

AGENDA

FLOWER MOUND TOWN COUNCIL REGULAR MEETING; CRIME CONTROL AND PREVENTION DISTRICT SPECIAL MEETING

6/21/2021

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. PRESENTATIONS

1. Proclamation for National Parks and Recreation Month

F. ANNOUNCEMENTS

1. Announcements from the mayor and council members

G. TOWN MANAGER'S REPORT

Update and discussion on:

1. Capital improvement projects
2. Economic Development projects
3. All Together Flower Mound focus group

H. FUTURE AGENDA ITEMS

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

I. COORDINATION OF CALENDARS

1. A strategic planning session is scheduled for 4:00 p.m., Thursday, July 15.
2. A regular meeting is scheduled for Monday, July 19.

J. CONSENT ITEMS

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

1. Minutes 6/15- Consider approval of the minutes from a special meeting of the Town Council held on June 15, 2021.
2. DENCO Resolution- Consider approval of a resolution casting the Town of Flower Mound's vote to appoint Brandon Barth as 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.
3. Central Fire Roof Replacement- Consider approval of Central Fire Station north section roof replacement from damage of April 28, 2021, storm.
4. Ord. Amendment- ISPSC- 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.
5. Ord. Amendment- NEC- 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.
6. Crime District Budget Amendment- Town Council acting as the Board of Directors for the Town of Flower Mound Crime Control and Prevention District to consider approval of a resolution amending the Town of Flower Mound Crime Control and Prevention District budget for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021, as adopted by Resolution No. 19-20 and amended by Resolution No. 02-21 and Resolution No. 07-21.
7. FY 20-21 Budget Amendment- Consider approval of an ordinance amending the Town of Flower Mound's Annual Budget for the fiscal year beginning October 1, 2020, and ending on September 30, 2021, as adopted by Ordinance No. 27-20 and amended by Ordinance No. 37-20, No. 09-21 and No. 18-21 for adjustments to the General Fund.
8. Wastewater Plant Update- 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.
9. Manhole Rehab- 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.

10. Pink Evening Primrose Trail- 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.
11. Edgefield Trail Const Award- 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.
12. Building Demolitions- Consider approval of an Interlocal Agreement provided through the Harris County Department of Education with Basic IDIQ, for the demolition of a Communication Building and a Natatorium Building, in the amount of \$595,519.32; and authorization for the Mayor to execute same on behalf of the Town.

K. REGULAR ITEMS

13. General Obligation Refunding Bonds- 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.
14. Certificates of Obligation- Consider approval of an ordinance authorizing the issuance of the Town of Flower Mound, Texas, Certificates of Obligation, Series 2021, for the purpose of paying for waterworks and sewer system improvements, 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.
15. SUP21-0001 Lakeside Crossing- Public Hearing to consider an ordinance granting Specific Use Permit No. 467 (SUP21-0001– Lakeside Crossing Building 4 (Jesse James Fit)) to permit a health club or athletic club use. The property is generally located south of Lakeside Parkway along and between International Parkway and Northwood Drive. (The Planning and Zoning Commission recommended approval by a vote of 5 to 0 at its June 14, 2021, meeting.)
16. Homestead Exemption- Consideration and approval of an ordinance increasing the residential homestead ad valorem (property) tax exemption.

L. 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**.

M. CLOSED MEETING

The Town Council to convene into closed meeting pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.071, 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. 2006 Rule 11 agreement and dismissal, Cause No. 2005-20153-158
- 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.

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.

N. RECONVENE TO REGULAR MEETING

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

O. ADJOURN MEETING

I do hereby certify that the Notice of Meeting was posted on the bulletin board at the Town Hall for the Town of Flower Mound, Texas, in a place convenient and readily accessible to the general public at all times and said Notice was also posted on the Town's website in accordance with GC Section 551.056 on the following date and time: June 18, 2021, at 3:15 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 21, 2021

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a regular meeting of the Town Council held on June 15, 2021.

BACKGROUND INFORMATION: The Town Council held a regular meeting on June 15, 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.

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 15th 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 regular meeting with the following members present:

Steve Dixon (Items A – F)	Mayor
Derek France (Items G – K)	Mayor
Jim Engel	Mayor Pro Tem
Ben Bumgarner	Deputy Mayor Pro Tem
Adam Schiestel (Items G – K)	Councilmember Place 1
Sandeep Sharma	Councilmember Place 2
Ann Martin	Councilmember Place 5

constituting a quorum with the following members of the Town Council absent:

Vacant (Items A – F)	Councilmember Place 1
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constituting a quorum with the following members of the Town Staff participating:

Theresa Scott	Town Secretary
Debra Wallace	Interim Town Manager/CFO
Tommy Dalton	Assistant Town Manager
Tiffany Bruce	Assistant Town Manager/Town Engineer

A. CALL MEETING TO ORDER

Mayor Dixon called the regular meeting to order at 6:00 p.m.

B. INVOCATION

Denton County Commissioner Bobbie Mitchell gave the 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

No speakers.

E. CONSENT ITEMS

1. Consider approval of the minutes from a regular meeting of the Town Council held on June 7, 2021.
2. Consider approval of the minutes from a special meeting of the Town Council held on June 10, 2021.

3. 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.

ORDINANCE NO. 25-21

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, CANVASSING RETURNS AND DECLARING RESULTS OF A SPECIAL RUNOFF ELECTION HELD JUNE 5, 2021, FOR THE PURPOSE OF ELECTING A MAYOR OF THE TOWN OF FLOWER MOUND, TEXAS; AND PROVIDING AN EFFECTIVE DATE.

Councilmember Sharma moved to approve by consent Items 1 – 3, as presented in the agenda caption. Deputy Mayor Pro Tem Bumgarner seconded the motion. Each item, as approved by consent, is restated above, and if applicable, the Ordinance or Resolution caption for each, for the record.

VOTE ON MOTION:

Motion passed

AYES: SHARMA, BUMGARNER, ENGEL, MARTIN
NAYS: NONE

F. RECOGNITION OF AND REMARKS FROM OUTGOING MAYOR STEVE DIXON

Councilmembers and Mayor Dixon offered remarks regarding his service to the Town.

G. OATH OF OFFICE FOR NEWLY ELECTED MAYOR DEREK FRANCE AND NEWLY APPOINTED COUNCILMEMBER ADAM SCHIESTEL

1. Administer Oath of Office to newly elected mayor and issue Certificate of Election.
Denton County Judge Andy Eads administered the Oath of Office to Derek France and Mayor Dixon issued the Certificate of Election.
2. Administer Oath of Office to newly appointed councilmember.
Ms. Scott administered the Oath of Office to Adam Schiestel.

H. REMARKS FROM NEWLY ELECTED MAYOR DEREK FRANCE AND NEWLY APPOINTED COUNCILMEMBER ADAM SCHIESTEL

Councilmembers offered remarks and congratulations to Mayor France and Councilmember Schiestel. Mayor France and Councilmember Schiestel extended words of thanks and remarks regarding their future service as an elected official.

I. CLOSED MEETING

The Town Council convened into a closed meeting at 6:34 p.m. on June 15, 2021, pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.074, to discuss matters relating to personnel, and reconvened into an open meeting at 6:43 p.m. on June 10, 2021, to take action on the items as follows:

- a. Discuss and consider election of Mayor Pro Tem and Deputy Mayor Pro Tem.

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

J. RECONVENE MEETING

The Town Council reconvened into an open meeting with the following action taken:

- a. Discuss and consider election of Mayor Pro Tem and Deputy Mayor Pro Tem.

Mayor Pro Tem Engel moved to select Councilmember Bumgarner as Mayor Pro Tem.
Councilmember Martin seconded the motion.

VOTE ON MOTION:*Motion passed***AYES: MARTIN, ENGEL, BUMGARNER, SHARMA, SCHIESTEL****NAYS: NONE**

Councilmember Martin moved to select Councilmember Sharma as Deputy Mayor Pro Tem.
Councilmember Engel seconded the motion.

VOTE ON MOTION:*Motion passed***AYES: SHARMA, BUMGARNER, ENGEL, MARTIN, SCHIESTEL****NAYS: NONE****K. ADJOURN MEETING**

Mayor France adjourned the meeting at 6:45 p.m. on June 15, 2021, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

DEREK FRANCE, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 2 CONSENT ITEM

DATE: June 21, 2021

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of a resolution casting the Town of Flower Mound's vote to appoint Brandon Barth as 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.

BACKGROUND INFORMATION: Chapter 772, Texas Health and Safety Code, provides for the [Denco Area 9-1-1](#) District Board of Managers to have "two members appointed jointly by all the participating municipalities located in whole or part of the district". Each year the term of one of the two members appointed by participating municipalities expires. [Click here](#) for current FY2021 Board of Managers.

On March 31, 2020, the Denco Area 9-1-1 requested participating municipalities nominate a representative for potential appointment to the district's board of managers. On May 17, 2021, the Town Council nominated Brandon Barth, Emergency Management Officer. Three additional individuals were nominated by participating cities. Now the Denco Area 9-1-1 District is requesting each participating municipality vote for one of the nominees, with a deadline of July 30, 2021. The draft motion and resolution casts the Town's vote for its nominee - Brandon Barth.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Letter from Denco, nominees and qualifications
2. Draft resolution

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

TO: Denco Area 9-1-1 District Participating Municipal Jurisdictions

FROM: Greg Ballentine, Executive Director

DATE: June 1, 2021

RE: Appointment to the Denco Area 9-1-1 District Board of Managers

On March 31, 2021, the Denco Area 9-1-1 District requested municipalities to nominate a representative to the district board of managers for the two-year term beginning October 1, 2021. Denco received the following nominations by the May 31, 2021 deadline:

<u>Nominee</u>	<u>City/Town Making Nomination</u>
Brandon Barth	Town of Flower Mound
Mark Klingele	City of Corinth
Sue Tejml	City of Aubrey City of Highland Village City of Justin City of Krugerville City of Lewisville City of Oak Point City of Pilot Point Town of Argyle Town of Bartonville Town of DISH Town of Double Oak Town of Hickory Creek Town of Lakewood Village Town of Northlake Town of Providence Village Town of Trophy Club
David Terre	City of The Colony

The Denco Area 9-1-1 District requests that each municipality vote for one of the candidates and advise the district of its selection by **5 p.m. on July 30, 2021**. No votes will be accepted after that time. If a nominating municipality does not formally vote, it's nomination will automatically count as a vote for its nominee. Please send a copy of the resolution recording council action. I have attached a sample resolution you may wish to use and resumes for the candidates. Also attached is a list of current board members.

Please send a copy of your council's office action to the Denco Area 9-1-1 District, 1075 Princeton Street, Lewisville, TX 75067 or to Melinda Camp at melinda.camp@denco.org. We will acknowledge receipt of all votes.

Thank you for your assistance in this matter.

Denco Area 9-1-1 District Board of Managers FY2021

Bill Lawrence, Chairman

- Appointed by Denton County Commissioners Court
- Member since October 2006
- Term expires September 2021
- Former Mayor of Highland Village
- Businessman, Highland Village

Sue Tejml, Vice Chair

- Appointed by member cities in Denton County
- Member since 2013
- Term expires September 2021
- Attorney at Law

Chief Terry McGrath, Secretary

- Appointed by Denton County Fire Chief's Association
- Member since October 2011
- Term expires September 2021
- Assistant Fire Chief, City of Lewisville

Jim Carter

- Appointed by member cities in Denton County
- Member since October 2014
- Term expires September 2022
- President of Emergency Services District #1
- Former Mayor of Trophy Club and Denton County Commissioner

Jason Cole

- Appointed by Denton County Commissioners Court
- Member since October 2020
- Term expires September 2022
- Businessman, Denton

George Karatzis

- Non-voting member appointed by largest telephone company (Verizon)
- Member since 2021
- Serves until replaced by telephone company
- Director, Network Field Engineering, Verizon

All voting members serve two-year terms and are eligible for re-appointment.

PROFILE SUMMARY

Results-oriented, dependable professional with 15 years of emergency response and fire rescue experience. Certified and skilled in emergency management, media, and public relations. Possesses superior communication and multi-tasking skills with an acute attention to detail in a fast-paced, high-stress environment.

PROFESSIONAL EXPERIENCE

Flower Mound Fire Department, Flower Mound, TX

Emergency Management Officer

March 2014-Present

- Leads, manages, directs, and supervises the functions and programs of the Emergency Management Division.
- Assists in the development, planning, and implementation of Departmental goals and objectives.
- Participates in the development and administration of the Emergency Management Division budget, including the financial planning for staffing, equipment, and supplies for the Emergency Management Division.
- Responds to incidents and provides Emergency Management Support
- Assists the Suppression Division during times of emergency as an officer of the Flower Mound Fire Department
- Manages the Town's Mobile Incident Command Vehicle and supervises the trained driver/operators of the vehicle.
- Serves as the Public Information Officer for the Fire Department, providing news releases/statements, coordinates projects with the Town's Communications Department, and oversees the FMFD website and social media accounts.
- Oversees administrative compliance and scheduling of the AMBUS with the North Central Texas Trauma Regional Advisory Council and the State of Texas Emergency Medical Task Force.
- Serves as the North Central Texas Trauma Regional Advisory Council's Finance Committee Chair Elect.
- Serves as a Medical Incident Support Team member as part of the Texas Emergency Medical Task Force.
- Maintains information and Tier II reports on hazardous materials that are stored in the Town of Flower Mound and project manages hazardous materials spills within the Town.
- Performs various special research projects and responsible for administering special programs.
- Secures technical and financial assistance through grants and Public/Private partnerships.
- Wrote the FY 2018 Staffing for Adequate Fire & Emergency Response (SAFER) Grant and was awarded \$2,768,534.25
- Led the Flower Mound Fire Department's COVID-19 vaccination efforts; vaccinating 1,200 people
- Prepares and presents public awareness programs to civic groups, medical facilities, schools, and other organizations.
- Reviews Special Event Permits and works with other Town departments to plan for special events and to prepare Special Event Emergency Operations Plans.
- Examines potential disaster events and evaluates the effect on the Town.
- Produces the Town's Debris Management Plan and master Emergency Operations Plan and 22 supporting Annexes. Plans the Town's response to disasters and ensures that all entities can respond as outlined in the Emergency Operations Plan.
- Serves in the Town's Emergency Operation Center (EOC) as the EOC Manager, if activated.
- Responsible for designing, training, and evaluation of periodic exercises to test elements of emergency plan.
- Provides expert knowledge and advice to operating departments on special conditions and operating requirements that would be imposed by disasters.
- Responsible for ensuring operability of 27 outdoor warning sirens and securing interlocal agreements and easements for the installation of sirens (installed 16 new sirens since 2014).
- Manage the Town's Everbridge emergency notification system.

- Serves as liaison with community, state and federal authorities concerned with disaster planning, response, and recovery.
- Responsible for seeking FEMA reimbursement post-disaster or reimbursement from the State of Texas post-deployment of Town resources to other disaster or emergency events; over \$1.3 million in the last 3.5 years
- Secured Homeland Security grant funding for a debris response trailer for the Town's Public Works Department as part of the region's Public Works Emergency Response Team
- Serve as the co-chair for the North Central Texas EOC Support Team

Allied International Emergency, LLC – Fort Worth, TX

May 2011- March 2014

Operations Manager

September 2013-March 2014

- Managed the daily operations and supervised a staff of 8 employees for the Allied International Emergency's corporate branch.
- Oversaw 500+ annual hazardous materials and environmental remediation projects daily in a rapid paced environment with multiple deadlines.
- Prepared bids and proposals to current and future customers.
- Ensured that all supplies and equipment at the facility are in a constant state of operational readiness.
- Provided response and laboratory reports to customers as well as state regulatory agencies regarding hazardous material/environmental incidents.
- Executed service agreements with new customers during numerous emergency responses.
- Maintained an up-to-date survey that tracks employees' training, certifications, fit tests, and physical exams to ensure conformance with OSHA regulations.
- Conducted training classes for employees and customers on subjects such as hazardous materials, confined space entry, and fall protection.

Project Manager

May 2011-September 2013

- Managed personnel at various types of hazardous materials and environmental incidents ranging from tractor-trailer accidents to chemical plant fires per OSHA 1910.120 and requiring travel to various cities and states on a moment's notice.
- Supervised projects through the emergency response, mitigation, remediation, and closure phases.
- Oversaw the decontamination of Naturally Occurring Radioactive Materials (NORM) as a Radiation Safety Officer.
- Performed confined space entry and confined space rescue standby as outlined by OSHA 1910.146.
- Interacted with customers as well as state regulatory agencies such as the Texas Railroad Commission and the Texas Commission on Environmental Quality during hazardous materials incidents as well as environmental emergencies.
- Responsible for the profiling and disposal of hazardous, non-hazardous, and RCRA E&P exempt waste streams.
- Conducted sampling of water, air, and soil to determine potential contamination.
- Wrote policies for new hires to the company.

Baldwin County Fire Rescue – Milledgeville, GA**January 2005- March 2011****Full-time Firefighter/Public Information Officer****January 2007-March 2011**

- Presented a marketing/communications plan to the department's executive staff, thus creating the position of a PIO as well as creating the department's social media accounts.
- Conducted interviews with local media outlets: newspaper, radio, and TV.
- Wrote news releases and operated the department's social media site.
- Redesigned the department's report writing system and making a quick reference guide to assist those.
- Worked in conjunction with the Executive Staff of the fire department in projecting their message to the public.
- Assisted with grant and compliance research on behalf of the executive staff.
- Worked 24-hour shifts; responding to various types of emergency incidents including emergency medical calls, vehicle accidents, and fires.
- Served as the acting-officer in charge; certified through the National Professional Qualifications Pro Board as a Fire Officer 1; overseeing the day-to-day tasks and emergency operations of the on-duty personnel when the shift officer was absent.
- Served as part of the regional Hazardous Materials Team; certified through the National Professional Qualifications Pro Board as a Hazardous Materials Technician
- Assisted in the training of firefighters; certified through the National Professional Qualifications Pro Board as a Fire Instructor 1.
- Provided fire safety demonstrations and classes to children in the local school system.
- Conducted pre-incident/safety inspections of commercial properties to assess dangers and to determine proper mitigation procedures based on building layout, hazards, and building construction.
- Drove and operated fire apparatus to include engines, tankers, aerials, and rescue trucks.
- Awarded Firefighter of the Year – Baldwin County Fire Rescue 2008-2009.

Part-time/Volunteer Firefighter**January 2005-January 2007**

While pursuing bachelor's degree, worked part-time covering shifts for full-time personnel who were on leave. Was entrusted to work alone at stations in rural parts of the county that only had one person on-duty during a shift. Maintained attendance in more than 80% of emergency calls and training drills and responded to emergencies via notification by pager.

EDUCATION

Bachelor of Business Administration, International Business
Georgia College & State University - Milledgeville, GA May 2007

PROFESSIONAL CERTIFICATIONS

Certified Emergency Manager, International Association of Emergency Managers
Fire Service Chief Executive Officer, Texas A&M Engineering Extension Service
Advanced Professional Series, Federal Emergency Management Agency
Professional Development Series, Federal Emergency Management Agency
Amateur Radio License, Federal Communications Commission
Advanced Structural Firefighter, Texas Commission on Fire Protection
Advanced Fire Investigator, Texas Commission on Fire Protection



Fire Officer IV, IFSAC/Texas Commission on Fire Protection
Fire Instructor II, IFSAC/Texas Commission on Fire Protection
Incident Safety Officer, IFSAC/Texas Commission on Fire Protection
Hazardous Materials Operations, IFSAC/Texas Commission on Fire Protection
Firefighter II, IFSAC/Texas Commission on Fire Protection
Emergency Medical Technician-Basic, National Registry and Texas Department of State Health Services
Wildland Firefighter, Texas Commission on Fire Protection and Texas A&M Forest Service
ICS 100, 200, 300, 400, 700, and 800, Federal Emergency Management Agency

AWARDS AND COMMENDATIONS

North Central Texas Council of Governments Regional Service Excellence Award
International Association of Fire Chiefs Ready, Set, Go! Excellence Award
Van Zandt County, TX Tornado Deployment Ribbon
Hurricane Harvey Deployment Ribbon
Flower Mound Fire Department "All In" Award
Hurricanes Marco & Laura Deployment Ribbon
El Paso, TX COVID-19 Deployment Ribbon

Mark C. Klingele

Objective

To be a valuable team member with an organization that is respected worldwide.

Experience

University of North Texas 1/2012 - 12/2019

- Adjunct Professor
- Design, develop and teach courses in within the Alternative Dispute Resolution Program.

Denton Fire Department 4/1983 – 7/2014

- Deputy Fire Chief, Captain, Driver/Operator, and Fire Fighter.

United States Air Force Active and Reserves 8/1977 - 5/1988

- Crash/Fire Rescue Fire Fighter, Driver/Operator, Station Captain, and Communications.

Education

University of North Texas 2002 - 2011

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|--|------------------------------|
| ▪ 2011 Alternative Dispute Resolution | University of North Texas |
| ▪ 2007 Master of Business Administration | University of North Texas |
| ▪ 2002 Bachelor of Business Administration | University of North Texas |
| ▪ 2002 Staff and Command | Maryland Fire & Rescue Inst. |

National Fire Academy 3/2008

- | | |
|-------------------------------|-----------------------|
| ▪ 2008 Executive Fire Officer | National Fire Academy |
|-------------------------------|-----------------------|

TCFP Certifications

- Master Firefighter, Fire Service Instructor II, Driver/Operator, and ARFF

Skills

During my more than 31 years of municipal government experience I spent more than 5½ years managing a large organization including supervising more than 142 employees in communications, emergency medical intervention, emergency scene mitigation, financial management, budgeting, strategic planning, and emergency management. My certifications from Texas Commission on Fire Protection are currently inactive due to my retirement and should be able to renew based on affiliation. Since I obtained my Dispute Resolution Certificate from UNT I have had the opportunity to hone my negotiation, mediation, and problem solving skills through and in conjunction with the University of North Texas. As an Adjunct Professor I have become very comfortable in front of people and am able to handle any public speaking request.

Sue Rosson Tejml



Photo: March 2019 – photograph by Bill Castleman

PERSONAL: Native Texan; Copper Canyon resident last 31 years
 Three adult children, seven grandchildren (ages 8-33)
 Married 60+ years to Emil Tejml (engineer & attorney)
 (In case you wondered, his Czech name rhymes - A mull TAY mull.)
 With corporate moves - we have lived in 4 states, 6 Texas cities, and worked abroad
Stay-at-home mother, until I became an attorney at age 40.

EDUCATION: University of Texas at Austin (B.A. History)
 Texas A&M University at Kingsville (M.A. History)
 Rice University (full scholarship for Ph.D. History, lack dissertation for Ph.D. degree)
New York University Law School: 2 years, Top 10 United States Law School
 University of Houston Law School (LL.B. Degree.)

MAYOR: Town of Copper Canyon for 14 years; re-elected unopposed 7th term 2017-2019

2004 Master Plan: Maintained Rural Feeling of Town north of FM 407 Town Center!

MINIMUM ONE ACRE home lots for 15 years! 2019: 42% Town is Ag Exempt with fields, trees!

“What’s Happening in Copper Canyon” For 14 years I have personally written this Monthly Mayor’s Column in the *Cross Timbers Gazette*, a local newspaper with 47,000 circulation. (Second in circulation in Denton County only to the *Dallas Morning News*.) My attempt to keep residents informed of events in our Town and subjects of general interest in our area – roads, water, gas well drilling, etc. Government **transparency** is my primary goal!

Argyle Volunteer Fire District Board (Served 14 years, 2005 to 2019)

Denton County Emergency Services District #1 Our small town’s dilemma was inability to adequately fund emergency services. ESD’s Founding Committee’s task was to educate residents on the benefits of an ESD. The ESD would collectively provide emergency fire and ambulance medical services to the towns of Argyle, Bartonville, Copper Canyon, Corral City, Northlake, and FWSD #6 and #7 in Lantana. But a specific property tax would be needed to fund it. ESD#1 was created in 2006 by a **62% positive vote in a district-wide special election over 65 square miles. Citizens voted themselves a tax increase for the specific benefit of Emergency Fire & Medicine.**

Neighborhood Watch and Crime Prevention

Copper Canyon does not have a police department. Resident Block Captains were recruited for all 40 streets in town. Our Town Council contracted with the Denton County Sheriff for Deputies dedicated to Copper Canyon. Every shift a Deputy drives each street in Copper Canyon at least once and provides Rush Hour Traffic Patrol. **Result is a virtually crime free community for past decade!**

Dallas Morning News: Copper Canyon named one of 10 Best Communities in DFW Metroplex! Spring 2016. Town rated #6 for safety – a prime concern for all individuals and families!

Maintained Same Low Tax Rate for 6 Years (2014-2019): .297505 includes road bond. Under spend budget each fiscal year. Roll budget surplus into Road Fund or Crime Prevention Fund.

2009 Road Taskforce: Composed of one person from almost all 40 roads in Town. **Town Wide Election** approves \$2.5 million bond to rebuild 90% of 25-35 year old asphalt interior residential roads. **Standard & Poors rating AA- (now AA+.) Denton County funds \$14 million to rebuild perimeter commuter roads through Town in concrete:** Copper Canyon Rd, Orchid Hill Ln, Chinn Chapel Rd.

Drafting Committee: 2010 “Best Practices for Municipalities and Gas Pipelines”

A collaborative effort of Denton County Mayors, Commissioners Court, and the Texas Pipeline Association. Goal was to **expedite safe pipeline construction**, but with a **minimal impact** on landowners, local businesses, and future development plans of each city. All affected parties signed!

Copper Canyon sponsors Annual Denton County Mayors Crime Luncheon: 7 years (2012-2019)

Goal was to coordinate information on area crime between the Denton County Mayors, their Police Chiefs, Denton County Sheriff's Office, Commissioners Court, Legislative representatives, and our Congressman Michael Burgess. **CoServ** Co-Sponsors this annual event with food & financial funds!

DENCO 911: Vice Chair, Board of Managers. 8 years (2013-2021.) Elected to 4 terms by 32 Denton County city members. 2019 re-elected by unanimous vote of 24 of 28 City Councils voting. Personally update 8 city councils each year on our **outstanding Denco 911 District! Recognized nationally!**
NENA - National Emergency Number Association: Attended 5 Texas & 5 National Conferences.

LEGAL: Solo Attorney 15 years: General Civil Practice - family law, oil & gas, wills, probate, contracts
 Matagorda County Bar Association - President,
 Texas State Bar - CLE Committee, District 5 Admissions, Texas Bar Foundation Life Member

FAMILY LAW: State Bar Board Certified in Family Law 10 years – Divorce and Child Custody
Texas Supreme Court: Committees on Child Support Guidelines and on Child Visitation Guidelines

MUNICIPAL: Bay City, Texas: City Attorney - 6 years. Estimated 18-20,000 population.
 Municipal Prosecutor & Legal Advisor to Police Department
 Home Rule Charter: City wide elected Public Office, Co-Chairman

VOLUNTEER: Denton County CASA - Court Appointed Special Advocate for Abused Children
Denton County Children's Advocacy Center - Gave \$10,000 for new Office
HUG Romania – Volunteer in a Romanian orphanage for 3 weeks.

INTERESTS: Home Design: Designed 5 of our family homes, including last one in Copper Canyon
Misc.: Computer, cooking, dollhouse miniatures, hunting, organic gardening, new science
Read: Biography, history, current political and global events, 1800's British romance novels

TRAVEL: Selected “Eisenhower People to People Ambassador” – Texas Representative to China's Department of Justice. One-month tour of China for 50 United States women attorneys & judges.

Visited for a week to a month each: Alaska, Australia, Bermuda, Beirut, Canada, China, Czech Republic, England, France, Germany, Greece, Hawaii, Ireland, Italy, Japan, Mexico, Norway, Romania, Russia, Saudi Arabia, Scotland, Singapore, South Korea, Switzerland, Tahiti, Turkey, Venezuela, Wales.

Hope to visit: Africa, Argentina, Brazil, Egypt, India, Israel, New Zealand, Peru, Tasmania, Yangtze River. Love travel in our beautiful United States! Especially Texas Hill Country-Padre Island! Wish to see Big Bend!

David Terre



OBJECTIVE

If elected to a fourth term, I will continue to work hard, be organized, use common sense, and always apply the golden rule. This approach has enabled me to make significant contributions during my previous three terms.

EDUCATION

Drake University/ Moberly Community College

BS-Business Administration and a Minor in economics

EMPLOYMENT HISTORY

Vice President of Sales | Wilson Sporting Goods

Retired

46 Year Career

Successfully retired after a wonderful 46 year career where I rose through the ranks to become Vice President of Sales responsible for all domestic sales.

- Directed European Sales Operations while living in Germany
- Experience in Marketing
- Achieved successful coordination of new product introductions
- Managed West Coast Distribution Operations

LEADERSHIP

The Colony City Council

2011-Present

- 2011 - Received the honor of being elected Mayor Pro Tem during my first term on City Council
- 2012 - Appointed to the Local Development Corporation Board of Directors to oversee new Grandscape (Nebraska Furniture Mart) Development
- 2013 - First Council Member from The Colony, Texas to be elected and serve on the Denton County Tax Appraisal District Board of Directors
- 2020 - Reelected to a 4th term on City Council receiving 86% of the total vote

The Colony Planning & Zoning Commission

2008-2011

- Served as Vice Chair

HONORS

- 1982 – Drake University Basketball Hall of Fame
- 1994 – Moberly Community College Basketball Hall of Fame
- 1995-2003 – Three-time Senior Olympics Gold Medal Winner for USA Basketball Team
- 1999 – Wilson Wall of Fame Honor
- 2007- Moberly Community College Outstanding Alumni of the year
- 2013 –Washington High School Hall of Fame
- 2018 –Roaring Lambs Hall of Fame

DCAD ACCOMPLISHMENTS

I have worked with my fellow Board Members to achieve the following meaningful results:

- Ensure a Quorum is established by being present at each meeting while achieving perfect attendance record.
- Make informed decisions doing the necessary preparation prior to each meeting
- Assisted in developing an Annual Operating Budget to ensure spending stays within budgeted funds while always looking for opportunities to reduce expenses
- Participate in the development and evaluation of the Chief Appraisal Officer each year
- To better serve Denton County Property owners, opened a convenient offsite location in the Lewisville Career Center to handle property tax protests
- Launched an online service permitting property owners to file property tax protests electronically
- Implemented a successful, structured flex work schedule as a benefit and morale Booster for ALL employees

TOWN OF FLOWER MOUND, TEXAS**RESOLUTION NO. __21**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, CASTING THE TOWN OF FLOWER MOUND'S VOTE TO APPOINT BRANDON BARTH AS A MEMBER OF THE BOARD OF MANAGERS OF THE Denco AREA 9-1-1 DISTRICT.

WHEREAS, Section 772, Health and Safety Code, provides that two voting members of the Board of Managers of an Emergency Communications District shall be appointed jointly by all cities and towns lying wholly or partly within the District.

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

SECTION 1

The Town of Flower Mound hereby votes to appoint Brandon Barth as a member of the Board of Managers for the Denco Area 9-1-1 Emergency Communication District for a two-year term beginning October 1, 2021.

SECTION 2

This Resolution shall become effective immediately upon its passage and approval.

DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF __ TO __ ON THIS 21st DAY OF JUNE, 2021.

APPROVED:

Derek France, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 3 CONSENT ITEM

DATE: June 21, 2021

FROM: Jeff Garner, Director of Facilities Management

ITEM: Consider approval of Central Fire Station north section roof replacement from damage of April 28, 2021, storm.

BACKGROUND INFORMATION: The standing seam roof on the northside of the Central Fire Station must be replaced due to failing metal materials and damaged substrate below the standing seam roof. The roof has been patched numerous times over its almost twenty-five-year life span to prevent damage to the interior of the building. Recent rains and high winds have exasperated the already poor condition of the roof making it necessary to replace the roof as soon as possible. Purchase of the replacement roof is thru TIPS purchasing cooperative; with Paragon's TIPS contract number 200201.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$143,300.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$143,300.00	100-655-59200-4301

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

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Paragon Roofing Quote

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



"Pattern of Excellence" since 1989



May 11th, 2020

Town of Flower Mound
Central Fire Station
3911 Broadway Blvd
Flower Mound, Texas 75028



ROOFING PROPOSAL

We are pleased to submit this proposal for replacing selected sections of low slope or standing seam metal roofing at Grand Central Fire Station for Town of Flower Mound through TIPS with Paragon's TIPS contract number 200201. This proposal includes both labor and materials for the scope of work as described below.

WORK INCLUDES

- Remove existing gutters on slope where standing seam metal roofs are being replaced
- Remove existing standing seam panels
- Remove existing underlayment
- Install high temperature rated peel and stick underlayment over entire substrate where metal roofing panels are being replaced
- Replace existing panels with 24 GA Exceptional Super-Lok standing seam panel
 - Color to be selected by City
- Shop fabricate Kynar coated steel gutters and eave trim out of prefinished 24GA steel
 - Color to be selected by City
- Install gutters using steel straps/hangers made from the same steel material used for the gutters
- Shop fabricate all details per manufacturer details for Super-Lok standing seam system
- Fasten all panels to substrate with manufacturer approved screws using manufacturer provided concealed seam clips
- 5 year (leak free) workmanship warranty
- Work to be coordinated with daily operations
- Slit cut existing TPO membrane per manufacturer requirements to allow for installation of new TPO roof system
- Mechanically attach ¼" SecureRock recover board
- Fully adhere 60 MIL white TPO membrane
- Install all new parapet wall flashing
- Flash all penetrations, walls and edge details per TPO manufacturer details
- Payment and performance bond included
- TIPS Fee included
- 5 year workmanship warranty

TERMS AND CONDITIONS

1. Contractor shall carry Worker's Compensation and General Liability Insurance.

COMMERCIAL MULTI-FAMILY RESIDENTIAL

1601 N. Walton Walker Blvd.
Dallas, TX 75211
o. 214.630.6363 | f. 214.630.6677

paragonroofinginc.com



"Pattern of Excellence" since 1989



Town of Flower Mound
May 11th, 2021
Page TWO

2. Contractor shall coordinate all schedules and work hours with the Owner or the designated representative. Standard work hours shall apply to this project. Only one mobilizations is included to complete the entire scope of work
3. Once work commences, Contractor shall proceed diligently to final completion.
4. Payment Schedule shall be as follows with all invoices due upon receipt:
 - A. Total due upon completion
5. This proposal, if accepted, shall become the agreement between the parties. There are no agreements either express or implied that extend beyond the face of this proposal.
6. Price is good for delivery of materials for 45 days from the date of this proposal.

TOTAL VALUE OF ROOFING WORK AS OUTLINED ABOVE:

1. North Section Standing Seam	\$ 65,900.00
2. Middle Section Standing Seam including cricket	\$ 62,500.00
3. Small middle TPO Seciton	\$ 14,900.00
	Tax 8.25% \$ N/A
Total:	\$ 143,300.00

ACCEPTANCE

If accepted the city will need to simply issue a Purchase Order to Paragon Roofing, Inc. by email Quentan@paragonroofinginc.com using the city's normal procedure. Be sure to include "TIPS PURCHASE" somewhere on the purchase order AND e-mail a copy to TIPSPO@TIPS-USA.com.

Should you have any questions or concerns please contact our office at the number listed above or the TIPS Hotline at 866-839-8477.

ACCEPTED:

Mr. Quantan Tobolka

*VP of Steep Slope & Multi Family Sales
m. 214.336.0316*

Company: _____

Printed Name: _____

Authorized Signature: _____

Title: _____

Date: _____

**COMMERCIAL
MULTI-FAMILY
RESIDENTIAL**

1601 N. Walton Walker Blvd.
Dallas, TX 75211
o. 214.630.6363 | f. 214.630.6677

paragonroofinginc.com



TOWN COUNCIL AGENDA ITEM NO. 4 CONSENT ITEM

DATE: June 21, 2021

FROM: Joelle Hainley, Building Official

ITEM: 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.

BACKGROUND INFORMATION: During the 86th regular session of the Texas Legislature, HB 2858 was passed requiring all municipalities that elect to regulate pools and spas to adopt the 2018 *International Swimming Pool and Spa Code* (ISPSC).

The principle concerns of the *International Swimming Pool and Spa Code* are the protection of public health, safety, and welfare. The *International Swimming Pool and Spa Code* addresses the design, construction, alteration, remodeling, enlargement, and repair of swimming pools and spas.

The Town of Flower Mound has been involved and supportive throughout the code development process. This support has been through the North Texas Chapter of the International Code Council and through the regional review process by the Regional Codes Coordinating Committee of the North Central Texas Council of Governments (NCTCOG). NCTCOG, along with Town staff, has reviewed this code and added regional amendments. NCTCOG has encouraged area municipalities to adopt the 2018 *International Swimming Pool and Spa Code* with these specific regional amendments. These recommended amendments are included in this ordinance. Town staff has reviewed the proposed amendments and made additional changes to meet Town specific needs.

Numerous sections of the 2018 ISPSC are proposed to be deleted as they pertain to public pools and spas. Those sections mirror the State’s standards for public pools and spas which is already codified within the Town’s code of ordinances under Chapter 34, Article V “Public Swimming Pool and Spa Standards and Regulations.” Therefore, in order to avoid duplicate codes, they are proposed for deletion.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: In order to regulate pools and spas, and to stay compliant with State regulations, the Town must adopt the 2018 ISPSC.

FISCAL IMPACT: N/A

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

ATTACHMENTS:

1. Proposed Ordinance

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

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

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 14, "BUILDINGS AND BUILDING REGULATIONS," ARTICLE VI, OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TO PROVIDE FOR ADOPTION OF THE *INTERNATIONAL SWIMMING POOL AND SPA CODE*, 2018 EDITION, AND LOCAL AMENDMENTS THERETO; PROVIDING THAT THE BOARD OF ADJUSTMENT SHALL BE THE BOARD OF APPEALS FOR PURPOSES SET OUT HEREIN; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the International Code Council (ICC) has developed a set of comprehensive and coordinated national model construction codes (known as the "International Codes"); and,

WHEREAS, the *International Swimming Pool and Spa Code* has been prepared by the ICC, and in addition to review by the NCTCOG, has been reviewed by Town staff; and,

WHEREAS, the current swimming pool code in the Town is the 1985 edition of the *Uniform Swimming Pool, Spa and Hot Tub Code*, and the Town's swimming pool code should be updated to the most current published building code available; and,

WHEREAS, the Texas Legislature passed House Bill 2858 (HB 2858) in 2020 adopting the *International Swimming Pool and Spa Code* for municipalities of the state; and,

WHEREAS, HB 2858 provides that municipalities may adopt local amendments to the *International Swimming Pool and Spa Code*; and,

WHEREAS, the 2018 edition of the *International Swimming Pool and Spa Code* is the most current published code available that addresses the general design and construction aspects of swimming pools and spas in the Town; and,

WHEREAS, the Town Council of the Town of Flower Mound has determined that it is in the best interest of the citizens of the Town of Flower Mound to update and adopt the 2018 edition of the *International Swimming Pool and Spa Code* and has determined that this will promote the health, safety and general welfare of the citizens of the Town of Flower Mound and the general public; and,

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WHEREAS, the Town Council of the Town of Flower Mound further desires to adopt certain local amendments to such Code reflecting the unique needs of the Town of Flower Mound;

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

SECTION 1

All of the above premises are found to be true and correct factual and legislative determinations of the Town of Flower Mound and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2

From and after the effective date of this Ordinance, Section 14-171 of the Code of Ordinances of the Town of Flower Mound, Texas, entitled "Uniform Swimming Pool, Spa, and Hot Tub Code Adopted," is hereby deleted and replaced with the following provision:

"Sec. 14-171. International Swimming Pool and Spa Code Adopted.

The *International Swimming Pool and Spa Code*, 2018 edition, a copy of which is on file in the office of the town secretary, is hereby adopted and designated as the swimming pool code of the town, the same as though these provisions of the *International Swimming Pool and Spa Code*, 2018 edition, were copied at length in this section; subject to the deletions, amendments, and additions provided in section 14-172."

SECTION 3

From and after the effective date of this Ordinance, Section 14-172 of the Code of Ordinances of the Town of Flower Mound, Texas, entitled "Amendments to Uniform Swimming Pool, Spa and Hot Tub Code," is hereby deleted and replaced with the following provision:

"Sec. 14-172. Local Amendments to International Swimming Pool and Spa Code

The *International Swimming Pool and Spa Code*, 2018 edition, is hereby amended by amending only the enumerated sections and provisions, as follows, and all sections and provisions not expressly amended or deleted shall remain in full force and effect:

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- (a) Section 101.1 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby amended to read as follows:

Section 101.1. Title. These regulations shall be known as the *Swimming Pool and Spa Code* of the Town of Flower Mound and shall be cited as such and will be referred to herein as “this code.”

- (b) Section 102.9 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby amended to read as follows:

Section 102.9. Other laws. The provisions of this code shall not be deemed to nullify any provisions of local, state or federal law, to include but not limited to;

Texas Department of State Health Services (TDSHS); Standards for Public Pools and Spas; §285.181 through §285.208, (TDSHS rules do not apply to pools serving one- and two-family dwellings or townhouses).

Texas Department of Licensing and Regulation (TDLR); 2012 Texas Accessibility Standards (TAS), TAS provide the scoping and technical requirements for accessibility for Swimming Pool, wading pools and spas and shall comply with 2012 TAS, Section 242. (TAS rules do not apply to pools serving one- and two-family dwellings or townhouses).

Exception: Elements regulated under Texas Department of Licensing and Regulation (TDLR) and built in accordance with TDLR approved plans, including any variances or waivers granted by the TDLR, shall be deemed in compliance with the requirements of this Chapter.

- (c) Section 103.1 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby amended to read as follows:

Section 103.1. Creation of agency. The Building and Inspections Department is hereby created and the official in charge thereof shall be known as the *code official*.

- (d) Section 105.1 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby amended to read as follows:

Section 105.1. Required. Any owner, contractor, or authorized agent who intends to construct, enlarge, alter, repair, move, or demolish a pool or spa or to erect, install, enlarge, alter, repair, remove, convert, or replace any system, the installation of which is regulated by this code, or causes any

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such work to be performed, shall first make application to the *code official* and obtain the required *permits*.

It shall be the responsibility of any person, firm, or corporation, upon submittal of an application for a building permit for work regulated by this code, to register as a contractor with the town. This form must be submitted with the *permit* application. Said registration shall be upon forms supplied by the *code official* and shall become null and void on December 31st of each year. An appropriate fee for registration shall be assessed in accordance with the provisions of Appendix A of the Code of Ordinances of the Town of Flower Mound.

Exception: Any residential property owner who, at his legal residence, desires to personally make or perform any installation, alteration, repair, replacement, or remodel regulated by this code shall be exempt from paying a registration fee. For this section, *legal residence* shall be defined as property for which a property owner shows proof of a homestead exemption.

Any contractor registration regulated by this code may be placed on hold or suspended by the *code official*, preventing any additional permits being issued, if it is determined by the *code official* that corrective action is needed for compliance with the requirements of Section 18-32 of the Code of Ordinances of the Town of Flower Mound. If any contractor registration regulated by this code is suspended, the procedures outlined in Chapter 18, Article II, of the Code of Ordinances of the Town of Flower Mound shall apply. Any registration placed on hold more than three times in a calendar year may be subject to suspension by the *code official*.

- (e) Section R105.2 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby amended to read as follows:

Section R105.2. Application for permit. Each application for a permit shall be filed with the code official on an electronic application form furnished for that purpose and shall contain a general description of the proposed work and its location. The permit application shall contain such other information required by the code official.

- (f) Section 105.3 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby amended to read as follows:

Section 105.3. Construction documents. Construction documents, engineering calculations, diagrams, and other such data shall be submitted electronically. {remaining text unchanged}.

- (g) Section 105.4 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby amended to read as follows:

Section 105.4 Time limitation of application. An application for a *permit* for any proposed work shall be deemed to have been abandoned 45 days after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except that the *code official* is authorized to grant one or more extensions of time for additional periods not exceeding 45 days each. The extension shall be requested in writing and justifiable cause demonstrated.

- (h) Section 105.5.3 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby amended to read as follows:

Section 105.5.3 Expiration. Every swimming pool permit issued by the *code official* under the provisions of this code shall expire by limitation and becomes null and void if the building or work authorized by such permit has not received final inspection approval within 180 days of the issuance of the permit. In the event of the expiration of the permit, no work or inspections shall be performed until a new permit shall be first obtained to do so, and the fee therefor shall be equal to the original fee.

- (i) Section 105.5.4 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby amended to read as follows:

Section 105.5.4. Extensions. Any permittee holding an unexpired permit may apply for an extension of the time within which work may commence under that permit when the permittee is unable to commence work within the time required by this section for good and satisfactory reasons. The *code official* may extend the time for action by the permittee for a period not exceeding 30 days on written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken.

- (j) Section 105.6.3 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby deleted in its entirety to read as follows:

Section 105.6.3. Fee Refunds. Deleted

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- (k) Section 107.3 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby deleted in its entirety to read as follows:

Section 107.3. Prosecution of violation. Deleted

- (l) Section 107.4 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby deleted in its entirety to read as follows:

Section 107.4. Violation penalties. Deleted

- (m) Section 107.5 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby amended to read as follows:

Section 107.5. Stop work orders. Upon notice from the *code official*, work on any system that is being done contrary to the provisions of this code or in a dangerous or unsafe manner shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to the owner's agent, or to the person doing the work. The notice shall state the conditions under which work is authorized to resume. Where an emergency exists, the *code official* shall not be required to give a written notice prior to stopping the work. Any person who shall continue any work in or about the structure after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be in violation of this code.

- (n) Section 108 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby deleted in its entirety and replaced to read as follows:

Section 108.1 General. Appeals of orders, decisions, or determinations made by the *code official* relative to the application and interpretation of this code, shall be done in compliance with Chapter 78, Article II, Division 3. Board of Adjustment of the Town's code of ordinances. The members of the town board of adjustment are hereby appointed as the board of appeals as provided by the *International Swimming Pool and Spa Code*, 2018 edition, and any changes in membership of the board of adjustment shall likewise be reflected in the membership of said board of appeals.

- (o) Section 202 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby amended by amending the definition of "pool", which shall be inserted into the list of definitions to replace the amended definition in alphabetical order:

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Section 202. Definitions. {Text of existing definitions save and except to the extent specifically amended hereby remains unchanged.}

POOL. Any structure intended for swimming or recreational bathing that contains water more than 24 inches (610 mm) deep. This includes in-ground, above-ground and on-ground swimming pools, hot tubs and spas. See “Public swimming pool” and “Residential swimming pool.”

- (p) Section 302.6 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby amended to read as follows:

Section 302.6. Wastewater discharge. Where wastewater from pools or spas, such as backwash water from filters discharge to a building drainage system, the connection shall be through an air gap in accordance with the International Plumbing Code or the International Residential Code as applicable in accordance with Section 102.7.1.

- (q) Section 303 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby deleted in its entirety to read as follows:

Section 303 Energy. Deleted

- (r) Section 304 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby deleted in its entirety to read as follows:

Section 304. Flood Hazard Areas. Deleted

- (s) Section 305.1 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby amended to read as follows:

Section 305.1. General. The provisions of this section shall apply to the design of barriers for restricting entry into areas having pools and spas. Where spas or hot tubs are equipped with a lockable safety cover complying with ASTM F1346, the areas where those spas or hot tubs are located shall not be required to comply with Sections 305.2 through 305.7.

- (t) Section 305.2 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby amended to read as follows:

Section 305.2.1. Outdoor swimming pools and spas. Outdoor pools and spas and indoor swimming pools shall be surrounded by a barrier that complies with Sections 305.2.1 through 305.7. At all times during the construction of a pool, or until a permanent barrier meeting all the

requirements of AG105.2 is installed, a temporary barrier that is at least thirty-six inches (36") in height, and meets the opening provisions of 305.2.2, and shall completely surround the pool excavation.

- (u) Section 305.2.4 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby deleted in its entirety to read as follows:

Section 305.2.4. Mesh fence as barrier. Deleted

- (v) Section 305.2.5 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby amended to read as follows:

Section 305.2.5. Closely spaced horizontal members. Where a barrier is composed of horizontal and vertical members, and the distance between the tops of the horizontal members is less than 45 inches (1143 mm), the horizontal members must be on located on the pool or spa side of the fence unless the barrier is a common fence between neighbors or the tops of any one member is at least 45 degrees, when measured from the horizontal, in which such members would not be considered horizontal. Spacing between vertical members shall not exceed 1.75 inches (44mm) in width. Where there are decorative cutouts within vertical members, spacing within the cutouts shall not exceed 1.75 inches (44 mm) in width.

- (w) Section 305.4 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby amended by adding an exception to read as follows:

Section 305.4. Structure wall as a barrier. Where a wall of a dwelling or structure serves as part of the barrier and where doors or windows provide direct access to the pool or spa through that wall, one of the following shall be required:

1. Operable windows having a sill height of less than 48 inches above the indoor finished floor and doors shall have an alarm that produces an audible warning when the window, door or their screens are opened. The alarm shall be listed and labeled as a water hazard entrance alarm in accordance with UL 2017. {remaining text unchanged}.

Exception: Windows located on any story above grade level and windows equipped with a locking device located a minimum of 54" above the finished floor are not required to have an alarm.

{remaining text unchanged}.

ORDINANCE NO. _____

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- (x) Section 306.3 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby amended to read as follows:

Section 306.3. Step risers and treads. Step risers for decks of residential pools and spas shall be uniform with the greatest riser height in any set of stairs not exceeding the smallest by more than 0.375 inch and shall have a height not exceeding 7.5 inches.

- (y) Section 306.4 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby deleted in its entirety to read as follows:

Section 306.4. Deck steps handrail required. Deleted.

- (z) Section 306.9.1 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby deleted in its entirety to read as follows:

Section 306.9.1. Hose bibbs. Deleted

- (aa) Section 307.1.2 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby deleted in its entirety to read as follows:

Section 307.1.2. Colors and finishes. Deleted.

- (bb) Section 307.1.4 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby deleted in its entirety to read as follows:

Section 307.1.4. Accessibility. Deleted.

- (cc) Section 307.2.4 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby deleted in its entirety to read as follows:

Section 307.2.4. Surface condition. Deleted.

- (dd) Section 309.2 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby deleted in its entirety to read as follows:

Section 309.2. Treatment and circulation system equipment. Deleted.

- (ee) Section 311.6 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby deleted in its entirety to read as follows:

Section 311.6. Pressure or vacuum gauge. Deleted.

- (ff) Section 311.7 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby deleted in its entirety to read as follows:

Section 311.7. Flow measurement. Deleted.

- (gg) Section 311.8 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby deleted in its entirety to read as follows:

Section 311.8. Instructions. Deleted.

- (hh) Section 315.2.1 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby deleted in its entirety to read as follows:

Section 315.2.1. Circulation systems. Deleted.

- (ii) Section 316.4.2 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby deleted in its entirety to read as follows:

Section 316.4.2. Access prohibited. Deleted.

- (jj) Section 319 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby deleted in its entirety to read as follows:

Section 319. Sanitizing Equipment. Deleted.

- (kk) Section 320.1 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby amended to read as follows:

Section 320.1. Backwash water or draining water. Backwash water and draining water shall be discharged to the sanitary sewer, or if no sanitary sewer is available to the property (lots with septic systems), it shall be disposed of by other means approved by the state or local authority.

- (ll) Section 321.2 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby deleted in its entirety to read as follows:

Section 321.2. Artificial lighting required. Deleted.

- (mm) Section 321.2.1 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby deleted in its entirety to read as follows:

Section 321.2.1. Pool and deck illumination. Deleted.

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- (nn) Section 321.2.2 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby deleted in its entirety to read as follows:

Section 321.2.2. Illumination intensity. Deleted.

- (oo) Section 321.2.3 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby deleted in its entirety to read as follows:

Section 321.2.3. Underwater lighting. Deleted.

- (pp) Section 321.3 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby deleted in its entirety to read as follows:

Section 321.3. Emergency illumination. Deleted.

- (qq) Chapter 4 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby deleted in its entirety to read as follows:

Chapter 4. Public Swimming Pools. Deleted.

- (rr) Chapter 5 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby deleted in its entirety to read as follows:

Chapter 5. Public Spas and Public Exercise Spas. Deleted.

- (ss) Chapter 6 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby deleted in its entirety to read as follows:

Chapter 6. Aquatic Recreation Facilities. Deleted.

- (tt) Section 804.1 of the *International Swimming Pool and Spa Code*, 2018 edition, is hereby amended to read as follows:

Section 804.1. General. The minimum diving water envelopes shall be in accordance with Table 804.1 and Figure 804.1, or the manufacturer's specifications, whichever is greater. Negative construction tolerances shall not be applied to the dimensions of the minimum diving water envelopes given in Table 804.1."

SECTION 4

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From and after the effective date of this Ordinance, Section 14-173 of the Code of Ordinances of the Town of Flower Mound, Texas, entitled "Location requirements," is hereby deleted and replaced with the following provision:

"Sec. 14-173. Location requirements.

- (a) **Front yard.** No swimming pool, spa, or hot tub shall be located within the required or established front yard. On a corner lot, where both street exposures are treated as front yards, for the purposes of this section, the front yards shall be determined by the placement of the main building along with the legal address.
- (b) **Side yard.** All swimming pools, spas, and hot tubs must be located at least five feet from the side property line to the water's edge.
- (c) **Rear yard.** All swimming pools, spas, and hot tubs must be located at least five feet from the rear property line to the water's edge.
- (d) **Easements.** No swimming pool, spa, or hot tub, including applicable decks, shall be located within an easement.
- (e) **Equipment.** No equipment may be placed within the required or established front yard as defined in subsection (a) of this section, or within any easement. Equipment in relation to the pool shall not be affixed to any required perimeter fencing or common fences between property owners. Adequate drainage must be provided between any equipment and any property line. At a minimum, two feet must be maintained."

SECTION 5

From and after the effective date of this Ordinance, Section 14-176 of the Code of Ordinances of the Town of Flower Mound, Texas, entitled "Required inspections," is hereby deleted and replaced with the following provision:

"Sec. 14-176. Required inspections.

- (a) **Pre-drainage inspection.** This visual inspection verifies and approves the Drainage and Access plan that was submitted during the plan review phase.

- (b) **Belly steel and pool placement inspection.** Before any concrete or gunite can be placed, the belly steel and placement of the pool shall be inspected and approved. Rebar shall be a minimum size of three-eighths of an inch and located no more than 12 inches on center each way.
- (c) **Deck steel, electrical bond, electrical underground and plumbing.** Before any concrete is placed for the pool deck, the placement of steel and the electrical bond shall be inspected and approved. The concrete deck shall be a minimum thickness of 3½ inches. Rebar shall be a minimum size of three-eighths of an inch and located no more than 18 inches on center each way. The bond conductor shall be a minimum size of No. 8 AWG. A minimum of four ground clamps that are evenly spaced around the pool shall be required to electrically bond the pool from stray ground current. All electrical conductors buried in the ground shall be inspected and approved prior to covering. All pool plumbing shall be subjected to a minimum water test of 15 psi.
- (d) **P-trap and gas line.** Before the backwash line, p-trap, and gas line are covered in any way, those items shall be inspected and approved. All pools shall have a p-trap and backwash line connected to the sanitary sewer.

Exception: Aboveground pools and spas that have a capacity of 750 gallons or less are not required to install a p-trap or backwash line. On lots that do not have access to town sewer and where sanitary drainage is provided through a septic system, no p-trap or backwash line is required; however, adequate drainage must be provided to allow for drainage of the pool.
- (e) **Pre-plaster inspection.** Before any water is placed in the pool, the permanent fence shall be installed, inspected, and approved.
- (f) **Final drainage inspection.** At the time of this inspection, all drain lines and dirt work must be completed. Installation of permeant vegetation in all disturbed areas must be installed before receiving a final drainage approval.

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Exception: If pre-approved, the requirement for final vegetation may be waived. If permeant vegetation is waived, erosion control devices would be required in all disturbed areas before this inspection could be approved.

- (g) **Pool final.** All pool permits must receive an approved final inspection within 180 days of the issue date, or the permit will be expired."

SECTION 6

All ordinances, orders, or resolutions heretofore passed and adopted by the Town of Flower Mound, Texas, are hereby repealed to the extent that said ordinances, orders, or resolutions, or parts thereof, are in conflict herewith.

SECTION 7

If any section, subsection, clause, phrase, or provision of this Ordinance, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void, or unconstitutional, the remaining sections, subsections, clauses, phrases, and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

SECTION 8

Any person who violates any provision of this Ordinance 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, Texas. Each day any such violation or violations exist shall constitute a separate offense and shall be punishable as such.

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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 take effect and be in full force from and after its passage and publication, as provided by the Revised Civil Statutes of the State of Texas and the Home Rule Charter of the Town of Flower Mound, Texas.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS 21ST DAY OF JUNE, 2021.

APPROVED:

Derek France, MAYOR**ATTEST:**

Theresa Scott, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 5 CONSENT ITEM

DATE: June 21, 2021

FROM: Joelle Hainley, Building Official

ITEM: 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.

BACKGROUND INFORMATION: The National Fire Protection Association (NFPA) is an international nonprofit membership organization founded in 1896. Today, with more than 75,000 members representing nearly 100 nations, NFPA serves as the world's leading advocate of fire prevention and is an authoritative source on public safety. NFPA's *National Electrical Code* is the only major electrical code in print today and is the most widely adopted electrical code in the United States.

NFPA encourages the broadest possible participation in code development. The process is driven by more than 6,000 volunteers from diverse professional backgrounds who serve on 230 technical code and standard-development committees. Throughout the entire process, interested parties are encouraged to provide NFPA technical committees with input. All NFPA members then have the opportunity to vote on proposed and revised codes and standards.

The Regional Code Coordinating Committee (RCCC) of the North Central Texas Council of Governments (NCTCOG) has reviewed the code. We as the Town of Flower Mound have been involved and supportive throughout the code development process. This support has been through the North Texas chapter of the International Code Council and through the regional review process by the RCCC of the NCTCOG. The RCCC and NCTCOG have encouraged area municipalities to adopt the 2020 *National Electrical Code* with specific regional amendments. The amendments recommended by the RCCC are included in this ordinance. The *National Electrical Code* is updated through the above process every three years. The 2020 *National Electrical Code* is the most current version at this time.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: Continue to use the 2014 *National Electrical Code* as our adopted electrical code.

FISCAL IMPACT: N/A

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

ATTACHMENTS:

1. Proposed Ordinance

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

TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY AMENDING CHAPTER 14, "BUILDINGS AND BUILDING REGULATIONS," THROUGH THE AMENDMENT OF ARTICLE V, ENTITLED "ELECTRICAL CODE," BY ADOPTING THE 2020 EDITION OF THE *NATIONAL ELECTRICAL CODE* THROUGH THE AMENDMENT OF SECTION 14-131, ENTITLED "NATIONAL ELECTRICAL CODE ADOPTED," BY AMENDING SECTION 14-132, ENTITLED "AMENDMENTS TO THE *NATIONAL ELECTRICAL CODE*," AND BY AMENDING SECTION 14-138, ENTITLED "BOARD OF APPEALS"; PROVIDING THIS ORDINANCE IS CUMULATIVE OF ALL ORDINANCES AND REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the National Fire Protection Association (NFPA) has developed the *National Electrical Code*, and the Town of Flower Mound has been involved throughout the regional review process by the Regional Codes Coordinating Committee of the North Central Texas Council of Governments (NCTCOG); and

WHEREAS, the 2020 edition of the *National Electrical Code* has been published by the NFPA and, in addition to review by the NCTCOG, has been reviewed by Town staff; and

WHEREAS, the Town's electrical code is intended to be updated periodically, and the 2020 edition of the *National Electrical Code* is the most current published electrical code at this time; and

WHEREAS, the 2020 edition of the *National Electrical Code* addresses the electrical design aspects of all buildings in the Town; and

WHEREAS, the current Electrical Code of the Town is the 2014 edition of the *National Electrical Code*, and the Town's electrical code should be updated to the most current published electrical code available; and

WHEREAS, the Town Council of the Town of Flower Mound has determined that, to protect the public health, safety, and welfare, it is in the best interest of the citizens of the Town of Flower Mound to update the Town's electrical code by adopting the 2020 edition of the *National Electrical Code* as the minimum standard for the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings, and appurtenances thereto, as set forth herein and as that said code is specifically modified by this Ordinance.

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

SECTION 1

All of the above premises are found to be true and correct factual and legislative determinations of the Town of Flower Mound and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2

From and after the effective date of this Ordinance, Section 14-131 of the Code of Ordinances of the Town of Flower Mound, entitled “*National Electrical Code Adopted*,” is hereby amended in its entirety and replaced with the following provision:

Section 14-131. *National Electrical Code Adopted.*

The following document, copies of which are on file in the office of the Town Secretary, being marked and designated as the *National Electrical Code*, 2020 Edition, published by the National Fire Protection Association, is hereby adopted as the Electrical Code of the Town of Flower Mound, Texas, regulating the design, construction, quality of materials, erection, installation, alteration, repair, location, relocation, replacement, addition to, or maintenance of electrical systems, wiring, or electrical equipment within the Town of Flower Mound, Texas; providing for the issuance of permits and collection of fees therefor.

SECTION 3

From and after the effective date of this Ordinance, Section 14-132 of the Code of Ordinances of the Town of Flower Mound, entitled “*Amendments to the National Electrical Code*,” is hereby amended in its entirety and replaced with the following provision:

“Section 14-132. *Amendments to the National Electrical Code.*

The following amendments shall supersede all requirements of the *National Electrical Code*, 2020 Edition. Where an amendment is not clear or is silent regarding a certain requirement, the requirements of the *National Electrical Code*, 2020 Edition, must be met.

(a) Disconnection.

The electrical service provider must disconnect the electrical service to any building or premises, except private residences and duplex apartments, each time such building or premises changes ownership, is leased, or changes occupancy, and it shall not again supply electricity to such building or premises until authorized to do so by the Building Official. The owners or the new occupants of such buildings

or premises must make application to the Building Official for an inspection.

(b) Connection to electricity without Building Official approval.

It is unlawful for any person, including the electrical service provider, to connect to a supply of electricity or to supply electricity to any electrical equipment that requires a permit for its installation, or which has been disconnected or ordered to be disconnected by the Building Official, or, except for private residences, which has been disconnected for any reason whatsoever, until such connection has been authorized by the Building Official.

(c) Article 100 of the *National Electrical Code*, 2020 edition, is hereby amended by adding the definition, "Engineering Supervision" and amending the definition "Intersystem Bonding Termination" to read as follows:

Engineering Supervision. Supervision by a Qualified State of Texas Licensed Professional Engineer engaged primarily in the design or maintenance of electrical installations.

Intersystem Bonding Termination. A device that provides a means for connecting bonding conductors for communication systems and other systems such as metallic gas piping systems to the grounding electrode system.

(d) Article 110.2 of the *National Electrical Code*, 2020

edition, is hereby amended by deleting said provision and replacing it with a new Article 110.2 to read as follows:

Article 110.2. Approval. The conductors and equipment required or permitted by this Code shall be acceptable only if approved. Approval of equipment may be evident by listing and labeling of equipment by a Nationally Recognized Testing Lab (NRTL) with a certification mark of that laboratory or a qualified third party inspection agency or a field evaluation by a Field Evaluation Body accredited by either the International Code Council International Accreditation Service AC354 or ANSI National Accreditation Board programs and approved by the AHJ.

Exception: Unlisted equipment that is relocated to another location within a jurisdiction or is field modified is subject to the approval by the AHJ. This

approval may be by a field evaluation by a NRTL or qualified third-party inspection agency or a field evaluation by a Field Evaluation Body accredited by either the International Code Council International Accreditation Service AC354 or ANSI National Accreditation Board programs and approved by the AHJ.

Informational Note No. 1: See 90.7, Examination of Equipment for Safety, and 110.3, Examination, Identification, Installation, and Use of Equipment. See definitions of Approved, Identified, Labeled, and Listed.

Informational Note No. 2: Manufacturer's self-certification of equipment may not necessarily comply with U.S. product safety standards as certified by an NRTL.

Informational Note No. 3: National Fire Protection Association (NFPA) 790 and 791 provide an example of an approved method for qualifying a third-party inspection agency.

- (e) Article 210.52(G)(1) of the *National Electrical Code*, 2020 edition, is hereby amended to read as follows:

(1) Garages. In each attached garage and in each detached garage with electric power. At least one receptacle outlet must be installed for each car space.

- (f) Article 230.71(A) of the *National Electrical Code*, 2020 edition, is hereby amended by adding a new exception at the end of this provision to read as follows:

Exception: Multi-occupant buildings. Individual service disconnecting means is limited to six for each occupant. The number of individual disconnects at one location may exceed six.

- (g) Article 408.4 (A) of the *National Electrical Code*, 2020 edition, is hereby amended to read as follows:

(A) Circuit Directory or Circuit Identification. Every circuit and circuit modification shall be legibly identified as to its clear, evident, and specific purpose or use. The identification shall include an approved degree of detail that allows each circuit to be distinguished from all others. Spare positions that contain unused overcurrent devices or switches shall be described accordingly. The identification shall be included in a circuit directory that is located on the

face or inside of, or in an approved location adjacent and permanently affixed the panel door in the case of a panelboard and at each switch or circuit breaker in a switchboard or switchgear. No circuit shall be described in a manner that depends on transient conditions of occupancy.

- (h) Article 410.118 of the *National Electrical Code*, 2020 edition, is hereby amended by adding a new exception at the end of this provision to read as follows:

Exception: Removable luminaires with a minimum measurement of 22 inches X 22 inches shall be permitted to be used as access to outlet, pull, junction boxes or conduit bodies.

- (i) Article 422.31 (B) of the *National Electrical Code*, 2020 edition, is hereby amended to read as follows:

(B) Appliances Rated over 300 Volt-Amperes. For permanently connected appliances rated over 300 volt-amperes, the branch-circuit switch or circuit breaker shall be permitted to serve as the disconnecting means where the switch or circuit breaker is within sight from and is readily accessible to the appliance it serves or is capable of being locked in the open position in accordance with 110.25 and is readily accessible to the appliance it serves.

Informational Note No. 1: For appliances employing unit switches, see 422.34.

Informational Note No 2: The following means of access are considered to constitute readily accessible for this code change when conforming to the additional access requirements of the International Code Council Codes:

- (1) A permanent stair.
- (2) A pull-down stair with a minimum 300 lb. (136 kg) capacity.
- (3) An access door from an upper floor level.

- (j) Article 500.8(A)(3) of the *National Electrical Code*, 2020 edition, is hereby amended to read as follows:

(A) Suitability. Suitability of identified equipment shall be determined by one of the following:

- (3) Evidence acceptable to the authority having jurisdiction such as a manufacturer's self-evaluation or an engineering judgment signed and sealed by a

qualified licensed Professional Engineer in the State of Texas.

- (k) Article 505.7(A) of the *National Electrical Code*, 2020 edition, is hereby amended to read as follows:

(A) Implementation of Zone Classification System. Classification of areas, engineering and design, selection of equipment and wiring methods, installation, and inspection shall be performed by a qualified licensed Professional Engineer in the State of Texas.

- (l) Article 695.6 (A) (1) of the *National Electrical Code*, 2020 edition, is hereby amended by deleting the exception at the end of this provision to read as follows:

Exception: Deleted.

- (m) Article 710.15 (A) of the *National Electrical Code*, 2020 edition, is hereby amended to delete the informational note and to read as follows:

(A) Supply Output. Power supply to premises wiring systems fed by stand-alone or isolated microgrid power sources shall have adequate capacity to meet the calculated load in accordance with Article 220.”

SECTION 4

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

SECTION 5

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 phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared invalid or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance, as if the same had been enacted by the Town Council without the incorporation of any such invalid or unconstitutional phrase, clause, sentence, paragraph, or section.

SECTION 6

All rights and remedies of the Town of Flower Mound are expressly saved as to any and all violations of the provisions of Chapter 14 of the Code of Ordinances of the Town of Flower

Mound or any ordinances relating to the Electrical Code, that have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

SECTION 7

Any person, firm, or corporation who violates any of the provisions of the *National Electrical Code*, 2020 edition, as adopted and amended by this Ordinance, or who does or attempts to do electrical work without first securing the permit prescribed herein for such work, or who, in any other manner, violates the provisions of this Ordinance is guilty of a misdemeanor, and upon conviction thereof, shall be fined in an amount not to exceed \$2,000.00, and each day or fraction of a day that an offense hereunder is committed or permitted to exist constitutes a separate offense and is punishable as such hereunder.

SECTION 8

Chapter 14 of the Code of Ordinances, Town of Flower Mound, Texas, as amended, remains in full force and effect, save and except as amended by this Ordinance.

SECTION 9

This Ordinance shall take effect and be in full force from and after its passage and publication, as provided by the laws of the State of Texas and the Home Rule Charter of the Town of Flower Mound, Texas.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____ ON THIS 21ST DAY OF JUNE, 2021.

APPROVED:

Derek France, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 6

CONSENT ITEM

DATE: June 21, 2021

FROM: Kay Wilkinson, Budget Officer

ITEM: Town Council acting as the Board of Directors for the Town of Flower Mound Crime Control and Prevention District to consider approval of a resolution amending the Town of Flower Mound Crime Control and Prevention District budget for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021, as adopted by Resolution No. 19-20 and amended by Resolution No. 02-21 and Resolution No. 07-21.

BACKGROUND INFORMATION: At the March 3, 2008, Town Council meeting, the Town Council acting as the Board of Directors for the Crime District, adopted alternative budget procedures for the Crime District to follow similar procedures and dates to the Town's annual budget.

The attached budget amendment represents an adjustment of the FY 2020-2021 Crime District Budget. According to Section 12 of Resolution No. 06-08, "During the fiscal year, the Town Council shall have the power to transfer funds allocated by the budget from one department to another department, and to re-estimate revenues and expenditures."

The budget in the Crime District Fund will increase by \$42,000 to supplement the budget to purchase a new SRO vehicle. The vehicle was originally approved in FY 19-20. Due to a change in the vehicle's body style, the purchase was delayed until FY 20-21. The budget should have been reappropriated from FY 19-20. This budget amendment corrects the budget for the vehicle.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT:

Proposed Expenditure/ (Revenue):	Account Number(s):
\$ 42,000	Fund 318 Crime District Fund
\$ 42,000	

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

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

ATTACHMENTS:

1. Resolution

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

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

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ACTING AS THE BOARD OF DIRECTORS OF THE TOWN OF FLOWER MOUND CRIME CONTROL AND PREVENTION DISTRICT, AMENDING THE BUDGET FOR THE TOWN OF FLOWER MOUND CRIME CONTROL AND PREVENTION DISTRICT FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2020, AND ENDING SEPTEMBER 30, 2021, AS ADOPTED BY RESOLUTION NO. 19-20 AND AMENDED BY RESOLUTION NO. 02-21 AND NO. 07-21; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the Town Council acting as the Board of Directors of the Town of Flower Mound Crime Control and Prevention District (Crime District) has adopted procedures for adopting and amending a budget that are different from the procedures outlined in Texas Local Government Code Section 363.204, as permitted by such section; and

WHEREAS, the Town Council acting as the Board of Directors of the Crime District caused to be filed with the Town Secretary, in accordance with the procedures adopted therefore, a budget to cover all proposed expenditures of the Crime District for the fiscal year beginning October 1, 2020, and ending September 30, 2021; and

WHEREAS, said Crime District Budget was adopted by Resolution No. 19-20 on September 21, 2020 and amended by Resolution No. 02-21 on January 4, 2021 and by Resolution 07-21 on March 1, 2021; and

WHEREAS, after approval of said Resolution, unexpected needs have arisen which require amendment of the Crime District Budget adopted thereby.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ACTING AS THE BOARD OF DIRECTORS OF THE TOWN OF FLOWER MOUND CRIME CONTROL AND PREVENTION DISTRICT, THAT:

SECTION 1

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

SECTION 2

The Crime District Budget, for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021, as heretofore adopted by Resolution No. 19-20 and amended by Resolution No. 02-21 and No. 07-21, is hereby amended to provide for adjustments as shown in Exhibit "A", attached hereto and incorporated herein.

RESOLUTION NO. _____**PAGE 2****SECTION 3**

The expenditures and amendments authorized by this Resolution are necessary to meet unusual and/or unforeseen conditions or circumstances that could not have been included in the original budget through the use of reasonably diligent thought and attention.

SECTION 4

The Town Manager shall file or cause to be filed three (3) true and correct copies of said amended budget, along with this Resolution, with the Town Secretary, who shall file or cause to be filed one (1) true and correct copy of same in the office of the County Clerk of Denton County, Texas and one (1) true and correct copy of same in the office of the County Clerk of Tarrant County, Texas.

SECTION 5

If any section, paragraph, sentence, clause, phrase, or word in this Resolution, or application thereof by any persons or circumstances is held invalid in any Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Resolution; and the Town Council acting as the Board of Directors of the Crime District hereby declares it would have passed such remaining portions of the resolution despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 6

This Resolution shall take effect and be in full force from and after its passage and adoption.

DULY PASSED, APPROVED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF _____ TO _____ ON THIS 21st DAY OF JUNE, 2021.

APPROVED:

Derek France, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

RESOLUTION NO. _____

PAGE 3

EXHIBIT "A"

**Town of Flower Mound
Crime Control and Prevention District
Amended Budget
Fiscal Year 2020-2021**

REASON FOR ADJUSTING THE CRIME DISTRICT FUND APPROPRIATION:

In the Crime District Fund, expenditures will increase by \$42,000 from \$3,266,307 to \$3,308,307 to supplement the budget to purchase a new SRO vehicle. The vehicle was originally approved in FY 19-20. Due to a change in the vehicle's body style, the purchase was delayed until FY 20-21. The budget should have been reappropriated from FY 19-20. This budget amendment corrects the budget for the vehicle.

Crime District Fund	Original Budget	Current Budget	Amended Budget	Increase / (Decrease)
Expenditures:				
Police Services	\$ 3,208,899	\$ 3,266,307	\$ 3,308,307	\$ 42,000
Total	\$ 3,208,899	\$ 3,266,307	\$ 3,308,307	\$ 42,000



TOWN COUNCIL AGENDA ITEM NO. 7

CONSENT ITEM

DATE: June 21, 2021

FROM: Kay Wilkinson, Budget Officer

ITEM: Consider approval of an ordinance amending the Town of Flower Mound's Annual Budget for the fiscal year beginning October 1, 2020, and ending on September 30, 2021, as adopted by Ordinance No. 27-20 and amended by Ordinance No. 37-20, No. 09-21 and No. 18-21 for adjustments to the General Fund.

BACKGROUND INFORMATION: The attached budget amendment represents the third proposed adjustment of the FY 2020-2021 Annual Budget. According to Section 9.14 of the Town Charter, "During the fiscal year, the Town Council shall have the power to transfer funds allocated by the budget from one department to another department, and to re-estimate revenues and expenditures." Transfers such as these are presented to the Town Council throughout the fiscal year in an effort to resolve variances from the Annual Budget and reallocate resources to cover unanticipated expenditures.

In the General Fund, expenditures will increase by \$214,380 from \$71,473,960 to \$71,688,340. The Legislative Services department's budget will increase by \$22,080 to account for the cost of the June mayoral runoff election. The Administrative Services Department's budget will increase by \$143,300 to cover the cost of the roof replacement at Central Fire Station. The Fire and Emergency Services Department's budget will increase by \$49,000 so the department can purchase a vehicle for the new EMS Officer position. The position was approved in May 2021.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT:

Proposed Expenditure/ (Revenue):	Account Number(s):
\$ 214,380	Fund 100 General Fund
\$ 214,380	

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

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

ATTACHMENTS:

1. Ordinance

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

TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE TOWN'S BUDGET FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2020, AND ENDING ON SEPTEMBER 30, 2021, AS ADOPTED BY ORDINANCE NO. 27-20 AND AMENDED BY ORDINANCE NO. 37-20, NO. 09-21 AND NO. 18-21, BY PROVIDING FOR ADJUSTMENTS TO THE GENERAL FUND; PROVIDING THAT EXPENDITURES FOR SAID FISCAL YEAR SHALL BE MADE IN ACCORDANCE WITH SAID BUDGET, AS AMENDED; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Flower Mound, Texas ("Town Council") has heretofore adopted its Annual Budget for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021; and,

WHEREAS, said Annual Budget was adopted by Ordinance No. 27-20 on September 21, 2020 and amended by Ordinance 37-20 on December 7, 2020, Ordinance 09-21 on March 1, 2021 and Ordinance 18-21 on April 19, 2021; and,

WHEREAS, after approval of said Annual Budget, unexpected needs have arisen which require amendment of the Annual Budget; and,

WHEREAS, Section 102.010 of the Local Government Code allows the Town to make changes to the budget for municipal reasons;

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

SECTION 1

All of the above premises are hereby found to be true and correct factual and legislative determinations of the Town of Flower Mound and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2

The Annual Budget of the Town of Flower Mound, Texas, for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021, as heretofore adopted by Ordinance No. 27-20 and amended by Ordinance No. 37-20, Ordinance No. 09-21 and Ordinance No. 18-21, is hereby amended to provide for adjustments to the General Fund, as shown in Exhibit "A," attached hereto and incorporated herein, and expenditures for said fiscal year shall be made in accordance with said Annual Budget, as amended.

SECTION 3

The expenditures and amendments authorized by this Ordinance are necessary to meet unusual and/or unforeseen conditions or circumstances that could not have been included in the original budget through the use of reasonably diligent thought and attention.

SECTION 4

A true and correct copy of this ordinance showing the approved budget amendments shall be filed with the Town Secretary and in the office of the County Clerk as required by Section 102.009 of the Local Government Code.

SECTION 5

All ordinances, orders or resolutions heretofore passed and adopted by the Town Council of the Town of Flower Mound, Texas, are hereby repealed to the extent that said ordinances, orders or resolutions, or parts thereof, are in conflict herewith.

SECTION 6

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

SECTION 7

This Ordinance shall take effect and be in full force from and after its passage and adoption.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS 21st DAY OF JUNE, 2021.

APPROVED:

Derek France, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

EXHIBIT "A"

**Town of Flower Mound
Amended Budget
Fiscal Year 2020-2021**

REASON FOR ADJUSTING THE GENERAL FUND APPROPRIATION:

The General Fund expenditures will increase by \$214,380 from \$71,473,960 to \$71,688,340. The Legislative Services department's budget will increase by \$22,080 to account for the cost of the June mayoral runoff election. The Administrative Services Department's budget will increase by \$143,300 to cover the cost of the roof replacement at Central Fire Station. The Fire and Emergency Services Department's budget will increase by \$49,000 so the department can purchase a vehicle for the new EMS Officer position. The position was approved in May 2021.

General Fund	Original Budget	Current Budget	Amended Budget	Increase / (Decrease)
Expenditures:				
Town Manager's Office	\$ 2,276,335	\$ 2,300,332	\$ 2,300,332	\$ -
Legislative Services	507,083	511,399	533,479	22,080
Development Services	2,127,616	2,164,753	2,164,753	-
Parks and Recreation Services	8,416,848	8,470,673	8,470,673	-
Library Services	1,921,013	1,952,851	1,952,851	-
Police Services	15,932,146	16,159,951	16,159,951	-
Financial Services	3,791,407	3,971,489	3,971,489	-
Administrative Services	5,617,102	5,931,556	6,074,856	143,300
Fire and Emergency Services	15,484,160	15,782,415	15,831,415	49,000
Communications	702,573	709,681	709,681	-
Non-Departmental Services	4,360,507	6,010,507	6,010,507	-
Public Works	5,846,993	5,978,673	5,978,673	-
Environmental Services	1,516,248	1,529,679	1,529,679	-
Total	\$ 68,500,031	\$ 71,473,960	\$ 71,688,340	\$ 214,380



TOWN COUNCIL AGENDA ITEM NO. 8

CONSENT ITEM

DATE: June 21, 2021

FROM: Christopher Allen, Utility Services Manager

ITEM: 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.

BACKGROUND INFORMATION: Currently the Town of Flower Mound's Wastewater Treatment Plant (WWTP) serves the Long Prairie and Lakeside service areas. While the collection system is designed and rated to accommodate peak wet weather conditions, the wastewater treatment plant is permitted and rated based on average annual flow rates. The treatment plant is currently permitted for 8.7 million gallons per day (MDG). Utilizing the dry weather model prepared as part of the wastewater model updates, the projected build out flows for these areas is approximately 9 MGD.

Development of an updated WWTP Master Plan is necessary to coordinate and prioritize recommended treatment plant improvements to ensure continued system reliability, address current and potential regulatory requirements, and to enhance plant performance and processes to reduce operational costs.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS:

FISCAL IMPACT: \$298,389.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$298,389.00	600-971-98476

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

Total project cost is \$430,000 Funding sources are:

- Impact Fees \$ 430,000

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 PLUMMER ASSOCIATES, INC.

This contract is entered into on this 21 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, Texas 76107.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to development of the Wastewater Treatment Plant Master Plan project; and

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

TERMS OF AGREEMENT

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

I.

Employment of Consultant

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

II.

Scope of Services

CONSULTANT shall perform such services as are necessary to provide professional services for the Wastewater Treatment Plant Master Plan 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 Two Hundred Ninety-Eight Thousand Three Hundred Eighty-Nine and No/100 Dollars (\$298,389.00). 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:

Jeffrey E. Caffey, P.E.
 Principal, Wastewater Chief Engineer
 Plummer Associates, Inc.
 1320 S. University Drive, Suite 300
 Fort Worth, Texas 76107
 817-806-1723 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 Derek France
Mayor, Town of Flower Mound Date

Signed: _____

Attest:

Town Secretary

CONSULTANT:**Plummer Associates, Inc.**By: *Jeffrey E. Caffey*

Name: Jeffrey E. Caffey

Title: Principal

Date Signed: *June 3, 2021*

State of Texas

§

County of *Tarrant*

§

§

This instrument was acknowledged before me on the *3* day of *June*, 20*21*, by *Jeffrey E. Caffey* in his 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 *3* DAY OF *June*, 20*21*.

Cylena Eason

Notary Public, State of Texas

My Commission Expires:

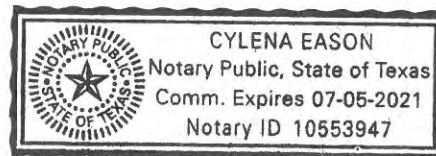
7/5/2021

EXHIBIT A
Town of Flower Mound
Wastewater Treatment Plant Master Plan
Scope of Work

Prepare a Master Plan report which summarizes the evaluation of the existing wastewater treatment plant, permit changes, process improvements, and improvements needed to reach the build-out and peak capacity for the plant.

The ENGINEER agrees to furnish the TOWN the following specific services:

BASIC ENGINEERING SERVICES

ENGINEER agrees to perform BASIC ENGINEERING SERVICES for the evaluation of the Town's wastewater treatment plant (WWTP) to reach annual average (design flow) capacity build-out and peak 2-hour flow capacity, in accordance with the stipulations within this AGREEMENT. The ENGINEER shall perform BASIC ENGINEERING SERVICES necessary for the development of the PROJECT as follows:

A. EVALUATION PHASE SERVICES

1. Meetings and Workshops
 - a. Kickoff Meeting: Prepare for and facilitate kickoff meeting with the Town. Review project scope, schedule and deliverables. Discuss overall objectives – short term and long term – for the Town's WWTP.
 - b. Progress Meetings: Prepare for and facilitate two progress meetings with the Town over the course of the Master Plan development.
 - c. Options Workshop: Prepare for and facilitate a workshop to review potential treatment options and arrangements for build out of the plant site.
 - d. Draft Report Review Meetings: Prepare for and facilitate one review meeting with the Town.
 - e. Conduct interval Quality Control Review Meetings with senior staff for each deliverable.
2. Data Collection
 - a. Receive flow data previously measured in the collection system.
 - b. Obtain the Town's wastewater hydraulic model.
3. Describe Existing WWTP
 - c. Gather data and review existing data. Recommend changes to data collection.
 - d. Summarize existing WWTP process and treatment capacity;
 - e. Summarize TCEQ permitted discharge location and requirements;
 - f. Summarize existing hydraulic capacity of the plant overall and for each treatment train;
 - g. Summarize recent improvements;
 - h. Review of recent Federal Emergency Management Agency maps to determine if 100-year floodplain levels have changed in the vicinity of the WWTP;

- i. Review remaining improvements that are funded and unfunded, but are addressed in the most recent CIP report;
 - j. Review service area, population, and wastewater flow projections based on the most recent collection system wastewater model;
 - k. Identify the peak influent flow to the WWTP based on flow meter data and the wastewater model;
 - l. Identify build-out capacity of the existing WWTP based on the collection system wastewater model;
 - m. Develop probable wastewater quality characteristics and wastewater loads based on review of up to five years of historical quality data for BOD, NH₃, T-N, T-P, TSS, alkalinity, pH, temperature, and any other pertinent data. The Town will furnish the data in electronic format. Document the changes in capacity from the previous design.
4. TPDES Permit Criteria
- a. Identify potential future permitting requirements.
 - b. Discuss impacts to the WWTP process due to changes in regulations (nutrients, water quality standards, etc.). This task does not include stream modeling, stream surveys, or sampling.
5. Condition Assessment
- a. Perform a condition assessment for older facilities at the plant. Prepare a chapter in the report describing the Condition Assessment. This assessment will consist of five individuals (project manager, electrical engineer, structural engineer, mechanical engineer, and process engineer). The review team will identify major deficiencies in the facility. The walk-through will be up to one day on site;
 - b. Confirm the number and types of units currently in operation.
 - c. Shadow staff to gain an insight into current daily operation and challenges. Interview facility operations staff regarding operation performance of each major asset. It is assumed that interviews will occur as staff accompanies the ENGINEERS on condition assessment site visit.
 - d. In conjunction with the Owner, identify items with high consequence of failure and/or high likelihood of failure. Describe condition of items, considering mechanical, structural, electrical and control sub-components based on observation, historical maintenance and feedback from plant staff.
 - e. Electrical
 - 1) Perform a condition assessment for existing electrical and SCADA facilities to support the expansion needs for the next 20 years. The electrical system evaluation will include an evaluation of the condition and capacity of the incoming electrical service and will coordinate with the power company based on the additional plant load including reclaimed water facility loads
 - 2) The Electrical condition assessment will include preliminary recommendations of improvements for each electrical facility at the plant. Review of site conditions is limited to electrical distribution equipment. Other areas of the plant will not be included in the assessment. These improvements should include:

- 3) Corrections of any noticed NEC violations or reliability issues related to existing electrical distribution and controls.
- 4) Replacement of aging equipment or equipment in poor condition.
- 5) System redundancy
- 6) System stability
- f. The condition assessment is intended to be high level visual inspection and documentation of the equipment. The visual inspection will cover the physical condition of the equipment. The report will document the condition of overall electrical system at each facility. It will not include individual descriptions for each piece of equipment.

6. Process Evaluation:

- a. Identify modifications to incorporate phosphorus removal in the existing treatment process if required.
- b. Describe conversion of the sequencing batch reactors (SBRs) to conventional wastewater treatment process to aeration basins and constructing new final clarifiers. Describe how process would meet the future potential TPDES nutrient removal criteria. Biowin or similar type of computer modeling is not included in Basic Services.
- c. Determine the capacities and sizes of the components for converted process.
- d. Develop life-cycle costs including the opinion of probable construction cost (OPCC) and the operational and maintenance (O&M) costs.
- e. Evaluate the plant's solids process for the following tasks:
 - 1) Estimate solids production and run time of existing equipment in order to develop a timeline for a second gravity belt thickener;
 - 2) Update solids drying cost comparison from Solids Facility Plan to update timeline for incorporating sludge drying.

7. Peak Flow Evaluation

Communities across Texas are experiencing increased peak flow to design flow ratios as homeowners and builders incorporate water conservation fixtures into homes and businesses. This results in WWTPs reaching their peak flow capacity before reaching their design flow capacity. This can be a hidden issue because it is much easier to track the design flow capacity. This likely has occurred in the Town of Flower Mound. The existing WWTP is designed for a 3.3 peak flow to design flow ratio. If this ratio has increased, the Town will need to identify how to address the increased peak flows to the plant.

- a. Utilizing the Town's wastewater collection system model results, identify the storm event return year on which to base the peak flow evaluation.
- b. Based on flow information provided to ENGINEER, evaluate two options for increasing peak flow capacity. The options may include a peak flow storage basin, increased peak flow to design flow capacity of treatment system, or separate peak flow treatment.
- c. Develop conceptual design configurations and life-cycle costs including OPCC and O&M costs for each peak flow option.

8. Odor Control Assessment:
 - a. Develop OPCC to provide a new bioscrubber type odor control system.
 - b. Include the odor control OPCC into the rehabilitation projects chapter.
9. Rehabilitation Projects:
 - a. Based on the condition assessment and treatment process evaluation, identify and describe equipment and facilities that require rehabilitation. As a minimum, the following items will be included in the cost development:
 - a. A coarse screen at the raw wastewater pump station,
 - b. Replacement of control panels and other items for the effluent filters, and
 - c. Pretreatment Unit Screen Building, screen replacement, grit classifier replacement and grit dumpster access improvements.
 - b. Develop an OPCC for rehabilitation items.
10. Support Facilities
 - a. In conjunction with plant staff, identify support facility needs related to operational facilities, maintenance facilities, storage facilities and other items identified in a workshop.
11. Electrical System and Back-Up power Evaluation and System Supervisory Control and Data Acquisition (SCADA) Evaluation:
 - a. The back-up power evaluation will address the size, number of units, and location for backup generators for the plant expansion. The evaluation will review the plant loads and evaluate options for permanent or mobile backup generators.
 - b. The SCADA evaluation will evaluate the process and the equipment required for the system communication for a plant expansion. Plant control system standards will be considered in developing a plan for the instrumentation system.
 - c. Identify studies such as arc-flash studies, a comprehensive power study, which incorporates the power studies prepared on previous projects, or wastewater pump station power efficiency study that could be included in the CIP.
 - d. Develop an OPCC for the recommended improvements based on each evaluation.
12. WWTP Master Plan Layout
 - a. Develop a conceptual design layout for implementing the WWTP Master Plan, including an evaluation of maintenance building locations and grit trailer access and hauling arrangements. Items to be rehabilitated at the WWTP identified by the Town will also be included in the phasing plan. A schedule of implementation will be developed in coordination with the Town.
 - b. Incorporate reclaimed water facilities into plant site layout based on Reclaimed Water Master Plan; and
 - c. Develop an opinion of probable construction costs for the final plant expansion.

13. Asset Inventory Plan

- a. Develop a plan for compiling and inventory listing of major above-ground plant assets and below-ground piping based on existing plant record and an onsite survey to identify structures, buildings, and the associated mechanical, electrical, and instrumentation equipment.
- b. Prepare a description of plan to be included in a list of new projects for the CIP update.
- c. Obtain the past five years of maintenance work orders performed at the WWTP.
- d. Using the historical work order data and the results of the condition assessment, assign a likelihood of failure score for each asset included in the asset inventory. Based on the relative importance of an asset to the WWTP processes, assign a consequence of failure score for each asset. Calculate the overall risk score for each asset and rank and sort the assets by their relative risk score.
- e. Identify items that need rehabilitation and priority of needs.
- f. Develop series of rehabilitation projects for the CIP program, identify items included in each rehabilitation project and the OPCC for each project.

14. Capital Improvement Plan

- a. Provide an updated list of capital improvement projects, in coordination with input from Town's staff, including a schedule and opinion of probable construction cost for each project. Items to be included are improvements identified in the Master Plan to increase/update the performance of the existing plant, items from the Reclaimed Water Master Plan as well as rehabilitation and replacement items. Maintenance facility will be included as part of CIP.
- b. Summarize results of each evaluation in a Master Plan Report. Content and format of the report will be structured so that it will meet the requirements of feasibility reports needed when applying for TWDB funding. Provide a draft to the Town in electronic format for review. Incorporate comments and provide final report to the Town in electronic format.

15. Master Plan Report

- a. Prepare a draft Master Plan report divided into Chapters. Submit five (5) hardcopies of the draft report and an electronic copy to OWNER review.
- b. Attend a review meeting for the draft report to received OWNER comments.
- c. Incorporate and address the comments and provide a Final Master Plan. Submit five (5) hardcopies and an electronic copy in PDF to the OWNER.

ADDITIONAL SERVICES

Additional services to be performed by the ENGINEER, if authorized by the TOWN, which are not included in the above-described Basic Engineering Services, are described as follows:

- A. Providing additional copies of reports, plans, specifications, and contract documents.
- B. Coordination with other consultants.
- C. Payment of fees for permit applications and publication of notices.
- D. Assisting TOWN or Contractor in the defense of prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. ENGINEER shall furnish such services, if any, on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
- E. Sampling, testing or analysis beyond that specifically included in Basic Services.
- F. Preparing copies of Computer-Aided Drafting (CAD) electronic databases, drawings, or files for the TOWN's use in a future CAD system.
- G. Attending additional meetings as requested by TOWN.
- H. Providing topographic surveys.
- I. Providing arrangements for all subsurface investigations, including but not limited to geotechnical borings, test pits, soil resistivity surveys, and other subsurface explorations beyond what is specifically included in basic services, and the TOWN making or arranging to have made the interpretations of data and reports resulting from such investigations.
- J. Corps of Engineer Permitting, SWPPP, Traffic Control Plans, Subsurface Utility Engineering.
- K. Public relations activities and consulting services.
- L. Providing design services for modeling any of the lift stations.
- M. Any additional services that may be required by the TOWN for completion of the project that are not included in the Basic or Special Services.

END OF DOCUMENT

EXHIBIT B-1
COMPENSATION

Plummer Associates will provide the Scope of Services for a lump sum fee.

Master Plan Report	\$298,389.00
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*Direct Reimbursable Expenses includes Mileage, Reproduction, Print, and Postage and Freight fees.

The ENGINEER may submit interim statements, not to exceed one per month, for partial payment for SERVICES rendered. The statements to the TOWN will be by task for the percentage of work actually completed. The TOWN shall make interim payments within 30 calendar days in response to ENGINEER's interim statements.

Town of Flower Mound WWTP Master Plan Budget Version 1 (4/19/21)											
Level 2 (Phase) No. and Description <i>Level 3 (Task) No. and Description</i>	Principal (hrs)	Sr. Proj Mgr (hrs)	Proj Mgr (hrs)	Proj Engr (hrs)	EIT (hrs)	Technician (hrs)	Clerical (hrs)	QC (hrs)	Total Labor		Percent of Total Fee
									Hours	Fee (\$\$\$)	
Budget Version 1 (4/19/21)	64	0	280	440	420	80	11	29	1,324		0.0%
A Meetings and Workshop	20	0	30	30	0	0	5	0	85	\$ 17,375	8.0%
1 Kickoff Meeting Prep, Mtg, and Notes	4		6	6			1	0	17	\$ 3,475	1.6%
2 Progress Meetings (2) Prep, Mtg, and Notes	8		12	12			2	0	34	\$ 6,950	3.2%
3 Options Workshop Prep, Mtg, and Notes	4		6	6			1	0	17	\$ 3,475	1.6%
4 Draft Report Review (Prep, Mtg, and Notes)	4		6	6			1	0	17	\$ 3,475	1.6%
B Existing WWTP Evaluation	4	0	32	64	84	0	0	0	184	\$ 28,300	13.0%
1 Data Collection			4		8				12	\$ 1,900	0.9%
2 Summarize existing WWTP facilities			2	8	12				22	\$ 3,150	1.5%
3 Summarize existing hydraulics capacity	4		2	4	8				18	\$ 3,270	1.5%
4 Review FEMA maps /Identify flood study needs			4	12	4				20	\$ 3,120	1.4%
5 Summarize recent improvements and remaing CIP			4	8	4				16	\$ 2,540	1.2%
6 Review KH Wastewater Model and meter flows			8	16	16				40	\$ 6,120	2.8%
7 Identify peak design flows based on meter data			4	8	16				28	\$ 4,100	1.9%
8 Revise influent data load calculations			4	8	16				28	\$ 4,100	1.9%
C Permitting Review	2	0	10	24	12	0	0	0	48	\$ 7,800	3.6%
1 Review potential permit changes			8	12					20	\$ 3,460	1.6%
2 Permitting section of report	2		1	8	12				23	\$ 3,545	1.6%
3 TCEQ Coordination			1	4					5	\$ 795	0.4%
D Condition Assessment	12	0	28	32	40	0	0	0	112	\$ 19,520	9.0%
1 Site Visit	8		8	8					24	\$ 5,320	2.4%
2 Operator Shadowing			8						8	\$ 1,720	0.8%
3 Identify Consequence of Failure	2		4	8	8				22	\$ 3,670	1.7%
4 Condition Assessment Documentation/Chapter	2		8	16	32				58	\$ 8,810	4.1%
D Process Evaluation	10	0	26	74	108	40	0	0	258	\$ 38,010	17.5%
1 Modification need evaluation	4		4	12	16				36	\$ 5,900	2.7%
2 SBR Conversion Plan	2		12	28	32	16			90	\$ 13,250	6.1%
3 Build-out capacity needs	2		4	8	16	8			38	\$ 5,630	2.6%
4 Peak flow apacity evaluation	2		4	18	32	16			72	\$ 10,080	4.6%
5 Summarize changes to solids for build-out			2	8	12				22	\$ 3,150	1.5%
E Rehabilitation and Support Facilities	2	0	22	52	56	0	0	0	132	\$ 20,160	9.3%
1 Describe Rehabilitation Project	2		8	12	16				38	\$ 6,150	2.8%
2 Identify Support Facility Needs			8	16	12				36	\$ 5,600	2.6%
3 Develop Description/OPCC - replace odor system			4	16	12				32	\$ 4,740	2.2%
4 Develop OPCC Costs			2	8	16				26	\$ 3,670	1.7%
F Electrical Evaluation	0	0	8	16	0	0	0	0	24	\$ 4,040	1.9%
1 Coordination with sub			8	16					24	\$ 4,040	1.9%
G Asset Inventory Plan and CIP Update	6	0	32	56	44	0	0	0	138	\$ 22,550	10.4%
1 Asset Inventory Plan	2		24	40	20				86	\$ 14,170	6.5%
2 CIP Project Identification and CIP List Update	4		8	16	24				52	\$ 8,380	3.9%
H Master Plan Layout and Report	8	0	30	92	76	40	6	4	256	\$ 38,500	17.7%
1 Conceptual design layout	2		8	24	16	40			90	\$ 12,490	5.8%
2 OPCC	2		2	12	24			4	44	\$ 7,120	3.3%
4 Draft Report	2		16	48	24		4		94	\$ 14,510	6.7%
5 Final Report	2		4	8	12		2		28	\$ 4,380	2.0%
PM ADMINISTRATIVE/QC TASKS	0	0	62	0	0	0	0	25	87	\$ 20,955	9.6%
1 Quality Control								25	25	\$ 7,625	3.5%
2 Project Management			62						62	\$ 13,330	6.1%
TOTAL LABOR	64	0	280	440	420	80	11	29	1,324	\$ 217,210	100.0%
Total Labor Hours	64	0	280	440	420	80	11	29	1,324		
Total Labor Amount										\$ 217,210	
Total Amounts by Labor Category	\$ 19,520	\$ -	\$ 60,200	\$ 63,800	\$ 54,600	\$ 9,200	\$ 1,045	\$ 8,845		\$ 217,210	
Labor Category Percent of Total Labor	9.0%	0.0%	27.7%	29.4%	25.1%	4.2%	0.5%	4.1%			100.0%
TOTAL EXPENSES (see breakdown below)											
Total Subconsultants										\$ 75,141	
Total Reimbursables										\$ 6,038	
Total Expenses										\$ 81,179	
GRAND TOTAL - Budget Version 1 (4/19/21)										\$ 298,389	

SUBCONSULTANT EXPENSES

Code	Description	Budget (\$\$)	Markup	Fee (\$\$\$)
CA	Architect Consultant	\$ -	1.15	\$ -
CC	Civil Engr Consultant	\$ -	1.15	\$ -
CE	Electrical Consultant	\$ 65,340	1.15	\$ 75,141
CG	Geotechnical Consultant	\$ -	1.15	\$ -
CM	Mechanical Consultant	\$ -	1.15	\$ -
CO	Other Consultant	\$ -	1.15	\$ -
CS	Structural Consultant	\$ -	1.15	\$ -
CY	Surveying Consultant	\$ -	1.15	\$ -
C1		\$ -	1.15	\$ -
C2		\$ -	1.15	\$ -
C3		\$ -	1.15	\$ -
C4		\$ -	1.15	\$ -
C5		\$ -	1.15	\$ -
C6		\$ -	1.15	\$ -
TOTAL SUBCONSULTANT EXPENSES		\$ 65,340		\$ 75,141

REIMBURSABLE EXPENSES

Code	Description	Budget (\$\$)	Markup	Fee (\$\$\$)
RA	Laboratory Analysis	\$ 1,500	1.15	\$ 1,725
RC	Computer	\$ -	1.15	\$ -
RH	Historical	\$ -	1.15	\$ -
RI	In-House Reproduction	\$ 500	1.15	\$ 575
RL	Long Distance Telephone	\$ -	1.15	\$ -
RM	Employee Mileage	\$ 1,000	1.15	\$ 1,150
RO	Other Expenses	\$ -	1.15	\$ -
RP	Purchased Services	\$ -	1.15	\$ -
RR	Reproduction	\$ 2,000	1.15	\$ 2,300
RS	Shipping, Delivery, Postage	\$ 250	1.15	\$ 288
RT	Travel, Meals, Lodging	\$ -	1.15	\$ -
RU	Telecommunications		1.00	\$ -
R1		\$ -	1.15	\$ -
R2		\$ -	1.15	\$ -
TOTAL REIMBURSABLE EXPENSES		\$ 5,250		\$ 6,038

PLUMMER ASSOCIATES, INC.
HOURLY FEE SCHEDULE
2021

Staff Description	Staff Code	2021 Rate
Admin Staff	A1 – A2	\$ 90.00
Admin Staff III	A3	\$ 95.00
Senior Admin Staff	A4	\$ 120.00
Designer/Technician	C1-C2	\$ 90.00
Designer/Technician III	C3	\$ 115.00
Senior Designer/Technician	C4	\$ 135.00
Engineer/Scientist Intern	ES0	\$ 60.00
Engineer-in-Training/Scientist-in-Training	ES1	\$ 115.00
Engineer-in-Training/Scientist-in-Training II	ES2	\$ 120.00
Engineer-in-Training/Scientist-in-Training III	ES3	\$ 130.00
Project Engineer/Scientist	ES4	\$ 145.00
Senior Project Engineer/Scientist	ES5	\$ 175.00
Project Manager	ES6	\$ 215.00
Senior Project Manager	ES7	\$ 240.00
Principal I	ES8	\$ 305.00
Principal II	ES9	\$ 320.00
Electrical Engineer in Training I	EE1	\$ 95.00
Electrical Engineer in Training II	EE2	\$ 120.00
Electrical Engineer in Training III	EE3	\$ 125.00
Electrical Specialist	EE4	\$ 145.00
Programmer	EE5	\$150.00
Programmer II	EE6	\$ 155.00
Senior Electrical Engineer	EE7	\$ 280.00

Billing rates may be adjusted by up to 4 percent annually (at the beginning of each calendar year) during the term of this agreement.

A multiplier of 1.15 will be applied to all direct expenses

A technology charge will be billed at \$5 per labor hour.

EXHIBIT C-1
TIME OF COMPLETION

Upon Receipt of a notice to proceed, we anticipate the following:

	<u>Calendar Days</u>
Evaluation Services	240

*Time of Completion assumes a review time by the Owner of two (2) weeks per submittal.



TOWN COUNCIL AGENDA ITEM NO. 9

CONSENT ITEM

DATE: June 21, 2021

FROM: Christopher Allen, Utility Services Manager

ITEM: **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.**

BACKGROUND INFORMATION: On May 12, 2011, the Town contracted with Alan Plummer Associates Inc., for the development of a Sanitary Sewer Overflow Initiative (SSOI) plan for the Town's sanitary sewer collection system.

The Town's SSOI Plan was completed in May 2012 and submitted to TCEQ for their review and comments. TCEQ approved the plan in July 2012. The plan provides a program of corrective actions designed to improve the overall performance of the Town's sanitary sewer system; provides improved strategies related to sanitary sewer overflows; enhances the Town's ongoing sewer system management, operations, and maintenance program; and reduces the number of Sanitary Sewer Overflows (SSOs) in the system. As part of this initiative, a comprehensive evaluation of the sanitary sewer system was completed that focused on identifying conditions that may lead to SSOs. An overall condition assessment of the sewer system was completed that resulted in the rating of each sewer-shed basin as good, fair or poor condition. The rating component included structural condition, rainfall Inflow/Infiltration frequency, and frequency of routine maintenance and cleaning.

The development of the SSOI plan identified several sewer-sheds to be in fair condition. These basins are in the older northeastern area of Town. The age and type of lines have contributed to the deterioration of the collection system in the selected areas. This section of the sanitary sewer collection system needs more detailed investigation to determine the exact locations within the collection system that need to be repaired or replaced.

In anticipation of the need to contract for services for detailed sanitary sewer system investigations, the Town developed a scope of services for a Sanitary Sewer Evaluation Survey (SSES) and advertised for firms to provide these services. On June 2, 2020, the Town Council approved one firm to provide SSES service for a two-year period, ending June 2, 2022. That firm was RJN Group, Inc. The scope of the proposed 2021 SSES and Manhole Rehabilitation Design project provides for the detailed sanitary sewer system investigation of the areas identified in the SSOI plan as being in fair condition.

The proposed Professional Services Agreement provides for professional engineering services for the 2021 SSES and Manhole Rehabilitation Design project in the amount of \$244,261.80. The proposed SSES and Manhole Rehabilitation Design project will be funded through the Inflow/Infiltration/Evaluation and Repair project as approved on the current 5-year capital improvement plan.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: A decision to not approve the Professional Services Agreement would terminate the Sanitary Sewer Overflow Initiative Plan Agreement with TCEQ and result in breaking the commitments made by Flower Mound on May 17, 2012.

FISCAL IMPACT: \$244,261.80

Proposed Expenditure/(Revenue):	Account Number(s):
\$244,261.80	630-970-98030

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

Total project cost is \$250,000 annually. Funding sources are:

- Other \$ 250,000

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
RJN GROUP, INC.**

This contract is entered into on this 21st 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 **RJN Group, Inc.**, (“hereinafter referred to as “CONSULTANT”) whose address is 14755 Preston Road, Suite 710, Dallas, TX 75254.

RECITALS

WHEREAS TOWN desires to obtain professional services from CONSULTANT relative to consulting engineering services for Phase III Sanitary Sewer Evaluation Services (SSES) and flow monitoring for the Phase III areas of Wellington North, Wellington East, and Garden Ridge North, project.

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 2021 SSES 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 Two Hundred Forty-Four Thousand Two Hundred Sixty One Dollars and Eighty Cents (\$244,261.80). 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:

Christopher Allen
Utility Services Manager
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6405 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 workspace 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 respondent 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:

Christopher Allen
Utility Services Manager
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6405 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:

Tristan Nickel, P.E.
Engineering Supervisor
RJN Group, Inc.
14755 Preston Rd, Suite 710
Dallas, TX 75254
972.437.4300 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 Derek France
Mayor, Town of Flower Mound

Date Signed: _____

Attest:

Town Secretary

**CONSULTANT:
RJN Group, Inc.**

By: Don Jackson
 Name: Daniel Jackson
 Title: Sr. Vice President
 Date Signed: 5/26/2021

State of Texas §
 §
 County of Dallas §

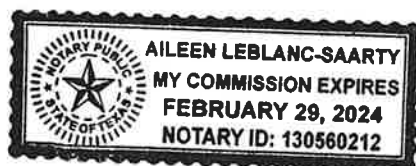
This instrument was acknowledged before me on the 26th day of May, 2021, by Daniel Jackson in his capacity as Sr. Vice President of RJN Group, Inc., a S Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of Principal.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE May DAY OF 26, 2021.

Aileen LeBlanc-Saarty
 Notary Public, State of Texas

My Commission Expires:

February 29, 2024



May 26, 2021

Mr. Tony Criss
Utility Line Maintenance Supervisor
Town of Flower Mound
2121 Cross Timbers Rd
Flower Mound, Texas 75028

Subject: 2021 Phase III– Sanitary Sewer Evaluation Studies (SSES)

Dear Mr. Criss:

We appreciate the opportunity to submit this proposal to perform consulting engineering services for condition assessment within the Town of Flower Mound.

The proposal consists of Phase III condition assessment. Phase III is for the Wellington North, Wellington East, and Garden Ridge North sewer sheds comprising approximately 313 manholes and 28,203 linear feet of sanitary sewer mains. Additionally, Phase III contains town-wide flow monitoring at nine (9) sites identified by the Town.

Enclosed, please find exhibits which detail the scope and compensation schedule.

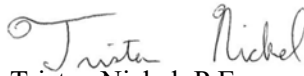
The not-to-exceed fee for the assessment activities is:

Phase III Total Not-to-Exceed Amount	\$244,261.80
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If you have any questions or comments, please do not hesitate to contact us.

Respectfully Submitted,

RJN GROUP, INC.



Tristan Nickel, P.E.
Senior Project Manager

TAN
Enclosures:

Attachment A – Scope of Services
Attachment B – Compensation Table

ATTACHMENT A
SCOPE OF WORK

TOWN OF FLOWER MOUND

2021 SSES

BACKGROUND:

RJN Group, Inc.'s (ENGINEER) services include field services, analysis, and reporting to the Town of Flower Mound (TOWN) for a multi-year Inflow/Infiltration (I/I) Reduction and Sanitary Sewer Evaluation Study (SSES). Phase III includes city-wide flow monitoring, and evaluation of approximately 52 mainline cleanouts, 313 manholes, and 28,203 linear feet of sanitary sewer mains within the Wellington North, Wellington East, Garden Ridge North sewer sheds.

The services to be provided include the following:

I. PROJECT ADMINISTRATION and MANAGEMENT (PHASE III):

A. Project Administration

1. Meet with Town staff to discuss progress of the various tasks throughout the Project. Monthly meetings are anticipated.
2. Bi-weekly updates will be provided to the Town consisting of activities performed in that week. The bi-weekly updates will include the following, but are not limited to:
 - o Quantities of field activities conducted.
 - o Maps providing a visual status of field work progress.
 - o A list of any issues that may arise preventing the completion of inspection activities (Town Action List).
3. Perform general consultation with Town staff on an as-needed basis.
4. Perform ENGINEER'S internal project control procedures monthly, including schedule and budget control, quality control review, and monthly progress reports.

B. Data Management

Collect and review existing information including maps, flow records, and other pertinent information. TOWN will provide ArcView shape files of the wastewater

system. ENGINEER shall prepare preliminary field maps for Project use from existing TOWN shape files.

Data shall be recorded by field crews on ENGINEER's electronic forms for each specified activity. All field inspection data shall be entered into a computerized data management system from which rehabilitation recommendations shall be made.

All field inspection data and photos will be provided in digital format to the TOWN.

II. FLOW/RAINFALL MONITORING/DATA ANALYSIS (PHASE III):

A. Flow Monitoring

Flow monitoring will be performed at nine (9) temporary locations to measure flow in the system.

The ENGINEER shall make recommendations for the locations to install the meters. The following tasks will be performed by the ENGINEER for this phase:

1. Identify candidate flow monitoring locations.
2. Install nine (9) temporary flow meters.
3. Service and calibrate temporary flow meters at the nine (9) locations for sixty (60) days. It is assumed that adequate weather conditions will be observed during the flow monitoring period so that dry and wet-weather conditions and at least five (5) storm events of different rainfall intensities are monitored which put stress on the sewer system, but do not result in surcharge conditions.

B. Rainfall Monitoring

Install and service four (4) rain gauges with 0.01-inch accuracy in the study area to obtain a continuous record of rainfall conditions during the monitoring period.

C. Data Analysis

1. Analyze flow data for the nine (9) gravity flow and develop average daily dry weather flow diurnal curves and dry weather flow peaking factors.
 - Develop hydrographs for dry and wet weather flow conditions.
 - Determine peak inflow rate for selected rainfall events and determine corresponding rainfall intensity for areas tributary to all flow monitoring locations.

2. Establish the relationship between peak inflow and rainfall intensity (Q vs I) for each tributary area to a monitoring location.
3. Determine peak infiltration rates during high groundwater conditions, if possible.
4. Prepare a brief Technical Memorandum that summarizes the results of the flow monitoring activities.

III. CONDITION ASSESSMENT (PHASE III):

A. Mainline Cleanout Inspections

Utilizing industry standard safety procedures and appropriate traffic control, all subsurface mainline cleanouts will be inspected. Pictures documenting the area around the mainline cleanout and looking into the mainline cleanout will be provided. Inspections will be conducted according to NASSCO MACP Level 1 standards.

Investigation data collected during field investigations will be reviewed on a weekly basis and analyzed routinely. A minimum of 15 minutes per visit will be spent attempting to access mainline cleanouts for inspection. Mainline cleanouts that cannot be inspected will be revisited by separate individuals to confirm status prior to being turned over to TOWN staff.

Once the cleanouts are located or the TOWN provides access to these cleanouts, the ENGINEER will complete all necessary inspections at the regular unit cost included in the Compensation section. Should a cleanout not be inspected upon completion of this project, the ENGINEER will be compensated at the reduced inspection attempt rate included in the Compensation section.

B. Manhole Inspections

Utilizing industry standard safety procedures and appropriate traffic control, all subsurface manhole components will be inspected. Manholes will be scanned utilizing 3D Optical Manhole Scanner technology where applicable. Inspections will be conducted according to NASSCO MACP Level 2 standards.

Investigation data collected during field investigations will be reviewed on a weekly basis and analyzed routinely. A minimum of 15 minutes per visit will be spent attempting to access manholes for inspection. Manholes that cannot be inspected will be revisited by separate individuals to confirm status prior to being turned over to TOWN staff.

Once the manholes are located or the TOWN provides access to these manholes, the ENGINEER will complete all necessary inspections at the

regular unit cost included in the Compensation section. Should a manhole not be inspected upon completion of this project, the ENGINEER will be compensated at the reduced inspection attempt rate included in the Compensation section.

C. *Smoke Testing*

Smoke testing will be conducted using dual axial blowers. Each 12-inch diameter and smaller segment shall be isolated by sandbagging. Smoke candles will be used to generate smoke for the smoke testing. Smoke testing will be performed only during dry ground periods which are anticipated to be between May and July. Dry conditions in other months will be utilized for this activity as appropriate.

Flags will be placed at observed smoke locations and digital images will be captured. All defects identified by smoke testing will be flagged and photographed. Smoke defect locations will be recorded on sketches or by obtaining GPS coordinates. All private sector smoke defect images will be entered into the field inspection database.

Main line defects and service lateral defects shall be scrutinized to ensure that a conservative determination of public vs. private side defects is made. If necessary, the line will be earmarked for television inspection.

Investigation data collected during field investigations will be reviewed on a weekly basis and analyzed routinely.

D. *Dyed Water Flooding*

Line segments requiring dye water testing will be identified based on visual pipe and smoke test results. Prior to initiating dye water testing, a list of line segments recommended for dye water testing will be provided to the TOWN for review and approval. The line segments on the list will be annotated as to the priority and reason for recommendation.

Dyed water flooding will be conducted at selected locations prior to televised inspection to verify the existence of Inflow and Infiltration sources. Dye water will be induced into the line by flooding storm sewers and drainage ditches with sufficient time allowed for the source to activate.

ENGINEER will prepare a letter report summarizing the justification and location of sewers to be TV inspected with concurrent dyed water flooding.

E. *Television Inspection*

Cleaning and internal TV inspection of selected sewer lines and record findings shall be conducted utilizing NASSCO (PACP) guidelines. Sanitary sewer lines will be cleaned to view the condition of the pipe. Heavy cleaning and root cutting will be authorized by ENGINEER on an as-needed basis. During cleaning operations, all sludge, debris, etc., will be removed from the sewer and disposed of in a proper manner to comply with the applicable regulations.

If progress of the television camera is impeded or stopped by roots or other impediments in the sewer reach being inspected, the camera will be withdrawn, and the line heavily cleaned only at the direction of the ENGINEER. If no heavy cleaning is authorized, the camera will then be reinserted at the other manhole of the sewer reach and the television inspection resumes. This shall be considered a “reverse set-up” and compensated at the rates specified.

If a line segment cannot be fully televised, the TOWN will be billed for the amount of linear footage televised, at the rates specified, in addition to the “reverse set-up” rate if a “reverse set-up” was attempted to obtain a complete inspection of an entire sewer line.

All internal TV inspections will be conducted following NASSCO PACP guidelines and codes. A review of the inspections will be performed to ensure the compliance and accuracy of the inspection. Special attention will be paid to identify sewer lines where partial inspections were conducted. These partial inspections will be evaluated and passed onto the TOWN on a bi-weekly basis. Partial inspections may be caused by, but not limited to the following: collapsed pipe, deformed pipe, intruding service tap, reduction in pipe diameter, or debris that could not be removed during cleaning activities.

ENGINEER will perform random quality control visits of subcontractor to ensure the quality of work being performed. ENGINEER will have bi-weekly meetings with subcontractor to discuss field progress and schedule. Any difficulties the subcontractor has pertaining to accessing sewer lines or where a complete inspection could not be performed, will be conveyed to the ENGINEER during these meetings. The ENGINEER will then notify the TOWN and a discussion will take place to determine how to proceed.

F. Television Inspection Review

ENGINEER will review and analyze the TV Inspection data to ensure that NASSCO PACP standards are met, codes are applied accurately, and all sewer lines identified for TV inspection are either inspected, or justification of why it was not inspected is provided.

IV. DEFECT ANALYSIS (PHASE III):

A. Inflow and Infiltration Source Analysis

At the conclusion of the field investigation services, an engineering analysis of field survey data shall be performed to develop recommendations for prioritizing I/I source repairs. A description of field investigations, engineering analysis, and recommended action to reduce I/I will be included in the report. ENGINEER shall deliver a comprehensive rehabilitation and improvement strategy as coordinated with the TOWN.

1. MACP inspection data will be evaluated, and an estimated inflow/infiltration rate will be applied to all recorded defects. The defect rates will then be combined into one (1) overall inflow/infiltration rate for each manhole.

MACP defects will be scored per NASSCO guidelines to provide an overall condition rating.

MACP inspection data will be compared to smoke testing to ensure that all manholes that could be inspected were, and inspected data corresponds across inspection methods.
2. Defects recorded during smoke testing will be evaluated against manhole inspection data to ensure quality and accuracy. All recorded defects will be assigned an inflow/infiltration rate where applicable.
3. Depth and velocity measurements taken prior to and upon completion of the dyed water flooding, will be evaluated using Manning's Equation to calculate the flow in the sewer line at that time. The initial flow rate will then be subtracted from the peak flow rate to determine the amount of inflow entering the sanitary sewer system during the test.
4. PACP inspection data will be evaluated, and an estimated inflow/infiltration rate will be applied to all recorded defects. The defect rates will then be combined into one (1) overall inflow/infiltration rate for each manhole.

V. REPORTING (PHASE III):

Reports will be prepared at key points during the Project to summarize completed tasks. Reports are included below and are further described in the task description above. In addition to the Project status meetings, a meeting will be held with the Town of Flower Mound prior to the delivery of the draft report to discuss the outline and general content of the report. The draft report will contain estimated costs for recommendations presented. The final report will incorporate all comments from the TOWN and recommendations and cost estimates will be updated accordingly.

The Town of Flower Mound will be provided with three (3) draft copies of each report, and three (3) final copies containing all incorporated changes. Both draft and final reports will be submitted in hard copy and electronic format.

A. Schedule of Reports

- o Flow Monitoring Report – *(Phase III)*
 - Dry and Wet Weather Analysis.
 - Inflow and Infiltration Analysis.
- o Sanitary Sewer Evaluation Study Report – *(Phase III)*
 - Manhole Inspection Results and Recommended Remedial Measures.
 - Smoke Testing Results and Recommended Remedial Measures.
 - Dyed Water Flooding Results and Recommended Remedial Measures.

VI. PROJECT DELIVERABLES

The deliverables are an important part of the project. Formal submittals will be delivered to the CITY at the following stages:

- o Conclusion of Flow Monitoring and Analysis.
- o Conclusion of Manhole/Cleanout Inspection and Analysis.
- o Conclusion of Smoke Testing and Analysis.
- o Conclusion of Dye Water Flooding and Analysis.
- o Conclusion of CCTV Inspection and Analysis.

ATTACHMENT B
COMPENSATION TABLE

TOWN OF FLOWER MOUND

2021 SSES

Task	Description	Quantity	Units	Unit Cost	Cost (\$)
PHASE III					
<i>Project/Data Management</i>					
1110	Project Administration	1	LS	\$26,280.00	26,280.00
3810	Data Management	1	LS	\$25,800.00	<u>25,800.00</u>
<i>Subtotal</i>					<u>52,080.00</u>
<i>Flow Monitoring</i>					
2120	Flow Meter Site Investigations	9	EA	\$450.00	4,050.00
2130	Flow Meter Installations	9	EA	\$800.00	7,200.00
2140	Rain Gauge Investigations/Installs	4	EA	\$400.00	1,600.00
2220	Flow Monitoring Period	540	M-D	\$88.00	47,520.00
2230	Rain Gauge Period	240	RG-D	\$10.00	<u>2,400.00</u>
<i>Subtotal</i>					<u>62,770.00</u>
<i>Condition Assessment</i>					
3210	Mainline Cleanout Inspections	52	EA	\$80.00	4,160.00
3215	Inaccessible Mainline Cleanouts		EA	\$34.00	
3230	Manhole Inspections (Scans)	313	EA	\$155.00	48,515.00
3235	Inaccessible Manholes		EA	\$50.00	
3310	Smoke Testing	28,203	LF	\$0.60	16,921.80
3420	Dyed Water Flooding	5	EA	\$475.00	2,375.00
3610	CCTV Review	4,000	LF	\$0.46	1,840.00
3620	CCTV Inspection/Cleaning	4,000	LF	1*	<u>9,900.00</u>
<i>Subtotal</i>					<u>83,711.80</u>
<i>Analysis/Reporting</i>					
2410	Flow Monitoring Technical Memo	1	LS	\$14,400.00	14,400.00
5110	Analysis/Reporting	1	LS	\$31,300.00	<u>31,300.00</u>
<i>Subtotal</i>					<u>45,700.00</u>
Phase III Total Not-to-Exceed Amount					\$244,261.80

1* Unit prices for cleaning and television inspection apply. Assumptions have been made on percentage of heavy cleaning and reverse setups.



TOWN COUNCIL AGENDA ITEM NO. 10

CONSENT ITEM

DATE: June 21, 2021

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

ITEM: 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.

BACKGROUND INFORMATION: On May 18, 2021, bids were received and opened (Bid # 2021-63-B) for the Pink Evening Primrose Trail Connection (Bridge & Trail from Gaston Park to Timber Trails Park) project. Parkscape Construction, Inc. submitted the lowest qualified bid of the fourteen (14) responding bidders at a base bid of \$534,610.15. The Pink Evening Primrose Trail Connection (Bridge & Trail from Gaston Park to Timber Trails Park) project consists of the installation of a 150-foot pedestrian bridge crossing Timber Creek and connecting to the Town Multi-Use Trail stubbed out with the NEM Senior Living development and extending the trail to the north to connect with Gaston Park and College Parkway. This connection will provide complete Town Multi-Use Trail access from Gaston Park to Timber Trails Park and other various Town Park properties further to the east.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: A decision to not approve the Construction Agreement would leave this section of stubbed out Town Multi-Use Trail in the current location and would not extend further north than Timber Creek.

A decision to not approve the Construction Agreement would also remove the need for construction materials and testing being proposed in the Pink Evening Primrose Trail Connection (Bridge & Trail From Gaston Park to Timber Trails Park) - Testing Award on the July 19, 2021, Town Council meeting.

FISCAL IMPACT: \$534,610.15

Proposed Expenditure/(Revenue):	Account Number(s):
\$400,000.00	308-110-90471
\$134,610.15	310-320-90471

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

Total project cost is \$915,000. Funding sources are:

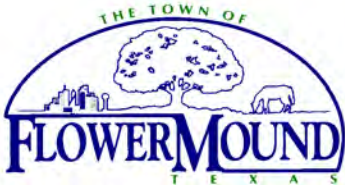
- Park development fees \$ 515,000
- TIRZ \$ 400,000

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.



Attachment 1

Town of Flower Mound
Bid Tabulation

Bid No: 2021-63-B - Pink Evening Primrose Trail Connection (Bridge & Trail From Gaston Park to Timber Trails Park)

Bid Opening: 5/18/2021 at 11:00 AM

Company	Base Bid
Parkscape Construction, Inc	\$ 534,610.15
C Green Scaping, LP	\$ 585,637.25
Rebcon, Inc	\$ 599,816.00
Ratliff Hardscape, Ltd	\$ 602,216.00
Urban Infraconstruction LLC	\$ 640,437.00
HQS Construction LLC	\$ 660,613.00
The Fain Group, Inc	\$ 663,318.00
Ed Bell Construction Company	\$ 684,801.75
J.B. & Co. LLC	\$ 685,841.00
Capko Concrete Structures, LLC	\$ 690,006.00
West Texas Rebar Placers, Inc	\$ 693,846.25
Fort Worth Civil Constructors, LLC	\$ 733,509.15
Reyes Group, Ltd	\$ 779,912.50
JCF Bridge & Concrete Inc	\$ 810,340.00

****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 18, 2021

TOWN OF FLOWER MOUND
PINK EVENING PRIMROSE TRAIL CONNECTION
(BRIDGE AND TRAIL FROM GASTON PARK TO TIMBER TRAILS PARK)

Bid # 2021-63-B

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the “Agreement”), made and entered into this 21st day of June, 2021, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the “Town,” and Parkscape 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:

PINK EVENING PRIMROSE TRAIL CONNECTION
(BRIDGE AND TRAIL FROM GASTON PARK TO TIMBER TRAILS PARK)
Bid # 2021-63-B

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

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

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

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

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

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

ARTICLE 2. For performance of the Work in accordance with the Contract Documents, the Town shall pay the Contractor in current funds an amount not to exceed **Five Hundred Thirty-Four Thousand Six Hundred Ten Dollars and Fifteen cents (\$ 534,610.15)** taking into consideration additions to or deductions from the Total Bid through properly executed change orders by reason of alterations or modifications of the original quantities or by reason of "Extra Work" authorized under this Agreement in accordance with the provisions of the Contract Documents. It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the Contractor by the Town, the said Contractor shall furnish all labor, equipment, and material (except as otherwise specified above) and shall perform all work necessary to complete the improvements in a good and workmanlike manner, ready for use, within the specified time for substantial completion of One Hundred and Twenty (120) calendar days, and final completion of One Hundred and Fifty (150) calendar days ready for final payment, as measured from the Effective Start Date shown in the Notice to Proceed. The work shall be in strict accordance with this Agreement, a copy of which is filed pursuant to law in the office of the legal representative of the Town.

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

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

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

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

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

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

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

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

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

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

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

Retainage shall be withheld and may be paid to:

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

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

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

The Town may withhold payment of some or all of any progress or final payment that would otherwise be due if the Town determines, in its discretion, that it is necessary and proper to provide an additional source of funds to pay claims for which the Town is entitled

to indemnification from Contractor under the Contract Documents. Amounts withheld under this section shall be in addition to any retainage.

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

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

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

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

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

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

Final payment to the Contractor shall not be due until the Contractor provides original full releases of liens, or other evidence satisfactory to the Town to show that all sums due for

labor, services, and materials furnished for or used in connection with the Work have been paid or shall be paid with the final payment. To ensure this result, Contractor consents to the issuance of the final payment in the form of joint checks made payable to Contractor and others. The Town may, but is not obligated to, issue final payment using joint checks.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TOWN OF FLOWER MOUND

CONTRACTOR

Derek France, MAYOR

(Signature)

(Printed Name)

(Position)

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST:

Theresa Scott, TOWN SECRETARYATTEST:

(Signature)

(Position)



TOWN COUNCIL AGENDA ITEM NO. 11

CONSENT ITEM

DATE: June 21, 2021

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

ITEM: 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.

BACKGROUND INFORMATION: On May 25, 2021, bids were received and opened (Bid # 2021-81-B) for the Edgefield Trail Reconstruction (Wood Creek Drive to Timber Valley Drive) project. Jeske Construction Company submitted the lowest qualified bid of the ten (10) responding bidders at a base bid of \$833,040.00. The Edgefield Trail Reconstruction (Wood Creek Drive to Timber Valley Drive) project consists of the complete reconstruction of Edgefield Trail paving between Wood Creek Drive and Timber Valley Drive. Failing storm sewer within the limits of the reconstruction will also be improved and replaced. Sidewalk and pedestrian ramp improvements are included in the project to be rebuilt to conform with current ADA requirements.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: A decision to not approve the Construction Agreement would leave this section of Edgefield Trail in the current condition. Currently various sections of Edgefield Trail asphalt paving have failed, been patch repaired and would continue to deteriorate. Along with the paving deficiencies various components related to the storm sewer and pedestrian routes/ramps would remain in the current failing or non-compliant conditions until the Town of Flower Mound would be able to proceed with the reconstruction.

A decision to not approve the Construction Agreement would also remove the need for construction materials and testing being proposed in the Edgefield Trail Reconstruction (Wood Creek Drive to Timber Valley Drive).

FISCAL IMPACT: \$833,040.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$833,040.00	316-560-78039

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

Total project cost is \$1,410,000. Funding sources are:

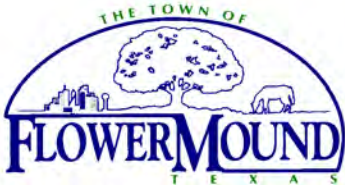
- Dedicated Sales Tax \$1,410,000

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.



Attachment 1

Town of Flower Mound
Bid Tabulation

Bid No: 2021-81-B - Edgefield Trail Reconstruction (Wood Creek Drive to Timber Valley Drive)

Bid Opening: 5/25/2021 at 11:00 AM

Company	Base Bid
Jeske Construction Company	\$ 833,040.00
Quality Excavation, LLC	\$ 893,555.00
Pavecon Public Works, LP	\$ 914,037.00
Ed Bell Construction Company	\$ 914,485.00
XIT Paving and Construction Inc	\$ 943,943.00
New World Contracting, LLC	\$ 949,236.00
HQS Construction LLC	\$ 997,115.00
Vescorp Construction LLC	\$ 1,004,500.00
Tiseo Paving Company	\$ 1,015,965.00
Fort Worth Civil Constructors, LLC	\$ 1,342,286.50

****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 25, 2021

TOWN OF FLOWER MOUND
EDGEFIELD TRAIL RECONSTRUCTION
(WOOD CREEK DRIVE TO TIMBER VALLEY DRIVE)

Bid # 2021-81-B

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the “Agreement”), made and entered into this 21st day of June, 2021, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the “Town,” and Jeske Construction Company, a Corporation, hereinafter referred to as the “Contractor.” For and in consideration of the payment, agreements, and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

EDGEFIELD TRAIL RECONSTRUCTION
(WOOD CREEK DRIVE TO TIMBER VALLEY DRIVE),
Bid # 2021-81-B

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

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

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

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

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

ARTICLE 2. For performance of the Work in accordance with the Contract Documents, the Town shall pay the Contractor in current funds an amount not to exceed **Eight Hundred Thirty-Three Thousand Forty Dollars and Zero cents (\$ 833,040.00)** taking into consideration additions to or deductions from the Total Bid through properly executed change orders by reason of alterations or modifications of the original quantities or by reason of “Extra Work” authorized under this Agreement in accordance with the provisions of the Contract Documents. It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the Contractor by the Town, the said Contractor shall furnish all labor, equipment, and material (except as otherwise specified above) and shall perform all work necessary to complete the improvements in a good and workmanlike manner, ready for use, within the specified time for substantial completion of ONE HUNDRED TWENTY (120) calendar days, and final completion of ONE HUNDRED FIFTY (150) calendar days ready for final payment, as measured from the Effective Start Date shown in the Notice to Proceed. The work shall be in strict accordance with this Agreement, a copy of which is filed pursuant to law in the office of the legal representative of the Town.

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

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

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

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

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

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

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

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

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

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

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

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

Retainage shall be withheld and may be paid to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TOWN OF FLOWER MOUND

CONTRACTOR

Derek France, MAYOR

(Signature)

(Printed Name)

(Position)

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST:

Theresa Scott, TOWN SECRETARYATTEST:

(Signature)

(Position)



TOWN COUNCIL AGENDA ITEM NO. 12 CONSENT ITEM

DATE: June 21, 2021

FROM: David Bauer, Construction Manager

ITEM: Consider approval of an Interlocal Agreement provided through The Interlocal Purchasing System (TIPS) Contract with Basic IDIQ, for the demolition of a Communication Building and a Natatorium Building, in the amount of \$595,519.32; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The Town recently purchased two parcels of land totaling 7.425 acres from LISD. The parcels are located adjacent to the Helen & Leonard Johns Community Park.

The two parcels were purchased for use as an active park that could include the future construction of a cultural arts center with a performance theater. At the June 8, 2020, Cultural Arts Feasibility Study Public Input meeting Webb Management highlighted in their Phase 1 conclusions that a cultural arts center makes sense for the Town given the amount of music, dance, theater, and arts organizations located here in Flower Mound. They recommended the center focus on music and performance but also have gallery and classroom space available. Other improvements to the site could include trails, landscaping, overlooks of the pond, additional parking, and site lighting.

The demolition proposal includes the removal of the old natatorium and a smaller communications building. The administration building will not be razed at this time. Staff is still evaluating the viability and expense of renovating the building to meet the recommendations of the Cultural Arts Feasibility Study. All demolition costs will be reimbursed with the Cultural Arts Commission grant funding allocated to the Town during the 86th State legislative session.

On May 6, 2021, seven vendors that have contracts to render demolition services through The Interlocal Purchasing System or (TIPS) were solicited and invited to bid on this project. Of the seven vendors, BASIC IDIQ was the only responding vendor interested to provide these services as a prime contractor for the Town. BASIC IDIQ has previously rendered services through this type of contract for the Town as the prime contractor for the temporary Fire Station No. 6 in western Flower Mound.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS:

FISCAL IMPACT: \$595,519.32

Proposed Expenditure/(Revenue):	Account Number(s):
\$ 595,519.32	370-719-34210-5110

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

LEGAL REVIEW: Larry Collister with Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the Interlocal Purchasing System Contract and drafted the Addendum to the Contract.

ATTACHMENTS:

1. Demolition Contract

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

DEMOLITION CONTRACT

This DEMOLITION CONTRACT (this "Contract" is by and the Town of Flower Mound, a Texas home-rule municipal corporation, ("Owner"), and BASIC IDIQ, Inc., a Texas corporation ("Contractor"). This Contract shall be effective as of the date of the last signature below ("Effective Date").

RECITALS

A. Owner is the owner of the real property located at 1776 and 1778 Timber Creek Rd., in the Town of Flower Mound, State of Texas, as more particularly described in Exhibit "A" attached hereto (the "Property" or the "Site") and desires to have the structures located upon the Property demolished and removed.

B. Contractor has submitted a proposal to The Interlocal Purchasing System ("TIPS") for demolition and related services and the same has been accepted by TIPS under TIPS contract number 181101. A copy of Contractor's proposal to TIPS is attached hereto as Exhibit "B" to this Contract.

C. Owner has selected Contractor to complete the demolition and removal of structures located up the Property. A copy of Contractor's scope of work, costworks breakdown, and cost summary is attached as Exhibit "C" to this Contract.

AGREEMENT

In consideration of the foregoing recitals, the covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and Contractor agree as follows:

Section 1. Definitions.

As used in this Contract, the following terms have the following meanings.

1.1. "Applicable Environmental Laws" means any federal, state or local statute, law, rule, regulation, ordinance, code, policy or rule of common law of any Governmental Entity now in effect and in each case as amended from time to time, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree, or judgment, relating to the environment, human health or hazardous materials, including, without limitation, CERCLA; The Hazardous Materials Transportation Act of 1994, as amended, 49 U.S.C. § 5101, et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1201, et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601, et seq.; the Clean Air Act, 42 U.S.C. § 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C. §300(f), et seq., the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. §136, et seq., the Occupational Safety and Health Act of 1970, 29 U.S.C. §651, et seq., orders, rules and regulations issued by the Texas Commission on Environmental Quality, and the ordinances, rules, and permits of the Town of Flower Mound, and any other similar federal, state or local laws, or any federal, state, or local laws relating to the environment or to hazardous or waste materials.

1.2. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

1.3. "Change Directive" has the meaning set forth in Section 9.4.B.

1.4. "Change Order" has the meaning set forth in Section 9.4.A.

1.5. "Commencement Date" means the day after the Effective Date.

1.6. "Completion Date" means August 13, 2021. The Completion Date may be changed only by written Change Order or written Change Directive in accordance with this Contract.

1.7. "Contract Documents" mean this Contract and all Exhibits hereto, and any other document listed in this Contract.

1.8. "Contractor-Related Person" has the meaning set forth in Section 14.1.A.

1.9. "Contract Sum" has the meaning set forth in Section 9.1.

1.10. "Contract Time" means the period of time beginning on the Commencement Date and ending on the Completion Date, unless increased or decreased by written Change Order or written Change Directive in accordance with this Contract.

1.11. "EPA" means the United States Environmental Protection Agency, or any successor agency.

1.12. "Event of Default" has the meaning set forth in Section 17.3.

1.13. "Final Completion", with respect to the Work, means that all Work, including, without limitation, all grading, disposal and compaction work, has been completed in accordance with the Contract Documents and has been accepted by Owner.

1.14. "Governmental Authorities" means governmental agencies, units or officials having jurisdiction over the Work.

1.15. "Governmental Entity" means any court or any federal, state, or local legislative or administrative body or governmental municipality, department, commission, board, bureau, agency or authority.

1.16. "Hazardous Materials" means:

A. any substance, material, or waste that is included within the definitions of "hazardous substances", "hazardous materials", "hazardous waste", "toxic substances", "toxic materials", "toxic waste", or words of similar import in any Environmental Law;

B. the substances listed as hazardous substances by the United States Department of Transportation (or any successor agency) (49 C.F.R. 172.101 and amendments thereto) or by the EPA (40 C.F.R. 302 and amendments thereto); and

C. any substance, material, or waste that is petroleum, petroleum related, or a petroleum by-product, asbestos or asbestos containing material, lead or lead containing materials, polychlorinated biphenyls, flammable, explosive, or radioactive materials, Freon gas, radon, or a pesticide, herbicide, or any other agricultural chemical.

1.17. "Improvements" mean all buildings, structures, and other improvements, and all equipment and other physical components of any of the foregoing located on the Property.

1.18. "Legal Requirements" means laws, ordinances, rules, codes, regulations, permits, licenses and legal requirements of any kind issued by any Governmental Authority, to the extent they apply to the Work under the laws of the State of Texas and as to the obligations of the Parties generally under this Contract.

1.19. "OSHA" means the United States Occupational Safety and Health Administration, or its successor.

1.20. "Outstanding Work" has the meaning ascribed to it in Section 17.8.

1.21. "Owner Indemnified Person" or "Owner Indemnified Persons" has the meaning set forth in Section 14.1.

1.22. "Owner's Certificate of Acceptance" has the meaning ascribed to it in Section 11.1.

1.23. "Property" or "Site" has the meaning set forth in the Recitals.

1.24. "Proposal" has the meaning set forth in the Recitals.

1.25. "Project" has the meaning set forth in Section 2.1.

1.26. "Subcontractor" means any person or entity under a direct contract with Contractor to perform any part of the Work, supply any materials to be incorporated into the Work, or to supply any tools, equipment or other articles or services to be used in the Work.

1.27. "Work" has the meaning set forth in Section 4.1.

Section 2. Project Description and Contract Documents.

2.1. Contract Documents. The Contract Documents are incorporated into this Contract by this reference for all purposes and constitute the entire and integrated agreement between Owner and Contractor. If anything contained in any of the Contract Documents other than this Contract is inconsistent with this Contract, this Contract shall govern.

2.2. Site and Project. The Work under this Contract and the Contract Documents is generally described as the demolition of the Improvements and the disposal of all debris relating thereto ("Project").

2.3. Ownership of Improvements Being Demolished. On execution of this Contract, solely for the purpose of performance under this Contract, all right, title and interest in and to the Improvements shall be deemed to be vested in Contractor, subject to the provisions of the Contract Documents. No right, title, property or interest in and to the land on which the improvements stand is created, assigned, conveyed, granted, or transferred to Contractor, or any other persons, except only the license to enter onto the Property to demolish and remove the improvements in strict accordance with the Contract Documents. If Owner terminates this Contract in accordance with the Contract Documents, title to the Improvements remaining on the Site as of the date of termination revert to and vest in Owner without release or prejudice to claims between the parties.

Section 3. Commencement and Completion of the Work.

3.1. Commencement and Completion Dates. Contractor shall commence the Work on or before the Commencement Date and shall complete the work on or before the Completion Date.

3.2. Timely Completion Required. Time is of the essence under this Contract. The time for completion of the Work shall not be extended except as agreed by Owner and Contractor by a written Change Order signed by both Owner and Contractor or by Change Directive.

3.3. Delay. If the Project is not completed on or before the Completion Date, then, in addition to all other rights and remedies Owner may have under this Contract, Contractor shall pay to Owner the sum of \$500.00 per day for each calendar day beyond the Completion Date until the Project is completed. If Contractor is delayed at any time in the progress of the Work, for any reason other than an act of neglect by Contractor or any of Contractor's agents, employees, consultants or Subcontractors (including, without limitation, any act or neglect of Owner or any of Owner's agents, employees or consultants), then, in such event, Contractor's sole remedy shall be an extension of the Contract Time. Contractor must notify Owner in writing within 7 days after the commencement of any event for which Contractor shall be entitled to a Contract Time extension under this Section 3.3 (it being expressly understood that requests made subsequent to such 7 day period shall not be eligible for extension), and any such adjustment in the Contract Time shall be memorialized in a written Change Order.

Section 4. Work.

4.1. Work. Contractor shall provide all necessary labor, professional services, supervision, materials, tools, accessories, equipment, permits, fees, testing, inspections, and certifications which may be necessary to properly complete the Project to the satisfaction of Owner and all applicable Governmental Authorities in accordance with the Contract Documents and all Legal Requirements (the "Work"). The term "Work", as used herein, includes all demolition, services, labor, materials, tools, machinery, equipment, transportation, disposal, permitting, utilities, and other facilities and services necessary for the proper execution and completion of the Work.

4.2. Scope of Work. The specific Work to be performed under this Contract is generally described in Exhibit "C".

4.3. Environmental Services. Any environmental consulting or engineering services forming a part of the Work shall be performed by a licensed engineer employed by Contractor. Such Work may include inspection and testing of possible asbestos, polychlorinated bi-phenyls, or other Hazardous Materials, permitting for removal and disposal work, establishing Hazardous Materials safety and handling programs and other related Work in accordance with all Applicable Environmental Laws.

4.4. Workmanlike Manner and Compliance with Laws. Contractor shall complete the Work in a first class, good and workmanlike manner in accordance with the terms of this Contract, and generally accepted engineering practices adopted by firms performing services of a similar nature to the Work. Contractor shall comply with all federal, state and municipal laws, codes, ordinances, rules and regulations and other Legal Requirements effective where the Work is to be performed.

4.5. General Requirements. Subject to additional requirements as set forth in the Contract Documents, Contractor shall perform the following duties in connection with the Work:

A. Utilities. Contractor shall contact all relevant utilities to (i) ensure that service has been disconnected; (ii) determine the location of any underground utilities located at the Site; and (iii) properly cap off all utilities as appropriate in accordance with all applicable Legal Requirements.

B. Fill and Compaction. Any depressions resulting from the removal of underground utilities, building foundations or other items shall be filled to grade with clean fill and compacted to 95%.

C. Grading. Following the removal of all on-grade improvements, underground improvements and debris, Contractor shall grade all disturbed surface areas.

D. Disposal of Hazardous Materials. Asbestos, polychlorinated biphenyls and other Hazardous Materials, if any, shall be disposed of in a properly licensed facility in accordance with all Applicable Environmental Laws or other Legal Requirements. Contractor shall provide Owner with a list of all disposal facilities for approval prior to disposing of any Hazardous Materials. Contractor shall promptly provide all original waste manifests and other evidence of proper disposal following removal of any Hazardous Materials from the Site.

4.6. Salvage. Contractor shall have salvage rights to all components of the Improvements to the Site, except only any asbestos containing materials, equipment containing polychlorinated bi-phenyls or any other Hazardous Materials, which must be disposed of as provided for herein.

4.7. Safety. Contractor further agrees that it will, during the performance of the Work, take proper precautions to prevent injury or damages to persons or property, including without limitation providing, erecting, and maintaining all reasonable, necessary, or required safety devices for its employees and flagmen, erecting proper barricades and other safeguards around its Work, and posting danger signs and other warning devices where warranted by the nature of the existing condition of the Work. In any event, Contractor shall promptly and properly replace any safety devices provided by others or Contractor and which are disturbed by Contractor's operations or forces hereunder. Contractor shall take all necessary steps to protect and secure its Work, materials, tools, scaffolding, equipment, buildings, trailers, and work shacks from vandalism, theft, and fire damage and Owner shall not be responsible for losses or damages to such items. Contractor shall be responsible for initiating, maintaining, and supervising safety precautions and programs in connection with the performance of its Work hereunder. Contractor shall take all reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury or loss to: (i) all Contractor's employees on the Project and all other persons on or near the Project Site who may be affected by Contractor's operations; (ii) all the Work and all materials and equipment used in connection with the performance of the Work, whether on or off-site, under the care, custody, or control of Contractor or any of Contractor's Subcontractors; (iii) other property at the Site or adjacent thereto; and (iv) the work of Owner or other separate contractors. When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel and in accordance with all applicable Legal Requirements. Contractor shall properly remedy all damage or loss to any property referred to herein caused in whole or in part by Contractor, any of its Subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and for which Contractor is responsible hereunder. The foregoing obligation is in addition to Contractor's indemnification obligations set forth elsewhere herein. Owner will not in any manner be answerable or accountable for any loss or damage that shall or may happen to the Work or any part or parts thereof respectively or for any of the equipment, materials or other things used and employed in finishing and completing the Work, or for injury to any person or persons, either workers or the public, or for damage to property.

Section 5. Representations and Warranties of Contractor.

Contractor hereby represents and warrants to Owner and Owner's successors and assigns as follows:

5.1. Qualifications. Contractor is a Texas corporation duly organized, existing, authorized to do business, and in good standing under the laws of all jurisdictions under which the Work is to be performed. Contractor is duly authorized to enter into this Contract by signature set forth herein. Contractor is skilled and experienced in the Work to be provided pursuant to this Contract and is familiar with and knowledgeable about Applicable Environmental Laws and Legal Requirements.

5.2. Site Inspected. Contractor has inspected the Site and is satisfied with the improvements, the surface and subsurface of the Site, available labor supplies, available materials and supplies, and all other matters that could, in reasonable probability, affect the nature of and cost to perform the Work. No adjustments shall be made to the Contract Sum for concealed or unknown conditions except to the extent that the same could not have reasonably been discovered or anticipated by a competent contractor using its best efforts to determine the scope of the Work based upon typical conditions in the vicinity of the site of the Work.

5.3. Good and Workmanlike Work. Contractor will provide and complete the Work in a good and workmanlike, first class, manner, to the best of Contractor's art and skill, and in accordance with the Contract Document, all Legal Requirements, and all Applicable Environmental Laws.

5.4. Licenses and Permits. Wherever necessary, Contractor shall obtain all licenses and permits required to perform the Work.

5.5. Work Will be Done in Compliance with Laws. Contractor shall comply with all Applicable Environmental Laws, and all federal, state and municipal laws, codes, ordinances, rules, regulations and other Legal Requirements effective where the Work is to be performed, with regard to safety, health, environment, or otherwise. Contractor, for itself and on behalf of its employees, agents, assigns and Subcontractors, agrees to comply with all safety directives of Owner's personnel and representatives. Failure to follow Owner's safety directives and regulations is grounds for immediate termination of this Contract without recourse and notwithstanding any other provision of this Contract.

Section 6. Permits.

Contractor's Obligation. Prior to conducting any physical demolition work at the Site, Contractor shall obtain all demolition, asbestos removal and other permits required to perform the Work, and shall provide all required notices to utilities and government agencies, if any, required to perform the Work, the costs of which are included in the Contract Sum.

Section 7. Conducting and Supervising Work.

7.1. Contractor Solely Responsible for Means, Methods, Techniques, Sequences and Procedures. Contractor shall use its best skill in attention in supervising and directing the Work and shall have full control over and sole responsibility for the means, methods, techniques, sequences and procedures of the Work and shall coordinate the Work with any other work being done by Owner or Owner's separate contractors. Contractor shall be responsible for worksite safety but shall at all times comply with any safety rules or programs maintained by Owner at the Site. Contractor shall be responsible for all acts and

omissions of Contractor's employees, agents, Subcontractors, licensees and invitees at the jobsite or elsewhere while acting in connection with the Project. Neither Owner nor Owner's officers, directors, employees or agents shall be responsible for Contractor's (a) means, methods, or techniques; (b) safety precautions or programs; (c) acts or omissions; or (d) failure to carry out the Work in accordance with the Contract Documents, Applicable Environmental Laws or applicable Legal Requirements.

7.2. Jobsite Order. Contractor shall maintain good order at the jobsite at all times and shall not permit unqualified personnel to work on the Project. Contractor shall not permit the use of drugs or alcohol by its employees or those of its Subcontractors on the site and shall immediately remove from the Site any such person under the influence of drugs or alcohol.

Section 8. Subcontractors.

Contractor shall supply to Owner a list of any Subcontractors to whom Contractor expects to perform work valued in excess of \$2,500.00. Each such subcontract shall: (a) require that such Work be performed in accordance with the requirements of this Contract; (b) waive all rights the Subcontractor may have against Owner for damages caused by fire or other casualty; (c) require the Subcontractor to carry and maintain liability insurance in an amount not less than those set out in Exhibit "D" and to furnish a certificate of such insurance naming Owner and Owner's officers and directors as additional insureds as set out in Exhibit "D" prior to entry on the Site.

Section 9. Contract Sum.

9.1. Amount. For all Work required under this Contract, Owner agrees to pay to Contractor the fixed fee of the following amount except as modified by Change Order or Change Directive ("Contract Sum"): \$595,519.32.

9.2. Amount Changed Only by Change Order. Notwithstanding anything to the contrary contained in this Contract, it is the specific intent of Owner and of Contractor that the Contract Sum may not, under any circumstances, be increased, other than by a written Change Order signed by authorized representatives of both Owner and Contractor or by Change Directive.

9.3. Amounts Outside of Contract Sum. Contractor agrees that it will not perform any work outside the scope of this Contract prior to receipt of a signed Change Order or Change Directive from Owner. Any such additional work performed without a Change Order or Change Directive shall not be subject to reimbursement by Owner. Contractor will be solely responsible for all its costs and expenses incurred in connection with this Contract that are not specifically provided for herein or in a written Change Order or Change Directive. This provision is of the highest importance to Owner and Owner would not have entered into this Contract absent this provision.

9.4. Changes in the Work.

A. A "Change Order" is a written agreement signed by Owner and Contractor stating their agreement upon a change in the Work, the amount of the adjustment of the Contract Sum, if any, and the extent of the adjustment in the Contract Time and Completion Date, if any.

B. A "Change Directive" is a written order prepared by Owner directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. Owner may by Change Directive, without invalidating this Contract, order changes in the

Work within the general scope of the Contract Documents consisting of additions, deletions or other revisions, with the Contract Sum and/or Contract Time being adjusted accordingly. A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

C. Changes in the Work may be accomplished after execution of this Contract, and without invalidating this Contract, by Change Order or Change Directive, subject to the limitations stated in this Section 9.4 and elsewhere in the Contract Documents. A Change Order shall be based upon agreement among Owner and Contractor. A Change Directive issued by Owner may or may not be agreed to by Contractor, however Contractor shall perform the changes in the Work under applicable provisions of the Contract Documents, and Contractor shall proceed promptly to perform all such changes in the Work (including, without limitation, under a Change Directive whether or not agreed to by Contractor) even if Contractor does not sign the Change Directive.

D. A Change Directive signed by Contractor indicates the agreement of Contractor therewith, including adjustment in the Contract Sum and/or Contract Time or the method for determining same. Such agreement shall be effective immediately and shall be recorded as a Change Order.

E. No more than 10% profit and overhead will be allowed on any change order.

Section 10. Taxes.

10.1. Sales Tax Exempt. As a tax exempt organization, Owner is not subject to the payment of sales, consumer, use and similar taxes. Contractor shall take all steps and execute such instruments as may be necessary to enable Owner to claim its exemption from the State of Texas Sales Tax for goods, materials, fuel or other materials incorporated, used or consumed in the Work. All savings resulting from such tax exemptions shall be for the sole benefit of Owner.

10.2. Contractor Incurred Taxes. Contractor shall pay sales, consumer, use and other similar taxes which are legally enacted as of the date of this Contract and incurred by Contractor in the Work. Notwithstanding anything in the Contract Documents to the contrary, the Contract Sum includes all sales, use, consumer, and similar taxes in effect, or announced to become effective on or before the date of this Contract and Contractor shall pay all such amounts directly to the appropriate authorities.

10.3. Taxes on Contractor's Business. Contractor shall bear and pay any and all liabilities or claims for any income taxes, profits taxes, property taxes on Contractor's equipment and other personal property, stamp taxes, document taxes, excise taxes, import taxes or duties, surtaxes, surcharges or any other taxes or governmental charges which any governmental authority claiming jurisdiction over the Contract may impose, assess or levy against Contractor on account of or resulting from Contractor's execution of or performance under the Contract.

10.4. Employee Benefits. Contractor further agrees to withhold from wages, salaries, fees or other remuneration of its agents, servants, employees, or subcontractors, all taxes and contributions imposed or required by any law for any employment insurance, pensions, old age retirement funds or similar purposes or any other sums required to be withheld by the laws of the State of Texas and to pay the same when due to the proper authorities.

Section 11. Payment of Contract Sum.

11.1. Final Completion and Invoice. After Contractor has completed all of the Work in accordance with the Contract Documents, Contractor shall notify Owner in writing. When Owner is satisfied Contractor has completed the Work in accordance with the Contract Documents, Owner shall notify Contractor of final acceptance of the Work by issuance of an "Owner's Certificate of Acceptance" in such form determined by Owner. Upon receipt of the Owner's Certificate of Acceptance, Contractor shall deliver to Owner an invoice for the entire Contract Sum along with the following documents:

- A. an affidavit or final waiver of lien, in such form as Owner may request, certifying payment of its Subcontractors, laborers, suppliers and materialmen;
- B. releases and/or final waivers of the Subcontractors or materialmen of Contractor of liens arising out of or in connection with performance of the Work as Owner may request; and
- C. a release by Contractor of all claims against Owner arising out of the Contract Documents and/or performance of the Work.

11.2. Payment of Final Invoice. Owner shall pay the Contract Sum to Contractor within 30 days after Owner's receipt of the final invoice and all of the items listed in Section 11.1, all to the reasonable satisfaction of Owner. Neither final payment nor issuance of the Owner's Certificate of Acceptance shall affect or impair Owner's rights with respect to any defect in or nonconforming Work or any other breach or right or remedy under the Contract Documents.

11.3. Inspections. Prior to making the final payment required, Owner (individually or through its architect or other consultants) shall have the right, but not the obligation, to conduct inspections of the Work to determine the level of completion of the Work, the quality thereof and the compliance of the Work with the Contract Documents and all applicable codes, ordinances, regulations or other Legal Requirements. Should Owner elect to retain a consultant for such inspections, such consultant shall have the authority, in the consultant's sole discretion, to reject all nonconforming Work and to make recommendations to Owner regarding issuance or non-issuance of the Owner's Certificate of Acceptance.

11.4. Withholding Payments. Payments may be withheld by Owner for any of the following reasons:

- A. Contractor fails to correct defective or non-conforming Work;
 - B. Claims or liens have been filed or threatened;
 - C. Contractor has failed to make timely and adequate payments to Subcontractors or others;
 - D. Contractor has failed to carry out the Work in accordance with this Contract;
 - E. Owner force places insurance on behalf of Contractor in accordance with Section 15.2;
 - F. Any cost or expense incurred by Owner to cancel or discharge one or more liens as provided in Section 12;
 - G. All damages Owner has suffered under this Contract as provided for in Section 17.6;
- and

H. The amount, if any, by which the costs incurred by Owner to complete the Work exceed the balance of the Contract Sum at the time of termination, and any other losses incurred as a result of Contractor's default, as provided for in Section 17.9.

11.5. No Representation. Any payment made by Owner to Contractor shall not thereby be deemed to represent that Owner has made an exhaustive or continuous on-Site inspection to check the quality or quantity of the Work, or that Owner has reviewed the means, methods, techniques, sequences, or procedures used to perform the Work, or that Owner has made an examination to ascertain the purposes for which Contractor has used the monies previously paid to Contractor, if any, pursuant to the Contract. No payment by Owner shall constitute an acceptance of any Work that is defective or otherwise not in accordance with this Contract.

Section 12. No Liens.

Contractor agrees that any monies it shall receive in payment for Work performed under this Contract, other than the portion of such payments being a part of Contractor's fee for services rendered under this Contract and remaining after payment in full of all expenses associated with the Work, shall be received in trust and used to discharge its financial obligations with respect to such Work. Contractor further agrees that it will not file or cause to be filed any mechanic's lien for labor performed or to be performed unless Owner. Contractor further agrees that if any Subcontractor holding a subcontract from it or any materialman supplying materials to it or anyone claiming by or through it or any such Subcontractor or materialman shall file or cause to be filed any lien, Contractor will, upon notice from Owner, cause such lien to be canceled and discharged within 15 calendar days from such notice; and in the event of Contractor's failure to do so, Owner shall have the right to cause such lien to be canceled and discharged, and in that event any expense so incurred by Owner, including the premiums upon any bond furnished for such cancellation and discharge and reasonable attorneys' fees and disbursements, shall be paid by Contractor, or at the option of Owner, shall be deducted from any payment then due or thereafter becoming due from Owner to Contractor.

Section 13. Environmental Matters.

13.1. Notification of Presence of Hazardous Materials. Owner has notified Contractor that it anticipates that the improvements to be demolished contains various asbestos containing materials, lead paint and other Hazardous Materials, including but not limited to, transformers and/or other electrical equipment containing polychlorinated bi-phenyls which are located at the Site. Contractor has represented to Owner that it has experience in handling Hazardous Materials, has inspected the Site for the presence of Hazardous Materials and has included the cost of remediation and disposal of such Hazardous Materials in the Contract Sum.

13.2. Release Reporting.

A. Immediate Reporting Requirements. Contractor shall immediately report a release to all appropriate agencies and to Owner in the event a release occurs during the performance of the Work that requires immediate reporting to one or more federal, state or local agencies pursuant to applicable law. The term, "immediate reporting" shall mean those instances where reporting is required within 15 minutes of the incident such that it is not practical to contact Owner prior to making such report.

B. Other Reporting Requirements. Except for releases subject to Subsection 13.2.A above, Contractor shall promptly advise Owner in writing of any condition which it reasonably believes requires reporting, the appropriate agencies that should receive reports and the time period in which reports should be provided. Owner shall be responsible for making all such reports unless otherwise agreed in writing. Contractor shall assist Owner in preparing such reports at the request of Owner.

C. Contractor Reporting Requirements. In the event Contractor is specifically required by applicable federal, state or local laws, regulations or ordinances to independently report any release to any appropriate agency, Contractor shall advise Owner in writing of such requirement and shall provide copies of all such intended reports to Owner prior to making such reports. Contractor shall use its best efforts to coordinate any reports it is independently required to make with Owner.

13.3. Process and Compliance. In addition to other provisions of this Contract, Contractor shall provide all engineering methods and follow all work practices required to meet the exposure limits as required by OSHA Standards at 29 C.F.R. §§ 1910.1001 and to prevent emissions of particulate asbestos material to the outside air as required by EPA Regulation 40 C.F.R. Part 61, Subpart M (the "Asbestos Regulations"). Prior to the start of work, Contractor shall provide Owner with a copy of Contractor's asbestos removal procedure. Contractor shall provide employees with training on Contractor's asbestos removal procedures and Contractor shall so indicate in writing to Owner, immediately, any deviation from these procedures. Contractor, when required by EPA Regulations, shall provide the EPA regional administrator with written notice of intention to remove asbestos and this notice shall include all EPA required information. This written notice shall be sent by certified mail, return receipt requested. Owner shall be given a copy of this written notice and a copy of the EPA returned receipt prior to the start of asbestos removal. Contractor shall also provide all notices, plans, and other documents as required under the Asbestos Regulations and shall provide Owner with a copy of all such notices. Contractor shall provide Owner with copies of all truck asbestos hauling permits, dumping receipts, monitoring test results, and any and all documentation as may be required by the Asbestos Regulations. Prior to the start of work, Contractor shall provide Owner with the names and social security numbers of all asbestos removal employees and a certification that employees are physically able to use respirators without any danger to their health and further certifying that they have received all of the required training and medical examinations. Contractor shall maintain a current daily log of personnel entering the sealed asbestos removal work area and copy Owner daily. Contractor shall provide all personal protective equipment, as required by OSHA Standards 29 C.F.R. §§ 1910.1001, for its employees. Contractor's Asbestos Removal Procedure shall include an established respirator program which shall provide training in the use of, and testing for proper face fit of, any respirator for all asbestos removal employees as required by OSHA Standard 29 C.F.R. §§ 1910.1001 and the American National Standards Institute "Practices For Respirator Protection," ANSI Z88.2-2015 and the "American National Standard for Respiratory Protection – Respirator Use – Physical Qualifications for Personnel," ANSI Z88.6-2006. Contractor shall provide all personal protective equipment to Owner's personnel or any state or other Governmental Authority who may be required to inspect the work. Contractor shall provide or make available at its cost, medical examinations relative to exposure to asbestos as required by OSHA Standards 29 C.F.R. §§ 1910.1001. Contractor shall provide for all personal and environmental monitoring by a qualified person or an Industrial hygienist using the OSHA Standards 29 C.F.R. §§ 1910.1001 methods with the samples tested

by a Laboratory accredited by qualified agencies. Contractor shall retain all Project records as required by OSHA Standards 29 C.F.R. §§ 1910.1001 for a period of 20 years or longer as may be required by State or local regulations.

Section 14. Indemnification.

14.1. Indemnification. To the fullest extent permitted by applicable law, Contractor shall defend, indemnify and hold harmless Owner and its officers, directors, employees or agents (collectively, the "Owner Indemnified Persons", and each, individually, an "Owner Indemnified Person" from and against:

A. all claims, damages, losses and expenses, including attorneys' and consultants' fees, arising out of the failure, in whole or in part, directly or indirectly, of Contractor, any Subcontractor, any material or equipment supplier, or anyone directly or indirectly employed by them and all other persons for whom contractor may be legally liable (collectively, the "Contractor-Related Persons", each, individually, a "Contractor-Related Person") to comply with Applicable Environmental Laws; Contractor's advising or instructing Owner in contravention of Applicable Environmental Laws; or the release or disturbance of Hazardous Materials by any Contractor-Related Person. Contractor hereby agrees to indemnify, defend and hold all Owner Indemnified Persons harmless from and against any and all costs, penalties, fines, remediation expenses, accountants', experts' and attorneys' fees and costs of litigation in the event of any allegation of improper disposal of Hazardous Materials by any Contractor-Related Person in connection with this Contract. This Section 14.1.A is intended to indemnify Owner Indemnified Persons from liability even in the event of any Owner Indemnified Person's contributory or concurrent negligence or strict liability;

B. all claims, damages, losses, expenses, liabilities and judgments which may be made, asserted or entered against Owner or any other Owner Indemnified Person (including attorneys', consultants' and experts' fees), which arise from, are incident to, grow out of or are connected with bodily injuries to any person, (including Contractor-Related Persons), or damage to any property, caused in whole or in part by Contractor or any other Contractor-Related Person (except to the extent caused by the sole negligence of any Owner Indemnified Person). Contractor hereby waives any immunity provided for by the applicable workers compensation laws so that this indemnity may be enforced against Contractor for any action brought against any Owner Indemnified Person by any employee or alleged employee of Contractor;

C. any claims, damages, losses, expenses, liabilities and judgments which may be made, asserted or entered into against any Owner Indemnified Person based upon or arising from any actual or claimed infringement of patents, trademarks, service marks, trade secrets, mask work rights, or copyrights with respect to any process, product, equipment or apparatus, goods or materials supplied by Contractor or any other Contractor-Related Person in connection with any of their performance hereunder or the Work (except to the extent such infringement arises solely and directly out of Contractor's compliance with Owner's written specifications for such item of equipment or material); and

D. any and all liability imposed by reason of Contractor's or any other Contractor-Related Person's actual or asserted violation of laws, regulations, ordinances, or other rules of

government or any quasi-governmental body or agency, including but not limited to, actual or alleged failure to pay taxes or other governmental fees or charges.

14.2. Deduction from Payments to Contractor. Any loss or damage incurred by Owner in connection with the foregoing may be deducted from compensation then due or to become due to Contractor hereunder, which deduction shall be in addition to any other remedies that Owner may have hereunder.

14.3. Survival. The Indemnities in this Section 14 shall survive the completion of the Work or the earlier termination of this Contract.

14.4. Notification. Contractor shall promptly advise Owner in writing of any action, administrative or legal proceeding or investigation as to which this indemnification may apply, and Contractor, at its own expense, shall assume on behalf of the Owner-Related Persons, and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to the Owner-Related Persons; provided, however, that the Owner-Related Persons shall have the right, at their option, to be represented therein by advisory counsel of their own selection and at their own expense. In the event of failure by Contractor to fully perform in accordance with this Section 14.4, the Owner-Related Persons, each at its option, and without relieving Contractor of its obligations hereunder, may so perform, but all costs and expenses so incurred by the Owner-Related Persons in that event shall be reimbursed by Contractor, together with interest on the same from the date any such expense was paid by the Owner- Related Persons until reimbursed by Contractor, at the highest lawful rate of interest allowed under applicable usury law (or if no maximum rate is applicable, at the rate of 18% per annum). This indemnification shall not be limited to damages, compensation or benefits payable under insurance policies, workers compensation acts, disability benefit acts or other employees' benefit acts.

14.5. Modified to Comply with Law. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under this Section, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.

Section 15. Insurance.

15.1. General and Specifications Exhibit. Attached hereto as Exhibit "D" are specifications for insurance and bonds to be obtained and maintained by Contractor and insurance to be obtained and maintained by Subcontractors. The specifications are in addition to the requirements set out in this Section 15. In the event of any conflict between the specification in Exhibit "D" and the requirements set out in the below sections of this Section 15, the specifications in the Exhibit "D" control and amend and supersede the conflicting requirement set out in the below sections of Section 15. Contractor will maintain certificates and evidence of insurance from all Subcontractors, enumerating, among other information, the waivers of subrogation in favor of and additional insured status of the Owner Indemnified Persons, as required by the Contract Documents. Contractor will make such certificates and evidence of insurance available to Owner Indemnified Persons prior to commencement of the Work and thereafter upon request. The coverages and limits set forth in Exhibit "D" are minimum requirements and not a determination as to all of the coverages and maximum limits that Contractor should carry. The failure of

Owner to demand full compliance by Contractor or any Subcontractor with respect to the minimum coverages outlined in Exhibit "D" will not constitute a waiver with respect to Contractors' or the Subcontractors' obligation to maintain such coverages. Contractor hereby indemnifies Owner and all Owner Indemnified Persons against any claims arising from Contractor's or any Subcontractor of any tier's failure to purchase and/or maintain the insurance coverages required by this Contract.

15.2. Forced Placed Insurance. In the event of any failure by Contractor to comply with the provisions of this Section, Owner may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to Contractor, purchase such insurance, at Contractor's expense, provided that Owner shall have no obligation to do so and if Owner shall do so, Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

15.3. Contractor's Liability Insurance. Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the State of Texas such insurance as expressly required by the insurance requirements in the Contract Documents and as will protect Contractor from claims set forth below which may arise out of or result from Contractor's operations and completed operations under the Contract and for which Contractor may be legally liable, whether such operations be by Contractor or by a Subcontractor of any tier or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

A. Claims under workers compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;

B. Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

C. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

D. Claims for damages insured by usual personal injury liability coverage;

E. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom;

F. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

G. Claims for bodily injury or property damage arising out of completed operations;

H. Claims involving contractual liability insurance applicable to Contractor's obligations under Section 14; and

I. Pollution liability.

15.4. Limits, Occurrence and Claims-Made Basis. The insurance required by this Section 15 and Exhibit "D" shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to Contractor's completed operations coverage, until the expiration of five years from

final completion. Notwithstanding the foregoing, such coverage required hereunder shall not be written on a claims-made basis without the advance express written consent of Owner, which consent may be withheld or denied in Owner's sole discretion, and if consent is not obtained then the insurance is to be written on an occurrence basis. No deductible or self-insured retention in excess of \$10,000.00 is permitted without the prior written approval of Owner. No policy may include an endorsement restricting, limiting or excluding coverage in any manner without the prior written approval of Owner.

15.5. Policies and Certificates of Insurance. Certificates of insurance acceptable to Owner shall be filed with Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. The insurance policies required by this Section 15 and Exhibit "D" shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with Contractor's final invoice and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 15.4. Information concerning reduction of coverage on account of revised limits or claims paid under the general aggregate, or both, shall be furnished by Contractor with reasonable promptness. Prior to commencement of Work and thereafter as requested by Owner, Contractor shall provide Owner with a certified true and correct copy of the insurance of Contractor's and such of the Subcontractors of any tier requested by Owner. When any required insurance, due to the attainment of a normal expiration date or renewal date shall expire, Contractor shall supply Owner with certificates of insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy. In the event any renewal or replacement policy, for whatever reason obtain or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way from the previous policy, Contractor shall also furnish Owner with a certified copy of the renewal or replacement policy unless Owner provides Contractor with prior written consent to submit only a Certificate of insurance for any such policy. All renewal and replacement policies shall be in form and substance satisfactory to Owner and written by carrier acceptable to Owner.

15.6. Endorsements. Contractor shall cause the commercial liability, auto and umbrella liability coverage required by the Contract Documents to include (1) Owner and Owner's officers and directors as additional insureds for claims caused in whole or in part by Contractor's acts or omissions during Contractor's operations; and (2) Owner and Owner's officers and directors as additional insured for claims caused in whole or in part by Contractor's acts or omissions during Contractor's completed operations. All such liability policies carried and maintained by Contractor must be endorsed to be primary to any liability insurance policies carried by the additional insureds with respect to Contractor's operations hereunder. Waivers of subrogation shall be provided in favor of the additional insureds on general, auto, workers compensation/employers, umbrella, pollution and all other liability policies carried and maintained by Contractor.

15.7. Bonds. Owner shall have the right to require Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder on the date of execution of the Contract. Both bonds shall be for 100% of the Contract Sum, in the form provided by Owner, and issued by an issuer acceptable to Owner. Any person, firm or corporation executing a performance or payment bond upon Contractor's Work under the Contract Documents, shall be deemed to have consented in advance to any changes in the Work made by order of Owner; any such changes shall in no

way alter or impair the obligations of such person, firm or corporation executing such a bond. The amount of the bonds shall be written to increase with Change Orders. Contractor shall obtain and file with Owner bonds for any increases in the Contract Sum as may be necessary to effectuate coverage for increases in the Contract Sum. Issuer must be at least a Best's Key Rating Guide A/VII company and listed on the United States Department of the Treasury's List of Acceptable Sureties and Reinsurers, Treasury Department Circular 570. The Contractor shall keep the surety informed of the progress of the Work, and, where necessary, obtain the Surety's consent to and waiver of (1) notice of changes in the Work; (2) request for reduction of release of retention; (3) request for final payment; and (4) any other material required by the surety. Owner may, in Owner's sole discretion, inform the Surety of the progress of the Work and obtain consents as necessary to protect Owner's rights, interest, privileges, and benefits under and pursuant to any bond issued in connection with the Work. A 100% performance bond and payment bond are required.

15.8. Property Insurance. The risk of loss to the improvements is to be borne by Contractor and Contractor waives and releases any claims on Owner's property insurance.

Section 16. Compliance with Law.

16.1. Covenant. Contractor agrees that it shall comply with 16.1. Covenant. Contractor agrees that it shall comply with, and shall cause all Subcontractors, consultants, and engineers retained by Contractor to comply with all requirements of applicable law, including, without limitation, (1) any code or ordinance of the Town of Flower Mound, Texas; (2) the requirements of the local board of insurance underwriters; (3) the provisions of any permits for the Work; (4) OSHA rules and regulations; and (5) all Applicable Environmental Laws and Legal Requirements.

16.2. Changes in Laws. If after the date of this Contract there is a change in the laws applicable to the Work (including a change in any official interpretation thereof issued by a court or regulatory agency) that necessitates some modification to the performance of any Work under this Contract, and Contractor neither had knowledge nor could reasonably have been expected to have knowledge of such change prior to the date of this Contract, Contractor shall prepare a proposed Change Order including the modifications required by such change in law and, upon acceptance by Owner, the Contract Sum shall be amended accordingly. No adjustment in the Contract Sum shall be made in the event of any change in law that Contractor knew of or could reasonably be expected to have knowledge of as of the date of this Contract.

Section 17. Termination or Suspension.

17.1. Termination for Convenience. Owner may terminate this Contract or any portion of the Work at any time, with or without cause, by 5 days prior written notice to Contractor provided, however, that Owner shall compensate Contractor for the verifiable direct cost of all Work properly performed and profit earned prior to Contractor's receipt of notice and all of Contractor's reasonable, verifiable direct costs and expenses incurred in demobilizing following any such termination. Under no circumstances is Contractor entitled to reimbursement for any lost profits, lost opportunity costs, productivity losses, lost efficiencies or any other direct, indirect or consequential damage or cost occasioned by Owner's termination for convenience.

17.2. Suspension for Convenience. Owner may suspend performance of all or any portion of the Work at any time, with or without cause, by 10 days prior written notice to Contractor provided, however,

that as Contractor's sole and exclusive remedy with respect thereto, Contractor shall be entitled to a Change Order in accordance with 9.4. During any such suspension, Contractor shall protect and secure the Work in such manner as Owner may require at Owner's expense, if such suspension is for convenience. Unless Owner otherwise directs, Contractor shall, at Owner's expense, if such suspension is for convenience, maintain its readiness on or near the Site to proceed with the Work upon Owner's further instructions. Contractor shall use its best efforts to use its material, labor and equipment in a manner that will mitigate costs associated with such a suspension. Following a suspension, Owner may at any time give Contractor notice to continue with the suspended Work.

17.3. Events of Default. Each of the following circumstances or events shall constitute an "Event of Default" by the party specified at the beginning of each sub-clause below:

A. by either party, if: a proceeding is instituted against the party seeking to adjudicate it as bankrupt or insolvent and such proceeding is not dismissed within 60 days of filing; the party makes a general assignment for the benefit of its creditors; a receiver is appointed on account of the insolvency of the party; the party files a petition seeking to take advantage of any other applicable laws relating to bankruptcy, insolvency, reorganization, winding up or composition or readjustment of debts; or the party is unable to pay its debts when due or as they mature;

B. by Owner, if Owner fails to pay any undisputed amount and such failure continues unremedied for more than 30 days after first written notice thereof by Contractor;

C. by Contractor, if Contractor fails to perform any material obligation under this Contract and such failure continues and/or has not been remedied, and/or the effects of such failure have not been remedied, in each case for more than 15 days after first written notice thereof by Owner;

D. by Contractor, if Contractor fails to fully complete the Project within 10 days or more beyond the Completion Date;

E. by Contractor, if Contractor abandons performance of the Work and such abandonment is not cured within 7 days after first written notice thereof by Owner;

F. by Contractor, if any Contractor-Related Person is in breach of any Applicable Environmental Laws and such breach is not cured within 7 days after first written notice thereof by Owner; and

G. by Contractor, if Contractor fails to obtain or maintain, in full force and effect, any insurance or permit required to be obtained by Contractor or its Subcontractors pursuant to this Contract and such failure is not cured within 7 days after notice thereof.

17.4. Notice of Default. Any notice of default pursuant to Section 17.3 shall be given in accordance with Section 18.1.

17.5. Termination for Default. Upon an Event of Default by a party, the other party may by written notice to the defaulting party, effective immediately or on such other date as the terminating party may specify, terminate this Contract, and (except as expressly limited in this Contract) exercise all other remedies under the Agreement, at law or in equity with respect to such termination and the relevant Event of Default.

17.6. Owner's Right of Set Off. Owner may, at its sole discretion, set off damages Owner has suffered under this Contract against any amounts that may be due to Contractor by Owner under this Contract.

17.7. General Obligations. If Owner elects to terminate this Contract pursuant to this Section 17, Contractor shall, at Owner's request and at Contractor's expense, do the following:

A. cease all Work, except such Work as Owner may specify in the termination notice for the sole purpose of protecting that part of the Work already executed;

B. terminate all subcontracts; except those to be assigned to Owner pursuant to Section 17.7.C;

C. immediately assign to Owner title to all Work not already owned by Company, all subcontracts and other contracts, all permits, licenses, authorizations, approvals, patents and other Contractor required authorizations; and

D. remove from the Site all machinery, tools, Hazardous Materials, trash and debris as Owner may request.

17.8. Payment Obligations. If Owner terminates this Contract as a result of an Event of Default with respect to Contractor pursuant to 17.5, Owner is not obligated to make any further payments to Contractor until either (i) the Work that remained outstanding on the date of termination (the "Outstanding Work") has been completed by or on behalf of Owner, or (ii) Owner has decided to abandon the Project. Upon completion of the Outstanding Work or abandonment of the Project (as the case may be), Owner shall pay Contractor the portion of the Contract Sum applicable to all Work properly performed in accordance with this Contract, subject to Company's right of set-off under

Section 17.9. Owner Set Off Rights; Reimbursement by Contractor. Owner shall have the right to deduct from the payment due to Contractor pursuant to Section 17.8 the amount, if any, by which the costs incurred by Owner to complete the Work exceed the balance of the Contract Sum at the time of termination, and any other losses incurred as a result of Contractor's default. Under no circumstances is Contractor entitled to reimbursement for any lost profits, lost opportunity costs, productivity losses, lost efficiencies or any other direct, indirect or consequential damage or cost occasioned by Company's termination in accordance with Section 17.5 as a result of Contractor's Event of Default.

Section 18. Notices.

18.1. Method. Any notice to be given by either party to this Contract shall be given in writing and may be affected by personal delivery e-mail or sent by United States Mail, postage prepaid, addressed as follows:

If to Owner:

[NEED INFO; include name of responsible individual, department, address, phone, email address]

If to Contractor:

[NEED INFO; include name of responsible individual, department, address, phone, email address]

18.2. Effective Date. Any notice sent in compliance with the requirements of this Section 18 shall be deemed received on the earlier to occur of (i) the date such notice is received by the party or parties to whom such notice is addressed; (ii) three days following the date such notice is deposited in a United States Post Office or other official depository of the United States mail; or (iii) if such notice is sent via e-mail, upon receipt if received during recipient's normal business hours or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours.

Section 19. Miscellaneous.

19.1. Entire Contract. This Contract, including the Exhibits, contains the entire Contract between Owner and Contractor pertaining to the transaction contemplated by this Contract and fully supersedes all prior Contracts and understandings between Owner and Contractor pertaining to such transaction.

19.2. Conflict of Provisions. Wherever there is conflict between this Contract and Contractor's scope of work set forth in Exhibit "C", Exhibit "C" shall prevail.

19.3. Quality of Workmanship. Contractor covenants and agrees that the quality of workmanship and the quality of materials to be furnished under this Contract shall be at least as good as the quality of workmanship and materials commonly used in projects for Owner or other major industrial companies in the vicinity of the site of the Work.

19.4. Attorneys' Fees. In the event of any controversy, claim or dispute between Owner and Contractor affecting or relating to the subject matter or performance of this Contract, the prevailing party shall be entitled to recover from the non-prevailing party all of the prevailing party's reasonable expenses, including, without limitation, attorneys' fees, accountants' fees and court costs.

19.5. Binding Effect. This Contract shall not be binding upon either Owner or Contractor unless and until both Owner and Contractor have executed this Contract or any counterpart hereof.

19.6. No Third-Party Beneficiary. The provisions of this Contract and of any other documents to be executed and delivered in connection with the Project are and will be for the benefit of Owner and Contractor only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Contract or of any other documents to be executed and delivered in connection with the Project.

19.7. No Assignment by Contractor. Contractor shall not sublet, assign, or transfer this Contract or any part thereof or any interest therein or contract any part of the Work called for by this Contract or permit the further subcontracting of any part thereof without prior written notice to Owner and without first obtaining the written consent of Owner thereto. The Contractor shall not subcontract any portion of the Work to any proposed Subcontractor to whom Owner has objection. Every such subcontract shall require the Subcontractor to be bound by and to comply with all the Contract Documents and Contractor shall cause its Subcontractors to comply with all the Contract Documents.

19.8. Rule of Construction. This Contract shall be construed without regard to any presumption or other rule requiring construction against the party causing this Contract or any of the provisions thereof to be drafted or prepared. If any words or phrases shall have been stricken out or otherwise eliminated, whether or not other words or phrases have been added, this Contract shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included in this Contract and no implication

or inference shall be drawn from the fact that said words or phrases were so stricken out or otherwise eliminated.

19.9. Governing Law; Jurisdiction. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Texas. Each of the parties hereby irrevocably submits to and accepts the jurisdiction of any state court sitting in Denton County, Texas, or federal court sitting in the U.S. District Court, Eastern District of Texas, and each of the parties hereby irrevocably agrees that any action may be heard and determined in such state or federal court.

19.10. Attorneys' Fees and Costs. In the event any legal action is taken under this Contract, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees, cost of suit, and all other costs reasonably related to enforcement of its rights under this Contract as determined by a court of competent jurisdiction.

19.11. Counterpart and Electronic Signatures. This Contract may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement. Signatures transmitted by facsimile or electronic mail (via pdf or other similar digital imaging method) shall constitute original signatures for purposes hereof.

19.12. Storm Water Pollution Prevention Plan. To the extent required by the Project, the Owner assumes any and all obligations, costs, and responsibilities related to storm water pollution prevention plan.

IN WITNESS WHEREOF, the parties hereto have, through their duly authorized representatives, executed this Demolition Contract as of the date first above written.

----- Signature Pages Follow -----

OWNER:

**Town of Flower Mound, Texas,
a Texas home-rule municipal corporation**

Signature

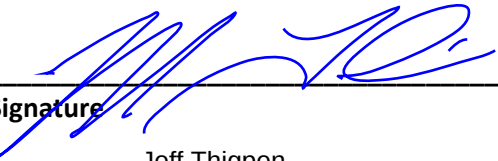
Printed Name

Title

Signed on the ____ day of June, 2021.

CONTRACTOR:

**BASIC IDIQ, Inc.,
a Texas corporation**



Signature

Jeff Thigpen

Printed Name

Vice President

Title

Signed on the ____ day of June, 2021.

Indoor Pool & Communication Building Aerial View



TIPS VENDOR AGREEMENT

Between Basic IDIQ, Inc. and
(Company Name)

THE INTERLOCAL PURCHASING SYSTEM (TIPS),
a Department of Texas Education Service Center Region 8
for
RCSP 181101 JOB ORDER CONTRACTING (JOC)

General Information

The Vendor Agreement ("Agreement") made and entered into by and between The Interlocal Purchasing System (hereinafter referred to as "TIPS" respectfully) a government cooperative purchasing program authorized by the Region 8 Education Service Center, having its principal place of business at 4845 US Hwy 271 North, Pittsburg, Texas 75686. This Agreement consists of the provisions set forth below, including provisions of all Attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any Attachment, the provisions set forth shall control.

The vendor Agreement shall include and incorporate by reference this Agreement, the terms and conditions, special terms and conditions, any agreed upon amendments, as well as all of the sections of the solicitation as posted, including any addenda and the awarded vendor's proposal. Once signed, if an awarded vendor's proposal varies or is unclear in any way from the TIPS Agreement, TIPS, at its sole discretion, will decide which provision will prevail. Other documents to be included are the awarded vendor's proposals, task orders, purchase orders and any adjustments which have been issued. If deviations are submitted to TIPS by the proposing vendor as provided by and within the solicitation process, this Agreement may be amended to incorporate any agreed deviations.

The following pages will constitute the Agreement between the successful vendors(s) and TIPS. Bidders shall state, in a separate writing, and include with their proposal response, any required exceptions or deviations from these terms, conditions, and specifications. If agreed to by TIPS, they will be incorporated into the final Agreement.

A Purchase Order, Agreement or Contract is the TIPS Member's approval providing the authority to proceed with the negotiated delivery order under the Agreement. Special terms and conditions as agreed to between the vendor and TIPS Member should be added as addenda to the Purchase Order, Agreement or Contract. Items such as certificate of insurance, bonding requirements, small or disadvantaged business goals are some of the addenda possible.

Terms and Conditions

Conflicts with RS Means Unit Price Book

If the terms of the solicitation referenced RS Means Unit Price Book occur, the RS Means Book shall control if it determines legality of the solicitation award as it relates to the requisite Means Unit Price Book.

Freight

All quotes to members shall provide a line item for cost for freight or shipping regardless if there is a charge or not. If no charge for freight or shipping, indicate by stating "No Charge" or "\$0" or other similar indication.

Warranty Conditions

All new supplies equipment and services shall include manufacturer's minimum standard warranty unless otherwise agreed to in writing. Vendor shall be legally permitted to sell, or an authorized dealer, distributor or manufacturer for all products offered for sale to TIPS Members. All equipment proposed shall be new unless clearly stated in writing.

Customer Support

The Vendor shall provide timely and accurate customer support to TIPS Members. Vendors shall respond to such requests within one (1) working day after receipt of the request. Vendor shall provide training regarding products and services supplied by the Vendor unless otherwise clearly stated in writing at the time of purchase. (Unless training is a line item sold or packaged and must be purchased with product.)

Agreements

Agreements for purchase will normally be put into effect by means of a contract, agreement or purchase order(s) executed by authorized agents of the participating government entities.

Davis Bacon Act requirements will be met when Federal Funds are used for construction and/or repair of buildings or as otherwise required by applicable statute or regulation.

Other Wage Rates may be required by some TIPS Members and acceptance of a project by the Vendor may require the Vendor to comply with the TIPS Member's required wage rate.

Tax exempt status

A taxable item sold, leased, rented to, stored, used, or consumed by any of the following governmental entities is exempted from the taxes imposed by this chapter: (1) the United States; (2) an unincorporated instrumentality of the United States; (3) a corporation that is an agency or instrumentality of the United States and is wholly owned by the United States or by another corporation wholly owned by the United States; (4) the State of Texas; (5) a Texas

exempts or does not impose a tax on similar sales of items to this state or a political subdivision county, city, special district, or other political subdivision; or (6) a state, or a governmental unit of a state that borders Texas, but only to the extent that the other state or governmental unit of this state. Texas Tax Code § 151.309. Most TIPS Members are tax exempt and the related laws of the jurisdiction of the TIPS Member shall apply.

Assignments of Agreements

No assignment of Agreement may be made without the prior written approval of TIPS. Payment can only be made to the awarded Vendor or authorized Assignee.

Disclosures

1. Vendor affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Agreement.
2. Vendor shall attach, in writing, a complete description of any and all relationships that might be considered a conflict of interest in doing business with Members in the TIPS program.
3. The vendor affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this Agreement.

Renewal of Agreements

The Agreement with TIPS is **for two (2) years with an option for renewal for additional two (2) consecutive one year terms years. Total term of Agreement can be up to the number of years provided in the solicitation or as limited by statute.** The option renewal year one shall be automatically renewed unless either party objects or terminates the agreement as provided herein at "**Termination for Convenience**". The Second one-year renewal term is only if both Parties agree.

No Agreement for goods or services with a TIPS Member by the awarded vendor named in this Agreement that results from the solicitation award named in this Agreement may incorporate an automatic renewal clause with which the TIPS Member must comply. All renewal terms incorporated in an Agreement by the vendor with the TIPS Member shall only be valid and enforceable when the vendor receives written confirmation by purchase order or executed Agreement issued by the TIPS Member for any renewal period. The purpose of this clause is to avoid a TIPS Member inadvertently renewing an Agreement during a period in which the governing body of the TIPS Member has not properly appropriated and budgeted the funds to satisfy the Agreement renewal. This term is not negotiable and any Agreement between a TIPS Member and a TIPS awarded vendor with an automatic renewal clause that conflicts with these terms are rendered void and unenforceable.

Invoices

The awarded vendor shall submit invoices or payment requests to the TIPS Member participating entity clearly stating "Per TIPS Agreement # xxxxxxxx. Each invoice or pay request shall include the TIPS Member's purchase order number or other identifying designation as provided in the order or contract by the TIPS Member. If applicable, the shipment tracking number or pertinent information for verification of TIPS Member receipt shall be made available upon request.

Pricing

Price increases will be honored according to the terms of the solicitation. However, the Vendor shall honor previous prices for thirty (30) days after written notification to TIPS of an increase, except any price changes related to the, then current, RS Means Unit Price Book is valid. Price of a specific Job Order Contract proposal to a TIPS Member shall not change within 60 days of date of proposal as a result of an updated RS Means Unit Price Book unless agreed by the TIPS Member.

All pricing submitted to TIPS shall include the participation fee, as provided in the solicitation, to be remitted to TIPS by the Vendor. Vendor will not show adding the fee to the invoice presented to customer. Failure to render the participation fee to TIPS shall constitute a breach of this agreement and shall be grounds for termination of this agreement and any other agreement held with TIPS.

Participation Fees

Vendor or vendor assigned dealer Agreements to pay the participation fee for all Agreement sales to TIPS on a monthly scheduled report. Vendor must login to the TIPS database and use the "Submission Report" section to report sales. The Vendor or vendor assigned dealers are responsible for keeping record of all sales that go through the TIPS Agreement. Failure to pay the participation fee will result in termination of Agreement. Please contact TIPS at tips@tips-usa.com or call (866) 839-8477 if you have questions about paying fees.

Indemnity

The Vendor agrees to indemnify and hold harmless and defend TIPS, TIPS Member(s), officers and employees from and against all claims and suits by third parties for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and reasonable attorney's fees, arising out of, or resulting from, Vendor's work under this Agreement, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part, upon allegations of negligent or intentional acts on the part of the Vendor, its officers, employees, agents, subcontractors, licensees, or invitees. Parties found liable shall pay their proportionate share of damages as agreed by the parties or as ordered by a court of competent jurisdiction over the case. Per Texas Education Code §44.032(f), reasonable Attorney's fees are recoverable by the prevailing party in any dispute resulting in litigation.

State of Texas Franchise Tax

By signature hereon, the bidder hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code.

Miscellaneous

The Vendor acknowledges and agrees that continued participation in TIPS is subject to TIPS sole discretion and that any Vendor may be removed from the participation in the Program at any time with or without cause. Nothing in the Agreement or in any other communication between TIPS and the Vendor may be construed as a guarantee that TIPS or TIPS Members will submit any orders at any time. TIPS reserves the right to request additional proposals for items or services already on Agreement at any time.

Purchase Order Pricing/Product Deviation

If a deviation of pricing/product on a purchase order or contract modification occurs, TIPS is to be notified within 48 hours of receipt of order.

Termination for Convenience

TIPS reserves the right to terminate this agreement for cause or no cause for convenience with a thirty-day written notice. Termination for convenience is required under Federal Regulations 2 CFR part 200. All purchase orders presented to the Vendor by a TIPS Member prior to the actual termination of this agreement shall be honored at the option of the TIPS Member. The awarded vendor may terminate the agreement with ninety (90) days written notice to TIPS 4845 US Hwy North, Pittsburg, Texas 75686. The vendor will be paid for goods and services delivered prior to the termination for convenience provided that the goods and services were delivered in accordance with the terms and conditions of the terminated agreement.

TIPS Member Purchasing Procedures

Purchase orders or their equal are issued by participating TIPS Member to the awarded vendor indicating on the PO "Agreement Number". Order is emailed to TIPS at tipspo@tips-usa.com.

- Awarded vendor delivers goods/services directly to the participating member.
- Awarded vendor invoices the participating TIPS Member directly.
- Awarded vendor receives payment directly from the participating member.
- Awarded vendor reports sales monthly to TIPS (unless prior arrangements have been made with TIPS to report monthly).

Form of Agreement and Reporting

If a vendor submitting an offer requires TIPS and/or TIPS Member to sign an additional agreement, a copy of the proposed agreement must be included with the proposal to the TIPS Member. TIPS does not require a review a TIPS Member's Job Order contract TYPE AIA or other similar Contract provided by the TIPS Member. This clause does not relieve the Vendor from the responsibility to report the contract execution and the amount of the contract and any change orders.

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Licenses

Awarded vendor shall maintain in current status all federal, state and local licenses, bonds and permits required for the operation of the business conducted by awarded vendor. Awarded vendor shall remain fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of services under the Agreement. TIPS reserves the right to stop work and/or cancel Agreement of any awarded vendor whose license(s) expire, lapse, are suspended or terminated.

Novation

If awarded vendor sells or transfers all assets or the entire portion of the assets used to perform this Agreement, a successor in interest must guarantee to perform all obligations under this Agreement. TIPS reserves the right to accept or reject any new party. A simple change of name agreement will not change the Agreement obligations of awarded vendor.

Site Requirements (when applicable to service or job)

Cleanup: Awarded vendor shall clean up and remove all debris and rubbish resulting from their work as required or directed by TIPS Member. Upon completion of work, the premises shall be left in good repair and an orderly, neat, clean and unobstructed condition.

Preparation: Awarded vendor shall not begin a project for which TIPS Member has not prepared the site, unless awarded vendor does the preparation work at no cost, or until TIPS Member includes the cost of site preparation in a purchase order.

Site preparation includes, but is not limited to: moving furniture, installing wiring for networks or power, and similar pre-installation requirements.

Registered sex offender restrictions: For work to be performed at schools, awarded vendor agrees that no employee of a sub-contractor who has been adjudicated to be a registered sex offender will perform work at any time when students are or reasonably expected to be present. Awarded vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at the TIPS Member's discretion. Awarded vendor must identify any additional costs associated with compliance of this term. If no costs are specified, compliance with this term will be provided at no additional charge. **Safety measures:** Awarded vendor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Awarded vendor shall post warning signs against all hazards created by the operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.

Smoking

Persons working under Agreement shall adhere to local smoking policies. Smoking will only be permitted in posted areas or off premises.

Marketing

Awarded vendor agrees to allow TIPS to use their name and logo within website, marketing materials and advertisement subject to any reasonable restrictions provided to TIPS in the Proposal to the Solicitation. Any use of TIPS name and logo or any form of publicity, inclusive of press release, regarding this Agreement by awarded vendor must have prior approval from TIPS.

Supplemental agreements

The TIPS Member entity participating in the TIPS Agreement and awarded vendor may enter into a separate supplemental agreement or contract to further define the level of service requirements over and above the minimum defined in this Agreement i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement or contract developed as a result of this Agreement is exclusively between the participating entity and awarded vendor. TIPS, its agents, TIPS Members and employees shall not be made party to any claim for breach of such agreement.

Survival Clause

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and TIPS or the TIPS Member Customer under the terms and conditions of the Agreement shall survive the expiration or termination of the Agreement. All Orders, Purchase Orders issued or contracts executed by TIPS or a TIPS Member and accepted by the Vendor prior to the expiration or termination of this agreement, shall survive expiration or termination of the Agreement, subject to previously agreed terms and conditions agreed by the parties or as otherwise specified herein relating to termination of this agreement.

Legal obligations

It is the responding vendor's responsibility to be aware of and comply with all local, state and federal laws governing the sale of products/services identified in this Solicitation and any awarded Agreement thereof. Applicable laws and regulations must be followed even if not specifically identified herein.

Audit rights

Due to transparency statutes and public accountability requirements of TIPS and TIPS Members', the awarded Vendor shall, at their sole expense, maintain appropriate due diligence of all purchases made by TIPS Member that utilizes this Agreement. TIPS and Region 8 ESC each reserve the right to audit the accounting of TIPS related purchases for a period of three (3) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of one (1) year from the effective date of termination. In order to ensure and confirm compliance with this agreement, TIPS shall have authority to conduct random audits of Awarded Vendor's pricing that is offered to TIPS Members with 30 days'

notice unless the audit is ordered by a Court Order or by a Government Agency with authority to do so without notice. Notwithstanding the foregoing, in the event that TIPS is made aware of any pricing being offered to eligible entities that is materially inconsistent with the pricing under this agreement, TIPS shall have the ability to conduct the audit internally or may engage a third-party auditing firm to investigate any possible non-complying conduct or may terminate the Agreement according to the terms of this Agreement. In the event of an audit, the requested materials shall be reasonably provided in the format and at the location designated by Region 8 ESC or TIPS.

Force Majeure

If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and fully particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

Bonding

When applicable, performance bonds and payment bonds will be required on construction or labor required jobs. Awarded vendor will meet the TIPS Member's local and state purchasing requirements. Awarded vendors may need to provide additional capacity as jobs increase. Bonds costs are passed through at cost to the TIPS Member and are not subject to the TIPS Participation fee be paid to TIPS. The actual cost of the bond will be a pass through to the TIPS Member and added to the purchase order or Contract.

Professional Engineering and Architect's Services

Professional Engineering and Architect's Services are not permitted to be provided under this Agreement. Texas statutes prohibit the procurement of Professional Engineering and Architect's Services through a cooperative agreement.

Scope of Services

The specific scope of work for each job shall be determined in advance and in writing between TIPS Member, Member's design professionals and Vendor. It is permitted for the TIPS Member to provide a general scope description, but the awarded vendor should provide a written scope of work, and if applicable, according to the TIPS Member's design Professional as part of the proposal. Once the scope of the job is agreed to, the TIPS Member will issue a PO and/or an Agreement or Contract with the Job Order Contract Proposal referenced or as an attachment along with bond and any other special provisions agreed by the TIPS Member. If special terms and conditions other than those covered within this solicitation and awarded Agreements are required, they will be attached to the PO and/or an Agreement or Contract and shall take precedence over those in this base TIPS Vendor Agreement.

Project Delivery Order Procedures

The TIPS Member having approved and signed an interlocal agreement, or other TIPS Membership document, may make a request of the awarded vendor under this Agreement when the TIPS Member has services that need to be undertaken. Notification may occur via phone, the web, email, fax, or in person. Upon notification of a pending request, the awarded vendor shall make contact with the TIPS Member as soon as possible, but must make contact with the TIPS Member within two working days.

Scheduling of Projects

Scheduling of projects (if applicable) may be accomplished when the TIPS Member issues a Purchase Order and/or an Agreement or Contract that will serve as “the notice to proceed” as agreed by the Vendor and the TIPS Member. The period for the delivery order will include the mobilization, materials purchase, installation and delivery, design, weather, and site cleanup and inspection. No additional claims may be made for delays as a result of these items. When the tasks have been completed the awarded vendor shall notify the client and have the TIPS Member or a designated representative of the TIPS Member inspect the work for acceptance under the scope and terms in the Purchase Order and/or Agreement or Contract. The TIPS Member will issue in writing any corrective actions that are required. Upon completion of these items, the TIPS Member will issue a completion notice and final payment will be issued per the contractual requirements of the project with the TIPS Member. Any Construction contract prepared by the TIPS Member’s Legal Counsel may alter the terms of this subsection, “Scheduling of Projects”.

Support Requirements

If there is a dispute between the awarded vendor and TIPS Member, TIPS or its representatives will assist in conflict resolution or third party (mandatory mediation), if requested by either party. TIPS, or its representatives, reserves the right to inspect any project and audit the awarded vendors TIPS project files, documentation and correspondence.

Status of TIPS Members as Related to This Agreement

TIPS Members stand in the place of TIPS as related to this agreement and have the same access to the proposal information and all related documents. TIPS Members have all the same rights under the awarded Agreement as TIPS.

Incorporation of Solicitation

The TIPS Solicitation, whether a Request for Proposals, the Request for Competitive Sealed Proposals or Request for Qualifications solicitation, the Vendor’s response to same and all associated documents and forms made part of the solicitation process, including any addenda, that resulted in the execution of this agreement are hereby incorporated by reference into this agreement as if copied verbatim.

SECTION HEADERS OR TITLES

THE SECTION HEADERS OR TITLES WITHIN THIS DOCUMENT ARE MERELY GUIDES FOR CONVENIENCE AND ARE NOT FOR CLASSIFICATION OR LIMITING OF THE RESPONSIBILITIES OF THE PARTIES TO THIS DOCUMENT.

NEW STATUTORY REQUIREMENT EFFECTIVE SEPTEMBER 1, 2017.

You certify that your company (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Agreement. Texas governmental entities are prohibited from doing business with companies that fail to certify to this condition as required by Texas Government Code Sec. 2270.

You certify that your company is not listed on and we do not do business with companies that are on the Texas Comptroller of Public Accounts list of Designated Foreign Terrorists Organizations per Texas Gov't Code 2270.0153 found at <https://comptroller.texas.gov/purchasing/docs/foreign-terrorist.pdf>

You certify that pursuant to Texas Business and Commerce Code Chapter 272, as revised September 1, 2017, any construction contract or agreement as defined in the Statute with a TIPS, Education Service Center Region 8 or a Texas TIPS Member subject to the Statute shall include a Choice of Law provision providing that this agreement shall be subject to and interpreted by the Laws of the State of Texas without regard to any conflict of laws principles for any action shall be in a court of competent jurisdiction in Texas and any arbitration shall be in the State of Texas. Pursuant to the Texas Business and Commerce Code, as amended by the 85th Texas Legislature, this Construction Agreement for Job Order Contract services is, in the event of a dispute between the parties, subject to interpretation according to the Laws of the state of Texas only, without regard to any conflict of laws principles. Venue for any alternative dispute resolution procedure or process shall be in the state of Texas. If the dispute is litigated, venue and jurisdiction shall be in a court of competent jurisdiction in the state of Texas.

Pursuant to 85th Texas Legislative H.B. 3270, as it applies to Texas Education Code § 22.0834 et seq, the Vendor shall comply with all relevant sections related to student contact, background checks, fingerprinting and other related requirements.

Special Terms and Conditions

It is the intent of TIPS to award to reliable, high performance vendors to supply products and services to government and educational agencies. It is the experience of TIPS that the following procedures provide TIPS, the Vendor, and the participating agency the necessary support to facilitate a mutually beneficial relationship. The specific procedures will be negotiated with the successful vendor.

- **Agreements:** All vendor Purchase Orders and/or Agreements/Contracts must be emailed to TIPS at tipspo@tips-usa.com. Should an agency send an order direct to vendor, it is the vendor's responsibility to forward the order to TIPS at the email above within 24 business hours and confirm its receipt with TIPS.
- **Promotion of Agreement:** It is agreed that Vendor will encourage all eligible entities to purchase from the TIPS Program. Encouraging entities to purchase directly from the Vendor, bypassing the TIPS Agreement when the Member has requested the TIPS agreement is a violation of the terms and conditions of this Agreement and will result in removal of the Vendor from the TIPS Program.

Page 12 of 12 will be the TIPS Vendor Agreement Signature Page

TIPS Vendor Agreement Signature Form

RCSP 181101 Job Order Contracting (JOC)

Company Name Basic IDIQ, Inc.

Address 10713 RR 620 North, Suite 622F

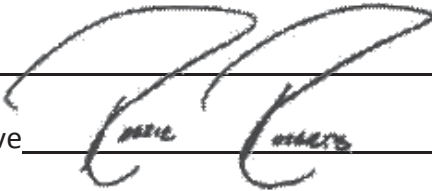
City Austin State TX Zip 78726

Phone (888) 402-4347 Fax (800) 711-6628

Email of Authorized Representative rroberts@basicidiq.com

Name of Authorized Representative Robbie Roberts

Title COO/VP

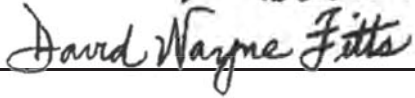
Signature of Authorized Representative 

Date December 14, 2018

TIPS Authorized Representative Name Meredith Barton

Title Vice-President of Operations

TIPS Authorized Representative Signature 

Approved by ESC Region 8 

Date 1/4/19

The Interlocal Purchasing System (TIPS Cooperative) Supplier Response

Bid Information		Contact Information		Ship to Information
Bid Creator	Mr. David Mabe Vice-President of Construction	Address	Region VIII Education Service Center 4845 US Highway 271 North Pittsburg, TX 75686	Address
Email	david.mabe@tips-usa.com			Contact
Phone	+1 (903) 243-4759 x			
Fax	+1 (866) 749-6674 x	Contact	Jensen Mabe, Construction Program Manager	Department Building
Bid Number	181101			Floor/Room
Title	Job Order Contracting			Telephone
Bid Type	RFP	Department Building		Fax
Issue Date	11/1/2018 08:04 AM (CT)			Email
Close Date	12/14/2018 03:00:00 PM (CT)	Floor/Room		
		Telephone	+1 (903) 438-6237 x	
		Fax	+1 (866) 839-8472 x	
		Email	bids@tips-usa.com	

Supplier Information

Company Basic IDIQ Inc
 Address 10713 RR 620 North
 Suite 622
 Austin, TX 78726
 Contact Robbie Roberts
 Department
 Building
 Floor/Room
 Telephone (888) 402-4347
 Fax (800) 711-6628
 Email rroberts@basicidiq.com
 Submitted 12/13/2018 08:43:29 PM (CT)
 Total \$0.00

By submitting your response, you certify that you are authorized to represent and bind your company.

Signature Robbie Roberts

Email rroberts@basicidiq.com

Supplier Notes

Bid Notes

Bid Activities

Bid Messages

Bid Attributes

Please review the following and respond where necessary

#	Name	Note	Response
1	Yes - No	Disadvantaged/Minority/Women Business Enterprise - D/M/WBE (Required by some participating governmental entities) Vendor certifies that their firm is a D/M/WBE? Vendor must upload proof of certification to the "Response Attachments" D/M/WBE CERTIFICATES section.	No
2	Yes - No	Historically Underutilized Business - HUB (Required by some participating governmental entities) Vendor certifies that their firm is a HUB as defined by the State of Texas at https://comptroller.texas.gov/purchasing/vendor/hub/ or in a HUBZone as defined by the US Small Business Administration at https://www.sba.gov/offices/headquarters/ohp Proof of one or both may be submitted. Vendor must upload proof of certification to the "Response Attachments" HUB CERTIFICATES section.	No
3	Yes - No	The Vendor can provide services and/or products to all 50 US States? Select YES, ONLY if your company is licensed to work in all 50 states, or the state does not require a license; otherwise select NO.	No
4	States Served:	If answer is NO to question #3, please list which states can be served. (Example: AR, OK, TX)	TX, OK, NM, AR, LA

5 Company and/or Product Description:

This information will appear on the TIPS website in the company profile section, if awarded a TIPS contract. (Limit 750 characters.)

Basic IDIQ Incorporated has been a contractor focusing on "Job Order" or "Indefinite Delivery, Indefinite Quantity" contracting since 2002. The company was founded as an operating division of Basic Industries, Inc. In 2007, Basic IDIQ, Inc. was "spun out" as a stand-alone corporation. The company has had consistent management from its inception. All members of the Basic IDIQ Team are highly committed to the success of every project. We have a passion for excellence and open communication with clients, employees and business partners. Basic IDIQ is an employee owned company and uses an ESOP as the ownership vehicle. Every employee-owner is highly committed to achieving success for our clients. Basic IDIQ Inc. ("Basic IDIQ") is focused on providing responsive, cost effective, and high-quality construction and facility services to clients who have significant infrastructure. Our clients include universities, K-12 school districts, community colleges, county governments, municipalities, healthcare organizations, and commercial businesses. Our services include "cradle to grave" project development and implementation. We specialize in providing a "best value" solution to clients who require facility improvements.

In addition to providing "cradle to grave" management of turn-key projects, we provide the following value added offerings:

- Job Order Contracting services
- Responsive and fast cycle time facility improvement services
- Turn-key project delivery services
- Construction management services
- Facility assessment services
- Abatement and demolition services
- Energy efficiency and alternative energy services

Services and Capabilities
Basic IDIQ provides facility professionals and building owners a strong partner and effective tools to improve their facilities and meet the diverse needs of demanding operations.

- Facility renovation and construction services delivering turnkey improvements while reducing time and cost.
- Energy efficiency and management solutions providing

high ROI and low risk.

- Job Order Contracting to reliably deliver cost effective, mission critical improvements.
 - Design - Build and Construction Management services to deliver projects on time, within budget, and without change orders.
 - Abatement and demolitions services to accelerate renovation projects.
 - Seamless integration with preferred architects, engineers, and client team of facility professionals.
 - State wide delivery through our responsive professionals in local offices.
- Basic IDIQ's team of facilities, construction, and technical experts:
- Integrate seamlessly with our clients to deliver compelling results.
 - Respond quickly given delegated decision making authority.

- Deliver turnkey projects using a fast cycle time approach to cut time and cost from the front end of the project delivery process.
- Combine value engineering and other best practices to ensure value delivered, price, and time are maximized on every project.

6	Primary Contact Name	Primary Contact Name	Robbie Roberts
7	Primary Contact Title	Primary Contact Title	COO / VP
8	Primary Contact Email	Primary Contact Email	rroberts@basicidiq.com
9	Primary Contact Phone	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	8884024347
10	Primary Contact Fax	Enter 10 digit fax number. (No dashes or extensions) Example: 8668398477	8007116628
11	Primary Contact Mobile	Enter 10 digit mobile phone number. (No dashes or extensions) Example: 8668398477	8175222542
12	Secondary Contact Name	Secondary Contact Name	Jeff Thigpen
13	Secondary Contact Title	Secondary Contact Title	Operations Manager
14	Secondary Contact Email	Secondary Contact Email	jthigpen@basicidiq.com
15	Secondary Contact Phone	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	8884024347
16	Secondary Contact Fax	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	8007116628
17	Secondary Contact Mobile	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	5129665686
18	Admin Fee Contact Name	Admin Fee Contact Name. This person is responsible for paying the admin fee to TIPS.	Brenda Moczygemba
19	Admin Fee Contact Email	Admin Fee Contact Email	bmoczygemba@basicidiq.com

20	Admin Fee Contact Phone	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	8884024347
21	Purchase Order Contact Name	Purchase Order Contact Name. This person is responsible for receiving Purchase Orders from TIPS.	Brenda Moczygemba
22	Purchase Order Contact Email	Purchase Order Contact Email	bmoczygemba@basicidiq.com
23	Purchase Order Contact Phone	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	8884024347
24	Company Website	Company Website (Format - www.company.com)	www.basicidiq.com
25	Federal ID Number:	Federal ID Number also known as the Employer Identification Number. (Format - 12-3456789)	14-2001530
26	Primary Address	Primary Address	10713 RR 620 N, Suite 622
27	Primary Address City	Primary Address City	Austin
28	Primary Address State	Primary Address State (2 Digit Abbreviation)	TX
29	Primary Address Zip	Primary Address Zip	78726
30	Search Words:	Please list search words to be posted in the TIPS database about your company that TIPS website users might search. Words may be product names, manufacturers, or other words associated with the category of award. YOU MAY NOT LIST NON-CATEGORY ITEMS. (Limit 500 words) (Format: product, paper, construction, manufacturer name, etc.)	Basic IDIQ Construction, Job Order Contracting, Energy Savings Solutions, General Construction Services throughout Texas, New Mexico, Oklahoma, Arkansas and Louisiana, construction and facilities maintenance experts, building energy audit and technical evaluation, upgrades in Lighting,HVAC (Mechanical and Geothermal Systems), Building Envelope (Weatherization, Insulation, Roofing) and Plumbing, upgrades in Lighting, HVAC (Mechanical and Geothermal Systems), Building Envelope Weatherization, Insulation, Roofing and Plumbing, new construction of commercial buildings, new construction of recreation facilities leasehold improvements, renovations, major system improvements, facility maintenance and building repairs, Job Order Contract pricing, demolition and environmental services, abatement, asbestos & lead removal, fire & water recovery construction, OSHA certified personnel, renovations, repairs and new construction, sewer line replacement, sewer main rehabilitation, waste water main rehabilitation, municipal solid waste management, water conservation

- 31 Do you want TIPS Members to be able to spend Federal grant funds with you if awarded? Is it your intent to be able to sell to our members regardless of the fund source, whether it be local, state or federal? Most of our members receive Federal Government grants and they make up a significant portion of their budgets. The members need to know if your company is willing to sell to them when they spend federal budget funds on their purchase. There are attributes that follow that are provisions from the federal regulations in 2 CFR part 200. Your answers will determine if your award will be designated as Federal or Education Department General Administrative Regulations (EDGAR) compliant. Yes
- Do you want TIPS Members to be able to spend Federal grant funds with you if awarded and is it your intent to be able to sell to our members regardless of the fund source, whether it be local, state or federal?
- 32 Yes - No Certification of Residency (Required by the State of Texas) The vendor's ultimate parent company or majority owner:
(A) has its principal place of business in Texas;
OR
(B) employs at least 500 persons in Texas? Yes
- 33 Company Residence (City) Vendor's principal place of business is in the city of? Austin, Texas
- 34 Company Residence (State) Vendor's principal place of business is in the state of? Texas
- 35 TIPS administration fee By submitting a proposal, I agree that all pricing submitted to TIPS shall include the participation fee, as designated in the solicitation or as otherwise agreed in writing and shall be remitted to TIPS by the Vendor as agreed in the Vendor agreement. I agree that the fee shall not and will not be added by the vendor as a separate line item on a TIPS member invoice, quote, proposal or any other written communications with the TIPS member. (No Response Required)
- 36 Yes - No Vendor agrees to remit to TIPS the required administration fee? Region 8 is required by Texas Government Code § 791 to be compensated for its work and thus, failure to agree shall render your response void and it will not be considered. Yes
- 37 Regular Hours Coefficient What is your regular hours coefficient for the RS Means Price Book? 0.89
- Example:
- A 5% discount for the RS Means Price Book would be a .95 regular hours coefficient.
- Remember that this is a ceiling discount. You can discount lower than the contract coefficient, but not higher.
- 38 After Hours Coefficient What is your after hours coefficient for the RS Means Price Book for work performed after normal working hours? 0.92
- Example:
- The most common after hours coefficient is time and a half. If your regular hours coefficient is .95, your after hours coefficient would be 1.45.
- Remember that this is a ceiling discount. You can discount lower than the contract coefficient, but not higher.

39	Non-Pre-Priced Markup	If the material being utilized for a project cannot be found in the RS Means Price Book, what is your materials markup?	1.13%
		Remember that this is a ceiling markup. You may markup a lesser percentage, but not a greater percentage.	
40	Yes - No	Do you offer additional discounts to TIPS members for large order quantities or large scope of work?	Yes
41	Years Experience	Company years experience in this category?	16
42	Price coefficients and non-pre-priced markups are guaranteed for?	Does the vendor agrees to honor the proposed pricing coefficients and non-pre-priced markups for the term of the award?	YES
43	Right of Refusal	Does the proposing vendor wish to reserve the right not to perform under the awarded agreement with a TIPS member at vendor's discretion?	No
44	NON-COLLUSIVE BIDDING CERTIFICATE	By submission of this bid or proposal, the Bidder certifies that: 1)This bid or proposal has been independently arrived at without collusion with any other Bidder or with any Competitor; 2)This bid or proposal has not been knowingly disclosed and will not be knowingly disclosed, prior to the opening of bids, or proposals for this project, to any other Bidder, Competitor or potential competitor; 3)No attempt has been or will be made to induce any other person, partnership or corporation to submit or not to submit a bid or proposal; 4)The person signing this bid or proposal certifies that he has fully informed himself regarding the accuracy of the statements contained in this certification, and under the penalties being applicable to the Bidder as well as to the person signing in its behalf. Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered.	(No Response Required)
45	CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ -Do you have any CONFLICT OF INTEREST TO REPORT OR DISCLOSE under this statutory requirement?	Do you have any CONFLICT OF INTEREST TO REPORT OR DISCLOSE under this statutory requirement? YES or NO you have a conflict of interest as described in this form or the Local Government Code Chapter 176, cited therein- you are required to complete and file with TIPS. may find the Blank CIQ form on the "Attachments" tab. There is an optional upload on the "Response Attachments" tab for this form provided if you have a conflict and must file the form.	No
46	Filing of Form CIQ	If yes (above), have you filed a form CIQ by uploading the form to this RCSP as directed above?	
47	Regulatory Standing	I certify to TIPS for the proposal attached that my company is in good standing with all governmental agencies, Federal or state, that regulate any part of our business operations. If not, please explain in the next attribute question.	Yes
48	Regulatory Standing	Regulatory Standing explanation of no answer on previous question.	

49 Antitrust Certification Statements (Tex. Government Code § 2155.005)

By submission of this bid or proposal, the Bidder certifies that: (No Response Required)

I affirm under penalty of perjury of the laws of the State of Texas that:

(1) I am duly authorized to execute this contract on my own behalf or on behalf of the company, corporation, firm, partnership or individual (Company) listed below;

(2) In connection with this bid, neither I nor any representative of the Company has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;

(3) In connection with this bid, neither I nor any representative of the Company has violated any federal antitrust law;

(4) Neither I nor any representative of the Company has directly or indirectly communicated any of the contents of this bid to a competitor of the Company or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Company.

50 Suspension or Debarment Instructions

Instructions for Certification: By answering yes to the next Attribute question below, the vendor and prospective lower tier participant is providing the certification set out herein in accordance with these instructions. (No Response Required)

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and / or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participants," "person," "primary covered transaction," "principal," "proposal" and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and / or debarment.

51 Suspension or Debarment Certification

By answering yes, you certify that no federal suspension or debarment is in place, which would preclude receiving a federally funded contract as described above. Yes

and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive

Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

By answering yes, you certify that no federal suspension or debarment is in place, which would preclude receiving a federally funded contract as described above.

52 Non-Discrimination Statement and Certification	In accordance with Federal civil rights law, all U.S. Departments, including the U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident. Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English. To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at How to File a Program Discrimination Complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov. VI of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities) U.S. Departments, including the USDA are equal opportunity provider, employer, and lender. Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. I certify that in the performance of a contract with TIPS or its members, that our company will conform to the foregoing anti-discrimination statement and comply with the cited and all other applicable laws and regulations.	Yes
53 2 CFR PART 200 Contract Provisions Explanation	Required Federal contract provisions of Federal Regulations for Contracts for contracts with ESC Region 8 and TIPS Members: following provisions are required to be in place and agreed if the procurement is funded in any part with federal funds. The ESC Region 8 and TIPS Members are the subgrantee or Subrecipient by definition. Most of the provisions are located in 2 CFR PART 200 - Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards at 2 CFR PART 200. Others are included within 2 CFR part 200 et al. In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain	(No Response Required)

provisions covering the following, as applicable.

54 2 CFR PART 200 Contracts

Contracts for more than the simplified acquisition threshold Yes
currently set at \$150,000, which is the inflation adjusted
amount determined by the Civilian Agency Acquisition
Council and the Defense Acquisition Regulations Council
(Councils) as authorized by 41 U.S.C. 1908, must address
administrative, contractual, or legal remedies in instances
where contractors violate or breach contract terms, and
provide for such sanctions and penalties as appropriate.

Notice: Pursuant to the above, when federal funds are
expended by ESC Region 8 and TIPS Members, ESC
Region 8 and TIPS Members reserves all rights and
privileges under the applicable laws and regulations with
respect to this procurement in the event of breach of
contract by either party.

Does vendor agree?

55 2 CFR PART 200 Termination

Termination for cause and for convenience by the grantee Yes
or subgrantee including the manner by which it will be
effected and the basis for settlement. (All contracts in
excess of \$10,000)

Pursuant to the above, when federal funds are expended
by ESC Region 8 and TIPS Members, ESC Region 8 and
TIPS Members reserves the right to terminate any
agreement in excess
of \$10,000 resulting from this procurement process for
cause after giving the vendor an appropriate opportunity
and up to 30 days, to cure the causal breach of terms and
conditions. ESC Region 8 and
TIPS Members reserves the right to terminate any
agreement in excess of \$10,000 resulting from this
procurement process for convenience with 30 days notice
in writing to the awarded vendor. The vendor
would be compensated for work performed and goods
procured as of the termination date if for convenience of
the ESC Region 8 and TIPS Members. Any award under
this procurement process is not exclusive and the ESC
Region 8 and TIPS reserves the right to purchase goods
and services from other vendors when it is in the best
interest of the ESC Region 8 and TIPS.

Does vendor agree?

56 2 CFR PART 200 Clean Air Act

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Yes
Water Pollution Control Act (33 U.S.C. 1251-1387), as
amended—Contracts and subgrants of amounts in excess
of \$150,000 must contain a provision that requires the
non-Federal award to agree to comply with all applicable
standards, orders or regulations issued pursuant to the
Clean Air Act (42 U.S.C. 7401-7671q) and the Federal
Water Pollution Control Act as amended (33 U.S.C.
1251-1387). Violations must be reported to the Federal
awarding agency and the Regional Office of the
Environmental Protection Agency (EPA).

Pursuant to the Clean Air Act, et al above, when federal
funds are expended by ESC Region 8 and TIPS Members,
ESC Region 8 and TIPS Members requires that the
proposer certify that during the term of
an award by the ESC Region 8 and TIPS Members
resulting from this procurement process the vendor agrees
to comply with all of the above regulations, including all of
the terms listed and referenced therein.

Does vendor agree?

- | | | | |
|----|---|---|-----|
| 57 | 2 CFR PART 200 Byrd Anti-Lobbying Amendment | <p>Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.</p> <p>Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires the proposer certify that during the term and during the life of any contract with ESC Region 8 and TIPS Members resulting from this procurement process the vendor certifies to the terms included or referenced herein.</p> <p>Does vendor agree?</p> | Yes |
| 58 | 2 CFR PART 200 Federal Rule | <p>Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)</p> <p>Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires the proposer certify that in performance of the contracts, subcontracts, and subgrants of amounts in excess of \$100,000, the vendor will be in compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).</p> <p>Does vendor certify that it is in compliance with the Clean Air Act?</p> | Yes |
| 59 | 2 CFR PART 200 Procurement of Recovered Materials | <p>A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.</p> | Yes |

Does vendor certify that it is in compliance with the Solid Waste Disposal Act as described above?

60 Certification Regarding Lobbying

Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal Funds I HAVE NOT Lobbied per above

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

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

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

(3)The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

61 Lobbying Report Standard Form-LLL, "disclosure Form to Report Lobbying,"

ONLY IF you answered "I HAVE Lobbied per above" to attribute #60, please download and complete and upload the Standard Form-LLL, "disclosure Form to Report Lobbying," in the Response attachments section.

(No Response Required)

62 Federal Requirements for Procurement and Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

Federal Requirements for Procurement and Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. Do you ever anticipate the possibility of subcontracting any of your work under this award if you are successful?

YES

- 63 If yes to the above question OR if you ever do subcontract any part of your performance under the TIPS Agreement, do you agree to comply with the following federal requirements? YES
- If yes to the above question OR if you ever do subcontract any part of your performance under the TIPS Agreement, do you agree to comply with the following federal requirements?
- Federal Regulation 2 CFR §200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. (a)The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b)Affirmative steps must include:(1)Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2)Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3)Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4)Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5)Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6)Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs(1) through (5) of this section.

- 64 Davis-Bacon Act compliance. Texas Statute requires compliance with Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 314S), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- BY SUBMITTING A PROPOSAL FOR THIS SOLICITATION, the Vendor agrees, AS REQUIRED BY LAW, to comply with the Davis Bacon Act, IF APPLICABLE.
- (No Response Required)
- 65 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- By submitting a proposal to this solicitation, and IF the customer is utilizing federal funds as described above, the Vendor agrees to comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).
- (No Response Required)

66 Indemnification

The ESC Region 8 and TIPS is a Texas Political Subdivision and a local governmental entity; therefore, is prohibited from indemnifying third parties pursuant to the Texas Constitution (Article 3, Section 52) except as specifically provided by law or as ordered by a court of competent jurisdiction. A provision in a contract to indemnify or hold a party harmless is a promise to pay for any expenses the indemnified party incurs, if a specified event occurs, such as breaching the terms of the contract or negligently performing duties under the contract. Article III, Section 49 of the Texas Constitution states that "no debt shall be created by or on behalf of the State ... " The Attorney General has counseled that a contractually imposed obligation of indemnity creates a "debt" in the constitutional sense. Tex. Att'y Gen. Op. No. MW-475 (1982). Contract clauses which require the System or institutions to indemnify must be deleted or qualified with "to the extent permitted by the Constitution and Laws of the State of Texas." Liquidated damages, attorney's fees, waiver of vendor's liability, and waiver of statutes of limitations clauses should also be deleted or qualified with "to the extent permitted by the Constitution and laws of State of Texas."

Yes

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms?

67 Remedies

The parties shall be entitled to exercise any right or remedy available to it either at law or in equity, subject to the choice of law, venue and service of process clauses limitations agreed herein. Nothing in this agreement shall commit the TIPS to an arbitration resolution of any disagreement under any circumstances. Any Claim arising out of or related to the Contract, except for those specifically waived under the terms of the Contract, may, after denial of the Board of Directors, be subject to mediation at the request of either party. Any issues not resolved hereunder MAY be referred to non-binding mediation to be conducted by a mutually agreed upon mediator as a prerequisite to the filing of any lawsuit over such issue(s). The parties shall share the mediator's fee and any associated filing fee equally. Mediation shall be held in Camp or Titus County, Texas. Agreements reached in mediation shall be reduced to writing, and will be subject to the approval by the District's Board of Directors, signed by the Parties if approved by the Board of Directors, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

Yes, I Agree

Do you agree to these terms?

68 Remedies Explanation of No Answer

- 69 Choice of Law
- The agreement between the Vendor and TIPS/ESC Region 8 and any addenda or other additions resulting from this procurement process, however described, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles.
- THIS DOES NOT APPLY to a vendor's agreement entered into with a TIPS Member, as the Member may be located outside Texas.
- Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms?
- Yes
- 70 Jurisdiction and Service of Process
- Any Proceeding arising out of or relating to this procurement process or any contract issued by TIPS resulting from or any contemplated transaction shall be brought in a court of competent jurisdiction in Camp County, Texas and each of the parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this Section may be served on any party anywhere in the world. Venue clauses in contracts with TIPS members may be determined by the parties.
- Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms?
- Yes
- 71 Alternative Dispute Resolution Explanation of No Answer
- 72 Infringement(s)
- The successful vendor will be expected to indemnify and hold harmless the TIPS and its employees, officers, agents, representatives, contractors, assignees and designees from any and all third party claims and judgments involving infringement of patent, copyright, trade secrets, trade or service marks, and any other intellectual or intangible property rights attributed to or claims based on the Vendor's proposal or Vendor's performance of contracts awarded and approved.
- Yes, I Agree
- Do you agree to these terms?
- 73 Infringement(s) Explanation of No Answer

- 74 Acts or Omissions
- The successful vendor will be expected to indemnify and hold harmless the TIPS, its officers, employees, agents, representatives, contractors, assignees and designees from and against any and all liability, actions, claims, demands or suits, and all related costs, attorney's fees and expenses arising out of, or resulting from any acts or omissions of the vendor or its agents, employees, subcontractors, or suppliers in the execution or performance of any agreements ultimately made by TIPS and the vendor.
- Yes, I Agree
- Do you agree to these terms?
- 75 Acts or Omissions Explanation of No Answer
- 76 Contract Governance
- Any contract made or entered into by the TIPS is subject to and is to be governed by Section 271.151 et seq, Tex Loc Gov't Code. Otherwise, TIPS does not waive its governmental immunities from suit or liability except to the extent expressly waived by other applicable laws in clear and unambiguous language.
- Yes
- 77 Payment Terms and Funding Out Clause
- Payment Terms:
- Yes
- TIPS or TIPS members shall not be liable for interest or late payment fees on past due balances at a rate higher than permitted by the laws or regulations of the jurisdiction of the TIPS Member.
- Funding Out Clause:
- Vendor agrees to abide by the laws and regulations, including Texas Local Government Code § 271.903, or any statutory or regulatory limitations of the jurisdiction of any TIPS Member which governs contracts entered into by the Vendor and TIPS or a TIPS Member that requires all contracts approved by TIPS or a TIPS Member are subject to the budgeting and appropriation of currently available funds by the entity or its governing body.
- See statute(s) for specifics or consult your legal counsel.
- Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered.
- Do you agree to these terms?

78 Insurance and Fingerprint Requirements
Information

Insurance

(No Response Required)

If applicable and your staff will be on TIPS member premises for delivery, training or installation etc. and/or with an automobile, you must carry automobile insurance as required by law. You may be asked to provide proof of insurance.

It is possible that a vendor may be subject to Chapter 22 of the Texas Education Code. The Texas Education Code, Chapter 22, Section 22.0834. Statutory language may be found at: <http://www.statutes.legis.state.tx.us/>

If the vendor has staff that meet both of these criterion:
will have continuing duties related to the contracted services; and

(2) has or will have direct contact with students you have "covered" employees for purposes of completing the attached form.

TIPS recommends all vendors consult their legal counsel for guidance in compliance with this law. If you have questions on how to comply, see below. If you have questions on compliance with this code section, contact the Texas Department of Public Safety Non-Criminal Justice Unit, Access and Dissemination Bureau, FAST-FACT at

NCJU@txdps.state.tx.us and you should send an email identifying you as a contractor to a Texas Independent School District or ESC Region 8 and TIPS. Texas DPS phone number is (512) 424-2474. form in the next attribute to complete entitled:

Texas Education Code Chapter 22 Contractor Certification for Contractor Employees

79 Texas Education Code Chapter 22 Contractor
Certification for Contractor Employees

Introduction: Texas Education Code Chapter 22 requires entities that contract with school districts to provide services to obtain criminal history record information regarding covered employees. Contractors must certify to the district that they have complied. Covered employees with disqualifying criminal histories are prohibited from serving at a school district.

Definitions: Covered employees: Employees of a contractor or subcontractor who have or will have continuing duties related to the service to be performed at the District and have or will have direct contact with students. The District will be the final arbiter of what constitutes direct contact with students. Disqualifying criminal history: Any conviction or other criminal history information designated by the District, or one of the following offenses, if at the time of the offense, the victim was under 18 or enrolled in a public school:

(a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense under federal law or the laws of another state. certify that: (Section A) of the employees of Contractor and any subcontractors are covered employees, as defined above. If this box is checked, I further certify that Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any subcontractor will not become covered employees. Contractor will maintain these precautions or conditions throughout the time the contracted services are provided. (Section B) or all of the employees of Contractor and any subcontractor are covered employees. If this box is checked, I further certify that:

(1) Contractor has obtained all required criminal history record information regarding its covered employees. None of the covered employees has a disqualifying criminal history.

(2) If Contractor receives information that a covered employee subsequently has a reported criminal history, Contractor will immediately remove the covered employee from contract duties and notify the District in writing within 3 business days.

(3) Upon request, Contractor will provide the District with the name and any other requested information of covered employees so that the District may obtain criminal history record information on the covered employees.

(4) If the District objects to the assignment of a covered employee on the basis of the covered employee's criminal history record information, Contractor agrees to discontinue using that covered employee to provide services at the District.

Noncompliance or misrepresentation regarding this certification may be grounds for contract termination.

- 80 Texas Business and Commerce Code § 272 Requirements as of 9-1-2017 SB 807 prohibits construction contracts to have provisions requiring the contract to be subject to the laws of another state, to be required to litigate the contract in another state, or to require arbitration in another state. A contract with such provisions is voidable. Under this new statute, a "construction contract" includes contracts, subcontracts, or agreements with (among others) architects, engineers, contractors, construction managers, equipment lessors, or materials suppliers. "Construction contracts" are for the design, construction, alteration, renovation, remodeling, or repair of any building or improvement to real property, or for furnishing materials or equipment for the project. The term also includes moving, demolition, or excavation. BY RESPONDING TO THIS SOLICITATION, AND WHEN APPLICABLE, THE PROPOSER AGREES TO COMPLY WITH THE TEXAS BUSINESS AND COMMERCE CODE § 272 WHEN EXECUTING CONTRACTS WITH TIPS MEMBERS THAT ARE TEXAS GOVERNMENT ENTITIES. (No Response Required)
- 81 Texas Government Code 2270 Verification Form Texas Government Code 2270 Verification Form YES
 Texas 2017 House Bill 89 has been signed into law by the governor and as of September 1, 2017 will be codified as Texas Government Code § 2270 and 808 et seq.
 The relevant section addressed by this form reads as follows:
 Texas Government Code Sec. 2270.002. PROVISION REQUIRED IN CONTRACT. A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract engaged by ESC Region 8/The Interlocal Purchasing System (TIPS)
 4845 Highway 271 North
 Pittsburg,TX 75686
 Verify by this writing that the above-named company affirms that it (1) does not boycott Israel; and (2) will not boycott Israel during the term of this contract, or any contract with the above-named Texas governmental entity in the future. I further affirm that if our company's position on this issue is reversed and this affirmation is no longer valid, that the above-named Texas governmental entity will be notified in writing within one (1) business day and we understand that our company's failure to affirm and comply with the requirements of Texas Government Code 2270 et seq. shall be grounds for immediate contract termination without penalty to the above-named Texas governmental entity.
 AND
 Our company is not listed on and we do not do business with companies that are on the the Texas Comptroller of Public Accounts list of Designated Foreign Terrorists Organizations per Texas Gov't Code 2270.0153 found at <https://comptroller.texas.gov/purchasing/docs/foreign-terrorist.pdf>
 I swear and affirm that the above is true and correct.
- 82 Solicitation Deviation/Compliance Does the vendor agree with the General Conditions Standard Terms and Conditions or Item Specifications listed in this proposal invitation? Yes

83 Solicitation Exceptions/Deviations Explanation	If the bidder intends to deviate from the General Conditions Standard Terms and Conditions or Item Specifications listed in this proposal invitation, all such deviations must be listed on this attribute, with complete and detailed conditions and information included or attached. TIPS will consider any deviations in its proposal award decisions, and TIPS reserves the right to accept or reject any bid based upon any deviations indicated below or in any attachments or inclusions. In the absence of any deviation entry on this attribute, the proposer assures TIPS of their full compliance with the Standard Terms and Conditions, Item Specifications, and all other information contained in this Solicitation.	No deviations
84 Agreement Deviation/Compliance	Does the vendor agree with the language in the Vendor Agreement?	Yes
85 Agreement Exceptions/Deviations Explanation	If the proposing Vendor desires to deviate from the Vendor Agreement language, all such deviations must be listed on this attribute, with complete and detailed conditions and information included. TIPS will consider any deviations in its proposal award decisions, and TIPS reserves the right to accept or reject any proposal based upon any deviations indicated below. In the absence of any deviation entry on this attribute, the proposer assures TIPS of their full compliance with the Vendor Agreement.	No deviations

Line Items

Response Total:	\$0.00
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ESC 8 / TIPS
Job Order Contracting (JOC)
RCSP 181101

PUBLIC WORK CONSTRUCTION JOC REFERENCES

Client References	Contact Names	Contact Phones
Angelo State University San Angelo, Texas	Clayton Smith, Director of Facilities Planning and Construction	(325) 245-3318
Texas State University San Marcos, Texas	Don Compton Assistant Director	(512) 245-9189
Texas Tech University Health Science Center Lubbock and El Paso	Aaron Scherpereel, Engineer Energy Management	(806) 743-4495, ext. 292
University of North Texas at Denton, Texas	Helen Bailey, AIA, LEED AP, CEF Director, Facilities Management & Construction, a Division of Finance & Administration	(940) 369-7886
Austin Independent School District, Austin, Texas	Zack Pearce Construction Contract Administrator	(512) 745-2561
McKinney Independent School District, McKinney, Texas	Corey Gilliland Facilities Manager	(469) 302-4142
Reagan County Independent School District Big Lake, Texas	Steve Long Superintendent of Schools	(325) 884-3705
City of Graham Graham, Texas	Brandon Anderson City Manager	(940) 549-3324
Erath County Stephenville, Texas	John Wooley Facilities Director	(254) 965-1452
Scurry County Snyder, Texas	Judge Ricky Fritz	(325) 573-8576
Potter County Amarillo, Texas	David Harder Purchasing Agent	(806) 349-4815
Young County Graham, Texas	Judge John Bullock	(940) 549-2030
US Postal Service TX, OK and LA	Sharon J. Russell Purchasing and SM Specialist, USPS Southwest Facilities Construction CMT	(214) 819-7218

CERTIFICATION BY CORPORATE OFFERER

COMPLETE ONLY IF OFFERER IS A CORPORATION,

THE FOLLOWING CERTIFICATE SHOULD BE EXECUTED AND INCLUDED AS PART OF PROPOSAL FORM/PROPOSAL FORM.

OFFERER: Basic IDIQ, Inc.
(Name of Corporation)

Ron Barrick certify that I am the Secretary of the Corporation
I, (Name of Corporate Secretary)

named as OFFERER herein above; that

Robbie Roberts
(Name of person who completed proposal document)

who signed the foregoing proposal on behalf of the corporation offerer is the authorized person that is acting as

COO / VP
(Title/Position of person signing proposal/offer document within the corporation)

of the said Corporation; that said proposal/offer was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

NONE
CORPORATE SEAL if available

Ron Barrick
SIGNATURE

December 14, 2018
DATE

Insert TIPS RFP # RCSP 181101 JOC

**FAILURE TO PROPERLY COMPLETE THIS FORM AND SUBMIT WITH YOUR RESPONSE MAY RESULT IN A
WAIVER OF YOUR RIGHTS UNDER THE LAW TO MAINTAIN CONFIDENTIALITY TREATMENT OF
SUBMITTED MATERIALS.**

CONFIDENTIAL INFORMATION SUBMITTED IN RESPONSE TO COMPETITIVE PROCUREMENT REQUESTS OF EDUCATION SERVICE CENTER REGION 8 AND TIPS (ESC8) IS GOVERNED BY TEXAS GOVERNMENT CODE, CHAPTER 552

If you consider any portion of your proposal to be confidential information and not subject to public disclosure pursuant to Chapter 552 Texas Gov't Code or other law(s), **you must make a copy of all claimed confidential materials within your proposal and put this COMPLETED form as a cover sheet to said materials then scan, name "CONFIDENTIAL" and upload with your proposal submission.** (You must include the confidential information in the submitted proposal as well, the copy uploaded is to indicate which material in your proposal, if any, you deem confidential in the event the receives a Public Information Request.) ESC8 and TIPS will follow procedures of controlling statute(s) regarding any claim of confidentiality and shall not be liable for any release of information required by law. Pricing of solicited product or service may be deemed as public information under Chapter 552 Texas Gov't Code. The Office of Texas Attorney General shall make the final determination whether the information held by ESC8 and TIPS is confidential and exempt from public disclosure.

If you claim that parts of your proposal are confidential, complete the top section below.

I claim part of my proposal to be confidential and DO NOT desire to expressly waive any claim of confidentiality as to any and all information contained within our response to the competitive procurement process (e.g. RFP, CSP, Bid, RFQ, etc.) by completing the following and submitting this sheet with our response to Education Service Center Region 8 and TIPS. The attached contains material from our proposal that I classify and deem confidential under Texas Gov't Code Sec. 552 or other law(s) and I invoke my statutory rights to confidential treatment of the enclosed materials.

Name of company claiming confidential status of material

Printed Name and Title of authorized company officer claiming confidential status of material

10713 RR 620 North, Suite 622F Austin TX

(888) 402-4347

Address City State ZIP Phone

ATTACHED ARE COPIES OF _____ PAGES OF CONFIDENTIAL MATERIAL FROM OUR PROPOSAL

Signature _____ Date **December 14, 2018**

OR

If you do not claim any of your proposal to be confidential, complete the section below only.

Express Waiver: I desire to expressly waive any claim of confidentiality as to any and all information contained within our response to the competitive procurement process (e.g. RFP, CSP, Bid, RFQ, etc.) by completing the following and submitting this sheet with our response to Education Service Center Region 8 and TIPS.

Robbie Roberts

COO / VP, Basic IDIQ, Inc.

Printed Name authorized company officer

Title of authorized company officer

10713 RR 620 North, Suite 622 Austin TX

78726

(888) 402-4347

Address

City

State

ZIP

Phone

Signature

Date December 14, 2018



AmTrust Surety
An AmTrust Financial Company

December 4, 2018

Mr. David Mabe, General Manager
The Interlocal Purchasing System (TIPS)
Region VIII Education Service Center
4845 US Highway 271 North
Pittsburg, Texas 75686

RE: Bonding Reference Letter; Basic IDIQ, Inc.
RCSP 181 101 Job Order Contracting (JOC)
Due Date: December 14, 2018

Dear Mr. Mabe:

Developers Surety and Indemnity Company, an AmTrust Financial Company (Surety) has provided surety credit to the above referenced Principal since 2014. We have extended single bond limits (bid and/or final bonds) in the \$10.0M range within an aggregate backlog of approximately \$30M. We would favorably consider requests from Basic IDIQ, Inc. to provide bid, performance and payment bonds on any and all projects they are contemplating. Developers Surety and Indemnity Company's AM Best rating is A- (Excellent) with a Financial Size Category of XV.

Please be aware that the execution of payment and performance bonds by the surety is subject to the positive review of all normal underwriting considerations at the time of the request and satisfactory review of any contracts, terms, conditions, specifications, bond forms, and owner financing tendered to the principal and the surety at the time of award.

Additionally, the issuance of bonds is a matter between the surety and the principal. If for any reason we do not issue bonds on an awarded project, no third-party liability is assumed by the surety company, the principal, or their agent. In no way does this letter replace or constitute a bid bond and is for informational purposes only. As such, this letter is not contractually binding.

Basic IDIQ, Inc. is a valued customer of AMTRUST Financial Company and we recommend them highly.

Sincerely,

Lisa Rockett
Attorney-in-Fact



BASIC-3

OP ID: MF

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/04/2018

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

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

PRODUCER Time Insurance Agency, Inc. 1405 East Riverside Drive Austin, TX 78741	512-447-7773 CONTACT NAME: Time Insurance Agency, Inc. PHONE (A/C, No, Ext): 512-447-7773 FAX (A/C, No): 512-440-0989 E-MAIL ADDRESS: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 80%;">INSURER(S) AFFORDING COVERAGE</th> <th style="width: 20%;">NAIC #</th> </tr> <tr> <td>INSURER A : Continental Insurance Company</td> <td>35289</td> </tr> <tr> <td>INSURER B : Continental Casualty</td> <td>20443</td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Continental Insurance Company	35289	INSURER B : Continental Casualty	20443	INSURER C :		INSURER D :		INSURER E :		INSURER F :	
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INSURER D :															
INSURER E :															
INSURER F :															
INSURED Basic IDIQ, Inc. 10713 FM 620 North Suite 622 Austin, TX 78726															

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:			5086150067	08/31/2018	08/31/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	AUTOMOBILE LIABILITY ☐ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			5086150053	08/31/2018	08/31/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10000			5086150070	08/31/2018	08/31/2019	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☒ Y ☒ N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	588467487	08/31/2018	08/31/2019	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

Re: RCSP 181101 JOB ORDER CONTRACTING (JOC)

CERTIFICATE HOLDER**CANCELLATION**

INTERLO The Interlocal Purchasing Systems (TIPS) Regional V111 Education Servic 4845 US Hwy 271 North Pittsburg, TX 75686	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	--

WARRANTY

Basic IDIQ will procure new materials, equipment and supplies with quality guarantees up to one year. Typical one year warranties cover all materials and installation for each job order project. Information for extended manufacturer's warranties will be provided to the TIPS Member during project acceptance. Basic IDIQ maintains computerized records of equipment under warranty. This data includes all information necessary to respond to the TIPS Member's requests for warranty work.

All labor and materials are measured by acceptable workmanship standards defined in the specifications and logged into our computerized system during project startup. Project submittals include specification references and require approval. After installation an inspection of the work is performed and recorded, if there are any deficiencies, corrective actions will be required and will be noted in the system. If the TIPS Member finds defective materials or poor workmanship with any work, Basic IDIQ will provide corrective action immediately.

Examples of Warranty Work

Examples of warranty work we recently completed under the Texas State University JOC contract for the James Street Crosswalk project demonstrates our dedication to quality and timeliness. We received a call from the CCA that the thermoplastic striping was coming loose on the concrete. We immediately contacted our subcontractor. The subcontractor mobilized to scarify the concrete and reapply the thermoplastic striping.

Another example included a warranty call received by Texas A&M University at Corpus Christi, Texas about cracks detected in the stucco columns we installed seven months prior. The next day our subcontractor was onsite to assess the rework and repairs were completed within the same week.



State Licensing Board for Contractors

This is to Certify that:

BASIC IDIQ, INC.
1907 Mockingbird Lane
Leander, TX 78641

is duly licensed and entitled to practice the following classifications

BUILDING CONSTRUCTION



Witness our hand and seal of the Board dated,
Baton Rouge, LA 21st day of January 2017

Will B. Mott
Director

Lee Mallett
Chairman

Expiration Date: December 28, 2018

License No: 54479

This License Is Not Transferrable

Andy Dumas
Treasurer

STATE OF NEW MEXICO

CONSTRUCTION INDUSTRIES DIVISION

BASIC IDIQ, INC.

LICENSE NUMBER

358781

Qualifying Party(S)

ROBERTS HARLAN

EXPIRES

10/31/2020

CLASSIFICATION(S)

19B98



DIRECTOR

This card is the property of the CID and shall be surrendered upon demand

STATE OF NEW MEXICO

CONSTRUCTION INDUSTRIES DIVISION

BASIC IDIQ, INC.

LICENSE NUMBER

358781

Qualifying Party(S)

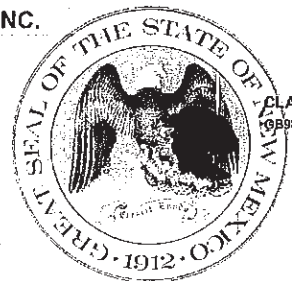
ROBERTS HARLAN

EXPIRES

10/31/2020

CLASSIFICATION(S)

19B98



DIRECTOR

This card is the property of the CID and shall be surrendered upon demand

License No. 0215511018

ACTIVATED

ID #27313

State of Arkansas
Commercial Contractors Licensing Board

BASIC IDIQ, INC.
 10713 RR 620 N, #F-622
 AUSTIN, TX 78726

BASIC IDIQ, INC.

This is to Certify That

is duly licensed under the provisions of Ark. Code Ann. § 17-25-101 et. seq. as amended and is entitled to practice Contracting in the State of Arkansas within the following classifications/specialties:

BUILDING
 - (COMMERCIAL & RESIDENTIAL)

This contractor has an unlimited suggested bid limit.

activated February 27, 2018 **until** October 31, 2018 **when this Certificate expires.**

Witness our hands of the Board, dated at North Little Rock, Arkansas:



Ray [Signature]

CHAIRMAN

Michael [Signature]

SECRETARY

February 27, 2018 - mi



June 04, 2021

City of Flower Mound

Attention: David Bauer, Construction Manager

Reference: Natatorium and Communication Buildings Demolition

Subject: Price Proposal

Dear Mr. Bauer,

Basic IDIQ Inc. is pleased for the opportunity to submit this proposal for the noted work and will be looking forward to hearing from you in the near future. Please contact me directly at any time if any clarifications or if further information is needed. Basic IDIQ Inc. is prepared to start work 10 days after the notice to proceed is received.

Please find the attached Scope of work, Cost works breakdown, and cost summary.

Purchasing cooperative for this project is TIPS Contract# 181101

Respectfully,

David Lewis
Area Manager
Basic IDIQ Inc
325-716-9914
dlewis@basicidiq.com

Attachments:

- A. Scope of Work
- B. Costworks Breakdown
- C. Cost Summary

SCOPE OF WORK
City of Flower Mound
Natatorium and Communication
Building Demolition
06/04/2021
TIPS CONTRACT# 181101

GENERAL:

This project provides for the building demolition at the Natatorium. Work includes demolition, asbestos abatement, earthwork, and exterior improvements. The repairs will be phased, as required, to accommodate the college traffic.

1.0 SCOPE OF WORK:

In accordance with this scope of work all labor, materials, supervision, equipment, insurance, taxes, overhead, and all other things or services necessary to furnish and install components and systems to provide for the renovation of the affected areas as indicated herein.

Work includes but is not limited to the following:

1.1 Natatorium and Communication Building Demolition

1.1.1 Asbestos Abatement

Work includes but not limited to the following:

- 1) Mobilize to site.
- 2) Industrial hygienist to perform baseline testing in Communication building.
- 3) Set up containment within Communication building.
- 4) Set up fresh air and negative air machines in Communication building.
- 5) Industrial hygienist set up air monitoring in Communication building.
- 6) Remove carpet over VCT and Asbestos glue in Communication building.
- 7) Abate asbestos under VCT in Communication building.
- 8) Clean abatement area per state requirements in Communication building.
- 9) Industrial hygienist to test abatement locations for complete removal in Communication building.
- 10) Remove asbestos containment in Communication building.
- 11) Properly dispose of abated debris per state requirements.
- 12) Provide all required abatement documentation to the City of Flower Mound, per state requirements.

1.1.2 Demolition:

Work includes but is not limited to the following:

- 1) Mobilize equipment to site.
- 2) Set up temporary fence panels around both Natatorium and Communication buildings.
- 3) Demolish Natatorium and Communication buildings. This includes 2ft below concrete foundation and pool structures.
 NO BUILDING OR SALVAGING DEBRIS PERMITTED ONCE WORK HAS STARTED.

- 4) Haul off all demolished Natatorium and Communications buildings debris.
- 5) Remove temporary fencing after hydro-mulching.
- 6) Demobilize all equipment used for Natatorium and Communications buildings.
- 7) Properly clean and dispose of all debris per state requirements.

1.1.3 Earthwork

Work includes but not limited to the following:

- 1) Backfill Natatorium and Communications buildings with 1 ½" base material.
- 2) Compact backfill material at Natatorium and Communications buildings.
- 3) Compaction test backfill at Natatorium and Communication buildings. Testing will be performed throughout backfill process.
- 4) Provide and install 6inches of topsoil at Natatorium and Communications buildings.
- 5) Provide and install hydro-mulch on new topsoil at Natatorium and Communications buildings.
- 6) Clean up all earthwork materials.

2.0 SPECIFICATIONS:

As provided by City of Flower Mound Personnel and are described in the scope of work.

2.1 DRAWING AND SKETCHES:

Sketches and drawings not provided.

2.2 SPECIFICATIONS:

Work shall be performed per the requirements of the latest edition of the applicable local, state and federal codes and standards. Details provided by City of Flower Mound personnel.

3.0 SUBMITTALS:

Subcontractor shall submit the indicated number of copies of each required submittal. Submittals shall be submitted and approved prior to incorporating that material or activity into the project. Submittals required by specification and/or drawings shall be made regardless of whether or not they are listed on this schedule.

3.1 SUBMITTAL TYPE AND DESCRIPTION OUTLINE:

Type	Description	Type	Description
A	Shop Drawings	G	Application Instructions
B	Manufacturer's Catalog Cuts/Data	H	Operations & Maintenance (O&M) Manuals
C	Certificate/Certification	I	Color Samples
D	Performance Test Reports	J	Red Line Drawings
E	Sample of Testing		
F	Notification of Sample Availability		

3.2 PROJECT SUBMITTAL REQUIREMENTS:

Required Submittal	Quantity	Due Date	Type
Abatement documentation			

4.0 SPECIAL CONSIDERATIONS:

Special considerations are applicable to this project as outlined in the following:

- 4.1 BASIC IDIQ, Inc. will contact the client project manager for equipment outages as required. Basic will provide a minimum of one (1) working day(s) notice for proper outage coordination.
- 4.2 Normal working hours for this project are 7:00am – 8:00pm. Working outside of standard hours or on weekends and holidays will be coordinated and approved by the owner/client. Proposed numbers do include some premium time hours.
- 4.3 All work performed shall be in accordance with the applicable requirements of the latest edition of the Occupational Safety and Health Act (OSHA), Basic IDIQ, Inc. Safety Manual and Client procedures as applicable.
- 4.4 Work areas will be maintained in a clean and orderly manner with materials, tools, and equipment properly stored and utilized to prevent hazards for worker and incidental personnel in the area. Provide barricades, signs, and other devices as necessary to ensure facility occupants are notified and shielded from dangers that work areas may pose.
- 4.5 Work activities and installations are subject to in process inspections and completion inspections by the Client personnel. No “hold points” are imposed on this project; however, items/materials installed which are not accessible after installation may be subject to rework if verification of acceptable installation is not possible.
- 4.6 Owner property will be properly protected from damage by construction activities.
- 4.1.2 Please note that this proposal is good for **30 days** unless extension is agreed by Basic IDIQ, Inc.

5.0 Exclusions:

All exclusions are applicable to this project as outlined in the following:

- 1) **Utility connections/disconnections.**
- 2) **Watering new hydro-mulch daily**
- 3) **Salvaging materials from project for owner**
- 4) **Permit fees**
- 5) **SWPPP**
- 6) **Anything not specified in the scope of work.**

CostWorks 2021 Quarter 2 - City of Flower Mound Natatorium and Communications Buildings Demolition									
Qty	CSI Number	Description	Unit	Bare Mat.	Bare Labor	Bare Equip.	Total	Total Incl. O&P	
2	01311 320 0160	Field personnel, general purpose laborer, average	Week	0.00	2,400.00	0.00	2,400.00	3,850.00	setting up/taking down temp fencing and misc task
4	01311 320 0260	Field personnel, superintendent, average	Week	0.00	6,300.00	0.00	6,300.00	10,200.00	on site supervision
20	01452 350 4900	Soil testing, proctor compaction, 4" standard mold, ASTM D 698	Ea.	0.00	0.00	0.00	4,040.00	4,440.00	compaction testing fo fill
7	01543 320 0330	Rent excavator diesel hydraulic crawler mounted 4.5 CY capacity	Day+	0.00	0.00	37,933.00	37,933.00	41,726.30	exavator rental
7	01543 320 0335	Rent excavator diesel hydraulic crawler mounted 6 CY capacity	Day+	0.00	0.00	37,009.00	37,009.00	40,709.90	excavator rental
7	01543 320 0345	Rent excavator attachment, grapples	Day+	0.00	0.00	1,931.44	1,931.44	2,124.58	grappler for excavator
7	01543 320 0347	Rent excavator attachment, hydraulic hammer, 5000 ft lbs	Day+	0.00	0.00	8,344.00	8,344.00	9,178.40	demolish concrete
14	01543 320 3350	Rent, smooth drum vibratory roller, 75 H.P.	Day+	0.00	0.00	13,062.00	13,062.00	14,368.20	compaction
30	01543 320 4730	Rent front end loader, 4WD, art. frame, diesel, 3 - 4.5 CY 185 HP	Day+	0.00	0.00	36,120.00	36,120.00	39,732.00	loading trucks and moving fill
60	01543 320 4880	Rent loader, skid steer, wheeled, 10 CF, 30 HP	Day+	0.00	0.00	16,332.00	16,332.00	17,965.20	2 skid steers

4	01543 650 1600	Mobilization or demobilization, delivery charge for equipment, hauled on 50-ton capacity towed trailer	Ea.	0.00	3,680.00	4,400.00	8,080.00	10,600.00	mobilizing/demobilizing equipment
1,000	01562 650 0100	Temporary fencing, chain link, 6' high, 11 ga	L.F.	5,950.00	1,620.00	0.00	7,570.00	9,100.00	protecting work area
499,968	02411 613 0080	Building demolition, large urban projects, masonry, includes 20 mile haul, excludes foundation demolition, dump fees	C.F.	0.00	79,994.88	74,995.20	154,990.08	219,985.92	demolish Natatorium
16,000	02411 613 0700	Building demolition, small buildings or single buildings, wood, elevated slabs, includes 20 mile haul, excludes salvage, foundation demolition or dump fees	C.F.	0.00	2,560.00	2,880.00	5,440.00	7,040.00	Communication bldg. demolition
22,832	02411 617 0440	Building footings and foundations demolition, floors, concrete slab on grade, concrete, rod reinforced, 6" thick, excludes disposal costs and dump fees	S.F.	0.00	6,164.64	14,612.48	20,777.12	25,800.16	Natatorium and Communication bldg. slab demolition without footings
500	02411 617 1000	Building footings and foundations demolition, remove concrete footing, 1' thick, 2' wide, excludes disposal costs and dump fees	L.F.	0.00	1,986.00	4,620.00	6,606.00	8,190.00	Communication bldg. footings(Adjusted by 024116171220)

1,500	02411 617 1140	Building footings and foundations demolition, remove concrete footing, 2' thick, 3' wide, excludes disposal costs and dump fees	L.F.	0.00	10,170.00	23,760.00	33,930.00	42,300.00	Natatorium concrete footing demolition(Adjusted by 024116171220)
0	02411 617 1220	Building footings and foundations demolition, remove concrete footing, heavy reinforcing, excludes disposal costs and dump fees, add	L.F.				20.0%	20.0%	add for concrete reinforcing
0	02411 617 2220	Building footings and foundations demolition, remove concrete walls, block, for vertical reinforcing, excludes disposal costs and dump fees, add	S.F.				20.0%	20.0%	add for CMU reinforcing
1	02411 617 9000	Building footings and foundations demolition, excludes disposal costs and dump fees, minimum labor/equipment charge	Job	0.00	179.00	63.00	242.00	355.00	minimum labor charge for footing demolition
18,517	02411 918 0400	Selective demolition, disposal only, urban buildings with salvage value allowed, masonry construction, includes loading and 5 mile haul to dump	C.Y.	0.00	99,991.80	106,472.75	206,464.55	274,051.60	disposal of demolished debris

200	02411 927 0020	Selective demolition, torch cutting, steel, 1" thick plate	L.F.	482.00	302.00	8.00	792.00	1,030.00	cutting steel
1	02411 927 1090	Selective demolition, torch cutting, steel, minimum labor/equipment charge	Job	0.00	251.00	7.15	258.15	420.00	minimum labor charge for cutting steel
25	02821 341 6000	Asbestos abatement equipment, disposable polyethylene bags, 6 mil, 3 CF	Ea.	31.50	0.00	0.00	31.50	34.75	debris bags
25	02821 341 6300	Asbestos abatement equipment, disposable fiber drums, 3 CF	Ea.	512.50	0.00	0.00	512.50	562.50	drums for debris bags
2	02821 341 6500	Asbestos abatement equipment, negative air machine, 1800 CFM	Ea.	1,850.00	0.00	0.00	1,850.00	2,050.00	negative air machine
2,000	02821 342 0100	Preparation of asbestos containment area, pre-cleaning, HEPA vacuum and wet wipe, flat surfaces	S.F.	20.00	460.00	0.00	480.00	740.00	containment
100	02821 342 0400	Preparation of asbestos containment area, personnel decontamination chamber, 2" x 4" @ 16", 3/4" plywood each side	S.F.	487.00	213.00	0.00	700.00	875.00	decontamination chamber for workers
100	02821 342 0450	Preparation of asbestos containment area, waste decontamination chamber, 2" x 4" @ 16", 3/4" plywood each side	S.F.	487.00	166.00	0.00	653.00	800.00	decontamination for debris

1,500	02821 342 0560	Preparation of asbestos containment area, cover surfaces with polyethylene sheeting, walls, each layer, 6 mil, incl. glue & tape	S.F.	120.00	660.00	0.00	780.00	1,185.00	containment work area
2	02821 342 0900	Preparation of asbestos containment area, set up negative air machine, 1-2k CFM/25 MCF volume	Ea.	0.00	154.00	0.00	154.00	244.00	negative air machine setup
1	02821 342 0950	Preparation of asbestos containment area, set up and remove portable shower unit	Ea.	0.00	166.00	0.00	166.00	263.00	set up portable shower
2,000	02821 343 5000	Bulk asbestos removal, remove VAT and mastic from floor by hand, includes disposable tools & 2 suits & 1 respirator filter/day/worker	S.F.	140.00	2,220.00	0.00	2,360.00	3,660.00	abatement of VCT mastic
3	02821 345 0130	OSHA testing, industrial hygienist, max	Day	0.00	1,545.00	0.00	1,545.00	1,545.00	testing personell
20	02821 345 0210	OSHA testing, asbestos sampling, PCM analysis, NIOSH 7400, maximum	Ea.	560.00	1,660.00	0.00	2,220.00	3,260.00	testing
20	02821 345 1110	OSHA testing, cleaned area samples, PCM air sample analysis, NIOSH 7400, maximum	Ea.	410.00	1,660.00	0.00	2,070.00	3,100.00	testing

2,000	02821 346 1000	Decontamination of asbestos containment area, spray encapsulate polyethylene sheeting	S.F.	860.00	660.00	0.00	1,520.00	2,000.00	decontamination of work area
25	02821 346 1500	Decontamination of asbestos containment area, bag polyethylene sheeting	Ea.	27.00	166.25	0.00	193.25	292.50	bagging of plastic sheeting
2,000	02821 346 2500	Decontamination of asbestos containment area, fine clean exposed substrate, wet wipe substrate	S.F.	0.00	1,100.00	0.00	1,100.00	1,760.00	fine clean work area
1	02821 346 4100	Decontamination of asbestos containment area, remove portable decontamination facility	Ea.	13.60	83.00	0.00	96.60	147.00	removal of decontamination chamber
25	02821 347 0100	Asbestos waste packaging, handling & disposal, collect and bag bulk material, by hand, 3 CF	Ea.	31.50	166.25	0.00	197.75	297.50	put ACM in bags
15	02821 347 2000	Asbestos waste packaging, handling & disposal, containerize bagged material in drums, per 3 CF drum	Ea.	307.50	49.95	0.00	357.45	420.00	put ACM bags in drums
10	02821 347 5020	Asbestos waste packaging, handling & disposal, disposal charges, excl. haul, max	C.Y.	0.00	0.00	0.00	3,100.00	3,450.00	disposal of ACM

4,340	31232 314 4240	Backfill, structural, clay, 200 HP dozer, 150' haul, from existing stockpile, excludes compaction	L.C.Y.	0.00	2,951.20	7,464.80	10,416.00	12,759.60	compaction of fill material
4,185	31232 315 0540	Borrow, crushed stone, haul 2 miles, 1-1/2" to 3/4" size, haul, spread with 200 H.P. dozer	Ton	0.00	5,398.65	10,755.45	16,154.10	20,380.95	3100cy x 2700 per cy=8.370,000lbs =4185 ton fill material
860	31232 315 7080	Borrow, topsoil or loam, 5 C.Y. bucket, loading and/or spreading, front end loader, wheel mounted	B.C.Y.	25,800.00	215.00	352.60	26,367.60	29,240.00	top soil
2,537	32112 323 8000	Base course drainage layers, prepare and roll sub-base, large areas over 2,500 S.Y.	S.Y.	0.00	837.21	1,395.35	2,232.56	2,866.81	compaction of fill material
1	32112 323 9000	Base course drainage layers, prepare and roll sub-base, minimum labor/equipment charge	Job	0.00	80.50	0.00	80.50	127.00	minimum labor charge for compaction
25	32921 914 3500	Seeding athletic fields, seeding rye, annual with mulch and fertilizer, 10 lb. per M.S.F., hydro or air seeding	M.S.F.	1,200.00	393.75	195.00	1,788.75	2,150.00	hydro-mulching
1	32921 914 9000	Seeding athletic fields, minimum labor/equipment charge	Job	0.00	90.50	0.00	90.50	144.00	minimum labor charge for hydro-mulching
Totals				\$39,289.60	\$236,695.58	\$402,713.22	\$685,838.40	\$877,521.87	

City of Flower Mound
Natatorium and Communication
Buildings Demolition
Cost Summary



Means Based Pricing (Modified by City Cost Index)		877,521.87
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Bid Coefficient (Means Based Pricing Only)	0.8900	(96,527.41)
TIPS Cooperative	Subtotal	780,994.46
Contract# 181101		

Non Pre-Priced Items:

		-
		-
	Overhead	-
	Profit	-
Subtotal - Non Pre-priced		-

	Subtotal	780,994.46
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	Subtotal	780,994.46
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One-time discount		(200,000.00)
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Final Total		580,994.46
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Payment and Performance Bonds	2.50%	14,524.86
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Revised Final Total		595,519.32
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EXHIBIT D

INSURANCE REQUIREMENTS GENERAL SERVICES

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

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

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

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

B. MINIMUM LIMITS OF INSURANCE

Vendor shall maintain limits throughout contract not less than:

1. Commercial General Liability: \$500,000 per occurrence / \$1,000,000 in the aggregate for third party bodily injury, personal injury and property damage. Policy will include coverage for:
 - a. Premises / Operations
 - b. Broad Form Contractual Liability
 - c. Products and Completed Operations
 - d. Personal Injury
 - e. Broad Form Property Damage
2. Workers Compensation and Employer's Liability: Workers Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability minimum limits of \$100,000 each accident, \$300,000 Disease - Policy Limit, and \$100,000 Disease – Each Employee.
3. Automobile Liability: \$500,000 Combined Single Limit. Limits can only be reduced if approved by the Town. Automobile liability shall apply to all owned, hired, and non-owned autos.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

D. OTHER INSURANCE PROVISIONS

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

1. General Liability and Automobile Liability Coverages:

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

2. Workers Compensation and Employer's Liability Coverage:

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

3. All Coverages:

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

E. ACCEPTABILITY OF INSURERS

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

F. VERIFICATION OF COVERAGE

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



TOWN COUNCIL AGENDA ITEM NO. 13

REGULAR ITEM

DATE: June 21, 2021

FROM: Debra Wallace, Interim Town Manager/CFO

ITEM: 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.

BACKGROUND INFORMATION: The Financial Services staff and Hilltop Securities Inc., the Town's financial advisor, request the Town Council's approval of an ordinance authorizing the potential issuance of General Obligation Refunding Bonds, Series 2021, ("the Bonds").

A refunding opportunity has been identified which would prepay or refund a portion of the Town's outstanding tax-supported issues, lowering the overall debt service requirements of the Town. In accordance with the Town's Financial Policies, "an advance refunding of outstanding debt shall only be considered when present value savings of at least 3.50% of the principal amount of the refunded bonds is produced." Please note that all debt refunded with the Bonds will be structured to maintain the existing maturity pattern to ensure no debt will be extended as a result of the refunding. Based on volatility in the municipal bond market and the interest rate levels at the time of pricing, the amount of bonds refunded may be decreased.

Refunded Issue	Refunded Bonds	Current Interest Rates	Refunded Years
Certificates of Obligation, Series 2011	\$2,050,000	3.00% - 4.00%	2022-2031

In order to efficiently complete the refunding, the attached ordinance establishes the following parameters, giving the Interim Town Manager/CFO and the Executive Director of Fiscal and Administrative Services the authority to approve all necessary documents and finalize the sale.

Maximum Principal Amount	\$2,175,000
Minimum Net Present Value Savings	5.00%
Maximum True Interest Cost	2.00%
Final Maturity Date	September 1, 2031

The Interim Town Manager/CFO's authorization to complete the sale of the Bonds will expire 180 days after passage of the ordinance. The issuance will be conducted as a negotiated sale with the pricing to occur on June 22, 2021. The Bonds will begin accruing interest on July 1, 2021 (the Dated Date), which the Town will receive upon delivery of the funds on July 14, 2021. The Bank of New York Mellon Trust Company, N.A., will serve as the Paying Agent/Registrar for the Bonds. The preliminary official statement, which discloses details related to issuance of the Bonds and the Town, is available in the Financial Services Department for review.

FISCAL IMPACT: Approximate amount of \$1,850,000

Proposed Expenditure:

(\$1,850,000).

Account Number(s):

Ad valorem taxes and utilities system revenues will fund the bonds, proportionately.

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

LEGAL REVIEW: The Town's Bond Counsel, Norton Rose Fulbright US LLP, prepared the proposed ordinance. No alteration to the legal content of this ordinance, which was originally approved by Taylor, Olson, Adkins, Sralla, & Elam L.L.P, was made.

ATTACHMENTS:

1. Draft Ordinance
2. Paying Agent/Registrar Agreement

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

TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO. __-21

AN ORDINANCE authorizing the issuance of "TOWN OF FLOWER MOUND, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2021"; levying a continuing direct annual ad valorem tax for the payment of said Bonds; resolving other matters incident and related to the issuance, sale, payment and delivery of said Bonds; establishing procedures for the sale and delivery of said Bonds; and delegating matters relating to the sale and issuance of said Bonds to an authorized Town official.

WHEREAS, the Town of Flower Mound, Texas (the "Town") currently has outstanding obligations of the Town of the following issue or series, to wit: "Town of Flower Mound, Texas, Certificates of Obligation, Series 2011," dated July 15, 2011 (hereinafter called the "Refunded Obligations"); and

WHEREAS, pursuant to the provisions of Texas Government Code, Chapter 1207, as amended ("Chapter 1207"), the Town Council of the Town (the "Council") is authorized to issue refunding bonds and deposit the proceeds of sale directly with any place of payment for the Refunded Obligations, or other authorized depository, and such deposit, when made in accordance with Chapter 1207 and the ordinances authorizing the issuance of the Refunded Obligations, shall constitute the making of firm banking and financial arrangements for the discharge and final payment of the Refunded Obligations; and

WHEREAS, the Town shall by this Ordinance, in accordance with the provisions of Section 1207.007, Texas Government Code, as amended, and Chapter 1371, Texas Government Code, as amended, delegate to a Pricing Officer (hereinafter designated) the authority to determine the principal amount and certain other specified terms of the Bonds to be issued, negotiate the terms of sale thereof and select the specific maturities, in whole or in part, of the Refunded Obligations to be refunded; and

WHEREAS, the Council hereby finds and determines that it is a public purpose and in the best interests of the Town to refund the Refunded Obligations in order to achieve a present value debt service savings, with such savings, among other information and terms, to be included in a pricing certificate (the "Pricing Certificate") to be executed by the Pricing Officer, all in accordance with the provisions of Texas Government Code, Section 1207.007, as amended; now, therefore

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

SECTION 1. Authorization - Series Designation - Principal Amount - Purpose - Bond Date. General obligation refunding bonds of the Town shall be and are hereby authorized to be issued in the maximum aggregate principal amount hereinafter set forth to be designated and bear the title "TOWN OF FLOWER MOUND, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2021", or such other designation as specified in the Pricing Certificate (herein referred to as the "Bonds"), for the purpose of providing funds for the discharge and final payment of certain obligations of the Town (described in the preamble hereof and finally identified in the Pricing Certificate and referred to herein as the "Refunded Obligations") and to pay the costs and expenses of issuance, in accordance with the authority conferred by and in conformity with the Constitution and laws of the State of Texas, including Texas Government Code, Chapter 1207,

as amended, and Texas Government Code, Chapter 1371, as amended ("Chapter 1371"). The Bonds shall be dated (the "Bond Date") as provided in the Pricing Certificate.

SECTION 2. Fully Registered Obligations - Terms. The Bonds shall be issued as fully registered obligations, without coupons, and (other than the Initial Bonds referenced in Section 8 hereof) shall be in denominations of \$5,000 or any integral multiple (within a Stated Maturity) thereof, shall be lettered "R" and numbered consecutively from one (1) upward and principal shall become due and payable on a date certain in each of the years (the "Stated Maturities") and in amounts and bear interest at the rate(s) per annum in accordance with the details of the Bonds as set forth in the Pricing Certificate.

The Bonds shall bear interest on the unpaid principal amounts from the date specified in the Pricing Certificate at the rate(s) per annum shown in the Pricing Certificate (calculated on the basis of a 360-day year consisting of twelve 30-day months). Interest on the Bonds shall be payable in each year, on the dates, and commencing on the date, set forth in the Pricing Certificate.

SECTION 3. Delegation of Authority to Pricing Officer. (a) As authorized by Texas Government Code, Section 1207.007, as amended, and Chapter 1371, the Interim Town Manager/CFO or the Executive Director of Fiscal and Administrative Services of the Town (either, the "Pricing Officer") is hereby authorized to act on behalf of the Town in selling and delivering the Bonds and carrying out the other procedures specified in this Ordinance, including selection of the specific maturities, in whole or in part, of the Refunded Obligations to be refunded, determining the aggregate principal amount of the Bonds, the date of the Bonds, any additional or different designation or title by which the Bonds shall be known, the price at which the Bonds will be sold, the manner of sale (negotiated, privately placed or competitively bid), the years in which the Bonds will mature, the principal amount to mature in each of such years, the rate of interest to be borne by each such maturity, the date from which interest on the Bonds will accrue, the interest payment dates, the record date, the compounding dates, the price and terms upon and at which the Bonds shall be subject to redemption prior to maturity at the option of the Town, as well as any mandatory sinking fund redemption provisions, determination of the use of a book-entry-only securities clearance, settlement and transfer system, the designation of an escrow agent satisfying the requirements of Chapter 1207, the terms of any bond insurance applicable to the Bonds, any modification of the continuing disclosure undertaking contained in Section 31 hereof as may be required by the purchasers of the Bonds in connection with any amendments to Rule 15c2-12, and all other matters relating to the issuance, sale and delivery of the Bonds, all of which shall be specified in the Pricing Certificate, provided that:

(i) the aggregate original principal amount of the Bonds shall not exceed \$2,175,000;

(ii) the refunding must produce a net present value debt service savings of at least 5.00%, net of any Town contribution;

(iii) the maximum true interest cost for the Bonds shall not exceed 2.00%; and

(iv) the maximum maturity date of the Bonds shall not exceed March 1, 2031.

The execution of the Pricing Certificate shall evidence the sale date of the Bonds by the Town to the Purchasers (hereinafter defined).

If the Pricing Officer determines that bond insurance results in a net reduction of the Town's interest costs associated with the Bonds, then the Pricing Officer is authorized, in connection with effecting the sale of the Bonds, to make the selection of the municipal bond insurance company for the Bonds (the "Insurer") and to obtain from the Insurer a municipal bond insurance policy in support of the Bonds. The Pricing Officer shall have the authority to determine the provisions of the commitment for any such policy and to execute any documents to effect the issuance of said policy by the Insurer.

(b) In establishing the aggregate principal amount of the Bonds, the Pricing Officer shall establish an amount for the Bonds not exceeding the amount authorized in subsection (a)(i) above, which shall be sufficient in amount to provide for the purposes for which the Bonds are authorized and to pay costs of issuing the Bonds. The delegation made hereby shall expire if not exercised by the Pricing Officer within one (1) year of the date hereof. The Bonds shall be sold to the purchaser(s)/underwriter(s) named in the Pricing Certificate (the "Purchasers"), at such price and with and subject to such terms as set forth in the Pricing Certificate and the Purchase Contract (hereinafter defined), and may be sold by negotiated or competitive sale or by private placement. The Pricing Officer is hereby delegated the authority to designate the Purchasers, which delegation shall be evidenced by the execution of the Pricing Certificate.

SECTION 4. Terms of Payment - Paying Agent/Registrar. The principal of, premium, if any, and the interest on the Bonds, due and payable by reason of maturity, redemption, or otherwise, shall be payable only to the registered owners or holders of the Bonds (hereinafter called the "Holders") appearing on the registration and transfer books maintained by the Paying Agent/Registrar, and the payment thereof shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

The selection and appointment of The Bank of New York Mellon Trust Company, N.A., Dallas, Texas, to serve as "Paying Agent/Registrar" for the Bonds is hereby approved and confirmed. Books and records relating to the registration, payment, exchange and transfer of the Bonds (the "Security Register") shall at all times be kept and maintained on behalf of the Town by the Paying Agent/Registrar, all as provided herein, in accordance with the terms and provisions of a "Paying Agent/Registrar Agreement," substantially in the form attached hereto as **Exhibit A** and such reasonable rules and regulations as the Paying Agent/Registrar and the Town may prescribe. The Mayor or Mayor Pro Tem and Town Secretary are hereby authorized to execute and deliver such Paying Agent/Registrar Agreement in connection with the delivery of the Bonds. The Town covenants to maintain and provide a Paying Agent/Registrar at all times until the Bonds are paid and discharged, and any successor Paying Agent/Registrar shall be a commercial bank, trust company, financial institution, or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Bonds, the Town agrees to promptly cause a written notice thereof to be sent to each Holder by United States mail, first-class, postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

The Bonds shall be payable at their Stated Maturities or upon their earlier redemption, only upon the presentation and surrender of the Bonds to the Paying Agent/Registrar at its designated offices, initially in East Syracuse, New York, or, with respect to a successor Paying Agent/Registrar, at the designated offices of such successor (the "Designated Payment/Transfer

Office"); provided, however, while a Bond is registered to Cede & Co., the payment thereof upon a partial redemption of the principal amount thereof may be accomplished without presentation and surrender of such Bond. Interest on a Bond shall be paid by the Paying Agent/Registrar to the Holders whose names appears in the Security Register at the close of business on the Record Date (which shall be set forth in the Pricing Certificate) and such interest payments shall be made (i) by check sent United States mail, first-class, postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which such banking institutions are authorized to be closed; and payment on such date shall have the same force and effect as if made on the original date payment was due.

In the event of a non-payment of interest on one or more maturities of the Bonds on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such past due interest have been received from the Town. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class, postage prepaid, to the address of each Holder of the Bonds appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

SECTION 5. Registration - Transfer - Exchange of Bonds - Predecessor Bonds. The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each and every Holder of the Bonds issued under and pursuant to the provisions of this Ordinance, or if appropriate, the nominee thereof. Any Bond may be transferred or exchanged for Bonds of like maturity and amount and in authorized denominations upon the Security Register by the Holder, in person or by his duly authorized agent, upon surrender of such Bond to the Paying Agent/Registrar at its Designated Payment/Transfer Office for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender for assignment or transfer of any Bond (other than the Initial Bonds authorized in Section 8 hereof) for transfer at the Designated Payment/Transfer Office of the Paying Agent/Registrar, one or more new Bonds, executed on behalf of and furnished by the Town, shall be registered and issued to the assignee or transferee of the previous Holder; such Bonds to be of authorized denominations, of like Stated Maturity, and of a like aggregate principal amount as the Bond or Bonds surrendered for transfer.

At the option of the Holder, Bonds (other than the Initial Bonds authorized in Section 8 hereof) may be exchanged for other Bonds of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Bonds surrendered for exchange, upon surrender of the Bonds to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Bonds are surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Bonds, executed on behalf of and furnished by the Town, to the Holder requesting the exchange.

All Bonds issued upon any such transfer or exchange of Bonds shall be delivered to the Holders at the Designated Payment/Transfer Office of the Paying Agent/Registrar or sent by United States mail, first-class, postage prepaid, to the Holders, and, upon the registration and delivery thereof, the same shall be the valid obligations of the Town, evidencing the same obligation to pay and entitled to the same benefits under this Ordinance, as the Bonds surrendered in such transfer or exchange.

All transfers or exchanges of Bonds pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Bonds canceled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Bonds," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the new Bond or Bonds registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Bonds" shall include any mutilated, lost, destroyed, or stolen Bond for which a replacement Bond has been issued, registered, and delivered in lieu thereof pursuant to the provisions of Section 11 hereof, and such new replacement Bond shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Bond.

Neither the Town nor the Paying Agent/Registrar shall be required to transfer or exchange any Bond called for redemption, in whole or in part, within forty-five (45) days of the date fixed for the redemption of such Bond; provided, however, such limitation on transferability shall not be applicable to an exchange by the Holder of the unredeemed balance of a Bond called for redemption in part.

SECTION 6. Book-Entry-Only Transfers and Transactions. Notwithstanding the provisions contained in Sections 4 and 5 hereof relating to the payment and transfer/exchange of the Bonds, the Town hereby approves and authorizes the use of "Book-Entry-Only" securities clearance, settlement, and transfer system provided by The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York ("DTC"), in accordance with the requirements and procedures identified in the current DTC Operational Arrangements memorandum, as amended, the Blanket Issuer Letter of Representations, by and between the Town and DTC, and the Letter of Representations from the Paying Agent/Registrar to DTC (collectively, the "Depository Agreement") relating to the Bonds.

In the event the Pricing Officer elects to utilize DTC's "Book-Entry-Only" System, which election shall be made by the Pricing Officer in the Pricing Certificate, pursuant to the Depository Agreement and the rules of DTC, the Bonds shall be deposited with DTC and who shall hold said Bonds for its participants (the "DTC Participants"). While the Bonds are held by DTC under the Depository Agreement, the Holder of the Bonds on the Security Register for all purposes, including payment and notices, shall be Cede & Co., as nominee of DTC, notwithstanding the ownership of each actual purchaser or owner of each Bond (the "Beneficial Owners") being recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Bonds or otherwise ceases to provide book-entry clearance and settlement of securities transactions in general or the Town decides to discontinue the use of the system of book-entry transfers through DTC, the Town covenants and agrees with the Holders of the Bonds to cause Bonds to be printed

in definitive form and provide for the Bond certificates to be issued and delivered to DTC Participants and Beneficial Owners, as the case may be. Thereafter, the Bonds in definitive form shall be assigned, transferred and exchanged on the Security Register maintained by the Paying Agent/Registrar and payment of such Bonds shall be made in accordance with the provisions of Sections 4 and 5 hereof.

SECTION 7. Execution - Registration. The Bonds shall be executed on behalf of the Town by the Mayor or Mayor Pro Tem under the Town's seal reproduced or impressed thereon and attested by the Town Secretary. The signature of said officials on the Bonds may be manual or facsimile. Bonds bearing the manual or facsimile signatures of individuals who are or were the proper officials of the Town on the date of the adoption of this Ordinance shall be deemed to be duly executed on behalf of the Town, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Bonds to the initial purchaser(s) and with respect to Bonds delivered in subsequent exchanges and transfers, all as authorized and provided in Texas Government Code, Chapter 1201, as amended.

No Bond shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Bond either a certificate of registration substantially in the form provided in Section 9(c), manually executed by the Comptroller of Public Accounts of the State of Texas, or his or her duly authorized agent, or a certificate of registration substantially in the form provided in Section 9(d), manually executed by an authorized officer, employee or representative of the Paying Agent/Registrar, and either such certificate duly signed upon any Bond shall be conclusive evidence, and the only evidence, that such Bond has been duly certified, registered, and delivered.

SECTION 8. Initial Bonds. The Bonds herein authorized shall be initially issued as fully registered Bonds as specified in the Pricing Certificate, being a single, fully registered Bond in the aggregate principal amount noted and principal installments to become due and payable as provided in the Pricing Certificate and numbered T-1, (hereinafter called the "Initial Bond") and the Initial Bond shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Bond shall be the Bond submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s). Any time after the delivery of the Initial Bond, the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Bond delivered hereunder and exchange therefor definitive Bonds and of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 9. Forms.

(a) Forms Generally. The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of Paying Agent/Registrar, and the form of Assignment to be printed on each of the Bonds, shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and, with the Bonds to be completed and modified with the information set forth in the Pricing Certificate, may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and

endorsements (including insurance legends on insured Bonds and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the Town or determined by the Pricing Officer. The Pricing Certificate shall set forth the final and controlling forms and terms of the Bonds. Any portion of the text of any Bonds may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond.

The definitive Bonds and the Initial Bond shall be printed, lithographed, engraved, typewritten, photocopied or otherwise reproduced in any other similar manner, all as determined by the officers executing such Bonds as evidenced by their execution thereof.

(b) Form of Definitive Bonds.

REGISTERED
NO. R-_____

PRINCIPAL AMOUNT
\$_____

UNITED STATES OF AMERICA
STATE OF TEXAS
TOWN OF FLOWER MOUND
GENERAL OBLIGATION REFUNDING BOND
SERIES 2021

Bond Date:
_____, 20__

Interest Rate:
_____%

Stated Maturity:
_____, 20__

CUSIP No.:

Registered Owner:

Principal Amount:

DOLLARS

The Town of Flower Mound (hereinafter referred to as the "Town"), a body corporate and political subdivision in the Counties of Denton and Tarrant, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, on the Stated Maturity date specified above the Principal Amount hereinabove stated (or so much thereof as shall not have been paid upon prior redemption), and to pay interest on the unpaid principal amount hereof from the interest payment date next preceding the "Registration Date" of this Bond appearing below (unless this Bond bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of this Bond is prior to the initial interest payment date in which case it shall bear interest from the _____) at the per annum rate of interest specified above computed on the basis of a 360 day year of twelve 30 day months; such interest being payable on _____ and _____ in each year, commencing _____, 20__, until maturity or prior redemption. Principal of this Bond is payable at its Stated Maturity or upon its prior redemption to the registered owner hereof, upon presentation and surrender, at the designated offices of the Paying Agent/Registrar executing the registration certificate appearing hereon, initially in East Syracuse, New York, or, with respect to a successor Paying Agent/Registrar, at the designated offices of such successor (the "Designated Payment/Transfer Office"); provided, however, while this Bond is registered to Cede & Co., the payment of principal upon a partial redemption of the principal amount hereof may be accomplished without presentation and surrender of this Bond. Interest is payable to the registered owner of this Bond (or one or more Predecessor Bonds, as defined in the Ordinance hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the _____ day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check

sent United States mail, first-class, postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Bond is one of the series specified in its title issued in the aggregate principal amount of \$_____ (herein referred to as the "Bonds") for the purpose of providing funds for the discharge and final payment of certain outstanding obligations of the Town and to pay the costs and expenses of issuance, under and in strict conformity with the Constitution and laws of the State of Texas, including Texas Government Code, Chapters 1207 and 1371, as amended, and pursuant to an Ordinance adopted by the Town Council of the Town (herein referred to as the "Ordinance").

[The Bonds maturing on the dates hereinafter identified (the "Term Bonds") are subject to mandatory redemption prior to maturity with funds on deposit in the Interest and Sinking Fund established and maintained for the payment thereof in the Ordinance, and shall be redeemed in part prior to maturity at the price of par and accrued interest thereon to the date of redemption, and without premium, on the dates and in the principal amounts as follows:

Term Bonds due _____, 20__	Term Bonds due _____, 20__
<u>Redemption Date</u> <u>Principal Amount</u>	<u>Redemption Date</u> <u>Principal Amount</u>
_____, 20__	_____, 20__
_____, 20__ *	_____, 20__ *

* Stated maturity.

The particular Term Bonds of a Stated Maturity to be redeemed on each redemption date shall be chosen by lot by the Paying Agent/Registrar; provided, however, that the principal amount of Term Bonds for a Stated Maturity required to be redeemed on a mandatory redemption date may be reduced, at the option of the Town, by the principal amount of Term Bonds of like Stated Maturity which, at least fifty (50) days prior to a mandatory redemption date, (1) shall have been acquired by the Town at a price not exceeding the principal amount of such Term Bonds plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation or (2) shall have been redeemed pursuant to the optional redemption provisions appearing below and not theretofore credited against a mandatory redemption requirement.]

The Bonds maturing on and after _____, 20__, may be redeemed prior to their Stated Maturities, at the option of the Town, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on _____, 20__, or on any date thereafter, at the redemption price of par, together with accrued interest to the date of redemption.

At least thirty (30) days prior to the date fixed for any redemption of Bonds, the Town shall cause a written notice of such redemption to be sent by United States mail, first-class, postage prepaid, to the registered owners of each Bond to be redeemed, in whole or in part, at the address shown on the Security Register and subject to the terms and provisions relating thereto contained in the Ordinance. If a Bond (or any portion of its principal sum) shall have been duly called for redemption and notice of such redemption duly given, then upon such redemption date such Bond (or the portion of its principal sum to be redeemed) shall become due and payable, and interest thereon shall cease to accrue from and after the redemption date therefor; provided moneys for the payment of the redemption price and the interest on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar.

In the event a portion of the principal amount of a Bond is to be redeemed and the registered owner is someone other than Cede & Co., payment of the redemption price of such principal amount shall be made to the registered owner only upon presentation and surrender of such Bond to the Designated Payment/Transfer Office of the Paying Agent/Registrar, and a new Bond or Bonds of like maturity and interest rate in any authorized denominations provided by the Ordinance for the then unredeemed balance of the principal sum thereof will be issued to the registered owner, without charge. If a Bond is selected for redemption, in whole or in part, the Town and the Paying Agent/Registrar shall not be required to transfer such Bond to an assignee of the registered owner within forty-five (45) days of the redemption date therefor; provided, however, such limitation on transferability shall not be applicable to an exchange by the registered owner of the unredeemed balance of a Bond redeemed in part.

With respect to any optional redemption of the Bonds, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption is conditional upon the receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon the satisfaction of any prerequisites set forth in such notice of redemption; and, if sufficient moneys are not received, such notice shall be of no force and effect, the Town shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

The Bonds are payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the Town. Reference is hereby made to the Ordinance, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all of the provisions of which the owner or holder of this Bond by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of the Bonds; the terms and conditions relating to the transfer or exchange of this Bond; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the Town and the Paying Agent/Registrar; the terms and provisions upon which this Bond may be discharged at or prior to its maturity or redemption, and deemed to be no longer Outstanding thereunder; and for other terms and provisions contained therein. Capitalized terms used herein and not otherwise defined have the meanings assigned in the Ordinance.

This Bond, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the registered owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Bonds of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the

same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The Town and the Paying Agent/Registrar, and any agent of either, shall treat the registered owner whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Bond as the owner entitled to payment of principal at the Stated Maturity, or its redemption, in whole or in part, and (iii) on any other date as the owner for all other purposes, and neither the Town nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of nonpayment of interest on a Bond on a scheduled payment date and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the Town. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class, postage prepaid, to the address of each registered owner of a Bond appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented, and declared that the Town is a body corporate and political subdivision duly organized and legally existing under and by virtue of the Constitution and laws of the State of Texas; that the issuance of the Bonds is duly authorized by law; that all acts, conditions, and things required to exist and be done precedent to and in the issuance of the Bonds to render the same lawful and valid obligations of the Town have been properly done, have happened, and have been performed in regular and due time, form, and manner as required by the Constitution and laws of the State of Texas, and the Ordinance; that the Bonds do not exceed any Constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Bonds by the levy of a tax as aforestated. In case any provision in this Bond shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The terms and provisions of this Bond and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the Town Council of the Town has caused this Bond to be duly executed under the official seal of the Town.

TOWN OF FLOWER MOUND, TEXAS

ATTEST:

[Mayor][Mayor Pro Tem]

Town Secretary

(Town Seal)

(c) Form of Registration Certificate of Comptroller of Public Accounts to appear on Initial Bond only.

REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER
OF PUBLIC ACCOUNTS
THE STATE OF TEXAS

(
(REGISTER NO. _____
(

I HEREBY CERTIFY that this Bond has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this _____.

Comptroller of Public Accounts
of the State of Texas

(Seal)

(d) Form of Certificate of Paying Agent/Registrar to appear on Definitive Bonds only.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Bond has been duly issued and registered in the name of the Registered Owner shown above under the provisions of the within-mentioned Ordinance; the bond or bonds of the above entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas, as shown by the records of the Paying Agent/Registrar.

The designated office of the Paying Agent/Registrar in East Syracuse, New York, is the Designated Payment/Transfer Office for this Bond.

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., Dallas, Texas

as Paying Agent/Registrar

Registration Date:

By: _____
Authorized Signature

(e) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto
(Print or typewrite name, address, and zip code of transferee): _____

(Social Security or other identifying number: _____
_____) the within Bond and all rights thereunder, and hereby
irrevocably constitutes and appoints _____
attorney to transfer the within Bond on the books kept for registration thereof, with full power of
substitution in the premises.

DATED: _____

Signature guaranteed:

NOTICE: The signature on this assignment
must correspond with the name of the
registered owner as it appears on the face of
the within Bond in every particular.

(f) The Initial Bond shall be in the form set forth therefor in subsection (b) of this
Section, except the heading and paragraph one shall be amended to read as follows:

NO. T-1

\$ _____

UNITED STATES OF AMERICA
STATE OF TEXAS
TOWN OF FLOWER MOUND
GENERAL OBLIGATION REFUNDING BOND
SERIES 2021

Bond Date: _____, 20__

Registered Owner:

Principal Amount:

DOLLARS

The Town of Flower Mound (hereinafter referred to as the "Town"), a body corporate and
political subdivision in the Counties of Denton and Tarrant, State of Texas, for value received,
acknowledges itself indebted to and hereby promises to pay to the registered owner named
above, or the registered assigns thereof, the Principal Amount hereinabove stated on
_____ in the years and in principal installments in accordance with the following
schedule:

STATED
MATURITY

PRINCIPAL
AMOUNT

INTEREST
RATE(S)

(Information to be inserted from Pricing Certificate)

(or so much principal thereof as shall not have been redeemed prior to maturity) and to pay
interest on the unpaid principal installments hereof from the _____ at the per annum rates
of interest specified above computed on the basis of a 360-day year of twelve 30-day months;
such interest being payable on _____, 20__, and each _____ and
_____ thereafter, until maturity or prior redemption. Principal installments of this

Bond are payable in the year of maturity or on a redemption date to the registered owner hereof by The Bank of New York Mellon Trust Company, N.A., Dallas, Texas (the "Paying Agent/Registrar"), upon presentation and surrender at its designated offices, initially in East Syracuse, New York, or, with respect to a successor paying agent/registrar, at the designated office of such successor (the "Designated Payment/Transfer Office"). Interest is payable to the registered owner of this Bond whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date," which is the _____ day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States mail, first-class, postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the registered owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to be closed; and payment on such date shall have the same force and effect as if made on the original date payment was due.

SECTION 10. Levy of Taxes. To provide for the payment of the "Debt Service Requirements" of the Bonds, being (i) the interest on the Bonds and (ii) a sinking fund for their redemption at maturity or a sinking fund of 2% (whichever amount is the greater) there is hereby levied, and there shall be annually assessed and collected in due time, form, and manner, a tax on all taxable property in the Town, within the limitations by law prescribed, sufficient to pay the Debt Service Requirements on the Bonds as the same becomes due and payable; and such tax hereby levied on each one hundred dollars' valuation of taxable property in the Town for the payment of the Debt Service Requirements of the Bonds shall be at a rate from year to year as will be ample and sufficient to provide funds each year to pay the principal of and interest on said Bonds while Outstanding; full allowance being made for delinquencies and costs of collection; the taxes levied, assessed, and collected for and on account of the Bonds shall be accounted for separate and apart from all other funds of the Town and shall be deposited in the "SPECIAL SERIES 2021 GENERAL OBLIGATION REFUNDING BOND FUND", or such other fund designation as specified in the Pricing Certificate (the "Interest and Sinking Fund") to be maintained at an official depository of the Town's funds; and such tax hereby levied, and to be assessed and collected annually, is hereby pledged to the payment of the Bonds.

PROVIDED, however, with regard to any payment to become due on the Bonds prior to the tax delinquency date next following the annual assessment of taxes levied which next follows the Bond Date, if any, sufficient current funds will be available and are hereby appropriated to make such payments; and the Mayor, Mayor Pro Tem, Interim Town Manager/CFO or Town Manager, Deputy Town Manager/CFO, Executive Director of Fiscal and Administrative Services and Town Secretary of the Town, individually or jointly, are hereby authorized and directed to transfer and deposit in the Interest and Sinking Fund such current funds which, together with the accrued interest received from the initial purchasers, will be sufficient to pay the payments due on the Bonds prior to the tax delinquency date next following the annual assessment of taxes levied which next follows the Bond Date.

The Mayor, Mayor Pro Tem, Interim Town Manager/CFO or Town Manager, Deputy Town Manager/CFO, Executive Director of Fiscal and Administrative Services and Town Secretary of the Town, individually or jointly, are hereby authorized and directed to cause to be transferred to the Paying Agent/Registrar for the Bonds, from funds on deposit in the Interest and Sinking Fund, amounts sufficient to fully pay and discharge promptly each installment of interest and principal of the Bonds as the same accrues or matures or comes due by reason of redemption prior to maturity; such transfers of funds to be made in such manner as will cause collected funds to be deposited with the Paying Agent/Registrar on or before each principal and interest payment date for the Bonds.

SECTION 11. Mutilated - Destroyed - Lost and Stolen Bonds. In case any Bond shall be mutilated, or destroyed, lost, or stolen, the Paying Agent/Registrar may execute and deliver a replacement Bond of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Bond; and with respect to a lost, destroyed, or stolen Bond, a replacement Bond may be issued only upon the approval of the Town and after (i) the filing by the Holder with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss, or theft of such Bond, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying Agent/Registrar of indemnification in an amount satisfactory to hold the Town and the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Bond shall be borne by the Holder of the Bond mutilated, or destroyed, lost, or stolen.

Every replacement Bond issued pursuant to this Section shall be a valid and binding obligation of the Town, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Bonds; notwithstanding the enforceability of payment by anyone of the destroyed, lost, or stolen Bonds.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost, or stolen Bonds.

SECTION 12. Satisfaction of Obligation of Town. If the Town shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Bonds, at the times and in the manner stipulated in this Ordinance and the Pricing Certificate, then the pledge of taxes levied under this Ordinance and all covenants, agreements, and other obligations of the Town to the Holders shall thereupon cease, terminate, and be discharged and satisfied.

Bonds or any principal amount(s) thereof shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Bonds or the principal amount(s) thereof at maturity or to the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (ii) Government Securities (as defined below) shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Securities have been certified by an independent accounting or consulting firm to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any moneys deposited therewith, if any, to pay when due the principal of and interest on such Bonds, or the principal amount(s) thereof, on and prior to the Stated Maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to

the Paying Agent/Registrar have been made) the redemption date thereof. The Town covenants that no deposit of moneys or Government Securities will be made under this Section and no use made of any such deposit which would cause the Bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, or regulations adopted pursuant thereto.

Any moneys so deposited with the Paying Agent/Registrar, or an authorized escrow agent, and all income from Government Securities held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Bonds, or any principal amount(s) thereof, or interest thereon with respect to which such moneys have been so deposited shall be remitted to the Town or deposited as directed by the Town. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Bonds and remaining unclaimed for a period of three (3) years after the Stated Maturity, or applicable redemption date, of the Bonds such moneys were deposited and are held in trust to pay shall upon the request of the Town be remitted to the Town against a written receipt therefor. Notwithstanding the above and foregoing, any remittance of funds from the Paying Agent/Registrar to the Town shall be subject to any applicable unclaimed property laws of the State of Texas, including the provisions of Title 6 of the Texas Property Code, as amended.

Unless otherwise modified by the Pricing Officer, the term "Government Securities" shall mean (a) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (b) noncallable obligations of an agency or instrumentality of the United States of America, including obligations unconditionally guaranteed or insured by the agency or instrumentality and, on the date of their acquisition or purchase by the Town, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, (c) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date of their acquisition or purchase by the Town, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent and (d) any other then authorized securities or obligations that may be used to defease obligations such as the Bonds under the then applicable laws of the State of Texas.

The Town reserves the right, subject to satisfying the requirements of (i) and (ii) above, to substitute other Government Securities for the Government Securities originally deposited, to reinvest the uninvested moneys on deposit for such defeasance and to withdraw for the benefit of the Town moneys in excess of the amount required for such defeasance.

Upon such deposit as described above, such Bonds shall no longer be regarded to be outstanding or unpaid. Provided, however, the Town has reserved the option, to be exercised at the time of the defeasance of the Bonds, to call for redemption, at an earlier date, those Bonds which have been defeased to their maturity date, if the Town: (i) in the proceedings providing for the firm banking and financial arrangements, expressly reserves the right to call the Bonds for redemption; (ii) gives notice of the reservation of that right to the Holders of the Bonds immediately following the making of the firm banking and financial arrangements; and (iii) directs that notice of the reservation be included in any redemption notices that it authorizes.

SECTION 13. Ordinance a Contract - Amendments - Outstanding Bonds. This Ordinance, together with the Pricing Certificate, shall constitute a contract with the Holders from time to time, be binding on the Town, and shall not be amended or repealed by the Town so long as any Bond remains Outstanding except as permitted in this Section and in Section 31 hereof. The Town may, without the consent of or notice to any Holders, from time to time and at any time,

amend this Ordinance or any provision in the Pricing Certificate in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the Town may, with the consent of Holders who own a majority of the aggregate of the principal amount of the Bonds then Outstanding, amend, add to, or rescind any of the provisions of this Ordinance or any provision in the Pricing Certificate; provided that, without the consent of all Holders of Outstanding Bonds, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of and interest on the Bonds, reduce the principal amount thereof, the redemption price, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of or interest on the Bonds, (2) give any preference to any Bond over any other Bond, or (3) reduce the aggregate principal amount of Bonds required to be held by Holders for consent to any such amendment, addition, or rescission.

The term "Outstanding" when used in this Ordinance with respect to Bonds means, as of the date of determination, all Bonds theretofore issued and delivered under this Ordinance, except:

- (1) those Bonds cancelled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;
- (2) those Bonds deemed to be duly paid by the Town in accordance with the provisions of Section 12 hereof; and
- (3) those mutilated, destroyed, lost, or stolen Bonds which have been replaced with Bonds registered and delivered in lieu thereof as provided in Section 11 hereof.

SECTION 14. Covenants to Maintain Tax-Exempt Status.

(a) Definitions. When used in this Section, the following terms have the following meanings:

"*Closing Date*" means the date on which the Bonds are first authenticated and delivered to the initial purchasers against payment therefor.

"*Code*" means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

"*Computation Date*" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"*Gross Proceeds*" means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Bonds.

"*Investment*" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"*Nonpurpose Investment*" means any investment property, as defined in Section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and which is not acquired to carry out the governmental purposes of the Bonds.

"Rebate Amount" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Regulations" means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

"Yield" of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The Town shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction, or improvement of which is to be financed (or refinanced) directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in Section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the Town receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the Town shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, the Town shall at all times prior to the last Stated Maturity of Bonds:

(i) exclusively own, operate, and possess all property the acquisition, construction, or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Bonds (including property financed with Gross Proceeds of the Refunded Obligations), and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed, or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department, and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(ii) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Bonds or any property the acquisition, construction, or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds (including property financed with Gross Proceeds of the Refunded Obligations), other than taxes of general application within the Town or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by Section 141 of the Code and the Regulations and rulings thereunder, the Town shall not use Gross Proceeds of the Bonds to

make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (1) property acquired, constructed, or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output, or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed, or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the Town shall not at any time prior to the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Bonds.

(f) Not Federally Guaranteed. Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the Town shall not take or omit to take any action which would cause the Bonds to be federally guaranteed within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The Town shall timely file the information required by Section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in Section 148(f) of the Code and the Regulations and rulings thereunder:

(i) The Town shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six (6) years after the day on which the last outstanding Bond is discharged. However, to the extent permitted by law, the Town may commingle Gross Proceeds of the Bonds with other money of the Town, provided that the Town separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(ii) Not less frequently than each Computation Date, the Town shall calculate the Rebate Amount in accordance with rules set forth in Section 148(f) of the Code and the Regulations and rulings thereunder. The Town shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(iii) As additional consideration for the purchase of the Bonds by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the Holders thereof for federal income tax purposes, the Town shall pay to the United States out of the general fund, other appropriate fund, or, if permitted by applicable Texas statute, regulation, or opinion of the Attorney General of the State of Texas, the Interest and Sinking Fund, the

amount that when added to the future value of previous rebate payments made for the Bonds equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place, and in the manner as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(iv) The Town shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the Town shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Bonds not been relevant to either party.

(j) Elections. The Town hereby directs and authorizes the Mayor, Mayor Pro Tem, Deputy Mayor Pro Tem, Interim Town Manager/CFO or Town Manager, Deputy Town Manager/CFO and Executive Director of Fiscal and Administrative Services of the Town, individually or jointly, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as one or more of such persons deems necessary or appropriate in connection with the Bonds, in the Certificate as to Tax Exemption, or similar or other appropriate certificate, form, or document.

(k) Bonds Not Hedge Bonds. At the time the original obligations refunded by the Bonds were issued, the Town reasonably expected to spend at least 85% of the spendable proceeds of such obligations within three years after such obligations were issued and (2) not more than 50% of the proceeds of the original obligations refunded by the Bonds were invested in Nonpurpose Investments having a substantially guaranteed Yield for a period of 4 years or more.

(l) Current Refunding. The Bonds are being issued to pay and discharge in full the Refunded Obligations and such payment of the Refunded Obligations will occur within ninety (90) days after the issuance of the Bonds.

(m) Qualified Tax-Exempt Obligations. The Pricing Officer is hereby authorized to designate in the Pricing Certificate the designation of the Bonds as "qualified tax-exempt obligations" in accordance with the provisions of the paragraph (3) of subsection (b) of Section 265 of the Code in the event the Bonds qualify for such designation and confirm that the Bonds are not "private activity bonds" as defined in the Code and confirm the amount of "tax-exempt

obligations” to be issued by the Town (including all subordinate entities of the Town) for the calendar year in which the Bonds are issued will not exceed the applicable limitation.

SECTION 15. Sale of Bonds - Official Statement. The Bonds authorized by this Ordinance are to be sold by the Town to the Purchasers in accordance with a bond purchase agreement in the event of a negotiated sale, letter agreement to purchase in the event of a private placement, or the successful bid form in the event of a competitive sale, as applicable (the “Purchase Contract”), the terms and provisions of which Purchase Contract are to be determined by the Pricing Officer in accordance with Section 3 hereof. The Pricing Officer is hereby authorized and directed to execute the Purchase Contract for and on behalf of the Town, as the act and deed of this Council, and to make a determination as to whether the terms are in the Town’s best interests, which determination shall be final.

With regard to such terms and provisions of the Purchase Contract, the Pricing Officer is hereby authorized to come to an agreement with the Purchasers on the following, among other matters:

1. The details of the purchase and sale of the Bonds;
2. The details of any public offering of the Bonds by the Purchasers, if any;
3. The details of any Official Statement or similar disclosure document (and, if appropriate, any Preliminary Official Statement) relating to the Bonds and the Town’s Rule 15c2-12 compliance, if applicable;
4. A security deposit for the Bonds, if any;
5. The representations and warranties of the Town to the Purchasers;
6. The details of the delivery of, and payment for, the Bonds;
7. The Purchasers’ obligations under the Purchase Contract;
8. The certain conditions to the obligations of the Town under the Purchase Contract;
9. Termination of the Purchase Contract;
10. Particular covenants of the Town;
11. The survival of representations made in the Purchase Contract;
12. The payment of any expenses relating to the Purchase Contract;
13. Notices; and
14. Any and all such other details that are found by the Pricing Officer to be necessary and advisable for the purchase and sale of the Bonds.

The Mayor or Mayor Pro Tem and Town Secretary of the Town and the Pricing Officer are further authorized and directed to deliver for and on behalf of the Town copies of a Preliminary Official Statement and Official Statement prepared in connection with the offering of the Bonds by the Purchasers, in final form as may be required by the Purchasers, and such final Official Statement as delivered by said officials shall constitute the Official Statement authorized for distribution and use by the Purchasers.

SECTION 16. Escrow Agreement. An “Escrow Agreement” (the “Escrow Agreement”) by and between the Town and an authorized escrow agent (the “Escrow Agent”), if any such agreement is required in connection with the issuance of the Bonds, shall be attached to and

approved in the Pricing Certificate. Such Escrow Agreement is hereby authorized to be finalized and executed by the Pricing Officer for and on behalf of the Town and as the act and deed of this Council; and such Escrow Agreement as executed by said Pricing Officer shall be deemed approved by this Council and constitute the Escrow Agreement herein approved. With regard to the finalization of certain terms and provisions of any Escrow Agreement, a Pricing Officer is hereby authorized to come to an agreement with the Escrow Agent on the following details, among other matters:

1. The identification of the Refunded Obligations;
2. The creation and funding of the Escrow Fund or Funds; and
3. The Escrow Agent's compensation, administration of the Escrow Fund or Funds, and the settlement of any paying agents' charges relating to the Refunded Obligations.

Furthermore, appropriate officials of the Town in cooperation with the Escrow Agent are hereby authorized and directed to make the necessary arrangements for the purchase of the escrowed securities referenced in the Escrow Agreement, if any, and the delivery thereof to the Escrow Agent on the day of delivery of the Bonds to the Purchasers for deposit to the credit of the "TOWN OF FLOWER MOUND, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2021 ESCROW FUND" (referred to herein as the "Escrow Fund"), or such other designation as specified in the Pricing Certificate; all as contemplated and provided in Chapter 1207, the Ordinance, the Pricing Certificate and the Escrow Agreement.

On or immediately prior to the date of the delivery of the Bonds to the Purchasers, the Pricing Officer, or other authorized Town official listed in Section 33 hereof, shall also cause to be deposited (and is hereby authorized to cause to be deposited) with the Escrow Agent or the paying agent for the Refunded Obligations from any moneys on deposit in the debt service fund(s) maintained for the payment of the Refunded Obligations an amount which, together with the proceeds of sale of the Bonds, and the investment earnings thereon, will be sufficient to pay in full the Refunded Obligations (or the amount of accrued interest due thereon) scheduled to mature and authorized to be redeemed on the earliest date established in the Pricing Certificate for the redemption of any of the Refunded Obligations (or the earliest date of payment, to be made from moneys in the Escrow Fund(s), as established in the Pricing Certificate, of the amount of accrued interest due thereon).

SECTION 17. Refunded Obligations. (a) In order to provide for the refunding, discharge, and retirement of the Refunded Obligations as selected by the Pricing Officer, the Refunded Obligations, identified, described, and in the amount set forth in the Pricing Certificate, are called for redemption on the first date such Refunded Obligations are subject to redemption or such other date specified by the Pricing Officer in the Pricing Certificate at the price of par plus accrued interest to the redemption date, and a notice of such redemption shall be given in accordance with the applicable provisions of the ordinance adopted by this Council, which authorized the issuance of the Refunded Obligations. The Pricing Officer is hereby authorized and directed to issue or cause to be issued a Notice of Redemption for the Refunded Obligations, in substantially the form set forth as an exhibit to the Pricing Certificate, to the paying agent/registrar for the Refunded Obligations, in accordance with the redemption provisions applicable to the Refunded Obligations.

(b) The paying agent/registrar for Refunded Obligations is hereby directed to provide the appropriate notice of redemption as required by the ordinance authorizing the issuance of the Refunded Obligations and is hereby directed to make appropriate arrangements so that the

Refunded Obligations may be redeemed on the redemption date specified in the Pricing Certificate.

(c) The source of funds for payment of the principal of and interest on the Refunded Obligations on their respective maturity or redemption dates shall be from the funds deposited with the Escrow Agent, pursuant to the Escrow Agreement, if any, or with the paying agent/registrar for the Refunded Obligations pursuant the provisions of Chapter 1207, this Ordinance and the Pricing Certificate finalized by the Pricing Officer.

SECTION 18. Control and Custody of Bonds. The Mayor or Mayor Pro Tem of the Town shall be and is hereby authorized to take and have charge of all necessary ordinances, resolutions, orders and records, including the definitive Bonds and the Initial Bonds, pending the investigation and approval of the Initial Bonds by the Attorney General of the State of Texas, and the registration of the Initial Bonds to the Comptroller of Public Accounts and the delivery thereof to the Purchasers.

Furthermore, the Mayor, Mayor Pro Tem, Deputy Mayor Pro Tem, Interim Town Manager/CFO or Town Manager, Deputy Town Manager/CFO, Executive Director of Fiscal and Administrative Services and Town Secretary individually or collectively, are hereby authorized and directed to furnish and execute such documents and certifications relating to the Town and the issuance of the Bonds, including a certification as to facts, estimates, circumstances and reasonable expectations pertaining to the use and expenditure and investment of the proceeds of the Bonds as may be necessary for the approval of the Attorney General and their registration by the Comptroller of Public Accounts. In addition, such officials, together with the Town's financial advisor, bond counsel and the Paying Agent/Registrar, are authorized and directed to make the necessary arrangements for the delivery of the Initial Bonds to the initial purchasers.

SECTION 19. Proceeds of Sale. Immediately following the delivery of the Bonds, the proceeds of sale (less those proceeds of sale designated to pay costs of issuance and any accrued interest received from the Purchasers of the Bonds or additional proceeds being deposited to the Interest and Sinking Fund) shall be deposited with the Escrow Agent for application and disbursement in accordance with the provisions of the Escrow Agreement or deposited with the paying agent/registrar for the Refunded Obligations for the payment and redemption of the Refunded Obligations. The proceeds of sale of the Bonds not so deposited with the Escrow Agent (or the paying agent/registrar for the Refunded Obligations) for the refunding of the Refunded Obligations shall be disbursed for payment of costs of issuance, or deposited in the Interest and Sinking Fund for the Bonds, all in accordance with written instructions from the Town or its financial advisor. Such proceeds of sale may be invested in authorized investments and any investment earnings realized may be (with respect to the accrued interest received from the Purchasers) deposited in the Interest and Sinking Fund as shall be determined by this Council.

Additionally, the Pricing Officer shall determine the amount of any Town contribution to the refunding from moneys on deposit in the interest and sinking fund maintained for the payment of the Refunded Obligations.

SECTION 20. Notices to Holders - Waiver. Wherever this Ordinance or the Pricing Certificate provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States mail, first-class, postage prepaid, to the address of each Holder appearing in the Security Register at the close of business on the business day next preceding the mailing of such notice.

In any case in which notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Bonds. Where this Ordinance or the Pricing Certificate provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 21. Cancellation. All Bonds surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly cancelled by it and, if surrendered to the Town, shall be delivered to the Paying Agent/Registrar and, if not already cancelled, shall be promptly cancelled by the Paying Agent/Registrar. The Town may at any time deliver to the Paying Agent/Registrar for cancellation any Bonds previously certified or registered and delivered which the Town may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly cancelled by the Paying Agent/Registrar. All cancelled Bonds held by the Paying Agent/Registrar shall be returned to the Town.

SECTION 22. Bond Counsel Opinion. The obligation of the Purchasers to accept delivery of the Bonds is subject to being furnished a final opinion of Norton Rose Fulbright US LLP, Dallas, Texas, approving the Bonds as to their validity, said opinion to be dated and delivered as of the date of delivery and payment for the Bonds. A true and correct reproduction of said opinion is hereby authorized to be printed on the Bonds, or an executed counterpart thereof is hereby authorized to be either printed on definitive printed obligations or deposited with DTC along with the global certificates for the implementation and use of the Book-Entry-Only System used in the settlement and transfer of the Bonds. The Town Council confirms the continuation of the engagement of Norton Rose Fulbright US LLP as the Town's bond counsel.

SECTION 23. CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Bonds shall be of no significance or effect as regards the legality thereof, and neither the Town nor attorneys approving the Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Bonds.

SECTION 24. Benefits of Ordinance. Nothing in this Ordinance or the Pricing Certificate, expressed or implied, is intended or shall be construed to confer upon any person other than the Town, the Paying Agent/Registrar and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof or the Pricing Certificate, this Ordinance and all of its provisions and the Pricing Certificate being intended to be and being for the sole and exclusive benefit of the Town, the Paying Agent/Registrar, and the Holders.

SECTION 25. Inconsistent Provisions. All ordinances or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance or the Pricing Certificate are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters contained herein.

SECTION 26. Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 27. Effect of Headings. The Section headings herein are for convenience of reference only and shall not affect the construction hereof.

SECTION 28. Construction of Terms. If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine, or neuter gender shall be considered to include the other genders.

SECTION 29. Severability. If any provision of this Ordinance or the Pricing Certificate or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the Pricing Certificate and the application thereof to other circumstances shall nevertheless be valid, and this Council hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 30. Incorporation of Findings and Determinations. The findings and determinations of this Council contained in the preamble hereof are hereby incorporated by reference and made a part of this Ordinance for all purposes as if the same were restated in full in this Section.

SECTION 31. Continuing Disclosure Undertaking. This Section shall apply unless the Pricing Officer determines in the Pricing Certificate that an undertaking is not required pursuant to the Rule (defined below).

(a) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

“Financial Obligation” means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that “financial obligation” shall not include municipal securities as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

“MSRB” means the Municipal Securities Rulemaking Board.

“Rule” means SEC Rule 15c2-12, as amended from time to time or officially interpreted by the SEC.

“SEC” means the United States Securities and Exchange Commission.

(b) Annual Reports. The Town shall provide annually to the MSRB (1) within six months after the end of each fiscal year, beginning with the year stated in the Pricing Certificate, financial information and operating data with respect to the Town of the general type included in the final Official Statement approved by the Pricing Officer and described in the Pricing Certificate and (2) if not provided as part of such financial information and operating data, audited financial statements of the Town within twelve months after the end of each fiscal year, when and if available. Any financial statements so provided shall be prepared in accordance with the accounting principles described in the Pricing Certificate, or such other accounting principles as the Town may be required to employ from time to time pursuant to state law or regulation, and audited, if the Town commissions an audit of such statements and the audit is completed within the period during which they must be provided. If audited financial statements are not available

by the required time, the Town will file unaudited financial statements within such twelve-month period and audited financial statements when and if such audited financial statements become available.

If the Town changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the Town otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document available to the public on the MSRB's Internet Web site or filed with the SEC.

(c) Notice of Certain Events. The Town shall provide notice of any of the following events with respect to the Bonds to the MSRB in a timely manner and not more than 10 business days after occurrence of the event:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
7. Modifications to rights of holders of the Bonds, if material;
8. Bond calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Bonds, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership, or similar event of the Town, which shall occur as described below;
13. The consummation of a merger, consolidation, or acquisition involving the Town or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.
15. Incurrence of a Financial Obligation of the Town, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Town, any of which affect security holders, if material; and
16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Town, any of which reflect financial difficulties.

For these purposes, (a) any event described in the immediately preceding item 12 is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the Town in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Town, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Town and (b) the Town intends the words used in the immediately preceding items 15 and 16 to have the meanings ascribed to them in SEC Release No. 34-83885, dated August 20, 2018.

The Town shall notify the MSRB, in a timely manner, of any failure by the Town to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such Section.

(d) Filings with the MSRB. All financial information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Section shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

(e) Limitations, Disclaimers and Amendments. The Town shall be obligated to observe and perform the covenants specified in this Section while, but only while, the Town remains an "obligated person" with respect to the Bonds within the meaning of the Rule, except that the Town in any event will give the notice required by subsection (c) hereof of any Bond calls and defeasance that cause the Town to be no longer such an "obligated person."

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The Town undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the Town's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The Town does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE TOWN BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE TOWN, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the Town in observing or performing its obligations under this Section shall constitute a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the Town under federal and state securities laws.

Notwithstanding anything to the contrary in this Ordinance, the provisions of this Section may be amended by the Town from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Town, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Bonds consent to such amendment or (b) a person that is unaffiliated with the Town (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Bonds. The provisions of this Section may also be amended from time to time or repealed by the Town if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the Town's right to do so would not prevent an underwriter of the initial public offering of the Bonds from lawfully purchasing or selling Bonds in such offering. If the Town so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided pursuant to subsection (b) of this Section an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

SECTION 32. Municipal Bond Insurance. The Bonds may be sold with the principal of and interest thereon being insured by a municipal bond insurance provider authorized to transact business in the State of Texas. The Pricing Officer is hereby authorized to make the selection of municipal bond insurance (if any) for the Bonds and make the determination of the provisions of any commitment therefor.

SECTION 33. Further Procedures. Any one or more of the Mayor, Mayor Pro Tem, Deputy Mayor Pro Tem, Interim Town Manager/CFO or Town Manager, Deputy Town Manager/CFO, Executive Director of Fiscal and Administrative Services and Town Secretary are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of the Town all agreements, instruments, certificates or other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the issuance of the Bonds. In addition, prior to the initial delivery of the Bonds, the Mayor, Mayor Pro Tem, Deputy Mayor Pro Tem, Interim Town Manager/CFO or Town Manager, Deputy Town Manager/CFO, Executive Director of Fiscal and Administrative Services or Bond Counsel to the Town are each hereby authorized and directed to approve any changes or corrections to this Ordinance or to any of the documents authorized and approved by this Ordinance, including the Pricing Certificate: (i) in order to cure any ambiguity, formal defect or omission in this Ordinance or such other document; or (ii) as requested by the Attorney General of the State of Texas or his representative to obtain the approval of the Bonds by the Attorney General and if such officer or counsel determines that such changes are consistent with the intent and purpose of this Ordinance, which determination shall be final. In the event that any officer of the Town whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 34. Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 35. Effective Date. In accordance with the provisions of Texas Government Code, Section 1201.028, as amended, this Ordinance shall be in force and effect from and after its passage on the date shown below and it is so ordained.

[Remainder of page left blank intentionally]

DULY PASSED AND APPROVED BY THE TOWN COUNCIL ON JUNE 21, 2021.

TOWN OF FLOWER MOUND, TEXAS

Derek France, MAYOR

(Town Seal)

ATTEST:

Theresa Scott, TOWN SECRETARY

EXHIBIT A

PAYING AGENT/REGISTRAR AGREEMENT

PAYING AGENT/REGISTRAR AGREEMENT

THIS AGREEMENT is entered into as of _____, 2021 (this "Agreement"), by and between The Bank of New York Mellon Trust Company, N.A., a banking association duly organized and existing under the laws of the United States of America (the "Bank") and the Town of Flower Mound, Texas (the "Issuer"),

RECITALS

WHEREAS, the Issuer has duly authorized and provided for the issuance of its "Town of Flower Mound, Texas General Obligation Refunding Bonds, Series 2021" (the "Securities"), dated _____, 2021, such Securities scheduled to be delivered to the initial purchasers thereof on or about _____, 2021; and

WHEREAS, the Issuer has selected the Bank to serve as Paying Agent/Registrar in connection with the payment of the principal of, premium, if any, and interest on said Securities and with respect to the registration, transfer and exchange thereof by the registered owners thereof; and

WHEREAS, the Bank has agreed to serve in such capacities for and on behalf of the Issuer and has full power and authority to perform and serve as Paying Agent/Registrar for the Securities;

NOW, THEREFORE, it is mutually agreed as follows:

ARTICLE ONE APPOINTMENT OF BANK AS PAYING AGENT AND REGISTRAR

Section 1.01 Appointment. The Issuer hereby appoints the Bank to serve as Paying Agent with respect to the Securities, and, as Paying Agent for the Securities, the Bank shall be responsible for paying on behalf of the Issuer the principal, premium (if any), and interest on the Securities as the same become due and payable to the registered owners thereof; all in accordance with this Agreement and the "Authorizing Document" (hereinafter defined). The Issuer hereby appoints the Bank as Registrar with respect to the Securities and, as Registrar for the Securities, the Bank shall keep and maintain for and on behalf of the Issuer books and records as to the ownership of said Securities and with respect to the transfer and exchange thereof as provided herein and in the Authorizing Document.

The Bank hereby accepts its appointment, and agrees to serve as the Paying Agent and Registrar for the Securities.

Section 1.02 Compensation. As compensation for the Bank's services as Paying Agent/Registrar, the Issuer hereby agrees to pay the Bank the fees and amounts set forth in **Annex A** attached hereto; provided however, notwithstanding anything herein or in Annex A to the contrary, the aggregate value of this agreement shall not exceed the dollar limitation set forth in Section 2271.002(a)(2) of the Texas Government Code, as amended.

In addition, the Issuer agrees to reimburse the Bank upon its request for all reasonable expenses, disbursements and advances incurred or made by the Bank in accordance with any of the provisions hereof (including the reasonable compensation and the expenses and disbursements of its agents and counsel).

ARTICLE TWO DEFINITIONS

Section 2.01 Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

“Acceleration Date” on any Security means the date, if any, on and after which the principal or any or all installments of interest, or both, are due and payable on any Security which has become accelerated pursuant to the terms of the Security.

“Authorizing Document” means the resolution, order, or ordinance of the governing body of the Issuer pursuant to which the Securities are issued, as the same may be amended or modified, including any pricing certificate related thereto, certified by the secretary or any other officer of the Issuer and delivered to the Bank.

“Bank Office” means the designated office of the Bank at the address shown in Section 3.01 hereof. The Bank will notify the Issuer in writing of any change in location of the Bank Office.

“Financial Advisor” means Hilltop Securities Inc.

“Holder” and “Security Holder” each means the Person in whose name a Security is registered in the Security Register.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision of a government.

“Predecessor Securities” of any particular Security means every previous Security evidencing all or a portion of the same obligation as that evidenced by such particular Security (and, for the purposes of this definition, any mutilated, lost, destroyed, or stolen Security for which a replacement Security has been registered and delivered in lieu thereof pursuant to Section 4.06 hereof and the Authorizing Document).

“Redemption Date”, when used with respect to any Security to be redeemed, means the date fixed for such redemption pursuant to the terms of the Authorizing Document.

“Responsible Officer”, when used with respect to the Bank, means the Chairman or Vice-Chairman of the Board of Directors, the Chairman or Vice-Chairman of the Executive Committee of the Board of Directors, the President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer, any Assistant Treasurer, the Cashier, any Assistant Cashier, any Trust Officer or Assistant Trust Officer, or any other officer of the Bank customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

“Security Register” means a register maintained by the Bank on behalf of the Issuer providing for the registration and transfers of Securities.

“Stated Maturity” means the date specified in the Authorizing Document the principal of a Security is scheduled to be due and payable.

Section 2.02 Other Definitions. The terms “Bank,” “Issuer,” and “Securities (Security)” have the meanings assigned to them in the recital paragraphs of this Agreement.

The term “Paying Agent/Registrar” refers to the Bank in the performance of the duties and functions of this Agreement.

ARTICLE THREE PAYING AGENT

Section 3.01 Duties of Paying Agent. As Paying Agent, the Bank shall pay, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, on behalf of the Issuer the principal of each Security at its Stated Maturity, Redemption Date or Acceleration Date, to the Holder upon surrender of the Security to the Bank at the following address:

<u>First Class/Registered/Certified</u>	<u>Express Delivery/Courier</u>	<u>By Hand Only</u>
The Bank of New York Mellon Trust Company, N.A. Global Corporate Trust P.O. Box 396 East Syracuse, NY 13057	The Bank of New York Mellon Trust Company, N.A. Global Corporate Trust 111 Sanders Creek Pkwy. East Syracuse, NY 13057	The Bank of New York Mellon Trust Company, N.A. Global Corporate Trust Corporate Trust Window 101 Barclay Street, 1st Floor East New York, NY 10286

As Paying Agent, the Bank shall, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, pay on behalf of the Issuer the interest on each Security when due, by computing the amount of interest to be paid each Holder and making payment thereof to the Holders of the Securities (or their Predecessor Securities) on the Record Date (as defined in the Authorizing Document). All payments of principal and/or interest on the Securities to the registered owners shall be accomplished (1) by the issuance of checks, payable to the registered owners, drawn on the paying agent account provided in Section 5.05 hereof, sent by United States mail, first class postage prepaid, to the address appearing on the Security Register or (2) by such other method, acceptable to the Bank, requested in writing by the Holder at the Holder’s risk and expense.

Section 3.02 Payment Dates. The Issuer hereby instructs the Bank to pay the principal of and interest on the Securities on the dates specified in the Authorizing Document.

ARTICLE FOUR REGISTRAR

Section 4.01 Security Register - Transfers and Exchanges. The Bank agrees to keep and maintain for and on behalf of the Issuer at the Bank Office books and records (herein sometimes referred to as the “Security Register”) for recording the names and addresses of the Holders of the Securities, the transfer, exchange and replacement of the Securities and the payment of the principal of and interest on the Securities to the Holders and containing such other

information as may be reasonably required by the Issuer and subject to such reasonable regulations as the Issuer and the Bank may prescribe. All transfers, exchanges and replacements of Securities shall be noted in the Security Register.

Every Security surrendered for transfer or exchange shall be duly endorsed or be accompanied by a written instrument of transfer, the signature on which has been guaranteed by an officer of a federal or state bank or a member of the Financial Industry Regulatory Authority, such written instrument to be in a form satisfactory to the Bank and duly executed by the Holder thereof or his agent duly authorized in writing.

The Bank may request any supporting documentation it feels necessary to effect a re-registration, transfer or exchange of the Securities.

To the extent possible and under reasonable circumstances, the Bank agrees that, in relation to an exchange or transfer of Securities, the exchange or transfer by the Holders thereof will be completed and new Securities delivered to the Holder or the assignee of the Holder in not more than three (3) business days after the receipt of the Securities to be cancelled in an exchange or transfer and the written instrument of transfer or request for exchange duly executed by the Holder, or his duly authorized agent, in form and manner satisfactory to the Paying Agent/Registrar.

Section 4.02 Securities. The Issuer shall provide additional Securities when needed to facilitate transfers or exchanges thereof. The Bank covenants that such additional Securities, if and when provided, will be kept in safekeeping pending their use and reasonable care will be exercised by the Bank in maintaining such Securities in safekeeping, which shall be not less than the care maintained by the Bank for debt securities of other governments or corporations for which it serves as registrar, or that is maintained for its own securities.

Section 4.03 Form of Security Register. The Bank, as Registrar, will maintain the Security Register relating to the registration, payment, transfer and exchange of the Securities in accordance with the Bank's general practices and procedures in effect from time to time. The Bank shall not be obligated to maintain such Security Register in any form other than those which the Bank has currently available and currently utilizes at the time.

The Security Register may be maintained in written form or in any other form capable of being converted into written form within a reasonable time.

Section 4.04 List of Security Holders. The Bank will provide the Issuer at any time requested by the Issuer, upon payment of the required fee, a copy of the information contained in the Security Register. The Issuer may also inspect the information contained in the Security Register at any time the Bank is customarily open for business, provided that reasonable time is allowed the Bank to provide an up-to-date listing or to convert the information into written form.

The Bank will not release or disclose the contents of the Security Register to any person other than to, or at the written request of, an authorized officer or employee of the Issuer, except upon receipt of a court order or as otherwise required by law. Upon receipt of a court order and prior to the release or disclosure of the contents of the Security Register, the Bank will notify the Issuer so that the Issuer may contest the court order or such release or disclosure of the contents of the Security Register.

Section 4.05 Return of Cancelled Securities. The Bank will, at such reasonable intervals as it determines, surrender to the Issuer, all Securities in lieu of which or in exchange for which other Securities have been issued, or which have been paid.

Section 4.06 Mutilated, Destroyed, Lost or Stolen Securities. The Issuer hereby instructs the Bank, subject to the provisions of the Authorizing Document, to deliver and issue Securities in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities as long as the same does not result in an overissuance.

In case any Security shall be mutilated, destroyed, lost or stolen, the Bank may execute and deliver a replacement Security of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Security, or in lieu of and in substitution for such mutilated, destroyed, lost or stolen Security, only upon the approval of the Issuer and after (i) the filing by the Holder thereof with the Bank of evidence satisfactory to the Bank of the destruction, loss or theft of such Security, and of the authenticity of the ownership thereof and (ii) the furnishing to the Bank of indemnification in an amount satisfactory to hold the Issuer and the Bank harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Security shall be borne by the Holder of the Security mutilated, destroyed, lost or stolen.

Section 4.07 Transaction Information to Issuer. The Bank will, within a reasonable time after receipt of written request from the Issuer, furnish the Issuer information as to the Securities it has paid pursuant to Section 3.01, Securities it has delivered upon the transfer or exchange of any Securities pursuant to Section 4.01, and Securities it has delivered in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities pursuant to Section 4.06.

ARTICLE FIVE THE BANK

Section 5.01 Duties of Bank. The Bank undertakes to perform the duties set forth herein and agrees to use reasonable care in the performance thereof.

Section 5.02 Reliance on Documents, Etc.

(a) The Bank may conclusively rely, as to the truth of the statements and correctness of the opinions expressed therein, on certificates or opinions furnished to the Bank.

(b) The Bank shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Bank was negligent in ascertaining the pertinent facts.

(c) No provisions of this Agreement shall require the Bank to expend or risk its own funds or otherwise incur any financial liability for performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity satisfactory to it against such risks or liability is not assured to it.

(d) The Bank may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. Without limiting the generality

of the foregoing statement, the Bank need not examine the ownership of any Securities, but is protected in acting upon receipt of Securities containing an endorsement or instruction of transfer or power of transfer which appears on its face to be signed by the Holder or an agent of the Holder. The Bank shall not be bound to make any investigation into the facts or matters stated in a resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document supplied by the Issuer.

(e) The Bank may consult with counsel, and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection with respect to any action taken, suffered, or omitted by it hereunder in good faith and in reliance thereon.

(f) The Bank may exercise any of the powers hereunder and perform any duties hereunder either directly or by or through agents or attorneys of the Bank.

(g) The Bank is also authorized to transfer funds relating to the closing and initial delivery of the Securities in the manner disclosed in the closing memorandum or letter as prepared by the Issuer, the Financial Advisor or other agent. The Bank may act on a facsimile or e-mail transmission of the closing memorandum or letter acknowledged by the Issuer, the Issuer's financial advisor or other agent as the final closing memorandum or letter. The Bank shall not be liable for any losses, costs or expenses arising directly or indirectly from the Bank's reliance upon and compliance with such instructions.

Section 5.03 Recitals of Issuer. The recitals contained herein with respect to the Issuer and in the Securities shall be taken as the statements of the Issuer, and the Bank assumes no responsibility for their correctness.

The Bank shall in no event be liable to the Issuer, any Holder or Holders of any Security, or any other Person for any amount due on any Security from its own funds.

Section 5.04 May Hold Securities. The Bank, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Issuer with the same rights it would have if it were not the Paying Agent/Registrar, or any other agent.

Section 5.05 Moneys Held by Bank - Paying Agent Account/Collateralization. A paying agent account shall at all times be kept and maintained by the Bank for the receipt, safekeeping, and disbursement of moneys received from the Issuer under this Agreement for the payment of the Securities, and money deposited to the credit of such account until paid to the Holders of the Securities shall be continuously collateralized by securities or obligations which qualify and are eligible under both the laws of the State of Texas and the laws of the United States of America to secure and be pledged as collateral for paying agent accounts to the extent such money is not insured by the Federal Deposit Insurance Corporation. Payments made from such paying agent account shall be made by check drawn on such account unless the owner of the Securities shall, at its own expense and risk, request an alternative method of payment.

Subject to the applicable unclaimed property laws of the State of Texas, any money deposited with the Bank for the payment of the principal of, premium (if any), or interest on any Security and remaining unclaimed for three years after final maturity of the Security has become due and payable will be held by the Bank and disposed of only in accordance with Title 6 of the Texas Property Code, as amended. The Bank shall have no liability by virtue of actions taken in compliance with this provision.

The Bank is not obligated to pay interest on any money received by it under this Agreement.

This Agreement relates solely to money deposited for the purposes described herein, and the parties agree that the Bank may serve as depository for other funds of the Issuer, act as trustee under indentures authorizing other bond transactions of the Issuer, or act in any other capacity not in conflict with its duties hereunder.

Section 5.06 Indemnification. To the extent permitted by law, the Issuer agrees to indemnify the Bank for, and hold it harmless against, any loss, liability, or expense incurred without negligence or willful misconduct on its part, arising out of or in connection with its acceptance or administration of its duties hereunder, including the cost and expense against any claim or liability in connection with the exercise or performance of any of its powers or duties under this Agreement.

Section 5.07 Interpleader. The Issuer and the Bank agree that the Bank may seek adjudication of any adverse claim, demand, or controversy over its person as well as funds on deposit, in either a Federal or State District Court located in the state and county where the administrative office of the Issuer is located, and agree that service of process by certified or registered mail, return receipt requested, to the address referred to in Section 6.03 of this Agreement shall constitute adequate service. The Issuer and the Bank further agree that the Bank has the right to file a Bill of Interpleader in any court of competent jurisdiction in the State of Texas to determine the rights of any Person claiming any interest herein.

In the event the Bank becomes involved in litigation in connection with this Section, the Issuer, to the extent permitted by law, agrees to indemnify and save the Bank harmless from all loss, cost, damages, expenses, and attorney fees suffered or incurred by the Bank as a result. The obligations of the Bank under this Agreement shall be performable at the principal corporate office of the Bank in the City of Dallas, Texas.

Section 5.08 DTC Services. It is hereby represented and warranted that, in the event the Securities are otherwise qualified and accepted for “Depository Trust Company” services or equivalent depository trust services by other organizations, the Bank has the capability and, to the extent within its control, will comply with the “Operational Arrangements”, which establishes requirements for securities to be eligible for such type depository trust services, including, but not limited to, requirements for the timeliness of payments and funds availability, transfer turnaround time, and notification of redemptions and calls.

ARTICLE SIX MISCELLANEOUS PROVISIONS

Section 6.01 Amendment. This Agreement may be amended only by an agreement in writing signed by both of the parties hereto.

Section 6.02 Assignment. This Agreement may not be assigned by either party without the prior written consent of the other.

Section 6.03 Notices. Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted hereby to be given or furnished to the Issuer or the Bank shall be mailed or delivered to the Issuer or the Bank, respectively, at the addresses shown on the signature page(s) hereof.

Section 6.04 Effect of Headings. The Article and Section headings herein are for convenience of reference only and shall not affect the construction hereof.

Section 6.05 Successors and Assigns. All covenants and agreements herein by the Issuer shall bind its successors and assigns, whether so expressed or not.

Section 6.06 Severability. In case any provision herein shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 6.07 Merger, Conversion, Consolidation, or Succession. Any corporation or association into which the Bank may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion, or consolidation to which the Bank shall be a party, or any corporation or association succeeding to all or substantially all of the corporate trust business of the Bank shall be the successor of the Bank as Paying Agent under this Agreement without the execution or filing of any paper or any further act on the part of either parties hereto.

Section 6.08 Benefits of Agreement. Nothing herein, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any benefit or any legal or equitable right, remedy, or claim hereunder.

Section 6.09 Entire Agreement. This Agreement and the Authorizing Document constitute the entire agreement between the parties hereto relative to the Bank acting as Paying Agent/Registrar and if any conflict exists between this Agreement and the Authorizing Document, the Authorizing Document shall govern.

Section 6.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

Section 6.11 Termination. This Agreement will terminate (i) on the date of final payment of the principal of and interest on the Securities to the Holders thereof or (ii) may be earlier terminated by either party upon sixty (60) days written notice; provided, however, an early termination of this Agreement by either party shall not be effective until (a) a successor Paying Agent/Registrar has been appointed by the Issuer and such appointment accepted and (b) notice has been given to the Holders of the Securities of the appointment of a successor Paying Agent/Registrar. However, if the Issuer fails to appoint a successor Paying Agent/Registrar within a reasonable time, the Bank may petition a court of competent jurisdiction within the State of Texas to appoint a successor. Furthermore, the Bank and the Issuer mutually agree that the effective date of an early termination of this Agreement shall not occur at any time which would disrupt, delay or otherwise adversely affect the payment of the Securities.

Upon an early termination of this Agreement, the Bank agrees to promptly transfer and deliver the Security Register (or a copy thereof), together with the other pertinent books and records relating to the Securities, to the successor Paying Agent/Registrar designated and appointed by the Issuer.

The provisions of Section 1.02 and of Article Five shall survive and remain in full force and effect following the termination of this Agreement.

Section 6.12 Iran, Sudan or Foreign Terrorist Organizations. The Bank represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Bank and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Bank understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Bank and exists to make a profit.

Section 6.13 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas.

[Remainder of page left blank intentionally.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A.

By: _____

Title: _____

Address: 2001 Bryan Street, 10th Floor
Dallas, Texas 75201

TOWN OF FLOWER MOUND, TEXAS

By: _____
[Mayor][Mayor Pro Tem]

Address: 2121 Cross Timbers Road
Flower Mound, Texas 75028

ATTEST:

Town Secretary

ANNEX A

FEE SCHEDULE



TOWN COUNCIL AGENDA ITEM NO. 14

REGULAR ITEM

DATE: June 21, 2021

FROM: Debra Wallace, Interim Town Manager/CFO

ITEM: Consider approval of an ordinance authorizing the issuance of the Town of Flower Mound, Texas, Certificates of Obligation, Series 2021, for the purpose of paying for waterworks and sewer system improvements, 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.

BACKGROUND INFORMATION: The Financial Services staff and Hilltop Securities, the Town's financial advisor, request the Town Council's approval of an ordinance authorizing the potential issuance of Certificates of Obligation, Series 2021, ("the Certificates").

In order to efficiently complete the sale, the attached ordinance establishes the following parameters, giving the Interim Town Manager/CFO and the Executive Director of Fiscal and Administrative Services the authority to approve all necessary documents and finalize the sale. The authorization will expire 180 days after passage of the ordinance.

Maximum Principal Amount	\$10,250,000
Maximum True Interest Cost	3.00%
Final Maturity Date	March 1, 2041

The Certificates will pay for the contractual obligations incurred for water and wastewater projects approved on the FY 2020-2021 Five-year Capital Improvement Program ("CIP") as listed on Attachment 1. On October 19, 2020, the Town Council approved a reimbursement resolution for an amount not to exceed \$17,205,000 to fund improvements to water and wastewater system projects and the costs of issuance of the debt. CIP Amendments during the fiscal year have modified funding sources and/or moved project start dates to future years, thus reducing the proposed debt issuance from \$17,035,000 to \$10,060,000, excluding financing costs.

At the Town Council meeting on April 19, 2021, the Town Council authorized the publication of notice to issue Certificates of Obligation, Series 2021, (the "Certificates") in the principal amount not to exceed \$10,250,000.

The issuance will be conducted as a negotiated sale with the pricing to occur on June 22, 2021. The Certificates will begin accruing interest on July 1, 2021 (the Dated Date), which the Town will receive upon delivery of the funds on July 14, 2021. The Bank of New York Mellon Trust Company, N.A., will serve as the Paying Agent/Registrar for the Certificates. The preliminary official statement, which discloses details related to issuance of the Certificates and the Town, is available in the Financial Services Department for review.

FISCAL IMPACT: Approximate amount of \$8,650,000

Proposed Expenditure:	Account Number(s):
(\$8,650,000)	The utilities system will fund the waterworks and sewer system improvements.

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

LEGAL REVIEW: The Town's Bond Counsel, Norton Rose Fulbright US LLP, prepared the proposed ordinance. No alteration to the legal content of this ordinance, which was originally approved by Taylor, Olson, Adkins, Sralla, & Elam L.L.P., was made.

ATTACHMENTS:

1. Proposed Projects
2. Ordinance authorizing the issuance of Certificates of Obligation, Series 2021
3. Paying Agent/Registrar Agreement

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

Attachment 1

Utility Capital Projects**Water Projects:**

Morriss Road Water Lines Phase II (Milford to Eaton)	\$	600,000	
Sentinel Oaks Water line Replacement (Three Bridges to Simmons)		500,000	
Stonecrest Pump Station Phase I (Auxiliary Power)		2,000,000	
Stonehill Pump Station Discharge Valve Replacement		500,000	
Timber Creek Water Line Replacement Phase II		300,000	
US 377 at FM 1171 Water Line Loop		2,500,000	
Utility Asset Management & Utility Replacement		300,000	
Water System Leak Detection & Repair		50,000	\$ 6,750,000

Wastewater Projects:

Inflow-Infiltration/Evaluation and Repair	\$	250,000	
Lift Station Improvements and Decommissioning Phase III		564,500	
Oak Street Lift Station and Force Main Phase IV		380,500	
Spring Meadow Lane Sewer Line Replacement		1,540,000	
Timber Creek Trunk Line (Morriss Road to Rawlings Street)		575,000	\$ 3,310,000

Total Utility**\$ 10,060,000****Estimated Financing Costs**

\$ 190,000

Grand Total of Debt Issuance**\$ 10,250,000**

TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO. __-21

AN ORDINANCE authorizing the issuance of "TOWN OF FLOWER MOUND, TEXAS, CERTIFICATES OF OBLIGATION, SERIES 2021"; providing for the payment of said certificates of obligation by the levy of an ad valorem tax upon all taxable property within the Town and a limited pledge of the net revenues derived from the operation of the Town's waterworks and sewer system; providing the terms and conditions of such certificates and resolving other matters incident and relating to the issuance, payment, security and delivery of said certificates of obligation; delegating matters relating to the sale and issuance of said certificates to an authorized Town official; and providing an effective date.

WHEREAS, the Town Council of the Town of Flower Mound, Texas, has heretofore determined that certificates of obligation should be issued in the maximum principal amount not to exceed \$10,250,000 for the purpose of paying contractual obligations to be incurred for authorized needs and purposes, to wit: (i) constructing waterworks and sewer system improvements and extensions, including the acquisition of land and rights-of-way therefor and (ii) professional services rendered in connection therewith; and

WHEREAS, a "Notice of Intention to Issue Town of Flower Mound, Texas, Certificates of Obligation" was (a) duly published in *The Denton Record-Chronicle*, a newspaper hereby found and determined to be of general circulation in the Town of Flower Mound, Texas, on May 2, 2021 and May 9, 2021, the date of the first publication of such notice being not less than forty-six (46) days prior to the tentative date stated therein for the passage and adoption of this Ordinance and (b) duly published continuously on the City's website for at least forty-five (45) days before the tentative date stated therein for the passage of the ordinance authorizing the issuance of such certificates; and

WHEREAS, no petition protesting the issuance of such certificates of obligation and bearing valid petition signatures of at least 5% of the qualified voters of the Town, has been presented to or filed with the Mayor, Town Secretary or any other official of the Town on or prior to the date of the passage of this Ordinance; and

WHEREAS, the Town Council hereby finds and determines that all of the certificates of obligation described in such notice should be issued and sold at this time in the amount and manner as hereinafter provided; and

WHEREAS, the Town Council by this Ordinance, in accordance with the provisions of Texas Government Code, Chapter 1371, as amended ("Chapter 1371"), delegates to a Pricing Officer (hereinafter designated) the authority to determine the principal amount of the Certificates to be issued and to negotiate the terms of sale thereof; and

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

SECTION 1: Authorization – Designation – Principal Amount – Purpose. Certificates of obligation of the Town shall be and are hereby authorized to be issued in an amount not to exceed

the aggregate original principal amount hereinafter set forth to be designated and bear the title "TOWN OF FLOWER MOUND, TEXAS, CERTIFICATES OF OBLIGATION, SERIES 2021" or such other designation as specified in the Pricing Certificate (hereinafter referred to as the "Certificates"), for the purpose of paying contractual obligations to be incurred for authorized needs and purposes, to wit: (i) constructing waterworks and sewer system improvements and extensions, including the acquisition of land and rights-of-way therefor and (ii) professional services rendered in connection therewith, pursuant to authority conferred by and in conformity with the Constitution and laws of the State of Texas, including Texas Local Government Code, Subchapter C of Chapter 271, as amended, and Chapter 1371.

SECTION 2: Fully Registered Obligations - Authorized Denominations - Stated Maturities - Interest Rates - Date. The Certificates are issuable in fully registered form only; shall be dated as provided in the Pricing Certificate (the "Certificate Date") and shall be in denominations of \$5,000 or any integral multiple thereof (within a Stated Maturity) and the Certificates shall become due and payable on a date certain in each of the years and in principal amounts (the "Stated Maturities") and bear interest at the per annum rates in accordance with the details of the Certificates as provided in the Pricing Certificate.

The Certificates shall bear interest on the unpaid principal amounts from the date specified in the Pricing Certificate (calculated on the basis of a 360-day year of twelve 30-day months) and shall be payable in each year, on the dates and commencing on the date, set forth in the Pricing Certificate.

SECTION 3: Delegation of Authority to Pricing Officer. (a) As authorized by Chapter 1371, the Interim Town Manager/CFO or the Executive Director of Fiscal and Administrative Services of the Town (either a "Pricing Officer") is hereby authorized to act on behalf of the Town in selling and delivering the Certificates and carrying out the other procedures specified in this Ordinance determining the aggregate principal amount of the Certificates, the date of the Certificates, any additional or different designation or title by which the Certificates shall be known, the price at which the Certificates will be sold, the manner of sale (negotiated, privately placed or competitively bid), the years in which the Certificates will mature, the principal amount to mature in each of such years, the rate of interest to be borne by each such maturity, the date from which interest on the Certificates will accrue, the interest payment dates, the record date, the price and terms upon and at which the Certificates shall be subject to redemption prior to maturity at the option of the Town, as well as any mandatory sinking fund redemption provisions, determination of the use of a book-entry-only securities clearance, settlement and transfer system, the terms of any bond insurance applicable to the Certificates, any modification of the continuing disclosure undertaking contained in Section 32 hereof as may be required by the purchasers of the Certificates in connection with any amendments to Rule 15c2-12, and all other matters relating to the issuance, sale and delivery of the Certificates, all of which shall be specified in the Pricing Certificate, provided that:

- (i) the aggregate original principal amount of the Certificates shall not exceed \$10,250,000;
- (ii) the maximum true interest cost for the Certificates shall not exceed 3.00%; and
- (iii) the maximum maturity date of the Certificates shall not exceed March 1, 2041.

The execution of the Pricing Certificate shall evidence the sale date of the Certificates by the Town to the Purchasers (hereinafter defined).

If the Pricing Officer determines that bond insurance results in a net reduction of the Town's interest costs associated with the Certificates, then the Pricing Officer is authorized, in connection with effecting the sale of the Certificates, to make the selection of the municipal bond insurance company for the Certificates (the "Insurer") and to obtain from the Insurer a municipal bond insurance policy in support of the Certificates. The Pricing Officer shall have the authority to determine the provisions of the commitment for any such policy and to execute any documents to affect the issuance of said policy by the Insurer.

(b) In establishing the aggregate principal amount of the Certificates, the Pricing Officer shall establish an amount not exceeding the amount authorized in subsection (a)(i) above, which shall be sufficient in amount to provide for the purposes for which the Certificates are authorized and to pay costs of issuing the Certificates. The delegation made hereby shall expire if not exercised by the Pricing Officer within one (1) year of the date of the adoption of this Ordinance. The Certificates shall be sold to the purchaser(s)/underwriter(s) named in the Pricing Certificate (the "Purchasers"), at such price and with and subject to such terms as set forth in the Pricing Certificate and the Purchase Contract (hereinafter defined), and may be sold by negotiated or competitive sale or by private placement. The Pricing Officer is hereby delegated the authority to designate the Purchasers, which delegation shall be evidenced by the execution of the Pricing Certificate.

SECTION 4: Terms of Payment-Paying Agent/Registrar. The principal of, premium, if any, and the interest on the Certificates, due and payable by reason of maturity, redemption or otherwise, shall be payable only to the registered owners or holders of the Certificates (hereinafter called the "Holders") appearing on the registration and transfer books maintained by the Paying Agent/Registrar and the payment thereof shall be in any coin or currency of the United States of America, which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

The selection and appointment of The Bank of New York Mellon Trust Company, N.A., Dallas, Texas, to serve as "Paying Agent/Registrar" for the Certificates is hereby approved and confirmed. Books and records relating to the registration, payment, exchange and transfer of the Certificates (the "Security Register") shall at all times be kept and maintained on behalf of the Town by the Paying Agent/Registrar, all as provided herein, in accordance with the terms and provisions of a "Paying Agent/Registrar Agreement," substantially in the form attached hereto as **Exhibit A** and such reasonable rules and regulations as the Paying Agent/Registrar and the Town may prescribe. The Mayor or Mayor Pro Tem and Town Secretary are hereby authorized to execute and deliver such Paying Agent/Registrar Agreement in connection with the delivery of the Certificates. The Town covenants to maintain and provide a Paying Agent/Registrar at all times until the Certificates are paid and discharged, and any successor Paying Agent/Registrar shall be a commercial bank, trust company, financial institution, or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Certificates, the Town agrees to promptly cause a written notice thereof to be sent to each Holder by United States mail, first-class, postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

Principal of and premium, if any, on the Certificates, shall be payable at the Stated Maturities or the redemption thereof only upon presentation and surrender of the Certificates to the Paying Agent/Registrar at its designated offices initially in East Syracuse, New York, or, with respect to a successor Paying Agent/Registrar, at the designated offices of such successor (the "Designated Payment/Transfer Office"). Interest on the Certificates shall be paid to the Holder

whose name appears in the Security Register at the close of business on the Record Date (which shall be set forth in the Pricing Certificate) and shall be paid by the Paying Agent/Registrar (i) by check sent United States mail, first-class, postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder. If the date for the payment of the principal or of interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when such banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

In the event of a non-payment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class, postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

SECTION 5: Registration - Transfer - Exchange of Certificates - Predecessor Certificates. The Paying Agent/Registrar shall obtain, record and maintain in the Security Register the name and address of each and every owner of the Certificates issued under and pursuant to the provisions of this Ordinance or, if appropriate, the nominee thereof. Any Certificate may be transferred or exchanged for Certificates of other authorized denominations by the Holder, in person or by his duly authorized agent, upon surrender of such Certificate to the Paying Agent/Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender of any Certificate (other than the Initial Certificate authorized in Section 8 hereof) for transfer at the Designated Payment/Transfer Office of the Paying Agent/Registrar, the Paying Agent/Registrar shall register and deliver, in the name of the designated transferee or transferees, one or more new Certificates, executed on behalf of, and furnished by, the Town, of authorized denominations and having the same Stated Maturity and of a like aggregate principal amount as the Certificate or Certificates surrendered for transfer.

At the option of the Holders, Certificates (other than the Initial Certificate authorized in Section 8 hereof) may be exchanged for other Certificates of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Certificates surrendered for exchange upon surrender of the Certificates to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Certificates are so surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Certificates, executed on behalf of, and furnished by the Town, to the Holder requesting the exchange.

All Certificates issued upon any transfer or exchange of Certificates shall be delivered at the Designated Payment/Transfer Office of the Paying Agent/Registrar, or sent by United States mail, first-class, postage prepaid, to the Holder and, upon the registration and delivery thereof, the same shall be valid obligations of the Town, evidencing the same obligation to pay, and

entitled to the same benefits under this Ordinance, as the Certificates surrendered in such transfer or exchange.

All transfers or exchanges of Certificates pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Certificates canceled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Certificates," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the new Certificate or Certificates registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Certificates" shall include any mutilated, lost, destroyed, or stolen Certificate for which a replacement Certificate has been issued, registered and delivered in lieu thereof pursuant to Section 25 hereof and such new replacement Certificate shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Certificate.

Neither the Town nor the Paying Agent/Registrar shall be required to issue or transfer to an assignee of a Holder any Certificate called for redemption, in whole or in part, within 45 days of the date fixed for the redemption of such Certificate; provided, however, such limitation on transferability shall not be applicable to an exchange by the Holder of the unredeemed balance of a Certificate called for redemption in part.

SECTION 6: Book-Entry-Only Transfers and Transactions. Notwithstanding the provisions contained herein relating to the payment and transfer/exchange of the Certificates, the Town hereby approves and authorizes the use of "Book-Entry-Only" securities clearance, settlement and transfer system provided by The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York ("DTC"), in accordance with the operational arrangements referenced in the Blanket Issuer Letter of Representations by and between the Town and DTC (the "Depository Agreement").

In the event the Pricing Officer elects to utilize DTC's "Book-Entry-Only" System, which election shall be made by the Pricing Officer in the Pricing Certificate, pursuant to the Depository Agreement and the rules of DTC, the Certificates shall be deposited with DTC who shall hold said Certificates for its participants (the "DTC Participants"). While the Certificates are held by DTC under the Depository Agreement, the Holder of the Certificates on the Security Register for all purposes, including payment and notices, shall be Cede & Co., as nominee of DTC, notwithstanding the ownership of each actual purchaser or owner of each Certificate (the "Beneficial Owners") being recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Certificates or otherwise ceases to provide book-entry clearance and settlement of securities transactions in general, or in the event the Town decides to discontinue use of the system of book-entry transfers through DTC, the Town covenants and agrees with the Holders of the Certificates to cause Certificates to be printed in definitive form and issued and delivered to DTC Participants and Beneficial Owners, as the case may be. Thereafter, the Certificates in definitive form shall be assigned, transferred and exchanged on the Security Register maintained by the Paying Agent/Registrar and payment of such Certificates shall be made in accordance with the provisions of Sections 4 and 5 hereof.

SECTION 7: Execution - Registration. The Certificates shall be executed on behalf of the Town by the Mayor or the Mayor Pro Tem under its seal reproduced or impressed thereon and countersigned by the Town Secretary. The signature of said officers on the Certificates may be manual or facsimile. Certificates bearing the manual or facsimile signatures of said individuals who are or were the proper officers of the Town on the date of the adoption of this Ordinance shall be deemed to be duly executed on behalf of the Town, notwithstanding that such individuals or any of them shall cease to hold such offices prior to the delivery of the Certificates to the initial purchaser(s), and with respect to Certificates delivered in subsequent exchanges and transfers, all as authorized and provided by Texas Government Code, Chapter 1201, as amended.

No Certificate shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Certificate either a certificate of registration substantially in the form provided in Section 9(c), manually executed by the Comptroller of Public Accounts of the State of Texas or his or her duly authorized agent, or a certificate of registration substantially in the form provided in Section 9(d), manually executed by an authorized officer, employee or representative of the Paying Agent/Registrar, and either such certificate duly signed upon any Certificate shall be conclusive evidence, and the only evidence, that such Certificate has been duly certified, registered and delivered.

SECTION 8: Initial Certificate. The Certificates herein authorized shall be initially issued as a single fully registered certificate in the total principal amount with principal installments to become due and payable as provided in the Pricing Certificate and numbered T-1 (hereinafter called the "Initial Certificate") and the Initial Certificate shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Certificate shall be the Certificate submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s). Any time after the delivery of the Initial Certificate, the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Certificate delivered hereunder and exchange therefor definitive Certificates of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 9: Forms.

(a) Forms Generally. The Certificates, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of Paying Agent/Registrar, and the form of Assignment to be printed on the Certificates, shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and to be completed and modified with the information set forth in the Pricing Certificate and may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including insurance legends in the event the Certificates, or any maturities thereof, are purchased with bond insurance and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the Town or determined by the Pricing Officer. The Pricing Officer shall set forth the final and controlling forms and terms of the Certificates. Any portion of the text of any Certificates may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Certificate.

The Certificates, including the Initial Certificate, shall be typewritten, printed, lithographed, or photocopied, or produced in any other similar manner, all as determined by the officers executing such Certificates as evidenced by their execution.

(b) Form of Definitive Certificate.

REGISTERED
NO. _____

REGISTERED
\$ _____

UNITED STATES OF AMERICA
STATE OF TEXAS
TOWN OF FLOWER MOUND, TEXAS
CERTIFICATE OF OBLIGATION
SERIES 2021

Certificate Date:
_____, 2021

Interest Rate:
_____ %

Stated Maturity:
_____, ____

CUSIP No.:

Registered Owner:

Principal Amount: _____ DOLLARS

The Town of Flower Mound (hereinafter referred to as the "Town"), a body corporate and municipal corporation in the Counties of Denton and Tarrant, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, on the Stated Maturity date specified above the Principal Amount stated above (or so much thereof as shall not have been paid upon prior redemption) and to pay interest on the unpaid principal amount hereof from the interest payment date next preceding the "Registration Date" of this Certificate appearing below (unless this Certificate bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of this Certificate is prior to the initial interest payment date, in which case it shall bear interest from _____) at the per annum rate of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on _____ and _____ of each year, commencing _____, 20____, until maturity or prior redemption of this Certificate. Principal of this Certificate is payable at its Stated Maturity or redemption to the registered owner hereof upon presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar executing the registration certificate appearing hereon, or its successor; provided, however, while the Certificate is registered to Cede & Co., the payment of principal upon a partial redemption of the principal amount may be accomplished without presentation and surrender of this Certificate. Interest is payable to the registered owner of this Certificate (or one or more Predecessor Certificates, as defined in the Ordinance hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the _____ day of the month next preceding each interest payment date and interest shall be paid by the Paying Agent/Registrar by check sent United States mail, first-class, postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding

day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Certificate shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Certificate is one of the series specified in its title issued in the aggregate principal amount of \$_____ to be designated and bear the title "TOWN OF FLOWER MOUND, TEXAS, CERTIFICATES OF OBLIGATION, SERIES 2021" (hereinafter referred to as the "Certificates"), for the purpose of paying contractual obligations to be incurred for authorized needs and purposes, to wit: (i) constructing waterworks and sewer system improvements and extensions, including the acquisition of land and rights-of-way therefor and (ii) professional services rendered in connection therewith, under and in strict conformity with the Constitution and laws of the State of Texas, particularly Texas Local Government Code, Subchapter C of Chapter 271, as amended, and Texas Government Code, Chapter 1371, as amended, and pursuant to an ordinance adopted by the Town Council of the Town (herein referred to as the "Ordinance").

[The Certificates having Stated Maturities on and after ____ 1, 20____ may be redeemed prior to their Stated Maturities, at the option of the Town, in whole or in part, in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on ____ 1, 20____, or on any date thereafter, at the redemption price of par, together with accrued interest to the date of redemption.

At least thirty (30) days prior to a redemption date, the Town shall cause a written notice of such redemption to be sent by United States mail, first-class, postage prepaid, to the registered owners of each Certificate to be redeemed at the address shown on the Security Register and subject to the terms and provisions relating thereto contained in the Ordinance. If a Certificate (or any portion of its principal sum) shall have been duly called for redemption and notice of such redemption duly given, then upon the redemption date such Certificate (or the portion of its principal sum to be redeemed) shall become due and payable, and, if moneys for the payment of the redemption price and the interest accrued on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar, interest shall cease to accrue and be payable from and after the redemption date on the principal amount redeemed.

In the event a portion of the principal amount of a Certificate is to be redeemed and the registered owner is someone other than Cede & Co., payment of the redemption price of such principal amount shall be made to the registered owner only upon presentation and surrender of such Certificate to the Designated Payment/Transfer Office of the Paying Agent/Registrar, and a new Certificate or Certificates of like maturity and interest rate in any authorized denominations provided by the Ordinance for the then unredeemed balance of the principal sum thereof will be issued to the registered owner, without charge. If a Certificate is selected for redemption, in whole or in part, the Town and the Paying Agent/Registrar shall not be required to transfer such Certificate to an assignee of the registered owner within forty-five (45) days of the redemption date therefor; provided, however, such limitation on transferability shall not be applicable to an exchange by the registered owner of the unredeemed balance of a Certificate redeemed in part.

With respect to any optional redemption of the Certificates, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Certificates to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption,

such notice may state that said redemption may, at the option of the Town, be conditional upon the receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon the satisfaction of any prerequisites set forth in such notice of redemption; and, if sufficient moneys are not received, such notice shall be of no force and effect, the Town shall not redeem such Certificates and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Certificates have not been redeemed.]

The Certificates are payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the Town and are additionally payable from and secured by a lien on and limited pledge of the Net Revenues (as defined in the Ordinance) of the Town's combined waterworks and sewer system (the "System"), such lien and pledge being limited to the amount of \$1,000 and being junior and subordinate to the lien on and pledge of the Net Revenues of the System securing the payment of "Prior Lien Bonds" (identified and defined in the Ordinance) now outstanding and hereafter issued by the Town. In the Ordinance, the Town reserves and retains the right to issue Prior Lien Bonds while the Certificates are outstanding without limitation as to principal amount but subject to any terms, conditions or restrictions as may be applicable thereto under law or otherwise, as well as the right to issue additional obligations payable from the same sources as the Certificates and, together with the Certificates, equally and ratably secured by a parity lien on and pledge of the Net Revenues of the System.

Reference is hereby made to the Ordinance, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all the provisions of which the Holder by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of the Certificates; the Net Revenues of the System pledged to the payment of the principal of and interest on the Certificates; the nature and extent and manner of enforcement of the limited pledge; the terms and conditions relating to the transfer or exchange of this Certificate; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the Town and the Paying Agent/Registrar; the terms and provisions upon which the tax levy and the liens, pledges, charges and covenants made therein may be discharged at or prior to the maturity of this Certificate, and this Certificate deemed to be no longer Outstanding thereunder; and for the other terms and provisions contained therein. Capitalized terms used herein and not otherwise defined have the meanings assigned in the Ordinance.

This Certificate, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the registered owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Certificates of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The Town and the Paying Agent/Registrar, and any agent of either, may treat the registered owner hereof whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Certificate as the owner entitled to payment of principal hereof at its Stated Maturity or its redemption, in whole or in part, and (iii) on any other date as the owner for all other purposes, and neither the Town

nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of a non-payment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class, postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented and covenanted that the Town is duly organized and legally incorporated under and by virtue of the Constitution and laws of the State of Texas; that the issuance of the Certificates is duly authorized by law; that all acts, conditions and things required to exist and be done precedent to and in the issuance of the Certificates to render the same lawful and valid obligations of the Town have been properly done, have happened and have been performed in regular and due time, form and manner as required by the Constitution and laws of the State of Texas, and the Ordinance; that the Certificates do not exceed any constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Certificates by the levy of a tax and a pledge of the Net Revenues of the System as aforesated. In case any provision in this Certificate or any application thereof shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions and applications shall not in any way be affected or impaired thereby. The terms and provisions of this Certificate and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the Town Council of the Town has caused this Certificate to be duly executed under the official seal of the Town as of the Certificate Date.

TOWN OF FLOWER MOUND, TEXAS

[Mayor][Mayor Pro Tem]

COUNTERSIGNED:

Town Secretary

(TOWN SEAL)

(c) Form of Registration Certificate of Comptroller of Public Accounts to appear on the Initial Certificate only.

REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER
OF PUBLIC ACCOUNTS

THE STATE OF TEXAS

(
(
(
(

REGISTER NO. _____

I HEREBY CERTIFY that this Certificate has been examined, certified as to validity and approved by the Attorney General of the State of Texas and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this _____.

Comptroller of Public Accounts
of the State of Texas

(SEAL)

(d) Form of Certificate of Paying Agent/Registrar to appear on Definitive Certificates only.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Certificate has been duly issued and registered under the provisions of the within-mentioned Ordinance; the certificate or certificates of the above entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

The designated office of the Paying Agent/Registrar located in East Syracuse, New York is the Designated Payment/Transfer Office for this Certificate.

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., Dallas, Texas,
as Paying Agent/Registrar

Registration Date:

By: _____
Authorized Signature

(e) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto (Print or typewrite name, address, and zip code of transferee:)

(Social Security or other identifying number: _____)
 the within Certificate and all 7rights thereunder, and hereby irrevocably constitutes and appoints
 _____ attorney to transfer the within Certificate on the books kept
 for registration thereof, with full power of substitution in the premises.

DATED: _____

Signature guaranteed:

NOTICE: The signature on this
 assignment must correspond with the
 name of the registered owner as it appears
 on the face of the within Certificate in every
 particular.

(f) The Initial Certificate shall be in the form set forth in paragraph (b) of this
 Section, except that the heading and first paragraph shall be modified as follows:

REGISTERED:
 NO. T-1

REGISTERED:
 \$ _____

UNITED STATES OF AMERICA
 STATE OF TEXAS
 TOWN OF FLOWER MOUND, TEXAS,
 CERTIFICATE OF OBLIGATION
 SERIES 2021

Certificate Date: _____, 2021

Registered Owner:

Principal Amount: _____ DOLLARS

The Town of Flower Mound (hereinafter referred to as the "Town"), a body corporate and
 municipal corporation in the Counties of Denton and Tarrant, State of Texas, for value received,
 acknowledges itself indebted to and hereby promises to pay to the Registered Owner named
 above, or the registered assigns thereof, the above stated Principal Amount on _____ 1 in each
 of the years and in principal installments in accordance with the following schedule:

<u>YEAR</u>	<u>PRINCIPAL INSTALLMENT (\$)</u>	<u>INTEREST RATE (%)</u>
-------------	---------------------------------------	------------------------------

(Information to be inserted from the Pricing Certificate).

(or so much thereof as shall not have been redeemed prior to maturity) and to pay interest on the
 unpaid Principal Amount from the interest payment date next preceding the "Registration Date"
 of this Certificate appearing below (unless this Certificate bears a "Registration Date" as of an
 interest payment date, in which case it shall bear interest from such date, or unless the
 "Registration Date" of this Certificate is prior to the initial interest payment date, in which case it

shall bear interest from the _____) at the per annum rate(s) of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on _____ and _____ of each year, commencing _____ 1, 20____, until maturity or prior redemption of this Certificate. Principal installments of this Certificate are payable at the year of maturity or on a redemption date to the registered owner hereof by The Bank of New York Mellon Trust Company, N.A., Dallas, Texas (the "Paying Agent/Registrar"), upon presentation and surrender at its designated offices in East Syracuse, New York, or, with respect to a successor paying agent/registrar, at the designated office of such successor (the "Designated Payment/Transfer Office"). Interest is payable to the registered owner of this Certificate whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the _____ day of the month next preceding each interest payment date hereof and interest shall be paid by the Paying Agent/Registrar by check sent United States mail, first-class, postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Certificate shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

SECTION 10: Definitions. For purposes of this Ordinance and for clarity with respect to the issuance of the Certificates herein authorized, and the levy of taxes and appropriation of Net Revenues therefor, the following words or terms, whenever the same appear herein without qualifying language, are defined to mean as follows:

(a) The term "Additional Certificates" shall mean tax and revenue obligations hereafter issued under and pursuant to the provisions of Texas Local Government Code, Subchapter C of Chapter 271, or other law and payable from ad valorem taxes and additionally payable from and secured by a lien on and pledge of the Net Revenues of the System on a parity with and of equal rank and dignity with the lien and pledge securing the payment of the Certificates.

(b) The term "Certificate Fund" shall mean the special Fund created and established under the provisions of Section 11 of this Ordinance.

(c) The term "Certificates" shall mean the "Town of Flower Mound, Texas, Certificates of Obligation, Series 2021" authorized by this Ordinance.

(d) The term "Collection Date" shall mean, when reference is being made to the levy and collection of annual ad valorem taxes, the date the annual ad valorem taxes levied each year by the Town become delinquent.

(e) The term "Fiscal Year" shall mean the twelve month period ending on September 30 of each year.

(f) The term "Net Revenues" shall mean the gross revenues of the System, less the expense of operation and maintenance, including all salaries, labor, materials, interest, repairs and extensions necessary to render efficient service; provided, however, that only such repairs and extensions, as in the judgment of the Town Council, reasonably and fairly exercised, are necessary to keep the System in operation and render adequate service to the Town and the inhabitants thereof, or such as might be necessary to meet some physical accident or condition which would otherwise impair the security of any obligations payable from and secured by a lien on the Net Revenues of the System, shall be deducted in determining "Net Revenues".

(g) The term "Outstanding" when used in this Ordinance with respect to Certificates means, as of the date of determination, all Certificates theretofore issued and delivered under this Ordinance, except:

(1) those Certificates canceled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;

(2) those Certificates deemed to be duly paid by the Town in accordance with the provisions of Section 24 hereof; and

(3) those Certificates that have been mutilated, destroyed, lost, or stolen and replacement Certificates have been registered and delivered in lieu thereof as provided in Section 25 hereof.

(h) The term "Prior Lien Bonds" shall mean all bonds or other similar obligations now outstanding and hereafter issued that are payable from and secured by a lien on and pledge of the Net Revenues of the System, which is prior in right and claim to the lien on and pledge of the Net Revenues securing the payment of the Certificates.

(i) The term "System" shall mean the Town's combined waterworks and sewer system, including all properties (real, personal or mixed and tangible or intangible) owned, operated, maintained and vested in the Town for the supply, treatment and distribution of treated water for domestic commercial, industrial and other uses and the together with all future additions, extensions replacements and improvements thereto.

SECTION 11: Certificate Fund. For the purpose of paying the interest on and to provide a sinking fund for the payment, redemption and retirement of the Certificates, there shall be and is hereby created a special account on the books of the Town to be designated "SPECIAL 2021 TAX AND REVENUE CERTIFICATE OF OBLIGATION FUND," and all moneys deposited to the credit of such account shall be kept and maintained in a banking fund maintained at the Town's depository. The Mayor, Mayor Pro Tem, Deputy Mayor Pro Tem, Interim Town Manager/CFO or Town Manager, Deputy Town Manager/CFO, Executive Director of Fiscal and Administrative Services or Town Secretary, individually or collectively, are hereby authorized and directed to make withdrawals from the Certificate Fund sufficient to pay the principal of and interest on the Certificates as the same become due and payable, and, shall cause to be transferred to the Paying Agent/Registrar from moneys on deposit in the Certificate Fund an amount sufficient to pay the amount of principal and/or interest falling due on the Certificates, such transfer of funds to the Paying Agent/Registrar to be made in such manner as will cause immediately available funds to be deposited with the Paying Agent/Registrar on or before the last business day next preceding each interest and principal payment date for the Certificates.

Pending the transfer of funds to the Paying Agent/Registrar, money in the Certificate Fund may, at the option of the Town, be invested in obligations identified in, and in accordance with the provisions of the Town's Investment Policy as the same may be amended from time to time and the "Public Funds Investment Act" relating to the investment of "bond proceeds"; provided that all such investments shall be made in such a manner that the money required to be expended from said Fund will be available at the proper time or times. All interest and income derived from deposits and investments in said Certificate Fund shall be credited to, and any losses debited to, the said Certificate Fund. All such investments shall be sold promptly when necessary to prevent any default in connection with the Certificates.

SECTION 12: Tax Levy. To provide for the payment of the "Debt Service Requirements" on the Certificates being (i) the interest on said Certificates and (ii) a sinking fund for their redemption at maturity or a sinking fund of 2% (whichever amount shall be the greater), there shall be and there is hereby levied, within the limitations prescribed by law, for the current year and each succeeding year thereafter while said Certificates or any interest thereon shall remain Outstanding, a sufficient tax on each one hundred dollars' valuation of taxable property in said Town, adequate to pay such Debt Service Requirements, full allowance being made for delinquencies and costs of collection; said tax shall be assessed and collected each year and applied to the payment of the Debt Service Requirements, and the same shall not be diverted to any other purpose. The taxes so levied and collected shall be paid into the Certificate Fund. The Town Council hereby declares its purpose and intent to provide and levy a tax legally and fully sufficient to pay the said Debt Service Requirements, it having been determined that the existing and available taxing authority of the Town for such purpose is adequate to permit a legally sufficient tax in consideration of all other outstanding indebtedness.

The amount of taxes to be provided annually for the payment of the principal of and interest on the Certificates shall be determined and accomplished in the following manner:

(a) Prior to the date the Town Council establishes the annual tax rate and passes an ordinance levying ad valorem taxes each year, the Town Council shall determine:

(1) The amount on deposit in the Certificate Fund after (a) deducting therefrom the total amount of Debt Service Requirements to become due on Certificates prior to the Collection Date for the ad valorem taxes to be levied and (b) adding thereto the amount of the Net Revenues of the System appropriated and allocated to pay such Debt Service Requirements prior to the Collection Date for the ad valorem taxes to be levied.

(2) The amount of Net Revenues of the System, and any other lawfully available revenues which are appropriated and to be set aside for the payment of the Debt Service Requirements on the Certificates between the Collection Date for the taxes then to be levied and the Collection Date for the taxes to be levied during the next succeeding calendar year.

(3) The amount of Debt Service Requirements to become due and payable on the Certificates between the Collection Date for the taxes then to be levied and the Collection Date for the taxes to be levied during the next succeeding calendar year.

(b) The amount of taxes to be levied annually each year to pay the Debt Service Requirements on the Certificates shall be the amount established in paragraph (3) above

less the sum total of the amounts established in paragraphs (1) and (2), after taking into consideration delinquencies and costs of collecting such annual taxes.

SECTION 13: Limited Pledge of Net Revenues. The Town hereby covenants and agrees that, subject to the prior lien on and pledge of the Net Revenues of the System to the payment and security of Prior Lien Bonds, the Net Revenues of the System in the amount of \$1,000 are hereby irrevocably pledged, equally and ratably, to the payment of the principal of and interest on the Certificates, and the limited pledge of \$1,000 of the Net Revenues of the System herein made for the payment of the Certificates shall constitute a lien on the Net Revenues of the System until such time as the Town shall pay all of such \$1,000, after which time the pledge shall cease. Furthermore, such lien on and pledge of the Net Revenues securing the payment of the Certificates shall be valid and binding and fully perfected from and after the date of adoption of this Ordinance without physical delivery or transfer or transfer of control of the Net Revenues, the filing of this Ordinance or any other act; all as provided in Texas Government Code, Chapter 1208, as amended.

Texas Government Code, Section 1208, as amended, applies to the issuance of the Certificates and the pledge of the Net Revenues of the System granted by the Town under this Section 13, and such pledge is therefore valid, effective and perfected. If Texas law is amended at any time while the Certificates are Outstanding such that the pledge of the Net Revenues of the System granted by the Town under this Section 13 is to be subject to the filing requirements of Texas Business and Commerce Code, Chapter 9, as amended, then in order to preserve to the registered owners of the Certificates the perfection of the security interest in said pledge, the Town agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Texas Business and Commerce Code, Chapter 9, as amended, and enable a filing to perfect the security interest in said pledge to occur.

SECTION 14: Revenue Fund. The Town hereby covenants and agrees that so long as the pledge of the Net Revenues is made to the payment of the Certificates all revenues derived from the operation of the System shall be kept separate and apart from all other funds, accounts and moneys of the Town, and all such revenues shall be deposited as collected into the "Town of Flower Mound, Texas, Waterworks and Sewer System Revenue Fund" (heretofore created and established and hereinafter called the "Revenue Fund"). All moneys deposited to the credit of the Revenue Fund shall be pledged and appropriated to the extent required for the following purposes and in the order of priority shown, to wit:

First: To the payment of the reasonable and proper operating and maintenance expenses as defined herein or required by statute to be a first charge on and claim against the gross revenues of the System.

Second: To the payment of all amounts required to be deposited in the special Funds created and established for the payment, security and benefit of Prior Lien Bonds in accordance with the terms and provisions of any ordinance authorizing the issuance of Prior Lien Bonds.

Third: To the payment, equally and ratably, of the limited amounts required to be deposited in the special funds and accounts created and established for the payment of the debt service requirements of the Certificates and Additional Certificates.

Any Net Revenues remaining in the Revenue Fund after satisfying the foregoing payments, or making adequate and sufficient provision for the payment thereof, may be appropriated and used for any other Town purpose now or hereafter permitted by law.

SECTION 15: Deposits to Certificate Fund. Subject to the provisions of Section 13 hereof, the Town hereby covenants and agrees to cause to be deposited in the Certificate Fund from the pledged Net Revenues of the System in the Revenue Fund, the amount of Net Revenues of the System pledged to the payment of the Certificates.

The Town covenants and agrees that the amount of pledged Net Revenues of the System (\$1,000), together with other lawfully available revenues appropriated by the Town for payment of the debt service requirements on the Certificates and ad valorem taxes levied, collected, and deposited in the Certificate Fund for and on behalf of the Certificates, will be an amount equal to one hundred percent (100%) of the amount required to fully pay the interest and principal due and payable on the Certificates. In addition, any surplus proceeds from the sale of the Certificates not expended for authorized purposes shall be deposited in the Certificate Fund, and such amounts so deposited shall reduce the sums otherwise required to be deposited in said Fund from ad valorem taxes and the Net Revenues of the System.

SECTION 16: Security of Funds. All moneys on deposit in the Funds for which this Ordinance makes provision (except any portion thereof as may be at any time properly invested) shall be secured in the manner and to the fullest extent required by the laws of Texas for the security of public funds, and moneys on deposit in such Funds shall be used only for the purposes permitted by this Ordinance.

SECTION 17: Special Covenants. The Town hereby further covenants as follows:

(1) It has the lawful power to pledge the Net Revenues of the System supporting this issue of Certificates and has lawfully exercised said powers under the Constitution and laws of the State of Texas, including said power existing under Texas Government Code, Chapter 1502, as amended, and Texas Local Government Code, Sections 271.041, et seq., as amended.

(2) Other than for the payment of the Prior Lien Bonds and the Certificates, the Net Revenues of the System are not pledged to the payment of any debt or obligation of the Town or of the System.

SECTION 18: Issuance of Prior Lien Bonds and Additional Certificates. The Town hereby expressly reserves the right to hereafter issue Prior Lien Bonds, without limitation as to principal amount but subject to any terms, conditions or restrictions applicable thereto under law or otherwise, and also reserves the right to issue Additional Certificates which, together with the Certificates, shall be secured by a parity lien on and pledge of the Net Revenues of the System.

SECTION 19: Application of Prior Lien Bonds Covenants and Agreements. It is the intention of this governing body and accordingly hereby recognized and stipulated that the provisions, agreements and covenants contained herein bearing upon the management and operations of the System, and the administering and application of revenues derived from the operation thereof, shall to the extent possible be harmonized with like provisions, agreements and covenants contained in the ordinances authorizing the issuance of the Prior Lien Bonds, and to the extent of any irreconcilable conflict between the provisions contained herein and in the

ordinances authorizing the issuance of the Prior Lien Bonds, the provisions, agreements and covenants contained therein shall prevail to the extent of such conflict and be applicable to this Ordinance but in all respects subject to the priority of rights and benefits, if any, conferred thereby to the holders of the Prior Lien Bonds. Notwithstanding the above, any change or modification affecting the application of revenues derived from the operation of the System shall not impair the obligation of contract with respect to the pledge of revenues herein made for the payment and security for the Certificates.

SECTION 20: Further Procedures. Any one or more of the Mayor, Mayor Pro Tem, Deputy Mayor Pro Tem, Interim Town Manager/CFO or Town Manager, Deputy Town Manager/CFO, Executive Director of Fiscal and Administrative Services and Town Secretary are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of the Town all agreements, instruments, certificates or other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the issuance of the Certificates. In addition, prior to the initial delivery of the Certificates, the Mayor, Mayor Pro Tem, Deputy Mayor Pro Tem, Interim Town Manager/CFO or Town Manager, Deputy Town Manager/CFO, Executive Director of Fiscal and Administrative Services, or Bond Counsel to the Town are each hereby authorized and directed to approve any changes or corrections to this Ordinance or to any of the documents authorized and approved by this Ordinance: (i) in order to cure any ambiguity, formal defect, or omission in the Ordinance or such other document; or (ii) as requested by the Attorney General of the State of Texas or his representative to obtain the approval of the Certificates by the Attorney General and if such officer or counsel determines that such changes are consistent with the intent and purpose of the Ordinance, which determination shall be final. In the event that any officer of the Town whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 21: Notices to Holders Waiver. Wherever this Ordinance provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States mail, first-class, postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the business day next preceding the mailing of such notice.

In any case where notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Certificates. Where this Ordinance provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 22: Cancellation. All Certificates surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly canceled by it and, if surrendered to the Town, shall be delivered to the Paying Agent/Registrar and, if not already canceled, shall be promptly canceled by the Paying Agent/Registrar. The Town may at any time deliver to the Paying Agent/Registrar for cancellation any Certificates previously certified or registered and delivered which the Town may have acquired in any manner whatsoever, and all Certificates so delivered shall be promptly canceled

by the Paying Agent/Registrar. All canceled Certificates held by the Paying Agent/Registrar shall be returned to the Town.

SECTION 23: Covenants to Maintain Tax-Exempt Status.

(a) Definitions. When used in this Section, the following terms have the following meanings:

"Closing Date" means the date on which the Certificates are first authenticated and delivered to the initial purchasers against payment therefor.

"Code" means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

"Computation Date" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Gross Proceeds" means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Certificates.

"Investment" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Nonpurpose Investment" means any investment property, as defined in Section 148(b) of the Code, in which Gross Proceeds of the Certificates are invested and which is not acquired to carry out the governmental purposes of the Certificates.

"Rebate Amount" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Regulations" means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Certificates. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

"Yield" of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Certificates has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The Town shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Certificate to become includable in the gross income, as defined in Section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the Town receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption

from federal income tax of the interest on any Certificate, the Town shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, the Town shall at all times prior to the last Stated Maturity of Certificates:

(1) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Certificates, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(2) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Certificates or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the Town or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by Section 141 of the Code and the Regulations and rulings thereunder, the Town shall not use Gross Proceeds of the Certificates to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the Town shall not at any time prior to the final Stated Maturity of the Certificates directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Certificates.

(f) Not Federally Guaranteed. Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the Town shall not take or omit to take any action which would cause the Certificates to be federally guaranteed within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The Town shall timely file the information required by Section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in Section 148(f) of the Code and the Regulations and rulings thereunder:

(1) The Town shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last outstanding Certificate is discharged. However, to the extent permitted by law, the Town may commingle Gross Proceeds of the Certificates with other money of the Town, provided that the Town separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the Town shall calculate the Rebate Amount in accordance with rules set forth in Section 148(f) of the Code and the Regulations and rulings thereunder. The Town shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Certificates until six years after the final Computation Date.

(3) As additional consideration for the purchase of the Certificates by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the Town shall pay to the United States from the general fund, other appropriate fund, or if permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State of Texas, the Certificate Fund, the amount that when added to the future value of previous rebate payments made for the Certificates equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(4) The Town shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the Issuer shall not, at any time prior

to the earlier of the Stated Maturity or final payment of the Certificates, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Certificates not been relevant to either party.

(j) Elections. The Town hereby directs and authorizes the Mayor, Mayor Pro Tem, Deputy Mayor Pro Tem, Interim Town Manager/CFO or Town Manager, Deputy Town Manager/CFO and Executive Director of Fiscal and Administrative Services, either or any combination of them to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Certificates, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document.

(k) Qualified Tax-Exempt Obligations. The Pricing Officer is hereby authorized to designate in the Pricing Certificate the designation of the Certificates as "qualified tax-exempt obligations" in accordance with the provisions of the paragraph (3) of subsection (b) of Section 265 of the Code in the event the Certificates qualify for such designation and confirm that the Certificates are not "private activity bonds" as defined in the Code and confirm the amount of "tax-exempt obligations" to be issued by the Town (including all subordinate entities of the Town) for the calendar year in which the Certificates are issued will not exceed the applicable limitation.

SECTION 24: Satisfaction of Obligations of Town. If the Town shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Certificates, at the times and in the manner stipulated in this Ordinance, then the pledge of taxes levied under this Ordinance and the Net Revenues of the System (to the extent such limited pledge of Net Revenues shall not have been discharged or terminated by prior payment of principal of or interest on the Certificates) and all covenants, agreements, and other obligations of the Town to the Holders shall thereupon cease, terminate, and be discharged and satisfied.

Certificates or any principal amount(s) thereof shall be deemed to have been paid within the meaning and with the effect expressed above in this Section ("Defeased Certificates") when (i) money sufficient to pay in full such Certificates or the principal amount(s) thereof at maturity or the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (ii) Government Securities (as defined below) shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Securities have been certified by an independent accounting or consulting firm to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any moneys deposited therewith, if any, to pay when due the principal of and interest on such Certificates, or the principal amount(s) thereof, on and prior to the Stated Maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/ Registrar have been made) the redemption date thereof. At such time as Certificates shall be deemed to be Defeased Certificates hereunder, as aforesaid, such Certificates and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of, the taxes or revenues levied and pledged as provided in this Ordinance, and such principal and interest shall be payable solely from such money or Government Securities. Notwithstanding any other provision of this Ordinance to the contrary, it is hereby provided that any determination not to redeem the Defeased Certificates that is made in conjunction with the payment arrangements specified in (i) or (ii) above in this paragraph shall not be irrevocable, provided that in the proceedings providing for such payment

arrangements, the Town: (1) expressly reserves the right to call the Defeased Certificates for redemption; (2) gives notice of the reservation of that right to the registered owners of the Defeased Certificates immediately following the making of the payment arrangements; and (3) directs that notice of the reservation be included in any redemption notices that it authorizes. The Town covenants that no deposit of moneys or Government Securities will be made under this Section and no use made of any such deposit which would cause the Certificates to be treated as "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, or regulations adopted pursuant thereto.

Any moneys so deposited with the Paying Agent/Registrar, or an authorized escrow agent, and all income from Government Securities held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Certificates, or any principal amount(s) thereof, or interest thereon with respect to which such moneys have been so deposited shall be remitted to the Town or deposited as directed by the Town. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Certificates and remaining unclaimed for a period of three (3) years after the Stated Maturity, or applicable redemption date, of the Certificates such moneys were deposited and are held in trust to pay shall upon the request of the Town be remitted to the Town against a written receipt therefor. Notwithstanding the above and foregoing, any remittance of funds from the Paying Agent/Registrar to the Town shall be subject to any applicable unclaimed property laws of the State of Texas.

Unless otherwise modified by the Pricing Officer, the term "Government Securities" as used herein, means (a) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (b) noncallable obligations of an agency or instrumentality of the United States, including obligations unconditionally guaranteed or insured by the agency or instrumentality and on the date of their acquisition or purchase by the Town are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, (c) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and on the date of their acquisition or purchase by the Town, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, and (d) any other then authorized securities or obligations that may be used to defease obligations such as the Certificates under the then applicable laws of the State of Texas.

SECTION 25: Mutilated, Destroyed, Lost, and Stolen Certificates. In case any Certificate shall be mutilated, or destroyed, lost or stolen, the Paying Agent/Registrar may execute and deliver a replacement Certificate of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Certificate, or in lieu of and in substitution for such destroyed, lost or stolen Certificate, only upon the approval of the Town and after (i) the filing by the Holder thereof with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss or theft of such Certificate, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying Agent/Registrar of indemnification in an amount satisfactory to hold the Town and the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Certificate shall be borne by the Holder of the Certificate mutilated, or destroyed, lost or stolen.

Every replacement Certificate issued pursuant to this Section shall be a valid and binding obligation, and shall be entitled to all the benefits of this Ordinance equally and ratably with all

other Outstanding Certificates; notwithstanding the enforceability of payment by anyone of the destroyed, lost, or stolen Certificates.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost or stolen Certificates.

SECTION 26: Ordinance a Contract - Amendments. This Ordinance, together with the Pricing Certificate, shall constitute a contract with the Holders from time to time, be binding on the Town, and shall not be amended or repealed by the Town so long as any Certificate remains Outstanding except as permitted in this Section and Section 32 hereof. The Town, may, without the consent of or notice to any Holders, from time to time and at any time, amend this Ordinance in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the Town may, with the written consent of Holders holding a majority in aggregate principal amount of the Certificates and Additional Certificates then Outstanding, amend, add to, or rescind any of the provisions of this Ordinance; provided that, without the consent of all Holders of Outstanding Certificates, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of, premium, if any, and interest on the Certificates, reduce the principal amount thereof, the redemption price, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of, premium, if any, or interest on the Certificates, (2) give any preference to any Certificate over any other Certificate, or (3) reduce the aggregate principal amount of Certificates required to be held by Holders for consent to any such amendment, addition, or rescission.

SECTION 27: Sale of the Certificates – Official Statement. The Certificates authorized by this Ordinance are to be sold by the Town to the Purchasers in accordance with a bond purchase agreement in the event of a negotiated sale, letter agreement to purchase in the event of a private placement, or the successful bid form in the event of a competitive sale, as applicable (the "Purchase Contract"), the terms and provisions of which Purchase Contract are to be determined by the Pricing Officer in accordance with Section 3 hereof. The Pricing Officer is hereby authorized and directed to execute the Purchase Contract for and on behalf of the Town, as the act and deed of this Council, and to make a determination as to whether the terms are in the Town's best interests, which determination shall be final.

With regard to such terms and provisions of the Purchase Contract, the Pricing Officer is hereby authorized to come to an agreement with the Purchasers on the following, among other matters:

1. The details of the purchase and sale of the Certificates;
2. The details of any public offering of the Certificates by the Purchasers, if any;
3. The details of any Official Statement or similar disclosure document (and, if appropriate, any Preliminary Official Statement) relating to the Certificates and the Town's Rule 15c2-12 compliance, if applicable;
4. A security deposit for the Certificates, if any;
5. The representations and warranties of the Town to the Purchasers;
6. The details of the delivery of, and payment for, the Certificates;
7. The Purchasers' obligations under the Purchase Contract;

8. The certain conditions to the obligations of the Town under the Purchase Contract;
9. Termination of the Purchase Contract;
10. Particular covenants of the Town;
11. The survival of representations made in the Purchase Contract;
12. The payment of any expenses relating to the Purchase Contract;
13. Notices; and
14. Any and all such other details that are found by the Pricing Officer to be necessary and advisable for the purchase and sale of the Certificates.

The Mayor or Mayor Pro Tem and Town Secretary of the Town and the Pricing Officer are each further authorized and directed to deliver for and on behalf of the Town copies of a Preliminary Official Statement and Official Statement prepared in connection with the offering of the Certificates by the Purchasers, in final form as may be required by the Purchasers, and such final Official Statement as delivered by said officials shall constitute the Official Statement authorized for distribution and use by the Purchasers.

SECTION 28: Proceeds of Sale. The proceeds of sale of the Certificates excluding accrued interest, if any, received from the Purchasers, and amounts to pay costs of issuance and any additional proceeds to be deposited to the Certificate Fund as specified in the Pricing Certificate, shall be deposited in a fund maintained at a Town depository bank (the "Construction Fund"). Pending expenditure for authorized projects and purposes, such proceeds of sale may be invested in authorized investments in accordance with the provisions of Texas Government Code, Chapter 2256, as amended, including specifically guaranteed investment contracts permitted by Texas Government Code, Section 2256.015, et seq., and the Town's investment policies and guidelines, and any investment earnings realized may be expended for such authorized projects and purposes or deposited in the Certificate Fund as shall be determined by the Town Council. Accrued interest, if any, received from the Purchasers as well as proceeds of sale, including investment earnings thereon, remaining after completion of all authorized projects or purposes shall be deposited to the credit of the Certificate Fund.

SECTION 29: Control and Custody of Certificates. The Mayor or Mayor Pro Tem of the Town shall be and is hereby authorized to take and have charge of all necessary orders and records pending the sale of the Certificates, the investigation by the Attorney General of the State of Texas, including the printing and supply of definitive Certificates, and shall take and have charge and control of the Initial Certificate pending the approval thereof by the Attorney General and its registration thereof by the Comptroller of Public Accounts.

Furthermore, the Mayor, Mayor Pro Tem, Deputy Mayor Pro Tem, Interim Town Manager/CFO or Town Manager, Deputy Town Manager/CFO, Executive Director of Fiscal and Administrative Services and Town Secretary individually or collectively, are hereby authorized and directed to furnish and execute such documents and certifications relating to the Town and the issuance of the Certificates, including a certification as to facts, estimates, circumstances and reasonable expectations pertaining to the use and expenditure and investment of the proceeds of the Certificates as may be necessary for the approval of the Attorney General and their registration by the Comptroller of Public Accounts. In addition, such officials, together with the Town's financial advisor, bond counsel and the Paying Agent/Registrar, are authorized and directed to make the necessary arrangements for the delivery of the Initial Certificate to the initial purchasers.

SECTION 30: Bond Counsel's Opinion. The Purchasers' obligation to accept delivery of the Certificates is subject to being furnished a final opinion of Norton Rose Fulbright US LLP, Dallas, Texas, approving the Certificates as to their validity, said opinion to be dated and delivered as of the date of delivery and payment for the Certificates. An executed counterpart of said opinion shall accompany the global certificates deposited with The Depository Trust Company or a reproduction thereof shall be printed on the definitive Certificates in the event the book-entry-only system shall be discontinued. The Town Council confirms the continuation of the engagement of Norton Rose Fulbright US LLP as the Town's bond counsel.

SECTION 31: CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Certificates. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Certificates shall be of no significance or effect as regards the legality thereof and neither the Town nor attorneys approving said Certificates as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Certificates.

SECTION 32: Continuing Disclosure Undertaking. This Section shall apply unless the Pricing Officer determines in the Pricing Certificate that an undertaking is not required pursuant to the Rule (defined below).

(a) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

"Financial Obligation" means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that "financial obligation" shall not include municipal securities as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

"MSRB" means the Municipal Securities Rulemaking Board.

"Rule" means SEC Rule 15c2-12, as amended from time to time.

"SEC" means the United States Securities and Exchange Commission.

(b) Annual Reports.

The Town shall provide annually to the MSRB (1) within six months after the end of each fiscal year, beginning with the year stated in the Pricing Certificate, financial information and operating data with respect to the Town of the general type included in the Official Statement approved by the Pricing Officer and described in the Pricing Certificate, and (2) if not provided as part of such financial information and operating data, audited financial statements of the Town within twelve months after the end of each fiscal year, when and if available. Any financial statements so provided shall be prepared in accordance with the accounting principles described in the Pricing Certificate, or such other accounting principles as the Town may be required to employ from time to time pursuant to state law or regulation. If audited financial statements are not available by the required time, the Town will file unaudited financial statements within such twelve-month period and audited financial statements when and if such audited financial statements become available.

If the Town changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the Town otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any documents available to the public on the MSRB's internet web site or filed with the SEC.

(c) Notice of Certain Events.

The Town shall provide notice of any of the following events with respect to the Certificates to the MSRB in a timely manner and not more than ten (10) business days after occurrence of the event:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Certificates, or other material events affecting the tax status of the Certificates;
- (7) Modifications to rights of holders of the Certificates, if material;
- (8) Certificate calls, if material, and tender offers;
- (9) Defeasances;
- (10) Release, substitution, or sale of property securing repayment of the Certificates, if material;
- (11) Rating changes;
- (12) Bankruptcy, insolvency, receivership, or similar event of the Town, which shall occur as described below;
- (13) The consummation of a merger, consolidation, or acquisition involving the Town or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (14) Appointment of a successor or additional trustee or the change of name of a trustee, if material;
- (15) Incurrence of a Financial Obligation of the Town, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar

terms of a Financial Obligation of the Town, any of which affect security holders, if material; and

(16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Town, any of which reflect financial difficulties.

For these purposes, (a) any event described in the immediately preceding item (12) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the Town in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Town, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Town and (b) the Town intends the words used in the immediately preceding items (15) and (16) to have the meanings ascribed to them in SEC Release No. 34-83885, dated August 20, 2018.

The Town shall notify the MSRB, in a timely manner, of any failure by the Town to provide financial information or operating data in accordance with Subsection (b) of this Section of this Ordinance by the time required by such Section.

(d) Filings with the MSRB.

All financial information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Section shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

(e) Limitations, Disclaimers, and Amendments.

The Town shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the Town remains an “obligated person” with respect to the Certificates within the meaning of the Rule, except that the Town in any event will give the notice required by Subsection (c) of this Section of any Certificate calls and defeasance that cause the Town to be no longer such an “obligated person.”

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Certificates; and, nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The Town undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section. Except as expressly provided within this Section, the Town does not undertake to provide any other information, whether or not it may be relevant or material to a complete presentation of the Town’s financial results, condition, or prospects; nor does the Town undertake to update any information provided in accordance with this Section or otherwise. Furthermore, the Town does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Certificates at any future date.

UNDER NO CIRCUMSTANCES SHALL THE TOWN BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY CERTIFICATE OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE TOWN, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the Town in observing or performing its obligations under this Section shall constitute a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the Town under federal and state securities laws.

Notwithstanding anything herein to the contrary, the provisions of this Section may be amended by the Town from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Town, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Certificates in the primary offering of the Certificates in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Certificates consent to such amendment or (b) a person that is unaffiliated with the Town (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Certificates. The provisions of this Section may also be amended from time to time or repealed by the Town if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the Town's right to do so would not prevent underwriters of the initial public offering of the Certificates from lawfully purchasing or selling Certificates in such offering. If the Town so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided pursuant to subsection (b) of this Section an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

SECTION 33: Municipal Bond Insurance. The Certificates may be sold with the principal of and interest thereon being insured by a municipal bond insurance provider authorized to transact business in the State of Texas. The Pricing Officer is hereby authorized to make the selection of municipal bond insurance (if any) for the Certificates and make the determination of the provisions of any commitment therefor.

SECTION 34: Benefits of Ordinance. Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon any person other than the Town, the Paying Agent/Registrar, and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof, this Ordinance and all its provisions being intended to be and being for the sole and exclusive benefit of the Town, the Paying Agent/Registrar and the Holders.

SECTION 35: Inconsistent Provisions. All ordinances, orders, or resolutions, or parts thereof which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict and the provisions of this Ordinance shall be and remain controlling as to the matters contained herein.

SECTION 36: Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 37: Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 38: Severability. If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance or the application thereof to other circumstances shall nevertheless be valid, and this governing body hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 39: Construction of Terms. If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

SECTION 40: Incorporation of Findings and Determinations. The findings and determinations of the Town Council contained in the preamble hereof are hereby incorporated by reference and made a part of this Ordinance for all purposes as if the same were restated in full in this Section.

SECTION 41: Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 42: Effective Date. In accordance with the provisions of Texas Government Code, Section 1201.028, as amended, this Ordinance shall be in force and effect from and after its passage on the date shown below and it is so ordained.

[Remainder of page intentionally left blank]

DULY PASSED AND APPROVED BY THE TOWN COUNCIL ON JUNE 21, 2021.

TOWN OF FLOWER MOUND, TEXAS

(Town Seal)

Derek France, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

EXHIBIT A

PAYING AGENT/REGISTRAR AGREEMENT

PAYING AGENT/REGISTRAR AGREEMENT

THIS AGREEMENT is entered into as of _____, 2021 (this "Agreement"), by and between The Bank of New York Mellon Trust Company, N.A., a banking association duly organized and existing under the laws of the United States of America (the "Bank") and the Town of Flower Mound, Texas (the "Issuer"),

RECITALS

WHEREAS, the Issuer has duly authorized and provided for the issuance of its "Town of Flower Mound, Texas Certificates of Obligation, Series 2021" (the "Securities"), dated _____, 2021, such Securities scheduled to be delivered to the initial purchasers thereof on or about _____, 2021; and

WHEREAS, the Issuer has selected the Bank to serve as Paying Agent/Registrar in connection with the payment of the principal of, premium, if any, and interest on said Securities and with respect to the registration, transfer and exchange thereof by the registered owners thereof; and

WHEREAS, the Bank has agreed to serve in such capacities for and on behalf of the Issuer and has full power and authority to perform and serve as Paying Agent/Registrar for the Securities;

NOW, THEREFORE, it is mutually agreed as follows:

ARTICLE ONE APPOINTMENT OF BANK AS PAYING AGENT AND REGISTRAR

Section 1.01 Appointment. The Issuer hereby appoints the Bank to serve as Paying Agent with respect to the Securities, and, as Paying Agent for the Securities, the Bank shall be responsible for paying on behalf of the Issuer the principal, premium (if any), and interest on the Securities as the same become due and payable to the registered owners thereof; all in accordance with this Agreement and the "Authorizing Document" (hereinafter defined). The Issuer hereby appoints the Bank as Registrar with respect to the Securities and, as Registrar for the Securities, the Bank shall keep and maintain for and on behalf of the Issuer books and records as to the ownership of said Securities and with respect to the transfer and exchange thereof as provided herein and in the Authorizing Document.

The Bank hereby accepts its appointment, and agrees to serve as the Paying Agent and Registrar for the Securities.

Section 1.02 Compensation. As compensation for the Bank's services as Paying Agent/Registrar, the Issuer hereby agrees to pay the Bank the fees and amounts set forth in **Annex A** attached hereto; provided however, notwithstanding anything herein or in Annex A to the contrary, the aggregate value of this agreement shall not exceed the dollar limitation set forth in Section 2271.002(a)(2) of the Texas Government Code, as amended.

In addition, the Issuer agrees to reimburse the Bank upon its request for all reasonable expenses, disbursements and advances incurred or made by the Bank in accordance with any of the provisions hereof (including the reasonable compensation and the expenses and disbursements of its agents and counsel).

ARTICLE TWO DEFINITIONS

Section 2.01 Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

“Acceleration Date” on any Security means the date, if any, on and after which the principal or any or all installments of interest, or both, are due and payable on any Security which has become accelerated pursuant to the terms of the Security.

“Authorizing Document” means the resolution, order, or ordinance of the governing body of the Issuer pursuant to which the Securities are issued, as the same may be amended or modified, including any pricing certificate related thereto, certified by the secretary or any other officer of the Issuer and delivered to the Bank.

“Bank Office” means the designated office of the Bank at the address shown in Section 3.01 hereof. The Bank will notify the Issuer in writing of any change in location of the Bank Office.

“Financial Advisor” means Hilltop Securities Inc.

“Holder” and “Security Holder” each means the Person in whose name a Security is registered in the Security Register.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision of a government.

“Predecessor Securities” of any particular Security means every previous Security evidencing all or a portion of the same obligation as that evidenced by such particular Security (and, for the purposes of this definition, any mutilated, lost, destroyed, or stolen Security for which a replacement Security has been registered and delivered in lieu thereof pursuant to Section 4.06 hereof and the Authorizing Document).

“Redemption Date”, when used with respect to any Security to be redeemed, means the date fixed for such redemption pursuant to the terms of the Authorizing Document.

“Responsible Officer”, when used with respect to the Bank, means the Chairman or Vice-Chairman of the Board of Directors, the Chairman or Vice-Chairman of the Executive Committee of the Board of Directors, the President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer, any Assistant Treasurer, the Cashier, any Assistant Cashier, any Trust Officer or Assistant Trust Officer, or any other officer of the Bank customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

“Security Register” means a register maintained by the Bank on behalf of the Issuer providing for the registration and transfers of Securities.

“Stated Maturity” means the date specified in the Authorizing Document the principal of a Security is scheduled to be due and payable.

Section 2.02 Other Definitions. The terms “Bank,” “Issuer,” and “Securities (Security)” have the meanings assigned to them in the recital paragraphs of this Agreement.

The term “Paying Agent/Registrar” refers to the Bank in the performance of the duties and functions of this Agreement.

ARTICLE THREE PAYING AGENT

Section 3.01 Duties of Paying Agent. As Paying Agent, the Bank shall pay, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, on behalf of the Issuer the principal of each Security at its Stated Maturity, Redemption Date or Acceleration Date, to the Holder upon surrender of the Security to the Bank at the following address:

<u>First Class/Registered/Certified</u>	<u>Express Delivery/Courier</u>	<u>By Hand Only</u>
The Bank of New York Mellon Trust Company, N.A. Global Corporate Trust P.O. Box 396 East Syracuse, NY 13057	The Bank of New York Mellon Trust Company, N.A. Global Corporate Trust 111 Sanders Creek Pkwy. East Syracuse, NY 13057	The Bank of New York Mellon Trust Company, N.A. Global Corporate Trust Corporate Trust Window 101 Barclay Street, 1st Floor East New York, NY 10286

As Paying Agent, the Bank shall, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, pay on behalf of the Issuer the interest on each Security when due, by computing the amount of interest to be paid each Holder and making payment thereof to the Holders of the Securities (or their Predecessor Securities) on the Record Date (as defined in the Authorizing Document). All payments of principal and/or interest on the Securities to the registered owners shall be accomplished (1) by the issuance of checks, payable to the registered owners, drawn on the paying agent account provided in Section 5.05 hereof, sent by United States mail, first class postage prepaid, to the address appearing on the Security Register or (2) by such other method, acceptable to the Bank, requested in writing by the Holder at the Holder’s risk and expense.

Section 3.02 Payment Dates. The Issuer hereby instructs the Bank to pay the principal of and interest on the Securities on the dates specified in the Authorizing Document.

ARTICLE FOUR REGISTRAR

Section 4.01 Security Register - Transfers and Exchanges. The Bank agrees to keep and maintain for and on behalf of the Issuer at the Bank Office books and records (herein sometimes referred to as the “Security Register”) for recording the names and addresses of the Holders of the Securities, the transfer, exchange and replacement of the Securities and the payment of the principal of and interest on the Securities to the Holders and containing such other

information as may be reasonably required by the Issuer and subject to such reasonable regulations as the Issuer and the Bank may prescribe. All transfers, exchanges and replacements of Securities shall be noted in the Security Register.

Every Security surrendered for transfer or exchange shall be duly endorsed or be accompanied by a written instrument of transfer, the signature on which has been guaranteed by an officer of a federal or state bank or a member of the Financial Industry Regulatory Authority, such written instrument to be in a form satisfactory to the Bank and duly executed by the Holder thereof or his agent duly authorized in writing.

The Bank may request any supporting documentation it feels necessary to effect a re-registration, transfer or exchange of the Securities.

To the extent possible and under reasonable circumstances, the Bank agrees that, in relation to an exchange or transfer of Securities, the exchange or transfer by the Holders thereof will be completed and new Securities delivered to the Holder or the assignee of the Holder in not more than three (3) business days after the receipt of the Securities to be cancelled in an exchange or transfer and the written instrument of transfer or request for exchange duly executed by the Holder, or his duly authorized agent, in form and manner satisfactory to the Paying Agent/Registrar.

Section 4.02 Securities. The Issuer shall provide additional Securities when needed to facilitate transfers or exchanges thereof. The Bank covenants that such additional Securities, if and when provided, will be kept in safekeeping pending their use and reasonable care will be exercised by the Bank in maintaining such Securities in safekeeping, which shall be not less than the care maintained by the Bank for debt securities of other governments or corporations for which it serves as registrar, or that is maintained for its own securities.

Section 4.03 Form of Security Register. The Bank, as Registrar, will maintain the Security Register relating to the registration, payment, transfer and exchange of the Securities in accordance with the Bank's general practices and procedures in effect from time to time. The Bank shall not be obligated to maintain such Security Register in any form other than those which the Bank has currently available and currently utilizes at the time.

The Security Register may be maintained in written form or in any other form capable of being converted into written form within a reasonable time.

Section 4.04 List of Security Holders. The Bank will provide the Issuer at any time requested by the Issuer, upon payment of the required fee, a copy of the information contained in the Security Register. The Issuer may also inspect the information contained in the Security Register at any time the Bank is customarily open for business, provided that reasonable time is allowed the Bank to provide an up-to-date listing or to convert the information into written form.

The Bank will not release or disclose the contents of the Security Register to any person other than to, or at the written request of, an authorized officer or employee of the Issuer, except upon receipt of a court order or as otherwise required by law. Upon receipt of a court order and prior to the release or disclosure of the contents of the Security Register, the Bank will notify the Issuer so that the Issuer may contest the court order or such release or disclosure of the contents of the Security Register.

Section 4.05 Return of Cancelled Securities. The Bank will, at such reasonable intervals as it determines, surrender to the Issuer, all Securities in lieu of which or in exchange for which other Securities have been issued, or which have been paid.

Section 4.06 Mutilated, Destroyed, Lost or Stolen Securities. The Issuer hereby instructs the Bank, subject to the provisions of the Authorizing Document, to deliver and issue Securities in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities as long as the same does not result in an overissuance.

In case any Security shall be mutilated, destroyed, lost or stolen, the Bank may execute and deliver a replacement Security of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Security, or in lieu of and in substitution for such mutilated, destroyed, lost or stolen Security, only upon the approval of the Issuer and after (i) the filing by the Holder thereof with the Bank of evidence satisfactory to the Bank of the destruction, loss or theft of such Security, and of the authenticity of the ownership thereof and (ii) the furnishing to the Bank of indemnification in an amount satisfactory to hold the Issuer and the Bank harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Security shall be borne by the Holder of the Security mutilated, destroyed, lost or stolen.

Section 4.07 Transaction Information to Issuer. The Bank will, within a reasonable time after receipt of written request from the Issuer, furnish the Issuer information as to the Securities it has paid pursuant to Section 3.01, Securities it has delivered upon the transfer or exchange of any Securities pursuant to Section 4.01, and Securities it has delivered in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities pursuant to Section 4.06.

ARTICLE FIVE THE BANK

Section 5.01 Duties of Bank. The Bank undertakes to perform the duties set forth herein and agrees to use reasonable care in the performance thereof.

Section 5.02 Reliance on Documents, Etc.

(a) The Bank may conclusively rely, as to the truth of the statements and correctness of the opinions expressed therein, on certificates or opinions furnished to the Bank.

(b) The Bank shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Bank was negligent in ascertaining the pertinent facts.

(c) No provisions of this Agreement shall require the Bank to expend or risk its own funds or otherwise incur any financial liability for performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity satisfactory to it against such risks or liability is not assured to it.

(d) The Bank may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. Without limiting the generality

of the foregoing statement, the Bank need not examine the ownership of any Securities, but is protected in acting upon receipt of Securities containing an endorsement or instruction of transfer or power of transfer which appears on its face to be signed by the Holder or an agent of the Holder. The Bank shall not be bound to make any investigation into the facts or matters stated in a resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document supplied by the Issuer.

(e) The Bank may consult with counsel, and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection with respect to any action taken, suffered, or omitted by it hereunder in good faith and in reliance thereon.

(f) The Bank may exercise any of the powers hereunder and perform any duties hereunder either directly or by or through agents or attorneys of the Bank.

(g) The Bank is also authorized to transfer funds relating to the closing and initial delivery of the Securities in the manner disclosed in the closing memorandum or letter as prepared by the Issuer, the Financial Advisor or other agent. The Bank may act on a facsimile or e-mail transmission of the closing memorandum or letter acknowledged by the Issuer, the Issuer's financial advisor or other agent as the final closing memorandum or letter. The Bank shall not be liable for any losses, costs or expenses arising directly or indirectly from the Bank's reliance upon and compliance with such instructions.

Section 5.03 Recitals of Issuer. The recitals contained herein with respect to the Issuer and in the Securities shall be taken as the statements of the Issuer, and the Bank assumes no responsibility for their correctness.

The Bank shall in no event be liable to the Issuer, any Holder or Holders of any Security, or any other Person for any amount due on any Security from its own funds.

Section 5.04 May Hold Securities. The Bank, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Issuer with the same rights it would have if it were not the Paying Agent/Registrar, or any other agent.

Section 5.05 Moneys Held by Bank - Paying Agent Account/Collateralization. A paying agent account shall at all times be kept and maintained by the Bank for the receipt, safekeeping, and disbursement of moneys received from the Issuer under this Agreement for the payment of the Securities, and money deposited to the credit of such account until paid to the Holders of the Securities shall be continuously collateralized by securities or obligations which qualify and are eligible under both the laws of the State of Texas and the laws of the United States of America to secure and be pledged as collateral for paying agent accounts to the extent such money is not insured by the Federal Deposit Insurance Corporation. Payments made from such paying agent account shall be made by check drawn on such account unless the owner of the Securities shall, at its own expense and risk, request an alternative method of payment.

Subject to the applicable unclaimed property laws of the State of Texas, any money deposited with the Bank for the payment of the principal of, premium (if any), or interest on any Security and remaining unclaimed for three years after final maturity of the Security has become due and payable will be held by the Bank and disposed of only in accordance with Title 6 of the Texas Property Code, as amended. The Bank shall have no liability by virtue of actions taken in compliance with this provision.

The Bank is not obligated to pay interest on any money received by it under this Agreement.

This Agreement relates solely to money deposited for the purposes described herein, and the parties agree that the Bank may serve as depository for other funds of the Issuer, act as trustee under indentures authorizing other bond transactions of the Issuer, or act in any other capacity not in conflict with its duties hereunder.

Section 5.06 Indemnification. To the extent permitted by law, the Issuer agrees to indemnify the Bank for, and hold it harmless against, any loss, liability, or expense incurred without negligence or willful misconduct on its part, arising out of or in connection with its acceptance or administration of its duties hereunder, including the cost and expense against any claim or liability in connection with the exercise or performance of any of its powers or duties under this Agreement.

Section 5.07 Interpleader. The Issuer and the Bank agree that the Bank may seek adjudication of any adverse claim, demand, or controversy over its person as well as funds on deposit, in either a Federal or State District Court located in the state and county where the administrative office of the Issuer is located, and agree that service of process by certified or registered mail, return receipt requested, to the address referred to in Section 6.03 of this Agreement shall constitute adequate service. The Issuer and the Bank further agree that the Bank has the right to file a Bill of Interpleader in any court of competent jurisdiction in the State of Texas to determine the rights of any Person claiming any interest herein.

In the event the Bank becomes involved in litigation in connection with this Section, the Issuer, to the extent permitted by law, agrees to indemnify and save the Bank harmless from all loss, cost, damages, expenses, and attorney fees suffered or incurred by the Bank as a result. The obligations of the Bank under this Agreement shall be performable at the principal corporate office of the Bank in the City of Dallas, Texas.

Section 5.08 DTC Services. It is hereby represented and warranted that, in the event the Securities are otherwise qualified and accepted for "Depository Trust Company" services or equivalent depository trust services by other organizations, the Bank has the capability and, to the extent within its control, will comply with the "Operational Arrangements", which establishes requirements for securities to be eligible for such type depository trust services, including, but not limited to, requirements for the timeliness of payments and funds availability, transfer turnaround time, and notification of redemptions and calls.

ARTICLE SIX MISCELLANEOUS PROVISIONS

Section 6.01 Amendment. This Agreement may be amended only by an agreement in writing signed by both of the parties hereto.

Section 6.02 Assignment. This Agreement may not be assigned by either party without the prior written consent of the other.

Section 6.03 Notices. Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted hereby to be given or furnished to the Issuer or the Bank shall be mailed or delivered to the Issuer or the Bank, respectively, at the addresses shown on the signature page(s) hereof.

Section 6.04 Effect of Headings. The Article and Section headings herein are for convenience of reference only and shall not affect the construction hereof.

Section 6.05 Successors and Assigns. All covenants and agreements herein by the Issuer shall bind its successors and assigns, whether so expressed or not.

Section 6.06 Severability. In case any provision herein shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 6.07 Merger, Conversion, Consolidation, or Succession. Any corporation or association into which the Bank may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion, or consolidation to which the Bank shall be a party, or any corporation or association succeeding to all or substantially all of the corporate trust business of the Bank shall be the successor of the Bank as Paying Agent under this Agreement without the execution or filing of any paper or any further act on the part of either parties hereto.

Section 6.08 Benefits of Agreement. Nothing herein, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any benefit or any legal or equitable right, remedy, or claim hereunder.

Section 6.09 Entire Agreement. This Agreement and the Authorizing Document constitute the entire agreement between the parties hereto relative to the Bank acting as Paying Agent/Registrar and if any conflict exists between this Agreement and the Authorizing Document, the Authorizing Document shall govern.

Section 6.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

Section 6.11 Termination. This Agreement will terminate (i) on the date of final payment of the principal of and interest on the Securities to the Holders thereof or (ii) may be earlier terminated by either party upon sixty (60) days written notice; provided, however, an early termination of this Agreement by either party shall not be effective until (a) a successor Paying Agent/Registrar has been appointed by the Issuer and such appointment accepted and (b) notice has been given to the Holders of the Securities of the appointment of a successor Paying Agent/Registrar. However, if the Issuer fails to appoint a successor Paying Agent/Registrar within a reasonable time, the Bank may petition a court of competent jurisdiction within the State of Texas to appoint a successor. Furthermore, the Bank and the Issuer mutually agree that the effective date of an early termination of this Agreement shall not occur at any time which would disrupt, delay or otherwise adversely affect the payment of the Securities.

Upon an early termination of this Agreement, the Bank agrees to promptly transfer and deliver the Security Register (or a copy thereof), together with the other pertinent books and records relating to the Securities, to the successor Paying Agent/Registrar designated and appointed by the Issuer.

The provisions of Section 1.02 and of Article Five shall survive and remain in full force and effect following the termination of this Agreement.

Section 6.12 Iran, Sudan or Foreign Terrorist Organizations. The Bank represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Bank and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Bank understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Bank and exists to make a profit.

Section 6.13 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas.

[Remainder of page left blank intentionally.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A.

By: _____

Title: _____

Address: 2001 Bryan Street, 10th Floor
Dallas, Texas 75201

TOWN OF FLOWER MOUND, TEXAS

By: _____
[Mayor][Mayor Pro Tem]

Address: 2121 Cross Timbers Road
Flower Mound, Texas 75028

ATTEST:

Town Secretary

ANNEX A

FEE SCHEDULE



TOWN COUNCIL AGENDA ITEM NO. 15

REGULAR ITEM

DATE: June 21, 2021

FROM: Claire Barnes, Planner

ITEM: **Public Hearing to consider an ordinance granting Specific Use Permit No. 467 (SUP21-0001– Lakeside Crossing Building 4 (Jesse James Fit)) to permit a health club or athletic club use. The property is generally located south of Lakeside Parkway along and between International Parkway and Northwood Drive. (*The Planning and Zoning Commission recommended approval by a vote of 5 to 0 at its June 14, 2021, meeting.*)**



SUMMARY DATA:

- Lot Size – 1.28 acres
- Proposed use – Health Club or Athletic Club
- Building Size – Use proposed for 5,672 sf of 15,145 sf multi-tenant building
- Current Zoning – PD-153 with Residential & Non-residential 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.

The applicant's identified hours of operation are 5 a.m. to 7:30 p.m. Monday through Friday, and 7:00 a.m. to 1:00 p.m. on Saturdays. These have been included as a condition of the SUP.

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: 4

REGULAR ITEM

DATE: June 14, 2021

FROM: Claire Barnes, Planner

ITEM: **Public Hearing to consider an ordinance granting Specific Use Permit No. 467 (SUP21-0001– Lakeside Crossing Building 4 (Jesse James Fit)) to permit a health club or athletic club use. The property is generally located south of Lakeside Parkway along and between International Parkway and Northwood Drive.**

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 467) to permit an approximately 5,672-square-foot health club or athletic club use to occupy the north end of the 15,145 square-foot multi-tenant retail building being developed on Lot 4, Block A of the Lakeside Crossing subdivision.

The subject site is approximately 1.28 acres. The property is zoned Planned Development District-153 (PD-153) for both residential and non-residential uses in compliance with the Campus Commercial land use designation within the Lakeside Business District Area Plan.

A health club or athletic club requires approval of a Specific Use Permit (SUP) in the Campus Commercial zoning district.

On August 5, 2019, Town Council approved a site plan (SP19-0001 Lakeside Crossing Buildings 4 & 5, Phase 2) for two retail buildings. On May 17, 2021, Town Council approved, with conditions, a zoning amendment (ZPD20-0006 – Lakeside Crossing) to modify the development standards related to the phasing of the development. This amendment indicated Building 4 as part of the development's first phase. The amended ordinance requires certain site improvements that must be completed prior to the issuance of any Certificates of Occupancy.

The health or athletic club use has a parking ratio of 1 space per 250 square feet. The parking demand for the use would be 23 parking spaces. PD-153 allows for shared

parking and the use of a mixed-use parking calculation. Overall, 256 parking spaces will be constructed and available as part of phase 1. Parking will be reviewed with each future site plan and each tenant's certificate of occupancy to verify compliance with Town parking standards.

The ordinance for the SUP will include the following conditions for the health club or athletic club use:

1. The Specific Use Permit is limited to the 5,672 square-foot lease space located at the northern end of retail Building #4.
2. Hours of operation are limited to 5 a.m. to 7:30 p.m. Monday-Friday and 7:00 a.m. to 1:00 p.m. on Saturdays
3. An amended site plan will be required to update the approved site plan.

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. SUP21-0001 had a total of 15 Property Owner Notifications mailed. At the time this report was written, staff had received no items of correspondence in support or in opposition to the request. All written correspondence is 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 Concept Plan and Concept Landscape Plan
4. Approved Landscape Plan and Elevations

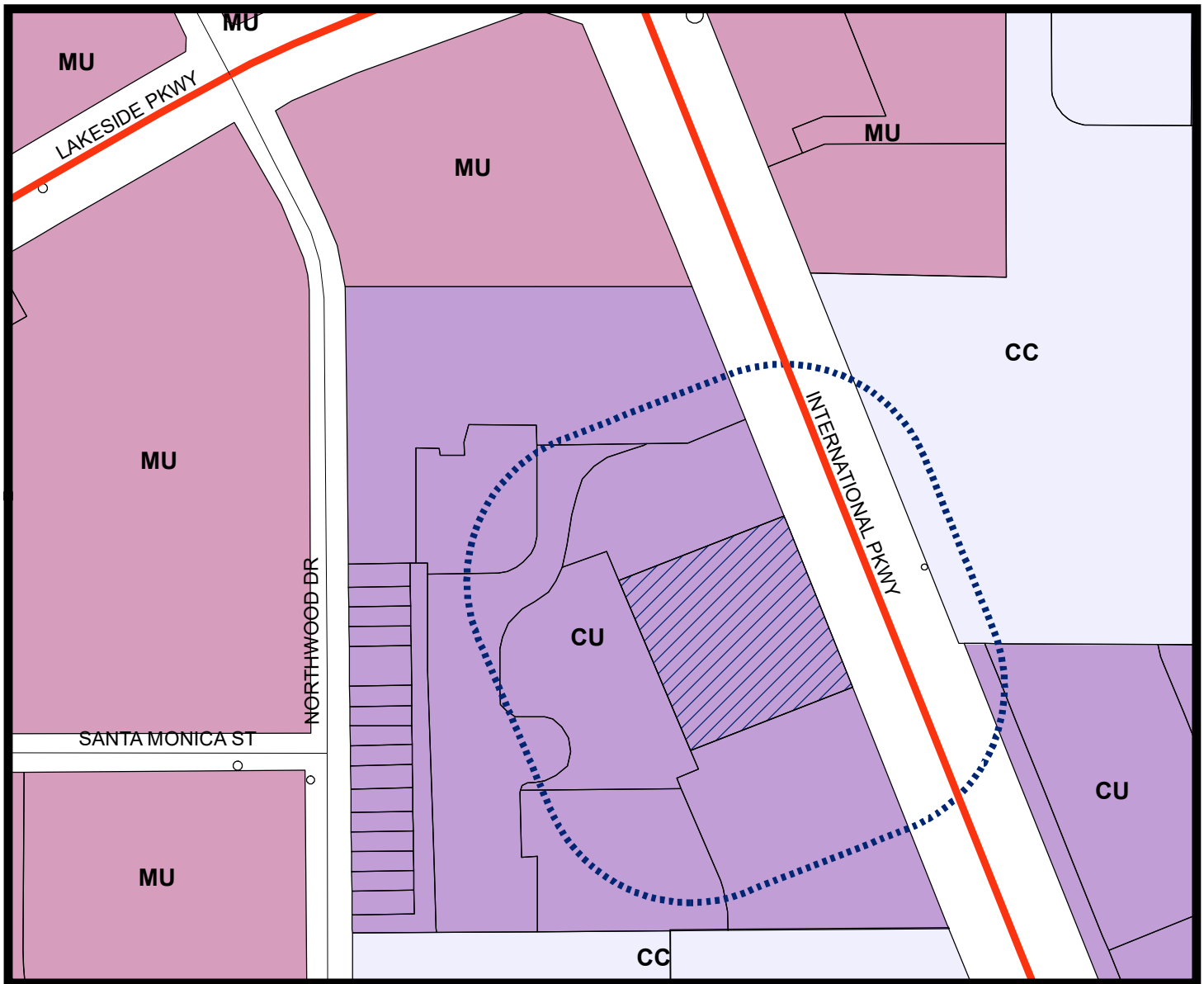
B. Application Details

1. Specific Use Permit Package

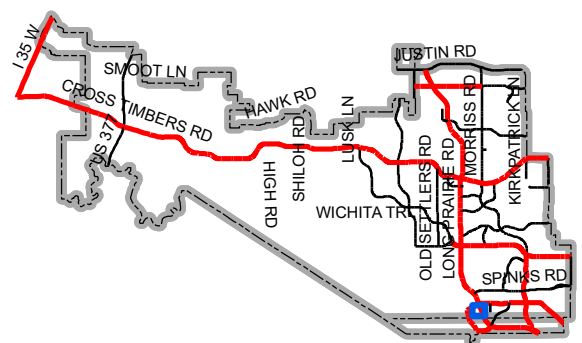
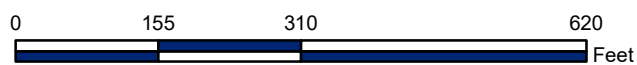
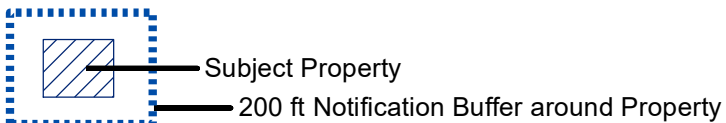


Vicinity Map

Reference Project: SUP21-0001



LEGEND



Map Location



Ms. Poornima Kashyap
Town of Flower Mound
Planning and Zoning
Senior Planner

April 21, 2021

Poornima,

Please accept this letter as our official request to process a Specific Use Permit to allow for Health/Sport Club for the property known as 811 International Parkway. This SUP is to allow for Jesse James Fit, LLC – Outlaw Fitcamp Franchise, LLC, provide health/sports club business in 5,672 square foot lease space inside the shopping center known as The Shops at Lakeside Crossing, Building 4. Jesse James Fit, LLC – Outlaw Fitcamp Franchise, LLC will occupy suites 450 and 460 totaling the 5,672 square foot of space. The hours of operation will be 5:00AM to 7:30PM, Monday through Friday. And 7:00AM to 1:00PM on Saturday. Current zoning is planned development No. 153 with underlying campus commercial zoning. The current use of space is for retail, restaurant, and office. We propose adding Health/Sports Club.

The proposed project is in compliance with the approved site plan and the site plan is currently under review for proposed changes. However, those site changes should not affect the SUP requested here.

Outside of obtaining a Specific Use Permit for this shopping center, there are no other requests.

Building 4:
Property ID: 752299 – Lakeside Crossing BLK A LOT 4
Address: 811 International Parkway.
Owner: Newstream Retail Partners – FM, LLC.

Site Acreage: 1.2840

Regards,

A handwritten signature in black ink, appearing to read 'Timothy Nystrom', is written over a horizontal line.

Timothy Nystrom,
Manager
Lakeside Crossing Land Partners, LP.
Newstream Retail Partners – FM, LLC.

Shared Parking Numbers for Buildings 4 & 5 only

SCHEDULE OF MIXED USE PARKING - BLDGS. 4&5					
	Weekday		Weekend		Night
	Daytime	Evening	Daytime	Evening	
	6A-6P	6P-Mid	6A-6P	6P-Mid	6A
Office	22	3	3	2	2
Retail	35	62	69	48	4
Restaurant	49	97	97	97	10
Hotel	0	0	0	0	0
Totals	106	162	169	147	16

*274 (256 on-site + 18 on-street parking spaces)

Total Parking - Complete Development Buildout

SCHEDULE OF MIXED USE PARKING - BLDGS. 1-7					
	Weekday		Weekend		Night
	Daytime	Evening	Daytime	Evening	
	6A-6P	6P-Mid	6A-6P	6P-Mid	6A
Office	191	20	20	10	10
Retail	46	82	91	64	5
Restaurant	84	168	168	168	17
Hotel	94	134	94	134	94
Totals	415	404	373	376	126

*465 (447 on-site + 18 on-street parking spaces)

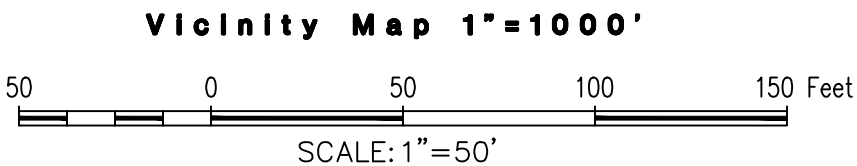
SCHEDULE OF MIXED USE PARKING - PERCENTAGES

	Weekday		Weekend		Night
	Daytime	Evening	Daytime	Evening	
	6A-6P	6P-Mid	6A-6P	6P-Mid	6A
Office	100%	10%	10%	5%	5%
Retail	50%	90%	100%	70%	5%
Restaurant	50%	100%	100%	100%	10%
Hotel	70%	100%	70%	100%	70%

FUTURE PARKING TABLE - LAKESIDE CROSSING		
Physical Address	TBD	
Gross Site Area	12,000 A; 522,720 SF	
Net Site Area	12,000 A; 522,720 SF	

Parking Summary		
	Required	Provided
Surface Parking		
Retail - 1 space per 250 Square Feet		
Office - 1 space per 300 Square Feet		
Hotel - 1 per lodging room		
Hotel Conference Area - 1 space per 150 SF		
Restaurant - 1 space per 75 SF		

LAKESIDE CROSSING		
Phase I Parking	169	256
Phase I Parking - Northwood	0	18
Total Parking - all uses @ Buildout	426	465

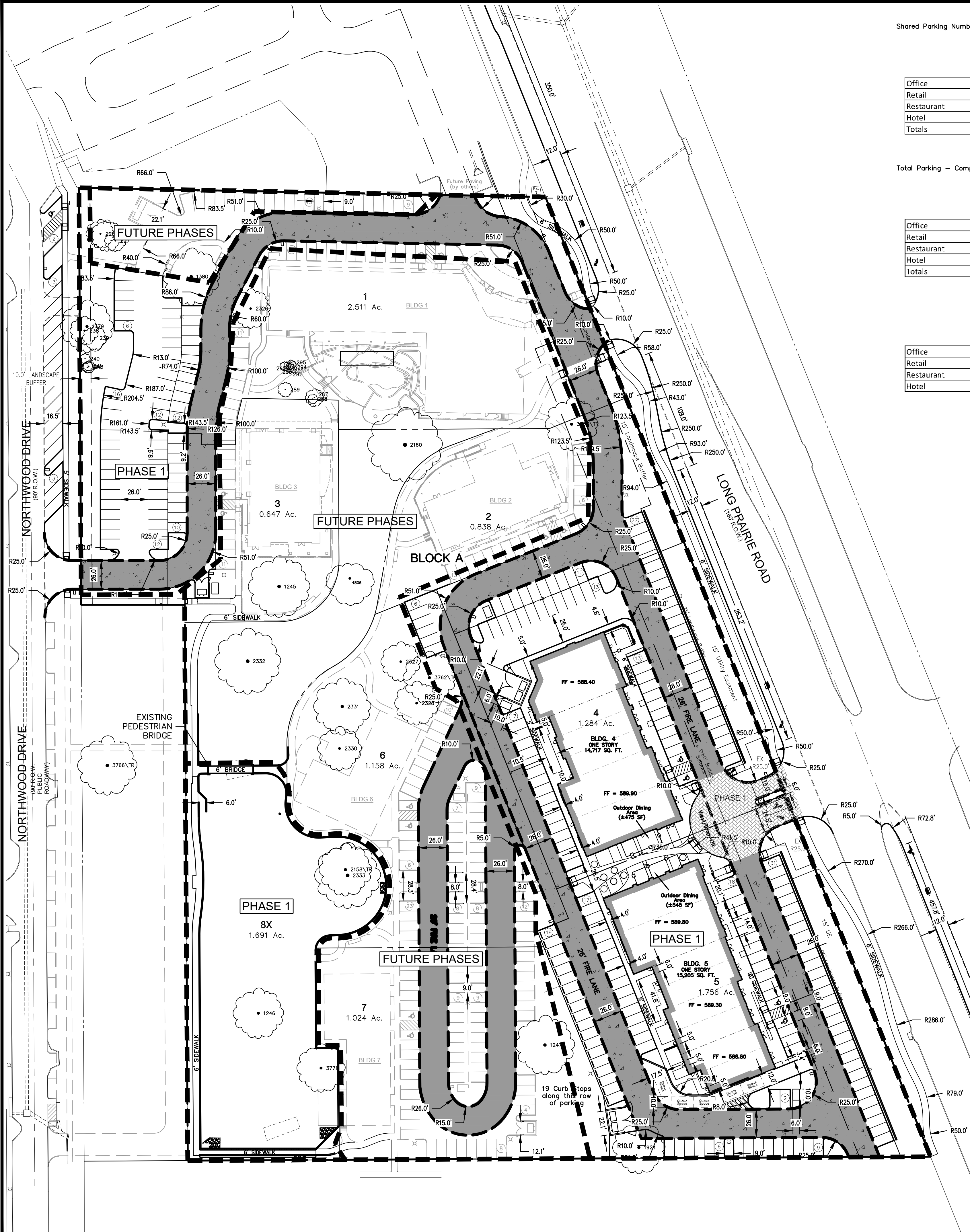


BOX CUT ON TOP OF THE WESTERN CURB OF NORTHWOOD DRIVE, NEAR A STREET LIGHT APPROXIMATELY 130' SOUTH OF THE NORTHWEST CORNER OF SUBJECT PROPERTY ELEV.=590.87

BOX CUT ON THE NORTHEAST CORNER OF A CURB INLET LOCATED ALONG THE WESTERN CURB OF NORTHWOOD DRIVE APPROXIMATELY 58' NORTH OF THE SOUTHWEST CORNER OF THE PROPERTY ELEV.=577.78

GENERAL NOTES:

- DEVELOPMENT OF FUTURE PHASES IS SUBJECT TO ORDINANCE 25-17 AND APPROVED SITE PLANS. (SEE MARKUPS).
- REFER TO CONCEPTUAL SITE PLAN FOR 3' CONCRETE TEMPORARY SIDEWALK TO BE CONSTRUCTED FROM THE PEDESTRIAN BRIDGE TO BUILDINGS 4&5.



LAKESIDE CROSSING

Lot 1-7 & 8X, Block A

LAKESIDE CROSSING

10.910 Acres

J.N. TANNER SURVEY, ABSTRACT NO. 1252

TOWN OF FLOWER MOUND

DENTON COUNTY, TEXAS

CONCEPT PHASING PLAN

PRELIMINARY PLANS

THIS DOCUMENT IS FOR INTERIM REVIEW AND IS NOT INTENDED FOR CONSTRUCTION, BIDDING, OR PERMIT PURPOSES. THE JOHN R. MCADAMS COMPANY, INC. TPBE: 19762 ROBERT JOHN DOLLAK, JR., P.E. #56898 DATE 4/8/2021

Drawn By: AR
Date: 10/30/2017
Scale: 1"=50'
Revisions:
10/07/2020
01/26/2021
04/08/2021

16326

OWNER/DEVELOPER
NEWSTREAM COMMERCIAL
311 S. OAK STREET, SUITE 260
ROANOKE, TX 76262
Ph. 817-602-0678
Contact MR. TROY LEWIS

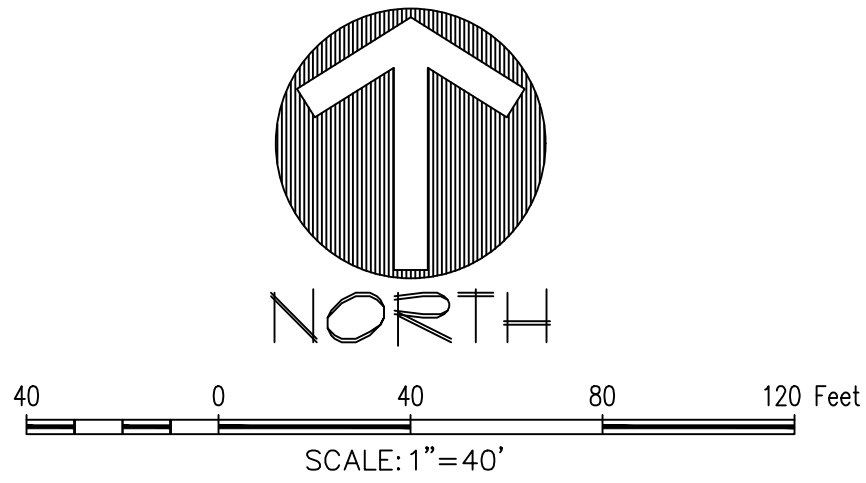
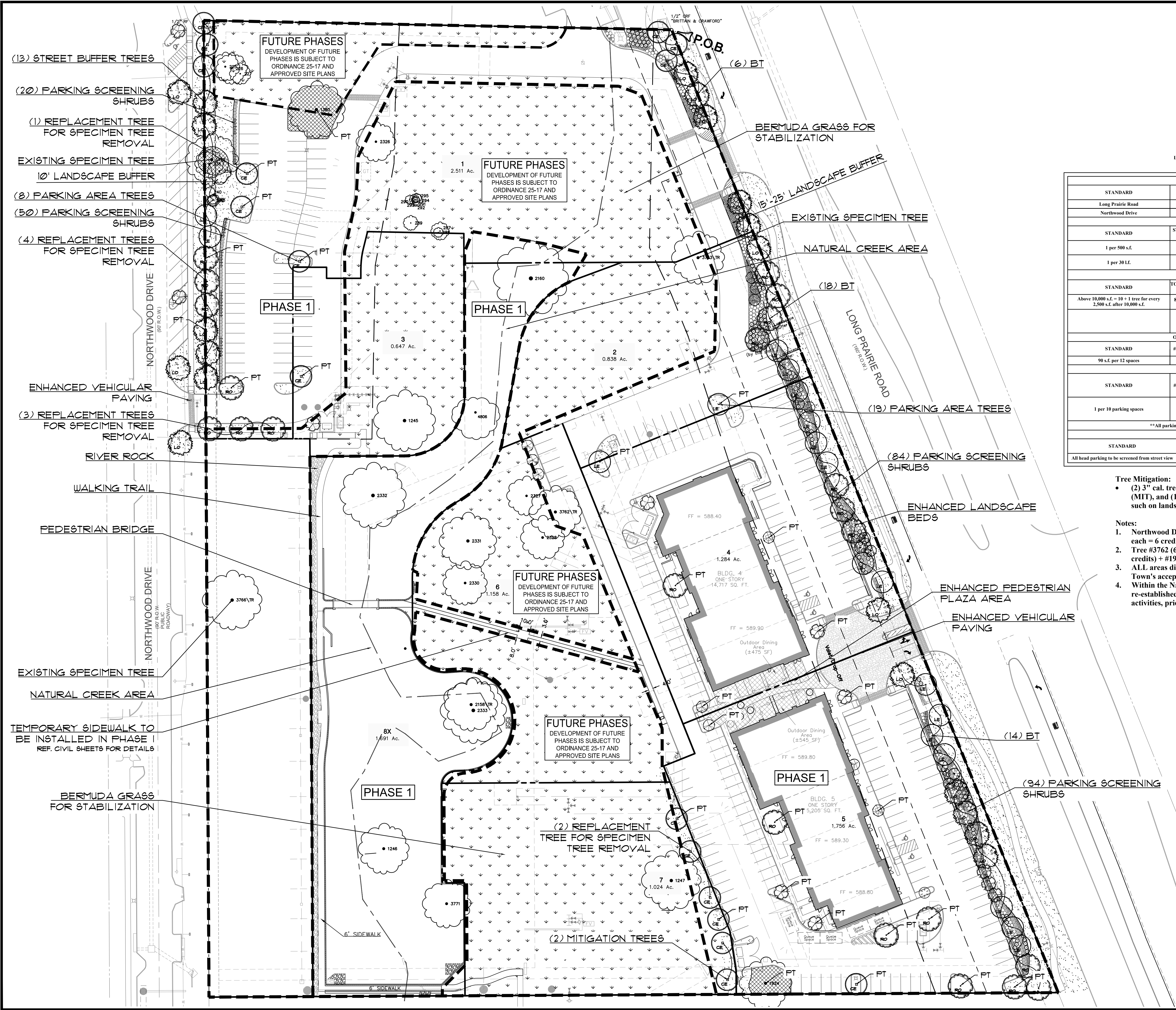
C3.1

LAKESIDE CROSSING



MCADAMS

The John R. McAdams Company, Inc.
111 Hillside Drive
Lewisville, Texas 75057
972.436.9712
201 Country View Drive
Rockwall, Texas 75087
940.246.1012
TPBE: 19762 TPPLS: 10194440
www.mcadamsco.com



LANDSCAPE REQUIREMENT COMPLIANCE
TOWN OF FLOWER MOUND
Lakeside Crossing

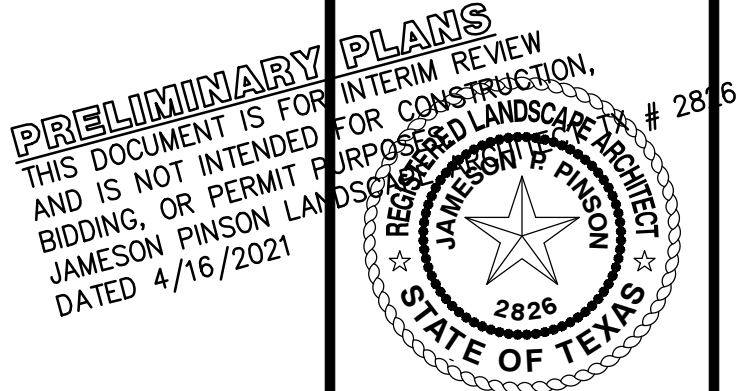
STREET BUFFER LANDSCAPING				
STANDARD		OVERALL REQUIRED BUFFER WIDTH	PROVIDED	
Long Prairie Road		25 ft.	15-25 ft.	
Northwood Drive		10 ft.	10 ft.	
OVERALL STREET BUFFER TREES				
STANDARD	STREET FRONTAGE (LINEAR FEET)	OVERALL REQUIRED	PROVIDED PHASE 1	PROVIDED FUTURE PHASES
1 per 500 s.f.	Long Prairie Rd. - 18,657 s.f.	38 trees (3" cal.)	38 trees (3" cal.)	n/a
1 per 30 L.F.	Northwood Dr. - 380 L.F.	13 trees (3" cal.)	13 trees (3" cal.)	n/a
STREET YARD TREES				
STANDARD	TOTAL STREET YARD (SQUARE FEET)	OVERALL REQUIRED	PROVIDED PHASE 1	PROVIDED FUTURE PHASES
Above 10,000 s.f. = 10 + 1 tree for every 2,500 s.f. after 10,000 s.f.	82,740 s.f. along Long Prairie Rd.	39 trees (3" cal.)	32 of 39 trees (3" cal.) + 2 existing specimen tree	13 of 39 trees (3" cal.)
	61,206 s.f. along Northwood Dr.	31 trees (3" cal.)	22 of 31 trees (3" cal.) + 3 existing specimen + 9 protected trees	4 of 31 trees (3" cal.)
OVERALL PARKING AREA LANDSCAPING				
STANDARD	# OF PARK. SPACES	OVERALL REQUIRED	PROVIDED PHASE 1	PROVIDED FUTURE PHASES
90 s.f. per 12 spaces	446 parking spaces	4,372 s.f.	6,145 of 4,372 s.f.	6,114 of 4,372 s.f.
PARKING AREA TREES				
STANDARD	# OF PARK. SPACES	OVERALL REQUIRED	PROVIDED PHASE 1 (274 SPACES)	PROVIDED FUTURE PHASES (191 SPACES)
1 per 10 parking spaces	465 parking spaces	47 trees (3" cal.)	18 trees (3" cal.) + 7 ornamental trees + 2 existing trees	16 trees (3" cal.) + 7 ornamental trees + 4 existing trees
**All parking spaces to be located within a 50 ft. avg. of parking lot tree.				
PARKING AREA SCREENING				
STANDARD		Landscape Berm or Screening Shrubs	PROVIDED PHASE 1	PROVIDED FUTURE PHASES
All head parking to be screened from street view		3' ht. screen	Screening shrubs (3' ht.)	n/a

Tree Mitigation:

- (2) 3" cal. trees to be planted in Phase 1, called out on landscape plan as (MIT), and (10) replacement trees for specimen tree removal, labeled as such on landscape plan.

Notes:

- Northwood Dr. Street Buffer Trees: #1379, 238, 240, 241, 242, 243 (1 credit each = 6 credits) + 7 new trees (3" cal.) = 13 landscape buffer trees
- Tree #3762 (6 credits) + #2159 (6 credits) + #3762 (5 credits) + #1247 (4 credits) + #1924 (5 credits) + 47 new trees = 73 parking trees
- ALL areas disturbed by construction shall be re-vegetated prior to the Town's acceptance of Phase 1.
- Within the Natural Creek Area, native and riparian plant material shall be re-established if impacted by clearing and grubbing or construction activities, prior to the Town's acceptance of Phase 1.



OWNER/DEVELOPER
NEWSTREAM COMMERCIAL
381 S. OAK STREET, SUITE 250
ROANOKE, TX 76262
Ph. 817-602-0578
Contact: MR. TROY LEWIS

LAKESIDE CROSSING
Lot 1-7, 8X, Block A
LAKESIDE CROSSING
in the
10.970 Acres
J.N. TANNEHILL SURVEY, ABSTRACT NO. 1252
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

CONCEPT PHASE I
LANDSCAPE PLAN

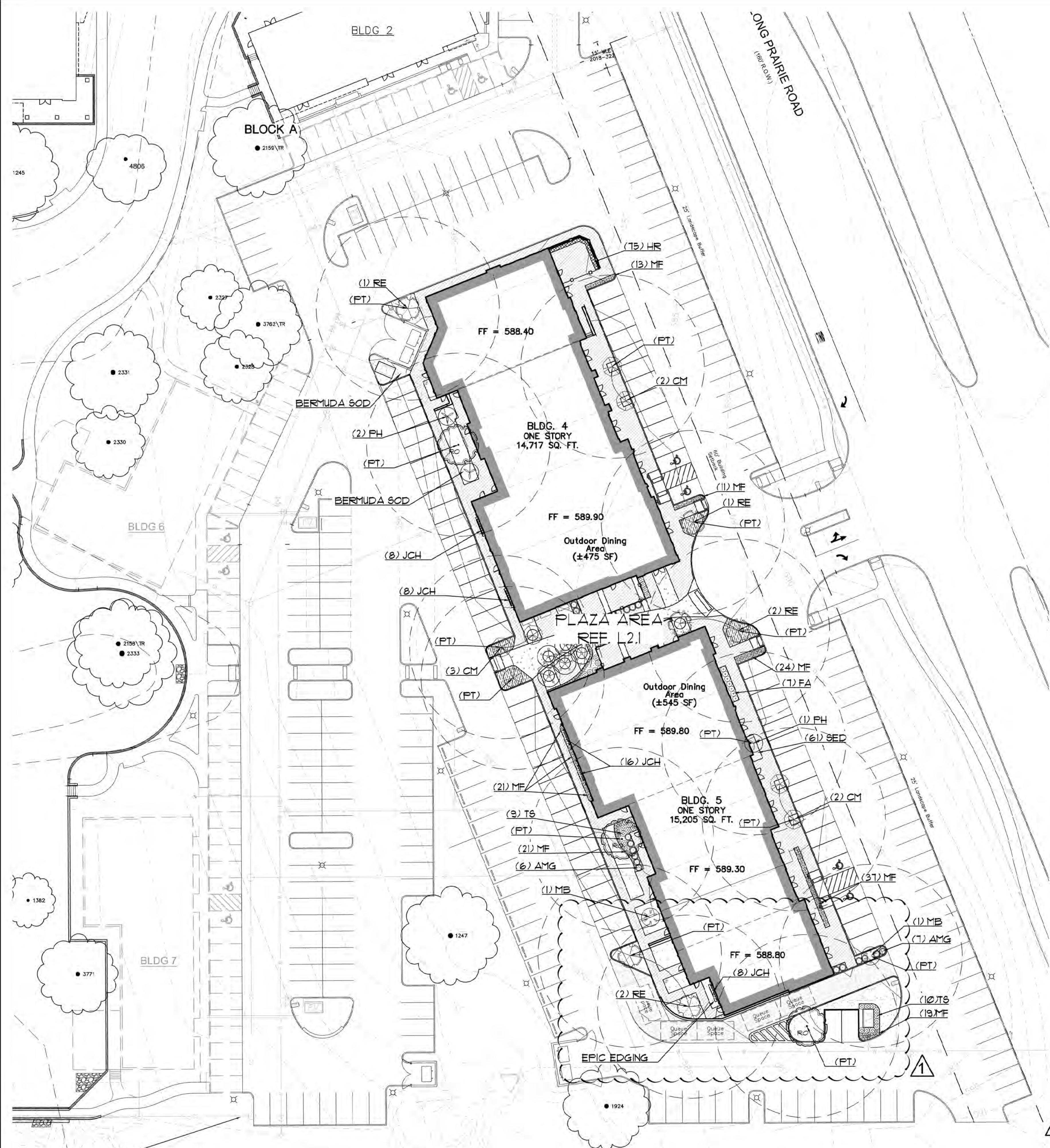
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Revisions:
11/20/2017
12/14/2017
01/17/2018
02/07/2018
9/17/2018
10/7/2020

16326

CLP



LAKESIDE CROSSING



LANDSCAPE REQUIREMENT COMPLIANCE TOWN OF FLOWER MOUND Lakeside Crossing: Buildings 4 & 5			
LAKESIDE CROSSING: STREET YARD TREES			
STANDARD	TOTAL STREET YARD (SQUARE FEET)	REQUIRED	PROVIDED
Above 10,000 s.f.=10 + 1 tree for every 2,500 s.f. after 10,000 s.f.	82,740 s.f. of Long Prairie Rd. street yard	39 trees (3" cal.)	48 trees (3" cal.) + 2 existing specimen
	61,206 s.f. of Northwood Dr. street yard	31 trees (3" cal.)	23 trees (3" cal.) + 9 existing specimen
LAKESIDE CROSSING BUILDING 4 & 5: STREET YARD TREES			
STANDARD	TOTAL STREET YARD (SQUARE FEET)	REQUIRED	PROVIDED
Above 10,000 s.f.=10 + 1 tree for every 2,500 s.f. after 10,000 s.f.	82,740 s.f. of Long Prairie Rd. street yard	39 trees (3" cal.)	n/a
	61,206 s.f. of Northwood Dr. street yard	n/a	n/a
LAKESIDE CROSSING: PARKING AREA LANDSCAPING			
STANDARD	# OF PARK. SPACES	REQUIRED	PROVIDED
90 s.f. per 12 spaces	466 parking spaces	3,495 s.f.	24,462 s.f.
LAKESIDE CROSSING BUILDING 4 & 5: PARKING AREA LANDSCAPING			
STANDARD	# OF PARK. SPACES	REQUIRED	PROVIDED
90 s.f. per 12 spaces	67 of 466 spaces	503 s.f. of 3,495 s.f.	1,391 s.f.
LAKESIDE CROSSING: PARKING AREA TREES			
STANDARD	# OF PARK. SPACES	REQUIRED	PROVIDED
1 per 10 parking spaces	466 parking spaces	47 trees (3" cal.)	50 trees See Note #3
LAKESIDE CROSSING BUILDING 4 & 5: PARKING AREA TREES			
STANDARD	# OF PARK. SPACES	REQUIRED	PROVIDED
1 per 10 parking spaces	67 of 466 spaces	7 of 47 trees (3" cal.)	3 tree (3" cal.) 10 ornamental trees (14 out of 47 = 30%)
**All parking spaces to be located within a 50 ft. avg. of parking for tree.			
LAKESIDE CROSSING: PARKING AREA SCREENING			
STANDARD		Landcape berm or screening shrubs	PROVIDED
All head parking to be screened from street view		3' ht. screen	Screening shrubs (3' ht.)
LAKESIDE CROSSING BUILDING 4 & 5: PARKING AREA SCREENING			
STANDARD		Landcape berm or screening shrubs	PROVIDED
All head parking to be screened from street view		3' ht. screen	n/a

Lakeside Crossing Notes:

"Tree Mitigation: (19) 3" cal. trees called out on landscape plan as (MTT).

"Note #1: Tree #219, 236, 240, 241, 242, 243 (1 credits each + 6 credits) + 1 new tree (3" cal.) + 13 landscape buffer

"Note #2: Tree #363 (6 credits) + #219 (6 credits) + #362 (5 credits) + #247 (4 credits) + #24 (5 credits) + 41 new trees = 13 parking trees

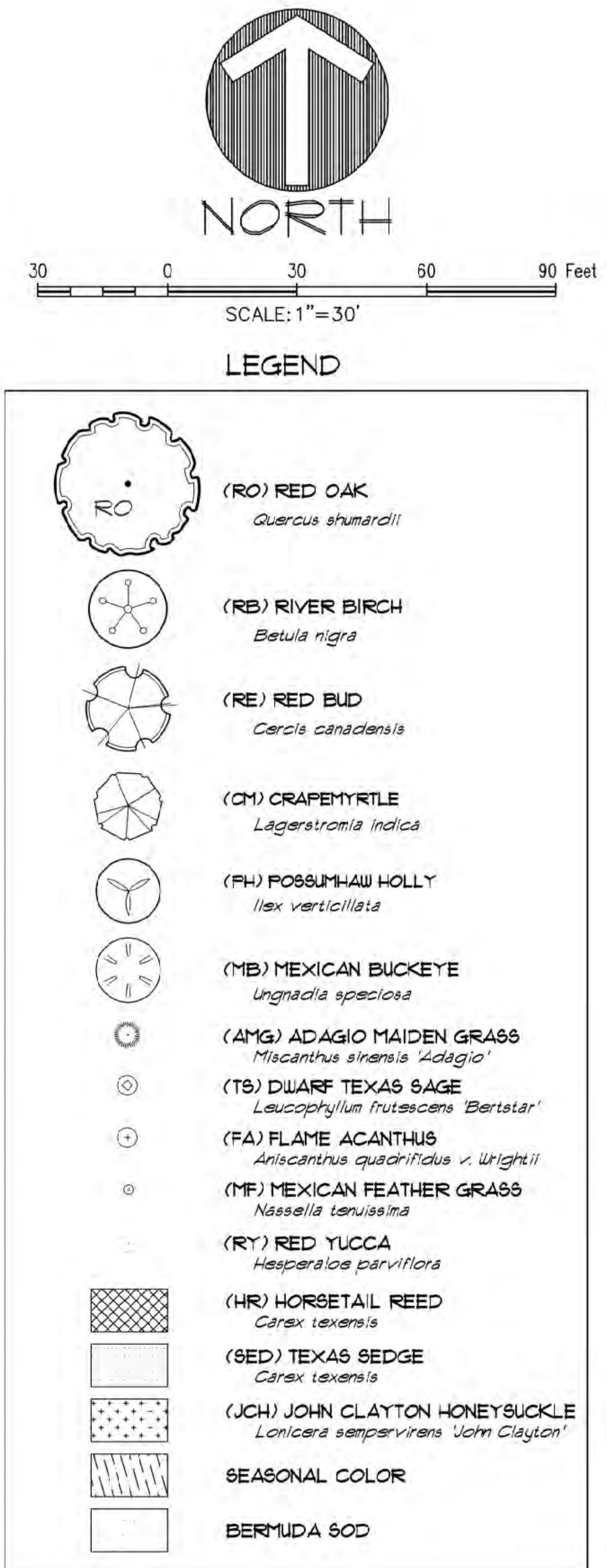
"Note #3: Lakeside Crossing (Phase 1) Parking Lot Trees = 15 (3-inch) cal. trees + 5 existing trees + 3 ornaments trees = 21 parking lot trees

Lakeside Crossing Building 4 & 5 Parking Lot Trees = 3 (3-inch) cal. trees + 10 ornamental trees = 13 parking lot trees

Future Lakeside Crossing Phase Parking Lot: Trees = 14 (3-inch) cal. trees + 2 existing trees = 16 parking lot trees

PARKING LOT TREE TOTAL: 21 trees = 15 trees + 16 trees = **50 parking lot trees**

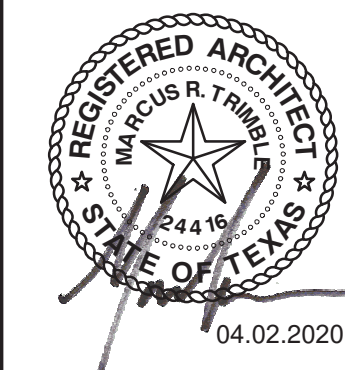
PLANT LIST						
QTY.	COMMON NAME	BOTANICAL NAME	SIZE	MIN. HT.	SPACE	REMARKS
3	RED OAK	Quercus shumardii	3" cal.	10'-12'	Per Plan	Single Trunk
5	RIVER BIRCH	Betula nigra	3" cal.	10'-12'	Per Plan	Multi-Trunk
6	RED BUD	Cercis canadensis	30gal.	7'-8'	Per Plan	Full
7	CRAPPE MYRTLE	Lagerstroemia indica 'Tuscarora'	30gal.	7'-8'	Per Plan	Multi-Trunk
3	POSSUMHAW HOLLY	Ilex verticillata	30gal.	7'-8'	Per Plan	Full
2	MEXICAN BUCKEYE	Ungadia speciosa	15 gal.	5'-6'	Per Plan	Multi-trunk
23	ADAGIO MAIDEN GRASS	Miscanthus sinensis 'Adagio'	5 gal.	36"	Per Plan	Full
30	DWARF TEXAS SAGE	Leucophyllum frutescens 'Bertola'	5 gal.	30"	2'-0'	Full
7	FLAME ACANTHUS	Anisacanthus quadrifidus v. wrightii	3 gal.	30"	Per Plan	Full
154	MEXICAN FEATHER GRASS	Nassella tenuissima	3 gal.	18"	2'-0'	Full
20	RED YUCCA	Hesperaloe parviflora	3 gal.	12"	3'-0'	Xeri
75	HORSETAIL REED	Equisetum hyemale	1 gal.	12"	3'-0'	Full
61	TEXAS SEDGE	Carex texensis	1 gal.	6"	12"	Full
40	JOHN CLAYTON HONEYSUCKLE	Lonicera sempervirens 'John Clayton'	1 gal.	6"	12"	Full
400	SEASONAL COLOR		4" pot	6"	Per Plan	Foli
2,930	BERMUDA SOD		SQ. FT.			



The John K. McAdams
 Company, Inc.
 (DBA, G&A | McAdams)
 111 Hillside Drive
 Lewisville, Texas 75057
 972.436.9712
 201 Country View Drive
 Roanoke, Texas 76262
 940.240.1012
 TBP: 19/62 TBP: 10194401
 www.gacon.com
 www.mcadamsco.com

Lot 4 & 5, Block A
3.040 Acres
in the
J.N. TANNEHILL SURVEY, ABSTRACT NO. 1252
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

Drawn By: MH
Date: 01/07/2019
Scale: 1"=30'
Revisions:
03/13/2019
04/15/2019
05/20/2019
06/12/2019
07/22/2019
05/18/2020



SHOPS AT LAKESIDE CROSSING
Flower Mound, Texas

LAKESIDE
— CROSSING —



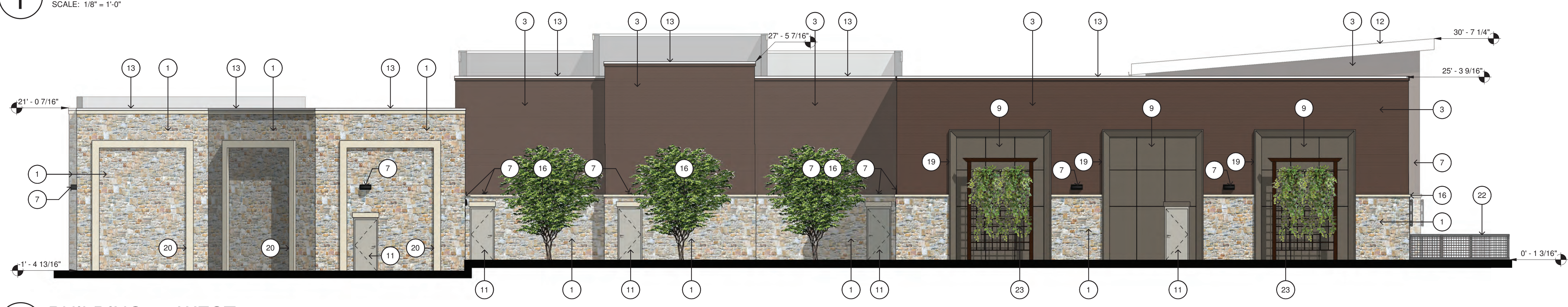
NO.	REVISION	DATE

Project #:	14001
Date	08.05.19
Drawn by:	MRT
Checked by:	MRT

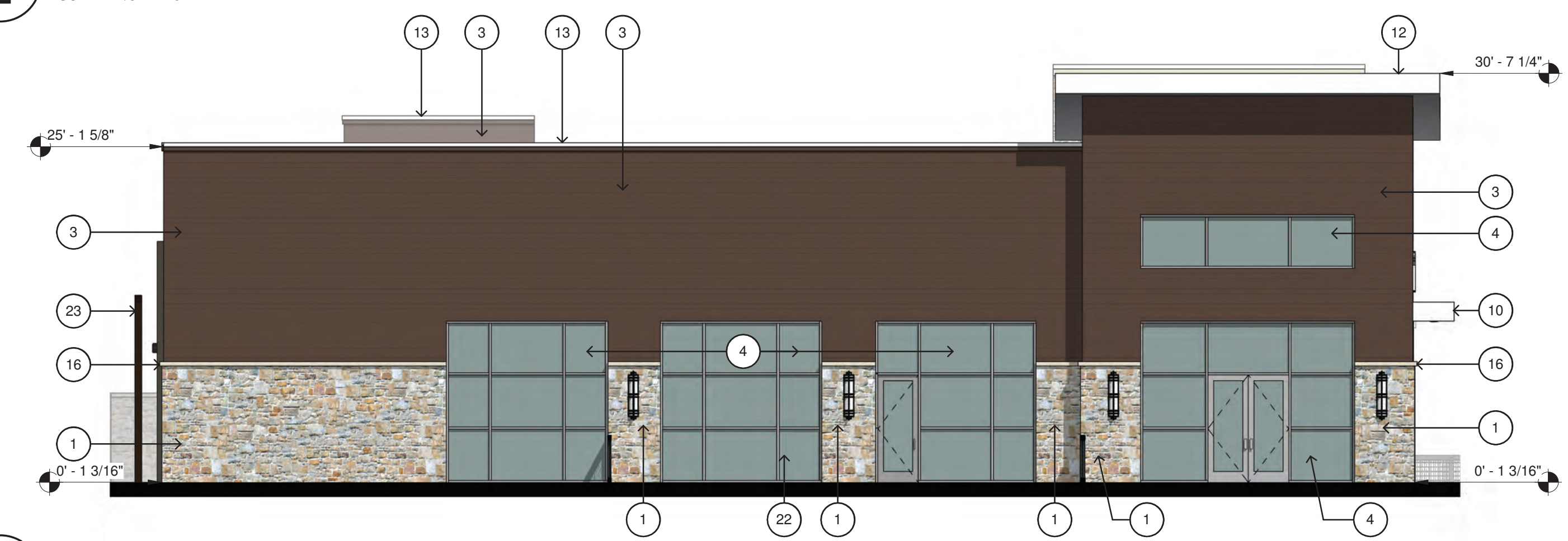
A9.1
BUILDING 4
ELEVATIONS -
COLOR



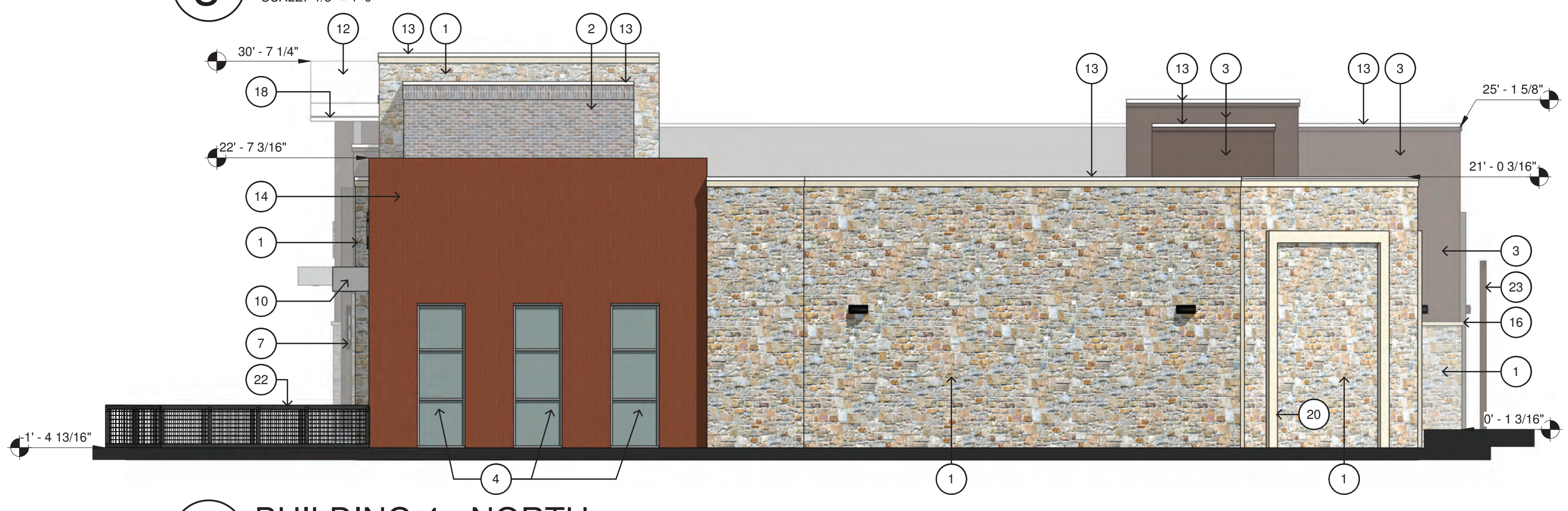
1 BUILDING 4 - EAST
SCALE: 1/8" = 1'-0"



2 BUILDING 4 - WEST
SCALE: 1/8" = 1'-0"



3 BUILDING 4 - SOUTH
SCALE: 1/8" = 1'-0"

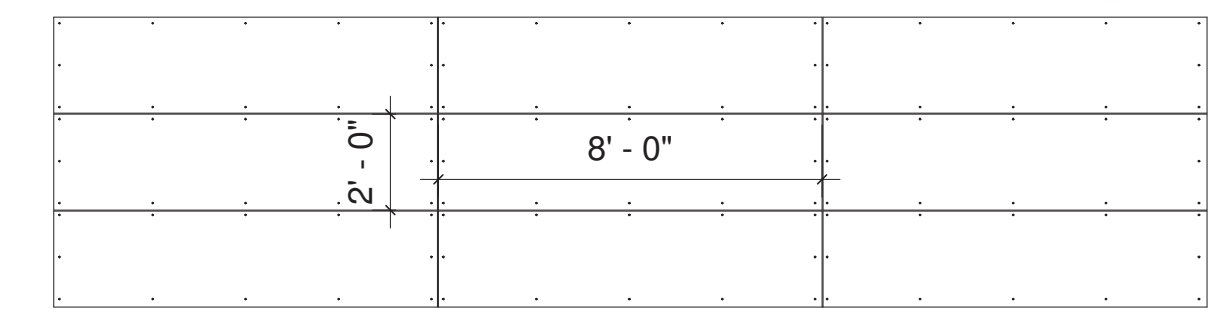


4 BUILDING 4 - NORTH
SCALE: 1/8" = 1'-0"

KEYED NOTES	
1	STONE (CORONADO STONE PRODUCTS - FRENCH COUNTRY VILLA SERIES); COLOR: CHAMPAGNE.
2	BRICK (TRIANGLE BRICK); COLOR: GRAND ISLE.
3	ARCHITECTURAL COMPOSITE WALL PANEL (NICHIIA ROUGHSAWN); COLOR: ESPRESSO.
4	ALUMINUM STOREFRONT SYSTEM (CLEAR ANODIZED ALUMINUM).
6	FUTURE TENANT SIGNAGE.
7	LIGHT RE: ELEC.
9	W.D. EIFS (PAREX USA); COLOR: CAVERN.
10	PREFINISHED ALUMINUM CANOPY.
11	DOOR AS SCHEDULED.
12	PREFINISHED STANDING SEAM METAL ROOF.
13	PREFINISHED CORING CAR (PAC/CLAD); COLOR: ALMOND.
14	COMPOSITE ALUMINUM PANEL (REYNOBOND); COLOR: ITALIAN WALNUT.
15	DECORATIVE CMU HEAD (HEADWATERS); COLOR: WHITE LIMESTONE.
16	DECORATIVE CMU SILL (HEADWATERS); COLOR: WHITE LIMESTONE.
18	PREFINISHED GUTTER AND DOWNSPOUT. PROVIDE SPLASH PAN AT ALL DOWNSPOUT LOCATIONS, RE: 5/A8.3.
19	EIFS PROFILE, RE: 11/A8.3.
20	DECORATIVE CMU (HEADWATERS); COLOR: WHITE LIMESTONE; RE: 13/A8.3.
21	BRICK, RE: 12/A8.3.
22	PATIO RAILING, RE: LANDSCAPING.
23	TRELLIS, RE: LANDSCAPING.

BUILDING 4 - RETAIL/RESTAURANT	NORTH*	SOUTH*	EAST*	WEST*
TOTAL FAÇADE SQUARE FOOTAGE:	2449	2513	4966	4747
FAÇADE SQUARE FOOTAGE (EXCLUSIVE OF DOORS/WINDOWS)	2305	1810	3306	4624
DOORS AND WINDOWS SQ. FT.	144	703	1660	123
PRIMARY MASONRY TOTALS (%)	97.79%	96.18%	93.16%	97.32%
BRICK SQ. FT.	115	0	552	0
STONE SQ. FT.	1434	374	1109	1919
STUCCO/EIFS SQ. FT.	0	0	485	732
ARCHITECTURAL FIBER CEMENT WALL PANEL	178	1357	468	1849
COMPOSITE ALUMINUM PANEL	527	0	466	0
SECONDARY MASONRY TOTALS (%)	2.21%	3.81%	6.84%	2.68%
PREFINISHED METAL (COPING, FASCIA, TRIM)	51	59	226	124

*All numbers within the column are in square feet (SQ. FT.), U.N.O.



PANEL LAYOUT
SCALE: 1/4" = 1'-0"

The Following Plat/Graphic
Case Number ASP20-0021
Was Administratively Approved
On Date August 31, 2020



SITE DATA TABLE - LAKESIDE CROSSING BUILDINGS 4&5	
Physical Address	TBD
Gross Site Area	3,040 A; 132,422 SF
Net Site Area	3,040 A; 132,422 SF
Lot Coverage	
Building Coverage	
Building 4	15,145 SF; ±11.4%
Building 5	15,656 SF; ±11.8%
Impervious Coverage	±90%
Pervious Area	±10%

Parking Summary	
Surface Parking (refer to the shared parking charts below)	
Retail - 1 space per 250 Square Feet	
Office - 1 space per 300 Square Feet	
Restaurant/Patio - 1 space per 75 Square Feet	

Shared Parking Chart - 1 space per 250 Square Feet		
Lakeside Crossing Buildings 4&5	Required	Provided
Building 4 (Restaurant 3,386 SF)	45	40
Building 4 (Rest. Patio 474 SF)	6	2
Building 4 (Retail 2,927 SF)	12	12
Building 4 (Office 3,160 SF)	11	9
Building 4 (Health/Sprt) 5,672 SF)	23	23
Building 5 (Restaurant 3,629 SF)	48	40
Building 5 (Rest. Patio 537 SF)	7	2
Building 5 (Office 3,067 SF)	10	10
Building 5 (Retail 8,960 SF)	36	28
*Accessible Parking	4	4
Provided Parking (Adj. to Bldgs)	0	67
Existing Adjacent Onsite Parking	0	99
**Total Parking (Bldg. 4 & 5)	182	256
**Total Parking (Lakeside Crossing)	420	465

Building 4 Data	
Height (story/feet)	1 Story
Peak Height	31' 1 5/16"
Mean Height	28' 1 3/16"
Total Square Footage	15,145 SF
Building 5 Data	
Height (story/feet)	1 Story
Peak Height	29' 6"
Mean Height	27' 0"
Total Square Footage	15,656 SF

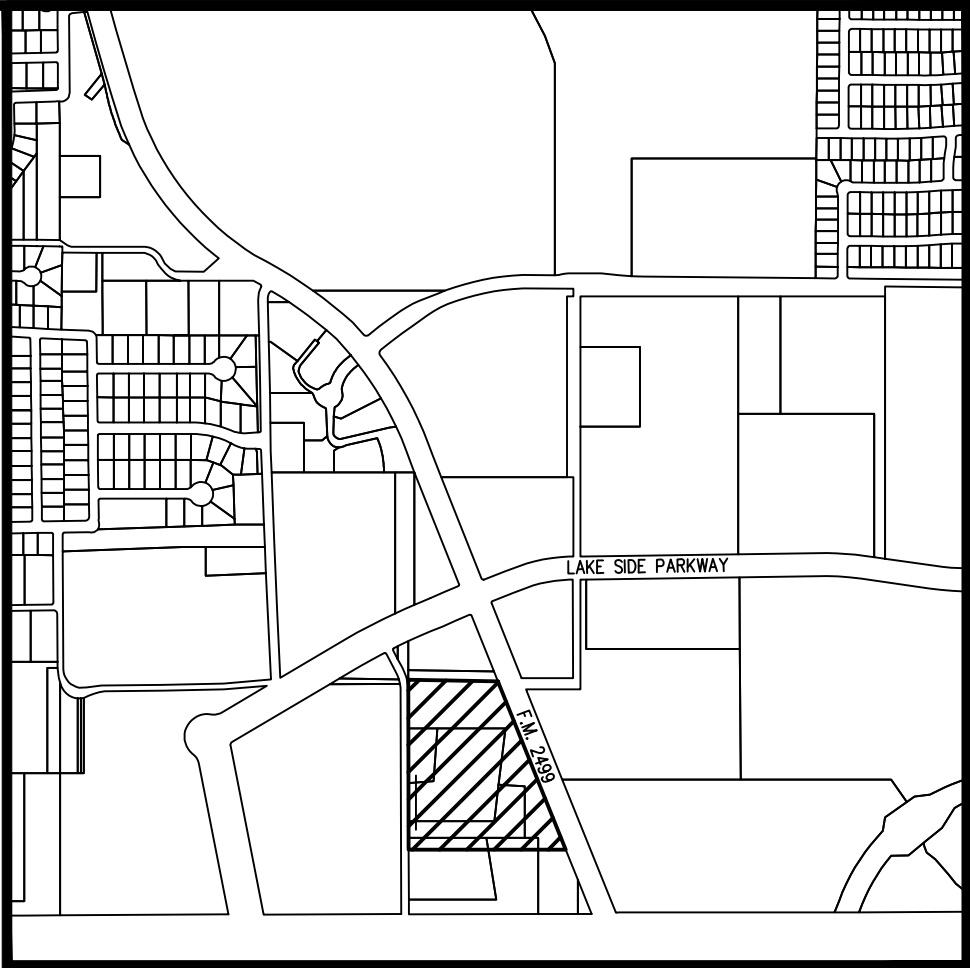
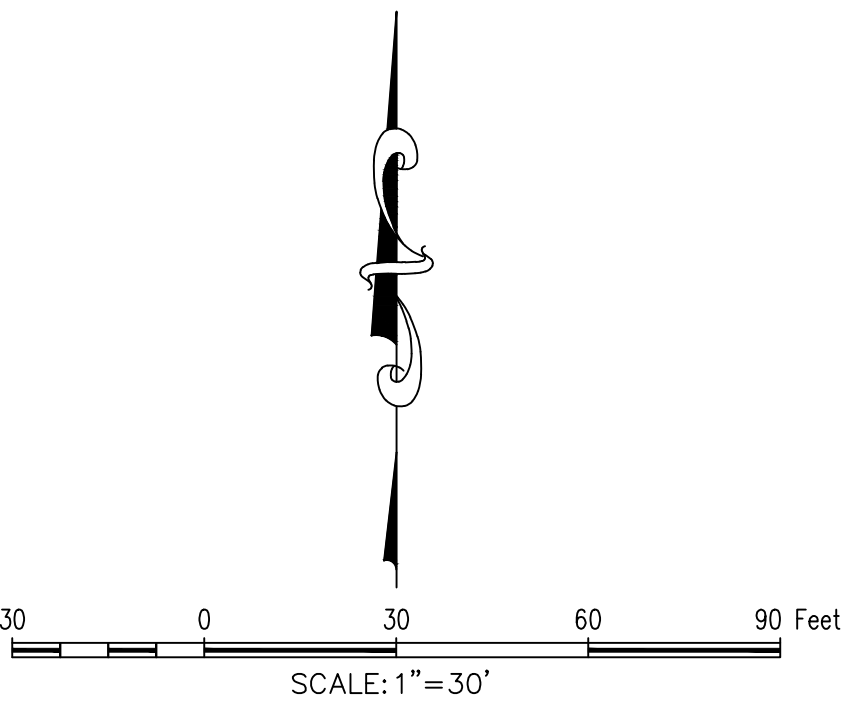
*Accessible Parking Provided based on the overall shared parking numbers for Lakeside Crossing (9 Required, 14 Provided)

**Total Parking numbers for Buildings 4&5 is based on the shared parking chart below, not the cumulative total from the numbers above. (Total parking numbers do NOT include any residential parking requirements, or the on-street parking in front of the residential)

Shared Parking Numbers for Buildings 4 & 5 only					
SCHEDULE OF MIXED USE PARKING - BLDGS. 4&5					
	Weekday		Weekend		Night
	Daytime	Evening	Daytime	Evening	Midnight
	6A-6P	6P-Mid	6A-6P	6P-Mid	6A
Office	21	3	3	2	2
Retail	36	64	71	50	4
Restaurant	54	108	108	108	11
Hotel	0	0	0	0	0
Totals	111	175	182	160	17

*274 (256 on-site + 18 on-street parking spaces)

Revised Overall Lakeside Crossing Parking Numbers with Revised Building Square Footages for Buildings 4 & 5					
SCHEDULE OF MIXED USE PARKING - PERCENTAGES					
	Weekday		Weekend		Night
	Daytime	Evening	Daytime	Evening	Midnight
	6A-6P	6P-Mid	6A-6P	6P-Mid	6A
Office	100%	10%	10%	5%	5%
Retail	50%	90%	100%	70%	5%
Restaurant	50%	100%	100%	100%	10%
Hotel	70%	100%	70%	100%	70%

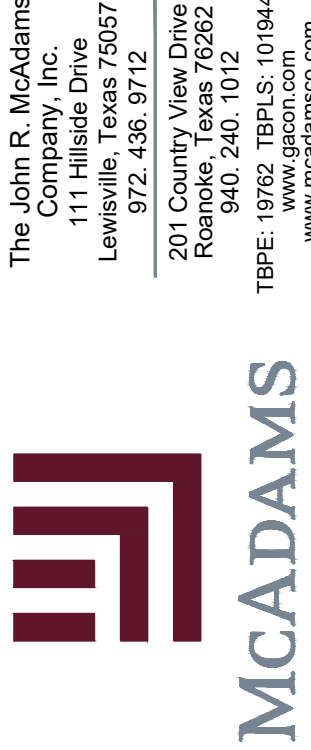


BOX CUT ON TOP OF THE WESTERN CURB OF NORTHWOOD DRIVE, NEAR A STREET LIGHT APPROXIMATELY 130' SOUTH OF THE NORTHWEST CORNER OF SUBJECT PROPERTY ELEV.=590.87

BOX CUT ON THE NORTHEAST CORNER OF A CURB INLET LOCATED ALONG THE WESTERN CURB OF NORTHWOOD DRIVE APPROXIMATELY 58' NORTH OF THE SOUTHWEST CORNER OF THE PROPERTY ELEV.=577.78

NOTES:

- CONTRACTOR IS TO CONTACT THE TOWN'S TREE ARBORIST PRIOR TO THE START OF CONSTRUCTION TO OBTAIN TREE PRESERVATION REQUIREMENTS DURING CONSTRUCTION.
- ALL PAVEMENT DIMENSIONS SHOWN ARE TO FACE OF CURB UNLESS OTHERWISE NOTED.
- ALL SIDEWALK DIMENSIONS SHOWN ARE TO THE EDGE OF PAVEMENT UNLESS OTHERWISE SHOWN.
- ALL RADII ARE 3.0 FEET UNLESS OTHERWISE NOTED.
- ALL PARKING SPOTS ARE 9.0' x 17.5' UNLESS OTHERWISE NOTED.
- THE LOCATION OF THE EXISTING UTILITIES SHOWN IS APPROXIMATE, THE CONTRACTOR IS TO FIELD VERIFY LOCATION AND DEPTH PRIOR TO CONDUCTING ANY WORK.
- REFER TO SHEET C4 FOR PAVING HATCH LEGEND.
- ALL RETAINING WALLS ARE TO BE CLAD IN A MATERIAL THAT MATCHES THE PROPOSED BUILDINGS.
- THE TOWN OF FLOWER MOUND CONSTRUCTION STANDARDS APPLY WHETHER INDICATED ON THESE PLANS OR NOT.
- ALL BUILDING MOUNTED UTILITY OR EQUIPMENT BOXES SHALL BE SCREENED FROM A STREET VIEW.
- SIGNS REQUIRE A SEPARATE BUILDING PERMIT. ANY SIGNS DEPICTED ON THE SITE PLAN OR ELEVATIONS ARE NOT APPROVED AS PART OF THIS REVIEW AND MUST COMPLY WITH THE TOWN'S REGULATIONS.
- THE DUMPSTER SCREENING WALL SHALL BE CLAD IN A MATERIAL TO MATCH THE MATERIALS ON THE MAIN BUILDING.
- REFER TO LANDSCAPE PLANS FOR ADDITIONAL INFORMATION ON THE RADII OF PAVEMENTS WITHIN THE COURTYARD AREA.



LAKESIDE CROSSING, BUILDINGS 4 & 5

Lots 4 & 5, Block A

J.N. TANNERHILL SURVEY, ABSTRACT NO. 1252
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

SITE PLAN AND DIMENSION
CONTROL PLAN

PRELIMINARY PLANS
THIS DOCUMENT IS FOR INTERIM REVIEW AND IS NOT INTENDED FOR CONSTRUCTION, BIDDING, OR PERMIT PURPOSES. THE JOHN R. MCADAMS COMPANY, INC. TBPE: 19762 ROBERT JOHN DOLAK, JR., P.E. #86898 DATE 5/28/2021

Drawn By: JMB
Date: 01/07/2019
Scale: 1"=30'
Revisions:
03/13/2019
04/15/2019
05/20/2019
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18351

C3

OWNER/DEVELOPER
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311 S. OAK STREET, SUITE 250
ROANOKE, TX 76262
Ph. 817-802-0578
Contact: MR. TROY LEWIS

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. 467 (SUP-467) FOR A HEALTH CLUB OR ATHLETIC CLUB USE ON CERTAIN PROPERTY DESCRIBED AS 1.284 ACRES OF LAND AND BEING ALL OF LOT 4, BLOCK A, OF LAKESIDE CROSSING AND ZONED PLANNED DEVELOPMENT NO. 153 (PD-153) WITH BOTH RESIDENTIAL AND NON-RESIDENTIAL USES; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; 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 1.284 acres of land and being all of Lot 4, Block A, of the Lakeside Crossing, Denton County, Texas has filed an application for a Specific Use Permit to allow health club or athletic club use; and,

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on June 14, 2021, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on June 21, 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 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:

1.284 acres of land, being all of Lot 4, Block A, of Lakeside Crossing, Denton County, Texas and zoned Planned Development No. 153 (PD-153) with both residential and non-residential uses.

Specific Use Permit No. 467 is granted to allow a health club or athletic club use as more fully described in the exhibits attached hereto and incorporated herein, subject to the following conditions:

1. The Specific Use Permit is limited to the 5,672 square-foot lease space located at the northern end of retail Building #4.
2. Hours of operation are limited to 5:00 a.m. to 7:30 p.m. Monday-Friday and 7:00 a.m. to 1:00 p.m. on Saturdays.
3. An amended site plan will be required to update the approved site plan.

SECTION 2

The conceptual site plan of the proposed health club or athletic club use, attached hereto as Exhibit "A," 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 No. 153 (PD-153).

SECTION 5

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

SECTION 6

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

SECTION 7

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

SECTION 8

All rights and remedies of the Town of Flower Mound are expressly saved as to any and all violations of the provisions of the 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.

SECTION 9

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

SECTION 10

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

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE 21ST DAY OF JUNE, 2021.

APPROVED:

Derek France, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY



SITE DATA TABLE - LAKESIDE CROSSING BUILDINGS 4&5	
Physical Address	TBD
Gross Site Area	3,040 A; 132,422 SF
Net Site Area	3,040 A; 132,422 SF
Lot Coverage	
Building Coverage	
Building 4	15,145 SF; ±11.4%
Building 5	15,656 SF; ±11.8%
Impervious Coverage	±90%
Pervious Area	±10%

Parking Summary	
Surface Parking (refer to the shared parking charts below)	
Retail - 1 space per 250 Square Feet	
Office - 1 space per 300 Square Feet	
Restaurant/Patio - 1 space per 75 Square Feet	

Shared Parking Chart - 1 space per 250 Square Feet		
Lakeside Crossing Buildings 4&5	Required	Provided
Building 4 (Restaurant 3,386 SF)	45	40
Building 4 (Rest. Patio 474 SF)	6	2
Building 4 (Retail 2,927 SF)	12	12
Building 4 (Office 3,160 SF)	11	9
Building 4 (Health/Sprt) 5,672 SF)	23	23
Building 5 (Restaurant 3,629 SF)	48	40
Building 5 (Rest. Patio 537 SF)	7	2
Building 5 (Office 3,067 SF)	10	10
Building 5 (Retail 8,960 SF)	36	28
*Accessible Parking	4	4
Provided Parking (Adj. to Bldgs)	0	67
Existing Adjacent Onsite Parking	0	99
**Total Parking (Bldg. 4 & 5)	182	256
**Total Parking (Lakeside Crossing)	420	465

Building 4 Data	
Height (story/feet)	1 Story
Peak Height	31' 1 5/16"
Mean Height	28' 1 3/16"
Total Square Footage	15,145 SF
Building 5 Data	
Height (story/feet)	1 Story
Peak Height	29' 6"
Mean Height	27' 0"
Total Square Footage	15,656 SF

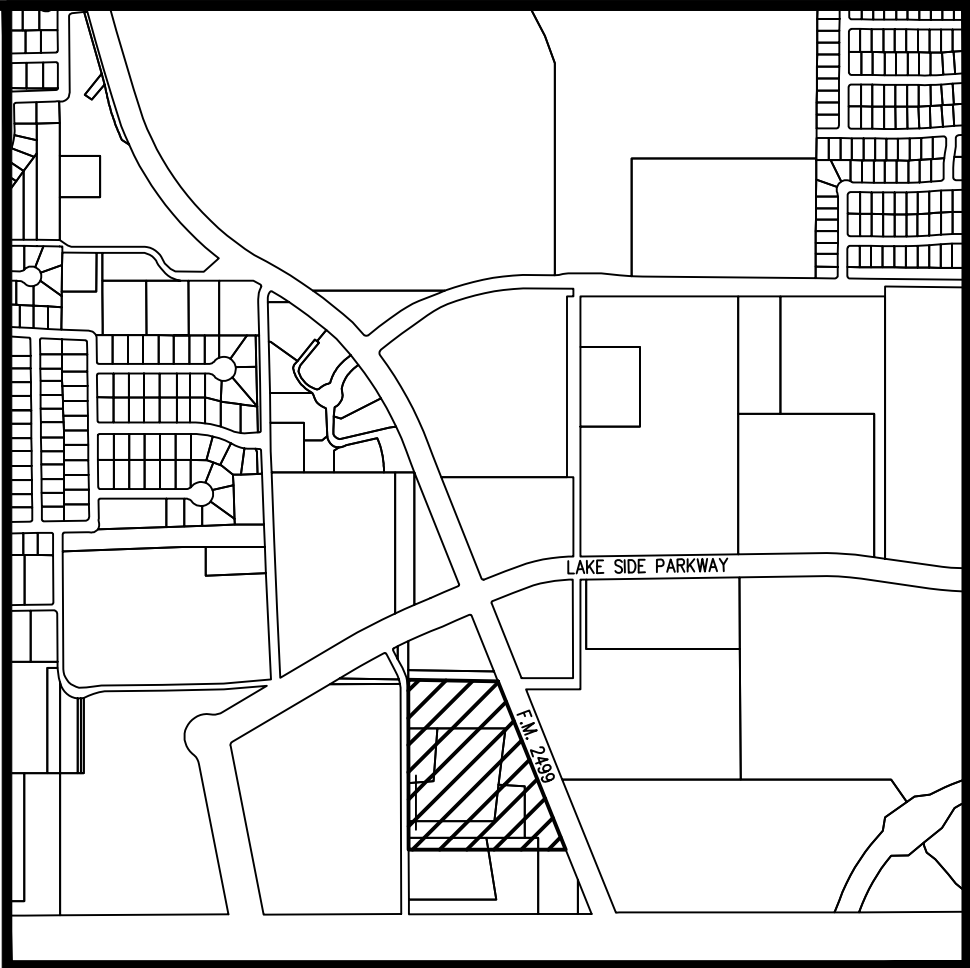
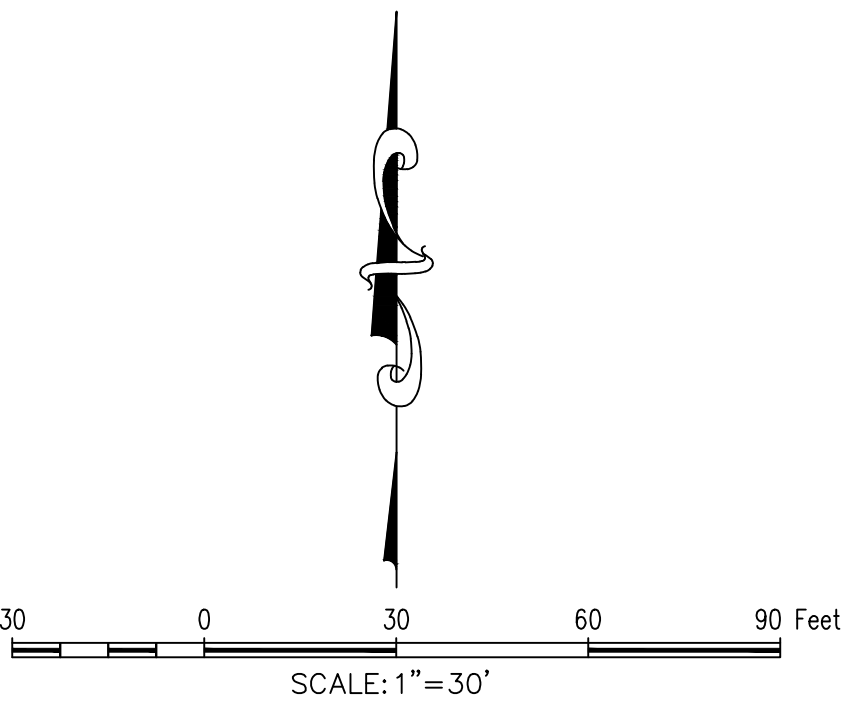
*Accessible Parking Provided based on the overall shared parking numbers for Lakeside Crossing (9 Required, 14 Provided)

**Total Parking numbers for Buildings 4&5 is based on the shared parking chart below, not the cumulative total from the numbers above. (Total parking numbers do NOT include any residential parking requirements, or the on-street parking in front of the residential)

Shared Parking Numbers for Buildings 4 & 5 only					
SCHEDULE OF MIXED USE PARKING - BLDGS. 4&5					
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BOX CUT ON THE NORTHEAST CORNER OF A CURB INLET LOCATED ALONG THE WESTERN CURB OF NORTHWOOD DRIVE APPROXIMATELY 58' NORTH OF THE SOUTHWEST CORNER OF THE PROPERTY ELEV.=577.78

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The John R. McAdams Company, Inc.
111 Hillside Drive
Lewisville, Texas 75057
972.436.9712
201 Country View Drive
Rockwall, Texas 75087
940.246.1012
TBPE: 19762 TBPLS: 1019440
www.mcadamsco.com

MCADAMS

LAKESIDE CROSSING, BUILDINGS 4 & 5
Lots 4 & 5, Block A
3,040 Acres
in the
J.N. TANNEHILL SURVEY, ABSTRACT NO. 1252
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

SITE PLAN AND DIMENSION CONTROL PLAN

PRELIMINARY PLANS
THIS DOCUMENT IS FOR INTERIM REVIEW AND IS NOT INTENDED FOR CONSTRUCTION, BIDDING, OR PERMIT PURPOSES. THE JOHN R. MCADAMS COMPANY, INC. TBPE: 19762 ROBERT JOHN DOLAK, JR., P.E. #86898 DATE 5/28/2021

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18351

C3

OWNER/DEVELOPER
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ROANOKE, TX 76262
Ph. 817-802-0578
Contact: MR. TROY LEWIS



TOWN COUNCIL AGENDA ITEM NO. 16

REGULAR ITEM

DATE: June 21, 2021

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

ITEM: **Consider approval of an ordinance increasing the residential homestead ad valorem (property) tax exemption to 5%**

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. On June 7, 2021, staff provided a presentation with possible scenarios to increase the exemption, and related impact on budget. Based on the presentation, Council direction was provided to bring forward an ordinance to increase the exemption to 5%.

If the ordinance is approved, 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: The first fiscal year the change is effective is FY2021-22

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

LEGAL REVIEW: The attached ordinance has been reviewed as to form and legality by Bryn Meredith with Taylor, Olson, Sralla, & Elam L.L.P., on June 16, 2021.

ATTACHMENTS:

1. Ordinance

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

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

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, PROVIDING FOR A RESIDENTIAL HOMESTEAD AD VALOREM (PROPERTY) TAX EXEMPTION; PROVIDING A SAVINGS/REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; 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, Section 11.13(n) of the Texas Tax Code authorizes the Town Council of the Town of Flower Mound, Texas ("Town Council") to adopt an exemption from taxation of a portion of the appraised value of an individual's residence homestead; and

WHEREAS, the Town Council has previously adopted an exemption under Texas Tax Code Section 11.13(n) in the amount of 2.5%; and

WHEREAS, the Town Council finds that it is in the public interest to change this exemption to 5% so that the tax rate calculations can be properly calculated with the increased amount; and

WHEREAS, the Town Council has investigated and determined that it would be advantageous and beneficial to the Town of Flower Mound and its citizens to adopt and increase the residential homestead ad valorem (property) tax exemption in accordance with Section 11.13(n) of the Texas Tax Code, as set forth below.

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

SECTION 1

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2

In addition to any other exemption provided by Texas law or Flower Mound ordinance, the owner of a residence homestead shall be entitled to an exemption from Flower Mound ad valorem taxation in an amount equal to the greater of five thousand dollars (\$5,000) or five percent (5%) of the appraised value of the residence homestead, subject to the limitations set forth in Texas law, including Section 11.13(n) of the Texas Tax Code, as it exists or may be amended. The exemption shall be granted to any such residential homestead and the improvements qualifying for same, as provided by law.

SECTION 3

The exemption set forth in Section 2 of this Ordinance shall become effective beginning with the 2021 tax year, and shall remain effective for each successive tax year until otherwise amended or repealed by the Town Council or other appropriate authority.

SECTION 4

All provisions of any ordinance in conflict with this Ordinance are hereby repealed, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent prosecution from being commenced for any violation occurring prior to the repeal of the ordinance. Any remaining portions of conflicting ordinances shall remain in full force and effect.

SECTION 5

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The Town Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

SECTION 6

This Ordinance shall become effective immediately upon its passage.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS ON THIS 21ST DAY OF JUNE, 2021.

APPROVED:

Derek France, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

Town Council Future Agenda Items



SCHEDULED	7/19/2021	Consent	Consider approval of the 2021 Lewisville Independent School District (LISD) for Contract with the Town of Flower Mound for law enforcement services.
		Consent	Consider approval of replacement of aged surveillance cameras and upgrade of current software in the amount of \$76,818.66
		Consent	Consider approval of the consumption of alcoholic beverages at the Flower Mound Senior Center during the SIM Auxiliary's Elite Chef Competition fundraiser
		Consent	Consider Approval of the purchase of traffic signal poles, signal heads, and signal parts in the estimated annual amount of \$650,000, from Consolidated Traffic Control, through the Houston-Galveston Area Council (H-GAC) contract.
		Consent	Consider approval of Change Order No. 1 to J.B. & Co., LLC., for the Hound Mound Parking Lot and Restroom project, in the amount of \$51,394.00; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Pink Evening Primrose Trail Connection (Bridge & Trail) - Testing Award
		Consent	Consider approval of the minutes from a regular meeting of the Town Council, and Town of Flower Mound Crime Control and Prevention District Special meeting held on June 21, 2021.
		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.
	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.
		Consent	Bruton-Orand @ FM 1171 Right Turn Lane - Construction Award
	9/20/2021	Consent	Bruton-Orand @ FM 1171 Right Turn Lane - Testing Award