspection at that time.	
Certified By: Sabrina R. Zadow Purchasing Manager Town of Flower Mound, Texas Date: May 15, 2018	

TOWN OF FLOWER MOUND
FIREWHEEL DRIVE ROADWAY IMPROVEMENTS

Bid # 2018-74-B

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the "Agreement"), made and entered into this 18 day of June, 2018, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the "Town," and Cam-Crete Contracting, Inc., a corporation, hereinafter referred to as the "Contractor." For and in consideration of the payment, agreements, and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

FIREWHEEL DRIVE ROADWAY IMPROVEMENTS,
Bid # 2018-74-B

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

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

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

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

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

ARTICLE 2. For performance of the Work in accordance with the Contract Documents, the Town shall pay the Contractor in current funds an amount not to exceed **Three Hundred Ninety-Three Thousand, Seven Hundred Thirty-Four Dollars and no cents (\$393,734.00)** taking into consideration additions to or deductions from the Total Bid through properly executed change orders by reason of alterations or modifications of the original quantities or by reason of “Extra Work” authorized under this Agreement in accordance with the provisions of the Contract Documents. It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the Contractor by the Town, the said Contractor shall furnish all labor, equipment, and material (except as otherwise specified above) and shall perform all work necessary to complete the improvements in a good and workmanlike manner, ready for use, within the specified time for substantial completion of One Hundred Eighty (180) calendar days, and final completion of Two Hundred Ten (210) calendar days ready for final payment, as measured from the Effective Start Date shown in the Notice to Proceed. The work shall be in strict accordance with this Agreement, a copy of which is filed pursuant to law in the office of the legal representative of the Town.

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

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

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

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

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

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

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

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

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

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

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

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

Retainage shall be withheld and may be paid to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 11. The Contractor understands and agrees that time is of the essence in performing and completing the Work. The Town and Contractor acknowledge that the actual damages the Town may sustain if the Contractor fails to complete the Work on time are uncertain and will be difficult to ascertain. The Contractor agrees that the sum of Two Hundred Forty and Zero/One Hundredths Dollars (\$240.00) per day or portion of a day in Liquidated Damages will be deducted from the Contract price by the Town for each calendar day or portion thereof that the work is not substantially complete beyond the Substantially Complete Contract time, or within such extra time as may have been allowed by an extension approved by the Town. The Contractor also agrees that the sum of Two Hundred Forty and Zero/One Hundredths Dollars (\$240.00) per day or portion of a day in Liquidated Damages for each calendar day or portion thereof the work has not been finally completed by the Contractor beyond the Contract time for final completion, or within such extra time as may have been allowed by an extension approved by the Town. The Town and the Contractor agree that this amount is payable as reasonable and just compensation for failure to complete the Work on time. This amount is payable as liquidated damages and not as a penalty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TOWN OF FLOWER MOUND

CONTRACTOR

Thomas E. Hayden, MAYOR

_____ (Signature)

_____ (Printed Name)

_____ (Position)

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST: _____
Theresa Scott, TOWN SECRETARY

ATTEST: _____ (Signature)

_____ (Position)



TOWN COUNCIL AGENDA ITEM NO. 9

CONSENT ITEM

DATE: June 18, 2018

FROM: Kari Biddix, Park Development Manager

ITEM: Consider approval of a Construction Agreement with West Texas Rebar Placers, Inc., for Segment 1 of the Pink Evening Primrose Trail project, in the amount of \$290,586.89; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On May 22, 2018, bids were received and opened (Bid # 2018-97-B) for the Pink Evening Primrose Trail – Segment 1 project. West Texas Rebar Placers, Inc., submitted the lowest qualified bid of the ten (10) responding bidders in the amount of \$290,586.89.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

FISCAL IMPACT: \$290,586.89

Proposed Expenditure:	Account Number(s):
\$290,586.89	310-320-90470

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

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

ATTACHMENTS:

1. Bid Tab
2. Construction Agreement

DRAFT MOTION: Move to approve a Construction Agreement with West Texas Rebar Placers, Inc., for Segment 1 of the Pink Evening Primrose Trail project, in the amount of \$290,586.89; and authorize for the Mayor to execute same on behalf of the Town.



Town of Flower Mound Bid Tabulation

Bid No: 2018-97-B - Pink Evening Primrose Trail - Segment 1	
Bid Opening: 5/22/2018 at 11:00 AM	
Company	Total Bid
North Rock Construction, LLC	\$ 374,559.36
Ratliff Hardscape	\$ 350,615.45
West Texas Rebar Placers, Inc.	\$ 290,586.89
2L Construction, LLC	\$ 337,051.00
Northstar Construction	\$ 357,021.00
DDM Construction Corp	\$ 309,139.00
Wall Enterprises	\$ 396,320.67
HQS Construction, LLC	\$ 361,028.00
VA Construction, Inc.	\$ 498,515.50
Urban Infraconstruction, LLC	\$ 321,042.55
**All bids/proposals submitted for the designated project are reflected on this tabulation sheet. However, the listing of the bid/proposal on this tabulation sheet shall not be construed as a comment on the responsiveness of such bid/proposal or as any indication that the agency accepts such bid/proposal as being responsive. The agency will make a determination as to the responsiveness of the vendor responses submitted based upon compliance with all applicable laws, purchasing guidelines and project documents, including but not limited to the project specifications and contract documents. The agency will notify the successful vendor upon award of the contract and, as according to the law, all bid/proposal responses received will be available for inspection at that time.	
Certified By: Marquita Shamlin Purchasing Buyer Town of Flower Mound, Texas	Date: May 22, 2018

TOWN OF FLOWER MOUND**PINK EVENING PRIMROSE TRAIL – SEGMENT 1****Bid # 2018-97-B****CONSTRUCTION AGREEMENT**

THIS CONSTRUCTION AGREEMENT (the “Agreement”), made and entered into this 18 day of June, 2018, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the “Town,” and Texas Rebar Placers, Inc., a Corporation, hereinafter referred to as the “Contractor.” For and in consideration of the payment, agreements, and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

**PINK EVENING PRIMROSE TRAIL – SEGMENT 1
Bid # 2018-97-B**

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

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

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

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

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

ARTICLE 2. For performance of the Work in accordance with the Contract Documents, the Town shall pay the Contractor in current funds an amount not to exceed **Two Hundred Ninety Thousand, Five Hundred Eighty-Six Dollars and 89 cents (\$290,586.89)** taking into consideration additions to or deductions from the Total Bid through properly executed change orders by reason of alterations or modifications of the original quantities or by reason of “Extra Work” authorized under this Agreement in accordance with the provisions of the Contract Documents. It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the Contractor by the Town, the said Contractor shall furnish all labor, equipment, and material (except as otherwise specified above) and shall perform all work necessary to complete the improvements in a good and workmanlike manner, ready for use, within the specified time for substantial completion of NINETY (90) calendar days, and final completion of ONE HUNDRED TWENTY (120) calendar days ready for final payment, as measured from the Effective Start Date shown in the Notice to Proceed. The work shall be in strict accordance with this Agreement, a copy of which is filed pursuant to law in the office of the legal representative of the Town.

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

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

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

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

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

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

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

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

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

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

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

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

Retainage shall be withheld and may be paid to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 11. The Contractor understands and agrees that time is of the essence in performing and completing the Work. The Town and Contractor acknowledge that the actual damages the Town may sustain if the Contractor fails to complete the Work on time are uncertain and will be difficult to ascertain. The Contractor agrees that the sum of Two Hundred Forty and Zero/One Hundredths Dollars (\$240.00) per day or portion of a day in Liquidated Damages will be deducted from the Contract price by the Town for each calendar day or portion thereof that the work is not substantially complete beyond the Substantially Complete Contract time, or within such extra time as may have been allowed by an extension approved by the Town. The Contractor also agrees that the sum of Two Hundred Forty and Zero/One Hundredths Dollars (\$240.00) per day or portion of a day in Liquidated Damages for each calendar day or portion thereof the work has not been finally completed by the Contractor beyond the Contract time for final completion, or within such extra time as may have been allowed by an extension approved by the Town. The Town and the Contractor agree that this amount is payable as reasonable and just compensation for failure to complete the Work on time. This amount is payable as liquidated damages and not as a penalty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TOWN OF FLOWER MOUND

CONTRACTOR

HONORABLE MAYOR

(Signature)

(Printed Name)

(Position)

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST: _____
Theresa Scott, TOWN SECRETARY

ATTEST: _____ (Signature)

(Position)



TOWN COUNCIL AGENDA ITEM NO. 10

REGULAR ITEM

DATE: June 18, 2018

FROM: Matthew Woods, Director of Environmental Services

ITEM: **Public Hearing to consider an application for a tree removal permit for four (4) specimen trees on the Hillside of Flower Mound residential development. The four (4) specimen trees are located at 4305 Belle Drive. *(The Environmental Conservation Commission recommended approval by a vote of 6-0-0 at its June 5, 2018, meeting).***

BACKGROUND INFORMATION: The Hillside of Flower Mound development is generally located south of Cross Timbers Road and west of Shiloh Road. The site is approximately 43.20 acres in size. The site is zoned for Planned Development District No. 143 (PD-143) for a cluster development and is master planned for the Cross Timbers Conservation Development District. The builder is proposing to remove four (4) specimen trees to construct a home. All four (4) specimen trees proposed for removal are in good condition.

The following is a list of the four (4) specimen trees requested for removal: Tree #167 – 24” cedar elm (multi-trunk); Tree #170 – 23” post oak; Tree #175 – 28” cedar elm (multi-trunk); and Tree #184 – 24” post oak

The Town’s tree ordinance requires that specimen trees removed from the site be replaced at a rate of two times their caliper inches. Mitigation for the four (4) specimen trees would be in the form of 198” of replacement trees, equaling 66 three-inch caliper trees. The builder is proposing to preserve a portion of the existing protected and specimen trees on the site, so there are credits available for the preservation of those trees.

BOARD REVIEW/CITIZEN FEEDBACK: This application was considered by the Environmental Conservation Commission (ECC) at its June 5, 2018, meeting. The ECC recommended approval of the requested permit to remove the specimen trees. A link to the ECC meetings can be found at:

<https://tx-flowermound.civicplus.com/index.aspx?NID=969>

CITIZEN FEEDBACK: As of June 6, 2018, staff has not received feedback related to this item.

ALTERNATIVES/OPTIONS: The Town Council may approve or deny the requested tree removal permit, or may choose to approve the permit with conditions or changes.

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Letter from the applicant indicating the reason(s) for the tree removal permit request.
2. Specimen tree removal permit application.
3. Photographs of the specimen trees proposed for removal.
4. Proposed plot plan for 4305 Belle Drive.

DRAFT MOTION: Move to approve the requested permit for the removal of four (4) specimen trees on the Hillside of Flower Mound residential development. The four (4) specimen trees are located at 4305 Belle Drive.



Rembert Enterprises, Inc.

3625 Bonanza Lane Flower Mound, TX 75022

May 31, 2018

James Hoefert
Town of Flower Mound
1001 Cross Timbers Road #2330
Flower Mound, TX 75028

RE: Application for Tree Removal Permit (LOI)
4305 Belle Way (Hillside Flower Mound Community)

Dear Mr. Hoefert,

Please accept this as our formal Letter of Intent to describe and explain the requested application for a Tree Removal Permit.

There are 7 specimen trees on site. We are requesting the removal of 4 specimen trees from our building site in order to construct a custom home. The 4 requested trees are as follows: specimen tree designation for post oak trees.

- | | | |
|-------------|---------------|----------------|
| • Tree #167 | 24" Cedar Elm | Buildable Area |
| • Tree #170 | 23" Post Oak | Buildable Area |
| • Tree #175 | 28" Cedar Elm | Buildable Area |
| • Tree #184 | 24" Post Oak | Buildable Area |

We were planning to keep two of the four requested specimen trees; however since they are close to the structure we are requesting removal. Also we are preserving 3 additional specimen trees on site: a 25" Post Oak, 24" post Oak, and a 19" Cedar Elm, along with several additional Post Oaks and Cedar Elms.

Sincerely,

Reginald Rembert

Town of Flower Mound
Application for:
TREE REMOVAL PERMIT

(Effective for Developments submitted 10/6/08 - present)

Check one: ☒ Protected Tree ☒ Specimen Tree ☐ Historic Tree

1. Applicant- Note: Must be a licensed Landscape Architect or Registered Arborist

Name: JOHN B. ST. CLAIR

Address: P.O. Box 12519
PAWAS, TX 75225

Phone: 214-394-3641

Applicant's Legal Interest in the Property:
LANDSCAPE ARCHITECT

2. Property Owner(s)

Name(s): HTS Investments
Address: 15455 Dallas Parkway Ste 120-
Addicks TX 75001

3. Location and Legal Description of Property:

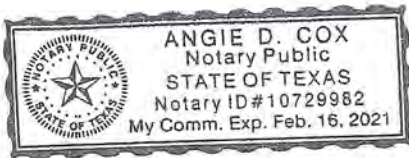
4305 Belle Way Lot 2 Block A
Hillside Flower Mound Community

Page 2 of 3.

4. Owner's Authorization of Representation

I, Reginald Rembel, the owner of the above described real property, do hereby authorize Reginald Rembel to represent my interests and to file an Application for Tree Removal Permit for said real property, pursuant to the terms and provisions of Chapter 94 (Trees), of the Land Development Regulations of the Town of Flower Mound, Texas Code of Ordinances.

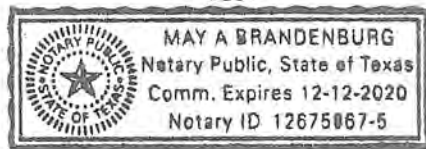
Reginald Rembel
Signature of Owner



Given Under My Hand and Seal of Office
This the 4 Day of May, 2018
Angie D. Cox
Notary Public
In and For Denton County, Texas.

5. Applicants Affidavit- Note: Applicant must be a licensed Landscape Architect or Registered Arborist.

Subject to criminal penalties contained in Subpart B, the Land Development Regulations of the Town of Flower Mound, Texas Code of Ordinances, I _____, do hereby swear or affirm that all of the Information contained herein and submitted herein is, to the best of my knowledge, true, correct and complete and that no false, misleading or incomplete information has been intentionally provided or submitted with this Application for a Tree Removal Permit.



John B. St. Clair
Signature of Applicant

Landscape Architect License No. 2210
State of Licensure TEXAS
Or ISA Certified Arborist No. _____

Given Under My Hand and Seal of Office
This the 30th Day of April, 2018
May A. Brandenburg
Notary Public
In and For Denton County, Texas

6. Received by Town of Flower Mound on (Date) 5/09/2018 by (initials) JRH

Hillside of Flower Mound -
Specimen trees proposed for removal

Tree #167 – 24" cedar elm



Tree #170 – 23" post oak



Tree #175 – 28" cedar elm

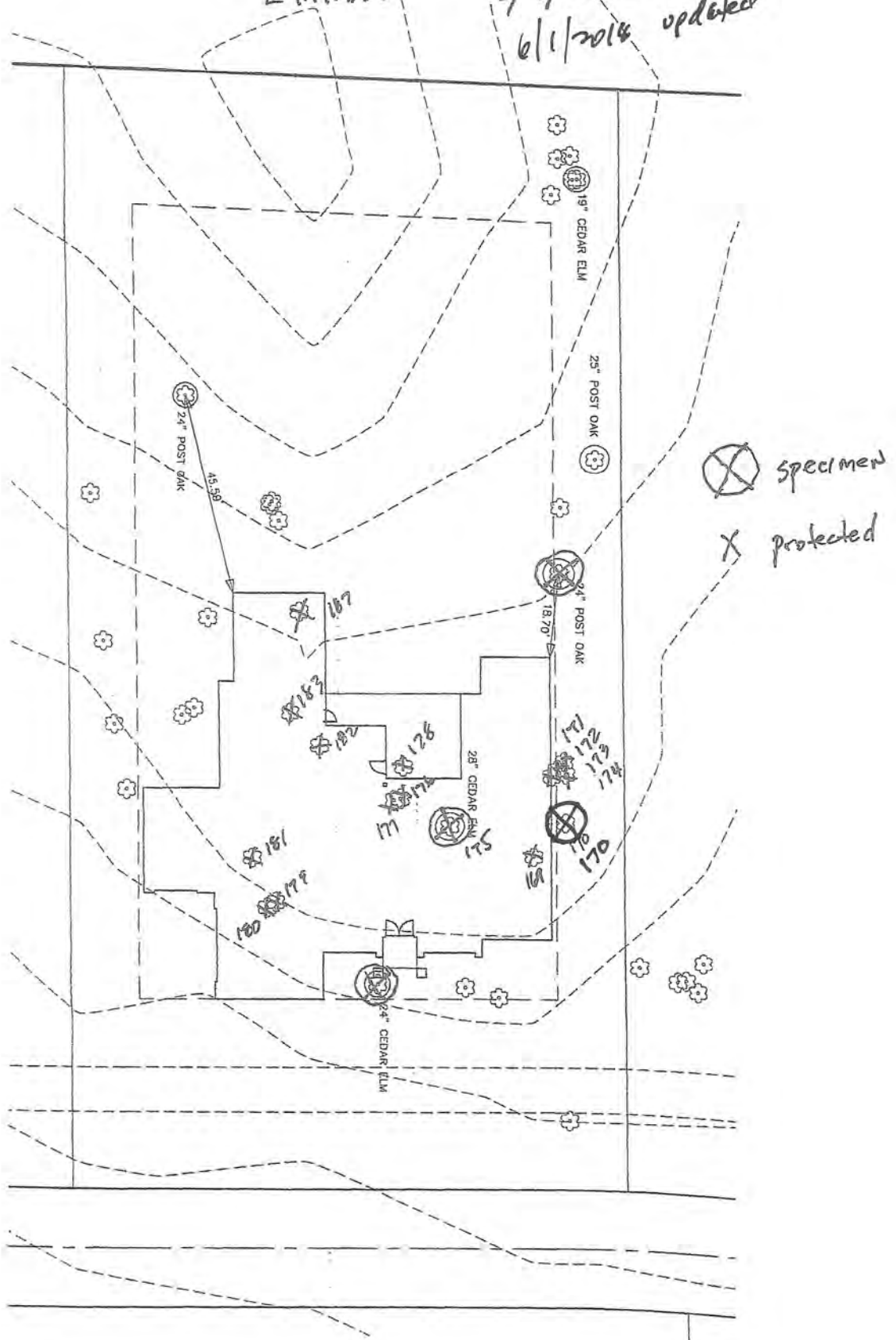


Tree #184 – 24" post oak



4305 Belle Drive
"Exhibit"

5/9/2018
6/1/2018 updated



Town Council Future Agenda Items



SCHEDULED	6/26/2018	Regular	Consider approval of an ordinance canvassing returns and declaring results of a runoff election held June 16, 2018, for the purpose of electing a Mayor, and providing an effective date.
	7/16/2018	Consent	FM2499 at Gerault Corp Permit PSA.
		Consent	Lakeside Lift Station and Force Main Change Order No. 4 and Final Acceptance.
		Consent	Consider approval of an amendment to the Development Agreement with Elan Flower Mound Venture, LLC for the construction of Northwood Drive associated with the Elan Flower Mound commercial development; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Old Gerault Road Improvement Development Agreement.
		Consent	Town Lake Flower Mound Road Development Agreement
		Consent	Library Expansion - Design Amendment 1
		Consent	Freeman Road 12-Inch Water Line Development Agreement.
		Consent	Firewheel Drive Testing Award.
		Consent	Consider approval of an Interlocal Cooperative Agreement with Denton County for the construction of Denton Creek Boulevard Bridge; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of an Interlocal Cooperation Agreement with Denton County for the assessment and collection of ad valorem taxes for the period beginning October 1, 2018 and ending September 30, 2019, subject to renewal for an additional one-year term, and authorization for the Mayor to execute same on behalf of the Town.
		Consent	FM 1171 @ FM 2499 Eastbound Right Turn Lane Change Order No.3 and Final Acceptance.

SCHEDULED	7/16/2018	Regular	Public Hearing to consider a request for rezoning (ZPD17-0017 - Johnson-Reddy Property) to amend Planned Development District No. 72 (PD-72) by modifying the existing development standards and zoning/master plan exhibit located within Ordinance No. 65-02, and to consider adopting an ordinance providing for said amendment. The property is generally located south of Cross Timbers Road and east and west of Auburn Drive. (The Planning and Zoning Commission recommended by a vote of to at its June 25, 2018, meeting.)
		Regular	Old Gerault Road 12-Inch Water Line Development Agreement.
		Regular	Public Hearing to consider a request for a Master Plan Amendment (MPA18-0005 – Johnson-Reddy Property) to remove conditions outlined in Section 4 of Ordinance No. 64-02, and depicted on Exhibit B thereto, which accompanied the change in land use designation, and to consider adopting an ordinance providing for said amendment. The property is generally located south of Cross Timbers Road and east and west of Auburn Drive. (The Planning and Zoning Commission recommended by a vote of to at its June 25, 2018, meeting.)
	8/6/2018	Consent	Consider approval of an ordinance establishing the 2018 certified appraisal roll.
		Consent	Town Council acting as the Board of Directors for the Town of Flower Mound Crime Control and Prevention District to schedule a public hearing for August 20, 2018, on the Flower Mound Crime Control and Prevention District budget and to schedule a meeting for September 17, 2018, to take action on the proposed budget; with each meeting to be held at 6:00 PM, at Town Hall, located at 2121 Cross Timbers Road.
		Consent	Consider accepting the submission of the notice of an effective tax rate of \$_____ per \$100 assessed valuation and a rollback tax rate of \$_____ per \$100 assessed valuation for the fiscal year beginning October 1, 2018, and ending September 30, 2019.
		Consent	Town Council acting as the Board of Directors for the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District to schedule a public hearing for August 20, 2018, on the Flower Mound Fire Control, Prevention, and Emergency Medical Services District budget and to schedule a meeting for September 17, 2018, to take action on the proposed budget; with each meeting to be held at 6:00 PM, at Town Hall, located at 2121 Cross Timbers Road.
		Consent	Flower Mound Storage Warehouse - Construction Award.
		Consent	Consider proposing a maximum tax rate of \$0._____ per \$100 valuation for the fiscal year beginning October 1, 2018, and ending September 30, 2019; and scheduling August 20, 2018, public hearings on the budget and tax rate, September 4, 2018, public hearing on the tax rate, and scheduling the September 17, 2018, adoption of said budget and tax rate; with each meeting to be held at 6:00 PM, at Town Hall, located at 2121 Cross Timbers Road.

SCHEDULED	8/6/2018	Consent	Consider accepting the submission of the certified collection rate of 100 percent for the fiscal year beginning October 1, 2018, and ending September 30, 2019.
		Consent	Consider approval of a resolution authorizing the adoption of the Program Year 2018 Action Plan for Housing and Community Development Block Grant and authorizing the Mayor to execute same on behalf of the Town and submit to the U.S. Department of Housing and Urban Development.
		Consent	Churchill Drive & Yucca Drive Reconstruction Construction Award.
	8/16/2018	Work Session	Budget workshop
		Work Session	Hold a discussion and provide direction regarding the FY 2018-2019 Proposed Budget, including Community Support funding.
	8/20/2018	Consent	Skillern Road Testing Award.
		Consent	Churchill Dr & Yucca Dr Testing Award.
		Consent	Skillern Road Construction Award.
		Regular	Placeholder: Silveron Thoroughfare Plan Amendment (postponed at the 3/19/18 Town Council Meeting)
		Regular	Public Hearing to consider the proposed budget for the fiscal year beginning on October 1, 2018, and ending on September 30, 2019.
		Regular	Public Hearing by the Town Council acting as the Board of Directors for the Town of Flower Mound Crime Control and Prevention District to consider the Flower Mound Crime Control and Prevention District proposed budget for the fiscal year beginning on October 1, 2018, and ending on September 30, 2019.
		Regular	Public Hearing by the Town Council acting as the Board of Directors for the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District to consider the Flower Mound Fire Control, Prevention, and Emergency Medical Services District proposed budget for the fiscal year beginning on October 1, 2018, and ending on September 30, 2019.
		Regular	Public Hearing to consider a tax rate of \$0.____ per \$100 assessed valuation.
	9/4/2018	Consent	High Road Water Line Replacement Phase I - Testing Award.
		Consent	High Road Water Line Replacement Phase I - Construction Award.
		Regular	Public Hearing to consider a tax rate of \$0.____ per \$100 assessed valuation.

SCHEDULED	9/17/2018	Consent	Bakers Branch Interceptor Phase II - Construction Award.
		Consent	Bakers Branch Interceptor Phase II - Testing Award.
		Regular	Consider approval of an ordinance adopting the budget for the fiscal year beginning on October 1, 2018, and ending on September 30, 2019, and making appropriations for each fund and department.
		Regular	Consider approval of an ordinance fixing and levying municipal ad valorem taxes for the fiscal year beginning on October 1, 2018 and ending on September 30, 2019, and for each fiscal year thereafter until otherwise provided, at the rate of \$0.____ per \$100 assessed valuation on all taxable property within the corporate limits of the Town of Flower Mound as of January 1, 2018.
		Regular	Town Council acting as the Board of Directors for the Town of Flower Mound Crime Control and Prevention District to consider approval of a resolution adopting the Town of Flower Mound Crime Control and Prevention District budget for the fiscal year beginning on October 1, 2018, and ending on September 30, 2019.
		Regular	Town Council acting as the Board of Directors for the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District to consider approval of a resolution adopting the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District budget for the fiscal year beginning on October 1, 2018, and ending on September 30, 2019.
	9/20/2018	Work Session	Discuss Lakeside Reuse Master Plan
	10/1/2018	Consent	WWTP Phase IV CO & Final Acceptance.
		Consent	US 377 @ Canyon Falls Traffic Signal Construction Award.
	10/15/2018	Consent	Library Expansion Construction Award (GMP).
	11/5/2018	Consent	Fire Station #7 Construction Award
	11/19/2018	Consent	Library Expansion Testing Award.
		Consent	Fire Station #7 Testing Award.