

AGENDA

**FLOWER MOUND TOWN COUNCIL REGULAR MEETING;
TOWN OF FLOWER MOUND FIRE CONTROL, PREVENTION,
AND EMERGENCY MEDICAL SERVICES DISTRICT SPECIAL MEETING;
AND CRIME CONTROL AND PREVENTION DISTRICT SPECIAL MEETING**

8/20/2018

**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 Recognition for the Shadow Ridge Middle School Band
2. Proclamation for National Senior Center Month
3. Proclamation for retiring Executive Director of Community Services, Gary Sims

E. PUBLIC COMMENT

To speak to Council during public comment, please fill out a [comment form](#).

- Turn in form by 6:10 p.m to Town Secretary
- Speakers are limited to 3 minutes, a tone will sound at 30 seconds left and when time has expired
- Please state your name and address when speaking

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

F. ANNOUNCEMENTS

1. Announce recent and upcoming civic and social events.

G. TOWN MANAGER'S REPORT

Update and discussion on:

1. Capital improvement projects
2. Economic Development projects
3. Update on quality of cell service in certain parts of Flower Mound
4. Presentation of the 2018 Employee Survey Results
5. Silveron Thoroughfare Plan Amendment

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H. FUTURE AGENDA ITEMS

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

I. COORDINATION OF CALENDARS

1. A regular meeting is scheduled for Tuesday, September 4

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 8/6-** Consider approval of the minutes from a regular meeting of the Town Council; Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special meeting; and Crime Control and Prevention District Special meeting held on August 6, 2018.
2. **Minutes 8/16-** Consider approval of the minutes from a work session of the Town Council held on August 16, 2018.
3. **Churchill/Yucca testing award-** Consider approval of a Professional Services Agreement with Alliance Geotechnical Group, to provide construction materials engineering and testing, for the Yucca Drive Reconstruction and Churchill Drive projects, in the amount of \$51,464.50; and authorization for the Mayor to execute same on behalf of the Town.
4. **Skillern Rd construction agreement-** Consider approval of a Construction Agreement with Pavecon Public Works, for the Skillern Road project, in the amount of \$562,559.40; and authorization for the Mayor to execute same on behalf of the Town.
5. **Skillern Rd testing award-** Consider approval of a Professional Services Agreement with Alliance Geotechnical Group, to provide construction materials engineering and testing, for the Skillern Road project, in the amount of \$16,563.50; and authorization for the Mayor to execute same on behalf of the Town.

K. REGULAR ITEMS

6. **Public Hearing - Town Budget-** Public Hearing to consider the proposed budget for the fiscal year beginning on October 1, 2018, and ending on September 30, 2019.
7. **Public Hearing - Crime District Budget-** 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.
8. **Public Hearing - Fire District Budget-** 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.
9. **First Public Hearing - Tax Rate-** Public Hearing to consider a tax rate of \$0.4390 per \$100 assessed valuation.

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10. **SPAN Annual agreement-** Consider approval of a Service Agreement for Demand Response Transit Service with SPAN, in an amount not-to-exceed \$48,672.00, to provide transportation service for Town citizens who are age 65 or older and Town citizens with verifiable disabilities that prevent them from driving; and authorization for the Mayor to execute same on behalf of the Town.
11. **Churchill/Yucca construction-** Consider approval to award Bid No. 2018-73-B, for the Yucca Drive Reconstruction and Churchill Drive projects, to Tiseo Paving Company, for the amount of \$2,064,583.15; and authorization for the Mayor to execute same on behalf of the Town.
12. **Police Department construction-** Consider approval of Bid No. 2018-90-B, Flower Mound Police Department Phase II to Schmoldt Construction Inc., in the amount of \$1,525,000.00; and authorization for the Mayor to execute on behalf of the Town.

L. CLOSED MEETING

The Town Council to convene into closed meeting pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.071, 551.072, 551.087 for consultation with attorney, and to discuss matters relating to real property, personnel, and economic development negotiations, as follows:

- a. Discuss and consider purchase, exchange, lease or value of real property for parks and/or other municipal purposes and all matters incident and related thereto.
- b. Discuss and consider economic development incentives, including retail centers, corporate relocation/expansion/retention, hospitality projects, and performance related to certain incentive agreements.
- c. Consultation with Town Attorney regarding legal issues associated with zoning approval procedures.

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.

M. 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.

N. 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: August 17, 2018, at 2:05 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: August 20, 2018

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a regular meeting of the Town Council; Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special meeting; and Crime Control and Prevention District Special meeting held on August 6, 2018.

BACKGROUND INFORMATION: The Town Council held a regular meeting of the Town Council; Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special meeting; and Crime Control and Prevention District Special meeting on August 6, 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 as presented in the agenda caption.

FLOWER MOUND TOWN COUNCIL MEETING OF AUGUST 6, 2018**PAGE 1**

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING; TOWN OF FLOWER MOUND FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL SERVICES DISTRICT SPECIAL MEETING; AND CRIME CONTROL AND PREVENTION DISTRICT SPECIAL MEETING HELD ON THE 6TH DAY OF AUGUST 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:

Steve Dixon	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
Chuck Russell	Town Planner
Tiffany Bruce	Executive Director of Public Works
Andrea Roy	Director of Economic Development
JP Walton	Assistant to the Town Manager
Chuck Jennings	Director of Parks and Recreation
Matt Woods	Director of Environmental Services

A. CALL REGULAR MEETING TO ORDER

Mayor Dixon 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 Will Langstaff gave the invocation and Mayor Dixon led the pledges.

D. PUBLIC COMMENT

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.	Paul Stone, 4100 Broadway	Gratitude
2.	Bryan Webb, 4112 High Rd	Candidate: Denton Co. Commissioner, Precinct 4
3.	Al Picardi, 1525 Lindby Dr	Traffic and TIRZ

FLOWER MOUND TOWN COUNCIL MEETING OF AUGUST 6, 2018**PAGE 2**

4.	Sam Stover, 3500 Newcomer Ln	Crossing at Sterling Pkwy & Bruton Orand
5.	Bonnie Leech, 951 Forest Vista Dr	Public transportation
6.	Jackie Buford, 1521 Lindby Dr	Public transportation
7.	Cindy Gallagher, 4312 Saddle Ridge Trail	Public transportation
8.	Kristen Strange, 5034 Creekwood Dr	Transit/SPAN contract
9.	Cheryl Blackmon, 1712 Marian Ln	Expand SPAN transit
10.	Vigyan Gotewal, 1801 Lake Forest Blvd*	Lake Forest Blvd extension
13.	Larry Lindahl, 505 Stewart Way	DCTA Service in Flower Mound

*Did not wish to speak

E. ANNOUNCEMENTS

Councilmember Sharma announced the Friends of the Library fundraiser taking place at Fish City Grill tomorrow.

Councilmember Bryant announced that school will be starting soon and reminded everyone to slow down in the school zones.

Deputy Mayor Pro Tem announced the LISD back to school event and offered appreciation for everyone that participated.

F. TOWN MANAGER'S REPORT

Mr. Stathatos provided an update and there was discussion on some of the items as follows:

1. Capital improvement projects:
 - Lake Forest road project
 - Transportation projects report based on a meeting with county and state partners, which include:
 - o Lakeside Parkway
 - o Denton Creek Bridge
 - o I-35 and 121 interchange
 - o Kirkpatrick, Phase 3
 - o Shiloh Road
 - o Kings Rd
 - o Denton Creek Blvd
2. Economic Development projects
 - Introduction of newest employee in Economic Development – Melody Eby (Economic Development Specialist)
 - Two real estate firms expanding
 - 151 Coffee shop is now open
 - Back Yard Brewers is coming to Parker Square
3. Prevention methods the Town uses for mosquito control

Mr. Woods provided background information about what the Town does in the way of mosquito control.

FLOWER MOUND TOWN COUNCIL MEETING OF AUGUST 6, 2018**PAGE 3****4. Park land dedication fees**

Mr. Stathatos provided background information about why the discussion of park land dedication fees is coming forward at this time.

Mr. Dalton gave a presentation identifying or noting:

- History
- Fee calculation (quantitative approach)
- Credit concept considerations
- Next steps
 - o Public Hearing at P & Z
 - o Public Hearing at Council

And he responded to questions or comments from Council regarding:

- How will the calculations and credit concepts be presented or defined to P & Z
- What is the time frame for tightening everything up
- Interest in seeing side by side comparisons of current and proposed calculations (to understand the difference) and to use past project examples
- Credit criteria needs to be very detailed and specific to make it less subjective
- Clarification regarding the role of the park board as it relates to the multi-family component

There was Council discussion regarding:

- How this was an item that was talked about in depth at the Strategic Planning Session

5. The following questions were asked or comments made by members of Council or Mayor Dixon, and some of which were as a result of the Public Comment portion of the meeting:

- When is the SPAN contract renewal
- Mayor/Council and Town Manager meeting update
- Signal timing on Morriss
- Speed limit change from 40 to 35 mph on the portion of Morriss from FM 1171 to Flower Mound Road
- Crossing safety devices at the intersection of Sterling and Bruton Orand

G. FUTURE AGENDA ITEMS

1. SPAN contract renewal (although currently scheduled for the next Council meeting)
2. Mayor Dixon expressed interest in exploring the possibility of connecting West Windsor Drive to Windsor Drive. There was council consensus to have the discussion.

H. COORDINATION OF CALENDARS

- 1./2. The FY2018-19 budget work session is scheduled for Thursday, August 16, 2018. A regular meeting is scheduled for Monday, August 20, 2018.

FLOWER MOUND TOWN COUNCIL MEETING OF AUGUST 6, 2018**PAGE 4**

Mayor Dixon announced the above referenced dates and confirmed attendance by members of Council. Councilmember Sharma indicated he will not be available at the August 16th work session.

3. Discuss and consider date options for Board and Commission Interviews, with the proposed dates of Tuesday, Sept. 18th (6pm) and Thursday, Sept. 20th – after the work session item (7pm estimated).

There was Council consensus to proceed with the above referenced dates for this purpose.

I. CONSENT ITEMS

1. Consider approval of the minutes from a regular meeting of the Town Council held on July 16, 2018.
2. Consider approval of the minutes from the strategic planning session held on July 17, 2018.
3. Consider approval of a resolution casting the Town of Flower Mound's vote for a member of the Board of Managers of the Denco Area 9-1-1 Emergency Communications District for a two-year term beginning October 1, 2018.

RESOLUTION NO. 14-18**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, APPOINTING ONE MEMBER TO THE BOARD OF MANAGERS OF THE Denco AREA 9-1-1 DISTRICT.**

4. Consider approval of the Statement of Work from Dell Equipment Move Center Services, to relocate the Town's Data Center to the new Town Hall, at a cost of \$19,789.00; and authorization for the Mayor to execute same on behalf of the Town.
5. 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.
6. 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.
7. Consider approval of an ordinance establishing the 2018 certified appraisal roll.

ORDINANCE NO. 28-18**AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, APPROVING THE 2018 APPRAISAL ROLL; REPEALING CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

FLOWER MOUND TOWN COUNCIL MEETING OF AUGUST 6, 2018

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8. 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.
9. Consider accepting the submission of the notice of an effective tax rate of \$0.427100 per \$100 assessed valuation and a rollback tax rate of \$0.443462 per \$100 assessed valuation for the fiscal year beginning October 1, 2018, and ending September 30, 2019.
10. Consider proposing a maximum tax rate of \$0.4390 per \$100 valuation for the fiscal year beginning October 1, 2018, and ending September 30, 2019; scheduling the 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 p.m., at Town Hall, located at 2121 Cross Timbers Road.
11. 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.

RESOLUTION NO. 15-18

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, PROVIDING FOR THE ADOPTION OF THE PROGRAM YEAR 2018 ACTION PLAN UNDER THE TOWN'S COMMUNITY DEVELOPMENT BLOCK GRANT; AUTHORIZING THE MAYOR TO EXECUTE THE ACTION PLAN ON BEHALF OF THE TOWN AND SUBMIT IT TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; AND PROVIDING AN EFFECTIVE DATE.

12. Consider Approval of the purchase of traffic signal poles, in the estimated annual amount of \$400,000.00, from Structural & Steel Products, Inc., through a City of McKinney contract.
13. Consider approval of the emergency purchase of one raw water pump, at the wastewater treatment facility, from Xylem Water Solutions USA Inc., in the amount of \$63,368.01.
14. *Item 14 was pulled from Consent to Regular.*

Mayor Pro Tem Jason Webb moved to approve by consent Items 1 – 13, as presented in the agenda caption for each. Councilmember Bryant seconded the motion.

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

14. Consider approval of a Consulting Agreement with Hawes Hill & Associates, LLP to conduct feasibility analysis for potential creation of a Tax Increment Reinvestment Zone (TIRZ)

Staff Presentation

FLOWER MOUND TOWN COUNCIL MEETING OF AUGUST 6, 2018**PAGE 6**

Ms. Roy gave a presentation identifying or noting:

- Purpose and background information on the agenda item
- Firm experience
- What is a TIRZ and how does it work
- Project specific TIRZ facts
- Pros and cons of a TIRZ
- Summary of the current TIRZ # 1

and she responded to questions from Council regarding:

- What type of breakdowns will the consultant provide
- Repayment options
- Is the experience of the consultant on the implementation of TIRZ Districts or in conducting feasibility studies in general
- Have reference checks been done (consultant)
- Past experience with George and Larry Kline (Schrader & Kline)

and there was Council discussion regarding:

- How the TIRZ District would allow more control in the district
- How the study would prove that Council is looking at the right numbers
- Interest in creating milestones within the district prior to releasing any funds
- Whether or not a TIRZ District is needed in this area
- Potential liability for the Town should there be a turn with a down market
- How the Town has had a positive experience with the current TIRZ, and how research by a third party that doesn't have a vested interest is a good plan of action to gain the perspective needed to make an informed decision about another TIRZ District

Councilmember Bryant moved to approve as presented in the agenda caption. Deputy Mayor Pro Tem Forest seconded the motion.

VOTE ON MOTION:*Motion passed***AYES: WEBB, BRYANT, ENGEL, FOREST****NAYS: SHARMA**

15. Consider adoption of the Town Council 2018 Strategic Planning Session Summary Report.

Staff Presentation

Mr. Walton gave a presentation identifying or noting:

- Purpose of the strategic planning session
- Topics discussion summary:
 - o Park land dedication fee review
 - o Lakeside Business District "limited residential"
 - o Lakeside Village TIRZ District
 - o Undergrounding Utilities
 - o Rental Inspections
 - o Additional Morriss Road Improvements (North of 1171) - No new through lanes
 - o Thoroughfare plan (Silveron)

FLOWER MOUND TOWN COUNCIL MEETING OF AUGUST 6, 2018

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- o Traffic Flow
- o DCTA Public Transit
- o Water reuse implementation
- o CIP Notification Process
- o Homestead Exemption
- o Monthly community highlights
- o Outstanding citizenship recognition program

and there was Council discussion regarding:

- Possibility of having the September meeting with DCTA as a special Council meeting so that all members of Council can benefit from the information presented. There was not a consensus of Council to move forward with having the discussion during a work session; however, it was mentioned that there will be a meeting with DCTA mid-September. Most members of Council expressed interest in getting a report after that meeting.
- Interest in pursuing the Homestead Exemption discussion, including a formal vote, and no later than January of next year and prior to the June implementation deadline date

Mayor Pro Tem Jason Webb moved to approve the Strategic Planning Session Report as presented. Deputy Mayor Pro Tem Forest seconded the motion.

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

16. Consider a request for a Development Plan (DP18-0004 - Tinley Park) to develop a residential subdivision. The property is generally located south of Flower Mound Road and west of Duncan Lane. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its July 23, 2018, meeting.)

Staff Presentation

Mr. Russell gave a presentation identifying or noting:

- General and detailed location
- Land use and zoning
- Photos of the subject property
- Development plan
- Landscape plan

and he responded to the following questions from Council:

- How will the x lot in the back corner be maintained

Deputy Mayor Pro Tem Forest moved to approve as presented in the agenda caption. Councilmember Bryant seconded the motion.

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

FLOWER MOUND TOWN COUNCIL MEETING OF AUGUST 6, 2018**PAGE 8****K./L. CLOSED/OPEN MEETING**

The Town Council convened into a closed meeting at 8:10 p.m. on August 6, 2018, pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.071, 551.072, 551.074, and 551.087 for consultation with attorney, and to discuss matters relating to real property, personnel, and economic development negotiations, and reconvened into an open meeting at 9:53 p.m. on August 6, 2018, to take action on the items as follows:

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

No action taken.

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

No action taken.

M. ADJOURN REGULAR MEETING

Mayor Dixon adjourned the meeting at 9:54 p.m. on Monday, August 6, 2018, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

STEVE DIXON, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 2

CONSENT ITEM

DATE: August 20, 2018

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a work session of the Town Council held on August 16, 2018.

BACKGROUND INFORMATION: The Town Council held a work session on August 16, 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 as presented in the agenda caption.

FLOWER MOUND TOWN COUNCIL MEETING OF AUGUST 16, 2018**PAGE 1**

THE FLOWER MOUND TOWN COUNCIL WORK SESSION MEETING HELD ON THE 16th DAY OF AUGUST, 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 work session with the following members present:

Steve Dixon	Mayor
Jason Webb	Mayor Pro Tem
Claudio Forest	Deputy Mayor Pro Tem
Kevin Bryant	Councilmember Place 3
Jim Engel	Councilmember Place 4

with the following members absent:

Sandeep Sharma	Councilmember Place 2
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constituting a quorum with the following members of the Town Staff participating:

Theresa Scott	Town Secretary
Jimmy Stathatos	Town Manager
Debra Wallace	Deputy Town Manager/CFO
Tommy Dalton	Assistant Town Manager
Tiffany Bruce	Executive Director of Public Works
Kay Wilkinson	Budget Officer

A. CALL WORK SESSION TO ORDER

Mayor Dixon called the work session to order at 6:00 p.m.

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

Mayor Dixon gave the invocation and led the pledges.

D. WORK SESSION ITEM

1. Hold a discussion and provide direction regarding the FY 2018-2019 Proposed Budget, including Community Support funding.

Ms. Wallace and Ms. Wilkinson gave a presentation identifying or noting:

- Benchmark comparison data in the following areas:
 - o How Flower Mound compares
 - o 2017 population comparison
 - o FY 2017 tax rate
 - o % of the tax rate used to pay debt
 - o Percentage of governmental outstanding debt (percentage covered by the tax rate)
 - o Full time equivalent (FTE) per Capita
 - o 2017 unassigned fund balance and financial policy
 - o Current utility comparison

FLOWER MOUND TOWN COUNCIL MEETING OF AUGUST 16, 2018**PAGE 2**

- Town sales tax revenue as a percentage of governmental revenue
- Financial goals update
- 2018 debt service and tax rates
- Strategic goals
- Changes since proposed budget
- Compensation/benefits
- Overview of general fund, utility fund, stormwater utility fund, special revenue funds
- Water/wastewater rates
- Current property tax exemptions available and impact
- Crime Control & Prevention District Budget and Fire Control, Prevention, & Emergency Medical Services District
- Street and signal projects
- Street reconstruction projects
- Facilities projects
- Gibson Grant Log Cabin background information, including recommended phasing
- Parks, water, storm, and wastewater projects
- Next steps
- Community Support Eligibility Criteria and funding
 - o And there was Council discussion regarding:
 - How the total should remain the same year after year
 - For cultural arts items there was discussion regarding whether or not to fund the Lewisville Lake Symphony at all or at 50% of the amount requested given the lack of quantitative data
 - For the category of Social Services:
 - Clarification about the work of Chisholm Trail
 - There was council discussion about continuing the funding from last year

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

- What parks are outstanding for upgrades
- What is the cost for the West Windsor connection

E. ADJOURN WORK SESSION

Mayor Dixon adjourned the work session at 6:55 p.m. on Thursday, August 16, 2018, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

STEVE DIXON, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 3

CONSENT ITEM

DATE: August 20, 2018

FROM: Brent Anderson, Senior Project Engineer

ITEM: Consider approval of a Professional Services Agreement with Alliance Geotechnical Group, to provide construction materials engineering and testing, for the Yucca Drive Reconstruction and Churchill Drive projects, in the amount of \$51,464.50; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The Professional Services Agreement includes construction materials engineering and testing for the Yucca and Churchill Drive Roadway Improvement project.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$51,464.50

Proposed Expenditure:	Account Number(s):
\$15,000.00	536-220-70531 Churchill Drive
\$36,464.50	316-560-78056 Yucca Drive

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 changes to the legal content of this form document were made.

ATTACHMENTS:

1. Professional Services Agreement

DRAFT MOTION: Move to approve as presented in the agenda caption.

THE STATE OF TEXAS §
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH
ALLIANCE GEOTECHNICAL GROUP**

This contract is entered into on this 20th day of August, 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 **ALLIANCE GEOTECHNICAL GROUP**, (“hereinafter referred to as “CONSULTANT”) whose address is 3228 Halifax Street, Dallas, Texas 75247

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to construction materials engineering and testing and other services for the Yucca and Churchill Drive Roadway Improvement project; and

WHEREAS, CONSULTANT is a construction materials engineering and testing firm qualified to provide such services and is willing to undertake the performance of such services for 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 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 the Yucca and Churchill Drive Roadway Improvement project Construction Materials Engineering and Testing 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 Fifty One Thousand Four Hundred Sixty Four Dollars and Fifty cents (\$51,464.50). 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.

CONSULTANT will bill TOWN on an hourly basis for certain services provided combined with a flat fee for specific tests performed in accordance with Attachment "A"; provided however that this Contract shall control in the event of any conflict between the language in Attachment "A" 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 actual services performed and reimbursable expenses incurred by CONSULTANT during the previous month for which payment is sought. Each invoice shall be itemized to show the amount of work performed that month broken down by the identity of the person(s) performing such work, the amount of time expended by such person(s) in performing that work, the billing rate for each such person, and a brief summary of the work or testing performed by each such person. Each invoice shall also state the percentage of work completed on the Project, the total of the current invoice amount and a running total balance for the Project to date.

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, within thirty (30) days of receipt of each such monthly invoice TOWN shall make monthly payments in the amount shown by CONSULTANT's approved monthly statements and other documentation submitted.

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 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:

Brent Anderson, P.E.
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6304 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.

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.

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. CONSULTANT'S liability under this provision shall be limited to the total dollar amount of this Contract, except to the extent that such liability is covered by CONSULTANT's insurance, whether maintained as a requirement of this Contract or otherwise.

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 in an amount not to exceed:

- (1) The amount of any applicable insurance coverage CONSULTANT is required to purchase and maintain under this Contract plus any deductible amount to be paid by CONSULTANT in conjunction with said coverage regardless of whether CONSULTANT has actually purchased and maintained said coverage, plus any additional insurance maintained by CONSULTANT in excess or in addition to the coverage required under this Contract; plus
- (2) The total dollar amount of this Contract.

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:

Brent Anderson, P.E.
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874- 6304 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:

Perry Kakara, S.E.T.
Alliance Geotechnical Group
3228 Halifax Street
Dallas, TX 75247
972-444-8889 Telephone
972-444-8893 Facsimile

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

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

This Contract is fully performable in Denton County, Texas, 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 left blank intentionally]

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

THE TOWN OF FLOWER MOUND, TEXAS

By: _____
The Honorable Steve Dixon
Mayor, Town of Flower Mound

Date Signed: _____

Attest:

Town Secretary

**CONSULTANT:
ALLIANCE GEOTECHNICAL GROUP**

By: 

Name: Robert P. Nance

Title: President

Date Signed: July 25, 2018

State of Texas §

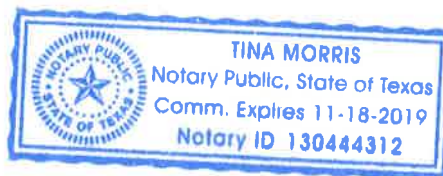
County of Dallas §

This instrument was acknowledged before me on the 25th day of July, 2018, by Robert P. Nance in his capacity as President of Alliance Geotechnical Group, Inc., 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 President of Alliance Geotechnical Group, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 25th
DAY OF July, 2018.


Notary Public, State of Texas

My Commission Expires:
11-18-2019





- GEOTECHNICAL ENGINEERING
- ENVIRONMENTAL CONSULTING
- CONSTRUCTION MATERIALS ENGINEERING AND TESTING
- CONSTRUCTION INSPECTION

Attachment 1

ATTACHMENT A - SCOPE OF WORK

July 2, 2018

Mr. Brent Anderson, P.E.
Senior Project Engineer
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028

Phn: (972) 874-6304
Email: brent.anderson@flower-mound.com

Re: Yucca-Churchill Roadway
Flower Mound, Texas
Engineering Inspection & Testing Services
AGG Proposal No: P18-0701C

Dear Mr. Anderson:

Alliance Geotechnical Group (AGG) is pleased to confirm our firm's interest in providing materials inspection and testing services for the proposed project noted above. A schedule of unit fees for this project is attached

After reviewing our fee schedule if you have any questions, please contact the undersigned at (972) 444-8889. If acceptable, please sign below and fax back to our office as our Authorization to Proceed. We look forward to the opportunity of working with you on this project.

Respectfully submitted,

ALLIANCE GEOTECHNICAL GROUP


Perry Kakara, S.E.T.
CME Department Manager


Robert P. Nance
President

Approved by: _____
Signature

Date: _____

SCHEDULE OF FEES
FOR
CONSTRUCTION MATERIALS ENGINEERING & TESTING
YUCCA-CHURCHILL ROADWAY FLOWER MOUND, TEXAS AGG PROPOSAL NO.: P18-0701C

DESCRIPTION OF SERVICES	QUANTITY		UNIT FEE	UNIT	FEE
A. SUB-GRADE / RETAINING WALL TESTING & INSPECTION					
• Moisture/Density Relationship of Soils (ASTM D-698)	8	@	\$165.00	each	\$1,320.00
• Material Analysis -200	8	@	\$35.00	each	\$280.00
• Atterberg Limits	8	@	\$55.00	each	\$440.00
• Trail In-Place Density Test	12	@	\$35.00	each	\$420.00
• Mass Fill In-Place Density Test	0	@	\$18.00	each	\$0.00
• Sulfate Test (1 per 300 lf) as needed	10	@	\$90.00	each	\$900.00
• Paving/Walks/Retaining Wall In-Place Density Test*	45	@	\$35.00	each	\$1,575.00
• Lime Series (5 Point PI Method)	6	@	\$250.00	each	\$1,500.00
• Select Fill In-Place Density Test	0	@	\$35.00	each	\$0.00
• Lime Subgrade Gradation	18	@	\$18.00	each	\$324.00
• THD Triaxial (Tex.-117-E) (as needed)	0	@	\$1,550.00	each	\$0.00
• Lime Subgrade Depth Check	18	@	\$18.00	each	\$324.00
• Sr. Engineering Tech to perform testing	143	@	\$47.50	hour	\$6,792.50
• Sr. Engineering Tech Overtime to perform testing	12	@	\$71.25	hour	\$855.00
• Project Manager	12	@	\$75.00	hour	\$900.00
• Sr. Geotechnical Engineer Project Review	6	@	\$125.00	hour	\$750.00
• Vehicle Charge	25	@	\$40.00	trip	\$1,000.00
Sub-Total					\$17,380.50
B. UTILITY BACKFILL TESTING & INSPECTION					
• Moisture/Density Relationship of Soils (ASTM D-698)	6	@	\$165.00	each	\$990.00
• Atterberg Limits	6	@	\$55.00	each	\$330.00
• Material Analysis -200	6	@	\$35.00	each	\$210.00
• In-Place Density Test* (ASTM D2922)	150	@	\$35.00	each	\$5,250.00
• Concrete Test Cylinders (4 cyls per set) MH/Inlets/Headwall	60	@	\$18.00	each	\$1,080.00
• Sr. Engineering Tech to perform testing	197	@	\$47.50	hour	\$9,357.50
• Project Manager	20	@	\$75.00	hour	\$1,500.00
• Vehicle Charge	42	@	\$40.00	trip	\$1,680.00
Sub-Total					\$20,397.50

SCHEDULE OF FEES
FOR
CONSTRUCTION MATERIALS ENGINEERING & TESTING
YUCCA-CHURCHILL ROADWAY FLOWER MOUND, TEXAS AGG PROPOSAL NO.: P18-0701C

DESCRIPTION OF SERVICES	QUANTITY		UNIT FEE	UNIT	FEE
C. CONCRETE & REINFORCING TESTING & INSPECTION					
• Sr. Geotechnical Engineer Pier Review	0	@	\$125.00	hour	\$0.00
• Concrete Inspection & Testing (regular time)	91	@	\$47.50	hour	\$4,322.50
• Concrete Inspection & Testing (over time)	24	@	\$71.25	hour	\$1,710.00
• Paving Concrete Cylinder Test	64	@	\$18.00	each	\$1,152.00
• Trail/Sidewalk Concrete Cylinder Test	68	@	\$47.50	each	\$3,230.00
• Retaining Wall Concrete Cylinders	24	@	\$18.00	each	\$432.00
• Project Manager	24	@	\$75.00	hour	\$1,800.00
• Vehicle Charge	26	@	\$40.00	trip	\$1,040.00
Sub-Total					\$13,686.50
D. ASPHALT TESTING & INSPECTION					
• Gradation/A. C. Content	0	@	\$175.00	each	\$0.00
• Density Air Voids	0	@	\$35.00	each	\$0.00
• Sulfate Soundness	0	@	\$285.00	each	\$0.00
• Hveem Stability	0	@	\$105.00	each	\$0.00
• Asphalt Cores	0	@	\$50.00	set	\$0.00
• Lab Molded Densities	0	@	\$45.00	set	\$0.00
• Rice Gravities	0	@	\$45.00	each	\$0.00
• TxDOT Level 1B Asphalt Technician	0	@	\$50.00	hour	\$0.00
• TxDOT Level 1A Asphalt Technician	0	@	\$55.00	hour	\$0.00
• Vehicle Charge	0	@	\$35.00	trip	\$0.00
Sub-Total					\$0.00
ESTIMATED TOTAL					\$51,464.50

NOTES:

1. It is understood that the contractor will be invoiced at overtime rates of 1.5 times the regular hourly rate for hours worked over eight (8) hours per day Monday thru Friday or any time before 7:00 a.m. or after 5:00 p.m. Service performed on Saturdays and Sundays will be billed at 1.5 times the regular hourly rate. Services performed on recognized holidays will be billed at 2.0 times the regular hourly rate.
2. All laboratory test fees are F.O.B. our laboratory; additional charge for sample pickup may apply.
3. Any additional tests will be billed on a hourly rate and charged at the applicable rate, portal-to-portal.
4. Additional test not specified in this proposal will be quoted upon request.
5. This proposal does not include any technician stand-by, non-readiness charges, and/or trips or re-tests of the previous failing tests.
6. The above unit rates are based on the project plans provided to AGG by the Town of Flower Mound

P18-0701C



TOWN COUNCIL AGENDA ITEM NO. 4

CONSENT ITEM

DATE: August 20, 2018

FROM: Brian Waltenburg, CIP Engineering Manager

ITEM: Consider approval of a Construction Agreement with Pavecon Public Works, for the Skillern Road project, in the amount of \$562,559.40; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On July 24, 2018, bids were received and opened (Bid # 2018-103-B) for the Skillern Road (Flower Mound Road to Riverhill) project. Pavecon Public Works submitted the lowest qualified bid of the six responding bidders at a base bid of \$562,559.40.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$562,559.40

Proposed Expenditure:	Account Number(s):
\$562,559.40	531-220-70100

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 these documents.

ATTACHMENTS:

1. Bid Tabulation
2. Construction Agreement

DRAFT MOTION: Move to approve as presented in the agenda caption.



Town of Flower Mound Bid Tabulation

Bid No: 2018-103-B - Skillern Road (Flower Mound Road to River Hill Drive)			
Bid Opening: 7/24/2018 at 11:00 AM			
Company	Total Bid		
RBR Infrastructure LLC	\$ 699,915.00		
Pavecon Public Works	\$ 562,559.40		
XIT Paving& Construction, Inc	\$ 596,886.75		
Tiseo Paving Company	\$ 711,540.00		
Ragle, Inc	\$ 724,796.35		
Ed Bell Construction	\$ 704,153.80		
**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.			
<table border="0" style="width: 100%;"> <tr> <td style="width: 70%;"> Certified By: Sabrina Zadow Purchasing Manager Town of Flower Mound, Texas </td><td style="width: 30%; text-align: right;"> Date: July 24, 2018 </td></tr> </table>		Certified By: Sabrina Zadow Purchasing Manager Town of Flower Mound, Texas	Date: July 24, 2018
Certified By: Sabrina Zadow Purchasing Manager Town of Flower Mound, Texas	Date: July 24, 2018		

TOWN OF FLOWER MOUND
SKILLERN ROAD
(FLOWER MOUND ROAD TO RIVER HILL DRIVE)

Bid # 2018-103-B

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the “Agreement”), made and entered into this 8th day of August, 2018, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the “Town,” and Pavecon Public Works, 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:

SKILLERN ROAD (FLOWER MOUND ROAD TO RIVER HILL DRIVE),
Bid # 2018-103-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 **Five Hundred Sixty-Two Thousand Five Hundred Fifty-Nine Dollars and forty cents (\$562,559.40)** 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 and Twenty (120) calendar days, and final completion of One Hundred and Fifty (150) calendar days ready for final payment, as measured from the Effective Start Date shown in the Notice to Proceed. The work shall be in strict accordance with this Agreement, a copy of which is filed pursuant to law in the office of the legal representative of the Town.

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

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

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

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

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

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

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

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

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

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

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

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

Retainage shall be withheld and may be paid to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 11. The Contractor understands and agrees that time is of the essence in performing and completing the Work. The Town and Contractor acknowledge that the actual damages the Town may sustain if the Contractor fails to complete the Work on time are uncertain and will be difficult to ascertain. The Contractor agrees that the sum of Two Hundred and 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 and 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

Steve Dixon, MAYOR

_____ (Signature)

_____ (Printed Name)

_____ (Position)

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST: _____
Theresa Scott, TOWN SECRETARY

ATTEST: _____ (Signature)

_____ (Position)



TOWN COUNCIL AGENDA ITEM NO. 5

CONSENT ITEM

DATE: August 20, 2018

FROM: Brian Waltenburg, CIP Engineering Manager

ITEM: Consider approval of a Professional Services Agreement with Alliance Geotechnical Group, to provide construction materials engineering and testing, for the Skillern Road project, in the amount of \$16,563.50; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The Professional Services Agreement includes construction materials engineering and testing for the Skillern Road (Flower Mound Road to Riverhill) project.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$16,563.50

Proposed Expenditure:	Account Number(s):
\$16,563.50	531-220-70100

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 changes to the legal content of this form document were made.

ATTACHMENTS:

1. Professional Services Agreement

DRAFT MOTION: Move to approve as presented in the agenda caption.

THE STATE OF TEXAS §
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH
ALLIANCE GEOTECHNICAL GROUP**

This contract is entered into on this 20th day of August, 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 **GEOTECHNICAL GROUP**, ("hereinafter referred to as "CONSULTANT") whose address is 3228 Halifax Street, Dallas, Texas 75247

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to construction materials engineering and testing and other services for the Skillern Road project; and

WHEREAS, CONSULTANT is a construction materials engineering and testing firm qualified to provide such services and is willing to undertake the performance of such services for 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 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 the Skillern Road Materials Engineering and Testing 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 Sixteen Thousand Five Hundred Sixty Three and 50/100 Dollars (\$16,563.50). 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.

CONSULTANT will bill TOWN on an hourly basis for certain services provided combined with a flat fee for specific tests performed in accordance with Attachment "A"; provided however that this Contract shall control in the event of any conflict between the language in Attachment "A" 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 actual services performed and reimbursable expenses incurred by CONSULTANT during the previous month for which payment is sought. Each invoice shall be itemized to show the amount of work performed that month broken down by the identity of the person(s) performing such work, the amount of time expended by such person(s) in performing that work, the billing rate for each such person, and a brief summary of the work or testing performed by each such person. Each invoice shall also state the percentage of work completed on the Project, the total of the current invoice amount and a running total balance for the Project to date.

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, within thirty (30) days of receipt of each such monthly invoice TOWN shall make monthly payments in the amount shown by CONSULTANT's approved monthly statements and other documentation submitted.

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 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:

Brian Waltenburg, P.E.
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6234 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.

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.

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. CONSULTANT'S liability under this provision shall be limited to the total dollar amount of this Contract, except to the extent that such liability is covered by CONSULTANT's insurance, whether maintained as a requirement of this Contract or otherwise.

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 in an amount not to exceed:

(1) The amount of any applicable insurance coverage CONSULTANT is required to purchase and maintain under this Contract plus any deductible amount to be paid by CONSULTANT in conjunction with said coverage regardless of whether CONSULTANT has actually purchased and maintained said coverage, plus any additional insurance maintained by CONSULTANT in excess or in addition to the coverage required under this Contract; plus

(2) The total dollar amount of this Contract.

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:

David Bauer
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874- 6308 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:

Perry Kakara, S.E.T.
Alliance Geotechnical Group
3228 Halifax Street
Dallas, TX 75247
972-444-8889 Telephone
972-444-8893 Facsimile

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

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

This Contract is fully performable in Denton County, Texas, 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 left blank intentionally]

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

**THE TOWN OF FLOWER MOUND,
TEXAS**

By: _____

The Honorable Steve Dixon
Mayor, Town of Flower Mound

Date Signed: _____

Attest:

Town Secretary

**CONSULTANT:
ALLIANCE GEOTECHNICAL GROUP**

By: 

Name: Robert P. Nance

Title: President

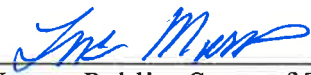
Date Signed: July 26, 2018

State of Texas §

County of Dallas §

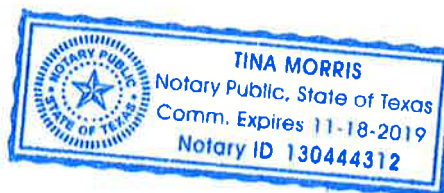
This instrument was acknowledged before me on the 26th day of July, 2018, by Robert P. Nance in his capacity as President of Alliance Geotechnical Group, Inc., a Texas Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of President of Alliance Geotechnical Group, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 26th
DAY OF July, 2018.


Notary Public, State of Texas

My Commission Expires:

11-18-2019





- GEOTECHNICAL ENGINEERING Attachment 1
- ENVIRONMENTAL CONSULTING
- CONSTRUCTION MATERIALS ENGINEERING AND TESTING
- CONSTRUCTION INSPECTION

July 26, 2018

Mr. Brian Waltenburg, P.E.
CIP Engineering Manager
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028

Phn: (972) 874-6234
Email: brian.waltenburg@flower-mound.com

Re: Skillern Road
Flower Mound, Texas
Engineering Inspection & Testing Services
AGG Proposal No: P18-0749C

Dear Mr. Waltenburg:

Alliance Geotechnical Group (AGG) is pleased to confirm our firm's interest in providing materials inspection and testing services for the proposed project noted above. A schedule of unit fees for this project is attached

After reviewing our fee schedule if you have any questions, please contact the undersigned at (972) 444-8889. If acceptable, please sign below and fax back to our office as our Authorization to Proceed. We look forward to the opportunity of working with you on this project.

Respectfully submitted,

ALLIANCE GEOTECHNICAL GROUP


Perry Kakara, S.E.T.
CME Department Manager


Robert P. Nance
President

Approved by: _____
Signature

Date: _____

SCHEDULE OF FEES
FOR
CONSTRUCTION MATERIALS ENGINEERING & TESTING
SKILLERN ROAD FLOWER MOUND, TEXAS AGG PROPOSAL NO.: P18-0749C

DESCRIPTION OF SERVICES	QUANTITY		UNIT FEE	UNIT	FEE
A. SUB-GRADE TESTING & INSPECTION					
• Moisture/Density Relationship of Soils (ASTM D-698)	4	@	\$165.00	each	\$660.00
• Material Analysis -200	4	@	\$35.00	each	\$140.00
• Atterberg Limits	4	@	\$55.00	each	\$220.00
• Pound In-Place Density Test	0	@	\$35.00	each	\$0.00
• Mass Fill In-Place Density Test	6	@	\$18.00	each	\$108.00
• Sulfate Test (1 per 300 lf) as needed	4	@	\$90.00	each	\$360.00
• Paving/Walks Subgrade In-Place Density Test*	24	@	\$35.00	each	\$840.00
• Lime Series (5 Point PI Method)	2	@	\$250.00	each	\$500.00
• Texas Wet Ball Mill	0	@	\$190.00	each	\$0.00
• Lime Subgrade Gradation	12	@	\$18.00	each	\$216.00
• THD Triaxial (Tex.-117-E) (as needed)	0	@	\$1,550.00	each	\$0.00
• Lime Subgrade Depth Check	12	@	\$18.00	each	\$216.00
• Sr. Engineering Tech to perform testing	72	@	\$47.50	hour	\$3,420.00
• Sr. Engineering Tech Overtime to perform testing	0	@	\$71.25	hour	\$0.00
• Project Manager	12	@	\$75.00	hour	\$900.00
• Sr. Geotechnical Engineer Project Review	0	@	\$125.00	hour	\$0.00
• Vehicle Charge	12	@	\$40.00	trip	\$480.00
Sub-Total					\$8,060.00
B. UTILITY BACKFILL TESTING & INSPECTION					
• Moisture/Density Relationship of Soils (ASTM D-698)	1	@	\$165.00	each	\$165.00
• Atterberg Limits	1	@	\$55.00	each	\$55.00
• Material Analysis -200	1	@	\$35.00	each	\$35.00
• In-Place Density Test* (ASTM D2922)	6	@	\$35.00	each	\$210.00
• Concrete Test Cylinders (4 cylinders per set) MH/Inlet	4	@	\$18.00	each	\$72.00
• Sr. Engineering Tech to perform testing	15	@	\$47.50	hour	\$712.50
• Project Manager	0	@	\$75.00	hour	\$0.00
• Vehicle Charge	4	@	\$40.00	trip	\$160.00
Sub-Total					\$1,409.50

SCHEDULE OF FEES
FOR
CONSTRUCTION MATERIALS ENGINEERING & TESTING
SKILLERN ROAD FLOWER MOUND, TEXAS AGG PROPOSAL NO.: P18-0749C

DESCRIPTION OF SERVICES	QUANTITY		UNIT FEE	UNIT	FEE
C. CONCRETE & REINFORCING TESTING & INSPECTION					
• Sr. Geotechnical Engineer Pier Review	0	@	\$125.00	hour	\$0.00
• Concrete Inspection & Testing (regular time)	92	@	\$47.50	hour	\$4,370.00
• Concrete Inspection & Testing (over time)	0	@	\$71.25	hour	\$0.00
• Sidewalk/Paving Concrete Cylinder Test	68	@	\$18.00	each	\$1,224.00
• Drilled Piers Inspection	0	@	\$47.50	each	\$0.00
• Concrete Cylinders	0	@	\$18.00	each	\$0.00
• Project Manager	12	@	\$75.00	hour	\$900.00
• Vehicle Charge	15	@	\$40.00	trip	\$600.00
Sub-Total					\$7,094.00
D. ASPHALT TESTING & INSPECTION					
• Gradation/A. C. Content	0	@	\$175.00	each	\$0.00
• Density Air Voids	0	@	\$35.00	each	\$0.00
• Sulfate Soundness	0	@	\$285.00	each	\$0.00
• Hveem Stability	0	@	\$105.00	each	\$0.00
• Asphalt Cores	0	@	\$50.00	set	\$0.00
• Lab Molded Densities	0	@	\$45.00	set	\$0.00
• Rice Gravities	0	@	\$45.00	each	\$0.00
• TxDOT Level 1B Asphalt Technician	0	@	\$50.00	hour	\$0.00
• TxDOT Level 1A Asphalt Technician	0	@	\$55.00	hour	\$0.00
• Vehicle Charge	0	@	\$35.00	trip	\$0.00
Sub-Total					\$0.00
ESTIMATED TOTAL					\$16,563.50

NOTES:

1. It is understood that the contractor will be invoiced at overtime rates of 1.5 times the regular hourly rate for hours worked over eight (8) hours per day Monday thru Friday or any time before 7:00 a.m. or after 5:00 p.m.
Service performed on Saturdays and Sundays will be billed at 1.5 times the regular hourly rate.
Services performed on recognized holidays will be billed at 2.0 times the regular hourly rate.
2. All laboratory test fees are F.O.B. our laboratory; additional charge for sample pickup may apply.
3. Any additional tests will be billed on a hourly rate and charged at the applicable rate, portal-to-portal.
4. Additional test not specified in this proposal will be quoted upon request.
5. This proposal does not include any technician stand-by, non-readiness charges, and/or trips or re-tests of the previous failing tests.
6. The above unit rates are based on the project plans provided to AGG by the Town of Flower Mound

P18-0749C



TOWN COUNCIL AGENDA ITEM NO. 6

REGULAR ITEM

DATE: August 20, 2018

FROM: Kay Wilkinson, Budget Officer

ITEM: **Public Hearing to consider the proposed budget for the fiscal year beginning on October 1, 2018, and ending on September 30, 2019.**

BACKGROUND INFORMATION: The Town is required by Section 102.006 of the Texas Local Government Code and Section 9.07 of the Town Charter to hold a public hearing on the proposed budget. During the public hearing on the proposed budget, all interested persons shall be given an opportunity to be heard for or against any item, or the amount of any item, therein contained.

The Fiscal Year 2018-2019 Proposed Budget was filed with the Town Secretary and distributed to the Town Council on July 31, 2018. The proposed budget is on file for review at Town Hall, the Library, and the Town's internet website. Town Council received a presentation of the proposed budget during the Town Council Work Session on August 16, 2018.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS: N/A

DRAFT MOTION: No action is required by the Town Council on this item.



TOWN COUNCIL AGENDA ITEM NO. 7

REGULAR ITEM

DATE: August 20, 2018

FROM: Kay Wilkinson, Budget and Grants Manager

ITEM: **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.**

BACKGROUND INFORMATION: Section 363.204 of the local government code requires a public hearing to consider the proposed annual budget of the Crime Control and Prevention District (Crime District). In addition, at the March 3, 2008 Town Council meeting, the Town Council acting as the Board of Directors for the Crime District, adopted alternative budget procedures for the Crime District to follow the procedures and public hearing requirements for the Town's annual budget process.

The Fiscal Year 2018-2019 Crime District Proposed Budget was filed with the Town Secretary and distributed to the Town Council on July 31, 2018. The proposed budget is on file for review at Town Hall, the Library, and the Town's internet website. Town Council received a presentation of the proposed budget during the Town Council Work Session on August 16, 2018.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS: N/A

DRAFT MOTION: No action is required by the Town Council on this item.



TOWN COUNCIL AGENDA ITEM NO. 8

REGULAR ITEM

DATE: August 20, 2018

FROM: Kay Wilkinson, Budget and Grants Manager

ITEM: **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.**

BACKGROUND INFORMATION: Section 344.204 of the local government code requires a public hearing to consider the proposed annual budget of the Fire Control, Prevention, and Emergency Medical Services District (Fire District). In addition, at the March 3, 2008, Town Council meeting, the Town Council acting as the Board of Directors for the Fire District, adopted alternative budget procedures for the Fire District to follow the procedures and public hearing requirements for the Town's annual budget process.

The Fiscal Year 2018-2019 Fire District Proposed Budget was filed with the Town Secretary and distributed to the Town Council on July 31, 2018. The proposed budget is on file for review at Town Hall, the Library, and the Town's internet website. Town Council received a presentation of the proposed budget during the Town Council Work Session on August 16, 2018.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS: N/A

DRAFT MOTION: No action is required by the Town Council on this item.



TOWN COUNCIL AGENDA ITEM NO. 9

REGULAR ITEM

DATE: August 20, 2018

FROM: Kay Wilkinson, Budget Officer

ITEM: Public Hearing to consider a tax rate of \$0.4390 per \$100 assessed valuation.

BACKGROUND INFORMATION: Chapter 26 of the Property Tax Code requires municipalities to comply with truth-in-taxation laws in adopting their tax rates. The laws are designed to make taxpayers aware of tax rate proposals and to allow taxpayers, in certain cases, to roll back or limit a tax increase. The Town is required by the Property Tax Code to hold two public hearings and publish a notice in the newspaper and on TV and web site before adopting a tax rate that exceeds \$0.427100 (the lower of the rollback rate or the effective tax rate). During the public hearing, taxpayers will be given the opportunity to express their views about the rate as it is proposed.

The effective tax rate enables the public to evaluate the relationship between taxes for the current year and taxes that a proposed tax rate would produce if applied to the same properties taxed in both years.

The rollback rate calculation is split into two separate components: an operating and maintenance rate and a debt rate. The rollback rate calculation allows municipalities to raise 108 percent of the operating and maintenance money raised in the prior year, plus the necessary debt rate. The Town's rollback rate for FY 2018-2019 is \$0.443462.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$48,836,832

Proposed Revenue:	Account Number(s):
\$35,749,949	100-4105 Property Taxes
9,554,978	110-4105 Property Taxes
3,531,905	308-4105 Property Taxes

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

LEGAL REVIEW: N/A

ATTACHMENTS: N/A

DRAFT MOTION: The Town Council does not have to take action on this item.

Note: The Mayor is required to make the following announcement:

"The Town of Flower Mound's tax rate is scheduled for adoption on Monday, September 17, 2018, at 6:00 p.m., at a regular Town Council meeting, to be held in the Town of Flower Mound Council Chambers, located at 2121 Cross Timbers Road, Flower Mound, Texas 75028."



TOWN COUNCIL AGENDA ITEM NO. 10

REGULAR ITEM

DATE: August 20, 2018

FROM: Chuck Jennings, Parks and Recreation Director

ITEM: **Consider approval of a Service Agreement for Demand Response Transit Service with Special Programs for Aging Needs, Inc., in an amount not-to-exceed \$48,672.00, to provide transportation service for Town citizens who are age 65 or older and Town citizens with verifiable disabilities that prevent them from driving; and authorization for the Mayor to execute same on behalf of the Town.**

BACKGROUND INFORMATION: This item is to enter into a Service Agreement for Demand Response Transit Service with SPAN, Inc., (SPAN) to provide transportation for Town citizens who are age 65 or older and/or Town citizens with verifiable disabilities that prevent them from driving. Eligible riders will be taken anywhere in the service area (Flower Mound, Lewisville, and Highland Village) at a cost to the Eligible Riders of \$5.00 per one-way ride for the limited purposes of medical treatments, doctor and dentist appointments, shopping for necessities, travel to and from places of employment, support programs for adults with special needs, and participation in the Town's Seniors In Motion senior citizen program.

Town representatives met with Roger Muckel, Mobility Manager and Michelle McMahon, Executive Director of SPAN in July and August to discuss the upcoming contract renewal period and the \$5310 (Enhanced Mobility for Seniors and People with Disabilities) grant funding. Ms. McMahon presented staff with the new one-way rate for fiscal year 2018-2019, and indicated that SPAN would have to raise the one way trip rate due mainly to increased personnel costs. SPAN did not increase the one way trip rate last year.

The breakdown of the rate is as follows:

Overall Rate: \$33.02

Operations Rate: \$23.67

Maintenance Rate: \$ 4.13 per one way trip

Administrative Rate: \$ 5.22 per one way trip

Ridership has increased over the previous contract period and has averaged 194 one-way trips per month through this fiscal year. Through July 2018, SPAN has provided 1,939 one-way rides to over 25 different residents. If the Town averaged 194 one-way trips per month this would equal 2,328 annual trips. Utilizing the rate of \$28.02 (Town portion) the annual cost would equal \$65,230.56 which would be well over the \$48,672.00 not-to-exceed amount. However, the addition of the \$5310 grant will provide funding in the amount of \$159,398.00 over three years. This will allow SPAN to provide an additional 173 one way rides per month with funding being pulled directly from the grant program.

The grant funding will enable the Town to increase the maximum number of one-way rides from 144 to 317 per month. This increase will help cover the additional costs associated with providing special need residents the opportunity to be transported to and from support programs in the Flower Mound, Lewisville, and Highland Village area. Examples of a support program include Special Abilities of North Texas and the Academy of Learning for Life. Riders using the transportation service for this trip purpose will be capped to a maximum of four one-way rides per week.

BOARD REVIEW/CITIZEN FEEDBACK: Over the last fiscal year, SPAN has received the following comments and requests from residents/users of the program: offer lower passenger fares for senior citizens, expand the service area for medical appointments to include the city of Denton, and add educational workshops/classes to the list of acceptable trip purposes.

SPAN does inform riders that their trips to the doctor or dentist's office, hospital, drug store, or other locations may qualify as a Medicaid eligible trip. Medicaid eligible trips are fully reimbursed by the federal government and are not charged to the rider or the Town.

ALTERNATIVES/OPTIONS: At this time there are no other transportation options available to the Town. The proposed SPAN contract does have a 30-day termination clause that could be used if a more viable option becomes available during the contract period.

FISCAL IMPACT: \$48,672.00

Proposed Expenditure:	Account Number(s):
\$28,900.00	361-718-97820-5110
\$19,772.00	100-630-34300-5110

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

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

ATTACHMENTS:

1. Service Agreement for Demand Response Transit Service
2. Independent Audit of SPAN's Financial Report for FY 2017
3. SPAN budget report
4. Fiscal Year 2017 SPAN Transportation Proposal for the Town of Flower Mound

DRAFT MOTION: Move to approve as presented in the agenda caption.

STATE OF TEXAS §

COUNTY OF DENTON §

SERVICE AGREEMENT FOR DEMAND RESPONSE TRANSIT SERVICE

THIS SERVICE AGREEMENT (“Agreement”) is entered into by and between the Town of Flower Mound, Texas, located in Denton County, Texas, acting by and through its duly authorized Mayor (hereinafter referred to as “TOWN”) and SPAN, Inc., (hereinafter referred to as “SPAN”), a Texas non-profit corporation operating in Denton County, Texas as an organization described in Section 501(c)3 of the Internal Revenue Code, acting by and through its duly authorized Executive Director.

WHEREAS, SPAN transportation services were developed to provide safe and efficient transportation to the general public, persons with special needs, and as defined by agreements into which SPAN may enter from time to time; and

WHEREAS, The TOWN and SPAN desire to enter into this Agreement whereby SPAN will provide Demand Response Transit Service for TOWN citizens who are age sixty-five (65) or older and/or TOWN citizens with verifiable disabilities that prevent them from driving (hereafter referred to collectively as “Eligible Riders”); and

WHEREAS, Eligible Riders in TOWN are taken anywhere in the Demand Response Transit Service area (cities include: TOWN, City of Lewisville, and City of Highland Village) at a cost to the Eligible Riders of \$5.00 per one-way ride for the limited purposes of medical treatments, doctor’s and dentist’s appointments, shopping for necessities, travel to and from places of employment, to support programs for persons with special needs (capped at a maximum of four one-way rides per week), and participation in the TOWN’S Seniors In Motion senior citizen program; and

WHEREAS, Eligible Riders may call in at least one (1) day in advance, but no more than two (2) weeks in advance, to set-up appointments for pick-up and drop off by calling SPAN’S Transportation Office weekdays between the hours of 8:00 a.m. and 2:00 p.m.; and

WHEREAS, Demand Response Transit Service is available between the hours of 6:00 a.m. and 6:00 p.m. Monday through Friday, and such services may also be available on certain holidays depending upon SPAN’s demand and staffing availability.

NOW, THEREFORE, THE TOWN AND SPAN DO HEREBY COVENANT AND AGREE AS FOLLOWS:

1. Recitals

The foregoing recitals are found to be true and correct, are fully incorporated into the body of this Agreement and made a part hereof by reference just as though they are set out in their entirety.

2. Scope of Services

SPAN shall provide door-to-door Demand Response Transit Services to TOWN citizens who are Eligible Riders in accordance with this Agreement and SPAN's "Transportation Policy and Procedures" which is attached hereto as Exhibit "A" and incorporated herein by reference as though it were set out in its entirety ("Policy"). In the event of conflict between this Agreement and the Policy, this Agreement shall control. In performing services under this Agreement, the relationship between the TOWN and SPAN is that of an independent contractor. No term or provision of this Agreement or act of SPAN in the performance of this Agreement shall be construed as making SPAN the agent, servant, or employee of the TOWN.

3. SPAN Operations

- a. SPAN shall provide all equipment, facilities, qualified employees, training, and insurance necessary to establish a Demand Response Transit Service for the TOWN's Eligible Riders. SPAN shall further establish, operate, and maintain an accounting system for this program that will allow for a tracking of services provided to Eligible Riders and a review of the financial status of the program. SPAN shall also track and break down the information regarding the number of one-way trips it provides to Eligible Riders.
- b. The TOWN shall have the right to review the activities and financial records kept incident to the services provided to the TOWN's Eligible Riders by SPAN. In addition, SPAN shall provide monthly ridership information to the Director of Parks and Recreation or his/her designee specifically identifying the number of Eligible Rider trips including rider origination, destination, and purpose.
- c. SPAN will be responsible for verifying and documenting the eligibility of riders. SPAN reserves the right to determine on an individual basis whether SPAN has the capability to safely transport a passenger. In the event that safety is compromised, SPAN may decline transportation for this person and must document the reason why service was declined.
- d. SPAN will inform riders that their trips to the doctor or dentist's office, hospital, drug store or other location may qualify as a Medicaid eligible trip. SPAN will direct potential Medicaid eligible riders to call Texas Health and Human Services toll free at 1-877-633-8747 (TTY: 1-800-735-2989) or 1-877-MED-TRIP on Monday through Friday between 8:00 a.m. and 5:00 p.m. at least two days before their appointment or trip to schedule free transportation through Medicaid.

4. Payment

- a. TOWN agrees to pay a reasonable fee for Demand Response Transit Service provided to Eligible Riders, together with Federal grant funds under the §5310 Enhanced Mobility for Seniors and People with Disabilities Program. Such fee to Town for fiscal year October 1, 2018, through September 30, 2019, will be a cumulative amount not to exceed Forty-Eight Thousand Six Hundred Seventy-Two Dollars (\$48,672.00) for up to a total of one thousand seven hundred thirty seven (1,737) one-way trips for Eligible Riders, invoiced to TOWN on a monthly basis at a price per one-way trip of twenty-eight dollars and two Cents (\$28.02). Eligible Riders shall pay SPAN a price per one-way trip of Five Dollars (\$5.00) to be collected by SPAN at the time of such trip.
- b. The number of one-way trips average to about one hundred and forty-four (144) one-way trips per month at a price of twenty-eight dollars and two Cents (\$28.02) per one-way trip payable by the Town. SPAN will produce monthly trip reports to help monitor usage and will work with the Town to implement limitations as needed to ensure that funding is sufficient for the entire length of this contract. The Town will restrict and/or eliminate non-medical trip purposes as needed when funding is insufficient and will give SPAN the authority to not accept new riders for those trip purposes until appropriate funding is available.
- c. If fewer than one hundred and forty-four (144) one-way trips are used in any given month the unused one-way trips from that month will accrue and be available for use during the immediately following month. If unused during the immediately following month, the accrued trips shall continue to roll forward on a monthly basis until the conclusion of the Term of this Agreement.
- d. It is expressly understood and agreed that in no event under the terms of this Agreement will the total compensation to be paid hereunder exceed Forty-Eight Thousand Six Hundred Seventy-Two Dollars (\$48,672.00) for all services rendered.
- e. It is further understood and agreed that the service provided hereunder shall be secondary to and not in lieu of or as a substitute for transportation services available through or funded by Medicare and/or Medicaid or any other program, insurance or provider.
- f. If an otherwise Eligible Rider contacts SPAN for service and the Eligible Rider's trip does not qualify for payment by the Town under this Agreement and/or there are no remaining trips or funding available under this Agreement for such trip, SPAN may offer its service to an otherwise Eligible Rider at the total cost of thirty-three dollars and two cents (\$33.02) per one-way trip within the Demand Response Transit Service area to be collected by SPAN at the time of such trip.
- g. Utilizing the available §5310 grant funds, SPAN shall provide up to one hundred seventy-three (173) one-way trips per month to Eligible Riders using such funds. If fewer than one hundred seventy-three trips are used in any given month the unused one-way trips from that month will accrue and be available for use during subsequent months of this Agreement.

5. Indemnification

SPAN assumes all liability and responsibility for and agrees to fully indemnify, hold harmless and defend the TOWN, and its officials, officers, agents, servants and employees from and against any and all claims, damages, losses and expenses, including but not limited to attorney's fees, for injury to or death of a person or damage to property, arising out of or in connection with, directly or indirectly, the performance, attempted performance or nonperformance of the services described hereunder or in any way resulting from or arising out of the management, supervision, and operation of the program and activities of SPAN. In the event of joint and concurring responsibility of SPAN and TOWN, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with Texas Law, without waiving any defense of either party under Texas Law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

6. Insurance

SPAN shall obtain public liability insurance of the types and in the amounts set forth below from an insurance carrier or underwriter licensed to do business in the State of Texas and acceptable to the TOWN. SPAN shall furnish TOWN with certificates of insurance or copies of the policies, evidencing the required insurance on or before the beginning date of this Agreement. SPAN agrees to submit new certificates or policies to TOWN on before the expiration date of the previous certificates or policies. The insurance shall be the following types in amounts not less than indicated:

- a. Comprehensive General (Public) Liability Insurance or its equivalent including minimum coverage limits of \$1,000,000 per occurrence combined single limit for bodily injury and property damage.
- b. Automobile Liability Insurance including minimum coverage limits of \$1,000,000 per combined single limit for bodily injury and property damage.
- c. On all insurance required, SPAN shall require insurance providers to:
 - 1) Name the TOWN, and its officials, officers and employees, as additional insureds; and,
 - 2) Provide thirty (30) days written notice to TOWN of any material change to or cancellation of the insurance.

7. Assignment and Delegation

Neither party shall assign or delegate the rights or obligations under this Agreement without the prior written consent of the other party.

8. Severability

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

9. Mediation

In the event of any dispute regarding this Agreement or the terms contained herein, the parties hereto agree that they shall submit such dispute to non-binding mediation.

10. Term of Agreement

The term of this Agreement shall be from October 1, 2018 through September 30, 2019. Either party may modify this Agreement by submitting, in writing, the proposed amendment to be considered and executed by both parties. This Agreement may be terminated with or without cause by either party by giving thirty (30) days written notice to the other party of their intent to terminate the Agreement. In the event the Town terminates without cause, SPAN shall be entitled to receive just and equitable compensation for any satisfactory work completed in accordance with this Agreement and prior to the termination. This Agreement shall automatically terminate upon the exhaustion of the three thousand eight hundred four (3,804) one-way trips provided for by this Agreement or the payment of Forty-Eight Thousand Six Hundred Seventy-Two Dollars (\$48,672.00) by Town to SPAN and the provision of all trips funded by the \$5310 grant.

11. U.S. Department Of Housing And Urban Development Community Development Block Grant Funds

The services provided under this Agreement may be, in part, eligible for reimbursement from the Community Development Block Grant (CDBG) program. SPAN shall comply with all necessary requirements of the CDBG program as set forth in Exhibit "B" and incorporated herein by reference as though it were set out in its entirety. The TOWN shall assume all responsibility for CDBG submittals and required reporting, unless otherwise requested in writing to SPAN. SPAN shall provide all information necessary for TOWN to comply with CDBG requirements.

12. Applicable Law/Venue

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Texas, and venue for any claim or cause of action shall lie exclusively in Denton County, Texas or the Federal courts having jurisdiction over claims arising in Denton County, Texas.

13. Attorney's Fees and Costs

In the event it becomes necessary to take legal action to enforce the terms of this Agreement, the prevailing party in such action shall be entitled to recover attorney's fees and costs of court from the non-prevailing party.

14. Federal Transit Administration Enhanced Mobility for Seniors and People with Disabilities (§5310) grant

As outlined above, the services provided under this Agreement may be, in part, eligible for funding through the Enhanced Mobility for Seniors and People with Disabilities (§5310) grant program. SPAN shall comply with all necessary requirements of the grant program as set forth in "Exhibit C" and incorporated herein by reference as though it were set out in its entirety. SPAN shall assume all responsibility for invoices, submittals and required reporting, unless otherwise requested in writing to TOWN.

IN WITNESS WHEREOF the Town of Flower Mound and Special Programs for Aging Needs, Inc. have executed this Agreement on this the _____ day of _____, 2018.

TOWN OF FLOWER MOUND:

SPAN, INC:

Steve Dixon, Mayor

Michelle McMahon, Executive Director

SPAN, INC.
TRANSPORTATION POLICY AND PROCEDURES
THE TOWN OF FLOWER MOUND

SPAN Transit is the contracted service provider for the Town of Flower Mound. The service is reserved for **individuals 65 years or older and/or with a professionally verified disability, for the limited purpose of trips to medical and dental appointments and pharmacy visits to fill a prescription, shopping for necessities, travel to and from places of employment, to support programs for persons with special needs (capped at a maximum of four one-way trips per week), and participation in the Town's Seniors-in-Motion Senior Citizen program.**

It is the policy of SPAN that no person shall on the grounds of race, color, national origin, sex, age, disability, or income status be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation under any program or activity administered by SPAN.

Information in these policies and procedures includes the following:

- I. Description of SPAN Transit Services
- II. Application Process
- III. Disability Certification
- IV. How to Schedule a Trip
- V. SPAN Transit Fares
- VI. Aides, Companions and Animals
- VII. Wait Time, No Shows and Trip Cancellations
- VIII. Mobility Devices
- IX. Seatbelts and Restraints
- X. Passenger Behavior
- XI. Termination of Services
- XII. Grievance and Appeal Procedures
- XIII. Title VI Complaints
- XIV. Definitions
- XV. Frequently Asked Questions

For additional information, please call 940-382-1900.

I. Description of SPAN Transit Services in The Town of Flower Mound

Service is provided to **seniors (aged 65 and older) and people with disabilities residing in the Town of Flower Mound** to locations in Flower Mound, Highland Village, and Lewisville.

SPAN transportation service is provided by lift equipped vehicles. Operators are available to provide some assistance **upon request**. Operators are not trained to provide medical assistance.

Assistance includes:

- The operator will assist passenger from the door of a residence or pick-up location to the vehicle if needed.
- The operator will attempt to notify passengers of arrival.
- The operator will assist passengers in boarding and exiting the vehicle.
- The operator will deliver the passenger to the door of his/her destination.

Assistance DOES NOT include:

- Assistance getting in or out of a wheelchair.
- Assistance in getting ready for the trip.
- Administering medication or oxygen.
- Assisting passengers in wheelchairs up or down stairs.
- Assisting passengers on ramps deemed unsafe.
- Assisting in carrying personal belongings or purchases.

SPAN IS NOT AN EMERGENCY MEDICAL TRANSPORTATION SERVICE.

PLEASE NOTE THAT SPAN INC. POLICY DOES NOT ALLOW AN OPERATOR TO LOSE VISUAL CONTACT WITH THE AGENCY VEHICLE AT ANY TIME, FOR ANY REASON.

Service Hours

Trips can be scheduled for pick-up as early as 6:00 a.m. and drop off as late as 6:00 p.m., Monday through Friday. Currently, there is no weekend service. Service is provided throughout the year, except for the following observed holidays:

- | | |
|--------------------------|--------------------------|
| • New Year's Day | • Labor Day |
| • Martin Luther King Day | • Thanksgiving Day |
| • Memorial Day | • Day after Thanksgiving |
| • Independence Day | • Christmas Eve |
| | • Christmas Day |

II. APPLICATION

In order to use SPAN Transit, passengers must complete and submit an application. Applications can be obtained by calling the SPAN Dispatch Office at (940) 382-1900. Upon receipt of completed applications, please allow a maximum of 21 days to process applications. SPAN will begin processing properly completed applications immediately upon receipt. Only completed, signed applications will be considered for review. Once the application is fully completed, the signed original should be dropped off, mailed or faxed to:

SPAN
1800 Malone
Denton, TX 76201 940-383-8433 (fax)

Upon completion of review, Applicants will receive written notice via U.S. mail and may begin scheduling trips.

Reapplication Process

Passengers will need to reapply every three years from the date they are initially approved. Reapplication ensures that SPAN's files are accurate and contain up-to-date information. SPAN will notify passengers when they are due for reapplication.

III. DISABILITY CERTIFICATION

People with disabilities that meet regulatory criteria are entitled to reduced fares. In addition to the regular application, applicants must submit a properly completed Certification Form. Both documents must be received and reviewed to begin the application process to qualify for reduced-fare trips due to disability.

A licensed physician or certified human services professional familiar with the applicant's condition must sign the Certification Form verifying the disability and the applicant's functional limitations if applying for reduced-fare based upon disability. It is recommended that the Certification Form and Application be submitted at the same time in order to prevent delay of the application review. Examples of licensed or certified human service professionals include: Medical Doctor, Psychiatrist, Psychologist, Social Worker, Rehabilitation Professional, Physical/Occupational Therapist, Physician's Assistant, Nurse Practitioner, Registered Nurse.

Once all documentation is received, SPAN personnel will evaluate it and request, if necessary, any additional relevant information about the applicant's functional limitations related to transportation. The applicant will be notified in writing of eligibility upon determination.

Notice of Eligibility Determination

An applicant that is determined to be eligible for reduced-fare service due to disability will be mailed (to the address printed on the application) documentation of eligibility. The document will include the name of the eligible individual, the phone number of the SPAN dispatch office, an expiration date for eligibility, and any conditions or limitation on the individual's eligibility including the use of a personal care attendant. If the determination is that the person is not

eligible, the written notification will state the specific reason(s) for the finding. All applicants have the right to appeal the initial determination of eligibility (see *Grievance and Appeal Procedures*). SPAN employees and SPAN Board of Directors will strive to maintain an accommodation process that is cooperative rather than adversarial in nature, attempt to fulfill disability eligibility requests when possible and will document any and all attempts at reasonable accommodations.

Recertification Process

Passengers with disabilities will need to recertify their eligibility every three years from the date they are initially approved. Re-certification is done to ensure that circumstances have not changed which would invalidate a passenger's eligibility. Recertification also ensures that SPAN's files are accurate and contain up-to-date information. SPAN reserves the right to re-certify eligibility at any time. SPAN will notify passengers when they are due for recertification.

IV. HOW TO SCHEDULE A TRIP

Trip Requests

1. Requests for service can be made from 8:00 AM until 2:00 PM, Monday through Friday by calling (940)-382-1900.
2. At the time of scheduling your reservation you will need to provide SPAN with your name, addresses of the pick-up/drop off points and the pick-up/drop off times. Please note that all schedule requests can be made as early as 14 days prior or as late as 1 day prior to the day of service.
3. Same day call-ins, including unscheduled requests or will-calls for return trips, will not be accepted. Bus drivers are not able to make unscheduled stops while in-route.

Scheduling

1. SPAN Transit is a shared ride, public transportation service. As such, we will attempt to schedule your pick-up time as close to your requested time as possible. **Once our schedule is completed the day before your trip, you must call us between 5:00 p.m. and 5:30 p.m. the day before your trip to obtain your scheduled pick-up time.** If the scheduled time is not acceptable to you, you may cancel your trip. (The trip must be cancelled by the day before in order to avoid a "late cancellation" or "no show" penalty. See *Failure to Meet the Bus*)
2. Because of traffic and other issues beyond our control, please note the vehicle may arrive **up to 15 minutes before or after** your scheduled pick-up time ("30-minute ready time window"). Once the bus has arrived, the driver **will not wait more than 5 minutes** for the scheduled passenger to board the bus.
3. Whenever possible, SPAN Transit will attempt to notify all passengers that the vehicle will be early or late (beyond the 30-minute window). This will allow the passenger time to make arrangements if the vehicle is unavoidably detained. If SPAN Transit does not have a telephone on record or if the number has been changed, we will not be able to notify

the passenger of the change in pick-up time. It is the responsibility of the passenger to provide accurate and up-to-date contact information to SPAN. Please make sure that we have a current telephone number and address on file.

4. Only trips with scheduled pick-up times will be entered on the daily schedules.
5. Subscription service is available to a limited number of passengers that travel to the same place at the same time every week. If a passenger is afforded a subscription slot, the passenger will automatically be placed on the schedule for those trips. The passenger will not be required to schedule each trip separately; however subscription passengers are still required to call the day before (between 5 p.m. and 5:30 p.m.) to get their scheduled pick-up time for the following day, and must cancel subscription trips to avoid penalties.

V. SPAN TRANSIT FARES

Fare for SPAN Transit is established by the Town of Flower Mound and approved by the SPAN Board of Directors. The current fare for the Town of Flower Mound is as follows:

- The Town of Flower Mound - \$5.00 per one way trip

Without exception, SPAN passengers must pay the bus driver promptly for that leg of the trip PRIOR to the vehicle's departure. Passengers shall pay the fare in exact change or with a pass. Bus drivers will not make change. Drivers may not take payment for a subsequent leg of your trip if that bus will not be providing the trip. A one way trip ("trip leg") is each boarding of the passenger onto the bus.

Passes

Passes may be purchased in books of 10 (for \$25.00) or 20 (for \$50.00) by submitting requests by mail or in person at the following location:

SPAN Administrative Office
1800 Malone
Denton, TX 76201

Requests submitted by mail should include the address to which the passes should be mailed along with appropriate payment in the form of a check or money order. Please do not mail cash.

VI. AIDES, COMPANIONS AND ANIMALS

Aides

An aide is a social services attendant or personal care assistant required to travel with a passenger. Aides ride for free; the aide must be picked up and dropped off at the same address as the passenger. Aides will need to be placed onto the schedule and the need for an aide must be indicated on the certification form in order for the aide to ride for free.

SPAN may require a passenger to supply their own aide. SPAN does not provide aides. Generally the following conditions warrant an aide:

- Incapable of self-mobility
- Unable to communicate
- Unable to handle common activities
- Unable to control his/her own actions
- Unable to remain seated and belted
- Unable to independently transfer from wheelchair
- Children under 15 years of age
- Others as reasonably determined by SPAN's Transportation Manager

Companions

A companion is anyone *other than an aide* who travels with a disability-certified passenger. Companions may accompany such passengers on a trip. A companion will be charged a fare comparable to the passenger. A companion must be picked up and dropped off at the same address as the passenger. An aide does not count as the one companion. Additional companions may accompany a passenger if space on the vehicle permits. Companions must be scheduled at the same time you call in to schedule your trip.

Animals

Guide dogs and other service animals are permitted on SPAN vehicles and allowed to accompany passengers if this need is indicated in the passenger's SPAN file. Other small animals are also allowed, but must be contained in an approved pet travel kennel and must be restrained in the kennel throughout the trip. When scheduling a trip, passengers must indicate that an animal will be accompanying the passenger.

VII. WAIT TIME, NO SHOWS AND TRIP CANCELLATION

Bus drivers will utilize the following guidelines concerning a person's failure to meet the SPAN vehicle.

Wait Time

SPAN bus drivers will not wait longer than five (5) minutes from the arrival time for passengers to board the vehicle. If the vehicle arrives within the 30-minute ready window (15 minutes before to 15 minutes after the scheduled pick-up time), the passenger must board the vehicle within five minutes of arrival time. Passengers or their associates may not ask the bus driver to delay this five-minute interval under any circumstances; this is to assure the timely pick-up and transportation of all SPAN passengers.

No Show

Failure to meet the vehicle within five minutes from the time of arrival will constitute a no-show. Also if a passenger fails to cancel their trip within 3 hours before the pick-up time it will also be considered a no-show. A passenger is allowed 2 no-shows per calendar month without penalty.

Late Cancellation

If a passenger cancels their trip on the day of service but does so **more than 3** hours before the pick-up time it will be considered a late cancellation. A passenger is allowed 4 late cancellations per calendar month without penalty.

Penalties

- Three (3) no-shows in a 30 day period will result in the suspension of services for 1 month. If the problem continues service can be suspended indefinitely.
- Five (5) Late Cancellations in a 30 day period will result in the suspension of services for 1 month. If the problem continues service can be suspended indefinitely.
- In addition, SPAN may impose reasonable penalties for any passenger that develops a pattern or practice of missing scheduled trips.
- Subscription riders that face penalties may lose their subscription slot.

VIII. MOBILITY DEVICES

SPAN vehicles, in compliance with the ADA and the Federal Code of Regulations, are designed to carry passengers utilizing wheelchairs. A wheelchair is defined as a mobility aid belonging to any class of three or more-wheeled devices, usable indoors, designed for and used by individuals with mobility impairments, whether operated manually or powered. SPAN vehicles are not designed to accommodate wheelchairs weighing 600 pounds or more when occupied by the passenger. Mobility devices that do not meet these criteria are unable to be carried on SPAN vehicles.

SPAN reserves the right to deny service if carrying the passenger would be inconsistent with legitimate safety requirements.

IX. SEATBELTS AND RESTRAINTS

SPAN provides seatbelts for all passengers. Agency policy requires that all passengers utilize them at all times for their own safety as well as the safety of other passengers. All carry-on items must be safely restrained during transport. All wheeled mobility devices must be properly secured at all times the SPAN vehicle is in operation.

X. PASSENGER BEHAVIOR

To assure the safety and comfort of all passengers and the driver, the following activities are prohibited on all vehicles and persons who engage in these activities may be refused service:

- Smoking
- Eating or drinking
- Playing personal radios unless headphones are used at a volume unable to be heard by surrounding passengers
- Consuming alcoholic beverages
- Using illegal drugs
- Using obscene or abusive language
- Violent, disruptive or threatening behavior
- Shoving, pushing, or behaving in a disorderly manner
- Causing actual or potential damage to the vehicle

SPAN reserves the right to deny service (including removing the passenger from the bus) if the situation is determined to be unsafe for the passenger, other passengers, the driver or the public.

XI. TERMINATION OF SERVICES

If a passenger does not follow guidelines and procedures involving the use of SPAN Transit, services will be terminated as follows:

- If feasible a verbal warning will be given.
- If compliance is not achieved after the verbal warning, the passenger will receive a written warning in detail concerning the area of non-compliance and possible sanctions.
- If compliance is not achieved after the written warning, the passenger will be notified in writing that his/her use of all or a portion of SPAN services is terminated, with a statement of reasons for termination.

SPAN reserves the right to immediately terminate services without prior warning if a passenger poses a safety risk to himself/herself or any other person.

XII. GRIEVANCE AND APPEAL PROCEDURES

1. Any individual has the option to appeal a suspension, termination or rate eligibility determination. Appeals must be presented in writing within 60 days. SPAN's Executive Director will first hear appeals. If the Executive Director upholds the determination, the individual may request that the matter be reviewed by a panel of SPAN board members designated by the SPAN Board Chair.
2. Once an individual requests an appeal, the SPAN board member panel will review all material submitted. SPAN service will not be suspended while the SPAN board panel is considering an appeal unless suspension or termination resulted from behavior that was determined to pose a risk to the passenger or others.
3. SPAN will notify the individual, in writing, of the Executive Director's or the board panel's ruling on all appeals. This notification will outline the ruling and the reasons for it.

4. Once the individual has been informed of the board's ruling, the determination will either be dismissed or imposed on the next day of service.
5. SPAN requires that all appeals must be made within 60 days of notification of sanctions or eligibility determination.
6. All decisions made by the SPAN board panel are considered final.

SPAN Employees and SPAN Board of Directors will strive to maintain an accommodation process that is cooperative rather than adversarial in nature, attempt to fulfill eligibility requests when possible and will document any and all attempts at reasonable accommodations.

XIII. TITLE VI COMPLAINTS

A Title VI Complaint may be filed by any individual or individuals who allege they have been subjected to discrimination or adverse impact under any SPAN program or activity based on race, religion, color, national origin, sex, age or disability.

SPAN complaint forms and informational flyers are available from SPAN's Title VI Officer (Executive Director) at SPAN's office (940-382-2224) or from Span's website at www.span-transit.org.

XIV. DEFINITIONS

Aide – An aide is a social services attendant or personal care assistant who accompanies a passenger to assist the passenger in utilizing SPAN's transportation service.

Companion – A companion is anyone *other than an aide* who travels with a disability-certified passenger.

Demand Response Service – Non-fixed-route shared transportation service utilizing vans or buses with passengers boarding and alighting at pre-arranged times and locations within the system's service area.

Disability -- The Americans with Disabilities Act utilizes a three-pronged definition of disability. An individual with a disability is any person who:

1. Has a physical or mental impairment that substantially limits one or more major life activities,
2. Has a record of such an impairment; or
3. Is regarded as having such an impairment.

An individual must satisfy at least one of the three prongs of the above definition in order to be considered an individual with a disability.

Mobility Device – A mechanism such as a wheelchair, a walker or a scooter, designed to aid passengers with mobility impairments. They can be either manually operated or powered.

Late Cancellation – If a passenger cancels their trip on the day of service but does so **more than 3** hours before the pick-up time it will be considered a late cancellation.

No Show – A no-show occurs when a passenger fails to cancel their trip at least 3 hours before the scheduled pick-up time or board the SPAN vehicle within 5 minutes after it arrives within the 30-minute ready-time window.

Ready Time Window – A 30 minute window from 15 minutes before to 15 minutes after the scheduled pick-up time, during which a passenger should be ready for pick-up.

Service Animals – Animals that are individually trained to perform tasks for people with disabilities, such as guiding people who are blind or who have low vision, alerting people who are deaf, pulling wheelchairs, alerting a person who is having a seizure or performing other special tasks. Service animals are working animals, not pets.

Service Area – SPAN transports residents of The Lake Cities to any location in Denton County.

Subscription Service – An ongoing standing order is entered in SPAN's schedule for a passenger travelling to the same place at the same time each week.

Wheelchair – A mobility aid belonging to any class of 3 or 4-wheeled devices, usable indoors, designed for and used by passengers with mobility impairments. They may be either operated manually or powered.

XV. FREQUENTLY ASKED QUESTIONS

Question: What if I run late at my appointment?

Answer: It is suggested that riders over-estimate rather than under-estimate the travel and appointment times.

Question: Do I have to call each day to schedule a trip if the times and days that I travel are the same week to week?

Answer: No, subscription service is available when travel is at the same time and day each week. However, the passenger must call the evening before each trip to get the pick-up time, and when necessary, the passenger must remember to cancel a subscription ride to avoid a no-show being recorded. Three (3) cancellations within a 1-month period shall invalidate the subscription.

Question: Will I be taken directly to and from my destination?

Answer: Not necessarily. SPAN is public transportation and usually passengers share rides. Other passengers may be picked up and/or dropped off during your trip.

Question: What is the service area?

Answer: The SPAN Transit transports residents of Flower Mound to destinations in Flower Mound, Highland Village, and Lewisville. The SPAN Transit service area is subject to change.

Question: How many grocery bags are allowed on the bus? (Cases of drinks and large bags of pet food are not allowed)

Answer: SPAN allows each passenger to carry a maximum of 2 standard size paper grocery bags (or equivalent volume thereof in plastic bags) while riding the bus. Passengers must be able to carry groceries on and off the bus in one trip.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT COMMUNITY
DEVELOPMENT BLOCK GRANT FUNDS

1. Statement of Work

During the period October 1, 2018 through September 30, 2019, the Town of Flower Mound may use Community Development Block Grant (CDBG) funds to reimburse SPAN for providing "Demand Response" transit service to the following citizens of the Town of Flower Mound (TOWN):

- Elderly who are 65 years and older
- Severely disabled adults who are 18 years and older and
 - o Use a wheel-chair or another special aid for six months or longer; or
 - o Are unable to perform one or more "functional activities" (i.e., seeing, hearing, having one's speech understood, lifting and carrying, walking up a flight of stairs, or walking); or
 - o Need assistance with an "ADL" (i.e., an activity of daily living including getting around inside the home, getting in or out of bed or a chair, bathing, dressing, eating, and toileting); or
 - o Need assistance with an "IADL" (i.e., going outside the home, keeping track of money or bills, preparing meals, doing light housework and using the telephone); or
 - o Are prevented from working at a job or doing housework; or
 - o Have a selected condition including autism, cerebral palsy, Alzheimer's disease, senility or dementia, or mental retardation; or
 - o Are less than 65 years and covered by Medicare or receive Supplemental Social Security Income.

It is expressly agreed and understood that the total amount of CDBG funds to be paid by the TOWN under this Agreement shall not exceed Twenty Eight Thousand Nine Hundred Dollars (\$28,900.00). Costs exceeding Twenty Eight Thousand Nine Hundred Dollars (\$28,900.00) for providing Demand Response transit service to the above citizens will be paid with TOWN funds in accordance with the Agreement.

The TOWN's obligations under this Agreement are contingent upon the actual receipt of adequate CDBG funds to meet SPAN's liabilities under this Agreement. If adequate CDBG funds are not available to make payments under this Agreement, the TOWN will notify SPAN in writing within a reasonable time after such fact has been determined, so that SPAN can modify its services. The TOWN may, at its option, either reduce the amount of its liability, or terminate the Agreement. It is expressly understood that this Agreement in no way obligates the TOWN's General Fund or any other monies or credits of the TOWN for payment of the CDBG funds.

CDBG grant funds will not be used for any cost or portion thereof of which:

- Has been paid, reimbursed or is subject to payment or reimbursement from any other source;
- Was incurred prior to the beginning date, or after the ending date specified in this Agreement;

- Is not in strict accordance with the terms of this Agreement; or,
- Has not been billed to TOWN within 30 calendar days following termination of the Agreement.

CDBG grant funds reimbursed under this Agreement will not be paid to any party other than SPAN. Upon termination of this Agreement, should any expense for which payment has been made be subsequently disallowed or disapproved as a result of any auditing or monitoring by the TOWN, the Department of Housing and Urban Development, or any other federal agency, SPAN will refund such amount to the TOWN within ten working days of a written notice to SPAN, which specifies the amount disallowed. Refunds of disallowed costs may not be made from these or any funds received from or through the TOWN.

2. Records and Reports

SPAN agrees to maintain records that provide accurate, current, separate, and complete disclosure of the status of the CDBG funds received under this Agreement. SPAN shall retain all records pertinent to expenditures incurred under this Agreement for five years from the date of termination of the Agreement. If there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs first.

SPAN agrees to grant access by the TOWN, the U. S. Department of Housing and Urban Development, and the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of SPAN which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions.

At the time SPAN submits a request to TOWN for reimbursement, SPAN shall provide a report to TOWN identifying the costs by line item and the actual ridership provided, including name, address, age, disability, and race. SPAN will provide TOWN staff access to records necessary to obtain documentation to support CDBG eligibility requirements.

3. Program Income

No program income will be generated under this Agreement.

4. Uniform Administrative Requirements

In regard to CDBG funds provided under this Agreement, SPAN agrees to comply with the requirements of Title 24: Housing and Urban Development of the Code of Federal Regulations (CFR) Part 570.502 concerning Community Development Block Grants (CDBG). The TOWN has a copy available for review or reproduction. SPAN also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the CDBG funds provided under this Agreement.

5. Other Program Requirements

SPAN further agrees to utilize CDBG funds available under this Agreement to supplement rather than supplant funds otherwise available. For example, if an eligible rider's fee is partially paid by other funds, CDBG funds will be used to pay only the difference in cost for the ride. CDBG grant funds will not be used to fund any claims, actions, suits, charges or judgments whatsoever that arise out of SPAN's performance or nonperformance of the services or subject matter called for in the Agreement. SPAN shall:

- Hold harmless, defend, and indemnify TOWN from any and all claims, actions, suits, charges and judgments whatsoever that arise out of SPAN's performance or nonperformance of the services or subject matter called for in the Agreement;
- Comply with the bonding and insurance requirements of OMB Circular A-110 (Flower Mound has a copy available for review or reproduction). Actual losses not covered by insurance as required by this Agreement are not allowable costs under this Agreement and remain the sole responsibility of SPAN;
- Comply with all applicable equal employment opportunity and affirmative action laws or regulations;
- Provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement;
- Maintain adequate and continuous liability insurance on all vehicles owned, leased or operated that are used to provide services under this Agreement; and,
- Ensure that all drivers possess a valid Texas driver's license.

6. Conditions for Religious Organizations

SPAN shall provide all services under this Agreement in a manner that is exclusively non-religious in nature and scope. There shall be no religious services, proselytizing, instruction or any other religious preference, influence or discrimination in connection with providing these services.

7. Reversion of Assets

Payment for allowable costs under the terms of the Agreement is on a reimbursement basis. Expenditures will not be reimbursed to SPAN for the purchase of real property or equipment. These are not allowable costs under this Agreement.

**NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS
IMPLEMENTATION OF AN ENHANCED MOBILITY OF SENIORS AND INDIVIDUALS WITH
DISABILITIES PROGRAM PROJECT**

Program Implementation

AGREEMENT COVER SHEET

TYPE OF AGREEMENT: Sub-Award agreement for reimbursable activities to Special Programs for Aging Needs (DUNS#: 088995790)

FUNDING SOURCE: 49 USC 5310 Formula Grants for Enhanced Mobility of Seniors and Individuals with Disabilities

CFDA NAME & NUMBER (www.cfda.gov): Enhanced Mobility of Seniors and Individuals with Disabilities, Section 5310 (20.513)

FEDERAL AWARD PROJECT DESCRIPTION. The Program Administrator has received Enhanced Mobility of Seniors and Individuals with Disabilities funds from the Federal Transit Administration, through an agreement executed on September 15, 2017 in the amount of Seven hundred, Sixty Two Thousand Four Hundred Nineteen dollars (\$762,419) for Fiscal Year 2017.

Federal Award Project Description, as described in the Federal Funding Accountability & Transparency Act (FFATA): NCTCOG FY 2017 Section 5310 Grant

FEDERAL AWARD IDENTIFICATION NUMBER (FAIN): TX-2017-073-01

FEDERAL AWARD PERFORMANCE PERIOD: SEPTEMBER 13, 2017 – DECEMBER 30, 2022

TOTAL SUBAWARD AMOUNT: \$159,398 (FEDERAL \$159,398, TDC 31,880)

AGREEMENT PERIOD: EXECUTION THROUGH NOVEMBER 30, 2021

U.S. Department of Transportation

Federal Transit Administration
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Project Manager:

*Dan Peschell
Program Management Specialist
Daniel.Peschell@dot.gov
(817) 978-0563*

North Central Texas Council of Governments

616 Six Flags Drive
Arlington, Texas 76011

Project Manager:

*Karina Maldonado
Senior Transportation Planner
kmaldonado@nctcog.org
(817) 704-5461*

Special Programs for Aging Needs

1800 Malone Street
Denton, TX, 76201

Project Manager:

*Michelle Mahon
Executive Director
michellem@span-transit.org
(940) 382-2224*

INTERLOCAL COOPERATIVE AGREEMENT
Between
THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS
and
SPECIAL PROGRAMS FOR AGING NEEDS
for
IMPLEMENTATION OF ENHANCED MOBILITY OF SENIORS
AND INDIVIDUALS WITH DISABILITIES

WHEREAS, 49 U.S.C. 5310 apportions Enhanced Mobility of Seniors and Individuals with Disabilities Program (Program) funds by formula to large urbanized areas, small urbanized areas, and non-urbanized areas; and,

WHEREAS, the North Central Texas Council of Governments (NCTCOG) has been designated as the Metropolitan Planning Organization for the Dallas-Fort Worth Metropolitan Area by the Governor of Texas in accordance with federal law; and,

WHEREAS, the Regional Transportation Council (RTC), comprised primarily of local elected officials, is the regional transportation policy body associated with NCTCOG and has been and continues to be a forum for cooperative decisions on transportation; and,

WHEREAS, it is the goal of the RTC to offer a transportation system that is accessible, integrated, efficient, and provides for a diverse and flexible set of transportation options; and,

WHEREAS, 49 U.S.C. 5310 authorizes and sets forth the provisions for the Program, which is intended to enhance mobility for seniors and persons with disabilities by providing funds for programs to serve the special needs of transit-dependent populations beyond traditional public transportation services and Americans with Disabilities Act (ADA) complementary services; and,

WHEREAS, NCTCOG is a designated recipient for the Federal Transit Administration (FTA) Section 5310 Program for the Dallas-Fort Worth-Arlington and Denton-Lewisville Urbanized Areas and is responsible for administering the program, as designated by the Governor of Texas; and,

WHEREAS, on October 12, 2017, the RTC approved projects for the Program in the Denton-Lewisville Urbanized Area; and,

WHEREAS, on October 26, 2017, the NCTCOG Executive Board authorized NCTCOG to enter into an Agreement with Special Programs for Aging Needs; and,

WHEREAS, Special Programs for Aging Needs is an eligible subrecipient of the Enhanced Mobility of Seniors and Individuals with Disabilities Program.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

PART A: Project Details

1. Parties. This Interlocal Agreement, hereinafter referred to as the Agreement, is made and entered into by and between the North Central Texas Council of Governments, acting as the Program Administrator, and Special Programs for Aging Needs (SPAN, Inc.), acting as the Project Manager. The Program Administrator and the Project Manager may each be referred to as a Party and may collectively be referred to as Parties to this Agreement.

2. Project Description. The Project Manager shall complete the following activities, hereinafter referred to as the Project: The project will provide transportation to seniors and those with disabilities that reside in the City of Flower Mound.

3. Service Area. The Project shall be implemented within Denton County.

4. Notice. Notice from one Party to another Party regarding this Agreement shall be in writing and shall be delivered to the addresses shown below, a courtesy copy will be provided to the contact identified on the Agreement Cover Sheet.

If to the Program Administrator: North Central Texas Council of Governments
Attn: Michael Morris, Transportation Director
616 Six Flags Drive
PO Box 5888
Arlington, Texas 76005-5888

If to the Project Manager: SPAN, Inc.
Attn: Michelle Mahon, Executive Director
1800 Malone Street
Denton, Texas, 76201

5. Budget. The total federal share reimbursable to Project Manager by Program Administrator for this Project shall not exceed \$159,398. The Project Manager's eligible indirect cost rate under this Agreement is 0%.

Eligible Expense	Total	Federal	TDC
Capital FY17	\$159,398	\$159,398	31,880

5.1 Federal Award Project Description. The Agreement Cover Page includes award information that the Program Administrator has received from FTA, through an executed Agreement for Enhanced Mobility of Seniors and Individuals with Disabilities Program funds.

5.1.1 Modifications to the Project will be accepted for review through the quarterly Statewide Transportation Improvement Program (STIP) modification cycles and may require an amendment to this Agreement.

5.2 Match. The Project Manager shall provide Local Share in an amount as specified in Section 6 of the Agreement. The Project Manager shall comply with all guidelines and requirements pertaining to Local Share as outlined in the FTA Master Agreement.

Milestones. The Project Manager shall coordinate with the Program Administrator to develop an implementation schedule for the Project prior to incurring any expenses. The implementation schedule will be approved by the Program Administrator's Project Manager and will become part of this Agreement. The Implementation Schedule will detail the timeline of the Project, scope phases of the Project, and deliverables. Revisions to the approved scope and schedule shall require written approval by the Program Administrator's Project Manager. The Project Manager is required to report financial, operating, milestone and property management data on a recurring basis, as applicable. Information to be submitted with these reports and the deadlines for submission will be determined and agreed upon by both parties in advance. Revisions to the Implementation Schedule and Milestones outlined below may be agreed to in writing by both Parties without requiring an Agreement amendment.

Project Milestones include:

Milestone 1: Service Agreement established with City of Flower Mound, September 2018

Milestone 2: Project Life Cycle Management plan finalized, September 2018

Milestone 3: Begin service in Flower Mound, September 2018

Milestone 4: Develop long-term sustainability plan, Winter 2020

Milestone 5: Submit closeout report no more than 60 days after final invoice, Fall 2021

PART B: Federal Transit Authority Requirements

6. Authority. The Parties agree to implement the activities included in this Agreement as authorized by and consistent with applicable regulations detailed in the following documents, which are hereby made part of this Agreement by reference:

- 6.1** FTA Master Agreement; FTA MA (24), October 1, 2017 and subsequent revisions; and
- 6.2** FTA Enhanced Mobility of Seniors and Individuals with Disabilities Program Circular; FTA C 9070.1G as may be amended from time to time; and,
- 6.3** Title 49 United States Code Section 5310 – Enhanced Mobility of Seniors and Individuals with Disabilities Program; and
- 6.4** Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards; 2 Code of Federal Regulation (CFR) 200 (the Uniform Guidance); and
- 6.5** FTA Required Clauses and Compliance Requirements as detailed in FTA C 4220.1f and as detailed in Appendix C. For the purpose of this Appendix, "Purchaser" shall mean "Program Administrator" and "Contractor" shall mean the "Project Manager". As required, the Project Manager shall include appropriate provisions in applicable contracts.
- 6.6** Any notification containing special conditions or requirements, if issued.

7. Certifications and Assurances. The Project Manager shall execute the Certifications and Assurances for FTA Assistance Programs by signing the Federal Fiscal Year FTA Certifications and Assurances for each fiscal year, as published in the Federal Register, between the Effective Date and

Termination of this Agreement. An executed copy of the Certifications and Assurances shall be provided to the Program Administrator not more than ninety (90) days after the date the Certifications and Assurances are published in the Federal Register.

8. FTA Oversight. Through self-certification, annual audits, and triennial reviews, the FTA shall ensure the administration and implementation of the Project under this Agreement adhere to all applicable federal mandates and requirements. As applicable, the Project Manager shall comply with any requested on-site visits and make available all necessary documentation for review by the FTA, the Program Administrator, or their authorized representatives, for this purpose.

PART C: Program Requirements

9. Program Administrator Responsibilities.

As the Designated Recipient and Grantee, the Program Administrator shall:

- 9.1** Serve as the main point of contact for the Project Manager in coordination of projects under this Agreement.
- 9.2** Implement appropriate procedures to ensure compliance of federal requirements by the Project Manager and Third-Party contractors.
- 9.3** Monitor the progress of the program through review of progress reports, on-site reviews, and communication with a designated representative of the Project Manager.
- 9.4** Review reimbursement requests and remit payment for eligible expenses to the Project Manager, provided all requirements are fulfilled.
- 9.5** Review documentation of local expenses and payments to ensure appropriate local match requirements are fulfilled, as applicable.
- 9.6** Review documentation as submitted by the Project Manager to ensure policies and procedures are within the requirements of the FTA as applicable to the funds allocated under this Agreement.
- 9.7** Work cooperatively with the Project Manager to improve or correct policies and procedures to assure compliance with federal mandates and regulations.
- 9.8** Submit all necessary reports to the FTA in a timely manner.

10. Project Manager Responsibilities.

As the Subrecipient, the Project Manager shall:

- 10.1** Comply with all annually updated applicable provisions of the FTA Master Agreement incorporated herein by reference.
- 10.2** Comply with all applicable State and federal statutes, regulations, rules, executive orders, FTA circulars, and other federal administrative requirements, and subsequent modification thereof, in implementation of the Project.

- 10.3** Comply with the Labor Standard requirements of 49 U.S.C., Section 5333(b) as determined fair and equitable by the U.S. Department of Labor.
- 10.4** Maintain appropriate knowledge of the programs funded under this Agreement, including an understanding of the purpose and requirements of Section 5310 – Enhanced Mobility of Seniors and Individuals with Disabilities.
- 10.5** Work cooperatively with the Program Administrator and the FTA as applicable to prepare documentation and/or implement procedures for compliance with State and federal rules and regulations.
- 10.6** Modify procedures and services performed for purposes of this Agreement based on recommendations by the Program Administrator to enable efficient and effective operations and implementation of the Project.
- 10.7** Maintain appropriate records of Project implementation, and submit these records to the Program Administrator as requested.
- 10.8** Identify, collect, and document required local matching funds for the Project. Project Manager shall be responsible for any funds determined to be ineligible for reimbursement under this Agreement.

11. Reporting.

- 11.1 Project Status Reports.** The Project Manager shall complete and submit a status report to the Program Administrator detailing Project activities which occurred during the invoiced performance period. Progress reports will be submitted monthly, quarterly or as determined by the Program Administrator. Each report shall identify the dates any Project milestones were met and any revised anticipated milestone dates; document any delays or problems encountered during the previous months in implementation of the Project and the applied resolution(s); document information and data for any applicable Performance Measures, as defined in Section 12.10; and document any other accomplishments. Status reports may be submitted with reimbursement requests as detailed in Section 13.3 of this Agreement.
- 11.2 Financial Status Reports.** The Program Administrator shall prepare Financial Status Reports quarterly for grant funds expended or obligated during the previous quarter and submit these reports to the Federal Transit Administration. Information requested from the Project Manager for the purposes of completing this report shall be provided to the Program Administrator promptly and in the format requested to enable timely submittal of the reports.
- 11.3 Milestone Progress Reports.** The Program Administrator shall prepare Milestone Progress Reports quarterly to update anticipated project milestones and submit these reports to the Federal Transit Administration. Information requested from the Project Manager for the purposes of completing this report shall be provided to the Program Administrator promptly and in the format requested to enable timely submittal of the reports.
- 11.4 National Transit Database.** Financial and operating information regarding service under this Agreement shall be reported to the FTA annually through the National Transit Database (NTD) Reporting System. The Program Administrator and the Project Manager shall collaborate on development of these reports. The Project Manager will provide to the

Program Administrator any requested information necessary to perform this task promptly and in the format requested. As needed, the Project Manager will submit data to the NTD directly.

- 11.5 Disadvantaged Business Enterprise Participation Reports.** The Program Administrator will compile semi-annual reports based upon the information submitted by the Project Manager regarding anticipated and completed contracting opportunities and Disadvantaged Business Enterprise Participation goals. The Project Manager shall provide requested information promptly and in the format requested to enable timely submittal of the reports.
- 11.6 Closeout Report.** The Project Manager shall prepare a closeout report documenting final Project implementation and costs, including final data for applicable Performance Measures, as agreed with the Program Administrator. The final closeout report should be submitted to the Program Administrator within 60 days of Project completion. A Project will be considered closed upon receipt of a final invoice. All final invoices are due, no later than sixty days after the Project completion. Ninety days after the end of the Project period, the remaining project balance will no longer be available to the Project Manager. All Project records shall be maintained and accessible for a period of three years following receipt of payment of the final invoice or final audit for the project. All real property records shall be maintained and accessible for a period of three years after final disposition of the property.
- 11.7 Charter Bus Service.** The Project Manager agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.
- 11.8 School Bus Service.** Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.
- 11.9 Safety and Security.** The Project Manager shall provide to the Program Administrator a written policy on safety, security, and emergency preparedness. This policy shall include, at a minimum, identification of safety personnel and safety accountability, procedures for investigating accidents, safety data reporting schedules, procedures for securing sensitive documents, past and planned security expenditures, anti-terrorist measures, past and planned training and practice drills, and response protocols for each Department of Homeland Security Threat Advisory Level.
- 11.10 Performance Measures.** The Project Manager shall monitor and document quantitative and qualitative information to detail the Project's performance in regards to the following performance measures:

- (a) Impact of project implementation on the availability of transportation services for seniors and individuals with disabilities, specifically increases or enhancements to geographic coverage of service, service quality, and expansion of service times.
- (b) Additions or change to environmental infrastructure, technology, and vehicles through implementation of the Project that impact availability of transportation services for seniors and individuals with disabilities.
- (c) Actual or estimated number of rides (as measured by one-way trips) provided for seniors and individuals with disabilities through implementation of the Project.
- (d) Other measures to be determined at a later date.

12. Payments.

- 12.1** The Project Manager shall be reimbursed for eligible costs incurred from the effective date of the Agreement for implementation of the Project, in an amount not to exceed the federal share of the Budget as detailed in Section 6. No advance funds will be provided.
- 12.2** The Project Manager shall contribute funding or service in an amount as specified in the Budget detailed in Section 6. The local contribution shall be documented and submitted to the Program Administrator as support for requested reimbursement.
- 12.3** The Project Manager shall provide to the Program Administrator reimbursement requests, in the form of an invoice, detailing eligible expenses incurred. Invoices may be submitted no more frequently than monthly. Each invoice must identify the period expenses were incurred, amount of expenses incurred by budget category, and the appropriate reimbursement amount being requested. Each invoice must include supporting receipts and any other documentation or data requested by the Program Administrator. Invoices received past 90 days will be subject to additional review and further documentation requirements.
- 12.4** The Program Administrator may deem an invoice incomplete if the Project Manager does not submit complete and acceptable documentation.
- 12.5** The Project Manager shall remit to the Program Administrator any excess payments made to the Project Manager any costs disallowed by the Federal Government, any amounts recovered by the Recipient from third parties or other sources, and any interest required.
- 12.6** Any compensation due to the Project Manager for performance of this Agreement shall be payable only after approval of invoices submitted to the Program Administrator and receipt of grant funds from the funding agencies. There shall be no obligation whatsoever to pay for performance of this Agreement from the monies of the Program Administrator.

13. Policy and Procedure Compliance. The Project Manager agrees to comply with all applicable management and administrative requirements for implementation of the Project. The Project Manager shall regularly review current policies and procedures and modify these procedures as needed to ensure compliance with federal requirements. If at any time, during the term of this Agreement, the Project Manager identifies any procedures or activities associated with the Project to be inconsistent with applicable regulations, the Project Manager shall notify the Program Administrator immediately to ensure appropriate resolution. As applicable to the Project, the Program Administrator may request written procedures or documentation of activities from the Project Manager. The Project Manager and Program

Administrator will work cooperatively to adjust procedures and Project activities to ensure compliance with regulations.

13.1 Financial Management. The Project Manager shall document and apply procedures for appropriate and sufficient financial reporting, accounting records, internal controls, budget control, cost review, source documentation, cash management, payment tracking, and other financial records. The Project Manager shall provide any requested data and other documentation to the Program Administrator to enable appropriate financial management oversight by the Program Administrator for management of the Project and compliance with federal requirements.

13.2 Allowable Costs. The Project Manager shall ensure compliance with 2 CFR Part 200.

13.3 Satisfactory Continuing Control. The Project Manager shall provide to the Program Administrator a current inventory of capital assets and real property, including all vehicles leased, owned, and/or operated by the Project Manager, and an inventory schedule. The Project Manager shall ensure all equipment and other assets received through this Agreement are appropriately maintained. The Project Manager shall provide reasonable access to the Program Administrator to investigate procedures, inventory records, equipment, and other assets to ensure satisfactory continuing control.

13.4 Asset Management.

13.4.1 Equipment Use and Management. As applicable to this Project, the Project Manager shall ensure compliance with 2 CFR 200.313 and 2 CFR 200.439. The Project Manager shall use the equipment for the project for which it was acquired as long as needed, even if the Project does not continue to receive federal funding. Equipment must be used first for the Project and then to meet transportation needs of other federal programs, providing that they do not interfere with the Project.

13.4.2 Maintenance and Inspections. For all equipment and vehicles purchased under this Agreement, the Project Manager agrees to abide by the manufacturer's maintenance specifications a Maintenance Program documented by the Project Manager. If the Project Manager has developed their own Maintenance Program, this program shall follow the manufacturer's recommendations to maintain optimal efficiency. As applicable for the type of equipment, the Project Manager shall maintain a maintenance records that contains, at a minimum:

- a. Maintenance repair records,
- b. Usage chart or monthly mileage reports, and
- c. Inspection log

The Project Manager shall submit this record to the Program Administrator as requested.

Equipment and vehicles purchased under this Agreement will remain under the Project Manager's purview for inspections and review, as necessary, and will remain on the Project Manager's inventory until title is transferred.

All vehicles owned, leased, or used in the operation of this Project will have an annual safety inspection conducted by qualified individuals at the expense of the Project Manager. Upon

detection of a problem, repairs required to make the vehicle safe to operate will immediately be completed. The vehicle will be inoperable until repairs are made and will be returned to service once safety is guaranteed.

The Project Manager shall maintain a preventative maintenance program for each vehicle purchased.

13.4.3 Disposition. The Project Manager must receive written authorization from the Program Administrator for use, non-use, sale, or other disposition of any equipment or vehicles provided through this Agreement for any purpose other than implementation of the Project, including use, non-use, sale or other disposition of equipment after the termination of this Agreement. The Project Manager acknowledges that use, non-use, sale, or other disposition of any equipment or vehicle may require the Project Manager to return all or a portion of funding received under this Agreement to the Program Administrator.

- a. Disposition of Vehicles.** When the Project Manager is ready to sell the vehicle and/or the vehicle is past its useful life, a written request must be made to the Program Administrator to release and convey the title to the Project Manager. This request will contain, at a minimum: type of vehicle, license plate number, serial number, engine size, special options (e.g. air conditioning, cruise control, etc.), mileage, condition of vehicle, and reason for disposition request. The Program Administrator will notify the Project Manager if the request has been approved. If a Project Manager no longer has a need for the vehicle for the original Project purpose and the vehicle is still within its useful life, the Program Administrator will seek to have the vehicle transferred to another Project Manager. The useful life of all vehicles included in the Project shall be as referenced in Awards Management Circular 5010.1. If the vehicle title has been released and the vehicle is past its useful life, the Project Manager may sell the vehicle and use the proceeds of the sale to fund transportation activities. Project Manager acknowledges that disposition of the vehicle may require the Project Manager to return all or a portion of funding received under this Agreement to the Program Administrator.

13.4.4 Depreciation. The Project Manager shall follow applicable guidelines for the calculation of depreciation on any fixed assets (i.e. buildings, capital improvements, equipment, software projects capitalized) consistent with 2 CFR 200.436 and Awards Management Circular 5010.1.

- 13.5 Licensure.** Every vehicle providing Service shall be operated by an operator duly licensed by the State of Texas and in current possession of said license to operate vehicles of the type and size obtained in this Agreement.
- 13.6 Title VI.** The Project Manager shall work cooperatively with the Program Administrator to implement appropriate Project activities to address environmental justice in minority and low-income populations, and to address needs from persons with Limited English Proficiency (LEP).
- 13.7 Public Hearing Requirements.** The Program Administrator shall be responsible for general public hearing and public meeting requirements associated with development and award of the Project. The Project Manager shall provide any necessary assistance to the Program

Administrator to ensure appropriate information is available to the public. Any additional public meetings or public hearings scheduled by the Project Manager should be coordinated in advance with the Program Administrator. The Project Manager shall transmit to the Program Administrator copies of subsequent meeting notices, agendas, and any public comments received regarding the Project, and any responses, within five (5) days of receipt.

13.8 Fares and Services. The Project Manager shall provide the Program Administrator a fee and service schedule for transit services offered through funds received under this Agreement, if applicable. Changes to fares and services initiated after the execution of this Agreement shall be provided to the Program Administrator prior to implementation of the changes.

13.9 Half Fare. The Project Manager shall provide to the Program Administrator a written description of the provider's half fare policies and procedures, including at a minimum, a schedule of half fare services, advertisement of half fare service, and eligibility verification procedures. Changes to half fare policies and procedures initiated after the execution of this Agreement shall be provided to the Program Administrator prior to implementation of the changes.

13.10 Drug and Alcohol Program. The Project Manager shall prepare and maintain a management information system (MIS) of drug and alcohol test results and provide an annual report to the Program Administrator by the first of February each year in the format requested. The Project Manager shall include a statement of compliance with the Drug and Alcohol Program in applicable Third-Party contracts and monitor compliance with the program. Annual MIS reports shall be completed and provided to the Program Administrator for applicable Third-Party contractors.

The Project Manager shall provide a copy of the Drug and Alcohol Policy to the Program Administrator. The Drug and Alcohol Policy shall include, at a minimum, a contact person, employee categories subject to testing, prohibited behavior, testing circumstances, testing procedures, requirement that covered employees submit to testing, behavior that constitutes a refusal to submit to a test, consequences for an employee who has a verified positive test result or alcohol concentration within specified levels, and a records retention schedule for drug and alcohol testing. Information shall be made available upon request of the Program Administrator.

13.10.1 Drug-Free Workplace. The Project Manager shall establish a drug-free workplace in accordance with the Drug-Free Workplace Act. A copy of the drug-free workplace policy, as distributed to employees, shall be provided to the Program Administrator. The drug-free workplace policy shall include, at a minimum, notification of prohibited activities relating to drugs, notification of requirement to abide by policy as a condition of employment, and drug conviction disclosure requirements. The Project Manager shall inform the Program Administrator within five (5) calendar days of the receipt of notice of an employee's criminal conviction for a drug statute violation that occurred in the workplace. The Project Manager shall maintain a record of all employees reporting drug convictions and the action taken against the employee, and make these records available to the Federal Transit Administration, the Program Administrator, or their auditors for review upon request.

- 13.11 Reviews.** The Program Administrator shall coordinate appropriately with the FTA regarding necessary review of program compliance. The Project Manager acknowledges that the FTA or their designees may require review of the Project Manager's compliance as a component of the review of the Program Administrator. The Project Manager agrees to permit access to staff, property, and records for the Program Administrator, the FTA, and their designees as necessary to complete any reviews.

PART D: General and Special Conditions

14. Term.

- 14.1 Effective Date.** The term of this Agreement shall take effect on the date executed by the Parties and remain in effect until November 30, 2021.
- 14.2 Termination.** NCTCOG reserves the right to terminate this Agreement in whole or in part for convenience. NCTCOG may terminate for cause. If NCTCOG elects to terminate for cause, NCTCOG shall provide written notice of termination, shall set forth the reasons for termination, and shall provide for a minimum of 30 days to cure the defect. Termination is effective only if the Project Manager fails to cure the defect within the period stated in the termination notice including any written extensions. If the Agreement is terminated, NCTCOG shall only be liable for payment of services provided and accepted before the effective date of termination. The Project Manager shall account for and return to NCTCOG any property in its possession paid for from funds received from NCTCOG, or property supplied to the Project Manager by NCTCOG.
- 14.3 Federal Government Termination.** Any or all of the terms of this Agreement may be suspended or terminated in the event that the Project or funding is terminated for any reason.
- 14.4 Project Closeout.** Closeout of any or all projects under this Agreement by the FTA does not invalidate any continuing obligations imposed by this Agreement.
- 14.5 Continuing Obligations.** Termination of this Agreement does not invalidate any continuing obligations imposed by this Agreement.

- 15. Procurement.** The Party responsible for conducting procurement activities, whether the Program Administrator or the Project Manager, shall ensure compliance with applicable provisions of 2 CFR 200.317-.326 and the FTA Circular 4220.1 F for the procurement of equipment or goods and services through this Agreement. Each Party shall ensure that procurements under this Agreement comply with 49 CFR Part 661. For procurements completed by the Project Manager, the Program Administrator may require the Project Manager to submit their procurement procedures and a written code of conduct prior to commencing the procurement for approval consistent with any third party procurement guidelines provided by the Program Administrator.

- 15.1 Procurement of Recovered Materials (Recycled Products).** As required under the Uniform Guidance, the Project Manager agrees to comply with all applicable provisions of 2 CFR §200.322.

15.2 Bus Testing. The Project Manager shall provide to the Program Administrator a copy of the test report, as applicable, for the purchase of a new bus model prior to purchase as applicable.

16. Single Audit Act and Submission of Audits. As applicable, the Project Manager shall comply with the requirements of the audit provisions of 2 CFR Part 200, Subpart F, which requires that a non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year, in Federal awards must have a single or program-specific audit conducted for that year. As applicable, the Project Manager shall provide to the Program Administrator, for its review, a copy of any audit received as a result of the Project Manager's policy or audits of federal and state governments relating to expenditure of funds under this Agreement. Such audits shall include or be accompanied by any applicable audit management letter issued and applicable responses to the auditor's findings and recommendations. All audits shall be submitted to The Program Administrator within thirty (30) days of receipt of each issued report.

17. Vehicles.

17.1 Vehicle Use. The Project Manager shall ensure the use of any vehicles received through this Agreement is consistent with the Project and the terms of this Agreement.

17.2 Titles to Vehicles. The Project Manager shall purchase a State vehicle title under the Project Manager's name through registration and annual registration renewal for any vehicles received through this Agreement. Project Managers may co-title vehicles with local governmental entities, in order to take advantage of blanket insurance rates or to participate in bulk purchases of fuel, maintenance and supplies. The Program Administrator, NCTCOG, will be the First Lien-Holder on all vehicles funded through this Agreement. The Program Administrator shall retain Title of the vehicle until either the vehicle reached the end of its useful life or upon disposition of the vehicle, upon which time Title will be transmitted to the Project Manager.

17.3 Vehicle Insurance. The Project Manager shall maintain adequate Comprehensive Automobile Insurance for the operation of vehicles for implementation of this Project. This insurance shall cover all owned, non-owned, and hired vehicles used during this Project. The Project Manager shall, at all times during the term of this agreement and extended terms thereof, provide and maintain, or cause to be provided and maintained, insurance protecting the interests of NCTCOG against any loss, cost or expense, of any kind arising out of the Service to be provided. NCTCOG shall be named as an additional insured and shall be provided with a certificate of insurance from an insurance company or companies acceptable to NCTCOG, at least twenty (20) days prior to the commencement of Service. Said policy or policies shall bear an endorsement giving NCTCOG a thirty (30) day written notice of cancellation. In the event the Project Manager allows any coverage to lapse during the terms of this Agreement, NCTCOG shall have the right to terminate the Agreement. Prior to delivery of any vehicle provided through this Agreement, the Project Manager will provide proof of insurance to the Program Administrator, and will submit proof of coverage annually.

The Project Manager is required to report to the Program Administrator when a vehicle is in an accident, stolen or there is other property damage. Any insurance proceeds received by or on behalf of the Project Manager under an insurance policy due to the damage or destruction of a vehicle funded through this Agreement must be utilized to repair the vehicle or acquire another vehicle for implementation of the Project.

17.4 No Recourse. Companies issuing the insurance policies herein described shall have no recourse against the Program Administrator for payment of any premiums or assessments for deductibles, such premiums and deductibles being the sole responsibility of the Project Manager.

18. Construction Management and Oversight. As applicable to this Project, the Project Manager shall ensure appropriate management of any construction activities, including compliance with applicable local construction regulations and permitting requirements. The Project Manager shall ensure that construction activities comply with prevailing wage requirements of the Davis-Bacon Act. Upon request, the Project Manager shall provide to the Program Administrator applicable documentation confirming compliance with construction regulations.

19. Amendments.

19.1 Agreement. This Agreement embodies all of the Agreements of the Parties relating to its subject matter, supersedes all prior understandings and Agreements regarding such subject matter, and may be amended, modified, or supplemented only by an instrument or instruments in writing executed by all of the Parties.

19.2 Severability. In the event any one or more of the provisions contained in this Agreement shall be for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision(s) hereof, and this Agreement shall be revised so as to cure such invalid, illegal, or unenforceable provision(s) to carry out as near as possible the original intent of the Parties.

19.3 Changed Circumstances. If future federal, State, or local statute, ordinance, regulation, rule, or action renders this Agreement, in whole or in part, illegal, invalid, unenforceable, or impractical, the Parties agree to delete and/or modify such portions of the Agreement as are necessary to render it valid, enforceable, and/or practical. Each section, paragraph, or provision of this Agreement shall be considered severable, and if, for any reason, any section, paragraph, or provision herein is determined to be invalid under current or future law, regulation, or rule, such invalidity shall not impair the operation of or otherwise affect the valid portions of this instrument.

20. Rights.

20.1 Authority. The Project Manager shall have no authority to act for or on behalf of the Program Administrator except as expressly provided for in this Agreement; no other authority, power, use, or joint enterprise is granted or implied. The Project Manager may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the Program Administrator.

20.2 Assignment. Without the prior written consent of the Program Administrator, the Project Manager may not transfer or assign any rights or duties under or any interest in this Agreement.

21. Miscellaneous Provisions.

- 21.1 Indemnification.** The Project Manager covenants and agrees to indemnify and hold harmless and defend and does hereby indemnify, hold harmless, and defend the Program Administrator, its officers and employees, from and against any and all suits or claims for damages or injuries, including death, to persons or property, whether real or asserted, arising out of any negligent act or omission on the part of the Project Manager, its officers, agents, servants, employees, or subcontractors, and the Project Manager does hereby assume all liability for injuries, claims or suits for damages to persons, property, or whatever kind of character, whether real or asserted, occurring during or arising out of the performance of this Agreement as a result of any negligent act or omission on the part of the Project Manager, its officers, agents, servants, employees, or subcontractors to the extent permitted by law.
- 21.2 Liability.** The Program Administrator shall not be liable for any damages, including that of personal injury, death, or property for any reason associated with implementation of the Project under this Agreement.
- 21.3 Force Majeure.** It is expressly understood and agreed by the Parties to this Agreement that, if the performance of any provision of this Agreement is delayed by force majeure, defined as reason of war, civil commotion, act of God, governmental restriction, regulation or interference, fire, explosion, hurricane, flood, failure of transportation, court injunction, or any circumstances which are reasonably beyond the control of the Party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated herein, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the period of time applicable to such requirement shall be extended for a period of time equal to the period of time such Party was delayed. Each Party must inform the other in writing within reasonable time of the existence of such force majeure.
- 21.4 Contractual Relationship.** It is understood and agreed that the relationship described in this Agreement between the Parties is contractual in nature and is not to be construed to create a partnership of joint venture or agency relationship between the Parties. Nor shall any Party be liable for any debts incurred by the other Party in the conduct of such other Party's business or functions.
- 21.5 Insurance.** The Project Manager shall comply with the insurance requirements imposed by State and local laws, regulations, and ordinances.
- 21.6 Captions.** The captions, headings, and arrangements used in this Agreement are for convenience only and shall not in any way affect, limit, amplify, or modify its terms and provisions.
- 21.7 Disputes and Remedies.** Should disputes arise concerning the Project, or additional agreed upon work to be performed under this Agreement, the Project Manager and NCTCOG shall negotiate in good faith toward resolving such disputes. NCTCOG shall be responsible to its funding agencies for the settlement of all contractual and administrative issues arising out of procurement entered into in support of the Unified Planning Work Program. Violation or breach of Contract terms by the Project Manager may be grounds for termination, and should said disputes be irreconcilable, NCTCOG shall terminate the

agreement by default. Any costs directly related to the termination shall be paid by the Project Manager, provided such amount shall not exceed the total contract amount for Project Manager under this Agreement.

- 21.8 Debarment/Suspension.** The Project Manager is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. The Project Manager and its subcontractors shall comply with the special provision "Certification Requirements for Recipients of Grants and Cooperative Agreements Regarding Debarments and Suspensions," which is included as Appendix A of this agreement.

The Project Manager shall ensure compliance with 2 CFR 200.212, by disclosing all information to the Program Administrator regarding the Project Manager's debarment, suspension, or other exclusion from public transactions. The Project Manager shall also ensure that any third-party vendor or contractor receiving funding through this Agreement is not debarred, suspended, or otherwise excluded from or ineligible for participation in publicly-funded programs. The Project Manager shall include a statement of compliance with Suspension and Debarment requirements in applicable procurement solicitations and third-party contracts.

- 21.9 Restrictions on Lobbying.** The Project Manager of these funds is prohibited from using monies for lobbying purposes; The Project Manager shall comply with the special provision "Restrictions on Lobbying," which is included as Appendix B of this Agreement. The Project Manager shall include a statement of compliance with the Lobbying Certification and Disclosure of Lobbying Activities in applicable procurement solicitations. Lobbying Certification and Disclosure of Lobbying Activities shall be completed by subcontractors and included in subcontractor contracts, as applicable.

- 21.10 Confidentiality.** The Project Manager and the Program Administrator shall ensure that all information, both written and verbal, deemed confidential by law that is obtained through implementation of the Project will remain confidential, subject to provisions of the Texas Public Information Act.

The following appendices are made part of this Agreement.

- Appendix A Debarment Certification
- Appendix B Lobbying Certification
- Appendix C Required FTA Clauses and Compliance Documentation
- Appendix D Required 2 CFR 200 Clauses

IN WITNESS HEREOF, the parties have executed this Agreement. This Agreement becomes effective on the last day the last Party signs.

NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS

DocuSigned by:

Mike Eastland

7/31/2018

24E72C1B5F0F426...

Mike Eastland, Executive Director

Date

SPECIAL PROGRAMS FOR AGING NEEDS (SPAN, INC.)

DocuSigned by:

Michelle Mahon

7/30/2018

34AEB5016C9647A

Michelle Mahon, Executive Director

Date

APPENDIX A
DEBARMENT CERTIFICATION

**APPENDIX A
DEBARMENT CERTIFICATION**

**CERTIFICATION REQUIREMENTS FOR RECIPIENTS OF GRANTS
AND COOPERATIVE AGREEMENTS REGARDING
DEBARMENT AND SUSPENSIONS**

Department of Transportation (DOT) Circular 2015.1 excludes entities and individuals that the federal government has either debarred or suspended from obtaining federal assistance funds through grants, cooperative agreements, or third-party contracts. NCTCOG has elected to include the requirements of the DOT Circular 2015.1 in all third-party contracts for federal funds. A certification process has been established by 49 C.F.R. Part 29 as a means to ensure that debarred, suspended, or voluntarily excluded persons do not participate in a federally assisted project. The inability of a person to provide the required certification will not necessarily result in a denial of participation in a covered transaction. A person that is unable to provide a positive certification as set forth in the Circular may submit a complete explanation attached to the certification. DOT will consider the certification and any accompanying explanation in determining whether or not to provide assistance for the project. Failure to furnish a certification or any explanation may disqualify that person from participating in the project.

Each potential third-party contractor, subcontractor under a third-party contract, subgrantee, or subrecipient must provide to the grantee or recipient of a cooperative agreement, as appropriate, a certification for a lower tier participant. In general, lower-level employees or procurements of less than \$25,000 will not be covered by the certification process procedures, except in the case of procurements with individuals that would have a critical influence on or substantive control over the project; nevertheless, a participant is not authorized to involve a lower-level employee or enter into a contract of less than \$25,000 with a person actually known by the participant to be debarred, suspended or voluntarily excluded.

NCTCOG requires each potential contractor subgrantee, or subrecipient for a third-party contract to complete the certification in Appendix A.2 for itself and its principals.

If an applicant for a grant or cooperative agreement or a potential contractor for a third-party contract knowingly enters into a lower-tier covered transaction such as a third-party contract or subcontract under a major third-party contract or subgrant with a person that is suspended, debarred, ineligible, or voluntarily excluded from participation in the project, in addition to other remedies available to the federal government, DOT may terminate the grant or subcontract, the underlying grant or cooperative agreement for cause or default.

APPENDIX A.1 CERTIFICATION INFORMATION

This certification is to be used by contractors pursuant to 49 CFR 29 when any of the following occur:

- any transaction between the contractor and a person (other than a procurement contract for goods and services), regardless of type, under a primary covered transaction
- any procurement contract for goods or services when the estimated cost is \$25,000 or more
- any procurement contract for goods or services between the contractor and a person, regardless of the amount, under which the person will have a critical influence on or substantive control over that covered transaction. Such persons include principal investigators and providers of federally required audit services.

A *procurement* transaction is the process of acquiring goods and services.

A *nonprocurement* transaction is the granting of financial assistance to entities to assist the grantor in meeting objectives that are mutually beneficial to the grantee and grantor.

A COPY OF THIS CERTIFICATION IS TO BE FURNISHED TO AUTHORIZED REPRESENTATIVES OF THE STATE OR THE U.S. DEPARTMENT OF TRANSPORTATION UPON REQUEST.

**APPENDIX A.2
LOWER TIER PARTICIPANT DEBARMENT CERTIFICATION
(Negotiated Contracts)**

Michelle Mahon
_____, being duly
(Name of certifying official)

sworn or under penalty of perjury under the laws of the United States, certifies that neither

SPAN, Inc.
_____, nor its principals
(Name of lower tier participant)

are presently:

- debarred, suspended, proposed for debarment,
- declared ineligible,
- or voluntarily excluded from participation in this transaction by any federal department or agency

Where the above identified lower tier participant is unable to certify to any of the above statements in this certification, such prospective participant shall indicate below to whom the exception applies, the initiating agency, and dates of action.

Exceptions will not necessarily result in denial of award but will be considered in determining contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

EXCEPTIONS:

DocuSigned by:

34AEB5016C9647A...

Signature of Certifying Official
Michelle McMahon

Title

7/30/2018

Date of Certification

APPENDIX B
LOBBYING CERTIFICATION

APPENDIX B LOBBYING CERTIFICATION

RESTRICTIONS ON LOBBYING

Section 319 of Public Law 101-121 prohibits recipients of federal contracts, grants, and loans exceeding \$100,000 at any tier under a federal contract from using appropriated funds for lobbying the Executive or Legislative Branches of the federal government in connection with a specific contract, grant, or loan. Section 319 also requires each person who requests or receives a federal contract or grant in excess of \$100,000 to disclose lobbying.

No appropriated funds may be expended by the recipient of a federal contract, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any federal executive department or agency as well as any independent regulatory commission or government corporation, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan the entering into of any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

As a recipient of a federal grant exceeding \$100,000, NCTCOG requires its subcontractors of that grant to file a certification, set for in Appendix B.1, that neither the agency nor its employees have made, or will make, any payment prohibited by the preceding paragraph.

Subcontractors are also required to file with NCTCOG a disclosure form, set forth in Appendix B.1, if the subcontractor or its employees have made or have agreed to make any payment using nonappropriated funds (to include profits from any federal action), which would be prohibited if paid for with appropriated funds.

**APPENDIX B.1
LOBBYING CERTIFICATION
FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS**

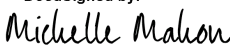
The undersigned certifies to the best of his or her knowledge and belief, that:

(1) No federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension continuation, renewal amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

DocuSigned by:

34AEB5016C9647A...

Signature
Michelle McMahon

Title
Executive Director

Agency
7/30/2018

Date

APPENDIX C
REQUIRED FTA CLAUSES AND COMPLIANCE DOCUMENTATION

APPENDIX C
FTA REQUIRED CLAUSES AND
COMPLIANCE DOCUMENTATION

A. No Obligation by the Federal Government.

1. The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

B. Program Fraud and False or Fraudulent Statements or Related Acts.

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

3. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

C. Access to Records.

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 2 CFR 200.317-.326, the Contractor

agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 2 CFR 200 Appendix II, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

3. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

4. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

5. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 2 CFR 200.336.

6. FTA does not require the inclusion of the above Access to Records requirements in subcontracts.

D. Federal Changes.

1. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

E. Civil Rights.

1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

- a. *Race, Color, Creed, National Origin, Sex* - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- b. *Age* - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- c. *Disabilities* - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

F. Disadvantaged Business Enterprise.

1. It is the policy of the U.S. Department of Transportation that Disadvantaged Business Enterprises as defined in 49 CFR, Part 26, Subpart A, shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with federal funds under this agreement. Consequently the DBE requirements of 49 CFR, Part 26, exclusive of Subpart D, apply to this agreement. NCTCOG and its subcontractors agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR, Part 26, Subpart A, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, NCTCOG and its subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR, Part 26, exclusive of Subpart D, to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. NCTCOG and its subcontractors shall not discriminate on the basis of race, creed, color, national origin, sex, or disability, in the award and performance of contracts funded in whole or in part with federal funds.

G. Disputes and Remedies.

1. Should disputes arise concerning the Project or additional agreed upon work to be performed under this Contract, the Contractor and NCTCOG shall negotiate in good faith toward resolving such disputes. NCTCOG shall be responsible to its funding agencies for the settlement of all contractual and administrative issues arising out of procurement entered into in support of the Unified Planning Work Program. Violation or breach of Contract terms by the Contractor may be grounds for termination, and should said disputes be irreconcilable, NCTCOG shall terminate the agreement by default. Any costs directly related to the termination shall be paid by the Contractor, provided such amount shall not exceed the total contract amount for Contractor under this Agreement.

H. Clean Air.

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate

EPA Regional Office.

2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

I. Clean Water.

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

H. Cargo Preference - Use of United States-Flag Vessels.

1. The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

I. Contract Work Hours and Safety Standards.

1. **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated

damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. Withholding for unpaid wages and liquidated damages - The Purchaser shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4. Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

J. Energy Conservation.

1. The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

K. Americans with Disabilities Act.

1. The contractor must comply applicable requirements of the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973, and USDOT/FTA implementing regulations.

L. Buy America.

1. The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

M. Intelligent Transportation Systems (ITS). The contractor shall coordinate appropriately to ensure compliance with the Regional ITS Policy, and plan accordingly for the implementation of recommended systems. The contractor shall provide to the Program Administrator a Statement of Architecture Consistency for all applicable projects. The Contractor shall include a clause in all applicable procurement bids and Third-Party contracts for required coordination with National/Regional ITS Architecture.

N. Incorporation of Federal Transit Administration Terms.

1. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in [FTA Circular 4220.1F](#) are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Purchaser requests which would cause Purchaser to be in violation of the FTA terms and conditions.

APPENDIX D

REQUIRED 2 CFR 200 CLAUSES

APPENDIX D
REQUIRED 2 CFR 200 CLAUSES
Uniform Administrative Requirements, Cost Principles & Audit Requirements
for Federal Awards

- 1. Equal Employment Opportunity.** Project Manager shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, or national origin. Project Manager shall take affirmative actions to ensure that applicants are employed, and that employees are treated, during their employment, without regard to their race, religion, color, sex, sexual orientation, gender identity, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 2. Davis-Bacon Act.** Project Manager agrees to comply with all applicable provisions of 40 USC § 3141 – 3148.
- 3. Contract Work Hours and Safety Standards.** Project Manager agrees to comply with all applicable provisions of 40 USC § 3701 – 3708 to the extent this agreement indicates any employment of mechanics or laborers.
- 4. Rights to Invention Made Under Contract or Agreement.** Project Manager agrees to comply with all applicable provisions of 37 CFR Part 401.
- 5. Clean Air Act, Federal Water Pollution Control Act, and Energy Policy Conservation Act.** PRO Project Manager VIDER agrees to comply with all applicable provisions of the Clean Air Act under 42 USC § 7401 – 7671, the Energy Federal Water Pollution Control Act 33 USC § 1251 – 1387, and the Energy Policy Conservation Act under 42 USC § 6201.
- 6. Debarment/Suspension.** Project Manager is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. Project Manager and its subcontractors shall comply with the special provision “Certification Requirements for Recipients of Grants and Cooperative Agreements Regarding Debarments and Suspensions,” which is included as Attachment A of this agreement.
- 7. Restrictions on Lobbying.** Project Manager of these funds is prohibited from using monies for lobbying purposes; Project Manager shall comply with the special provision “Restrictions on Lobbying,” which is included as Attachment B of this Agreement. Project Manager shall include a statement of compliance with the Lobbying Certification and Disclosure of Lobbying Activities in applicable procurement solicitations. Lobbying Certification and Disclosure of Lobbying Activities shall be completed by subcontractors and included in subcontractor contracts, as applicable.
- 8. Procurement of Recovered Materials.** Project Manager agrees to comply with all applicable provisions of 2 CFR §200.322.

SPAN, INCORPORATED

ANNUAL FINANCIAL REPORT

YEAR ENDED SEPTEMBER 30, 2017

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DENTON, TX 76202-0977
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INDEPENDENT AUDITORS' REPORT

To the Board of Directors
SPAN, Incorporated
Denton, Texas

Report on the Financial Statements

We have audited the accompanying financial statements of SPAN, Incorporated (a nonprofit organization), which comprise the statement of financial position as of September 30, 2017, and the related statements of activities, functional expenses, and cash flows for the year then ended, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

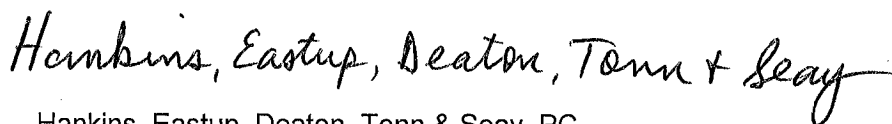
In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of SPAN, Incorporated as of September 30, 2017, and the changes in its net assets and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Other Matters*Other Information*

Our audit was conducted for the purpose of forming an opinion on the financial statements as a whole. The accompanying schedule of expenditures of federal awards, as required by Title 2 U.S. *Code of Federal Regulations* (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, is presented for purposes of additional analysis and is not a required part of the financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated, in all material respects, in relation to the financial statements as a whole.

Other Reporting Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated February 19, 2018, on our consideration of SPAN, Incorporated's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering SPAN, Incorporated's internal control over financial reporting and compliance.



Hankins, Eastup, Deaton, Tonn & Seay, PC
Denton, Texas

February 19, 2018

FINANCIAL SECTION

SPAN, INCORPORATEDSTATEMENT OF FINANCIAL POSITION
SEPTEMBER 30, 2017**ASSETS**

Current Assets:

Cash	\$ 646,528	
Accounts receivable	494,426	
Prepaid expenses	<u>5,338</u>	
Total Current Assets		\$ 1,146,292

Property and equipment:

Land	181,100	
Building	599,323	
Transportation equipment	2,687,380	
Office/Shop furniture and equipment	<u>270,121</u>	
	3,737,924	
Less accumulated depreciation	<u>(2,193,633)</u>	
Net Property and Equipment		<u>1,544,291</u>
Total Assets		<u><u>\$ 2,690,583</u></u>

LIABILITIES AND NET ASSETS

Current Liabilities:

Accounts payable	\$ 49,923	
Total Current Liabilities		\$ 49,923

Net Assets:

Unrestricted	2,640,660	
Temporarily restricted	<u>-</u>	
Total Net Assets		<u>2,640,660</u>
Total Liabilities and Net Assets		<u><u>\$ 2,690,583</u></u>

The accompanying notes are an integral part of these financial statements.

SPAN, INCORPORATEDSTATEMENT OF ACTIVITIES
YEAR ENDED SEPTEMBER 30, 2017

	Unrestricted	Temporarily Restricted	Total
Support and Revenue:			
Support			
Contributions	\$ 142,503		\$ 142,503
Support from local governments	161,788		161,788
United Way	51,324		51,324
Total Support	<u>355,615</u>		<u>355,615</u>
Revenue:			
Transportation grants	1,978,842		1,978,842
Transportation contracts	319,285		319,285
Aging grants	488,412		488,412
Aging contracts	76,430		76,430
Transportation program income	290,938		290,938
Meals program income	34,935		34,935
Miscellaneous	2,773		2,773
Interest income	234		234
Total Revenue	<u>3,191,849</u>		<u>3,191,849</u>
Net assets released from restrictions:			
Satisfaction of usage restrictions	-	\$ -	-
Total Support and Revenue	<u>3,547,464</u>	<u>-</u>	<u>3,547,464</u>
Expenses:			
Functional Expenses:			
Transportation program	2,310,802		2,310,802
Senior citizen meals and other services	746,793		746,793
Management and general	102,086		102,086
Fundraising	33,810		33,810
Total Expenses	<u>3,193,491</u>		<u>3,193,491</u>
Change in net assets	<u>353,973</u>	<u>-</u>	<u>353,973</u>
Net Assets, Beginning of Year	<u>2,286,687</u>	<u>-</u>	<u>2,286,687</u>
Net Assets, End of Year	<u>\$ 2,640,660</u>	<u>\$ -</u>	<u>\$ 2,640,660</u>

The accompanying notes are an integral part of these financial statements.

SPAN, INCORPORATEDSTATEMENT OF CASH FLOWS
YEAR ENDED SEPTEMBER 30, 2017

Cash Flows From Operating Activities:

Change in net assets	\$ 353,973	
Adjustments to reconcile change in net assets to net cash provided by operating activities:		
Depreciation	395,783	
Increase in accounts receivable	(120,001)	
Increase in prepaid expenses	(61)	
Increase in accounts payable	<u>10,392</u>	
Net Cash Provided By Operating Activities		\$ 640,086

Cash Flows From Investing Activities:

Purchase of property and equipment	<u>(610,219)</u>	
Net Cash Used by Investing Activities		<u>(610,219)</u>

Net increase in cash and cash equivalents	29,867
---	--------

Cash and cash equivalents - September 30, 2016	<u>616,661</u>
--	----------------

Cash and cash equivalents - September 30, 2017	<u><u>\$ 646,528</u></u>
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Supplemental disclosure:

Interest paid during the year	\$ -
Income taxes paid during the year	\$ -

The accompanying notes are an integral part of these financial statements.

SPAN, INCORPORATEDSTATEMENT OF FUNCTIONAL EXPENSES
YEAR ENDED SEPTEMBER 30, 2017

	<u>Transportation</u>	<u>Senior Citizen Meal and Other Services</u>	<u>Management and General</u>	<u>Fundraising</u>	<u>Total</u>
Salaries and Wages	1,098,643	214,398	74,123	24,708	1,411,872
Payroll taxes	87,711	17,354	5,931	1,977	112,973
Workers compensation ins.	31,519	12,441	2,482	827	47,269
Health insurance	156,637	19,026	9,916	3,305	188,884
Retirement	12,783	4,283	963	321	18,350
Travel	712	2,302			3,014
Occupancy	19,922	7,862	1,096	366	29,246
Insurance	56,486	3,794	619	206	61,105
Telephone	26,085	7,090	1,310	436	34,921
Office expense	12,378	3,439	893	298	17,008
Conferences and meetings	3,359	211	297	99	3,966
Advertising	6,246	300			6,546
Professional fees	7,098	2,802	825	275	11,000
Computer & equipment expenses	17,887	2,157	791	264	21,099
Fundraising expenses				601	601
Fuel and oil	205,346				205,346
Licensing	8,019				8,019
Vehicle repairs & maintenance	150,447				150,447
Health testing	2,347				2,347
Uniforms	2,870				2,870
Miscellaneous	19,973	2,138	2,457		24,568
Cost of meals		431,778			431,778
Equipment maintenance/supplies		4,479			4,479
Total expenses before deprec.	<u>1,926,468</u>	<u>735,854</u>	<u>101,703</u>	<u>33,683</u>	<u>2,797,708</u>
Depreciation of property & equip	<u>384,334</u>	<u>10,939</u>	<u>383</u>	<u>127</u>	<u>395,783</u>
Total expenses	<u>2,310,802</u>	<u>746,793</u>	<u>102,086</u>	<u>33,810</u>	<u>3,193,491</u>

The accompanying notes are an integral part of these financial statements.

SPAN, INCORPORATEDNOTES TO THE FINANCIAL STATEMENTS
SEPTEMBER 30, 2017

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**A. Nature of Activities**

SPAN, Incorporated (SPAN) is a not-for-profit agency established to provide transportation, meals and other services to senior citizens and others within the community.

B. Financial Statement Presentation

The accompanying financial statements have been prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States. Net assets and revenues, expenses, gains, and losses are classified based on the existence or absence of donor-imposed restrictions. Accordingly, net assets of the Organization and changes therein are classified and reported as follows:

Unrestricted net assets - Net assets that are not subject to donor-imposed stipulations.

Temporarily restricted net assets - Net assets subject to donor-imposed stipulations that may or will be met, either by actions of the Organization and/or the passage of time. When a restriction expires, temporarily restricted net assets are reclassified to unrestricted net assets and reported in the statement of activities as net assets released from restrictions.

C. Description of Programs

Transportation - SPAN provides transportation programs for citizens throughout Denton County. Programs include demand response transportation in Denton County for senior citizens, persons with disabilities, and the general public. Funding for these programs is provided through Federal and State transportation grants and contracts; fares and donations received from riders; and local public and private support.

Senior Citizen Meals and Other Services - Daily (Monday through Friday) hot meals are served to senior citizens at thirteen sites throughout Denton County. The program also includes home delivered meals to qualifying home-bound senior citizens. Funding for the meal programs is provided by Federal and State aging grants, donations from meal recipients and local public and private support. SPAN also provides a variety of programs for senior citizens including information and referral and recreational activities at senior centers.

SPAN, INCORPORATEDNOTES TO THE FINANCIAL STATEMENTS
SEPTEMBER 30, 2017

NOTE 1 – SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**D. Contributions**

Contributions, including unconditional promises to give, are recorded as made. All contributions are available for unrestricted use unless specifically restricted by the donor. Conditional promises to give are recognized when the conditions on which they depend are substantially met. Unconditional promises to give due in the next year are recorded at their net realizable value. Unconditional promises to give due in subsequent years are reported at the present value of their net realizable value, using risk-free interest rates applicable to the years in which the promises are to be received.

E. Property and Equipment

Expenditures for property and equipment are stated at cost. Donated property and equipment is recorded at its estimated fair market value at the date of donation.

Depreciation of property and equipment is calculated on the straight-line method over the following estimated useful lives:

Buildings	31.5 years
Vehicles	4-10 years
Equipment	4-8 years
Furniture and fixtures	7-10 years

F. Contributed Services and Materials

SPAN receives donated services from a variety of unpaid volunteers assisting SPAN in its programs. No amounts have been recognized in the accompanying statement of activities because the criteria for recognition of such volunteer effort under SFAS No. 116 have not been satisfied.

G. Income Taxes

SPAN is exempt from Federal income taxes under Internal Revenue Code Section 501(c)(3) and therefore has made no provision for Federal income taxes. In addition, SPAN has been determined by the Internal Revenue Service not to be a "private foundation" within the meaning of Section 509(a) of the Internal Revenue Code. There was no unrelated business income.

H. Functional Allocation of Expenses

The costs of providing SPAN's various programs and supporting services have been summarized on a functional basis in the statement of activities. Accordingly, certain costs have been allocated among the programs and supporting services benefited.

SPAN, INCORPORATEDNOTES TO THE FINANCIAL STATEMENTS
SEPTEMBER 30, 2017

NOTE 1 – SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**I. Cash Equivalents**

For purposes of the statement of cash flows, SPAN considers all cash and other highly liquid investments with initial maturities of three months or less to be cash equivalents.

J. Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

NOTE 2 – CONCENTRATIONS OF RISK

SPAN maintains several bank accounts at two banks and one credit union. Accounts at an institution are insured by the Federal Deposit Insurance Corporation (FDIC) up to \$250,000. Cash held at Wells Fargo Bank exceeded Federally insured limits at certain times during the year. At September 30, 2017, cash balances at Wells Fargo Bank were \$315,405.

SPAN receives a significant portion of its revenues under transportation grants from Texas Department of Transportation (TXDOT) and North Central Texas Council of Governments (NCTCOG). Revenue from these grants were \$1,033,432 from TXDOT and \$897,952 from NCTCOG during the year ended September 30, 2017.

SPAN also received \$505,024 in aging and transportation grants from the Area Agency on Aging. — — — — —

NOTE 3 – RETIREMENT PLAN

SPAN sponsors a retirement plan for its employees. The plan is a salary reduction retirement plan under Internal Revenue Code Section 403(b). Under the plan, employees can elect to contribute to the plan, up to Internal Revenue Code limits. SPAN matches eligible employee's contributions up to three percent of the employee's compensation. During the fiscal year ended September 30, 2017, SPAN contributed \$18,350 in matching contributions to the plan.

NOTE 4 – FAIR VALUE OF FINANCIAL INSTRUMENTS

The carrying amounts of cash, accounts receivable, accounts payable, and deferred revenue reported in the statement of financial position approximate fair values because of the short maturities of those instruments.

NOTE 5 – SUBSEQUENT EVENTS

Management has reviewed events subsequent to September 30, 2017 through February 19, 2018, which is the date the financial statements were available to be issued. No subsequent events were identified that were required to be recorded or disclosed in the financial statements.

FEDERAL AWARDS SECTION

Members:
AMERICAN INSTITUTE OF
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TEXAS SOCIETY OF CERTIFIED
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**HANKINS, EASTUP, DEATON,
TONN & SEAY**
A PROFESSIONAL CORPORATION
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**INDEPENDENT AUDITORS' REPORT ON INTERNAL CONTROL OVER
FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS
BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED
IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS**

To the Board of Directors
SPAN, Incorporated
Denton, Texas

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of SPAN, Incorporated (a nonprofit organization), which comprise the statement of financial position as of September 30, 2017, and the related statements of activities, functional expenses, and cash flows for the year then ended, and the related notes to the financial statements, and have issued our report thereon dated February 19, 2018.

Internal Control Over Financial Reporting

In planning and performing our audit of the financial statements, we considered SPAN, Incorporated's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of SPAN, Incorporated's internal control. Accordingly, we do not express an opinion on the effectiveness of the Organization's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether SPAN, Incorporated's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the organization's internal control or on compliance. This report is an integral part of the audit performed in accordance with *Government Auditing Standards* in considering the organization's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.



Hankins, Eastup, Deaton, Tonn & Seay, PC
Denton, Texas

February 19, 2018

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INDEPENDENT AUDITORS' REPORT ON COMPLIANCE FOR EACH MAJOR FEDERAL
PROGRAM AND REPORT ON INTERNAL CONTROL OVER COMPLIANCE IN
ACCORDANCE WITH THE UNIFORM GUIDANCE

To the Board of Directors
SPAN, Incorporated
Denton, Texas

Report on Compliance for Each Major Federal Program

We have audited SPAN, Incorporated's compliance with the types of compliance requirements described in the *OMB Compliance Supplement* that could have a direct and material effect on each of SPAN, Incorporated's major federal programs for the year ended September 30, 2017. SPAN, Incorporated's major federal programs are identified in the summary of auditor's results section of the accompanying schedule of finding and questioned costs.

Management's Responsibility

Management is responsible for compliance with the requirements of laws, regulations, contracts, and grants applicable to its federal programs.

Auditors' Responsibility

Our responsibility is to express an opinion on compliance for each of SPAN, Incorporated's major federal programs based on our audit of the types of compliance requirements referred to above. We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and the audit requirements of Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Costs Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Those standards and the Uniform Guidance require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements referred to above that could have a direct and material effect on a major federal program occurred. An audit includes examining, on a test basis, evidence about SPAN, Incorporated's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances.

We believe that our audit provides a reasonable basis for our opinion on compliance for each major federal program. However, our audit does not provide a legal determination of SPAN, Incorporated's compliance.

Opinion on Each Major Federal Program

In our opinion, SPAN, Incorporated complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and material effect on each of its major federal programs for the year ended September 30, 2017.

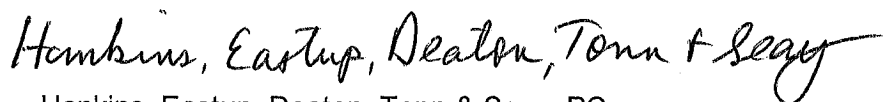
Report on Internal Control Over Compliance

Management of SPAN, Incorporated is responsible for establishing and maintaining effective internal control over compliance with the types of compliance requirements referred to above. In planning and performing our audit of compliance, we considered SPAN, Incorporated's internal control over compliance with the types of requirements that could have a direct and material effect on each major federal program to determine the auditing procedures that are appropriate in the circumstances for the purpose of expressing an opinion on compliance for each major federal program and to test and report on internal control over compliance in accordance with the Uniform Guidance, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of SPAN, Incorporated's internal control over compliance.

A deficiency in internal control over compliance exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. *A material weakness in internal control over compliance* is a deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis. *A significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Accordingly, this report is not suitable for any other purpose.



Hankins, Eastup, Deaton, Tonn & Seay, PC
Denton, Texas

February 19, 2018

SPAN, INCORPORATED

**SCHEDULE OF FINDINGS AND QUESTIONED COSTS
YEAR ENDED SEPTEMBER 30, 2017**

I. Summary of Auditors' Results**Financial Statements**

Type of auditors' report issued:	Unmodified
Internal control over financial reporting:	
Material weakness(es) identified?	No
Significant deficiencies identified that are not considered to be material weaknesses?	None reported.
Noncompliance material to financial statements noted?	No

Federal Awards

Internal control over major federal programs:	
Material weakness(es) identified?	No
Significant deficiencies identified that are not considered to be material weaknesses?	None reported.
Type of auditors' report issued on compliance for major federal programs:	Unmodified
Any audit findings disclosed which are required to be reported in accordance with 2 CFR 200.516(a)?	No
Identification of major programs:	
Name of Federal Program or Cluster:	CFDA Numbers
U.S. Department of Transportation:	
Federal Transit Cluster:	
Federal Transit – Formula Grants	20.507
Bus and Bus Facilities Formula Program	20.526
U.S. Department of Health and Human Services:	
Aging Cluster:	
Title III, Part B – Supporting Services & Senior Centers	93.044
Title III, Part C – Nutrition Services	93.045
Nutrition Services Incentive Program	93.053
Dollar threshold used for distinguishing between Type A and Type B federal programs?	\$750,000
Auditee qualified as low-risk auditee?	No

SPAN, INCORPORATED

SCHEDULE OF FINDINGS AND QUESTIONED COSTS (CONTINUED)
YEAR ENDED SEPTEMBER 30, 2017

II. Financial Statement Findings

None

III. Federal Awards Findings and Questioned Costs

None

SPAN, INCORPORATED

SCHEDULE OF STATUS OF PRIOR FINDINGS
YEAR ENDED SEPTEMBER 30, 2017

PROGRAM

DESCRIPTION

No findings were noted in the prior year.

SPAN, INCORPORATED

CORRECTIVE ACTION PLAN
YEAR ENDED SEPTEMBER 30, 2017

PROGRAM

DESCRIPTION

None required.

SPAN, INCORPORATEDSCHEDULE OF EXPENDITURES OF FEDERAL AWARDS
YEAR ENDED SEPTEMBER 30, 2017

Federal Grantor/Pass-Through Grantor/Program Title	Federal CFDA Number	Agency or Pass-Through Number	Federal Expenditures
<u>U.S. Department of Health and Human Services</u>			
Pass-through Texas Department on Aging: Contracted through the North Central Texas Council of Governments Area Agency on Aging:			
Special Programs for the Aging; Title III, Part D	93.043	N/A	<u>960</u>
Aging Cluster:			
Title III, Part B – Supporting Services and Senior Centers *	93.044	N/A	\$ 32,105
Title III, Part C – Nutrition Services *	93.045	N/A	372,241
Nutrition Services Incentive Program *	93.053	N/A	<u>77,413</u>
Subtotal – Aging Cluster			<u>481,759</u>
Total U.S. Department of Health and Human Services			<u>482,719</u>
<u>U.S. Department of Transportation</u>			
Pass-through Texas Department of Transportation:			
Public Transportation for Nonurbanized Areas	20.509	RPT-1602(18)013	481,139
	20.509	RPT-1702(33)032	73,914
	20.509	TGR-1701(18)043	<u>36,885</u>
Total CFDA 20.509			<u>591,938</u>
Enhanced Mobility of Seniors and Individuals with Disabilities	20.513	ED-1702(18)	<u>30,000</u>
Bus and Bus Facilities Formula Program **	20.526	VCR-1602(26)(18)	18,156
	20.526	BBF – 1702(26)(010)	<u>27,180</u>
Total CFDA 20.526			<u>45,336</u>

SPAN, INCORPORATED

SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS (CONTINUED)
YEAR ENDED SEPTEMBER 30, 2017

Federal Grantor/Pass-Through Grantor/Program Title	<u>Federal CFDA Number</u>	<u>Agency or Pass-Through Number</u>	<u>Federal Expenditures</u>
<u>U.S. Department of Transportation (continued)</u>			
National Infrastructure			
Investments	20.933	TGR – 1701(18)043	<u>28,756</u>
Subtotal			<u>696,030</u>
Pass-through North Central Texas			
Council of Governments:			
Federal Transit – Formula Grants			
(Urbanized Area Formula			
Program) **	20.507	N/A	376,066
Enhanced Mobility of Seniors			
And Individuals with Disabilities	20.513	N/A	59,775
Bus and Bus Facilities			
Formula Program**	20.526	N/A	<u>462,111</u>
Subtotal			<u>897,952</u>
Total U.S. Department of Transportation			<u>1,593,982</u>
Total Expenditures of Federal Awards			<u>\$ 2,076,701</u>

* Clustered Programs – Aging Cluster

** Clustered Programs – Federal Transit Cluster

SPAN, INCORPORATED**NOTES TO SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS
YEAR ENDED SEPTEMBER 30, 2017**

NOTE 1 – BASIS OF PRESENTATION

The accompanying schedule of expenditures of federal awards (the "Schedule") includes the federal grant activity of SPAN, Incorporated ("SPAN") under programs of the federal government for the year ended September 30, 2017. The information in this schedule is presented in accordance with the requirements of the Uniform Guidance. Because the schedule presents only a selected portion of the operations of SPAN, it is not intended to and does not present the financial position, changes in net assets or cash flows of SPAN.

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

SPAN accounts for all awards under federal programs using the accrual basis of accounting in accordance with accounting principles generally accepted in the United States. This basis of accounting recognizes revenue in the accounting period in which they are earned, and expenses in the accounting period in which the liability is incurred. Expenses are recognized following the cost principles contained in the Uniform Guidance, wherein certain types of expenses are not allowable.

Budget Report
For the Nine Months Ending Saturday, June 30, 2018

		<i>October</i>	<i>November</i>	<i>December</i>	<i>January</i>	<i>February</i>	<i>March</i>	<i>April</i>	<i>May</i>	<i>June</i>	<i>YTD</i>			
		<i>Actual</i>	<i>Actual</i>	<i>Actual</i>	<i>Actual</i>	<i>Actual</i>	<i>Actual</i>	<i>Actual</i>	<i>Actual</i>	<i>Actual</i>	<i>Actual</i>	<i>Budget</i>	<i>Variance</i>	<i>75%</i>
	Allocated Revenue and Expense													
	Revenue													
5010	CITY OF DENTON CONTRIBUTIONS	\$2,300.00	\$2,300.00	\$2,300.00	\$2,300.00	\$2,300.00	\$2,300.00	\$2,300.00	\$2,300.00	\$2,300.00	\$20,700.00	\$22,315.00	(\$1,615.00)	93%
5020	LEWISVILLE CONTRIBUTIONS	2,400.00	2,400.00	2,200.00	2,600.00	2,400.00	2,400.00	2,400.00	2,400.00	2,400.00	21,600.00	24,000.00	(2,400.00)	90%
5030	PILOT POINT CONTRIBUTIONS									2,500.00	2,500.00	2,500.00		100%
5035	CITY OF JUSTIN											3,000.00	(3,000.00)	
5040	SANGER CONTRIBUTIONS											18,500.00	(18,500.00)	
5045	ARGYLE CONTRIBUTIONS											500.00	(500.00)	
5050	THE COLONY CONTRIBUTIONS											8,125.00	(8,125.00)	
5055	LAKE DALLAS CONTRIBUTIONS								110.00		110.00	1,300.00	(1,190.00)	8%
5085	FLOWER MOUND CONTRIBUTIONS	4,000.00									4,000.00	5,000.00	(1,000.00)	80%
5065	TITLE IIIB - ICC			165.00	285.00	315.00	435.00	405.00	315.00	345.00	2,265.00	4,500.00	(2,235.00)	50%
5070	DENTON COUNTY CONTRIBUTION	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	67,500.00	85,000.00	(17,500.00)	79%
5090	UNITED WAY-DENTON CONTRIBUTION	3,683.33	5,287.39	3,683.33	3,683.33	3,683.33	3,683.33	4,466.67	6,602.37	4,166.67	38,939.75	55,000.00	(16,060.25)	71%
5100	UNITED WAY-NATIONAL									6.22	6.22		6.22	
5110	UNITED WAY-LEWISV. UNALLOCATED	10.99									10.99		10.99	
5170	INTEREST INCOME	86.86	8.86	7.93	8.85	7.58	423.47	10.73	10.94	147.30	712.52		712.52	
5175	FUNDRAISER REVENUE											5,000.00	(5,000.00)	
5177	BOARD AND COUNCIL GIVING		500.00	1,475.00			300.00				2,275.00	7,500.00	(5,225.00)	30%
5178	FUND DEVELOPMENT	20,000.00	10,094.40		15,000.00	500.00		2,060.00	4,509.10	5,000.00	57,163.50	70,000.00	(12,836.50)	82%
5180	MISCELLANEOUS		150.00	356.40			42.00				548.40	2,500.00	(1,951.60)	22%
5181	PET MEALS	150.00	125.00	4,341.00	800.00				1,300.00	100.00	6,816.00	3,000.00	3,816.00	227%
5187	EBAY SALES REVENUE			1,620.00				21,105.00			22,725.00	10,000.00	12,725.00	227%
5190	GENERAL DONATIONS, UNALLOCATED	2,880.80	12,994.91	11,131.20	6,330.40	3,829.21	3,558.78	2,679.67	5,188.71	3,896.20	52,489.88	65,000.00	(12,510.12)	81%
5335	E&D 5310					30,000.00					30,000.00	71,684.00	(41,684.00)	42%
5340	COUNTY TRANS. 5311	111,367.00	102,730.00	88,583.00	108,872.00	77,086.00	26,880.00	10,383.00			525,901.00	491,921.00	33,980.00	107%
5350	MEDICAID CONTRACT	23,330.68	16,649.87	16,934.72	17,266.95	13,207.34	14,570.79	13,399.16	15,802.28	18,074.58	149,236.37	320,000.00	(170,763.63)	47%
5357	TX VETERANS COMM	1,577.24	1,649.31		1,189.57	1,295.90	2,820.08	1,700.94	1,433.29	1,714.41	13,380.74	20,000.00	(6,619.26)	67%
5360	TITLE IIIB - TRANSPORTATION	2,180.94	2,164.64	2,172.94	2,172.94	2,172.94	2,172.94	2,184.42	2,161.46	2,172.94	19,556.16	25,000.00	(5,443.84)	78%
5361	5307 DISCRETIONARY FUNDS	35,541.43	28,279.73	26,850.00	158,956.05	29,016.65	111,572.22	86,030.64	84,834.28	77,550.36	638,631.36	650,000.00	(11,368.64)	98%
5365	BUS DONATIONS - COUNTY									15.00	15.00		15.00	
5370	FARES - COUNTY 5311	8,265.86	6,360.79	5,885.42	8,010.76	6,544.93	7,575.23	8,596.51	9,083.50	6,513.77	66,836.77	75,000.00	(8,163.23)	89%
5375	OTHER TRANSPORTATION SERVICES	18,853.44	19,779.50	16,845.92	19,613.40	20,252.20	21,608.94	21,169.20	20,380.48	25,020.54	183,523.62	250,000.00	(66,476.38)	73%
5410	TITLE IIIC1- CONGREGATE MEALS	13,186.81	13,182.75	13,184.73	13,184.73	13,184.73	13,184.73	13,185.33	13,184.13	13,184.73	118,662.67	125,542.00	(6,879.33)	95%
5440	MEAL DONATIONS -TITLE C1	1,351.82	1,217.25	1,036.50	1,083.25	1,190.40	1,190.25	1,253.00	1,054.75	926.59	10,303.81	17,000.00	(6,696.19)	61%
5450	TITLE III-C2 HOME DELIVERY	22,052.40	22,052.25	22,052.25	22,052.25	22,052.25	22,052.25	22,052.92	22,051.58	22,052.25	198,470.40	264,642.00	(66,171.60)	75%
5470	USDA ALLOWANCE - HOME DEL.							12,648.83			12,648.83	11,358.00	1,290.83	111%
5480	MEAL DONATIONS -TITLE C2	1,925.00	1,668.00	1,816.50	1,565.00	1,452.10	1,548.50	1,614.50	1,197.50	2,205.50	14,992.60	15,000.00	(7.40)	100%
5490	PURCHASED MEALS	15.00		5.00		30.00	30.00	5.00	10.00	20.00	115.00	200.00	(85.00)	58%
5520	DADS CBA/CCAD HD MEALS	6,877.44	7,730.19	7,609.50	7,008.75	7,311.06	6,974.64	7,179.57	6,402.33	7,091.80	64,185.28	90,000.00	(25,814.72)	71%
	Total Revenue	289,537.04	264,824.84	237,756.34	399,483.23	245,331.62	252,823.15	244,330.09	207,831.70	204,903.86	2,346,821.87	2,820,087.00	473,265.13	83%

Budget Report

For the Nine Months Ending Saturday, June 30, 2018

		<i>October</i>	<i>November</i>	<i>December</i>	<i>January</i>	<i>February</i>	<i>March</i>	<i>April</i>	<i>May</i>	<i>June</i>	<i>YTD</i>			<i>75%</i>
		<i>Actual</i>	<i>Actual</i>	<i>Actual</i>	<i>Actual</i>	<i>Actual</i>	<i>Actual</i>	<i>Actual</i>	<i>Actual</i>	<i>Actual</i>	<i>Actual</i>	<i>Budget</i>	<i>Variance</i>	<i>%</i>
	General Expenses													
6005	DUES AND MEMBERSHIPS	225.00			100.00		15.00			550.00	890.00	1,000.00	110.00	89%
6010	MILEAGE	264.51	119.70	54.45	123.75	97.20	241.16	174.60	261.45	198.45	1,535.27	5,000.00	3,464.73	31%
6015	JANITORIAL SERVICES	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	1,800.00	3,200.00	1,400.00	56%
6020	TELEPHONE - GENERAL	3,648.61	3,627.10	3,622.54	3,360.46	3,730.41	4,207.50	3,575.07	3,829.49	2,661.30	32,262.48	30,000.00	(2,262.48)	108%
6025	UTILITIES	1,219.52	1,036.67	1,032.48	2,186.33	265.18	128.40	2,192.07	1,353.42	1,516.92	10,930.99	14,000.00	3,069.01	78%
6030	BUILDING MAINTENANCE	552.66	552.66	499.66	475.00	557.89	557.89	1,166.29	1,227.89	562.89	6,152.83	5,000.00	(1,152.83)	123%
6035	GROUNDS MAINTENANCE	400.00	400.00	400.00	400.00	400.00	504.90	400.00	1,100.00	755.00	4,759.90	6,000.00	1,240.10	79%
6040	FEES & PERMITS		5.00		15.00	34.45		10.00	50.00	5.00	119.45	500.00	380.55	24%
6045	LIABILITY INSURANCE	8,068.00	5,970.99			31.00				(100.00)	13,969.99	19,000.00	5,030.01	74%
6050	MEETINGS/CONFERENCES		448.03			139.71			210.98		798.72	5,000.00	4,201.28	16%
6052	TRAINING	60.00	57.00		210.00	375.94	15.00	285.00	252.00	195.00	1,449.94	3,000.00	1,550.06	48%
6055	POSTAGE	584.94	80.12	101.07	20.41	540.11	59.19	64.20	143.63	85.64	1,679.31	2,500.00	820.69	67%
6060	OFFICE SUPPLIES	345.38	592.76	475.12	740.21	848.43	326.31	388.45	619.94	750.21	5,086.81	8,000.00	2,913.19	64%
6065	OFFICE EQUIPMENT	(38.97)					205.63	155.86		629.54	952.06	2,000.00	1,047.94	48%
6070	PRINTING		88.00				417.10	141.00		79.98	726.08	1,500.00	773.92	48%
6075	OFFICE EQUIPMENT REPAIRS			1,397.00							1,397.00	1,000.00	(397.00)	140%
6080	COMPUTER CONSULTANTS			2,688.75							2,688.75	500.00	(2,188.75)	538%
6085	ADVERTISING & PROMOTION	1,185.00	1,314.00	9.74	719.00	1,028.00	768.00	537.00	396.40	678.60	6,635.74	7,500.00	864.26	88%
6090	LEGAL & ACCOUNTING						12,000.00				12,000.00	13,000.00	1,000.00	92%
6095	EQUIPMENT LEASING	121.10	121.10	552.40	121.10	121.10	570.83	121.10	121.10	620.00	2,469.83	3,000.00	530.17	82%
6105	COMPUTER EQUIPMENT		89.27								89.27	500.00	410.73	18%
6110	COMPUTER SOFTWARE	3,248.73	16.23	16.23	16.23	16.23	827.40	16.23	1,742.46	16.23	5,915.97	15,000.00	9,084.03	39%
6115	BANK SERVICE FEES	122.11	120.47	187.39	182.85	121.45	247.74	187.74	307.93	179.32	1,657.00	1,500.00	(157.00)	110%
6120	INTEREST & FINANCE CHARGES				48.73	49.04	75.00	21.57			194.34		(194.34)	
6150	GROUP MEDICAL	16,121.01	14,400.20	15,193.58	15,680.91	15,449.95	31,361.78	15,758.97	14,878.22	15,587.72	154,432.34	200,000.00	45,567.66	77%
6155	EMPLOYER SHARE OF RETIREMENT	3,572.24	1,354.54	1,772.37	1,478.68	1,542.29	(254.37)	4,014.81	1,411.66	1,385.98	16,278.20	22,000.00	5,721.80	74%
6190	FUNDRAISER EXPENSE		258.53	147.00	125.00	242.90					773.43	500.00	(273.43)	155%
6192	FUND DEVELOPMENT											1,000.00	1,000.00	
6195	MISC. (OTHER)	1,447.07	1,423.63	2,452.15	1,017.69	2,314.71	625.44	1,470.95	3,707.59	2,630.20	17,089.43	25,000.00	7,910.57	68%
	Total General Expense	41,346.91	32,276.00	30,801.93	27,221.35	28,105.99	53,099.90	30,880.91	31,814.16	29,187.98	304,735.13	396,200.00	91,464.87	77%
	Program Expenses													
6405	UNIFORMS	165.05	347.58	153.52	217.86	297.54	152.72	349.94	571.25	152.72	2,408.18	3,000.00	591.82	80%
6410	FUEL	18,049.93	17,236.28	14,879.44	17,620.59	17,256.39	18,838.59	17,386.81	22,905.67	24,775.06	168,948.76	200,000.00	31,051.24	84%
6415	PARTS	2,863.74	3,040.54	2,557.56	3,245.36	4,190.54	3,711.39	2,115.82	3,794.01	2,385.96	27,904.92	35,000.00	7,095.08	80%
6420	TIRES		872.10		697.68	2,077.20	6,976.80	3,837.24	1,744.20	3,829.24	20,034.46	30,000.00	9,965.54	67%
6425	OFF SITE REPAIRS	9,962.59	2,587.36	1,787.34	4,992.58	623.54	1,897.22	4,274.37	7,453.00	8,770.72	42,348.72	75,000.00	32,651.28	56%
6440	LICENSING	61.50	982.25	36.00	101.75	1,456.25	731.00	316.50	475.76	170.50	4,331.51	7,000.00	2,668.49	62%
6445	INSURANCE - VEHICLE	11,151.25	2,464.50		13,615.75			13,615.75	6,455.25		47,302.50	45,000.00	(2,302.50)	105%
6470	DRIVER DRUG SCREENING	222.94	151.77		303.54	876.96	338.65	364.63	1,110.30	374.05	3,742.84	2,500.00	(1,242.84)	150%
6475	INSURANCE CLAIMS EXPENSE NON-BUDGET	(3,994.50)	8,584.50	3,451.50					(10,416.28)	11,919.54	9,544.76		(9,544.76)	
6510	CATERED AND PURCHASED MEALS	34,971.36	33,982.05	29,249.25	45,758.19	34,494.72	34,528.36	42,748.80	35,011.35	32,386.06	323,130.14	420,000.00	96,869.86	77%
6545	FUEL-OIL-PARTS	125.17	117.54	157.97	203.50	97.63	101.44	93.55	130.99	109.71	1,137.50	5,000.00	3,862.50	23%
6550	PET MEALS		404.36								404.36	1,000.00	595.64	40%
	Total Program Expenses	73,579.03	70,770.83	52,272.58	86,756.80	61,370.77	67,276.17	85,103.41	69,235.50	84,873.56	651,238.65	823,500.00	172,261.35	79%

Budget Report

For the Nine Months Ending Saturday, June 30, 2018

		<i>October</i>	<i>November</i>	<i>December</i>	<i>January</i>	<i>February</i>	<i>March</i>	<i>April</i>	<i>May</i>	<i>June</i>	<i>YTD</i>			<i>75%</i>
		<i>Actual</i>	<i>Actual</i>	<i>Actual</i>	<i>Actual</i>	<i>Actual</i>	<i>Actual</i>	<i>Actual</i>	<i>Actual</i>	<i>Actual</i>	<i>Actual</i>	<i>Budget</i>	<i>Variance</i>	<i>%</i>
	Payroll Expense													
8000	GENERAL ADMINISTRATION	17,045.92	17,130.25	36,588.32	19,909.35	18,188.47	27,713.28	18,450.81	18,418.10	19,515.96	192,960.46	236,007.00	43,046.54	82%
8001	GENERAL ADMIN BENEFITS	1,314.14	1,318.66	2,801.68	1,674.39	1,486.46	2,185.25	1,429.43	1,417.70	1,524.74	15,152.45	18,345.00	3,192.55	83%
8200	TRANSPORTATION ADMIN	19,636.60	18,839.94	23,857.94	18,459.15	22,149.38	24,364.16	19,413.69	20,488.98	20,830.76	188,040.60	269,300.00	81,259.40	70%
8201	TRANSPORTATION BENEFITS	1,502.19	1,446.43	1,825.13	1,552.40	1,835.79	1,926.17	1,510.05	1,584.91	1,611.68	14,794.75	21,000.00	6,205.25	70%
8210	DRIVERS	51,626.60	53,215.88	52,681.26	53,482.06	56,748.69	76,911.46	50,560.48	52,652.12	53,110.76	500,989.31	674,565.00	173,575.69	74%
8211	DRIVER BENEFITS	3,978.12	4,101.87	4,061.44	4,497.87	4,772.58	6,468.19	4,193.81	4,279.10	4,283.77	40,636.75	53,254.00	12,617.25	76%
8220	SHOP ADMINISTRATION	3,525.74	3,525.74	4,600.74	3,525.74	3,525.74	5,288.61	3,525.74	3,525.74	3,525.74	34,569.53	45,835.00	11,265.47	75%
8221	SHOP ADMINISTRATION BENEFITS	269.72	269.71	351.96	296.52	296.52	419.39	269.71	269.73	269.71	2,712.97	3,556.00	843.03	76%
8230	MECHANICS	4,304.89	4,327.33	4,791.04	4,391.55	4,034.13	7,215.55	4,644.00	3,394.88	2,979.68	40,083.05	55,300.00	15,216.95	72%
8231	MECHANICS BENEFITS	340.71	342.61	375.50	369.34	339.27	587.30	366.85	259.71	227.94	3,209.23	4,330.00	1,120.77	74%
8400	SENIOR SERVICES ADMINISTRATION	3,673.42	3,673.42	3,748.42	3,794.17	3,692.74	9,510.13	3,673.42	3,673.42	3,673.42	39,112.56	47,755.00	8,642.44	82%
8401	SENIOR SERVICES BENEFITS	281.01	281.01	286.77	319.09	310.55	740.09	281.01	281.03	281.01	3,061.57	3,703.00	641.43	83%
8430	SR CTR MGRS	8,367.19	8,320.77	10,282.04	9,286.10	9,311.98	13,398.94	8,830.54	8,680.00	9,029.08	85,506.64	115,826.00	30,319.36	74%
8431	SR CENTER BENEFITS	705.65	701.70	868.54	769.28	783.15	1,126.88	742.64	729.99	759.31	7,187.14	9,611.00	2,423.86	75%
6125	WORKERS COMP INSURANCE	7,797.00	3,340.00	3,340.00	3,340.00	3,340.00	3,340.00	3,340.00	1,186.00	(23.88)	28,999.12	42,000.00	13,000.88	69%
	Total Payroll Expense	124,368.90	120,835.32	150,460.78	125,667.01	130,815.45	181,195.40	121,232.18	120,841.41	121,599.68	1,197,016.13	1,600,387.00	403,370.87	75%
	Total Program Expenses	73,579.03	70,770.83	52,272.58	86,756.80	61,370.77	67,276.17	85,103.41	69,235.50	84,873.56	651,238.65	823,500.00	172,261.35	79%
	Total General Expenses	41,346.91	32,276.00	30,801.93	27,221.35	28,105.99	53,099.90	30,880.91	31,814.16	29,187.98	304,735.13	396,200.00	91,464.87	77%
	Total Expenses	239,294.84	223,882.15	233,535.29	239,645.16	220,292.21	301,571.47	237,216.50	221,891.07	235,661.22	2,152,989.91	2,820,087.00	667,097.09	76%
	Capital Purchases				127,062.00						127,062.00		-127,062.00	
	Total Revenue	289,537.04	264,824.84	237,756.34	399,483.23	245,331.62	252,823.15	244,330.09	207,831.70	204,903.86	2,346,821.87	2,820,087.00	473,265.13	83%
	Net Contribution	50,242.20	40,942.69	4,221.05	32,776.07	25,039.41	(48,748.32)	7,113.59	(14,059.37)	(30,757.36)	66,769.96		(66,769.96)	



Span, Inc.

1800 Malone Street
Denton, TX 76201-1746



August 10, 2018

Mr. Chuck Jennings
Recreation Superintendent
Town of Flower Mound
2121 Cross Timbers Rd.
Flower Mound, TX 75028

Dear Mr. Jennings:

We are pleased to submit a proposal for fiscal year 2019 to again provide transportation service for Town of Flower Mound citizens who are elderly persons and Town citizens with verifiable disabilities that prevent them from driving. Eligible riders would be taken anywhere in the service area (Flower Mound, Lewisville and Highland Village) for the limited purposes of medical treatments, doctor and dentist appointments, employment, shopping for necessities, participation in the Town's Seniors In Motion senior citizen program, and to support programs for persons with special needs (capped at a maximum of four one-way rides per week)

The new rate proposed by SPAN is \$33.02 per one-way trip for fiscal year 2019. After deducting the \$5.00 fare that passengers pay, the Town of Flower Mound would subsidize \$28.02 for each ride. Furthermore, Span understands the program budget is \$48,672.00 for Fiscal Year 2019, which averages about 144 trips per month and we will notify Town staff if service levels begin trending over budget.

Please let me know if you have any questions regarding this proposal or require additional information. We will be happy to appear at the Town Council meeting when scheduled to answer questions or address any issues the Council or public may have.

Thanks again for the opportunity to continue to serve Flower Mound through our transportation services.

Best regards,

Michelle McMahon
Executive Director



TOWN COUNCIL AGENDA ITEM NO. 11

REGULAR ITEM

DATE: August 20, 2018

FROM: Brent Anderson, Senior Project Engineer

ITEM: Consider approval to award Bid No. 2018-73-B, for the Yucca Drive Reconstruction and Churchill Drive projects, to Tiseo Paving Company, for the amount of \$2,064,583.15; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On July 10, 2018, bids were received and opened Bid No. 2018-73-B, for the Yucca (Sagebrush Drive North to 700-ft south of FM 1171) and Churchill Drive (FM 2499 to Yucca) Roadway Improvement projects. Tiseo Paving Company submitted the lowest qualified bid of the four responding bidders, for a total base bid of \$2,064,583.15.

The project will reconstruct the existing narrow asphalt section of Yucca Drive to provide a standard 36-foot width, 2-lane concrete curb and gutter roadway. The Yucca improvements start just south of FM 1171 and extend to the south to tie into Sagebrush Drive. The project also includes the extension of existing Churchill Drive to the east to tie into Yucca Drive and associated public utility improvements.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

FISCAL IMPACT: \$2,064,583.15

Proposed Expenditure:	Account Number(s):
\$683,151.05	316-560-78056 Yucca Drive
\$400,000.00	308-220-70531 Churchill Drive
\$111,432.10	550-117-70531 Churchill Drive
\$870,000.00	630-960-78056 Yucca Drive

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 approve as presented in the agenda caption.



Town of Flower Mound Bid Tabulation

Bid No: 2018-73-B - Yucca Drive and Churchill Drive	
Bid Opening: 7/10/2018 at 10:00 AM	
Company	Total Bid
Pavecon Public Works, LP	\$ 2,394,253.16
FNH Construction LLC	\$ 2,354,247.00
Jackson Construction LTD	\$ 2,203,218.60
Tiseo Paving Company	\$ 2,064,583.15
**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:	Date: July 10, 2018
Sabrina Zadow Purchasing Manager Town of Flower Mound, Texas	

TOWN OF FLOWER MOUND
YUCCA DRIVE AND CHURCHILL DRIVE

Bid # 2018-73-B

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the "Agreement"), made and entered into this 20th day of August, 2018, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the "Town," and Tiseo Paving Company, 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:

YUCCA DRIVE AND CHURCHILL DRIVE,
Bid # 2018-73-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 Million, Sixty Four Thousand, Five Hundred Eighty Three Dollars and fifteen cents (\$2,064,583.15)** 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 Two Hundred and Eighty (280) calendar days, and final completion of Three Hundred and Twenty Five (325) 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 and Fifty Dollars (\$250.00) 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 Five Hundred Dollars (\$500.00) 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 20th day of August, 2018.

TOWN OF FLOWER MOUND

CONTRACTOR

Steve Dixon, MAYOR

_____ (Signature)

_____ (Printed Name)

_____ (Position)

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST: _____
Theresa Scott, TOWN SECRETARY

ATTEST: _____ (Signature)

_____ (Position)



TOWN COUNCIL AGENDA ITEM NO. 12

REGULAR ITEM

DATE: August 20, 2018

FROM: Jeff Garner, Director of Facilities Management

ITEM: Consider approval of Bid No. 2018-90-B, Flower Mound Police Department Phase 2 to Schmoldt Construction Inc., in the amount of \$1,525,000.00; and authorization for the Mayor to execute on behalf of the Town.

BACKGROUND INFORMATION: The Phase 2 project is comprised of an addition to the east side of the building, renovation of the Exterior Insulation and Finish System (EFIS) and additional secured parking for vehicles. The Phase 2 project included a base bid of \$1,470,000.00, for building addition and parking. Alternate 1 for \$7,000.00, includes the installation of a store front system, between the new addition and the fitness room. Alternate 2 for \$55,000.00, includes the renovation of the EFIS on the exterior of the building. Alternate 1 will be deleted from the project, and Alternate 2 will be included, as the EFIS system has not been sealed since it was placed on the building in 1999.

Of the seven responding bidders, Schmoldt Construction Inc., submitted the lowest qualifying bid. The Facilities Management Division, Police Department, and Oxley Williams Tharp Architects, verified references and found Schmoldt Construction Inc., qualified to perform the project.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

FISCAL IMPACT: \$1,525,000.00

Proposed Expenditure:	Account Number(s):
\$986,364.26	505-111-50101
\$538,635.74	533-111-50101

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 these documents.

ATTACHMENTS:

1. Bid Tabulation No. 2018-90-B
2. Construction Agreement

DRAFT MOTION: Move to approve as presented in the agenda caption.



**Town of Flower
Mound
Bid Tabulation**

Bid No: 2018-90-B - Flower Mound Police Department-Phase 2 Bid Opening: 7/25/2018 at 10:00 AM				
Company	Total Base Bid	Alternate #1	Alternate #2	Total
RKM General Contractors	\$ 1,761,000.00	\$ 18,800.00	\$ 85,000.00	\$ 1,864,800.00
308 Construction LLC	\$ 2,341,000.00	\$ 21,560.00	\$ 32,000.00	\$ 2,394,560.00
Walkcon LTD	\$ 1,647,800.00	\$ 6,250.00	\$ 26,000.00	\$ 1,680,050.00
ICI Construction, Inc	\$ 1,755,000.00	\$ 16,000.00	\$ 145,000.00	\$ 1,916,000.00
Steele & Freeman Inc	\$ 1,750,000.00	\$ 8,987.00	\$ 111,646.00	\$ 1,870,633.00
Mac's Construction Company, Inc	\$ 1,879,000.00	\$ 15,600.00	\$ 180,000.00	\$ 2,074,600.00
Schmoldt Construction, Inc	\$ 1,470,000.00	\$ 7,000.00	\$ 55,000.00	\$ 1,532,000.00
**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. ALL BIDDERS ATTENDED THE MANDATORY PRE-BID MEETING AND SITE TOUR - CONFIRMED BY S. ZADOW				
Certified By: Sabrina Zadow Purchasing Manager Town of Flower Mound, Texas				Date: July 24, 2018

TOWN OF FLOWER MOUND**Flower Mound Police Station-Phase 2****Bid # 2018-90-B****CONSTRUCTION AGREEMENT**

THIS CONSTRUCTION AGREEMENT (the "Agreement"), made and entered into this 20th Day of August 2018, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the "Town," and Schmoldt Construction, 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:

**Flower Mound Police Station-Phase 2,
Bid # 2018-90-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 **One Million Five Hundred Twenty-Five Dollars and no cents (\$1,525,000.00)** 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 two hundred seventy (270) calendar days, and final completion of three hundred (300) 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 per **Two Hundred Forty and Zero/One Hundredths Dollars (\$240.00)** 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

Steve Dixon, MAYOR

_____ (Signature)

_____ (Printed Name)

_____ (Position)

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST: _____
Theresa Scott, TOWN SECRETARY

ATTEST: _____ (Signature)

_____ (Position)

Town Council Future Agenda Items



SCHEDULED	9/4/2018	Presentation	KFMB Annual Update
		Consent	Consider approval of the purchase of uniforms in the annual estimated amount of \$55,800.00 from Galls LLC., through a City of Frisco contract.
		Consent	Consider acceptance of a land donation for open space. The 6.5 acre property is part of Lot 4X, Block A of the Timber Creek Medical Office Plaza, and generally located north of Central Park Drive and east of Long Prairie Road.
		Consent	Consider approval of the purchase of thirty sets of bunker gear from NAFECO, Inc. through BuyBoard Purchasing Contract No. 542-17 in the total amount of \$76,039.20; and authorization for the Mayor to approve same on behalf of the Town.
		Consent	Consider approval to award Bid No. 2018-36-B to Hawk Construction, LLC., with reduced quantities, for Screening Wall Repair Services, in the amount of \$75,000; and authorization for the Mayor to execute same on behalf of the Town.
		Regular	Consider a request for a Development Plan (DP18-0007 - Southgate, Phase Two) to amend the grading detail for a portion of Phase Two residential. The property is generally located north of Long Prairie Road and west of Gerault Road.(Planning and Zoning recommended by a vote of to at its August 27, 2018, meeting.)
		Regular	Consider approval of a resolution to adopt the Denton County Greenbelt Plan.
		Regular	Consider approval of a Construction Agreement with Atkins Brothers Equipment Co. Inc., for the High Road Water Line Replacement Phase I project, in the amount of \$1,073,373.50; and authorization for the Mayor to execute same on behalf of the Town.
		Regular	Public Hearing to consider a tax rate of \$0.4390 per \$100 assessed valuation.
	9/17/2018	Presentation	Recognition of the 2018 Food Service Award of Excellence winners and National Food Safety Month
		Consent	Consider approval of a resolution amending the financial policies of the Town of Flower Mound.
		Consent	FM 1171 @ FM 2499 Eastbound Right Turn Lane Change Order No.3 and Final Acceptance.
		Consent	Consider approval of a resolution adopting an Investment Policy for funds for the Town of Flower Mound as required annually by the Public Funds Investment Act.
		Consent	Freeman Road 12-Inch Water Line Development Agreement.

SCHEDULED	9/17/2018	Consent	High Road Water Line Replacement Phase I - Testing Award.
		Consent	Heritage Park Phase IV Change Order 2.
		Consent	Bakers Branch Interceptor Phase II - Construction Award.
		Consent	FM 2499 @ College Drive Signal - Change Order 1 and Final Acceptance.
		Consent	FM 2499 at Gerault Corp Permit PSA.
		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 \$0.439 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	BOARD AND COMMISSION INTERVIEWS
		Work Session	Discuss Lakeside Reuse Master Plan
	10/1/2018	Presentation	Special Recognition of German Exchange Students
		Consent	Update Pavement Markings Contract with Stripe A Zone
		Consent	WWTP Phase IV CO & Final Acceptance.
		Consent	Consider approval of the Professional Services Agreement with Mesa Design Associates, Inc., for the design services associated with the Canyon Falls Park project, in the amount of \$146,000.00; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Old Gerault Road 12-Inch Water Line Development Agreement.

SCHEDULED	10/1/2018	Consent	Consider approval of an agreement with Axon Enterprise, Inc., to purchase body worn camera products; and authorization for the Mayor to execute same on behalf of the Town
		Consent	US 377 @ Canyon Falls Traffic Signal Construction Award.
		Consent	Rheudasil Park Improvements Design Award.
		Regular	Consider approval of a Cultural Arts Master Plan for the Town
	10/15/2018	Consent	FM 2499 Roadway, Traffic Signal & Drainage Improvements - CO 2 and Final Acceptance.
	11/5/2018	Consent	Central Fire Station Phase II Construction Award.
		Consent	Flower Mound Storage Warehouse - Construction Award.
	11/19/2018	Consent	Fire Station #7 Testing Award.
		Consent	Fire Station #7 Construction Award
	12/17/2018	Consent	Library Expansion Construction Award (GMP).
		Consent	Library Expansion Testing Award.