# AGENDA

## FLOWER MOUND TOWN COUNCIL REGULAR MEETING

## 10/19/2020

## 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. ANNOUNCEMENTS

1. Announce recent and upcoming civic and social events.

## F. TOWN MANAGER'S REPORT

Update and discussion on:

1. Capital improvement projects
2. Economic Development projects
3. Financial update
4. Mixed-use regulations

## G. 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).**

## H. COORDINATION OF CALENDARS

1. A regular meeting is scheduled for Monday, November 2.
2. A regular meeting is scheduled for Monday, November 16.
3. A work session is scheduled for Thursday, November 19.

## I. 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 10/5 & 10/15- Consider approval of the minutes from a regular meeting of the Town Council held on October 5, 2020, and approval of the minutes from a joint Town Council/Planning and Zoning work session held on October 15, 2020.
2. Handyman Contract- Consider approval to utilize the handyman contract pricing with Unlimited Hotel Services, Inc. for services performed on the Police Department CID and Jury Room Renovation Project.
3. Municipal Grounds/Landscape Maintenance- Consider approval to increase the contract funding for additional grounds maintenance and landscape services performed by American Landscape.
4. Ice Cream Trucks- Consider approval of an ordinance amending Chapter 18, "Businesses," Article III "Food and Food Establishments," and Article IV "Solicitation Activities," of the Code of Ordinances of the Town of Flower Mound, Texas, by amending Section 18-91, "Definitions," and adding a new Section 18-127, "Ice Cream Trucks," to define and establish permit requirements and regulations for ice cream trucks, by amending Section 18-267, "Solicitation on public property," to allow designated mobile food vendors to operate within the public rights-of-way, and by amending Appendix A "Fee Schedule," relative to adding a permit fee.
5. Vehicle Purchase - Police Tahoes- Consider approval of the purchase of three (3) Chevrolet Tahoe Police Pursuit Vehicles with Equipment and Patrol Application (turn-key units) per Town of Flower Mound Specifications and Vendor Quote from Holiday Chevrolet for Police Services in the amount of $176,678.00
6. Reimbursement Resolution- Consider approval of a resolution declaring expectation to reimburse water and sewer project 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.
7. Denton County Library Agreement- 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.
8. Lewisville Gun Range Agreement- Consider approval of a fee agreement with City of Lewisville for use of the Jerry R. Galler Public Safety Training Center for the purpose of firearms training and annual qualifications, and authorization for the Mayor to execute same on behalf of the Town.

9. US 377 at FM 1171 Water Line Design- 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.

10. Garden Ridge Water Ph II Testing Award- 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.

11. License Agreement - Vehicle Parking- Consider approval of a License Agreement with Sankey, Ltd. to allow for vehicle parking on park property; and authorization for the Mayor to execute same on behalf of the Town.

12. Holiday Lighting Service Contract- Consider approval of a Service Contract with The Christmas Light Company, Inc., in an annual amount not-to-exceed $55,100, to provide holiday lighting services at the Community Activity Center; and authorization for the Mayor to execute same on behalf of the Town.

13. 2021 Independence Fest- 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).

## J. REGULAR ITEMS

14. Stonehill Pump Station Discharge Valve- 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.

15. Board or Commission Member Comments- Consider creation of a protocol regarding public comments made by a board or commission member directed toward members of Council. *(No packet content)*

16. Voting Record- Consider creation of a voting record document for Town Council and board and commission members. *(No packet content)*

## K. 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, and 551.087 for consultation with attorney, and to discuss matters relating to real property, 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.

## L. 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.

## M. 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 16, 2020, at 2:10 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 19, 2020

**FROM:** Theresa Scott, Town Secretary

**ITEM:** **Consider approval of the minutes from a regular meeting of the Town Council held on October 5, 2020, and approval of the minutes from a joint Town Council/Planning and Zoning work session held on October 15, 2020.**

**BACKGROUND INFORMATION:** The Town Council held a regular meeting on October 5, 2020, and a joint work session with the Planning and Zoning Commission on October 15, 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 10.5
2. Draft minutes 10.15

**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 5TH DAY OF OCTOBER 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 |
| Joelle Hainley | Building Official |
| Chuck Jennings | Director of Parks and Recreation |
| JP Walton | Assistant to the Town Manager |

## 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 Russ McNamer 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. | Doug Brown, 1721 Ingleside Dr | Veterans Liaison committee update |
| 2. | Ann Martin, 4700 Oak Springs Dr | Voting |
| 3. | Ava Caruthers, Viburnum Dr (House # not provided) | Home security concerns |

DRAFT

## E. PRESENTATIONS

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

   Mr. Walton provided background information regarding this item.

   Alan Pennington, Matrix Consulting, gave a presentation identifying or noting:

   - Project scope
   - Project methodologies
   - Current strengths
   - Key recommendations
   - Summary

   and he, Ms. Hainley, or Mr. Dalton, responded to the following questions or comments from Council:

   - Clarification regarding the suggested time line for implementation
   - Hiring versus contractual services
   - What cities were used for the comparison assessment
   - Is TRAKit software being fully utilized

## F. ANNOUNCEMENTS

None.

## G. TOWN MANAGER'S REPORT

Ms. Wallace provided a report on the following topics:

1. Capital improvement projects

   - Roundabout projects
   - Gibson Grant Log Cabin

2. Economic Development projects

   - Now open or coming soon businesses

3. 2020 Planning Innovator Award

   Mr. Dalton gave a presentation identifying or noting:

   - Background information about the award
   - Development map
   - Notification process
   - Staff group photo

DRAFT

## H. FUTURE AGENDA ITEMS

1. Councilmember Pierson requested a future agenda item to discuss the creation of a voting record document for Council members and possibly for board members as well. There was council consensus to have a discussion on the topic at a future agenda.

2. Mayor Pro Tem Sharma requested a future agenda item to discuss and possibly adopt protocol regarding public comments made by a board or commission member directed toward Councilmembers.

   Mr. Meredith or Ms. Scott provided statements of fact regarding the structure of board and commission members, as well as communication opportunities at the Town's annual in-house training.

   There was council consensus to have a discussion on the topic at a future meeting.

## 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.

   Ms. Scott pointed out the option to swap the Oct. 15th work session to the Nov. date given voting will be underway in Town Hall, as well as other electioneering factors.

   There was Council consensus to move the October 15th meeting start time to 7:30 p.m. and other meetings during the voting period would continue as usual.

2. A regular meeting is scheduled for Monday, October 19.

   Mayor Dixon confirmed the October 19th Council meeting date.

3. Confirm Town Council availability for December 21, 2020, meeting.

   Ms. Scott sought clarification from Council regarding availability given the date is close to the Christmas holiday.

   And she responded to the following questions from Council:
   - If Council is still compliant with the number of meetings per month requirement

   Two members of Council indicated they will not be available at that meeting.

   There was Council consensus to cancel the December 21st meeting.

## J. 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 21, 2020.

DRAFT

2. Consider approval to the purchase of Cityworks custom ELA licensing in the amount of $48,000.00.
3. 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. 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. 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. 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.

Mayor Pro Tem Sharma moved to approve by consent Items 1 – 6, as presented in the agenda caption. Deputy Mayor Pro Tem Forest 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:** *Motion passed*
**AYES: PIERSON, ENGEL, SHARMA, FOREST, BUMGARNER**
**NAYS: NONE**

## K. REGULAR ITEMS

7. 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.

   **Staff Presentation**

   Mr. Jennings gave a presentation identifying or noting:
   - Grant information (funding and timeline)
   - Peters Colony Memorial Park (park master plan)

   Mayor Dixon opened the Public Hearing at 7:17 p.m. No one spoke. Mayor Dixon closed the Public Hearing at 7:17 p.m.

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

**RESOLUTION NO. 20-20**

**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**

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**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.**

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

8. 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.

**Staff Presentation**

Ms. Wallace gave a presentation identifying or noting:

- Timeline
- Description
- Floorplan
- Elevations
- Site plan

and she responded to the following questions from Council:

- Clarification regarding what is included for the price (i.e. landscaping)
- Is the restoration reasonable

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

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

9. 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.

**Staff Presentation**

Mr. Waltenburg provided background regarding the project.

Pete Kelly, Kimley Horn, gave a presentation identifying or noting:

- Purpose
- Existing and future conditions
- Summary and results
- Comparison to previous update (2015)
- Next steps

**Council Discussion**

There was Council discussion regarding:

DRAFT

- Community growth
- Request for a copy of the presentation

## L. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 7:43 p.m. on October 5, 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 8:00 p.m. on October 5, 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.

Mayor Pro Tem Sharma moved to approve granting authority to Town staff to submit a bid as discussed during executive session. With additional authorization for the Interim Town Manager, or her designee, to close on the property should an agreement be reached, to pay all costs associated with said closing in addition to the purchase price of the property, and to execute all necessary documents at closing on behalf of the Town. Deputy Mayor Pro Tem Forest seconded the motion.

**VOTE ON MOTION:** *Motion passed*
**AYES: FOREST, SHARMA, ENGEL, PIERSON**
**NAYS: BUMGARNER**

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.

   No action taken.

d. Discuss and consider the recruitment process for the Town Manager, and all matters incident and related thereto.

   No action taken.

## M. ADJOURN REGULAR MEETING

Mayor Dixon adjourned the meeting at 8:01 p.m. on Monday, October 5, 2020, and all were in favor.

**TOWN OF FLOWER MOUND, TEXAS**

_____
**STEVE DIXON, MAYOR**

DRAFT

**ATTEST:**

_____

**THERESA SCOTT, TOWN SECRETARY**

DRAFT

**THE JOINT FLOWER MOUND TOWN COUNCIL AND PLANNING AND ZONING COMMISSION WORK SESSION HELD ON THE 15th DAY OF OCTOBER, 2020, IN THE FLOWER MOUND TOWN HALL, LOCATED AT 2121 CROSS TIMBERS ROAD IN THE TOWN OF FLOWER MOUND, COUNTY OF DENTON, TEXAS AT 7:30 P.M.**

*Click here for meeting video link (subject to change)*

The Town Council and Planning and Zoning (P & Z) Commission met in a work session with the following members present:

**Town Council**

| | |
|---|---|
| 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 |

**Planning and Zoning Commission**

| | |
|---|---|
| Brad Ruthrauff | Chair |
| Rob Rawson | Vice Chair |
| Adam Schiestel | Place 2 |
| David Johnson | Place 4 |
| Phil DelVecchio | Place 5 |
| Don Gilmore | Place 6 |
| Tim Fink | Place 7 |
| Janvier Werner | Place 9 |

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

| | |
|---|---|
| Theresa Scott | Town Secretary |
| Debra Wallace | Interim & Deputy Town Manager/CFO |
| Tommy Dalton | Assistant Town Manager |
| Lexin Murphy | Director of Planning Services |

## A. CALL WORK SESSION TO ORDER

Mayor Dixon called the work session to order at 7:30 p.m.

## B. 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. | Ray White, 3900 Regency Park | Master plan |

DRAFT

## C. WORK SESSION ITEM

1. Joint work session with the Planning and Zoning Commission to discuss infill locations.

Ms. Murphy gave a presentation identifying or noting:

- Previous discussion
- Undeveloped properties
- Master Plan language
- Infill standards
- Mixed use zoning
- Incentives for use

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

- Clarification regarding the criteria of infill
- What is the goal (what want to accomplish)
- Are all of the infields residential
- What's wrong with the master plan that the Town is trying to fix, especially for the large lots
- Clarification regarding the intent
- How frequently does the Town conduct a Master Plan review

**Council/Planning and Zoning Commission Discussion**

There was Council and Planning and Zoning Commission discussion regarding:

- Are existing rural homesteads included
- Possibility of a fast track opportunity for a percentage of parkland dedication
- Suggested categorizations may allow more certainty amongst the development community
- Possibility of making the infill properties more site specific and set a standard based on that
- How the challenge to an infill property is just a matter of coming before Council for a vote
- How the longer a property sits idle the more complicated the situation will be
- Incentivize people to bring a plan forward and look at each project on its merit
- Importance of defining infill properties, and then set criteria for a developer to look at to see if it fits
- Interest in engaging the Parks Board (for the ones with park components)
- What problem is the Town trying to solve
- Interest in having input from the property owners

Mayor Dixon summarized that the staff direction is:

- Create a list of properties that have multiple applications and identify those with known difficulties, then add to this list the small undeveloped properties that don't fit the above criteria
- Create another list of large and small properties that have conflicts between the master plan and zoning
- Then from there take those two lists and outline the properties to have a more constructive conversation on what to do.

DRAFT

He also pointed out that this could be done in a phased process.

## D. ADJOURN WORK SESSION

Mayor Dixon adjourned the work session at 8:59 p.m. on Thursday, October 15, 2020, and all were in favor.

**TOWN OF FLOWER MOUND, TEXAS**

_____
**STEVE DIXON, MAYOR**

**ATTEST:**

_____
**THERESA SCOTT, TOWN SECRETARY**

DRAFT

# TOWN COUNCIL AGENDA ITEM NO. 2

## CONSENT ITEM

**DATE:** October 19, 2020

**FROM:** Jeff Garner, Director of Facilities Management

**ITEM:** **Consider approval to utilize the handyman contract pricing with Unlimited Hotel Services, Inc. for services performed on the Police Department CID and Jury Room Renovation Project.**

**BACKGROUND INFORMATION:** Occasionally the Facilities Management Division will serve as the General Contractor on various construction projects. This allows the Town the ability to fast track projects and save money utilizing the handyman contractors.

The FY 19-20 budget included funding to renovate the jury/community room and the CID space adding an interview room at the Police & Courts facility. Facilities Management is acting as the General Contractor and will utilize the handyman contract pricing for this project.

**BOARD REVIEW/CITIZEN FEEDBACK:** N/A

**ALTERNATIVES/OPTIONS:** N/A

**FISCAL IMPACT:** The funding for these projects was approved during the FY 19-20 budget process.

| Proposed Expenditure/(Revenue): | Account Number(s): |
|---|---|
| $44,450 | 100-655-59200-6010 |

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

**LEGAL REVIEW:** N/A

**ATTACHMENTS:** N/A

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

# TOWN COUNCIL AGENDA ITEM NO. 3

# CONSENT ITEM

**DATE:** October 19, 2020

**FROM:** Jeff Garner, Director, Facilities Management

**ITEM:** **Consider approval to increase the contract funding for additional grounds maintenance and landscape services performed by American Landscape**

**BACKGROUND INFORMATION:** The Town currently contracts with American Landscape Services to perform landscape services to the grounds of Town owned facilities. This request is to increase the scope of services performed by American Landscape Services. Expansions of Town Hall, Library, Police and Court, and new Facilities such as Fire Station 7 require that the additional grounds be maintained on a regular basis. Additionally, replacement plants, sod, and trees are needed as well as irrigation modifications to maintain existing grounds.

On June 4, 2018, Town Council approved an amount not to exceed $170,000. An additional $80,000 is needed due to the increased scope of services, making the total annual amount not to exceed $250,000.

**BOARD REVIEW/CITIZEN FEEDBACK:** N/A

**ALTERNATIVES/OPTIONS:** N/A

**FISCAL IMPACT:** $250,000.00

| Proposed Expenditure/(Revenue): | Account Number(s): |
|---|---|
| $250,000.00 | 100-655-59200-5110 |

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

**LEGAL REVIEW:** N/A

**ATTACHMENTS:**

1. Proposal
2. Change order

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

AMERICAN LANDSCAPE SYSTEMS
*Professional Landscape /Irrigation Contractor*
1780 Midway Road • Lewisville, Texas 75056

# PROPOSAL

| DATE | PROPOSAL # |
|---|---|
| 9/25/2020 | 3567 |

| NAME / ADDRESS |
|---|
| TOWN OF FLOWER MOUND<br>ATTN: Marquita<br>2121 CROSS TIMBERS RD<br>FLOWER MOUND, TX 75028 |

| TERMS | PROJECT |
|---|---|
| Net 30 | 318MM - Municipal Grounds Maintenance |

| QTY | DESCRIPTION | UNIT | UNIT PRICE | TOTAL |
|---|---|---|---|---|
| | BID Number: 2018-56-A | | | |
| 1 | Monthly Grounds Maintenance for Town Facilities-Original Bid | | 114,920.00 | 114,920.00 |
| | | | | |
| | CHANGE ORDER #1 BID Number: 2018-56-A | | 0.00 | 0.00 |
| | | | | |
| 12 | #5 Flower Mound Library Expansion | | 208.00 | 2,496.00 |
| 12 | #26 Fire Station 7 | | 325.00 | 3,900.00 |
| 12 | #6 Police & Court | | 418.00 | 5,016.00 |
| 12 | #7 Town Hall | | 188.00 | 2,256.00 |
| 1 | As needed Irrigation Repair | | 45,000.00 | 45,000.00 |
| 1 | As needed Seasonal Color | | 15,000.00 | 15,000.00 |
| 1 | As needed Plants, grass, shrubs, and tree replacement | | 50,000.00 | 50,000.00 |
| | -As needed items are not part of monthly maintenance service and will only be used at the request of a Town representative and with an approved PO. | | | |
| | Original Contract Items-$114,920.00 | | | |
| | CO1 New or Added Area Total-$13,668.00 | | | |
| | As needed Items Total-$110,000.00 | | | |

Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ) (MC-178), PO Box 13087, Austin, Texas 78711-3087. TCEQ's website is: www.tceq.state.tx.us

| | |
|---|---|
| **SALES TAX (0.0%)** | $0.00 |
| **TOTAL** | **$238,588.00** |

All material is guaranteed to be as specified, and the above work performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner.

ACCEPTANCE OF PROPOSAL The above prices, specifications and conditions are satisfactory and hereby accepted. You are authorized to do the work. Payments will be made as outlined above.

Signature_____ Date_____

ISSUED BY:
Purchasing Division
2121 Cross Timbers Road
Flower Mound, Texas 75028

**TOWN OF FLOWER MOUND**
**CONTRACT CHANGE ORDER**

Contract No.: 2018-56-A
Change Order #: 1
Effective When Signed by Both Parties

Contract Title:
Best Value Bid for Municipal Grounds Maintenance

Contractor Name/Address:
American Landscape Systems, Inc.
**Attn: Joseph Angelone, Vice President**
1780 Midway Rd.
Lewisville, TX 75056

Reference Documents:
See attached price increase email request from

Contract Adjustment:
The Contract Amount is:
☒ Increased ☐ Decreased ☐ Not Changed

In the Amount of : See below Description

Contract Term:
The Contract Time is:
☐ Increased ☐ Decreased ☒ Not Changed
By:
Contract Expiration Date: 6/4/2019 thru 6/4/2021

Description of Change:

This Change Order No. 1 is to acknowledge Town of Flower Mound's acceptance of American Landscape Systems, Inc's attached price increase proposal for additional services as noted; increasing the contract from $114,920.00 by $13,668.00 for weekly mowing/landscape services and as needed items estimated at $110,000.00 for a revised annual estimated expenditure of $238,588.00 effective on the date this change order is fully executed. ****All other items remain unchanged.**

The attached price proposal is accepted and incorporated as part of this change order.

**No claims for further compensation or extensions of time, whether for delay, overhead, profit, fees, acceleration, force majeure, disruption, or any other reason, shall be made by the Contractor as a result of the changes contained in this Change Order, as payment specified hereunder constitutes compensation in full for the Work as altered herein.**

Accepted By:
American Landscape Systems, Inc.
By: _____
AUTHORIZED REPRESENTATIVE
Date: 10/9/2020

Print/Type Name and Title:
Joseph T. Angelone V.P.

Accepted By:
TOWN OF FLOWER MOUND
By: Marquita Shamlin
AUTHORIZED REPRESENTATIVE
Date: 10/9/2020

Marquita Shamlin – Buyer
Purchasing Division

**CONTRACTOR'S RECEIPT OF AN EXECUTED COPY OF THIS FORM SHALL SERVE AS A CONTRACTOR'S OFFICIAL NOTICE TO PROCEED WITH THE CHANGE TO WORK INCLUDED HEREIN.**

# TOWN COUNCIL AGENDA ITEM NO. 4

## CONSENT ITEM

**DATE:** October 19, 2020

**FROM:** Tom Vyles, Environmental Health Manager

**ITEM:** **Consider approval of an ordinance amending Chapter 18, "Businesses," Article III "Food and Food Establishments," and Article IV "Solicitation Activities," of the Code of Ordinances of the Town of Flower Mound, Texas, by amending Section 18-91, "Definitions," and adding a new Section 18-127, "Ice Cream Trucks," to define and establish permit requirements and regulations for ice cream trucks, by amending Section 18-267, "Solicitation on public property," to allow designated mobile food vendors to operate within the public rights-of-way, and by amending Appendix A "Fee Schedule," relative to adding a permit fee.**

**BACKGROUND INFORMATION:** Current Town regulations effectively prohibit ice cream trucks from operating within Town limits. At the June 19, 2020, Strategic Planning Session, staff received direction to create an ordinance to permit mobile ice cream vending within the Town.

This ordinance amendment will define ice cream trucks and mobile ice cream vendors, establish regulations for the operation of mobile ice cream trucks within the Town rights-of-way, and establish an annual permit fee for the ice cream trucks.

**ALTERNATIVES/OPTIONS:** Maintain the current ordinance which effectively prohibits ice cream trucks from operating in Flower Mound

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

**ATTACHMENTS:**

1. Draft Ordinance

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

**TOWN OF FLOWER MOUND, TEXAS**

**ORDINANCE NO._____**

**AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 18, "BUSINESSES," OF THE TOWN'S CODE OF ORDINANCES, SECTION 18-91, "DEFINITIONS," TO ADD DEFINITIONS TO REGULATE ICE CREAM TRUCKS; ADDING SECTION 18-127, "ICE CREAM TRUCKS," TO ESTABLISH REGULATIONS FOR ICE CREAM TRUCKS; AMENDING SECTION 18-267, "SOLICITATION ON PUBLIC PROPERTY," TO ALLOW ICE CREAM TRUCK VENDORS TO OPERATE WITHIN THE PUBLIC RIGHTS-OF-WAY; 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.**

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

**WHEREAS**, the Town Council of the Town of Flower Mound previously adopted the Texas Department of State Health Services "Texas Food Establishment Rules" found in the Texas Administrative Code; and

**WHEREAS**, the Texas Food Establishment Rules contain regulations for Mobile Food Units; and

**WHEREAS,** the Town finds that the permitted operation of ice cream trucks and similar Mobile Food Units do not create a health hazard or nuisance when properly regulated; and

**WHEREAS,** the Town Council finds that the regulations adopted herein are in the best interest of the Town of Flower Mound and will promote the health, safety, and general welfare of the citizens of the Town of Flower Mound and the general public.

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

**SECTION 1**

Chapter 18, "Businesses," Article III, "Food and Food Establishments," Division 2, "Food Service Establishments," Subdivision I, "In General," Section 18-91 "Definitions," of the Code of Ordinances of the Town of Flower Mound, Texas, is hereby amended by adding the following:

**"Sec. 18-91. – Definitions.**

***

*Mobile ice cream truck* means a permitted mobile food unit/establishment that vends pre-wrapped and sealed ice cream, soft serve ice cream, canned soft drinks, pre-packaged candy, chips, and pickles.

*Mobile ice cream vendor* means any person who has obtained a valid permit to operate a mobile ice cream truck on the public right-of-way to sell goods as permitted herein to customers for immediate consumption.

***

*Sunset:* The time in the evening established by the National Oceanic and Atmospheric Administration (NOAA)."

**SECTION 2**

Chapter 18, "Businesses," Article III, "Food and Food Establishments," Division 2, "Food Service Establishments," Subdivision II, "Permit,", of the Code of Ordinances of the Town of Flower Mound, Texas, is hereby amended by adding Section 18-127, "Ice Cream Trucks," to read as follows:

"Sec. 18-127. - Ice Cream Trucks.

(a) Any person desiring to operate as a mobile ice cream vendor shall submit an application and appropriate fee, found in Appendix A of this Code, to the Town.

(b) All mobile ice cream vendors and mobile ice cream truck employees must submit to and pass an approved background check through the Flower Mound Police Department prior to operating a mobile ice cream truck.

(c) Mobile ice cream vendors shall comply with all applicable Town and state health laws and regulations.

(d) All sales shall take place between the hours of 11am and sunset.

(e) Mobile ice cream vendors shall not vend within 40 feet of any intersection, stop sign, flashing beacon, yield sign, or other traffic control signal located on the side of a roadway.

(f) Mobile ice cream vendors shall not sell within two city blocks or 600 feet, whichever is greater, of the grounds of a public, private, or parochial elementary or secondary school between the hours of 11am and 4:30pm on days when school is in session.

(g) Mobile ice cream vendors shall only vend on the passenger side of the ice cream truck.

(h) Mobile ice cream trucks shall park in the right-of-way, as far as practicable from traffic, when stopping for the purpose of making sales and shall operate emergency flashers when stopped. In no event shall a mobile ice cream truck stop for the purpose of making sales that prevent passage of other motor vehicles on the right-of-way or impede the flow of vehicular or pedestrian traffic.

(i) No signage or other obstructions shall block the windows of a mobile ice cream truck.

(j) The lawful name of the mobile ice cream truck shall be displayed on the vending/passenger side of the truck at all times.

(k) The menu and price lists shall only be displayed on the vending/ passenger side of the mobile ice cream truck.

(l) No mobile ice cream vendor shall sell alcoholic beverages, controlled substances, or any other item the possession or use of which is deemed illegal under any federal, state, or local law.

(m) Mobile ice cream trucks and vendors may only operate a horn, sound amplification system, or other sound producing device or music system during authorized vending periods. Mobile ice cream trucks and vendors shall not operate any such horn, sound amplification system, or other sound producing device or music system when the truck is stationary or in a manner that creates a noise disturbance as defined in Chapter 34, Sections 34-181 and 34-182 of the Town's Code of Ordinances.

(n) Pre-packaged candy, chips, and soft drinks must be sold in commercially packaged, single-portion units.

## SECTION 3

Chapter 18, "Businesses," Article IV, "Solicitation Activities," of the Code of Ordinances of the Town of Flower Mound, Texas, is hereby amended by amending Sub-section 18-267(a), "Solicitation on public property," to read as follows:

"**Sec. 18-267. – Solicitation on public property.**

(a) It shall be unlawful for any person to peddle, hawk, sell, solicit, distribute, or take orders for any services, wares, merchandise, or goods, including, but not limited to, magazines, encyclopedias, tools, photographs, flowers, candy, plants, or statues on the streets, street rights-of-way, or medians of the town, unless otherwise permitted as a Mobile Ice Cream Vendor. This prohibition shall apply to and include any institution or group organized for a political, religious, or charitable purpose, or individuals engaging in such activities on behalf of any such institution or group."

## SECTION 4

Appendix A, "Fee Schedule," of the Code of Ordinances of the Town of Flower Mound, Texas, is hereby amended by amending Chapter 18, "Businesses sub-section 18-123(a), to read as follows:

| "Code Section Number | Description |
|---|---|
| 18-123 | Food establishment fees |

(a) *Food establishment permit fees.* Each separate food establishment operating within the corporate limits of the Town of Flower Mound shall pay the following fees:

***

Mobile Ice Cream Truck (annually) …..$150.00”

**SECTION 5**

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

**SECTION 6**

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

**SECTION 7**

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

**SECTION 8**

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

**SECTION 9**

The Town Secretary of the Town of Flower Mound is hereby directed to publish the caption in the official newspaper of the Town of Flower Mound as required by Section 3.07 of the Charter of the Town of Flower Mound.

**SECTION 10**

This Ordinance shall be in full force and effect from and after the date of its passage and publication as required by law, and it is so ordained.

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE 19th DAY OF OCTOBER, 2020.**

**APPROVED:**

**_____**
**Steve Dixon, MAYOR**

**ATTEST:**

**_____**
**Theresa Scott, TOWN SECRETARY**

# TOWN COUNCIL AGENDA ITEM NO. 5

# CONSENT ITEM

**DATE:** October 19, 2020

**FROM:** Sabrina Zadow, Purchasing Manager

**ITEM:** **Consider approval of the purchase of three (3) Chevrolet Tahoe Police Pursuit Vehicles with Equipment and Patrol Application (turn-key units) per Town of Flower Mound Specifications and Vendor Quote from Holiday Chevrolet for Police Services in the amount of $176,678.00.**

**BACKGROUND INFORMATION:** The Police Services Department is requesting the purchase of three (3) new 2021 Chevrolet Tahoe 9C1 RWD Police Pursuit Vehicles with Equipment and Patrol Application per Town of Flower Mound Specifications and Vendor Estimate #28844 in the amount of $176,678.00 from Holiday Chevrolet through Tarrant County Contract 2019-014. This purchase is to replace Police Tahoe Patrol Application Units 43500-23, 43500-24 and 43500-38; and are part of the approved Fiscal Year 20-21 Vehicle Equipment Replacement Fund (VERF).

**BOARD REVIEW/CITIZEN FEEDBACK:** N/A

**ALTERNATIVES/OPTIONS:** N/A

**FISCAL IMPACT:** $176,678.00

| Proposed Expenditure: | Account Number(s): |
|---|---|
| $176,678.00 | 565-450-84500-6130 – VERF |

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

**LEGAL REVIEW:** N/A

**ATTACHMENTS:**

1. Fleet Supervisor's Bid Award Recommendation for Vehicle
2. Quote – Estimate #28844
3. Town of Flower Mound Specifications

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

# Bid Award Recommendation

Date: 10/01/2020

Description: **New 2021 Chevrolet Tahoe PPV w/ Equipment, Patrol Application**

Qty.: 3

*Replaces:* *Unit 43500-23 2014 Chevrolet Tahoe Patrol Application*
*Unit 43500-24 2015 Chevrolet Tahoe Patrol Application*
*Unit 43500-38 2016 Chevrolet Tahoe Patrol Application*

Bidder: Holiday Ford and Holiday Chevrolet (DBA: Johnson Grayson Automotive, Inc.)
Mike Hewitt – mike@defendersupply.com – 903.564.5641
Estimate #: 28844

Item: New (3) 2021 Chevrolet Tahoe PPV's w/ Equipment (turn-key units)
Per TOFM Specs

| | |
|---|---|
| Total Vehicle Cost: | $102,957.00 |
| Total Cost of Equipment/Installation: | $ 73,721.00 |
| Total Bid Price – 3 Units: | $176,678.00 |

It is Fleet Services recommendation to award the bid to **Holiday Ford and Holiday Chevrolet (DBA: Johnson Grayson Automotive, Inc.)** in the amount of **$176,678.00** utilizing the **Tarrant County Cooperative Contract # 2019-014**.

Fleet Services Supervisor

10/01/2020
Date

**Holiday Ford and Holiday Chevrolet**
**(DBA: Johnson Grayson Automotive, Inc.)**
1009 Highway 82 W
Whitesboro, TX 76273

| Date | 9/11/2020 |
|---|---|
| Estimate By | Mike Hewitt |
| | mike@defendersupply.com |
| | (903) 564-5641 |

| Bill To |
|---|
| Town of Flower Mound<br>2121 Crosstimbers Rd<br>Flower Mound, TX 75028 |

| Customer Contact | |
|---|---|
| Customer Phone | 972-874-6037 AP |
| Customer E-mail | accountspayable@flower... |
| Estimate # | 28844 |

| Description | Location | Qty. | Ext. Price |
|---|---|---|---|
| 2021 Chevrolet Tahoe 9C1 RWD Police Pursuit Vehicle with EcoTec3 5.3-liter, 10-Speed Auto Trans with Heavy Duty Cooler, Heavy Duty Clutch Type Locking Differential, Dual Batteries with 760-amp Auxiliary Battery, High-output Alternator, 20-inch Steel Wheels, Brembo Front Calipers with 16-inch rotors, Keyless Entry & Push-to-Start Ignition, OnStar with Bluetooth Connectivity, Vinyl Rear Seat & Front Recovery Tow Hooks. (No Spotlight) (Purchased Through Holiday Chevrolet on the Tarrant County Cooperative Contract # 2019-014).<br><br>BLACK Exterior<br><br>6E2 Keyed Alike<br>AMF 6 Sets of Keys/FOBs<br>Rear Windows, Doors, Locks, Handles, INOP, 6N5, 6N6. | | 3 | 102,957.00 |
| Ice chains for 20" Tires | | 3 | 573.00 |
| Window Tint - For Two Front Windows, Madico Onyx 55% | | 3 | 237.00 |
| Unity Driver Side Halogen Spotlight, Spotlight Shaft, Handle & Mounting Bracket for a 2015+ Tahoe (LED Replacement Bulb Sold Separately). | | 3 | 621.00 |
| Whelen LED 8 Degree Spotlight Replacement | | 3 | 477.00 |
| Whelen Solid State Chevrolet Tahoe Headlight/Taillight Flasher | | 3 | 207.00 |
| 2 Year Texas State Inspection Certificate | | 3 | 21.00 |
| Vehicle Dealer Prep | | 3 | 390.00 |
| Disable Rear Door Window Switches, Door Locks and Door Handles - Tahoe | | 3 | 435.00 |
| Troy Console, 18"<br><br>Faceplates:<br><br>Cencom<br>Motorola APX6500 Radio - 2 Piece | | 3 | 777.00 |
| Troy Floorplate, 2021 Tahoe | | 3 | 387.00 |
| Panel with cut-out for OEM port | | 6 | 450.00 |
| Troy Internal Beverage Holder w/Rubber Fingers | | 3 | 114.00 |
| Troy faceplate w/ (1) USB port and (2) 12VDC plugs | | 3 | 126.00 |

Final sale amount may be subject to state and local sales tax. PLEASE NOTE: Once this estimate has been approved, either by signature on this form, written approval referencing the estimate number or the issuance of purchase order, any changes or cancellations of parts made by the customer are subject to a 25% restocking fee. Any addtional customer-requested parts/services will be added to the total amount of the sale.

**Vehicle and Emergency Equipme...**

SIGNATURE

**Holiday Ford and Holiday Chevrolet**
**(DBA: Johnson Grayson Automotive, Inc.)**
1009 Highway 82 W
Whitesboro, TX 76273

| | |
|---|---|
| **Date** | 9/11/2020 |
| **Estimate By** | Mike Hewitt |
| | mike@defendersupply.com |
| | (903) 564-5641 |

| **Bill To** |
|---|
| Town of Flower Mound<br>2121 Crosstimbers Rd<br>Flower Mound, TX 75028 |

| | |
|---|---|
| **Customer Contact** | |
| **Customer Phone** | 972-874-6037 AP |
| **Customer E-mail** | accountspayable@flower... |
| **Estimate #** | 28844 |

| |
|---|
| |

| Description | Location | Qty. | Ext. Price |
|---|---|---|---|
| Troy Computer Mount, Side Clevis | | 3 | 945.00 |
| Docking Station for Dell's Latitude 14 Rugged and Latitude 12 & 14 Rugged Extreme Notebooks (Basic Port Replication) | | 3 | 1,332.00 |
| Pro-Gard Center Sliding Polycarbonate Window for 2015+ Chevrolet Tahoe 9C1 - Includes Recessed Panel & Pair of Bucket Seat Extension Panels - Mounted Behind Front Seats. | | 3 | 1,851.00 |
| Setina Transport Seat with Steel mesh Cargo Barrier | | 3 | 2,652.00 |
| Setina window bars for a 2015+ Tahoe | | 3 | 432.00 |
| Door Panel VS TPO Plastic Black Installs Over OEM Door Panels for a 2015+ Tahoe | | 3 | 453.00 |
| Dual T-Rail Weapon Lock with Timer & Handcuff Adjustable Locks | | 3 | 1,047.00 |
| Setina T-Rail Universal Lock, EoTech Bracket | | 3 | 51.00 |
| Whelen 54" Legacy® DUO+™ Color Series Super-LED® Clear Lens Light Bar with Take Downs, Alley Lights with Red/White/Blue/White Front Configuration & Red/Amber/Blue/Amber Rear Traffic Direction Configuration. | | 3 | 4,677.00 |
| Whelen Cencom Carbide Siren & PA Amplifier with Light Control Module with CANport™ OBDII Interface with Traffic Advisor™ Module. | | 3 | 2,196.00 |
| Whelen Cencom Carbide Siren & PA Amplifier & Light Control Head - Includes 3 Section Control Head and 21 Push-Buttons, 4-Position Slide Switch, Microphone with Extension Cable, No Charge When Purchased with Amplifier Control Module. | | 3 | 0.00 |
| OBDII Module for Chevy Tahoe | | 3 | 0.00 |
| Whelen Light Bar Strap Mount Kit for a 2015+ Chevrolet Tahoe | | 3 | 117.00 |
| Whelen 100 Watt All Weather Heavy Duty Composite Siren Speaker | | 3 | 447.00 |
| Whelen Universal "L" Shape Siren Speaker Bracket | | 3 | 69.00 |
| Carbide Expansion Module | | 6 | 387.00 |
| Whelen Surface Mount ION Trio Light Head in Red/Blue/White | | 12 | 1,068.00 |
| Whelen Trio Color LInear ION Red/Blue/White | | 21 | 1,869.00 |
| Defender Intersector 180 Degree Output LED Tricolor - Red/Blue/White Under Mirror Mounted Light for Critical Intersection & Side Warning Purposes | Sideview Mirrors | 6 | 441.00 |

Final sale amount may be subject to state and local sales tax. PLEASE NOTE: Once this estimate has been approved, either by signature on this form, written approval referencing the estimate number or the issuance of purchase order, any changes or cancellations of parts made by the customer are subject to a 25% restocking fee. Any addtional customer-requested parts/services will be added to the total amount of the sale.

**Vehicle and Emergency Equipme...**

SIGNATURE

**Holiday Ford and Holiday Chevrolet**
**(DBA: Johnson Grayson Automotive, Inc.)**
1009 Highway 82 W
Whitesboro, TX 76273

| | |
|---|---|
| **Date** | 9/11/2020 |
| **Estimate By** | Mike Hewitt |
| | mike@defendersupply.com |
| | (903) 564-5641 |

| **Bill To** |
|---|
| Town of Flower Mound<br>2121 Crosstimbers Rd<br>Flower Mound, TX 75028 |

| | |
|---|---|
| **Customer Contact** | |
| **Customer Phone** | 972-874-6037 AP |
| **Customer E-mail** | accountspayable@flower... |
| **Estimate #** | 28844 |

| | | | |
|---|---|---|---|
| **Description** | **Location** | **Qty.** | **Ext. Price** |
| Federal Signal hideaway light - BLUE/WHITE split | Reverse Lights | 6 | 450.00 |
| ION REAR PILLAR WC DUO TAHOE, Red/Blue | Rear Pillar | 3 | 2,736.00 |
| Whelen Low Frequency Howler Siren System programmed to run 60 seconds | | 3 | 1,329.00 |
| Whelen Howler Bracket - 2017+ Tahoe<br>***PLEASE INCLUDE REQUIRED PART #s WH-SAK63D AND WH-SAK63P*** | | 3 | 0.00 |
| Whelen Behind the Grill Siren Speaker Bracket - 2017+ Tahoe, Driver Side<br>*****MUST INCLUDE SAK63P IF INSTALLED W/ HOWLER***** | | 3 | 69.00 |
| Whelen Behind the Grill Siren Speaker Bracket - 2017 Tahoe, Driver Side<br>*****MUST INCLUDE SAK63D IF INSTALLED W/ HOWLER***** | | 3 | 69.00 |
| Whelen LED Flush Mount Compartment Light in Red & White | | 15 | 885.00 |
| Clear Fresnel Lens w/ White LED<br>& Red LED Night Light Dome Light | Front Cabin | 3 | 165.00 |
| Whelen Dual Avenger II DUO RB/RB CORD | | 3 | 687.00 |
| 4-Light "LR Series" Push Bumper (Whelen ION) for 2015+ Tahoe (LIGHTS NOT INCLUDED) | | 3 | 867.00 |
| Streamlight SL-20L LED Flashlight | | 3 | 306.00 |
| Stinger power cable for mobile charging unit. | | 3 | 27.00 |
| Stinger car charging unit | | 3 | 39.00 |
| 90 Watt Power Supply (with ferrite bead for in-vehicle EMI suppression) for use with DS-DELL-100,110 Series, DS-DELL-200,210,220,230 Series, DS-DELL-300 Series, DS-DELL-400 Series, and DS-GD-300 Series Docking Stations | | 3 | 396.00 |
| SafeStop for 2015+ Tahoe | | 3 | 354.00 |
| Stalker DSR 2X - "Ka" Band - Front & Rear Antenna Moving Radar Unit with Remote. | | 3 | 10,236.00 |
| Applied Concepts, Stalker, 24 Month Extended Warranty | | 3 | 1,347.00 |
| Stalker Counting Unit Mount for the Stalker Dual SL & DSR 2X for 2015+ Chevrolet Tahoe 9C1 | | 3 | 144.00 |
| Stalker Antenna Bracket for the Front Antenna for the Stalker Dual SL & DSR 2X for 2015+ Chevrolet Tahoe 9C1 | | 3 | 177.00 |
| Motorola APX4500 Cables, complete cable sets | | | |

Final sale amount may be subject to state and local sales tax.
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**Vehicle and Emergency Equipme...**

SIGNATURE

**Holiday Ford and Holiday Chevrolet**
**(DBA: Johnson Grayson Automotive, Inc.)**
1009 Highway 82 W
Whitesboro, TX 76273

| | |
|---|---|
| **Date** | 9/11/2020 |
| **Estimate By** | Mike Hewitt |
| | mike@defendersupply.com |
| | (903) 564-5641 |

| **Bill To** |
|---|
| Town of Flower Mound<br>2121 Crosstimbers Rd<br>Flower Mound, TX 75028 |

| | |
|---|---|
| **Customer Contact** | |
| **Customer Phone** | 972-874-6037 AP |
| **Customer E-mail** | accountspayable@flower... |
| **Estimate #** | 28844 |

| |
|---|
| |

| Description | Location | Qty. | Ext. Price |
|---|---|---|---|
| HAF4013A Motorolla Antenna (762-870 mHz) | | 3 | 315.00 |
| Mobile Power Cable, 20ft, 10 AWG | | 3 | 144.00 |
| Power cable plus speaker outs for Motorola XTL 5000 | | 3 | 120.00 |
| 7.5W Motorola radio speaker - NOT FOR STOCK | | 3 | 225.00 |
| 17' remote cable | | 3 | 210.00 |
| Federal Signal LED Opticom ® Emitter, Infrared System - External Use | | 3 | 3,654.00 |
| Opticom Bracket for Front Push Bumper just like Fairview PD placing the Opticom up close to the top Horizontal Bar - Made by Defender Supply | | 3 | 117.00 |
| Panorama GPS-D-2148, GPSD+/C29/C32/C74/CABLES KIT | | 3 | 1,047.00 |
| AFM 835 700-800 whip | | 3 | 42.00 |
| Radio Cable FRadio Cable FME(ftd) MPL(ftd) 5m CS23 cable | | 3 | 54.00 |
| Jotto Desk Magnetic Mic Clip | | 9 | 252.00 |
| Cradlepoint COR IBR900 Wiring Harness | | 3 | 291.00 |
| Design & Installation of Graphics for Customer's Department-Graffix Shoppe | | 3 | 1,701.00 |
| Professional Installation of Graphics by Defender Supply | | 3 | 450.00 |
| Red or Green Rocker Switches for 3SR Dome Light Activation | | 6 | 8.00 |
| Shipping of Above Emergency Parts for Upfit | | 3 | 309.00 |
| Misc. Shop Supplies | | 3 | 231.00 |
| Defender Supply Wiring Harness, Power Distribution Block and Battery Management System | | 3 | 1,125.00 |
| Installation of Above Equipment and Below Customer Supplied Items:<br><br>Installation of Above Emergency Equipment<br><br>CUSTOMER SUPPLIED:<br><br>Cradlepoint<br>Motorola APX6500<br>Axon Fleet 2 | | 3 | 17,487.00 |
| Defender Supply Electronic Equipment mounting system with Protection Cover - Mounts to cargo partition in the Rear Cargo Area to Install and Protect Electronic Equipment and Power Distribution for Cleanliness and Easy Maintenance Access. Includes Installation. | | 3 | 807.00 |

Final sale amount may be subject to state and local sales tax. PLEASE NOTE: Once this estimate has been approved, either by signature on this form, written approval referencing the estimate number or the issuance of purchase order, any changes or cancellations of parts made by the customer are subject to a 25% restocking fee. Any addtional customer-requested parts/services will be added to the total amount of the sale.

**Vehicle and Emergency Equipme... $176,678.00**

SIGNATURE _____

Town of Flower Mound

**PURCHASING SPECIFICATIONS** **SPECIFICATION NO.:**

**Revised: August 10, 2020**

# ITEM: (3) THREE New Vehicle 1/2 Ton Pursuit rated Police pkg. SUV, 4-door, 2 wheel drive

**(TOFM vehicle replacement program Unit's 43500-23,24,38)**

**FUNCTION: Pursuit Application Vehicle. Public Safety unit with rear cargo area for transporting various types of equipment.**

**DESCRIPTION: (The following should be interpreted as examples only, for the type of vehicle requested. It is not the intent of the Town of Flower Mound to exclude any vehicle which meets or exceeds the required specifications in this bid.)**

**Example:**
**Chevy Tahoe (police pursuit rated)**

**NOTE:**

**Bidder MUST indicate: 'Yes' unit bid meets or exceeds the minimum required specification, or 'No' unit bid does not meet or exceed the minimum required specification listed. Failure to do so could result in disqualification of bid.**

**ATTENTION:**

**It is the intent of the Town of Flower Mound to satisfy the requirements setforth by the EPA (Environmental Protection Agency) whenever purchasing new vehicles and/or equipment.**

| Bidder / Flower Mound Y/N | Y/N | |
|---|---|---|
| Y | Y__ | 1. Unit bid is EPA LEV (Certified Low Emmissions Vehicle). |
| Y | Y__ | 2. Unit bid is an E-85 flex-fuel vehicle. (FFV not required for this application.) |

**DRIVE TRAIN**

**Bidder / Flower Mound**

| Y/N | Y/N | |
|---|---|---|
| Y | Y__ | 1. Engine: Gasoline, minimum 3.5L or equal<br>State engine size bid: 5.3L<br>Flex-Fuel: ✓Yes __No |
| Y | Y__ | 2. Automatic Transmission |
| Y | Y__ | 3. Fuel tank: min. 20 gal. |
| Y | Y__ | 4. Dual Heavy duty battery |
| Y | Y__ | 5. Power Anti-lock Braking System, 4-wheel Disc |
| Y | Y__ | 6. Rear wheel drive |

## TIRES AND WHEELS

**Bidder / Flower Mound**

| Y/N | Y/N | |
|---|---|---|
| Y | Y__ | 1. Tires: Radial highway, all season |
| Y | Y__ | 2. Full size spare tire with jack |
| Y | Y__ | 3. Matching full size spare tire/wheel |
| Y | Y__ | 4. Ice/Snow cables (1 set, for 2 tires) per the tire size bid |

## CAB & EQUIPMENT

**Bidder / Flower Mound**

| Y/N | Y/N | |
|---|---|---|
| Y | Y__ | 1. Power Steering |
| Y | Y__ | 2. Tinted glass – Front Driver/Passenger 55% Madico Onyx (rear factory darkness) |
| Y | Y__ | 3. Intermittent wipers |
| Y | Y__ | 4. Exterior Paint: **Black** |
| Y | Y__ | 5. Seats: Cloth Front lowback (bucket) seats, Rear Vinyl |
| Y | Y__ | 6. Rear fold down seat, (preferred 60/40 split) |

Y 7. Air Conditioning

Y 8. Radio: Standard AM / FM w/CD player

Y 9. Rear Window Defroster

Y 10. Interior cargo area.
Preferred width: min. 74".
State width of unit interior bid: 74"

Preferred cargo volume: min. 27 cu.ft.
State cargo volume of unit bid: 27 cu ft

Y 11. Rear window washer and wiper

Y 12. Power windows (with inoperative rear window switchs) 6N5

Y 13. Power door locks (with rear door locks and handles inoperative) 6N6

Y 14. Power Driver/Passenger Mirrors

Y 15. Front and Rear: Full black rubber floor covering (no floormats).

Y 16. Interior: Dark gray or equivalent dark interior

Y 17. Keyless entry

Y 18. six (6) sets of keys (Must be included at time of vehicle delivery) 5HP

Y 19. All vehicles keyed alike (6E2 Key Common)

Y 20. Rear lift hatch

Y 21. 1 - Vehicle spotlight/post and door mount (LED), located on the driver side only.

Y 22. Tow Hitch / Package

Y 23. 6J7 Flasher System (Headlamp and Tailamp) 6J7

Y 24. Bluetooth UE1

**OTHER EQUIPMENT**

**Bidder / Flower Mound**
**Y/N Y/N**

Y Y__ 1. Running boards, full length.

Y Y__ 2. Pursuit Package (Law Enforcement Emergency Vehicle Package) to include but not limited to: engine and transmission cooling package, increased electrical power and heavy duty suspension.)

Y Y__ 3. Vehicle State Inspection when delivered (2 year certificate)

**ATTENTION: ***

**ALL ITEMS LISTED UNDER "EQUIPMENT OPTIONS" BELOW WILL BE INCLUDED IN THE OVERALL COST AND MAKE READY OF THE REQUESTED VEHICLE SPECIFICATION AS PART OF THE FINAL UNIT. ALL PRICING AND INSTALLATION CHARGES MUST BE INCLUDED IN THE OVERALL COST OF EACH UNIT.**

**EQUIPMENT OPTIONS:**

Manufacturer brands and model numbers listed are to be interpreted as 'preferred'. Any equivalent bid must be an exact replacement for preferred Mfg. brand and model number.
*The following items will be included as Options. The listed Mfg. brand or a manufacture equivalent will be required. If an equivalent is named it must be approved by the Town of Flower Mound Chief of Police or his designee.

***Interior** **COST EACH**

**Bidder / Flower Mound**
**Y/N Y/N**

Y Y__ (3) Troy Standard Width Console 18"
Part # CC-C18 $ 161.00

Y Y__ (3) Troy Products Internal Bev Holder #AC-INBHG $ 114.00

Y Y__ (3) Troy console bracket for USB and 12v $ 126.00

Y Y__ (3) Troy Computer Mount Side Clevis
Part # CM-SDMT-SLS-HAV $ 945.00

| | | | |
|---|---|---|---|
| Y | Y__ | (3) Havis Docking Station for Dell Rugged Part#DS-DELL-405 | $ 1332 |
| Y | Y__ | (3) Pro-Gard Partition w/ Recess and Lower Ext. Part # | $ 1851 |
| Y | Y__ | (3) Setina Exp Metal Cargo Partition W/ Seat Part # QK0635TAH15 | $ 2652 |
| Y | Y__ | (3) Setina Window Barrier Part # WK0514TAH15 | $ 432 ea |
| Y | Y__ | (3) Setina Rear Door Panels Cover Part# DK0100TAH15 | $ 453 ea |
| Y | Y__ | (3) Setina Partition Double Gun Mounting System (w/ optics ready bracket #PG7529) Part# GK10301S1UHKSVCAXL | $ 1098 |

**Total price for above "Interior" items:** $ 10,617 ea

**Total installation charges for above "Interior" items:** $ 5829 ea

***Lighting**

| **Bidder / Flower Mound** **Y/N** | **Y/N** | | **COST EACH** |
|---|---|---|---|
| Y | Y__ | (3) Whelen – Texas special 54" Legacy **DUO** Lightbar/ **CENCOM CARBIDE** / Speaker Part # call FMPD for light color specs 21 push button control head Part# CCSRNT4G | $ 7506 |
| Y | Y__ | (3) Whelen Canport for 2015+ Tahoe | $ Incl |
| Y | Y__ | (6) Whelen Carbide Expansion Packs | $ 387 ea |
| Y | Y__ | (12) Whelen ION TRIO R/B/W Part# I3SMJC | $ 1068 ea |
| Y | Y__ | (21) Whelen ION TRIO R/B/W Part# I3JC | $ 1869 ea |
| Y | Y__ | (6) Soundoff Intersector R/B/W | $ 441 ea |

Part#ENT2B3RBW

Y Y__ (3) Whelen Rear Pillar R/B DUO – can cruise
Part # RPWD45 $ 273 ea

Y Y__ (6) Federal Signal Corner LED $ 450 ea
Part# Blue/White in reverse light

Y Y__ (6) Whelen Headlight/Tailight Flasher Modules
Part# SSFPOSI6 (2015+ Tahoe) $ Incl

Y Y__ (3) Whelen Howeler Low Frequency Siren
Part # HOWLER $ 1467 ea

Y Y__ (15) Whelen 3" Round Super LED Light head
(Rear Hatch Red/White)
Part # 3SRCCDCR $ 885 ea

Y Y__ (3) Soundoff Interior Dome light (Officer) $ 165 ea
Part #ECVDMLTAL00

Y Y__ (3) Whelen Dual DUO Avengers R/B $ 687 ea
$_____

**Total cost for above "Lighting" items:** $ 17,661 ea

**Total installation charges for above "Lighting" items:** $ 5829 ea

***Other Equipment**

**Bidder / Flower Mound**
**Y/N Y/N** **COST EACH**

| | | | |
|---|---|---|---|
| Y | Y__ | (3) Go Rhino Push Bumper<br>Part# 5165-4L61 | $ 867 cc |
| Y | Y__ | (3) Streamlight SL-20L LED Flashlight<br>350 lumen alum. body w/dc charger / charge sleeve<br>Part# STL-20602 | $ 306 cc |
| Y | Y__ | (3) Streamlight DS Charge Cable (22051) | $ 27 cc |
| Y | Y__ | (3) Streamlight DS Charging Base (75100) | $ 39 cc |
| Y | Y__ | (3) Lind Power Suply for Dell Lat. 5414 | $ 396 cc |
| Y | Y__ | (3) Top Hat Equipment Timer | $ Incl |
| Y | Y__ | (3) Pro-Gard Safe Stop | $ 354 cc |
| Y | Y__ | (3) Stalker 2X Radar System w/ extended Warranty | $ 11,583 cc |
| Y | Y__ | (3) Stalker Tahoe Antenna Mount 200-1088-00 | $ 144 cc |
| Y | Y__ | (3) Stalker Tahoe Display Mount 200-1089-00 | $ 177 cc |
| Y | Y__ | (3) Federal Signal 795H Opticom w/ bracket/mount | $ 3771 cc |
| Y | Y__ | (3) Panomara GPS-D 2148 kit , C23F-SM | $ 1143 cc |
| Y | Y__ | (9) Super Strong Magnetic Mic Clips | $ 252 cc |
| Y | Y__ | (3) Cradlepoint COR IBR900 wiring harness | $ 291 cc |
| Y | Y__ | (3) NEW replacement wiring for APX 6500 | $ 1014 cc |
| Y | Y__ | (3) Defender Supply Electronic Equip Tray | $ 807 cc |
| Y | Y__ | (3) FMPD Graphics Kit w/ US/TX Flags | $ 2151 cc |
| Y | Y__ | (6) Red Rocker Switches<br>**(for rear light switches)** | $ 8 cc |

**Total cost for above "Other Equipment" items:** $ 23,330 cc

**Total installation charges for above "Other Equipment":** $ 5829 cc

**ATTENTION: ****
**THE FOLLOWING ITEMS WILL BE REMOVED FROM TOWN OF FLOWER MOUND DECOMMISSIONED VEHICLES (Chevy Tahoe) AND RE-INSTALLED/TRANSFERRED ONTO NEW TAHOE UNITS. ALL PRICING AND INSTALLATION CHARGES MUST BE INCLUDED IN THE OVERALL COST OF EACH UNIT.**

| ****Transferred Items** | | | **REMOVE/RE-INSTALL CHARGE** |
|---|---|---|---|
| **Bidder / Flower Mound** | | | |
| **Y/N** | **Y/N** | | |
| | | *****Everything below is Customer Supplied***** | |
| Y | Y__ | (3) Cradlepoint COR IBR900 | $ Incl |
| Y | Y__ | (3) Motorola APX6500 | $ Incl |
| Y | Y__ | (3) Install AXON Fleet 2 System | $ Incl |

**Total Re-install charges for above "Transferred Items":** $ Included in Install

**ATTENTION: *****
**THE FOLLOWING ITEMS WILL BE REMOVED FROM TOWN OF FLOWER MOUND DECOMMISSIONED VEHICLES (Chevy Tahoe) AND RETURNED/SHIPPED LOOSE BACK TO THE TOWN OF FLOWER MOUND FLEET SERVICE CENTER FACILITY AT 1101 DUNCAN LN., FLOWER MOUND, TX 75028 ON OR BEFORE DELIVERY OF THE NEW UNITS. NEW UNITS WILL BE DELIVERED TO THE FLEET SERVICE CENTER FACILITY AT 1101 DUNCAN LN., FLOWER MOUND, TX. 75028.**

| *****Decommissioned Items** | | **Removal Charge** |
|---|---|---|
| **Bidder / Flower Mound** | | |
| **Y/N** | **Y/N** | |

___ Y__ 1. None $ N/A

**Total removal charges for above "Decommissioned Items":** $ N/A

**TOTAL Cost of EQUIP** $ 56,234 00

**TOTAL COST OF INSTALL** $ 17,487 00

**TOTAL VEHICLE COST** $ 102,957 00

**TOTAL BID PRICE** $ 176,678 00
**(To include all listed equipment and installation)**

**Warranty: Standard Manufacturers warranty. Please specify.**

Vehicle - 5yr/100K Drive Train, 3yr/36K Bumper to Bumper
5 yr parts. Vehicle service life of/on Labor.

**COMMENTS**

Use this page to explain any items that you marked no on above:

# TOWN COUNCIL AGENDA ITEM NO. 6

# CONSENT ITEM

**DATE:** October 19, 2020

**FROM:** Julie Taylor, Director of Treasury Operations

**ITEM:** **Consider approval of a resolution declaring expectation to reimburse water and sewer project 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.**

**BACKGROUND INFORMATION:** The procurement process requires that 100% of funding be available before funds can be encumbered for the award of contracts. This reimbursement resolution will allow staff to satisfy the funding requirements prior to the issuance of debt under federal tax law.

The Town plans to issue debt during fiscal year 2020-21 to fund improvements to the water and sewer system within the Town and fund the costs of issuance of the debt. **This debt is not supported/included in the debt portion of the ad valorem tax rate**.

In order to begin the water and sewer projects prior to the issuance of debt, it is necessary to pass this resolution declaring intent to reimburse expenditures. The proposed reimbursement resolution provides the funding source to satisfy the procurement requirements for the water and sewer projects as included on the fiscal year 2020-21 Five-Year Capital Improvement Program ("CIP").

**BOARD REVIEW/CITIZEN FEEDBACK:** N/A

**ALTERNATIVES/OPTIONS:** N/A

**FISCAL IMPACT:** $17,205,000

| Proposed Expenditure: | Account Number(s): |
|---|---|
| $17,205,000 | To satisfy the funding requirements and begin the water and sewer capital projects prior to the issuance of debt under federal tax law. |

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

**LEGAL REVIEW:** The Town's Bond Counsel, Norton Rose Fulbright US LLP, prepared the proposed resolution. This standard reimbursement resolution was approved in the past by Taylor, Olson, Adkins, Sralla, & Elam L.L.P. No alteration to the legal content of this form document was made in preparation of this document.

**ATTACHMENTS:**

1. Resolution

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

**TOWN OF FLOWER MOUND, TEXAS**

**RESOLUTION NO. _____**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, DECLARING EXPECTATION TO REIMBURSE WATER AND SEWER PROJECT 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.**

**WHEREAS**, the Town of Flower Mound, Texas (the "Town"), intends to issue debt for the construction and improvement of the water and sewer projects listed on Exhibit A (collectively, the "Projects"); and

**WHEREAS**, the Town further intends to make certain capital expenditures with respect to the Projects and currently desires and expects to reimburse the capital expenditures with proceeds of such debt; and

**WHEREAS**, under Treas. Reg. § 1.150-2 (the "Regulation"), to fund such reimbursement with proceeds of tax-exempt obligations, the Town must declare its expectation to make such reimbursement; and

**WHEREAS**, the Town desires to preserve its ability to reimburse the capital expenditures with proceeds of tax-exempt obligations.

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

**SECTION 1**

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

**SECTION 2**

The Town reasonably expects to reimburse capital expenditures with respect to the Projects with proceeds of debt hereafter to be incurred by the Town, and this Resolution shall constitute a declaration of official intent under the Regulation. The maximum principal amount of obligations expected to be issued for the Projects is $17,205,000.

**SECTION 3**

Hilltop Securities Inc. is hereby authorized and directed to prepare, or cause to be prepared, any and all documents including, but not limited to, an official statement or other offering document associated with the issuance, sale and delivery of the obligations, the proceeds of which will provide financing of the Projects.

**SECTION 4**

This Resolution shall take effect from and after the date of its passage.

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ON THIS 19th DAY OF OCTOBER 2020.**

**APPROVED:**

**Steve Dixon, MAYOR**

**ATTEST:**

**Theresa Scott, TOWN SECRETARY**

**RESOLUTION NO. _____**

## EXHIBIT A

| | |
|---|---|
| **Utility Capital Projects** | |
| **Water Projects:** | |
| High Road Water Line Replacement Phase II | |
| Morriss Road Water Lines Phase II (Milford to Eaton) | |
| Sentinel Oaks Water line Replacement (Three Bridges to Simmons) | |
| Stonecrest Pump Station Phase I (Auxiliary Power) | |
| Stonehill Pump Station Discharge Valve Replacement | |
| Timber Creek Water Line Replacement Phase II | |
| US 377 at FM 1171 Water Line Loop | |
| Utility Asset Management & Utility Replacement | |
| Water System Leak Detection & Repair | $ 12,190,500 |
| **Wastewater Projects:** | |
| Inflow-Infiltration/Evaluation and Repair | |
| Lift Station Improvements and Decommissioning Phase III | |
| Oak Street Lift Station and Force Main Phase IV | |
| Spring Meadow Lane Sewer Line Replacement | |
| Timber Creek Trunk Line (Morriss Road to Rawlings Street) | $ 4,845,000 |
| **Total Utility** | **$ 17,035,500** |
| **Estimated Financing Costs** | $ 169,500 |
| **Grand Total of Debt Issuance** | **$ 17,205,000** |

# TOWN COUNCIL AGENDA ITEM NO. 7

# CONSENT ITEM

**DATE:** October 19, 2020

**FROM:** Sue Ridnour, Director of Library Services

**ITEM:** **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.**

**BACKGROUND INFORMATION:** Since 1985, the Town has annually received funding from Denton County in exchange for providing library services to residents of the county. The 2020-21 amount of $58,700.00 represents an increase of $1,700.00 over 2019-20.

To be eligible for funding, the Flower Mound Public Library must agree to serve all Denton County residents. The library must also have in place technology protection measures (filters) with respect to any computers used by the public. The Flower Mound Public Library fulfills these requirements.

The Director of Library Services acts as liaison officer between the County and the Town.

**BOARD REVIEW/CITIZEN FEEDBACK:** N/A

**ALTERNATIVES/OPTIONS:** N/A

**FISCAL IMPACT:** $58,700 in revenue, paid in equal quarterly installments.

| Proposed Expenditure/(Revenue): | Account Number(s): |
|---|---|
| ($58,700.00) | 100-4605 |

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

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

**ATTACHMENTS:**

1. Interlocal Agreement for Library Services

**DRAFT MOTION:** Move to approve 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.

**THE STATE OF TEXAS** §
§ **FLOWER MOUND PUBLIC LIBRARY**
**COUNTY OF DENTON** §

# INTERLOCAL COOPERATION AGREEMENT FOR LIBRARY SERVICES

**THIS AGREEMENT** is made and entered into by and between Denton County, a political subdivision of the State of Texas, hereinafter referred to as ("the **COUNTY**"), and the Town of Flower Mound, Texas, a municipality of Denton County, Texas, hereinafter referred to as ("the **MUNICIPALITY**"), and has an effective date of October 1, 2020.

**WHEREAS**, the **COUNTY** is a duly organized political subdivision of the State of Texas engaged in the administration of county government and related services for the benefit of the citizens of the **COUNTY**; and

**WHEREAS,** the **MUNICIPALITY** is a duly organized municipality in Denton County, Texas, engaged in the provision of library and related services for the benefit of the citizens of the **MUNICIPALITY**; and

**WHEREAS,** the **COUNTY** has requested, and the **MUNICIPALITY** has agreed to provide library services for all residents of the **COUNTY**; and

**WHEREAS**, the **COUNTY** and the **MUNICIPALITY** mutually desire to be subject to the provisions of Chapter 791 of the Texas Government Code, the Interlocal Cooperation Act, and Chapter 323 of the Texas Local Government Code, regarding County Libraries.

**NOW, THEREFORE**, the **COUNTY** and the **MUNICIPALITY**, for the mutual consideration hereinafter stated, agree and understand as follows:

## I.

The term of this Agreement shall be for the period from October 1, 2020, through September 30, 2021.

## II.

For the purposes and consideration herein stated and contemplated, the **MUNICIPALITY** shall provide library services for the residents of the **COUNTY** without regard to race, religion, color, age, disability or national origin. Upon proper proof of residence, by an individual in the **COUNTY**, the individual shall be entitled issuance of a library card, at no cost, to be used in connection with said library services.

The **MUNICIPALITY** shall develop and maintain through the Library one or more of the following programs of service:

1. Educational and reading incentive programs and materials for youth.

2. Functional literacy materials and/or tutoring programs for adults.

3. Job training/career development programs and/or materials for all ages.

4. Outreach services to eliminate barriers to library services.

5. Educational programs designed to enhance quality of life for adults.

**III.**

The **COUNTY** designates the County Judge to act on behalf of the **COUNTY** and serve as liaison officer for the **COUNTY** with and between the **COUNTY** and the **MUNICIPALITY**. The County Judge or his designated substitute shall insure the performance of all duties and obligations of the **COUNTY** herein stated and shall devote sufficient time and attention to the execution of said duties on behalf of the **COUNTY** in full compliance with the terms and conditions of this Agreement. The County Judge shall provide immediate and direct supervision of the **COUNTY'S** employees, agents, contractors, sub-contractors, and laborers, if any, in the furtherance of the purposes, terms and conditions of this Agreement for the mutual benefit of the **COUNTY** and the **MUNICIPALITY**.

**IV.**

The **MUNICIPALITY** shall designate_____to act on behalf of the **MUNICIPALITY** and to serve as liaison officer for the **MUNICIPALITY** with and between the **MUNICIPALITY** and the **COUNTY** to insure the performance of all duties and obligations of the **MUNICIPALITY** as herein stated and shall devote sufficient time and attention to the execution of said duties on behalf of the **MUNICIPALITY** in full compliance with the terms and conditions of this Agreement. _____ shall provide management of the **MUNICIPALITY'S** employees, agents, contractors, sub-contractors, and laborers, if any, in the furtherance of the purposes, terms and conditions of this Agreement for the mutual benefit of the **MUNICIPALITY** and the **COUNTY.**

The **MUNICIPALITY** shall provide the **COUNTY** with a copy of the annual report submitted to the Texas State Library and shall respond to the **COUNTY'S** annual questionnaire as documentation of the **MUNICIPALITY'S** expenditures and provision of service.

**V.**

The **MUNICIPALITY** shall be solely responsible for all techniques, sequences, procedures and coordination of all work performed under the terms and conditions of this Agreement. The **MUNICIPALITY** shall insure, dedicate and devote the full time and attention of those employees necessary for the proper execution and completion of the duties and obligations of the **MUNICIPALITY** as stated in this Agreement and shall give all attention required for proper supervision and direction of their employees.

**VI.**

The **MUNICIPALITY** agrees that its established library shall assume the functions of a county library within Denton County, Texas, and to provide a librarian who meets the requirements of the **MUNICIPALITY'S** job description.

**VII.**

The **COUNTY** and the **MUNICIPALITY** agree and acknowledge that each entity is not an agent of the other entity and that each entity is responsible for its own acts, forbearance, negligence and deeds and for those of its agents or employees. This Agreement does not and shall not be construed to entitle either party or any of their respective employees, if applicable, to any benefit, privilege or other amenities of employment applicable to the other party. The **MUNICIPALITY** understands and agrees that the **MUNICIPALITY**, its employees, servants, agents and representatives shall not represent themselves to be employees, servants, agents or representatives of the **COUNTY**.

***To the fullest extent permitted by law, the MUNICIPALITY agrees to hold harmless and indemnify the COUNTY from and against any and all claims and for all liability arising out of, resulting from or occurring in connection with the performance of the work hereunder, including but not limited to, any negligent act or omission of the MUNICIPALITY, its officers, agents or employees.***

The **COUNTY** and the **MUNICIPALITY** acknowledge and agree that the **COUNTY** does not waive any sovereign or governmental immunity available to the **COUNTY** under Texas law and does not waive any available defenses under Texas law. Nothing in this paragraph shall be construed to create or grant any rights, contractual or otherwise, in or to any third persons or entities.

**VIII.**

This Agreement is not intended to extend the liability of the parties beyond that provided by law. Neither the **MUNICIPALITY** nor the **COUNTY** waives any immunity or defense that would otherwise be available to it against claims by third parties.

**IX.**

Any notice required by this Agreement shall be delivered, in writing, by either the **COUNTY** or the **MUNICIPALITY** to the following addresses:

The address of the **COUNTY** is:
Denton County Judge
110 West Hickory Street, 2nd Floor
Denton, Texas 76201
Telephone: 940-349-2820

The address of the **MUNICIPALITY** is:
Flower Mound Public Library
c/o The Town of Flower Mound, Texas
3030 Broadmoor Lane
Flower Mound, Texas 75022
Attention: Sue Ridnour
Telephone: 972-874-6200

**X.**

For the full performance of the services above stated, the **COUNTY** agrees to pay the **MUNICIPALITY** fees as described herein from current revenues available for such payment. The **COUNTY** shall pay the **MUNICIPALITY** fees in the amount of **FIFTY-EIGHT THOUSAND SEVEN HUNDRED AND NO/100 DOLLARS ($58,700.00)**, based upon North Central Texas Council of Governments service population allocation figures provided to the **COUNTY** by the Library Advisory Board, payable in equal quarterly installments to the **MUNICIPALITY** commencing on October 1, 2020. The Allocation chart setting forth said figures is attached hereto and incorporated herein for all intents and purposes as Exhibit "A."

Payment by the **COUNTY** to the **MUNICIPALITY** shall be made in accordance with the normal and customary processes and business procedures of the **COUNTY** and payment shall be satisfied from current revenues of the **COUNTY**.

***All funding by the COUNTY to the MUNICIPALITY is subject to the condition that the MUNICIPALITY shall have in place technology protection measures (commonly referred to as "filters") with respect to any computers used by the public that have Internet access which are designed to block access through such computers to visual depictions that are (1) obscene, as defined by Section 43.21 of the Texas Penal Code, or (2) contain pornography.***

***The technology protection measures shall be in compliance with the Children's Internet Protection Act.***

***The MUNICIPALITY hereby certifies that its libraries have either installed and are using the required technology protection measures during use of its computers that have Internet access by the public at the present time or will have such protection measures in place and operational by October 1, 2020.***

**XI.**

This Agreement may be terminated, at any time, by either party by giving sixty (60) days advance written notice to the other party. In the event of such termination by either party, the **MUNICIPALITY** shall be compensated pro rata for all services performed to the termination date, together with reimbursable expenses then due and as authorized by this Agreement. In the event of such termination, should the **MUNICIPALITY** be overcompensated on a pro rata basis for all services performed to the termination date or be overcompensated for reimbursable expenses as authorized by this Agreement, the **COUNTY** shall be reimbursed pro rata for all such overcompensation. Acceptance of such reimbursement shall not constitute a waiver of any claim that may otherwise arise out of this Agreement.

**XII.**

This Agreement represents the entire integrated Agreement between the **MUNICIPALITY** and the **COUNTY** and supersedes all prior negotiations, representations and/or Agreements, either oral or written. This Agreement may be amended only by written instrument signed by both the **MUNICIPALITY** and the **COUNTY**.

**XIII.**

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. Further, this Agreement shall be performable and all compensation payable in Denton County, Texas.

**XIV.**

In the event any portion of this Agreement shall be found to be contrary to law it is the intent of the parties hereto that the remaining portions shall remain valid and in full force and effect to the fullest extent possible.

**XV.**

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties

hereto and each party hereby certifies to the other that any necessary orders or resolutions extending said authority have been duly passed and are now in full force and effect.

**EXECUTED** this _____ day of _____, 20____.

**DENTON COUNTY, TEXAS**

By: _____
Andy Eads, County Judge
Denton County, Texas

**ATTEST:**

By:_____
Denton County Clerk

**The Town of Flower Mound, Texas**

By:_____
Name:_____
Title:_____

**ATTEST:**

By:_____
Town Secretary

## AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of $_____ to accomplish and pay the obligation of Denton County under this agreement.

_____
Denton County Auditor

Attachment 1

**EXHIBIT A**

**DENTON COUNTY LIBRARY'S FUNDING Approved (2020-2021)**

Changes made during Budget Workshops

PER CAPITA: $ 0.338302

MATCHING: $ 10,000.00

| | |
|---|---|
| DENTON COUNTY POPULATION: | 900,185 |
| POPULATION OF CITIES WITH LIBRARIES | 402,134 |
| REMAINING POPULATION | 498,051 |

| | TOTAL | CITY | COUNTY | PER CAPITA | MATCHING | TOTAL | ROUNDED |
|---|---|---|---|---|---|---|---|
| **LIBRARY** | **POP** | **POP** | **allocation** | **ALLOCATION** | **FUNDS** | | |
| | | | | | | | |
| AUBREY | 36,712 | 16,400 | 20,312 | $ 12,420 | $ 10,000 | $ 22,420 | $ 22,500 |
| CARROLLTON | 189,858 | 84,814 | 105,044 | $ 64,229 | $ - | $ 64,229 | $ 64,300 |
| FLOWER MOUND | 173,398 | 77,461 | 95,937 | $ 58,661 | $ - | $ 58,661 | $ 58,700 |
| JUSTIN | 10,342 | 4,620 | 5,722 | $ 3,499 | $ 10,000 | $ 13,499 | $ 13,500 |
| KRUM | 11,461 | 5,120 | 6,341 | $ 3,877 | $ 10,000 | $ 13,877 | $ 13,900 |
| LEWISVILLE | 237,908 | 106,279 | 131,629 | $ 80,485 | $ - | $ 80,485 | $ 80,500 |
| LITTLE ELM | 103,420 | 46,200 | 57,220 | $ 34,987 | $ 10,000 | $ 44,987 | $ 45,000 |
| PILOT POINT | 9,626 | 4,300 | 5,326 | $ 3,256 | $ 10,000 | $ 13,256 | $ 13,300 |
| PONDER | 5,820 | 2,600 | 3,220 | $ 1,969 | $ 10,000 | $ 11,969 | $ 12,000 |
| SANGER | 20,326 | 9,080 | 11,246 | $ 6,876 | $ 10,000 | $ 16,876 | $ 16,900 |
| THE COLONY | 101,315 | 45,260 | 56,055 | $ 34,275 | $ 10,000 | $ 44,275 | $ 44,300 |
| | | | | | | | |
| **TOTAL** | **900,185** | **402,134** | **498,051** | **$ 304,534** | **$ 80,000** | **$ 384,534** | **$ 384,900** |

| | |
|---|---|
| | |
| Aubrey Population: | |
| Aubrey | 5,380 |
| Crossroads | 2,460 |
| Krugerville | 1,860 |
| Providence | 6,700 |
| Total | 16,400 |
| Ponder Population: | 2,400 |
| Dish (Interlocal Agreement | 200 |
| Total | 2,600 |

# TOWN COUNCIL AGENDA ITEM NO. 8

# CONSENT ITEM

**DATE:** October 19, 2020

**FROM:** Wendell Mitchell, Assistant Chief of Police WM

**ITEM:** **Consider approval of a fee agreement with City of Lewisville for use of the Jerry R. Galler Public Safety Training Center for the purpose of firearms training and annual qualifications; and authorization for the Mayor to execute same on behalf of the Town.**

**BACKGROUND INFORMATION:** In 2019 the Flower Mound Police Department entered into an agreement to use the Jerry R. Galler Public Safety Training Center for the purpose of firearms training and annual qualifications. The Police Department had previously unitized three other area firearms ranges for training or qualifications, but two of the ranges, Grapevine outdoor range and Crossfire, are closed. The third, Denton County range, had suspended use of patrol rifles in 2018. Although, patrol rifle use is currently allowed on the Denton County range, it is located north of Denton. This makes the use of this range impractical for on duty staff to participate in training

In late 2018 and during FY 2019 - 2020, the Flower Mound Police was provided the opportunity to rent range time at the Jerry R. Galler Public Safety Training Center (Lewisville range). The Flower Mound Police Department has utilized the Lewisville range for the previous 18 months and have found the Lewisville range to be well suited to meet our training needs and qualification standards. Further, the Lewisville Range is in close proximity, less than five miles, to the Flower Mound Police Department. As such, the Flower Mound Police Department is requesting approval of this fee agreement for continued use of Lewisville range for FY 2020 – 2021.

**BOARD REVIEW/CITIZEN FEEDBACK:** N/A

**ALTERNATIVES/OPTIONS:** There are no other options for a firearms range that meet our training. Including rate/cost, proximity, supporting qualifications requirements, and training opportunity.

**FISCAL IMPACT:** The proposed expenditure is the anticipated cost given previous year's firearms training schedule and annual qualifications.

| Proposed Expenditure/(Revenue): | Account Number(s): |
|---|---|
| $15,800.00 | 100-640-43500-5110 |

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

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

**ATTACHMENTS:**

1. City of Lewisville Range Agreement

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

# CITY OF LEWISVILLE RANGE USE AND FEE AGREEMENT WITH THE TOWN OF FLOWER MOUND

This Agreement is entered into this _____ day of _____, 2020, between the Town of Flower Mound, hereafter referred to as "Flower Mound" and the City of Lewisville, hereinafter referred to as "Lewisville" (jointly, the "Parties"), for use of the firearm range at the Jerry R. Galler Public Safety Training Center, located at 701 E Valley Ridge Blvd, Lewisville, TX 75057:

## RECITALS

WHEREAS, Lewisville owns and operates a police firing range at the Jerry R. Galler Public Safety Training Center, hereafter referred to as the "Range," located at 701 E Valley Ridge Blvd, Lewisville, TX; and

WHEREAS, Flower Mound is in need of a range for training and firearm qualification for all Flower Mound employees who are licensed as sworn police officers, police cadets, SWAT team medics, and officers who have honorably retired from Flower Mound; and

WHEREAS, Lewisville is willing to permit Flower Mound use of the range; and

WHEREAS, Flower Mound and Lewisville desire to enter into this agreement;

THEREFORE, the parties agree as follows:

## SECTION ONE
## TERM

The initial term of this Agreement is one (1) year from the date of execution by both Parties (the "Initial Term"). The term of this Agreement shall automatically renew for an additional one-year term ("Renewal Term") at the end of the Initial Term and every Renewal Term thereafter, unless canceled by either party in writing at least sixty (60) days before the end of the then-current Initial Term or Renewal Term, or otherwise terminated by either party as provided for in this Agreement.

## SECTION TWO
## SCOPE OF SERVICES AND RESPONSIBILITES

1. Lewisville agrees to allow Flower Mound access to the Range for a minimum of eight hours of training on a monthly basis and for one week (40 hours) during the Initial Term and each Renewal Term for annual qualifications. Access to the range for the one-week (40 hours) period shall only be available once per Lewisville fiscal year (October 1 to September 30).

2. Lewisville will assign a Lewisville Police Department employee to the Range when

Flower Mound personnel are on site.

3. The Range shall be under the charge and control of Lewisville at all times and employees and representatives of Lewisville shall have unrestricted access and right of entry

4. Lewisville agrees to provide Flower Mound 72-hour notice via email as provided in section 6, below, when practical, if there is a need to reschedule or cancel Range reservations.

5. Flower Mound is responsible for coordinating Range time with Lewisville on a monthly basis. The reserved dates and times may vary each month depending on availability due to other scheduled training at the Range, Range maintenance, or other unforeseen situations. Lewisville shall retain the right to priority use of the Range and may preempt any scheduled use under this Agreement for use by Lewisville.

6. Flower Mound is responsible for providing all ammunition, targets, and firearm cleaning supplies necessary for its use of the Range.

7. Upon completion of each Range use, Flower Mound shall remove and properly dispose of all waste materials generated and leave the Range in a ready to use condition.

8. While on the Range, Flower Mound employees will be subject to, and shall abide by, all Town and Flower Mound Police Departmental policy and Lewisville Range rules and policy, as well as complying with all local, state, and federal law.

## SECTION THREE
## HOLD HARMLESS AND INSURANCE

1. **TO THE EXTENT PERMITTED BY THE CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS AND SUBJECT TO THE LIMITATIONS AS TO LIABILITY AND DAMAGES IN THE TEXAS TORT CLAIMS ACT, FLOWER MOUND, INCLUDING ITS OFFICERS, AGENTS, EMPLOYEES, INDEPENDENT CONTRACTORS, OTHER REPRESENTATIVES, INVITEES, LICENSEES, OR GUESTS DOES HEREBY AGREE TO COMPLETELY AND WHOLLY RELEASE AND HOLD HARMLESS LEWISVILLE, ITS AGENTS, ITS OFFICERS, INDEPENDENT CONTRACTORS, EMPLOYEES AND ALL PERSONS NATURAL OR CORPORATE, IN PRIVITY WITH THEM OR ANY OF THEM, FROM ANY AND ALL CLAIMS, DAMAGES, CAUSES OF ACTION OF ANY KIND WHATSOEVER, STATUTORY OR OTHERWISE, PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, LAWSUITS AND JUDGMENTS, COURT COSTS, EXPENSES AND REASONABLE ATTORNEY'S FEES, AND ALL OTHER EXPENSES RESULTING DIRECTLY OR INDIRECTLY FROM THE ACTIONS, OMISSIONS AND ACTIVITIES OF FLOWER MOUND RELATING TO FLOWER MOUND'S USE OF THE RANGE UNDER THIS AGREEMENT, OR WHICH MAY BE SUSTAINED BY REASON OF ANY ACT OR OMISSION ON THE PART OF FLOWER MOUND, ITS**

**EMPLOYEES, AGENTS AND/OR CONTRACTORS, OR BY ANYONE ACTING DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR BY ANYONE FOR WHOSE ACTS OR OMISSIONS MAY BE LIABLE. IT IS THE UNDERSTANDING OF ALL PARTIES THAT THIS RELEASE AND HOLD HARMLESS AGREEMENT SHALL APPLY WHETHER OR NOT THE CLAIMS, DAMAGES, CAUSES OF ACTION OF ANY KIND WHATSOEVER, STATUTORY OR OTHERWISE, PERSONAL INJURY, INCLUDING DEATHS, PROPERTY DAMAGE, LAWSUITS, JUDGMENTS, COURT COSTS, ATTORNEY'S FEES OR ANY OTHER EXPENSE ARISE DIRECTLY OR INDIRECTLY FROM THE NEGLIGENCE OF WHATEVER NATURE, OMISSIONS, WILLFUL OR INTENTIONAL ACTS OF FLOWER MOUND OR FLOWER MOUND'S OFFICERS, AGENTS, EMPLOYEES, INDEPENDENT CONTRACTORS, OTHER REPRESENTATIVES, INVITEES, LICENSEES, OR GUESTS.**

2. Flower Mound agrees to maintain and keep in full force and effect at all time during the term of this agreement sufficient property damage, personal injury and public liability insurance coverage to protect both Parties against any such claims, suits, executions or demands.

## SECTION FOUR
## RISKS

Flower Mound recognizes and acknowledges that participating in activities at the Lewisville Range involves intrinsic risks, dangers and hazards, which could include death, stemming from the inherent risk associated with such activities, including the use of firearms, the proximity to other shooters, the potential for falls, loading and unloading equipment, equipment failure, property damage, accidental discharge of firearms, the negligence of others, and any and all risks generally associated with being a participant in such activities.

## SECTION FIVE
## COMPENSATION

1. Lewisville will provide Flower Mound with an invoice for Range use fees quarterly.

2. Range fees are set by the Lewisville Fee Schedule, as provided for in section 2-201 of the Lewisville Code of Ordinances and which is available in the City Manager's office or on the Lewisville website for review. A copy of current Range fees is attached hereto as Exhibit A, but Flower Mound acknowledges that these fees may change during the course of the Initial Term or any Renewal Terms.

3. Payment from Flower Mound to Lewisville will be made within 30 calendar days from the date of receipt of an invoice from Lewisville.

## SECTION SIX
## NOTICE

1. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same, to the address thereof, unless otherwise specifically provided for in this Agreement. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the individuals to be noticed and their contact information shall be as follows:

If to Lewisville, to: Lewisville Police Department
1187 W. Main St. Lewisville, TX 75067
(972)219-3600

If to Flower Mound, to: Flower Mound Police Department
4150 Kirkpatrick Ln. Flower Mound, TX 75028
(972)874-3314

Either party may amend this contact information by written notice to the other party as provided for herein, without requiring an amendment to this Agreement.

## SECTION SEVEN
## TERMINATION

1. This Agreement may be terminated by either party at any time for any reason, with sixty (60) days' written notice.

2. This Agreement may be immediately terminated by Lewisville or Flower Mound by either party's Chief of Police or their designee, for an act of gross negligence or failure to follow established Range safety protocols by either party. Such notice shall be provided in writing.

## SECTION EIGHT
## MISCELLANEOUS PROVISIONS

1. For any and all legal action brought under this Agreement, exclusive venue shall lie in Denton County, Texas, and its terms or provisions, as well as the rights and duties of the Parties hereunder, shall be governed by the laws of the State of Texas.

2. In case any one or more of the terms, sentences, paragraphs or provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other terms, sentences, paragraphs or provisions thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained here.

3. This Agreement may be amended or modified only by the mutual agreement of the Parties. Such amendment or modification must be in writing and executed by an authorized representative of each Party.

4. This Agreement supersedes any prior understandings or written or oral agreements between the parties respecting this subject matter. This Agreement contains all commitments, agreements, warranties and representations of the Parties. Any oral or written commitments, agreements, warranties or representations not contained herein shall have no force or effect to alter any term or condition of this Agreement.

**IN WITNESS WHEREOF, the Parties hereto have executed this Agreement to be effective upon execution and dating by each Party.**

City of Lewisville

_____
Kevin Deaver
Chief of Police, City of Lewisville

Town of Flower Mound

_____
Steve Dixon
Mayor, Town of Flower Mound

CITY OF LEWISVILLE
RANGE FEE AGREEMENT WITH
FLOWER MOUND POLICE DEPARTMENT

Outdoor Range

- Outdoor Range Rental $101.02 per hour (Based on a $25 per hour range fee + $76.02 per hour onsite representative fee)
- Long-Term Outdoor Range Rental is $3,840.80 per 40-hour week (Based on a $800.00 weekly fee + $76.02 per hour onsite representative for one week, 40 hours)

Indoor Range (without moving targets)

- Indoor Range Rental $116.02 per hour (Based on a $40 per hour range fee + $76.02 per hour onsite representative fee)
- Long-Term Indoor Range Rental is $4,040.80 per 40-hour week (Based on a $1,000.00 weekly fee + $76.02 per hour onsite representative for one week, 40 hours)

Indoor Range (with active targets)

- Indoor Range Rental $136.02 per hour (Based on a $40 per hour range fee + $76.02 per hour onsite representative fee)
- Long-Term Indoor Range Rental is $4,240.80 per 40-hour week (Based on a $1,200.00 weekly fee + $76.02 per hour onsite representative for one week, 40 hours)

Note - Range fees are set by the Lewisville Fee Schedule, as provided for in section 2-201 of the Lewisville Code of Ordinances and which is available in the City Manager’s office or on the Lewisville website for review.

# TOWN COUNCIL AGENDA ITEM NO. 9

# CONSENT ITEM

**DATE:** October 19, 2020

**FROM:** Brian Waltenburg, PE, Assistant Director of Engineering

**ITEM:** **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.**

**BACKGROUND INFORMATION:** Due to the TxDOT expansion of US 377, all utilities in conflict with the expansion are required to move into a new alignment. The Town of Flower Mound operates approximately 8,000 linear feet of 30"/36" transmission water main on the east side of US 377, from FM 1171 north to the Town limits. Approximately 1,500 linear feet of the water line in conflict with the expansion project and will need to be relocated. In addition to the relocation, the Town will install a master planned waterline loop at the intersection of US 377 and FM 1171. By installing the looped water main prior to the US 377 expansion project beginning, the Town will realize significant savings as opposed to installation after the bridge is installed.

The remaining 6,500 linear feet of existing water main along US 377 is located within a dedicated easement, now located within the expanded TxDOT ROW. TxDOT is requesting the Town move the existing main approximately 10-15 feet east, at the Town's expense. It is the Town's intention to not relocate the water line without being reimbursed for the relocation as the water line does not conflict with the road expansion. TxDOT and the Town of Flower Mound are currently in discussions about the remaining 6,500 linear feet of water main. If an agreement can be reached between TxDOT and the Town, staff may bring a design amendment forward at a later date to add the additional relocation length into the project.

The scope of the Professional Services Agreement includes a topographic survey, geotechnical investigation, preparation of design plans and technical specifications, cost estimates, and easement preparation.

**BOARD REVIEW/CITIZEN FEEDBACK:** N/A

**ALTERNATIVES/OPTIONS:** N/A

**FISCAL IMPACT:** $134,000

| Proposed Expenditure/(Revenue): | Account Number(s): |
|---|---|
| $134,000 | 601-900-98671 |

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

Total project cost is $5,500,000. Funding sources are:

- Impact Fees $ 409,500
- Utility debt $ 5,090,500

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

**ATTACHMENTS:**

1. Professional Services Agreement

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH JACOBS ENGINEERING GROUP**

This contract is entered into on this 19th day of October, 2020, by and between the **TOWN OF FLOWER MOUND, TEXAS,** a municipal corporation located in Denton County, Texas, (hereinafter referred to as "TOWN"), acting by and through its Mayor, and **JACOBS ENGINEERING GROUP,** ("hereinafter referred to as "CONSULTANT") whose address is 1999 Bryan Street, Suite 1200, Dallas, Texas 75201.

**RECITALS**

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to surveying, design and providing construction documents for the US 377 at FM 1171 Water Line Loop/Relocation project; and

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

**TERMS OF AGREEMENT**

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

**I.**
**Employment of Consultant**

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

## II.
## Scope of Services

CONSULTANT shall perform such services as are necessary to provide services for the US 377 at FM 1171 Water Line Loop/Relocation project specifically including, but not necessarily limited to, the tasks enumerated more fully in Attachment "A" hereto entitled "Scope of Work" (hereafter referred to as the "Project"). Attachment "A" is hereby incorporated herein by reference and made a part hereof as if written word for word. However, in case of conflict in the language of Attachment "A" and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.

## III.
## Payment for Services

Total payment for services described herein shall be a sum not to exceed One Hundred Thirty-Four Thousand No/100 Dollars ($134,000.00). This total payment for services includes CONSULTANT's ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT. If CONSULTANT retains any subcontractors to perform any of the work, CONSULTANT acknowledges that payments to such subcontractors are due and payable in accordance with the provisions of Texas Government Code Section 2251.022, and that interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.

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

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

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

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

## IV.
## Revisions of the Scope of Services

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

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

## V.
## Term

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

## VI.
## Contract Termination Provision

Notwithstanding any other provision of this Contract, this Contract may be terminated at any time by TOWN for any reason, with or without cause, by providing CONSULTANT thirty (30) days written notice of such termination. Upon receipt of such notice, CONSULTANT shall immediately terminate working on, placing orders or

entering into contracts for supplies, assistance, facilities or materials in connection with this Contract and shall proceed to promptly cancel all existing contracts insofar as they are related to this Contract.

## VII.
## Ownership of Documents

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

## VIII.
## Insurance

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

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

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

The following policies and coverage shall be required:

1. Worker's Compensation Insurance (as required by law) with the policy endorsed to provide a waiver of subrogation as to TOWN; such policy to provide for Employers' Liability Insurance of $100,000.00 for each accident, $100,000.00 disease-each employee, $500,000.00 disease-policy limit;

2. Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractor's and Contractual Liability, including but not limited to coverage for all of the indemnification obligations of CONSULTANT under this Contract, and fully insuring CONSULTANT's liability for injury to or death of employees of TOWN and of third parties, extended to include personal injury liability coverage and for damage to property of third parties, with combined single limits of $1,000,000 per occurrence, $1,000,000 Products/Completed Operations Aggregate and $1,000,000 general aggregate per occurrence. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis;

3. Business Automobile Liability Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury and property damage limit of $1,000,000.00 per occurrence; and

4. Professional Liability Insurance: CONSULTANT shall obtain and maintain at all times during the prosecution of the work under this Contract professional liability insurance, which may be written on a claims made form provided that "tail coverage" or continuation coverage is provided. Limits of liability shall be $1,000,000.00 per claim, $1,000,000.00 annual aggregate. The coverage under this policy shall include a contractual liability endorsement.

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

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

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

2. The TOWN shall also be named as an additional insured as to all other applicable coverage save and except the Worker's Compensation Insurance and Professional Liability Insurance;

3. Each policy will require that thirty (30) days prior to the expiration, cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to TOWN by certified mail to:

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

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

4. The term "Owner" or "TOWN" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of TOWN and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of TOWN;

5. The policy phrase "Other Insurance" shall not apply to TOWN where TOWN is an additional insured on the policy; and

6. All provisions of the Contract concerning liability, duty and standards of care together with the indemnification provision shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

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

1. Any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by CONSULTANT. The TOWN's decision(s) thereon shall be final;

2. All policies are to be written through companies duly approved to transact that class of insurance in the State of Texas; and
3. All liability policies required herein, save and except Professional Liability Insurance, shall be written with an "occurrence" basis coverage trigger.

D. CONSULTANT agrees to the following:

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

2. Companies issuing the insurance policies and CONSULTANT shall have no recourse against TOWN for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of CONSULTANT;

3. Approval, disapproval or failure to act by TOWN regarding any insurance supplied by CONSULTANT (or any subcontractors) shall not relieve CONSULTANT of full responsibility or liability for damages and accidents as set forth in the Contract documents. Neither shall the insolvency or denial of liability by the insurance company exonerate CONSULTANT from liability; and

4. No special payments shall be made for any insurance that the CONSULTANT and subcontractors are required to carry; all are included in the contract price and the contract unit prices.

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

## IX.
## Right to Inspect Records

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

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

compliance with the provisions of the paragraph. TOWN shall give any such engineer or sub-contractor reasonable advance notice of intended audits.

## X.
## Successors and Assigns

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

## XI.
## CONSULTANT's Liability

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

## XII.
## Indemnification

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

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

## XIII.
## Independent Contractor

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

## XIV.
## Default

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

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

(a) Specific performance of the Contract;

(b) Re-performance of this Contract at no extra charge to TOWN; or

(c) Monetary damages.

## XV.
## Provisions Surviving Termination

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

## XVI.
## Changes

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

## XVII.
## Conflicts of Interest

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

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

## XVIII.
## Confidential Information

CONSULTANT hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations in accordance with this Contract, which is of a confidential, non-public or proprietary nature. CONSULTANT shall treat any such information received in full confidence and

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

## XIX.
## Notice Information

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

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

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

C. Raajan "Raj" Mehta, P.E.
Client Account Manager
Jacobs Engineering Group
1999 Bryan Street, Suite 1200
Dallas, Texas 75201
469.941.8917 Telephone

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

## XX.
## Applicable Law

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

## XXI.
## Non-Discrimination

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

(a) Cancel, terminate, or suspend the Contract in whole or in part; or

(b) Declare CONSULTANT ineligible for future TOWN contracts until it is determined to be in compliance.

## XXII.
## Arbitration

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

## XXIII.
## No Waiver of Governmental Immunity

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

## XXIV.
## Severability

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

## XXV.
## Remedies

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

## XXVI.
## Entire Agreement

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

## XXVII.
## Non-Waiver

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

## XXVIII.
## Headings

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

## XXIX.
## Venue

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

## XXX.
## No Third Party Beneficiary

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

*[The remainder of this page is left blank intentionally]*

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

**THE TOWN OF FLOWER MOUND, TEXAS**

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

Date Signed: _____

Attest:

_____
Town Secretary

**CONSULTANT:**
**JACOBS ENGINEERING GROUP**

By: _____

Name: C. RAAJAN MEHTA

Title: VICE PRESIDENT

Date Signed: 10/2/2020

State of Texas §
§
County of TARRANT §

This instrument was acknowledged before me on the 2ND day of OCTOBER, 2020, by CRAAJAN MEHTA in his capacity as VICE PRESIDENT of JACOBS ENGINEERING GROUP, a _____ Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of JACOBS ENGINEERING GROUP.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 2ND DAY OF OCT, 2020.

_____
Notary Public, State of Texas

My Commission Expires:

01/21/2022

NOTARY PUBLIC STATE OF TEXAS
FATIMA MOHAMED
Notary Public, State of Texas
Commission Expires 01/21/2022
Notary ID 12968343-0

ATTACHMENT A SCOPE OF SERVICES

PROJECT NAME: **US** 377 **at FM 1171** Water Line **Loop / Relocation**

PROJECT UNDERSTANDING

This project will connect an existing 20" diameter water pipeline at the southwest corner of the intersection of US 377 and FM 1171 to an existing 30" diameter water pipeline at the northeast intersection of US 377 and FM 1171 to create a loop and eliminate dead ends. The new connecting pipeline is shown in Figure 1 below. The pipe will be encased per TXDOT standards where required in the right of way.

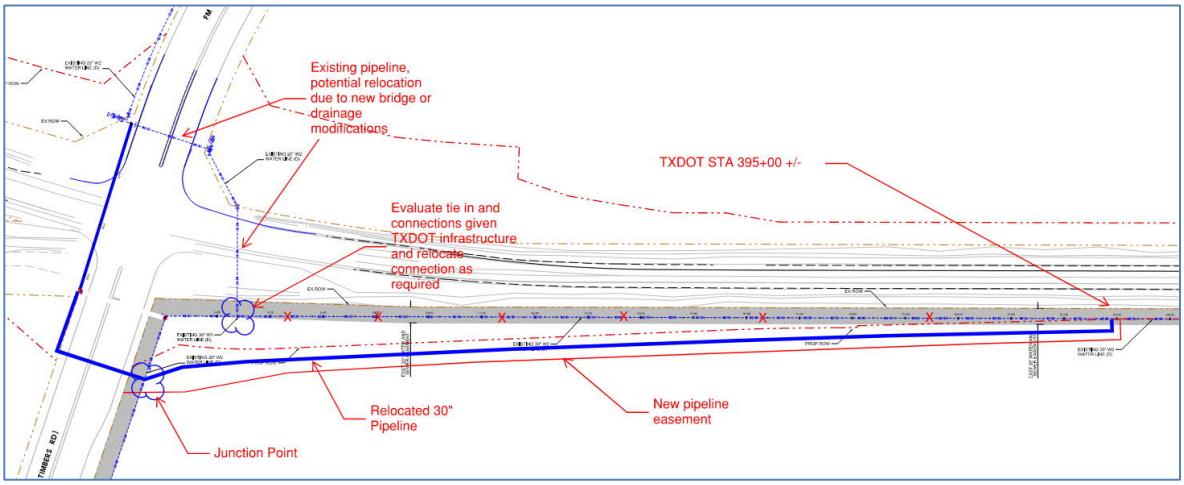



Figure 1: Project Location Map

In addition, it is assumed that the existing 20" pipeline will need to be relocated based upon location of new TXDOT bridge or drainage facilities. The connection point at the northeast corner of the intersection will need to be evaluated as part of the effort.

The TXDOT ROW will be widening which will also require relocation of an existing 30" transmission main on the east side of US 377, also shown on Figure 1. A relocation design is needed for this reach which will terminate on the north end approximately at TXDOT STA 395+00 (found in the roadway plans). This is the point at which the existing pipe centerline becomes close to matching the new TXDOT ROW line; the Town has not determined if relocation will be needed north of this point.

SCOPE OF PROFESSIONAL SERVICES

TASK 1 – PROJECT MANAGEMENT

This task includes attending meetings; tracking and managing internal schedules of work; monitoring and addressing issues related to the scope of work, budget and deliverables; preparing and processing monthly billings; providing labor resources necessary to fulfill scoped work; scheduling and participating in quality control reviews; and providing updates to Flower Mound (Town) on a regular basis.

Following are anticipated meetings.

- Kick-off meeting
- 30% design review meeting
- 60% design review meeting
- 90% design review meeting
- Site visit during design (1)

TASK 2 – EVALUATION (PRELIMINARY DESIGN, 30%)

This task includes collecting existing data and performing desktop evaluation of design alternatives along with preliminary construction estimates. Evaluation results shall be submitted in PDF exhibits to Town for review. The horizontal alignment will be confirmed as a result of this task.

Deliverables

- Three (3) printed, half-size copies of design alternative exhibits

TASK 3 – DESIGN

This task includes developing 60%, 90%, and 100% construction drawings, specifications and Opinion of Probable Construction Cost (OPCC).

The anticipated sheet count includes the following:

- Cover/index – 3 sheets
- Plan/profile (1"=20' and 1"=40" scales) – 6 sheets
- Details – tunnel and pipeline – 6 sheets
- Traffic control – 2 sheets if required

Deliverables

- Three (3) printed, half-size copies of construction plans for 60%, 90%, and 100% reviews
- One (1) printed copies of specifications for 60%, 90%, and 100% reviews
- OPCC at 60%, 90% and 100%
- PDF of each submittal set of plans and specifications

It is assumed that SWPPP requirements will have been addressed in the TXDOT plans for this area and that SWPPP drawings will not be required for this design package. This also depends on the timing of the TXDOT work and how it relates to the pipeline relocations. If separate SWPPP drawings are required for the pipelines independently, additional services will be needed.

TASK 4 – BIDDING PHASE SERVICES

Review Contractor questions and issue addenda as required.

Deliverables

- OPCC and PDF for each submittal set of plans and specifications.
- Print and deliver to Town up to four (4) sets of bid documents. Plan sets will be

half-size (11x17). Specification books will be bound 8.5x11 books.
- Print and deliver to Town up to six (6) sets of conformed documents. Plan sets will be half-size (11x17). Specification books will be bound 8.5x11 books.

TASK 5 – SERVICES DURING CONSTRUCTION

Assist the Owner with engineering services during construction, including attendance at construction kickoff meeting, monthly progress meetings and monthly site visits, RFI responses, change order review, and submittal review.

Deliverables:
- Submittal review comments for 10 submittals, including test results
- RFI responses (up to 3)
- Progress meetings combined with site visits (3 total)

TASK 6 – RECORD DRAWINGS

Prepare record drawings from Contractor's markups showing changes made during construction. Transfer contractor markups to digital format.

Deliverables
- Record Drawing in digital format (PDF, TIFF, CAD)

SPECIAL SERVICES

Consultant is currently working on the design of the TX-DOT US 377 Expansion project. Applicable survey, SUE, easements and geotechnical data will be used for this pipeline project. Additional field survey, easements and geotechnical evaluation required will be performed under special services tasks shown below. Special services task fee and scope shall be approved by the Town before starting the work and shall be on a time and materials basis because of the lack of a fully defined scope of work at this time.

TASK 7 – SURVEY AND EASEMENTS

This task includes topographic survey (horizontally and vertical), picking up surface features; drainage features; fences/retaining walls; trees and/or tree lines; roadways; railways; and city, county and franchise utilities (as provided by Texas 811 utility locate request) within the project area.

This task also includes preparation of permanent and temporary easement instruments sealed, dated, and signed by a Registered Professional Land Surveyor.

A special service allowance of $15,000 is allocated for this task.

TASK 8 – GEOTECHNICAL

This task includes borings for soil samples and developing a geotechnical report for the purpose of pipeline construction and jack/bore tunneling operations as required.

A special service allowance of $10,000 is allocated for this task.

SCHEDULE

It is anticipated that design will be completed no more than 9 months after Notice to Proceed. The bid phase is assumed to require 2 months, followed by a 6-month construction phase. With record drawings in the final 1 month, the entire scope of work is assumed to be delivered within 18 months.

ATTACHMENT B COMPENSATION

Consultant will provide the Scope of Services for a lump sum fee, except for time and materials tasks (special services).

| | |
|---|---|
| TASK 1 – Project Management | $15,000 |
| TASK 2 – Evaluation | $12,000 |
| TASK 3 – Design | $66,000 |
| TASK 4 – Bidding Phase Services | $4,000 |
| TASK 5 – Services During Construction | $8,000 |
| TASK 6 – Record Drawings | $4,000 |
| TASK 7 – Survey and Easements (special services) | $15,000 |
| TASK 8 – Geotechnical (special services) | $10,000 |
| | |
| TOTAL | $134,000 |

Special services budgets will be verified at the time they are identified, as required. The amounts shown are initial allowances and must be authorized by the Town prior to commencing work on those tasks.

# TOWN COUNCIL AGENDA ITEM NO. 10

## CONSENT ITEM

**DATE:** October 19, 2020

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

**ITEM:** **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.**

**BACKGROUND INFORMATION:** The Professional Services Agreement includes construction materials engineering and testing for the Garden Ridge Boulevard Water Line Phase II project. The construction project was awarded to Muniz Construction, Inc., on October 5, 2020. The project includes installation of approximately 3,050 linear feet of water line along Garden Ridge Boulevard from Bellaire Boulevard to Ridgecreek Drive. The new water line will expand the water distribution system per the Town's adopted Water Plan.

**BOARD REVIEW/CITIZEN FEEDBACK:** N/A

**ALTERNATIVES/OPTIONS:** Materials testing is required in the contract of the recently awarded construction project.

**FISCAL IMPACT:** $21,853.00

| Proposed Expenditure/(Revenue): | Account Number(s): |
|---|---|
| $21,853.00 | 630-960-98541 |

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

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

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

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

**ATTACHMENTS:**

1. Professional Services Agreement

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

Attachment 1

THE STATE OF TEXAS §
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH ECS SOUTHWEST, LLP**

This contract is entered into on this 19th day of October, 2020, by and between the **TOWN OF FLOWER MOUND, TEXAS,** a municipal corporation located in Denton County, Texas, (hereinafter referred to as "TOWN"), acting by and through its Mayor, and **ECS SOUTHWEST, LLP,** ("hereinafter referred to as "CONSULTANT") whose address is 4050 Sandshell Drive, Fort Worth, TX 76137.

**RECITALS**

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to construction materials engineering and testing and other services for the Garden Ridge Boulevard Water Line Phase II project; and

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

**TERMS OF AGREEMENT**

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

**I.**
**Employment of Consultant**

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

**II.**
**Scope of Services**

CONSULTANT shall perform such services as are necessary to provide the

Garden Ridge Boulevard Water Line Phase II Construction Materials Engineering and Testing specifically including, but not necessarily limited to, the tasks enumerated more fully in Appendix "A" hereto entitled "Scope of Work" (hereafter referred to as the "Project"). Appendix "A" is hereby incorporated herein by reference and made a part hereof as if written word for word. However, in case of conflict in the language of Appendix "A" and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.

## III.
## Payment for Services

Total payment for services described herein shall be a sum not to exceed Twenty One Thousand Eight Hundred Fifty Three and No/100 Dollars ($21,853.00). This total payment for services includes CONSULTANT's ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT.

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

Each month CONSULTANT will submit to TOWN an invoice for actual services performed and reimbursable expenses incurred by CONSULTANT during the previous month for which payment is sought. Each invoice shall be itemized to show the amount of work performed that month broken down by the identity of the person(s) performing such work, the amount of time expended by such person(s) in performing that work, the billing rate for each such person, and a brief summary of the work or testing performed by each such person. Each invoice shall also state the percentage of work completed on the Project, the total of the current invoice amount and a running total balance for the Project to date.

Assuming that TOWN agrees with the invoice, that TOWN has not determined any of the work to be unsatisfactory, or that TOWN otherwise does not dispute any of the amounts billed, within thirty (30) days of receipt of each such monthly invoice TOWN shall make monthly payments in the amount shown by CONSULTANT's approved monthly statements and other documentation submitted.

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

## IV.
## Revisions of the Scope of Services

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

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

## V.
## Term

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

## VI.
## Contract Termination Provision

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

## VII.
## Ownership of Documents

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

## VIII.
## Insurance

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

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

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

The following policies and coverage shall be required:

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

2. Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractor's and Contractual Liability, including but not limited to coverage for all of the indemnification obligations of

CONSULTANT under this Contract, and fully insuring CONSULTANT's liability for injury to or death of employees of TOWN and of third parties, extended to include personal injury liability coverage and for damage to property of third parties, with minimum combined single limits of $1,000,000 per occurrence, $1,000,000 Products/Completed Operations Aggregate and $1,000,000 general aggregate per occurrence. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis;

3. Business Automobile Liability Insurance, covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of $1,000,000.00 per occurrence; and

4. Professional Liability Insurance: CONSULTANT shall obtain and maintain at all times during the prosecution of the work under this Contract professional liability insurance, which may be written on a claims made form provided that "tail coverage" or continuation coverage is provided. Limits of liability shall be $1,000,000.00 per claim, $1,000,000.00 annual aggregate. The coverage under this policy shall include a contractual liability endorsement.

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

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

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

2. The TOWN shall also be named as an additional insured as to all other applicable coverage save and except the Worker's Compensation Insurance and Professional Liability Insurance;

3. Each policy will require that thirty (30) days prior to the expiration, cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to TOWN by certified mail to:

Dale Crown, P.E.
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6302 Telephone

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

4. The term "Owner" or "TOWN" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of TOWN and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of TOWN;

5. The policy phrase "Other Insurance" shall not apply to TOWN where TOWN is an additional insured on the policy; and

6. All provisions of the Contract concerning liability, duty and standards of care together with the indemnification provision shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

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

1. Any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by CONSULTANT. The TOWN's decision(s) thereon shall be final;

2. All policies are to be written through companies duly approved to transact that class of insurance in the State of Texas; and

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

D. CONSULTANT agrees to the following:

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

2. Companies issuing the insurance policies and CONSULTANT shall have no recourse against TOWN for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of CONSULTANT;

3. Approval, disapproval or failure to act by TOWN regarding any insurance supplied by CONSULTANT (or any subcontractors) shall not relieve CONSULTANT of full responsibility or liability for damages and accidents as set forth in the Contract documents. Neither shall the insolvency or denial of liability by the insurance company exonerate CONSULTANT from liability; and

4. No special payments shall be made for any insurance that the CONSULTANT and subcontractors are required to carry; all are included in the contract price and the contract unit prices.

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

## IX.
## Right to Inspect Records

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

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

## X.
## Successors and Assigns

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

## XI.
## CONSULTANT's Liability

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

## XII.
## Indemnification

**THE PROVISIONS OF THIS SECTION ARE SUBJECT TO THE LIMITATIONS OF TEXAS LOCAL GOVERNMENT CODE SECTION 271.904 AND SHALL BE CONSTRUED TO THAT EFFECT. THE CONSULTANT AS ALLOWED BY TEXAS LOCAL GOVERNMENT CODE SECTION 271.904 WILL STILL NAME TOWN AS ADDITIONAL INSURED IN ITS GENERAL LIABILITY POLICY AND PROVIDE ANY DEFENSE AS ALLOWED BY THE POLICY. CONSULTANT DOES HEREBY COVENANT AND CONTRACT TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY AND HOLD HARMLESS TOWN AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS OR CAUSES OF ACTION, INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, THAT MAY ARISE BY REASON OF DEATH OR INJURY TO PERSONS OR DAMAGE TO OR LOSS OF USE OF PROPERTY OCCASIONED BY ANY WRONGFUL INTENTIONAL ACT OR OMISSION OF CONSULTANT AS WELL AS ANY NEGLIGENT OMISSION, ACT OR ERROR OF CONSULTANT, ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, OR OTHER PERSONS FOR WHOM CONSULTANT IS LEGALLY LIABLE WITH REGARD TO THE PERFORMANCE OF THIS CONTRACT, REGARDLESS OF WHETHER SUCH LIABILITY, CLAIMS, SUITS, DEMANDS OR CAUSES OF ACTION IS THE RESULT IN PART OF TOWN'S NEGLIGENCE OR FAULT, AND CONSULTANT WILL, AT ITS OWN COST AND EXPENSE, DEFEND AND PROTECT TOWN AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS.**

## XIII.
## Independent Contractor

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

## XIV.
## Default

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

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

(a) Specific performance of the Contract;

(b) Re-performance of this Contract at no extra charge to TOWN; or

(c) Monetary damages in an amount not to exceed:

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

(2) The total dollar amount of this Contract.

## XV.
## Provisions Surviving Termination

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

## XVI.
## Changes

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

## XVII.
## Conflicts of Interest

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

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

## XVIII.
## Confidential Information

CONSULTANT hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations in

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

## XIX.
## Notice Information

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

Dale Crown, P.E.
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874- 6302 Telephone

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

Vince Elizarde, P.E.
ECS Southwest, LLP
3033 Kellway Drive, Suite 110
Carrollton, TX 75006
972-392-3222 Telephone

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

## XX.

## Applicable Law

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

## XXI.
## Non-Discrimination

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

(a) Cancel, terminate, or suspend the Contract in whole or in part; or

(b) Declare CONSULTANT ineligible for future TOWN contracts until it is determined to be in compliance.

## XXII.
## Arbitration

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

## XXIII.
## No Waiver of Governmental Immunity

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

## XXIV.
## Severability

If any of the terms, provisions, covenants, conditions or any other part of this Contract are for any reason held to be invalid, void or unenforceable, the remainder of

the terms, provisions, covenants, conditions or any other part of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

## XXV.
## Remedies

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

## XXVI.
## Entire Agreement

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

## XXVII.
## Non-Waiver

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

## XXVIII.
## Headings

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

## XXIX.
## Venue

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

## XXX.
## No Third Party Beneficiary

For purposes of this Contract, including its intended operation and effect, the parties (TOWN and CONSULTANT) specifically agree and contract that: (1) the Contract

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

*[The remainder of this page left blank intentionally]*

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

**THE TOWN OF FLOWER MOUND, TEXAS**

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

Date Signed: _____

Attest:

_____
Town Secretary

**CONSULTANT:**
**ECS SOUTHWEST, LLP.**

By: _____

Name: Siddharth Neekhra

Title: Vice President

Date Signed: 09/25/20

State of Texas §
§
County of Dallas §

This instrument was acknowledged before me on the 25th day of September, 2020, by Siddharth Neekhra in his capacity as Vice President of ECS Southwest, a LLP Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of Vice President.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 25th DAY OF September, 2020.

_____
Notary Public, State of Texas

My Commission Expires:

08/30/24

Marcellina Okorie
My Commission Expires
08/30/2024
ID No. 130801658

## APPENDIX A: SCOPE OF SERVICES

Our construction materials engineering & testing services scope is limited to providing periodic testing and/or observations for the expected general construction activities for this project. We understand that the client or their designated representative will be scheduling our services, and the number of hours and level of effort that we based our proposal on should be considered approximate for budgetary purposes since it is not based on a published construction schedule or contractor material quantities. If a schedule becomes available, we can review this schedule against our assumptions and be more definitive in our proposed scope of services.

Unless otherwise noted, we agree to provide an engineering technician(s) or an engineer to perform our construction materials field testing, sampling, and observation services as noted in the following sections. *To most effectively serve the client and facilitate the construction process, our services should be scheduled 24-hours in advance. We understand that the construction process incorporates a large degree of variability and as such, we will do our best to accommodate scheduling calls made on the same day as our services are needed but we cannot guarantee that we can satisfy service requests made after-hours or on the same day as the services are needed to be performed.*

We anticipate the following services for this project:

### Earthwork

Perform as-scheduled earthwork (soils) observation, sampling, and testing services including:

1. Obtain (pick up) soil samples and perform laboratory soil tests generally including moisture/density relationship (Standard Proctor) tests, soil classification tests (Atterberg Limits and percent finer than the no. 200 sieve) for each requested soil-type. Additional soil testing may be required depending on project-specific requirements.
2. Perform in-place moisture/density tests on placed and compacted backfill soils and prepared subgrades.
3. Perform lime series laboratory tests and in-field lime gradations on lime stabilized subgrades.

### Cast-In-Place Concrete

Perform as-scheduled observation, sampling, and testing services for concrete placement events including:

1. Perform concrete field tests and associated measurements including: slump, air content, unit weight, and ambient air & concrete temperature. Sample placed concrete materials.
2. Pick up concrete sample cylinders the following work-day and transport them to the ECS concrete laboratory for processing, moisture curing, and subsequent compressive strength testing. *Appropriate onsite storage areas (curing boxes, shades, etc) for initial sample curing and any other field curing of concrete samples shall be provided by the contractor.*

### Project Administration, Clerical, & Dispatching

Project Administrators / Clerical Staff will work on the project as follows:

1. Perform Field Services Dispatching.
2. Process Field Reports and Laboratory Test Result Reports.
3. Perform additional administrative and clerical duties to aid in project execution.

### Project Management

Project Managers and Principal Engineers will manage the project as follows:

1. Coordinate with Client's field and office staff.
2. Attend the Pre-Construction meeting and periodic site meetings (as requested).
3. Coordinate field and lab services with the project general contractor and dispatch our field staff as scheduled.
4. Process, finalize, and distribute all field and laboratory reports.
5. Manage our project operation and services delivery as well as provide material engineering consultation.

Our field staff or project professionals will provide documentation of events in the field and notify the project general contractor and the client (as needed) upon recognition of deficiencies.

## ADDITIONAL SERVICES

The following services are not included in the Scope of Services and will be considered as *Additional Services*, if and when they are required, requested, or occur:

1. Additional construction material samples for laboratory testing including early test samples or additional sample sets beyond the frequency required in the project documents.*
2. Service cancellations while our staff is in transit to the project site or once at the project site.*
3. Onsite delays and standby time.*
4. Failed Tests.*
5. Field (on site) curing facilities and/or storage for the cementitious samples.
6. Attend project meetings or routine construction meetings throughout the duration of the construction process.
7. Any additional services not specifically included in the above Scope of Services for this project.*

* Including all associated time, materials, and vehicle charges.

The additional services noted above are not factored into our scope and estimated fees and will be invoiced as additional services to be addressed by the Town of Flower Mound with the contractor. *These additional services will be invoiced as Task 2 charges.* Unless defined specifically, all additional services will be invoiced at their standard rates (subject to overtime modification, where applicable) shown on the "Standard Fee Schedule" provided in Appendix B.

Beyond the scope of services presented in this proposal for this project, ECS offers the following construction materials engineering and testing services, locally, that could prove beneficial to the client and the project in general:

- Erosion Control Status Observation
- Ground Penetrating Radar (GPR)
- Concrete Coring and Core Sample Testing

# APPENDIX B: ESTIMATED FEES & STANDARD FEE SCHEDULE

## ESTIMATED FEES

| Description of Services | Detail | Estimate | Quantity | Unit | Rate | Total |
|---|---|---|---|---|---|---|
| **Earthwork** | | | | | | |
| Engineering Technician | *Sample Pickup* | *2 Events* | 6 | hours | $ 55.00 | $ 330.00 |
| Engineering Technician | *Water Lines (All)* | *20 Events* | 50 | hours | $ 55.00 | $ 2,750.00 |
| Engineering Technician | *Water Line Structures* | *7 Events* | 18 | hours | $ 55.00 | $ 990.00 |
| Engineering Technician | *Pavement* | *8 Events* | 28 | hours | $ 55.00 | $ 1,540.00 |
| Engineering Technician | *Pavement SG Stab.* | *8 Events* | 20 | hours | $ 55.00 | $ 1,100.00 |
| Engineering Technician | *Sidewalk & Median* | *2 Events* | 5 | hours | $ 55.00 | $ 275.00 |
| Nuclear Gauge Fee | | | 45 | events | $ 75.00 | $ 3,375.00 |
| Lime Gradations | *2 per Event* | | 10 | each | $ 15.00 | $ 150.00 |
| Lime Series | | | 2 | each | $ 160.00 | $ 320.00 |
| St. Proctor (Moist./Dens. Rel.) | *Standard Proctor* | | 3 | each | $ 140.00 | $ 420.00 |
| Atterberg Limits Tests | *Plasticity Index* | | 3 | each | $ 80.00 | $ 240.00 |
| Washed Sieve (- #200 Sieve) | *Percent Fines* | | 3 | each | $ 60.00 | $ 180.00 |
| Vehicle Charge | | | 47 | trips | $ 35.00 | $ 1,645.00 |
| | | | | | **Subtotal:** | **$ 13,315.00** |
| **Concrete** | | | | | | |
| Engineering Technician | *CLSM / Flowable Fill* | *4 Events* | 12 | hours | $ 55.00 | $ 660.00 |
| Engineering Technician | *Pavement* | *8 Events* | 28 | hours | $ 55.00 | $ 1,540.00 |
| Engineering Technician | *Sidewalk & Median* | *2 Events* | 7 | hours | $ 55.00 | $ 385.00 |
| Conc. Cylinders (Comp. Str.) | | *(4 Cyls/Set)* | 56 | each | $ 18.00 | $ 1,008.00 |
| Material Sample Pickup | | | 14 | trips | $ 55.00 | $ 770.00 |
| Vehicle Charge | | | 14 | trips | $ 35.00 | $ 490.00 |
| | | | | | **Subtotal:** | **$ 4,853.00** |
| **Project Management** | | | | | | |
| Administrator / Clerical / Dispatch | | | 4 | hours | $ 50.00 | $ 200.00 |
| Project Manager | | | 15 | hours | $ 120.00 | $ 1,800.00 |
| Project Principal | | | 10 | hours | $ 165.00 | $ 1,650.00 |
| Vehicle Charge | | | 1 | trips | $ 35.00 | $ 35.00 |
| | | | | | **Subtotal:** | **$ 3,685.00** |
| | | | | | **PROJECT TOTAL:** | **$ 21,853.00** |

## General Assumptions:

Based on the general project information and our scope of services outlined above, the general assumptions utilized in the preparation of our estimated fees are listed below:

1. All material sample pickups and transport to our Laboratory are separate trips, independent of scheduled services.
2. Utility trench excavation backfilling will be tested over 20 total trips on an intermittent basis.
3. Prepared subgrades for areas to receive cast-in-place will be prepared and tested on a separate event than the concrete placement event.
4. Concrete for road pavement will be placed at a rate of 20-30 cubic yards per event (pour). One set of concrete sample cylinders is expected for each concrete placement event.
5. Concrete for sidewalks and medians will be placed at a rate of 10 cubic yards or less per event (pour). One set of concrete sample cylinders is expected for each concrete placement event.
6. Subgrade preparation (compaction) and concrete for sidewalks will be completed in 7 events each with each individual section completed on separate/independent events.
7. Concrete sample sets will consist of 4 sample cylinders measuring 6 inches in height by 12 inches in diameter and will be tested: 2 at 7 Days, 2 at 28 Days.
8. Overtime is not expected due to the project location and construction work hours constraints.
9. For budgeting purposes, all onsite services (example: earthwork and concrete) are estimated to be performed on separate trips and independent of each other.
10. Reinforcing steel will be observed by the Town of Flower Mound Inspection Staff.

## STANDARD FEE SCHEDULE

| Description of Services | Notes | Unit Rate |
|---|---|---|
| **Field Services** | | |
| • Engineering Technician | | $ 55.00 / hour |
| • Senior Engineering Technician | | $ 60.00 / hour |
| • Specialty Engineering Techncian | | $ 75.00 / hour |
| • Structural Steel Technician | | $ 80.00 / day |
| • Nuclear Gauge Fee | | $ 75.00 / day |
| • Core Drilling (Crew) | | $ 100.00 / hour |
| • Core Drilling (Equip. & Matls) | | $ 15.00 / each |
| **Project Management & Engineering Services** | | |
| • Administrator / Clerical / Dispatch | | $ 50.00 / hour |
| • Project Manager | | $ 120.00 / hour |
| • Project Principal | | $ 165.00 / hour |
| • Concrete Mix Design Review | | $ 300.00 / each |
| • Certification Letter | | $ 325.00 / each |
| **Laboratory Services** | | |
| • St. Proctor (Moist./Dens. Rel.) | *ASTM D-698* | $ 140.00 / each |
| • Mod. Proctor (Moist./Dens. Rel.) | *ASTM D-1557* | $ 140.00 / each |
| • Atterberg Limits Tests | *ASTM D-4318* | $ 80.00 / each |
| • Washed Sieve (- #200 Sieve) | *ASTM D-1440* | $ 60.00 / each |
| • Lime Series | *ASTM D-6276* | $ 160.00 / each |
| • Lime Gradations | *ASTM D-6913* | $ 15.00 / each |
| • Free-Swell Test | *ASTM D-4546* | $ 100.00 / each |
| • Conc. Cylinders (Comp. Str.) | *ASTM C-39* | $ 18.00 / each |
| • Conc. Cores (Comp. Str.) | *ASTM C-39* | $ 50.00 / each |
| • Grout Prisms (Comp. Str.) | *ASTM C-1019* | $ 30.00 / each |
| • Mortar Cubes (Comp. Str.) | *ASTM C-270* | $ 18.00 / each |
| • Masonry Block Prisms (Comp. Str.) | *ASTM C-1314* | $ 300.00 / each |
| **Mobilization & Transportation** | | |
| • Core Drilling (Mobilization) | | $ 350.00 / each |
| • Floor Flatness (Mobilization) | | $ 300.00 / hour |
| • Material Sample Pickup | | $ 55.00 / trip |
| • Vehicle Charge | | $ 35.00 / trip |

**General Notes:**

1. There will be no minimum charge for services rendered on this project; billing will be based on specific unit rates reflecting only the actual time spent and tests performed on this project.
2. Hourly unit rates are based on a normal 10 hour work day, Monday through Friday (non-holidays), between normal business hours of 7:00 a.m. to 5:00 p.m. Hourly rates outside normal hours (excluding travel time and report preparation/lab time), and on Saturday, Sunday, and Holidays, will be invoiced at a rate of 1.5 times the normal hourly rate indicated above.
3. All vehicle charges account for a round trip from the **ECS Southwest, LLP Fort Worth, Texas** office to the project site.

# TOWN COUNCIL AGENDA ITEM NO. 11

# CONSENT ITEM

**DATE:** October 19, 2020

**FROM:** Chuck Jennings, Director of Parks and Recreation

**ITEM:** **Consider approval of a License Agreement with Sankey, Ltd. to allow for vehicle parking on park property; and authorization for the Mayor to execute same on behalf of the Town.**

**BACKGROUND INFORMATION:** In 1995, the Town entered into a 25-year license agreement with the original owner of the property at 2845 Morriss Rd., Dr. Damon Wilkerson. The office is located adjacent to the Town's trail network and across the street from Forestwood Middle School and Wilkerson Park. The agreement granted Dr. Wilkerson permission to construct 15 additional concrete parking spaces on Town parkland. The additional parking spaces helped address parking concerns for Dr. Wilkerson's patients and provided overflow parking for the ballfield located in Wilkerson Park, as well as access to the adjacent hike and bike trail. The construction costs and ongoing maintenance and upkeep were the responsibility of Dr. Wilkerson. The property was sold to Dr. Wayne Sankey in December of 2001 and the current contract expired on April 1, 2020.

Dr. Sankey has reviewed the new license agreement and is amenable to the terms for the continued use and maintenance of the parking lot. The new license will automatically renew annually until terminated by either party with 120 days' written notice. Town residents will continue to have access to the parking lot after business hours to access the Town trail and ballfield. Dr. Sankey is required to supply the Town with comprehensive general liability and property damage insurance coverages naming the Town as an additional insured under the policy.

The proposed license agreement, along with the required proof of insurance from Dr. Sankey's insurance carrier has been attached for your review.

**BOARD REVIEW/CITIZEN FEEDBACK:** N/A

**ALTERNATIVES/OPTIONS:** The council can deny the parking license to Sankey, Ltd. and reserve these 15 parking spots for park patron use only.

**FISCAL IMPACT:** N/A

**LEGAL REVIEW:** The attached has been reviewed as to form and legality by Bryn D. Meredith of Taylor, Olson, Adkins, Sralla, Elam, LLP on April 13, 2020.

**ATTACHMENTS:**

1. License for Vehicle Parking Area Agreement
2. Insurance Certificate

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

**License for Vehicle Parking Area**

This License Agreement (this "Agreement") is made among the Town of Flower Mound, a Texas Municipal Corporation (the "Licensor") and SANKEY, LTD, a Texas Limited Partnership (the "Licensee"), effective as of April 1, 2020. Licensor and Licensee may each be referred to as "Party" herein, and both together may be referred to as the "Parties" to this Agreement.

**WHEREAS** the Licensor is owner of the following described property (the "Property"):

> Being a portion along the northeastern border of the public park owned by Town of Flower Mound located on Morriss Road south of its intersection with Garden Road, and which is adjacent to the northern border of Lot 1, Block A, of Wilkerson Medical Addition, an Addition to the Town of Flower Mound, Denton County, Texas, According to the Plat thereof; but only the portion of the public park upon which has been constructed a parking area and immediate appurtenances thereto; and described on the attached **Exhibit A**, page 1 as the "Parking Area Outside of Platted Lot" and appurtenances, and on **Exhibit A**, page 2, as the parking area and appurtenances north of the north property line of Lot 1 Block A.

**WHEREAS**, licensee desires to exercise certain rights and privileges on the Property, which rights and privileges the licensee has previously exercised under another, previous agreement which is no longer in effect.

**NOW, THEREFORE**, for good and valuable consideration, which the Parties hereto acknowledge receiving, the Parties hereby agree as follows:

1. Licensee and Licensor agree to use jointly, or individually, the Property for vehicle parking which shall include automobiles, pickup and similar vehicles, but shall not include heavy duty construction vehicles. Licensor agrees that Licensee may construct certain landscaping

improvements on the Property which enhance or further encourage improved drainage. Additional irrigation, if desired by Licensee, shall be constructed at Licensee's expense.

Licensee shall have the right to operate equipment on the Property to construct, reconstruct, maintain, repair, and replace vehicle parking area, and the right of ingress and egress onto said Property for the purpose of exercising the rights herein granted. Licensee shall have the right to restrict parking on the Property to patrons of Licensee's business or premises, only during Licensee's business hours; at all other times, Licensee must allow public access to the Property, for access to adjacent and nearby public property.

2. **LICENSEE EXPRESSLY AGREES TO FULLY AND COMPLETELY DEFEND, INDEMNIFY, AND HOLD HARMLESS LICENSOR, ITS COUNCIL MEMBERS, EMPLOYEES, AND ATTORNEYS AND THEIR SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "INDEMNIFIED PARTIES") AGAINST ANY AND ALL CLAIMS, DAMAGES, LAWSUITS, LIABILITIES, JUDGMENTS, COSTS, AND EXPENSES INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND OTHER CONSULTANTS, FOR BODILY INJURY (INCLUDING DEATH), PROPERTY DAMAGE (INCLUDING, BUT NOT LIMITED TO, DAMAGE TO LICENSOR'S PROPERTY) OR OTHER HARM, DAMAGES OR LIABILITY FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ANY NEGLIGENT, GROSSLY NEGLIGENT, WRONGFUL, OR STRICTLY LIABLE ACT OR OMISSION OF LICENSEE AND/OR ITS AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, OR INVITEES IN**

**CONNECTION WITH THE LICENSEE'S LICENSE UNDER THIS AGREEMENT. THE INDEMNITY CONTAINED IN THIS PARAGRAPH WILL NOT BE LIMITED BY COMPARATIVE RESPONSIBILITY STATUTES AND WILL APPLY EVEN IF ANY SUCH LIABILITIES, CLAIMS, DEMANDS, ASSERTIONS, CAUSES OF ACTION, PENALTIES, COSTS, OR DAMAGES ARISE IN WHOLE OR IN PART FROM THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF ANY OF THE INDEMNIFIED PARTIES, BUT WILL NOT APPLY TO THE EXTENT THAT SUCH LIABILITIES, CLAIMS, DEMANDS, ASSERTIONS, CAUSES OF ACTION, PENALTIES, COSTS, OR DAMAGES ARISE IN WHOLE OR IN PART FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY OF THE INDEMNIFIED PARTIES, PROVIDED, HOWEVER, THAT ANY ALLEGATION OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT WILL NOT ALLEVIATE THE OBLIGATION OF LICENSEE TO DEFEND ANY OF THE INDEMNIFIED PARTIES FROM ANY CLAIMS, DEMANDS, ASSERTIONS, OR CAUSES OF ACTION UNTIL AND UNLESS A FINAL JUDGMENT DETERMINING THAT SUCH INDEMNIFIED PARTY HAS IN FACT COMMITTED SUCH GROSS NEGLIGENCE AND/OR WRONGFUL MISCONDUCT. NOTHING CONTAINED IN THIS AGREEMENT SHALL BE CONSTRUED AS A WAIVER OF ANY IMMUNITY DEFENSE THAT MAY BE ASSERTED BY ANY OF THE INDEMNIFIED PARTIES OR OTHERWISE PREVENT LICENSEE FROM RAISING SUCH DEFENSE ON BEHALF THE INDEMNIFIED PARTIES IN ANY CLAIM, DEMAND, ASSERTION, OR CAUSE OF ACTION, INCLUDING BUT NOT LIMITED TO ANY SUCH CLAIM, DEMAND, OR CAUSE OF ACTION COVERED BY THE INDEMNIFICATION**

**UNDER THIS PARAGRAPH 2.** This provision is solely for the benefit of Licensee and the Indemnified Parties and is not intended to create or grant any rights, contractual or otherwise, in or to any other person. This indemnification shall survive the termination of this Agreement.

3. Parties agree that Licensee shall be responsible for all maintenance and upkeep and for any necessary repair to the paving already in place, as of April 1, 2020. The Licensee shall be responsible for maintenance and upkeep and for any necessary repair to the iron fence and any landscaping in place on the property as of April 1, 2020. If Licensor believes the paving, fence, or landscaping has been improperly maintained, or requires some necessary repair, Licensor shall provide Licensee with written notice of the alleged maintenance, repair, or upkeep deficiency. If the deficiency is not corrected within sixty days, the Licensor may perform the maintenance, repair, or upkeep deemed necessary, and may invoice Licensee for actual cost of work performed and materials used, which Licensee agrees to pay within thirty days.
4. Licensee agrees to provide and maintain during the life of this Agreement, with a carrier reasonably acceptable to the Licensor, comprehensive general liability and property damage insurance coverages in the amount of $2,000,000.00 combined single limit to protect Licensee and Licensor from any claims for negligence, personal injury, including wrongful and accidental death, and property damage which may arise from any construction, maintenance, use, or occupation of the Property. The policy or policies shall name Licensor as an additional insured and shall contain a provision that the insurer will not cancel or decrease the insurance coverages required herein without first giving Licensor thirty (30) days' written notice. Licensee shall provide Licensor with a certificate of insurance evidencing the coverages required herein prior to the execution of this Agreement.

5. Notice shall be deemed sufficient if delivered in person or by certified mail, return receipt requested, by one Party to another, at the addresses shown herein.

   Town of Flower Mound, Texas
   ATTN: Chuck Jennings, Director of Parks and Recreation
   2121 Cross Timbers Road
   Flower Mound, TX 75028

   Sankey LTD
   2845 Morriss Road
   Flower Mound, TX 75028

   Either Party may, from time to time, modify their addresses as herein listed, by delivering notice in writing to the other Party.

6. Either party may terminate this Agreement with one hundred twenty (120) days' written notice to the other party for any reason. Upon termination, Licensee shall immediately relinquish control over and use of the Property.

7. The Parties agree that this Agreement shall be for a term of one year, beginning April 1, 2020, and shall renew each year on April 1, without action of the Parties, until such time as either Party shall terminate this Agreement.

**MISC. PROVISIONS**

8. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

9. This Agreement may be executed in multiple original counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement.

10. This Agreement shall supersede any prior agreements between Licensor and Licensee relating to the Property.

11. The failure of either party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant or right with respect to further performance.
12. The prevailing party in the adjudication of any proceeding relating to this Agreement shall be authorized to recover its reasonable and necessary attorney's fees pursuant to Sec. 271.159 of the Texas Local Government Code.
13. Notwithstanding any provision of this Agreement, nothing herein shall be construed to commit the expenditure of any future revenue by Licensor, or to create a debt which is contrary to the laws or the constitution of the State of Texas.
14. No assignment of this Agreement or any right or interest herein by either party is effective without the prior written consent of a duly authorized representative of the other party.
15. Licensee must incur no debts or obligations on the credit of the Licensor and must not allow any liens to attach to the Property.
16. This Agreement shall be interpreted according to the laws of the State of Texas. Venue for any proceeding regarding this case shall be only Denton County.

WITNESS the execution hereof, effective as of the date set forth above.

**Town of Flower Mound, Texas**

By:_____
Steve Dixon, Mayor
2121 Cross Timbers Road
Flower Mound, TX 75028

ATTEST:

_____
Theresa Scott, Town Secretary

**SANKEY, LTD, a Texas limited partnership**

_____

By:_____
Address: _____
_____

# Exhibit A

Page 1

TOWN OF FLOWER MOUND
BUILDING INSPECTIONS
APPROVED
BY: KCS
DATE: 12/23/03

CHECK YOUR DEED RESTRICTIONS AND HOME OWNER'S ASSOCIATION REGULATIONS BEFORE BUILDING, AS THE TOWN DOES NOT REGULATE THEM.

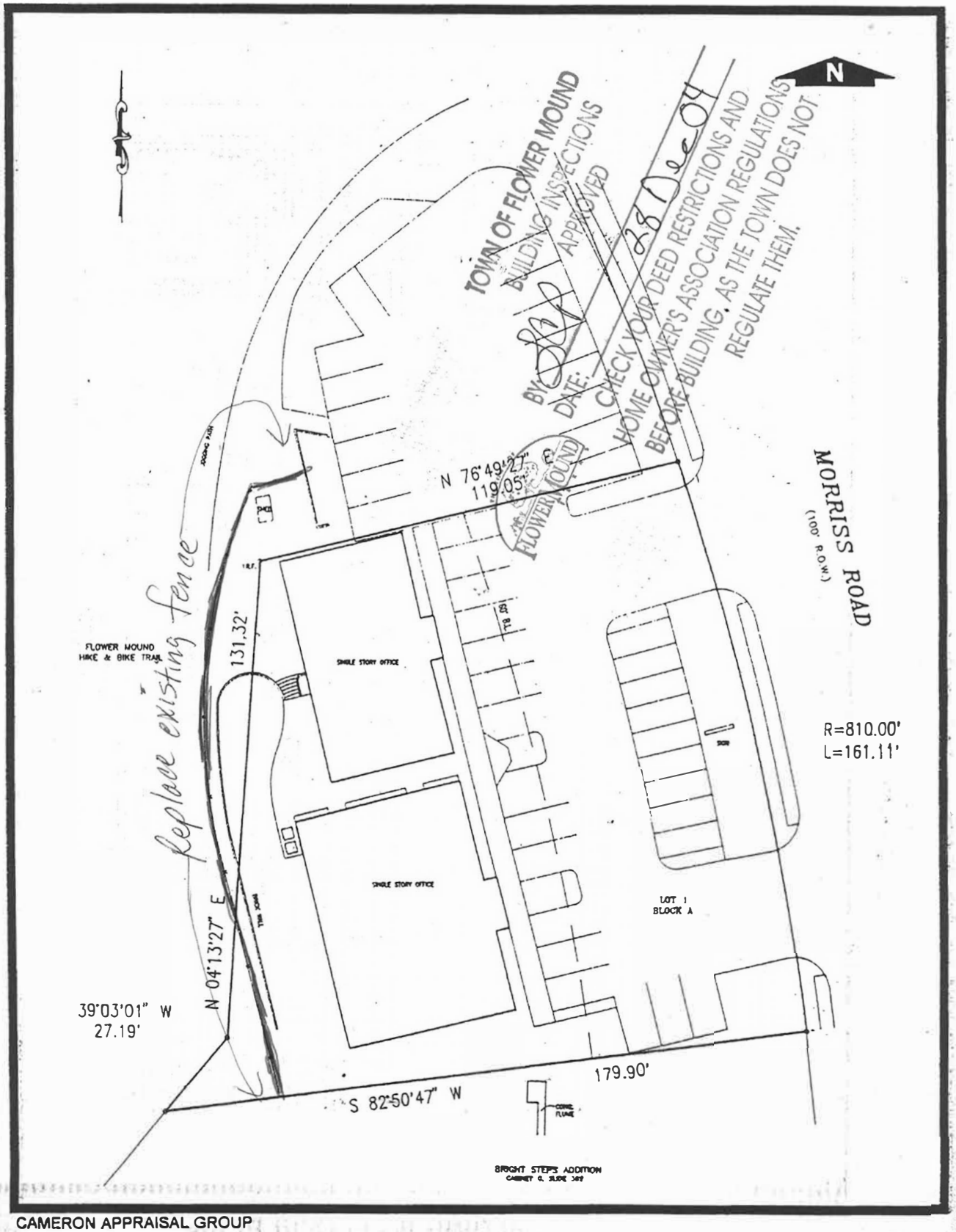
NOTE: THE PROPERTY SHOWN FLOOD PLAIN IN ACCORDANCE AND IS IN ZONE 'AE' & 'X'

| | | |
|---|---|---|
| DRAWN BY | APPROVED BY: | REVISIONS |
| DATE Plot date: 05/04/99 at 01:00 | PROJ. NO. | |
| | File name: C:\DWG\MAY99\23749901 | |

PROJECT:
LOT 1, in BLOCK A, of W
an Addition to the Town
County, Texas, according
in Cabinet H, Page 314
Texas.

# Exhibit A

Page 2




CAMERON APPRAISAL GROUP

**SITE PLAN**

# CERTIFICATE OF LIABILITY INSURANCE

Attachment 2

DATE (MM/DD/YYYY): 09/18/2020

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

| PRODUCER | CONTACT NAME: Goosehead Insurance | |
|---|---|---|
| Goosehead Insurance Agency LLC<br>1500 Solana Blvd, Bldg 4, Ste 4500<br>Westlake, TX 76262 | PHONE (A/C, No, Ext): 800-474-1377 | FAX (A/C, No): 866-877-6250 |
| | E-MAIL ADDRESS: Certificate@Goosehead.com | |
| | INSURER(S) AFFORDING COVERAGE | NAIC # |
| | INSURER A : The Hanover Casualty Company | |
| INSURED<br>Wayne L Sankey DDS MS<br>Sankey LTD<br>2845 Morriss RD<br>Flower Mound, TX 75028 | INSURER B : | |
| | INSURER C : | |
| | INSURER D : | |
| | INSURER E : | |
| | INSURER F : | |

**COVERAGES** **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | |
|---|---|---|---|---|---|---|---|---|
| A | ☑ COMMERCIAL GENERAL LIABILITY<br>☐ CLAIMS-MADE ☑ OCCUR<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br>☑ POLICY ☐ PRO-JECT ☐ LOC<br>☐ OTHER: | X | | OLD-H126569-00 | 12/10/2019 | 12/10/2020 | EACH OCCURRENCE | $ 1,000,000 |
| | | | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) | $ 300,000 |
| | | | | | | | MED EXP (Any one person) | $ 5,000 |
| | | | | | | | PERSONAL & ADV INJURY | $ 1,000,000 |
| | | | | | | | GENERAL AGGREGATE | $ 2,000,000 |
| | | | | | | | PRODUCTS - COMP/OP AGG | $ 2,000,000 |
| | | | | | | | | $ |
| | AUTOMOBILE LIABILITY<br>☐ ANY AUTO<br>☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS<br>☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY | | | | | | COMBINED SINGLE LIMIT (Ea accident) | $ |
| | | | | | | | BODILY INJURY (Per person) | $ |
| | | | | | | | BODILY INJURY (Per accident) | $ |
| | | | | | | | PROPERTY DAMAGE (Per accident) | $ |
| | | | | | | | | $ |
| | ☐ UMBRELLA LIAB ☐ OCCUR<br>☐ EXCESS LIAB ☐ CLAIMS-MADE<br>☐ DED ☐ RETENTION $ | | | | | | EACH OCCURRENCE | $ |
| | | | | | | | AGGREGATE | $ |
| | | | | | | | | $ |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐<br>**(Mandatory in NH)**<br>If yes, describe under DESCRIPTION OF OPERATIONS below | N / A | | | | | | ☐ PER STATUTE ☐ OTH-ER | |
| | | | | | | | E.L. EACH ACCIDENT | $ |
| | | | | | | | E.L. DISEASE - EA EMPLOYEE | $ |
| | | | | | | | E.L. DISEASE - POLICY LIMIT | $ |
| | | | | | | | | |

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

The Town of Flower Mound is afforded additional insured status where required by written contract.

**CERTIFICATE HOLDER**

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

**CANCELLATION**

**SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.**

**AUTHORIZED REPRESENTATIVE**

La'Votric Crumbley

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# TOWN COUNCIL AGENDA ITEM NO. 12

## CONSENT ITEM

**DATE:** October 19, 2020

**FROM:** Chuck Jennings, Director of Parks and Recreation

**ITEM:** **Consider approval of a Service Contract with The Christmas Light Company, Inc., in an annual amount not-to-exceed $55,100, to provide holiday lighting services at the Community Activity Center; and authorization for the Mayor to execute same on behalf of the Town.**

**BACKGROUND INFORMATION:** With the loss of the Pecan tree at Gerault Park/CAC, the Town needed to secure quotes for the addition of a 50-foot lighted artificial Christmas tree, eight-foot lighted wreath, and building roof line LED lights for the 2020 Holiday season and beyond. The proposed contract is a lease option and is good for one year with (2) two, one-year renewable options. The contract includes the items previously mentioned plus set-up, storage, take down, and the vendor assumes all risk and liability. The 50-foot commercial grade branched tree will have 51,000 LED mini lights, 600 six- and eight-inch acrylic ball ornaments, and a five foot "3-D Starburst" tree topper. The eight-foot wreath will come with 2,100 LED mini lights and a three-foot red bow with gold trim. The Town Council approved funding for the artificial tree during the FY 20-21 budget process.

The Christmas Light Company has been in business for over 22 years and provides quality commercial lighting for many retail developments, municipalities, HOA's, public thoroughfares, and downtown areas.

**BOARD REVIEW/CITIZEN FEEDBACK:** N/A

**ALTERNATIVES/OPTIONS:** The council can deny the request and decide not to provide a lighted Christmas tree and building lighting at the Community Activity Center this holiday season.

**FISCAL IMPACT:** $55,100.00

| Proposed Expenditure/(Revenue): | Account Number(s): |
|---|---|
| $38,640.00 | 100-630-34200-5110 |
| $16,460.00 | 320-370-00000-5110 |

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

**LEGAL REVIEW:** This standard service contract was approved in the past by Taylor, Olson, Adkins, Sralla, & Elam L.L.P. No alteration to the legal content of this document was made in preparation of this agreement.

**ATTACHMENTS:**

1. Service Contract

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

**TOWN OF FLOWER MOUND**
**STANDARD TERMS & CONDITIONS FOR SERVICES/PRODUCTS**

**This Contract is made by the Town of Flower Mound, Texas, a municipal Corporation ("Town") and The Christmas Light Company, LLC. ("Contractor"). The Town and Contractor agree:**

**EMPLOYMENT OF THE CONTRACTOR:** The Town agrees to retain the Contractor, and the Contractor agrees to provide services relative to: Christmas Tree and Building Lighting Services (hereinafter referred to as "Services") in connection with the terms and conditions as set forth in the Contract Documents, attached hereto and incorporated by reference.

**SCOPE OF SERVICES:** The Services to be performed are specified in the attached estimated. Deviations from the scope of work may be authorized from time to time by the Town in writing.

**PAYMENT:** Town shall pay to Contractor the amount of $55,100.00. Fifty percent (50%) of the total sum shall be paid to Contractor upon completion of installation with the remaining 50% due upon completion of removal. Contractor will be responsible for invoicing the Town accordingly.

**INSTALLATION:** Installation date(s): one week prior to Town's Christmas Tree Lighting Ceremony. Installation dates delayed by rain will be absorbed the following week. The entire estimate scope, including but not limited to lights, power cords, garlands, wreaths, etc., as well as placement of these items has been decided by Town.

**ACCESS TO AREA(S):** Irrevocable access to all areas decorated, as well as electrical sources, etc., is granted for installation, repairs, removals, inspections, and system diagnostic checks.

**REPAIRS:** Contractor will perform "checks" of the property two times a week. Contractor will correct any problems found upon inspection that night or the next day. Contractor will have at least one staff member on site during the Town of Flower Mound Annual Tree Lighting event, and a staff member will attend future Tree Lighting events for any year that this Agreement is in place.

**ELECTRICAL:** All estimates are made under the assumption that adequate power and receptacles are available and in proper working condition. GFCI problems are Town's responsibility. No refunds, charge backs, or discounts are allowed for any power/electrical related problems. Installed items that cannot be used due to lack of power supply will not be discounted. Any additional electrical work or electrical upgrades will be at Town's expense. Multiple visits are often necessary to accurately troubleshoot and repair which are normal and should be expected.

**REMOVAL:** Removal of Christmas tree, wreath, and building lights will be no sooner than January 2, and no later than January 15, of said contract year(s), weather permitting.

**ESTIMATE INCLUDES:** Estimate is set forth in Exhibit C and includes installation, equipment rental, service, and removal.

**CONTRACT PERIOD:** The initial contract period will be one year, with two (2) optional one-year renewal periods from date of award of contract. All pricing is to remain firm during the contract period. This agreement may be terminated by either party with written notice at least ninety (90) days prior to the current term renewal date, indicating their intent not to renew.

**INVOICING:** Invoices should be prepared and submitted to the Town for payment in accordance with the Contract Documents. Invoices should be mailed to: Accounts Payable, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, TX 75028 or accountspayable@flower-mound.com.

**RIGHTS OF WITHHOLDING:** The Town may withhold any payment or partial payment otherwise due the Contractor on account of unsatisfactory performance by the Contractor. The amount to be withheld will be calculated based on the work not performed and the impact to the Town. Any payment or partial payment that may be withheld for unsatisfactory performance can be used to remedy the lack of performance and will not be paid to the Contractor.

**TRANSFER OF INTEREST:** Neither Town nor Contractor may assign or transfer their interests in the Contract without the written consent of the other party. Such consent shall not be unreasonably withheld. This Contract is binding on Town, Contractor, and their successors and assigns. Nothing herein is to be construed as creating a personal liability on the part of any Town officer, employee or agent.

**EQUAL EMPLOYMENT OPPORTUNITY:** The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such actions shall include, but not be limited to the following: employment, promotions, demotion, transfers, recruitment or recruitment advertising, layoffs, terminations, selection for training (including apprenticeships), and participation in recreational activities.

**TERMINATION OF CONTRACT**: Town may terminate this contract upon sixty (60) days written notice to Contractor, except in the event Contractor is in breach of this Contract. If foregoing conditions exists, Town shall notify Contractor and Contractor shall be given two (2) days to cure such breach. Should Contractor fail to cure to the satisfaction of the Town, Town may terminate this Contract upon written notice.

a. Furthermore, the Town retains the right to terminate this Contract at the expiration of each Town budget period (September 30) during the term of this Contract, even without prior notice as described in the preceding sentence.
b. In the event of any termination hereunder, the Contractor consents to Town's selection of another Contractor to assist the Town in any way in completing the Services. Contractor further agrees to cooperate and provide any information requested by Town in connection with the completion of the Services.
c. Contractor shall be compensated for Services performed and expenses incurred for satisfactory work up to the termination date in that Contractor shall receive a portion of fees and expenses permitted under this Contract in direct proportion to percentage of work actually completed up to the termination date. This provision shall not deprive the Town of any remedies against Contractor that may be available under applicable law.

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

**TOWN APPROVAL FOR ADDITIONAL WORK**: No payment, of any nature whatsoever, will be made to Contractor for additional work without the Town's written approval before such work begins.

a. **PERFORMANCE BY CONTRACTOR**: All Services provided by the Contractor hereunder shall be performed in accordance with the highest professional standards and in accordance with the Contract Documents, and Contractor shall be responsible for all Services provided hereunder whether such services are provided directly by contractor or by any contractors hired by Contractor. The Contractor shall perform all duties and Services and make all decisions called for hereunder promptly and without unreasonable delay. Contractor shall not utilize subcontractors to perform Services without the Town's prior written consent.

**DAMAGE:** In all instances where Town property and/or equipment is damaged by the Contractor's employees, a full report of the facts, extent of the damage and estimated impact on the Contractor's schedule shall be submitted to the Town's Parks and Recreation Department by 8 a.m. of the following Town business day after the incident. If damage may result in further damages to the Town or loss of Town property, the Contractor must notify Police Dispatch immediately. The Contractor shall be fully liable for all damage to Town property or equipment caused by the Contractor's officers, employees or agents.

**INSURANCE:** The Contractor shall provide proof that it has obtained and will continue to maintain throughout the duration of the Contract the insurance requirements set forth in Exhibit A. Failure to maintain the required insurance may result in immediate termination of the Contract.

**INDEMNIFICATION:** As specified in Exhibit B.

**TOWN OBJECTION TO PERSONNEL:** If at any time after entering into this Contract, Town has any reasonable objection to any of Contractor's personnel, or any personnel retained by Contractor, then Contractor shall promptly propose substitutes to whom the Town has no reasonable objection, and the Contractor's compensation shall be equitably adjusted to reflect any difference in the Contractor's costs occasioned by such substitution.

**COMPLIANCE WITH LAWS:** The Contractor warrants and covenants to the Town that all Services will be performed in compliance with all applicable federal, state, county and Town laws, rules, and regulations including, but not limited to, the Texas Industrial Safety and Health Act and the Workers Right-to-Know Law. All necessary precautions shall be taken to assure that safety regulations prescribed by OSHA and the Town's Representative are followed.

**ENTIRE CONTRACT:** This instrument together with the Contract Documents of which this Contract is a part contains the entire Contract between the Town and Contractor concerning the Services. There will be no understandings or contracts

other than those incorporated herein. The Contract may not be modified except by an instrument in writing signed by the parties hereto. In the event of a conflict between an attachment to this Contract and this Contract, this Contract shall control.

**IMMIGRATION REFORM AND CONTROL ACT (8 U.S.C 1324a):** The Town supports the Immigration Reform and Control Act (IRCA), which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. The Seller and its subcontractors shall at all times during the term of the contract with the Town comply with the requirement of IRCA and shall notify the Town within fifteen (15) working days of receiving notice of a violation of IRCA. The Seller also warrants that it has not had an IRCA violation within the last five (5) years. The Town may terminate a contract with the Seller if the Town determines that (a) the Seller or its subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years or (b) the Seller or its subcontractors fail to timely notify the Town of an IRCA violation.

**NO BOYCOTT OF ISRAEL:** Pursuant to Texas Government Code Chapter 2270, the Seller agrees that acceptance of these Terms & Conditions serves as written verification that 1) Seller does not boycott Israel, as defined by Texas Government Code Section 808.001 and 2) Seller will not boycott Israel during the term of the contract.

**COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION:** Pursuant to Texas Government Code Chapter 2252, Subchapter F. Seller affirms that it is not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to a foreign terrorist organization.

**MAILING ADDRESSES:** All notices and communications concerning this Contract to be mailed or delivered to the Town shall be sent to the address of the Town as follow, unless and until the Contractor is otherwise notified:

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

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

William F. Rathburn, President
The Christmas Light Company
8019 Military Parkway
Dallas, Texas 75227

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

**LEGAL CONSTRUCTION:** If any one or more of the provisions contained in the Contract for any reason is held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Contract shall be construed as if such invalid, illegal or unenforceable provision had never been included.

**GOVERNING LAW:** The validity of this Contract and of any of its terms or provisions as well as the rights and duties hereunder, shall be governed by and construed in accordance with Texas law. Venue for this Contract shall be located in Denton County, Texas.

**COUNTERPARTS:** The Contract may be signed in counterparts, each of which shall be deemed to be an original.

**EFFECTIVE DATE:** This contract shall be effective once it is signed by the Town and Contractor.

**I HAVE READ AND UNDERSTAND ALL PRECEDING TERMS AND BY SIGNING HEREBY AGREE TO ALL.**

| | | | |
|---|---|---|---|
| _____ | _____ | _____ | _____ |
| William F. Rathburn, President<br>The Christmas Lighting Company | Date | Steve Dixon, Mayor<br>Town of Flower Mound | Date |

# EXHIBIT A

## INSURANCE REQUIREMENTS
## GENERAL SERVICES

Services performed on Town property, including but not limited to: Installation, Landscape, Maintenance, Custodial, Electrical, Painting, Welding, Plumbing, Transportation, Street Sweeping, Fireworks, Moving, Uniforms, Concessions, etc.

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

### A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. ISO Form Number GL 00 01 (or similar form) covering Commercial General Liability. "Occurrence" form only, "claims made" forms are unacceptable.

2. Workers Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.

3. Automobile Liability as required by the State of Texas, covering all owned, hired, or non-owned vehicles. Automobile Liability is only required if vehicle(s) will be used under this contract.

### B. MINIMUM LIMITS OF INSURANCE

Vendor shall maintain limits throughout contract not less than:

1. Commercial General Liability: $500,000 per occurrence / $1,000,000 in the aggregate for third party bodily injury, personal injury and property damage. Policy will include coverage for:

    a. Premises / Operations

    b. Broad Form Contractual Liability

    c. Products and Completed Operations

    d. Personal Injury

    e. Broad Form Property Damage

2. Workers Compensation and Employer's Liability: Workers Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability minimum limits of $100,000 each accident, $300,000 Disease - Policy Limit, and $100,000 Disease – Each Employee.

3. Automobile Liability: $500,000 Combined Single Limit. Limits can only be reduced if approved by the Town. Automobile liability shall apply to all owned, hired, and non-owned autos.

### C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

D. OTHER INSURANCE PROVISIONS

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

1. General Liability and Automobile Liability Coverages:

   a. The Town, its officers, officials, employees, boards and commissions and volunteers are to be added as "Additional Insured's" relative to liability arising out of activities performed by or on behalf of the vendor, products and completed operations of the vendor, premises owned, occupied or used by the vendor. The coverage shall contain no special limitations on the scope of protection afforded to the Town, its officers, officials, employees or volunteers.

   b. The vendor's insurance coverage shall be primary insurance in respects to the Town, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Town, its officers, officials, employees or volunteers shall be in excess of the vendor's insurance and shall not contribute with it.

   c. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Town, its officers, officials, employees, boards, and commissions or volunteers.

   d. The vendor's insurance shall apply separately to each insured against whom the claim is made or suit is brought, except to the limits of the insured's limit of liability.

2. Workers Compensation and Employer's Liability Coverage:

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

3. All Coverages:

   Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after 30 days written notice to the Town for all occurrences, except 10 days written notice to the Town for non-payment.

E. ACCEPTABILITY OF INSURERS

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

F. VERIFICATION OF COVERAGE

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

Exhibit B

**RELEASE AND INDEMNIFICATION OF LIABILITY**

**STATE OF TEXAS )**

**) KNOWN ALL MEN BY THESE PRESENTS:**

**COUNTY OF DENTON )**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Witness my hand this _____ day of _____, 20 ___.

_____
An independent contractor of the
Town of Flower Mound

By: _____

Its: _____
(Title)

Subscribed and sworn to before me on this _____ day of _____, 20____.

_____
Notary Public in and for the State of Texas

My commission expires: _____

Exhibit C

Phone: (214) 515-XMAS (9627)
Fax: (214) 275-4213

8019 Military Parkway
Dallas, Texas 75227

# 2020 Holiday Lighting

**For**

# The City of Flower Mound

*Bid Includes: One-Time Installation, Removal and Equipment Purchase*

## *(OPTION B: "RENTAL of 50 FOOT COMMERCIAL BRANCH CHRISTMAS TREE*

**(REVISED - 9/24/20)**

## "TURN-KEY" RENTAL PACKAGE:

## I. (1) 50ft "Platinum Fir" Commercial BRANCH Tree $49,000
## (50 FOOT BRANCH TREE plus 5 FOOT STAR)

*** Securely Installed, Serviced & Removed**

### TREE:

a. (1) 50 Foot Commercial "Platinum Fir" BRANCH Tree
   1. 51,000 LED Mini Lights

### TREE TOPPER:

b. (1) 5 Foot LED "3-D STARBURST" Tree Topper
   1. LED Lights

   * NOTE: Any Other style of 5 FOOT Tree Topper is also available

### ORNAMENTS:

c. (300) 6 INCH Acrylic Ball Ornaments (color TBD)
d. (300) 8 INCH Acrylic Ball Ornaments (color TBD)
   1. "Platinum Acrylic Ornament Package"

Phone: (214) 515-XMAS (9627)
Fax: (214) 275-4213

8019 Military Parkway
Dallas, Texas 75227

## II. (1) 8 FOOT "Platinum Fir" Commercial Wreath $1000

**WREATH:**

a. (1) 8 Foot Commercial "STEEL-FRAMED" Wreath
   1. 2100 LED Mini Lights (OR) 350 C7s

**BOW:**

a. (1) 3 Foot RED "Commercial" RED Bow w/ Gold Trim
   1. LED Lights

## III. BUILDING ROOFLINES $5100

a. All C9 Bulbs, C9 Line, Clips, Etc.
(Light (2) Levels along the Front & Peaks & Side Where Tree is Located)
   1. C9 LED Lights, Bulbs, Clips, Etc.

b. (1) 50 Foot Commercial "Platinum Fir" Christmas Tree
   1. 51,000 LED Mini Lights

c. (1) 4 foot 3-D Star Tree Topper
   1. LED Mini Lights

d. (600) Large Ball Ornaments
   1. "Platinum Acrylic Ornament Package"

| | |
|---|---|
| **GRAND TOTAL (YEAR ONE):** | **$55,100.00** |
| **GRAND TOTAL (YEAR TWO):** | **$55,100.00** |
| **GRAND TOTAL (YEAR THREE):** | **$55,100.00** |

# TOWN COUNCIL AGENDA ITEM NO. 13

# CONSENT ITEM

**DATE:** October 19, 2020

**FROM:** Mark Long, Assistant Director of Parks and Recreation

**ITEM:** **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 6-0 at its September 3, 2020 meeting).***

**BACKGROUND INFORMATION:** Staff is requesting approval of the sale of alcoholic beverages (beer and wine) at the 2021 Independence Fest that will be held on Sunday, July 4 at Bakersfield Park. On December 2, 2019, the Town Council unanimously approved alcohol sales for the festival that was to be held on July 4, 2020. Due to the Covid-19 pandemic, the 2020 festival was cancelled. The Town has allowed the sale of alcoholic beverages for the Wild About Flower Mound Festival and the Independence Fest since 2009. There have been no issues or concerns related to the sale of alcoholic beverages during any of the previous events.

The sale of alcoholic beverages on park property requires Parks Board consideration and the Town Council's approval since the event will be held at Bakersfield Park, as stipulated in Sec. 54-31(b)(2) of the Town's Code of Ordinances.

Similar to what was planned for previous events, Promoter Line, Inc., will secure a third-party retailer to handle the sale of alcoholic beverages. The retailer will take on the risk and liability of selling alcohol at the festival. Additionally, the retailer will acquire all appropriate licenses and permits from the Texas Alcoholic Beverage Commission and name the Town as an additional insured on their liability insurance. The Town will be paid a 25% commission of the total beverage sales.

If approved for the event, alcohol would be prohibited from being taken out of the fenced in festival area. This would be controlled by fencing, signage, police officers, and festival security staff. With the festival taking place on Independence Day, the Town has instructed the Flower Mound Youth Sports Association to not schedule their AAYBA World Series baseball tournament the week leading up to the event, and the week after.

If the sale of alcohol is not approved for the event, the Town could lose significant sponsorship opportunities and the revenue stream created by the sale of alcoholic beverages. For the 2019 festival, Budweiser sponsored the festival by contributing $3,000, donating the backdrops for the stage, and produced event signage. In addition, the Town received $9,591.50 in commissions from the sale of beverages.

**BOARD REVIEW/CITIZEN FEEDBACK:** The Parks Board recommended approval by a unanimous vote of 6 to 0 at its September 3, 2020, regular meeting.

**ALTERNATIVES/OPTIONS:** The Town Council could deny the request and alcoholic beverages would not be sold at the 2021 Independence Fest.

**FISCAL IMPACT:** N/A

**LEGAL REVIEW:** N/A

**ATTACHMENT:** N/A

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

# TOWN COUNCIL AGENDA ITEM NO. 14

# REGULAR ITEM

**DATE:** October 19, 2020

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

**ITEM:** **Consider approval of a Construction Agreement with Archer Western Construction, LLC for 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.**

**BACKGROUND INFORMATION:** On September 15, 2020, bids were received and opened for the Stonehill Pump Station Discharge Valve Replacement and 10 MG Ground Storage Tank Rehabilitation project, Bid 2021-4-B. Archer Western Construction, LLC submitted the lowest qualified base bid of the two responding bidders at a base bid of $1,027,000.00. No bid alternates have been selected for the project.

The Stonehill Pump Station Discharge Valve Replacement & 10 MG Ground Storage Tank Rehabilitation project includes modifications to the existing pump discharge valves, a tank and pump station paint recoating, the addition of a tank mixer, and other necessary repairs to the ground storage tank.

**BOARD REVIEW/CITIZEN FEEDBACK:** N/A

**ALTERNATIVES/OPTIONS:** The Stonehill Pump Station is a critical part of the Town's water system. During routine inspections, components of the storage tank were identified to be in poor condition and the storage tank discharge valve is currently inoperable. A decision to not approve the proposed agreement would result in the pump station storage tank continuing to deteriorate and risk water supply or quality issues. The Town could also be open to enforcement action by the Texas Commission on Environmental Quality (TCEQ).

**FISCAL IMPACT:** $1,027,000.00.

| Proposed Expenditure/(Revenue): | Account Number(s): |
|---|---|
| $560,000.00 | 630-960-98930 |
| $467,000.00 | 630-960-96003 |

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

Total project cost is $1,200,000. Funding sources are:

- Other $ 100,000
- Utility debt $ 1,100,000

**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.

Attachment 1

**Town of Flower Mound**
**Bid Tabulation**

**Bid No: 2021-4-B - Stonehill Pump Station Discharge Valve Replacement and 10 MG Ground Storage Tank Rehabilitation**

**Bid Opening: 9/15/2020 at 11:00 AM**

| Company | Total Base Bid | Optional Bid Item 01 | Optional Bid Item 02 | Total Base Bid With Options |
|---|---|---|---|---|
| Archer Western Construction, LLC | $ 1,027,000.00 | $ 34,000.00 | $ 107,100.00 | $ 1,168,100.00 |
| Fort Worth Civil Constructors, LLC | $ 1,653,800.00 | $ 51,000.00 | $ 54,400.00 | $ 1,759,200.00 |

**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: September 15, 2020

**TOWN OF FLOWER MOUND**

**STONEHILL PUMP STATION DISCHARGE VALVE REPLACEMENT AND 10 MG GROUND STORAGE TANK REHABILITATION**

**Bid # 2021-4-B**

**CONSTRUCTION AGREEMENT**

THIS CONSTRUCTION AGREEMENT (the "Agreement"), made and entered into this ____day of _____, 20___, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the "Town," and Archer Western Construction, LLC, a Limited Liability Company, 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:

STONEHILL PUMP STATION DISCHARGE VALVE REPLACEMENT
AND 10 MG GROUND STORAGE TANK REHABILITATION
Bid # 2021-4-B

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

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

A. The Construction Agreement;

B. Properly executed Change Orders and Field Orders in writing and executed by the Town, the last in time being first in precedence;

C. Any listed and numbered addenda;

D. Special Provisions;

E. Supplementary Conditions;

F. Construction Drawings or Plans;

G. Technical Specifications;

H. Town's Standard Construction Details;

I. The most current edition of the *Town of Flower Mound Design Criteria and Construction Standards* (by reference);

J. *Occupational Safety and Health Standards – Excavation*, 20 CFR Part 1926 (by reference);

K. *Texas Manual on Uniform Traffic Control Devices (TMUTCD)* (by reference);

L. The General Conditions;

M. *Public Works Construction Standards - North Central Texas, as amended* (by reference);

N. Notice to Bidders;

O. Instructions to Bidders;

P. The Town's written notice to proceed to Contractor;

Q. The Contractor's Bid Proposal;

R. The Performance Bond, Payment Bond and Maintenance Bond; and

S. Bid materials distributed by the Town that relate to the Project.

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

ARTICLE 2. For performance of the Work in accordance with the Contract Documents, the Town shall pay the Contractor in current funds an amount not to exceed **One Million Twenty-Seven Thousand Dollars and No cents ($1,027,000.00)** taking into consideration additions to or deductions from the Total Bid through properly executed change orders by reason of alterations or modifications of the original quantities or by reason of "Extra Work" authorized under this Agreement in accordance with the provisions of the Contract Documents. It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the Contractor by the Town, the said Contractor shall furnish all labor, equipment, and material (except as otherwise specified above) and shall perform all work necessary to complete the improvements in a good and workmanlike manner, ready for use, within the specified time for substantial completion of 150 calendar days, and final completion of 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:

| Contract Amount | Retainage Percentage |
|---|---|
| Up to $25,000.00 | 15% |
| $25,000.00 to $400,000.00 | 10% |
| Over $400,000.00 | 5% |

Retainage shall be withheld and may be paid to:

1. ensure proper completion of the Work. The Town may use retained funds to pay replacement or substitute contractors to complete unfinished or defective work;

2. ensure timely completion of the Work. The Town may use retained funds to pay liquidated damages; and

3. provide an additional source of funds to pay claims for which the Town is entitled to indemnification from Contractor under the Contract Documents.

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

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

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

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

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

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

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

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

1. include the estimate of the value of Work properly completed since the date of the most recent previous progress payment;

2. correct prior progress payments; and

3. include retainage or other amounts previously withheld that are to be returned to Contractor, if any.

Final payment to the Contractor shall not be due until the Contractor provides original full releases of liens, or other evidence satisfactory to the Town to show that all sums due for labor, services, and materials furnished for or used in connection with the Work have been paid or shall be paid with the final payment. To ensure this result, Contractor consents to

the issuance of the final payment in the form of joint checks made payable to Contractor and others. The Town may, but is not obligated to, issue final payment using joint checks.

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

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

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

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

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

In its sole discretion, the Town shall have the right to approve counsel to be retained by Contractor in fulfilling its obligation to defend and indemnify the Town. Contractor shall retain approved counsel for the Town within seven business days after receiving written notice from the Town that it is invoking its right to indemnification under this Agreement. If Contractor does not retain counsel for the Town within the required time, then the Town shall have the right to retain counsel and the Contractor shall pay the attorneys' fees and expenses.

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

ARTICLE 11. The Contractor understands and agrees that time is of the essence in performing and completing the Work. The Town and Contractor acknowledge that the actual damages the Town may sustain if the Contractor fails to complete the Work on time are uncertain and will be difficult to ascertain. The Contractor agrees that the sum of Two Hundred Fifty and Zero/One Hundredths Dollars ($250.00) per day or portion of a day in Liquidated Damages will be deducted from the Contract price by the Town for each calendar day or portion thereof that the work is not substantially complete beyond the Substantially Complete Contract time, or within such extra time as may have been allowed by an extension approved by the Town. The Contractor also agrees that the sum of Two Hundred Fifty and Zero/One Hundredths Dollars ($250.00) 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.

The Town has identified "Critical Operations" that must not be out of service longer than the designated maximum out of service time and/or must be performed during the designated times. The Bidder accepts the One Thousand Five Hundred and Zero/One Hundredths Dollars ($1,500.00) per day liquidated damages in the event of failure to complete critical operation within the specified time period as fair and just compensation to Town for the damages it suffers as a result of any such delay.

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

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

The Contractor shall begin the remedial work within ten (10) calendar days after receiving the written notice from the Town. If the Contractor does not begin the remedial work timely or prosecute it diligently, then the Town may pay for necessary labor and materials

to effect repairs and these expenses shall be paid by the Contractor, the maintenance bond surety, or both.

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

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

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

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

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

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

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

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

of the Mayor or Town Manager and Town Secretary or their authorized designees. The purpose of this provision is to ensure that:

1. the Contractor timely delivers to the Town all bonds and insurance documents; and

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

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

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

Payments under this Contract are due and payable in accordance with the provisions of Texas Government Code Section 2251.022. Interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.
Attention is called to the Government Code, Chapter 2258, Prevailing Wage Rates. Contractor and any subcontractor shall pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of this Agreement. The Town has determined the general prevailing rate of per diem wages in the locality in which the public work is to be constructed by using the prevailing wage rates as determined by the United States Department of Labor in accordance with the Davis-Bacon Act as applicable to this Project. Contractor or a subcontractor who violates this provision shall be liable for the penalty specified in Texas Government Code Section 2258.023, which as of the date of this Agreement is $60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. Town reserves the right to receive and review payroll records, payment records, and earnings statements of employees of Contractor, and of Contractor's Subcontractors, and of Sub-Subcontractors to verify payments made to same. However, no Claim for additional compensation shall be considered by Town because of payments of wage rates in excess of the applicable rate provided herein.

It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialmen, artisan, laborer, or subcontractor, whether skilled or unskilled, shall ever in

any manner have, claim, or acquire any lien upon the project of whatever nature or kind so erected or to be erected by virtue of this Contract, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas.

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

1. that it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

2. that it is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

3. that it is authorized to do business in the State of Texas and properly licensed by all necessary governmental, public and quasi-public authorities having jurisdiction over it, the Work, or the site of the Project; and

4. that the execution of the Contract and its performance thereof are within its duly-authorized powers.

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

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

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

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

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

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

TOWN OF FLOWER MOUND

_____
Steve Dixon, MAYOR

(CORPORATE SEAL)

ATTEST:_____
Theresa Scott, TOWN SECRETARY

CONTRACTOR

_____ (Signature)

_____ (Printed Name)

_____ (Position)

(CORPORATE SEAL)

ATTEST:_____ (Signature)

_____ (Position)

# Town Council Future Agenda Items

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| **SCHEDULED** | **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. |
| | | Consent | Consider approval of a Construction Agreement with J.B. & Company LLC, for the Hound Mound Parking and Restroom project, in the amount of $498,945.00. |
| | | Consent | Consider approval of the purchase of eight (8) 2021 Dodge Charger Police Pursuit Sedans with Police Equipment Packages per Town of Flower Mound Specifications and Vendor Quote from Holiday Dodge of the Holiday Autogroup for Police Services in the amount of $271,960.00. |
| | | Consent | Consider approval of the purchase of a Pierce Custom Velocity Tanker 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 the purchase of new Traffic Signal Detection Equipment for the Traffic Detection Rehabilitation project, from Twincrest Technologies through the HGAC program, in the amount of $129,980.00. |
| | | Consent | Consider approval of a Professional Services Agreement with Matrix Consulting Group, Inc. to conduct a development services fee study, in the amount of $30,000.00; and authorization for the Mayor to execute same on behalf of the Town. |
| | | Consent | Consider adoption of the Town Council Strategic Plan for Fiscal Year 2020-2021. |
| | | Consent | Consider approval of a Memorandum of Agreement with Dr. Sean Fleming, MD in the amount of $55,375.00 for EMS Medical Direction and authorization for the Mayor to execute same on behalf of the Town. |
| | | Consent | Consider approval of the minutes from a regular meeting of the Town Council held on October 19, 2020. |
| | | Regular | Consider a request for a Site Plan (SP20-0016 – River Walk Chapel) to amend the previously approved elevations to eliminate stained glass windows. The property is generally located north of 1st Avenue and east of River Walk Drive. (The Planning and Zoning Commission recommended approval/denial by a vote of 0 to 0 at its October 26, 2020, meeting.) |
| | | Regular | Consider approval of a Construction Agreement with DDM Construction Corporation for the Waketon Road (Cross Timbers Drive to 1,350 feet 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. |

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| **SCHEDULED** | **11/2/2020** | Regular | The purpose of both hearings is to consider an ordinance amending the Land Development Regulations (LDR20-0004 – Nonconforming Uses) by amending Chapter 78 entitled “Administration,” of the Town's Code of Ordinances to update the definitions and processes related to nonconformities within the Town of Flower Mound, as well as to update the standards for submitting appeals to the Board of Adjustment, in order to comply with new state requirements. (The Planning and Zoning Commission recommended approval/denial by a vote of 0 to 0 at its October 26, 2020, meeting.) |
| | **11/16/2020** | Consent | FM 2499 @ Chaparral Traffic Signal Construction Award |
| | | 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 | Sentinel Oaks Water Line Replacement (3 Bridges to Simmons) - Design Award. |
| | | Consent | Canyon Falls Park - Construction Award |
| | | Consent | Consider approval of a contract with TBD in the amount of TBD for reinsurance for the Town's Group Health Plan and authorization for the Mayor to execute same on behalf of the Town. |
| | | Consent | Consider approval of the award of RFP No. 2021-3-A for Employee Basic Life Insurance & Accidental Death Insurance, Long Term Disability Insurance, Employee and Dependent Optional Life and Accidental Death Insurance to CIGNA Group Insurance in the estimated amount of TBD and authorization for the Mayor to execute same on behalf of the Town. |
| | | Consent | Upper Timber Creek Interceptor - CO1 |
| | | Consent | Pecan Orchard Park Playground Equipment Purchase & Install |
| | | Consent | Wastewater Treatment Plant Phase V - Change Order 2 |
| | | Consent | Consider approval of Amendment No. 1 to the Fiscal Year 2020-2021 Capital Improvement Program. |
| | | Consent | Consider approval of a Professional Services Agreement with Innovative Transportation Solutions, Inc., to provide professional transportation services in the amount of $75,000.00 annually, with a one year renewal option; and authorization for the Mayor to execute same on behalf of the Town. |
| | | Regular | Placeholder: ELECTION CANVASS (new officers - oath of office) |
| | **11/19/2020** | Work Session | Placeholder: permitted use discussion |
| | **12/7/2020** | 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. |

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| **SCHEDULED** | **12/7/2020** | Consent | Bruton-Orand @ FM 1171 Right Turn Lane - Construction Award |
| | | Consent | Canyon Falls Park - Testing Award |
| | | Regular | Master Plan Update |
| | **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 |