

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

10/5/2020

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 Jody Smith Hall

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. PUBLIC COMMENT

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

- 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.

E. PRESENTATIONS

1. Presentation and discussion of the Flower Mound Development Process Review by Matrix Consulting.

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. 2020 Planning Innovator Award

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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 joint work session with the Planning & Zoning Commission to discuss Master Plan infill locations is scheduled for Thursday, October 15.
2. A regular meeting is scheduled for Monday, October 19.
3. Confirm Town Council availability for December 21, 2020, meeting.

J. CONSENT ITEMS

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

1. Minutes 9/21- 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 on September 21, 2020.
2. Cityworks License Agreement purchase- Consider approval to the purchase of Cityworks custom ELA licensing in the amount of \$48,000.00.
3. Firefighter Uniforms- Consider approval of the purchase of Firefighter uniforms in the amount of \$75,000.00 from Gall's LLC through the City of Frisco Cooperative Bid No. 1905-082 (TOFM No. 2019-168-I).
4. Medical Supplies- Consider approval of the purchase of emergency medical supplies and pharmaceuticals from Bound Tree Medical LLC, through the City of Cedar Hill Contract in the amount of \$120,000.00.
5. Parks Lightning Detection Replacements- Consider approval of the purchase and installation of lightning detection systems at various athletic complexes, for the Lightning Detection System Replacements project, from Earth Networks in the amount of \$56,400.00.
6. Garden Ridge Water Ph II Const Award- Consider approval of a Construction Agreement with Muniz Construction, Inc., for the Garden Ridge Boulevard Water Line Phase II project, in the amount of \$822,345.00; and authorization for the Mayor to execute same on behalf of the Town.

K. REGULAR ITEMS

7. Grant Resolution- Public Hearing to consider approval of a resolution authorizing the application of a grant proposal to the Texas Parks and Wildlife Department, for funding assistance for the development of Peters Colony Memorial Park; and authorization for the Mayor to execute same on behalf of the Town.

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8. Gibson Grant Construction Award- Consider approval of the Guaranteed Maximum Price (GMP) for the construction of the Gibson Grant Log Cabin Restoration Project with Phoenix I Restoration and Construction, Ltd., in the amount of \$1,363,507.00; and authorization for the Mayor to execute the same on behalf of the Town.
9. Master Plan Impact Fee Update-Landuse- Presentation of land use assumptions as they relate to the ongoing Master Plan and Impact Fee update projects, and opportunity for the Council to ask questions and provide input.

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, 551.074, and 551.087 for consultation with attorney, and to discuss matters relating to real property, personnel, and economic development negotiations, as follows:

- a. Consultation with Attorney.

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

- b. Discuss and consider purchase, exchange, lease or value of real property for parks, public rights-of-way, cultural arts center, and/or other municipal purposes and all matters incident and related thereto.
- c. Discuss and consider economic development incentives, including retail centers, corporate relocation/expansion/retention, senior housing, hospitality projects, and performance related to certain incentive agreements.
- d. Discuss and consider the recruitment process for the Town Manager, and all matters incident and related thereto.

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: October 2, 2020, at 12:00 p.m., at least 72 hours prior to the scheduled time of said meeting.

Theresa Scott, Town Secretary

The Flower Mound Town Hall and Jody Smith Hall 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: October 5, 2020

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 September 21, 2020.

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 held on September 21, 2020.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

Proposed Expenditure/(Revenue):

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.

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 21ST DAY OF SEPTEMBER 2020, 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
Sandeep Sharma	Mayor Pro Tem
Claudio Forest	Deputy Mayor Pro Tem
Jim Pierson	Councilmember Place 1
Ben Bumgarner	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
Debra Wallace	Interim & Deputy Town Manager/CFO
Tommy Dalton	Assistant Town Manager
Lexin Murphy	Director of Planning Services
Tiffany Bruce	Executive Director of Public Works
Kay Wilkinson	Budget Manager
Andrea Roy	Director of Economic Development
Eric Greaser	Fire Chief

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 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.	David Johnson, 3617 San Paula Dr	Public comments
2.	Ginger Simonson, 3104 Native Oak Dr	Veterans Committee
3.	Claire Schroeder-Brown, 1721 Ingleside Dr	Veterans Committee
4.	Doug Brown, 1721 Ingleside Dr	Veterans Committee
5.	Katie Mayer, 3612 Burlington Dr With donated time from: Nancy Kleckner, 2608 Wisdom Creek Dr	Tennis Center

6.	Rebecca Stanley, 3900 Edna Valley Ct*	Tennis Center
7.	Tonya Balusek, 3705 Hillsdale Dr*	Tennis Center

*Submitted a speaker card in support of a tennis center; however, didn't wish to speak.

E. ANNOUNCEMENTS

Deputy Mayor Pro Tem Forest and Mayor Pro Tem Sharma announced that early voting begins on October 13th.

Councilmember Engel announced that the Farmer's Market is back open.

Councilmember Pierson reported on a community conversation event that the City of Lewisville had regarding ways they could improve in the area of community diversity.

F. TOWN MANAGER'S REPORT

Ms. Wallace provided an update on the following projects or topics:

1. Capital improvement projects
 - Library expansion and renovation
2. Economic Development projects
 - Businesses that recently opened or coming soon
3. Financial updates
 - Sales tax revenue

G. FUTURE AGENDA ITEMS

1. There were no items requested for a future agenda.

H. COORDINATION OF CALENDARS

Mayor Dixon announced the following future meetings:

1. A regular meeting is scheduled for Monday, October 5.
2. A joint work session with the Planning & Zoning Commission to discuss Master Plan infill locations is scheduled for Thursday, October 15.

I. CONSENT ITEMS

1. 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 on September 8, 2020.
2. Consider approval of the minutes from a regular meeting of the Town Council held on September 15 and September 17, 2020.
3. Consider approval of a resolution adopting Atmos Energy Corp., Mid-Tex Division's rate tariffs that reflect the negotiated rate change pursuant to the Rate Review Mechanism process.

RESOLUTION NO. 14-20

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, APPROVING A NEGOTIATED SETTLEMENT BETWEEN THE ATMOS CITIES STEERING COMMITTEE ("ACSC") AND ATMOS ENERGY CORP., MID-TEX DIVISION REGARDING THE COMPANY'S 2020 RATE REVIEW MECHANISM FILING; DECLARING EXISTING RATES TO BE UNREASONABLE; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT; FINDING THE RATES TO BE SET BY THE ATTACHED SETTLEMENT TARIFFS TO BE JUST AND REASONABLE AND IN THE PUBLIC INTEREST; APPROVING AN ATTACHED EXHIBIT ESTABLISHING A BENCHMARK FOR PENSIONS AND RETIREE MEDICAL BENEFITS; APPROVING AN ATTACHED EXHIBIT REGARDING AMORTIZATION OF REGULATORY LIABILITY; REQUIRING THE COMPANY TO REIMBURSE ACSC'S REASONABLE RATEMAKING EXPENSES; DETERMINING THAT THIS RESOLUTION WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; ADOPTING A SAVINGS CLAUSE; DECLARING AN EFFECTIVE DATE; AND REQUIRING DELIVERY OF THIS RESOLUTION TO THE COMPANY AND THE ACSC'S LEGAL COUNSEL.

4. Consider approval of a resolution authorizing the Town to participate in Texas Coalition for Affordable Power, Inc.'s Strategic Hedging Program.

RESOLUTION NO. 15-20

RESOLUTION OF THE TOWN OF FLOWER MOUND TEXAS ADOPTING TCAP'S PROFESSIONAL SERVICES AGREEMENT AND GEXA ENERGY'S COMMERCIAL ELECTRIC SERVICE AGREEMENT FOR POWER TO BE PROVIDED ON AND AFTER JANUARY 1, 2023.

5. Consider approval of purchasing additional licenses with TimeClock Plus.
6. 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.

RESOLUTION NO. 16-20

A RESOLUTION BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS ("TOWN"), ADOPTING AN INVESTMENT POLICY FOR FUNDS FOR THE TOWN AS REQUIRED ANNUALLY BY THE PUBLIC FUNDS INVESTMENT ACT; AND PROVIDING AN EFFECTIVE DATE.

7. Consider approval of an ordinance amending Appendix A of the Code of Ordinances by amending the charges for residential and non-residential water and sewer service; providing a severability clause; providing for publication; and providing an effective date.

ORDINANCE NO. 26-20

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING APPENDIX A, "FEE SCHEDULE," OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND BY AMENDING THE CHARGES CONTAINED THEREIN FOR RESIDENTIAL AND NON-RESIDENTIAL WATER AND SEWER SERVICE;

PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

8. Consider approval of a resolution amending the financial policies of the Town of Flower Mound.

RESOLUTION NO. 17-20

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, PROVIDING FOR THE ADOPTION OF AMENDED FINANCIAL POLICIES; AND PROVIDING AN EFFECTIVE DATE.

9. Consider approval of Amendment No. 1 to the Professional Services Agreement for the Rippey Road project with CP&Y, Inc., to provide additional drainage investigation and design services in the amount of \$38,140.00; and authorization for the Mayor to execute same on behalf of the Town.
10. Consider approval of Change Order No. 2 for the Wastewater Treatment Plant Ultraviolet System Upgrade project, amending the contract with Felix Construction in the amount of \$102,265.77; and authorization for the Mayor to execute same on behalf of the Town.
11. Consider approval of the purchase of one wastewater pump, at the wastewater treatment facility, from Xylem Water Solutions USA Inc., a sole source provider, in the amount of \$71,384.49.
12. Consider approval of a Professional Services Agreement with Alliance Geotechnical Group to provide construction materials engineering and testing, for the Blue Ridge Trail Reconstruction project, in the amount of \$28,997.50; and authorization for the Mayor to execute same on behalf of the Town.
13. Consider approval of Change Order No. 1 for the construction of the Forest Vista Drive Reconstruction Phase II (Morris to Chancellor) project, amending the contract with Pavecon Public Works, LP, to provide for an increase to the contract in the amount of \$25,221.35; and authorization for the Mayor to execute same on behalf of the Town.
14. Consider approval of a Professional Services Agreement with Plummer Associates, Inc., Inc. in the amount of \$25,000.00, to assist in securing Texas Pollution Discharge Elimination System (TPDES) permit renewal for the wastewater treatment plant; and authorization for the Mayor to execute same on behalf of the Town.

Deputy Mayor Pro Tem Forest moved to approve by consent Items 1 – 14, as presented in the agenda caption. Councilmember Bumgarner seconded the motion. Each item, as approved by consent, is restated above, and if applicable, the Ordinance or Resolution caption for each, for the record.

VOTE ON MOTION:

AYES: BUMGARNER, FOREST, SHARMA, ENGEL, PIERSON

NAYS: NONE

Motion passed

J. REGULAR ITEMS

Mayor Dixon opened items 15 – 17 at the same time.

15. Consider approval of an ordinance adopting the budget for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021, and making appropriations for each fund and department.
16. 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, 2020, and ending on September 30, 2021.
17. 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, 2020, and ending on September 30, 2021.

Staff Presentation

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

- Proposed budget overview
- Budget process
- 2021 Budget assumptions
- Budget timeline
- Timeline and next steps
- Financial goals
- Financial policy update
- Strategic goals
- Required budget and tax rate adoption language
- 2020 debt service and tax rate
- Changes since proposed budget published
- Compensation/benefits
- General fund
- Prior year budgets
- Utility fund
- Water/Wastewater rates
- Stormwater utility fund
- Special revenue funds
- Crime control and prevention district budget
- Fire control, prevention & emergency medical services district budget
- Capital improvement projects (streets, parks, water, wastewater, stormwater)
- Capital improvement program total

and she, Chief Greaser, Ms. Bruce, or Mr. Dalton, responded to the following questions or comments from Council:

- Clarification regarding the movement of funds for the memorial park
- Clarification regarding timing for the tennis center
- Are there opportunities for residents to purchase/donate benches
- What is the status of the joint fire training facility now that The Colony is out
- In relation to the 1171/Canyon Fall traffic signal, are future developments slated for Flower Mound or Northlake
- Who benefits the most for the proposed Garden Ridge signal
- Clarification if the traffic signal would be warranted given the traffic pattern

changes as a result of COVID

Councilmember Engel proposed removal of the two traffic signals (Garden Ridge/Forest Vista as well as 1171/Canyon Falls) be removed from the budget.

Councilmember Bumgarner proposed the bridge at Canyon Falls be removed from the CIP.

Item 15 (1 of 2)

1st motion

Deputy Mayor Pro Tem Forest moved to approve an ordinance adopting the budget for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021, and making appropriations for each fund and department, and to remove the traffic signal at FM 1171 at Canyon Falls to the following year CIP. Councilmember Pierson seconded the motion.

VOTE ON MOTION:

Motion failed

AYES: FOREST, PIERSON

NAYS: BUMGARNER, SHARMA, ENGEL

2nd motion

Councilmember Engel moved to approve an ordinance adopting the budget for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021, and making appropriations for each fund and department, with the removal of traffic signals at Canyon Falls and FM 1171 and also Garden Ridge at Forest Vista. Councilmember Bumgarner seconded the motion.

ORDINANCE NO. 27-20

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, ADOPTING AND APPROVING THE BUDGET FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2020, AND ENDING SEPTEMBER 30, 2021, AND MAKING APPROPRIATIONS FOR EACH FUND AND DEPARTMENT; PROVIDING FOR THE LEVYING AND COLLECTION OF A SUFFICIENT TAX TO PAY THE INTEREST ON SINKING FUND AND OTHER OBLIGATIONS; REPEALING CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

VOTE ON MOTION:

Motion passed

AYES: ENGEL, SHARMA, BUMGARNER

NAYS: PIERSON, FOREST

Item 15 (2 of 2)

Deputy Mayor Pro Tem Forest moved to ratify the property tax revenue increase reflected in the FY 2020-2021 budget. Mayor Pro Tem Sharma seconded the motion.

VOTE ON MOTION:

Motion passed

AYES: PIERSON, ENGEL, SHARMA, FOREST, BUMGARNER

NAYS: NONE

Item 16

Mayor Pro Tem Sharma moved that The Town Council, acting as the Board of Directors for the Fire Control, Prevention, and Emergency Medical Services District, move to approve 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, 2020, and ending on September 30, 2021. Councilmember Engel seconded the motion.

RESOLUTION NO. 18-20

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ACTING AS THE BOARD OF DIRECTORS OF THE TOWN OF FLOWER MOUND FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL SERVICES DISTRICT, ADOPTING AND APPROVING THE BUDGET FOR THE TOWN OF FLOWER MOUND FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL SERVICES DISTRICT FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2020, AND ENDING SEPTEMBER 30, 2021; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

VOTE ON MOTION:**AYES: BUMGARNER, FOREST, SHARMA, ENGEL, PIERSON****NAYS: NONE***Motion passed***Item 17**

Mayor Pro Tem Sharma moved to approve The Town Council, acting as the Board of Directors for the Crime Control and Prevention District, move to approve a resolution adopting the Town of Flower Mound Crime Control and Prevention District budget for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021. Deputy Mayor Pro Tem Forest seconded the motion.

RESOLUTION NO. 19-20

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ACTING AS THE BOARD OF DIRECTORS OF THE TOWN OF FLOWER MOUND CRIME CONTROL AND PREVENTION DISTRICT, ADOPTING AND APPROVING THE BUDGET FOR THE TOWN OF FLOWER MOUND CRIME CONTROL AND PREVENTION DISTRICT FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2020, AND ENDING SEPTEMBER 30, 2021; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

VOTE ON MOTION:**AYES: PIERSON, ENGEL, SHARMA, FOREST, BUMGARNER****NAYS: NONE***Motion passed*

18. Public Hearing to consider approval of an ordinance adopting the 2020 tax rolls and fixing and levying municipal ad valorem taxes for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021, and for each fiscal year thereafter until otherwise provided, at the rate of \$0.436500 per \$100 assessed valuation on all taxable property

within the corporate limits of the Town of Flower Mound as of January 1, 2020.

Mayor Dixon opened the Public Hearing at 7:34 p.m. No one spoke. Mayor Dixon closed the Public Hearing at 7:34 p.m.

Council Discussion

There was Council discussion regarding:

- Possibility of lowering the tax rate to .432

Ms. Wallace clarified that when Council approved the budget, they also approved the revenue.

Deputy Mayor Pro Tem Forest moved that the property tax rate be increased by the adoption of a tax rate of \$0.436500 per \$100 of assessed value, which is effectively a 2.34 percent increase in the tax rate; and move to approve an ordinance adopting the 2020 tax rolls and fixing and levying municipal ad valorem taxes for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021, and for each fiscal year thereafter until otherwise provided, at the rate of \$0.436500 per \$100 assessed valuation on all taxable property within the corporate limits of the Town of Flower Mound as of January 1, 2020. Councilmember Engel seconded the motion.

ORDINANCE NO. 28-20

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, FIXING AND LEVYING MUNICIPAL AD VALOREM TAXES FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2020, AND ENDING ON SEPTEMBER 30, 2021, AND FOR EACH FISCAL YEAR THEREAFTER UNTIL OTHERWISE PROVIDED, AT A RATE OF \$0.4365 PER ONE HUNDRED DOLLARS (\$100) ASSESSED VALUATION ON ALL TAXABLE PROPERTY WITHIN THE CORPORATE LIMITS OF THE TOWN AS OF JANUARY 1, 2020; DIRECTING THE ASSESSMENT THEREOF TO PROVIDE REVENUES FOR THE PAYMENT OF CURRENT EXPENSES AND TO PROVIDE AN INTEREST AND SINKING FUND ON ALL OUTSTANDING DEBTS OF THE TOWN; PROVIDING FOR DUE AND DELINQUENT DATES TOGETHER WITH PENALTIES AND INTEREST; PROVIDING FOR APPROVAL OF THE 2020 TAX ROLLS; REPEALING CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

VOTE ON MOTION:

Motion passed

AYES: FOREST, SHARMA, ENGEL, PIERSON

NAYS: BUMGARNER

19. Public Hearing to consider an ordinance amending the Land Development Regulations (LDR20-0001 – Economic Development Waiver Removal) by amending Chapter 98 entitled “Zoning,” of the Town’s Code of Ordinances, as well as the SMARTGrowth Implementation Manual, to remove the option for economic development waivers of either environmental or community character SMARTGrowth requirements within the Town of Flower Mound. (The SMARTGrowth Commission recommended approval by a vote of 8 to 0 at its September 14, 2020, meeting.) (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its September 14, 2020, meeting.)

Staff Presentation

Ms. Murphy gave a presentation identifying or noting:

- Previous discussion (background)
- Proposed updates
- Other ED References

and she, Ms. Roy, Mr. Dalton, or Mr. Meredith, responded to the following questions from Council:

- Clarification that economic development incentives will remain at the discretion of the Council
- Clarification regarding the exception language, and possibility of a super majority versus simply majority
- Clarification regarding the economic develop exemptions
- What are the traffic impact analysis requirements

Council Discussion

- How the item before Council is taking the economic development piece out of SMARTGrowth

Mayor Dixon opened the Public Hearing at 8:07 p.m. No one spoke. Mayor Dixon closed the Public Hearing at 8:07 p.m.

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

ORDINANCE NO. 29-20

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 98, "ZONING," OF THE TOWN'S CODE OF ORDINANCES, SECTION 98-33, "SMARTGROWTH IMPLEMENTATION MANUAL-AMENDMENTS," TO REMOVE REFERENCES TO OUTDATED EXHIBITS; AMENDING SECTION 98-140 "ECONOMIC DEVELOPMENT INCENTIVE POLICY," TO REMOVE REFERENCES TO PROJECT TYPES; AMENDING SECTION 93-148, "WATER IMPOUNDMENT PROTECTION," TO INCORPORATE AN EXCEPTION REQUEST; REMOVING IN ITS ENTIRETY SECTION 98-151, "WAIVER OF ENVIRONMENTAL QUALITY CRITERIA;" REMOVING IN ITS ENTIRETY SECTION 98-169, "WAIVER OF COMMUNITY CHARACTER CRITERIA;" AMENDING SMARTGROWTH ANALYSIS SECTION D, "ECONOMIC DEVELOPMENT," AND SMARTGROWTH ANALYSIS SECTION E, "ENVIRONMENTAL QUALITY," SUBSECTION 4, "WATER IMPOUNDMENT PROTECTION," AS SHOWN IN EXHIBIT A; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATION; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION:

AYES: PIERSON, ENGEL, SHARMA, FOREST, BUMGARNER
NAYS: NONE

Motion passed

20. Public Hearing to consider an ordinance amending Specific Use Permit No. 421 (SUP20-0006 - Justin Road Storage Center) to allow expansion of an existing mini-warehouse facility, with an exception for meritorious design and a waiver to the Architectural Standards of the Town's Urban Design Plan. The property is generally located south of Justin Road and west of Meadow View. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its September 14, 2020, meeting.)

Staff Presentation

Ms. Murphy gave a presentation identifying or noting:

- General and detailed location
- Land use and zoning
- Concept plan
- Waiver request
- Site photos
- Landscape plan
- Elevations

and she responded to the following questions from Council:

- When this was first platted out, why wasn't it stretched out for the whole area

Mayor Dixon opened the Public Hearing at 8:14 p.m. No one spoke. Mayor Dixon closed the Public Hearing at 8:14 p.m.

Administrative Note: A public comment card was submitted by Jon Stanley, 3900 Edna Valley Ct, Flower Mound; however, he was not available at the time of the public hearing. There was no indication of "for" or "against" on the card.

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

ORDINANCE NO. 30-20

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING ORDINANCE NO. 16-14 THAT GRANTED SPECIFIC USE PERMIT NO. 421 (SUP-421) TO PERMIT EXPANSION OF AN EXISTING MINIWAREHOUSE FACILITY, IN ACCORDANCE WITH SPECIFIC REQUIREMENTS STATED HEREIN AND EXHIBITS ATTACHED HERETO, ON CERTAIN PROPERTY DESCRIBED AS 5.5226 ACRES OF LAND AND BEING ALL OF LOTS 1R AND 2R, BLOCK A, OF THE UNIFIED ADDITION, AND ZONED INDUSTRIAL DISTRICT-1 (I-1); GRANTING WAIVERS AND EXCEPTIONS TO CERTAIN ARCHITECTURAL STANDARDS IN THE TOWN'S URBAN DESIGN PLAN; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION:

AYES: BUMGARNER, FOREST, SHARMA, ENGEL, PIERSON

NAYS: NONE

Motion passed

21. Public Hearing to consider a request for rezoning (Z20-0006 – Grace Park Residential) from Agricultural District (A) to Single-Family District-15 (SF-15). The property is generally located south of Cross Timbers Road and east of Regency Park Court. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its September 14, 2020, meeting.)

Staff Presentation

Ms. Murphy gave a presentation identifying or noting:

- General and detailed location
- Land use and zoning
- Zoning exhibit
- Site photos

And she responded to the following questions from Council:

- Clarification that it is currently zoned ag

Council Discussion

-

Mayor Dixon opened the Public Hearing at 8:20 p.m. No one spoke. Mayor Dixon closed the Public Hearing at 8:20 p.m.

Mayor Pro Tem Sharma moved to approve as presented and Councilmember Engel seconded the motion.

ORDINANCE NO. 31-20

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, "LAND DEVELOPMENT REGULATIONS," OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY CHANGING THE ZONING ON APPROXIMATELY 9.796 ACRES OF LAND SITUATED IN THE P. MALONE SURVEY, ABSTRACT NUMBER 836, FROM AGRICULTURAL DISTRICT (A) USES TO SINGLE FAMILY RESIDENTIAL DISTRICT-10 (SF-15) USES IN ACCORDANCE WITH THE TOWN'S MASTER PLAN AND SPECIFIC REQUIREMENTS AND EXHIBITS INCORPORATED HEREIN; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION:

Motion passed

AYES: PIERSON, ENGEL, SHARMA, FOREST, BUMGARNER

NAYS: NONE

22. Consider approval of a Construction Agreement with Fort Worth Civil Constructors, LLC, for the Lift Station Improvements and Decommissioning Phase II project, in the amount of \$1,293,798.00; and authorization for the Mayor to execute same on behalf of the Town.

Staff Presentation

Ms. Wallace provided background information regarding the item, and she, or Ms. Bruce, responded to the following questions from Council:

- Clarification regarding the improvements or actual work to be done

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

VOTE ON MOTION:

Motion passed

AYES: BUMGARNER, FOREST, SHARMA, ENGEL, PIERSON

NAYS: None

K. BOARDS/COMMISSIONS (Pre-Council Room)

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

For the Parks Board Mayor Pro Tem Sharma moved to reappoint:

Allen Pichon, Place 2

Richard Kenyon, Place 4

Mark Mayer, Place 6

Holly Royer, Place 10, Alternate

With terms beginning October 1, 2020 and ending on September 30, 2022. Councilmember Engel seconded the motion.

VOTE ON MOTION:

Motion passed

AYES: PIERSON, ENGEL, SHARMA, FOREST, BUMGARNER

NAYS: NONE

For the Environmental Conservation Commission, Councilmember Bumgarner moved to appoint:

Rich Murchek, Place 8, Alternate

With terms beginning October 1, 2020, and ending on September 30, 2022. Councilmember Engel seconded the motion.

VOTE ON MOTION:

Motion passed

AYES: PIERSON, ENGEL, SHARMA, FOREST, BUMGARNER

NAYS: NONE

23. Discuss and consider expanding the Veterans Liaison position to a committee, and with additional responsibilities.

Council Discussion

There was Council discussion regarding:

- What prompted the interest in expanding the Veterans Liaison position to a board
- Establish a small committee, led by Mr. Brown, and let them develop some criteria and scope to take the program to the next level in the interest of Flower Mound Veterans

There was Council consensus to formulate a task force comprised of Doug Brown (current Veterans Liaison) and his contacts, as well as those individuals that applied to serve as the Veterans Liaison, to come up with ideas, and present their recommendations to Council later.

24. Discuss and consider expanding the Veterans Liaison position to a committee, and with additional responsibilities.

Ms. Scott gave a presentation identifying or noting:

- Flower Mound students enrolled at the school districts outside of LISD

Council Discussion

There was Council discussion regarding:

- Interest in having this person provide a periodic report to Council (written or orally on some type of rotation)
- How their influence with the school district will be minimal
- There could be a benefit if they attend an ISD meetings and serve as an informational conduit for things that impact Flower Mound
- Possibility of getting someone that lives in the district to be the representative
- Have the people that expressed interest in the LISD Liaison position serve as a task force and come up with recommendations regarding what this person should do
- Past situation with a liaison where that person made a request indicating they were speaking on behalf of the Town, and it wasn't the true direction of Council
- Possibility of expanding the program to include special needs

There was Council consensus to formulate a task force comprised of individuals that applied for the LISD Liaison position, to come up with ideas and present their recommendations to Council later.

L./M. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 8:37 p.m. on September 21, 2020, 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 9:54 p.m. on September 21, 2020, to take action on the items as follows:

- a. Consultation with Attorney.

No action taken.

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

No action taken.

- c. Discuss the employment and recruitment process associated with the Town Manager, and all matters incident and related thereto.

No action taken.

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

- e. Annual review of Town Secretary.

No action taken.

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

For the Community Development Corporation Mayor Pro Tem Sharma moved to reappoint:

Mehul Desai, Director, Place 2

Michele Langenberg, Director, Place 4

With terms beginning January 1, 2021, and ending on December 31, 2022. Councilmember Bumgarner seconded the motion.

VOTE ON MOTION:

AYES: BUMGARNER, FOREST, SHARMA, ENGEL, PIERSON

NAYS: NONE

Motion passed

N. ADJOURN REGULAR MEETING

Mayor Dixon adjourned the meeting at 9:54 p.m. on Monday, September 21, 2020, 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: October 5, 2020

FROM: Gary Bertagnolli, Director of Information Technology

ITEM: Consider approval of the purchase of Cityworks custom ELA licensing in the amount of \$48,000.

BACKGROUND INFORMATION: The purpose of this request is to move the Town of Flower Mound from a per license Cityworks agreement to a Custom ELA that allows for unlimited licensing as well as the ability to use Cityworks mobile in the field. Currently, the Town has 100+ users operating 29 AMS licenses and 27 active Storeroom users operating 3 Storeroom licenses without the ability of using mobile capabilities. This is highly inefficient and subject to licensing restrictions from Cityworks.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: Potential licensing restrictions from Cityworks are possible going forward without this new agreement. Not being able to meet current or future needs, operational inefficiency which doubles the amount of staff time, and increased possibility of incorrect data in the Asset Management System. Without funding this request the Town would remain in a 2005 pricing structure and without enough licenses to support current or future use.

FISCAL IMPACT: \$48,000

Proposed Expenditure/(Revenue):	Account Number(s):
\$48,000	100-655-59110-5110

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

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Cityworks ELA quote
2. Cityworks License Agreement

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



Azteca Systems, LLC - Cityworks
 11075 S State St, Suite 24 | Sandy, UT 84070
 801-523-2751 | Fax # 801-523-3734

Quote Number Q-10007-3
 Created Date 9/25/2020
 Expiration Date 11/1/2020

Contact Information

Contact Name: Andrew Lupher
 Organization: Flower Mound (TX), Town of
 Contact Address: 2121 Cross Timbers Rd.
 Flower Mound, TX
 75028

Prepared By Name: Veronica Schindler
 Prepared By Phone: (801) 523-2751

Quote Lines

Product Name	Quantity/ Population	Net Unit Price
ELA - Server AMS STANDARD	1.00	\$48,000.00
TOTAL:		\$48,000.00

Notes

Year 1 Dollar Value	\$48,000.00	Year 1 Date Range	10/01/2020 - 09/30/2021
Year 2 Dollar Value	\$54,000.00	Year 2 Date Range	10/01/2021 - 09/30/2022
Year 3 Dollar Value	\$60,000.00	Year 3 Date Range	10/01/2022 - 09/30/2023

Quote Notes:

Quote upgrades current licensing to Standard AMS ELA.

Updated License:

Server AMS Standard Enterprise License Agreement (ELA), Includes Unlimited Quantities of the Identified Products:

Office

Respond

Mobile Native Apps (for iOS/Android)

--Includes the following Add-ons:

Storeroom

Equipment Checkout

Contracts

Cityworks for Excel

Cityworks Analytics for AMS

eURL (Enterprise URL)

Workload

Web Hooks

CCTV for PACP Interface

Pavement Management

Local Government Templates (LGT)

Use of Cityworks AMS Application Programming Interfaces (APIs) with commercially available Cityworks-centric applications that are licensed and maintained by authorized Cityworks partners

Annual fee herein is based on 50,001 - 100,000 population range

Terms and Conditions

Payment Terms

Payment due within 30 days

Authorized to Invoice 30 days prior to renewal.

All quotations are valid for ninety-days (90) from the date above, unless otherwise stated in this quotation form. All prices quoted are in USD, unless specifically provided otherwise, above. These prices and terms are valid only for items purchased for use and delivery within the United States.

Unless otherwise referenced, this quotation is for the Cityworks software products referenced above only. Pricing for implementation services (installation, configuration, training, etc.), or other software applications is provided separately and upon request.

The procurement, installation and administration of the Esri software utilized in conjunction with Cityworks will be the responsibility of the customer.

The procurement, installation and administration of the RDBMS utilized in conjunction with Cityworks will be the responsibility of the customer. Currently, Cityworks supports Oracle and SQL Server. The procurement, installation and administration of the infrastructure (hardware and networking) utilized in conjunction with Cityworks will be the responsibility of the customer.

This quotation information is confidential and proprietary and may not be copied or released other than for the express purpose of the current system selection and purchase. This information may not be given to outside parties or used for any other purpose without written consent from Azteca Systems, LLC.

Software Licensing

All Azteca Systems software offered in this quotation are commercial off-the-shelf (COTS) software developed at private expense, and is subject to the terms and conditions of the "Cityworks Software License Agreement" and any and all addendums or amendments thereto. A fully executed copy of the Software License Agreement and any addendum(s) is required before delivery and installation and usage of the software is subject to the terms of the current license agreement.

Delivery method is by way of download through Azteca Systems, LLC. customer support web portal.

Taxes

Prices quoted do not include any applicable state, sales, local, or use taxes unless so stated. In preparing your budget and/or Purchase Order, please allow for any applicable taxes, including, sales, state, local or use taxes as necessary. Azteca Systems reserves the right to collect any applicable sales, use or other taxes tax assessed by or as required by law. Azteca Systems reserves the right to add any applicable tax to the invoice, unless proof with the order is shown that your organization or entity is tax exempt or if it pays any applicable tax directly.

International Customers

These items are controlled by the U.S. government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations.

Your signature indicates your acceptance of this Quote, and that you have read and accepted the Terms and Conditions set forth above.

Accepted by:

Title

_____/_____/_____
Date



Azteca Systems, LLC, 11075 South State, Suite 24, Sandy, UT 84070

• TEL 801.523.2751 • FAX 801.523.3734 •

www.cityworks.com

CITYWORKS® LICENSE AND MAINTENANCE AGREEMENT

This Software License and Maintenance Agreement made by and between Azteca Systems, LLC ("Azteca Systems") a Delaware limited liability company, with a place of business at 11075 South State, Suite 24, Sandy, Utah 84070 USA and the **Town of Flower Mound, Texas**, using certain of Azteca Systems Licensed Products hereinafter referred to as "Licensee." This Agreement is effective immediately upon delivery of Licensed Products (the "Effective Date").

Azteca Systems Products are licensed under the terms and conditions of the Agreement. This agreement, when executed by the Licensee named above and Azteca Systems, as licensor of the Software, Online, Services, and Documentation licensed under the License Agreement, will supersede any previous Agreements including the License Agreement presented in the installation process requiring acceptance by electronic acknowledgement and will constitute a signed License Agreement.

This signed Agreement includes (i) this License and Maintenance Agreement, (ii) Addendum #1 – Product Licensing, (iii) Addendum #2 – Standard Maintenance and Support and (iv) Addendum #3 – Third Party Contractor Acknowledgment.

This signed Agreement may be executed in duplicate by the Parties. An executed Agreement, modification, amendment, or separate signature page shall constitute a duplicate if it is transmitted through electronic means, such as fax or email, and reflects the signing of the document by any Party. Duplicates are valid and binding even if an original paper document bearing each Party's original signature is not delivered.

ARTICLE 1—DEFINITIONS

1.1 Definitions. The terms used are defined as follows:

- a. "Agreement" means this Software License Agreement between Azteca Systems and Licensee, inclusive of all schedules, exhibits, attachments, addenda and other documents incorporated by reference.
- b. "Authorization Code(s)" means any key, authorization number, enablement code, login credential, activation code, token, account user name and password, or other mechanism required for use of a Product.
- c. "Authorized User" or "User" shall mean: (i) a direct user of the Licensed Products, including but not limited to Licensee's employees; (ii) Licensee's consultants who have agreed to maintain the Licensed Property in confidence and use it only for the benefit of Licensee, or (iii) members of the public gaining access to, and only limited use of, the Licensed Products via the Software's public web portal (if applicable). Other than limited use of the Products through the software's web portal, the public is not considered an authorized user.
- d. "Client Data" means the data provided or inputted by or on behalf of Licensee, including personally identifiable information, for use with the Software.
- e. "Covered Software" shall mean the particular Cityworks Software, scripts, interfaces and custom code identified in Addendum #1.
- f. "Deployment Server License" means a license that, in addition to providing staging server License rights, authorizes Licensee to install and use the Software for deployment in Licensee's internal use.
- g. "Testing Server License" means a license that authorizes Licensee to install and use the Software on a server in Licensee's internal use to provide testing License rights prior to deployment.
- h. "Documentation" means all user reference documentation that is delivered with the Software.
- i. "Internal Use" means use of the Licensed Products by employees of Licensee in Licensee's internal operations but does not include access of the Licensed Products by, or use of the Licensed Products in the provisions of services to, Licensee's clients or customers. Internal Use also includes use of the Licensed Products by contractors of Licensee, including contractors providing outsourcing or hosting services, as long as Licensee assumes full responsibility for the compliance with this Agreement in such use. Use of the Licensed Products (or any part thereof) for the benefit of others, whether by means of a software as a service offering, service bureau application, application service provider, outsourcing or other means of providing service to any third party shall not be considered Internal Use.
- j. "Licensed Products" or "Products" shall mean the portion of the Cityworks Software and the Documentation to which Licensee has purchased a License as identified in Addendum #1 – Product

Licensing, attached hereto. Licensed Products shall include any updates or upgrades to the Licensed Products that Azteca Systems may at its discretion deliver to Licensee. Products includes but is not limited to Software, Online Services, and Documentation licensed under the terms of this license Agreement.

- k. "Login" means a license that allows Licensee to permit a single authorized named end user to use the Software, Data, and Documentation installed on a server and accessed from a computer device.
- l. "Online Services" means any Internet-based system, including applications and associated APIs, hosted by Azteca Systems or its licensors, for storing, managing, publishing, and using Cityworks software and data, and other information.
- m. "Ordering Document(s)" means a sales quotation, purchase order, or other document identifying the Products that Licensee orders.
- n. "Preview" means any alpha, beta, or prerelease Product.
- o. "Sample(s)" means sample code, sample applications, add-ons, or sample extensions of Products.
- p. "Server" means each single instance of an operating system, whether physically installed on a computer or within a virtualized environment.
- q. "Software" or "Cityworks Software" means all or any portion of Azteca Systems proprietary software technology, excluding data, accessed or downloaded from an Azteca Systems (Cityworks) authorized website or delivered on any media in any format including backups, updates, upgrades, and service packs.
- r. "Standard Maintenance" or "Maintenance Addendum" shall mean Addendum #2 - Standard Software Maintenance & Support.
- s. "Term License" means a license or access provided for use of a Product for a limited time period ("Term") or on a subscription or maintenance basis as specified herein.

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ARTICLE 3—GRANT OF LICENSE

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- a. *Software.* Use and License for specific Software products are set forth in Addendum #1- Product Licensing Addendum, which is incorporated by reference.
- b. *Maintenance.* Maintenance terms are set forth in Section 9.11 below and in Addendum #2, - Standard Maintenance and Support which is incorporated by reference.
- c. *Third Party Contractor.* Terms of use for Third Party Contractor software usage (if applicable) are set forth in Addendum #3 – Third Party Contractor Acknowledgment, which is incorporated by reference.

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3.4 Delivery. Unless otherwise requested by Licensee, Azteca Systems shall provide an electronic link to make available to Licensee the Licensed Product by electronic download and a license key to activate the Licensed Product.

ARTICLE 4—SCOPE OF USE

4.1 Permitted Uses

- a. For Products delivered to Licensee, Licensee may:
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 2. Make archival copies and routine computer backups;
 3. Install and use a newer version of Software concurrently with the version to be replaced during a reasonable transition period not to exceed 6 months, provided that the deployment of either version does not exceed the Licensee's licensed quantity; thereafter, Licensee shall not use more Software in the aggregate than Licensee's total licensed quantity;
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- c. Act as a service bureau or Commercial ASP;
- d. Use Software, Data, or Documentation for a site or service and operate the site or service for profit or generate revenue through direct or indirect methods (e.g., advertising or by charging for access to the site or service);
- e. Redistribute Software, Data, or Online Services to third parties, in whole or in part, including, but not limited to, extensions, components, or APIs;
- f. Redistribute Authorization Codes;
- g. Reverse engineer, decompile, or disassemble Products;
- h. Make any attempt to circumvent the technological measure(s) that controls access to or use of Products;
- i. Upload or transmit content or otherwise use Products in violation of third-party rights, including

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- l. Unbundle or independently use the individual or component parts of Software or Online Services;
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ARTICLE 5—TERM AND TERMINATION

5.1. This License Agreement is effective upon date and signature of Licensee below. The initial term of this License Agreement will begin upon the dates set forth in Addendum #1 – Product Licensing and provided the fees are paid. This License agreement and its maintenance provisions may then be renewed annually by payment of the then current maintenance fees for the next annual maintenance period as set forth in Addendum #1 – Product Licensing.

5.2. Either party may terminate this License Agreement or any Product license for a material breach that is not cured within thirty (30) days of written notice to the breaching party, except that termination is immediate for a material breach that is impossible to cure.

5.3. Termination for Convenience: Either party may terminate this Agreement by giving the other party thirty (30) days' written notice prior to the end of the current Term Maintenance Period.

5.4. In the event that either funding from Licensee or other sources is withdrawn, reduced, or limited, or the authority of Licensee to perform any of its duties is withdrawn, reduced, or limited in any way after the Effective Date of this Agreement and prior to normal completion, the parties shall have the authority to exercise the Termination for Convenience option to terminate this Agreement in whole or in part. If a party to this Agreement chooses to terminate for convenience that party may do so by thirty (30) days' written notice to the other party.

5.5. Upon termination of the License and Maintenance Agreement, all Product licenses granted hereunder terminate as well. Upon termination of a License or the License and Maintenance Agreement, Licensee will (i) stop accessing and using affected Product(s); (ii) clear any client-side data cache derived from Online Services; and (iii) uninstall, remove, and destroy all copies of affected Product(s) in Licensee's possession or control, including any modified or merged portions thereof, in any form, and execute and deliver evidence of such actions to Azteca Systems.

5.6. If this Agreement is terminated for convenience, the Licensee is only liable for payment required by the terms of this Agreement for license, maintenance and support services rendered or products and software received and accepted prior to the effective date of termination.

5.7. If this Agreement is terminated under section 5.3 or 5.4 above, Licensee shall then return to Azteca Systems all of the Software, related modules, related updates, and any whole or partial copies, codes, modifications, and merged portions in any form. Azteca will then for no additional charge to Licensee and at Licensee's option either grant a license to the Licensee, for a period of one (1) year, which will allow Licensee to retain the ability to access records and data contained in the Software or allow Licensee to create digital copies of all files needed by the Licensee for the same period. If Licensee needs to retain access to records or data for a period longer than one (1) year, in order to transfer data to another system, Azteca will consider reasonable requests to extend beyond one (1) year.

5.8. The parties hereby agree that all provisions which operate to protect the intellectual rights of Azteca Systems shall remain in force should breach or termination of any kind occur.

ARTICLE 6—LIMITED WARRANTIES AND DISCLAIMERS

6.1 Limited Warranties. Except as otherwise provided in this Article 6, Azteca Systems warrants for a period of ninety (90) days from the date Azteca Systems issues the Authorization Code enabling use of Software and that the unmodified Software will substantially conform to the published Documentation under normal use and service.

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6.3 Internet Disclaimer. THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE INTERNET IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS AND THAT (i) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (ii) THE PARTIES HAVE NO CONTROL OVER THE INTERNET, AND (iii) NONE OF THE PARTIES SHALL BE LIABLE FOR DAMAGES UNDER ANY THEORY OF LAW RELATED TO THE PERFORMANCE OR DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF ONLINE SERVICES.

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6.5 Exclusive Remedy. Licensee's exclusive remedy and Azteca Systems' entire liability for breach of the limited warranties set forth in this Article 6 shall be limited, at Azteca Systems' sole discretion, to (i) replacement of any defective media; (ii) repair, correction, or a workaround for Software or Online Services subject to the Azteca Systems Maintenance Services and Support Addendum; or (iii) return of the license fees paid by Licensee for the current period, prorated for the current period, for Software or Online Services that do not meet Azteca Systems limited warranty, provided that Licensee uninstalls, removes, and destroys all copies of Software or Documentation; ceases using the Software or Online Services; and executes and delivers evidence of such actions to Azteca Systems.

6.6 If the performance of any obligation under this Agreement is prevented, restricted, or interfered with by reason of fire, flood, earthquake, explosion, or other casualty or accident; strikes or labor disputes; inability to procure delivery of parts, supplies, services, or power; war, threat of actual terrorist act, cyberattack, or other violence; any law order, proclamation, regulation, ordinance, or demand; or any condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, will be provided a temporary extension for a period of time as may be reasonably necessary to allow for such delay, prevention interference, or restriction.

ARTICLE 7—LIMITATION OF LIABILITY

7.1 Disclaimer of Certain Types of Liability. NEITHER PARTY TO THIS AGREEMENT SHALL BE LIABLE TO THE OTHER FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS, LOST SALES, OR BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL

DAMAGES ARISING OUT OF OR RELATED TO THIS LICENSE AND MAINTENANCE AGREEMENT OR USE OF PRODUCTS, HOWEVER CAUSED ON ANY THEORY OF LIABILITY, WHETHER OR THE PARTIES TO THIS AGREEMENT HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

7.2 General Limitation of Liability. EXCEPT AS PROVIDED IN ARTICLE 8—INFRINGEMENT INDEMNITY, THE TOTAL CUMULATIVE LIABILITY OF AZTECA SYSTEMS FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, MISREPRESENTATION, OR OTHERWISE, SHALL NOT EXCEED THE FEES ACTUALLY PAID BY LICENSEE DURING THE CURRENT MAINTENANCE AND SUPPORT PERIOD, FOR THE PRODUCTS THAT GIVE RISE TO THE CAUSE OF ACTION.

7.3 Applicability of Disclaimers and Limitations. Licensee agrees that the limitations of liability and disclaimers set forth in this License Agreement will apply regardless of whether Licensee has accepted Products or any other product or service delivered by Azteca Systems. The parties agree that Azteca Systems has set its fees and that the parties have entered into this License Agreement in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties, and that the same form an essential basis of the bargain between the parties. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

THE FOREGOING WARRANTIES, LIMITATIONS, AND EXCLUSIONS MAY NOT BE VALID IN SOME JURISDICTIONS AND APPLY ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW IN LICENSEE'S JURISDICTION. LICENSEE MAY HAVE ADDITIONAL RIGHTS UNDER LAW THAT MAY NOT BE WAIVED OR DISCLAIMED. AZTECA SYSTEMS DOES NOT SEEK TO LIMIT LICENSEE'S WARRANTY OR REMEDIES TO ANY EXTENT NOT PERMITTED BY LAW.

ARTICLE 8—INFRINGEMENT INDEMNITY

8.1 Azteca Systems shall defend, indemnify as described below, and hold Licensee harmless from and against any loss, liability, cost, or expense, including reasonable attorneys' fees, arising out of any claims, actions, or demands by a third party legally alleging that Licensee's licensed use of Software or Online Services infringe a US patent, copyright, or trademark, provided:

- a. Licensee promptly notifies Azteca Systems in writing of the claim;
- b. Licensee provides documents describing the allegations of infringement;
- c. Azteca Systems has sole control of the defense of any action and negotiation related to the defense or settlement of any claim; and
- d. Licensee reasonably cooperates in the defense of the claim at Azteca Systems' request and expense.

8.2 If Software or Online Services are found to infringe a US patent, copyright, or trademark, Azteca Systems, at its own expense, may either (i) obtain rights for Licensee to continue using the Software or Online Services or (ii) modify the allegedly infringing elements of Software or Online Services while maintaining substantially similar functionality. If neither alternative is commercially reasonable, the license shall terminate, and Licensee shall cease accessing infringing Online Services and shall uninstall and return to Azteca Systems any infringing item(s). Azteca Systems entire liability shall then be to indemnify Licensee pursuant to Section 8.1 and refund the unused portion of fees paid, prorated for the current maintenance and support period.

8.3 Azteca Systems shall have no obligation to defend Licensee or to pay any resultant costs, damages, or attorneys' fees for any claims or demands alleging direct or contributory infringement to the extent arising out of (i) the combination or integration of Software or Online Services with a product, process, or system not supplied by Azteca Systems or specified by Azteca Systems in its Documentation; (ii) material alteration of Software or Online Services by anyone other than Azteca Systems or its subcontractors; or (iii) use of Software or Online Services after modifications have been provided by Azteca Systems for avoiding infringement or use after a return is ordered by Azteca Systems under Section 8.2.

8.4 THE FOREGOING STATES THE ENTIRE OBLIGATION OF AZTECA SYSTEMS WITH RESPECT TO INFRINGEMENT OR ALLEGATION OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

ARTICLE 9—GENERAL PROVISIONS

9.1 Future Updates. New or updated Products and subscription renewals will be licensed under the then-current Azteca Systems license terms and conditions included with the deliverable Products.

9.2 Export Control Regulations. Licensee expressly acknowledges and agrees that Licensee shall not export, re-export, import, transfer, or release Products, in whole or in part, to (i) any US embargoed country; (ii) any person on the US Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the US Commerce Department's Denied Persons List, Entity List, or Unverified List; or (iv) any person or entity or into any country where such export, re-export, or import violates any US, local, or other applicable import/export control laws or regulations including, but not limited to, the terms of any import/export license or license exemption and any amendments and supplemental additions to those import/export laws as they may occur from time to time.

9.3 Taxes and Fees, Shipping Charges. License fees quoted to Licensee are exclusive of any and all taxes or fees, including, but not limited to, sales tax, use tax, value-added tax (VAT), customs, duties, or tariffs, and shipping and handling charges.

9.4 No Implied Waivers. The failure of either party to enforce any provision of this License Agreement shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

9.5 Severability. The parties agree that if any provision of this License Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make the intent of the language enforceable.

9.6 Successor and Assigns. Licensee shall not assign, sublicense, or transfer Licensee's rights or delegate Licensee's obligations under this License Agreement without Azteca Systems' prior written consent, which consent shall not be unreasonably withheld, and any attempt to do so without consent shall be void. This License Agreement shall be binding on the respective successors and assigns of the parties to this License Agreement. Notwithstanding, a government contractor under contract to the government to deliver Products may assign this License Agreement and Products acquired for delivery to its government customer upon written notice to Azteca Systems, provided the government customer assents to the terms of this License Agreement.

9.7 Survival of Terms. The provisions of Articles 2, 5, 6, 7, 8, and 9 of this License Agreement, and the provisions of section 4.1 of Addendum 2, shall survive the expiration or termination of this License and Maintenance Agreement.

9.8 Equitable Relief. The parties agree that any breach of this Agreement may cause irreparable damage and that, in the event of such breach, in addition to any and all remedies at law, the other party shall have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction without the requirement of posting a bond or proving injury as a condition for relief.

9.9 US Government Licensee. The Products are commercial items, developed at private expense, provided to Licensee under this License Agreement. If Licensee is a US government entity or US government contractor, Azteca Systems licenses Products to Licensee in accordance with this License Agreement under FAR Subparts 12.211/12.212 or DFARS Subpart 227.7202. Azteca Systems Data and Online Services are licensed under the same subpart 227.7202 policy as commercial computer software for acquisitions made under DFARS. The commercial license rights in this License Agreement strictly govern Licensee's use, reproduction, or disclosure of Products. Azteca Systems Software source code is unpublished, and all rights to Products are reserved by Azteca Systems and its licensors. Licensee may transfer Software to any licensed government procuring agency facility to which computer(s) on which Software is installed are transferred. If any court, arbitrator, or board holds that Licensee has greater rights to any portion of Products under applicable public procurement law, such rights shall extend only to the portions affected.

9.10 Governing Law, Disputes, and Arbitration. This License Agreement shall be governed by and construed in accordance with the laws of the State of Texas without reference to conflict of laws principles, except that US federal law shall govern in matters of intellectual property. Except as provided in Section 9.8, any dispute arising out of or relating to this License Agreement or the breach thereof shall be resolved in the following order:

- *Consultation and negotiation in good faith and a spirit of mutual cooperation;*
- Mediation, by a mutually acceptable mediator chosen by the parties, which cost is shared equally;
- If the matter cannot be settled through negotiation or mediation, then it shall be finally settled by the courts located in Denton County, Texas to which jurisdiction and venue shall lie. This License Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

9.11 Maintenance. Maintenance for qualifying Software consists of updates and other benefits, such as access to technical support, are provided during the Term of Use. Maintenance is specified as set forth in Addendum #2.

9.12 Feedback. Azteca Systems may freely use any feedback, suggestions, or requests for Product improvements that Licensee provides to Azteca Systems. Regardless of the source of any feedback or suggestions, any improvements to Cityworks Software or Products, and any related intellectual property, are owned by Azteca Systems.

9.13 Patents. Licensee may not seek, and may not permit any other authorized user to seek, a patent or similar right worldwide that is based on or incorporates any Azteca Systems technology or services. This express prohibition on patenting shall not apply to Licensee's software and technology except to the extent that Azteca Systems technology or services, or any portion thereof, are a part of any claim or preferred embodiment in a patent application or a similar application.

9.14 Entire Agreement. This License Agreement, including its incorporated documents, addendums, and exhibits constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous license agreements, understandings, and arrangements between the parties relating to such subject matter. Additional or conflicting terms set forth in any purchase orders, invoices, or other standard form documents exchanged during the ordering process, other than product descriptions, quantities, pricing, and delivery instructions, are void and of no effect. Any modification(s) or amendment(s) to this License Agreement must be in writing and signed by each party or as otherwise provided in Addendum #1.

IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be executed and made effective by their respective authorized representatives.

AZTECA SYSTEMS, LLC

By: _____

Name: Brian L. Haslam

Title: President - CEO

Date: 10/01/2020

TOWN OF FLOWER MOUND, TX – (LICENSEE)

By: _____

Name: _____

Title: _____

Date: _____

ADDENDUM #1**PRODUCT LICENSING****1. Licensed Software:**

Server AMS Standard Enterprise License Agreement (ELA), Includes Unlimited Quantities of the Identified Products:

Office

Respond

Mobile Native Apps (for iOS/Android)

--Includes the following Add-ons:

Storeroom

Equipment Checkout

Contracts

Cityworks for Excel

Cityworks Analytics for AMS

eURL (Enterprise URL)

Workload

Web Hooks

Local Government Templates (LGT)

Use of Cityworks AMS Application Programming Interfaces (APIs) with commercially available Cityworks-centric applications that are licensed and maintained by authorized Cityworks partners

Annual fee herein is based on a 50,001 - 100,000 population range

Additional Software Products & Licenses: Additional Software Products & licenses may be added to this License Agreement with either an acknowledgement of an official Cityworks quote signed by Licensee and additional fees, if necessary or applicable being paid, or receipt of Purchase Order from Licensee in response to an official Cityworks quote and additional fees, if applicable being paid.

2. Notices & Licensee Information: Until or unless otherwise, modified, all notices relevant to this agreement shall be sent to the following address:

Azteca Systems, LLC 11075 South State, Suite 24 Sandy, Utah 84070	Town of Flower Mound 2121 Cross Timbers Rd Flower Mound, TX 75028
	Attn: Andrew Lupher
	E-mail: Andrew.lupher@flower-mound.com
	Phone: 972.874.6057

3. Delivery Date/Effective Date of Software

MM/DD/YYYY

10/01/2020

4. Schedule of Payments and Fees under License and Maintenance Agreement

Support Period	Date From/To (mm/dd/yyyy)	Amount
Period 1	10/01/2020 – 09/30/2021	\$48,000.00
Period 2	10/01/2021 – 09/30/2022	\$54,000.00
Period 3	10/01/2022 – 09/30/2023	\$60,000.00

5. Additional

Updates to the above licensed software means a subsequent release of the program which Azteca generally makes available to its supported customers as part of the annual maintenance plan for which fees have been paid.

Occasionally, Azteca changes the name of its licensed software as part of its ongoing process to improve and increase the functionality of the software. In the event the software licensed or listed above changes in name, and/or improvements are made, Azteca will provide software with functionality that is similar to or with substantially the same or greater functionality of the originally licensed software, provided all current license fees have been paid.

Updates may not always include any release, option or future program that Azteca licenses separately. Updates are provided when available (as determined by Azteca). Azteca is under no obligation to develop any future programs or functionality. Any updates made available will be delivered to you, or made available to you for download. You shall be responsible for copying, downloading and installing the updates.

ADDENDUM #2

STANDARD MAINTENANCE AND SUPPORT

Standard Maintenance and Support Addendum provisions are between the Licensee and Azteca, Systems, LLC. Maintenance and Support are provided subject to the terms and conditions of the signed License Agreement and which is incorporated by reference.

1. **MAINTENANCE & SUPPORT:** Azteca Systems will provide maintenance and support services to Licensee for qualifying Products during the applicable Term for such Products provided the applicable license fees have been paid for the times and periods and amounts specified in Addendum #1. Maintenance and Support Services consist of the following benefits: Technical support, new version software, service packs, software upgrades, and software updates.

1.1. Azteca Systems will ensure upward compatibility for the Covered Software applications within a reasonable timeframe for minor Esri® ArcGIS and Cityworks supported database revisions. Azteca Systems will not ensure upward compatibility for Covered Software Applications when there are major Esri ArcGIS revisions (for example, from rev 10.x to rev 11.x), however Azteca Systems will make all reasonable efforts to provide upward compatibility.

1.2. Azteca Systems shall, without additional charge (except as allowed for in paragraph 3.4), during the term of this Agreement provide the following:

- (a) Software Updates. Software Updates includes Upgrades and service packs which are a collection of files that enhance or correct the Covered Software and which will be available for Licensee to download during the Maintenance Term/Period. Updates and Upgrades may also include new versions;
- (b) Provide Telephone Support, Email Support, Web Support, during normal business hours, 8 AM to 5 PM Mountain Time, Monday through Friday (excepting Holidays) and after hour emergency support line, and other benefits deemed appropriate by Azteca Systems (as set forth in Section 2 below); and
- (c) Implement and maintain a means of secure, remote direct network access (VPN, Web-access, etc.) to the Licensee's systems in order to perform thorough remote diagnostics.

1.3 The following items, among others, however, are specifically excluded as support services under this section of this Maintenance and Support:

- (a) Support for applying or installing upgrades and service packs;
- (b) Assistance with questions related to third party software, computer hardware, networking, and other similar items that are not provided by Azteca;
- (c) Assistance with computer operating system questions not directly pertinent to the Covered Software or Program Modifications;
- (d) Licensee Data debugging and/or correcting;
- (e) Services necessitated as a result of any cause other than authorized ordinary and proper use by the Licensee of the Covered Software, including but not limited to neglect, abuse, unauthorized modifications and/or unauthorized updates;
- (f) Consulting regarding customizations created to function with the Covered Software unless the customization is identified and listed as Covered Software in Addendum 1;
- (g) Assistance with applications which are not part of a standard life cycle, such as preview, beta, or candidate releases; and
- (h) Questions such as configuration, implementation and walk-throughs.

1.4 Support Periods are renewable unless terminated as provided in Section 3 below. The Maintenance Services consists of software and documentation updates and access to technical support via telephone, email, web-based (www.MyCityworks.com) and after hours support as set forth in Section 1 of this Addendum.

1.5. Technical support provided pursuant these maintenance provisions shall be performed in a professional and workmanlike manner. Azteca Systems will use commercially reasonable efforts to provide corrections to a technical issue or provide a workaround, but Azteca Systems cannot guarantee that all technical issues can be fixed or resolved.

1.6. **Authorized Callers.** Licensee may designate a limited number of authorized callers per software product listed in Addendum 1. Licensee may replace Authorized Callers at any time by notifying Azteca Systems Support services. Authorized callers may be designated in this Addendum #2 or by email. Azteca may limit the total number of authorized callers as may be reasonably necessary and may request an updated list of authorized callers.

1.7. **Cityworks Online Support and Customer Portal.** Azteca has created a self-help support website center for Authorized Callers to submit technical issues, chat with technical specialists, track technical support incidents through the 'MyCityworks' portal, and view technical articles, updated product documentation, blogs, links to forums, and technology announcements. The support and care website can be found at <http://www.mycityworks.com>.

2. PROCEDURES FOR ACCESSING SUPPORT:

2.1. All problem categories from routine, non-critical and critical that occur during normal business hours shall procedurally occur as follows: 1) Licensee's system administration staff as first line of support, and then 2) Azteca Systems staff as the second line of support. Azteca Systems will make all reasonable efforts to acknowledge all requests for support during normal business hours within 4 hours.

2.2. Prior to calling Azteca Systems for support services, the Licensee will first attempt to isolate any problems that occur within the Licensee's System. The Licensee will try to reduce the problem down to a specific software or system component. If it is determined that the problem is The Cityworks Software component, Licensee will first try and resolve the problem without Azteca Systems' involvement. If Licensee cannot resolve the problem or isolate the problem, Licensee may contact Azteca Systems via telephone, chat, or self-service portal. In each case, Cityworks technical support will log the information and provide, an answer to the question, a resolution to the problem, or submit a verified bug to the development group. Any support request that is not quickly resolved will be assigned to a technical support representative. Phone calls and chat requests are accepted during normal business hours as outlined on the Contact Support page of MyCityworks.com. Voicemails and requests submitted via the self-service portal outside of the posted business hours will be responded to on a first come, first served basis the next business day.

2.3. For critical problems that occur outside of Azteca Systems' normal business hours (8 AM to 5 PM, Mountain Time) and cannot be isolated and resolved by the Licensee, Azteca Systems will provide an after-hours phone number or pager number that will forward the call to the currently assigned Azteca Systems support representative. Azteca Systems will make all reasonable efforts to acknowledge and respond to the request for support for critical problems that occur outside of normal business hours within 4 hours of receipt of the call from a designated and authorized Licensee representative. Critical problems are defined as problems that cause several users to be unable to perform their duties. For routine and non-critical problems Licensee will submit support requests during normal business hours as outline in 2.2 above.

2.4. After a Technical Support Incident is logged, Azteca Systems will use commercially reasonable efforts to provide corrections to a technical issue or provide a work around. While it is Azteca's goal to provide an acceptable solution to technical issues, Azteca cannot guarantee that all technical issues can be fixed or resolved.

2.5. Azteca will use all reasonable efforts to utilize remote support-type services. However, in the event Licensee and Azteca Systems agree it becomes necessary for Azteca Systems to be on-site to provide support for the Covered Software, the parties by mutual negotiation, shall develop a separate agreement that will govern the terms and conditions for any on-site work or services.

3. CHARGES/FEEES

3.1. License, Maintenance and Support Services herein are included in the payment of annual fees as set forth in Addendum #1, and shall be paid by Licensee. The annual fee for each twelve (12) month period is set forth in Addendum #1, and shall be paid prior to the start for each License and Maintenance Period unless otherwise specified. The annual fee for successive Terms/Periods (twelve-month periods) commencing upon the anniversary of the first maintenance period, shall become due prior to the end of the preceding paid-up Maintenance Period.

3.2. Upon sixty (60) days written notice, the fee for the License and Maintenance Periods listed in Addendum 1 subsequent to year three (3) of the Maintenance Period, may be adjusted by Azteca Systems to reflect increases in costs of providing the services; provided, however, that the fee shall not increase by more than the CPI from the previous annual fee. Azteca Systems will notify Licensee of the new pricing no later than ninety (90) days prior to the annual renewal date of the year preceding the year for which such adjusted pricing applies.

3.3. **Maintenance Expiration.** Azteca Systems will send Licensee a notice of expiration approximately sixty (60) days before the Maintenance term expires. If Azteca Systems does not receive a purchase order prior to the expiration date, Azteca will send the notification to Licensee upon expiration of the Maintenance term. Azteca Systems will continue to provide technical support for an additional thirty (30) days, but Licensee will no longer receive Software updates released after the Maintenance term's expiration. If Licensee does not reinstate Maintenance within thirty (30) days of the expiration date, Licensee will no longer receive technical support. All other Maintenance benefits and Support services will end with the expiration of the Maintenance term.

3.4. **Reinstatement Fee for Lapsed Maintenance.** Azteca Systems will reinstate Maintenance if Licensee sends a purchase order or payment within thirty (30) days of the expiration date. If Licensee does not renew Maintenance within thirty (30) days of the expiration date but at a later date wants to reinstate Maintenance, Maintenance fees will include the Maintenance fees that Licensee would have paid since the expiration date.

4. MISCELLANEOUS

4.1. **Data Confidentiality Statement:** Azteca Systems will take reasonable measures to ensure that any Licensee data and/or confidential information provided to Azteca Systems is not inappropriately accessed or distributed to any third-party. Data provided to Azteca Systems by the Licensee may be loaded onto Azteca Systems servers or employee computers for the purpose of testing The Cityworks Software, database structure, or database values, and related Esri® software to resolve database or software performance issues, software enhancements and software defects. At no time will the data be distributed to individuals or organizations who are not Azteca Systems employees without first receiving written approval from Licensee. If requested by the Licensee, and once the testing has been completed, Azteca Systems will delete all data provided by the Licensee.

4.2. **No Implied Waivers:** No failure or delay by Azteca Systems or Licensee in enforcing any right or remedy under this Agreement shall be construed as a waiver of any future or other exercise of such right or remedy by Azteca Systems.

ADDENDUM #3**THIRD PARTY CONTRACTOR ACKNOWLEDGMENT**

If Licensee (**Town of Flower Mound, Texas**) engages any Third Party Contractor and desires to grant access to or permission to use the licensed software, the access may be granted subject to the following terms conditions and provisions:

1. Access and use of the Licensed Products by any third party is solely for Licensee's benefit;
2. The Third Party Contractor (or, if applicable, its employee) shall be considered, as applicable, the Authorized User for purposes of the applicable license type, and all use by such contractor shall be in accordance with the terms and conditions of the License and Maintenance Agreement;
3. Before accessing the Licensed Products, the Third Party Contractor agrees in writing that (a) the software shall be used solely in accordance with the terms of this Agreement and solely for Licensee's benefit and (b) said contractor shall be liable to Azteca Systems for any breach by it of this Agreement;
4. Licensee hereby agrees and acknowledges that Licensee will be liable for any and all actions or omissions of the Third Party Contractor with respect to the use of the Licensed Products, as if such actions or omissions were the Licensee's;
5. Upon expiration or termination of this License Agreement, the rights of usage to any Third Party Contractor shall immediately terminate;
6. Use of the Software by such Third Party Contractors on Licensee's behalf will be governed by the terms of this Agreement, and will require that Licensee purchase the appropriate license for each user utilized by such contractor;
7. Any breach of this Agreement by any Third Party Contractor(s) will be deemed to be a breach by Licensee;
8. Licensee will ensure that Third Party Contractor agrees to comply with and does comply with the terms of this Agreement on the same basis as the terms apply to Licensee; and
9. Any Third Party Contractor must sign a copy of this Addendum acknowledging that it has a copy of the License Agreement and agrees to the terms herein, further Licensee shall provide a signed copy of this Addendum for every Third Party contractor to which it has granted permission to access and/or use the licensed software;

The rights granted under Third-Party Contractor Addendum, do not modify the license or increase the number of licenses granted under this Agreement. Third-Party Contractor acknowledges acceptance by signing below, and providing a copy to Azteca Systems at contracts@cityworks.com.

Third Party Contractor Name (Print)

By: _____
Authorized Signature

Date: _____



TOWN COUNCIL AGENDA ITEM NO. 3

CONSENT ITEM

DATE: October 5, 2020

FROM: Eric Greaser, Fire Chief *EG*

ITEM: Consider approval of the purchase of Firefighter uniforms in the amount of \$75,000.00 from Gall's LLC through the City of Frisco Cooperative Bid No. 1905-082 (TOFM No. 2019-168-I).

BACKGROUND INFORMATION: To provide fire retardant Nomex station wear, Class A uniforms, cold weather jackets, as well as various other accessories such as hats, gloves, belts, rain gear, etc. The Nomex daily station wear on the average is replaced every two years. Other gear and accessories are replaced as needed.

This is an annual expenditure with the current contract good through August 6, 2021.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$75,000.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$75,000.00	100-660-63000-2270

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

LEGAL REVIEW: N/A

ATTACHMENTS:

1. City of Frisco Cooperative Bid No. 1905-082

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



CITY OF FRISCO

GEORGE A. PUREFOY MUNICIPAL CENTER
6101 FRISCO SQUARE BLVD
FRISCO, TEXAS 75034
TEL 972.292.5000
WWW.FRISCOTEXAS.GOV

May 6, 2020

Galls, LLC
1340 Russell Cave Rd.
Lexington, KY 40505
800-876-4242 Ext.4242
Jones-Terry@galls.com
Terry Jones

BVB #1905-082

Fire Department Uniforms

Award Date: 08/07/2019
Contract Renewal Period: 08/07/2020 – 08/06/2021

Gall's,

The City of Frisco is requesting a one year renewal to continue your services under the same terms and conditions on the above referenced contract. The City will issue Purchase Orders to you as necessary. This is the first of four optional one-year renewals.

Please acknowledge receipt of this letter by signing and emailing it to Steve Cone at scone@friscotexas.gov or you may fax it to 972-292-5586.

David Scheve, CFO
Name

05/18/2020
Date


Signature

with new pricing, please see attached

We look forward to a continued successful business relationship. If you have any further questions, please contact the Purchasing Division at (972) 292 5542.

Sincerely,

Steve Cone, CPPB
Senior Buyer



TOWN COUNCIL AGENDA ITEM NO. 4

CONSENT ITEM

DATE: October 5, 2020

FROM: Eric Greaser, Fire Chief *EG*

ITEM: Consider approval of the purchase of emergency medical supplies and pharmaceuticals from Bound Tree Medical LLC, through the City of Cedar Hill Contract in the amount of \$120,000.00.

BACKGROUND INFORMATION: To provide effective life-saving services, the Fire and Emergency Services Department needs an adequate, reliable source of emergency medical supplies. Bound Tree Medical, LLC provides medical supplies and pharmaceuticals to the Town through the Cedar Hill Contract No. 2013-37-I. Medical supplies to stock the Department's medics and paramedic engines include basic and advanced life support items, oxygen, pediatric equipment, cardiac monitor parts, vascular access supplies, pharmaceuticals and other EMS-related medical supplies. These supplies are necessary to ensure a comprehensive response to medical emergencies.

This is an annual expenditure with current contract good through February 28, 2021.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$120,000.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$120,000.00	100-660-61000-2090

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

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Cedar Hill Contract No. 2013-37-I

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

Donna Hill

From: Pervis, Gregory <gregory.pervis1@cedarhilltx.com>
Sent: Thursday, February 7, 2019 10:00 AM
To: Alfaro, Vicki; Allison, Cheryl; Alonzo, Cynthia; Back, Shane; Briggs, Derek; Brock, Elton; Brown, James; Caldwell, Gilbert; Christian, Christa; Cook, Jennifer; Cunningham, Kevin; Davenport, Cheryl; Davis, Bryce; Denson, Melissa; Dixon, Alton; George, Diana; John Glover; Gregory, Corey; Hammock, Lee; Jones, David; Jones, Jess; Kearney, Brendon; Klinck, Julia; Latch, Jaye; Lewandowski, Jerry; Long, Craig; Long, Kade; Lowry, Michael; Loyd, Greg; McCaskill, Dale; Mendoza, Rachel; Miller, Terri; Montgomery, Stephanie; Newcomer, Wil; North, Adam; Ogurek, Tracey; Palmer, S; Pennington, Dee; Peterson, Eric; Pitts, Alice; Priolog, Vince; Ramirez, Eva; Ramirez, Randy; Ramos, Alvarado, Jewelie; Rohde, Sam; Russell, Tim; Scott, Thomas; Sewell, Bobby; Marquita Shamlin; Sirianni, Michele L.; Slifka, Timothy; Smith, Landon; Sonley, Karen; Southard, Bryan; Stephens, Ted; Taylor, Marietta; Theobald, Michael; Tigerina, Melanie L.; Tompkins, D' Ann; Torres, Kristen; Troyer, Cindy; Whittenton, Brandi; Whtie, Alton; Williams, Ryan; Wright, Lance; Sabrina Zadow
Subject: City of Cedar Hill - Bound Tree Contract Renewal
Attachments: Emergency Medical Services Agreement-Contract Only.pdf

Good Morning Everyone,

Below are 7 bullet points regarding the *Bound-Tree* EMS Contract:

1. Please allow this e-mail to inform you that the City of Cedar Hill and *Bound-Tree* have agreed to a (second of three) extensions, as reflected in the attached mutually signed document-dated January 24, 2017.
2. This second extension will go into effect March 1, 2019 and will be valid through February 28, 2020, as one (optional) renewal year remains.
 - a. This entire contract will expire on February 28, 2021 (page 2 number 3) of the attached PDF.
3. **NOTE: Cedar Hill contract renewals do not require Council-consideration.**
4. As of the time of this e-mail, City of Cedar Hill is exploring having a Secondary EMS Vendor - in the event *Bound-Tree* does not have the needed supplies. Once that decision is final, I will share with everyone.
5. *Bound-Tree* will "load" the updated prices in your respective (entity's) database.
6. Should *Bound-Tree* experience an unanticipated price increase, *Bound-Tree* will provide thirty (30) days' notice.
7. Feel free to share this e-mail to those interested party's within your organization.

If anyone has questions, please contact me.

Greg Pervis



Budget/Purchasing
 285 Uptown Boulevard

EMERGENCY MEDICAL SERVICE SUPPLIES AGREEMENT

This Emergency Medical Service Supplies Agreement (herein "Agreement") is made and entered into by and between the City of Cedar Hill, Texas, a Texas home rule municipal corporation (herein "City"), and Bound Tree Medical, LLC, an Ohio limited liability company (herein "Bound Tree") and shall be effective as of the date of execution set forth herein.

WITNESSETH

WHEREAS, Bound Tree is a distributor of medical and pharmaceutical supplies; and

WHEREAS, the City operates an emergency medical service ("EMS") by and through its Fire Department; and

WHEREAS, the City's EMS requires the use of certain medical and pharmaceutical supplies ("medical supplies") to preserve and protect the public health and safety of the City's residents visitors; and

WHEREAS, Bound Tree bid on and was awarded a contract by the City under which Bound Tree agreed to sell medical supplies to the City's EMS for the period of March 1, 2013 through February 28, 2014 (the Original Agreement); and

WHEREAS, the Original Agreement was renewed for each of three optional one-year renewal terms; and

WHEREAS, the final renewal term of the Original Agreement ends on February 28, 2017; and

WHEREAS, the City desires to continue to procure medical supplies, by and through the City's EMS, to preserve and protect the public health and safety of its residents and visitors; and

WHEREAS, Bound Tree desires and agrees to continue supply the City's EMS with medical supplies subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the premises and covenants and conditions herein, the City and Bound Tree agree as follows:

1. Purchase and Sale of Medical Supplies. Bound Tree agrees to sell, and City agrees to purchase, medical supplies for the City's EMS pursuant to all of the terms and conditions of the Contract Documents as defined herein. In exchange for the City's use of Bound Tree as the City's medical supplies vendor, when said medical supplies can be delivered timely, Bound Tree will provide requested medical supplies to the City's EMS at the agreed-upon price and in the agreed-upon quantities as set forth in the Contract Documents.

2. Contract Documents. The Contract Documents referenced in and made part of this Agreement shall consist of the following:

- a. this Agreement
- b. the Invitation to Bid & Bid Specifications
- c. Bound Tree's Bid Quotation
- d. any written modifications or change orders agreed to by the City and Bound Tree.

The Invitation to Bid and Bid Specifications along with Bound Tree's Bid Quotation are attached hereto as Exhibit A and incorporated herein for all purposes.

3. Term. The term of this Agreement shall be one year beginning on March 1, 2017 and ending on February 28, 2018. This Agreement includes three (3) optional one-year renewal terms. The City shall have the right to renew this Agreement for any or all of the optional renewal terms under the same terms and conditions of this Agreement.

4. Termination. Notwithstanding the provisions in Section 3 above, the City may terminate this Agreement for any reason or no reason at all by providing Bound Tree with ninety (90) days prior written notice.

5. Payments. The City agrees to pay Bound Tree per the terms of the Contract Documents for orders from and delivered to the City's EMS.

6. Delivery. The City and Bound Tree agree that the City is not obligated to order a specific quantity of medical supplies and cannot supply Bound Tree with a forecast of the volume of medical supplies that the City's EMS will order. The City will, upon reasonable request from Bound Tree, and without the City binding itself in any way, provide short-term estimates of needed medical supplies to Bound Tree.

7. Acceptance of Medical Supplies. Acceptance or approval by the City or the City's EMS of any medical supplies under this Agreement shall not in any way relieve Bound Tree of responsibility for the any technical accuracy or quality of the fulfilment of any order for medical supplies from the City's EMS. The City's review, approval or acceptance of or payment for any medical supplies shall not be construed to operate as a waiver of any of the City's rights under this Agreement or any cause of action arising out of the performance or non-performance of this Agreement.

8. Indemnification. Bound Tree shall indemnify, save, and hold harmless the City and the City's EMS, its officials, officers, agents and employees with respect to any claims or demands, actions, damages, costs and expenses, including, without limitation, attorneys' fees and costs of litigation, arising from the death or injury of any person whomsoever, or any loss,

damage or destruction of any property whatsoever, resulting directly or indirectly from any intentional, negligent or grossly negligent act, error or omission of the Bound Tree, its agents, servants, employees or other persons acting on Bound Tree's behalf and arising from or related to Bound Tree's performance under this Agreement. This indemnity shall not be terminated or otherwise affected by reason of the termination or expiration of this Agreement.

9. Relationship of Parties. Bound Tree will use its own means and manner to perform its obligations under this Agreement and shall be deemed an independent contractor of the City. In no event shall this Agreement or any performance thereunder be deemed or interpreted as creating a principal-agent or joint venture relationship between the parties hereto. Neither party shall hold itself out as an agent of the other party, nor shall a party incur any indebtedness or obligations in the name of, or which shall be binding upon, the other party.

10. Notices. All notices and communications under this Agreement to be mailed or delivered to the City shall be sent to the address of the City EMS as follows, unless and until Bound Tree is otherwise notified:

EMS Chief
Cedar Hill Fire Department
1212 W. Belt Line Rd.
Cedar Hill, Texas 75104

All notices and communications under this Agreement to be mailed or delivered to Bound Tree shall be sent to the address of the Bound Tree as follows, unless and until the City is otherwise notified:

Bound Tree Medical, LLC
P.O. Box 8023
5000 Tuttle Crossing Blvd.
Dublin, OH 43016

11. Assignment. This Agreement shall not be assignable in whole or in part without the written consent of the City.

12. Dispute Resolution. If a dispute arises between the parties relating to this Agreement, the parties agree to use the following procedure prior to either party pursuing other available remedies:

a. A meeting shall be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.

b. If, within thirty (30) days after such meeting, the parties have not succeeded in

negotiating a resolution of the dispute, they will appoint a mutually-acceptable mediator and agree to attend one, half day mediation with said mediator in an attempt to resolve the dispute. The parties shall share the fees of the mediator equally.

13. **WAIVER OF RIGHT TO TRIAL BY JURY.** BOUND TREE AND CITY AGREE THAT ALL DISPUTES ARISING FROM OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY AND ALL REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, IF ANY, WHICH CANNOT BE RESOLVED THROUGH INFORMAL NEGOTIATIONS OR MEDIATION AS SET FORTH IN SECTION 12 ABOVE, SHALL BE RESOLVED BY WAY OF A TRIAL BEFORE A JUDGE OF A COURT OF COMPETENT JURISDICTION. BOUND TREE AND CITY EACH HEREBY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY. BOUND TREE AND CITY EACH HEREBY ACKNOWLEDGE AND REPRESENT THAT THEY HAVE KNOWINGLY AND VOLUNTARILY WAIVED THEIR RESPECTIVE RIGHTS TO A JURY TRIAL WITH RESPECT TO ANY LEGAL MATTER OR DISPUTE ARISING FROM OR RELATED TO THIS AGREEMENT.

14. **Severability.** Should any word, phrase, sentence, paragraph or other provision or portion of this Agreement be construed to be unlawful or unenforceable by a court of competent jurisdiction, such circumstance shall not affect the validity of the remaining portions of this Agreement which shall remain in full force and effect.

15. **Binding Effect.** This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective permitted successors and permitted assigns.

16. **Governing Law and Venue.** This Agreement shall be governed by, and its provisions construed in accordance with, the laws of the State of Texas. Venue for any action arising from or related to this Agreement shall be the State District Courts of Dallas County, Texas.

17. **Amendment and Waiver.** No amendment or waiver of any provision of this Agreement, and no consent to any departure herefrom, shall be effective or binding unless and until set forth in a writing signed by each party, and then any such waiver or consent shall be effective only in a specific instance and for the specific purpose for which it was given. No notice or any other communication given by one party to the other party shall be construed to be or constitute an approval or ratification by the other party of any matter contained or referred to in such notice, unless the same be consented to by the other party in writing.

18. **Entire Agreement.** This Agreement constitutes the entire agreement between the

parties, and there exist no other written or oral understandings, agreements or assurances with respect to any matters except as set forth herein. Unless expressly stated, this Agreement confers no rights to or upon any person or entity that is not a party hereto.

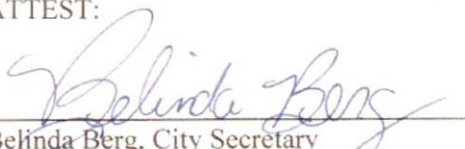
19. Legal Construction. Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. The parties agree that this Agreement or any provision of this Agreement shall not be construed in favor of or against any party on the basis that the party did or did not author this Agreement or any provision hereto. This Agreement and all of the terms and provisions herein shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Agreement.

EXECUTED this 24 day of January, 2017.

CITY OF CEDAR HILL, TEXAS:

By: 
Rob Franke, Mayor

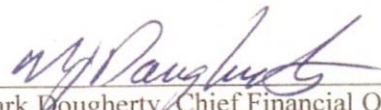
ATTEST:


Belinda Berg, City Secretary

APPROVED AS TO FORM:


Ron G. MacFarlane, Jr., City Attorney

BOUND TREE MEDICAL, LLC:

By: 
Mark Dougherty, Chief Financial Officer



TOWN COUNCIL AGENDA ITEM NO. 5

CONSENT ITEM

DATE: October 5, 2020

FROM: Mark Long, Recreation Superintendent

ITEM: Consider approval of the purchase and installation of lightning detection systems at various athletic complexes, for the Lightning Detection System Replacements project, from Earth Networks in the amount of \$56,400.00.

BACKGROUND INFORMATION: In 2005, the Town, along with support from the Flower Mound Youth Sports Association (FMYSA) and the Greater Lewisville Area Soccer Association (GLASA) partnered to purchase four lightning detection systems at Bakersfield, Gerault, Hilltop and Chinn Chapel. Over the last fifteen years, the technology associated with lightning detection has changed, creating the need to upgrade the Town's current system to most effectively safe-guard facility users.

Earth Networks works with government agencies, school districts, universities, and municipalities to provide a turn-key lightning detection and monitoring system. They are also the lightning data provider for the National Weather Service, NOAA, the NFL, MLB, and the FAA. The Total Lightning Network® is the new standard for lightning detection and alerting - superior to existing networks and single-node prediction systems. The Total Lightning Network® incorporates patent pending systems and methods for detection of lightning activity to provide in-cloud and cloud-to-ground detection efficiency. It is the first integrated in-cloud and cloud to ground detection network capable of detecting long range in-cloud lightning, which is critical for advanced notification of severe weather phenomena such as: cloud to ground lightning strikes, heavy rain rates, high winds, hail, and tornadic activity. The system allows users to receive alerts to multiple locations via multiple methods which include mobile devices, computers, indoor visualization tools, and to outdoor mass notification alert systems. Strikes are monitored, confirmed and communicated to avoid false alarms. Earth Networks provides 24/7/365 network monitoring and access to staff meteorologist.

Earth Networks has over 20 years of experience and operates a proprietary observing network of over 9,000 weather stations throughout North America. It is the only real-time and highly dense combined network of weather stations, lightning detection sensors, and outdoor notification systems.

BOARD REVIEW/CITIZEN FEEDBACK: The Parks Board, Community Development Corporation, and Town Council approved the replacement of six lightning detection systems at Bakersfield (2), Gerault, Jake's Hilltop, Chinn Chapel Soccer Complex, and Glenwick.

ALTERNATIVES/OPTIONS: The Town Council can deny approval of the purchase and staff would continue using the lightning prediction systems currently in place.

FISCAL IMPACT: \$56,400.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$56,400.00	317-110-90764

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

Total project cost is \$90,000. Funding source is: Dedicated Sales Tax

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Earth Networks Quote

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



SEE WHAT
WE'RE UP TO!

EARTH NETWORKS ORDER FORM

12410 Milestone Center Drive,
Suite 300, Germantown, MD 20876

Customer Contact Information

Business Name:	City Of Flower Mound	Business Address:	2121 Cross Timbers Rd Flower Mound, TX 75028
Contact Name:	Matt Chutchian		
Contact Phone:	(972) 874-6271	Contact Fax:	

Earth Networks Contact Information

POC:	Randy Smith	Email Address:	rsmith@earthnetworks.com
Contact Phone:	(330) 472-7621	Contact Fax:	

Schedule of Services

Product Name	Notes	Quantity	Unit Price	Total Price
Earth Networks Outdoor Lightning Alerting Horn and Strobe System with Installation		5	\$7,900.00	\$39,500.00
Earth Networks Outdoor Lightning Alerting Horn and Strobe System with Installation and Solar Power		1	\$9,900.00	\$9,900.00
- Lightning Alerting Horn and Strobe System unlimited parts and labor maintenance 24x7 System Monitoring - Countdown Clock - Sferic Maps and Mobile License - Daily Weather Outlook Email - Lightning Alerting Feed	These services are included in the first year at no cost. The annual cost for these services starting in year 2 is \$1,300 per park for the primary system. The unlimited parts and labor annual cost for the secondary system would be \$500.	5 - Year 1 5 - Year 2 Maintenance for 1 secondary system for 2 years	\$0.00 \$1,300.00 \$500	\$0.00 \$6,500.00 \$500.00
Initial Term of Contract: Four Year				Total: \$56,400.00

Solar Power is available. The total cost for the Outdoor Lightning Alerting Horn and Strobe System would be \$9900 per system.

Livingstone/IntelliDyne has agreed to add City of Flower Mound as an Additional Insured under General Liability coverage.

Remarks:

The customer agrees to payment terms of Net 30 unless otherwise documented. Late payment fees will be charged as one percent (1%) per month or part thereof will be charged for any payment that is more than 30 days late.

Installation and/or maintenance costs quoted above are valid for standard installations only. Any installation or maintenance work that requires non-standard equipment, materials, or regulatory expense may be subject to an additional charge. Furthermore, customer is responsible for providing all communication and electrical infrastructure.

Please allow up to four weeks for delivery of hardware.

This Order Form is subject to the terms and conditions attached hereto.

CUSTOMER:

EARTH NETWORKS:

By: _____

By:  _____

Name: _____

Name: Daniel W. O'Connell

Title: _____

Title: General Counsel

Date: _____

Date: September 17, 2020

1. Payment. The Buyer agrees to payment terms per Remarks section of Schedule. Late payment fees will be charged as follows: (a) one percent (1%) per month or part thereof will be charged for any payment that is more than 30 days late; (b) Payment should be made to:

Earth Networks
Dept 0152, PO Box 120152
Dallas, TX 75312

2. Inspection and Acceptance. It is Buyer's responsibility to inspect and accept each unit at the time of delivery. Failure of Buyer to inspect and accept the unit at that time waives Buyer's rights to inspection and acceptance as a term of the contract. However, any actions under this clause shall not be deemed a waiver of any warranty contained herein.

3. Web Services. As part of this package purchase, Seller agrees to provide to Buyer: (1) complete access to the web service specified on the Schedule; (2) Provide adequate bandwidth and server capacity; (3) Provide toll-free technical support. The above services will be provided for as long as Seller maintains support for the applicable web service.

4. Term and Termination. The web services shall have an initial term as specified on the Schedule. Unless otherwise specified on the Schedule, the web services subscription shall automatically renew for successive 12 month terms, unless terminated by either party with at least 30 days written notice prior to the expiration of the then current term.

5. Intentionally Deleted.

6. Warranty. The Seller warrants the hardware and software purchased by the Buyer against defects in workmanship and materials for a period of one (1) year from date of delivery under this contract. The Seller shall, at its sole option, either repair or replace defective items. Buyer is responsible to return of defective items to Seller by means specified by the Seller. The Buyer shall bear all shipping expenses. Packing of defective items for return is responsibility of Buyer. Damage due to natural causes (storms, lightning, flying debris, etc.) is not covered by this warranty. Damage resulting from Buyer negligence or mishandling of hardware and software is not covered by this warranty.

7. Alterations and Attachments. If Buyer makes alterations or attaches a device or any other item to the Earth Networks unit as sold and installed, the warranty is voided and Seller has no further obligation under the warranty.

8. Disclaimer of Implied Warranties. EXCEPT AS PROVIDED ABOVE, THE WEB SERVICES AND DATA DISPLAYED THEREIN ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. EXCEPT AS PROVIDED IN SECTION 6 ABOVE, SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, TO BUYER, OR TO ANY AUTHORIZED USER OR THIRD PARTY, INCLUDING ANY WARRANTIES OF QUALITY, ACCURACY, PERFORMANCE, COMPATABILITY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. BUYER ACKNOWLEDGES THAT SELLER IS NOT RESPONSIBLE FOR THE ACCURACY OF ANY INFORMATION OR DATA CONTAINED IN THE SERVICES, AND SELLER SHALL NOT BE LIABLE FOR ANY LOSSES RESULTING FROM BUYER'S OR ANY AUTHORIZED USER'S RELIANCE ON ANY SUCH INFORMATION OR DATA UNDER ANY CIRCUMSTANCES.

9. Lightning Disclaimer. Experience has shown that the resolution, timeliness, and format in which lightning data are presented within various displays and products, does not provide a total solution with regard to addressing concerns regarding the presence of convective activity and/or lightning and their potential impact on the safety of personnel and/or safeguarding of facilities, whether it be of immediate or short term concern. Interpretation and application of the data, as well as any comparative analysis and/or prognosis or similar activities done by any user, are done so solely at the user's risk

and have not directly or indirectly been implied, condoned or recommended by Seller, and/or its data suppliers.

10. Intentionally Deleted.

11. Limitations of Liability. Except for damages caused by Seller's willful misconduct, recklessness, or gross negligence, the parties agree that to the extent permitted by applicable law, Seller limits or disclaims liability related to the manufacture, delivery, or use of the equipment, the software and/or supplies used in connection with the equipment or the provision of services for the equipment, as follows: Parties disclaim liability for indirect, incidental, special, or consequential damages (including but not limited to, loss of use, revenue, or profit) whether such claim alleges breach of contract, tortious conduct including but not limited to negligence, or any other theory.

12. Data Rights. Seller retains all rights to data and/or video images (hereinafter "data") generated by the Earth Networks system(s). Seller grants Buyer a limited license for use of such data, in connection with Buyer's internal business/educational purposes, but for no other purpose, except for distribution or publication as required by law, including but not limited to Public Information and Freedom of Information laws. Seller has exclusive rights for resale or to otherwise use data from the installed system(s). Buyer and users of hardware and software under this contract cannot provide access to third parties without the express written consent of Seller. Requests for access must be in writing to the Seller at the Seller's place of business. Seller grants Buyer a royalty free license to use and disseminate data generated by the Buyer's Earth Networks system for educational purposes, save and except that Buyer is expressly prohibited from disseminating data to media outlets (such as TV stations, cable channels, radio stations, newspapers, and magazines). Buyer is expressly prohibited from disseminating data from any other Earth Networks system.

13. Access To Communication Line. Buyer agrees to connect, at Buyer expense, the Earth Networks unit(s) to a dedicated, full-time Internet connection. Buyer further agrees to maintain the Earth Networks system in an operational mode at all times and to permit Seller authorized outside access to system data through the telecommunication line. Telecommunication line expense is solely the obligation of Buyer. Buyer agrees to follow all procedures outlined in the Operations Manual to ensure system access is maintained.

14. Non-Waiver of Rights. The failure of Buyer or Seller to insist upon strict performance of the terms and conditions of this Contract or to exercise any rights or remedies, shall not be construed as a waiver or its rights to assert any of same rights or to rely on any such terms or conditions at any time thereafter.

15. Governing Law. This Agreement shall be governed by the laws of the State of Texas, exclusive of its choice of law provisions. Any action arising under the terms of this agreement shall be brought and maintained only in the Courts of the State of Texas, County of Denton.

16. Attorney's Fees/Costs. In any action by a party to enforce its rights hereunder, the non-prevailing party shall pay the prevailing party's costs and expenses (including reasonable attorney's fees & other costs).

17. Extraordinary Circumstances. Except for obligations of payment, neither Seller nor the Buyer shall be liable for nonperformance caused by circumstances beyond their control, including but not limited to, work stoppages, floods, lightning and all other acts of God.

18. Breach. Either party may terminate this Agreement on breach by the other party of any material term or condition hereof 10 days after written notice is given to

the breaching party by the non-breaching party if such breach is not cured.

19. Order Fulfillment. If this is a multiple unit order and/or includes promotional goods, credits, services, and the Buyer does not fully complete the terms of the Order agreement, Seller reserves the right to re-bill at standard prices or to retrieve the promotional items, unless the Buyer reconciles by acquiring another Earth Networks product eligible for such promotional items/discounts.

20. Patent Indemnity. Seller will defend the Buyer from, and pay for ultimate judgment or liability for infringement in the United States by equipment or operating system software ("Software") of any patent, trademark, trade secret, protected semiconductor chip mask work, or copyright if Buyer promptly notifies Seller in writing of any alleged infringement, allows Seller to defend, and cooperates with Seller. Seller is not responsible for any non-Earth Networks litigation expenses or settlements unless Earth Networks agrees to them in writing. Seller is not liable for any infringement due to equipment or software being made or modified by the Buyer or Buyer requested specification or designs, or being used or sold in combination with equipment, software, or supplies not provided by Seller. This provision shall not be limited by the limitations on liability otherwise contained herein. **IMPORTANT: SELLER MAKES NO OTHER EXPRESS OR IMPLIED WARRANTY OF NON-INFRINGEMENT AND HAS NO OTHER LIABILITY FOR INFRINGEMENT OR ANY DAMAGES THEREFROM.** To avoid an infringement (even if not alleged) Seller may, at its option, at no charge to Buyer, obtain a license to use, modify, or substitute an equivalent item for the infringing equipment or software.

21. Purchase Orders. To the extent that the terms and conditions contained herein contradict or do not comport with Buyer's standard terms and conditions, the terms herein shall be of no force and effect. Buyer's standard terms and conditions shall be integrated as if fully set forth herein, and shall control over terms herein.

22. Necessary Maintenance by Earth Networks. Buyer will provide, upon reasonable notice by Seller, access to the system(s) for the purpose of supplying necessary maintenance and/or the installation of additional sensor equipment.

23. Severability/Assignability. If any provision of this Agreement shall be held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall remain valid and enforceable. Neither party may assign this Agreement or any of its rights and obligations hereunder to any person, firm or corporation, without the prior written consent of the other, which consent shall not be unreasonably withheld, provided however that either party may assign this Agreement to a successor in interest as a result of a sale of all or substantially all of its stock or assets.

24. Modification. This contract shall not be varied in its terms or conditions by any oral Agreement or representation, but only by an instrument in writing of even or subsequent date thereto, properly executed by both the Seller and Buyer.

25. Entire Agreement. The terms and conditions contained or referenced in this Order Agreement are the complete and entire agreement between Seller and Buyer respecting the subject matter of this Agreement.

Customer Signature and Date



Earth Networks Signature and Date



TOWN COUNCIL AGENDA ITEM NO. 6

CONSENT ITEM

DATE: October 5, 2020

FROM: Dale Crown, P.E., Senior Project Engineer

ITEM: Consider approval of a Construction Agreement with Muniz Construction, Inc., for the Garden Ridge Boulevard Water Line Phase II project, in the amount of \$822,345.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On August 11, 2020, bids were received and opened for the Garden Ridge Boulevard Water Line Phase II project (Bid No. 2020-111-B). Muniz Construction, Inc. submitted the lowest qualified bid of the five responding bidders at a base bid of \$822,345.00. The project includes installation of approximately 3,050 linear feet of water line along Garden Ridge Boulevard from Bellaire Boulevard to Ridgeway Drive. The new water line will expand the water distribution system in accordance with the Town's adopted Water Master Plan.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: The decision to not approve the construction agreement would leave a gap in the Town's water distribution system along Garden Ridge Boulevard. The proposed water line will provide redundancy in the water distribution system and better water service to the Town's residents and businesses.

FISCAL IMPACT: \$822,345.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$219,500.80	630-960-98541
\$602,844.20	601-900-98541

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

Total project cost is \$1,000,000. Funding sources are:

- Impact Fees \$ 700,000
- Other \$ 300,000

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: 2020-111-B - Garden Ridge Phase II Water Line

Bid Opening: 8/11/2020 at 11:00 AM

Company	Base Bid
Muniz Construction, Inc	\$ 822,345.00
Dickerson Construction Company, Inc	\$ 1,119,362.00
John Burns Construction Company of Texas, Inc	\$ 1,290,281.00
Atkins Brothers Equipment Company, Inc	\$ 1,292,302.00
Excel Aircraft LLC dba Excel Trenching	\$ 1,502,082.00

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

Certified By: Sabrina Zadow
Purchasing Manager
Town of Flower Mound, Texas

Date: August 11, 2020

TOWN OF FLOWER MOUND
GARDEN RIDGE BOULEVARD WATER LINE PHASE II

Bid # 2020-111-B

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the "Agreement"), made and entered into this 5th day of October, 2020, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the "Town," and Muniz Construction, Inc., a corporation, hereinafter referred to as the "Contractor." For and in consideration of the payment, agreements, and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

GARDEN RIDGE BOULEVARD WATER LINE PHASE II,
Bid # 2020-111-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 **Eight Hundred Twenty Two Thousand Three Hundred Forty Five Dollars and Zero cents (\$822,345.00)** taking into consideration additions to or deductions from the Total Bid through properly executed change orders by reason of alterations or modifications of the original quantities or by reason of “Extra Work” authorized under this Agreement in accordance with the provisions of the Contract Documents. It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the Contractor by the Town, the said Contractor shall furnish all labor, equipment, and material (except as otherwise specified above) and shall perform all work necessary to complete the improvements in a good and workmanlike manner, ready for use, within the specified time for substantial completion of One Hundred Fifty (150) calendar days, and final completion of One Hundred Eighty (180) 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 Five Hundred and Zero/One Hundredths Dollars (\$500.00) 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 and Zero/One Hundredths 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 8th day of September, 2020.

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. 7

REGULAR ITEM

DATE: October 5, 2020

FROM: Chuck Jennings, Director of Parks and Recreation

ITEM: **Public Hearing to consider approval of a resolution authorizing the application of a grant proposal to the Texas Parks and Wildlife Department, for funding assistance for the development of Peters Colony Memorial Park; and authorization for the Mayor to execute same on behalf of the Town.**

BACKGROUND INFORMATION: Each year, the Texas Parks and Wildlife Department (TPWD) advertises its Local Park Grant Program. The deadline for application for funding through this grant is November 6, 2020. The Local Park Grant Program provides 50% matching fund grant assistance for acquisition and development and renovation of public recreation areas and facilities. The master plan for the park was approved by council on November 4, 2019, and funds were appropriated in the FY20-21 budget to assist in the development of Peters Colony Memorial Park.

Requirements for application of a TPWD Grant include a Public Hearing to solicit citizen input and a resolution authorizing application for the grant. Sponsors requesting assistance for grant funds must submit an application to TPWD and have it approved prior to any construction activities for which assistance is requested. The maximum amount which may be requested for assistance is \$750,000 in matching grant funds. Projects must be operated and maintained for the purposes intended throughout the expected lifetime of the facilities, minimum of 25 years, by the Town. The Town's local match must be documented by letters of commitment and provide documentation of legal control of the project site. TPWD will announce recommendations to fund individual projects sometime in mid-year of 2021.

ALTERNATIVES/OPTIONS: The Town Council can decide not to submit a grant application at this time.

FISCAL IMPACT: \$750,000.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$750,000.00	317-110-90731-6210

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

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

ATTACHMENTS:

1. TPWD Local Park Grant Program Resolution

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



Local Park Grant Program Resolution Authorizing Application

Resolution # _____

A resolution of the Town of Flower Mound as hereinafter referred to as "Applicant," designating certain officials as being responsible for, acting for, and on behalf of the Applicant in dealing with the Texas Parks & Wildlife Department, hereinafter referred to as "Department," for the purpose of participating in the Local Park Grant Program, hereinafter referred to as the "Program"; certifying that the Applicant is eligible to receive program assistance; certifying that the Applicant matching share is readily available; and dedicating the proposed site for permanent (or for the term of the lease for leased property) public park and recreational uses.

WHEREAS, the Applicant is fully eligible to receive assistance under the Program; and

WHEREAS, the Applicant is desirous of authorizing an official to represent and act for the Applicant in dealing with the Department concerning the Program;

BE IT RESOLVED BY THE APPLICANT:

SECTION 1: That the Applicant hereby certifies that they are eligible to receive assistance under the Program, and that notice of the application has been posted according to local public hearing requirements.

SECTION 2: That the Applicant hereby certifies that the matching share for this application is readily available at this time.

SECTION 3: That the Applicant hereby authorizes and directs the Director of Parks and Recreation to act for the Applicant in dealing with the Department for the purposes of the Program, and that Chuck Jennings is hereby officially designated as the representative in this regard.

SECTION 4: The Applicant hereby specifically authorizes the official to make application to the Department concerning the site to be known as Peters Colony Memorial Park in the Town of Flower Mound for use as a park site and is hereby dedicated (or will be dedicated upon completion of the proposed acquisition) for public park and recreation purposes in perpetuity (or for the lease term, if legal control is through a lease). Projects with federal monies may have differing requirements.

Introduced, read and passed by an affirmative vote of the "Applicant" on this 5th day of October, 2020.

Signature of Local Government Official

Steve Dixon, Mayor

Typed Name and Title

ATTEST:

Signature

Theresa Scott, Town Secretary

Typed Name and Title



TOWN COUNCIL AGENDA ITEM NO. 8

REGULAR ITEM

DATE: October 5, 2020

FROM: David Bauer, Construction Manager

ITEM: Consider approval of the Guaranteed Maximum Price (GMP) for the construction of the Gibson Grant Log Cabin Restoration Project with Phoenix I Restoration and Construction, Ltd., in the amount of \$1,363,507.00; and authorization for the Mayor to execute the same on behalf of the Town.

BACKGROUND INFORMATION: The Gibson-Grant Log House, constructed in 1860-1861, is of exceptional historical significance as one of the few remaining log structures of mid-nineteenth century still standing on its original site in Denton County. The project is being facilitated with the Construction Manager at Risk (CMaR) delivery method.

In 2015, Curtis Grant, a Flower Mound developer who bought the subject property with the intent of demolishing the existing house and subdividing the lot for residential development, discovered the historic log house inside the living room walls, with newer construction built around it in stages. He immediately contacted the Denton County Office of History and Culture to report his findings and seek information and guidance. Further investigation by the Denton County Office of History and Culture revealed that this was likely an early log house built by settlers who came to Texas as part of the Peters Colony, the earliest settlement in Denton County.

The Town of Flower Mound acquired the property with the intent of restoring the historic log house. Further research and testing was undertaken by the University of Arkansas Tree-Ring Laboratory; by taking core samples of the logs and remaining chinking and analyzing them, the Tree-Ring Laboratory team determined that the logs had been cut between 1857 and 1860 and stockpiled on site awaiting construction, which was undertaken between 1860-1861.

The recommendations provided herein are intended as part of a plan for the restoration of the historic log house and surrounding historic additions and to serve the owner's goals for the use of the building and property. The house is historically significant for two reasons, for its association with William Gibson, a Peters Colonist and because it exemplifies the evolution of early homesteads on the Texas frontier.

Quimby McCoy was contracted by the Town of Flower Mound to prepare a Historic Structure Report and a Master Plan for the Gibson-Grant Cabin Restoration. The log house, dating from 1860, was discovered inside the walls of a seemingly modern-day residence in the Town of Flower Mound, Denton County.

The Construction Manager at Risk (CMAR) contract with Phoenix I Restoration and Construction, Ltd was approved by Town Council on September 16, 2019 to be the CMAR to help in budgeting the project as it was being designed. The CMAR prepared a Guaranteed Maximum Price (GMP) contract for the Town's review and acceptance.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$1,363,507

Proposed Expenditure/(Revenue):

\$1,363,507

Account Number(s):

325-373-90763

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

Total project cost is \$1,575,593. Funding source(s) are:

- Grant \$ 1,451,000
- Tax Debt \$ 88,000 prior to grant
- Other \$ 36,593 prior to grant

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

ATTACHMENTS:

1. Guaranteed Maximum Price Contract

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



AIA Document A133™ – 2009 Exhibit A

Guaranteed Maximum Price Amendment

for the following PROJECT:

(Name and address or location)

Gibson - Grant Cabin Restoration
4801 Quail Run St.
Flower Mound, TX 75022

THE OWNER:

(Name, legal status and address)

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

THE CONSTRUCTION MANAGER:

(Name, legal status and address)

Phoenix I Restoration and Construction, Ltd.
14032 Distribution Way
Farmers Branch, Texas 75234

ARTICLE A.1

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of this Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed One Million Three Hundred Sixty Three Thousand Five Hundred Seven Dollars and Zero Cents (\$ 1,363,507.00), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Construction Manager's Fee, and other items that comprise the Guaranteed Maximum Price.

(Provide below or reference an attachment.)

See Exhibit A

§ A.1.1.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the Contract Documents permit the Owner to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

N/A

ADDITIONS AND DELETIONS:

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

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

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

§ A.1.1.4 Allowances included in the Guaranteed Maximum Price, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price (\$0.00)
Irrigation	\$5,000.00
Log Repairs	\$3,200.00
Door Hardware	\$7,500.00
Cut/Patch for MEP	\$4,800.00
Wallpaper	\$30,000.00
Signage	\$12,500.00
Interpretation	\$10,000.00
Comm./Security	\$3,000.00

§ A.1.1.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

N/A

§ A.1.1.6 The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
N/A			

§ A.1.1.7 The Guaranteed Maximum Price is based upon the following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Agreement.)
 Gibson - Grant Historic Cabin Restoration

Section	Title	Date	Pages
	Gibson - Grant Historic Cabin Restoration	8/17/2020	189

§ A.1.1.8 The Guaranteed Maximum Price is based upon the following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Agreement.)
 Gibson - Grant Historic Cabin Restoration

Number	Title	Date
	Gibson - Grant Historic Cabin Restoration	8/17/2020

§ A.1.1.9 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Agreement.)

N/A

ARTICLE A.2

§ A.2.1 The anticipated date of Substantial Completion established by this Amendment:

270 Days from Notice to Proceed

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

Dale C. Sellers, President / CEO of General Partner

(Printed name and title)

(Printed name and title)



Group	Phase	Item	Description	Takeoff Quantity	Labor Cost/Unit	Labor Amount	Material Cost/Unit	Material Amount	Sub Cost/Unit	Sub Amount	Other Cost/Unit	Other Amount	Total Amount
01.000			GENERAL REQUIREMENTS										
			PROJECT MANAGEMENT										
	01.310												
		2000	Project manager	4.00 mo	10,000.00 /mo	40,000	-	-	-	-	-	-	40,000
		2005	Project superintendent	8.00 mo	9,000.00 /mo	72,000	-	-	-	-	-	-	72,000
			TEMP UTILITIES										
	01.510												
		1000	Temporary power/lighting	1.00 ls	-	-	-	-	1,620.00 /ls	1,620			1,620
			CONSTRUCTION FACILITIES										
	01.520												
		1050	Storage trailers	8.00 mo	-	-	-	-	-	-	640.00 /mo	5,120	5,120
		1060	Portable toilets	8.00 mo	-	-	-	-	-	-	280.00 /mo	2,240	2,240
			TEMP CONSTRUCTION										
	01.530												
		1010	Protection of existing materials	1.00 ls	-	-	-	-	2,740.00 /ls	2,740			2,740
			CONSTRUCTION AIDS										
	01.540												
		1017	Phone/internet	8.00 mo	-	-	-	-	-	-	320.00 /mo	2,560	2,560
		1025	Copy/Blue prints	1.00 ls	-	-	-	-	-	-	1,100.00 /ls	1,100	1,100
		1050	Dumpster	10.00 ea	-	-	-	-	-	-	525.00 /ea	5,250	5,250
		9010	Equipment rental/scaffolding	1.00 ls	-	-	-	-	-	-	9,600.00 /ls	9,600	9,600
			TEMP BARRIERS & ENCLOSURE										
	01.560												
		9000	Construction fencing/tree protection	1.00 ls	-	-	-	-	2,950.00 /ls	2,950	-	-	2,950
			TEMP CONTROLS										
	01.570												
		9000	Erosion control	1.00 ls	-	-	-	-	2,380.00 /ls	2,380	-	-	2,380
			PROJECT IDENTIFICATION										
	01.580												
		1000	Project sign	1.00 ea	-	-	-	-	950.00 /ea	950	-	-	950
			PREPARATION										
	01.720												
		1015	Surveying	1.00 ls	-	-	-	-	1,950.00 /ls	1,950			1,950
			CLEANING										
	01.740												
		2005	Progress/final cleaning	1.00 ls	4,200.00 /ls	4,200	-	-	-	-	-	-	4,200
02.000			SITE CONSTRUCTION										
			DEMOLITION										
	02.220												
		9040	Demolition	1.00 ls	-	-	-	-	29,500.00 /ls	29,500	-	-	29,500
			SHORING & UNDERPINNING										
	02.250												
		9000	Helicals for chimney	1.00 ls	-	-	-	-	7,250.00 /ls	7,250	-	-	7,250
			LEVELING										
	02.280												
		9000	Pad prep for restroom building	1.00 ls	-	-	-	-	4,800.00 /ls	4,800	-	-	4,800
			IRRIGATION SYSTEM										
	02.810												
		9000	Irrigation - allowance	1.00 ls	-	-	-	-	5,000.00 /ls	5,000	-	-	5,000
			FENCES AND GATES										
	02.820												
		9005	Fencing	1.00 ls	-	-	-	-	20,612.00 /ls	20,612	-	-	20,612
			EXTERIOR PLANTS										
	02.930												
		9000	Landscaping	1.00 ls	-	-	-	-	23,397.00 /ls	23,397	-	-	23,397



Group	Phase	Item	Description	Takeoff Quantity	Labor Cost/Unit	Labor Amount	Material Cost/Unit	Material Amount	Sub Cost/Unit	Sub Amount	Other Cost/Unit	Other Amount	Total Amount
			FINISHES										
	09.025												
		9000	Cut and patch for MEP work - Allowance	1.00 ls	-	-	-	-	4,800.00 /ls	4,800	-	-	4,800
			GYPSON BOARD ASSEMBLIES										
	09.260												
		9000	Drywall/framing	1.00 ls	-	-	-	-	16,875.00 /ls	16,875	-	-	16,875
			WOOD FLOORING										
	09.640												
		9005	Wood flooring	1.00 ls	-	-	-	-	23,850.00 /ls	23,850	-	-	23,850
			PAINTS AND COATINGS										
	09.900												
		9000	Paint	1.00 ls	-	-	-	-	39,320.00 /ls	39,320	-	-	39,320
			PAINTS										
	09.910												
		9000	Parking striping	1.00 ls	-	-	-	-	2,800.00 /ls	2,800	-	-	2,800
			DECORATIVE FINISHES										
	09.940												
		9000	Wallpaper - allowance	1.00 ls	-	-	-	-	30,000.00 /ls	30,000	-	-	30,000
10.000			SPECIALTIES										
			INDENTIFICATION DEVICES										
	10.400												
		9010	Additional signage - allowance	1.00 ls	-	-	-	-	12,500.00 /ls	12,500	-	-	12,500
		9015	Interpretation - allowance	1.00 ls	-	-	-	-	10,000.00 /ls	10,000	-	-	10,000
			EXTERIOR SIGNAGE										
	10.430												
		9000	Monument signs	1.00 ls	-	-	-	-	5,800.00 /ls	5,800	-	-	5,800
			FIRE PROTECTION										
	10.520												
		9000	Fire extinguishers	1.00 ls	-	-	-	-	750.00 /ls	750	-	-	750
11.000			EQUIPMENT										
			KITCHEN EQUIPMENT										
	11.450												
		9000	Appliances	1.00 ls	-	-	-	-	2,420.00 /ls	2,420	-	-	2,420
13.000			SPECIAL CONSTRUCTION										
			PRE-ENGINEERED STRUCTURE										
	13.120												
		9005	Prefabricated restroom building	1.00 ls	-	-	-	-	52,000.00 /ls	52,000	-	-	52,000
15.000			MECHANICAL										
			PLUMBING										
	15.350												
		9000	Plumbing	1.00 ls	-	-	-	-	24,134.00 /ls	24,134	-	-	24,134
			HVAC										
	15.700												
		9000	HVAC	1.00 ls	-	-	-	-	22,710.00 /ls	22,710	-	-	22,710
16.000			ELECTRICAL										
			ELECTRICAL POWER										
	16.200												
		9000	Electrical	1.00 ls	-	-	-	-	48,321.00 /ls	48,321	-	-	48,321
			COMMUNICATIONS										
	16.700												
		9000	Communications and security - allowance	1.00 ls	-	-	-	-	3,000.00 /ls	3,000	-	-	3,000



Estimate Totals

Description	Amount	Totals	Hours	Rate	Cost Basis	Cost per Unit	Percent of Total
Labor	116,200						8.52%
Material							
Subcontract	891,989						65.42%
Equipment							
Other	25,870						1.90%
	1,034,059	1,034,059					75.84 ####
General Liability	15,511			1.500 %	T		1.14%
CMAR Contingency	26,239			2.500 %	T		1.92%
Administrative Fee	12,910			1.200 %	T		0.95%
CMAR Fee	127,380			11.700 %	T		9.34%
P & P Bond - DB	23,453				B		1.72%
Owner Contingency	123,955			10.000 %	T		9.09%
Total		1,363,507					



TOWN COUNCIL AGENDA ITEM NO. 9

REGULAR ITEM

DATE: October 5, 2020

FROM: Brian Waltenburg, P.E., Assistant Director of Engineering

ITEM: **Presentation of land use assumptions as they relate to the ongoing Master Plan and Impact Fee update projects, and opportunity for the Council to ask questions and provide input.**

BACKGROUND INFORMATION: On October 7, 2019, a professional services agreement with Kimley-Horn and Associates, Inc., for the professional services associated with the Water and Wastewater Master Plan Updates and Water, Wastewater, and Roadway Impact Fee Updates project, was approved by Town Council.

The project will update the Town's water and wastewater models to account for changes in existing and projected demands, land uses and capital improvements projects since the last update was performed in 2015. This project will also include recommendations for updates to the Town's five-year Water and Wastewater Capital Improvements Program.

The project will also update the Town's Impact Fee program. Impact fees allow the Town to recoup costs associated with infrastructure needed to serve new development. The Town is required by Chapter 395 of the Texas Local Government Code to provide for an impact fee update every five years. The Town's last impact fee update was done in 2015.

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS: N/A

DRAFT MOTION: N/A

Town Council Future Agenda Items



SCHEDULED	10/5/2020	Presentation	Presentation and discussion of the Flower Mound Development Process Review by Matrix Consulting.
		Calendar	Confirm Town Council availability for December 21, 2020, meeting.
		Consent	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 on September 21, 2020.
		Consent	Consider approval to the purchase of Cityworks custom ELA licensing in the amount of \$48,000.00.
		Consent	Consider approval of the purchase of Firefighter uniforms in the amount of \$75,000.00 from Gall's LLC through the City of Frisco Cooperative Bid No. 1905-082 (TOFM No. 2019-168-I).
		Consent	Consider approval of the purchase of emergency medical supplies and pharmaceuticals from Bound Tree Medical LLC, through the City of Cedar Hill Contract in the amount of \$120,000.00.
		Consent	Consider approval of the purchase and installation of lightning detection systems at various athletic complexes, for the Lightning Detection System Replacements project, from Earth Networks in the amount of \$56,400.00.
		Consent	Consider approval of a Construction Agreement with Muniz Construction, Inc., for the Garden Ridge Boulevard Water Line Phase II project, in the amount of \$822,345.00; and authorization for the Mayor to execute same on behalf of the Town.
		Regular	Public Hearing to consider approval of a resolution authorizing the application of a grant proposal to the Texas Parks and Wildlife Department, for funding assistance for the development of Peters Colony Memorial Park; and authorization for the Mayor to execute same on behalf of the Town.
		Regular	Consider approval of the Guaranteed Maximum Price (GMP) for the construction of the Gibson Grant Log Cabin Restoration Project with Phoenix I Restoration and Construction, Ltd., in the amount of \$1,363,507.00; and authorization for the Mayor to execute the same on behalf of the Town.
		Regular	Presentation of land use assumptions as they relate to the ongoing Master Plan and Impact Fee update projects, and opportunity for the Council to ask questions and provide input.
	10/15/2020	Work Session	Joint work session with the Planning and Zoning Commission to discuss infill locations.

SCHEDULED	10/19/2020	Consent	Consider approval of a Professional Services Agreement with ECS Southwest, LLP to provide construction materials engineering and testing, for the Garden Ridge Boulevard Water Line Phase II project, in the amount of \$21,853.00; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of the sale and consumption of alcoholic beverages (beer and wine) at Bakersfield Park, during the 2021 Independence Fest (The Parks Board recommended approval by a vote of 6 to 0 at its September 3, 2020 meeting).
		Consent	Consider approval of a Construction Agreement with J.B. & Company LLC, for the Hound Mound Parking and Restroom project, in the amount of \$589,382.00; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of the purchase of a Pierce Custom Chassis, PUC for Fire and Emergency Services Department from Siddons-Martin Emergency Group, through the Houston-Galveston Area Council of Governments (H-GAC) cooperative purchasing program, in the amount of \$799,728.13; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of a Professional Services Agreement with Jacobs Engineering Group for design phase services associated with the US 377 and FM 1171 Water Line Loop / Relocation project in the amount of \$134,000.00; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of an Interlocal Cooperation Agreement with Denton County for the provision of library services for the benefit of the citizens of Denton County, and authorize the mayor to execute same on behalf of the Town.
		Consent	Consider approval to increase the contract funding for additional grounds maintenance and landscape services performed by American Landscape
		Regular	Consider approval of a Construction Agreement with Archer Western Construction, LLC the Stonehill Pump Station Discharge Valve Replacement and 10 MG Ground Storage Tank Rehabilitation project, in the amount of \$1,027,000.00; and authorization for the Mayor to execute same on behalf of the Town.
		Regular	Consider approval of a Construction Agreement with DDM Construction Corporation for the Waketon Road (Cross Timbers Drive to 1,350' East of Chinn Chapel) project, in the amount of \$4,796,507.45; and authorization for the Mayor to execute same on behalf of the Town.
		Regular	Consider approval of a resolution declaring expectation to reimburse expenditures with proceeds of future debt and authorizing the preparation of the documents associated with the issuance, sale, and delivery of the debt obligations; and providing an effective date.
	11/2/2020	Presentation	Proclamation to designate November as Arts Month in Flower Mound
		Consent	Consider approval of the purchase of twenty sets of bunker gear from NAFECO, Inc. through BuyBoard Purchasing Contract No. 524-17 and authorization for the Mayor to approve same on behalf of the Town.

SCHEDULED	11/2/2020	Consent	FM 2499 @ Chaparral Traffic Signal Construction Award
		Consent	Upper Timber Creek Interceptor - CO1
		Consent	Canyon Falls Park - Construction Award
		Consent	Pecan Orchard Park Playground Equipment Purchase & Install
		Consent	Consider approval of a Professional Services Agreement with ECS Southwest, LLP to provide construction materials engineering and testing, for the Waketon Road (Cross Timbers Drive to 1,350' East of Chinn Chapel) project, in the amount of \$121,308.00; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Traffic Signal Rehabilitation Equipment Purchase
		Consent	Stonehill Pump Station Discharge Valve Replacement & 10 MG GST Rehabilitation - Testing Award.
	11/16/2020	Consent	Wastewater Treatment Plant Phase V - Change Order 2
		Consent	Canyon Falls Park - Testing Award
	11/19/2020	Work Session	Placeholder: permitted use discussion
	12/7/2020	Consent	Bruton-Orand @ FM 1171 Right Turn Lane - Construction Award
		Consent	Master Plan Update
		Consent	Consider approval of Standards of Care for Youth Recreation Programs operated by the Town, in accordance with the Texas Human Resources Code - Section 42.041 and to adopt an ordinance providing for said Standards.
	12/21/2020	Consent	Bruton-Orand @ FM 1171 Right Turn Lane - Testing Award
	3/1/2021	Regular	Consider approval of an ordinance amending the Town of Flower Mound's Annual Budget for the fiscal year beginning October 1, 2020, and ending on September 30, 2021, as adopted by Ordinance No. xx-xx for adjustments to the General Fund