

AGENDA**FLOWER MOUND TOWN COUNCIL REGULAR MEETING****6/7/2021****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. Announcements from the mayor and council members

F. TOWN MANAGER'S REPORT

Update and discussion on:

1. Capital improvement projects
2. Economic Development projects

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 special meeting to interview and deliberate on Place 1 applicants is scheduled for Thursday, June 10.
2. A regular meeting to canvass the runoff election is scheduled for Tuesday, June 15, at which time the incoming mayor will be sworn in, and there will be a public reception between 5:15 – 6:00 p.m. for newly elected Councilmember Place 4, and the outgoing and incoming mayors.
3. Propose moving the Strategic Planning Session from June 18 to July 15.

Town Council Meeting Agenda

June 7, 2021

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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 council member by making such request prior to a motion and vote.

1. Minutes 5/17- Consider approval of the minutes from a regular meeting of the Town Council held on May 17, 2021.
2. Minutes 6/2- Consider approval of the minutes from a special meeting of the Town Council held on June 2, 2021.
3. Annual Audit- Consider approval of the engagement letter with Eide Bailly, L.L.P., to perform external auditing services for the fiscal year ending September 30, 2021; and authorization for the Mayor to execute same on behalf of the Town.
4. CoServ Gas Rate Case- Consider approval of a resolution authorizing the Town to join with the Steering Committee of Cities Served by CoServ Gas, Ltd. to deny CoServ Gas's application for approval to amend its gas rates.
5. Emergency Response Plan- Consider approval of a Professional Services Agreement with Plummer Associates, Inc., for the development of an Emergency Response Plan in the amount of \$20,000; and authorization for the Mayor to execute same on behalf of the Town.
6. Sentinel Oaks Water Line- Consider approval of a Construction Agreement with Canary Construction, Inc. for the Sentinel Oaks Water Line Replacement (Three Bridges to Simmons) project, in the amount of \$389,029.00; and authorization for the Mayor to execute same on behalf of the Town.
7. Grand Park Playground- Consider approval of the purchase and installation of the 2020-21 Playground Replacements project, for Grand Park Playground, from Webuildfun, Inc., through the Texas Local Government Purchasing Cooperative, in the amount of \$250,124.27.
8. Waketon Road Testing- 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.

J. REGULAR ITEMS

9. SUP21-0003 Turning Pointe- Public Hearing to consider an ordinance granting Specific Use Permit No. 469 (SUP21-0003– Turning Pointe Dance Studio) to permit a Dancing, drama, or music school or studio use. The property is generally located south of Garden Road and west of Morriss Road. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its May 24, 2021, meeting)
10. Stonecrest Pump Station- Consider approval of a Construction Agreement with Clark Electric, Inc., for the Stonecrest Pump Station Phase I (Auxiliary Power) project, in the amount of \$1,856,680.00; and authorization for the Mayor to execute same on behalf of the Town.
11. Homestead Exemption- Discussion and presentation about increasing the residential homestead ad valorem (property) tax exemption.

Town Council Meeting Agenda**June 7, 2021****Page 3****K. BOARDS/COMMISSIONS (Bold text represents boards with vacancies) - Pre-Council Room**

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

L. CLOSED MEETING

The Town Council to convene into closed meeting pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.071, 551.072, 551.074, and 551.087 for consultation with attorney, and to discuss matters relating to real property, personnel, and economic development negotiations, as follows:

- a. Consultation with Attorney.
 - 1. Cause No. 18-9622-431; EagleRidge Operating, LLC v Town of Flower Mound, Texas, et al
- 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 resignations, appointments, or evaluations for the following boards or commissions: Board of Adjustment/Oil & Gas Board of Appeals, Community Development Corporation, and Planning and Zoning Commission.
- d. Discuss and consider economic development incentives, including retail centers, corporate relocation/expansion/retention, senior housing, hospitality projects, and performance related to certain incentive agreements.
- e. Discuss and consider election of Mayor Pro Tem and Deputy Mayor Pro Tem.

The Town Council may convene in executive session to conduct a private consultation with its attorney on any legally posted agenda item, when the Town Council seeks the advice of its attorney about pending or contemplated litigation, a settlement offer, or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the provisions of Chapter 551, including the above referenced items.

M. RECONVENE TO REGULAR MEETING

The Town Council to reconvene into an open meeting to take any action deemed necessary as a result of the closed meeting.

N. ADJOURN MEETING

I do hereby certify that the Notice of Meeting was posted on the bulletin board at the Town Hall for the Town of Flower Mound, Texas, in a place convenient and readily accessible to the general public at all times and said Notice was also posted on the Town's website in accordance with GC Section 551.056 on the following date and time: June 4, 2021, at 12:15 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: June 7, 2021

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a regular meeting of the Town Council held on May 17, 2021.

BACKGROUND INFORMATION: The Town Council held a regular meeting on May 17, 2021.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Draft minutes

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

FLOWER MOUND TOWN COUNCIL MEETING OF MAY 17, 2021**PAGE 1**

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 17TH DAY OF MAY 2021, 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
Jim Engel	Mayor Pro Tem
Ben Bumgarner	Deputy Mayor Pro Tem
Sandeep Sharma	Councilmember Place 2
Ann Martin	Councilmember Place 5

with the following member absent:

Jim Pierson	Councilmember Place 1 (Through item 10)
Vacant	Councilmember Place 1 (Items 10 – 14)

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

Theresa Scott	Town Secretary
Bryn Meredith	Town Attorney
Debra Wallace	Interim Town Manager/CFO
Tommy Dalton	Assistant Town Manager
Lexin Murphy	Director of Planning Services
Tiffany Bruce	Assistant Town Manager/Town Engineer
JP Walton	Assistant to the Town Manager/Interim Economic Development Director

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 or stated)
1.	Adam Schiestel, 2205 Waterford Dr	Place 1 TC
2.	David Broughton, 2433 Gramercy Park Dr	Children's Advocacy Center
3.	Kent Johnson, 3808 Regency Park Ct	Councilmember resignation
4.	Scott Tarwater, 4613 Windmill Ln	Council vacancy
5.	Paul Stone, 4100 Broadway	Council vacancy
6.	Kevin Bryant, 3513 Castlewood	Council vacancy
7.	Patsy Mizeur, 1821 Castle Ct	Furst Ranch

FLOWER MOUND TOWN COUNCIL MEETING OF MAY 17, 2021**PAGE 2****E. PRESENTATIONS**

1. Certificate of Achievement Flower Mound High School Girls' Soccer Team - State Champions.

Manjushree Mukkala, School Liaison Committee member, assisted Mayor Dixon in presenting a Certificate of Achievement to the team.

F. ANNOUNCEMENTS

Councilmember Martin reported that the Friends of the Library is hoping to resume their book sale in August and with donations being taken in June.

Mayor Dixon announced that he would be willing to fill Place 1 if Council so desires.

G. TOWN MANAGER'S REPORT

Ms. Wallace provided an update on the following projects as well as a legislative update:

1. Capital improvement projects
 - Traffic signal at 2499 @ Chaparral
 - Gibson Grant Log Cabin restoration
 - Hound Mound rest room
2. Economic Development projects
 - New and coming soon businesses
3. Legislative Update
 - Highlighted various bills circulating through the Texas Legislature, as well as some that have already been signed by the Governor.

H. FUTURE AGENDA ITEMS

1. No request for future agenda items.

I. COORDINATION OF CALENDARS

Mayor Dixon announced the following upcoming meetings:

1. A regular meeting is scheduled for Monday, June 7
2. A special meeting is scheduled for Tuesday, June 15 to canvass the Runoff Election

J. CONSENT ITEMS

1. Consider approval of the minutes from a regular meeting of the Town Council held on May 12, 2021.
2. Consider approval of a candidate nomination for appointment to the Denco Area 9-1-1 District Board of Managers.

RESOLUTION NO. 13-21

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

3. Consider approval of a resolution of the Town of Flower Mound, Texas calling for a runoff election to be held on June 5, 2021, for the office of Mayor; establishing procedures for conduct of the election.

RESOLUTION NO. 14-21

A RESOLUTION OF THE TOWN OF FLOWER MOUND, TEXAS, CALLING FOR A RUN-OFF ELECTION TO BE HELD ON JUNE 5, 2021, FOR THE OFFICE OF MAYOR; ESTABLISHING PROCEDURES FOR CONDUCT OF THE ELECTION.

4. Consider approval of a resolution authorizing the Town to join with the Steering Committee of Cities Served by Oncor to deny Oncor Electric Delivery Company LLC's application for approval to amend its distribution cost recovery factor.
5. Consider acceptance of grant funds and execution of an Interlocal Cooperation Agreement with the North Central Texas Council of Governments for the 2020 Incident Management Equipment Purchase Call for Projects; and authorization for the Mayor to execute same on behalf of the Town.
6. Consider approval of the naming of the park property located on the 13.11 acre tract located within the Townlake Phase IV residential development as Trotter Park.
7. Consider approval of a Professional Services Agreement with Kimley-Horn and Associates, Inc., for the design phase services for the Range Wood Drive Drainage Improvements project, in the amount of \$189,000.00; and authorization for the Mayor to execute same on behalf of the Town.
8. Consider approval of a Professional Services Agreement with PROS Consulting, Inc., to provide a Tennis Center Feasibility Study, in the amount of \$49,950.00; and authorization for the Mayor to execute same on behalf of the Town.

VOTE ON MOTION:*Motion passed***AYES: SHARMA, BUMGARNER, ENGEL, MARTIN****NAYS: NONE****ABSENT: PIERSON****K. REGULAR ITEMS**

9. Consider resignation of Councilmember Place 1, Jim Pierson.

Staff Presentation

Ms. Scott gave a presentation identifying options for Council consideration.

There was Council discussion regarding the three available options.

FLOWER MOUND TOWN COUNCIL MEETING OF MAY 17, 2021

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The majority of Council was acceptable to:

- the application process
- for it to begin sooner than later
- have an open application period where anyone can apply
- have it in an open format like how boards and commissions are handled

Ms. Scott indicated she will need Council feedback regarding the proposed interview dates, as well as on the application questions.

Councilmember Martin moved to accept the resignation of Councilmember, Place 1, Jim Pierson. Councilmember Sharma seconded the motion.

VOTE ON MOTION:

Motion passed

AYES: MARTIN, ENGEL, BUMGARNER, SHARMA

NAYS: NONE

VACANT: PLACE 1

10. Consider approval of a Chapter 380 and Tax Abatement Agreement with Niagara Conservation, Inc. (aka Deus, LLC), at 300 Old Gerault Road, for the economic development of Flower Mound, and authorization for the Mayor to execute same on behalf of Town. (The Town Council postponed this item at its Dec 7, 2020, Jan 4, Feb 1, March 1, April 5, and April 19, 2021, meetings.)

Staff Presentation

Mr. Walton gave a presentation identifying or noting:

- Niagara timeline
- HOA Improvements
- Additional costs since this item came to Town Council on December 7, 2020
- Cost benefit analysis
- Summary

and he or Ms. Wallace responded to questions from Council regarding:

- What would the payback period be for five years
- Clarification that the applicant is paying for all of the fees up front

John Walsh, TIG, 4015 University, Dallas, representing the applicant

Mr. Walsh responded to questions from Council regarding:

- HOA improvements as it relates to the gas line area and the possible impact

There was Council discussion regarding:

- How the cost has increased, but it's not outside of the approval
- How the applicant has been amenable to meet every request made by Council

Mayor Pro Tem Engel moved to approve as presented. Motion failed due to a lack of a second.

There was additional Council discussion regarding:

- The four items that added the cost was not in the original scope in December and the costs were added when they were in the middle of the approval process

FLOWER MOUND TOWN COUNCIL MEETING OF MAY 17, 2021**PAGE 5**

- The applicant started the process and Council increased the fees so the Town changed the rules mid-stream
- How Niagara is a valued customer in town
- The property is challenged because of topography, location, pipelines, easements, etc.
- The Town will benefit financially even with the fee waivers
- 10 years is too long and should be lowered to 7 and closer to \$160,000 instead of \$171,849

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

VOTE ON MOTION:*Motion passed***AYES: ENGEL, MARTIN, DIXON*****NAYS: SHARMA, BUMGARNER****VACANT: PLACE 1**

**Administrative Note: The Mayor votes in the event of a tie.*

11. Public Hearing to consider an ordinance for rezoning (ZPD20-0006 – Lakeside Crossing) to amend Planned Development No. 153 (PD-153) with both residential and non-residential uses to modify approved development standards related to the phasing of this development. The property is generally located south of Lakeside Parkway along and between Long Prairie Road and Northwood Drive. (The Planning and Zoning Commission recommended approval with a modified motion by a vote of 4 to 2 at its March 22, 2021, meeting.) (The Town Council moved to postpone this item to April 19, 2021 by a vote of 5 to 0 at its April 5, 2021, meeting.) (The Town Council moved to postpone this item to May 17, 2021 by a vote of 5 to 0 at its April 19, 2021, meeting.)

Staff Presentation

Ms. Murphy gave a presentation identifying or noting:

- General and detailed location
- Background information
- Land use and zoning
- Approved concept plan (original)
- Concept Phase I site plan
- Lot 8X hardscape plan, lighting plan, maintenance plan
- Redlined Ordinance language
- Next steps

and she or Ms. Bruce responded to questions from Council regarding:

- Have staff and the applicant worked out the differences regarding the landscaping
- Tree mitigation fees

Mayor Dixon opened the Public Hearing at 7:21. No one spoke. Mayor Dixon closed the Public Hearing at 7:21 p.m.

Applicant Presentation

Tim Nystrom, Newstream

Mr. Nystrom responded to questions from Council regarding:

- If the applicant and staff are in alignment regarding the landscaping

Councilmember Sharma moved to approve as presented in the agenda caption with the additional condition that a new exhibit, approved by staff, highlighting the described areas identified in the development standards, be completed and attached to the final ordinance, and with a change to the reference of biannual to semiannual for the maintenance. Deputy Mayor Pro Tem Bumgarner seconded the motion.

ORDINANCE NO. 22-21

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING ORDINANCE NO. 25-17, WHICH ESTABLISHED PLANNED DEVELOPMENT DISTRICT NO. 153 (PD-153) ON CERTAIN PROPERTY DESCRIBED AS APPROXIMATELY 10.91 ACRES OF LAND AND BEING ALL OF LOT 1, BLOCK A; LOT 2, BLOCK A; LOT 3, BLOCK A; LOT 4, BLOCK A; LOT 5, BLOCK A; LOT 6, BLOCK A; LOT 7, BLOCK A; AND LOT 8X, BLOCK A, OF THE LAKESIDE CROSSING ADDITION BY MODIFYING DEVELOPMENT STANDARDS RELATED TO OPEN SPACE REQUIREMENTS AND PHASING; AND BY ADDING CONCEPT PHASING PLAN, CONCEPT PHASE 1 SITE PLAN, CONCEPT PHASE 1 LANDSCAPE PLAN, CONCEPT HARDSCAPE PLAN FOR LOT 8X, CONCEPT LIGHTING PLAN FOR LOT 8X; AND MAINTENANCE PLAN FOR LOT 8X; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION:

AYES: MARTIN, ENGEL, BUMGARNER, SHARMA

NAYS: NONE

VACANT: PLACE 1

Motion passed

12. Consider a request for a Site Plan (SP20-0022 – Argyle ISD Elementary School No. 3) to develop an elementary school, with a request for a deviation to computing parking and loading requirements pursuant to Section 82-73 of the Code of Ordinances, an exception to Section 82-302, Compatibility buffer, of the Code of Ordinances, and an exception to Section IV.C.5. of the Town's Engineering Design Criteria requirement to provide a wet retention pond. The property is generally located east of Denton Creek Boulevard and south of Prairie Ridge Road. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its May 10, 2021, meeting.)

Staff Presentation

Ms. Murphy gave a presentation identifying or noting:

- General and detailed location
- Land use and zoning
- Record plat
- Site plan
- Exception request
- Site photos

FLOWER MOUND TOWN COUNCIL MEETING OF MAY 17, 2021**PAGE 7**

and she or Mr. Dalton responded to questions from Council regarding:

- Parking thresholds

Applicant Presentation

Jeff Koehn, Argyle ISD Construction Manager

Mr. Koehn responded to question from Council regarding:

- Why they need the additional parking

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

VOTE ON MOTION:*Motion passed***AYES: SHARMA, BUMGARNER, ENGEL, MARTIN****NAYS: NONE****VACANT: PLACE 1**

13. Public Hearing to consider a Site Plan (SP21-0001 – Lakeside Center) with a request for an exception to 'Underground Utilities' pursuant to Section 82-377, Exceptions, of the Code of Ordinances. The property is generally located south of Lakeside Parkway along and between Long Prairie Road and Northwood Drive. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its May 10, 2021, meeting)

Staff Presentation

Ms. Murphy gave a presentation identifying or noting:

- General and detailed location
- Land use and zoning
- Aerial exhibit and associated exception request regarding overhead power lines
- Site photos
- Spectrum and CoServ exhibits

and she responded to questions from Council regarding:

- Future development of the adjacent property as it relates to power lines

Mayor Dixon opened the Public Hearing at 7:38 p.m. No one spoke. Mayor Dixon closed the Public Hearing at 7:38 p.m.

Deputy Mayor Pro Tem Bumgarner moved to approve as presented. Mayor Pro Tem Engel seconded the motion.

VOTE ON MOTION:*Motion passed***AYES: MARTIN, ENGEL, BUMGARNER, SHARMA****NAYS: NONE****VACANT: PLACE 1**

14. Public Hearing to consider an ordinance for rezoning (ZPD21-0001 – Brightstar PD-83 Amendment) to amend Planned Development No. 83 (PD-83) with non-residential uses to modify Exhibit C, Section C.8.h. "Parking Lot Landscaping", and a request for a deviation to the required parking standard pursuant to Section 82-73 of the Code of Ordinances. The property is generally located north of Lakeside Parkway and east of Garden Ridge Boulevard. (The Planning and Zoning Commission recommended approval by a vote of 5 to 1 at its April 26, 2021, meeting.)

Staff Presentation

Ms. Murphy gave a presentation identifying or noting:

- General and detailed location
- Land use and zoning
- Proposed site plan and applicant's request to amend the PD standards (parking islands and increased parking) specific to this site
- Site photos
- Proposed landscape plan, including additional landscaping beyond the Town's requirement to address the changes

Mayor Dixon opened the Public Hearing at 7:45 p.m. No one spoke. Mayor Dixon closed the Public Hearing at 7:45 p.m.

There was Council discussion regarding:

- How the proposal makes sense given the conditions

Deputy Mayor Pro Tem Bumgarner moved to approve as presented. Councilmember Martin seconded the motion.

ORDINANCE NO. 23-21

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING ORDINANCE NO. 94-04, AS AMENDED, WHICH ESTABLISHED PLANNED DEVELOPMENT DISTRICT NO. 83 (PD-83) INCLUDING CERTAIN PROPERTY DESCRIBED AS 18.234 ACRES OF LAND SITUATED IN THE J. KNIGHT SURVEY, ABSTRACT NUMBER 722, DENTON COUNTY, TEXAS, AND IDENTIFIED AS LOT 2R, BLOCK B OF THE LAKESIDE RANCH BUSINESS PARK; BY AMENDING EXHIBIT C, SECTION C.8.h., "PARKING LOT LANDSCAPING"; AND BY APPROVING A DEVIATION TO THE REQUIRED PARKING STANDARDS PURSUANT TO SECTION 82-73 OF THE CODE OF ORDINANCES, IN ACCORDANCE WITH SPECIFIC REQUIREMENTS STATED HEREIN AND EXHIBITS ATTACHED HERETO; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF IN ACCORDANCE WITH SECTION 1-13 OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION:

AYES: SHARMA, BUMGARNER, ENGEL, MARTIN

NAYS: NONE

VACANT: PLACE 1

Motion passed

FLOWER MOUND TOWN COUNCIL MEETING OF MAY 17, 2021**PAGE 9****L. BOARDS/COMMISSIONS (Pre-Council Room)**

There was no discussion on the following item:

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

M./N. CLOSED/OPEN MEETING

The Town Council did not convene into a closed meeting. No action was taken on the following items:

- a. Consultation with Attorney.
 1. Consultation with Attorney regarding resignation and the filling of a vacancy in the office of Councilmember of the Town of Flower Mound.
- b. Discuss and deliberate options to fill the vacancy of a public officer in the office of Councilmember, Place 1.
- c. Discuss and consider election of Mayor Pro Tem and Deputy Mayor Pro Tem.
- d. 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.
- e. Discuss and consider resignations, appointments, or evaluations for the following boards or commissions: Board of Adjustment/Oil & Gas Board of Appeals, Community Development Corporation, and Planning and Zoning Commission.
- f. Discuss and consider economic development incentives, including retail centers, corporate relocation/expansion/retention, senior housing, hospitality projects, and performance related to certain incentive agreements.

O. ADJOURN REGULAR MEETING

Mayor Dixon adjourned the meeting at 7:46 p.m. on Monday, May 17, 2021, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

STEVE DIXON, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 2

CONSENT ITEM

DATE: June 7, 2021

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a special meeting of the Town Council held on June 2, 2021.

BACKGROUND INFORMATION: The Town Council held a special meeting on June 2, 2021.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Draft minutes

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

FLOWER MOUND TOWN COUNCIL MEETING OF JUNE 2, 2021

PAGE 1

THE FLOWER MOUND TOWN COUNCIL SPECIAL MEETING HELD ON THE 2ND DAY OF JUNE, 2021, 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 special meeting with the following members present:

Jim Engel	Mayor Pro Tem
Ben Bumgarner	Deputy Mayor Pro Tem
Sandeep Sharma	Councilmember Place 2
Ann Martin	Councilmember Place 5
Vacant	Councilmember Place 1

with the following member absent:

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

Theresa Scott	Town Secretary
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A. CALL SPECIAL MEETING TO ORDER

Mayor Pro Tem Engel called the regular meeting to order at 6:00 p.m.

B./C. INVOCATION/PLEDGE

Deputy Mayor Pro Tem Bumgarner gave the invocation, and led the pledges

D. GENERAL PUBLIC COMMENT

No speakers.

E. INTERVIEWS

Town Council conducted interviews with the following Place 1 applicants:

1. Kent Johnson
2. Jason Webb
3. Melbourne Presswood
4. Tim Trotter

F. ADJOURN SPECIAL MEETING

Mayor Pro Tem Engel adjourned the special meeting at 8:13 p.m. and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

JIM ENGEL, MAYOR PRO TEM

ATTEST:

THERESA SCOTT, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 3

CONSENT ITEM

DATE: June 7, 2021

FROM: Tammy Wilson, Executive Director of Fiscal and Administrative Services

ITEM: Consider approval of the engagement letter with Eide Bailly, L.L.P., to perform external auditing services for the fiscal year ending September 30, 2021; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On July 20, 2020, an agreement with Eide Bailly, L.L.P., was approved for one year with an option to renew, at the Town's discretion, for four additional one-year terms. This request is to exercise the first renewal option, and to approve the engagement letter with Eide Bailly, L.L.P., for the fiscal year ending September 30, 2021. Each year a new engagement letter is submitted outlining the rights and responsibilities of both the auditors and Town staff.

The Town Charter requires an independent annual audit to be made of the books and accounts of each and every department. Eide Bailly, L.L.P., performed the audit for the fiscal year ending September 30, 2020.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$62,060

Proposed Expenditure/(Revenue):	Account Number(s):
\$62,060	100-650-51000-5110

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

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Engagement letter prepared by Eide Bailly, L.L.P.

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



May 17, 2021

To the Town Manager and
Members of the Town Council of
Town of Flower Mound, Texas
C/O Ms. Tammy Wilson
2121 Cross Timbers Road
Flower Mound, Tx. 75028

You have requested that we audit the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of **Town of Flower Mound, Texas** as of September 30, 2021, and for the year then ended, and the related notes to the financial statements, which collectively comprise **Town of Flower Mound, Texas's** basic financial statements. In addition, we will audit the entity's compliance over major federal award programs for the period ended September 30, 2021. We are pleased to confirm our acceptance and our understanding of this audit engagement by means of this letter. Our audits will be conducted with the objectives of our expressing an opinion on each opinion unit and an opinion on compliance regarding the entity's major federal award programs.

Accounting principles generally accepted in the United States of America require that certain information be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the required supplementary information (RSI) in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist primarily of inquiries of management regarding their methods of measurement and presentation and comparing the information for consistency with management's responses to our inquiries. We will not express an opinion or provide any form of assurance on the RSI. The following RSI is required by accounting principles generally accepted in the United States of America. This RSI will be subjected to certain limited procedures but will not be audited:

- Management's Discussion and Analysis
- Schedule of Revenues, Expenditures and Changes in Fund Balances – Budget and Actual - General Fund
- TMRS Schedule of Changes in Net Pension Liability and Related Ratios
- TMRS Schedule of Contributions
- TMRS SDBF Schedule of Changes in Total OPEB Liability and Related Ratios
- Retiree Insurance Schedule of Changes in Total OPEB Liability and Related Ratios

Supplementary information other than RSI will accompany **Town of Flower Mound, Texas's** basic financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the basic financial statements and certain additional procedures, including comparing and reconciling the supplementary information to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and additional procedures in accordance with auditing standards generally accepted in the United States of America. We intend to provide an opinion on the following supplementary information in relation to the financial statements as a whole:

- Combining and Individual Nonmajor Fund Statements and Schedules

Schedule of Expenditures of Federal Awards

We will subject the schedule of expenditures of federal awards to the auditing procedures applied in our audit of the basic financial statements and certain additional procedures, including comparing and reconciling the schedule to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and additional procedures in accordance with auditing standards generally accepted in the United States of America. We intend to provide an opinion on whether the schedule of expenditures of federal awards is presented fairly in all material respects in relation to the financial statements as a whole.

Also, the document we submit to you will include the following other additional information that will not be subjected to the auditing procedures applied in our audit of the financial statements:

- Introductory Section
- Statistical Section

Data Collection Form

Prior to the completion of our engagement, we will complete the sections of the Data Collection Form that are our responsibility. The form will summarize our audit findings, amounts and conclusions. It is management's responsibility to submit a reporting package including financial statements, schedule of expenditure of federal awards, summary schedule of prior audit findings and corrective action plan along with the Data Collection Form to the federal audit clearinghouse. The financial reporting package must be text searchable, unencrypted, and unlocked. Otherwise, the reporting package will not be accepted by the federal audit clearinghouse. We will assist you in the electronic submission and certification. You may request from us copies of our report for you to include with the reporting package submitted to pass-through entities.

The Data Collection Form is required to be submitted within the *earlier* of 30 days after receipt of our auditors' reports or nine months after the end of the audit period, unless specifically waived by a federal cognizant or oversight agency for audits. Data Collection Forms submitted untimely are one of the factors in assessing programs at a higher risk.

Audit of the Financial Statements

We will conduct our audit in accordance with auditing standards generally accepted in the United States of America (U.S. GAAS), the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States of America; the audit requirements of Title 2 U.S. Code of Federal Regulations (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) and, if applicable, in accordance with any state or regulatory audit requirements. Those standards and the Uniform Guidance require that we plan and perform the audit to obtain reasonable assurance about whether the basic financial statements are free from material misstatement. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error, fraudulent financial reporting, misappropriation of assets, or violations of laws, governmental regulations, grant agreements, or contractual agreements.

An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. If appropriate, our procedures will therefore include tests of documentary evidence that support the transactions recorded in the accounts, tests of the physical existence of inventories, and direct confirmation of cash, investments, and certain other assets and liabilities by correspondence with creditors and financial institutions. As part of our audit process, we will request written representations from your attorneys, and they may bill you for responding. At the conclusion of our audit, we will also request certain written representations from you about the financial statements and related matters.

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk that some material misstatements or noncompliance (whether caused by errors, fraudulent financial reporting, misappropriation of assets, detected abuse, or violations of laws or governmental regulations) may not be detected exists, even though the audit is properly planned and performed in accordance with U.S. GAAS and *Government Auditing Standards* of the Comptroller General of the United States of America and/or state or regulatory audit requirements. Please note that the determination of abuse is subjective, and *Government Auditing Standards* does not require auditors to detect abuse.

In making our risk assessments, we consider internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the financial statements that we have identified during the audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any other periods.

We will issue a written report upon completion of our audit of **Town of Flower Mound, Texas's** basic financial statements. Our report will be addressed to the governing body of **Town of Flower Mound, Texas**. We cannot provide assurance that any unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions, add an emphasis-of-matter or other-matter paragraph(s), or withdraw from the engagement.

In accordance with the requirements of *Government Auditing Standards*, we will also issue a written report describing the scope of our testing over internal control over financial reporting and over compliance with laws, regulations, and provisions of grants and contracts, including the results of that testing. However, providing an opinion on internal control and compliance over financial reporting will not be an objective of the audit and, therefore, no such opinion will be expressed.

Audit of Major Program Compliance

Our audit of **Town of Flower Mound, Texas's** major federal award program(s) compliance will be conducted in accordance with the requirements of the Single Audit Act, as amended; and the Uniform Guidance and will include tests of accounting records, a determination of major programs in accordance with the Uniform Guidance, and other procedures we consider necessary to enable us to express such an opinion on major federal award program compliance and to render the required reports. We cannot provide assurance that an unmodified opinion on compliance will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion or withdraw from the engagement.

The Uniform Guidance requires that we also plan and perform the audit to obtain reasonable assurance about whether the entity has complied with applicable laws and regulations and the provisions of contracts and grant agreements applicable to major federal award programs. Our procedures will consist of determining major federal programs and performing the applicable procedures described in the U.S. Office of Management and Budget *OMB Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each of the entity's major programs. The purpose of those procedures will be to express an opinion on the entity's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to the Uniform Guidance.

Also, as required by the Uniform Guidance, we will perform tests of controls to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each of the entity's major federal award programs. However, our tests will be less in scope than would be necessary to render an opinion on these controls and, accordingly, no opinion will be expressed in our report.

We will issue a report on compliance that will include an opinion or disclaimer of opinion regarding the entity's major federal award programs, and a report on internal controls over compliance that will report any significant deficiencies and material weaknesses identified; however, such report will not express an opinion on internal control.

Management Responsibilities

Our audit will be conducted on the basis that management and, when appropriate, those charged with governance, acknowledge and understand that they have responsibility:

1. For the preparation and fair presentation of the basic financial statements in accordance with accounting principles generally accepted in the United States of America;
2. For the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of basic financial statements that are free from material misstatement, whether due to fraud or error;

3. For identifying, in its accounts, all federal awards received and expended during the period and the federal programs under which they were received, including federal awards and funding increments received prior to December 26, 2014 (if any), and those received in accordance with the Uniform Guidance (generally received after December 26, 2014);
4. For maintaining records that adequately identify the source and application of funds for federally funded activities;
5. For preparing the schedule of expenditures of federal awards (including notes and noncash assistance received) in accordance with the Uniform Guidance;
6. For the design, implementation, and maintenance of internal control over federal awards;
7. For establishing and maintaining effective internal control over federal awards that provides reasonable assurance that the nonfederal entity is managing federal awards in compliance with federal statutes, regulations, and the terms and conditions of the federal awards;
8. For identifying and ensuring that the entity complies with federal statutes, regulations, and the terms and conditions of federal award programs and implementing systems designed to achieve compliance with applicable federal statutes, regulations, and the terms and conditions of federal award programs;
9. For disclosing accurately, currently, and completely, the financial results of each federal award in accordance with the requirements of the award;
10. For identifying and providing report copies of previous audits, attestation engagements, or other studies that directly relate to the objectives of the audit, including whether related recommendations have been implemented;
11. For taking prompt action when instances of noncompliance are identified;
12. For addressing the findings and recommendations of auditors, for establishing and maintaining a process to track the status of such findings and recommendations and taking corrective action on reported audit findings from prior periods and preparing a summary schedule of prior audit findings;
13. For following up and taking corrective action on current year audit findings and preparing a corrective action plan for such findings;
14. For submitting the reporting package and data collection form to the appropriate parties;
15. For making the auditor aware of any significant contractor relationships where the contractor is responsible for program compliance;
16. To provide us with:
 - a. Access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements, and relevant to federal award programs, such as records, documentation, and other matters;
 - b. Additional information that we may request from management for the purpose of the audit; and
 - c. Unrestricted access to persons within the entity from whom we determine it necessary to obtain audit evidence.
17. For adjusting the basic financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the current period under audit are immaterial, both individually and in the aggregate, to the basic financial statements as a whole;
18. For acceptance of nonattest services, including identifying the proper party to oversee nonattest work;
19. For maintaining adequate records, selecting and applying accounting principles, and safeguarding assets;
20. For informing us of any known or suspected fraud affecting the entity involving management, employees with significant role in internal control and others where fraud could have a material effect on compliance;
21. For the accuracy and completeness of all information provided;
22. For taking reasonable measures to safeguard protected personally identifiable and other sensitive information; and

23. For confirming your understanding of your responsibilities as defined in this letter to us in your management representation letter.

With respect to any nonattest services we perform, we agree to perform the following:

- Assist with preparing the schedule of expenditures of federal awards.
- Completion of the auditee's portion of the Data Collection Form

Town of Flower Mound, Texas's management is responsible for (a) making all management decisions and performing all management functions; (b) assigning a competent individual to oversee the services; (c) evaluating the adequacy of the services performed; (d) evaluating and accepting responsibility for the results of the services performed; and (e) establishing and maintaining internal controls, including monitoring ongoing activities.

With regard to the schedule of expenditures of federal awards referred to above, you acknowledge and understand your responsibility (a) for the preparation of the schedule of expenditures of federal awards in accordance with the Uniform Guidance, (b) to provide us with the appropriate written representations regarding the schedule of expenditures of federal awards, (c) to include our report on the schedule of expenditures of federal awards in any document that contains the schedule of expenditures of federal awards and that indicates that we have reported on such schedule, and (d) to present the schedule of expenditures of federal awards with the audited financial statements, or if the schedule will not be presented with the audited financial statements, to make the audited financial statements readily available to the intended users of the schedule of expenditures of federal awards no later than the date of issuance by you of the schedule and our report thereon.

With regard to the supplementary information referred to above, you acknowledge and understand your responsibility (a) for the preparation of the supplementary information in accordance with the applicable criteria, (b) to provide us with the appropriate written representations regarding supplementary information, (c) to include our report on the supplementary information in any document that contains the supplementary information and that indicates that we have reported on such supplementary information, and (d) to present the supplementary information with the audited financial statements, or if the supplementary information will not be presented with the audited financial statements, to make the audited financial statements readily available to the intended users of the supplementary information no later than the date of issuance by you of the supplementary information and our report thereon.

As part of our audit process, we will request from management and, when appropriate, those charged with governance, written confirmation concerning representations made to us in connection with the audit.

We understand that your employees will prepare all confirmations we request and will locate any documents or invoices selected by us for testing.

If you intend to publish or otherwise reproduce the financial statements and make reference to our firm, you agree to provide us with printers' proofs or masters for our review and approval before printing. You also agree to provide us with a copy of the final reproduced material for our approval before it is distributed.

Fees and Timing

L. Diane Terrell is the engagement partner for the audit services specified in this letter. Responsibilities include supervising services performed as part of this engagement and signing or authorizing another qualified firm representative to sign the audit report. We expect to begin our interim audit procedures in approximately September 2021 and our final audit procedures in approximately January 2022.

Our fees are based on the amount of time required at various levels of responsibility, plus actual out-of-pocket expenses. Invoices are payable upon presentation. We estimate that our fee for the audit will be \$53,820 and our fee for the Single Audit, if applicable, will be \$8,240. We will notify you immediately of any circumstances we encounter that could significantly affect this initial fee estimate. Whenever possible, we will attempt to use **Town of Flower Mound, Texas's** personnel to assist in the preparation of schedules and analyses of accounts. This effort could substantially reduce our time requirements and facilitate the timely conclusion of the audit.

In addition, we will be compensated for any time and expenses, including time and expenses of legal counsel, we may incur in conducting or responding to discovery requests or participating as a witness or otherwise in any legal, regulatory, or other proceedings as a result of our Firm's performance of these services. You and your attorney will receive, if lawful, a copy of every subpoena we are asked to respond to on your behalf and will have the ability to control the extent of the discovery process to control the costs you may incur.

Should our relationship terminate before our audit procedures are completed and a report issued, you will be billed for services to the date of termination. All bills are payable upon receipt. A service charge of 1% per month, which is an annual rate of 12%, will be added to all accounts unpaid 30 days after billing date. If collection action is necessary, expenses and reasonable attorney's fees will be added to the amount due.

Other Matters

During the course of the engagement, we may communicate with you or your personnel via fax or e-mail, and you should be aware that communication in those mediums contains a risk of misdirected or intercepted communications.

We may use third party service providers and/or affiliated entities (including Eide Bailly Shared Services Private Limited) (collectively, "service providers") in order to facilitate delivering our services to you. Our use of service providers may require access to client information by the service provider. We will take reasonable precautions to determine that they have the appropriate procedures in place to prevent the unauthorized release of confidential information to others. We will remain responsible for the confidentiality of client information accessed by such service provider and any work performed by such service provider.

The audit documentation for this engagement is the property of Eide Bailly LLP and constitutes confidential information. However, we may be requested to make certain audit documentation available to regulators pursuant to authority given to it by law or regulation. If requested, access to such audit documentation will be provided under the supervision of Eide Bailly LLP's personnel. Furthermore, upon request, we may provide copies of selected audit documentation to regulators. The regulators may intend, or decide, to distribute the copies of information contained therein to others, including other governmental agencies. We agree to retain our audit documentation or work papers for a period of at least eight years from the date of our report.

Further, we will be available during the year to consult with you on financial management and accounting matters of a routine nature.

During the course of the audit, we may observe opportunities for economy in, or improved controls over, your operations. We will bring such matters to the attention of the appropriate level of management, either orally or in writing.

Regarding the electronic dissemination of audited financial statements, including financial statements published electronically on your Internet website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

Professional standards prohibit us from being the sole host and/or the sole storage for your financial and non-financial data. As such, it is your responsibility to maintain your original data and records and we cannot be responsible to maintain such original information. By signing this engagement letter, you affirm that you have all the data and records required to make your books and records complete.

You agree to inform us of facts that may affect the financial statements of which you may become aware during the period from the date of the auditor's report to the date the financial statements are issued.

At the conclusion of our audit engagement, we will communicate to the Town Manager and Members of the Town Council the following significant findings from the audit:

- Our view about the qualitative aspects of the entity's significant accounting practices;
- Significant difficulties, if any, encountered during the audit;
- Uncorrected misstatements, other than those we believe are trivial, if any;
- Disagreements with management, if any;
- Other findings or issues, if any, arising from the audit that are, in our professional judgment, significant and relevant to those charged with governance regarding their oversight of the financial reporting process;
- Material, corrected misstatements that were brought to the attention of management as a result of our audit procedures;
- Representations we requested from management;
- Management's consultations with other accountants, if any; and
- Significant issues, if any, arising from the audit that were discussed, or the subject of correspondence, with management.

Government Auditing Standards require that we provide, upon request, a copy of our most recent external peer review report and any subsequent review reports to the party contracting for the audit. Accordingly, we will provide a copy of our most recent peer review report at your request.

Eide Bailly LLP is a member of HLB International, a worldwide organization of accounting firms and business advisors, ("HLB"). Each member firm of HLB, including Eide Bailly LLP is a separate and independent legal entity and is not owned or controlled by any other member of HLB. Each member firm of HLB is solely responsible for its own acts and omissions and no other member assumes any liability for such acts or omissions. Neither Eide Bailly LLP, nor any of its affiliates, are responsible or liable for any acts or omission of HLB or any other member firm of HLB and hereby specifically disclaim any and all responsibility, even if Eide Bailly LLP, or any of its affiliates are aware of such acts or omissions of another member of HLB.

DISPUTE RESOLUTION

The following procedures shall be used to resolve any disagreement, controversy or claim that may arise out of any aspect of our services or relationship with you, including this engagement, for any reason ("Dispute"). Specifically, we agree to first mediate.

Mediation

All Disputes between us shall first be submitted to non-binding mediation by written notice ("Mediation Notice") to the other party. In mediation, we will work with you to resolve any differences voluntarily with the aid of an impartial mediator. The mediator will be selected by mutual agreement, but if we cannot agree on a mediator, one shall be designated by the American Arbitration Association ("AAA").

The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the Dispute. Mediation will be conducted with the parties in person in Abilene, Texas.

Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

Either party may commence suit on a Dispute after the mediator declares an impasse.

INDEMNITY

You agree that none of Eide Bailly LLP, its partners, affiliates, officers or employees (collectively "Eide Bailly") shall be responsible for or liable to you for any misstatements in your financial statements that we may fail to detect as a result of knowing representations made to us, or the concealment or intentional withholding of information from us, by any of your owners, directors, officers or employees, whether or not they acted in doing so in your interests or for your benefit, and to hold Eide Bailly harmless from any claims, losses, settlements, judgments, awards, damages and attorneys' fees from any such misstatement, provided that the services performed hereunder were performed in accordance with professional standards, in all material respects.

If a claim is brought against you by a third-party that arises out of or is in any way related to the services provided under this engagement, you agree to indemnify Eide Bailly LLP, its partners, affiliates, officers and employees, against any losses, including settlement payments, judgments, damage awards, punitive or exemplary damages, and the costs of litigation (including attorneys' fees) associated with the services performed hereunder provided that the services were performed in accordance with professional standards, in all material respects.

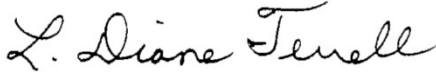
ASSIGNMENTS PROHIBITED

You agree that you will not and may not assign, sell, barter or transfer any legal rights, causes of actions, claims or Disputes you may have against Eide Bailly LLP, its partners, affiliates, officers and employees, to any other person or party, or to any trustee, receiver or other third party.

Please sign and return the attached copy of this letter to indicate your acknowledgment of, and agreement with, the arrangements for our audit of the financial statements compliance over major federal award programs including our respective responsibilities.

We appreciate the opportunity to be your certified public accountants and look forward to working with you and your staff.

Respectfully,



L. Diane Terrell
Partner

RESPONSE:

This letter correctly sets forth our understanding.

Acknowledged and agreed on behalf of management of **Town of Flower Mound, Texas** by:

Name: _____

Title: Interim Town Manager/CFO

Date: _____

Acknowledged and agreed on behalf of the Honorable Mayor and Members of the Town Council of **Town of Flower Mound, Texas** by:

Name: _____

Title: Mayor

Date: _____

FORM 1295

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

Date Acknowledged:

Eide Bailly LLP
Abilene, TX United States

Town of Flower Mound, Texas

2021 Eng Ltr
Audit of 2021 Financial Statements

5 Check only if there is NO Interested Party.

Version V1.1.ceffd98a



TOWN COUNCIL AGENDA ITEM NO. 4

CONSENT ITEM

DATE: June 7, 2021

FROM: Kay Wilkinson, Budget Officer

ITEM: Consider approval of a resolution authorizing the Town to join with the Steering Committee of Cities Served by CoServ Gas, Ltd. to deny CoServ Gas's application for approval to amend its gas rates.

BACKGROUND INFORMATION: On November 13, 2020, CoServ Gas, Ltd. ("CoServ" or "Company"), pursuant to Subchapter C of Chapter 104 of the Gas Utility Regulatory Act, filed its Statement of Intent to change gas rates at the Railroad Commission of Texas ("RRC") and in all municipalities exercising original jurisdiction within its service area, effective March 14, 2021.

On January 4, 2021, Council approved a resolution suspending CoServ's rate request from taking effect for 90 days after the effective date, the fullest extend permissible under the law. This time period has permitted the Town, through its participation in the Steering Committee of Cities Served by CoServ, Ltd. ("CoServ Gas Cities"), to determine that the proposed rate increase and consolidation are unreasonable. Consistent with the recommendations of experts engaged by CoServ Gas Cities, CoServ's request for a rate increase and consolidation of service areas should be denied.

Accordingly, the purpose of this resolution is to deny the rate change application proposed by CoServ.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

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

ATTACHMENTS:

1. Denial Resolution

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

RESOLUTION NO. _____

**RESOLUTION OF THE TOWN OF FLOWER MOUND
DENYING COSERV GAS, LTD.'S REQUESTED RATE
INCREASE; REQUIRING THE COMPANY TO
REIMBURSE THE TOWN'S REASONABLE RATEMAKING
EXPENSES; FINDING THAT THE MEETING AT WHICH
THIS RESOLUTION IS PASSED IS OPEN TO THE
PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE
OF THIS RESOLUTION TO THE COMPANY AND THE
TOWN'S LEGAL COUNSEL**

WHEREAS, the Town of Flower Mound, Texas ("Town") is a gas utility customer of CoServ Gas Ltd. ("CoServ" or "Company"), and is a regulatory authority under the Gas Utility Regulatory Act ("GURA"), and under Chapter 104, § 104.001 et seq. of GURA has exclusive original jurisdiction over CoServ's rates, operations, and services within the Town; and

WHEREAS, the Town cooperated with a coalition of similarly situated cities served by the Company that have joined together to facilitate the review and response to natural gas issues affecting rates charged in CoServ's service area ("CoServ Gas Cities" or "Steering Committee of Cities Served by CoServ Gas, Ltd."); and

WHEREAS, on or about November 13, 2020 the Company filed a Statement of Intent to increase rates on a system-wide basis by \$9.6 million per year, and by \$8,113,409 in all municipalities exercising original jurisdiction within its service area; and

WHEREAS, CoServ proposed March 14, 2021 as the effective date for its requested increase in rates; and

WHEREAS, the Town passed resolution No. 01-21 to suspend the effective date of CoServ's requested rate increase for 90 days, the maximum period allowed by law; and

WHEREAS, the CoServ Gas Cities hired and directed legal counsel and consultants to prepare a common response to the Company's requested system-wide rate increase and proposed consolidation of service areas, which resulted in a conclusion that CoServ's rates are not reasonable, the proposed consolidation of services areas is not reasonable, and a recommendation that the rate request and consolidation be denied; and

WHEREAS, the GURA § 103.022 provides that costs incurred by CoServ Gas Cities in ratemaking activities are to be reimbursed by the regulated utility.

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

1. That the rates proposed by CoServ to be recovered through its gas rates charged to customers located within the Town limits are hereby found to be unreasonable and shall be denied.
2. That CoServ shall continue to charge its existing rates to customers within the Town and that said existing rates are reasonable.
3. That the Town's reasonable rate case expenses shall be reimbursed by the Company.
4. That it is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.
5. A copy of this Resolution shall be sent to CoServ, care of Charles Harrell, CoServ Gas, Ltd. 7701 South Stemmons Freeway, Corinth, Texas 76210 (CHarrell@coserv.com), and to Thomas Brocato at Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701 (tbrocato@lglawfirm.com).

PASSED AND APPROVED this 7th day of June, 2021.

Mayor

ATTEST:

Town Secretary



TOWN COUNCIL AGENDA ITEM NO. 5 CONSENT ITEM

DATE: June 7, 2021

FROM: Clay Riggs, PE, CFM, Director of Public Works

ITEM: Consider approval of a Professional Services Agreement with Plummer Associates, Inc., for the development of an Emergency Response Plan in the amount of \$20,000.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: In October 2018, Congress passed America's Water Infrastructure Act (AWIA). This Act requires community water systems serving more than 3,300 people to conduct a Risk and Resiliency Assessment (RRA) and update Emergency Response Plans (ERPs). The Town has completed the Risk and Resiliency Assessment. The next requirement is to update the Town's Emergency Response Plan to incorporate findings from the Risk and Resiliency Assessment.

The scope of the Professional Services Agreement provides updating the Town's Emergency Response Plan to incorporate findings from the Risk and Resiliency Assessment.

ALTERNATIVES/OPTIONS: Not completing the Emergency Response Plan would place the Town in violation of Congress's America's Water Infrastructure Act (AWIA).

FISCAL IMPACT: \$20,000.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$20,000.00	200-690-92100-5230

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

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

ATTACHMENTS:

1. Professional Services Agreement

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH
PLUMMER ASSOCIATES, INC.**

This contract is entered into on this 7th day of June, 2021, 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 **Plummer Associates, Inc.**, (“hereinafter referred to as “CONSULTANT”) whose address is 1320 S. University Drive, Suite 300, Fort Worth, TX 76107.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to development of an Emergency Response Plan for the Town of Flower Mound Water Distribution System; 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 Emergency Response Plan for the Town of Flower Mound Water Distribution System 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 Twenty Thousand and No/100 Dollars (\$20,000.00). 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 may deem necessary, but in such event TOWN shall pay CONSULTANT equitable compensation for such services. In any event, when CONSULTANT is directed to revise or expand the scope of services under this Section of the Contract, CONSULTANT shall provide TOWN a written proposal for the entire costs involved in performing such additional services. Prior to CONSULTANT undertaking any revised or expanded services as directed by TOWN under this Contract, TOWN must authorize in writing the nature and scope of the services and accept the method and amount of compensation and the time involved in all phases of the Project.

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

V. Term

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

VI. Contract Termination Provision

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

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

VII.

Ownership of Documents

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

VIII.

Insurance

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

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

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

The following policies and coverage shall be required:

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

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

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

1. The TOWN shall be named as an additional insured on the Commercial General Liability policy, by using endorsement CG2026 or broader;
2. The TOWN shall also be named as an additional insured as to all other applicable coverage save and except the Worker's Compensation Insurance and Professional Liability Insurance;

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

Clay Riggs, PE, CFM
 Director of Public Works
 Town of Flower Mound
 2121 Cross Timbers Road
 Flower Mound, Texas 75028
 972-874-6411 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 subcontractor involving transactions to the subcontract, and further, that TOWN shall have access during normal working hours to all such engineer or sub-contractor facilities and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of the paragraph. TOWN shall give any such engineer or sub-contractor reasonable advance notice of intended audits.

X.
Successors and Assigns

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

XI.
CONSULTANT's Liability

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

XII.
Indemnification

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

CONSULTANT IS LEGALLY LIABLE WITH REGARD TO THE PERFORMANCE OF THIS CONTRACT, REGARDLESS OF WHETHER SUCH LIABILITY, CLAIMS, SUITS, DEMANDS OR CAUSES OF ACTION IS THE RESULT IN PART OF TOWN'S NEGLIGENCE OR FAULT, AND CONSULTANT WILL, AT ITS OWN COST AND EXPENSE, DEFEND AND PROTECT TOWN AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS, INCLUDING PAYMENT OF TOWN'S REASONABLE ATTORNEYS' FEES. IN THE EVENT OF A CLAIM IS BROUGHT AGAINST TOWN, TOWN SHALL HAVE THE RIGHT TO RETAIN LEGAL COUNSEL OF ITS CHOOSING IN DEFENSE OF SUCH A CLAIM, AND SUCH ELECTION SHALL NOT RELIEVE CONTRACTOR OF ITS OBLIGATIONS UNDER THIS SECTION.

XIII.

Independent Contractor

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

XIV.

Default

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

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

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

XV.
Provisions Surviving Termination

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

XVI.
Changes

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

XVII.
Conflicts of Interest

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

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

XVIII.
Confidential Information

CONSULTANT hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations in accordance with this Contract, which is of a confidential, non-public or proprietary nature. CONSULTANT shall treat any such information received in full confidence and will not disclose or appropriate such Confidential Information for its own use or the use

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

XIX. **Notice Information**

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

Clay Riggs, PE, CFM
Director of Public Works
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6411 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:

Ellen McDonald, PhD., P.E.
Principal, Water Planning Practice Leader
1320 S. University Drive, Suite 300
Fort Worth, Texas 76107
682-237-7718 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:**Plummer Associates, Inc.**By: Ellen McDonald

Name: Ellen McDonald

Title: Principal

Date Signed: May 24, 2021

State of Texas §

County of Tarrant §

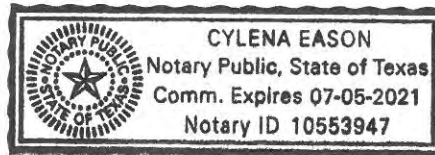
This instrument was acknowledged before me on the 24 day of May, 2021, by Ellen McDonald in her capacity as Principal of Plummer Associates, Inc. a Texas Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of Authorized Representative.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 24 DAY OF May, 2021.

Cylena Eason

Notary Public, State of Texas

My Commission Expires:

7/5/2021

ATTACHMENT A

**EMERGENCY RESPONSE PLAN FOR THE
TOWN OF FLOWER MOUND
WATER DISTRIBUTION SYSTEM**

SCOPE OF WORK

In October 2018, Congress passed America's Water Infrastructure Act (AWIA, or the Act). This Act requires community water systems (CWSs) serving more than 3,300 people to conduct a Risk and Resilience Assessment (RRA), update Emergency Response Plans (ERPs) and to send the United States Environmental Protection Agency (EPA) certifications of their completion. The Town of Flower Mound (CLIENT) was required to conduct a Risk and Resilience Assessment (RRA) by December 31st, 2020. Plummer Associates, Inc. (ENGINEER) conducted the RRA on behalf of CLIENT and the RRA was certified on December 23rd, 2020. AWIA requires an Emergency Response Plan (ERP) to be updated within six months of completing the RRA. Therefore, CLIENT is required to certify completion of an updated ERP by June 23rd, 2020. CLIENT has retained ENGINEER to develop an updated ERP by the required deadline.

This Scope of Work provides for assisting CLIENT with this project. Included are descriptions of BASIC SERVICES. BASIC SERVICES are those services known to be required for the renewal of the TPDES permit. A specific scope and budget for BASIC SERVICES is provided. A cost breakdown for the proposed services has been provided as Exhibit B.

BASIC SERVICES

The BASIC SERVICES tasks are as follows:

Task I – Progress Meetings

ENGINEER will facilitate two remote meetings. These meetings will include Town staff from multiple departments. Informal coordination, such as phone calls and emails, will also occur between ENGINEER and CLIENT throughout the duration of the project.

Task II – Develop Emergency Response Plan

ENGINEER will:

1. Review any emergency plans currently in place for CLIENT.
2. Obtain data from CLIENT during a remote kickoff meeting required to complete the ERP according to AWIA requirements. Required information may include:
 - a. Site plans and as-built drawings for critical water assets.
 - b. Equipment specifications and operation instructions.
 - c. Emergency power and light generation operation specifications.
 - d. SCADA system operation instructions.
 - e. Communications system operations instructions.

- f. Contact information for emergency personnel.
 - g. Health and Safety Plan.
3. Develop a draft ERP according to the template issued by the Environmental Protection Agency (EPA).
 4. Submit the draft ERP to CLIENT electronically by the end of June 17th for review
 5. Deliver the final electronic copy of the ERP to CLIENT by the end of the day June 22nd, 2021. ENGINEER will also provide CLIENT with up to three (3) hardcopies of the final ERP.
 6. It is CLIENT's responsibility to certify completion of the ERP to the EPA by the end of the day June 23rd, 2021.

PROJECT MANAGEMENT

ENGINEER will provide necessary project management services associated with the services described in Tasks I and II.

SCHEDULE

The project schedule for development of the ERP is driven by the certification due date, which is June 23rd, 2021. Based on these requirements, the following anticipated application schedule is provided:

Milestone	Target Date
Project Kick-off	June 8 th , 2021
Draft ERP to CLIENT	June 17 th , 2021
CLIENT comments to ENGINEER	June 21 st , 2021
Final ERP to CLIENT	June 22 nd , 2021
CLIENT certify completion of ERP	June 23 rd , 2021

ATTACHMENT B

Compensation

1. Basic Services of ENGINEER

CLIENT shall pay ENGINEER for Basic Services of ENGINEER rendered for “Scope of Services” as provided in this agreement. Compensation shall be paid on a lump sum basis. ENGINEER will provide monthly invoices with estimates of the percent completion of the project as of the close of the month prior.

Project Budget	
Task I – Progress Meetings	\$ 3,820.00
Task II – Develop Emergency Response Plan	\$ 12,220.00
Project Management	\$ 3,960.00
Total for Basic Services	\$ 20,000.00



TOWN COUNCIL AGENDA ITEM NO. 6

CONSENT ITEM

DATE: June 7, 2021

FROM: Blake Hummel, P.E., Senior Project Engineer

ITEM: Consider approval of a Construction Agreement with Canary Construction, Inc. for the Sentinel Oaks Water Line Replacement (Three Bridges to Simmons) project, in the amount of \$389,029.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On May 4, 2021, bids were received and opened (Bid # 2021-42-B) for the Sentinel Oaks Water Line Replacement (Three Bridges to Simmons) project. Canary Construction, Inc. submitted the lowest qualified bid of the seven (7) responding bidders at a base bid of \$389,029.00. The Sentinel Oaks Water Line Replacement (Three Bridges to Simmons) project consists of the installation of roughly 1800 feet of 8-inch water main that will be replacing an existing undersized system consisting of 2-inch and 4-inch water mains along Sentinel Oak Road. All residential services will be transitioned over to the new water main to maintain Town water service and several water meters will be upgraded to new meters. Additional fire hydrants will be placed along the project limits to increase the potential for fire protection along Sentinel Oaks Road. Miscellaneous removal and replacement of driveway, mailboxes, fencing, etc. required to install the new water main will also be included as part of the overall project.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: A decision to not approve the Construction Agreement would leave the existing undersized water main along Sentinel Oaks Road in the current configuration with limited serviceability and poor fire protection for the immediate surrounding residents.

FISCAL IMPACT: \$389,029.00

Proposed Expenditure/(Revenue):

\$389,029.00

Account Number(s):

630-960-98852

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

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

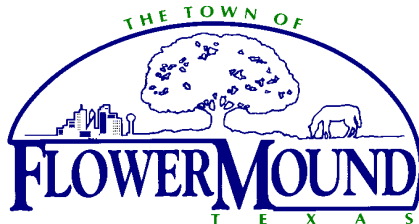
- Utility debt \$ 500,000

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 this Construction Agreement.

ATTACHMENTS:

1. Bid Tabulation
2. Construction Agreement

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



Town of Flower Mound Bid Tabulation

Bid No: 2021-42-B – Sentinel Oaks Water Line Replacement (Three Bridges to Simmons)

Bid Opening: 5/4/2021 at 11:00 AM

Company	Grand Total Section I plus Section II Bid
Gomez Brothers Construction, Inc	\$ 354,770.50
Canary Construction, Inc	\$ 389,029.00
Excel 4 Construction, LLC	\$ 415,506.00
Larrett, Inc	\$ 438,269.50
Excel Aircraft, LLC dba Excel Trenching	\$ 499,999.98
Saber Development Corporation	\$ 532,911.45
Fort Worth Civil Constructors, LLC	\$ 819,979.00

******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: May 4, 2021

TOWN OF FLOWER MOUND
**SENTINEL OAKS WATER LINE REPLACEMENT (THREE BRIDGES TO
SIMMONS)**

Bid # 2021-42-B

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the "Agreement"), made and entered into this 7th day of June, 2021, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the "Town," and Canary Construction, a Corporation, hereinafter referred to as the "Contractor." For and in consideration of the payment, agreements, and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

SENTINEL OAKS WATER LINE REPLACEMENT
(THREE BRIDGES TO SIMMONS),
Bid # 2021-42-B

in the Town of Flower Mound, Texas, and all extra work in connection therewith, under the terms as stated in this Agreement, and under the terms of the Contract Documents; and at his, her, or their own proper cost and expense to furnish all superintendence, labor, insurance, equipment, tools, and other accessories and services necessary to complete the said construction in accordance with all the Contract Documents, incorporated herein as if written word for word, and in accordance with the Plans, which include all maps, plats, blueprints, and other drawings and printed or written explanatory manner therefore, and the Conditions and Specifications as prepared by the Town or its consultant hereinafter called "Engineer", who has been identified by the endorsement of the Contractor's written proposal, and the General Conditions, Supplemental Conditions, and Special Provisions of this Agreement, and the payment, performance, and maintenance bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Agreement.

ARTICLE 1. The Contract Documents shall consist of the following documents:

- A. The Construction Agreement;
- B. Properly executed Change Orders and Field Orders in writing and executed by the Town, the last in time being first in precedence;
- C. Any listed and numbered addenda;

- D. Special Provisions;
- E. Supplementary Conditions;
- F. Construction Drawings or Plans;
- G. Technical Specifications;
- H. Town's Standard Construction Details;
- I. The most current edition of the *Town of Flower Mound Design Criteria and Construction Standards* (by reference);
- J. *Occupational Safety and Health Standards – Excavation*, 20 CFR Part 1926 (by reference);
- K. *Texas Manual on Uniform Traffic Control Devices (TMUTCD)* (by reference);
- L. The General Conditions;
- M. *Public Works Construction Standards - North Central Texas, as amended* (by reference);
- N. Notice to Bidders;
- O. Instructions to Bidders;
- P. The Town's written notice to proceed to Contractor;
- Q. The Contractor's Bid Proposal;
- R. The Performance Bond, Payment Bond and Maintenance Bond; and
- S. Bid materials distributed by the Town that relate to the Project.

These Contract Documents are incorporated by reference into this Agreement as if set out in their entirety. The Contract Documents are intended to be complementary; what is called for by one document shall be as binding as if called for by all Contract Documents. It is specifically provided; however, that in the event of any inconsistency in the Contract Documents, the inconsistency shall be resolved by giving precedence to the Contract Documents in the order in which they are listed herein above. If, however, there exists a conflict or inconsistency between the Technical Specifications and the Construction Drawings, it shall be the Contractor's obligation to seek clarification as to which requirements or provisions control before undertaking any work on that component of the project. Should the Contractor fail or refuse to seek a clarification of such conflicting or inconsistent requirements or provisions prior to any work on that component of the project,

the Contractor shall be solely responsible for the costs and expenses - including additional time - necessary to cure, repair, and/or correct that component of the project.

ARTICLE 2. For performance of the Work in accordance with the Contract Documents, the Town shall pay the Contractor in current funds an amount not to exceed **Three Hundred Eighty-Nine Thousand Twenty-Nine Dollars and Zero cents (\$389,029.00)** 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 fifty eight (50) calendar days, and final completion of sixty (60) calendar days ready for final payment, as measured from the Effective Start Date shown in the Notice to Proceed. The work shall be in strict accordance with this Agreement, a copy of which is filed pursuant to law in the office of the legal representative of the Town.

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

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

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

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

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

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

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

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

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

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

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

Retainage shall be withheld and may be paid to:

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

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

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

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

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

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

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

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

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

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

Final payment to the Contractor shall not be due until the Contractor provides original full releases of liens, or other evidence satisfactory to the Town to show that all sums due for labor, services, and materials furnished for or used in connection with the Work have been paid or shall be paid with the final payment. To ensure this result, Contractor consents to

the issuance of the final payment in the form of joint checks made payable to Contractor and others. The Town may, but is not obligated to, issue final payment using joint checks.

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

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

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

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

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

In its sole discretion, the Town shall have the right to approve counsel to be retained by Contractor in fulfilling its obligation to defend and indemnify the Town. Contractor shall retain approved counsel for the Town within seven business days after receiving written notice from the Town that it is invoking its right to indemnification under this Agreement. If Contractor does not retain counsel for the Town within the required time, then the Town shall have the right to retain counsel and the Contractor shall pay the attorneys' fees and expenses.

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

ARTICLE 11. The Contractor understands and agrees that time is of the essence in performing and completing the Work. The Town and Contractor acknowledge that the actual damages the Town may sustain if the Contractor fails to complete the Work on time are uncertain and will be difficult to ascertain. The Contractor agrees that the sum of Two Hundred Forty and Zero/One Hundredths Dollars (\$240.00) per day or portion of a day in Liquidated Damages will be deducted from the Contract price by the Town for each calendar day or portion thereof that the work is not substantially complete beyond the Substantially Complete Contract time, or within such extra time as may have been allowed by an extension approved by the Town. The Contractor also agrees that the sum of Two Hundred Forty and Zero/One Hundredths Dollars (\$240.00) per day or portion of a day in Liquidated Damages for each calendar day or portion thereof the work has not been finally completed by the Contractor beyond the Contract time for final completion, or within such extra time as may have been allowed by an extension approved by the Town. The Town and the Contractor agree that this amount is payable as reasonable and just compensation for failure to complete the Work on time. This amount is payable as liquidated damages and not as a penalty.

ARTICLE 12. For a two-year period after the date specified in a written notice of acceptance of Work and authorization to make final payment by the Flower Mound Town Council, Contractor shall provide and pay for all labor and materials that the Town determines are necessary to correct all defects in the Work arising because of defective materials or workmanship supplied or provided by Contractor or any subcontractor. This shall also include areas of vegetation that did meet TPDES General Construction Permit during final close out but have since become noncompliant.

Forty-five (45) to sixty (60) calendar days before the end of the two-year warranty period, the Town may make a warranty inspection of the Work. The Town shall notify the Contractor of the date and time of this inspection so that a Contractor representative may be present. After the warranty inspection, and before the end of the two-year warranty period, the Town shall mail to the Contractor a written notice that specifies the defects in the Work that are to be corrected.

The Contractor shall begin the remedial work within ten (10) calendar days after receiving the written notice from the Town. If the Contractor does not begin the remedial work timely or prosecute it diligently, then the Town may pay for necessary labor and materials to effect repairs and these expenses shall be paid by the Contractor, the maintenance bond surety, or both.

If the Town determines that a hazard exists because of defective materials and workmanship, then the Town may take steps to alleviate the hazard, including making repairs. These steps may be taken without prior notice either to the Contractor or its surety.

Expenses incurred by the Town to alleviate the hazard shall be paid by the Contractor, the maintenance bond surety, or both.

Any Work performed by or for the Contractor to fulfill its warranty obligations shall be performed in accordance with the Contract Documents. By way of example only, this is to ensure that Work performed during the warranty period is performed with required insurance and the maintenance and payment bonds still in effect.

Work performed during the two-year warranty period shall itself be subject to a one-year warranty. This warranty shall be the same as described in this section.

The Town may make as many warranty inspections as it deems appropriate.

ARTICLE 13. The Contractor shall be responsible for ensuring that it and any subcontractors performing any portion of the Work required under the Contract Documents comply with all applicable federal, state, county, and municipal laws, regulations, and rules that relate in any way to the performance and completion of the Work. This provision applies whether or not a legal requirement is described or referred to in the Contract Documents.

Ancillary/Integral Professional Services: In selecting an architect, engineer, land surveyor, or other professional to provide professional services, if any, that are required by the Contract Documents, Contractor shall not do so on the basis of competitive bids but shall make such selection on the basis of demonstrated competence and qualifications to perform the services in the manner provided by Section 2254.004 of the Texas Government Code and shall so certify to the Town the Contractor's agreement to comply with this provision with Contractor's bid.

ARTICLE 14. The Contractor shall sign the Construction Agreement, and deliver signed performance, payment, and maintenance bonds and proper insurance policy endorsements (and/or other evidence of coverage) within fifteen (15) calendar days after the Town makes available to the Contractor copies of the Contract Documents for signature. Six copies of the Contract Documents shall be signed by an authorized representative of the Contractor and returned to the Town.

The Construction Agreement "effective date" shall be the date on which the Town Council acts to approve the award of the Contract for the Work to Contractor. It is expressly provided; however, that the Town Council delegates the authority to the Town Manager or his designee to rescind the Contract award to Contractor at any time before the Town delivers to the Contractor a copy of this Construction Agreement that bears the signature of the Mayor or Town Manager and Town Secretary or their authorized designees. The purpose of this provision is to ensure that:

1. the Contractor timely delivers to the Town all bonds and insurance documents; and

2. the Town retains the discretion not to proceed if the Town Manager or his designee determines that information indicates that the Contractor was not the lowest responsible bidder or that the Contractor cannot perform all of its obligations under the Contract Documents.

THE CONTRACTOR AGREES THAT IT SHALL HAVE NO CLAIM OR CAUSE OF ACTION OF ANY KIND AGAINST THE TOWN, INCLUDING A CLAIM FOR BREACH OF CONTRACT, NOR SHALL THE TOWN BE REQUIRED TO PERFORM UNDER THE CONTRACT DOCUMENTS, UNTIL THE DATE THE TOWN DELIVERS TO THE CONTRACTOR A COPY OF THE CONSTRUCTION AGREEMENT BEARING THE SIGNATURES JUST SPECIFIED.

Contractor stipulates that the Town is a political subdivision of the State of Texas, and, as such, may enjoy immunities from suit and liability under the Constitution and laws of the State of Texas. By entering into this Agreement, the Town does not waive any of its immunities from suit and/or liability, except as otherwise expressly and specifically provided herein or as specifically provided by law.

Payments under this Contract are due and payable in accordance with the provisions of Texas Government Code Section 2251.022. Interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.

Attention is called to the Government Code, Chapter 2258, Prevailing Wage Rates. Contractor and any subcontractor shall pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of this Agreement. The Town has determined the general prevailing rate of per diem wages in the locality in which the public work is to be constructed by using the prevailing wage rates as determined by the United States Department of Labor in accordance with the Davis-Bacon Act as applicable to this Project. Contractor or a subcontractor who violates this provision shall be liable for the penalty specified in Texas Government Code Section 2258.023, which as of the date of this Agreement is \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. Town reserves the right to receive and review payroll records, payment records, and earnings statements of employees of Contractor, and of Contractor's Subcontractors, and of Sub-Subcontractors to verify payments made to same. However, no Claim for additional compensation shall be considered by Town because of payments of wage rates in excess of the applicable rate provided herein.

It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialmen, artisan, laborer, or subcontractor, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the project of whatever nature or kind so erected or to be erected by virtue of this Contract, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas.

The Contractor represents and warrants the following to the Town (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Town to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work:

1. that it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
2. that it is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
3. that it is authorized to do business in the State of Texas and properly licensed by all necessary governmental, public and quasi-public authorities having jurisdiction over it, the Work, or the site of the Project; and
4. that the execution of the Contract and its performance thereof are within its duly-authorized powers.

The Contract Documents shall be construed and interpreted by applying Texas law. Exclusive venue for any litigation concerning the Contract Documents shall be Denton County, Texas.

Although the Construction Agreement has been drafted by the Town, should any portion of the Construction Agreement be disputed, the Town and Contractor agree that it shall not be construed more favorably for either party.

The Contract Documents are binding upon the Town and Contractor and shall inure to their benefit as well as that of their respective successors and assigns.

If Town Council approval is not required for the Construction Agreement under applicable law, then the Construction Agreement "effective date" shall be the date on which the Mayor or Town Manager and Town Secretary or their designees have signed the Construction Agreement. If the Mayor or Town Manager and Town Secretary sign on different dates, then the later date shall be the effective date.

IN WITNESS WHEREOF, the Town and the Contractor, respectively, have caused this Agreement to be duly executed in the day and year first herein written in two copies, all of which to all intents and purposes shall be considered as the original.

This Agreement will be effective on the ____ day of _____, 20____.

TOWN OF FLOWER MOUND

CONTRACTOR

Steve Dixon, MAYOR

_____ (Signature)

_____ (Printed Name)

_____ (Position)

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST:_____
Theresa Scott, TOWN SECRETARY

ATTEST:_____ (Signature)

_____ (Position)



TOWN COUNCIL AGENDA ITEM NO. 7

CONSENT ITEM

DATE: June 7, 2021

FROM: Kari Biddix, Park Development Manager

ITEM: Consider approval of the purchase and installation of the 2020-21 Playground Replacements project, for Grand Park Playground, from Webuildfun, Inc., through the Texas Local Government Purchasing Cooperative, in the amount of \$250,124.27.

BACKGROUND INFORMATION: The Community Development Corporation and Town Council approved various playground upgrades in the Fiscal Year 2020-2021 after recommendation from the Parks Board for Park and Recreation needs for the Capital Improvement Program projects. Grand Park playground is one of the playgrounds funded.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: A decision to not approve the purchase and installation of the play equipment for Grand Park will result in the playground not getting renovated.

FISCAL IMPACT: \$250,124.27

Proposed Expenditure/(Revenue):	Account Number(s):
\$250,124.27	317-110-90821

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

Total project cost is \$350,000. Funding sources are:

- Dedicated Sales Tax \$ 350,000

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Buyboard Proposal

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

**CUSTOMER INFORMATION**

Customer: **Town of Flower Mound**
 Contact: **Kari Biddix**
 Contact Info: **Kari.Biddix@flower-mound.com**
 Project Name: **Grand Park**
 Site Address: **6201 Madeline Lane, Flower Mound**
 End User: **Town of Flower Mound**

CONSULTANT	
Tracy Shore	(469) 416-1323

QUOTE	
Quote Date	Valid Until
5/14/2021	7/30/2021
Est. Delivery:	Est. Install
Special Order	2021

Buyboard Contract # 592-19

Buyboard Vendor 2904

ITEM	DESCRIPTION	QTY	EACH	TOTAL
MIRACLE	Miracle custom playground equipment design 61_44278462141 plus Custom Design Studio	1		\$143,067.02
FREIGHT	Freight			\$6,003.00
DISCOUNT	Discount			-\$29,166.25
INSTALL	Installation of new playground equipment, INCLUDING demo and disposal of existing play equipment, excavation and disposal of soil in added area, excavation and disposal of existing EWF. All concrete work to be done by "others".			\$49,089.76
TURF	Install Syntipede Plat 321 turf safety surfacing with premium infill; 8"-10" sub-base material; pad for designated fall height throughout; trample zone areas; and blue synthetic turf "river".			\$81,130.74



TAX EXEMPT Tax Exemption Certificate Provided

TOTAL \$250,124.27

Payment Terms Net 30 To be invoiced in full upon completion of project.

Prices reflected on quote assumes all site work to be done by others unless noted above.

* All drainage within the playground border and away from the play area to be done by "other" unless noted above. * Price assumes border by "other" unless noted above.

* No site restoration is included unless noted above. * Additionally, no bond or special insurance coverages are included unless noted above.

Send purchase order to: tracy@webuildfun.com

Price assumes all site work, drainage away from play area & border to be provided by "other" at no cost to webuildfun unless specified otherwise in the quote above. This includes site prep, grade work, drainage, construction fencing, concrete borders and site restoration. All additional services can be quoted upon request. webuildfun, inc. warrants the labor for replacement parts for 1 year, if webuildfun, inc provided the original installation. In the event rock is encountered, additional charges may be assessed. It is the responsibility of the owner to obtain permit(s) unless specified above. It is the responsibility of the owner to locate all underground utility lines. webuildfun, Inc will assist with this by requesting a line locate from Dig Tess, at the owner's request. webuildfun, Inc will make every reasonable effort to respect all marked utility lines, and will repair damage(s) caused by webuildfun, Inc to marked utilities. webuildfun, Inc will not be responsible for damage to unmarked utilities. Prices are guaranteed for 30 days from the date listed on quote.



TOWN COUNCIL AGENDA ITEM NO. 8

CONSENT ITEM

DATE: June 7, 2021

FROM: Brian Waltenburg, Assistant Director of Engineering

ITEM: Consider approval of a Professional Services Agreement with ECS Southwest, LLP, to provide material testing services for the Waketon Road project in the amount of \$121,308.00.

BACKGROUND INFORMATION: On May 12, 2021, a construction agreement for the Waketon Road project, in the amount of \$4,335,111.00, was awarded to Ed Bell Construction Co. The attached Professional Services Agreement provides for material testing associated with the Waketon Road project.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: Materials Testing is required as a part of the recently awarded construction project.

FISCAL IMPACT: \$121,308.00

Proposed Expenditure (Revenue):	Account Number(s):
\$121,308.00	308-103-70465

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

Total project cost is \$ 8,466,905. Funding sources are:

- Interlocal \$ 2,966,905
- Escrow \$ 60,839
- TIRZ \$ 5,209,161
- Tax debt \$ 230,000

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 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
ECS SOUTHWEST, LLP**

This contract is entered into on this 7th day of June, 2021, 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 Waketon Road (Cross Timbers Drive to 1,350’ East of Chinn Chapel) 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 Waketon Road (Cross Timbers Drive to 1,350’ East of Chinn Chapel) project

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

III. Payment for Services

Total payment for services described herein shall be a sum not to exceed one hundred twenty-one thousand three hundred eight and No/100 Dollars (\$121,308.00). 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 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 actual services performed and reimbursable expenses incurred by CONSULTANT during the previous month for which payment is sought. Each invoice shall be itemized to show the amount of work performed that month broken down by the identity of the person(s) performing such work, the amount of time expended by such person(s) in performing that work, the billing rate for each such person, and a brief summary of the work or testing performed by each such person. Each invoice shall also state the percentage of work completed on the Project, the total of the current invoice amount and a running total balance for the Project to date.

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

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

IV. Revisions of the Scope of Services

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

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

V. Term

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

VI. Contract Termination Provision

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

VII. **Ownership of Documents**

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

VIII. **Insurance**

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

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

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

The following policies and coverage shall be required:

1. Worker's Compensation Insurance (as required by law) with the policy endorsed to provide a waiver of subrogation as to TOWN; such policy to provide for Employers' Liability Insurance of not less than \$100,000.00 for each accident, \$100,000.00 disease-each employee, \$500,000.00 disease-policy limit;
2. Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractor's and Contractual Liability, including but not limited to coverage for all of the indemnification obligations of

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

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

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

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

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

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

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

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

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

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

D. CONSULTANT agrees to the following:

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

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

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

IX.

Right to Inspect Records

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

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

X.

Successors and Assigns

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

XI.
CONSULTANT's Liability

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

XII.
Indemnification

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

XIII. Independent Contractor

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

XIV. Default

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

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

- (a) Specific performance of the Contract;
- (b) Re-performance of this Contract at no extra charge to TOWN; or
- (c) Monetary damages in an amount not to exceed:

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

(2) The total dollar amount of this Contract.

XV.

Provisions Surviving Termination

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

XVI.

Changes

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

XVII.

Conflicts of Interest

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

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

XVIII.

Confidential Information

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

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

XIX. **Notice Information**

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

Brian Waltenburg
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:

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.

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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: Siddharth Neekhra

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.

Marcellina Okorie
Notary Public, State of Texas

My Commission Expires:

08/30/24



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 cement-stabilized laboratory and in-field testing for pavement 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 (if held) 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 general 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. Observation and testing of non-structural or temporary components.
8. 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
- Asphalt Observation, Testing, and Coring

APPENDIX B: ESTIMATED FEES & STANDARD FEE SCHEDULE

ESTIMATED FEES

Description of Services	Detail	Estimate	Quantity	Unit	Rate	Total
Earthwork						
Engineering Technician	<i>Sample Pickups</i>	<i>3 Events</i>	12	hours	\$ 55.00	\$ 660.00
Engineering Technician	<i>Utility Lines</i>	<i>38 Events</i>	171	hours	\$ 55.00	\$ 9,405.00
Engineering Technician	<i>Utility Structures</i>	<i>28 Events</i>	98	hours	\$ 55.00	\$ 5,390.00
Engineering Technician	<i>Riprap & Ret. Walls</i>	<i>15 Events</i>	68	hours	\$ 55.00	\$ 3,740.00
Engineering Technician	<i>Pavement - Road</i>	<i>40 Events</i>	140	hours	\$ 55.00	\$ 7,700.00
Engineering Technician	<i>Pavement - Driveway</i>	<i>16 Events</i>	40	hours	\$ 55.00	\$ 2,200.00
Engineering Technician	<i>Stamped Concrete</i>	<i>12 Events</i>	30	hours	\$ 55.00	\$ 1,650.00
Engineering Technician	<i>Sidewalks & Ramps</i>	<i>18 Events</i>	46	hours	\$ 55.00	\$ 2,530.00
Nuclear Gauge Fee			167	events	\$ 75.00	\$ 12,525.00
St. Proctor (Moist./Dens. Rel.)	<i>Standard Proctor</i>		6	each	\$ 140.00	\$ 840.00
Atterberg Limits Tests	<i>Plasticity Index</i>		6	each	\$ 80.00	\$ 480.00
Washed Sieve (- #200 Sieve)	<i>Percent Fines</i>		6	each	\$ 60.00	\$ 360.00
Vehicle Charge			170	trips	\$ 35.00	\$ 5,950.00
Subtotal:						\$ 53,430.00
Concrete						
Engineering Technician	<i>Utility Structures</i>	<i>20 Events</i>	70	hours	\$ 55.00	\$ 3,850.00
Engineering Technician	<i>Riprap & Ret. Walls</i>	<i>28 Events</i>	126	hours	\$ 55.00	\$ 6,930.00
Engineering Technician	<i>Pavement - Road</i>	<i>20 Events</i>	110	hours	\$ 55.00	\$ 6,050.00
Engineering Technician	<i>Pavement - Driveway</i>	<i>16 Events</i>	56	hours	\$ 55.00	\$ 3,080.00
Engineering Technician	<i>Stamped Concrete</i>	<i>12 Events</i>	44	hours	\$ 55.00	\$ 2,420.00
Engineering Technician	<i>Sidewalks & Ramps</i>	<i>18 Events</i>	64	hours	\$ 55.00	\$ 3,520.00
Conc. Cylinders (Comp. Str.)			536	each	\$ 18.00	\$ 9,648.00
Material Sample Pickup			114	trips	\$ 55.00	\$ 6,270.00
Vehicle Charge			114	trips	\$ 35.00	\$ 3,990.00
Subtotal:						\$ 45,758.00
Project Management						
Administrator / Clerical / Dispatch			23	hours	\$ 50.00	\$ 1,150.00
Project Manager			96	hours	\$ 120.00	\$ 11,520.00
Project Principal			56	hours	\$ 165.00	\$ 9,240.00
Vehicle Charge			6	trips	\$ 35.00	\$ 210.00
Subtotal:						\$ 22,120.00
PROJECT TOTAL:						\$ 121,308.00

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. **Construction in Double Oak and in Flower Mound are expected to be performed separately and not simultaneously.**
3. Utility trench excavation backfilling will be completed at a rate of 2 lifts per day for a length of 100 linear feet per day.
4. Utility structures includes box culverts, headwalls, storm structures, inlets, manholes, light pole bases, etc.
5. Subgrade preparation (stabilization/compaction) will be completed and concrete for road pavement will be placed at a rate of roughly 200 linear feet per event (pour). Two sets of concrete sample cylinders are expected for each concrete placement event.
6. Subgrade preparation (stabilization/compaction) will be completed and concrete for sidewalks will be placed at a rate of 50-100 linear feet per event (pour). One 1 set of concrete sample cylinders is expected for each concrete placement event.
7. Concrete for curbs will be completed at a rate of 200 linear feet per event (pour) in two phases for joints.
8. Subgrade preparation (compaction) and concrete for sidewalks will be completed each with each individual section completed on separate/independent events at a minimum.
9. Subgrade preparation (compaction) and concrete for driveways will be completed each with one to two completed on separate/independent events at a minimum.
10. 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.
11. Overtime is not expected due to the project location and construction work hours constraints.
12. For budgeting purposes, all onsite services (example: earthwork and concrete) are estimated to be performed on separate trips and independent of each other.
13. Reinforcing steel will be observed by the Town of Flower Mound Inspectors.

STANDARD FEE SCHEDULE

Description of Services	Notes	Unit Rate
Field Services		
• Engineering Technician		\$ 55.00 / hour
• Senior Engineering Technician		\$ 60.00 / hour
• Specialty Engineering Technician		\$ 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. 9

REGULAR ITEM

DATE: June 7, 2021

FROM: Claire Barnes, Planner

ITEM: Public Hearing to consider an ordinance granting Specific Use Permit No. 469 (SUP21-0003– Turning Pointe Dance Studio) to permit a Dancing, drama, or music school or studio use. The property is generally located south of Garden Road and west of Morriss Road. *(The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its May 24, 2021, meeting.)*



SUMMARY DATA:

- Lot Size – 1.05 acres
- Existing Building – 5,590 sf
- Current Zoning – PD-13 with Office Uses
- SMARTGrowth – N/A
- Traffic Analysis – N/A
- Exceptions – None
- Incentives – None

BACKGROUND INFORMATION: Attached is the Planning and Zoning Commission (P&Z) report and backup for this item.

In order to comply with the Town's parking requirements, the applicant indicated that they would remove the existing dumpster enclosure located on site and install an additional parking spot. This condition has been included in the draft ordinance.

ATTACHMENTS:

1. Planning and Zoning Commission Staff Report
2. Draft Ordinance

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

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



PLANNING AND ZONING COMMISSION

AGENDA ITEM NO: 2

REGULAR ITEM

DATE: May 24, 2021

FROM: Claire Barnes, Planner

ITEM: **Public Hearing to consider an ordinance granting Specific Use Permit No. 469 (SUP21-0003– Turning Pointe Dance Studio) to permit a Dancing, drama, or music school or studio use. The property is generally located south of Garden Road and west of Morriss Road.**

I. ITEM SUMMARY

This application has been reviewed by DRC and determined to be ready for consideration by the Planning and Zoning Commission. There are no outstanding issues.

This application will require final action by the Town Council.

II. APPLICATION ANALYSIS

The purpose of the application is to request approval of a Specific Use Permit (SUP 469) to permit a dancing, drama, or music school or studio use to occupy a an existing 5,590 square-foot building located on Lot 1 of the Bright Steps Addition (2801 Morriss Road).

The subject site is approximately 1.05 acres. The property is zoned Planned Development No. 13 with underlying Office zoning. The land use is medium density residential. A dancing, drama, or music school or studio use requires approval of a Specific Use Permit (SUP) in Office zoning.

On May 16, 1988, P&Z approved site plan SP05-88 Bright Steps Day Care Facility, which included an approximately 5,590 square-foot building on the subject property. The property has more recently operated as a church, as reflected on the most recently approved elevations.

Dancing, drama, or music school or studio uses utilize a parking ratio of one (1) space per 250 square feet of floor area. 5,590 square feet would require 22 parking spaces. The site currently possesses 17 spaces. Town code permits a deviation of 20% without additional approval from Town Council. As the site is currently 23% under parked, the applicant is proposing to remove the dumpster enclosure and install at least one additional space. This modification would raise the total amount of spaces to 18 (20% under parked), which would bring the site into compliance with the current Town code's parking requirements. If this SUP is approved, an amended site plan application will be required for the removal of the dumpster and addition of the required space.

Except for the additional parking spot, the applicant is not proposing any other changes to the site plan, landscape plan, or elevations in conjunction with this application.

The applicant indicated in their letter of intent that the location will be open Monday-Saturday with hours varying each day between 9am and 9pm.

The ordinance for the SUP will include the following condition for the dancing, drama, or music school or studio use:

1. An amended site plan application will be required to show the removal of the dumpster/dumpster enclosure and the addition of the required parking space.

III. CORRESPONDENCE

The Town Code requires both public notice in a newspaper of general circulation (Denton Record Chronicle) and notification of the property owners within 200 feet of the subject property for all zoning application requests. SUP21-0003 had a total of 23 Property Owner Notifications mailed. At the time this report was written, staff had received 9 items of correspondence in support and 0 items of correspondence in opposition to the request. All written correspondence was sent directly to the Planning and Zoning Commission according to the new public communication process.

IV. ATTACHMENTS

A. Background Information

1. Vicinity Map
2. Letter of Intent
3. Approved Site Plan, Landscape Plan, and Elevations

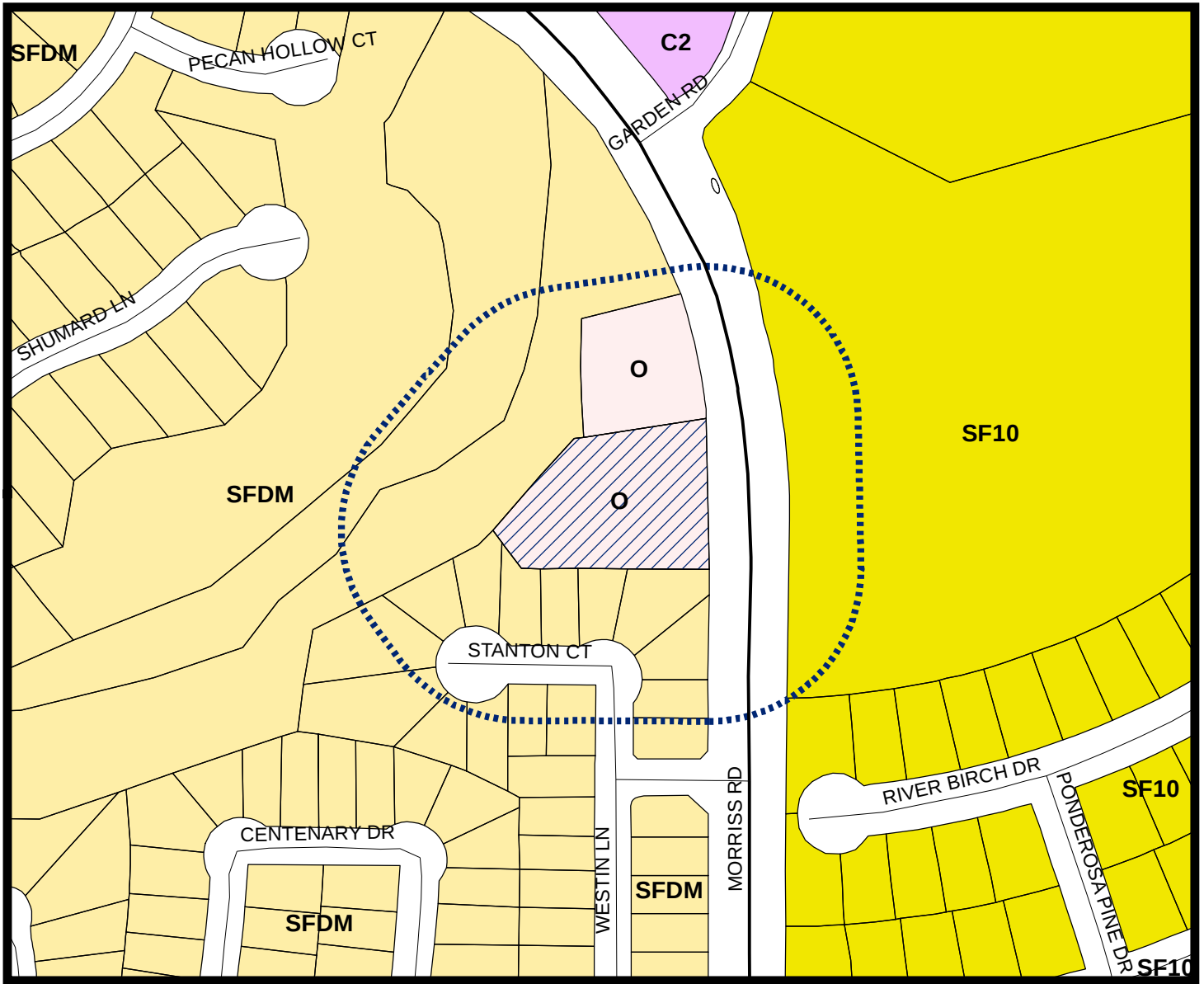
B. Application Details

1. Specific Use Permit Package

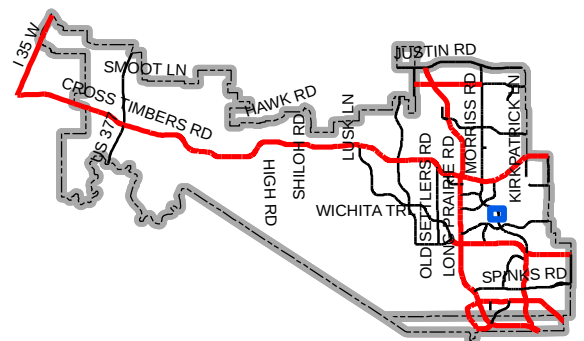
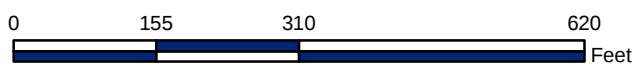
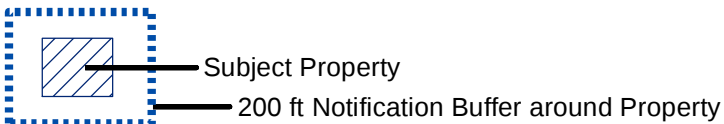


Vicinity Map

Reference Project: SUP21-0003



LEGEND



Map Location



May 14, 2021

Re: Letter of Intent: Specific Use Permit

To the Town of Flower Mound Planning and Zoning Department:

My name is Amy Houston and I am the owner of Turning Pointe Dance Studio. I am requesting a Special Use Permit for the building I am in the process of purchasing in Flower Mound.

The building located at 2801 Morriss Rd is currently operating as a church, so we will need an SUP to operate as a dance studio.

The existing zone is Planned Development 13 which is designated for Office use.

The acreage of the property is 1.050 according to the Tax Certificate.

The studio's hours of operation are as follows:

Mondays 10:00-11:00am and 4:00-9:00pm

Tuesdays 10:00-11:00am and 4:00-9:00pm

Wednesdays 4:00-9:00pm

Thursdays 11:00am-12:00pm and 4:00-9:00pm

Fridays 4:00-7:00pm

Saturdays 9:00-1:00pm

Sundays closed

To comply with Town Code regarding parking, we will remove the dumpster and add a parking space giving us a total of 18 spaces.

I am hopeful the Planning and Zoning committee can review this information as soon as possible.

I am excited about the opportunity to provide a forever dance home to our studio families who have supported us for the last sixteen years.

Please let me know if you need further documentation.

Sincerely,

Amy Houston

Owner/Artistic Director

Turning Pointe Dance Studio

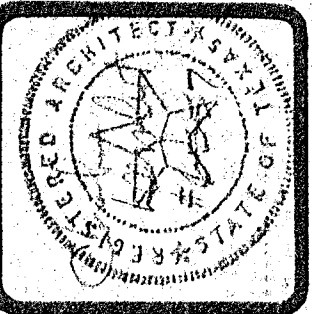
972.539.7017

2851 Cross Timbers Rd, Suite 101

Flower Mound, TX 75028

www.TurningPointeTX.com

[illegible]



MORRIS RD. DAY CARE
FLOWER MOUND, TEXAS

1001 CROSS TIMBERS BLVD.
SUITE 2330
FLOWER MOUND, TEXAS 75028
214 539-8838

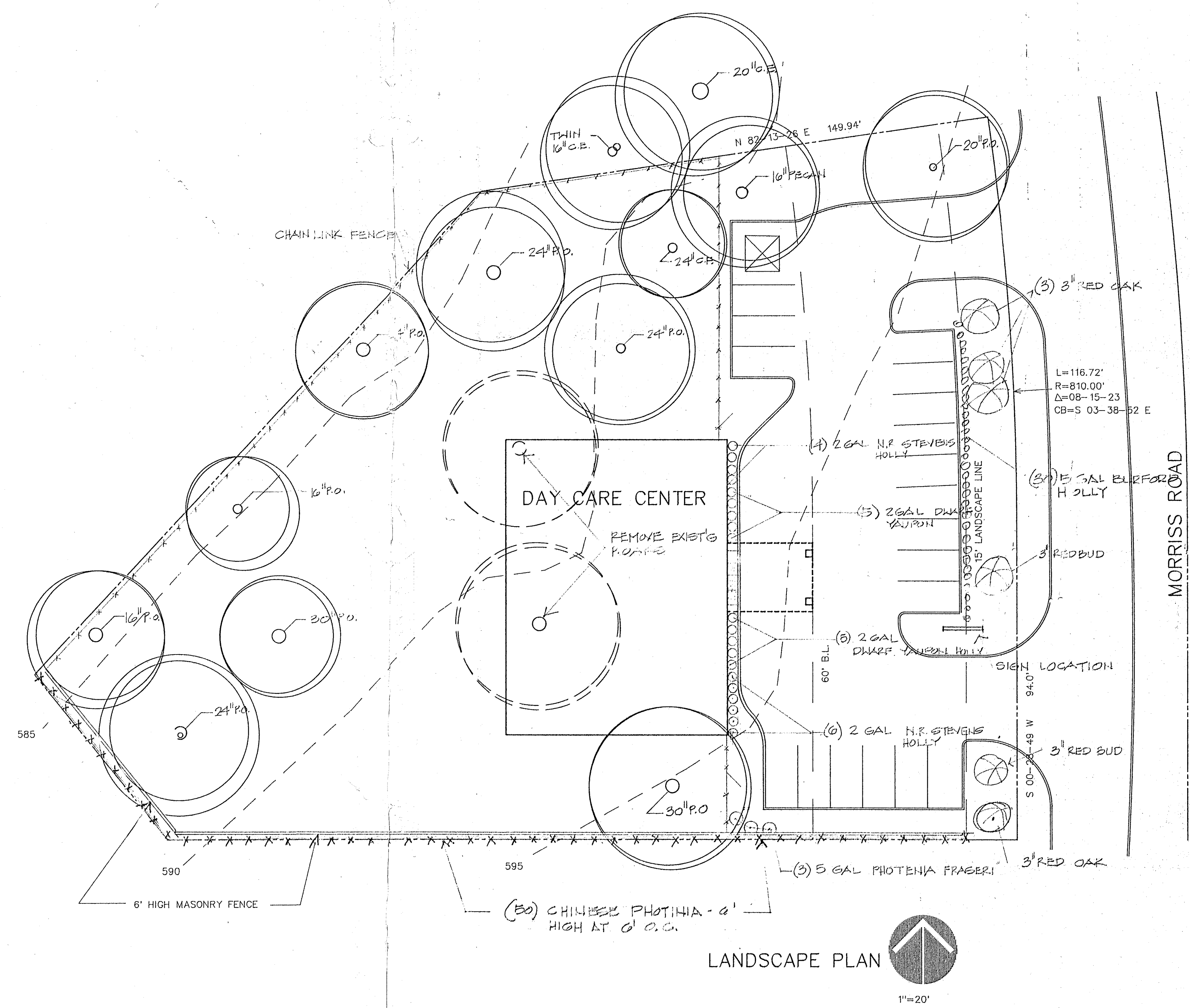
Lambert Associates Inc.
Architects

drawn by: C.L.
date: 5-2-88
revisions:
5-6-88
5-12-88

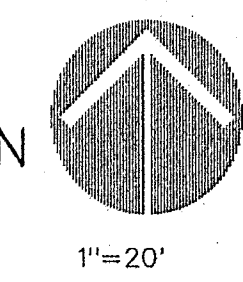
job no. 88012

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L.S. 1

L.P.05-88



LANDSCAPE PLAN





**The Following Plat/Graphic
Case Number ASP15-0071
Was Administratively Approved
On Date OCT. 29, 2015**

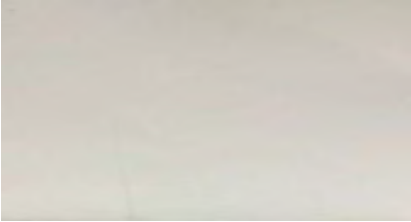


**FAUX STONE
VENEER**



MESA GREY

**STUCCO/EFIS
COLOR**



D13-1 OLYMPIC OFF WHITE

**EXISTING
BRICK**



BURGUNDY BRICK

**EXISTING
STOREFRONT SYSTEM**



DARK BRONZE
STOREFRONT FRAME

**EXISTING
METAL ROOF**



“SILVER”

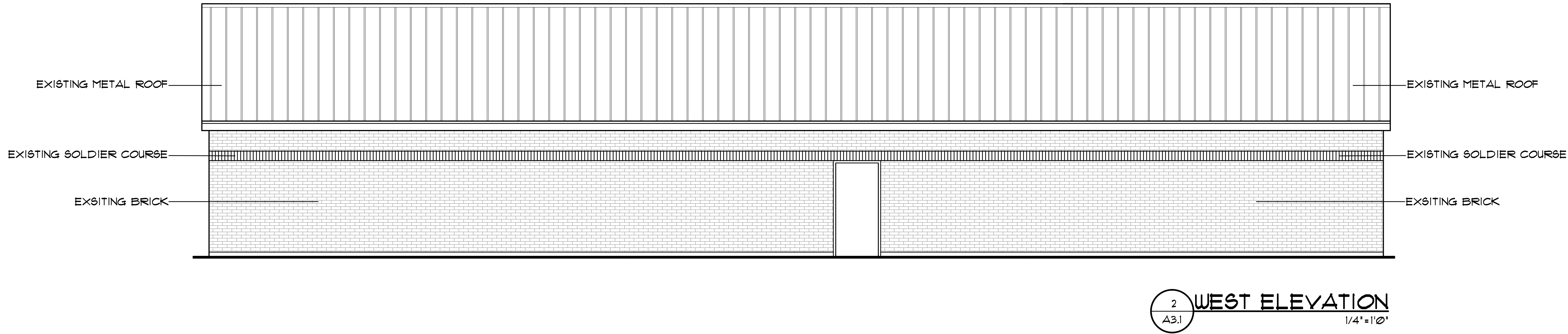
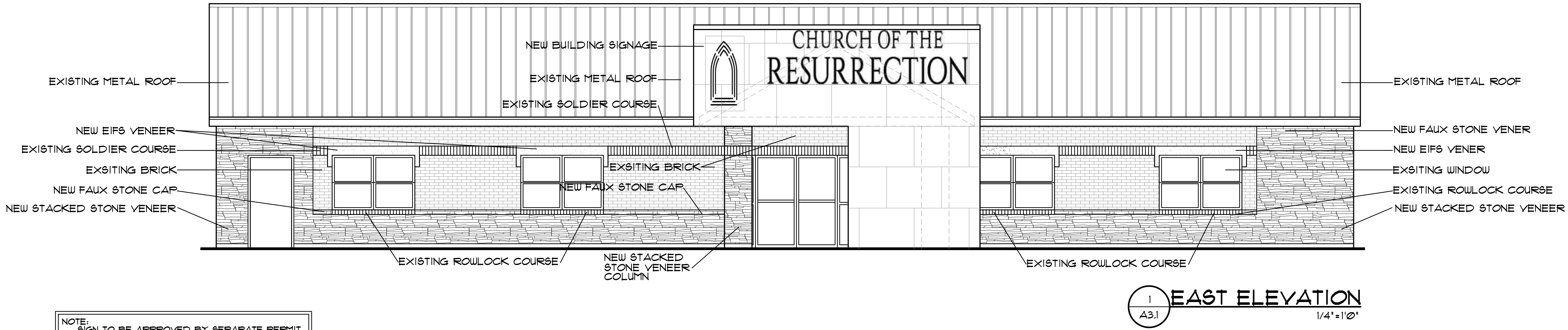
OWNER
CHURCH OF THE RESSURECTION
FR. BRIAN PAPE
2801 MORRISS ROAD
FLOWER MOUND, TX. 75028

ARCHITECT
M J WRIGHT & ASSOCIATES, INC.
MICHAEL J WRIGHT
8233 MID CITIES BLVD. STE A
NORTH RICHLAND HILLS, TX. 76182



**FAÇADE SAMPLE BOARD
CHURCH OF THE RESURRECTION
CASE NUM: ASP15-0071**

**The Following Plat/Graphic
Case Number ASP15-0071
Was Administratively Approved
On Date OCT. 29, 2015**



MATERIAL TABULATION CHART				
	NORTH	SOUTH	EAST	WEST
1. TOTAL FACADE SF.	883 SQ.FT.	883 SQ.FT.	888 SQ.FT.	888 SQ.FT.
2. FACADE SF. (EXCLUSIVE OF DOORS AND WINDOWS)	706 SQ.FT.	765 SQ.FT.	724 SQ.FT.	865 SQ.FT.
3. DOORS & WINDOWS SF.	177 SQ.FT.	118 SQ.FT.	164 SQ.FT.	23 SQ.FT.
4. PRIMARY MASONRY (80% MIN.)	565 SQ.FT.	612 SQ.FT.	580 SQ.FT.	632 SQ.FT.
BRICK SF.	671 SQ.FT.	730 SQ.FT.	317 SQ.FT.	865 SQ.FT.
STONE SF.		20 SQ.FT.	221 SQ.FT.	
TILT WALL SF.				
5. SECONDARY MASONRY (20% MAX.)	141 SQ.FT.	153 SQ.FT.	144 SQ.FT.	173 SQ.FT.
STUCCO SF.				
EIFS SF.	35 SQ.FT.	15 SQ.FT.	258 SQ.FT.	
HARDIPLANK SF.				
DETAIL ANY ADDITIONAL				

The Following Plat/Graphic
Case Number **ASP15-0071**
Was Administratively Approved
On Date **OCT. 29, 29015**

ELEVATIONS	
CHURCH OF THE RESURRECTION 2801 MORRIS ROAD FLOWER MOUND, DENTON COUNTY, TEXAS PREPARED 10/21/2015	
OWNER CHURCH OF THE RESURRECTION TOMMY TUCKER FR. BRIAN PAPE 2801 MORRIS RD. FLOWER MOUND TX 76028	ARCHITECT MJ WRIGHT & ASSOCIATES, INC. MICHAEL URIGHT 8233 MID CITIES BLVD. STE A NORTH RICHLAND HILLS TX 76182 817-268-5555

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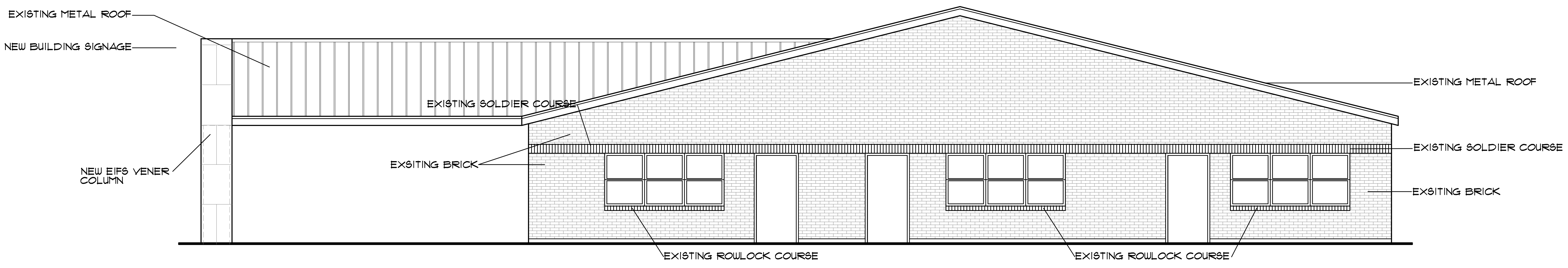
CHURCH OF THE
RESURRECTION
FACADE RENOVATIONS
FLOWER MOUND TEXAS



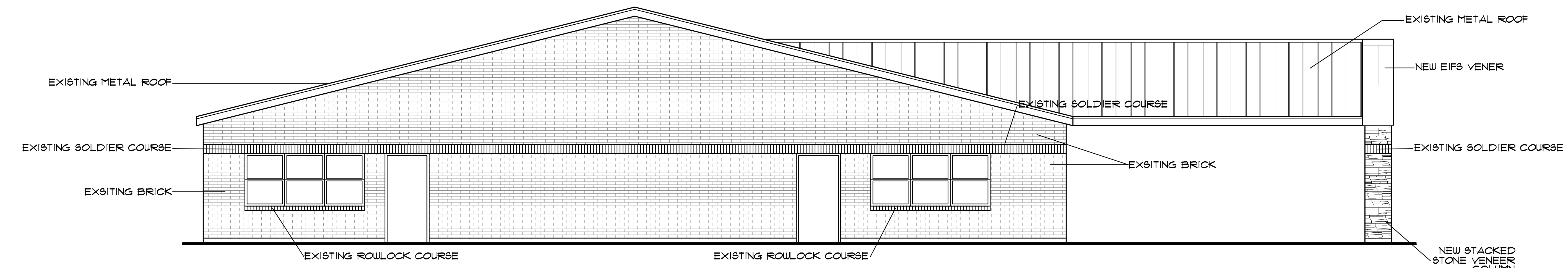
M. J. WRIGHT & ASSOCIATES, INC.
601 W. HARWOOD ROAD
HURST TX 76054-3161
OFFICE: 817/268-5555
FAX: 817/268-5556
WWW.MJWRIGHT.COM

ARCHITECTS

Sheet No.
A3.1
Project No.
15064CHU



1 NORTH ELEVATION
A3.2
1/4" = 1'0"



2 SOUTH ELEVATION
A3.2
1/4" = 1'0"

MATERIAL TABULATION CHART

	NORTH	SOUTH	EAST	WEST
1. TOTAL FACADE SF.	883 SQ.FT.	883 SQ.FT.	888 SQ.FT.	888 SQ.FT.
2. FACADE SF. (EXCLUSIVE OF DOORS AND WINDOWS)	706 SQ.FT.	765 SQ.FT.	724 SQ.FT.	865 SQ.FT.
3. DOORS & WINDOWS SF.	177 SQ.FT.	118 SQ.FT.	164 SQ.FT.	23 SQ.FT.
4. PRIMARY MASONRY (80% MIN.)	565 SQ.FT.	612 SQ.FT.	580 SQ.FT.	692 SQ.FT.
BRICK SF.	671 SQ.FT.	730 SQ.FT.	317 SQ.FT.	865 SQ.FT.
STONE SF.		20 SQ.FT.	221 SQ.FT.	
TILT WALL SF.				
5. SECONDARY MASONRY (20% MAX.)	141 SQ.FT.	153 SQ.FT.	144 SQ.FT.	173 SQ.FT.
STUCCO SF.				
EIFS SF.	35 SQ.FT.	15 SQ.FT.	258 SQ.FT.	
HARDIPLANK SF.				
DETAIL ANY ADDITIONAL				

ELEVATIONS

CHURCH OF THE RESURRECTION
2801 MORRIS ROAD
FLOWER MOUND, DENTON COUNTY, TEXAS
PREPARED 10/21/2015

OWNER
CHURCH OF THE RESURRECTION
TOMMY TUCKER
8233 MID CITIES BLVD. STE. A
NORTH RICHLAND HILLS TX 76182
817-268-5555

ARCHITECT
MJ WRIGHT & ASSOCIATES, INC.
MICHAEL WRIGHT
2801 MORRIS RD.
FLOWER MOUND TX 75028

The Following Plat/Graphic
Case Number **ASP15-0871**
Was Administratively Approved
On Date **OCT. 29, 29015**

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Date 10/21/15
Drawn By MJW
Checked By MJW
Revisions

THIS ELECTRONIC DRAWING FILE IS RELEASED UNDER THE AUTHORITY OF MICHAEL J. WRIGHT, ARCHITECT, TEXAS REG.# 11130. THE USER OF THIS ELECTRONIC DRAWING FILE IS RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION CONTAINED HEREIN. THE USER OF THIS ELECTRONIC DRAWING FILE IS RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION CONTAINED HEREIN. THE USER OF THIS ELECTRONIC DRAWING FILE IS RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION CONTAINED HEREIN.

CHURCH OF THE RESURRECTION
FACADE RENOVATIONS
FLOWER MOUND TEXAS

M. J. WRIGHT & ASSOCIATES, INC.
ARCHITECTS

601 W. HARWOOD ROAD
SUITE 300
HOUSTON, TEXAS 77002
PHONE: 817.268.5555
FAX: 817.268.5556
WWW.MJWRIGHT.COM

Sheet No.
A3.2
Project No.
15064CHU

Applicant will submit Amended Site Plan application to show removal of dumpster and dumpster enclosure and to show addition of at least one required parking space.

Site plan details include:

- Fences:** 5' HIGH CHAIN LINK FENCE, 6' HIGH MASONRY FENCE, 6' HIGH SCREEN FENCE AROUND DUMPSTER, 5' HIGH CHAIN LINK FENCE.
- Parking:** HAND CAPPED PARKING, EXISTING PARKING TO REMAIN - REPAIR, RESURFACE AND RESTRIPE AS NOTED.
- Other Features:** FIRE LANE, 15' LANDSCAPE LINE, EXISTING MONUMENT SIGN LOCATION - REF. 02/70.
- Dimensions and Bearings:**
 - N 82-50-47 E 179.90
 - N 89-03-01 E 163.76
 - N 39-27-48 W 51.85
 - N 89-31-11 W 248.96
 - S 00-28-43 W 54.0
 - 24'-0"
 - 29'-4"
 - 77'-0"
 - 12'-0"
 - 25'-0"
 - 19'-4"
 - 17'-0"
 - 13'-0"
 - 43'-1"
 - 25'
 - 60' BL
 - 18'-0"
 - 45'-0"
 - 17'-0"
 - 107.92'
 - R=810.00'
 - Δ=07-38-02
 - CB=S 03-20-12 E
 - 107.84'

01 SITE PLAN
SCALE: R.T.S.

MORRIS ROAD

Applicant will submit Amended Site Plan application to show removal of dumpster and dumpster enclosure and to show addition of at least one required parking space.

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

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, "LAND DEVELOPMENT REGULATIONS," OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY APPROVING SPECIFIC USE PERMIT NO. 469 (SUP-469) FOR A DANCING, DRAMA, OR MUSIC SCHOOL OR STUDIO USE ON CERTAIN PROPERTY DESCRIBED AS 1.05 ACRES OF LAND AND BEING ALL OF LOT 1 OF THE BRIGHT STEPS ADDITION AND ZONED PLANNED DEVELOPMENT DISTRICT NO. 13 (PD-13) WITH OFFICE USES; 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 heretofore adopted the Land Development Regulations of the Town of Flower Mound, as amended, which Ordinance regulates and restricts the location and use of buildings, structures, and land for trade, industry, residence, and other purposes, and provides for the establishment of zoning districts of such number, shape, and area as may be best suited to carry out these regulations; and,

WHEREAS, in accordance with Chapter 78 of the Land Development Regulations, the owner of the property described as 1.05 acres of land and being all of Lot 1 of the Bright Steps Addition, Denton County, Texas has filed an application for a Specific Use Permit to allow a dancing, drama, or music school or studio use; and,

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on May 24, 2021, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on June 7, 2021, with respect to the Specific Use Permit described herein; and,

WHEREAS, the Town has complied with all requirements of Chapter 211 of the Local Government Code, Chapter 78 of the Land Development Regulations, and all other laws dealing with notice, publication, and procedural requirements for the approval of a Specific Use Permit on the property described herein; and,

WHEREAS, the Town Council finds that the Specific Use Permit should be granted as outlined herein as it is 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

Ordinance No. _____**Page 2**

the general public.

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

SECTION 1

The Land Development Regulations of the Town of Flower Mound, Texas, as amended, are hereby amended on the hereinafter described property and area as shown below:

1.05 acres of land, being all of Lot 1 of the Bright Steps Addition, Denton County, Texas and zoned Planned Development District No. 13 (PD-13) With Office Uses.

Specific Use Permit No. 469 is granted to allow a dancing, drama, or music school or studio use as more fully described in the exhibits attached hereto and incorporated herein, subject to the following condition:

1. An amended site plan application will be required to show the removal of the dumpster and dumpster enclosure and the addition of one required parking space.

SECTION 2

The conceptual site plan of the proposed dancing, drama, or music school or studio use, attached hereto as Exhibit "A" and incorporated herein for all purposes allowed by law, is hereby approved as the conceptual site plan for this Specific Use Permit.

SECTION 3

The official map of the Town of Flower Mound is amended and the Director of Planning Services is directed to revise the official zoning map to reflect the approved Specific Use Permit, as set forth above.

SECTION 4

The use of the property described above shall be subject to all applicable regulations contained in the Land Development Regulations and all other applicable and pertinent ordinances of the Town of Flower Mound including the regulations contained in Planned Development District-13 (PD-13).

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

Ordinance No. _____**Page 3**

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 Land Development Regulations or any ordinances governing zoning 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.

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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 7TH DAY OF JUNE, 2021.

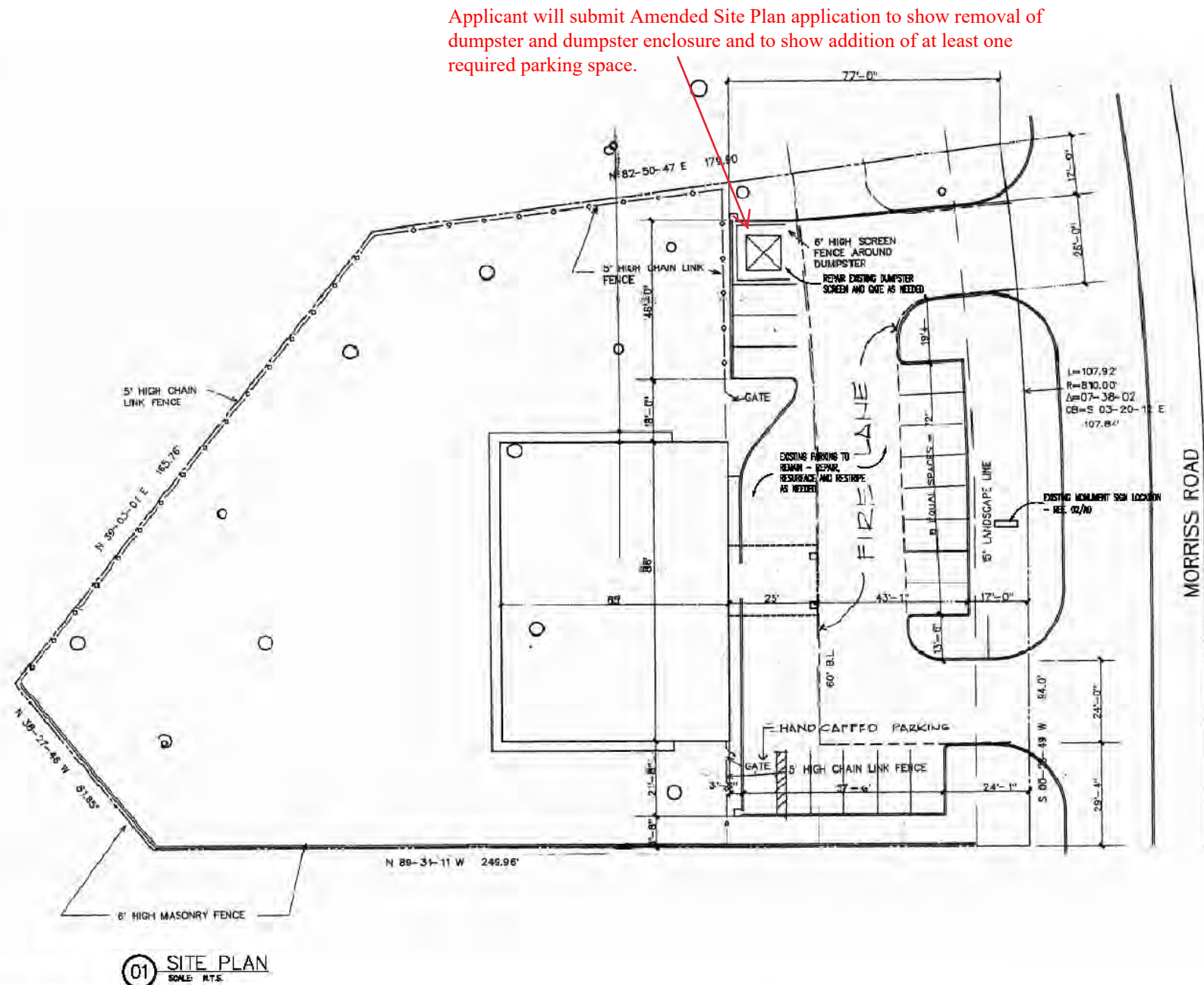
APPROVED:

Steve Dixon, MAYOR**ATTEST:**

Theresa Scott, TOWN SECRETARY

Exhibit A

2801 Morriss Rd (Existing Site Plan)





TOWN COUNCIL AGENDA ITEM NO. 10

REGULAR ITEM

DATE: June 7, 2021

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

ITEM: Consider approval of a Construction Agreement with Clark Electric, Inc., for the Stonecrest Pump Station Phase I (Auxiliary Power) project, in the amount of \$1,856,680.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On May 19, 2021, bids were received and opened for the Stonecrest Pump Station Phase I (Auxiliary Power) project (Bid # 2021-74-B). Clark Electric, Inc. submitted the lowest qualified bid of the seven responding bidders at a bid amount of \$1,856,680.00. The project includes installation of a 1,600 KW backup generator, switchgear modifications, pavement improvements and drainage improvements.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: The proposed generator will provide auxiliary power to the Stonecrest Pump Station, a facility that serves western Flower Mound. A decision not to approve the Construction Agreement would result in continued reliance of a critical component of the Town's water distribution system with no backup electric power.

FISCAL IMPACT: \$1,856,680.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$351,390.00	601-900-98350
\$1,505,290.00	630-960-98350

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

Total project cost is \$2,550,000. Funding sources are:

- Impact fees \$ 550,000
- Utility debt \$ 2,000,000

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: 2021-74-B - Stonecrest Pump Station Phase I (Auxiliary Power)
Bid Opening: 5/19/2021 at 11:00 AM

Company	Base Bid
Clark Electric, Inc	\$ 1,856,680.00
Crescent Constructors, Inc	\$ 2,069,000.00
McDonald Municipal & Industrial, a Division of C.F. McDonald Electric, Inc	\$ 2,084,469.00
Fort Worth Civil Constructors, LLC	\$ 2,166,923.71
Rey-Mar Construction	\$ 2,309,593.71
Dake Construction	\$ 2,317,693.71
Winston Electric, Inc dba Acme Electric	\$ 2,752,494.71

****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: May 19, 2021

TOWN OF FLOWER MOUND
STONECREST PUMP STATION PHASE I (AUXILIARY POWER)

Bid #2021-74-B

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the “Agreement”), made and entered into this 7th day of June, 2021, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the “Town,” and Clark Electric, Inc., a corporation, hereinafter referred to as the “Contractor.” For and in consideration of the payment, agreements, and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

STONECREST PUMP STATION PHASE I
(AUXILIARY POWER)
Bid # 2021-74-B

in the Town of Flower Mound, Texas, and all extra work in connection therewith, under the terms as stated in this Agreement, and under the terms of the Contract Documents; and at his, her, or their own proper cost and expense to furnish all superintendence, labor, insurance, equipment, tools, and other accessories and services necessary to complete the said construction in accordance with all the Contract Documents, incorporated herein as if written word for word, and in accordance with the Plans, which include all maps, plats, blueprints, and other drawings and printed or written explanatory manner therefore, and the Conditions and Specifications as prepared by the Town or its consultant hereinafter called “Engineer”, who has been identified by the endorsement of the Contractor's written proposal, and the General Conditions, Supplemental Conditions, and Special Provisions of this Agreement, and the payment, performance, and maintenance bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Agreement.

ARTICLE 1. The Contract Documents shall consist of the following documents:

- A. The Construction Agreement;
- B. Properly executed Change Orders and Field Orders in writing and executed by the Town, the last in time being first in precedence;
- C. Any listed and numbered addenda;
- D. Special Provisions;

- E. Supplementary Conditions;
- F. Construction Drawings or Plans;
- G. Technical Specifications;
- H. Town's Standard Construction Details;
- I. The most current edition of the *Town of Flower Mound Design Criteria and Construction Standards* (by reference);
- J. *Occupational Safety and Health Standards – Excavation*, 20 CFR Part 1926 (by reference);
- K. *Texas Manual on Uniform Traffic Control Devices (TMUTCD)* (by reference);
- L. The General Conditions;
- M. *Public Works Construction Standards - North Central Texas, as amended* (by reference);
- N. Notice to Bidders;
- O. Instructions to Bidders;
- P. The Town's written notice to proceed to Contractor;
- Q. The Contractor's Bid Proposal;
- R. The Performance Bond, Payment Bond and Maintenance Bond; and
- S. Bid materials distributed by the Town that relate to the Project.

These Contract Documents are incorporated by reference into this Agreement as if set out in their entirety. The Contract Documents are intended to be complementary; what is called for by one document shall be as binding as if called for by all Contract Documents. It is specifically provided; however, that in the event of any inconsistency in the Contract Documents, the inconsistency shall be resolved by giving precedence to the Contract Documents in the order in which they are listed herein above. If, however, there exists a conflict or inconsistency between the Technical Specifications and the Construction Drawings, it shall be the Contractor's obligation to seek clarification as to which requirements or provisions control before undertaking any work on that component of the project. Should the Contractor fail or refuse to seek a clarification of such conflicting or inconsistent requirements or provisions prior to any work on that component of the project, the Contractor shall be solely responsible for the costs and expenses - including additional time - necessary to cure, repair, and/or correct that component of the project.

ARTICLE 2. For performance of the Work in accordance with the Contract Documents, the Town shall pay the Contractor in current funds an amount not to exceed **One Million Eight Hundred Fifty Six Thousand Six Hundred Eighty Dollars and Zero cents (\$1,856,680.00)** 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 Three Hundred (300) calendar days, and final completion of Three Hundred Thirty (330) calendar days ready for final payment, as measured from the Effective Start Date shown in the Notice to Proceed. The work shall be in strict accordance with this Agreement, a copy of which is filed pursuant to law in the office of the legal representative of the Town.

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

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

The performance, payment, and maintenance bonds shall be issued by a corporate surety, acceptable to and approved by the Town, authorized to do business in the State of Texas, pursuant to Chapter 2253 of the Texas Government Code. Further, the Contractor shall supply capital and surplus information concerning the surety and reinsurance information concerning the performance, payment, and maintenance bonds upon Town request. In addition to the foregoing requirements if the amount of the bond exceeds One Hundred Thousand and Zero/One Hundredths Dollars (\$100,000.00) the bond must be issued by a surety that is qualified as a surety on obligations permitted or required under federal law

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

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

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

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

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

The fact that the Town makes a progress payment shall not be deemed to be an admission by the Town concerning the quantity, quality, or sufficiency of the Contractor's work.

Progress payments shall not be deemed to be acceptance of the Work nor shall a progress payment release the Contractor from any of its responsibilities under the Contract Documents.

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

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

Retainage shall be withheld and may be paid to:

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

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

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

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

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

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

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

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

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

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

Final payment to the Contractor shall not be due until the Contractor provides original full releases of liens, or other evidence satisfactory to the Town to show that all sums due for labor, services, and materials furnished for or used in connection with the Work have been paid or shall be paid with the final payment. To ensure this result, Contractor consents to

the issuance of the final payment in the form of joint checks made payable to Contractor and others. The Town may, but is not obligated to, issue final payment using joint checks.

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

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

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

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

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

In its sole discretion, the Town shall have the right to approve counsel to be retained by Contractor in fulfilling its obligation to defend and indemnify the Town. Contractor shall retain approved counsel for the Town within seven business days after receiving written notice from the Town that it is invoking its right to indemnification under this Agreement. If Contractor does not retain counsel for the Town within the required time, then the Town shall have the right to retain counsel and the Contractor shall pay the attorneys' fees and expenses.

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

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

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 7th day of June, 2021.

TOWN OF FLOWER MOUND

CONTRACTOR

TBD, MAYOR

(Signature)

(Printed Name)

(Position)

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST:_____
Theresa Scott, TOWN SECRETARY

ATTEST:_____(Signature)

(Position)



TOWN COUNCIL AGENDA ITEM NO. 11

REGULAR ITEM

DATE: June 7, 2021

FROM: Debra Wallace, Interim Town Manager/CFO *DW*

ITEM: Discussion and presentation about increasing the residential homestead ad valorem (property) tax exemption.

BACKGROUND INFORMATION: In 2018, Town Council approved a homestead tax exemption that states the owner of a residence homestead is entitled to an exemption from Flower Mound ad valorem taxation in an amount equal to the greater of five thousand dollars (\$5,000) or 2.5 percent (2.5%).

A homestead exemption, or any changes to an existing exemption, must be approved by June 30 each tax year to go into effect the next fiscal year. Staff will provide a presentation with possible scenarios and related impact on budget. If council then desires to move forward with any changes, an ordinance will be placed on the June 21 agenda for approval.

If an ordinance is approved on June 21, it will become effective beginning with Tax Year 2021/Fiscal Year 2021-2022.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS: N/A

DRAFT MOTION: N/A

Town Council Future Agenda Items



SCHEDULED	6/10/2021	Regular	Deliberate on the Town Council, Place 1 applicants, including the appointment to fill this unexpired term.
	6/15/2021	Consent	Consider approval of the minutes from a regular meeting of the Town Council held on June 7, 2021.
		Consent	Consider approval of the minutes from a special meeting of the Town Council held on June 10, 2021.
		Regular	Consider approval of an ordinance canvassing returns and declaring results of a runoff election held June 5, 2021, for the purpose of electing Mayor, and providing an effective date.
	6/21/2021	Consent	Consider approval of a Professional Services Agreement with RJN Group, Inc., to provide professional engineering services for the Inflow/Infiltration/Evaluation & Repair project, in the amount of \$244,261.80; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of the Third Amendment to the Professional Services Agreement with Studio Outside Landscape Architecture for the design services associated with the Rheudasil Park Improvements project, in the amount of \$41,885.00; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of a Professional Services Agreement with Plummer Associates, Inc., for the development of the Wastewater Treatment Plant (WWTP) Master Plan in the amount of \$298,389.00; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of a Construction Agreement with Jeske Construction Company for the Edgefield Trail Reconstruction (Wood Creek Drive to Timber Valley Drive) project, in the amount of \$833,040.00; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of Central Fire Station north section roof replacement from damage of April 28, 2021 storm.
		Consent	Consider approval of an Ordinance amending Chapter 14, "Buildings and Building Regulations," Article V, of the Code of Ordinances of the Town of Flower Mound, to provide for the adoption of the National Electrical Code, 2020 edition, and local amendments thereto and authorize the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of an Ordinance amending Chapter 14, "Buildings and Building Regulations," Article VI, of the Code of Ordinances of the Town of Flower Mound, to provide for the adoption of the International Swimming Pool and Spa Code, 2018 edition, and local amendments thereto and authorize the Mayor to execute same on behalf of the Town.

SCHEDULED	6/21/2021	Consent	Consider approval of a Construction Agreement with Parkscape Construction, Inc. for the Pink Evening Primrose Trail Connection (Bridge & Trail from Gaston Park to Timber Trails Park) project, in the amount of \$534,610.15; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of a resolution casting the Town of Flower Mound's vote for a member of the Board of Managers of the Denco Area 9-1-1 Emergency Communications District for a two-year term beginning October 1, 2021.
		Presentation	Proclamation for National Parks and Recreation Month
		Regular	Consider approval of an ordinance authorizing the issuance of the Town of Flower Mound, Texas, General Obligation Refunding Bonds, Series 2021, establishing parameters for the sale and issuance of such bonds, delegating certain matters to an authorized official of the Town and resolving all matters incident and related thereto.
		Regular	Consideration and approval of an ordinance increasing the residential homestead ad valorem (property) tax exemption.
		Regular	Consider approval of a resolution approving and authorizing publication of notice of intention to issue Certificates of Obligation, Series 2021, in the principal amount not to exceed \$8,650,000, for the purpose of paying for waterworks and sewer system improvements.
		Town Mngr Report	All Together Flower Mound focus group update.
	7/19/2021	Consent	Stonecrest Pump Station Auxiliary Power Phase I - Testing Award
		Consent	Pink Evening Primrose Trail Connection (Bridge & Trail) - Testing Award
	8/2/2021	Presentation	Placeholder: KFMB annual update
	8/23/2021	Consent	Consider approval of a Service Agreement for Demand Response Transit Service with SPAN, Inc., in an amount not-to-exceed \$_____, to provide transportation service for Town citizens who are age 65 or older and Town citizens with verifiable disabilities that prevent them from driving; and authorization for the Mayor to execute same on behalf of the Town.