

AGENDA

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

1/3/2022

**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. Administer Oath of Office to new Town Manager James W. Childers
2. Proclamation and presentation of Hometown Hero to Hunter Leyendecker
3. Insurance Services Office to present Public Protection Classification 1 (PPC/ISO 1) to the Town of Flower Mound Fire Department

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. Town Manager's Onboarding Strategy
4. Use of Town Manager's Report on Future Agendas

Town Council Meeting Agenda
January 3, 2022
Page 2

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. The regular meeting scheduled for Monday, January 17 has been rescheduled to Tuesday, January 18 due to the MLK holiday.
2. A regular meeting is scheduled for February 7.

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 12/6 and 12/16- Consider approval of the minutes from a regular meeting of the Town Council; Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special meeting; and Crime Control and Prevention District Special meeting on December 6, 2021; and a work session of the Town Council held on December 16, 2021.
2. Immutable Backup Solution- Consider approval of purchasing immutable cloud backup expansion through Centre Technologies in the amount of \$ 23,290.16
3. Building Fee Amendment- Consider approval of an ordinance amending Appendix A "Fee Schedule," referenced in Chapter 14, "Buildings and Buildings and Building Regulations," Section 14-1, "Building, plumbing, mechanical and electrical permit fees," of the Code of Ordinances of the Town of Flower Mound, Texas, by revising various building permit fees.
4. Rescue Equipment (Fire)- Consider approval of the purchase of apparatus rescue equipment for aerial ladder trucks from Metro Fire through BuyBoard Purchasing Contract No. 603-20 in the total amount of \$54,731.00 and authorization for the Mayor to approve same on behalf of the Town.
5. Purchase of Uniforms (Police)- Consider approval of the purchase of uniforms in the annual estimated amount of \$66,310 from Galls, LLC, Impact Promotional Services, LLC dba Got You Covered Work Wear and Uniforms; and GT Distributors, Inc. through North Central Texas Council of Governments (NCTCOG) Master Service Agreement (MSA) #2021-073
6. Radio Console Equipment (Police)- Consider the approval of the proposed contract with Motorola Solutions, Inc titled "MCC7500 Dispatch Console Upgrade" for the purpose of upgrading the Flower Mound Police Communications Center existing radio console equipment and installing an additional radio console as approved in the FY 2021-2022 Town budget for a total cost of \$ 181,605.00; and authorization from the Mayor to execute same of behalf of the Town.
7. Traffic Signal Design- Consider approval of a Professional Services Agreement with Kimley Horn and Associates, Inc., to provide traffic signal designs for the Garden Ridge Boulevard at Forest Vista Drive, FM 1171 at Canyon Falls Boulevard, and Signal Rehabilitation - FM 2499 at Firewheel Drive projects in the amount of \$106,000; and authorization for the Mayor to execute same on behalf of the Town.

Town Council Meeting Agenda
January 3, 2022
Page 3

8. Traffic Signal ICA- Consider approval of an Interlocal Cooperation Agreement with the City of Lewisville for the Garden Ridge Blvd. at Forest Vista Dr. Signal project, for \$85,000.00; and authorization for the Mayor to execute same on behalf of the Town.
9. Street Reconstruction Project Design- Consider approval of a Professional Services Agreement with Teague Nall and Perkins, Inc., for the design phase services associated with the Timber Creek Road at College Parkway Intersection Reconstruction & Melody Court Reconstruction project, in the amount of \$98,620.00; and authorization for the Mayor to execute same on behalf of the Town.
10. Street Leveling Services- Consider approval of the purchase of street leveling services from Nortex Concrete Lift & Stabilization, Inc., through a City of Grand Prairie contract, in the estimated annual amount of \$75,000.00.
11. Termination of Dev. Agreement- Consider termination of a Development Agreement for the property located at 800 Enterprise Rd; and authorization for the Mayor to execute the same on behalf of the Town.

K. REGULAR ITEMS

12. SUP21-0007 Stone Hill Boat Sales- Public Hearing to consider an ordinance granting a Specific Use Permit No. 473 (SUP21-0007 – Stone Hill Boat Sales) to permit Retail, general (outdoors) facility for a boat dealership, with an exception to 'Underground Utilities' pursuant to Section 82-377, "Exceptions," of the Code of Ordinances. The property is generally located south of Justin Road and west of Stone Hill Farms Parkway. (The Planning and Zoning Commission recommended denial by a vote of 6 to 0 at its October 11, 2021, meeting.)
13. Pepper Creek Ranch Tree Removal- Public Hearing to consider an application for a tree removal permit (TRP21-0024) for one (1) specimen tree on Lot 8, Block B of the Pepper Creek Ranch Addition subdivision. The property is located at 4709 Angels Landing. (The Environmental Conservation Commission recommended approval by a vote of 6 to 0 at its December 7, 2021, meeting).

L. BOARDS/COMMISSIONS *(Bold text represents boards with vacancies)*

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

14. TIRZ Appointment/Chair Designation- Consider appointment of a regular member and selection of chair for the Tax Increment Reinvestment Zone No. 1 (TIRZ)

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.

**Town Council Meeting Agenda
January 3, 2022
Page 4**

1. Cause No. 18-9622-431; EagleRidge Operating, LLC v Town of Flower Mound, Texas, et al
 2. 2006 Rule 11 agreement and dismissal, Cause No. 2005-20153-158 and Flower Mound Ranch Development Applications
- 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, evaluations, reassignments, discipline, or dismissals 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, 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 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: December 30, 2021, 4:30 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. 01

CONSENT ITEM

DATE: January 3, 2022

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a regular meeting of the Town Council; Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special meeting; and Crime Control and Prevention District Special meeting on December 6, 2021; and a work session of the Town Council held on December 16, 2021.

BACKGROUND INFORMATION: The Town Council held a regular meeting of the Town Council; Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special meeting; and Crime Control and Prevention District Special meeting on December 6, 2021.

The Town Council held a work session on December 16, 2021.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Draft minutes 12/6
2. Draft minutes 12/16

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

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

Derek France	Mayor
Ben Bumgarner	Mayor Pro Tem
Sandeep Sharma	Deputy Mayor Pro Tem
Adam Schiestel	Councilmember Place 1
Jim Engel	Councilmember Place 4
Ann Martin	Councilmember Place 5

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

Theresa Scott	Town Secretary
Bryn Meredith	Town Attorney
Tommy Dalton	Interim Town Manager
Tiffany Bruce	Assistant Town Manager/Town Engineer
Lexin Murphy	Director of Planning Services
Lynda Bolitho	Director of Human Resources

A. CALL REGULAR MEETING TO ORDER

Mayor France called the regular meeting to order at 6:01 p.m.

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

Chaplain Russ McNamer gave the invocation and Mayor France led the pledges.

D. PUBLIC COMMENT

Names listed below don't necessarily reflect the order in which each person spoke and all addresses are located in Flower Mound unless otherwise indicated.

	Speaker names and address	Subject (as written on the form)
1.	Bob Kohankie, 4312 Lauren Way	539 SERV/PD Dispatch compliment
2.	Paul Stone, 4100 Broadway	Agenda item # 2
3.	Elaine Takacs, 2101 Beachview Dr	Proposed Estuary Pointe
4.	Norman Chang, 1705 Deer Path	Estuary Pointe
5.	James Sherman, 2100 Beachview – with donated time from: Patricia Sherman, 2100 Beachview Mike Robbins, 2105 Beachview Emily Chang, 1705 Deer Path Joni Koch, 1980 Harbor View	Estuary Pointe Development (DP21-0001)

6.	Tess Turner, 2916 Parkhaven Dr	Estuary Pointe
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E. PRESENTATIONS

1. Proclamation and presentation of Hometown Hero to Bailey Rogers
Mayor France recited the proclamation and presented it to Bailey's mother Kathi Rogers.
2. Santa Cops Program and update
Officer Justin Hobbs provided background on the Santa Cops program.
3. Announcement and Presentation of 2021 Outstanding Citizen Award(s)
Carol Kyer, 2020 Citizen of the Year and Outstanding Citizenship Award Committee Chair, provided background information about the program and announced the 2021 Outstanding Citizenship Awards winners:
 - Individual Category: Jared Bennos
 - Youth Category: Mia Camm
 - Group: Missionaries of The Church of Jesus Christ of Latter-day Saints
 - Lifetime: Carol Kohankie

Town Council recessed at 6:55 p.m. and reconvened at 7:10 pm

F. ANNOUNCEMENTS

Mayor France and several members of Council expressed appreciation to the Parks staff and everyone who came out for the Town's annual Christmas Parade and tree lighting event.

Mayor France and members of Council announced the Town will be competing in a Salvation Army Kettle Challenge at Hobby Lobby between 11am and 7pm on Saturday, December 11 with the cities of Highland Village and Lewisville.

Several members of Council extended congratulations to the recipients of the Outstanding Citizenship Award, including well wishes for a Merry Christmas to everyone.

Councilmember Engel announced that on Saturday, December 11, at 10:00 am, there will be a ribbon cutting for the Gibson Grant Cabin, including tours thereafter.

G. TOWN MANAGER'S REPORT

Mr. Dalton provided an update on the following projects:

1. Capital improvement projects
 - Traffic switch on Waketon Road
2. Economic Development projects
 - Now open or coming soon businesses

3. Pepper Creek subdivision acceptance update
 - Status update

H. FUTURE AGENDA ITEMS

1. There were no future agenda item request.

I. COORDINATION OF CALENDARS

Mayor France confirmed that all members of Council are planning to attend the following two meetings:

1. A work session - Thursday, December 16.
2. A regular meeting - Monday, January 3.
3. Discuss and consider scheduling a January meeting.

Mr. Dalton noted there are development projects that could benefit from a mid-January meeting. There was consensus to have a special meeting on January 18 or on the work session date of January 20 as warranted. The topic will be revisited at the January 3 meeting.

J. CONSENT ITEMS

1. Consider approval of the minutes from a regular meeting of the Town Council held on November 15, 2021; and a work session held on November 18, 2021.
2. Consider approval of the 2021 Annual Report for the Flower Mound Tax Increment Reinvestment Zone #1 (TIRZ #1) in accordance with Chapter 311 of the Texas Tax Code. (The TIRZ #1 Board recommended approval by a vote of 5 to 0 at its November 29, 2021, meeting)
3. Consider approval of replacing 54 Town wireless network access points through Blue Reef Networks in the amount of \$49,274.00
4. Consider approval of a Professional Services Agreement for monthly gas well pad site air monitoring by Modern Geosciences, LLC, in the amount of \$120,000.00; and authorization for the Mayor to execute same on behalf of the Town.
5. Consider approval of a Memorandum of Agreement between the Town of Flower Mound and Texas A&M Extension Service (TEEX) for customized training of executive and command staff for the Emergency Operations Center in the total amount of \$20,715.00 and authorization for the Mayor to approve same on behalf of the Town.
6. Consider approval of an Interlocal Cooperation Agreement with Denton County for the provision of library services for the benefit of the citizens of Denton County, and authorization for the mayor to execute same on behalf of the Town.
7. Consider approval of the purchase of two (2) 2022 Ford F150 Super Cab 1/2 Ton Trucks with 6.5 foot bed per Town of Flower Mound Specifications and Vendor Quote in the amount of \$66,405.34.
8. Consider approval of the purchase of two (2) 2022 Ford Pursuit Rated Hybrid Police Interceptor Utility with Police Equipment Packages and two (2) 2022 Chevrolet Tahoe

PPV with emergency equipment as per Town of Flower Mound Specifications and Vendor Quotes from the Holiday Auto Group for Police Services in the amount of \$240,072.00.

9. Consider approval of the purchase of one new Ford F450 Pick-Up Truck with Utility Body per the Town of Flower Mound Specification and Vendor Quote in the amount of \$61,280.72.
10. 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, No. 18-21 and No. 28-21 for adjustments to the General Fund, COVID-19 Fund, and Health/Flex Fund.

ORDINANCE NO. 49-21

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, NO. 18-21 AND NO. 28-21, BY PROVIDING FOR ADJUSTMENTS TO THE GENERAL FUND, COVID-19 FUND, AND HEALTH/ FLEX 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.

11. Consider approval of an ordinance amending the Town of Flower Mound's Annual Budget for the fiscal year beginning October 1, 2021, and ending on September 30, 2022, as adopted by Ordinance No. 38-21 for adjustments to the General Fund, Utility Fund, Tree Preservation Fund, Parks and Recreation Special Activities Fund, Flower Mound Log Cabin Fund, IRS Equitable Sharing Fund, Vehicle & Equipment Replacement Fund, Technology Replacement Fund and Health Insurance/Flex Account Fund.

ORDINANCE NO. 50-21

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, 2021, AND ENDING ON SEPTEMBER 30, 2022, AS ADOPTED BY ORDINANCE NO. 38-21, BY PROVIDING FOR ADJUSTMENTS TO THE GENERAL FUND, UTILITY FUND, TREE PRESERVATION FUND, PARKS AND RECREATION SPECIAL ACTIVITIES FUND, FLOWER MOUND LOG CABIN FUND, IRS EQUITABLE SHARING FUND, VEHICLE AND EQUIPMENT REPLACEMENT FUND, TECHNOLOGY REPLACEMENT FUND, AND HEALTH INSURANCE/FLEX ACCOUNT 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.

12. 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, 2021, and ending on September 30, 2022, as adopted by Resolution No. 24-21.

RESOLUTION NO. 34-21

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, 2021, AND ENDING SEPTEMBER 30, 2022, AS ADOPTED BY RESOLUTION NO. 24-21; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

13. Town Council acting as the Board of Directors for the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District to consider approval of a resolution amending the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District budget for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021, as adopted by Resolution No. 18-20 and amended by Resolution No. 07-21. Town Council acting as the Board of Directors for the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District to consider approval of a resolution amending the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District budget for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021, as adopted by Resolution No. 18-20 and amended by Resolution No. 07-21.

RESOLUTION NO. 31-21

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ACTING AS THE BOARD OF DIRECTORS OF THE TOWN OF FLOWER MOUND FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL SERVICES DISTRICT, AMENDING THE BUDGET FOR THE TOWN OF FLOWER MOUND FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL SERVICES DISTRICT FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2020, AND ENDING SEPTEMBER 30, 2021, AS ADOPTED BY RESOLUTION NO. 18-20 AND AMENDED BY RESOLUTION NO. 07-21; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

14. Consider approval of a resolution authorizing the adoption of the Program Year 2020 Consolidated Annual Performance & Evaluation Report for the Community Development Block Grant; and authorization for the Mayor to execute same on behalf of the Town and submit to the U.S. Department of Housing and Urban Development.

RESOLUTION NO. 32-21

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, PROVIDING FOR THE ADOPTION OF FLOWER MOUND'S PROGRAM YEAR 2020 CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT UNDER THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM; PROVIDING AUTHORIZATION FOR THE MAYOR TO EXECUTE SAID REPORT; AND PROVIDING AN EFFECTIVE DATE.

15. Consider a request to amend the Town's Code of Ordinances by amending Appendix A, "Fee Schedule," Referenced in Chapter 70, "Utilities," by amending Section 70-56(d), entitled "Water Meter Fee Schedule," by repealing all conflicting ordinances; providing a severability clause; and providing an effective date.

ORDINANCE NO. 51-21

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING APPENDIX A, "FEE SCHEDULE," REFERENCED IN CHAPTER 70, "UTILITIES," BY AMENDING 70-56(d), ENTITLED "WATER METER FEE SCHEDULE," BY REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

16. Consider approval of the purchase of creek bank stabilization and erosion control services from KEC Retaining Walls & Construction, Inc., a sole source provider, for work associated with Bakers Branch Stabilization at 1600 & 1612 Strait Lane project, in the amount of \$211,849.00; and authorization for the Mayor to execute on behalf of the Town.
17. Consider approval of Change Order No. 5 for the Wastewater Treatment Plant Rehabilitation Phase V project, amending the contract with Archer Western Construction, LLC, to provide for an increase to the contract in the amount of \$23,615.50; and authorization for the Mayor to execute same on behalf of the Town.
18. Consider approval of the First Amendment to the Professional Services Agreement with Jacobs Engineering Group for the design services associated with the US 377 at FM 1171 Water Line Loop/Relocation project, in the amount of \$156,700.00; and authorization for the Mayor to execute same on behalf of the Town.
19. Consider approval of a Professional Services Agreement with Pacheco Koch Consulting Engineers, Inc., for the design phase services associated with the Lopo Road Reconstruction and Wood Creek Circle Reconstruction project, in the amount of \$153,447.00; and authorization for the Mayor to execute same on behalf of the Town.
20. Consider approval of the purchase and installation of light poles and LED fixtures for the Glenwick Park Upgrade CIP project, from Musco Sports Lighting, LLC, through the Texas Local Government Purchasing Cooperative, in the amount of \$201,543.00.
21. Consider approval of the purchase and installation of light poles and LED fixtures for the Leonard & Helen Johns Park CIP project, from Musco Sports Lighting, LLC, through the Texas Local Government Purchasing Cooperative, in the amount of \$207,452.00.
22. Consider approval of the purchase and installation of playground safety surfacing at five parks for the Individual Park Improvements CIP project, from WeBuildFun, Inc., through the Texas Local Government Purchasing Cooperative, in the amount of \$441,188.61.
23. Consider approval of Standards of Care for Youth Recreation Programs operated by the Town, in accordance with the Texas Human Resources Code - Section 42.041 and to adopt an ordinance providing for said Standards. (The Parks Board recommended approval by a vote of 6 to 0 at its November 4, 2021, regular meeting).
24. Consider approval of the renovation of softball and baseball infields at Bakersfield Park and Gerault Park, from MasterTurf Products and Service, Inc., through the Texas Local Government Purchasing Cooperative, in an amount not-to-exceed \$186,133.00.

25. Consider approval of the sale and consumption of alcoholic beverages (beer and wine) at Bakersfield Park, during the 2022 Independence Fest (The Parks Board recommended approval by a vote of 6 to 0 at its September 2, 2021, meeting).

Deputy Mayor Pro Tem Sharma moved to approve by consent Items 1 – 25, as presented in the agenda caption. 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: SCHIESTEL, SHARMA, BUMGARNER, ENGEL, MARTIN

NAYS: NONE

K. REGULAR ITEMS

Mayor France opened items 26, 27 & 28 at same time.

26. Public Hearing to consider an ordinance amending the Master Plan (MPA21-0007 – Emerald Place) to amend Section 1.0, Land Use Plan, of the Master Plan to change the current land use designation from Estate Residential to Low Density Residential uses. The property is generally located west of Wager Road and south of Kirkpatrick Lane. (On August 30, 2021, the Planning and Zoning (P & Z) Commission tabled this item to their September 13, 2021 meeting by a vote of 6 to 0.) (P & Z recommended denial by a vote of 6 to 0 at its September 13, 2021, meeting.) (The Town Council moved to postpone this item by a vote of 4 to 1 at its October 4, 2021, meeting.)
27. Public Hearing to consider an ordinance amending the zoning (ZPD21-0005 – Emerald Place) from Agricultural District uses to Planned Development District No. 183 (PD-183) with Single Family District-15 (SF-15) uses and with certain modifications and exceptions to the Code of Ordinances. The property is generally located west of Wager Road and south of Kirkpatrick Lane. (On August 30, 2021, the Planning and Zoning (P & Z) Commission tabled this item to their September 13, 2021, meeting by a vote of 6 to 0.) P & Z recommended denial by a vote of 6 to 0 at its September 13, 2021, meeting.) (The Town Council moved to postpone this item by a vote of 5 to 0 at its October 4, 2021, meeting.)
28. Public Hearing to consider an application for a tree removal permit (TRP21-0014) for four (4) specimen trees on property proposed for development as Emerald Place. The property is generally located west of Wager Road and north of Trails End Drive. (The Environmental Conservation Commission recommended denial by a vote of 6 to 0 at its August 3, 2021, meeting).

Staff Presentation

Ms. Murphy gave a presentation for items 26, 27, and 28 identifying or noting:

- General and detailed location
- Land use and zoning
- Conceptual site plan
- Modifications requested
- Miscellaneous items (exception for wet retention ponds and fencing)
- Photos of site
- Master Plan Exhibit
- Conceptual site plan

- Conceptual landscape plan, hardscape plan
- Trees

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

- Trail design and connection
- Platting of special panhandle lot configuration
- Trees
- Drainage
- Traffic

Applicant Presentation

Reginald Rembert, Rembert Enterprises

Mr. Rembert gave a presentation identifying or noting:

- What changed
- 44 lot plan (plan presented and agreed upon) and 48 lot plan (rejected viewing)
- What changed after the meeting
- Soderberg email
- Master Plan amendment
- Master Plan history
- Cramming lots exhibit and comparison
- Our plan history
- 44 lot plan
- Lot area specifics
- Area opposition
- Conclusion
- What's really going on
- DRC meeting (10/19/21)
- Transportation facility/bus barn
- LISD Contract
- 42 lot new concept plan

and he responded to questions from Council regarding:

- Flood plain
- Erosion concerns
- Original proposal

Mayor France opened the Public Hearing for items 26, 27, 28 at 7:47 p.m.

The following individuals either spoke in support or opposition, or had questions / comments related to the item: *Names listed below don't necessarily reflect the order in which each person spoke and all addresses are located in Flower Mound unless otherwise indicated.*

Support: Comments/Questions	Opposition: Comments/Questions	Question(s)/ Comments Only
Puja Gogri, 1114 Oak Dr	Judy Collins, 1537 Simmons Rd	None
	Elizabeth & Randy Soderberg, 3100 Wager Rd	
	Cindy Bocksell, 1104 Oak Dr	

	Angela Vinson, 1224 Oak Creek Cir	
	Diane Preston, 1124 Lopo Rd	
	Tori Brewer, 1208 Oak Creek Cir	
	Cindy & Mitch Waters, 3030 Wager Rd	
	Mitch Waters, 3030 Wager Rd With donated time from: Jason McNutt, 619 Trails End	
	William Langley, 800 Carter Ct	
	Jolene Harrison, 909 Oak*	
	Chuck Young, 909 Oak Dr*	
	Bridget Siharath, 3228 Wager Rd*	
	Moukda Siharath, 3228 Wager Rd*	
	Karyn Walsh, 3525 High Rd*	
	Kathy O'Donnell, 910 Oak Dr*	

*Indicated do not wish to speak

Mayor France closed the Public Hearing for items 26, 27, and 28 at 8:25 p.m.

Council Discussion

There was Council discussion regarding:

- Density changes
- Residents interest in being SF E
- Bus barn option
- LISD's position on this item
- Access point (lack of)
- How it's possible to develop estate residential
- Appreciation for the parties to try and find compromise
- Master plan amendment history for this property
- Not interested in changing the Master Plan
- Safety concerns (street)

26. Councilmember Schiestel moved to deny MPA21-0007-Emerald Place. Deputy Mayor Pro Tem Sharma seconded the motion.

VOTE ON MOTION:

Motion passed (to deny)
(Administrative Note: A supermajority of 4 votes is required for Master Plan amendments)

AYES: MARTIN, SHARMA, SCHIESTEL

NAYS: ENGEL, BUMGARNER

27. Councilmember Schiestel moved to deny ZPD21-0005, Emerald Place, PD-183. Deputy Mayor Pro Tem Sharma seconded the motion.

VOTE ON MOTION:

Motion passed (to deny)

AYES: SCHIESTEL, SHARMA, MARTIN

NAYS: BUMGARNER, ENGEL

28. No action taken.

29. Consider approval of a contract with Blue Cross and Blue Shield in the amount of \$1,029,609 for reinsurance for the Town's Group Health Plan and authorization for the Mayor to execute same on behalf of the Town.

Staff Presentation

Mr. Dalton pointed out that this item is on the agenda because of the two commas in the amount rule. He indicated staff is assuming Council wants to continue with that practice and staff will do so unless directed otherwise. He also provided background information on the purpose of the item.

And he, Ms. Bolitho, or Scott Gibbs, McGriff, Seibels & Williams of Texas, Inc. (Town's health insurance consulting firm), responded to questions from Council regarding:

- What is lasering?
- Health claim cost (estimates higher than budgeted)
- Employee cost

Council Discussion

There was Council discussion regarding:

- Amount of bids received (interest in seeing more in the future)
- Claims that exceeded \$150,000

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

VOTE ON MOTION:

Motion passed

AYES: MARTIN, ENGEL, BUMGARNER, SHARMA, SCHIESTEL

NAYS: NONE

30. Consider approval of a resolution casting the vote of the Town of Flower Mound, Texas, for the election of the Board of Directors of the Denton Central Appraisal District (DCAD).

Staff Presentation

Ms. Scott provided background information on the item.

There was Council discussion regarding:

- Candidate outreach
- Interest in allocating all votes to the candidate nominated on October 4
- Possibility of splitting the votes between the two Flower Mound residents

Deputy Mayor Pro Tem Sharma moved to approve a resolution casting the 115 votes of the Town of Flower Mound, Texas to Sharon Gentry for the election of the Board of Directors of the Denton Central Appraisal District. Councilmember Martin seconded the motion.

RESOLUTION NO. 33-21

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, CASTING THE TOWN OF FLOWER MOUND'S ONE HUNDRED FIFTEEN(115) ALLOCATED

VOTES FOR THE ELECTION OF THE BOARD OF DIRECTORS FOR THE DENTON CENTRAL APPRAISAL DISTRICT; AND PROVIDING FOR AN EFFECTIVE DATE.

VOTE ON MOTION:

Motion passed

AYES: MARTIN, ENGEL, BUMGARNER, SHARMA, SCHIESTEL

NAYS: NONE

L. BOARDS/COMMISSIONS

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.

No action taken.

M./N. CLOSED/OPEN MEETING

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

- a. Consultation with Attorney.
- 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.

O. ADJOURN REGULAR MEETING

Mayor France adjourned the meeting at 9:08 p.m. on Monday, December 6, 2021, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

DEREK FRANCE, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 16, 2021

PAGE 1

THE FLOWER MOUND TOWN COUNCIL WORK SESSION HELD ON THE 16TH DAY OF DECEMBER, 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 and work session with the following members present:

Derek France	Mayor
Ben Bumgarner	Mayor Pro Tem
Sandeep Sharma	Deputy Mayor Pro Tem
Adam Schiestel	Councilmember Place 1
Jim Engel	Councilmember Place 4
Ann Martin	Councilmember Place 5

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

Theresa Scott	Town Secretary
Tommy Dalton	Interim Town Manager
Tiffany Bruce	Assistant Town Manager/Town Engineer
Lexin Murphy	Director of Planning Services
Joelle Hainley	Building Official
Matt Woods	Dir of Env Svc
Bob Pegg	Asst Dir of Engineering
Brian Waltenburg	Asst Dir Engineering
Ray Watson	Dir of Economic Dev
Brandon Barth	Division Chief
Jason Bolejack	Fire Marshal
LauriAnn Cash	Executive Assistant

A. CALL WORK SESSION TO ORDER

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

B./C. INVOCATION/PLEDGE OF ALLEGIANCE

Mayor France gave the invocation and led the pledges.

D. PUBLIC COMMENT

No speakers.

E. WORK SESSION ITEMS

Presentation and discussion on:

1. Development fee study

Mr. Dalton provided background information regarding this item. Courtney Ramos, Consultant, gave a presentation identifying or noting:

- Project overview
- Benefits/uses
- Services reviewed
- Fee study outcomes
- Typical cost recovery
- Next steps

and she, Mr. Dalton, or Ms. Hainley responded to questions or comments from Council regarding:

- What components brought Environmental Services to 111%
- Data resources
- Development fee components as it relates to recent updates
- Goals and alignment with the Council's vision
- Application of subsidies (residential and small business necessities)
- Lower the fees that are too high and adjust from there with consideration toward what is reasonable
- Interest in understanding benchmark city comparison
- Concept of generalized permitting for various services
- Is there a way to reduce staff time on projects
- Cost for new versus existing data
- Clarification regarding automatic increase mechanisms

Council Discussion

There was Council discussion regarding:

- Expenses versus recovery
- Recognize 100% expense recovery is not possible
- Building versus planning staff review time
- Interest in seeing an application demo
- How it's not all a mathematical formula and interest in having more detail
- Cost recovery goals
- Subsidizing by a dollar amount or by department
- Possibility of getting a quote from Matrix with a statement of work, as opposed to staff doing the research

Mr. Dalton pointed out that a starting point could be to make sure new construction is paying its way and continue to subsidize compliance with existing commercial and residential. Then that data could be looked at to get the most out of the recovery as opposed to line by line. He also suggested adjusting those that are out of line immediately.

There was general Council consensus to proceed with that recommendation.

2. Impact fees (video minute marker 1:23:10)

Mr. Dalton gave a presentation identifying or noting:

- Impact fee discussion agenda
- Impact fee comparisons
- Impact fee examples (Service Area C)
- Service unit calculations – vehicle miles

and he, Ms. Bruce, or Mr. Watson responded to questions from Council regarding:

- Clarification that the comparison is from a dollar point of view and not cost recovery
- Reimbursement of impact fees versus waivers
- Has anyone paid the fees since the new rates have been in place from about 9 months ago
- The economic impact of the fee changes
- Who absorbs the cost for roadways in new developments
- If fees can be different for various service areas
- Use of 380 agreements/Return on investment

Council Discussion

There was Council discussion regarding:

- Goal of the impact fees discussion
- Background information about previous rates
- Consider lowering fees to be more competitive with benchmark cities
- Economic development impact regarding fees
- Possibility of a mechanism like the past senior overlay for necessary businesses (succinct and time limited offer for certain type of businesses)
- Business needs on the west side of town
- How the topic is at an impasse because no one is moving off their original thoughts
- Housing cost and the market
- Communicating feedback with Council

Mr. Dalton summarized that the Town continues to receive interest from the development community and staff will provide feedback to Council along the way.

F. ADJOURN WORK SESSION

Mayor France adjourned the meeting at 8:06 p.m.

TOWN OF FLOWER MOUND, TEXAS

DEREK FRANCE, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 02

CONSENT ITEM

DATE: January 3, 2022

FROM: Gary Bertagnolli, Director of Information Technology

ITEM: Consider approval of purchasing immutable cloud backup expansion through Centre Technologies in the amount of \$ 23,290.16

BACKGROUND INFORMATION: With the escalation and advancement of ransomware, organizations need to harden their backup solutions to include an immutable (cannot be deleted) copy. Currently, the Town has a robust data backup and disaster recovery solution in place. However, backups are not immutable. This request adds to the current backup system (Veeam) which uploads an immutable copy of the Town's backup data to the AWS (Amazon Web Services) cloud.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$ 23,290.16

Proposed Expenditure:

\$ 23,290.16

Account Number(s):

567-270-84510-2020

Finance Review by: Tammy Wilson, Executive Director of Fiscal and Administrative Services/CFO tw

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

ATTACHMENTS:

1. Center Technologies Quote.pdf

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



BUSINESS TECHNOLOGY SOLUTIONS FOR:

Town of Flower Mound - AWS Services

Quote # 051660
Version 1

PREPARED FOR:

Town of Flower Mound

Derek France
derek.france@flower-mound.com

16801 Greenspoint Park Drive
Suite 200
Houston, TX 77060
www.centrotechnologies.com
(281) 506-2480



Town of Flower Mound - AWS Services

Prepared by:

Centre Technologies

Joy Gutierrez
on behalf of Rick Essex
(972) 948-6063
jgutierrez@centrotechnologies.com

Prepared for:

Town of Flower Mound

Derek France
Ship To:
2121 Cross Timbers Road
Flower Mound, TX 75028
(972) 874-6011
derek.france@flower-mound.com

Quote Information:

Quote #: 051660

Version: 1
Delivery Date: 12/20/2021
Expiration Date: 01/31/2022

12 Month Terms

Please note licensing charges start on date of purchase, in advance of project completion.

DIR-TSO-4144

AWS Premium Bundle

Description	Qty	Recurring	Ext. Recurring
Amazon AWS Compute Monthly Usage	1	\$1,269.68	\$1,269.68
<i>Based on AWS instances and quantities.</i>			
Centre Amazon Web Services (AWS) Subscription with Insights	1	\$0.00	\$0.00
Centre Amazon Web Services (AWS) with Insights Maximizing your AWS investment with Centre Value-Add for Infrastructure-as-a-Service (IaaS).			
- Detailed Billing Reports - Summarized Billing Reporting and Support - Comprehensive Cloud Infrastructure Reports and Executive Summaries			
Monthly Subtotal:			\$1,269.68

16801 Greenspoint Park Drive
Suite 200
Houston, TX 77060
www.centrotechnologies.com
(281) 506-2480



Consulting & Delivery Services

Description	Qty	Price	Ext. Price
Cloud Consulting	1	\$8,054.00	\$8,054.00
<i>See "Scope of Work" documentation for complete details and service inclusions</i>			
Subtotal:			\$8,054.00

Quote Summary

Description	Amount
Consulting & Delivery Services	\$8,054.00
Total:	\$8,054.00

Monthly Expenses Summary

Description	Amount
AWS Premium Bundle	\$1,269.68
Monthly Total:	\$1,269.68

This Quote is between Centre Technologies, Inc. a Texas corporation (sometimes referred to as "we," "us," "our," OR "Provider"), and the Customer found on the applicable Quote (sometimes referred to as "you," "your," OR "Customer"). Collectively, these two entities are "the Parties". The Quote, together with the MSA and relevant Service Attachments, forms the Agreement between the Parties. This Quote is effective as of the date the Parties sign below, ("Services Start Date"). If there is a conflict between this Quote, the Master Services Agreement and any Service Attachment, amendment, or schedule, this Quote will control for the items in this Quote only.

The definitions and the Term are set forth in the MSA. The Term for the services starts on Service Start Date of an applicable Service Attachment. The Service Start Date of an applicable Service Attachment shall begin on the date Provider provisions the Services to Client. Upon the Service Start Date, the Client will be billed a setup and initiation fee, One (1) full calendar month of Service and an additional one (1) month of Service in advance. Thereafter Services will be billed monthly on the first day of the month. Additional work or hours to be completed as part of change requests, if any, will be billed monthly.

This Order and its accompanying Agreements supersede all prior negotiations, discussions, proposals, communications, or previous Orders or Agreements between the Parties.

If you are a person who is required to comply with HIPAA\The HITECH Act and related state laws, you must click here and sign the Master Data Protection Agreement – Business Associate Agreement (MDPA-BAA) (https://centrotechnologies.com/hubfs/Agreements/MDPA-BAA-Centre_Technologies-v1.1-091721.pdf). Centre will not begin Services, Project Services, and/or Supplemental Services until the MDPA-BAA is executed by Customer.

If you are a person who is required to comply with GDPR and related member state laws, you must click here and sign the Master Data Protection Agreement (MDPA) for GDPR (https://centrotechnologies.com/hubfs/Agreements/MDPA-Centre_Technologies-v1.1-091721.pdf). Centre will not begin Services, Project Services, and/or Supplemental Services until the MDPA is executed by Customer.

By signing below, the Parties acknowledge, represent, and warrant that they have read and agree to the terms and conditions of the Agreement, including all related agreements, schedules, Service Attachments, and/or amendments identified at the end of this Quote. The



Party hereby represents that the electronic signature to this Quote shall be relied upon and serves to bind them/it to the obligations stated herein. Each Party hereby warrants and represents that he/she/it has the express authority to execute this Agreement(s).

E-Signature Confirmation for Town of Flower Mound

Signature: _____

Name: Derek France

Title: Mayor

Date: _____

SOCaaS Managed Detection and Response (MDR)

Value Delivered to Business

Gained Peace of Mind

Exponentially improve security posture through zero-trust automatic threat containment and remediation guidance

Greater Freedom to Take Risks

Proactively reduce future vulnerabilities and protect employees from lost productivity due to security incidents

Elevated Innovation

Tailored IT Blueprint™ safeguarding everything from networks to devices while optimizing processes fortify security protections

Amplified Competitive Edge

Extensive and diverse cybersecurity expertise leveraging proven and enterprise-grade security tools and processes

Strengthened Confidence

Certified cybersecurity professionals continuously reviewing threats and current security landscape to harden security posture

Features At-A-Glance

Vigilant

- ✓ Threat Detection
- ✓ Zero-Trust Threat Response
- ✓ Automatic Threat Containment

Sophisticated

- ✓ 24x7 Monitoring
- ✓ Machine-Learning Threat Hunting
- ✓ Human Threat Forensics and Analysis

Dedicated

- ✓ Proactive Consulting
- ✓ Remediation Guidance
- ✓ Process Automation

Centre Value-Add Services

Force multiplying threat detection and remediation guidance with enhanced tracking, visibility, and consulting.

- ✓ Local Security Analysts Supporting Co-Managed IT Environments
- ✓ Threat and Vulnerability Remediation Guidance and Consulting
- ✓ Tailored SOCaaS Threat Detection and Remediation Reporting (CMAC™ Security Dashboard)
- ✓ Weekly and Monthly SOCaaS Reports
- ✓ Personalized Security Innovation Recommendations and Consulting
- ✓ Automatic End-to-End Threat Remediation and Verification*
Requires Centre Secure Managed Services agreement.

Summary of Services

NETWORK DETECTION AND RESPONSE (NDR)

24x7 network monitoring, threat containment and remediation guidance across your entire local environment of networked devices.

Threat Monitoring

- ✓ 24x7 “Always-on” Network Detection and Response
 - × Monitors networks and connected devices and local virtual machines (VM)
 - × Looks for suspicious network use and spikes
 - × Checks for activity from known malicious IP addresses
- ✓ Proactive Threat Hunting
 - × Machine-learning threat hunting
 - × Human-driven threat hunting
- ✓ Perimeter Assessments
 - × Monitors for local network threats
 - × Searches for threats and provides remediation guidance

Threat Containment and Remediation

- ✓ Automatic Threat Containment
 - × Automatically contains threats by isolating verified network threats
 - × Provides remediation guidance and support
 - × Delivers rapid response and transparent remediation*
Requires Centre Secure Managed Services agreement.
 - × Provides remediation verification

- ✓ Misconfiguration Analysis and Remediation
 - × Confirms anti-virus is installed and current
 - × Delivers personalized analysis from certified Security Analyst
 - × Provides remediation guidance and support for misconfigurations
 - × Delivers automatic and transparent remediation of misconfigurations*
Requires Centre Secure Managed Services agreement.
- ✓ Forensic Investigation
 - × Delivers personalized SOCaaS Security Incident Summary, including systems impacted, containment status, potential risks, incident details, remediation steps taken and long-term recommendations
 - × Delivers remediation guidance and support from both global security professionals and local experts
 - × Conducts secondary review by Centre security experts and analysts

Security Management

- ✓ Identity Management
 - × Checks for improper resource network usage and connections
 - × Checks for unusual changes to network privileges
- ✓ Log Management
 - × Supports SIEM integration
 - × Configures SIEM tools

Reporting

- ✓ **Security Reporting**
 - × CMAC™ Security Dashboard
 - × eSentire Insight Dashboard
 - × Weekly SOCaaS Report
 - × Monthly SOCaaS Summary
 - × Categorizes alerts by raw signals, filtered, incidents and escalations

- ✓ **Audit Reporting**
 - × Fulfills compliance requirements like PCI DSS, HIPAA, CMMC, SEC, ISO, etc.
 - × Provides additional evidence of compliance efforts
- ✓ **Security Innovation Recommendations**
 - × Provides security hardening recommendations and consulting*
Additional support requires Centre Secure Managed Services or available separately at an hourly rate.
 - × Provides insights on both global and industry threat landscape
 - × Reports security advisory news and exploit briefs

ENDPOINT DETECTION AND RESPONSE (EDR)

24x7 device monitoring, threat containment and remediation guidance for desktops, laptops, on-prem servers and local virtual machines.

Threat Monitoring

- ✓ **24x7 “Always-on” Endpoint Detection and Response**
 - × Monitors individual endpoints, including laptops and desktops
 - × Looks for data exfiltration (unauthorized data transfer) from endpoint device and installed applications
 - × Checks for activity from known malicious IP addresses
- ✓ **Proactive Threat Hunting**
 - × Machine-learning threat hunting
 - × Human-driven threat hunting
- ✓ **Perimeter Assessments**
 - × Monitors for local device threats
 - × Searches for threats and provides remediation guidance

Threat Containment and Remediation

- ✓ **Automatic Threat Containment**
 - × Automatically contains threats by isolating verified endpoint threats
 - × Provides remediation guidance and support
 - × Delivers rapid response and transparent remediation*
Requires Centre Secure Managed Services.
 - × Provides remediation verification
- ✓ **Misconfiguration Analysis and Remediation**
 - × Confirms anti-virus is installed and current for devices and local virtual machines (VM)
 - × Delivers personalized analysis from certified Security Analyst
 - × Provides remediation guidance and support for misconfigurations
 - × Delivers automatic and transparent remediation of misconfigurations*
Requires Centre Secure Managed Services.
- ✓ **Forensic Investigation**
 - × Delivers personalized SOCaaS Security Incident Summary, including systems impacted, containment status, potential risks, incident details, remediation steps taken and long-term recommendations
 - × Delivers remediation guidance and support from both global security professionals and local experts
 - × Conducts secondary review by Centre security experts and analysts

Security Management

- ✓ **Identity Management**
 - × Checks for improper resource usage from operating system and applications
 - × Checks for unusual changes to user and account privileges
- ✓ **Log Management**
 - × Supports SIEM integration
 - × Configures SIEM tools

Reporting

- ✓ **Security Reporting**
 - × CMAC™ Security Dashboard
 - × eSentire Insight Dashboard
 - × Weekly SOCaaS Report
 - × Monthly SOCaaS Summary
 - × Categorizes alerts by raw signals, filtered, incidents and escalations
- ✓ **Audit Reporting**
 - × Fulfills compliance requirements like PCI DSS, HIPAA, CMMC, SEC, ISO, etc.
 - × Provides additional evidence of compliance efforts
- ✓ **Misconfiguration Reporting**
 - × Reports non-best practice configurations for individual endpoint security settings
- ✓ **Security Innovation Recommendations**
 - × Provides security hardening recommendations and consulting*
Additional support requires Centre Secure Managed Services or available separately at an hourly rate.
 - × Provides insights on both global and industry threat landscape
 - × Reports security advisory news and exploit briefs

CLOUD DETECTION AND RESPONSE (CDR)

24x7 monitoring and containment across your entire cloud ecosystem, including hosted virtual machines, Microsoft 365, Amazon Web Services, Microsoft Azure and Google Cloud.

Threat Monitoring

- ✓ **24x7 “Always-on” Cloud Detection and Response**
 - × Monitors exposed services and data in cloud infrastructure
 - × Looks for data exfiltration (unauthorized data transfer) for both cloud infrastructure and cloud applications
 - × Checks for activity from known malicious IP addresses for both cloud infrastructure and cloud applications
- ✓ **Proactive Threat Hunting**
 - × Machine-learning threat hunting
 - × Human-driven threat hunting
- ✓ **Perimeter Assessments**
 - × Monitors for vulnerabilities in integrated cloud environments
 - × Searches for vulnerabilities and provides remediation guidance

Threat Containment and Remediation

- ✓ **Automatic Threat Containment**
 - × Automatically contains threats by isolating verified cloud threats
 - × Provides remediation guidance and support
 - × Delivers rapid response and transparent remediation*
Requires Centre Secure Managed Services.
 - × Provides remediation verification
- ✓ **Misconfiguration Analysis and Remediation**
 - × Confirms anti-virus are installed for Azure virtual machines (VM)
 - × Notifies when virtual machines are deployed incorrectly
 - × Delivers personalized Security Analyst analysis
 - × Provides remediation guidance and support for misconfigurations
 - × Delivers automatic and transparent remediation of misconfigurations*
Requires Centre Secure Managed Services.

- ✓ **Forensic Investigation**
 - × Delivers personalized SOCaaS Security Incident Summary, including systems impacted, containment status, potential risks, incident details, remediation steps taken and long-term recommendations
 - × Delivers remediation guidance and support from both global security professionals and local experts
 - × Conducts secondary review by Centre security experts and analysts

Security Management

- ✓ **Identity Management**
 - × Monitors Identity Access Management (IAM) policy violations within both cloud infrastructure and cloud applications
 - × Checks for improper resource usage in cloud infrastructure
 - × Checks for unusual privilege changes within both cloud infrastructure and cloud applications
 - × Monitors suspicious email policy changes within cloud applications
- ✓ **Log Management**
 - × Supports SIEM integration to public cloud platform
 - × Configures SIEM tools in cloud environments

Reporting

- ✓ **Security Reporting**
 - × CMAC™ Security Dashboard
 - × eSentire Insight Dashboard
 - × Weekly SOCaaS Report
 - × Monthly SOCaaS Summary
 - × Categorizes alerts by raw signals, filtered, incidents and escalations
- ✓ **Audit Reporting**
 - × Fulfills compliance requirements like PCI DSS, HIPAA, CMMC, SEC, ISO, etc.
 - × Provides additional evidence of compliance efforts
- ✓ **Misconfiguration Reporting**
 - × Identifies misconfigurations for all cloud workloads (current and new)
 - × Reports non-best practice configurations for SQL, firewalls and TCP ports
- ✓ **Security Innovation Recommendations**
 - × Provides security hardening recommendations and consulting*
Additional support requires Centre Azure Operational Care and Optimization or Centre Secure Managed Services.
 - × Provides insights on both global and industry threat landscape
 - × Reports security advisory news and exploit briefs

LOG MANAGEMENT (SIEM)

Fully aggregated critical threat visibility and log management that prioritizes security gap remediation guidance across your entire technology ecosystem.

Comprehensive Threat Alerts

- ✓ Phishing Attacks
- ✓ Suspicious and/or Unusual User Behavior
- ✓ Data Loss Prevention
- ✓ Privilege Escalations and Alterations
- ✓ Insider Threats
- ✓ Cloud Service Misconfigurations
- ✓ Modular Malware
- ✓ Crypto-Jacking and Crypto-Mining
- ✓ Email Security

Altas XDR Platform

- ✓ Purpose-built cloud Extended Detection and Response (XDR)
- ✓ Ingests and enriches signals from SIEM and other MDR solutions
- ✓ Eliminates noise
- ✓ Enables real-time detection and response
- ✓ Automatically blocks known and unknown threats

MITRE ATT&CK Mapped

- ✓ Broad Tactic Categories
- ✓ Individual Technique IDs
- ✓ Detectors and Runbooks

Compliance Management

- ✓ **Audit Reporting**
 - × Fulfills compliance requirements like PCI DSS, HIPAA, CMMC, SEC, ISO, etc.
 - × Provides additional evidence of compliance efforts
- ✓ **Security Innovation Recommendations**
 - × Provides security hardening recommendations and consulting*
Additional support requires Centre Secure Managed Services or available separately at an hourly rate .
 - × Provides insights on both global and industry threat landscape

Robust Cloud Integrations

- ✓ **Cloud Infrastructures**
 - × Microsoft Azure
 - × Google Cloud
 - × Amazon Web Services (AWS)
- ✓ **Cloud Applications**
 - × GSuite
 - × Microsoft 365
- ✓ **Endpoint Detection and Response (EDR) and Endpoint Protection Platform (EPP) Tools**
 - × Carbon Black
 - × Crowdstrike
 - × Trend Micro
 - Additional tools may be supported.*
- ✓ **Network Security Technology**
 - × Palo Alto
 - × Cisco
 - Additional solutions may be supported.*
- ✓ **Email Security Platforms**
 - × Microsoft Outlook
 - × Gmail
 - × Proofpoint
 - Additional platforms may be supported.*
- ✓ **VPN Providers**
 - × Palo Alto
 - × Cisco
 - Additional providers may be supported.*
- ✓ **Web Gateway Solutions (Citrix)**



Agreements

I. TERMS AND CONDITIONS

- a. Centre Technologies' Product Terms and Conditions
https://centretechnologies.com/hubfs/Agreements/PTC-Centre_Technologies-v2.3-090121.pdf
- b. Third Party Terms and Conditions
For Third-Party Manufacturers, additional terms and conditions may apply.

II. AGREEMENTS

- a. Mutual Non-Disclosure Agreement (MNDA)
https://centretechnologies.com/hubfs/Agreements/MNDA-Centre_Technologies-v1.7-090221.pdf
- b. Master Services Agreement (MSA)
https://centretechnologies.com/hubfs/Agreements/MSA-Centre_Technologies-v1.27-091321.pdf
- c. Acceptable Use Policy (AUP) for All Services
https://centretechnologies.com/hubfs/Agreements/AUP-Centre_Technologies-v1.2-083121.pdf
- d. Service Level Objectives (SLO) for All Services
https://centretechnologies.com/hubfs/Agreements/SLO-Centre_Technologies-v1.2-083121.pdf
- e. Microsoft Cloud Volume Licensing Agreement
https://centretechnologies.com/hubfs/Agreements/Microsoft_Cloud_Agreement-2019_oct.pdf
- f. Microsoft SPLA End User License Terms
https://centretechnologies.com/hubfs/Agreements/MS_SPLA_End_User-Centre_Technologies-v1.2-081820.pdf
- g. Service Attachment (SA) for Secure Managed Services
https://centretechnologies.com/hubfs/Agreements/SA-Secure_Managed_Services-Centre_Technologies-v1.9-092021.pdf
- h. Service Attachment (SA) for Cloud Services
https://centretechnologies.com/hubfs/Agreements/SA-Cloud_Services-Centre_Technologies-v1.2-083121.pdf
- i. Service Attachment (SA) for Endpoint Detection and Response Services
https://centretechnologies.com/hubfs/Agreements/SA-Endpoint_Detection_and_Response_Services-Centre_Technologies-v1.2-083121.pdf
- j. Service Attachment (SA) for Network Detection and Response Services
https://centretechnologies.com/hubfs/Agreements/SA-Network_Detection_and_Response_Services-Centre_Technologies-v1.2-083121.pdf
- k. Service Attachment (SA) for Cloud Detection and Response Services
https://centretechnologies.com/hubfs/Agreements/SA-Cloud_Detection_and_Response_Services-Centre_Technologies-v1.3-083121.pdf

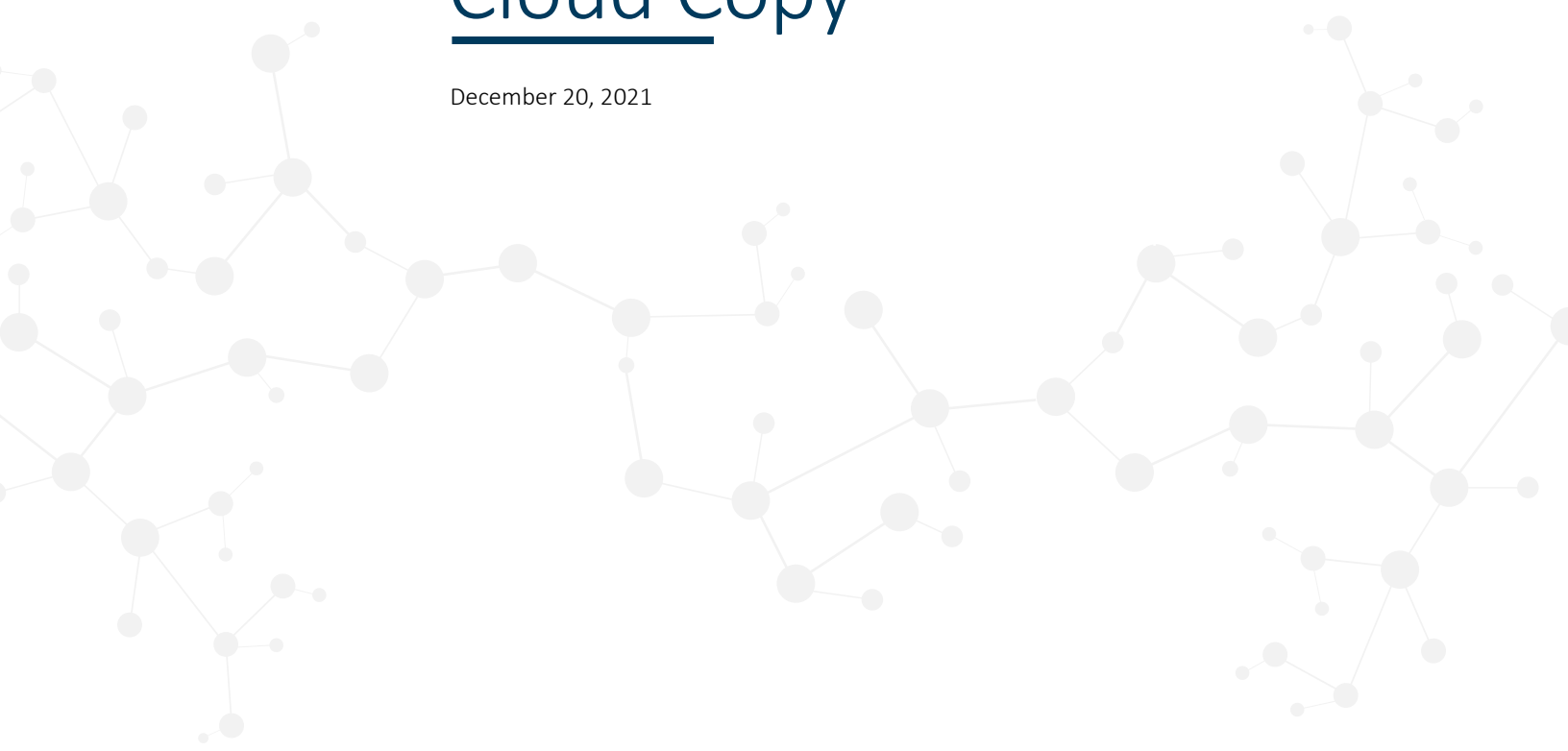


Centre
TECHNOLOGIES

STATEMENT OF WORK

Veeam Immutable Cloud Copy

December 20, 2021



PRESENTED TO
Town of Flower Mound

PREPARED BY
Centre Technologies, Inc.
Jamey Rush

Contact Information

Customer Contact	Rob Silvy	972-874-6051 rob.silvy@flower-mound.com
Centre Account Manager	Rick Essex	972-333-0934 ressex@centretechnologies.com
Centre Services Contact	Jamey Rush	214-593-6864 jrush@centretechnologies.com

Project Overview

This Statement of Work is between Centre Technologies, Inc., a Texas company (sometimes referred to as “we,” “us,” “our,” OR “Provider”), and Town of Flower Mound (sometimes referred to as “you,” “your,” OR “Customer”). This document, along with the Quote and Master Services Agreement, forms the Agreement between both parties including terms to which both parties agree to be bound.

Executive Summary

The Town of Flower Mound has engaged Centre Technologies to deploy immutable backups to a new cloud tenant. The town has approximately 40 TB of data to backup and has requested to implement the solution with minimal capital investment, if possible.

During the phases of this project, Centre will work with the Customer to meet project timelines and goals. Upon completion of this project, the Customer and Centre will meet to discuss recommendations and next steps.

Solution Summary

Centre will create a new cloud tenant in AWS with immutability set. Then, Centre will configure two new backup jobs as needed with the requirements for immutable backups and validate the cloud storage or reconfigure two existing jobs if they fulfill the requirements for immutable backups.

Our Responsibilities

Validate existing repositories

Convert simple repositories to scale-out backup repositories

Configure Veeam bucket on AWS

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Add test backup jobs as needed

Validate backup jobs and immutability

Project Management

Centre Technologies will assign a Project Manager for the duration of this project to work closely with an assigned Customer representative (i.e. Primary Technical Contact) to ensure proper project coordination and planning.

These activities will include:

- Project Kickoff Meeting to define project resources and delivery timeline
- Project Status Report, including scheduled project activities
- Project Status Meetings and updates, as needed
- Coordination of schedules to ensure successful implementation
- Final Project Deliverables, including documentation, notations, and references to formalize end of project

Key Assumptions

The key assumptions for this project include:

- All work to be performed at Customer premises shall occur during normally scheduled working hours (8:00 a.m. to 6:00 p.m. CST, Monday through Friday), except holidays, and unless otherwise agreed to in advance.
- All tasks will be performed over a consecutive timeframe unless otherwise agreed to by all parties.
- Additional charges may apply if a Centre consultant must return to site for any reason outside of the technician's control. For example:
 - All equipment is not onsite
 - Location/area is not ready for install
 - Site contact is not available when consultant arrives, and consultant is turned away
- During the project the Centre consultant may collect inventory, and configuration data from the environment as a whole
- Client will have licensing for any software that will be used
- Remote access will be provided during the project
- Current client Veeam version supports S3 buckets and immutability

Project Scope

Events and Tasks

This section contains the scope of the events and tasks associated with the completion of the project. These are organized into phases. Any dates are subject to change depending on schedules and progress.

Kickoff

Project Kickoff

- Review project goals
- Confirm technical goals & requirements
- Confirm customer access to systems
- Receive credentials and network information
- Schedule project start

Preparation

Validation of existing repositories

- Review existing repositories and validate readiness to migrate to scale out backup repositories, as needed

Implementation

Convert repositories to scale-out backup repositories, as needed

- Convert simple repositories to SOBRs to provide compatibility with S3 buckets

Configure Veeam AWS S3 bucket

- Configure new AWS S3 container with object lock bucket policy based on client requirement of 7-day offsite immutable backup
- Add Centre-provisioned AWS S3 container to the existing client Veeam environment

Add two test backup jobs as needed or reconfigure two existing jobs for testing

- Add two test backup jobs with retention of 7 days or more using bucket as target using best practices for immediate copy
- Test two backups and confirm backups complete properly and stores to the bucket

Validate test backup jobs and immutability

- Confirm backup job completed
- Attempt to delete the backup and validate that backup is retained

Support

Post Project Support (days)

- Dedicated expert level support to ensure that any post project issues are resolved as quickly as possible

Knowledge Transfer

Documentation & Knowledge Transfer

- Complete project documentation
- Knowledge transfer with client

Closeout

Project Closeout

- Confirm that customer has monitoring and backups in place for the new/upgraded solutions
- Review results with Customer
- Provide project documentation

Locations in Scope

This section contains a list of the physical locations where services are to be performed by Centre.

Out of Scope Services

This section contains a list of specific tasks or services that are outside the project scope or standard service offerings provided by Centre.

- Migration of existing Veeam backup data
- Modification of existing Veeam backup jobs, except two job reconfigurations if they already fulfill the requirements of immutable backups
- Remediation of existing issues, not listed as a task, within the environment
- Configuration of any prerequisite tasks
- Implementation, configuration, or migration of additional features or services not listed as a task
- Remediation of existing repositories if they are unhealthy or unable to be converted to SOBRs
- Reconfiguration of backup jobs beyond initial two test jobs

While Centre has done its best to list all excluded specific tasks, and services, the above list may not be all inclusive. Centre reserves the right to exclude any unlisted items. Any item selected from the above list will require a Change Order Request with billing on a time and materials basis. The Customer is responsible for inquiries regarding exclusions.

Prerequisites and Customer Responsibilities

General prerequisites for this project include:

- Dedication of appropriate Customer staff during the duration of the project
- Customer supplied systems meet necessary hardware or software requirements
- Centre is informed in advance of necessary clearances or security addendum requirements
- Provide staging area or room for technicians.
- Provide individual workspace with phone and network access that provides access to systems that are required to perform the assigned job functions
- Provide access to documentation or personnel who have knowledge of the environment
- Coordinate all physical access to facilities as necessary (security badges, parking, etc.)
- Have valid and appropriate product licenses and product support agreements
- Assign project sponsor as the single point of contact for issue resolution and activity scheduling
- Assume responsibility for all network connectivity, performance, and configuration issues
- Ensure adequate and effective backup and restore processes exist and are operational

Change Control

Changes to this SOW shall be initiated by providing a filled-out copy of the Change Request Form in Appendix A to the other party. Changes include but are not limited to requests for changes in project plans, scope, specifications, schedule, designs, requirements, service deliverables, or any other aspect of the SOW. Both parties shall review any change requests and advise if the request(s) will be accepted in-whole or in-part and if so, the associated costs and project impacts, if any. Fully executed copies of approved changes shall be added as an amendment.

The Customer point of contact and the Centre project manager shall receive the request from the other party. The Customer point of contact or Centre representative shall respond in writing to either accept or reject the request within three (3) business days of receipt unless a shorter response is requested. Changes are not authorized unless both parties agree.

Scheduling

All work to be performed at Customer premises shall occur during normally scheduled working hours (8:00 a.m. to 6:00 p.m. local time, Monday through Friday), except holidays, unless otherwise agreed to in advance.

All tasks will be performed over a consecutive timeframe unless otherwise agreed to by all parties

The work is subject to a mutually agreeable delivery schedule. Centre shall provide mutually agreeable timelines for Centre responsibilities and the Customer shall provide information used to develop the project. If the Customer causes mutually agreed upon deadlines to be missed, or fails to provide information which delays the project, then the Customer shall be responsible for additional expenses incurred related to the project task. Additional expenses and/or fees caused by delays by either party shall be treated as a change to the scope and costs quoted for this SOW and shall be handled as specified in the Change Control section of this SOW. Delays caused by fault of Centre alone shall under no circumstance cause additional expenses to be borne by the Customer.

The Customer understands that delays that are due to factors beyond Centre's reasonable control shall also not cause additional expenses and/or fees to be borne by either party, however, these types of delays may cause a temporary unavailability of resources due to schedule conflicts. These delays include, but are not limited to:

- A. acts of any governmental body, war, insurrection, sabotage, embargo, "Acts of God" (i.e. fire, flood, earthquake, tornado, etc.), strike or other labor disturbance, interruption of or delay in transportation, failure of third party software or inability to obtain raw materials, supplies or power used in equipment needed for provision of the SOW;
- B. those resulting from Customer's or third-party hardware, software, or services; and
- C. actions or inactions of Customer or third parties, Customer's employees, agents, contractors, vendors, or anyone gaining access to Customer's network by means of Customer's passwords or equipment.

Centre reserves the right to rotate resources assigned from time to time and shall provide reasonable notice to Customer prior to this transition. Centre shall have the departing resource and the incoming resource both on-site for a reasonable period to ensure a smooth transition of services.

Engagement reschedules made after the project kick off shall incur a 10% rescheduling fee.

Exceptions may be made to the normally scheduled hours to allow for activities that impact the Customer's business, Customers and/or Customer's landlords, and/or other affected tenants in buildings. Those exceptions must be represented here. In the absence of these exceptions, time and expenses shall be applied to all non-standard hours.

Cancellation Fees

For all cancellations made within 2 weeks before the scheduled engagement, Centre shall charge the Customer for any cancelled travel expenses (i.e., hotel and airfare). In addition to such travel expenses, Customer shall pay for service fees as follows:

- A. Cancellation **between 5 and 3 days before** project start date: 1 full day of consultant time (minimum of \$1,950)
- B. Cancellation **between 3 and 1 days before** project start date: 3 full days of consultant time (minimum of \$5,850)
- C. Cancellation **1 day before** project start date: 4 full days of consultant time (minimum of \$7,800)

The total fees charged will not exceed the total service fees listed in the Project Pricing section.

Completion Criteria

Centre shall have fulfilled its obligations under this Statement of Work when Centre completes the tasks listed under the Services Performed and Key Deliverables sections or the Customer terminates the project. Early termination may not relieve Customer of certain financial obligations.

Non-Solicitation

Customer agrees not to seek, offer, or solicit offers of employment from Centre employees, without the expressed written consent of Centre. The above limitation shall be effective for the Term of this Statement of Work and for a period of one (1) year following the termination of this Statement of Work or any extension hereto.

Project Deliverables

Centre Technologies has completed its responsibilities to this Statement of Work when the following deliverables are complete:

- Installation Documentation - Customer will receive an overview of the installation including what changed in the environment. Network information will be provided in the documentation.
- Task and Event Completion - The project is considered completed once the outlined tasks have been completed

Project Pricing

Fixed Fee Pricing

Description	Total
Professional Services	\$8,054.00
TOTAL	\$8,054.00

Project framework time estimate

From the project start date the estimated time to completion is: **3 business days**

Payment Schedule

The following payment schedule will be executed for the fees associated with this project.

Service Fees	Amount
Upon execution of Statement of Work	\$4,027.00
Upon completion of Project	\$4,027.00
TOTAL FEES TO TOWN OF FLOWER MOUND	\$8,054.00

Town of Flower Mound
Veeam Immutable Cloud Copy

Terms and Conditions

The following Terms and Conditions apply to this project:

- Material costs are not included in this fee and may be billed separately if applicable/incurred during the project.
- Estimated Expenses are included in this fee. This amount may change based on actuals.
- Pricing is valid for (30) days Centre Technologies requires advanced notice for scheduling of resources.

Quotes and Ordering. PURCHASE ORDERS SUBMITTED TO CENTRE SHALL BE BINDING ON CUSTOMER UPON WRITTEN ACCEPTANCE BY CENTRE. QUOTATIONS PROVIDED BY CENTRE TO CUSTOMER SHALL BE BINDING ON CUSTOMER UPON CUSTOMER'S WRITTEN ACCEPTANCE RECEIVED BY CENTRE WITHIN THE TIME DESCRIBED IN THE QUOTATION. ANY FEES QUOTED MAY BE REVISED TO INCLUDE TAXES, HANDLING AND OTHER FEES. SUCH FEES ARE ESTIMATED UNTIL FINAL PROCESSING AND MAY VARY TO INCLUDE ANY PRICING ERRORS.

Invoices. CENTRE SHALL INVOICE CUSTOMER ALL FEES, INCLUDING STATE SALES TAXES AS PROVIDED IN THE APPLICABLE MSA. PROJECT CONSULTING SERVICES ARE INVOICED WHEN THE CUSTOMER HAS ACCEPTED THE WORK AND THE TICKET IS CLOSED. ALL FEES ARE DUE WITHIN THIRTY (30) DAYS FROM THE DATE OF CENTRE INVOICE. MONTHLY RECURRING BLOCK OF HOURS ARE INVOICED (30) DAYS IN ADVANCE. AN ACH DEBIT PAYMENT METHOD CAN BE SETUP FOR THE PAYMENT OF RECURRING MONTHLY INVOICES. CUSTOMER SHALL PAY ALL BANK CHARGES, TAXES, DUTIES, LEVIES AND OTHER COSTS AND COMMISSIONS ASSOCIATED WITH ANY BANK WIRE TRANSFER OR OTHER MEANS OF PAYMENT.

Warranties and Limitations. CENTRE WARRANTS THAT ITS SERVICES SHALL BE PERFORMED BY QUALIFIED PERSONNEL IN A MANNER CONSISTENT WITH GOOD PRACTICE IN THE INFORMATION TECHNOLOGY SERVICES INDUSTRY. IF CENTRE BREACHES THIS WARRANTY, IT SHALL SUPPLY SERVICES TO CORRECT OR REPLACE THE WORK AT NO CHARGE. THE REMEDY SET FORTH IN THIS SECTION IS CUSTOMER'S EXCLUSIVE REMEDY FOR BREACH OF WARRANTY. CENTRE MAKES NO OTHER WARRANTIES ON THE SERVICES AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Interest. ANY OVERDUE AND UNPAID PORTION OF THE FEES SHALL BEAR INTEREST, AS SPECIFIED IN THE MSA. CENTRE MAY SUSPEND LICENSES AND PERFORMANCE OF ORDERS FOR WHICH CENTRE IS INSECURE OR WHICH PAYMENT IS OVERDUE UNTIL THE OVERDUE AMOUNTS ARE EITHER PAID IN FULL OR AN ALTERNATIVE ARRANGEMENT ACCEPTABLE TO CENTRE IS MADE. CUSTOMER SHALL REIMBURSE CENTRE FOR REASONABLE ATTORNEYS' FEES AND ANY OTHER COSTS ASSOCIATED WITH COLLECTING DELINQUENT PAYMENTS.

IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THIS STATEMENT OF WORK TO BE EXECUTED BY THEIR DULY AUTHORIZED REPRESENTATIVES WITH THE INTENT TO BE LEGALLY BOUND AS OF THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND ADEQUACY OF WHICH IS HEREBY ACKNOWLEDGED.

Signature of Acceptance

Acceptance of Statement of Work

Centre Technologies, Inc.

Town of Flower Mound

Joyce Johnson

Signature

Signature

Joyce Johnson

Printed Name

Derek France

Printed Name

Director of IT Consulting

Title

Mayor – Town of Flower Mound

Title

12/20/2021

Effective Date

Effective Date

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December 20, 2021

Page 10 | 11

Appendix A: Change Request Form

General Information

Date	
Company Name	Town of Flower Mound
Project Name	Veeam Immutable Cloud Copy
Change Name	
Change Number	
Change Type	
Change Request Description	

Evaluation

Scope	
Additional Prerequisites	
Schedule Changes	
Change Cost Model	
Cost	

Approval

Acceptance of Statement of Work (Change Request) – Centre Technologies, Inc. and Town of Flower Mound

For Centre Technologies, Inc.

For Town of Flower Mound

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

CONFIDENTIAL

December 20, 2021



TOWN COUNCIL AGENDA ITEM NO. 03

CONSENT ITEM

DATE: January 3, 2022

FROM: Joelle Hainley, Building Official

ITEM: Consider approval of an ordinance amending Appendix A “Fee Schedule,” referenced in Chapter 14, “Buildings and Buildings and Building Regulations,” Section 14-1, “Building, plumbing, mechanical and electrical permit fees,” of the Code of Ordinances of the Town of Flower Mound, Texas, by revising various building permit fees.

BACKGROUND INFORMATION: The Town recently hired Matrix Consulting to perform a fee study for certain development related fees. The results of the study showed that the Town is over recovering costs for several of our single-family dwelling permits. A Town Council work session was held on December 16, 2021 and during the work session it was discussed that staff would be bringing forward ordinance amendments to correct fees that were determined to be higher than the costs associated with the service. This ordinance is the first of those amendments and modifies the single-family dwelling permit fees that were determined to be too high, to one hundred percent cost recovery.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: Thomas Samuelson 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 APPENDIX A, "FEE SCHEDULE," REFERENCED IN CHAPTER 14, "BUILDINGS AND BUILDING REGULATIONS," SECTION 14-1, ENTITLED "BUILDING, PLUMBING, MECHANICAL AND ELECTRICAL PERMIT FEES," OF THE CODE OF ORDINANCES, TOWN OF FLOWER MOUND, TEXAS, TO REVISE THE FEES RELATED TO THE ISSUANCE OF CERTAIN BUILDING PERMITS; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY; 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 has previously adopted regulations for the issuance of building permits within the Town and has provided for the collection of fees in connection therewith; and

WHEREAS, the Town of Flower Mound has recently received the final results of an independent fee study performed by Matrix Consulting, the results of which show that the current permit fees for certain new residential construction are recovering more than the costs associated with those permits; and

WHEREAS, the Town Council finds and determines that the fees corresponding to Chapter 14, "Buildings, and Building Regulations" of Appendix A, "Fee Schedule," should be amended as set out herein and that the amendments proposed are in the best interest of and are necessary to protect the health, safety, and general welfare of the citizens of the Town and the general public;

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

SECTION 1

Appendix A, "Fee Schedule," of the Code of Ordinances, Town of Flower Mound, Texas is hereby amended by revising "New single-family fees" corresponding to Chapter 14, "Buildings and Building Regulations," Section 14-1, "Building, plumbing, mechanical and electrical permit fees," are amended as follows:

a) *New single-family fees (including duplexes):*

	Square footage:	Permit fee:
1.	2,000 or less	\$1,275.00

2.	2,001 to 2,500	\$1,508.00
3.	2,501 to 3,000	\$1,660.00
4.	3,001 to 4,000	\$1,798.00
5.	4,001 to 5,000	\$2,028.00
6.	5,001 to 7,500	\$2,848.00
7.	7,501 to 10,000	\$3,405.00
8.	10,001 sq. ft. or more	\$3,868.00
Note: A nonrefundable plan review fee of \$250.00 is due at time of plan submittal.		

SECTION 2

This Ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances, Town of Flower Mound, Texas, as amended, except where 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 3

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

SECTION 4

Any person, firm or corporation 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, Town of Flower Mound, Texas. Each day any such violation or violations exist shall constitute a separate offense and shall be punishable as such.

SECTION 5

All rights and remedies of the Town of Flower Mound, Texas, are expressly saved as to any and all violations of the provisions of the Code of Ordinances or any other ordinances affecting the matters regulated herein which 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,

ORDINANCE NO. _____

PAGE NO. 3

same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

SECTION 6

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

SECTION 7

This Ordinance shall take effect and be in full force from and after the date of its passage and publication.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS 3RD DAY OF JANUARY, 2022.

APPROVED:

Derek France, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 04

CONSENT ITEM

DATE: January 3, 2022

FROM: Paul Henley, Fire Chief *PH*

ITEM: Consider approval of the purchase of apparatus rescue equipment for aerial ladder trucks from Metro Fire through BuyBoard Purchasing Contract No. 603-20 in the total amount of \$54,731.00 and authorization for the Mayor to approve same on behalf of the Town.

BACKGROUND INFORMATION: To alleviate the gap in mutual aid service delivery, the Fire Department needs to equip our apparatus to allow for large and heavy vehicle accidents, small-scale structural collapses and rescues from heights and depths. The equipment purchase through Metro Fire is part of the approved FY21/22 Decision Package needed to accomplish this.

FISCAL IMPACT: \$54,731.00

Proposed Expenditure/(Revenue):	Account Number(s):
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\$54,731.00	100-660-63000-6190
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Finance Review by: Tammy Wilson, Executive Director of Fiscal and Administrative Services/CFO *tw*

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Metro Fire Quote #180099-0
2. Metro Fire Quote #180100-0

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



QUOTE

Corporate
17350 State Hwy 249
Suite 250
Houston TX 77064-1142
(713) 692-0911 Phone
(713) 692-1591 Fax

Mansfield
625 S Wisteria St Ste 121
Mansfield TX 76063-2528
(817) 467-0911 Phone
(817) 375-1775 Fax

South Houston
514 Michigan St
South Houston TX 77587-3221
(713) 475-2411 Phone
(713) 475-2428 Fax

Number	180099-0
Quote Date	11/08/2021
Page	1

Bill to: FLOWER MOUND FIRE DEPT
3911 S BROADWAY AVE
FLOWER MOUND, TX 75028

Ship to: FLOWER MOUND FLEET SERVICE CENTER
1101 DUNCAN LANE
FLOWER MOUND, TX 75028

Cust Code	Ordered By	Salesman	Job/Rel#	Customer PO
FLO001		SCOTT GIBBS		
Entered By	FOB	Ship Via	Terms	
SCOTT GIBBS	CUSTOMER PAYS FREIGHT		NET 20 DAYS	
Customer/Order Instructions				

PRICE REFLECTS BUY BOARD CONTRACT 603-20.

Quantity			U/M	Item #	Description	Price	Extension
Order	Ship	Back					
1	1	0	EA	PAR-22-796852	HIGHWAY VEHICLE STABILIZATION KIT; 6 STRUT EXTENSIONS, 4 ACME STRUTS, 4 MULTI-BASES, 4 HINGED BASE, 4 RATCHET BELTS 4 TIE DOWN KEYS W/ J-HOOK	7530.00	7530.00
2	2	0	EA	PAR-22-79HA10	HYDRAFUSION STRUT 10	2618.00	5236.00
2	2	0	EA	PAR-22-790020G	HYDRAFUSION PUMP W/ GUAGE	1086.00	2172.00
2	2	0	EA	PAR-22-796331	VSK BASE 6 *	1125.00	2250.00
SubTotal							17,188.00
Total							17,188.00

QUOTE GOOD FOR 45 DAYS



QUOTE

Corporate
17350 State Hwy 249
Suite 250
Houston TX 77064-1142
(713) 692-0911 Phone
(713) 692-1591 Fax

Mansfield
625 S Wisteria St Ste 121
Mansfield TX 76063-2528
(817) 467-0911 Phone
(817) 375-1775 Fax

South Houston
514 Michigan St
South Houston TX 77587-3221
(713) 475-2411 Phone
(713) 475-2428 Fax

Number	180100-0
Quote Date	11/08/2021
Page	1

Bill to: FLOWER MOUND FIRE DEPT
3911 S BROADWAY AVE
FLOWER MOUND, TX 75028

Ship to: FLOWER MOUND FLEET SERVICE CENTER
1101 DUNCAN LANE
FLOWER MOUND, TX 75028

Cust Code	Ordered By	Salesman	Job/Rel#	Customer PO
FLO001		SCOTT GIBBS		
Entered By	FOB	Ship Via	Terms	
SCOTT GIBBS	CUSTOMER PAYS FREIGHT		NET 20 DAYS	
Customer/Order Instructions				

PRICE REFLECTS BUY BOARD CONTRACT 603-20.

Quantity			U/M	Item #	Description	Price	Extension
Order	Ship	Back					
1	1	0	EA	PAR-22-796855	INTERSTATE / MOTORWAY VSK 12 STRUT EXTENSIONS, 4 CHAINS, 4EA. CONTOUR - V - MULTI BASES 6 HINGED BASE & RATCHET BELTS	19168.00	19168.00
2	2	0	EA	PAR-22-79HA10	HYDRAFUSION STRUT 10	2618.00	5236.00
2	2	0	EA	PAR-22-79HA16	HYDRAFUSION STRUT 16	3010.00	6020.00
2	2	0	EA	PAR-22-790020G	HYDRAFUSION PUMP W/ GUAGE	1086.00	2172.00
1	1	0	EA	PAR-22-796300	TRIPOD CONVERSION KIT	2697.00	2697.00
2	2	0	EA	PAR-22-796331	VSK BASE 6 *	1125.00	2250.00

SubTotal 37,543.00

Total 37,543.00

QUOTE GOOD FOR 45 DAYS

**TOWN COUNCIL AGENDA ITEM NO. 05****CONSENT ITEM****DATE:** January 3, 2022**FROM:** Lavona Burgess, Director of Support Services**ITEM:** Consider approval of the purchase of uniforms in the annual estimated amount of \$66,310.00 from Galls, LLC; Impact Promotional Services, LLC dba Got You Covered Work Wear and Uniforms; and GT Distributors, Inc through a North Central Texas Council of Government (NCTCOG) Master Service Agreement (MSA) #2021-073.

BACKGROUND INFORMATION: The Town of Flower Mound Police Department previously purchased uniforms using an interlocal agreement with the City of Frisco. The City of Frisco's bid with Galls, LLC expired on November 4, 2021 causing our existing contract to no longer be valid. The department is requesting a new Master Services Agreement with three suppliers to meet our uniform needs. The suppliers are Galls, LLC; Impact Promotional Services, LLC dba Got You Covered Work Wear and Uniforms; and GT Distributors, Inc. The initial term of the annual contract is one year, expiring November 1, 2022, with four renewal options remaining.

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

FISCAL IMPACT: \$ 66,310.00 is the total annual expenditure approved in the budget for the purpose of purchasing uniforms.

Proposed Expenditure/(Revenue):	Account Number(s):
\$ 5,510.00	100-640-43500-2210
\$ 52,300.00	100-640-43500-2270
\$ 825.00	318-560-43500-2210
\$ 7,675.00	318-560-43500-2270

Finance Review by: Tammy Wilson, Executive Director of Fiscal and Administrative Services/CFO tw

LEGAL REVIEW: N/A**ATTACHMENTS:**

1. MSA 2021-073 Police and First Responder Uniforms Galls
2. MSA 2021-073 Police and First Responder Uniforms GT Distributors
3. MSA 2021-073 Police and First Responder Uniforms Got You Covered

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



MASTER SERVICES AGREEMENT #2021-073
First Responder Uniforms, Accessories, and Services

THIS MASTER SERVICES AGREEMENT ("Agreement"), effective the last date of signed approval ("Effective Date"), is entered into by and between the **North Central Texas Council of Governments** ("**NCTCOG**"), a Texas political subdivision and non-profit corporation, with offices located at 616 Six Flags Drive, Arlington, TX 76011, and

Galls, LLC. ("Contractor")
1340 Russell Cave Rd.
Lexington, KY 40505

ARTICLE I
RETENTION OF THE CONTRACTOR

- 1.1 This Agreement defines the terms and conditions upon which the Contractor agrees to provide **First Responder Uniforms, Accessories, and Services** (hereinafter, "Services") to governmental entities participating in the North Texas SHARE program (hereinafter "Participating Entities"). The Contractor is being retained to provide services described below to Participating Entities based on the Contractor's demonstrated competence and requisite qualifications to perform the scope of the services described herein and in the Request for Proposals **#2021-073** (hereinafter, "RFP"). The Contractor demonstrated they have the resources, experience, and qualifications to perform the described services, which is of interest to Participating Entities and was procured via the RFP. NCTCOG agrees to and hereby does retain the Contractor, as an independent contractor, and the Contractor agrees to provide services to Participating Entities, in accordance with the terms and conditions provided in this Agreement and consistent with Contractor's response to the RFP.

ARTICLE II
SCOPE OF SERVICES

- 2.1 The Contractor will provide Services described in a written Purchase Order issued by NCTCOG or a SHARE Participating Entity. Any such Purchase Order is hereby incorporated by reference and made a part of this Agreement and shall be subject to the terms and conditions in this Agreement. In the event of a conflict between any term or provision in this Agreement and any term or provision in a Purchase Order, the term or provision in this Agreement shall control unless the conflicting term or provision in this Agreement is referenced, and expressly stated not to apply, in such Purchase Order.
- 2.2 All Services rendered under this Agreement will be performed by the Contractor: i) with due care; ii) in accordance with generally prevailing industry standards; iii) in accordance with Participating Entities' standard operating procedures and applicable policies, as may be amended from time to time; and iv) in compliance with all applicable laws, government regulatory requirements, and any other written instructions, specifications, guidelines, or requirements provided by NCTCOG and/or Participating Entities.
- 2.3 Any agreed-upon changes to a Purchase Order shall be set forth in a subsequent Purchase Order amendment. Contractor will not implement any changes or any new Services until a Purchase Order has been duly executed by Participating Entity. For the avoidance of doubt, the Contractor acknowledges that Participating Entity is under no obligation to execute a Purchase Order. Participating Entity shall not be liable for any amounts not included in a Purchase Order in the absence of a fully executed amendment of Purchase Order.

- 2.4 Pricing for items in Attachment 1 represent ~~Page 49 of 105~~ **Page 49 of 105** cost for each item offered by the Contractor. Contractor and Participating Entity may mutually agree to a lower cost for any item covered under this agreement.

2.5 NCTCOG Obligations

- 2.5.1 NCTCOG shall make available a contract page on its NorthTexasSHARE.org website which will include contact information for the Contractor(s).

2.6 Participating Entity Obligations.

- 2.6.1 In order to utilize the Services, Participating Entities must have executed a Master Interlocal Agreement for North Texas SHARE with NCTCOG. This agreement with the Participating Entity will define the legal relationship between NCTCOG and the Participating Entity.
- 2.6.2 In order to utilize the Services, Participating Entities must execute a Purchase Order with the Contractor. This agreement with the Participating Entity will define the Services and costs that the Participating Entity desires to have implemented by the Contractor.

2.7 Contractor Obligations.

- 2.7.1 Contractor must be able to deliver, perform, install, and implement services with the requirements and intent of RFP #2021-073
- 2.7.2 If applicable, Contractor shall provide all necessary material, labor and management required to perform this work. The scope of services shall include, but not be limited to, items listed in Attachment 1.
- 2.7.3 Contractor agrees to market and promote the use of the SHARE awarded contract whenever possible among its current and solicited customer base. Contractor shall agree to follow reporting requirements in report sales made under this Master Services Agreement in accordance with Section 4.2.

ARTICLE III TERM

- 3.1 This Agreement will commence on the Effective Date and remain in effect for an initial term ending on November 1, 2022 (the "**Term**"), unless earlier terminated as provided herein. This Agreement may be renewed, at NCTCOG's sole discretion, for up to four (4) additional one (1) year terms through November 1, 2026.
- 3.2 **Termination.** NCTCOG and/or Participating Entities may terminate this Agreement and/or any Purchase Order to which it is a signatory at any time, with or without cause, upon thirty (30) days' prior written notice to Contractor. Upon its receipt of notice of termination of this Agreement or Purchase Order, Contractor shall follow any instructions of NCTCOG respecting work stoppage. Contractor shall cooperate with NCTCOG and/or Participating Entities to provide for an orderly conclusion of the Services. Contractor shall use its best efforts to minimize the amount of any non-cancelable obligations and shall assign any contracts related thereto to NCTCOG or Participating Entity at its request. If NCTCOG or Participating Entity elects to continue any activities underlying a terminated Purchase Order after termination, Contractor shall cooperate with NCTCOG or Participating Entity to provide for an orderly transfer of Contractor's responsibilities with respect to such Purchase Order to NCTCOG or Participating Entity. Upon the effective date of any such termination, the Contractor shall submit a final invoice for payment in accordance with Article IV, and NCTCOG or Participating Entity shall pay such amounts as are due to Contractor through the effective date of termination. NCTCOG or Participating Entity shall only be liable for payment of services rendered before the effective date of termination. If Agreement is terminated, certain reporting requirements identified in this Agreement shall survive termination of this Agreement.

- 3.2.1 **Termination for Cause.** Either party may immediately terminate this Agreement if the other party breaches its obligations specified within this Agreement, and, where capable of remedy, such breach has not been materially cured within thirty (30) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
- 3.2.2 **Breach:** Upon any material breach of this Agreement by either party, the non-breaching party may terminate this Agreement upon twenty (20) days written notice to the breaching party. The notice shall become effective at the end of the twenty (20) day period unless the breaching party cures such breach within such period.

ARTICLE IV COMPENSATION

- 4.1 **Invoices.** Contractor shall submit an invoice to the ordering Participating Entity upon receipt of an executed Purchase Order and after completion of the work, with Net 30 payment terms. Costs incurred prior to execution of this Agreement are not eligible for reimbursement. There shall be no obligation whatsoever to pay for performance of this Agreement from the monies of the NCTCOG or Participating Entities, other than from the monies designated for this Agreement and/or executed Purchase Order. Contractor expressly agrees that NCTCOG shall not be liable, financial or otherwise, for Services provided to Participating Entities.
- 4.2 **Reporting.** NCTCOG intends to make this Agreement available to other governmental entities through its SHARE cooperative purchasing program. Contractor shall submit to NCTCOG on a calendar quarterly basis a report that identifies any new client Participating Entities, the date and order number, and the total contracted value of services that each Participating Entity has purchased and paid in full under this Master Service Agreement. Reporting and invoices should be submitted to:

NCTCOG
ATTN: North Texas SHARE
PO Box 5888
Arlington, TX 76005-5888
Email: NorthTexasSHARE@nctcog.org

ARTICLE V SERVICE FEE

- 5.1 **Explanation.** NCTCOG will make this Master Service Agreement available to other governmental entities, Participating Entities, and non-profit agencies in Texas and the rest of the United States through its SHARE cooperative purchasing program. The Contractor is able to market the Services under this Agreement to any Participating Entity with emphasis that competitive solicitation is not required when the Participating Entity purchases off of a cooperative purchasing program such as SHARE. However, each Participating Entity will make the decision that it feels is in compliance with its own purchasing requirements. The Contractor realizes substantial efficiencies through their ability to offer pricing through the SHARE Cooperative and that will increase the sales opportunities as well as reduce the need to repeatedly respond to Participating Entities' Requests for Proposals. From these efficiencies, Contractor will pay an administrative fee to SHARE calculated as a percentage of sales processed through the SHARE Master Services Agreement. This administrative fee is not an added cost to SHARE participants. This administrative fee covers the costs of solicitation of the contract, marketing and facilitation, as well as offsets expenses incurred by SHARE.
- 5.2 **Administrative Fee.** NCTCOG will utilize an administrative fee, in the form of a percent of cost that will apply to all contracts between awarded contractor and NCTCOG or participants resulting from this solicitation. The administrative fee will be remitted by the contractor to NCTCOG on a quarterly basis, along with required quarterly reporting. The remuneration fee for this program will be 2% on sales.
- 5.3 **Setup and Implementation.** NCTCOG will provide instruction and guidance as needed to the Contractor to assist in maximizing mutual benefits from marketing these Services through the SHARE purchasing program.

ARTICLE VI RELATIONSHIP BETWEEN THE PARTIES

- 6.1 **Contractual Relationship.** It is understood and agreed that the relationship described in this Agreement between the Parties is contractual in nature and is not to be construed to create a partnership or joint venture or agency relationship between the parties. Neither party shall have the right to act on behalf of the other except as expressly set forth in this Agreement. Contractor will be solely responsible for and will pay all taxes related to the receipt of payments hereunder and shall give reasonable proof and supporting documents, if reasonably requested, to verify the payment of such taxes. No Contractor personnel shall obtain the status of or otherwise be considered an employee of NCTCOG or Participating Entity by virtue of their activities under this Agreement.

ARTICLE VII**REPRESENTATIONS AND WARRANTIES****7.1 Representations and Warranties.** Contractor represents and warrants that:

- 7.1.1 As of the Effective Date of this Agreement, it is not a party to any oral or written contract or understanding with any third party that is inconsistent with this Agreement and/or would affect the Contractor's performance under this Agreement; or that will in any way limit or conflict with its ability to fulfill the terms of this Agreement. The Contractor further represents that it will not enter into any such agreement during the Term of this Agreement;
- 7.1.2 NCTCOG is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from, or ineligible for, participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. Contractor and its subcontractors shall include a statement of compliance with Federal and State Debarment and suspension regulations in all Third-party contracts.
- 7.1.3 Contractor shall notify NCTCOG if Contractor or any of the Contractor's sub-contractors becomes debarred or suspended during the performance of this Agreement. Debarment or suspension of the Contractor or any of Contractor's sub-contractors may result in immediate termination of this Agreement.
- 7.1.4 Contractor and its employees and sub-contractors have all necessary qualifications, licenses, permits, and/or registrations to perform the Services in accordance with the terms and conditions of this Agreement, and at all times during the Term, all such qualifications, licenses, permits, and/or registrations shall be current and in good standing.
- 7.1.5 Contractor shall, and shall cause its representatives to, comply with all municipal, state, and federal laws, rules, and regulations applicable to the performance of the Contractor's obligations under this Agreement.

ARTICLE VIII**CONFIDENTIAL INFORMATION AND OWNERSHIP**

- 8.1 **Confidential Information.** Contractor acknowledges that any information it or its employees, agents, or subcontractors obtain regarding the operation of NCTCOG or Participating Entities, its products, services, policies, customer, personnel, and other aspect of its operation ("Confidential Information") is proprietary and confidential, and shall not be revealed, sold, exchanged, traded, or disclosed to any person, company, or other entity during the period of the Contractor's retention hereunder or at any time thereafter without the express written permission of NCTCOG or Participating Entity.

Notwithstanding anything in this Agreement to the contrary, Contractor shall have no obligation of confidentiality with respect to information that (i) is or becomes part of the public domain through no act or omission of Contractor; (ii) was in Contractor's lawful possession prior to the disclosure and had not been obtained by Contractor either directly or indirectly from the NCTCOG or Participating Entity; (iii) is lawfully disclosed to Contractor by a third party without restriction on disclosure; (iv) is independently developed by Contractor without use of or reference to the NCTCOG's Participating Entity's Confidential Information; or (v) is required to be disclosed by law or judicial, arbitral or governmental order or process, provided Contractor gives the NCTCOG or Participating Entity prompt written notice of such requirement to permit the NCTCOG or Participating Entity to seek a protective order or other appropriate relief. Contractor acknowledges that NCTCOG and Participating Entities must strictly comply with applicable public information laws, in responding to any request for public information. This obligation supersedes any conflicting provisions of this Agreement.

- 8.2 **Ownership.** No title or ownership rights to any applicable software are transferred to the NCTCOG by this agreement. The Contractor and its suppliers retain all right, title and interest, including all copyright and intellectual property rights, in and to, the software (as an independent work and as an underlying

Page 58 of 105
work serving as a basis for any improvements, modifications, derivative works, and applications NCTCOG may develop), and all copies thereof and all final documents, data, reports, information, or materials are and shall at all times be and remain, upon payment of Contractor's invoices therefore, the property of NCTCOG or Participating Entity and shall not be subject to any restriction or limitation on their future use by, or on behalf of, NCTCOG or Participating Entity, except otherwise provided herein. Subject to the foregoing exception, if at any time demand be made by NCTCOG or Participating Entity for any documentation related to this Agreement and/or applicable Purchase Orders for the NCTCOG and/or any Participating Entity, whether after termination of this Agreement or otherwise, the same shall be turned over to NCTCOG without delay, and in no event later than thirty (30) days after such demand is made. Contractor shall have the right to retain copies of documentation, and other items for its archives. If for any reason the foregoing Agreement regarding the ownership of documentation is determined to be unenforceable, either in whole or in part, the Contractor hereby assigns and agrees to assign to NCTCOG all rights, title, and interest that the Contractor may have or at any time acquire in said documentation and other materials, provided that the Contractor has been paid the aforesaid.

ARTICLE IX GENERAL PROVISIONS

- 9.1 **Notices.** All notices from one Party to another Party regarding this Agreement shall be in writing and delivered to the addresses shown below:

If to NCTCOG: North Central Texas Council of Governments
P.O. Box 5888
Arlington, TX 76005-5888
Attn: Craigan Johnson
(817) 695-9186
cjohnson@nctcog.org

If to Contractor: Galls, LLC
Attn: Legal Dept.
1340 Russell Cave Rd.
Lexington, KY 40505
(859) 800 - 1400
Smeltzer-Amelia@galls.com

The above contact information may be modified without requiring an amendment to the Agreement.

- 9.2 **Tax.** NCTCOG and several participating entities are exempt from Texas limited sales, federal excise and use tax, and does not pay tax on purchase, rental, or lease of tangible personal property for the organization's use. A tax exemption certificate will be issued upon request.
- 9.3 **Indemnification.** Contractor shall defend, indemnify, and hold harmless NCTCOG and Participating Entities, NCTCOG's affiliates, and any of their respective directors, officers, employees, agents, subcontractors, successors, and assigns from any and all suits, actions, claims, demands, judgments, liabilities, losses, damages, costs, and expenses (including reasonable attorneys' fees and court costs) (collectively, "Losses") arising out of or relating to: (i) Services performed and carried out pursuant to this Agreement; (ii) breach of any obligation, warranty, or representation in this Agreement, (iii) the negligence or willful misconduct of Contractor and/or its employees or subcontractors; or (iv) any infringement, misappropriation, or violation by Contractor and/or its employees or subcontractors of any right of a third party; provided, however, that Contractor shall have no obligation to defend, indemnify, or hold harmless to the extent any Losses are the result of NCTCOG's or Participating Entities' gross negligence or willful misconduct.
- 9.4 **Limitation of Liability.** In no event shall either party be liable for special, consequential, incidental, indirect or punitive loss, damages or expenses arising out of or relating to this Agreement, whether arising from a breach of contract or warranty, or arising in tort, strict liability, by statute or otherwise,

Notwithstanding any provision hereof to the contrary, neither party's liability shall be limited by this Article with respect to claims arising from breach of any confidentiality obligation, arising from such party's infringement of the other party's intellectual property rights, covered by any express indemnity obligation of such party hereunder, arising from or with respect to injuries to persons or damages to tangible property, or arising out of the gross negligence or willful misconduct of the party or its employees.

9.5 Insurance. At all times during the term of this Agreement, Contractor shall procure, pay for, and maintain, with approved insurance carriers, the minimum insurance requirements set forth below, unless otherwise agreed in a Purchase Order between Contractor and Participating Entities. Further, Contractor shall require all contractors and sub-contractors performing work for which the same liabilities may apply under this Agreement to do likewise. All subcontractors performing work for which the same liabilities may apply under this contract shall be required to do likewise. Contractor may cause the insurance to be effected in whole or in part by the contractors or sub-contractors under their contracts. NCTCOG reserves the right to waive or modify insurance requirements at its sole discretion.

9.5.1 Workers' Compensation: Statutory limits and employer's liability of \$100,000 for each accident or disease.

9.5.2 Commercial General Liability:

9.5.2.1 Required Limits:

\$1,000,000 per occurrence;

\$3,000,000 Annual Aggregate

9.5.2.2 Commercial General Liability policy shall include:

9.5.2.2.1 Coverage A: Bodily injury and property damage;

9.5.2.2.2 Coverage B: Personal and Advertising Injury liability;

9.5.2.2.3 Coverage C: Medical Payments;

9.5.2.2.4 Products: Completed Operations;

9.5.2.2.5 Fire Legal Liability;

9.5.2.3 Policy coverage must be on an "occurrence" basis using CGL forms as approved by the Texas State Board of Insurance.

9.5.3 Business Auto Liability: Coverage shall be provided for all owned hired, and non-owned vehicles. Required Limit: \$1,000,000 combined single limit each accident.

9.5.4 Professional Errors and Omissions liability:

9.5.4.1 Required Limits:

\$1,000,000 Each Claim

\$1,000,000 Annual Aggregate

9.6 Conflict of Interest. During the term of this Agreement, and all extensions hereto and for a period of one (1) year thereafter, neither party, shall, without the prior written consent of the other, directly or indirectly, whether for its own account or with any other persons or entity whatsoever, employ, solicit to employ or endeavor to entice away any person who is employed by the other party.

9.7 Force Majeure. It is expressly understood and agreed by both parties to this Agreement that, if the performance of any provision of this Agreement is delayed by force majeure, defined as reason of war, civil commotion, act of God, governmental restriction, regulation or interference, fire, explosion, hurricane, flood, failure of transportation, court injunction, or any circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated herein, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the period of time applicable to such

Requirement shall be extended for a period of time equal to the period of time such party was delayed. Each party must inform the other in writing within a reasonable time of the existence of such force majeure.

- 9.8 **Ability to Perform.** Contractor agrees promptly to inform NCTCOG of any event or change in circumstances which may reasonably be expected to negatively affect the Contractor's ability to perform its obligations under this Agreement in the manner contemplated by the parties.
- 9.9 **Availability of Funding.** This Agreement and all claims, suits, or obligations arising under or related to this Agreement are subject to and limited by the receipt and availability of funds which are received from the Participating Entities by NCTCOG dedicated for the purposes of this Agreement.
- 9.10 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas, United States of America. The mandatory and exclusive venue for the adjudication or resolution of any dispute arising out of this Agreement shall be in Tarrant County, Texas.
- 9.11 **Waiver.** Failure by either party to insist on strict adherence to any one or more of the terms or conditions of this Agreement, or on one or more occasions, will not be construed as a waiver, nor deprive that party of the right to require strict compliance with the same thereafter.
- 9.12 **Entire Agreement.** This Agreement and any attachments/addendums, as provided herein, constitutes the entire agreement of the parties and supersedes all other agreements, discussions, representations or understandings between the parties with respect to the subject matter hereof. No amendments hereto, or waivers or releases of obligations hereunder, shall be effective unless agreed to in writing by the parties hereto.
- 9.13 **Assignment.** This Agreement may not be assigned by either Party without the prior written consent of the other Party.
- 9.14 **Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision(s) hereof, and this Agreement shall be revised so as to cure such invalid, illegal, or unenforceable provision(s) to carry out as near as possible the original intents of the Parties.
- 9.15 **Amendments.** This Agreement may be amended only by a written amendment executed by both Parties, except that any alterations, additions, or deletions to the terms of this Agreement, which are required by changes in Federal and State law or regulations or required by the funding source, are automatically incorporated into this Agreement without written amendment hereto and shall become effective on the date designated by such law or regulation.
- 9.16 **Dispute Resolution.** The parties to this Agreement agree to the extent possible and not in contravention of any applicable State or Federal law or procedure established for dispute resolution, to attempt to resolve any dispute between them regarding this Agreement informally through voluntary mediation, arbitration or any other local dispute mediation process, including but not limited to dispute resolution policies of NCTCOG, before resorting to litigation.
- 9.17 **Publicity.** Contractor shall not issue any press release or make any statement to the media with respect to this Agreement or the services provided hereunder without the prior written consent of NCTCOG.
- 9.18 **Survival.** Rights and obligations under this Agreement which by their nature should survive will remain in effect after termination or expiration hereof.

ARTICLE X**ADDITIONAL REQUIREMENTS**

- 10.1 **Equal Employment Opportunity.** Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, or national origin. Contractor shall take affirmative actions to ensure that applicants are employed, and that employees are treated, during their employment, without regard to their race, religion, color, sex, sexual orientation, gender identity, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 10.2 **Davis-Bacon Act.** Contractor agrees to comply with all applicable provisions of 40 USC § 3141 – 3148.
- 10.3 **Contract Work Hours and Selection Standards.** Contractor agrees to comply with all applicable provisions of 40 USC § 3701 – 3708 to the extent this Agreement indicates any employment of mechanics or laborers.
- 10.4 **Rights to Invention Made Under Contract or Agreement.** Contractor agrees to comply with all applicable provisions of 37 CFR Part 401.
- 10.5 **Clean Air Act, Federal Water Pollution Control Act, and Energy Policy Conservation Act.** Contractor agrees to comply with all applicable provisions of the Clean Air Act under 42 USC § 7401 – 7671, the Energy Federal Water Pollution Control Act 33 USC § 1251 – 1387, and the Energy Policy Conservation Act under 42 USC § 6201.
- 10.6 **Debarment/Suspension.** Contractor is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. Contractor and its subcontractors shall comply with the Certification Requirements for Recipients of Grants and Cooperative Agreements Regarding Debarments and Suspensions.
- 10.7 **Restrictions on Lobbying.** 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.
- 10.8 **Procurement of Recovered Materials.** Contractor agrees to comply with all applicable provisions of 2 CFR §200.322.
- 10.9 **Drug-Free Workplace.** Contractor shall provide a drug free work place in compliance with the Drug Free Work Place Act of 1988.
- 10.10 **Texas Corporate Franchise Tax Certification.** Pursuant to Article 2.45, Texas Business Corporation Act, state agencies may not contract with for profit corporations that are delinquent in making state franchise tax payments.
- 10.11 **Civil Rights Compliance**
Compliance with Regulations: Contractor will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation

(USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this agreement.

Nondiscrimination: Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 45 CFR Part 21.

Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by Contractor of obligations under this contract and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, sex, or national origin.

Information and Reports: Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor will so certify to NCTCOG, the Texas Department of Transportation ("the State") or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

Sanctions for Noncompliance: In the event of Contractor's noncompliance with the Nondiscrimination provisions of this Agreement, NCTCOG will impose such sanctions as it or the State or the FHWA may determine to be appropriate, including, but not limited to: withholding of payments to the Contractor under this Agreement until the Contractor compiles and/or cancelling, terminating or suspension of this Agreement, in whole or in part.

Incorporation of Provisions: Contractor will include the provisions of the paragraphs listed above, in this section 10.11, in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Contractor will take such action with respect to any subcontract or procurement as NCTCOG, the State, or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, Contractor may request the State to enter into such litigation to protect the interests of the State. In addition, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. Contractor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. Each sub-award or sub-contract must include the following assurance: *The Contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

10.13 Pertinent Non-Discrimination Authorities

During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- b. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects).
- c. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- d. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- e. The Age Discrimination Act of 1975, as amended, (49 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- f. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- g. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not).
- h. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- i. The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- j. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- k. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).
- i. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

10.14 Ineligibility to Receive State Grants or Loans, or Receive Payment on State Contracts

In accordance with Section 231.006 of the Texas Family Code, a child support obligor who is more

an entity (50) days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least twenty-five (25) percent is not eligible to:

- a. Receive payments from state funds under a contract to provide property, materials or services; or
- b. Receive a state-funded grant or loan.

By signing this Agreement, the Contractor certifies compliance with this provision.

10.15 House Bill 89 Certification

If contractor is required to make a certification pursuant to Section 2270.002 of the Texas Government Code, contractor certifies that contractor does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If contractor does not make that certification, contractor state in the space below why the certification is not required.

10.16 Certification Regarding Disclosure of Conflict of Interest.

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

“No employee of the contractor, no member of the contractor’s governing board or body, and no person who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this contract shall participate in any decision relating to this contract which affects his/her personal pecuniary interest.

Executives and employees of contractor shall be particularly aware of the varying degrees of influence that can be exerted by personal friends and associates and, in administering the contract, shall exercise due diligence to avoid situations which give rise to an assertion that favorable treatment is being granted to friends and associates. When it is in the public interest for the contractor to conduct business with a friend or associate of an executive or employee of the contractor, an elected official in the area or a member of the North Central Texas Council of Governments, a permanent record of the transaction shall be retained.

Any executive or employee of the contractor, an elected official in the area or a member of the NCTCOG, shall not solicit or accept money or any other consideration from a third person, for the performance of an act reimbursed in whole or part by contractor or Department. Supplies, tools, materials, equipment or services purchased with contract funds shall be used solely for purposes allowed under this contract. No member of the NCTCOG shall cast a vote on the provision of services by that member (or any organization which that member represents) or vote on any matter which would provide a direct or indirect financial benefit to the member or any business or organization which the member directly represents”.

No officer, employee or paid consultant of the contractor is a member of the NCTCOG.

No officer, manager or paid consultant of the contractor is married to a member of the NCTCOG.

No member of NCTCOG directly owns, controls or has interest in the contractor.

The contractor has disclosed any interest, fact, or circumstance that does or may present a potential conflict of interest.

No member of the NCTCOG receives compensation from the contractor for lobbying activities as defined in Chapter 305 of the Texas Government Code.

Should the contractor fail to abide by the foregoing covenants and affirmations regarding conflict of interest, the contractor shall not be entitled to recovery of any costs or expenses incurred in relation to the contract and shall immediately refund to the North Central Texas Council of Governments any fees or expenses that may have been paid under this contract and shall further be liable for any other costs incurred or damages sustained by the NCTCOG as it relates to this contract.

10.17 Certification of Fair Business Practices

That the submitter affirms that the submitter has not been found guilty of unfair business practices in a judicial or state agency administrative proceeding during the preceding year. The submitter further affirms that no officer of the submitter has served as an officer of any company found guilty of unfair business practices in a judicial or state agency administrative during the preceding year.

10.18 Certification of Good Standing Texas Corporate Franchise Tax Certification

Pursuant to Article 2.45, Texas Business Corporation Act, state agencies may not contract with for profit corporations that are delinquent in making state franchise tax payments. The undersigned authorized representative of the corporation making the offer herein certified that the following indicated Proposal is true and correct and that the undersigned understands that making a false Proposal is a material breach of contract and is grounds for contract cancellation.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Galls, LLC.


 Signature Date 11/03/2021

David Scheve
 Printed Name

North Central Texas Council of Governments


 Signature Date 11/3/2021
 Michael Eastland
 Executive Director

Attachment I
Pricing for SHARE

For First Responder Uniforms, Accessories, and Services, contractor shall quote participating SHARE Entities the rates and/or discount required for products and services specified by the RFP. Contractor's proposed catalog discount for uniforms and services are found below.

UNIFORM ALTERATION SERVICES

The Contractor has indicated that they will provide uniform alteration services at a percentage-discount over catalogue pricing. The Contractor has provided a Uniform Customization catalog, which is found on the SHARE landing page. To this end, the Contractor has provided the following pricing information:

Galls, LLC. will offer uniform alteration services at a minimum percent-discount rate of 15%
Galls, LLC. will offer uniform embroidery services at a minimum percent-discount rate of 15%

For additional information, please refer to Gall's Uniform Customization Catalogue.

UNIFORMS AND ACCESSORIES PRICING

Product Supplier/Brand Catalogue Discount Pricing information is found on the following pages.

**Percent Discount
proposal for catalogue
Brands for items not
listed in this Tab:**

Page 62 of 405	
Brand	% Discount off catalog
Atlanco	15%
ASP	15%
Blauer (Texas Retail Price List)	15%
5.11	15%
GT	15%
Point Blank (Concealable)	15%
Point Blank (Tactical Armour& Accessories)	15%
Nardis	15%
Safariland	15%
Elbeco	15%
Under Armour	15%
Smith & Wesson	15%
ESS	15%
Blackhawk	15%
Port Authority	15%
Custom Made Items	15%
Flying Cross	15%
Brand	% Discount off catalog
221B Resources	15%
3M Company	15%
3M Company-Personal Safety Div	15%
5.11 Inc.	15%
5.11 Inc. (CUSTOM SHOP)	15%
A E Nelson Leather Co	15%
A+ CAREER APPAREL	15%
ABX Group Inc	15%
ACR ELECTRONICS, INC.	15%
ADVENTURE MEDICAL KIT	15%
Advon	15%
Aervoe Industries Inc	15%
Aimpoint Inc	15%
AKER INTERNATIONAL	15%
AL NU PRODUCTS, INC	15%
ALL AMERICAN BOOT MFG., INC.	15%
Alliance Sports Group (Nebo)	15%
ALLIED HEALTHCARE PRODUCTS, IN	15%
Alpha Industries Inc	15%
Alpha Shirt Co	15%
ALPHABRODER	15%
ALTA INDUSTRIES	15%
Altai	15%

**Any Additional Brands
with Percent-Discounts
offered for catalogues
not listed above:**

ALTUS BRANDS LLC	15%
AMBU INC	15%
AMER SPORTS WINTER & OUTDOOR C	15%
AMERICAN DIAGNOSTIC CORP	15%
AMERICAN TECHNOLOGIES NETWORK	15%
AMERIGLO, LLC	15%
ANCHOR UNIFORM MFG LLC	15%
ANGELUS SHOE POLISH COMPANY	15%
ANSELL HEALTHCARE PRODUCTS	15%
AOB Products Company	15%
Arc'Teryx Equipment, Inc.	15%
Ariat International, Inc.	15%
Armament Leather Inc	15%
ARMAMENT SYSTEMS AND PROCEDURE	15%
ARMOR EXPRESS	15%
ARMORPUR DIVISION OF LORENZA V	15%
Arons Manufacturing Company	15%
ARONS MFG CORP	15%
ARTEX KNITTING MILLS, INC	15%
Ash City USA	15%
Ashley Worldwide Inc.	15%
Asmara International LTD	15%
ASSEMBLED PRODUCTS CORP	15%
ASSOCIATED PREMIUM CORP	15%
AST Sportswear Inc	15%
Astra Radio Communications	15%
Atlanco	15%
AUGUSTA SPORTSWEAR	15%
Avon Protection Systems	15%
Baffin Inc.	15%
Battleware Technologies Inc	15%
BAYCO	15%
BAYLY, INC.	15%
BELL SPORTS, INC.	15%
BELLEVILLE SHOE MANUFACTURING	15%
Bellwether Cycling	15%
BENCHMADE KNIFE CO USA	15%
Berne Apparel	15%
Best Made Designs	15%
Better Emblem Co	15%
BIANCHI/SAFARILAND LLC	15%
Big Studio Inc	15%
Bill Hicks & Co LTD	15%
BLACK DIAMOND GROUP, INC.	15%
Black Rifle Coffee Company	15%
BLADE-TECH INDUSTRIES	15%
BLASTERS TOOL & SUPPLY CO INC	15%

Blauer Mfg Co	Page 64 of 405	15%
BLAUER MFG CO - QUOTED ITEMS		15%
BLUE FORCE GEAR INC		15%
Blue Generation		15%
Blue Line Production, Inc		15%
Blue Water Treasures		15%
BOLLE		15%
BOSTON LEATHER INC		15%
Bound Tree Medical, LLC		15%
BREAK-FREE, INC/SAFARILAND LLC		15%
BRITE-STRIKE TECHNOLOGIES, INC		15%
Brixum Corp dba Gatorz Eyewear		15%
BUCK KNIVES INC		15%
BULLARD COMPANY		15%
BUSHNELL (UNCLE MIKES)		15%
BUSHNELL OUTDOOR PRODUCTS		15%
C.W. NIELSEN MFG		15%
CAMELBAK PRODUCTS INC		15%
CAMMENG COMPANY LLC		15%
CAMPCO INC		15%
Capps Shoe Company		15%
Careismatic Brands Inc		15%
CARHARTT INC		15%
CAROLINA SAFETY SPORT INT'L, L		15%
Casa Raul Western Wear		15%
Casual Duty Warehouse		15%
Celestron Acquisition, LLC		15%
CENTURY MARTIAL ART SUPPLY		15%
Cerritos VAS Need		15%
CFT INC LIFE MASK		15%
Champion Athletic Wear		15%
Champion Target		15%
Charles River Apparel		15%
CHINOOK MEDICAL GEAR INC		15%
CHIPPEWA SHOE CO		15%
Classic Cap & Embroidery		15%
Cloud Unicorn LTD		15%
CMI INC		15%
COAST CUTLERY CO		15%
COBMEX APPAREL LTD.		15%
CODE 3 INC		15%
Code Red		15%
COLUMBIA RIVER KNIFE & TOOL		15%
COLUMBIA SPORTSWEAR COMPANY		15%
CONCAP SPORTSWEAR		15%
CONCEPT DEVELOPMENT CORPORATIO		15%
Condor Outdoor Products Inc		15%

COOLCOP LLC	15%
Cortina Tool & Mold Co Inc	15%
COURTLAND BOOT JACK CO.	15%
COVE SHOE COMPANY, INC.	15%
CRAMER DECKER INDUSTRIES MERET	15%
Criss Optical Mfg CO	15%
Crossbreed Holsters	15%
Crye Precision LLC	15%
CS SYSTEMS COMPANY INC	15%
Culture Apparel & Automotive	15%
Custom Identification Products	15%
Cutter & Buck, Inc.	15%
CYALUME TECHNOLOGIES, INC.	15%
CYCLE FORCE GROUP LLC	15%
DAMASCUS WORLDWIDE INC	15%
DANGRA INC.	15%
Danner, Inc.	15%
DASH AMERICA INC.	15%
DAVIS & STANTON	15%
DE SANTIS HOLSTER & LEATHER CO	15%
Decal Impressions	15%
Deer Stags Concepts, Inc.	15%
DEFENSE TECH/SAFARILAND LLC.	15%
Dehner Boot Co Inc	15%
DICKE TOOL COMPANY	15%
DNB NOR FINANS AS	15%
DON HUME LEATHERGOODS	15%
DP Packaging	15%
DRIFIRE, LLC	15%
DUTYMAN INC	15%
DYNAREX CORPORATION	15%
EAR PHONE CONNECTION	15%
EarHugger Safety Products	15%
EDWARDS GARMENT CO	15%
EISEMAN-LUDMAR CO INC	15%
Elbeco Incorporated	15%
Eleven 10 LLC	15%
Elite First Aid Inc	15%
Emergency Medical Internationa	15%
EMERGENCY PRODUCTS & RESEARCH	15%
ENERGIZER	15%
ERAZOR BITS	15%
ERB INDUSTRIES INC	15%
Ergodyne Corporation	15%
ERMALINDA M LESLIE	15%
ESMET INC	15%
EYE SAFETY SYSTEMS	15%

E-Z Cuff Inc	Page 66 of 405	15%
FCGI		15%
FECHHEIMER BROTHERS UNIFORM CO		15%
FEDERAL SIGNAL CORP		15%
Feniex Industries, LLC		15%
FERNO WASHINGTON, INC.		15%
Finger Fashions-GFP		15%
FIRE DEX, LLC		15%
FIRST SAMCO		15%
First Tactical LLC		15%
Fisher Print LLC		15%
FISHER RESEARCH LAB, INC.		15%
FISHER SPACE PEN COMPANY		15%
FISKARS BRANDS INC		15%
FLAMBEAU PRODUCTS CORPORATION		15%
FLEXFIT LLC		15%
Flight Suits Ltd		15%
Flitz International Ltd		15%
FORENSIC SOURCE/SAFARILAND LLC		15%
Forever Young Enterprise		15%
FOX LABS INTERNATIONAL INC		15%
Fox Outdoor Products		15%
Fox River Mills Inc.		15%
FoxFury Lightning Solutions		15%
FRED SHAW-BLUMENTHAL		15%
Frogg Toggs		15%
GA REL		15%
GALCO INTERNATIONAL LTD		15%
GALLANT INDUSTRIES CO LTD		15%
GALLS INC		15%
GALLS UNIQUE CONTRACT ITEMS		15%
Galls, LLC		15%
GAMBER JOHNSON		15%
GAME SPORTSWEAR		15%
GARMIN USA INC		15%
Garmont Int'l N America Inc		15%
GARRETT ELECTRONICS INC		15%
GENN SHANG IND. CO LTD		15%
Gentex Corporation		15%
George Glove Company Inc		15%
GH Armor Systems		15%
GILDAN USA INC.		15%
Glendale Industries		15%
Glock Inc		15%
GO RHINO PRODUCTS		15%
GOLIGHT, INC.		15%
GOULD & GOODRICH LEATHER INC		15%

Granite Knitwear	Page 67 of 405	15%
Graphic Results		15%
Grayhawk products		15%
GRIP-FLEX CORPORATION		15%
Grizzly Graphics NM		15%
Grunt Style LLC		15%
GT DISTRIBUTORS, INC.		15%
H & K Int'l CO., LTD.		15%
HAIX NORTH AMERICA INC.		15%
Hamburger Woolen Co Inc		15%
HAMMERHEAD INDUSTRIES		15%
HANDCUFF WAREHOUSE		15%
Hanes Brands, Inc.		15%
Hankin Brothers Cap Company		15%
Hat Trap Inc		15%
HATCH/SAFARILAND LLC		15%
HEAD MOST		15%
HELMET HOUSE INC		15%
HERO'S PRIDE		15%
Hero's Pride - HG		15%
HEXARMOR		15%
High Noon Industries		15%
High Speed Gear, Inc.		15%
HONEYWELL FIRST RESPONDER PROD		15%
HONEYWELL SAFETY PRODUCTS		15%
HOOK-FAST SPECIALTIES		15%
Hope Uniform & Security		15%
HWI Gear Inc		15%
I Spiewak		15%
IMPLUS FOOTCARE, LLC		15%
IMPLUS FOOTCARE/LLC-FOR KIWI		15%
INTOXIMETERS INC		15%
IRON DUCK		15%
IRONCLAD PERFORMANCE WEAR		15%
J.L. DARLING CORPORATION		15%
JEROME CUTTING/SNAP & WEAR		15%
Johnson Plastics		15%
Jox Sox		15%
JS Leather Products		15%
Justin Boots		15%
KA-BAR KNIVES INC		15%
Keen Inc		15%
KERSHAW KNIVES		15%
KESON INDUSTRIES		15%
Keystone Uniform Cap Corp		15%
KLEIN ELECTRONICS		15%
KLENCH CO		15%

Kohaut & Company	Page 68 of 405	15%
Kontoor Brands (Lee)		15%
Kontoor Brands (Wrangler)		15%
K-Power Industrial Co. LTD.		15%
KROLL INTERNATIONAL		15%
KUHL Clothing		15%
KUSTOM SIGNALS INC		15%
L.R.I.		15%
LACROSSE FOOTWEAR, INC.		15%
LAERDAL MEDICAL CORP		15%
Lakeview Trading, Inc		15%
Landau		15%
Landway International Corp		15%
Lansky Sharpeners		15%
LAW ENFORCEMENT SUPPLY INC		15%
LC INDUSTRIES		15%
Leader Mfg Co. Inc.		15%
LEAPERS, INC		15%
Leather Luster Inc		15%
LEATHERHEAD TOOLS		15%
LEATHERMAN TOOL GROUP INC		15%
LEICA CAMERA INC		15%
LIARN YANN ENTERPRISE CO, LTD		15%
LIBERTY UNIFORM MFG CO INC		15%
Lighthouse Uniform Co.		15%
Lightning X Products, Inc.		15%
LION APPAREL INC		15%
LOGO X PRESS		15%
LOGO X PRESS LEX PO		15%
LONDON BRIDGE TRADING COMPANY		15%
LONGWORTH INDUSTRIES		15%
LOWA BOOTS LLC		15%
Luggage USA Inc		15%
M L Kishigo Manufacturing Co		15%
M. J. SOFFE CO		15%
MACE SECURITY INTNL		15%
MACHO PRODUCTS		15%
Macs Worldwide, LLC		15%
MAG INSTRUMENT INC		15%
Magenav, Inc - Statgear		15%
MAGNUM MEDICAL, INC.		15%
MAGPUL INDUSTRIES CORP		15%
Majestic Glove		15%
Major Surplus & Survival		15%
MANZELLA PRODUCTIONS, INC.		15%
MAPTOOLS		15%
Marketing Works		15%

Marlow White	15%
Marmot Mountain, Inc.	15%
MAXPEDITION HARD-USE GEAR	15%
McRae Footwear	15%
MECHANIX WEAR, INC.	15%
MEDIC FIRST AID INTERNATIONAL,	15%
MERCURY LUGGAGE	15%
MICROTEK MEDICAL, INC.	15%
MIDWAY CAP COMPANY	15%
Mil-Spec Monkey	15%
Mission Critical Designs, LLC	15%
MOCEAN	15%
Modern Stitch & Ink	15%
MoJack Distributors LLC	15%
MONADNOCK/SAFARILAND, LLC.	15%
MOORE MEDICAL	15%
MSA - MINE SAFETY APPLIANCES C	15%
Muscatello Uniforms	15%
MUSTANG SURVIVAL, INC.	15%
MUTUAL INDUSTRIES INC	15%
National Products Inc	15%
NEW BALANCE	15%
New Bold Corporation	15%
NEWCAL, LLC	15%
Nick's Shoe Repair & Custom	15%
NIKE	15%
Nine Line Apparel, Inc.	15%
Ningbo Seahorse Electronics	15%
NITE IZE INC/RCP ENTERPRISES	15%
NOBLE MEDICAL INC	15%
NoIR Laser Company	15%
NOROTOS INC	15%
NORTH AMERICAN RESCUE	15%
NORTH SAFETY PRODUCTS	15%
NRS	15%
O Baltor & Sons	15%
Oakley	15%
Occunomix International LLC	15%
ONGUARD INDUSTRIES, LLC	15%
OPEN AIR BRANDS, LLC	15%
Orchid Radio	15%
Original Swat Footwear Co	15%
ORION SAFETY PRODUCTS	15%
Orpaz LLC	15%
OTIS TECHNOLOGY, INC.	15%
OTTO INTERNATIONAL, INC.	15%
Outdoor Cap	15%

OUTDOOR RESEARCH	Page 70 of 405	15%
Pacific Headwear, Inc.		15%
Pannell Swim Shop Inc		15%
Parris Mfg Co		15%
PAULSON MANUFACTURING CORP		15%
PEERLESS HANDCUFF COMPANY		15%
PELICAN PRODUCTS INC		15%
PepperBall		15%
PERFECT FIT		15%
PERFORMANCE SYSTEMS		15%
Petra Roc, Inc.		15%
PETZL AMERICA		15%
PHILADELPHIA RAPID TRANSIT		15%
PHOENIX INT'L LTD		15%
Pickett Hosiery Mills, Inc.		15%
Pierside Promotions		15%
PIGEON MOUNTAIN INDUSTRIES INC		15%
Pinnacle Textile		15%
Plano Molding Company		15%
PM Adirondack		15%
Pocket Press, Inc.		15%
POINT BLANK ENTERPRISES		15%
Power Products Unlimited, Inc.		15%
PowerTraveller International		15%
Premier Comm Corp dba Pryme Ra		15%
PREMIER CROWN CORP		15%
Premier Emblem - HG		15%
PREMIER EMBLEMS		15%
PRESCO PRODUCTS CO		15%
Prestige Medical		15%
PRINCETON TEC		15%
PRO FEET INC		15%
PRO LOK		15%
PRO-FEET/EXECUSOX		15%
PROFORCE EQUIPMENT		15%
PROMARKETING INC		15%
Propper International Sales		15%
Protech Armored Prod/Safarilan		15%
PROTECTIVE INDUSTRIAL PRODUCTS		15%
PS Products Inc.		15%
Pudala Uniforms		15%
Pyramex		15%
Qalo		15%
Qingdao Hellena Fashion Co.,Lt		15%
Q-Series, LLC		15%
QUARTERMASTER		15%
QUIK-PIN LLC		15%

Page 71 of 405

R5 - HE03 Qingdao Hellena	15%
R5 - RI09 RICHARDSON CAPS	15%
RADIANS, INC.	15%
RAINE INC	15%
Rapid Assault Tools	15%
REEVES CO., INC.	15%
Reflect-A-Life	15%
REFLECTIVE APPAREL FACTORY, IN	15%
REGAL ALUMINUM PRODUCTS INC	15%
Remington Arms Co (Bushmaster)	15%
Renfro Corporation	15%
Resqme, Inc.	15%
REVISION MILITARY LTD	15%
RICHARDSON CAPS	15%
RICOH COMPANY (FORMERLY PENTAX	15%
RIDGE OUTDOORS USA INC	15%
RINGERS Technologies LLC	15%
RINGS MANUFACTURING	15%
RM Products	15%
Roadside Safety Supply Inc	15%
ROCKWOOD CORPORATION	15%
Rocky Brands Wholesale, LLC.	15%
Ross Glove Co	15%
ROTHCO	15%
RSR Group	15%
S & S Activewear	15%
S H RESOURCE CO, LTD.	15%
SAFARILAND, LLC.	15%
SAFETEC OF AMERICA INC	15%
Safety Flag Co	15%
SAM MEDICAL PRODUCTS	15%
Samson Manufacturing Corp	15%
SAMUEL BROOME UNIFORM ACCESSOR	15%
SANDPIPER OF CA	15%
Sanmar Corp.	15%
SANTA CRUZ GUNLOCKS, LLC	15%
SAS SAFETY CORP	15%
SAUNDERS MFG CO., INC.	15%
Sayre Enterprises, Inc.	15%
SCHUMACHER ELECTRIC CORP	15%
Security 20/20 Inc.	15%
SECURITY EQUIPMENT CORPORATION	15%
Seirus Innovation	15%
SELLMARK CORPORATION	15%
SETINA MFG CO INC	15%
Shadowfax Graphics	15%
SHELBY SPECIALTY GLOVE	15%

Page 72 of 405

Shellback Tactical, LLC	15%
Shooting Depot LLC	15%
Silynx Communications, Inc.	15%
SIRCHIE FINGER PRINT LABORATOR	15%
Skechers USA Inc	15%
SKEDCO INC	15%
SMITH & WARREN CO	15%
Smith & Wesson Corp.	15%
Smith Sport Optics	15%
SMITHS MEDICAL ASD	15%
SOG SPECIALTY KNIVES	15%
SOMAR CORPORATION	15%
SOUND UNIFORM GROUP LLC	15%
SOUNDOFF SIGNAL	15%
Source Hydration USA LLC	15%
SOUTHEASTERN SHIRT CORP.	15%
Southwest Boot Co	15%
Spike Strip Mfg	15%
SPORT SUPPLY GROUP, INC.	15%
SPORTIF USA	15%
SPYDERCO, INC.	15%
SRI Monogramming &	15%
STA-Brite Products	15%
STACK-ON PRODUCTS CO.	15%
Staedtler Mars LTD	15%
Star Headlight & Lantern Co.	15%
STEARNS WEAR	15%
STECK MANUFACTURING COMPANY, I	15%
Steiner USA	15%
Stitch Designers	15%
STRATTON HATS, INC.	15%
Streamlight	15%
STRONG LEATHER INC	15%
Strong Suit Inc	15%
Summatech Solutions LLC	15%
SUPER SEER CORPORATION	15%
Superfeet Worldwide, Inc.	15%
Supply Room Inc	15%
SUREFIRE LLC	15%
Survival Armor	15%
Swiftwick LLC	15%
TACT SQUAD GROUP, INC.	15%
Tactical Medical Solutions LLC	15%
Tactical Tailor, Inc	15%
TALENT CREATION	15%
Tango Down, Inc.	15%
TASC Performance, Inc.	15%

Page 73 of 405

TATJACKET	15%
TAYLOR'S LEATHERWEAR	15%
TEAMWALTERS	15%
Ted Blocker Holsters	15%
Tedder Industries LLC	15%
TerraLux Inc	15%
Texas Weapon Systems	15%
THE COLEMAN COMPANY, INC.	15%
THE KEYSTONE GROUP	15%
Thomas Printwroks/Visualogisti	15%
THORLO, INC	15%
Thyrm LLC	15%
Tifosi Optics, Inc.	15%
Timber Rock Marketing LLC	15%
TIMBERLAND CO	15%
TIMEX GROUP USA, INC.	15%
Tingley Rubber Corporation	15%
Todd A Moen Kreativ Launch LLC	15%
Tommie Copper	15%
Top Dawg Electronics	15%
TORFINO ENTERPRISES INC	15%
Training Center Pros Inc	15%
Transcend Information Inc	15%
TRANSPORTATION SAFETY APPAREL	15%
TRI FOXCO	15%
TRIDENT SECURITY & HOLDINGS LL	15%
Trijicon, Inc.	15%
TRI-MOUNTAIN	15%
TUFF PRODUCTS BRAND LLC	15%
TYR Tactical, LLC	15%
UBELT Co	15%
UK INTERNATIONAL	15%
UNDER ARMOUR	15%
UNIDEN CORPORATION OF AMERICA	15%
UNITED SHIELD INTERNATIONAL LL	15%
UNITED UNIFORM MANUFACTURING	15%
UNITY MANUFACTURING CO	15%
UNIVERSAL OVERALL COMPANY	15%
US Armor Corporation	15%
US Footwear Holdings LLC	15%
US NIGHT VISION CORPORATION	15%
V H BLACKINTON CO. INC.	15%
VAN HEUSEN CORPORATION	15%
Vanguard Industries West	15%
Vanguard Military Equipment Co	15%
Vertx	15%
VF IMAGEWEAR INC (BULWARK)	15%

VF IMAGEWEAR INC (RED KAP)	15%
VF IMAGEWEAR INC (Workrite)	15%
VF IMAGEWEAR INC(HORACE SMALL)	15%
VF Workwear/Dickies	15%
VH Blackinton	15%
Viking Tactics, Inc.	15%
Viktos LLC	15%
Vista Outdoor Sales, LLC	15%
VLC Distribution Company, Inc	15%
W. LBOUM HAT CO INC	15%
WARSON GROUP, INC.	15%
WARWICK MILLS INC	15%
WATERSHED LLC	15%
Wawak	15%
WEBSTER INNOVATIONS	15%
WEINBRENNER SHOE COMPANY, INC.	15%
Wesol Distribution	15%
Western Shelter Systems	15%
Whelen Engineering Company Inc	15%
Whistler Group Inc	15%
White Horse Research & Develop	15%
WHITE KNIGHT ENGINEERED PROD.,	15%
White Swan-META	15%
Wilderness Solutions	15%
WILEY X, INC.	15%
William Hollister Qwik Codes	15%
Wise Company, Inc.	15%
Wolf Peak International Inc	15%
WOLFMARK NECKWEAR CORP	15%
Wolfpack Gear Inc	15%
Wolverine World Wide (Harley)	15%
Wolverine World Wide (Merrell)	15%
Wolverine World Wide, Inc.	15%
Wolverine Worldwide (Bates)	15%
Wrightsock	15%
WSI Sports	15%
YATES GEAR, INC	15%
YKK INC.	15%
Youngstown Glove Company	15%
ZAK TOOL INC	15%
Zan Headgear	15%
ZARC INTERNATIONAL	15%
Zero9 Solutions LTD	15%

Attachment 2
Service Area Designations

RFP 2021-073	Texas Service Area Designation or Identification				
Proposer Name:	Galls, LLC				
Notes:	Indicate in the appropriate box whether you are proposing to service the entire State of Texas				
	Will service the entire State of Texas	Will not service the entire State of Texas			
	YES				
	If you are not proposing to service the entire State of Texas, designate on the form below the regions that you are proposing to provide goods and/or services to. By designating a region or regions, you are certifying that you are willing and able to provide the proposed goods and services.				
Item	Region	Metropolitan Statistical Areas	Designated Service Area		
1.	North Central Texas	16 counties in the Dallas-Fort Worth Metropolitan area			
2.	High Plains	Amarillo Lubbock			
3.	Northwest	Abilene Wichita Falls			
4.	Upper East	Longview Texarkana, TX-AR Metro Area Tyler			
5.	Southeast	Beaumont-Port Arthur			
6.	Gulf Coast	Houston-The Woodlands-Sugar Land			
7.	Central Texas	College Station-Bryan Killeen-Temple Waco			
8.	Capital Texas	Austin-Round Rock			
9.	Alamo	San Antonio-New Braunfels Victoria			
10.	South Texas	Brownsville-Harlingen Corpus Christi Laredo McAllen-Edinburg-Mission			
11.	West Texas	Midland Odessa San Angelo			
12.	Upper Rio Grande	El Paso			

RFP 2021-073	Nationwide Service Area Designation or Identification Form						
Proposer Name:	Galls, LLC						
Notes:	Indicate in the appropriate box whether you are proposing to provide service to all Fifty (50) States. <table border="1"> <tr> <td>Will service all Fifty (50) States</td> <td>Will not service Fifty (50) States</td> </tr> <tr> <td>YES</td> <td></td> </tr> </table> If you are not proposing to service to all Fifty (50) States, then designate on the form below the States that you will provide service to. By designating a State or States, you are certifying that you are willing and able to provide the proposed goods and services in those States. If you are only proposing to service a specific region, metropolitan statistical area (MSA), or city in a State, then indicate as such in the appropriate column box.			Will service all Fifty (50) States	Will not service Fifty (50) States	YES	
Will service all Fifty (50) States	Will not service Fifty (50) States						
YES							
Item	State	Region/MSA/City	Designated as a Service Area				
1.	Alabama						
2.	Alaska						
3.	Arizona						
4.	Arkansas						
5.	California						
6.	Colorado						
7.	Connecticut						
8.	Delaware						
9.	Florida						
10.	Georgia						
11.	Hawaii						
12.	Idaho						
13.	Illinois						
14.	Indiana						
15.	Iowa						
16.	Kansas						
17.	Kentucky						
18.	Louisiana						
19.	Maine						
20.	Maryland						
21.	Massachusetts						

22.	Michigan	Page 77 of 405	
23.	Minnesota		
24.	Mississippi		
25.	Missouri		
26.	Montana		
27.	Nebraska		
28.	Nevada		
29.	New Hampshire		
30.	New Jersey		
31.	New Mexico		
32.	New York		
33.	North Carolina		
34.	North Dakota		
35.	Ohio		
36.	Oregon		
37.	Oklahoma		
38.	Pennsylvania		
39.	Rhode Island		
40.	South Carolina		
41.	South Dakota		
42.	Tennessee		
43.	Texas		
44.	Utah		
45.	Vermont		
46.	Virginia		
47.	Washington		
48.	West Virginia		
49.	Wisconsin		
50.	Wyoming		

Guarantees of the Contractor

STOCKING, DISTRIBUTION & FULFILLMENT Galls has a fully staffed Inventory Management Department ("IM") that is responsible for purchasing and managing our inventory. On average Galls holds approximately \$80M in on-hand inventory. Galls utilizes our very own G3 planning and forecasting system software which is fully automated. The system uses complex algorithms to compute current and future needs on finished goods inventory.

Galls' Inventory Planning reviews electronic data provided by the G3 system and then adds human logic as well as historical data from any previous contracts and customer input. Purchase Orders are then released for finished goods to our vendors. This process considers constraints such as lead time, process time, cycle time, instability in order patterns, and historical demand. For many of our large programs, we have negotiated with vendors to hold safety stock levels which allow us to react quicker on replenishment needs. Galls Fill Rate is 90% for un-customized orders. Galls' distribution center (DC) is in Lexington, KY.

The DC is approx. 350,000 square feet, containing 40,000 active pick locations and 38,000 reserve locations. Current capacity is 82% in active and 84% in reserve. Galls has a fully automated warehouse management software tool and state of the art conveyor system for order fulfillment allowing us to ship an average of 2,700 orders daily or 700k orders annually. Also note, Galls has 2 additional distribution centers: one in Cerritos, California with 50,000 square feet and the other in Lenexa, Kansas with 30,000 square feet.

Galls is the NCTCOG's reliable source for quality, in-stock public safety equipment and apparel. Like you, we're quick, efficient, and effective. Galls understands that the demanding needs of your profession drive your purchasing decisions, so we demand the quality gear you require to do your job. As the public safety industry leader, we pride ourselves on having the largest inventory in the industry. However, your options do not end with our inventory; Galls will leverage our experience and knowledge to find the products you require in the rare event we do not inventory the item or brand.

ORDERING OPTIONS Galls provides a full-service ordering process with purchasing options available for online, in person, over the phone, or through email. We want our customers to purchase whichever way is easiest for them. Each account has dedicated representatives that can be emailed or called for order placement, this can also be handled by our expert customer service staff. Our customers can also utilize any of our branch locations to be sized and place orders directly. eEquip, our online ordering portal, will be setup with contract pricing exclusive to NCTCOG and participating members.

DELIVERY RATE & EXPECTATIONS The NCTCOG can purchase the items under this contract directly from the eEquip system. Galls will ship all orders via FedEx from our Lexington, KY distribution center. Additional shipping options may be available upon request. Galls will provide a tracking number with every shipment and will be emailed to the user within 1 hour of the order being placed. Additionally, tracking options will be made available on eEquip. We will make sure that all shipments require signature for delivery, and we will not deliver any orders to personal residences or off-site locations. Shipping will be included in the price of each item and not be priced as a separate line item.

RETURN & RESTOCKING POLICY Galls offers a "no hassle guarantee" on returned merchandise. This means if the NCTCOG and participating members are unhappy for any reason with their purchase, it can be returned to Galls for an exchange or refund. This does not apply to a non-Galls error on a personalized (embroidered, heat press, etc.) garment. Trust is crucial to a team and, as your partner, we want to make sure our products match your expectations. We offer two levels of returns:

30-day Comfort Guarantee If you are not completely satisfied with your boots or shoes, simply return them within 30 days from the date you received your order for a refund or exchange.

One-Year Returns We accept returns of resaleable items within one year of purchase that are unworn, in new condition, and in original packaging along with all packaging attachments and enclosures, including all applicable tags, instructions, etc. For apparel, return item in its original, packaging along with all packaging attachments and enclosures, including all applicable tags, instructions, etc. Return instructions are available on the reverse side of the packing slip.

Refunds Refunds are deposited back to your original payment method.

Shipping Refunds Original shipping charges are non-refundable unless the return is related to our error.

Special Order or Embellished Items Special order items or items that have been altered, decorated, engraved, customized, or otherwise embellished at the request of our customers cannot be returned unless the return is related to our error.

Electronic Items Body worn cameras, audio recording devices, and memory cards cannot be returned to a Galls store or at Galls.com; they must be returned directly to the manufacturer in accordance with that manufacturer's returns policy.

Clearance Items All clearance items are sold "as is" and cannot be returned.

HAZMAT or ORM-D Items Returns for these items, including but not limited to self-defense sprays, chemical kits, select first aid kits and components, road flares, and fire extinguishers cannot be accepted. If you are unsure if the product you are returning falls into this category, please contact Galls' Customer Service.

WARRANTY All products will fall under the manufacturer's standard warranties. In addition, Galls offers a "No Hassle Guarantee" on returned merchandise. This means that if you are unhappy for any reason with your purchase, you may return it to Galls for an exchange or refund within 1 year from purchase date. This does not apply to a non-Galls error on a personalized (embroidered, heat press, etc.) garment. **Manufacturer Warranties** - Many products sold by Galls offer extended manufacturer's warranties. For returns related to matters covered by a manufacturer's warranty, please visit the manufacturing brand's website and/or call their customer service line directly.

PAYMENT TERMS & INVOICING Galls bills under Net 30 terms and accepts credit cards/ p-cards. There are no associated fees for the use of these payment methods. We will work with each individual customer to set up an accounting and invoicing system that will work with their needs. Our full service "in house" accounting and finance department and will work closely with customers to meet specific needs and make your billing process with Galls seamless. Billtrust can email, fax, or USPS invoices automatically and daily. Statements are generated once a month and go out the same way. Non-customized invoices can be emailed individually or strung together and sent in one email from Billtrust. Customized invoices are manually generated and can be emailed, faxed, or USPS bi-monthly or monthly. Statements can be generated mid-month or at requested intervals. This is essentially a download of current account balance information in excel format. Customized invoices are almost always strung together and manually emailed to customers. Non-customized invoices- the Billtrust Gateway can be activated so customers can print their own statements and invoices for up to two years. After two years, invoices/statements are not available on Billtrust, but invoices can be requested from Galls, and Galls can provide this information. Statements older than two years are not retained by Billtrust or Galls.

CUSTOMIZED BILLING OPTIONS

- Can have electronic signature capture of orders picked up at the branch/service centers
- Can have up to 3 customizable fields (15 characters) printed on invoice
- Can have contract descriptions printed after our item description
- Can have contract line numbers printed on invoice

Billtrust or customized invoices (not picked up), have FedEx or USPS tracking numbers (except of drop ship – items shipped from vendors directly). For orders where “shopping for” feature is selected, only customized invoices (GQ) has the feature at this time. Ticket open to have Billtrust invoicing to mirror. “Invoice notes” entered on eQUIP websites will print on both Billtrust and customized invoices (50 characters) – must be turned on at the website level and will say whatever is typed in by customer during order entry. Galls offers regular invoices which are customizable per account. Regular invoicing = 1 order with multiple shipments will = multiple invoices.

FREQUENCY OPTIONS

- Regular, non-customized invoices from Billtrust are held for 5 days or \$500 (whichever comes first) and then sent automatically.
- Customized invoices are manually generated by Galls team and are generally done bi-monthly or monthly depending on volume
- Statements are once a month
- All can be sent per customer’s choice of method to deliver

SORTING CAPABILITIES Only the downloadable reports for customized invoices or Billtrust (non-customized invoices) are sortable as they are in excel format. Invoices that are printed/faxed/emailed are in sales order # and then date completed.

PAYMENT METHODS Galls accepts ACH, checks and P-Card

MEASUREMENTS AND FITTINGS Galls will utilize our nationwide branch network and Branch Service Representatives to meet with participating members for sizing and fitting needs. Galls employees go through various trainings to ensure they are providing proper fit on uniforms, equipment and ballistic products.

QUALITY CONTROL Strategic training allows us to quickly expand and contract work cells to service both rush and more complex orders. Our integrated warehouse management system allows real time tracking of each order as it completes each Production operation. Shipments go through multiple phases of auditing in our distribution center, from picking and embellishments, to packing and shipping. *In the event that order issues may occur we can employ an individual inspection on a random selection of orders. Galls confirms that we take no exceptions to the statement of work or the requirements within the request for proposal. We have provided our best pricing solution and capabilities to service the needs of the NCTCOG and their participating members. We look forward to building a lasting partnership if selected for award.

ONLINE UNIFORM PROGRAM “EQUIP” eEquip is a real time, secure online ordering system which is fully integrated into the Galls ERP platform. eEquip allows customers to manage uniform allotments, track orders, restrict views by rank or location, customize items, see inventory availability, manage inventory, and customize on demand reports for the agency, individual, or unit to provide a seamless order process. eEquip will notify customers of any backordered items in real time during order placement.

Galls will work closely with our manufacturers to obtain products quickly in order to maintain a stock of necessary uniforms and equipment. The efficiencies gained by utilizing the Galls on-line solution results in real dollar savings beyond evaluating products at a line-item basis. By utilizing the eEquip system you are eliminating a lot of the hidden costs with managing your uniform program such as managing multiple suppliers. Time spent traveling to and from a store location to be sized or place orders can now be done from any mobile device. By utilizing eEquip you are lowering costs just by saving time, money and hours managing your uniform program, and increasing your buying power.

Galls currently operates more than 15,000 eQuip sites nationwide, covering departments and agencies of all sizes between 5 and 100,000 users. Galls is Page 31 of 45 capable of servicing all of your employees on eQuip. eQuip capabilities include:

- Secure online ordering system
- Site only accessible by username/password as assigned by customers
- Contract pricing pre-loaded into each specific website.
- Mobile device capability
- Customer specific configuration
- Product offering management
- Integrated with Galls ERP system
- Flexible On-Demand Reporting

The Galls eQuip web system is an in-house technology owned and operated by Galls. This is important because it allows Galls to control the timelines of implementations and changes throughout the contract in a timeframe that is acceptable to the user. Galls does not outsource any of the work needed to build and maintain the website. The Galls eQuip system is a force multiplier for your agency that will dramatically amplify your effectiveness in managing contract purchases at no additional cost or effort to the NCTCOG and members. This is something Galls offers at no cost to the customer and is something we work hand in hand with customers to make sure it is catered to them. Please see the attached specification sheets that detail our eQuip program.

EMBROIDERY & TAILORING No one can compare to our full spectrum of in-house customization options for apparel and gear. Utilizing single, double, six, and twelve head embroidery machines we are able to accommodate everything from the small individual order to the substantial agency order. Strategic training allows us to quickly expand and contract work cells to service both rush and more complex orders. Our integrated warehouse management system allows real time tracking of each order as it completes each Production operation. Galls' embroidery options provide a complete catalog of Madeira poly-neon thread in wide-ranging colors to include red, gold, dark gold, navy, green, and white.

PROHIBITED TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT CERTIFICATION

This Contract is subject to the Public Law 115-232, Section 889, and 2 Code of Federal Regulations (CFR) Part 200, including §200.216 and §200.471, for prohibition on certain telecommunications and video surveillance or equipment.

Public Law 115-232, Section 889, identifies that restricted telecommunications and video surveillance equipment or services (e.g. phones, internet, video surveillance, cloud servers) include the following:

- A) Telecommunications equipment that is produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliates of such entities).
- B) Video surveillance and telecommunications equipment produced by Hytera Communications Corporations, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliates of such entities).
- C) Telecommunications or video surveillance services used by such entities or using such equipment.
- D) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, Director of the National Intelligence, or the Director of the Federal Bureau of Investigation reasonably believes to be an entity owned or controlled by the government of a covered foreign country.

The entity identified below, through its authorized representative, hereby certifies that no funds under this Contract will be obligated or expended to procure or obtain telecommunication or video surveillance services or equipment or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system prohibited by 2 CFR §200.216 and §200.471, or applicable provisions in Public Law 115-232 Section 889.

☒ The Contractor or Subrecipient hereby certifies that it does comply with the requirements of 2 CFR §200.216 and §200.471, or applicable regulations in Public Law 115-232 Section 889.

SIGNATURE OF AUTHORIZED PERSON:



NAME OF AUTHORIZED PERSON:

David Scheve

NAME OF COMPANY:

Galls, LLC

DATE:

11/03/2021

-OR-

☐ The Contractor or Subrecipient hereby certifies that it cannot comply with the requirements of 2 CFR §200.216 and §200.471, or applicable regulations in Public Law 115-232 Section 889.

SIGNATURE OF AUTHORIZED PERSON:

NAME OF AUTHORIZED PERSON:

NAME OF COMPANY:

DATE:



**MASTER SERVICES AGREEMENT #2021-073
First Responder Uniforms, Accessories, and Services**

THIS MASTER SERVICES AGREEMENT ("**Agreement**"), effective the last date of signed approval ("**Effective Date**"), is entered into by and between the **North Central Texas Council of Governments** ("**NCTCOG**"), a Texas political subdivision and non-profit corporation, with offices located at 616 Six Flags Drive, Arlington, TX 76011, and

GT Distributors, Inc. ("Contractor**")**
2545 Brockton Dr. Ste 100
P.O. Box 16080, Austin, TX
78761

**ARTICLE I
RETENTION OF THE CONTRACTOR**

1.1 This Agreement defines the terms and conditions upon which the Contractor agrees to provide **First Responder Uniforms, Accessories, and Services** (hereinafter, "**Services**") to governmental entities participating in the North Texas SHARE program (hereinafter "**Participating Entities**"). The Contractor is being retained to provide services described below to Participating Entities based on the Contractor's demonstrated competence and requisite qualifications to perform the scope of the services described herein and in the Request for Proposals **#2021-073** (hereinafter, "**RFP**"). The Contractor demonstrated they have the resources, experience, and qualifications to perform the described services, which is of interest to Participating Entities and was procured via the RFP. NCTCOG agrees to and hereby does retain the Contractor, as an independent contractor, and the Contractor agrees to provide services to Participating Entities, in accordance with the terms and conditions provided in this Agreement and consistent with Contractor's response to the RFP.

**ARTICLE II
SCOPE OF SERVICES**

- 2.1 The Contractor will provide Services described in a written Purchase Order issued by NCTCOG or a SHARE Participating Entity. Any such Purchase Order is hereby incorporated by reference and made a part of this Agreement and shall be subject to the terms and conditions in this Agreement. In the event of a conflict between any term or provision in this Agreement and any term or provision in a Purchase Order, the term or provision in this Agreement shall control unless the conflicting term or provision in this Agreement is referenced, and expressly stated not to apply, in such Purchase Order.
- 2.2 All Services rendered under this Agreement will be performed by the Contractor: i) with due care; ii) in accordance with generally prevailing industry standards; iii) in accordance with Participating Entities' standard operating procedures and applicable policies, as may be amended from time to time; and iv) in compliance with all applicable laws, government regulatory requirements, and any other written instructions, specifications, guidelines, or requirements provided by NCTCOG and/or Participating Entities.
- 2.3 Any agreed-upon changes to a Purchase Order shall be set forth in a subsequent Purchase Order amendment. Contractor will not implement any changes or any new Services until a Purchase Order has been duly executed by Participating Entity. For the avoidance of doubt, the Contractor acknowledges that Participating Entity is under no obligation to execute a Purchase Order. Participating

2.4 Pricing for items in Attachment 1 represent the maximum cost for each item offered by the Contractor. Contractor and Participating Entity may mutually agree to a lower cost for any item covered under this agreement.

2.5 NCTCOG Obligations

2.5.1 NCTCOG shall make available a contract page on its NorthTexasSHARE.org website which will include contact information for the Contractor(s).

2.6 Participating Entity Obligations.

2.6.1 In order to utilize the Services, Participating Entities must have executed a Master Interlocal Agreement for North Texas SHARE with NCTCOG. This agreement with the Participating Entity will define the legal relationship between NCTCOG and the Participating Entity.

2.6.2 In order to utilize the Services, Participating Entities must execute a Purchase Order with the Contractor. This agreement with the Participating Entity will define the Services and costs that the Participating Entity desires to have implemented by the Contractor.

2.7 Contractor Obligations.

2.7.1 Contractor must be able to deliver, perform, install, and implement services with the requirements and intent of RFP #2021-073

2.7.2 If applicable, Contractor shall provide all necessary material, labor and management required to perform this work. The scope of services shall include, but not be limited to, items listed in Attachment 1.

2.7.3 Contractor agrees to market and promote the use of the SHARE awarded contract whenever possible among its current and solicited customer base. Contractor shall agree to follow reporting requirements in report sales made under this Master Services Agreement in accordance with Section 4.2.

ARTICLE III

TERM

3.1 This Agreement will commence on the Effective Date and remain in effect for an initial term ending on November 1, 2022 (the "**Term**"), unless earlier terminated as provided herein. This Agreement may be renewed, at NCTCOG's sole discretion, for up to four (4) additional one (1) year terms through November 1, 2026.

3.2 **Termination.** NCTCOG and/or Participating Entities may terminate this Agreement and/or any Purchase Order to which it is a signatory at any time, with or without cause, upon thirty (30) days' prior written notice to Contractor. Upon its receipt of notice of termination of this Agreement or Purchase Order, Contractor shall follow any instructions of NCTCOG respecting work stoppage. Contractor shall cooperate with NCTCOG and/or Participating Entities to provide for an orderly conclusion of the Services. Contractor shall use its best efforts to minimize the amount of any non-cancelable obligations and shall assign any contracts related thereto to NCTCOG or Participating Entity at its request. If NCTCOG or Participating Entity elects to continue any activities underlying a terminated Purchase Order after termination, Contractor shall cooperate with NCTCOG or Participating Entity to provide for an orderly transfer of Contractor's responsibilities with respect to such Purchase Order to NCTCOG or Participating Entity. Upon the effective date of any such termination, the Contractor shall submit a final invoice for payment in accordance with Article IV, and NCTCOG or Participating Entity shall pay such amounts as are due to Contractor through the effective date of termination. NCTCOG or Participating Entity shall only be liable for payment of services rendered before the effective date of termination. If Agreement is terminated, certain reporting requirements identified in this Agreement shall survive termination of this Agreement.

- 3.2.1 **Termination for Cause:** Either party may immediately terminate this Agreement if the other party breaches its obligations specified within this Agreement, and, where capable of remedy, such breach has not been materially cured within thirty (30) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
- 3.2.2 **Breach:** Upon any material breach of this Agreement by either party, the non-breaching party may terminate this Agreement upon twenty (20) days written notice to the breaching party. The notice shall become effective at the end of the twenty (20) day period unless the breaching party cures such breach within such period.

ARTICLE IV COMPENSATION

- 4.1 **Invoices.** Contractor shall submit an invoice to the ordering Participating Entity upon receipt of an executed Purchase Order and after completion of the work, with Net 30 payment terms. Costs incurred prior to execution of this Agreement are not eligible for reimbursement. There shall be no obligation whatsoever to pay for performance of this Agreement from the monies of the NCTCOG or Participating Entities, other than from the monies designated for this Agreement and/or executed Purchase Order. Contractor expressly agrees that NCTCOG shall not be liable, financial or otherwise, for Services provided to Participating Entities.
- 4.2 **Reporting.** NCTCOG intends to make this Agreement available to other governmental entities through its SHARE cooperative purchasing program. Contractor shall submit to NCTCOG on a calendar quarterly basis a report that identifies any new client Participating Entities, the date and order number, and the total contracted value of services that each Participating Entity has purchased and paid in full under this Master Service Agreement. Reporting and invoices should be submitted to:

NCTCOG
ATTN: North Texas SHARE
 PO Box 5888
 Arlington, TX 76005-5888
 Email: NorthTexasSHARE@nctcog.org

ARTICLE V SERVICE FEE

- 5.1 **Explanation.** NCTCOG will make this Master Service Agreement available to other governmental entities, Participating Entities, and non-profit agencies in Texas and the rest of the United States through its SHARE cooperative purchasing program. The Contractor is able to market the Services under this Agreement to any Participating Entity with emphasis that competitive solicitation is not required when the Participating Entity purchases off of a cooperative purchasing program such as SHARE. However, each Participating Entity will make the decision that it feels is in compliance with its own purchasing requirements. The Contractor realizes substantial efficiencies through their ability to offer pricing through the SHARE Cooperative and that will increase the sales opportunities as well as reduce the need to repeatedly respond to Participating Entities' Requests for Proposals. From these efficiencies, Contractor will pay an administrative fee to SHARE calculated as a percentage of sales processed through the SHARE Master Services Agreement. This administrative fee is not an added cost to SHARE participants. This administrative fee covers the costs of solicitation of the contract, marketing and facilitation, as well as offsets expenses incurred by SHARE.
- 5.2 **Administrative Fee.** NCTCOG will utilize an administrative fee, in the form of a percent of cost that will apply to all contracts between awarded contractor and NCTCOG or participants resulting from this solicitation. The administrative fee will be remitted by the contractor to NCTCOG on a quarterly basis, along with required quarterly reporting. The remuneration fee for this program will be 2% on sales.
- 5.3 **Setup and Implementation.** NCTCOG will provide instruction and guidance as needed to the Contractor to assist in maximizing mutual benefits from marketing these Services through the SHARE purchasing program.

ARTICLE VI RELATIONSHIP BETWEEN THE PARTIES

- 6.1 **Contractual Relationship.** It is understood and agreed that the relationship described in this Agreement between the Parties is contractual in nature and is not to be construed to create a partnership or joint venture or agency relationship between the parties. Neither party shall have the right to act on behalf of the other except as expressly set forth in this Agreement. Contractor will be solely responsible for and will pay all taxes related to the receipt of payments hereunder and shall give reasonable proof and supporting documents, if reasonably requested, to verify the payment of such taxes. No Contractor personnel shall obtain the status of or otherwise be considered an employee of NCTCOG or Participating Entity by virtue of their activities under this Agreement.

ARTICLE VII**REPRESENTATION AND WARRANTIES****7.1 Representations and Warranties.** Contractor represents and warrants that:

- 7.1.1 As of the Effective Date of this Agreement, it is not a party to any oral or written contract or understanding with any third party that is inconsistent with this Agreement and/or would affect the Contractor's performance under this Agreement; or that will in any way limit or conflict with its ability to fulfill the terms of this Agreement. The Contractor further represents that it will not enter into any such agreement during the Term of this Agreement;
- 7.1.2 NCTCOG is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from, or ineligible for, participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. Contractor and its subcontractors shall include a statement of compliance with Federal and State Debarment and suspension regulations in all Third-party contracts.
- 7.1.3 Contractor shall notify NCTCOG if Contractor or any of the Contractor's sub-contractors becomes debarred or suspended during the performance of this Agreement. Debarment or suspension of the Contractor or any of Contractor's sub-contractors may result in immediate termination of this Agreement.
- 7.1.4 Contractor and its employees and sub-contractors have all necessary qualifications, licenses, permits, and/or registrations to perform the Services in accordance with the terms and conditions of this Agreement, and at all times during the Term, all such qualifications, licenses, permits, and/or registrations shall be current and in good standing.
- 7.1.5 Contractor shall, and shall cause its representatives to, comply with all municipal, state, and federal laws, rules, and regulations applicable to the performance of the Contractor's obligations under this Agreement.

ARTICLE VIII**CONFIDENTIAL INFORMATION AND OWNERSHIP**

- 8.1 **Confidential Information.** Contractor acknowledges that any information it or its employees, agents, or subcontractors obtain regarding the operation of NCTCOG or Participating Entities, its products, services, policies, customer, personnel, and other aspect of its operation ("Confidential Information") is proprietary and confidential, and shall not be revealed, sold, exchanged, traded, or disclosed to any person, company, or other entity during the period of the Contractor's retention hereunder or at any time thereafter without the express written permission of NCTCOG or Participating Entity.

Notwithstanding anything in this Agreement to the contrary, Contractor shall have no obligation of confidentiality with respect to information that (i) is or becomes part of the public domain through no act or omission of Contractor; (ii) was in Contractor's lawful possession prior to the disclosure and had not been obtained by Contractor either directly or indirectly from the NCTCOG or Participating Entity; (iii) is lawfully disclosed to Contractor by a third party without restriction on disclosure; (iv) is independently developed by Contractor without use of or reference to the NCTCOG's Participating Entity's Confidential Information; or (v) is required to be disclosed by law or judicial, arbitral or governmental order or process, provided Contractor gives the NCTCOG or Participating Entity prompt written notice of such requirement to permit the NCTCOG or Participating Entity to seek a protective order or other appropriate relief. Contractor acknowledges that NCTCOG and Participating Entities must strictly comply with applicable public information laws, in responding to any request for public information. This obligation supersedes any conflicting provisions of this Agreement.

- 8.2 **Ownership.** No title or ownership rights to any applicable software are transferred to the NCTCOG by this agreement. The Contractor and its suppliers retain all right, title and interest, including all copyright and intellectual property rights, in and to, the software (as an independent work and as an underlying

work serving as a basis for any improvements, modifications, derivative works, and applications NCTCOG may develop), and all copies thereof and all final documents, data, reports, information, or materials are and shall at all times be and remain, upon payment of Contractor's invoices therefore, the property of NCTCOG or Participating Entity and shall not be subject to any restriction or limitation on their future use by, or on behalf of, NCTCOG or Participating Entity, except otherwise provided herein. Subject to the foregoing exception, if at any time demand be made by NCTCOG or Participating Entity for any documentation related to this Agreement and/or applicable Purchase Orders for the NCTCOG and/or any Participating Entity, whether after termination of this Agreement or otherwise, the same shall be turned over to NCTCOG without delay, and in no event later than thirty (30) days after such demand is made. Contractor shall have the right to retain copies of documentation, and other items for its archives. If for any reason the foregoing Agreement regarding the ownership of documentation is determined to be unenforceable, either in whole or in part, the Contractor hereby assigns and agrees to assign to NCTCOG all rights, title, and interest that the Contractor may have or at any time acquire in said documentation and other materials, provided that the Contractor has been paid the aforesaid.

ARTICLE IX GENERAL PROVISIONS

- 9.1 **Notices.** All notices from one Party to another Party regarding this Agreement shall be in writing and delivered to the addresses shown below:

If to NCTCOG: North Central Texas Council of Governments
P.O. Box 5888
Arlington, TX 76005-5888
Attn: Craigan Johnson
(817) 695-9186
Bmoll@nctcog.org

If to Contractor: GT Distributors, Inc.
Attn: Greg Nebeker
2545 Brockton Dr. Ste 100
Austin, Texas 78761
(512) 451-8298
txbids@gtdist.com

The above contact information may be modified without requiring an amendment to the Agreement.

- 9.2 **Tax.** NCTCOG and several participating entities are exempt from Texas limited sales, federal excise and use tax, and does not pay tax on purchase, rental, or lease of tangible personal property for the organization's use. A tax exemption certificate will be issued upon request.
- 9.3 **Indemnification.** Contractor shall defend, indemnify, and hold harmless NCTCOG and Participating Entities, NCTCOG's affiliates, and any of their respective directors, officers, employees, agents, subcontractors, successors, and assigns from any and all suits, actions, claims, demands, judgments, liabilities, losses, damages, costs, and expenses (including reasonable attorneys' fees and court costs) (collectively, "Losses") arising out of or relating to: (i) Services performed and carried out pursuant to this Agreement; (ii) breach of any obligation, warranty, or representation in this Agreement, (iii) the negligence or willful misconduct of Contractor and/or its employees or subcontractors; or (iv) any infringement, misappropriation, or violation by Contractor and/or its employees or subcontractors of any right of a third party; provided, however, that Contractor shall have no obligation to defend, indemnify, or hold harmless to the extent any Losses are the result of NCTCOG's or Participating Entities' gross negligence or willful misconduct.
- 9.4 **Limitation of Liability.** In no event shall either party be liable for special, consequential, incidental, indirect or punitive loss, damages or expenses arising out of or relating to this Agreement, whether arising from a breach of contract or warranty, or arising in tort, strict liability, by statute or otherwise,

Notwithstanding any provision hereof to the contrary, neither party's liability shall be limited by this Article with respect to claims arising from breach of any confidentiality obligation, arising from such party's infringement of the other party's intellectual property rights, covered by any express indemnity obligation of such party hereunder, arising from or with respect to injuries to persons or damages to tangible property, or arising out of the gross negligence or willful misconduct of the party or its employees.

9.5 **Insurance.** At all times during the term of this Agreement, Contractor shall procure, pay for, and maintain, with approved insurance carriers, the minimum insurance requirements set forth below, unless otherwise agreed in a Purchase Order between Contractor and Participating Entities. Further, Contractor shall require all contractors and sub-contractors performing work for which the same liabilities may apply under this Agreement to do likewise. All subcontractors performing work for which the same liabilities may apply under this contract shall be required to do likewise. Contractor may cause the insurance to be effected in whole or in part by the contractors or sub-contractors under their contracts. NCTCOG reserves the right to waive or modify insurance requirements at its sole discretion.

9.5.1 Workers' Compensation: Statutory limits and employer's liability of \$100,000 for each accident or disease.

9.5.2 Commercial General Liability:

9.5.2.1 Required Limits:

\$1,000,000 per occurrence;

\$3,000,000 Annual Aggregate

9.5.2.2 Commercial General Liability policy shall include:

9.5.2.2.1 Coverage A: Bodily injury and property damage;

9.5.2.2.2 Coverage B: Personal and Advertising Injury liability;

9.5.2.2.3 Coverage C: Medical Payments;

9.5.2.2.4 Products: Completed Operations;

9.5.2.2.5 Fire Legal Liability;

9.5.2.3 Policy coverage must be on an "occurrence" basis using CGL forms as approved by the Texas State Board of Insurance.

9.5.3 Business Auto Liability: Coverage shall be provided for all owned hired, and non-owned vehicles. Required Limit: \$1,000,000 combined single limit each accident.

9.5.4 Professional Errors and Omissions liability:

9.5.4.1 Required Limits:

\$1,000,000 Each Claim

\$1,000,000 Annual Aggregate

9.6 **Conflict of Interest.** During the term of this Agreement, and all extensions hereto and for a period of one (1) year thereafter, neither party, shall, without the prior written consent of the other, directly or indirectly, whether for its own account or with any other persons or entity whatsoever, employ, solicit to employ or endeavor to entice away any person who is employed by the other party.

9.7 **Force Majeure.** It is expressly understood and agreed by both parties to this Agreement that, if the performance of any provision of this Agreement is delayed by force majeure, defined as reason of war, civil commotion, act of God, governmental restriction, regulation or interference, fire, explosion, hurricane, flood, failure of transportation, court injunction, or any circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated herein, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the period of time applicable to such

Requirement shall be extended for a period of time equal to the period of time such party was delayed. Each party must inform the other in writing within a reasonable time of the existence of such force majeure.

- 9.8 **Ability to Perform.** Contractor agrees promptly to inform NCTCOG of any event or change in circumstances which may reasonably be expected to negatively affect the Contractor's ability to perform its obligations under this Agreement in the manner contemplated by the parties.
- 9.9 **Availability of Funding.** This Agreement and all claims, suits, or obligations arising under or related to this Agreement are subject to and limited by the receipt and availability of funds which are received from the Participating Entities by NCTCOG dedicated for the purposes of this Agreement.
- 9.10 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas, United States of America. The mandatory and exclusive venue for the adjudication or resolution of any dispute arising out of this Agreement shall be in Tarrant County, Texas.
- 9.11 **Waiver.** Failure by either party to insist on strict adherence to any one or more of the terms or conditions of this Agreement, or on one or more occasions, will not be construed as a waiver, nor deprive that party of the right to require strict compliance with the same thereafter.
- 9.12 **Entire Agreement.** This Agreement and any attachments/addendums, as provided herein, constitutes the entire agreement of the parties and supersedes all other agreements, discussions, representations or understandings between the parties with respect to the subject matter hereof. No amendments hereto, or waivers or releases of obligations hereunder, shall be effective unless agreed to in writing by the parties hereto.
- 9.13 **Assignment.** This Agreement may not be assigned by either Party without the prior written consent of the other Party.
- 9.14 **Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision(s) hereof, and this Agreement shall be revised so as to cure such invalid, illegal, or unenforceable provision(s) to carry out as near as possible the original intents of the Parties.
- 9.15 **Amendments.** This Agreement may be amended only by a written amendment executed by both Parties, except that any alterations, additions, or deletions to the terms of this Agreement, which are required by changes in Federal and State law or regulations or required by the funding source, are automatically incorporated into this Agreement without written amendment hereto and shall become effective on the date designated by such law or regulation.
- 9.16 **Dispute Resolution.** The parties to this Agreement agree to the extent possible and not in contravention of any applicable State or Federal law or procedure established for dispute resolution, to attempt to resolve any dispute between them regarding this Agreement informally through voluntary mediation, arbitration or any other local dispute mediation process, including but not limited to dispute resolution policies of NCTCOG, before resorting to litigation.
- 9.17 **Publicity.** Contractor shall not issue any press release or make any statement to the media with respect to this Agreement or the services provided hereunder without the prior written consent of NCTCOG.
- 9.18 **Survival.** Rights and obligations under this Agreement which by their nature should survive will remain in effect after termination or expiration hereof.

ARTICLE X**ADDITIONAL REQUIREMENTS**

- 10.1 **Equal Employment Opportunity.** Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, or national origin. Contractor shall take affirmative actions to ensure that applicants are employed, and that employees are treated, during their employment, without regard to their race, religion, color, sex, sexual orientation, gender identity, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 10.2 **Davis-Bacon Act.** Contractor agrees to comply with all applicable provisions of 40 USC § 3141 – 3148.
- 10.3 **Contract Work Hours and Selection Standards.** Contractor agrees to comply with all applicable provisions of 40 USC § 3701 – 3708 to the extent this Agreement indicates any employment of mechanics or laborers.
- 10.4 **Rights to Invention Made Under Contract or Agreement.** Contractor agrees to comply with all applicable provisions of 37 CFR Part 401.
- 10.5 **Clean Air Act, Federal Water Pollution Control Act, and Energy Policy Conservation Act.** Contractor agrees to comply with all applicable provisions of the Clean Air Act under 42 USC § 7401 – 7671, the Energy Federal Water Pollution Control Act 33 USC § 1251 – 1387, and the Energy Policy Conservation Act under 42 USC § 6201.
- 10.6 **Debarment/Suspension.** Contractor is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. Contractor and its subcontractors shall comply with the Certification Requirements for Recipients of Grants and Cooperative Agreements Regarding Debarments and Suspensions.
- 10.7 **Restrictions on Lobbying.** 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.
- 10.8 **Procurement of Recovered Materials.** Contractor agrees to comply with all applicable provisions of 2 CFR §200.322.
- 10.9 **Drug-Free Workplace.** Contractor shall provide a drug free work place in compliance with the Drug Free Work Place Act of 1988.
- 10.10 **Texas Corporate Franchise Tax Certification.** Pursuant to Article 2.45, Texas Business Corporation Act, state agencies may not contract with for profit corporations that are delinquent in making state franchise tax payments.
- 10.11 **Civil Rights Compliance**
Compliance with Regulations: Contractor will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation

(USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this agreement.

Nondiscrimination: Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 45 CFR Part 21.

Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by Contractor of obligations under this contract and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, sex, or national origin.

Information and Reports: Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor will so certify to NCTCOG, the Texas Department of Transportation ("the State") or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

Sanctions for Noncompliance: In the event of Contractor's noncompliance with the Nondiscrimination provisions of this Agreement, NCTCOG will impose such sanctions as it or the State or the FHWA may determine to be appropriate, including, but not limited to: withholding of payments to the Contractor under this Agreement until the Contractor compiles and/or cancelling, terminating or suspension of this Agreement, in whole or in part.

Incorporation of Provisions: Contractor will include the provisions of the paragraphs listed above, in this section 10.11, in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Contractor will take such action with respect to any subcontract or procurement as NCTCOG, the State, or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, Contractor may request the State to enter into such litigation to protect the interests of the State. In addition, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. Contractor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. Each sub-award or sub-contract must include the following assurance: *The Contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

10.13 Pertinent Non-Discrimination Authorities

During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- b. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects).
- c. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- d. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- e. The Age Discrimination Act of 1975, as amended, (49 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- f. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- g. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not).
- h. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- i. The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- j. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- k. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).
- i. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

10.14 Ineligibility to Receive State Grants or Loans, or Receive Payment on State Contracts

In accordance with Section 231.006 of the Texas Family Code, a child support obligor who is more

man entity (50) days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least twenty-five (25) percent is not eligible to:

- a. Receive payments from state funds under a contract to provide property, materials or services; or
- b. Receive a state-funded grant or loan.

By signing this Agreement, the Contractor certifies compliance with this provision.

10.15 House Bill 89 Certification

If contractor is required to make a certification pursuant to Section 2270.002 of the Texas Government Code, contractor certifies that contractor does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If contractor does not make that certification, contractor state in the space below why the certification is not required.

10.16 Certification Regarding Disclosure of Conflict of Interest.

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

“No employee of the contractor, no member of the contractor’s governing board or body, and no person who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this contract shall participate in any decision relating to this contract which affects his/her personal pecuniary interest.

Executives and employees of contractor shall be particularly aware of the varying degrees of influence that can be exerted by personal friends and associates and, in administering the contract, shall exercise due diligence to avoid situations which give rise to an assertion that favorable treatment is being granted to friends and associates. When it is in the public interest for the contractor to conduct business with a friend or associate of an executive or employee of the contractor, an elected official in the area or a member of the North Central Texas Council of Governments, a permanent record of the transaction shall be retained.

Any executive or employee of the contractor, an elected official in the area or a member of the NCTCOG, shall not solicit or accept money or any other consideration from a third person, for the performance of an act reimbursed in whole or part by contractor or Department. Supplies, tools, materials, equipment or services purchased with contract funds shall be used solely for purposes allowed under this contract. No member of the NCTCOG shall cast a vote on the provision of services by that member (or any organization which that member represents) or vote on any matter which would provide a direct or indirect financial benefit to the member or any business or organization which the member directly represents”.

No officer, employee or paid consultant of the contractor is a member of the NCTCOG.

No officer, manager or paid consultant of the contractor is married to a member of the NCTCOG.

No member of NCTCOG directly owns, controls or has interest in the contractor.

The contractor has disclosed any interest, fact, or circumstance that does or may present a potential conflict of interest.

No member of the NCTCOG receives compensation from the contractor for lobbying activities as defined in Chapter 305 of the Texas Government Code.

Should the contractor fail to abide by the foregoing covenants and affirmations regarding conflict of interest, the contractor shall not be entitled to the recovery of any costs or expenses incurred in relation to the contract and shall immediately refund to the North Central Texas Council of Governments any fees or expenses that may have been paid under this contract and shall further be liable for any other costs incurred or damages sustained by the NCTCOG as it relates to this contract.

10.17 Certification of Fair Business Practices

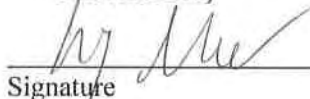
That the submitter affirms that the submitter has not been found guilty of unfair business practices in a judicial or state agency administrative proceeding during the preceding year. The submitter further affirms that no officer of the submitter has served as an officer of any company found guilty of unfair business practices in a judicial or state agency administrative during the preceding year.

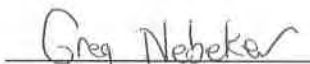
10.18 Certification of Good Standing Texas Corporate Franchise Tax Certification

Pursuant to Article 2.45, Texas Business Corporation Act, state agencies may not contract with for profit corporations that are delinquent in making state franchise tax payments. The undersigned authorized representative of the corporation making the offer herein certified that the following indicated Proposal is true and correct and that the undersigned understands that making a false Proposal is a material breach of contract and is grounds for contract cancellation.

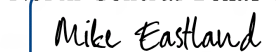
IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

GT Distributors, Inc.

 11-2-21
Signature Date


Printed Name

North Central Texas Council of Governments

 11/4/2021
Signature Date

Michael Eastland
Executive Director

Attachment I
Price for SHARE

For First Responder Uniforms, Accessories, and Services, contractor shall quote participating SHARE Entities the rates and/or discount required for products and services specified by the RFP. Contractor's proposed catalog discount for uniforms and services are found below.

Percent Discount proposal for catalogue Brands for items not listed in this Tab:	Brand	% Discount off catalog
	Atlanco	37
	ASP	
	Blauer (Texas Retail Price List)	22
	5.11	25
	GT	
	Point Blank (Concealable)	
	Point Blank (Tactical Armour& Accessories)	
	Nardis	
	Safariland	
	Elbeco	31
	Under Armour	28
	Smith & Wesson	
	ESS	
	Blackhawk	
	Port Authority	28
	Custom Made Items	10
	Flying Cross	32
Any Additional Brands with Percent-Discounts offered for catalogues not listed above:	Brand	% Discount off catalog
	I Spiewak	20
	Tact Squad	22
	United Uniform	22
	Propper	16
	Liberty	29
	Horace Small	32
	Red Kap	32
	Dickies	15
	Gerber Outerwear	16
	First Tactical	22
	Alpha Broder	22

Alterations and Embroidery Pricing

	Alteration	Classification Code	Unit Price	Extended Price
1	Alterations (shirts and pants)	ALT	N/A	
2	Sew on Patches	ALT	\$1.50	\$1.50
3	Screen Print	ALT	N/A	
4	Add loop to Patch 1 side	ALT- ADDL	\$3.00	\$3.00
5	Add Hard(Hook) Velcro to Back or Patch	ALT- ADDV	\$3.00	\$3.00
6	Add Front & Back Crease to Trousers	ALT- CRB	\$18.00	\$18.00
7	or Mylar	ALT- ST4	\$45.00	\$45.00
8	or Mylar	ALT- ST5	\$55.00	\$55.00
9	Alterations to Seat on Trousers	ALT- TS	\$15.00	\$15.00
10	Wording/Color/ETC	ALT-BADGE	\$12.00	\$12.00
11	Add Stripe to BDU Trouser	ALT-BDUST	\$20.00	\$20.00
12	Add Knife/FLSLT(Billy) PKT to Pan	ALT-BP	\$20.00	\$20.00
13	Direct Embroider 1 Line	ALT-DEMB1	\$6.00	\$6.00
14	Direct Embroider 2 Line	ALT-DEMB2	\$8.50	\$8.50
15	Direct Embroider 3 Line	ALT-DEMB3	\$10.00	\$10.00
16	Embroider Rank on Epaulet (pair)	ALT-EMBRANK	\$12.00	\$12.00
17	Heat Press on Added Material	ALT-HTMATL	\$10.00	\$10.00
18	Alter jacket-Patch Remove/Replace	ALT-JPRR	\$4.00	\$4.00
19	Embroider LOGO	ALT-LOGO	\$12.00	\$12.00
20	Mic Loop Added to Shirt 2"x1"	ALT-MIC	\$4.00	\$4.00
21	Alterations-Patch Sewn on Shirt	ALT-PAT	\$1.50	\$1.50
22	Patch Sewn on Jacket	ALT-PATJ	\$4.00	\$4.00
23	Heat Press REFL Silver 1 Line	ALT-REFSIL1	\$10.00	\$10.00
24	Heat Press REFL Silver 2 Line	ALT-REFSIL2	\$12.00	\$12.00
25	Remove Patch From Shirt	ALT-RPAT	\$1.50	\$1.50
26	Remove Patch From Jacket	ALT-RPATJ	\$4.00	\$4.00
27	Alterations 11 Buttons Added to Stock Garment	ALT-SB11	\$12.00	\$12.00
28	Alterations 13 Buttons Added to L/S Stock Shirt	ALT-SB13	\$14.00	\$14.00
29	Alterations 2 Metal Buttons Added	ALT-SB2	\$3.00	\$3.00
30	Alterations 4 Metal Buttons Added	ALT-SB4	\$4.00	\$4.00
31	Alterations 9 Buttons Added to Stock Garment	ALT-SB9	\$10.00	\$10.00
32	Sew-In Military Creases to Shirt	ALT-SC	\$15.00	\$15.00
33	Create Epaulet Multi Sewn/PR	ALT-SEPMSN	\$8.00	\$8.00
34	Create Epaulet 2 Color Piggy Back	ALT-SEPPB	\$10.00	\$10.00
35	Alter Shirt EMB Insig Ep/Collar	ALT-SINSGE/C	\$12.00	\$12.00
36	Alter Shirt Patch Remove/Replace	ALT-SPR/R	\$1.50	\$1.50
37	Alter Shirt Sleeve Length	ALT-SS	\$12.00	\$12.00
38	Alter Shirt SleTaper	ALT-SST	\$12.00	\$12.00
39	Alterations to Shirt (Taper Body)	ALT-ST	\$12.00	\$12.00
40	Alter Pant Add Stirrups/PR	ALT-STIRUPS	\$10.00	\$10.00
41	Make shoulder Straps Workable	ALT-SWE	\$10.00	\$10.00
42	Alter Remove Zipper From Shirt	ALT-SZR	\$12.00	\$12.00
43	Alter to Hem on Trousers	ALT-TH	\$10.00	\$10.00
44	Alter Pant Add Mohair/PR	ALT-TMOHAIR	\$14.00	\$14.00
45	Alter Trousers Taper Leg	ALT-TTR	\$15.00	\$15.00

46	Alterations to Waist on Trousers	ALT-TW	\$12.00	\$12.00
47	Alterations Pant Waist/Seat/Crotch	ALT-TWSC	\$15.00	\$15.00
48	Add Zipper to Shirt	ALT-ZIP	\$12.00	\$12.00

	Embroidery Options	Classification Code	Unit Price	Extended Price
1	Customizations-1 Line Direct Embroider		\$6.00	\$6.00
2	Customizations-2 Line Direct Embroider		\$8.50	\$8.50
3	Customizations-POLICE reflective screen print		\$10.00	\$10.00
4	Customizations-Embroidered name strip 1 line		\$4.00	\$4.00
5	Customizations-Embroidered Logo		\$12.00	\$12.00

Attachment 2
Texas Service Area Designation

RFP 2021-073	Texas Service Area Designation or Identification						
Proposer Name:	G T DISTRIBUTORS, INC.						
Notes:	Indicate in the appropriate box whether you are proposing to service the entire State of Texas <table border="1" style="width: 100%;"> <tr> <td style="width: 50%;">Will service the entire State of Texas</td> <td style="width: 50%;">Will not service the entire State of Texas</td> </tr> <tr> <td style="text-align: center;">✓</td> <td></td> </tr> </table> If you are not proposing to service the entire State of Texas, designate on the form below the regions that you are proposing to provide goods and/or services to. By designating a region or regions, you are certifying that you are willing and able to provide the proposed goods and services.			Will service the entire State of Texas	Will not service the entire State of Texas	✓	
Will service the entire State of Texas	Will not service the entire State of Texas						
✓							
Item	Region	Metropolitan Statistical Areas	Designated Service Area				
1.	North Central Texas	16 counties in the Dallas-Fort Worth Metropolitan area					
2.	High Plains	Amarillo Lubbock					
3.	Northwest	Abilene Wichita Falls					
4.	Upper East	Longview Texarkana, TX-AR Metro Area Tyler					
5.	Southeast	Beaumont-Port Arthur					
6.	Gulf Coast	Houston-The Woodlands-Sugar Land					
7.	Central Texas	College Station-Bryan Killeen-Temple Waco					
8.	Capital Texas	Austin-Round Rock					
9.	Alamo	San Antonio-New Braunfels Victoria					
10.	South Texas	Brownsville-Harlingen Corpus Christi Laredo McAllen-Edinburg-Mission					
11.	West Texas	Midland Odessa San Angelo					
12.	Upper Rio Grande	El Paso					

RFP 2021-073	Nationwide Service Area Designation or Identification Form						
Proposer Name:	G T DISTRIBUTORS, INC.						
Notes:	Indicate in the appropriate box whether you are proposing to provide service to all Fifty (50) States. <table border="1"> <tr> <td>Will service all Fifty (50) States</td> <td>Will not service Fifty (50) States</td> </tr> <tr> <td></td> <td style="text-align: center;">✓</td> </tr> </table> If you are not proposing to service to all Fifty (50) States, then designate on the form below the States that you will provide service to. By designating a State or States, you are certifying that you are willing and able to provide the proposed goods and services in those States. If you are only proposing to service a specific region, metropolitan statistical area (MSA), or city in a State, then indicate as such in the appropriate column box.			Will service all Fifty (50) States	Will not service Fifty (50) States		✓
Will service all Fifty (50) States	Will not service Fifty (50) States						
	✓						
Item	State	Region/MSA/City	Designated as a Service Area				
1.	Alabama						
2.	Alaska						
3.	Arizona						
4.	Arkansas						
5.	California						
6.	Colorado						
7.	Connecticut						
8.	Delaware						
9.	Florida						
10.	Georgia						
11.	Hawaii						
12.	Idaho						
13.	Illinois						
14.	Indiana						
15.	Iowa						
16.	Kansas						
17.	Kentucky						
18.	Louisiana						
19.	Maine						
20.	Maryland						
21.	Massachusetts						

22.	Michigan		
23.	Minnesota		
24.	Mississippi		
25.	Missouri		
26.	Montana		
27.	Nebraska		
28.	Nevada		
29.	New Hampshire		
30.	New Jersey		
31.	New Mexico		
32.	New York		
33.	North Carolina		
34.	North Dakota		
35.	Ohio		
36.	Oregon		
37.	Oklahoma		
38.	Pennsylvania		
39.	Rhode Island		
40.	South Carolina		
41.	South Dakota		
42.	Tennessee		
43.	Texas	ALL	✓
44.	Utah		
45.	Vermont		
46.	Virginia		
47.	Washington		
48.	West Virginia		
49.	Wisconsin		
50.	Wyoming		

Attachment 3
Guarantees of the Contractor

Indicate the services you are able to provide:

SERVICE	YES	NO
Uniform Alterations	✓	
Embroidery Services	✓	
Emblem Application/Sewing	✓	

How many trained personnel do you employ? 15

If you intend to offer alterations:

- Number of full time tailors: _____
- Number of full time seamstresses: 15

What is your web address (if you have one)? gtdist.com

List days and hours of operation. M-F 8:30-5:30

List your location(s), street address(es) where work will be performed. _____
2545 BROCKTON DR. STE 100, AUSTIN, TX 78758

Do you offer tiered pricing? If so, please list quantities required for each tier. _____
NO

Outline your product ordering (**online, phone, storefront**), processing and billing procedures

Departments may reach G T Dsitributors by phone, email, or walk-in service to place orders. We invoice once the items

are complete and ready to deliver, unless other payment arrangements are made in advance.

Outline your shipping, local delivery and/or pickup options. Our standard shipping carrier is FedEx, but orders

can also be arranged to be picked up at our Austin location if that is most convenient for the customer.

Outline your quality control procedures. G T Distributors production and order processing staff adhere to industry

standards for expected quality of work, consistency, and customer satisfaction.

Note: Respondent is not required to complete any questions that are not applicable to the services you are bidding.

If more space is needed, please add additional pages as necessary.

PROHIBITED TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT CERTIFICATION

This Contract is subject to the Public Law 115-232, Section 889, and 2 Code of Federal Regulations (CFR) Part 200, including §200.216 and §200.471, for prohibition on certain telecommunications and video surveillance or equipment.

Public Law 115-232, Section 889, identifies that restricted telecommunications and video surveillance equipment or services (e.g. phones, internet, video surveillance, cloud servers) include the following:

- A) Telecommunications equipment that is produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliates of such entities).
- B) Video surveillance and telecommunications equipment produced by Hytera Communications Corporations, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliates of such entities).
- C) Telecommunications or video surveillance services used by such entities or using such equipment.
- D) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, Director of the National Intelligence, or the Director of the Federal Bureau of Investigation reasonably believes to be an entity owned or controlled by the government of a covered foreign country.

The entity identified below, through its authorized representative, hereby certifies that no funds under this Contract will be obligated or expended to procure or obtain telecommunication or video surveillance services or equipment or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system prohibited by 2 CFR §200.216 and §200.471, or applicable provisions in Public Law 115-232 Section 889.

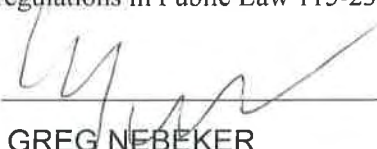
- ☒ The Contractor or Subrecipient hereby certifies that it does comply with the requirements of 2 CFR §200.216 and §200.471, or applicable regulations in Public Law 115-232 Section 889.

SIGNATURE OF AUTHORIZED PERSON:

NAME OF AUTHORIZED PERSON:

NAME OF COMPANY:

DATE:


GREG NEBEKER

G T DISTRIBUTORS, INC.

11/03/2021

-OR-

☐ The Contractor or Subrecipient hereby certifies that it cannot comply with the requirements of 2 CFR §200.216 and §200.471, or applicable Regulations in Public Law 115-232 Section 889.

Page 105 of 105

SIGNATURE OF AUTHORIZED PERSON:

NAME OF AUTHORIZED PERSON:

NAME OF COMPANY:

DATE:



**MASTER SERVICES AGREEMENT #2021-073
First Responder Uniforms, Accessories, and Services**

THIS MASTER SERVICES AGREEMENT ("Agreement"), effective the last date of signed approval ("Effective Date"), is entered into by and between the **North Central Texas Council of Governments** ("**NCTCOG**"), a Texas political subdivision and non-profit corporation, with offices located at 616 Six Flags Drive, Arlington, TX 76011, and

**Impact Promotional Services, LLC (DBA Got You Covered Work Wear and Uniforms).
("Contractor")
1212 E. Lancaster Ave
Fort Worth, TX 76102**

**ARTICLE I
RETENTION OF THE CONTRACTOR**

1.1 This Agreement defines the terms and conditions upon which the Contractor agrees to provide **First Responder Uniforms, Accessories, and Services** (hereinafter, "Services") to governmental entities participating in the North Texas SHARE program (hereinafter "Participating Entities"). The Contractor is being retained to provide services described below to Participating Entities based on the Contractor's demonstrated competence and requisite qualifications to perform the scope of the services described herein and in the Request for Proposals **#2021-073** (hereinafter, "RFP"). The Contractor demonstrated they have the resources, experience, and qualifications to perform the described services, which is of interest to Participating Entities and was procured via the RFP. NCTCOG agrees to and hereby does retain the Contractor, as an independent contractor, and the Contractor agrees to provide services to Participating Entities, in accordance with the terms and conditions provided in this Agreement and consistent with Contractor's response to the RFP.

**ARTICLE II
SCOPE OF SERVICES**

- 2.1 The Contractor will provide Services described in a written Purchase Order issued by NCTCOG or a SHARE Participating Entity. Any such Purchase Order is hereby incorporated by reference and made a part of this Agreement and shall be subject to the terms and conditions in this Agreement. In the event of a conflict between any term or provision in this Agreement and any term or provision in a Purchase Order, the term or provision in this Agreement shall control unless the conflicting term or provision in this Agreement is referenced, and expressly stated not to apply, in such Purchase Order.
- 2.2 All Services rendered under this Agreement will be performed by the Contractor: i) with due care; ii) in accordance with generally prevailing industry standards; iii) in accordance with Participating Entities' standard operating procedures and applicable policies, as may be amended from time to time; and iv) in compliance with all applicable laws, government regulatory requirements, and any other written instructions, specifications, guidelines, or requirements provided by NCTCOG and/or Participating Entities.
- 2.3 Any agreed-upon changes to a Purchase Order shall be set forth in a subsequent Purchase Order amendment. Contractor will not implement any changes or any new Services until a Purchase Order has been duly executed by Participating Entity. For the avoidance of doubt, the Contractor acknowledges that Participating Entity is under no obligation to execute a Purchase Order. Participating

2.4 Pricing for items in Attachment 1 represent the maximum cost for each item offered by the Contractor. Contractor and Participating Entity may mutually agree to a lower cost for any item covered under this agreement.

2.5 NCTCOG Obligations

2.5.1 NCTCOG shall make available a contract page on its NorthTexasSHARE.org website which will include contact information for the Contractor(s).

2.6 Participating Entity Obligations.

2.6.1 In order to utilize the Services, Participating Entities must have executed a Master Interlocal Agreement for North Texas SHARE with NCTCOG. This agreement with the Participating Entity will define the legal relationship between NCTCOG and the Participating Entity.

2.6.2 In order to utilize the Services, Participating Entities must execute a Purchase Order with the Contractor. This agreement with the Participating Entity will define the Services and costs that the Participating Entity desires to have implemented by the Contractor.

2.7 Contractor Obligations.

2.7.1 Contractor must be able to deliver, perform, install, and implement services with the requirements and intent of RFP #2021-073

2.7.2 If applicable, Contractor shall provide all necessary material, labor and management required to perform this work. The scope of services shall include, but not be limited to, items listed in Attachment 1.

2.7.3 Contractor agrees to market and promote the use of the SHARE awarded contract whenever possible among its current and solicited customer base. Contractor shall agree to follow reporting requirements in report sales made under this Master Services Agreement in accordance with Section 4.2.

ARTICLE III TERM

3.1 This Agreement will commence on the Effective Date and remain in effect for an initial term ending on November 1, 2022 (the "**Term**"), unless earlier terminated as provided herein. This Agreement may be renewed, at NCTCOG's sole discretion, for up to four (4) additional one (1) year terms through November 1, 2026.

3.2 **Termination.** NCTCOG and/or Participating Entities may terminate this Agreement and/or any Purchase Order to which it is a signatory at any time, with or without cause, upon thirty (30) days' prior written notice to Contractor. Upon its receipt of notice of termination of this Agreement or Purchase Order, Contractor shall follow any instructions of NCTCOG respecting work stoppage. Contractor shall cooperate with NCTCOG and/or Participating Entities to provide for an orderly conclusion of the Services. Contractor shall use its best efforts to minimize the amount of any non-cancelable obligations and shall assign any contracts related thereto to NCTCOG or Participating Entity at its request. If NCTCOG or Participating Entity elects to continue any activities underlying a terminated Purchase Order after termination, Contractor shall cooperate with NCTCOG or Participating Entity to provide for an orderly transfer of Contractor's responsibilities with respect to such Purchase Order to NCTCOG or Participating Entity. Upon the effective date of any such termination, the Contractor shall submit a final invoice for payment in accordance with Article IV, and NCTCOG or Participating Entity shall pay such amounts as are due to Contractor through the effective date of termination. NCTCOG or Participating Entity shall only be liable for payment of services rendered before the effective date of termination. If Agreement is terminated, certain reporting requirements identified in this Agreement shall survive termination of this Agreement.

- 3.2.1 **Termination for Cause:** Either party may immediately terminate this Agreement if the other party breaches its obligations specified within this Agreement, and, where capable of remedy, such breach has not been materially cured within thirty (30) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
- 3.2.2 **Breach:** Upon any material breach of this Agreement by either party, the non-breaching party may terminate this Agreement upon twenty (20) days written notice to the breaching party. The notice shall become effective at the end of the twenty (20) day period unless the breaching party cures such breach within such period.

ARTICLE IV COMPENSATION

- 4.1 **Invoices.** Contractor shall submit an invoice to the ordering Participating Entity upon receipt of an executed Purchase Order and after completion of the work, with Net 30 payment terms. Costs incurred prior to execution of this Agreement are not eligible for reimbursement. There shall be no obligation whatsoever to pay for performance of this Agreement from the monies of the NCTCOG or Participating Entities, other than from the monies designated for this Agreement and/or executed Purchase Order. Contractor expressly agrees that NCTCOG shall not be liable, financial or otherwise, for Services provided to Participating Entities.
- 4.2 **Reporting.** NCTCOG intends to make this Agreement available to other governmental entities through its SHARE cooperative purchasing program. Contractor shall submit to NCTCOG on a calendar quarterly basis a report that identifies any new client Participating Entities, the date and order number, and the total contracted value of services that each Participating Entity has purchased and paid in full under this Master Service Agreement. Reporting and invoices should be submitted to:

NCTCOG
ATTN: North Texas SHARE
PO Box 5888
Arlington, TX 76005-5888
Email: NorthTexasSHARE@nctcog.org

ARTICLE V**SERVICE FEE**

- 5.1 **Explanation.** NCTCOG will make this Master Service Agreement available to other governmental entities, Participating Entities, and non-profit agencies in Texas and the rest of the United States through its SHARE cooperative purchasing program. The Contractor is able to market the Services under this Agreement to any Participating Entity with emphasis that competitive solicitation is not required when the Participating Entity purchases off of a cooperative purchasing program such as SHARE. However, each Participating Entity will make the decision that it feels is in compliance with its own purchasing requirements. The Contractor realizes substantial efficiencies through their ability to offer pricing through the SHARE Cooperative and that will increase the sales opportunities as well as reduce the need to repeatedly respond to Participating Entities' Requests for Proposals. From these efficiencies, Contractor will pay an administrative fee to SHARE calculated as a percentage of sales processed through the SHARE Master Services Agreement. This administrative fee is not an added cost to SHARE participants. This administrative fee covers the costs of solicitation of the contract, marketing and facilitation, as well as offsets expenses incurred by SHARE.
- 5.2 **Administrative Fee.** NCTCOG will utilize an administrative fee, in the form of a percent of cost that will apply to all contracts between awarded contractor and NCTCOG or participants resulting from this solicitation. The administrative fee will be remitted by the contractor to NCTCOG on a quarterly basis, along with required quarterly reporting. The remuneration fee for this program will be 2% on sales.
- 5.3 **Setup and Implementation.** NCTCOG will provide instruction and guidance as needed to the Contractor to assist in maximizing mutual benefits from marketing these Services through the SHARE purchasing program.

ARTICLE VI**RELATIONSHIP BETWEEN THE PARTIES**

- 6.1 **Contractual Relationship.** It is understood and agreed that the relationship described in this Agreement between the Parties is contractual in nature and is not to be construed to create a partnership or joint venture or agency relationship between the parties. Neither party shall have the right to act on behalf of the other except as expressly set forth in this Agreement. Contractor will be solely responsible for and will pay all taxes related to the receipt of payments hereunder and shall give reasonable proof and supporting documents, if reasonably requested, to verify the payment of such taxes. No Contractor personnel shall obtain the status of or otherwise be considered an employee of NCTCOG or Participating Entity by virtue of their activities under this Agreement.

ARTICLE VII**REPRESENTATION AND WARRANTIES****7.1 Representations and Warranties.** Contractor represents and warrants that:

- 7.1.1 As of the Effective Date of this Agreement, it is not a party to any oral or written contract or understanding with any third party that is inconsistent with this Agreement and/or would affect the Contractor's performance under this Agreement; or that will in any way limit or conflict with its ability to fulfill the terms of this Agreement. The Contractor further represents that it will not enter into any such agreement during the Term of this Agreement;
- 7.1.2 NCTCOG is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from, or ineligible for, participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. Contractor and its subcontractors shall include a statement of compliance with Federal and State Debarment and suspension regulations in all Third-party contracts.
- 7.1.3 Contractor shall notify NCTCOG if Contractor or any of the Contractor's sub-contractors becomes debarred or suspended during the performance of this Agreement. Debarment or suspension of the Contractor or any of Contractor's sub-contractors may result in immediate termination of this Agreement.
- 7.1.4 Contractor and its employees and sub-contractors have all necessary qualifications, licenses, permits, and/or registrations to perform the Services in accordance with the terms and conditions of this Agreement, and at all times during the Term, all such qualifications, licenses, permits, and/or registrations shall be current and in good standing.
- 7.1.5 Contractor shall, and shall cause its representatives to, comply with all municipal, state, and federal laws, rules, and regulations applicable to the performance of the Contractor's obligations under this Agreement.

ARTICLE VIII**CONFIDENTIAL INFORMATION AND OWNERSHIP**

- 8.1 **Confidential Information.** Contractor acknowledges that any information it or its employees, agents, or subcontractors obtain regarding the operation of NCTCOG or Participating Entities, its products, services, policies, customer, personnel, and other aspect of its operation ("Confidential Information") is proprietary and confidential, and shall not be revealed, sold, exchanged, traded, or disclosed to any person, company, or other entity during the period of the Contractor's retention hereunder or at any time thereafter without the express written permission of NCTCOG or Participating Entity.

Notwithstanding anything in this Agreement to the contrary, Contractor shall have no obligation of confidentiality with respect to information that (i) is or becomes part of the public domain through no act or omission of Contractor; (ii) was in Contractor's lawful possession prior to the disclosure and had not been obtained by Contractor either directly or indirectly from the NCTCOG or Participating Entity; (iii) is lawfully disclosed to Contractor by a third party without restriction on disclosure; (iv) is independently developed by Contractor without use of or reference to the NCTCOG's Participating Entity's Confidential Information; or (v) is required to be disclosed by law or judicial, arbitral or governmental order or process, provided Contractor gives the NCTCOG or Participating Entity prompt written notice of such requirement to permit the NCTCOG or Participating Entity to seek a protective order or other appropriate relief. Contractor acknowledges that NCTCOG and Participating Entities must strictly comply with applicable public information laws, in responding to any request for public information. This obligation supersedes any conflicting provisions of this Agreement.

- 8.2 **Ownership.** No title or ownership rights to any applicable software are transferred to the NCTCOG by this agreement. The Contractor and its suppliers retain all right, title and interest, including all copyright and intellectual property rights, in and to, the software (as an independent work and as an underlying

work serving as a basis for any improvements, modifications, derivative works, and applications NCTCOG may develop), and all copies (Page 1 of 14) of final documents, data, reports, information, or materials are and shall at all times be and remain, upon payment of Contractor's invoices therefore, the property of NCTCOG or Participating Entity and shall not be subject to any restriction or limitation on their future use by, or on behalf of, NCTCOG or Participating Entity, except otherwise provided herein. Subject to the foregoing exception, if at any time demand be made by NCTCOG or Participating Entity for any documentation related to this Agreement and/or applicable Purchase Orders for the NCTCOG and/or any Participating Entity, whether after termination of this Agreement or otherwise, the same shall be turned over to NCTCOG without delay, and in no event later than thirty (30) days after such demand is made. Contractor shall have the right to retain copies of documentation, and other items for its archives. If for any reason the foregoing Agreement regarding the ownership of documentation is determined to be unenforceable, either in whole or in part, the Contractor hereby assigns and agrees to assign to NCTCOG all rights, title, and interest that the Contractor may have or at any time acquire in said documentation and other materials, provided that the Contractor has been paid the aforesaid.

ARTICLE IX GENERAL PROVISIONS

- 9.1 **Notices.** All notices from one Party to another Party regarding this Agreement shall be in writing and delivered to the addresses shown below:

If to NCTCOG: North Central Texas Council of Governments
P.O. Box 5888
Arlington, TX 76005-5888
Attn: Craigan Johnson
(817) 695-9186
Bmoll@nctcog.org

If to Contractor: Impact Promotional Services
Attn: Rhonda Harvey
1212 E. Lancaster Ave
Fort Worth, TX 76102
(817) 336-0692
rhonda@gycuniforms.com

The above contact information may be modified without requiring an amendment to the Agreement.

- 9.2 **Tax.** NCTCOG and several participating entities are exempt from Texas limited sales, federal excise and use tax, and does not pay tax on purchase, rental, or lease of tangible personal property for the organization's use. A tax exemption certificate will be issued upon request.
- 9.3 **Indemnification.** Contractor shall defend, indemnify, and hold harmless NCTCOG and Participating Entities, NCTCOG's affiliates, and any of their respective directors, officers, employees, agents, subcontractors, successors, and assigns from any and all suits, actions, claims, demands, judgments, liabilities, losses, damages, costs, and expenses (including reasonable attorneys' fees and court costs) (collectively, "Losses") arising out of or relating to: (i) Services performed and carried out pursuant to this Agreement; (ii) breach of any obligation, warranty, or representation in this Agreement, (iii) the negligence or willful misconduct of Contractor and/or its employees or subcontractors; or (iv) any infringement, misappropriation, or violation by Contractor and/or its employees or subcontractors of any right of a third party; provided, however, that Contractor shall have no obligation to defend, indemnify, or hold harmless to the extent any Losses are the result of NCTCOG's or Participating Entities' gross negligence or willful misconduct.
- 9.4 **Limitation of Liability.** In no event shall either party be liable for special, consequential, incidental, indirect or punitive loss, damages or expenses arising out of or relating to this Agreement, whether arising from a breach of contract or warranty, or arising in tort, strict liability, by statute or otherwise,

Notwithstanding any provision hereof to the contrary, neither party's liability shall be limited by this Article with respect to claims arising from breach of any confidentiality obligation, arising from such party's infringement of the other party's intellectual property rights, covered by any express indemnity obligation of such party hereunder, arising from or with respect to injuries to persons or damages to tangible property, or arising out of the gross negligence or willful misconduct of the party or its employees.

9.5 **Insurance.** At all times during the term of this Agreement, Contractor shall procure, pay for, and maintain, with approved insurance carriers, the minimum insurance requirements set forth below, unless otherwise agreed in a Purchase Order between Contractor and Participating Entities. Further, Contractor shall require all contractors and sub-contractors performing work for which the same liabilities may apply under this Agreement to do likewise. All subcontractors performing work for which the same liabilities may apply under this contract shall be required to do likewise. Contractor may cause the insurance to be effected in whole or in part by the contractors or sub-contractors under their contracts. NCTCOG reserves the right to waive or modify insurance requirements at its sole discretion.

9.5.1 Workers' Compensation: Statutory limits and employer's liability of \$100,000 for each accident or disease.

9.5.2 Commercial General Liability:

9.5.2.1 Required Limits:

\$1,000,000 per occurrence;

\$3,000,000 Annual Aggregate

9.5.2.2 Commercial General Liability policy shall include:

9.5.2.2.1 Coverage A: Bodily injury and property damage;

9.5.2.2.2 Coverage B: Personal and Advertising Injury liability;

9.5.2.2.3 Coverage C: Medical Payments;

9.5.2.2.4 Products: Completed Operations;

9.5.2.2.5 Fire Legal Liability;

9.5.2.3 Policy coverage must be on an "occurrence" basis using CGL forms as approved by the Texas State Board of Insurance.

9.5.3 Business Auto Liability: Coverage shall be provided for all owned hired, and non-owned vehicles. Required Limit: \$1,000,000 combined single limit each accident.

9.5.4 Professional Errors and Omissions liability:

9.5.4.1 Required Limits:

\$1,000,000 Each Claim

\$1,000,000 Annual Aggregate

9.6 **Conflict of Interest.** During the term of this Agreement, and all extensions hereto and for a period of one (1) year thereafter, neither party, shall, without the prior written consent of the other, directly or indirectly, whether for its own account or with any other persons or entity whatsoever, employ, solicit to employ or endeavor to entice away any person who is employed by the other party.

9.7 **Force Majeure.** It is expressly understood and agreed by both parties to this Agreement that, if the performance of any provision of this Agreement is delayed by force majeure, defined as reason of war, civil commotion, act of God, governmental restriction, regulation or interference, fire, explosion, hurricane, flood, failure of transportation, court injunction, or any circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated herein, the party so obligated or permitted shall be excused from doing or

performing the same during such period of delay, so that the period of time applicable to such requirement shall be extended for a period of time equal to the period of time such party was delayed. Each party must inform the other in writing within a reasonable time of the existence of such force majeure.

- 9.8 **Ability to Perform.** Contractor agrees promptly to inform NCTCOG of any event or change in circumstances which may reasonably be expected to negatively affect the Contractor's ability to perform its obligations under this Agreement in the manner contemplated by the parties.
- 9.9 **Availability of Funding.** This Agreement and all claims, suits, or obligations arising under or related to this Agreement are subject to and limited by the receipt and availability of funds which are received from the Participating Entities by NCTCOG dedicated for the purposes of this Agreement.
- 9.10 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas, United States of America. The mandatory and exclusive venue for the adjudication or resolution of any dispute arising out of this Agreement shall be in Tarrant County, Texas.
- 9.11 **Waiver.** Failure by either party to insist on strict adherence to any one or more of the terms or conditions of this Agreement, or on one or more occasions, will not be construed as a waiver, nor deprive that party of the right to require strict compliance with the same thereafter.
- 9.12 **Entire Agreement.** This Agreement and any attachments/addendums, as provided herein, constitutes the entire agreement of the parties and supersedes all other agreements, discussions, representations or understandings between the parties with respect to the subject matter hereof. No amendments hereto, or waivers or releases of obligations hereunder, shall be effective unless agreed to in writing by the parties hereto.
- 9.13 **Assignment.** This Agreement may not be assigned by either Party without the prior written consent of the other Party.
- 9.14 **Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision(s) hereof, and this Agreement shall be revised so as to cure such invalid, illegal, or unenforceable provision(s) to carry out as near as possible the original intents of the Parties.
- 9.15 **Amendments.** This Agreement may be amended only by a written amendment executed by both Parties, except that any alterations, additions, or deletions to the terms of this Agreement, which are required by changes in Federal and State law or regulations or required by the funding source, are automatically incorporated into this Agreement without written amendment hereto and shall become effective on the date designated by such law or regulation.
- 9.16 **Dispute Resolution.** The parties to this Agreement agree to the extent possible and not in contravention of any applicable State or Federal law or procedure established for dispute resolution, to attempt to resolve any dispute between them regarding this Agreement informally through voluntary mediation, arbitration or any other local dispute mediation process, including but not limited to dispute resolution policies of NCTCOG, before resorting to litigation.
- 9.17 **Publicity.** Contractor shall not issue any press release or make any statement to the media with respect to this Agreement or the services provided hereunder without the prior written consent of NCTCOG.
- 9.18 **Survival.** Rights and obligations under this Agreement which by their nature should survive will remain in effect after termination or expiration hereof.

ARTICLE X**ADDITIONAL REQUIREMENTS**

- 10.1 **Equal Employment Opportunity.** Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, or national origin. Contractor shall take affirmative actions to ensure that applicants are employed, and that employees are treated, during their employment, without regard to their race, religion, color, sex, sexual orientation, gender identity, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 10.2 **Davis-Bacon Act.** Contractor agrees to comply with all applicable provisions of 40 USC § 3141 – 3148.
- 10.3 **Contract Work Hours and Selection Standards.** Contractor agrees to comply with all applicable provisions of 40 USC § 3701 – 3708 to the extent this Agreement indicates any employment of mechanics or laborers.
- 10.4 **Rights to Invention Made Under Contract or Agreement.** Contractor agrees to comply with all applicable provisions of 37 CFR Part 401.
- 10.5 **Clean Air Act, Federal Water Pollution Control Act, and Energy Policy Conservation Act.** Contractor agrees to comply with all applicable provisions of the Clean Air Act under 42 USC § 7401 – 7671, the Energy Federal Water Pollution Control Act 33 USC § 1251 – 1387, and the Energy Policy Conservation Act under 42 USC § 6201.
- 10.6 **Debarment/Suspension.** Contractor is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. Contractor and its subcontractors shall comply with the Certification Requirements for Recipients of Grants and Cooperative Agreements Regarding Debarments and Suspensions.
- 10.7 **Restrictions on Lobbying.** 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.
- 10.8 **Procurement of Recovered Materials.** Contractor agrees to comply with all applicable provisions of 2 CFR §200.322.
- 10.9 **Drug-Free Workplace.** Contractor shall provide a drug free work place in compliance with the Drug Free Work Place Act of 1988.
- 10.10 **Texas Corporate Franchise Tax Certification.** Pursuant to Article 2.45, Texas Business Corporation Act, state agencies may not contract with for profit corporations that are delinquent in making state franchise tax payments.
- 10.11 **Civil Rights Compliance**

Compliance with Regulations: Contractor will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation

(USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this agreement.

Nondiscrimination: Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 45 CFR Part 21.

Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by Contractor of obligations under this contract and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, sex, or national origin.

Information and Reports: Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor will so certify to NCTCOG, the Texas Department of Transportation ("the State") or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

Sanctions for Noncompliance: In the event of Contractor's noncompliance with the Nondiscrimination provisions of this Agreement, NCTCOG will impose such sanctions as it or the State or the FHWA may determine to be appropriate, including, but not limited to: withholding of payments to the Contractor under this Agreement until the Contractor compiles and/or cancelling, terminating or suspension of this Agreement, in whole or in part.

Incorporation of Provisions: Contractor will include the provisions of the paragraphs listed above, in this section 10.11, in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Contractor will take such action with respect to any subcontract or procurement as NCTCOG, the State, or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, Contractor may request the State to enter into such litigation to protect the interests of the State. In addition, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. Contractor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. Each sub-award or sub-contract must include the following assurance: *The Contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

10.13 Pertinent Non-Discrimination Authorities

During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- b. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects).
- c. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- d. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- e. The Age Discrimination Act of 1975, as amended, (49 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- f. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- g. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not).
- h. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- i. The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- j. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- k. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).
- i. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

10.14 Ineligibility to Receive State Grants or Loans, or Receive Payment on State Contracts

In accordance with Section 231.006 of the Texas Family Code, a child support obligor who is more

an entity (30) days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, Page 17 of 45 with an ownership interest of at least twenty-five (25) percent is not eligible to:

- a. Receive payments from state funds under a contract to provide property, materials or services; or
- b. Receive a state-funded grant or loan.

By signing this Agreement, the Contractor certifies compliance with this provision.

10.15 House Bill 89 Certification

If contractor is required to make a certification pursuant to Section 2270.002 of the Texas Government Code, contractor certifies that contractor does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If contractor does not make that certification, contractor state in the space below why the certification is not required.

10.16 Certification Regarding Disclosure of Conflict of Interest.

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

“No employee of the contractor, no member of the contractor’s governing board or body, and no person who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this contract shall participate in any decision relating to this contract which affects his/her personal pecuniary interest.

Executives and employees of contractor shall be particularly aware of the varying degrees of influence that can be exerted by personal friends and associates and, in administering the contract, shall exercise due diligence to avoid situations which give rise to an assertion that favorable treatment is being granted to friends and associates. When it is in the public interest for the contractor to conduct business with a friend or associate of an executive or employee of the contractor, an elected official in the area or a member of the North Central Texas Council of Governments, a permanent record of the transaction shall be retained.

Any executive or employee of the contractor, an elected official in the area or a member of the NCTCOG, shall not solicit or accept money or any other consideration from a third person, for the performance of an act reimbursed in whole or part by contractor or Department. Supplies, tools, materials, equipment or services purchased with contract funds shall be used solely for purposes allowed under this contract. No member of the NCTCOG shall cast a vote on the provision of services by that member (or any organization which that member represents) or vote on any matter which would provide a direct or indirect financial benefit to the member or any business or organization which the member directly represents”.

No officer, employee or paid consultant of the contractor is a member of the NCTCOG.

No officer, manager or paid consultant of the contractor is married to a member of the NCTCOG.

No member of NCTCOG directly owns, controls or has interest in the contractor.

The contractor has disclosed any interest, fact, or circumstance that does or may present a potential conflict of interest.

No member of the NCTCOG receives compensation from the contractor for lobbying activities as defined in Chapter 305 of the Texas Government Code.

Should the contractor fail to abide by the foregoing covenants and affirmations regarding conflict of interest, the contractor shall not be entitled to the recovery of any costs or expenses incurred in relation to the contract and shall immediately refund to the North Central Texas Council of Governments any fees or expenses that may have been paid under this contract and shall further be liable for any other costs incurred or damages sustained by the NCTCOG as it relates to this contract.

10.17 Certification of Fair Business Practices

That the submitter affirms that the submitter has not been found guilty of unfair business practices in a judicial or state agency administrative proceeding during the preceding year. The submitter further affirms that no officer of the submitter has served as an officer of any company found guilty of unfair business practices in a judicial or state agency administrative during the preceding year.

10.18 Certification of Good Standing Texas Corporate Franchise Tax Certification

Pursuant to Article 2.45, Texas Business Corporation Act, state agencies may not contract with for profit corporations that are delinquent in making state franchise tax payments. The undersigned authorized representative of the corporation making the offer herein certified that the following indicated Proposal is true and correct and that the undersigned understands that making a false Proposal is a material breach of contract and is grounds for contract cancellation.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Impact Promotional Services, LLC.

Rhonda L Harvey 10/29/2021
Signature Date

Rhonda L Harvey
Printed Name

North Central Texas Council of Governments

Mike Eastland 11/5/2021
Signature Date
Michael Eastland
Executive Director

Attachment I
Pricing for SHARE

For First Responder Uniforms, Accessories, and Services, contractor shall quote participating SHARE Entities the rates and/or discount required for products and services specified by the RFP. Contractor's proposed catalog discount for uniforms and services are found below.

**Percent Discount proposal
for catalogue Brands for
items not listed in this Tab:**

Brand	% Discount off catalog
Atlenco	15
ASP	10
Blauer (Texas Retail Price List)	15
5.11	15
GT	NA
Point Blank (Concealable)	35
Point Blank (Tactical Armour& Accessories)	35
Nardis	NA
Safariland	10
Elbeco	20
Under Armour	
Smith & Wesson	5
ESS	NA
Blackhawk	5
Port Authority	15
Custom Made Items	15
Flying Cross	NA

**Any Additional Brands with
Percent-Discounts offered for
catalogues not listed above:**

Brand	% Discount off catalog
HERO'S PRIDE	10
PREMIER EMBLEM	10
FIRST TACTICAL	15
PROPPER	15
THOROGOOD	15
SMITH & WARREN	10
VH BLACKINTON	10
LIBERTY	15
GERBER	15
SANMAR	10
HOPE UNIFORM	15
TACT SQUAD/UNITED UNIFORMS	15
DICKIES/WORKRITE/BULWORK/REDKAP/HORACE SMALL	15
HAIX USA	10
BIANCHI	10
ROTHCO	10
CONDOR	10
TAYLOR LEATHERS	10
MIDWAY CAP	10
KEYSTONE CAP	10
BAYLEY	10
SAMUEL BROOME	10
DUTYMAN	10
DANNER	10
EISMAN LUDMAR (ELC)	10
EDWARDS	10
ROCKY	10
STREAMLIGHT	10
EARPHONE CONNECT	10
LIGHTHOUSE	10
CREW BOSS	10

	BATES	10
	JAY - P	10

ALTERATION SERVICES

Description of Alteration Service		Proposed Price Per Service	OR Percent Discount off of Service
Please fill-in based upon items listed on Exhibit B			
1	Dress Coat - Button Accommodation 4btn - Large Buttons	\$16.00	
2	Dress Coat - Button Accommodation 4btn - Small Buttons	\$8.00	
3	Dress Coat - Button Accommodation 9btn - Large Buttons	\$36.00	
4	Dress Coat - Add Extra Button		
5	Dress Coat - Open Liner / Sleeve	\$35.00	
6	Dress Coat - Cordedge		
7	Dress Coat - Patch Place / Remove	\$15.00	
8	Dress Coat - Shorten Coat	\$30.00	
9	Dress Coat - Add Toggles / Washers		
10	Dress Coat - Shorten / Lengthen Sleeves	\$22.00	
11	Dress Coat - Taper	\$37.00	
12	Dress Coat - Add 1 Sleeve Stripe	\$15.00	
13	Dress Coat - Add 2 Sleeve Stripes	\$20.00	
14	Dress Coat - Add 3 Sleeve Stripes	\$25.00	
15	Dress Coat - Add 4 Sleeve Stripes	\$30.00	
16	Dress Coat - Add 5 Sleeve Stripes	\$35.00	
17	Dress Coat - Custom Epaulets (pair)	\$23.00	
18			
19	Vest - Add Mic Hole - Per One Side	\$15.00	
20	Vest - Add 3 Rows Molle, Front Side	\$35.00	
21	Vest - Button Accomodation 10btn	\$20.00	
22			
23	Shirt - Add Mic Tab	\$5.00	
24	Shirt - Add Mic Hole - Per One Side	\$7.50	
25	Shirt - Button Accommodation 4btn - Small Buttons	\$8.00	
26	Shirt - Button Accommodation 9btn - Small Buttons	\$18.00	
27	Shirt - Functional Epaulets	\$12.50	
28	Shirt - Shorten / Lengthen Shirt Tail	\$25.00	
29	Shirt - Shorten Sleeves	\$17.00	
30	Shirt - Shorten Sleeves - Keep Reflective Stripe	\$42.00	
31	Shirt - Taper - Sides / Body Standard	\$20.00	
32	Shirt - Taper - Sides / Body Mesh	\$45.00	
33	Shirt - Taper - Sides / Body Tactical	\$65.00	
34	Shirt - Taper - Sleeves Standard	\$16.00	
35	Shirt - Taper - Sleeves Mesh	\$30.00	
36	Shirt - Add Military Creases	\$25.00	
37	Shirt - Patch Place or Removal	\$5.25	First 2 included at no charge per garment
38	Shirt - Maternity Conversion		
39	Shirt - Pocket Place or Remove (per pocket)	\$13.00	
40	Shirt - Zipper Replacement	\$25.00	
41	Shirt - Add Zipper (under buttons)	\$30.00	
42			
43	Pants - Hem - Boot Cut/Westpoint Hem	\$25.00	
44	Pants - Hem - Plain Bottom	\$0.00	included at no charge
45	Pants - Hem - Cuff	\$13.00	
46	Pants - Sew Down Pockets	\$11.00	
47	Pants - Hook and Eye Replacement	\$15.00	
48	Pants - Add Stripe	\$30.00	
49	Pants - Add Cordedge		custom request quoted
50	Pants - Take in Waist / Seat	\$25.00	
51	Pants - Taper - Full Taper - Above Knee	\$32.00	
52	Pants - Taper - Below Knee	\$24.00	
53	Pants - Taper - Tactical - Below Knee	\$48.00	
54	Pants - Taper - Tactical - Above Knee	\$64.00	
55	Pants - Zipper Replacement	\$30.00	
56	Pants - Add Zipper to Pant Leg	\$65.00	
57	Pants - Recut - With Waist	\$68.00	
58	Pants - Recut - Without Waist	\$43.00	
59	Pants - Recut - Without Waist Tactical	\$75.00	
60	Pants - Motor - Custom	\$250.00	

61	Pants - Motor - Add Stirrups	\$17.00	
62			
63	Outerwear - Patch Place or Remove	\$8.00	
64	Outerwear - Add Reflective Stripe	\$120.00	custom request quoted
65	Outerwear - Zipper Replacement	\$125.00	
66	Outerwear - Add Elastic to Sleeves	\$25.00	
67			
68	Hat - Patch Place	\$5.25	
69			
70	Alterations - Seam Repair	\$15.00	
71	Alterations - Button Replacement / Reinforcement (per button)	\$5.00	
72			
73	Alterations - Velcro - 4 x 11 Back	\$15.00	
74	Alterations - Velcro - 4 x 4 Sleeve	\$9.00	
75	Alterations - Velcro - Nametape	\$11.00	

EMBROIDERY SERVICES

Description of Alteration Service Please fill-in based upon items listed on Exhibit B		Proposed Price Per Service	OR Percent Discount off of Service
1	direct single line embroidery	\$6.00	
2	direct double line embroidery	\$8.00	
3	basic logo (8500 stitch count or less)	\$8.50	
4	custom logo	\$1.00 per 1,000 stitch count	
5	digitization	\$50.00	
6	patch sample	\$65.00	
7	standard nametape	\$9.00	
8	standard nametape w/velcro	\$11.00	
9	heat press 3-3.5"	\$22.00	Non-reflective
10	heat press reflective	\$22.00	standard silver reflective
11	heat press black reflective	\$28.00	black reflective
12	screen print	quote by job	
13	cap logo	\$1.05 per 1,000 stitch count	
14	collar embroidery	\$11.00	
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

Attachment 2
Texas Service Area Designation

RFP 2021-073	Texas Service Area Designation or Identification						
Proposer Name:							
Notes:	Indicate in the appropriate box whether you are proposing to service the entire State of Texas <table border="1" style="width: 100%;"> <tr> <td style="width: 50%;">Will service the entire State of Texas</td> <td style="width: 50%;">Will not service the entire State of Texas</td> </tr> <tr> <td style="text-align: center;">✓</td> <td></td> </tr> </table> If you are not proposing to service the entire State of Texas, designate on the form below the regions that you are proposing to provide goods and/or services to. By designating a region or regions, you are certifying that you are willing and able to provide the proposed goods and services.			Will service the entire State of Texas	Will not service the entire State of Texas	✓	
Will service the entire State of Texas	Will not service the entire State of Texas						
✓							
Item	Region	Metropolitan Statistical Areas	Designated Service Area				
1.	North Central Texas	16 counties in the Dallas-Fort Worth Metropolitan area					
2.	High Plains	Amarillo Lubbock					
3.	Northwest	Abilene Wichita Falls					
4.	Upper East	Longview Texarkana, TX-AR Metro Area Tyler					
5.	Southeast	Beaumont-Port Arthur					
6.	Gulf Coast	Houston-The Woodlands-Sugar Land					
7.	Central Texas	College Station-Bryan Killeen-Temple Waco					
8.	Capital Texas	Austin-Round Rock					
9.	Alamo	San Antonio-New Braunfels Victoria					
10.	South Texas	Brownsville-Harlingen Corpus Christi Laredo McAllen-Edinburg-Mission					
11.	West Texas	Midland Odessa San Angelo					
12.	Upper Rio Grande	El Paso					

RFP 2021-073	Nationwide Service Area Designation or Identification Form						
Proposer Name:							
Notes:	Indicate in the appropriate box whether you are proposing to provide service to all Fifty (50) States. <table border="1"> <tr> <td>Will service all Fifty (50) States</td> <td>Will not service Fifty (50) States</td> </tr> <tr> <td></td> <td>✓</td> </tr> </table> If you are not proposing to service to all Fifty (50) States, then designate on the form below the States that you will provide service to. By designating a State or States, you are certifying that you are willing and able to provide the proposed goods and services in those States. If you are only proposing to service a specific region, metropolitan statistical area (MSA), or city in a State, then indicate as such in the appropriate column box.			Will service all Fifty (50) States	Will not service Fifty (50) States		✓
Will service all Fifty (50) States	Will not service Fifty (50) States						
	✓						
Item	State	Region/MSA/City	Designated as a Service Area				
1.	Alabama						
2.	Alaska						
3.	Arizona						
4.	Arkansas		✓				
5.	California						
6.	Colorado		✓				
7.	Connecticut						
8.	Delaware						
9.	Florida						
10.	Georgia						
11.	Hawaii						
12.	Idaho						
13.	Illinois						
14.	Indiana						
15.	Iowa						
16.	Kansas						
17.	Kentucky						
18.	Louisiana		✓				
19.	Maine						
20.	Maryland						
21.	Massachusetts						

22.	Michigan		
23.	Minnesota		
24.	Mississippi		
25.	Missouri		
26.	Montana		
27.	Nebraska		
28.	Nevada		
29.	New Hampshire		
30.	New Jersey		
31.	New Mexico		
32.	New York		
33.	North Carolina		
34.	North Dakota		
35.	Ohio		
36.	Oregon		
37.	Oklahoma		✓
38.	Pennsylvania		
39.	Rhode Island		
40.	South Carolina		
41.	South Dakota		
42.	Tennessee		
43.	Texas		✓
44.	Utah		
45.	Vermont		
46.	Virginia		
47.	Washington		
48.	West Virginia		
49.	Wisconsin		
50.	Wyoming		

Attachment 3 **Guarantees of the Contractor**

Standard Lead Times:

Alterations Only:	10 Business days
Embroidery Only:	15 Business days

Embroidery and Alterations Small Orders (Ex. FWPD Collar Embroidery and Patches:	15 Business days
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Embroidery and Alterations Large Orders:	20 Business days
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BULK Orders:	3-4 Weeks
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Screen Print:	3 Weeks
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New Patches/New Designs:	Up to 6 Weeks total
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Patch Orders:	Minimum 3 Weeks
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Badge Orders:	4-5 Weeks
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Custom Nameplates:	4-5 Weeks
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*Rushes available for New Hires, Funerals, and Repairs.

**Custom Items:	4-6 Weeks
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Delivery Schedule:

South of DFW – Tuesday Weekly

North of DFW – Thursday Weekly

East of DFW – Wednesday Bi-Weekly

West Texas – Once Every 6-8 Weeks, 2-3 days

*Additional delivery schedules are added when required

PROHIBITED TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT CERTIFICATION

This Contract is subject to the Public Law 115-232, Section 889, and 2 Code of Federal Regulations (CFR) Part 200, including §200.216 and §200.471, for prohibition on certain telecommunications and video surveillance or equipment.

Public Law 115-232, Section 889, identifies that restricted telecommunications and video surveillance equipment or services (e.g. phones, internet, video surveillance, cloud servers) include the following:

- A) Telecommunications equipment that is produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliates of such entities).
- B) Video surveillance and telecommunications equipment produced by Hytera Communications Corporations, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliates of such entities).
- C) Telecommunications or video surveillance services used by such entities or using such equipment.
- D) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, Director of the National Intelligence, or the Director of the Federal Bureau of Investigation reasonably believes to be an entity owned or controlled by the government of a covered foreign country.

The entity identified below, through its authorized representative, hereby certifies that no funds under this Contract will be obligated or expended to procure or obtain telecommunication or video surveillance services or equipment or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system prohibited by 2 CFR §200.216 and §200.471, or applicable provisions in Public Law 115-232 Section 889.

☒ The Contractor or Subrecipient hereby certifies that it does comply with the requirements of 2 CFR §200.216 and §200.471, or applicable regulations in Public Law 115-232 Section 889.

SIGNATURE OF AUTHORIZED PERSON:

Rhonda L Harvey

NAME OF AUTHORIZED PERSON:

Rhonda L Harvey

NAME OF COMPANY:

Impact Promotional Services LLC
/dba Got You Covered Work Wear & Uniforms

DATE:

10/29/2021

-OR-

SIGNATURE OF AUTHORIZED PERSON:

NAME OF AUTHORIZED PERSON:

NAME OF COMPANY:

DATE:

**TOWN COUNCIL AGENDA ITEM NO. 06****CONSENT ITEM**

DATE: January 3, 2022

FROM: Lavona Burgess, Director of Support Services

ITEM: Consider the approval of the proposed contract with Motorola Solutions, Inc titled "MCC7500 Dispatch Console Upgrade" through HGAC Contract No. RA05-21 for the purpose of upgrading the Flower Mound Police Communications Center existing radio console equipment and installing an additional radio console as approved in the FY 2021-2022 Town budget for a total cost of \$181,605.00; and authorization from the Mayor to execute same of behalf of the Town.

BACKGROUND INFORMATION: The Police Department submitted two items in the FY 2021-2022 Town Budget Proposal related to the maintenance upgrades of our existing radio console equipment and the installation of new console equipment at a fifth workstation in the 911 Communications Center. Both items were approved by Council with the adoption of the current budget. The radio consoles are vital tools to the public safety function. They are used by 911 Telecommunicators to broadcast emergency information to police, fire, and EMS units. The fifth console will add a training location within the communication center and allow for additional growth. Our current equipment is operating without a maintenance agreement. To install an additional fifth console the existing equipment must be upgraded. All equipment will need the proposed maintenance agreement from this point forward to ensure that all five consoles are properly supported.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: The existing radio infrastructure for the Town public safety is provided solely by Motorola, we have no other options to consider for this upgrade.

FISCAL IMPACT: The fiscal impact over the 5-year term is a total of \$ 425,098.00 and as outlined on page 10 of Attachment 1. The first-year expenditure listed below includes funding from the American Rescue Plan Act.

Proposed Expenditure/(Revenue):	Account Number(s):
\$ 101,133.00	100-640-43500-4100
\$ 80,472.00	378-588-00000-6120

Finance Review by: Tammy Wilson, Executive Director of Fiscal and Administrative Services/CFO *tw*

LEGAL REVIEW: Thomas E. Samuelson of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the contract as to form and legality.

ATTACHMENTS:

1. MCC7500 Dispatch Console Upgrade

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



TOWN OF FLOWER MOUND

MCC7500 DISPATCH CONSOLE UPGRADE

OCTOBER 8, 2021

The design, technical, pricing, and other information ("Information") furnished with this submission is proprietary and/or trade secret information of Motorola Solutions, Inc. ("Motorola Solutions") and is submitted with the restriction that it is to be used for evaluation purposes only. To the fullest extent allowed by applicable law, the Information is not to be disclosed publicly or in any manner to anyone other than those required to evaluate the Information without the express written permission of Motorola Solutions.

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TABLE OF CONTENTS

Section 1

Solution Overview	1-1
1.1 Proposed Offering	1-1
1.2 Assumptions.....	1-1

Section 2

Services Description	2-1
2.1 Overview	2-1
2.2 Advanced Plus Services Element Descriptions	2-1
2.2.1 Remote Technical Support	2-1
2.2.2 Network Hardware Repair with Advanced Replacement	2-1
2.2.3 On-site Infrastructure Response.....	2-2
2.2.4 Annual Preventive Maintenance	2-2
2.2.5 Network Updates	2-2
2.3 Motorola Solutions Service Delivery Ecosystem.....	2-3
2.3.1 Centralized Managed Support Operations	2-3
2.3.2 Field Service	2-3
2.3.3 Repair Depot.....	2-3
2.3.4 Customer Support Manager	2-4

Section 3

Pricing	3-1
---------------	-----

Section 4

ASTRO 25 Advanced Services Statement of Work	4-1
4.1 Overview	4-1
4.2 Motorola Solutions Service Delivery Ecosystem.....	4-2
4.2.1 Centralized Managed Support Operations	4-2
4.2.2 Field Service	4-2
4.2.3 Customer Support Manager	4-3
4.2.4 Repair Depot.....	4-3
4.2.5 MyView Portal	4-3
4.3 Connectivity Specifications	4-4
4.4 Advanced Services Detailed Description	4-4
4.4.1 Remote Technical Support	4-4
4.4.1.1 Description of Service	4-4
4.4.1.2 Scope	4-5
4.4.1.3 Inclusions	4-5
4.4.1.4 Motorola Solutions Responsibilities.....	4-5
4.4.1.5 Limitations and Exclusions	4-5
4.4.1.6 Customer Responsibilities	4-5

4.4.2	Network Hardware Repair with Advanced Replacement.....	4-6
4.4.2.1	Description of Service	4-6
4.4.2.2	Scope	4-6
4.4.2.3	Inclusions	4-6
4.4.2.4	Motorola Solutions Responsibilities.....	4-7
4.4.2.5	Limitations and Exclusions	4-7
4.4.2.6	Customer Responsibilities	4-8
4.4.2.7	Repair Process	4-9
4.4.2.8	Advanced Replacement.....	4-10
4.4.3	On-site Infrastructure Response.....	4-13
4.4.3.1	Description of Service	4-13
4.4.3.2	Scope	4-13
4.4.3.3	Inclusions	4-14
4.4.3.4	Motorola Solutions Responsibilities.....	4-14
4.4.3.5	Customer Responsibilities	4-14
4.4.4	Annual Preventive Maintenance.....	4-15
4.4.4.1	Description of Service	4-15
4.4.4.2	Scope	4-15
4.4.4.3	Motorola Solutions Responsibilities.....	4-15
4.4.4.4	Limitations and Exclusions	4-16
4.4.4.5	Customer Responsibilities	4-16
4.4.4.6	Preventive Maintenance Tasks	4-16
4.5	Priority Level Definitions and Response Times.....	4-19

Section 5

Contractual Documentation	5-1
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Section 6

Our Commitment.....	6-1
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Motorola Solutions, Inc.
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USA

Tel. + 1 847 576 5000
Fax + 1 847 538 6020

October 8, 2021

Lavona Burgess
Town of Flower Mound
4150 Kirkpatrick Lane
Flower Mound, TX 75028

Subject: MCC7500 Dispatch Console Upgrade

Dear Lavona Burgess,

Motorola Solutions, Inc. ("Motorola Solutions") is pleased to have the opportunity to provide Town of Flower Mound with quality communications equipment and services. The Motorola Solutions project team has taken great care to propose a solution that will meet your needs and provide unsurpassed value.

To best meet the functional and operational specifications of this solicitation, our solution includes a combination of hardware, software, and services. Specifically, this solution is for the adding an additional console position and upgrading the existing dispatch center consoles.

This proposal is subject to the terms and conditions of the enclosed H-GAC Communications System and Services Agreement (CSSA), together with its Exhibits and Addendum, and remains valid for a period of 90 days from the date of this cover letter. Flower Mound may accept this proposal by returning to Motorola a signed copy of the aforementioned agreement and a purchase order. Alternatively, Motorola is pleased to address any concerns you may have regarding the proposal. Any questions can be directed to your Motorola Account Executive, Robert Smoczynski, at 312.339.9974

We thank you for the opportunity to furnish Town of Flower Mound with "best in class" solutions and we hope to strengthen our relationship by implementing this project. Our goal is to provide you with the best products and services available in the communications industry.

Sincerely,

Motorola Solutions, Inc.

A handwritten signature in black ink that reads "Brad Rice".

Brad Rice
Area Sales Manager

SECTION 1

SOLUTION OVERVIEW

1.1 PROPOSED OFFERING

Motorola is pleased to provide the price estimate to the Town of Flower Mound for the following items:

- Maintenance and Lifecycle plan for the Town's existing public safety MCC7500 dispatch consoles.
 - This Lifecycle Plan will upgrade the existing consoles to the latest software/hardware platform available, as well as continue to provide ongoing software/hardware upgrades to the console system. The Maintenance plan will ensure that the system will be covered for any repairs including 24x7 onsite support and component repairs.
- Single Position Add On to the existing console system.
 - Once the consoles have been upgraded to the latest version, one additional operator position will be added to the existing (4) operator positions.
 - The OP position includes the following:
 - One (1) Z2 Mini PC, Keyboard and Mouse
 - One (1) LCD monitor
 - One (1) Enhanced Instant Recall Recorder (IRR) software license
 - Two (2) Desktop Speakers
 - Two (2) Headset Jacks
 - One (1) Gooseneck Microphone
 - One (1) Footswitch
 - One (1) 8 Port Power Strip
 - One (1) UPS power backup – 5 mins

1.2 ASSUMPTIONS

- The City will provide the furniture for the dispatch positions, power and backup power including generator and UPS for this radio system equipment. There is no backroom UPS or UPS for existing OPs, and Type1/Type 2 SPDs included in the design.
- Approved local, State, or Federal permits, as may be required for the construction, installation and operation of the proposed building, tower and equipment, are the responsibility of the City.
- The City's existing logging recorder will be re-used for this project. No cost is included to upgrade or interface the logger (the logger currently directly logs the radios in the backroom)
- The Town will provide a dedicated delivery point—such as a warehouse—for receipt, inventory, and storage of equipment prior to delivery to the site.



SECTION 2

SERVICES DESCRIPTION

2.1 OVERVIEW

Motorola Solutions is proposing our Advanced Plus Services for ASTRO® 25 infrastructure, a comprehensive program to sustain the long-term performance of Town of Flower Mound's network. Advanced Plus Services consists of the following elements:

- Remote Technical Support.
- Network Hardware Repair with Advanced Replacement.
- On-site Infrastructure Response.
- Annual Preventive Maintenance.
- Network Updates.

Together, these elements will help to avoid operational disruptions and maintain the value of Town of Flower Mound's communications investment.

2.2 ADVANCED PLUS SERVICES ELEMENT DESCRIPTIONS

The following sections describe the elements proposed for Town of Flower Mound's ASTRO 25 infrastructure.

2.2.1 Remote Technical Support

Motorola Solutions' Centralized Managed Support Operations (CMSO) will provide Remote Technical Support for infrastructure issues that require specific technical expertise. Experienced technical support specialists will be available to consult with Town of Flower Mound to help diagnose, troubleshoot, and resolve infrastructure issues. Service Desk maintenance procedures and incident resolution techniques are based on ISO 9001 and TL 9000 standards.

2.2.2 Network Hardware Repair with Advanced Replacement

To restore Town of Flower Mound's ASTRO 25 network components if they malfunction, Motorola Solutions will repair Motorola Solutions-provided infrastructure equipment. This includes select third-party infrastructure equipment supplied by Motorola Solutions. Motorola Solutions will ship and return repaired equipment, and will coordinate the repair of third-party solution components.

To reduce the impact of a malfunction, Motorola Solutions will exchange malfunctioning equipment with Advanced Replacement units or Field Replacement Units (FRU), as available. Motorola Solutions' repair depot will diagnose and repair malfunctioning components, and once repaired, add those to the depot's FRU inventory. Replacement components will remain in Town of Flower Mound's ASTRO 25 network to maintain continued network functionality.



If Town of Flower Mound prefers to maintain their existing FRU inventory rather than using Motorola Solutions' depot inventory, Motorola Solutions can provide "loaner" FRUs during the repair process.

2.2.3 On-site Infrastructure Response

Motorola Solutions will provide repair service from trained and qualified technicians. Once dispatched, technicians will travel to Town of Flower Mound's ASTRO 25 network location to diagnose issues and restore functionality. These technicians will run diagnostics on hardware to identify defective components, and repair or replace them as appropriate. Infrastructure Response times are based on a given issue's impact on overall system function.

Travel times and service levels are governed by local geography. Motorola Solutions will provide additional information in the Statement of Work for ASTRO 25 Advanced Plus Services and in the Customer Support Plan agreed between Town of Flower Mound and Motorola Solutions.

2.2.4 Annual Preventive Maintenance

Motorola Solutions will annually test and service network components. Qualified field technicians will perform routine hands-on examination and diagnostics of network equipment to keep them operating according to original manufacturer specifications.

2.2.5 Network Updates

The Network Updates service provides public safety radio system release updates on a consistent, budgeted plan. These updates maintain reliable network operations and cybersecurity protection. In addition, Network Updates keeps Town of Flower Mound's ASTRO 25 network compatible with expansion elements, as well as new products or features. With Network Updates, Town of Flower Mound's network will remain on a release that qualifies for support services.

Motorola Solutions will deliver updates based on a predefined cadence of upgrade windows, with up to one update in each window. The Network Updates service includes the following:

- **Software Release Updates** - Motorola Solutions-certified software that improves network functions over previous releases. This also includes commercial operating system and application software updates.
- **Hardware Update** – When needed to support a software release update, Motorola Solutions provides new hardware. New hardware will both support the new software update, as well as maintain existing functions and features.
- **Professional Implementation Services** – Motorola Solutions will plan and implement updates at Town of Flower Mound's site. This includes factory integration, testing, and supply chain management for new software and hardware.

With these services, Town of Flower Mound will have access to the technology, support, and planning expertise needed for an effective upgrade.

2.3 MOTOROLA SOLUTIONS SERVICE DELIVERY ECOSYSTEM

Advanced Plus Services are delivered through a tailored combination of field service personnel, centralized teams, product repair depots, and MyView Portal. These service resources will collaborate to swiftly analyze network issues, accurately diagnose root causes, and efficiently resolve issues to return the network to normal operation.

Motorola Solutions services will be delivered by staff experienced in servicing mission-critical networks. Motorola Solutions uses the Information Technology Infrastructure Library (ITIL) framework to define service tasks based on industry-recognized best practices. As staff perform tasks, service incident information will be available to Town of Flower Mound's administrators and personnel through MyView Portal.

Service activities and Motorola Solutions' service team are described in more detail below.

2.3.1 Centralized Managed Support Operations

The cornerstone of Motorola Solutions' support process is the Centralized Managed Support Operations (CMSO) organization. This TL 9000/ISO 9001-certified organization is staffed 24x7x365 by experienced service desk specialists, security analysts, and operations managers. The CMSO houses critical central functions, including the Service Desk.

The CMSO Service Desk will serve as a single point of contact for services. It processes service requests, service incidents, change requests, and dispatching. The Service Desk communicates necessary information to stakeholders, bridging communications among Town of Flower Mound, Motorola Solutions, and third-party subcontractors.

Service Desk teams record, track, and update incidents through the Motorola Solutions Customer Relationship Management (CRM) system. They document and respond to inquiries, requests, concerns, and service tickets. When an incident is initiated, the CMSO will engage with teams to resolve that incident. The CMSO will escalate to new teams when needed. Depending on the incident, the CMSO will coordinate incident resolution with local field service and authorized repair depots.

2.3.2 Field Service

Motorola Solutions authorized and qualified field service technicians will perform the On-site Infrastructure Response service, repair malfunctioning hardware in the field, and conduct preventive maintenance tasks. These technicians will coordinate with the Service Desk, technical support teams, and product engineering as needed to resolve incidents.

2.3.3 Repair Depot

The Motorola Solutions Repair Depot will provide Town of Flower Mound with a central repair location. This will eliminate the need to send network equipment to multiple vendor locations for repair. Motorola Solutions tracks products sent to the Depot via a case management system throughout the repair process. This system will enable Town of Flower Mound's representatives to check repair status, from inbound shipment to return.

2.3.4 Customer Support Manager

A Motorola Solutions Customer Support Manager (CSM) will be Town of Flower Mound's key point of contact for the definition and administration of services. The CSM will work with Town of Flower Mound to define service delivery details to address Town of Flower Mound's specific priorities.



SECTION 3

PRICING

Motorola is pleased to provide the following equipment and services to Town of Flower Mound:

Console Add-On to Existing Dispatch

DESCRIPTION	PRICING
Equipment	\$52,905
Implementation Services	\$37,821
First-Year Warranty	<i>Included</i>
HGAC Contract Discount	-\$10,254)
Total System Purchase	\$80,472
Year 1 Console Upgrade	\$101,133

Console Ongoing Maintenance/Lifecycle

- System Upgrade Agreement
- 24x7 Onsite Support
- Infrastructure Repair/Advanced Replacement
- Security Update Service

DESCRIPTION	PRICING
Year 2	\$58,715
Year 3	\$60,125
Year 4	\$61,578
Year 5	\$63,075

The above Life-cycle services, excluding Year 1, which includes “Standard Warranty Services 2022-2025” and “System Upgrade Agreement II 2022-2025,” are optional and not included in the total above (\$). These services may be purchased at any time before the end of the initial Warranty Period.



SECTION 4

ASTRO 25 ADVANCED SERVICES STATEMENT OF WORK

4.1 OVERVIEW

Motorola Solutions' ASTRO® 25 Advanced Services ("Advanced Services") provide an integrated and comprehensive sustainment program for fixed end network infrastructure equipment located at the network core, RF sites, and dispatch sites. Advanced Services do not include maintenance for mobile devices, portable devices, or network backhaul equipment.

Advanced Services consist of the following elements:

- Remote Technical Support.
- Network Hardware Repair.
- Remote Security Update Service.
- On-site Infrastructure Response.
- Annual Preventive Maintenance.
- Security Monitoring.

Each of these elements is summarized below and expanded upon in Section 4.4. In the event of a conflict between the descriptions below and an individual subsection of Section 4.4, the individual subsection prevails.

This Statement of Work ("SOW"), including all of its subsections and attachments is an integral part of the applicable agreement ("Agreement") between Motorola Solutions, Inc. ("Motorola Solutions") and the customer ("Customer").

In order to receive the services as defined within this SOW, the Customer is required to keep the system within a standard support period as described in Motorola Solutions' [Software Support Policy \("SwSP"\)](#).

Remote Technical Support

Motorola Solutions will provide telephone consultation with specialists skilled at diagnosing and swiftly resolving infrastructure operational technical issues that require a high level of ASTRO 25 network experience and troubleshooting capabilities.

Network Hardware Repair

Motorola Solutions will repair Motorola Solutions-manufactured infrastructure equipment and select third-party manufactured infrastructure equipment supplied by Motorola Solutions. Motorola Solutions coordinates the equipment repair logistics process.



Remote Security Update Service

Motorola Solutions will pre-test third-party security updates to verify they are compatible with the ASTRO 25 network, and remotely push the updates to the Customer's network.

On-site Infrastructure Response

When needed to resolve equipment malfunctions, Motorola Solutions will dispatch qualified local technicians to the Customer's location to diagnose and restore the communications network. Technicians will perform diagnostics on impacted hardware and replace defective components. The service technician's response time will be based on pre-defined incident priority levels.

Annual Preventive Maintenance

Qualified field service technicians will perform regularly scheduled operational testing and alignment of infrastructure and network components to verify those components comply with the original manufacturer's specifications.

4.2 MOTOROLA SOLUTIONS SERVICE DELIVERY ECOSYSTEM

Advanced Services are delivered through a tailored combination of local field service personnel, centralized teams equipped with a sophisticated service delivery platform, product repair depots, and MyView Portal. These service entities will collaborate to swiftly analyze issues, accurately diagnose root causes, and promptly resolve issues to restore the Customer's network to normal operations.

4.2.1 Centralized Managed Support Operations

The cornerstone of Motorola Solutions' support process is the Centralized Managed Support Operations ("CMSO") organization, which includes the Service Desk and technical support teams. The CMSO is staffed 24x7x365 by experienced personnel, including service desk specialists, security analysts, and operations managers.

The Service Desk provides a single point of contact for all service related items, including communications between the Customer, Motorola Solutions, and third-party subcontractors. The Service Desk processes service requests, service incidents, change requests, and dispatching, and communicates with stakeholders in accordance with pre-defined response times.

All incoming transactions through the Service Desk are recorded, tracked, and updated through the Motorola Solutions Customer Relationship Management ("CRM") system. The Service Desk also documents Customer inquiries, requests, concerns, and related tickets.

The CMSO coordinates with the field service organization that will serve the Customer locally.

4.2.2 Field Service

Motorola Solutions authorized and qualified field service technicians perform on-site infrastructure response, field repair, and preventive maintenance tasks. These technicians are integrated with the Service Desk and with technical support teams and product engineering as required to resolve repair and maintenance requests.

4.2.3 Customer Support Manager

A Motorola Solutions Customer Support Manager (“CSM”) will be the Customer’s key point of contact for defining and administering services. The CSM’s initial responsibility is to create the Customer Support Plan (“CSP”) in collaboration with the Customer.

The CSP functions as an operating document that personalizes the services described in this document. The CSP contains Customer-specific information, such as site names, site access directions, key contact persons, incident handling instructions, and escalation paths for special issues. The CSP also defines the division of responsibilities between the Customer and Motorola Solutions so response protocols are pre-defined and well understood when the need arises.

The CSP governs how the services will be performed and will be automatically integrated into this Statement of Work by this reference. The CSM and Customer will review and amend the CSP on a mutually agreed cadence so the CSP remains current and effective in governing the Advanced Services.

4.2.4 Repair Depot

The Motorola Solutions Repair Depot provides the Customer with a central repair location, eliminating the need to send network equipment to multiple vendor locations for repair. All products sent to the Depot are tracked throughout the repair process, from inbound shipment to return, through a case management system that enables Customer representatives to see repair status.

4.2.5 MyView Portal

Supplementing the CSM and the Service Desk as the Customer points of contact, MyView Portal is a web-based platform that provides network maintenance and operations information. The portal is accessed from a desktop, laptop, tablet, or smartphone web browser. The information available includes:

- Network Event Monitoring: Manage incidents and view self-service reports. Observe incident details by incident priority level, and track the progress of issue resolution.
- Remote Technical Support: Manage incidents and view self-service reports. Observe incident details by incident priority level, and track the progress of issue resolution.
- Network Hardware Repair: Track return material authorizations (“RMA”) shipped to Motorola Solutions’ repair depot and eliminate the need to call for status updates. In certain countries, customers will also have the ability to create new RMA requests online.
- Remote Security Update Service: View patch history and status of recently completed security updates.
- On-site Infrastructure Response: Manage incidents and view self-service reports. Observe incident details by incident priority level, and track the progress of issue resolution.
- Annual Preventive Maintenance: View incident status and details of each annual change request for preventive maintenance, including completed checklist information for the incident.
- Orders and Contract Information: View available information regarding orders, service contracts, and service coverage details.

The data presented in MyView Portal is provided to support the services described in the following sections, which define the terms of any service delivery commitments associated with this data.

4.3 CONNECTIVITY SPECIFICATIONS

The Advanced Services package requires available internet connectivity provided by the Customer. A minimum connection of 2 Mbps is necessary to enable remote monitoring and update services.

4.4 ADVANCED SERVICES DETAILED DESCRIPTION

Due to the interdependence between deliverables within the detailed sections, any changes to or any cancellation of any individual section may require a scope review and price revision.

4.4.1 Remote Technical Support

Motorola Solutions' Remote Technical Support service provides telephone consultation for technical issues that require a high level of ASTRO 25 network knowledge and troubleshooting capabilities. Remote Technical Support is delivered through the Motorola Solutions Centralized Managed Support Operations ("CMSO") organization by a staff of technical support specialists skilled in diagnosis and swift resolution of infrastructure performance and operational issues.

Motorola Solutions applies leading industry standards in recording, monitoring, escalating, and reporting for technical support calls from its contracted customers to provide the support needed to maintain mission-critical systems.

4.4.1.1 Description of Service

The CMSO organization's primary goal is Customer Issue Resolution ("CIR"), providing incident restoration and service request fulfillment for Motorola Solutions' currently supported infrastructure. This team of highly skilled, knowledgeable, and experienced specialists is an integral part of the support and technical issue resolution process. The CMSO supports the Customer remotely using a variety of tools, including fault diagnostics tools, simulation networks, and fault database search engines.

Calls requiring incidents or service requests will be logged in Motorola Solutions' Customer Relationship Management ("CRM") system, and Motorola Solutions will track the progress of each incident from initial capture to resolution. This helps ensure that technical issues are prioritized, updated, tracked, and escalated as necessary, until resolution. Motorola Solutions will advise and inform Customer of incident resolution progress and tasks that require further investigation and assistance from the Customer's technical resources.

The CMSO Operations Center classifies and responds to each technical support request in accordance with Section 4.5: Priority Level Definitions and Response Times.

This service requires the Customer to provide a suitably trained technical resource that delivers maintenance and support to the Customer's system, and who is familiar with the

operation of that system. Motorola Solutions provides technical consultants to support the local resource in the timely closure of infrastructure, performance, and operational issues.

4.4.1.2 Scope

The CMSO Service Desk is available via telephone 24 hours per day, 7 days per week, and 365 days per year to receive and log requests for technical support. Remote Technical Support service is provided in accordance with Section 4.5: Priority Level Definitions and Response Times.

4.4.1.3 Inclusions

Remote Technical Support service will be delivered for Motorola Solutions-provided infrastructure, including integrated third-party products.

4.4.1.4 Motorola Solutions Responsibilities

- Maintain availability of the Motorola Solutions CMSO Service Desk via telephone (800-MSI-HELP) 24 hours per day, 7 days per week, and 365 days per year to receive, log, and classify Customer requests for support.
- Respond to incidents and technical service requests in accordance with Section 4.5: Priority Level Definitions and Response Times.
- Provide caller a plan of action outlining additional requirements, activities, or information required to achieve restoral/fulfillment.
- Maintain communication with the Customer in the field as needed until resolution of the incident.
- Coordinate technical resolutions with agreed upon third-party vendors, as needed.
- Escalate support issues to additional Motorola Solutions technical resources, as applicable.
- Determine, in its sole discretion, when an incident requires more than the Remote Technical Support services described in this SOW and notify the Customer of an alternative course of action.

4.4.1.5 Limitations and Exclusions

The following activities are outside the scope of the Remote Technical Support service:

- Customer training.
- Remote Technical Support for network transport equipment or third-party products not sold by Motorola Solutions.
- Any maintenance and/or remediation required as a result of a virus or unwanted cyber intrusion.

4.4.1.6 Customer Responsibilities

- Prior to contract start date, provide Motorola Solutions with pre-defined information necessary to complete Customer Support Plan ("CSP").
- Submit timely changes in any information supplied in the CSP to the Customer Support Manager ("CSM").
- Contact the CMSO Service Desk to engage the Remote Technical Support service when needed, providing the necessary information for proper entitlement services. This

information includes, but is not limited to, the name of contact, name of Customer, system ID number, site(s) in question, and a brief description of the problem that contains pertinent information for initial issue classification.

- Maintain suitably trained technical resources familiar with the operation of the Customer's system to provide field maintenance and technical maintenance services for the system.
- Supply suitably skilled and trained on-site presence when requested.
- Validate issue resolution in a timely manner prior to close of the incident.
- Acknowledge that incidents will be addressed in accordance with Section 4.5: Priority Level Definitions and Response Times.
- Cooperate with Motorola Solutions, and perform all acts that are reasonable or necessary to enable Motorola Solutions to provide Remote Technical Support.
- In the event that Motorola Solutions agrees in writing to provide supplemental Remote Technical Support to third-party elements provided by the Customer, the Customer agrees to obtain all third-party consents or licenses required to enable Motorola Solutions to provide the service.

4.4.2 Network Hardware Repair with Advanced Replacement

Motorola Solutions will provide hardware repair for Motorola Solutions and select third-party infrastructure equipment supplied by Motorola Solutions. A Motorola Solutions authorized repair depot manages and performs the repair of Motorola Solutions supplied equipment, and coordinates equipment repair logistics.

4.4.2.1 Description of Service

Infrastructure components are repaired at Motorola Solutions-authorized Infrastructure Depot Operations ("IDO"). At Motorola Solutions' discretion, select third-party infrastructure may be sent to the original equipment manufacturer or third-party vendor for repair.

Network Hardware Repair is also known as Infrastructure Repair.

4.4.2.2 Scope

Repair authorizations are obtained by contacting the Centralized Managed Support Operations ("CMSO") organization Service Desk, which is available 24 hours a day, 7 days a week. Repair authorizations can also be obtained by contacting the Customer Support Manager ("CSM").

4.4.2.3 Inclusions

This service is available on Motorola Solutions-provided infrastructure components, including integrated third-party products. Motorola Solutions will make a commercially reasonable effort to repair Motorola Solutions manufactured infrastructure products after product cancellation. The post-cancellation support period of the product will be noted in the product's end-of-life ("EOL") notification.

4.4.2.4 Motorola Solutions Responsibilities

- Provide the Customer access to the CMSO Service Desk, operational 24 hours a day and 7 days per week, to request repair service.
- Provide repair return authorization numbers when requested by the Customer.
- Receive malfunctioning infrastructure components from the Customer and document its arrival, repair, and return.
- Conduct the following services for Motorola Solutions infrastructure:
 - Perform an operational check on infrastructure components to determine the nature of the problem.
 - Replace malfunctioning components.
 - Verify that Motorola Solutions infrastructure components are returned to applicable Motorola Solutions factory specifications.
 - Perform a box unit test on serviced infrastructure components.
 - Perform a system test on select infrastructure components.
- Conduct the following services for select third-party infrastructure:
 - When applicable, perform pre-diagnostic and repair services to confirm infrastructure component malfunctions and prevent sending infrastructure components with No Trouble Found (“NTF”) to third-party vendor for repair.
 - When applicable, ship malfunctioning infrastructure components to the original equipment manufacturer or third-party vendor for repair service.
 - Track infrastructure components sent to the original equipment manufacturer or third-party vendor for service.
 - When applicable, perform a post-test after repair by original equipment manufacturer or third-party vendor to confirm malfunctioning infrastructure components have been repaired and function properly in a Motorola Solutions system configuration.
- Reprogram repaired infrastructure components to original operating parameters based on software and firmware provided by the Customer, as required in Section 4.4.2.6. If the Customer’s software version and configuration are not provided, shipping will be delayed. If the repair depot determines that infrastructure components are malfunctioning due to a software defect, the repair depot reserves the right to reload these components with a different but equivalent software version.
- Properly package repaired infrastructure components.
- Ship repaired infrastructure components to Customer-specified address during normal operating hours of Monday through Friday from 7:00 a.m. to 7:00 p.m. Central Standard Time (“CST”), excluding holidays. Infrastructure component will be sent using two-day air shipping unless the Customer requests otherwise. Motorola Solutions will pay for shipping unless the Customer requests shipments outside of the above mentioned standard business hours or carrier programs, such as next flight out (“NFO”). In such cases, the Customer will be responsible for paying shipping and handling charges.

4.4.2.5 Limitations and Exclusions

Motorola Solutions may return infrastructure equipment that is no longer supported by Motorola Solutions, the original equipment manufacturer, or a third-party vendor without repairing or replacing it. The following items are excluded from this service:

- All Motorola Solutions infrastructure components over the post-cancellation support period.
- All third-party infrastructure components over the post-cancellation support period.

- All broadband infrastructure components over the post-cancellation support period.
- Physically damaged infrastructure components.
- Third-party equipment not shipped by Motorola Solutions.
- Consumable items including, but not limited to, batteries, connectors, cables, toner or ink cartridges, tower lighting, laptop computers, monitors, keyboards, and mouse.
- Video retrieval from digital in-car video equipment.
- RF infrastructure and backhaul components, including but not limited to, antennas, transmission lines, antenna dehydrators, microwave, line boosters, amplifiers (such as tower top amplifiers and bi-directional amplifiers), logging recorders, data talker wireless transmitters, short haul modems, combiners, multicouplers, duplexers, shelters, shelter HVAC, generators, UPS's, and test equipment.
- Racks, furniture, and cabinets.
- Non-standard configurations, customer-modified infrastructure, and certain third party infrastructure.
- Firmware or software upgrades.

4.4.2.6 Customer Responsibilities

- Contact or instruct servicer to contact the Motorola Solutions CMSO organization, and request a return authorization number prior to shipping malfunctioning infrastructure components.
- Provide model description, model number, serial number, type of system, software and firmware version, symptom of problem, and address of site location for spare infrastructure components.
- Indicate if Motorola Solutions or third-party infrastructure components being sent in for service were subjected to physical damage or lightning damage.
- Follow Motorola Solutions instructions regarding including or removing firmware and software applications on infrastructure components being sent in for service.
- In the event that the Customer requires repair of equipment that is not contracted under this service at the time of request, the Customer acknowledges that charges may apply to cover shipping, labor, and parts. Motorola Solutions and the Customer will collaborate to agree on payment vehicle that most efficiently facilitates the work, commensurate with the level of urgency that is needed to complete the repair.
- Properly package and ship the malfunctioning component, at the Customer's expense. The Customer is responsible for properly packaging the malfunctioning infrastructure component to ensure it is not damaged in-transit and arrives in repairable condition.
 - Clearly print the return authorization number on the outside of the packaging.
- Maintain versions and configurations for software, applications, and firmware to be installed on repaired equipment.
- Provide Motorola Solutions with proper software and firmware information to reprogram equipment after repair, unless current software has caused this malfunction.
- Cooperate with Motorola Solutions and perform reasonable or necessary acts to enable Motorola Solutions to provide hardware repair services to the Customer.
- At the Customer's cost, obtain all third-party consents or licenses required to enable Motorola Solutions to provide the service.

4.4.2.7 Repair Process

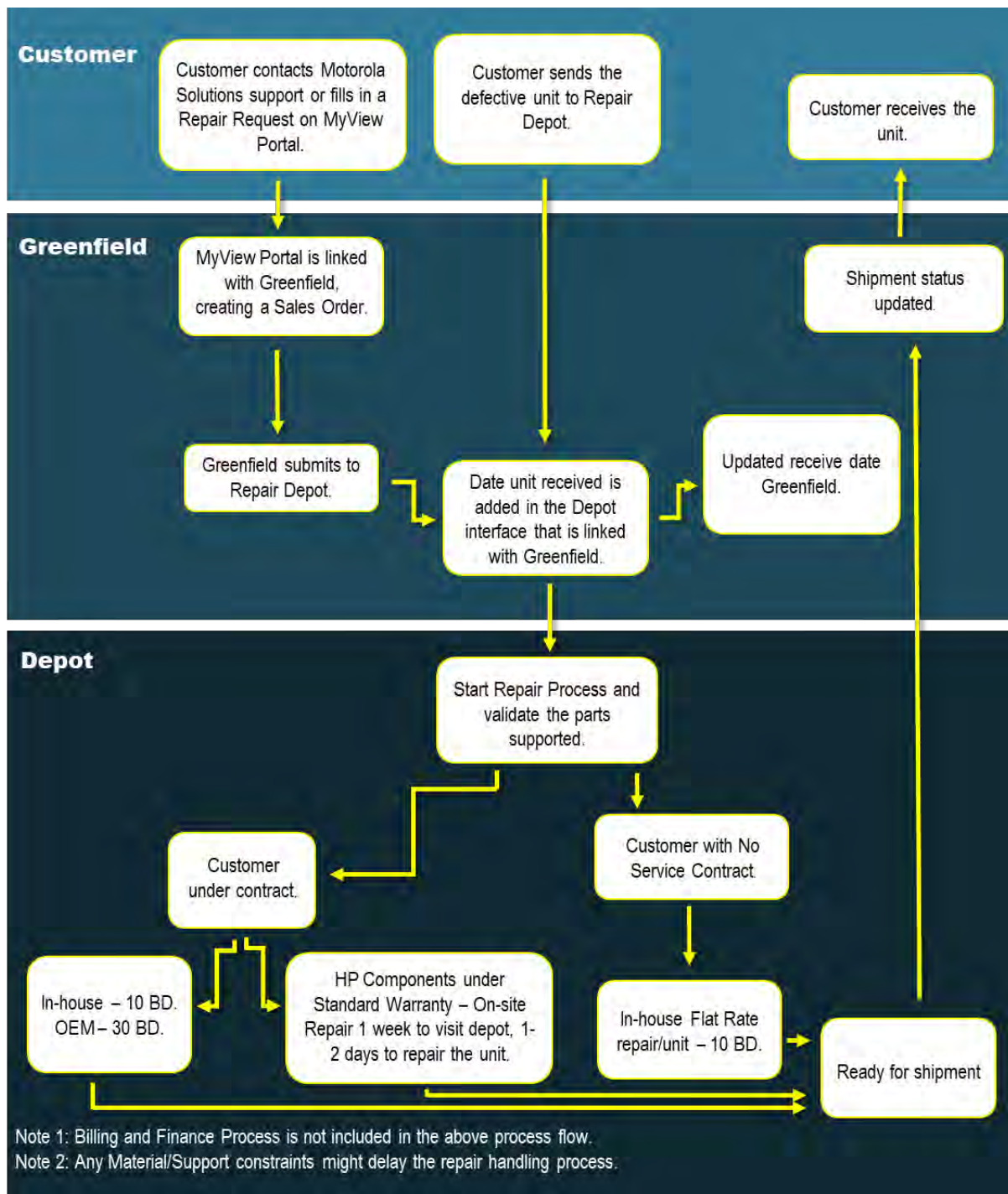


Figure 4-1: Repair Decision Process

4.4.2.8 Advanced Replacement

As an addition to Hardware Repair service, Advanced Replacement is a repair exchange service for Motorola Solutions and select third-party infrastructure components supplied by Motorola Solutions. When available, Motorola Solutions will provide the Customer with advanced replacement units or Field Replacement Units (“FRU”) in exchange for the Customer’s malfunctioning equipment. A Motorola Solutions-authorized repair depot will evaluate and repair malfunctioning equipment, and add that equipment to the depot’s FRU inventory after completing repairs.

Customers who prefer to maintain their own FRU inventory may request a “Loaner” FRU while their unit is being repaired. Refer to Figure 4-2 for details on the unit loan process.

4.4.2.8.1 Added Motorola Solutions Responsibilities for Advanced Replacement

- Use commercially reasonable efforts to maintain FRU inventory on supported platforms.
- Provide new or reconditioned FRU’s to the Customer upon request, subject to availability. The FRU will be an equipment type and version similar to the Customer’s malfunctioning component, and will contain equivalent boards and chips.
- Load firmware and software for equipment that requires programming. The Customer’s software version information must be provided for the replacement FRU to be programmed accordingly. If the Customer’s software version and configuration are not provided, shipping will be delayed.
- Package and ship FRU from the FRU inventory to Customer-specified address.
 - Motorola Solutions will ship FRU as soon as possible, depending on stock availability and requested configuration. FRU will be shipped during normal operating hours of Monday through Friday from 7:00 a.m. to 7:00 p.m. CST, excluding holidays. Motorola Solutions will pay for the shipping to the Customer, unless the Customer requests shipments outside of standard business hours or carrier programs, such as weekend or next flight out (“NFO”) shipment. In such cases, the Customer will be responsible for paying shipping and handling charges.
 - When sending FRU to the Customer, provide a return air bill in order for the Customer to send the Customer’s malfunctioning component. The Customer’s malfunctioning component will become property of the Motorola Solutions repair depot or select third party replacing it, and the Customer will own the FRU.
 - For loaner equipment, Motorola Solutions will ship repaired infrastructure components to Customer-specified address during normal operating hours, Monday through Friday from 7:00 a.m. to 7:00 p.m. CST, excluding holidays. FRU will be sent using two-day air shipping unless the Customer requests otherwise. Motorola Solutions will pay for shipping unless the Customer requests shipments outside of the above mentioned standard business hours or carrier programs, such as NFO. In such cases, the Customer will be responsible for paying shipping and handling charges.
 - When sending a loaner FRU to the Customer, Motorola Solutions will pay for outbound shipping charges. Inbound shipping to Motorola Solutions for repair will be the Customer’s responsibility. Motorola Solutions will repair and return the Customer’s component, and provide a return air bill for the Customer to return the loaner FRU. Refer to Figure 4-2 for the loaner process, and Table 4-1 for shipping charge details.

- Provide repair return authorization (“RA”) number upon Customer request to replace infrastructure components that are not classified as an advanced replacement or loaner FRU.
- Provide a repair RA number so that returned components can be repaired and returned to FRU stock.
- Receive malfunctioning components from the Customer, carry out repairs and testing, and return it to the FRU stock

4.4.2.8.2 Added Customer Responsibilities for Advanced Replacement

- Pay for Advanced Replacement or Loaner FRU shipping from Motorola Solutions repair depot if the Customer requested shipping outside of standard business hours or carrier programs set forth in Section 4.4.2.8.1. See Table 4-1 for shipping charge details.
- Properly package and ship the malfunctioning component using the pre-paid air-bill that arrived with the FRU. The Customer is responsible for properly packaging the malfunctioning infrastructure component to ensure that it is not damaged in transit and arrives in repairable condition. The Customer will be subject to a replacement fee for malfunctioning components returned improperly.
- Within five business days of receipt of the advanced replacement FRU from Motorola Solutions’ FRU inventory, properly package the Customer’s malfunctioning FRU and ship the malfunctioning Infrastructure to Motorola Solutions’ repair depot for evaluation and repair. The Customer must send the return air bill back to the repair depot in order to facilitate proper tracking of the returned infrastructure. The Customer will be subject to a full replacement fee for FRU’s not returned within five business days.
- At the Customer’s expense and risk of loss, the Customer may send a malfunctioning Motorola Solutions or third-party infrastructure component for repairs before a replacement has been sent. In such cases, the malfunctioning component should be properly packaged and shipped to Motorola Solutions.
- Clearly print the return authorization number on the outside of the packaging.



4.4.2.8.3 Replacement Process for Advanced Replacement

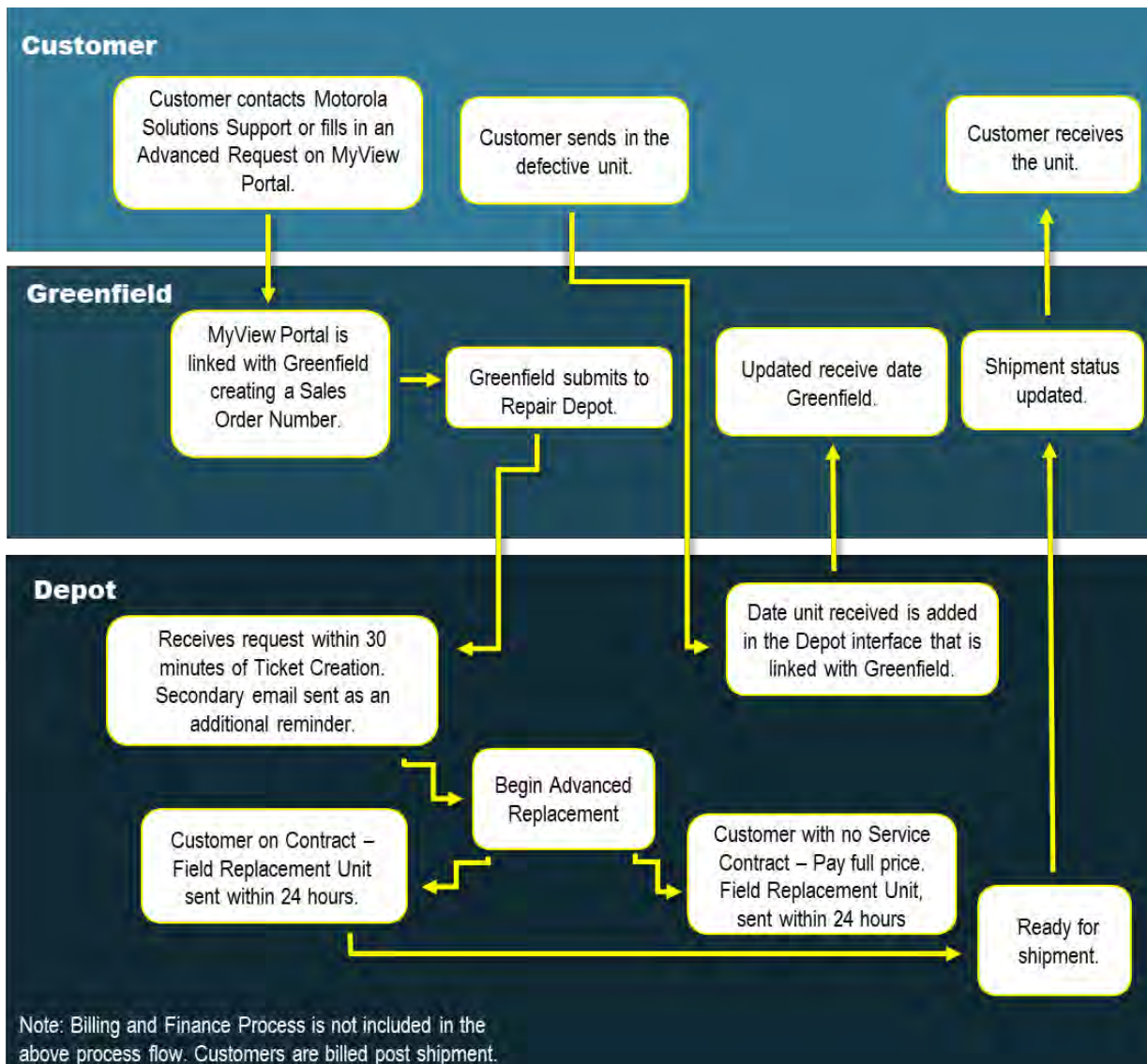


Figure 4-2: Advanced Replacement or Loaner Decision Process

Table 4-1: Shipping Charges and Default Mail Service:

Service	Advanced Replacement Charges Responsibility
Advanced Replacements (Normal Business Hours) Shipped FedEx Overnight or equivalent	Motorola Solutions
Loaner Shipping Outbound to Customer	
Loaner Repair and Return Shipping Outbound to Customer	
Advanced Replacements (Next Flight Out or Other)	Customer
Exchanges or Loaners Shipped Outbound to Customer by Non-Motorola Carrier*	
Loaner Repair Shipping Inbound to Motorola Solutions	
Loaner Installation Labor	

*Motorola Solutions shipping carrier – FedEx

4.4.3 On-site Infrastructure Response

Motorola Solutions' On-site Infrastructure Response service provides incident management and escalation for on-site technical service requests. The service is delivered by Motorola Solutions' Centralized Managed Support Operations ("CMSO") organization in cooperation with a local service provider.

On-site Infrastructure Response may also be referred to as On-site Support.

4.4.3.1 Description of Service

The Motorola Solutions CMSO Service Desk will receive the Customer's request for on-site service.

The CMSO Dispatch Operations team is responsible for opening incidents, dispatching on-site resources, monitoring issue resolution, and escalating as needed to ensure strict compliance to committed response times.

The dispatched field service technician will travel to the Customer's location to restore the system in accordance with Section 4.5: Priority Level Definitions and Response Times.

Motorola Solutions will manage incidents as described in this SOW. The CMSO Service Desk will maintain contact with the field service technician until incident closure.

4.4.3.2 Scope

On-site Infrastructure Response is available 24 hours a day, 7 days a week in accordance with Section 4.5: Priority Level Definitions and Response Times. Customer's Response Time Classification is designated in the Customer Support Plan.

4.4.3.3 Inclusions

On-site Infrastructure Response is provided for Motorola Solutions-provided infrastructure.

4.4.3.4 Motorola Solutions Responsibilities

- Receive service requests.
- Create an incident when service requests are received. Gather information to characterize the issue, determine a plan of action, and assign and track the incident to resolution.
- Dispatch a field service technician, as required by Motorola Solutions' standard procedures, and provide necessary incident information.
- Provide the required personnel access to relevant Customer information, as needed.
- Motorola Solutions field service technician will perform the following on-site:
 - Run diagnostics on the infrastructure component.
 - Replace defective infrastructure component, as supplied by the Customer.
 - Provide materials, tools, documentation, physical planning manuals, diagnostic and test equipment, and any other material required to perform the maintenance service.
 - If a third-party vendor is needed to restore the system, the vendor can be accompanied onto the Customer's premises.
 - If required by the Customer's repair verification in the Customer Support Plan ("CSP"), verify with the Customer that restoration is complete or system is functional. If verification by the Customer cannot be completed within 20 minutes of restoration, the incident will be closed and the field service technician will be released.
 - Escalate the incident to the appropriate party upon expiration of a response time.
- Close the incident upon receiving notification from the Customer or Motorola Solutions field service technician, indicating the incident is resolved.
- Notify the Customer of incident status, as defined in the CSP and Service Configuration Portal ("SCP"):
 - Open and closed.
 - Open, assigned to the Motorola Solutions field service technician, arrival of the field service technician on-site, delayed, or closed.
- Provide incident activity reports to the Customer, if requested.

4.4.3.5 Customer Responsibilities

- Contact Motorola Solutions, as necessary, to request service.
- Prior to start date, provide Motorola Solutions with the following pre-defined Customer information and preferences necessary to complete CSP:
 - Incident notification preferences and procedure.
 - Repair verification preference and procedure.
 - Database and escalation procedure forms.
- Submit timely changes in any information supplied in the CSP to the Customer Support Manager ("CSM").
- Provide the following information when initiating a service request:
 - Assigned system ID number.
 - Problem description and site location.
 - Other pertinent information requested by Motorola Solutions to open an incident.
- Provide field service technician with access to equipment.

- Supply infrastructure spare or FRU, as applicable, in order for Motorola Solutions to restore the system.
- Maintain and store software needed to restore the system in an easily accessible location.
- Maintain and store proper system backups in an easily accessible location.
- If required by repair verification preference provided by the Customer, verify with the CMSO Service Desk and dispatch that restoration is complete or system is functional.
- Cooperate with Motorola Solutions and perform reasonable or necessary acts to enable Motorola Solutions to provide these services.
- In the event that Motorola Solutions agrees in writing to provide supplemental On-site Infrastructure Response to Customer-provided third-party elements, the Customer agrees to obtain and provide applicable third-party consents or licenses to enable Motorola Solutions to provide the service.

4.4.4 Annual Preventive Maintenance

Motorola Solutions personnel will perform a series of maintenance tasks to keep network equipment functioning correctly.

4.4.4.1 Description of Service

Annual Preventative Maintenance provides annual operational tests on the Customer's infrastructure equipment to monitor its conformance to specifications.

4.4.4.2 Scope

Annual Preventive Maintenance will be performed during standard business hours, unless otherwise agreed to in writing. After the service starts, if the system or Customer requirements dictate that the service must occur outside of standard business hours, an additional quotation will be provided. The Customer is responsible for any charges associated with unusual access requirements or expenses.

4.4.4.3 Motorola Solutions Responsibilities

- Notify the Customer of any planned system downtime needed to perform this service.
- Maintain communication with the Customer as needed until completion of the Annual Preventive Maintenance.
- Determine, in its sole discretion, when an incident requires more than the Annual Preventive Maintenance services described in this SOW, and notify the Customer of an alternative course of action.
- Provide the Customer with a report in MyView Portal, or as otherwise agreed in the Customer Support Plan ("CSP"), comparing system performance with expected parameters, along with any recommended actions. Time allotment for report completion is to be mutually agreed.
- Provide trained and qualified personnel with proper security clearance required to complete Annual Preventive Maintenance services.
- Field service technician will perform the following on-site:
 - Perform the tasks defined in Section 4.4.4.6: Preventive Maintenance Tasks.



- Provide diagnostic and test equipment necessary to perform the Preventive Maintenance service.
- As applicable, use the Method of Procedure (“MOP”) defined for each task.

4.4.4.4 Limitations and Exclusions

The following activities are outside the scope of the Annual Preventive Maintenance service.

- Preventive maintenance for third-party equipment not sold by Motorola Solutions as part of the original system.
- Network transport link performance verification.
- Verification or assessment of Information Assurance.
- Any maintenance and/or remediation required as a result of a virus or unwanted cyber intrusion.
- Tower climbs, tower mapping analysis, or tower structure analysis.

4.4.4.5 Customer Responsibilities

- Provide preferred schedule for Annual Preventative Maintenance to Motorola Solutions.
- Authorize and acknowledge any scheduled system downtime.
- Maintain periodic backup of databases, software applications, and firmware.
- Establish and maintain a suitable environment (heat, light, and power) for the equipment location as described in equipment specifications, and provide Motorola Solutions full, free, and safe access to the equipment so that Motorola Solutions may provide services. All sites shall be accessible by standard service vehicles.
- Submit timely changes in any information supplied in the CSP to the Customer Support Manager (“CSM”).
- Provide site escorts, if required, in a timely manner.
- Provide Motorola Solutions with requirements necessary for access to secure facilities.
- In the event that Motorola Solutions agrees in writing to provide supplemental Annual Preventive Maintenance to third-party elements provided by Customer, the Customer agrees to obtain any third-party consents or licenses required to enable Motorola Solutions field service technician to access the sites to provide the service.

4.4.4.6 Preventive Maintenance Tasks

The Preventive Maintenance service includes the tasks listed in this section. Tasks will be performed based on the level of service noted in 4.4.4.3

DISPATCH SITE CHECKLIST	
General	
Inspect all Cables	Inspect all cables and connections to external interfaces are secure.
Mouse and Keyboard	Verify operation of mouse and keyboard.
Configuration File	Verify each operator position has access to required configuration files.
Console Operator Position Time	Verify console operator position time is consistent across all operator positions.
Screensaver	Verify screensaver set as Customer prefers.

DISPATCH SITE CHECKLIST	
Screen Performance	Verify screen operational and is not suffering from dead pixels or image burn-in that prevent user operation.
Touchscreen	Verify touchscreen operation, if present.
Cabling/Lights/Fans	Visual inspection of all equipment cabling, lights, and fans
Filters/Fans/Dust	Clean all equipment filters and fans and remove dust.
Monitor and Hard Drive	Confirm monitor and hard drive do not "sleep".
DVD/CD	Verify and clean DVD or CD drive.
Time Synchronization	Verify console time is synchronized with NTP server
Anti-Virus	Verify anti-virus is enabled and that definition files have been updated within two weeks of current date.
Headset Unplugged Testing	
Speakers	Test all speakers for audio quality, volume, static, drop-outs, and excess hiss when turned up.
Channel Audio in Speaker	Verify selected channel audio in select speaker only.
Footswitch Pedals	Verify both footswitch pedals operational.
Radio On-Air Light	Verify radio on-air light comes on with TX (if applicable).
Headset Plugged In Testing	
Radio TX and RX	Verify radio TX/RX from both headset jacks. Verify levels OK. Check volume controls for noise, static, or drop-outs.
Speaker Mute	Verify speaker mutes when muted.
Telephone Operation	Verify telephone operational through both headset jacks. Check volume controls for noise, static, or drop-outs.
Audio Switches	Verify audio switches to speaker when phone off-hook if interfaced to phones.
Radio Takeover in Headset	Verify radio-takeover in headset mic when phone is off-hook, with mic switching to radio and muting phone during push-to-talk.
Other Tests	
Phone Status Light	Verify phone status light comes on when phone is off-hook (if applicable).
Desk Microphone Operation	Confirm desk mic operation (if applicable).
Radio Instant Recall Recorder ("IRR") Operation	Verify radio IRR operational on Motorola Solutions dispatch (if applicable).
Telephone IRR Operation	Verify telephone IRR operational on Motorola Solutions dispatch, if on radio computer.
Recording	Verify operator position being recorded on long term logging recorder, if included in service agreement
IRR Setup Parameters	Check IRR set-up parameters, audio card set-up, and level adjustments.



DISPATCH SITE CHECKLIST	
Paging Controls	Confirm all paging controls are functional, including third-party encoders if covered by maintenance contract.
Computer Performance Testing	
Computer Reboot	Reboot operator position computer.
Computer Operational	Confirm client computer is fully operational (if applicable).
Event Logs	Pull event logs and review for major errors.
Hard Drive Backup	Create backup of drive for offsite storage.
Memory Usage	Check memory usage.
Application Logs and Alerts	Review built in application logs and alerts.
Hard Drive Usage	Check available space, ensure there is a minimum of 10%.
Verify Software	Verify that the latest MOTOPATCH, released for Windows by Motorola Solutions, has been installed.
Audio Testing	
Conventional Resources	Confirm all conventional resources are functional, with adequate audio levels and quality.
Secure Mode	Confirm any secure talkgroups are operational in secure mode.
Trunked Resources	Confirm all trunked resources on screen are functioning by placing a call in both directions, at the Customer's discretion, and at a single operator position
Backup Resources	Confirm backup resources are operational.
Paging Tones	Confirm tone sequences and paging operation.



4.5 PRIORITY LEVEL DEFINITIONS AND RESPONSE TIMES

Table 4-2 describes the criteria Motorola Solutions uses to prioritize incidents and service requests, and lists the response times for those priority levels.

Table 4-2: Priority Level Definitions and Response Times

Incident Priority	Incident Definition	Initial Response Time	On-site Response Time
Critical P1	Core: Core server or core link failure. No redundant server or link available. Sites/Subsites: Primary site down. Two RF sites or more than 10% of RF sites down, whichever is greater. Consoles: More than 40% of a site's console positions down. Conventional Channels: Conventional Channel Gateways (CCGW) down without redundant gateways available. Security Features: Security is non-functional or degraded. Alarm Events: Door, motion, intrusion, power failure, or environmental alarms triggered.	Response provided 24/7 until service restoration. Technical resource will acknowledge incident and respond within 30 minutes of CMSO logging incident.	Response provided 24/7 until service restoration. Field service technician arrival on-site within 4 hours of receiving dispatch notification.
High P2	Core: Core server or link failures. Redundant server or link available. Consoles: Between 20% and 40% of a site's console positions down. Sites/Subsites: One RF site or up to 10% of RF sites down, whichever is greater. Conventional Channels: Up to 50% of CCGWs down. Redundant gateways available. Network Elements: Site router, site switch, or GPS server down. No redundant networking element available.	Response provided 24/7 until service restoration. Technical resource will acknowledge incident and respond within 1 hour of CMSO logging incident.	Response provided 24/7 until service restoration. Field service technician arrival on-site within 4 hours of receiving dispatch notification.
Medium P3	Consoles: Up to 20% of a site's console positions down. Conventional Channels: Single channel down. Redundant gateway available. Network Elements: Site router/switch or GPS server down. Redundant networking element available.	Response provided during normal business hours until service restoration. Technical resource will acknowledge incident and respond within 4 hours of CMSO logging incident.	Response provided during normal business hours until service restoration. Field service technician arrival on-site within 8 hours of receiving dispatch notification.
Low P4	Service Requests: Minor events and warnings in the system. Preventative and planned maintenance activities (scheduled work).	Response provided during normal business hours. Motorola Solutions will acknowledge and respond within 1 Business Day.	Not applicable.

SECTION 5

CONTRACTUAL DOCUMENTATION

Terms and Conditions are included on the following pages.



H-GAC Communications System and Services Agreement

Motorola Solutions, Inc. ("Motorola") and The Town of Flower Mound ("Customer") enter into this "Agreement," pursuant to which Customer will purchase and Motorola will sell the System and Services, as described below. Motorola and Customer may be referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, the Customer desires to purchase a Communications System; and

WHEREAS, Motorola desires to sell a Communications System to Customer; and

WHEREAS, Houston-Galveston Area Council ("H-GAC"), acting as the agent for various local governmental entities who are "End Users" under interlocal agreements (including the Customer) has solicited proposals for radio communications equipment and conducted discussions with Motorola concerning its proposal and, where applicable, in accordance with the competitive procurement procedures of Texas law; and

WHEREAS, H-GAC and Motorola entered into that certain Contract No. RA05-21 executed on September 28, 2021, (the "H-GAC Contract"), which provided that End Users may purchase radio communications equipment from Motorola pursuant to certain terms contained therein; and

WHEREAS, pursuant to Special Provisions, Articles 2 and 6 of the H-GAC Contract, Motorola and Customer now wish to enter into this Agreement to delineate the specific terms of the purchase of radio communications equipment from Motorola by the Customer. For good and valuable consideration, the Parties agree as follows:

Section 1 ATTACHMENTS

1.1. EXHIBITS. The Exhibits listed below are exhibits related to the System sale and implementation. These Exhibits are incorporated into and made a part of this Agreement.

Exhibit A "Motorola Software License Agreement"

Exhibit B "Payment"

Exhibit C Technical and Implementation Documents

C-1 "System Description" dated October 8th 2021_

C-2 "Pricing Summary & Equipment List" ____

C-3 "Implementation Statement of Work" ____

C-4 "Acceptance Test Plan" or "ATP" dated ____

C-5 "Performance Schedule" dated ____

Exhibit D "System Acceptance Certificate"

Exhibit E H-GAC Contract No. RA05-21

1.2. ADDENDUM (ADDENDA). Customer may elect to purchase professional or subscription services in addition to the System and related services. Any such services will be governed by the terms in the main body of the Agreement and an applicable Addendum containing terms specific to such service. Such Addenda will be labeled with the name of the service being purchased.

1.3 ORDER OF PRECEDENCE. In interpreting this Agreement and resolving any ambiguities: 1) the main body of this Agreement takes precedence over the exhibits (unless otherwise specified in an exhibit), and any inconsistency between Exhibits A through E will be resolved in their listed order, except that Exhibit E shall prevail over this entire Agreement in the event of a conflict, and 2) The applicable service Addendum will take precedence over the main body of the Agreement and the Exhibits.

Section 2 DEFINITIONS

Capitalized terms used in this Agreement have the following meanings:

“Acceptance Tests” means those tests described in the Acceptance Test Plan.

“Addendum (Addenda)” is the title of the document(s) containing a specific set of terms and conditions applicable to a particular service or other offering beyond the Communication System and System implementation services. The terms in the Addendum are applicable only to the specific service or offering described therein.

“Administrative User Credentials” means an account that has total access over the operating system, files, end user accounts and passwords at either the System level or box level. Customer’s personnel with access to the Administrative User Credentials may be referred to as the Administrative User.

“Beneficial Use” means when Customer first uses the System or a Subsystem for operational purposes (excluding training or testing).

“Confidential Information” means all information consistent with the fulfillment of this Agreement that is (i) disclosed under this Agreement in oral, written, graphic, machine recognizable, and/or sample form, being clearly designated, labeled or marked as confidential or its equivalent or (ii) obtained by examination, testing or analysis of any hardware, software or any component part thereof provided by discloser to recipient. The nature and existence of this Agreement are considered Confidential Information. Confidential Information that is disclosed orally must be identified as confidential at the time of disclosure and confirmed by the discloser by submitting a written document to the recipient within thirty (30) days after such disclosure. The written document must contain a summary of the Confidential Information disclosed with enough specificity for identification purpose and must be labeled or marked as confidential or its equivalent.

“Contract Price” means the price for the System and implementation Services, including the H-GAC administrative fee, but excluding applicable sales or similar taxes and freight charges. Further, unless otherwise stated in Exhibit B, “Payment” or the pricing pages of the proposal, recurring fees for maintenance, SUA, or subscription services are not included in the Contract Price.

“Deliverables” means all written information (such as reports, specifications, designs, plans, drawings, analytics, Solution Data, or other technical or business information) that Motorola prepares for Customer in the performance of the Services and is obligated to provide to Customer under this Agreement. The Deliverables, if any, are more fully described in the Statement of Work.

“Derivative Proprietary Materials” means derivatives of the Proprietary Materials that Motorola may from time to time, including during the course of providing the Services, develop and/or use and/or to which Motorola provides Customer access.

“Effective Date” means that date upon which the last Party executes this Agreement.

“Equipment” means the hardware components of the Solution that Customer purchases from Motorola under this Agreement. Equipment that is part of the System is described in the Equipment List.

“Feedback” means comments or information, in oral or written form, given to Motorola by Customer in connection with or relating to Equipment or Services, during the term of this Agreement.

“Force Majeure” means an event, circumstance, or act that is beyond a Party’s reasonable control, such as an act of God, an act of the public enemy, an act of a government entity, strikes, other labor disturbances, supplier performance, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war,

riots, or any other similar cause.

“Motorola Software” means software that Motorola or its affiliated companies owns.

“Non-Motorola Software” means software that a party other than Motorola or its affiliated companies owns.

“Open Source Software” (also called “freeware” or “shareware”) means software with either freely obtainable source code, license for modification, or permission for free distribution.

“Proprietary Materials” means certain software tools and/or other technical materials, including, but not limited to, data, modules, components, designs, utilities, subsets, objects, program listings, models, methodologies, programs, systems, analysis frameworks, leading practices and specifications which Motorola has developed prior to, or independently from, the provision of the Services and/or which Motorola licenses from third parties.

“Proprietary Rights” means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to the Equipment and Software, including those created or produced by Motorola under this Agreement and any corrections, bug fixes, enhancements, updates or modifications to or derivative works from the Software whether made by Motorola or another party.

“Services” means system implementation, maintenance, support, subscription, or other professional services provided under this Agreement, which may be further described in the applicable Addendum and/or SOW.

“Software” (i) means proprietary software in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such software; (ii) means any modifications, enhancements, new versions and new releases of the software provided by Motorola; and (iii) may contain one or more items of software owned by a third party supplier. The term “Software” does not include any third party software provided under separate license or third party software not licensable under the terms of this Agreement.

“Software License Agreement” means the Motorola Software License Agreement (Exhibit A).

“Software Support Policy” (“SwSP”) means the policy set forth at https://www.motorolasolutions.com/content/dam/msi/secure/services/software_policy.pdf describing the specific technical support that will be provided to Customers under the Warranty Period and during any paid maintenance support period for Motorola Software. This policy may be modified from time to time at Motorola’s discretion.

“Solution” means the combination of the System(s) and Services provided by Motorola under this Agreement.

“Solution Data” means Customer data that is transformed, altered, processed, aggregated, correlated or operated on by Motorola, its vendors or other data sources and data that has been manipulated or retrieved using Motorola know-how to produce value-added content to data consumers, including customers or citizens which is made available to Customer with the Solution and Services.

“Specifications” means the functionality and performance requirements that are described in the Technical and Implementation Documents.

“SUA” or “SUA II” means Motorola’s Software Upgrade Agreement program.

“Subsystem” means a major part of the System that performs specific functions or operations.

Subsystems are described in the Technical and Implementation Documents.

“System” means the Equipment, including incidental hardware and materials, Software, and design, installation and implementation services that are combined together into an integrated system; the System(s) is (are) described in the Technical and Implementation Documents.

“System Acceptance” means the Acceptance Tests have been successfully completed.

“System Data” means data created by, in connection with or in relation to Equipment or the performance of Services under this Agreement.

“Warranty Period” for System Hardware, Software, or services related to system implementation means one (1) year from the date of System Acceptance or Beneficial Use, whichever occurs first. Unless otherwise stated in the applicable Addendum, Warranty Period for other Services means ninety (90) days from performance of the Service.

Section 3 SCOPE OF AGREEMENT AND TERM

3.1. **SCOPE OF WORK.** Motorola will provide, install and test the System(s), and perform its other contractual responsibilities to provide the Solution, all in accordance with this Agreement. Customer will perform its contractual responsibilities in accordance with this Agreement.

3.2. **CHANGE ORDERS.** Either Party may request changes within the general scope of this Agreement. If a requested change causes an increase or decrease in the cost or time required to perform this Agreement, the Parties will agree to an equitable adjustment of the Contract Price or applicable subscription fees, Performance Schedule, or both, and will reflect the adjustment in a change order or Addendum. Neither Party is obligated to perform requested changes unless both Parties execute a written change order.

3.3. **TERM.** Unless terminated in accordance with other provisions of this Agreement or extended by mutual agreement of the Parties, the term of this Agreement begins on the Effective Date and continues until the date of Final Project Acceptance or expiration of the Warranty Period, or completion of the Services, whichever occurs last. The term and the effective date of recurring Services will be set forth in the applicable Addendum.

3.4. **ADDITIONAL EQUIPMENT OR SOFTWARE.** For three (3) years after the expiration date of the Agreement, Customer may order additional Equipment or Software, if it is then available. Each purchase order must refer to this Agreement, the expiration date of the Agreement, and must specify the pricing and delivery terms. The Parties agree that, notwithstanding expiration of the Agreement, the applicable provisions of this Agreement (except for pricing, delivery, passage of title and risk of loss to Equipment, warranty commencement, and payment terms) will govern the purchase and sale of the additional Equipment or Software. Additional or contrary terms in the purchase order will be inapplicable, unless signed by both parties. Title and risk of loss to additional Equipment will pass at shipment, warranty will commence upon delivery, and payment is due within thirty (30) days after the invoice date. Motorola will send Customer an invoice as the additional Equipment is shipped or Software is licensed. Alternatively, Customer may register with and place orders through the Motorola Solutions Customer Portal eCommerce Shop, and this Agreement will be the “Underlying Agreement” for those eCommerce transactions rather than the eCommerce Shop Terms and Conditions of Sale. eCommerce Shop registration and other information may be found at https://www.motorolasolutions.com/en_us/registration and the shop support telephone number is (800) 814-0601.

3.5. **MOTOROLA SOFTWARE.** Any Motorola Software, including subsequent releases, is licensed to Customer solely in accordance with the Software License Agreement. Customer hereby accepts and agrees to abide by all of the terms and restrictions of the Software License Agreement.

3.6. **NON-MOTOROLA SOFTWARE.** Any Non-Motorola Software is licensed to Customer in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to Motorola the right to sublicense the Non-Motorola Software pursuant to the Software License Agreement, in which case it applies and the copyright owner will have all of Licensor's rights and protections under the Software License Agreement. Motorola makes no representations or warranties of any kind regarding Non-Motorola Software. Non-Motorola Software may include Open Source Software.

3.7. **SUBSTITUTIONS.** At no additional cost to Customer, Motorola may substitute any Equipment, Software, or services to be provided by Motorola, if the substitute meets or exceeds the Specifications and is of equivalent or better quality to the Customer. Any substitution will be reflected in a change order.

3.8. **OPTIONAL EQUIPMENT OR SOFTWARE.** This paragraph applies only if a "Priced Options" exhibit is shown in Section 1, or if the parties amend this Agreement to add a Priced Options exhibit. During the term of the option as stated in the Priced Options exhibit (or if no term is stated, then for one (1) year after the Effective Date), Customer has the right and option to purchase the equipment, software, and related services that are described in the Priced Options exhibit. Customer may exercise this option by giving written notice to Seller which must designate what equipment, software, and related services Customer is selecting (including quantities, if applicable). To the extent they apply, the terms and conditions of this Agreement will govern the transaction; however, the parties acknowledge that certain provisions must be agreed upon, and they agree to negotiate those in good faith promptly after Customer delivers the option exercise notice. Examples of provisions that may need to be negotiated are: specific lists of deliverables, statements of work, acceptance test plans, delivery and implementation schedules, payment terms, maintenance and support provisions, additions to or modifications of the Software License Agreement, hosting terms, and modifications to the acceptance and warranty provisions.

Section 4 SERVICES

4.1. If Customer desires and Motorola agrees to continue Services beyond the Term, Customer's issuance and Motorola's acceptance of a purchase order for Services will serve as an automatic extension of the Agreement for purposes of the continuing Services. Only the terms and conditions applicable to the performance of Services will apply to the extended Agreement.

4.2. During the Warranty Period, in addition to warranty services, Motorola will provide maintenance Services for the Equipment and support for the Motorola Software pursuant to the applicable maintenance and support Statements of Work. Support for the Motorola Software will be in accordance with Motorola's established Software Support Policy. Copies of the SwSP can be found at https://www.motorolasolutions.com/content/dam/msi/secure/services/software_policy.pdf and will be sent by mail, email or fax to Customer upon written request. Maintenance Services and support during the Warranty Period are included in the Contract Price. Unless already included in the Contract Price, if Customer wishes to purchase 1) additional maintenance or software support services during the Warranty Period; or 2) continue or expand maintenance, software support, installation, and/or SUA services after the Warranty Period, Motorola will provide the description of and pricing for such services in a separate proposal document. Unless otherwise agreed by the parties in writing, the terms and conditions in this Agreement applicable to maintenance, support, installation, and/or SUA Services, will be included in the Maintenance and Support Addendum, SUA Addendum, the applicable Statements of Work, and the proposal, (if applicable). These collective terms will govern the provision of such Services.

To obtain any such additional Services, Customer will issue a purchase order referring to this Agreement and the separate proposal document. Omission of reference to this Agreement in Customer's purchase order will not affect the applicability of this Agreement. Motorola's proposal may include a cover page entitled "Service Agreement" or "Installation Agreement", as applicable, and other attachments. These cover pages and other attachments are incorporated into this Agreement by this reference

4.3. **PROFESSIONAL AND SUBSCRIPTION SERVICES.** If Customer purchases professional or subscription Services as part of the Solution, additional or different terms specific to such Service will be included in the applicable Addendum and will apply to those Services. Customer may purchase additional professional or subscription services by issuing a purchase order referencing this Agreement and Motorola's proposal for such additional services.

4.4. Any information in the form of specifications, drawings, reprints, technical information or otherwise furnished to Customer in providing Services under this Agreement or Motorola data viewed, accessed, will remain Motorola's property, will be deemed proprietary, Confidential Information. This Confidential Information will be promptly returned at Motorola's request.

4.5. **TOOLS.** All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of providing Services under this Agreement will be and remain the sole property of Motorola. Customer will safeguard all such property while it is in Customer's custody or control, be liable for any loss or damage to this property, and return it to Motorola upon request. This property will be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction. Upon termination of the contract for any reason, Customer shall return to Motorola all equipment delivered to Customer.

4.6. **COVENANT NOT TO EMPLOY.** During the term of this Agreement and continuing for a period of two (2) years thereafter, Customer will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of Motorola or its subcontractors without the prior written authorization of Motorola. This provision applies only to those employees of Motorola or its subcontractors who are responsible for rendering Services under this Agreement. If this provision is found to be overly broad under applicable law, it will be modified as necessary to conform to applicable law.

4.7. **CUSTOMER OBLIGATIONS.** If the applicable Statement of Work or Addendum contains assumptions that affect the Services or Deliverables, Customer will verify that they are accurate and complete. Any information that Customer provides to Motorola concerning the Services or Deliverables will be accurate and complete in all material respects. Customer will make timely decisions and obtain any required management approvals that are reasonably necessary for Motorola to perform the Services and its other duties under this Agreement. Unless the Statement of Work states the contrary, Motorola may rely upon and is not required to evaluate, confirm, reject, modify, or provide advice concerning any assumptions and Customer-provided information, decisions and approvals described in this paragraph.

4.8. **ASSUMPTIONS.** If any assumptions or conditions contained in this Agreement, applicable Addenda or Statements of Work prove to be incorrect or if Customer's obligations are not performed, Motorola's ability to perform under this Agreement may be impacted and changes to the Contract Price, subscription fees, project schedule, Deliverables, or other changes may be necessary.

4.9. **NON-PRECLUSION.** If, as a result of the Services performed under this Agreement, Motorola recommends that Customer purchase products or other services, nothing in this Agreement precludes Motorola from participating in a future competitive bidding process or otherwise offering or selling the recommended products or other services to Customer. Customer represents that this paragraph does not violate its procurement or other laws, regulations, or policies.

4.10. **PROPRIETARY MATERIALS.** Customer acknowledges that Motorola may use and/or provide Customer with access to Proprietary Materials and Derivative Proprietary Materials. The Proprietary Materials and the Derivative Proprietary Materials are the sole and exclusive property of Motorola and Motorola retains all right, title and interest in and to the Proprietary Materials and Derivative Proprietary Materials.

4.11. **ADDITIONAL SERVICES.** Any services performed by Motorola outside the scope of this Agreement at the direction of Customer will be considered to be additional Services which are subject to additional charges. Any agreement to perform additional Services will be reflected in a written and executed change order, Addendum or amendment to this Agreement.

Section 5 PERFORMANCE SCHEDULE

The Parties will perform their respective responsibilities in accordance with the Performance Schedule. By executing this Agreement, Customer authorizes Motorola to proceed with contract performance.

Section 6 CONTRACT PRICE, PAYMENT AND INVOICING

6.1. Customer affirms that a purchase order or notice to proceed is not required for contract performance or for subsequent years of service, if any, and that sufficient funds have been appropriated in accordance with applicable law. The Customer will pay all invoices as received from Motorola and any changes in scope will be subject to the change order process as described in this Agreement. At the time of execution of this Agreement, the Customer will provide all necessary reference information to include on invoices for payment in accordance with this Agreement.

6.2. **CONTRACT PRICE.** The Contract Price in U.S. dollars is \$_80,472_, which includes the H-GAC administrative fee. Motorola will pay H-GAC's administrative fee in accordance with the payment terms of the Motorola/H-GAC Contract RA05-21. If applicable, a pricing summary is included with the Payment schedule in Exhibit B. Motorola has priced the Services, Software, and Equipment as an integrated System. A change in Software or Equipment quantities, or Services, may affect the overall Contract Price, including discounts if applicable. Fees for professional, SUA, and/or subscription services which are not included in the Contract Price may be listed in Exhibit B, the pricing pages of the proposal, or the applicable Addendum.

6.3. **INVOICING AND PAYMENT.** Motorola will submit invoices to Customer according to the Payment schedule in Exhibit B. Invoices will be mailed or emailed to Customer pursuant to Section 6.5, Invoicing and Shipping Addresses. Except for a payment that is due on the Effective Date, Customer will make payments to Motorola within thirty (30) days after the date of each invoice. Customer will make payments when due in the form of a wire transfer, check, or cashier's check from a U.S. financial institution. Overdue invoices will bear simple interest at the maximum allowable rate. For reference, the Federal Tax Identification Number for Motorola is 36-1115800.

6.4. **FREIGHT, TITLE, AND RISK OF LOSS.** Motorola will pre-pay and add all freight charges to the invoices. Title and risk of loss to the Equipment will pass to Customer upon shipment. Title to Software will not pass to Customer at any time. Motorola will pack and ship all Equipment in accordance with good commercial practices.

6.5. **INVOICING AND SHIPPING ADDRESSES.** Invoices will be sent to the Customer at the following address:

Name same as what is currently on file.

Address: _____

Phone: _____

E-INVOICE. To receive invoices via email:

Customer Account Number: _____

Customer Accounts Payable Email: _____

Customer CC(optional) Email: _____

The address which is the ultimate destination where the Equipment will be delivered to Customer is:

Name: _____

Address: _____

The Equipment will be shipped to the Customer at the following address (insert if this information is known):

Name: _____

Address: _____

Phone: _____

Customer may change this information by giving written notice to Motorola.

Section 7 SITES AND SITE CONDITIONS

7.1. ACCESS TO SITES. In addition to its responsibilities described elsewhere in this Agreement, Customer will provide a designated project manager; all necessary construction and building permits, zoning variances, licenses, and any other approvals that are necessary to develop or use the sites and mounting locations; and access to the worksites or vehicles identified in the Technical and Implementation Documents as reasonably requested by Motorola so that it may perform its duties in accordance with the Performance Schedule and Statement of Work. If the Statement of Work so indicates, Motorola may assist Customer in the local building permit process.

7.2. SITE CONDITIONS. Customer will ensure that all work sites it provides will be safe, secure, and in compliance with all applicable industry and OSHA standards. To the extent applicable and unless the Statement of Work states to the contrary, Customer will ensure that these work sites have adequate: physical space; air conditioning and other environmental conditions; adequate and appropriate electrical power outlets, distribution, equipment and connections; and adequate telephone or other communication lines (including modem access and adequate interfacing networking capabilities), all for the installation, use and maintenance of the System. Before installing the Equipment or Software at a work site, Motorola may inspect the work site and advise Customer of any apparent deficiencies or non-conformities with the requirements of this Section. This Agreement is predicated upon normal soil conditions as defined by the version of E.I.A. standard RS-222 in effect on the Effective Date.

7.3. SITE ISSUES. If a Party determines that the sites identified in the Technical and Implementation Documents are no longer available or desired, or if subsurface, structural, adverse environmental or latent conditions at any site differ from those indicated in the Technical and Implementation Documents, the Parties will promptly investigate the conditions and will select replacement sites or adjust the installation plans and specifications as necessary. If change in sites or adjustment to the installation plans and specifications causes a change in the cost or time to perform, the Parties will equitably amend the Contract Price, Performance Schedule, or both, by a change order.

Section 8 TRAINING

Any training to be provided by Motorola to Customer will be described in the applicable Statement of Work. Customer will notify Motorola immediately if a date change for a scheduled training program is required. If Motorola incurs additional costs because Customer reschedules a training program less than thirty (30) days before its scheduled start date, Motorola may recover these additional costs.

Section 9 SYSTEM ACCEPTANCE

9.1. COMMENCEMENT OF ACCEPTANCE TESTING. Motorola will provide to Customer at least ten (10) days notice before the Acceptance Tests commence. System testing will occur only in accordance with the Acceptance Test Plan.

9.2. SYSTEM ACCEPTANCE. System Acceptance will occur upon successful completion of the Acceptance Tests. Upon System Acceptance, the Parties will memorialize this event by promptly executing a System Acceptance Certificate. If the Acceptance Test Plan includes separate tests for individual Subsystems or phases of the System, acceptance of the individual Subsystem or phase will

occur upon the successful completion of the Acceptance Tests for the Subsystem or phase, and the Parties will promptly execute an acceptance certificate for the Subsystem or phase. If Customer believes the System has failed the completed Acceptance Tests, Customer will provide to Motorola a written notice that includes the specific details of the failure. If Customer does not provide to Motorola a failure notice within thirty (30) days after completion of the Acceptance Tests, System Acceptance will be deemed to have occurred as of the completion of the Acceptance Tests. Minor omissions or variances in the System that do not materially impair the operation of the System as a whole will not postpone System Acceptance or Subsystem acceptance, but will be corrected according to a mutually agreed schedule.

9.3. **BENEFICIAL USE.** Customer acknowledges that Motorola's ability to perform its implementation and testing responsibilities may be impeded if Customer begins using the System before System Acceptance. Therefore, Customer will not commence Beneficial Use before System Acceptance without Motorola's prior written authorization, which will not be unreasonably withheld. Motorola is not responsible for System performance deficiencies that occur during unauthorized Beneficial Use. Upon commencement of Beneficial Use, Customer assumes responsibility for the use and operation of the System.

9.4. **FINAL PROJECT ACCEPTANCE.** Final Project Acceptance will occur after System Acceptance when all deliverables and other work have been completed. When Final Project Acceptance occurs, the parties will promptly memorialize this final event by so indicating on the System Acceptance Certificate.

Section 10 REPRESENTATIONS AND WARRANTIES

10.1. **SYSTEM FUNCTIONALITY.** Motorola represents that the System will perform in accordance with the Specifications in all material respects. Upon System Acceptance or Beneficial Use, whichever occurs first, this System functionality representation is fulfilled. Motorola is not responsible for System performance deficiencies that are caused by ancillary equipment not furnished by Motorola which is attached to or used in connection with the System or for reasons or parties beyond Motorola's control, such as natural causes; the construction of a building that adversely affects the microwave path reliability or radio frequency (RF) coverage; the addition of frequencies at System sites that cause RF interference or intermodulation; or Customer changes to load usage or configuration outside the Specifications.

10.2. **EQUIPMENT WARRANTY.** During the Warranty Period, Motorola warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship. If System Acceptance is delayed beyond six (6) months after shipment of the Equipment by events or causes beyond Motorola's control, this warranty expires eighteen (18) months after the shipment of the Equipment.

10.3. **SOFTWARE WARRANTY.** Except as described in the SwSP and unless otherwise stated in the Software License Agreement, during the Warranty Period, Motorola warrants the Software in accordance with the warranty terms set forth in the Software License Agreement and the provisions of this Section that are applicable to the Software. If System Acceptance is delayed beyond six (6) months after shipment of the Motorola Software by events or causes beyond Motorola's control, this warranty expires eighteen (18) months after the shipment of the Motorola Software. **Nothing in this Warranty provision is intended to conflict or modify the Software Support Policy. In the event of an ambiguity or conflict between the Software Warranty and Software Support Policy, the Software Support Policy governs.**

10.4. **EXCLUSIONS TO EQUIPMENT AND SOFTWARE WARRANTIES.** These warranties do not apply to: (i) defects or damage resulting from: use of the Equipment or Software in other than its normal, customary, and authorized manner; accident, liquids, neglect, or acts of God; testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Motorola; Customer's failure to comply with all applicable industry and OSHA standards; (ii) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (iii) Equipment that has had the serial number removed or made illegible; (iv) batteries (because they carry

their own separate limited warranty) or consumables; (v) freight costs to ship Equipment to the repair depot; (vi) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (vii) normal or customary wear and tear.

10.5. **SERVICE WARRANTY.** During the Warranty Period, Motorola warrants that the Services will be provided in a good and workmanlike manner and will conform in all material respects to the applicable Statement of Work. Services will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. Customer acknowledges that the Deliverables may contain recommendations, suggestions or advice from Motorola to Customer (collectively, "recommendations"). Motorola makes no warranties concerning those recommendations, and Customer alone accepts responsibility for choosing whether and how to implement the recommendations and the results to be realized from implementing them.

10.6. **WARRANTY CLAIMS.** To assert a warranty claim, Customer must notify Motorola in writing of the claim before the expiration of the Warranty Period. Upon receipt of this notice, Motorola will investigate the warranty claim. If this investigation confirms a valid Equipment or Software warranty claim, Motorola will (at its option and at no additional charge to Customer) repair the defective Equipment or Motorola Software, replace it with the same or equivalent product, or refund the price of the defective Equipment or Motorola Software. These actions will be the full extent of Motorola's liability for the warranty claim. In the event of a valid Services warranty claim, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. If this investigation indicates the warranty claim is not valid, then Motorola may invoice Customer for responding to the claim on a time and materials basis using Motorola's then current labor rates. Repaired or replaced product is warranted for the balance of the original applicable warranty period. All replaced products or parts will become the property of Motorola.

10.7. **ORIGINAL END USER IS COVERED.** These express limited warranties are extended by Motorola to the original user purchasing the System or Services for commercial, industrial, or governmental use only, and are not assignable or transferable.

10.8. **DISCLAIMER OF OTHER WARRANTIES.** THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND MOTOROLA SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

Section 11 DELAYS

11.1. **FORCE MAJEURE.** Neither Party will be liable for its non-performance or delayed performance if caused by a Force Majeure. A Party that becomes aware of a Force Majeure that will significantly delay performance will notify the other Party promptly (but in no event later than fifteen days) after it discovers the Force Majeure. If a Force Majeure occurs, the Parties will execute a change order to extend the Performance Schedule or applicable Addenda for a time period that is reasonable under the circumstances.

11.2. **PERFORMANCE SCHEDULE DELAYS CAUSED BY CUSTOMER.** If Customer (including its other contractors) delays the Performance Schedule, it will make the promised payments according to the Payment schedule as if no delay occurred; and the Parties will execute a change order to extend the Performance Schedule and, if requested, compensate Motorola for all reasonable charges incurred because of the delay. Delay charges may include costs incurred by Motorola or its subcontractors for additional freight, warehousing and handling of Equipment; extension of the warranties; travel; suspending and re-mobilizing the work; additional engineering, project management, and standby time calculated at then current rates; and preparing and implementing an alternative implementation plan.

Section 12 DISPUTES

The Parties will use the following procedure to address any dispute arising under this Agreement (a "Dispute").

12.1. **GOVERNING LAW.** This Agreement will be governed by and construed in accordance with the laws of the State in which the System is installed.

12.2. **NEGOTIATION.** Either Party may initiate the Dispute resolution procedures by sending a notice of Dispute ("Notice of Dispute"). The Parties will attempt to resolve the Dispute promptly through good faith negotiations including 1) timely escalation of the Dispute to executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for the matter and 2) direct communication between the executives. If the Dispute has not been resolved within ten (10) days from the Notice of Dispute, the Parties will proceed to mediation.

12.3. **MEDIATION.** The Parties will choose an independent mediator within thirty (30) days of a notice to mediate from either Party ("Notice of Mediation"). Neither Party may unreasonably withhold consent to the selection of a mediator. If the Parties are unable to agree upon a mediator, either Party may request that American Arbitration Association nominate a mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Each Party will participate in the mediation in good faith and will be represented at the mediation by a business executive with authority to settle the Dispute.

12.4. **LITIGATION, VENUE and JURISDICTION.** If a Dispute remains unresolved for sixty (60) days after receipt of the Notice of Mediation, either Party may then submit the Dispute to a court of competent jurisdiction in the state in which the System is installed. Each Party irrevocably agrees to submit to the exclusive jurisdiction of the courts in such state over any claim or matter arising under or in connection with this Agreement.

12.5. **CONFIDENTIALITY.** All communications pursuant to subsections 12.2 and 12.3 will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality protections provided by applicable law. The use of these Dispute resolution procedures will not be construed under the doctrines of laches, waiver or estoppel to affect adversely the rights of either Party.

Section 13 DEFAULT AND TERMINATION

13.1. **DEFAULT BY A PARTY.** If either Party fails to perform a material obligation under this Agreement, the other Party may consider the non-performing Party to be in default (unless a Force Majeure causes the failure) and may assert a default claim by giving the non-performing Party a written and detailed notice of default. Except for a default by Customer for failing to pay any amount when due under this Agreement which must be cured immediately, the defaulting Party will have thirty (30) days after receipt of the notice of default to either cure the default or, if the default is not curable within thirty (30) days, provide a written cure plan. The defaulting Party will begin implementing the cure plan immediately after receipt of notice by the other Party that it approves the plan. If Customer is the defaulting Party, Motorola may stop work on the project until it approves the Customer's cure plan.

13.2. **FAILURE TO CURE.** If a defaulting Party fails to cure the default as provided above in Section 13.1, unless otherwise agreed in writing, the non-defaulting Party may terminate any unfulfilled portion of this Agreement. In the event of termination for default, the defaulting Party will promptly return to the non-defaulting Party any of its Confidential Information. If Customer is the non-defaulting Party, terminates this Agreement as permitted by this Section, and completes the System through a third Party, Customer may as its exclusive remedy recover from Motorola reasonable costs incurred to complete the System to a capability not exceeding that specified in this Agreement less the unpaid portion of the Contract Price. Customer will mitigate damages and provide Motorola with detailed invoices substantiating the charges.

In the event Customer elects to terminate this Agreement for any reason other than default, Customer shall pay Motorola for the conforming Equipment and/or Software delivered and all services performed.

Section 14 INDEMNIFICATION

14.1. **GENERAL INDEMNITY BY Motorola.** Motorola will indemnify and hold Customer harmless from any and all liability, expense, judgment, suit, cause of action, or demand for personal injury, death, or direct damage to tangible property which may accrue against Customer to the extent it is caused by the negligence of Motorola, its subcontractors, or their employees or agents, while performing their duties under this Agreement, if Customer gives Motorola prompt, written notice of any claim or suit. Customer will cooperate with Motorola in its defense or settlement of the claim or suit. This Section sets forth the full extent of Motorola's general indemnification of Customer from liabilities that are in any way related to Motorola's performance under this Agreement.

14.2. **GENERAL INDEMNITY BY CUSTOMER.** Customer will indemnify and hold Motorola harmless from any and all liability, expense, judgment, suit, cause of action, or demand for personal injury, death, or direct damage to tangible property which may accrue against Motorola to the extent it is caused by the negligence of Customer, its other contractors, or their employees or agents, while performing their duties under this Agreement, if Motorola gives Customer prompt, written notice of any the claim or suit. Motorola will cooperate with Customer in its defense or settlement of the claim or suit. This Section sets forth the full extent of Customer's general indemnification of Motorola from liabilities that are in any way related to Customer's performance under this Agreement.

14.3. PATENT AND COPYRIGHT INFRINGEMENT.

14.3.1. Motorola will defend at its expense any suit brought against Customer to the extent it is based on a third-party claim alleging that the Equipment manufactured by Motorola or the Motorola Software ("Motorola Product") directly infringes a United States patent or copyright ("Infringement Claim"). Motorola's duties to defend and indemnify are conditioned upon: Customer promptly notifying Motorola in writing of the Infringement Claim; Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and Customer providing to Motorola cooperation and, if requested by Motorola, reasonable assistance in the defense of the Infringement Claim. In addition to Motorola's obligation to defend, and subject to the same conditions, Motorola will pay all damages finally awarded against Customer by a court of competent jurisdiction for an Infringement Claim or agreed to, in writing, by Motorola in settlement of an Infringement Claim.

14.3.2 If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense: (a) procure for Customer the right to continue using the Motorola Product; (b) replace or modify the Motorola Product so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the Motorola Product and grant Customer a credit for the Motorola Product, less a reasonable charge for depreciation. The depreciation amount will be calculated based upon generally accepted accounting standards.

14.3.3 Motorola will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the combination of the Motorola Product with any software, apparatus or device not furnished by Motorola; (b) the use of ancillary equipment or software not furnished by Motorola and that is attached to or used in connection with the Motorola Product; (c) Motorola Product designed or manufactured in accordance with Customer's designs, specifications, guidelines or instructions, if the alleged infringement would not have occurred without such designs, specifications, guidelines or instructions; (d) a modification of the Motorola Product by a party other than Motorola; (e) use of the Motorola Product in a manner for which the Motorola Product was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by Customer to install an enhancement release to the Motorola Software that is intended to correct the claimed infringement. In no event will Motorola's liability resulting from its indemnity obligation to Customer extend in any way to royalties payable on a per use basis or the Customer's revenues, or any royalty basis other than a reasonable royalty based upon revenue derived

by Motorola from Customer from sales or license of the infringing Motorola Product.

14.3.4. This Section 14 provides Customer's sole and exclusive remedies and Motorola's entire liability in the event of an Infringement Claim. Customer has no right to recover and Motorola has no obligation to provide any other or further remedies, whether under another provision of this Agreement or any other legal theory or principle, in connection with an Infringement Claim. In addition, the rights and remedies provided in this Section 14 are subject to and limited by the restrictions set forth in Section 15.

Section 15 LIMITATION OF LIABILITY

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of the Equipment, Software, or implementation and other one-time Services with respect to which losses or damages are claimed. With respect to all subscription or other ongoing Services and unless as otherwise provided under the applicable Addenda, Motorola's total liability will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Services preceding the incident giving rise to the claim. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS, INCONVENIENCE, LOSS OF USE, LOSS TIME, DATA, GOODWILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT.** This limitation of liability provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account.

Section 16 CONFIDENTIALITY AND PROPRIETARY RIGHTS

16.1. CONFIDENTIAL INFORMATION.

16.1.1. Each party is a disclosing party ("Discloser") and a receiving party ("Recipient") under this Agreement. All Deliverables will be deemed to be Motorola's Confidential Information. During the term of this Agreement and for a period of three (3) years from the expiration or termination of this Agreement, Recipient will (i) not disclose Confidential Information to any third party; (ii) restrict disclosure of Confidential Information to only those employees (including, but not limited to, employees of any wholly owned subsidiary, a parent company, any other wholly owned subsidiaries of the same parent company), agents or consultants who must be directly involved with the Confidential Information for the purpose and who are bound by confidentiality terms substantially similar to those in this Agreement; (iii) not copy, reproduce, reverse engineer, decompile, or disassemble any Confidential Information; (iv) use the same degree of care as for its own information of like importance, but at least use reasonable care, in safeguarding against disclosure of Confidential Information; (v) promptly notify Discloser upon discovery of any unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this Agreement; and (vi) only use the Confidential Information as needed to fulfill this Agreement. Parties acknowledge that the Customer is subject to the Texas Public Information Act, codified in Chapter 552 of the Texas Government Code. Any information or materials submitted to the Customer that is considered to be confidential must be marked "CONFIDENTIAL," "TRADE SECRET," OR "PROPRIETARY." Subject to the requirements of the Texas Public Information Act, deemed confidential by this section., Customer will notify Motorola and submit a letter to the Texas Attorney General per the Texas Public Information Act's requirements. If an outside individual or entity requests review or copies of the information so marked, Customer will advise Motorola of the request. Customer will request an Open Records Decision from the Attorney General's Office of the State of Texas.

16.1.2. Recipient is not obligated to maintain as confidential, Confidential Information that Recipient can demonstrate by documentation (i) is now available or becomes available to the public without breach of this agreement; (ii) is explicitly approved for release by written authorization of Discloser; (iii) is lawfully obtained from a third party or parties without a duty of confidentiality; (iv) is known to the Recipient prior to such disclosure; or (v) is independently developed by Recipient without the use of any of Discloser's Confidential Information or any breach of this Agreement.

13

16.1.3. To the extent permitted by law all Confidential Information remains the property of the Discloser and will not be copied or reproduced without the express written permission of the Discloser, except for copies that are absolutely necessary in order to fulfill this Agreement. Within ten (10) days of receipt of Discloser's written request, Recipient will return all Confidential Information to Discloser along with all copies and portions thereof, or certify in writing that all such Confidential Information has been destroyed. However, Recipient may retain one (1) archival copy of the Confidential Information that it may use only in case of a dispute concerning this Agreement. No license, express or implied, in the Confidential Information is granted other than to use the Confidential Information in the manner and to the extent authorized by this Agreement. The Discloser warrants that it is authorized to disclose any Confidential Information it discloses pursuant to this Agreement.

16.2. **PRESERVATION OF MOTOROLA'S PROPRIETARY RIGHTS.** Motorola, the third party manufacturer of any Equipment, and the copyright owner of any Non-Motorola Software own and retain all of their respective Proprietary Rights in the Equipment and Software, and nothing in this Agreement is intended to restrict their Proprietary Rights. All intellectual property developed, originated, or prepared by Motorola in connection with providing to Customer the Equipment, Software, or related services remain vested exclusively in Motorola, and this Agreement does not grant to Customer any shared development rights of intellectual property. Except as explicitly provided in the Software License Agreement, Motorola does not grant to Customer, either directly or by implication, estoppel, or otherwise, any right, title or interest in Motorola's Proprietary Rights. Customer will not modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, distribute, sublicense, sell or export the Software, or permit or encourage any third party to do so. The preceding sentence does not apply to Open Source Software which is governed by the standard license of the copyright owner.

16.3 **VOLUNTARY DISCLOSURE.** Except as required to fulfill its obligations under this Agreement, Motorola will have no obligation to provide Customer with access to its Confidential Information and/or proprietary information. Under no circumstances will Motorola be required to provide any data related to cost and pricing.

16.4 DATA AND FEEDBACK.

16.4.1 To the extent permitted by law, Customer owns all right, title and interest in System Data created solely by it or its agents (hereafter, "Customer Data"), and grants to Motorola the right to use, host, cache, store, reproduce, copy, modify, combine, analyze, create derivatives from, communicate, transmit, publish, display, and distribute such Customer Data.

16.4.2 Motorola owns all right, title and interest in data resulting from System Data that is or has been transformed, altered, processed, aggregated, correlated or operated on (hereafter, "Derivative Data").

16.4.3 Any Feedback given by Customer is and will be entirely voluntary and, even if designated as confidential, will not create any confidentiality obligation for Motorola. Motorola will be free to use, reproduce, license or otherwise distribute and exploit the Feedback without any obligation to Customer. Customer acknowledges that Motorola's receipt of the Feedback does not imply or create recognition by Motorola of either the novelty or originality of any idea. The parties further agree that all fixes, modifications and improvements made to Motorola products or services conceived of or made by Motorola that are based, either in whole or in part, on the Feedback are the exclusive property of Motorola and all right, title and interest in and to such fixes, modifications or improvements to the Motorola product or service will vest solely in Motorola.

Section 17 GENERAL

17.1. **TAXES.** The Contract Price does not include any excise, sales, lease, use, property, or other taxes, assessments or duties, all of which will be paid by Customer except as exempt by law. If Motorola

is required to pay any of these taxes, Motorola will send an invoice to Customer and Customer will pay to Motorola the amount of the taxes (including any interest and penalties) within thirty (30) days after the date of the invoice. Customer will be solely responsible for reporting the Equipment for personal property tax purposes, and Motorola will be solely responsible for reporting taxes on its income or net worth.

17.2. **ASSIGNABILITY AND SUBCONTRACTING.** Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer. In addition, in the event Motorola separates one or more of its businesses (each a "Separated Business"), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a "Separation Event"), Motorola may, without the prior written consent of the other Party and at no additional cost to Motorola, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Motorola and its affiliates, to the extent applicable) following the Separation Event. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

17.3. **WAIVER.** Failure or delay by either Party to exercise a right or power under this Agreement will not be a waiver of the right or power. For a waiver of a right or power to be effective, it must be in a writing signed by the waiving Party. An effective waiver of a right or power will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

17.4. **SEVERABILITY.** If a court of competent jurisdiction renders any part of this Agreement invalid or unenforceable, that part will be severed and the remainder of this Agreement will continue in full force and effect.

17.5. **INDEPENDENT CONTRACTORS.** Each Party will perform its duties under this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership or formal business organization of any kind.

17.6. **HEADINGS AND SECTION REFERENCES.** The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.

17.7. **NOTICES.** Notices required under this Agreement to be given by one Party to the other must be in writing and either personally delivered or sent to the address provided by the other Party by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as Federal Express, UPS, or DHL), or by facsimile with correct answerback received, and will be effective upon receipt.

17.8. **COMPLIANCE WITH APPLICABLE LAWS.** Each Party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement or use of the System. Customer will obtain and comply with all Federal Communications Commission ("FCC") licenses and authorizations required for the installation, operation and use of the System before the scheduled

installation of the Equipment. Although Motorola might assist Customer in the preparation of its FCC license applications, neither Motorola nor any of its employees is an agent or representative of Customer in FCC or other matters.

17.9 FUTURE REGULATORY REQUIREMENTS. The Parties acknowledge and agree that this is an evolving technological area and therefore, laws and regulations regarding Services and use of Solution may change. Changes to existing Services or the Solution required to achieve regulatory compliance may be available for an additional fee. Any required changes may also impact the price for Services.

17.10. AUTHORITY TO EXECUTE AGREEMENT. Each Party represents that it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; the person executing this Agreement on its behalf has the authority to do so; upon execution and delivery of this Agreement by the Parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the Party.

17.11. ADMINISTRATOR LEVEL ACCOUNT ACCESS. If applicable to the type of System purchased by Customer, Motorola will provide Customer with Administrative User Credentials. Customer agrees to only grant access to the Administrative User Credentials to those personnel with the training and experience to correctly use them. Customer is responsible for protecting Administrative User Credentials from disclosure and maintaining Credential validity by, among other things, updating passwords when required. Customer may be asked to provide valid Administrative User Credentials when in contact with Motorola System support personnel. Customer understands that changes made as the Administrative User can significantly impact the performance of the System. Customer agrees that it will be solely responsible for any negative impact on the System or its users by any such changes. System issues occurring as a result of changes made using the Administrative User Credentials may impact Motorola's ability to perform Services or other obligations under the Agreement. In such cases, a revision to the appropriate provisions of the Agreement, including the Statement of Work, may be necessary. To the extent Motorola provides assistance to correct any issues caused by or arising out of the use of or failure to maintain Administrative User Credentials, Motorola will be entitled to bill Customer and Customer will pay Motorola on a time and materials basis for resolving the issue.

17.12. SURVIVAL OF TERMS. The following provisions will survive the expiration or termination of this Agreement for any reason: Section 3.5 (Motorola Software); Section 3.6 (Non-Motorola Software); if any payment obligations exist, Sections 6.2 and 6.3 (Contract Price and Invoicing and Payment); Subsection 10.8 (Disclaimer of Implied Warranties); Section 12 (Disputes); Section 15 (Limitation of Liability); and Section 16 (Confidentiality and Proprietary Rights); and all of the General provisions in Section 17.

17.13. ENTIRE AGREEMENT. This Agreement, including all Exhibits, constitutes the entire agreement of the Parties regarding the subject matter of the Agreement and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be executed in multiple counterparts, and shall have the same legal force and effect as if the Parties had executed it as a single document. The Parties may sign in writing, or by electronic signature, including by email. An electronic signature, or a facsimile copy or computer image, such as a PDF or tiff image, of a signature, shall be treated as and shall have the same effect as an original signature. In addition, an electronic signature, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document. This Agreement may be amended or modified only by a written instrument signed by authorized

representatives of both Parties. The preprinted terms and conditions found on any Customer purchase or purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each Party signs that document.

The Parties hereby enter into this Agreement as of the Effective Date.

Motorola Solutions, Inc.

By:

Name: _____

Title: _____

Date: _____

Customer

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A

MOTOROLA SOFTWARE LICENSE AGREEMENT

This Exhibit A Motorola Software License Agreement ("Agreement") is between Motorola Solutions, Inc., ("Motorola"), and Denco Area 9-1-1 District__ ("Licensee").

For good and valuable consideration, the parties agree as follows:

Section 1 DEFINITIONS

1.1 "Designated Products" means products provided by Motorola to Licensee with which or for which the Software and Documentation is licensed for use.

1.2 "Documentation" means product and software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which such information is provided).

1.3 "Open Source Software" means software with either freely obtainable source code, license for modification, or permission for free distribution.

1.4 "Open Source Software License" means the terms or conditions under which the Open Source Software is licensed.

1.5 "Primary Agreement" means the agreement to which this exhibit is attached.

1.6 "Security Vulnerability" means a flaw or weakness in system security procedures, design, implementation, or internal controls that could be exercised (accidentally triggered or intentionally exploited) and result in a security breach such that data is compromised, manipulated or stolen or the system damaged.

1.7 "Software" (i) means proprietary software in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such software; (ii) means any modifications, enhancements, new versions and new releases of the software provided by Motorola; and (iii) may contain one or more items of software owned by a third party supplier. The term "Software" does not include any third party software provided under separate license or third party software not licensable under the terms of this Agreement.

Section 2 SCOPE

Motorola and Licensee enter into this Agreement in connection with Motorola's delivery of certain proprietary software or products containing embedded or pre-loaded proprietary software, or both. This Agreement contains the terms and conditions of the license Motorola is providing to Licensee, and Licensee's use of the proprietary software and affiliated documentation.

Section 3 GRANT OF LICENSE

3.1. Subject to the provisions of this Agreement and the payment of applicable license fees, Motorola grants to Licensee a personal, limited, non-transferable (except as permitted in Section 7) and non-exclusive license under Motorola's copyrights and Confidential Information (as defined in the Primary Agreement) embodied in the Software to use the Software, in object code form, and the Documentation solely in connection with Licensee's use of the Designated Products. This Agreement does not grant any rights to source code.

3.2. If the Software licensed under this Agreement contains or is derived from Open Source Software, the terms and conditions governing the use of such Open Source Software are in the Open Source Software Licenses of the copyright owner and not this Agreement. If there is a conflict between the terms and conditions of this Agreement and the terms and conditions of the Open Source Software Licenses governing Licensee's use of the Open Source Software, the terms and conditions of the license grant of the applicable Open Source Software Licenses will take precedence over the license grants in this Agreement. If requested by Licensee, Motorola will use commercially reasonable efforts to: (i) determine whether any Open Source Software is provided under this Agreement; and (ii) identify the Open Source Software (or specify where that license may be found).

3.3 TO THE EXTENT, IF ANY, THAT THERE IS A SEPARATE LICENSE AGREEMENT PACKAGED WITH, OR PROVIDED ELECTRONICALLY WITH, A PARTICULAR PRODUCT THAT BECOMES EFFECTIVE ON AN ACT OF ACCEPTANCE BY THE END USER, THEN THAT AGREEMENT SUPERSEDES THE SOFTWARE LICENSE AGREEMENT AS TO THE END USER OF EACH SUCH PRODUCT.

Section 4 LIMITATIONS ON USE

4.1. Licensee may use the Software only for Licensee's internal business purposes and only in accordance with the Documentation. Any other use of the Software is strictly prohibited. Without limiting the general nature of these restrictions, Licensee will not make the Software available for use by third parties on a "time sharing," "application service provider," or "service bureau" basis or for any other similar commercial rental or sharing arrangement.

4.2. Licensee will not, and will not allow or enable any third party to: (i) reverse engineer, disassemble, peel components, decompile, reprogram or otherwise reduce the Software or any portion to a human perceptible form or otherwise attempt to recreate the source code; (ii) modify, adapt, create derivative works of, or merge the Software; (iii) copy, reproduce, distribute, lend, or lease the Software or Documentation to any third party, grant any sublicense or other rights in the Software or Documentation to any third party, or take any action that would cause the Software or Documentation to be placed in the public domain; (iv) remove, or in any way alter or obscure, any copyright notice or other notice of Motorola's proprietary rights; (v) provide, copy, transmit, disclose, divulge or make the Software or Documentation available to, or permit the use of the Software by any third party or on any machine except as expressly authorized by this Agreement; or (vi) use, or permit the use of, the Software in a manner that would result in the production of a copy of the Software solely by activating a machine containing the Software. Licensee may make one copy of Software to be used solely for archival, back-up, or disaster recovery purposes; *provided* that Licensee may not operate that copy of the Software at the same time as the original Software is being operated. Licensee may make as many copies of the Documentation as it may reasonably require for the internal use of the Software.

4.3. Unless otherwise authorized by Motorola in writing, Licensee will not, and will not enable or allow any third party to: (i) install a licensed copy of the Software on more than one unit of a Designated Product; or (ii) copy onto or transfer Software installed in one unit of a Designated Product onto one other device. Licensee may temporarily transfer Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Licensee provides written notice to Motorola of the temporary transfer and identifies the device on which the Software is transferred. Temporary transfer of the Software to another device must be discontinued when the original Designated Product is returned to operation and the Software must be removed from the other device. Licensee must provide prompt written notice to Motorola at the time temporary transfer is discontinued.

4.4 Licensee will maintain, during the term of this Agreement and for a period of two years thereafter, accurate records relating to this license grant to verify compliance with this Agreement. Motorola or an independent third party ("Auditor") may inspect Licensee's premises, books and records, upon reasonable prior notice to Licensee, during Licensee's normal business hours and subject to Licensee's facility and

security regulations. Motorola is responsible for the payment of all expenses and costs of the Auditor. Any information obtained by Motorola and the Auditor will be kept in strict confidence by Motorola and the Auditor and used solely for the purpose of verifying Licensee's compliance with the terms of this Agreement.

Section 5 OWNERSHIP AND TITLE

Motorola, its licensors, and its suppliers retain all of their proprietary rights in any form in and to the Software and Documentation, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the Software and Documentation (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, emulations to or derivative works from the Software or Documentation, whether made by Motorola or another party, or any improvements that result from Motorola's processes or, provision of information services). No rights are granted to Licensee under this Agreement by implication, estoppel or otherwise, except for those rights which are expressly granted to Licensee in this Agreement. All intellectual property developed, originated, or prepared by Motorola in connection with providing the Software, Designated Products, Documentation or related services, remains vested exclusively in Motorola, and Licensee will not have any shared development or other intellectual property rights.

Section 6 LIMITED WARRANTY; DISCLAIMER OF WARRANTY

6.1. Unless otherwise stated in the Primary Agreement, the commencement date and the term of the Software warranty will be a period of ninety (90) days from Motorola's shipment of the Software (the "Warranty Period"). If Licensee is not in breach of any of its obligations under this Agreement, Motorola warrants that the unmodified Software, when used properly and in accordance with the Documentation and this Agreement, will be free from a reproducible defect that eliminates the functionality or successful operation of a feature critical to the primary functionality or successful operation of the Software. Whether a defect occurs will be determined by Motorola solely with reference to the Documentation. Motorola does not warrant that Licensee's use of the Software or the Designated Products will be uninterrupted, error-free, completely free of Security Vulnerabilities, or that the Software or the Designated Products will meet Licensee's particular requirements. Motorola makes no representations or warranties with respect to any third party software included in the Software. Notwithstanding, any warranty provided by a copyright owner in its standard license terms will flow through to Licensee for third party software provided by Motorola.

6.2 Motorola's sole obligation to Licensee and Licensee's exclusive remedy under this warranty is to use reasonable efforts to remedy any material Software defect covered by this warranty. These efforts will involve either replacing the media or attempting to correct significant, demonstrable program or documentation errors or Security Vulnerabilities. If Motorola cannot correct the defect within a reasonable time, then at Motorola's option, Motorola will replace the defective Software with functionally-equivalent Software, license to Licensee substitute Software which will accomplish the same objective, or terminate the license and refund the Licensee's paid license fee.

6.3. Warranty claims are described in the Primary Agreement.

6.4. The express warranties set forth in this Section 6 are in lieu of, and Motorola disclaims, any and all other warranties (express or implied, oral or written) with respect to the Software or Documentation, including, without limitation, any and all implied warranties of condition, title, non-infringement, merchantability, or fitness for a particular purpose or use by Licensee (whether or not Motorola knows, has reason to know, has been advised, or is otherwise aware of any such purpose or use), whether arising by law, by reason of custom or usage of trade, or by course of dealing. In addition, Motorola disclaims any warranty to any person other than Licensee with respect to the Software or Documentation.

Section 7 TRANSFERS

Licensee will not transfer the Software or Documentation to any third party without Motorola's prior written consent. Motorola's consent may be withheld at its discretion and may be conditioned upon transferee paying all applicable license fees and agreeing to be bound by this Agreement. If the Designated Products are Motorola's radio products and Licensee transfers ownership of the Motorola radio products to a third party, Licensee may assign its right to use the Software (other than CPS and Motorola's FLASHport® software) which is embedded in or furnished for use with the radio products and the related Documentation; *provided* that Licensee transfers all copies of the Software and Documentation to the transferee, and Licensee and the transferee sign a transfer form to be provided by Motorola upon request, obligating the transferee to be bound by this Agreement.

Section 8 TERM AND TERMINATION

8.1 Licensee's right to use the Software and Documentation will begin when the Primary Agreement is signed by both parties and will continue for the life of the Designated Products with which or for which the Software and Documentation have been provided by Motorola, unless Licensee breaches this Agreement, in which case this Agreement and Licensee's right to use the Software and Documentation may be terminated immediately upon notice by Motorola.

8.2 Within thirty (30) days after termination of this Agreement, Licensee must certify in writing to Motorola that all copies of the Software have been removed or deleted from the Designated Products and that all copies of the Software and Documentation have been returned to Motorola or destroyed by Licensee and are no longer in use by Licensee.

8.3 Licensee acknowledges that Motorola made a considerable investment of resources in the development, marketing, and distribution of the Software and Documentation and that Licensee's breach of this Agreement will result in irreparable harm to Motorola for which monetary damages would be inadequate. If Licensee breaches this Agreement, Motorola may terminate this Agreement and be entitled to all available remedies at law or in equity (including immediate injunctive relief and repossession of all non-embedded Software and associated Documentation unless Licensee is a Federal agency of the United States Government).

Section 9 Commercial Computer Software

9.1 *This Section 9 only applies to U.S. Government end users.* The Software, Documentation and updates are commercial items as that term is defined at 48 C.F.R. Part 2.101, consisting of "commercial computer software" and "computer software documentation" as such terms are defined in 48 C.F.R. Part 252.227-7014(a)(1) and 48 C.F.R. Part 252.227-7014(a)(5), and used in 48 C.F.R. Part 12.212 and 48 C.F.R. Part 227.7202, as applicable. Consistent with 48 C.F.R. Part 12.212, 48 C.F.R. Part 252.227-7015, 48 C.F.R. Part 227.7202-1 through 227.7202-4, 48 C.F.R. Part 52.227-19, and other relevant sections of the Code of Federal Regulations, as applicable, the Software, Documentation and Updates are distributed and licensed to U.S. Government end users: (i) only as commercial items, and (ii) with only those rights as are granted to all other end users pursuant to the terms and conditions contained herein.

9.2 If Licensee is licensing Software for end use by the United States Government or a United States Government agency, Licensee may transfer such Software license, but only if: (i) Licensee transfers all copies of such Software and Documentation to such United States Government entity or interim transferee, and (ii) Licensee has first obtained from the transferee (if applicable) and ultimate end user an enforceable end user license agreement containing restrictions substantially identical to the ones contained in this Agreement. Except as stated in the foregoing, Licensee and any transferee(s) authorized by this subsection 9.2 may not otherwise use or transfer or make available any Motorola software to any third party nor permit any party to do so.

Section 10 CONFIDENTIALITY

Licensee acknowledges that the Software and Documentation contain Motorola's valuable proprietary and Confidential Information and are Motorola's trade secrets, and that the provisions in the Primary Agreement concerning Confidential Information apply.

Section 11 LIMITATION OF LIABILITY

The Limitation of Liability provision is described in the Primary Agreement.

Section 12 NOTICES

Notices are described in the Primary Agreement.

Section 13 GENERAL

13.1. **COPYRIGHT NOTICES.** The existence of a copyright notice on the Software will not be construed as an admission or presumption of publication of the Software or public disclosure of any trade secrets associated with the Software.

13.2. **COMPLIANCE WITH LAWS.** Licensee acknowledges that the Software is subject to the laws and regulations of the United States and Licensee will comply with all applicable laws and regulations, including export laws and regulations of the United States. Licensee will not, without the prior authorization of Motorola and the appropriate governmental authority of the United States, in any form export or re-export, sell or resell, ship or reship, or divert, through direct or indirect means, any item or technical data or direct or indirect products sold or otherwise furnished to any person within any territory for which the United States Government or any of its agencies at the time of the action, requires an export license or other governmental approval. Violation of this provision is a material breach of this Agreement.

13.3 **FUTURE REGULATORY REQUIREMENTS.** The Parties acknowledge and agree that this is an evolving technological area and therefore, laws and regulations regarding Services and use of Solution may change. Changes to existing Services or the Solution required to achieve regulatory compliance may be available for an additional fee. Any required changes may also impact the price for Services.

13.4. **ASSIGNMENTS AND SUBCONTRACTING.** Motorola may assign its rights or subcontract its obligations under this Agreement, or encumber or sell its rights in any Software, without prior notice to or consent of Licensee.

13.5. **GOVERNING LAW.** This Agreement is governed by the laws of the United States to the extent that they apply and otherwise by the internal substantive laws of the State to which the Software is shipped if Licensee is a sovereign government entity, or the internal substantive laws of the State of Illinois if Licensee is not a sovereign government entity. The terms of the U.N. Convention on Contracts for the International Sale of Goods do not apply. In the event that the Uniform Computer Information Transaction Act, any version of this Act, or a substantially similar law (collectively "UCITA") becomes applicable to a party's performance under this Agreement, UCITA does not govern any aspect of this Agreement or any license granted under this Agreement, or any of the parties' rights or obligations under this Agreement. The governing law will be that in effect prior to the applicability of UCITA.

13.6. **THIRD PARTY BENEFICIARIES.** This Agreement is entered into solely for the benefit of

Motorola and Licensee. No third party has the right to make any claim or assert any right under this Agreement, and no third party is deemed a beneficiary of this Agreement. Notwithstanding the foregoing, any licensor or supplier of third party software included in the Software will be a direct and intended third party beneficiary of this Agreement.

13.7. SURVIVAL. Sections 4, 5, 6.4, 7, 8, 9, 10, 11 and 13 survive the termination of this Agreement.

13.8. ORDER OF PRECEDENCE. In the event of inconsistencies between this Exhibit and the Primary Agreement, the parties agree that this Exhibit prevails, only with respect to the specific subject matter of this Exhibit, and not the Primary Agreement or any other exhibit as it applies to any other subject matter.

13.9. SECURITY. Motorola uses reasonable means in the design and writing of its own Software and the acquisition of third party Software to limit Security Vulnerabilities. While no software can be guaranteed to be free from Security Vulnerabilities, if a Security Vulnerability is discovered, Motorola will take the steps set forth in Section 6 of this Agreement.

Exhibit B PAYMENT

Except for a payment that is due on the Effective Date, Customer will make payments to Motorola within thirty (30) days after the date of each invoice. Customer will make payments when due in the form of a check, cashier's check, or wire transfer drawn on a U.S. financial institution. If Customer has purchased additional Professional or Subscription services, payment will be in accordance with the applicable addenda. Payment for the System purchase will be in accordance with the following milestones.

System Purchase (excluding Subscribers, if applicable)

1. 50% of the Contract Price due upon contract execution (due upon effective date);
2. 50% of the Contract Price due upon Final Acceptance

If Subscribers are purchased, 100% of the Subscriber Contract Price will be invoiced upon shipment (as shipped).

Motorola shall make partial shipments of equipment and will request payment upon shipment of such equipment. In addition, Motorola shall invoice for installations completed on a site-by-site basis or when professional services are completed, when applicable. The value of the equipment shipped/services performed will be determined by the value shipped/services performed as a percentage of the total milestone value. Unless otherwise specified, contract discounts are based upon all items proposed and overall system package. For invoicing purposes only, discounts will be applied proportionately to the FNE and Subscriber equipment values to total contract price. Overdue invoices will bear simple interest at the maximum allowable rate by state law.

For Lifecycle Support Plan and Subscription Based Services:

Motorola will invoice Customer annually in advance of each year of the plan.

The chart below outlines the hourly labor rates for Motorola System Integration resources to be used. The staffing requirements shall be multiplied by the appropriate rate per resource in the table below. The hourly labor rates are fully burdened. The hourly rates per resource type and level are listed in Table 1.

	Resource Types			
Levels	Project Management	System Engineering	System Technologist	Project Administration
4	\$ 290.00	\$ 300.00	\$ 280.00	\$ 200.00
3	\$ 240.00	\$ 250.00	\$ 240.00	\$ 180.00
2	\$ 220.00	\$ 220.00	\$ 220.00	\$ 170.00
1	\$ 190.00	\$ 210.00	\$ 210.00	\$ 160.00

Table 1 - Hourly Rates

These rates apply to ordinary days and times (Monday to Friday during the hours 8am to 5pm). Additional surcharges may apply to work done outside these timeframes. The minimum charge for any resource will be 4 hours. Travel expenses are not included in these rates and may be charged separately. The qualifications of each type and level of resource are defined in the tables found at

<https://www.motorolasolutions.com/content/dam/msi/secure/services/labor-rates-exhibit-160408.pdf>. All Motorola System Integration personnel assigned to this project will be classified according these levels. Project Administrative roles are varied and their specific duties and qualifications will be determined by the complexity and requirements of each project.

EXHIBIT D

System Acceptance Certificate

Customer Name: Town of Flower Mound____

Project Name: Console Add-On and Upgrade_____

This System Acceptance Certificate memorializes the occurrence of System Acceptance. Motorola and Customer acknowledge that:

1. The Acceptance Tests set forth in the Acceptance Test Plan have been successfully completed.
2. The System is accepted.

Customer Representative:

Motorola Representative:

Signature: _____
Print Name: _____
Title: _____
Date: _____

Signature: _____
Print Name: _____
Title: _____
Date: _____

FINAL PROJECT ACCEPTANCE:

Motorola has provided and Customer has received all deliverables, and Motorola has performed all other work required for Final Project Acceptance.

Customer Representative:

Motorola Representative:

Signature: _____
Print Name: _____
Title: _____
Date: _____

Signature: _____
Print Name: _____
Title: _____
Date: _____

Exhibit E

H-GAC Contract No. RA05-21

MOTOROLA GENERAL PROVISIONS

This Master Agreement is made and entered into, by and between the Houston-Galveston Area Council hereinafter referred to as H-GAC having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027 and Motorola Solutions, Inc., hereinafter referred to as the Contractor, having its principal place of business at 500 West Monroe Street, Chicago, IL 60661.

WITNESSETH:

WHEREAS, H-GAC hereby engages the Contractor to perform certain services in accordance with the specifications of the Master Agreement; and

WHEREAS, the Contractor has agreed to perform such services in accordance with the specifications of the Master Agreement;

NOW, THEREFORE, H-GAC and the Contractor do hereby agree as follows:

ARTICLE 1: LEGAL AUTHORITY

The Contractor warrants and assures H-GAC that it possesses adequate legal authority to enter into this Master Agreement. The Contractor's governing body, where applicable, has authorized the signatory official(s) to enter into this Master Agreement and bind the Contractor to the terms of this Master Agreement and any subsequent amendments hereto.

ARTICLE 2: APPLICABLE LAWS

The Contractor agrees to conduct all activities under this Master Agreement in accordance with all federal laws, executive orders, policies, procedures, applicable rules, regulations, directives, standards, ordinances, and laws, in effect or promulgated during the term of this Master Agreement, including without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Contractor shall furnish H-GAC with satisfactory proof of its compliance therewith.

ARTICLE 3: PUBLIC INFORMATION

Except as stated below, all materials submitted to H-GAC, including any attachments, appendices, or other information submitted as a part of a submission or Master Agreement, are considered public information, and become the property of H-GAC upon submission and may be reprinted, published, or distributed in any manner by H-GAC according to open records laws, requirements of the US Department of Labor and the State of Texas, and H-GAC policies and procedures. In the event the Contractor wishes to claim portions of the response are not subject to the Texas Public Information Act, it shall so; however, the determination of the Texas Attorney General as to whether such information must be disclosed upon a public request shall be binding on the Contractor. H-GAC will request such a determination only if Contractor bears all costs for preparation of the submission. H-GAC is not responsible for the return of creative examples of work submitted. H-GAC will not be held accountable if material from submissions is obtained without the written consent of the contractor by parties other than H-GAC, at any time during the evaluation process.

ARTICLE 4: INDEPENDENT CONTRACTOR

The execution of this Master Agreement and the rendering of services prescribed by this Master Agreement do not change the independent status of H-GAC or the Contractor. No provision of this Master Agreement or act of H-GAC in performance of the Master Agreement shall be construed as making the Contractor the agent, servant, or employee of H-GAC, the State of Texas, or the United States Government. Employees of the Contractor are subject to the exclusive control and supervision of the Contractor. The Contractor is solely responsible for employee related disputes and discrepancies, including employee payrolls and any claims arising therefrom.

ARTICLE 5: ANTI-COMPETITIVE BEHAVIOR

Contractor will not collude, in any manner, or engage in any practice which may restrict or eliminate competition or otherwise restrain trade.

ARTICLE 6: SUSPENSION AND DEBARMENT

Debarment and Suspension (Executive Orders 12549 and 12689) – A contract award (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 1966 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.

Pursuant to the Federal Rule above, Respondent certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency or by the State of Texas and at all times during the term of the Contract neither it nor its principals will be debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency or by the State of Texas Respondent shall immediately provide the written notice to H-GAC if at any time the Respondent learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. H-GAC may rely upon a certification of the Respondent that the Respondent is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless the H-GAC knows the certification is erroneous.

ARTICLE 7: GOAL FOR CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN’S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS (if subcontracts are to be let)

H-GAC’s goal is to assure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible in providing services under a contract. In accordance with federal procurements requirements of 2 CFR §200.321, if subcontracts are to be let, the prime contractor must take the affirmative steps listed below:

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 task 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.

Nothing in this provision will be construed to require the utilization of any firm that is either unqualified or unavailable. The Small Business Administration (SBA) is the primary reference and database for information on requirements related to Federal Subcontracting <https://www.sba.gov/federal-contracting/contracting-guide/prime-subcontracting>

NOTE: The term DBE as used in this solicitation is understood to encompass all programs/business enterprises such as: Small Disadvantaged Business (SDB), Historically Underutilized Business (HUB), Minority Owned Business Enterprise (MBE), Women Owned Business Enterprise (WBE) and Disabled Veteran Business Enterprise (DVBE) or other designation as issued by a certifying agency.

Contractor agrees to work with and assist HGACBuy customer in meeting any DBE targets and goals, as may be required by any rules, processes, or programs they might have in place. Assistance may include compliance with reporting requirements, provision of documentation, consideration of Certified/Listed subcontractors, provision of documented evidence that an active participatory role for a DBE entity was considered in a procurement transaction, etc.

ARTICLE 8: SCOPE OF SERVICES

The services to be performed by the Contractor are outlined in an Attachment to this Agreement.

ARTICLE 9: PERFORMANCE PERIOD

This Master Agreement shall be performed during the period which begins 08/01/21 and ends 07/31/23. All services under this Master Agreement must be rendered within this performance period, unless directly specified under a written change or extension provisioned under Article 21, which shall be fully executed by both parties to this Master Agreement.

ARTICLE 10: PAYMENT OR FUNDING

Payment provisions under this Master Agreement are outlined in the Special Provisions. H-GAC will not pay for any expenses incurred prior to the execution date of a contract, or any expenses incurred after the termination date of the contract.

ARTICLE 11: PAYMENT FOR WORK

The H-GAC Customer is responsible for making payment to the Contractor upon delivery and acceptance of the goods or completion of the services and submission of the subsequent invoice.

ARTICLE 12: PAYMENT TERMS/PRE-PAYMENT/QUANTITY DISCOUNTS

If discounts for accelerated payment, pre-payment, progress payment, or quantity discounts are offered, they must be clearly indicated in the Contractor's submission prior to contract award. The applicability or acceptance of these terms is at the discretion of the Customer.

ARTICLE 13: REPORTING REQUIREMENTS

If the Contractor fails to submit to H-GAC in a timely and satisfactory manner any report required by this Agreement, or otherwise fails to satisfactorily render performances hereunder, H-GAC may terminate this agreement with notice as identified in Article 29 of these General Provisions. H-GAC has final determination of the adequacy of performance and reporting by Contractor. Termination of this agreement for failure to perform may affect Contractor's ability to participate in future opportunities with H-GAC. The Contractor's failure to timely submit any report may also be considered cause for termination of this Agreement.

Any additional reporting requirements shall be set forth in the Special Provisions of this Agreement.

ARTICLE 14: INSURANCE

Contractor shall maintain insurance coverage for work performed or services rendered under this Master Agreement as outlined and defined in the attached Special Provisions.

ARTICLE 15: SUBCONTRACTS AND ASSIGNMENTS

Except as may be set forth in the Special Provisions, the Contractor agrees not to assign, transfer, convey, sublet, or otherwise dispose of this Master Agreement or any right, title, obligation, or interest it may have therein to any third party without prior written approval of H-GAC, which will not be unreasonably withheld. The Contractor acknowledges that H-GAC is not liable to any subcontractor or assignee of the Contractor. The Contractor shall ensure that the performance rendered under all subcontracts shall result in compliance with all the terms and provisions of this Master Agreement as if the performance rendered was rendered by the Contractor. Contractor shall give all required notices, and comply with all laws and regulations applicable to furnishing and performance of the work. Except where otherwise expressly required by applicable law or regulation, H-GAC shall not be responsible for monitoring Contractor's compliance, or that of Contractor's subcontractors, with any laws or regulations.

ARTICLE 16: AUDIT

Notwithstanding any other audit requirement, H-GAC reserves the right to conduct or cause to be conducted an independent audit of any transaction under this Master Agreement, such audit may be performed by the H-GAC local government audit staff, a certified public accountant firm, or other auditors designated by H-GAC and will be conducted in accordance with applicable professional standards and practices. The Contractor understands and agrees that the Contractor shall be liable to the H-GAC for any findings that result in monetary obligations to H-GAC.

In no circumstances will Contractor be required to create or maintain documents not kept in the ordinary course of its business operations, nor will Contractor be required to disclose any information, including but not limited to product cost data, which it considers confidential or proprietary.

ARTICLE 17: TAX EXEMPT STATUS

H-GAC and Customer members are either units of government or qualified non-profit agencies, and are generally exempt from Federal and State sales, excise or use taxes. Respondent must not include taxes in its Response. It is the responsibility of Contractor to determine the applicability of any taxes to an order and act accordingly. Exemption certificates will be provided upon request.

ARTICLE 18: EXAMINATION OF RECORDS

The Contractor shall maintain during the course of the work complete and accurate records of all of the Contractor's invoices and pertinent documentation of items which are chargeable to H-GAC under this Master Agreement. H-GAC, through its staff or designated public accounting firm, the State of Texas, and United States Government, shall have the right at any reasonable time to inspect, copy and audit those pertinent records on or off the premises by authorized representatives of its own or any public accounting firm selected by H-GAC. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. Failure to provide access to records may be cause for termination of the Master Agreement.

The Contractor further agrees that the examination of records outlined in this article shall be included in all subcontractor or third-party agreements.

ARTICLE 19: RETENTION OF RECORDS

The Contractor and its subcontractors shall maintain all records pertinent to this Master Agreement, for a period of seven (7) years from the later of the date of acceptance of the final payment or until all audit findings have been resolved. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the retention period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the seven (7) years, whichever is later, and until any outstanding litigation, audit, or claim has been fully resolved.

ARTICLE 20: DISTRIBUTORS, VENDORS, RESELLERS

Contractor agrees and acknowledges that any such designations of distributors, vendors, resellers or the like are for the convenience of the Contractor only and the awarded Contractor will remain responsible and liable for all obligations under the Contract and the performance of any designated distributor, vendor, reseller, etc. Contractor is also responsible for receiving and processing any Customer purchase order in accordance with the Contract and forwarding of the Purchase Order to the designated distributor, vendor, reseller, etc. to complete the sale or service. H-GAC reserves the right to reject any entity acting on the Contractor's behalf or refuse to add entities after a contract is awarded.

ARTICLE 21: CHANGE ORDERS AND AMENDMENTS

- A. Any alterations, additions, or deletions to the terms of this Master Agreement, which are required by changes in federal or state law or by regulations, are automatically incorporated without written amendment hereto, and shall become effective on the date designated by such law or by regulation.
- B. To ensure the legal and effective performance of this Master Agreement, both parties agree that any amendment that affects the performance under this Master Agreement must be mutually agreed upon and that all such amendments must be in writing. After a period of no less than 30 days subsequent to written notice, unless sooner implementation is required by law, such amendments shall have the effect of qualifying the terms of this Master Agreement and shall be binding upon the parties as if written herein.
- C. Customers have the right to issue a change order to any purchase orders issued to the Contractor for the purposes of clarification or inclusion of additional specifications, qualifications, conditions, etc. The change order must be in writing and agreed upon by Contractor and the Customer agency prior to issuance of any Change Order. A copy of the Change Order must be provided by the Contractor to, and acknowledged by, H-GAC.

ARTICLE 22: CONTRACT ITEM CHANGES

- A. If a manufacturer discontinues a contracted item, that item will automatically be considered deleted from the contract with no penalty to Contractor. However, H-GAC may at its sole discretion elect to make a contract award to the next lowest Respondent for the item, or take any other action deemed by H-GAC, at its sole discretion, to be in the best interests of its Customers.
- B. If a manufacturer makes any kind of change in a contracted item which affects the contract price, Contractor must advise H-GAC of the details. H-GAC may allow or reject the change at its sole discretion. If the change is rejected, H-GAC will remove the item from its program and there will be no penalty to Contractor. However, H-GAC may at its sole discretion elect to make a contract award to the next lowest Respondent for the item, or take any other action deemed by H-GAC, at its sole discretion, to be in the best interests of its Customers.
- C. If a manufacturer makes any change in a contracted item which does not affect the contract price, Contractor shall advise H-GAC of the details. If the 'new' item is equal to or better than the originally contracted item, the 'new' item shall be approved as a replacement. If the change is rejected H-GAC will remove the item from its program and there will be no penalty to Contractor. However, H-GAC may at its sole discretion elect to make a contract award to the next lowest Respondent for the item or may take any other action deemed by H-GAC at its sole discretion, to be in the best interests of its Customers.
- D. In the case of specifically identified catalogs or price sheets which have been contracted as base bid items or as published options, routine published changes to products and pricing will be automatically incorporated into the contract. However, Contractor must still provide thirty (30) calendar days written

notice and an explanation of the changes to products and pricing. H-GAC will respond with written approval.

ARTICLE 23: CONTRACT PRICE ADJUSTMENTS

Price Decreases

If Contractor's Direct Cost decreases at any time during the full term of this award, Contractor must immediately pass the decrease on to H-GAC and lower its prices by the amount of the decrease in Direct Cost. (Direct Cost means Contractor's cost from the manufacturer of any item or if Contractor is the manufacturer, the cost of raw materials required to manufacture the item, plus costs of transportation from manufacturer to Contractor and Contractor to H-GAC. Contractor must notify H-GAC of price decreases in the same way as for price increases set out below. The price decrease shall become effective upon H-GAC's receipt of Contractor's notice. If Contractor routinely offers discounted contract pricing, H-GAC may request Contractor accept amended contract pricing equivalent to the routinely discounted pricing

Price Increases

Contractors may request a price increase for items priced as Base Bid items and Published Options after twelve (12) months from the bid opening date of the bid received by H-GAC. The amount of any increase will not exceed actual documented increase in Contractor's Direct Cost and will not exceed 10% of the previous bid price. Considerations on the percentage limit will be given if the price increase is the result of increased tariff charges, or other economic factors.

Price Changes

Any permanent increase or decrease in offered pricing for a base contract item or published option is considered a price change. Temporary increases in pricing by whatever name (e.g. 'surcharge', 'adjustment', 'equalization charge', 'compliance charge', 'recovery charge', etc.), are also considered to be price changes. For published catalogs and price sheets as part of an H-GAC contract, requests to amend the contract to reflect any new published catalog or price sheet must be submitted whenever the manufacturer publishes a new document. The request must include the new catalog or price sheet.

All Products shall, at time of sale, be equipped as required under any then current applicable local, state, and federal government requirements. If, during the course of any contract, changes are made to any government requirements which cause a manufacturer's costs of production to increase, Contractor may increase pricing to the extent of Contractor's actual cost increase. The increase must be substantiated with support documentation acceptable to H-GAC prior to taking effect. Modifications to a Product required to comply with such requirements which become effective after the date of any sale are the responsibility of the Customer.

Requesting Price Increase/Required Documentation

Contractor must submit a written notification at least thirty (30) calendar days prior to the requested effective date of the change, setting the amount of the increase, along with an itemized list of any increased prices, showing the Contractor's current price, revised price, the actual dollar difference and the percentage of the price increase by line item. Price change requests must include H-GAC Forms D Offered Item Pricing and E Options Pricing, or the documentation used to submit pricing in the original Response and be supported with substantive documentation (e.g. manufacturer's price increase notices, copies of invoices from suppliers, etc.) clearly showing that Contractor's actual costs have increased per the applicable line-item bid. The Producer Price Index (PPI) may be used as partial justification, subject to approval by H-GAC, but no price increase based solely on an increase in the PPI will be allowed. This documentation should be submitted in Excel format to facilitate analysis and updating of the website. The letter and documentation must be sent to the Bids and Specifications manager, William Burton, at William.Burton@h-gac.com

Review/Approval of Requests

If H-GAC approves the price increase, Contractor will be notified in writing; no price increase will be effective until Contractor receives this notice. If H-GAC does not approve Contractor's price increase, Contractor may terminate its performance upon sixty (60) days advance written notice to H-GAC, however Contractor must fulfill any outstanding Purchase Orders. Termination of performance is Contractor's only remedy if H-GAC does not approve the price increase. H-GAC reserves the right to accept or reject any price change request.

ARTICLE 24: DELIVERIES AND SHIPPING TERMS

The Contractor agrees to make deliveries only upon receipt of authorized Customer Purchase Order acknowledged by H-GAC. Delivery made without such Purchase Order will be at Contractor's risk and will leave H-GAC the option of canceling any contract awarded to the Contractor. The Contractor must secure and deliver any item within five (5) working days, or as agreed to on any corresponding customer Purchase Order.

Shipping must be Freight On Board Destination to the delivery location designated on the Customer purchase order. The Contractor will retain title and control of all goods until delivery is completed and the Customer has accepted the delivery. All risk of transportation and all related charges are the responsibility of the Contractor. The Customer will notify the Contractor and H-GAC promptly of any damaged goods and will assist the Contractor in arranging for inspection. The Contractor must file all claims for visible or concealed damage. Unless otherwise stated in the Master Agreement, deliveries must consist only of new and unused merchandise.

ARTICLE 25: RESTOCKING (EXCHANGES AND RETURNS)

There will be no restocking charge to the Customer for return or exchange of any item purchased under the terms of any award. If the Customer wishes to return items purchased under an awarded contract, the Contractor agrees to exchange, these items for other items, with no additional charge incurred. Items must be returned to Contractor within thirty (30) days from date of delivery. If there is a difference in price in the items exchanged, the Contractor must notify H-GAC and invoice Customer for increase price or provide the Customer with a credit or refund for any decrease in price per Customer's preference. On items returned, a credit or cash refund will be issued by the Contractor to Customer. This return and exchange option will extend for thirty (30) days following the expiration of the term of the Contract. All items returned by the Customer must be unused and in the same merchantable condition as when received. Items that are special ordered may be returned only upon approval of the Contractor.

ARTICLE 26: MANUALS

Each product delivered under contract to any Customer must be delivered with at least one (1) copy of a safety and operating manual and any other technical or maintenance manual. The cost of the manual(s) must be included in the price for the Product offered.

ARTICLE 27: OUT OF STOCK, PRODUCT RECALLS, AND DISCONTINUED PRODUCTS

H-GAC does NOT purchase the products sold pursuant to a Solicitation or Master Agreement. Contractor is responsible for ensuring that notices and mailings, such as Out of Stock or Discontinued Notices, Safety Alerts, Safety Recall Notices, and customer surveys, are sent directly to the Customer with a copy sent to H-GAC. Customer will have the option of accepting any equivalent product or canceling the item from Customer's Purchase Order. Contractor is not authorized to make substitutions without prior Customer approval.

ARTICLE 28: WARRANTIES, SALES, AND SERVICE

Warranties must be the manufacturer's standard and inclusive of any other warranty requirements stated in the Master Agreement; any warranties offered by a dealer will be in addition to the manufacturer's standard warranty and will not be a substitute for such. Pricing for any product must be inclusive of the standard warranty.

Contractor is responsible for the execution and effectiveness of all product warranty requests and any claims, Contractor agrees to respond directly to correct warranty claims and to ensure reconciliation of warranty claims that have been assigned to a third party.

ARTICLE 29: TERMINATION PROCEDURES

The Contractor acknowledges that this Master Agreement may be terminated for Convenience or Default. H-GAC will not pay for any expenses incurred after the termination date of the contract.

A. Convenience

H-GAC may terminate this Master Agreement at any time, in whole or in part, with or without cause, whenever H-GAC determines that for any reason such termination is in the best interest of H-GAC, by providing thirty (30) days written notice by certified mail to the Contractor. Upon receipt of notice of termination, all services hereunder of the Contractor and its employees and subcontractors shall cease to the extent specified in the notice of termination.

The Contractor may cancel or terminate this Master Agreement upon submission of thirty (30) days written notice, presented to H-GAC via certified mail. The Contractor may not give notice of cancellation after it has received notice of default from H-GAC.

B. Default

H-GAC may, by written notice of default to the Contractor, terminate the whole or any part of the Master Agreement, in any one of the following circumstances:

- (1) If the Contractor fails to perform the services herein specified within the time specified herein or any extension thereof; or
- (2) If the Contractor fails to perform any of the other provisions of this Agreement for any reason whatsoever, or so fails to make progress or otherwise violates the Agreements that completion of services herein specified within the Agreement term is significantly endangered, and in either of these two instances does not cure such failure within a period of fifteen (15) days (or such longer period of time as may be authorized by H-GAC in writing) after receiving written notice by certified mail of default from H-GAC.
- (3) In the event of such termination, Contractor will notify H-GAC of any outstanding Purchase Orders and H-GAC will consult with the End User and notify the Contractor to what extent the End User wishes the Contractor to complete the Purchase Order. If Contractor is unable to do so, Contractor may be subject to a claim for damages from H-GAC and/or the End User.

ARTICLE 30: SEVERABILITY

H-GAC and Contractor agree that should any provision of this Master Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Master Agreement, which shall continue in full force and effect.

ARTICLE 31: FORCE MAJEURE

To the extent that either party to this Master Agreement shall be wholly or partially prevented from the performance of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed. The party affected by the Force Majeure will notify the other within fifteen (15) days. Determination of force majeure shall rest solely with H-GAC.

ARTICLE 32: CONFLICT OF INTEREST

No officer, member or employee of the Contractor or Contractors subcontractor, no member of the governing body of the Contractor, and no other public officials of the Contractor who exercise any functions or responsibilities in the review or Contractor approval of this Master Agreement, shall participate in any decision relating to this Master Agreement which affects his or her personal interest, or shall have any personal or pecuniary interest, direct or indirect, in this Master Agreement.

- A. **Conflict of Interest Questionnaire:** Chapter 176 of the Texas Local Government Code requires contractors contracting or seeking to contract with H-GAC to file a conflict-of-interest questionnaire (CIQ) if they have an employment or other business relationship with an H-GAC officer or an officer's close family member. The required questionnaire and instructions are located on the H-GAC website or at the Texas Ethics Commission website <https://www.ethics.state.tx.us/forms/CIQ.pdf>. H-GAC officers include its Board of Directors and Executive Director, who are listed on this website. Respondent must complete and file a CIQ with the Texas Ethics Commission if an employment or business relationship with H-GAC office or an officer's close family member as defined in the law exists.
- B. **Certificate of Interested Parties Form – Form 1295:** As required by Section 2252.908 of the Texas Government Code. H-GAC will not enter a Contract with Contractor unless (i) the Contractor submits a disclosure of interested parties form to H-GAC at the time the Contractor submits the contract H-GAC, or (ii) the Contractor is exempt from such requirement. The required form and instructions are located at the Texas Ethics Commission website https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm. Respondents who are awarded a Contract must submit their Form 1295 with the signed Contract to H-GAC.

ARTICLE 33: FEDERAL COMPLIANCE

Contractor agrees to comply with all applicable federal statutes relating to nondiscrimination, labor standards, and environmental compliance. With regards to "Rights to Inventions Made Under a Contract or Master Agreement," If the Federal award meets the definition of "funding Master Agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding Master Agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Master Agreements," and any implementing regulations issued by the awarding agency. Contractor agrees to be wholly compliant with the provisions of 2 CFR 200, Appendix II. Additionally, for work to be performed under the Master Agreement or subcontract thereof, including procurement of materials or leases of equipment, Contractor shall notify each potential subcontractor or supplier of the Contractor's federal compliance obligations. These may include, but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) the Fair Labor Standards Act of 1938 (29 USC 676 et. seq.), (d) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps and the Americans with Disabilities Act of 1990; (e) the Age Discrimination in Employment Act of 1967 (29 USC 621 et. seq.) and the Age Discrimination Act of 1974, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (f) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (g) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (h) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (i) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (j) any other nondiscrimination provisions in any specific statute(s) applicable to any Federal funding for this Master Agreement; (k) the requirements of any other nondiscrimination statute(s) which may apply to this Master

Agreement; (l) applicable provisions of the Clean Air Act (42 U.S.C. §7401 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251 et seq.), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and the Environmental Protection Agency regulations at 40 CFR Part 15; (m) applicable provisions of the Davis- Bacon Act (40 U.S.C. 276a - 276a-7), the Copeland Act (40 U.S.C. 276c), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332), as set forth in Department of Labor Regulations at 20 CFR 5.5a; (n) the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

ARTICLE 34: PROHIBITION ON CONTRACTING WITH ENTITIES USING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE EQUIPMENT (EFFECTIVE AUG. 13, 2020 AND AS AMENDED OCTOBER 26, 2020)

Pursuant to 2 CFR 200.216, Contractor shall not offer equipment, services, or system that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Covered telecommunications equipment or services means 1) telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); 2) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); 3) telecommunications or video surveillance services provided by such entities or using such equipment; or 4) telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. Respondent must comply with requirements for certifications. The provision at 48 C.F.R Section 52.204-26 requires that offerors review SAM prior to completing their required representations. This rule applies to all acquisitions, including acquisitions at or below the simplified acquisition threshold and to acquisitions of commercial items, including commercially available off the-shelf items.

ARTICLE 35: DOMESTIC PREFERENCE

In accordance with 2 CFR 200.322, as appropriate and to the extent consistent with law, when using federal grant award funds H-GAC should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). H-GAC must include this requirement in all subawards including all contracts and purchase orders for work or products under the federal grant award. If Contractor intends to qualify for Purchase Orders using federal grant money, then it shall work with H-GAC to provide all required certifications and other documentation needed to show compliance.

ARTICLE 36: CRIMINAL PROVISIONS AND SANCTIONS

The Contractor agrees to perform the Master Agreement in conformance with safeguards against fraud and abuse as set forth by the H-GAC, the State of Texas, and the acts and regulations of any related state or federal agency. The Contractor agrees to promptly notify H-GAC of any actual or suspected fraud, abuse, or other criminal activity through the filing of a written report within twenty-four (24) hours of knowledge thereof. Contractor shall notify H-GAC of any serious accident or incident requiring medical attention arising from its activities under this Master Agreement within twenty-four (24) hours of such occurrence. Theft or willful damage to property on loan to the Contractor from H-GAC, if any, shall be reported to local law enforcement agencies and H-GAC within two (2) hours of discovery of any such act.

The Contractor further agrees to cooperate fully with H-GAC, local law enforcement agencies, the State of Texas, the Federal Bureau of Investigation, and any other duly authorized investigative unit, in carrying out a full investigation of all such incidents.

The Contractor shall notify H-GAC of the threat of lawsuit or of any actual suit filed against the Contractor pertaining to this Master Agreement or which would adversely affect the Contractor's ability to perform services under this Master Agreement.

ARTICLE 37: INDEMNIFICATION AND RECOVERY

H-GAC's liability under this Master Agreement, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, is limited to its order processing charge. In no event will H-GAC be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits, or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. Contractor agrees, to the extent permitted by law, to defend and hold harmless H-GAC, its board members, officers, agents, officials, employees, and indemnities from any and all claims, costs, expenses (including reasonable attorney fees), actions, causes of action, judgements, and liens arising as a result of Contractor's negligent act or omission under this Master Agreement. Contractor shall notify H-GAC of the threat of lawsuit or of any actual suit filed against Contractor relating to this Master Agreement.

ARTICLE 38: LIMITATION OF CONTRACTOR'S LIABILITY

Except as specified in any separate writing between the Contractor and an END USER, Contractor's total liability under this Master Agreement, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, but excluding its obligation to indemnify H-GAC, is limited to the price of the particular products/services sold hereunder, and Contractor agrees either to refund the purchase price or to repair or replace product(s) that are not as warranted. In no event will Contractor be liable for any loss of use, loss of time, inconvenience, commercial loss, loss of profits or savings or other incidental, special, or consequential damages to the full extent such use may be disclaimed by law. Contractor understands and agrees that it shall be liable to repay and shall repay upon demand to END USER any amounts determined by H-GAC, its independent auditors, or any agency of State or Federal government to have been paid in violation of the terms of this Master Agreement.

ARTICLE 39: TITLES NOT RESTRICTIVE

The titles assigned to the various Articles of this Master Agreement are for convenience only. Titles shall not be considered restrictive of the subject matter of any Article, or part of this Master Agreement.

ARTICLE 40: JOINT WORK PRODUCT

This Master Agreement is the joint work product of H-GAC and the Contractor. This Master Agreement has been negotiated by H-GAC and the Contractor and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against any party.

ARTICLE 41: PROCUREMENT OF RECOVERED MATERIAL

H-GAC and the Respondent 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: (1) 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; (2) procuring solid waste management services in a manner that maximizes energy and resource recovery; and (3) establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Pursuant to the Federal Rule above, as required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6962(c)(3)(A)(i)), Respondent certifies that the percentage of recovered materials content for EPA-designated items to be delivered or used in the performance of the Contract will be at least the amount required by the applicable contract specifications or other contractual requirements.

ARTICLE 42: COPELAND “ANTI-KICKBACK” ACT

Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into the contract. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as appropriate agency instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses. A breach of the contract clauses above may be grounds for termination of the Contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

ARTICLE 43: DISCRIMINATION

Respondent and any potential subcontractors shall comply with all Federal statutes relating to nondiscrimination. These include, but are not limited to:

- a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color, or national origin;
- b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex;
- c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps;
- d) The Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101- 6107), which prohibits discrimination on the basis of age;
- e) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
- f) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- g) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing;
- i) Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and
- j) The requirements of any other nondiscrimination statute(s) that may apply to the application.

ARTICLE 44: DRUG FREE WORKPLACE

Contractor must provide a drug-free workplace in accordance with the Drug-Free Workplace Act, as applicable. For the purposes of this Section, “drug-free” means a worksite at which employees are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance. H-GAC may request a copy of this policy.

ARTICLE 45: APPLICABILITY TO SUBCONTRACTORS

Respondent agrees that all contracts it awards pursuant to the contract awarded as a result of this Master Agreement will be bound by the foregoing terms and conditions.

ARTICLE 46: WARRANTY AND COPYRIGHT

Submissions must include all warranty information, including items covered, items excluded, duration, and renewability. Submissions must include proof of licensing if using third party code for programming.

ARTICLE 47: DATA HANDLING AND SECURITY

Unless otherwise agreed upon between Contractor and the End User, it will always be the responsibility of the selected Contractor to manage data transfer and to secure all data appropriately during the project to prevent

unauthorized access to all data, products, and deliverables.

ARTICLE 48: DISPUTES

All disputes concerning questions of fact or of law arising under this Master Agreement, which are not addressed within the Whole Master Agreement as defined pursuant to Article 4 hereof, shall be decided by the Executive Director of H-GAC or his designee, who shall reduce his decision to writing and provide notice thereof to the Contractor. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such notice, the Contractor requests a rehearing from the Executive Director of H-GAC. In connection with any rehearing under this Article, the Contractor shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. The Contractor may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Master Agreement and in accordance with H-GAC's final decision.

ARTICLE 49: CHOICE OF LAW: VENUE

This Master Agreement shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with the Master Agreement shall lie exclusively in Harris County, Texas. Disputes between END USER and Contractor are to be resolved in accordance with the law and venue rules of the state of purchase. Contractor shall immediately notify H-GAC of such disputes.

ARTICLE 50: ORDER OF PRIORITY

In the case of any conflict between or within this Master Agreement, the following order of priority shall be utilized: 1) General Provisions, 2) Special Provisions, 3) Scope of Work, and 4) Other Attachments.

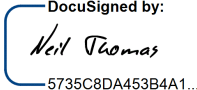
ARTICLE 51: WHOLE MASTER AGREEMENT

Please note, this is an H-GAC Master Agreement template and is used for all products and services offered in H-GAC Cooperative Purchasing. Any redlines to this Master Agreement may not be reviewed. If this Master Agreement has not been signed by the Contractor within 30 calendar days, this Master Agreement will be automatically voided. The Master General Provisions, Master Special Provisions, and Attachments, as provided herein, constitute the complete Master Agreement between the parties hereto, and supersede any and all oral and written Master Agreements between the parties relating to matters herein. Except as otherwise provided herein, this Master Agreement cannot be modified without written consent of the parties.

SIGNATURES:

H-GAC and the Contractor have read, agreed, and executed the whole Master Agreement as of the date first written above, as accepted by:

Motorola Solutions, Inc.

Signature  5735C8DA453B4A1...

Name Neil Thomas

Title Vice President, Western Region

Date 9/28/2021

H-GAC

Signature  82EC270D5D61423...

Name Chuck Wemple

Title Executive Director

Date 9/27/2021

MOTOROLA SPECIAL PROVISIONS

Please note, this is an H-GAC Master Agreement template and is used for all products and services offered in H-GAC Cooperative Purchasing. Any redlines to this Master Agreement may not be reviewed. Incorporated by attachment, as part of the whole Master Agreement, H-GAC and the Contractor do, hereby agree to the Master Special Provisions as follows:

ARTICLE 1: BIDS/PROPOSALS INCORPORATED

In addition to the whole Master Agreement, the following documents listed in order of priority are incorporated into the Master Agreement by reference: Bid/Proposal Specifications and Contractor's Response to the Bid/Proposal.

ARTICLE 2: END USER AGREEMENTS ("EUA")

H-GAC acknowledges that the END USER may choose to enter into an End User Master Agreement (EUA) with the Contractor through this Master Agreement, and that the term of the EUA may exceed the term of the current H-GAC Master Agreement. H-GAC's acknowledgement is not an endorsement or approval of the End User Master Agreement's terms and conditions. Contractor agrees not to offer, agree to or accept from the END USER, any terms or conditions that conflict with those in Contractor's Master Agreement with H-GAC. Contractor affirms that termination of its Master Agreement with H-GAC for any reason shall not result in the termination of any underlying EUA, which shall in each instance, continue pursuant to the EUA's stated terms and duration. Pursuant to the terms of this Master Agreement, termination of this Master Agreement will disallow the Contractor from entering into any new EUA with END USERS. Applicable H-GAC order processing charges will be due and payable to H-GAC on any EUAs, surviving termination of this Master Agreement between H-GAC and Contractor.

ARTICLE 3: MOST FAVORED CUSTOMER CLAUSE

Contractor shall provide its most favorable pricing and terms to H-GAC. If at any time during this Master Agreement, Contractor develops a regularly followed standard procedure of entering into Master Agreements with other governmental customers within the State of Texas, and offers the same or substantially the same products/services offered to H-GAC on a basis that provides prices, warranties, benefits, and or terms more favorable than those provided to H-GAC, Contractor shall notify H-GAC within ten (10) business days thereafter, and this Master Agreement shall be deemed to be automatically retroactively amended, to the effective date of Contractor's most favorable past Master Agreement with another entity. Contractor shall provide the same prices, warranties, benefits, or terms to H-GAC and its END USER as provided in its most favorable past Master Agreement. H-GAC shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null and void. If Contractor claims that a more favorable price, warranty, benefit, or term that was charged or offered to another entity during the term of this Master Agreement, does not constitute more favorable treatment, than Contractor shall, within ten (10) business days, notify H-GAC in writing, setting forth the detailed reasons Contractor believes the aforesaid offer is not in fact most favored treatment. H-GAC, after due consideration of Contractor's written explanation, may decline to accept such explanation and thereupon this Master Agreement between H-GAC and Contractor shall be automatically amended, effective retroactively, to the effective date of the most favored Master Agreement, to

provide the same prices, warranties, benefits, or terms to H-GAC and the END USER. This clause shall not be applicable to prices and price adjustments offered by a bidder, proposer, or contractor, which are not within bidder's/proposer's control [example; a manufacturer's bid concession], or to any prices offered to the Federal Government and its agencies

EXCEPTION: *This clause shall not be applicable to the sale of large communications systems (one million dollars (\$1,000,000.00) and above). The term "Communication Systems" shall refer to a project that includes the sale of infrastructure hardware and/or software, user devices, and Contractor engineering and installation service. The contract for a "Communication System" will always have a Statement of Work and an Acceptance Test Plan. This clause shall also not be applicable to pre-existing contracts Contractor has in the State of Texas. The term "pre-existing" shall refer to contracts in existence as of the effective date of this Agreement.*

ARTICLE 4: PARTY LIABILITY

Contractor's total liability under this Master Agreement, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, is limited to the price of the particular products/services sold hereunder. Contractor agrees either to refund the purchase price or to repair or replace product(s) that are not as warranted. Contractor accepts liability to repay, and shall repay upon demand to END USER, any amounts determined by H-GAC, its independent auditors, or any state or federal agency, to have been paid in violation of the terms of this Master Agreement.

ARTICLE 5: GOVERNING LAW & VENUE

Contractor and H-GAC agree that Contractor will make every reasonable effort to resolve disputes with the END USER in accord with the law and venue rules of the state of purchase. Contractor shall immediately notify H-GAC of such disputes.

ARTICLE 6: SALES AND ORDER PROCESSING CHARGE

Contractor shall sell its products to END USERS based on the pricing and terms of this Master Agreement. H-GAC will invoice Contractor for the applicable order processing charge, which is listed and detailed in the attached "Addendum A" to this contract, when H-GAC receives notification of an END USER order. Contractor shall remit to H-GAC the full amount of the applicable order processing charge, after delivery of any product or service and subsequent END USER acceptance. Payment of the Order Processing Charge shall be remitted from Contractor to H-GAC, within thirty (30) calendar days or ten (10) business days after receipt of an END USER's payment, whichever comes first, notwithstanding Contractor's receipt of invoice. For sales made by Contractor based on this Master Agreement, including sales to entities without Interlocal Master Agreements, Contractor shall pay the applicable order processing charges to H-GAC. Further, Contractor agrees to encourage entities who are not members of H-GAC's Cooperative Purchasing Program to execute an H-GAC Interlocal Master Agreement. H-GAC reserves the right to take appropriate actions including, but not limited to, Master Agreement termination if Contractor fails to promptly remit the appropriate order processing charge to H-GAC. In no event shall H-GAC have any liability to Contractor for any goods or services an END USER procures from Contractor. At all times, Contractor shall remain liable to pay to H-GAC any order processing charges on any portion of the Master Agreement actually performed, and for which compensation was received by Contractor.

ARTICLE 7: LIQUIDATED DAMAGES

Any liquidated damage terms will be determined between Contractor and END USER at the time an END USER purchase order is placed.

ARTICLE 8: INSURANCE

Unless otherwise stipulated in Section B of the Bid/Proposal Specifications, Contractor must have the following insurance and coverage:

- a. General liability insurance with a Single Occurrence limit of \$1,000,000.00, and a General Aggregate limit of two times the Single Occurrence limit, including:
 - i. Product liability insurance with a Single Occurrence limit of \$1,000,000.00, and a General Aggregate limit of two times the Single Occurrence limit for all Products except Automotive Fire Apparatus. For Automotive Fire Apparatus, see Section B of the Bid/Proposal Specifications.
- b. Property Damage or Destruction insurance is required for coverage of End User owned equipment while in Contractor's possession, custody, or control. The Single Occurrence limit is \$500,000.00 and the General Aggregate limit must be two times the Single Occurrence limit. This insurance may be carried in several ways, e.g. under an Inland Marine policy, as part of Automobile coverage, or under a Garage Keepers policy. In any event, this coverage must be specifically and clearly listed on insurance certificate(s) submitted to H-GAC.
- c. Insurance coverage shall be in effect for the length of any contract made pursuant to the Bid/Proposal, and for any extensions thereof, plus the number of days/months required to deliver any outstanding order after the close of the contract period.
- d. PDF Insurance Certificates must be furnished to H-GAC after contract execution and at policy renewal during term of contract, showing Contractor as the insured and showing coverage and limits for the insurances listed above.
- e. If any Product(s) or Service(s) will be provided by parties other than Contractor, all such parties are required to carry the insurance coverages specified herein, and if requested by H-GAC, a separate insurance certificate must be submitted for each such party.
- f. H-GAC reserves the right to contact insurance underwriters to confirm policy and certificate issuance and document accuracy.

ARTICLE 9: PERFORMANCE AND PAYMENT BONDS FOR INDIVIDUAL ORDERS

H-GAC's contractual requirements DO NOT include a Performance & Payment Bond (PPB); therefore, Contractor shall offer pricing that reflects this cost savings. Contractor shall remain prepared to offer a PPB to cover any order if so requested by the END USER. Contractor shall quote a price to END USER for provision of any requested PPB, and agrees to furnish the PPB within ten business (10) days of receipt of END USER's purchase order.

ARTICLE 10: ORDER PROCESSING CHARGE

H-GAC will apply an Order Processing Charge, listed in Addendum A to this contract, for each sale done through the H-GAC contract, with the exception of orders for motor vehicles. Any pricing submitted must include this charge amount per the most current H-GAC schedule. For motor vehicle orders, the Processing Charge is paid by the Customer.

ARTICLE 11: CHANGE OF STATUS

Contractor shall immediately notify H-GAC, in writing, of ANY change in ownership, control, dealership/franchisee status, Motor Vehicle license status, or name. Contractor shall offer written

guidance to advise H-GAC if this Master Agreement shall be affected in any way by such change. H-GAC shall have the right to determine whether or not such change is acceptable, and to determine what action shall be warranted, up to and including cancellation of Master Agreement.

ARTICLE 12: REQUIREMENTS TO APPLICABLE PHYSICAL GOODS

In the case of physical goods (e.g. equipment, material, supplies, as opposed to services), all Products offered must comply with any applicable provisions of the Texas Business and Commerce Code, Title 1, Chapter 2 and with at least the following:

- a. Be new, unused, and not refurbished.
- b. Not be a prototype as the general design, operation and performance. This requirement is NOT meant to preclude the Contractor from offering new models or configurations which incorporate improvements in a current design or add functionality, but in which new model or configuration may be new to the marketplace.
- c. Include all accessories which may or may not be specifically mentioned in the Master Agreement, but which are normally furnished or necessary to make the Product ready for its intended use upon delivery. Such accessories shall be assembled, installed and adjusted to allow continuous operation of Product at time of delivery.
- d. Have assemblies, sub-assemblies and component parts that are standard and interchangeable throughout the entire quantity of a Product as may be purchased simultaneously by any Customer.
- e. Be designed and constructed using current industry accepted engineering and safety practices, and materials.
- f. Be available for inspection at any time prior to or after procurement.

ARTICLE 13: TEXAS MOTOR VEHICLE BOARD LICENSING

All Contractors that deal in motor vehicles shall maintain current licenses that are required by the Texas Motor Vehicle Commission Code. If at any time during this Master Agreement term, any required Contractor license is denied, revoked, or not renewed, Contractor shall be in default of this Master Agreement, unless the Texas Motor Vehicle Board issues a stay or waiver. Contractor shall promptly provide copies of all current applicable Texas Motor Vehicle Board documentation to H-GAC upon request.

ARTICLE 14: INSPECTION/TESTING

All Products sold pursuant to this Master Agreement will be subject to inspection/testing by or at the direction of H-GAC and/or the ordering Customer, either at the delivery destination or the place of manufacture. In the event a Product fails to meet or exceed all requirements of this Master Agreement, and unless otherwise agreed in advance, the cost of any inspection and/or testing, will be the responsibility of the Contractor.

ARTICLE 15: ADDITIONAL REPORTING REQUIREMENTS

Contractor agrees to submit written quarterly reports to H-GAC detailing all transactions during the previous three (3) month period. Reports must include, but are not limited, to the following information:

- a. Customer Name
- b. Product/Service purchased, including Product Code if applicable
- c. Customer Purchase Order Number
- d. Purchase Order Date
- e. Product/Service dollar amount

f. HGACBuy Order Processing Charge amount

ARTICLE 16: BACKGROUND CHECKS

Cooperative customers may request background checks on any awarded contractor's employees who will have direct contact with students, or for any other reason they so choose, any may require contractor to pay the cost of obtaining any background information requested by the Customer.

ARTICLE 17: PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL CERTIFICATION

As required by Chapter 2271 of the Texas Local Government Code the Contractor must verify that it 1) does not boycott Israel; and 2) will not boycott Israel during the term of the Contract. Pursuant to Section 2271.001, Texas Government Code:

1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and

2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.

ARTICLE 18: NO EXCLUDED NATION OR TERRORIST ORGANIZATION CERTIFICATION

As required by Chapter 2252 of the Texas Government Code the Contractor must certify that it is not a company engaged in active business operations with Sudan, Iran, or a foreign terrorist organization – specifically, any company identified on a list prepared and maintained by the Texas Comptroller under Texas Government Code §§806.051, 807.051, or 2252.153. (A company that the U.S. Government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, Iran, or any federal sanctions regime relating to a foreign terrorist organization is not subject to the contract prohibition.)

ARTICLE 19: BUY AMERICA ACT (National School Lunch Program and Breakfast Program)

With respect to products purchased by Customers for use in the National School Lunch Program and/or National School Breakfast Program, Contractor shall comply with all federal procurement laws and regulations with respect to such programs, including the Buy American provisions set forth in 7 C.F.R. Part 210.21(d), to the extent applicable. Contractor agrees to provide all certifications required by Customer regarding such programs.

In the event Contractor or Contractor's supplier(s) are unable or unwilling to certify compliance with the Buy American Provision, or the applicability of an exception to the Buy American provision, H-GAC Customers may decide not to purchase from Contractor. Additionally, H-GAC Customers may require country of origin on all products and invoices submitted for payment by Contractor, and Contractor agrees to comply with any such requirement.

ARTICLE 20: BUY AMERICA REQUIREMENT (Applies only to Federally Funded Highway and Transit Projects)

With respect to products purchased by Customer for use in federally funded highway projects, Contractor shall comply with all federal procurement laws and regulations with respect to such projects, including the Buy American provisions set forth in 23 U.S.C. Section 313, 23 C.F.R. Section 635.410, as amended, and the Steel and Iron Preference provisions of Texas Transportation Code Section 223.045, to the extent applicable. Contractor agrees to provide all certifications required by Customer regarding such programs. With respect to products purchased by Customer for use in federally funded transit projects, Contractor shall comply with all federal procurement laws and regulations with respect to such projects, including the Buy American provisions set forth in 49 U.S.C. Section 5323(j)(1), 49 C.F.R. Sections 661.6 or 661.12, to the extent applicable. Contractor agrees to provide all certifications required by Customer regarding such programs. Contractor agrees that the provisions in this Article may be applicable in an End User Agreement.

ARTICLE 21: TITLE VI REQUIREMENTS

H-GAC in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this Master Agreement and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

ARTICLE 22: EQUAL EMPLOYMENT OPPORTUNITY

Except as otherwise provided under 41 CFR Part 60, all Contracts and Customer Purchase Orders that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 shall be deemed to include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., pg.339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

The equal opportunity clause provided under 41 CFR 60-1.4(b) is hereby incorporated by reference. Contractor agrees that such provision applies to any contract that meets the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 and agrees that it will comply with such provision.

ARTICLE 23: CLEAN AIR AND WATER POLLUTION CONTROL ACT

Customer Purchase Orders using federal funds must contain a provision that requires the Contractor 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 Federal Rule above, Contractor certifies that it is in compliance with all applicable provisions of 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) and will remain in compliance during the term of the Contract.

ARTICLE 24: PREVAILING WAGE

Contractor and any potential subcontractors have a duty to and shall pay the prevailing wage rate under the Davis-Bacon Act, 40 U.S.C. 276a – 276a-5, as amended, and the regulations adopted thereunder contained in 29 C.F.R. pt. 1 and 5.

ARTICLE 25: CONTRACT WORK HOURS AND SAFETY STANDARDS

As per the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), where applicable, all Customer Purchase Orders 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.

ARTICLE 26: PROFIT AS A SEPARATE ELEMENT OF PRICE

For purchases using federal funds in excess of \$150,000, a Customer may be required to negotiate profit as a separate element of the price. See, 2 CFR 200.323(b). Contractor agrees to provide information and negotiate with the Customer regarding profit as a separate element of the price for the purchase. Contractor also agrees that the total price, including profit, charged by Contractor to Customer will not exceed the awarded pricing, including any applicable discount, under any awarded contract. Contractor agrees that the provisions in this Article may be applicable in an End User Agreement.

ARTICLE 27: BYRD ANTI-LOBBYING AMENDMENT

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) – Contractors that apply or bid for an award exceeding \$100,000 must file the required anti-lobbying certification. Each tier must certify 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 Customer. As applicable, Contractor agrees to file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 USC 1352). Contractor certifies that it is currently in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) and will continue to be in compliance throughout the term of the Contract and further certifies that:

1. No Federal appropriated funds have been paid or will be paid by or on behalf of the Contractor, 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 Master Agreement, and the extension,

continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative Master 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 a Member of Congress in connection with a Federal contract, grant, loan, or cooperative Master Agreement, Contractor shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.
3. Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative Master Agreements) and that all subcontractors shall certify and disclose accordingly.

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

ARTICLE 28: COMPLIANCE WITH EPA REGULATIONS APPLICABLE TO GRANTS, SUBGRANTS, COOPERATIVE MASTER AGREEMENTS, AND CONTRACTS

Contractor agrees to comply with all applicable standards, orders, regulations, and/or requirements issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act, as amended (13 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR Part 15.

ARTICLE 29: COMPLIANCE WITH ENERGY POLICY AND CONSERVATION ACT

Contractor agrees to comply with applicable mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

Addendum A- Applicable Order Processing Charge

Excerpt from page 6 of RFP #RA05-21:

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5. Dealer/Reseller as Respondent

If the Respondent is a dealer or reseller of the products and/or services being proposed, the response will be evaluated based on the Respondent's authorization to provide those products and services from their manufacturer.

6. Approval by Manufacturer

Any awarded contractor must be approved by the manufacturer to sell, install, and service the brand of equipment submitted. Respondents to this solicitation must submit an approval letter from each manufacturer; authorization letters must include the regions in which equipment may be sold or serviced.

7. Administrative Fee

For each purchase order processed under an awarded contract, H GAC will directly invoice contractor a 1.5% Order Processing Charge applicable to the price of all equipment/services submitted in contractor's response. The Fee is calculated from awarded bid pricing before additional discounts (if any) have been applied. It is the contractor's responsibility to remit the administrative fee within thirty (30) days of processing any Customer purchase order, even if an invoice is not received from H-GAC.

Contractor agrees that H-GAC will have the right, with reasonable notice, to inspect its records pertaining to purchase orders processed and the accuracy of the fees payable to H-GAC.

8. Contractor Status

Contractor is required to provide a status form, which is not part of any evaluation, but may be relevant to other state or local procurement requirements that apply to HGACBuy Customers. The following information will need to be captured:

- a) Contractor's status as a minority/woman-owned business enterprise, historically underutilized business, or service-disabled veteran;
- b) Whether Contractor or its ultimate parent or majority owner has its principal place of business in Texas or employs at least 500 persons in Texas; and
- c) Whether Respondent is a Texas resident or a non-resident business.



HOUSTON-GALVESTON AREA COUNCIL COOPERATIVE PURCHASING PROGRAM

FORM-H -- MARKETING & SERVICE PLAN

Respondent: Motorola Solutions, Inc.

H-GAC expects proposer to have the capability and willingness to serve any H-GAC Customers across the nation, and to promote any contract to the best of its ability. Respondent must submit a completed marketing and service plan form and include a detailed written narrative explaining in detail activities that will be undertaken to actively market and promote the awarded contract to H-GAC Customers and provide information on applicable items listed below:

1. Describe types of media to be used, frequency and method of outreach campaigns (social media, ads, sales tools, newsletters, etc.)
2. A description of the dedicated staff resources anticipated in serving and in promoting any contract.
3. Anticipated marketing strategies to increase sales in awarded service areas or categories
4. Anticipated employee representative trainings and frequency
5. Dedicated webpages or other online presence
6. Use of dealer or distributor networks
7. Use of existing company marketing teams and coordination with H-GAC's marketing team
8. Metrics employed to measure outreach and marketing success and measurement of sales

Motorola has marketed to local government customers the use of the H-GAC contract nationally to its direct representatives in addition to our partner network both in traditional land mobile radio and our video solutions group. Your local point of contact, George Ebelt provides nationwide training for both direct representatives and Manufacture Resellers each year, and as requested across the country. As reported of the last fourteen years, we have made significant progress in many States with both quotes and successful sales totaling well over the \$10M mark outside of the State of Texas. This compliments the \$60M plus in sales that Motorola has made over the last 3-5 years utilizing the H-GAC contract as its and users preferred method of sale. We are committed to training nationally on the parameters of the H-GAC contract and continue to educate both internal Motorola resources and H-GAC end users.

1. Describe types of media to be used, frequency and method of outreach campaigns (social media, ads, sales tools, newsletters, etc.)

Motorola's vast marketing efforts to promote the H-GAC buying experience along with our technologies, consists of a presence via Twitter, Facebook, and many internal Chat pages (i.e. "Bat Chat"). Additionally, we will enhance our efforts with ads where we deem most effective to promote the use of the H-GAC contract as a partner process in procuring our technologies.

2. A description of the dedicated staff resources anticipated in serving and in promoting any contract.

Motorola marketing and sales team is unmatched nationally in regards to using the H-GAC contract. Our marketing team stretches across every division nationwide along with additional support personnel in Chicago, IL at our corporate headquarters. Our national sales force consisting of more than 300 people are complimented with both an internal inside sales team and a large network of Manufacturer Resellers (MR's) doubling the number of in-person representation offering the H-GAC procurement vehicle as an option and in many cases the lead procurement vehicle for technical solutions.

3. Anticipated marketing strategies to increase sales in awarded service areas or categories

As we have for over 20+ years as a H-GAC partner, Motorola will use the H-GAC procurement vehicle (contract) for each category. We are hopeful to gain approval in all four categories as we did as the only four category partner in contract RA05-18. Our strategic approach includes signage at national conference (as they began opening) along with continued education on our virtual events. Our approach has always been to lead with the H-GAC contract in Texas and as the H-GAC presence grew nationally, we have many states doing the same.

4. Anticipated employee representative trainings and frequency

Our training for use of the H-GAC contract is an on-going dynamic plan. We have one local person in Texas who has

Attachment A						
Motorola Solutions Inc.						
Radio Communications/Emergency Response Equipment						
Contract No.: RA05-21						
Line Item Reference Number	Product Code	Product Summary (detailing the items, equipment and/or services being offered for the specific product code)	Manufacturer	Vendor	Item Description	Bid Price
1	PA	Mobile and Portable radios and accessories Base Stations and accessories Radio Trunked Systems Dispatch Consoles Mobile Data Systems Mobile Data Subscribers Mobile Computing Devices Broadband Wireless Mesh Infrastructure and Subscribers Video and Biometrics Radio Infrastructure (Towers, Shelters, UPSs and Generators) Broadband and LTE Equipment/Services Next Gen 911 Equipment/Services Intelligent Led Policing Real Time Crime Center/ Video Solutions CAD and Records Management Biometrics Applications	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	<i>Per the RFP Motorola has included an Electronics Catalogue (PCAT file of .pdf's) file in lieu of listing each individual product and its options. In addition, a discount APC sheet is attached in the pricing section and used to calculate all individual prices within the PCAT file.</i>	APC Summary Provided Below.
					<i>Motorola also offers an extensive on-line program called My View Portal that allows each H-GAC end user to check specific contract pricing, place orders, and check shipping estimates in addition to invoice history. The on-line tool is the most advanced of its kind in the Communications Industry.</i>	
2	PB	Integrated Command Control Equipment System Integration Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	<i>Per the RFP Motorola has included an Electronics Catalogue (PCAT file of .pdf's) file in lieu of listing each individual product and its options. In addition, a discount APC sheet is attached in the pricing section and used to calculate all individual prices within the PCAT file.</i>	APC Summary Provided Below.
					<i>Motorola also offers an extensive on-line program called My View Portal that allows each H-GAC end user to check specific contract pricing, place orders, and check shipping estimates in addition to invoice history. The on-line tool is the most advanced of its kind in the Communications Industry.</i>	

3	PC	Emergency Trailers System Integration Services Command Vehicles Integrated Emergency Operations Center Incident Command Systems	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	<i>Per the RFP Motorola has included an Electronics Catalogue (PCAT file of .pdf's) file in lieu of listing each individual product and its options. In addition, a discount APC sheet is attached in the pricing section and used to calculate all individual prices within the PCAT file</i>	APC Summary Provided Below.
					<i>Motorola also offers an extensive on-line program called My View Portal that allows each H-GAC end user to check specific contract pricing, place orders, and check shipping estimates in addition to invoice history. The on-line tool is the most advanced of its kind in the Communications Industry.</i>	
4	PD	Project Management System Technologist Training Advanced Services Video and Network Management Testing Civil Work (Soil grading, fencing, grub work, etc...) Tower Services (concrete/foundation work, documentation, civil work, etc...) Network Services for all category technologies Cloud Services and Associated Integration	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	<i>Motorola offers wide range of services including Integration, Installation and Training. The cost of these services is regional in nature. Samples below are listed for reference only.</i>	APC Summary Provided Below.
MOTOROLA INTEGRATION SERVICES - LMR						
Motorola offers wide range of services including Integration, Installation and Training. The cost of these services is regional in nature. Samples below are listed for reference only.						
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Project Management Daily Rate*	\$2,072
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	System Technologist Daily Rate*	\$2,072
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Standard Shop Installation: Hourly Rate*	\$150
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Standard Shop Installation: Daily Rate*	\$1,200
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Mobile Radio Installation*	\$180-\$600
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Radio Programming*	\$55-\$125
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Data Installation*	\$180-\$600
					*Prices may vary by Region and Stated Scope. Travel Not Included.	
MOTOROLA INTEGRATION SERVICES - ADVANCED SERVICES						
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	NG9-1-1 Consulting Services-Daily Rate*	\$1,900
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Security Project/Program Management-Daily Rate*	\$1,900
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Wireless Security Technician-Daily Rate*	\$1,900

			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Security Penetration Tester (Wired Network)-Daily Rate*	\$1,900
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Security Trainer-Daily Rate*	\$1,650
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Application Security Code Reviewer-Daily Rate*	\$2,100
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	IT Incident Response and E-Discovery Assistance-Daily Rate*	\$1,900
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	IT Disaster Recovery Planner-Daily Rate*	\$1,900
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	IT Disaster Recovery Plan Tester-Daily Rate*	\$1,900
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Business Continuity/Continuity of Government Planner-Daily Rate*	\$1,900
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Business Continuity/Continuity of Government Plan Tester-Daily Rate*	\$1,900
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Mobile Application Services Project Management-Daily Rate*	\$750
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Mobile Application Services Solution Achitech-Daily Rate*	\$2,100
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Mobile Application Services Application and Solution Design-Daily Rate*	\$2,100
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Mobile Application Services Application and Solution Implementation-Daily Rate*	\$2,100
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Application Integration and Customization Services Project Management-Daily Rate*	\$1,694
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Application Integration and Customization Services Solution Achitech-Daily Rate*	\$2,100
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Application Integration and Customization Services Application and Solution Design-Daily Rate*	\$2,100
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Application Integration and Customization Services Application and Solution Implementation-Daily Rate*	\$1,694
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Unified Communications Services Project Management-Daily Rate*	\$1,900
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Unified Communications Services Application and Solution Design-Daily Rate*	\$2,100
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Unified Communications Services Application and Solution Implementation-Daily Rate*	\$1,900
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Consulting Services Project Management-Daily Rate*	\$1,900
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Consulting Services Internet Protocol Network Assessment-Daily Rate*	\$2,100
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Consulting Services IP Network Design and Integration-Daily Rate*	\$2,033
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Consulting Services IP Wide Area Network Backhaul Design and Integration-Daily Rate*	\$2,100
			Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Consulting Services Customer Network Interface Design and Integration-Daily Rate*	\$2,100
APC SUMMARY						
	6	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO Dispatch Support	
	42	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO SUA Upgrade Operations Support	
	43	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO SUA Field Service Support	

	127	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Motorola Shop Services	
	135	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Drop Ship Freight	
	185	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Motorola Subscriber Services	
	208	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Motorola Project Management Services	
	231	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Motorola Partner Maintenance Support	
	290	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Motorola Warranty Services	
	298	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO System Essential Support	
	306	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Site Development Services	
	348	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO System Premier Support	
	373	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO System Advanced Support	
	390	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO System Manager Support	
	427	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	3rd Party Services	
	431	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Motorola Device Management Support - Essential	
	519	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO Security Monitoring Support	
	560	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO System Update Service Remote Patching Support	
	561	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO Network Monitoring Support	
	670	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Asset Management Service	
	700	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Motorola Device Management Support - Advanced	
	701	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Motorola Device Management Support - Premier	
	724	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Motorola APX Next Management Support - Advanced	
	769	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO Preventative Maintenance Support	
	772	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO Technical Support	
	814	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO Cyber Security Assessment Support	
	823	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO SUA Hardware & Software Support	
	847	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Lunarline Cyber Security Services	
	848	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Lunarline Cyber Security Monitoring	
	859	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Delta Risk Cyber Security Services	
	882	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO On-Site Support	
	929	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO Infrastructure Repair Support	

	943	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO SUA Training Service Support	
	948	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	3rd Party Maintenance Support	
	969	System Integration & Support Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	ASTRO System Update Service Local Patching Support	
	901	Lifecycle Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Migration Assurance Program	
	902	Lifecycle Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	SMA	
	903	Lifecycle Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	SUA, SUA II	
	904	Lifecycle Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	SUS	
	905	Lifecycle Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	SA	
	390	Professional Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Performance Management Reports	
	659	Professional Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	NG-911	
	659	Professional Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Security, IP Networking	
	670	Professional Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	SI	
	842	Professional Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	311 Software	
	561	Service/Maintenance	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Network Monitoring	
	769	Service/Maintenance	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Network Preventive Maintenance & Onsite Infrastructure Response	
	769	Service/Maintenance	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	SUAII	
	772	Service/Maintenance	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Technical Support	
	929	Service/Maintenance	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Services	
	206	Service/Maintenance	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Subscriber Repair	
	293	Service/Maintenance	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Services/Training	
	17	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	PremierOne CAD Delivery Services	
	30	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Flex CAD Delivery Services	
	79	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Situational Awareness Delivery Services	
	86	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Emergency Notification Delivery Services	
	90	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	PremierOne Records Delivery Services	
	97	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Flex Records Delivery Services	
	99	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Flex Jail Delivery Services	
	141	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Digital Evidence Delivery Services	
	168	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Kodiak Delivery Services	

	327	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	CAD Mobile Delivery Services	
	331	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	CAD Suite Deployment	
	473	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Spillman Delivery Services	
	586	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	CallWorks Delivery Services	
	639	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Critical Connect Delivery Services	
	634	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Situational Awareness 3rd Party HW and SW or just HW	
	572	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Situational Awareness 3rd Party HW and SW or just HW	
	141	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Interface SA	
	144	Software SI Delivery Services	Motorola Solutions, Inc.	Motorola Solutions, Inc. and Partners	Professional Services, Training Analytics Plus Only	

LIFECYCLE MANAGEMENT ADDENDUM

This Addendum to the Communications System and Services Agreement or other previously executed Agreement currently in force, as applicable ("Primary Agreement") provides additional or different terms and conditions to govern the sale of Lifecycle Management services. The terms in this Addendum are integral to and incorporated into the Primary Agreement signed by the Parties.

1. DEFINITIONS

All capitalized terms not otherwise defined herein shall have the same meaning as defined in the Agreement.

"Lifecycle Management Services" means the upgrade services as defined in the applicable Statement(s) of Work.

"MUA" means Microwave Upgrade Agreement (MUA).

"NUA" means Network Upgrade Agreement (NUA).

"SUA" or "SUA II" means Motorola's Software Upgrade Agreement program (which may include MUA or NUA).

2. SCOPE

Motorola will provide Services as further described in the applicable Statement of Work, or attachment to Motorola's proposal for additional services.

3. TERMS AND CONDITIONS

The terms of the Primary Agreement combined with the terms of this Addendum will govern the products and services offered pursuant to this Addendum. To the extent there is a conflict between the terms and conditions of the Primary Agreement and the terms and conditions of this Addendum, this Addendum takes precedence.

3.2 LIFECYCLE MANAGEMENT SERVICES

3.2.1 PURCHASE ORDER ACCEPTANCE. Purchase orders for SUA, NUA or MUA services and software support, during the Warranty Period or after the Warranty Period, become binding only when accepted in writing by Motorola.

3.2.2 The Software License Agreement included as Exhibit A to the Agreement applies to any Motorola Software provided as part of the Lifecycle Management transactions.

3.2.3 The term of this Addendum is 4 years, commencing on October 1, 2022. The Lifecycle Management Price for the 4 years of services is \$344,626 excluding applicable sales or use taxes but including discounts as more fully set forth in the pricing pages. Because the

Lifecycle Management services are subscription services as more fully described in the applicable Statement of Work, payment from Customer is due in advance and will not be in accordance with any Payment Milestone Schedule.

3.2.4 The System upgrade will be scheduled during the subscription period and will be performed when Motorola's system upgrade operation resources are available. Because there might be a significant time frame between when this Amendment is executed and when a System upgrade transaction is performed, Motorola may substitute any of the promised Equipment or Software so long as the substitute is equivalent or superior to the initially promised Equipment or Software.

3.2.5 Acceptance of a Lifecycle Management transaction occurs when the Equipment (if any) and Software are delivered and the Lifecycle Management services are fully performed; there is no Acceptance Testing with a Lifecycle Management transaction.

3.2.6 The Warranty Period for any Equipment or Motorola Software provided under a Lifecycle Management transaction will commence upon shipment and not on System Acceptance or Beneficial Use, and is for a period of ninety (90) days rather than one (1) year. The ninety (90) day warranty for Lifecycle Management services is set forth in the applicable Statement of Work.

3.2.7 In addition to the description of the services and exclusions provided in the Statement of Work, the following apply:

- a) Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment.
- b) services exclude the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.
- c) Unless specifically included in this Addendum or the Statement of Work, services exclude items that are consumed in the normal operation of the Equipment; accessories; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by the transmission medium.
- d) Customer will provide Motorola with designated points of contact (list of names and phone numbers) that will be available during the performance of the services.

3.2.8 The annualized price is based on the fulfillment of the two year cycle. If Customer terminates this service during a two year cycle, except for Motorola's default, then Customer will be required to pay for the balance of payments owed for the two year cycle if a major system release has been implemented before the point of termination.

3.2.9 If Customer terminates this service and contractual commitment before the end of the 5 year term, for any reason other than Motorola's default, then the Customer will pay to Motorola a termination fee equal to the discount applied to the last three years of service payments related to the 4 year commitment.

3.2.10 INFLATION ADJUSTMENT. For multi-year agreements, at the end of the first year of the Agreement and each year thereafter, a CPI percentage change calculation shall be performed using the U.S. Department of Labor, Consumer Price Index, all Items, Unadjusted Urban Areas (CPI-U). Should the annual inflation rate increase greater than 3% during the previous year, Motorola shall have the right to increase all future maintenance prices by the CPI increase amount exceeding 3%. All items, not seasonally adjusted shall be used as the measure of CPI for this price adjustment. Measurement will take place once the annual average for the new year has been posted by the Bureau of Labor Statistics. For purposes of illustration, if in year 5 the CPI reported an increase of 8%, Motorola may increase the Year 6 price by 5% (8%-3% base).

4. ENTIRE AGREEMENT. This Addendum, any related attachments, and the Agreement, constitutes the entire agreement of the Parties regarding the subject matter of this Addendum and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Addendum may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any Customer purchase or purchase order, acknowledgment or other form will not be considered an amendment or modification of this Addendum, even if a representative of each Party signs that document.

END

SECTION 6

OUR COMMITMENT

Motorola Solutions creates innovative, mission-critical communication solutions and services that help public safety and commercial customers build safer cities and thriving communities. You can find our products at work in a variety of industries including law enforcement, fire, emergency medical services, national government security, utilities, mining, energy, manufacturing, hospitality, retail, transportation and logistics, education, and public services.

Founded in 1928, Motorola Solutions has a history of innovation that has revolutionized communications. From pioneering mobile communications in the 1930s and making equipment that carried the first words from the moon in 1969, to supporting modern-day emergency response equipment for disaster relief efforts around the world, Motorola Solutions has a global footprint with products that demonstrate its thought leadership.

Throughout its history, Motorola Solutions has transformed innovative ideas into products that connect people to each other and the world around them. Moving forward, the company strives to keep its commitment of make things better and life easier, to make sound recommendations that will guide you in linking your current and future communication needs and objectives with technology's ever-evolving promise.



**TOWN COUNCIL AGENDA ITEM NO. 07****CONSENT ITEM****DATE:** January 3, 2022**FROM:** Matthew J. Hotelling, P.E., PTOE, ADAC, Senior Engineer Transportation Manager**ITEM:** Consider approval of a Professional Services Agreement with Kimley Horn and Associates, Inc., to provide traffic signal designs for the Garden Ridge Boulevard at Forest Vista Drive, FM 1171 at Canyon Falls Boulevard, and Signal Rehabilitation – FM 2499 at Firewheel Drive projects in the amount of \$106,000; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The intersection of Garden Ridge at Forest Vista; and the intersection of FM 1171 at Canyon Falls have met traffic signal warrants in accordance with the Texas Manual on Uniform Traffic Control Devices. Both projects were approved through this year's budget process. Both of these locations have been requested for several years from both the neighborhoods and commuters. The distance between these locations and the nearest traffic signal in any direction is adequate for an additional traffic signal. Authorization from the Texas Department of Transportation is being requested for the FM 1171 at Canyon Falls location. It is anticipated to have authorization within the next four weeks.

The intersection of FM 2499 at Firewheel Drive was part of a decision package approved through this year's budget process to replace two traffic signal poles. The poles met the standard when they were initially installed, now each of these poles do not meet today's standard for mast arm length. The longer mast arms will provide better visibility for left turning vehicles at each of these intersections and bring the Town into compliance with standards. In addition to the pole replacement, Americans with Disabilities Act (ADA) ramps and ADA pedestrian button locations will be brought into compliance with this project.

BOARD REVIEW/CITIZEN FEEDBACK: The Transportation Commission reviews traffic signal projects each spring. The locations of FM 1171 at Canyon Falls and Garden Ridge at Forest Vista were locations reviewed with feedback for installation by the Transportation Commission.

ALTERNATIVES/OPTIONS: A decision to deny the professional services agreement will delay the projects to a future date.

FISCAL IMPACT: \$106,000

Proposed Expenditure/(Revenue):	Account Number(s):
\$47,000.00	378-588-77140-6200 (1171 @ Canyon Falls)
\$37,000.00	378-588-77145-6200 (Garden Ridge @ Forest Vista)
\$22,000.00	505-220-77150-6200 (Signal Rehab 2499 @ Firewheel)

Finance Review by: Tammy Wilson, Executive Director of Fiscal and Administrative Services/CFO *tw*

Project costs and funding sources are:

- FM 1171 @ Canyon Falls
 - o American Rescue Plan Act \$260,600
 - o Impact Fees \$189,400
- Garden Ridge at Forest Vista
 - o American Rescue Plan Act \$263,000
 - o Impact Fees \$112,000

- Signal Rehabilitation – FM 2499 @ Firewheel Drive
 - o Decision Package \$200,000

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
KIMLEY-HORN and ASSOCIATES, INC.**

This contract is entered into on this _____ day of _____, 20____, 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 **Kimley-Horn and Associates, Inc.**, ("hereinafter referred to as "CONSULTANT") whose address is 801 Cherry Street, Unit 11, Suite 1300, Fort Worth, Texas, 76102.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to surveying, design and providing construction documents for the new traffic signals at Garden Ridge Boulevard at Forest Vista Drive and FM 1171 at Canyon Falls Boulevard; and traffic signal rehabilitation at FM 2499 at Firewheel Drive project; and

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

TERMS OF AGREEMENT

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

I.

Employment of Consultant

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

II.

Scope of Services

CONSULTANT shall perform such services as are necessary to provide services for the Garden Ridge Boulevard at Forest Vista Drive; FM 1171 at Canyon Falls Boulevard; and FM 2499 at Firewheel Drive traffic signal design project specifically including, but not necessarily limited to, the tasks enumerated more fully in Attachment "A" hereto entitled "Scope of Work" (hereafter referred to as the "Project"). Attachment "A" is hereby incorporated herein by reference and made a part hereof as if written word for word. However, in case of conflict in the language of Attachment "A" and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.

III.

Payment for Services

Total payment for services described herein shall be a sum not to exceed One Hundred Six Thousand and No/100 Dollars (\$106,000.00). This total payment for services includes CONSULTANT's ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT. If CONSULTANT retains any subcontractors to perform any of the work, CONSULTANT acknowledges that payments to such subcontractors are due and payable in accordance with the provisions of Texas Government Code Section 2251.022, and that interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.

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

Each month CONSULTANT will submit to TOWN an invoice for supporting the percentage for which payment is sought by CONSULTANT during the previous month for which payment is sought. Each invoice shall also state the percentage of work

completed on the Project, the total of the current invoice amount and a running total balance for the Project to date.

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

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

IV.

Revisions of the Scope of Services

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

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

V.

Term

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

VI.

Contract Termination Provision

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

VII.

Ownership of Documents

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

VIII.

Insurance

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

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

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

The following policies and coverage shall be required:

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

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:

Matthew J. Hotelling, P.E., PTOE
Senior Engineering Transportation Manager
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6303 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:

Matthew J. Hotelling, P.E., PTOE
Senior Engineering Transportation Manager
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6303 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:

Abhishek Acharya, P.E., PTOE
Kimley-Horn and Associates, Inc.
801 Cherry Street
Suite 1300
Fort Worth, Texas 76102
817-335-6511 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.

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:
Kimley-Horn and Associates, Inc.

By: Scott R. Arnold
Name: Scott R. Arnold
Title: Vice President

Date Signed: December 6, 2021

State of Texas §
 §
County of TARRANT §

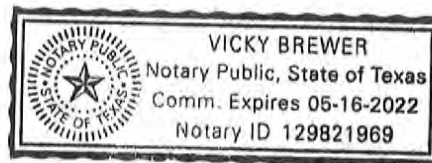
This instrument was acknowledged before me on the 6 day of DECEMBER, 20 21, by SCOTT R. ARNOLD in his capacity as VICE PRESIDENT of KIMLEY-HORN AND ASSOCIATES, INC., a PRIVATE Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of KIMLEY-HORN AND ASSOCIATES, INC.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____ DAY OF 6, 20 21.

Vicky Brewer
Notary Public, State of Texas

My Commission Expires:

05/16/2022



Attachment A
Scope of Services
Traffic Signal Design at Garden Ridge Boulevard at Forest Vista Drive and FM 1171 at Canyon Falls Boulevard; Traffic Signal Rehabilitation at FM 2499 at Firewheel Drive
The Town of Flower Mound, Texas

Project Description

The TOWN plans to install a permanent traffic signals at the intersections of Garden Ridge Boulevard at Forest Vista Drive and FM 1171 at Canyon Falls Boulevard. In addition, the project includes replacements of northbound and southbound traffic signal poles at the intersection of FM 2499 at Firewheel Drive. The project also includes replacement of all non-compliant curb ramps and pedestrian push button at FM 2499 at Firewheel Drive intersection. The following scope of services consists the preparation of plans, specifications, quantities, and estimate for the construction of this traffic signal, paving and ADA improvements.

Task 1 – Traffic Signal Design

Task 1.1 *Topographic Survey*

- A. The CONSULTANT will perform a field survey at the intersections of Garden Ridge Boulevard at Forest Vista Drive; FM 1171 at Canyon Falls Boulevard and FM 2499 and Firewheel Drive to collect horizontal and vertical elevations and other information needed by the CONSULTANT in design and preparation of plans for the project. This task only includes topographic survey for northeast and southwest corners of the FM 2499 and Firewheel intersection. Additional survey for this intersection will be provided under the scope included on Task 2.1. Information gathered during the survey shall consists of topographic data, elevations of all sanitary and adjacent storm sewers, rim/invert elevations, location of buried utilities, structures, trees (measure caliper, identify overall canopy), and other features relevant to the final plan sheets. Existing drainage at intersections will be verified by field surveys. Spot elevations will be shown on intersection layouts with cross slope to fit intersecting grade lines.
- B. The minimum survey information to be provided on the plans shall include the following:
 - A Project Control Sheet, showing all Control Points, used or set while gathering data. Generally, on a scale of not less than 1:400.
 - The following information about each Control Point:
 - Identified (Existing. Town Monument #XXX, PK Nail, 5/8" Iron Rod).
 - X, Y and Z Coordinates, in an identified coordinate system, and a referred bearing base. Z coordinate on Town Datum only.
 - Descriptive Location (Ex. Set in the centerline of the inlet in the South curb line of FM 1171 at the East end of radius at the Southeast corner of FM 1171 and Forums Drive).
 - Coordinates on all P.C.'s, P.T.'s, P.I.'s, manholes, valves, etc., in the same coordinate system, as the Control.
 - No less than two horizontal bench marks, per line or location.
 - Bearings given on all proposed centerlines, or baselines.
 - Station equations relating utilities to paving, when appropriate.

Task 1.2 *Base Map Assembly*

This task will include performing work associated with preparing the base map in CAD for the project intersections for the traffic signal work.

- A. The CONSULTANT will assemble design standards and specifications (in electronic format) from the TOWN and/or TxDOT.
- B. The CONSULTANT will gather existing record drawings and file information of the project intersections from TOWN files, including the existing Town Engineering Division record or construction roadway and traffic signalization plans, right-of-way information, and utility maps.
- C. The CONSULTANT will meet with the TOWN's representative at the project intersection for the site investigation. The CONSULTANT will perform a field reconnaissance of the intersection to determine existing pavement widths, lane configurations, traffic control devices, and above ground utility locations. The CONSULTANT will also identify potential traffic signal pole locations, power source, and controller cabinet location. Prior to the field visit, the CONSULTANT will contact Texas 811 and the TOWN to locate existing underground utilities.
- D. The CONSULTANT will prepare a base map of existing geometrics, apparent or known utilities, and traffic control devices from record drawings and topographic survey collected during Task 1.1.

Task 1.3 *Preliminary Plans, Contract Documents, Specifications, and Quantities*

This task will include the preliminary design for the traffic signal, preliminary specification list, quantities, contract documents, and engineer's opinion of probable construction cost (OPCC).

- A. At the outset of the project, the CONSULTANT will prepare for and attend one (1) kick-off meeting to discuss the TOWN's project requirements and special design or coordination needs.
- B. Following the meeting, the CONSULTANT will furnish the TOWN a preliminary traffic signal layout sheet showing the signal pole locations and dimensions of said signal poles, proposed service location, proposed controller cabinet location, and conduit runs.
- C. The CONSULTANT will incorporate TOWN review comments and prepare the preliminary traffic signal design plan set for the project intersections. The basic design parameters will be based on discussions with the TOWN. The CONSULTANT anticipates this submittal will include a cover sheet, sheet index, general notes, traffic signal layout, signal phasing, summary charts, signs and markings layout (removals and installations), modified sidewalk and ADA ramp layouts (if needed), modified TxDOT standard detail sheets, and a list of applicable TOWN/TxDOT standard detail sheets for each traffic signal.
- D. The CONSULTANT will prepare the separate contract documents for each traffic signal which will include any required technical specifications. The TOWN will provide the latest approved front-end documents to the CONSULTANT.
- E. The CONSULTANT will prepare and submit a preliminary engineer's OPCC.

Task 1.4 *Final Plans*

Following the receipt of preliminary plan comments from the TOWN, the CONSULTANT will incorporate comments and produce the final plans, specifications, quantities, contract documents, and engineer's OPCC and submit these to the TOWN. The CONSULTANT will incorporate TOWN review comments (if any) to submit for TxDOT permit.

Task 2 – Accessibility Improvements Design for FM 2499 at Firewheel Drive

Task 2.1 *Topographic Survey*

- A. The CONSULTANT will perform a field survey at the intersection of FM 2499 at Firewheel Drive to supplement topographic survey collected under Task 1.1. Topographic survey for this location will follow the same requirements outlined in Task 1.1 and following:
- Topographic survey collected under this task will include northwest and southeast corner on this intersection. This survey will also include medians and sidewalk within 100 ft of the intersections.

Task 2.2 *Base Map Assembly*

This task will include performing work associated with preparing the base map in CAD for the FM 2499 at Firewheel Drive.

- A. The Base Map preparation for these intersections will be done in accordance with the process outlined in task 1.2.

Task 2.3 *Preliminary Plans, Contract Documents, Specifications, and Quantities*

This task will include the preliminary design plan for accessibility improvements at the intersection of FM 2499 and Firewheel Drive, preliminary specification list, quantities, contract documents, and OPCC.

- A. The CONSULTANT will furnish the TOWN a preliminary traffic signal layout sheet showing the replacement of all non-compliant curb ramps and APS push buttons at this intersection.
- B. The CONSULTANT will all provide paving layout sheet showing cross slope and running slopes on all curb ramp replacement. Median nose modification on east leg of intersection is anticipated.
- C. No Paving is anticipated for on the travel lanes.
- D. The CONSULTANT will incorporate TOWN review comments and prepare the preliminary traffic signal design plan set for the project intersections. The basic design parameters will be based on discussions with the TOWN. The CONSULTANT anticipates this submittal will be included with the preliminary plans for traffic signal design specified on Task 1.3.
- E. The CONSULTANT will prepare contract documents for accessibility improvements which will be included together with the traffic signal design.
- F. The CONSULTANT will prepare and submit a preliminary engineer's OPCC for accessibility improvements.

Task 2.3 *Final Plans*

Following the receipt of preliminary plan comments from the TOWN, the CONSULTANT will incorporate comments and produce the final plans, specifications, quantities, contract documents, and engineer's OPCC for each traffic signal and submit these to the TOWN. The CONSULTANT will incorporate TOWN review comments (if any) to submit for TxDOT permit for the intersection along with the traffic signal design.

Deliverables:

Topographic Survey: Copies of field survey data and notes signed and sealed by a licensed surveyor, drawing of the project layout with dimensions and coordinate list.

Base Map Assembly: None

Preliminary Plans:

- *One (1) electronic copy of each preliminary plan set.*
- *Three (3) 11" x 17" copies of the preliminary plans*
- *List of Quantities. One (1) electronic copy for each traffic signal.*
- *Preliminary Engineer's OPCC. One (1) electronic copy for each traffic signal.*
- *Contract Documents. One (1) electronic copy for each traffic signal.*

Final Plans:

- *One (1) set of reproducible 11" x 17" originals and up to ten (10) hard copies for each traffic signal.*
- *List of Quantities: One (1) set of reproducible 8-1/2" x 11" originals and one (1) electronic copy for each traffic signal.*
- *Final Engineer's OPCC: One (1) electronic copy for each traffic signal.*
- *Final Contract Documents: One (1) electronic copy and up to ten (10) hard copies for each traffic signal.*

Additional Services

Any services not specifically provided for in the above scope will be considered additional services and can be performed at our then current hourly rates.

Additional services we can provide include, but are not limited to, the following:

- Assisting Town or contractor in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, shall be furnished by the CONSULTANT on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
- Sampling, testing, or analysis beyond that specifically included in the Scope of Services referenced herein above.
- Providing additional printing for bidding document distribution.
- Providing professional services associated with the construction phase of the project.
- Providing Sub-surface Utility Engineering (SUE)
- Attending the Bid Opening
- Attending the Pre-construction Meeting
- Preparing a Bid Tabulation or Recommendation Letter
- Reviewing Contractor's References
- Any services not listed in the Scope of Services.

Attachment B**Payment Terms**

Payment is a lump sum fee in the amount listed in Article III of this Contract. This amount shall be payable by the TOWN pursuant to the schedule listed below and upon completion of the services and written acceptance by the TOWN.

Schedule of Payment for each phase:

Task	Description	Fee
1	Traffic Signal Design	
	<i>Task 1.1 Topographic Survey</i>	
	• Garden Ridge Boulevard at Forest Vista Drive	\$ 5,500
	• FM 1171 at Canyon Falls Boulevard	\$ 5,500
	• FM 2499 at Firewheel Drive (Traffic Signal Design)	\$ 3,000
	<i>Task 1.2 Base Map Assembly</i>	
	• Garden Ridge Boulevard at Forest Vista Drive	\$ 1,500
	• FM 1171 at Canyon Falls Boulevard	\$ 1,500
	• FM 2499 at Firewheel Drive (Traffic Signal Design)	\$ 1,000
	<i>Task 1.3 Preliminary Plans</i>	
	• Garden Ridge Boulevard at Forest Vista Drive	\$18,000
	• FM 1171 at Canyon Falls Boulevard	\$16,500
	• FM 2499 at Firewheel Drive (Traffic Signal Design)	\$10,500
	<i>Task 1.4 Final Plans</i>	
	• Garden Ridge Boulevard at Forest Vista Drive	\$10,000
	• FM 1171 at Canyon Falls Boulevard	\$ 9,000
	• FM 2499 at Firewheel Drive (Traffic Signal Design)	\$ 6,000
Total (Task 1)		\$88,000
2	Task 2 – Accessibility Improvements Design for FM 2499 at Firewheel Drive	
	<i>Task 2.1 Topographic Survey</i>	\$ 2,500
	<i>Task 2.2 Base Map Assembly</i>	\$ 500
	<i>Task 2.3 Preliminary Plans</i>	\$ 9,000
	<i>Task 2.4 Final Plans</i>	\$ 6,000
Total (Task 2)		\$18,000
Total Fee		\$106,000

Additional services will be negotiated at the time they are identified.



TOWN COUNCIL AGENDA ITEM 08

CONSENT ITEM

DATE: January 3, 2022

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

ITEM: Consider approval of an Interlocal Cooperation Agreement with the City of Lewisville for the Garden Ridge Blvd. at Forest Vista Dr. Signal project, for \$85,000.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The Garden Ridge Blvd. at Forest Vista Dr. Signal project was approved by Town Council during the FY 2021 / FY 2022 Budget and Capital Improvement Plan Adoption. During the budget process, Town Council requested that staff reach out to the City of Lewisville to explore a cost sharing approach to the signal work. The attached Interlocal Cooperation Agreement is the result of those discussions.

The intersection is located within the Town of Flower Mound and the City of Lewisville with three corners adjacent to Flower Mound and one corner adjacent to Lewisville. Flower Mound and Lewisville agree that a traffic signal is warranted at the intersection based on independent reviews of the study. Per the agreement, Flower Mound will be responsible for 75% of the first \$340,000.00 required to design, construct, and inspect the Traffic Signal. If costs for such design, construction, and inspection exceed \$340,000.00, Flower Mound will be responsible for all additional funding required to design, construct, and inspect all mechanical, structural, and electrical components needed to operate the Traffic Signal. Lewisville will be responsible for 25% of the first \$340,000.00 required to design, construct, and inspect the Traffic Signal. Once installed, Flower Mound will be responsible for the operation, maintenance, repair and/or replacement of the Traffic Signal to allow coordination with the Signal at FM 3040 and Garden Ridge Blvd.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: If not approved, Flower Mound can move forward with the project without funding from the City of Lewisville.

FISCAL IMPACT: \$85,000.00

Proposed Expenditure/(Revenue):	Account Number(s):
(\$85,000.00)	506-4792 Lewisville – Garden Ridge at Forest Vista

If approved, these funds will be available for the Garden Ridge Blvd. at Forest Vista Dr. Signal project, and the CIP will be updated in the next amendment.

Finance Review by: Tammy Wilson, Executive Director of Fiscal and Administrative Services/CFO *tw*

LEGAL REVIEW: Ben Gibbs, of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the Interlocal Cooperative Agreement as to form and legality.

ATTACHMENTS:

1. Interlocal Cooperation Agreement

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

STATE OF TEXAS §
 §
 COUNTY OF DENTON §

**INTERLOCAL COOPERATION AGREEMENT FOR
 GARDEN RIDGE BLVD. AND FOREST VISTA DR. SIGNAL PROJECT**

This Interlocal Agreement (hereinafter referred to as the "Agreement") is entered into pursuant to the provisions of the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, by and between the Town of Flower Mound, Texas, a Texas home-rule municipality (hereinafter referred to as "Flower Mound"), and the City of Lewisville, Texas, a Texas home-rule municipality (hereinafter referred to as "Lewisville") (collectively, the "Parties").

WHEREAS, the Interlocal Cooperation Act authorizes local governments to contract with one or more local governments to perform governmental functions and services under the terms of the Act; and

WHEREAS, Flower Mound and Lewisville mutually desire to be subject to the provisions of the Texas Government Code, Chapter 791, the Interlocal Cooperation Act, specifically section 791.011 regarding contracts to perform governmental functions and services; and

WHEREAS, Flower Mound is a duly organized municipality in Denton County, Texas, engaged in the provision of municipal and related services for the benefit of the citizens of the Town of Flower Mound, Texas; and

WHEREAS, Lewisville is a duly organized municipality in Denton County, Texas, engaged in the provision of municipal and related services for the benefit of the citizens of the City of Lewisville, Texas; and

WHEREAS, a warrant analysis was completed by Flower Mound and the results of this warrant study indicate that a traffic signal is warranted at the Garden Ridge Blvd. and Forest Vista Dr. intersection based on current traffic loadings; and

WHEREAS, portions of this intersection are located within the city limits of both Flower Mound and Lewisville, and both Flower Mound and Lewisville agree that a traffic signal is warranted at the intersection based on independent reviews of the above referenced study; and

WHEREAS, this project will only include the installation of the Traffic Signal (hereinafter defined) ; and

WHEREAS, no pavement modifications and/or addition of turn lanes are included in this project, and these will be considered separate projects if and when completed in the future by each city.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Flower Mound and Lewisville agree as follows:

Section 1. Incorporation of Premises

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the Parties.

Section 2. Term

The term of this Agreement shall be for a period of twenty (20) years. Thereafter, the Agreement will automatically renew for two (2) additional twenty (20) year terms unless notice is given by either party to terminate this Agreement ninety (90) days prior to the expiration of each term, or unless terminated sooner as provided for in section 6, below.

Section 3. Definitions

- (a) **Agreement.** The word "Agreement" means this Interlocal Cooperation Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (b) **Effective Date.** The words "Effective Date" mean the date of execution of this Agreement by Flower Mound and Lewisville.
- (c) **Flower Mound.** The words "Flower Mound" mean the Town of Flower Mound, Texas, a Texas home-rule municipality, whose address for the purposes of this Agreement is 2121 Cross Timbers Drive, Flower Mound, Texas 75028.
- (d) **Lewisville.** The word "Lewisville" means the City of Lewisville, Texas, a Texas home-rule municipality, whose address for the purposes of this Agreement is 151 W. Church Street, Lewisville, Texas 75057.
- (e) **Term.** The word "Term" means the term of this Agreement as specified in Section 2 of this Agreement.
- (f) **Traffic Signal.** The words "Traffic Signal" mean the traffic signal to be installed at the intersection of Garden Ridge Blvd. and Forest Vista Dr., which intersection is located in part within Flower Mound and in part within the Lewisville, including all mechanical, structural and electrical components related to the installation and operation thereof.

Section 4. Obligations of Flower Mound

- (a) Consistent with Section 791.011(d)(3) of the Texas Government Code, Flower Mound, in making payments hereunder for governmental functions or services, shall make payments from current revenues available to Flower Mound. It is understood and agreed that the funding for the Term set forth above has been approved and will be appropriated by Flower Mound.
- (b) Flower Mound will be responsible for 75% of the first \$340,000.00 required to design, construct, and inspect the Traffic Signal. If costs for such design, construction, and inspection exceed \$340,000.00, Flower Mound will be responsible for all additional funding required to design, construct, and inspect all mechanical, structural and electrical components needed to operate the Traffic Signal.

- (c) Flower Mound will be responsible for hiring a qualified engineering firm to perform the topographic surveying, intersection geometric analysis, prepare construction specifications and drawings and provide construction management services. Once the design is completed, both Flower Mound and Lewisville will review the plans and make comments until a final buildable design set of plans and specifications is approved by both Parties.
- (d) Flower Mound will hire the construction firm to install the Traffic Signal based on the plans and specifications that were approved by both Parties.
- (e) Once installed, Flower Mound will be responsible for the operation, maintenance, repair and/or replacement of the Traffic Signal throughout the Term of this Agreement. Flower Mound agrees to respond to a malfunction of the Traffic Signal within twenty-four (24) hours of becoming aware of the malfunction and shall repair immediately if possible. If immediate repair is not possible, Flower Mound agrees to perform and complete such repairs as soon thereafter as reasonably possible but, in any case, not later than ten (10) days after receipt of written notice from Lewisville. If Flower Mound fails to provide the service contemplated herein within said ten (10) days, such failure shall constitute an event of default, and Lewisville may terminate this Agreement by giving thirty (30) days notice. Notwithstanding the foregoing to the contrary, Flower Mound shall not be in default of this Agreement for failing to complete repairs within said ten (10) day period to the extent that repair or replacement cannot reasonably be completed within ten (10) days from the date of receipt of written notice so long as Flower Mound is reasonably diligent in pursuing completion of such repairs or replacement.
- (f) Flower Mound will be responsible for all funding required to repair, maintain, and/or replace the Traffic Signal.

Section 5. Obligations of Lewisville

- (a) Consistent with Section 791.011(d)(3) of the Texas Government Code, Lewisville, in making payments hereunder for governmental functions or services, shall make payments from current revenues available to Lewisville.
- (b) Lewisville will be responsible for 25% of the first \$340,000.00 required to design, construct, and inspect the Traffic Signal. Lewisville shall provide such funding to Flower Mound within thirty (30) days of receipt of an invoice from Flower Mound, to be submitted upon the earlier of the date of completion of the Traffic Signal or the date upon which total expenditures for design, construction, and inspection of the Traffic Signal reach \$340,000.00.
- (c) Lewisville agrees to review the Traffic Signal plans and specifications within three (3) weeks of receipt each time they are submitted and provide comments back to Flower Mound for incorporation into the plans and specifications.
- (d) If Lewisville determines that construction inspection is necessary for the traffic poles and mast arms installed in Lewisville, those services will be provided by Lewisville at no cost to Flower Mound for this project. The assigned inspector will attend the pre-construction meeting and monthly meetings, as necessary.
- (e) Lewisville will allow at least one (1) Traffic Signal pole and foundation and associated

underground conduit and/or electrical wiring/pull boxes to be located in Lewisville's right-of-way so that the project can be completed.

- (f) Once the Traffic Signal is installed and operational, if Lewisville needs to move a Traffic Signal pole and/or associated underground conduit, electric and/or pull boxes located in their right-of-way for a future project, Lewisville will design, manage, and fund the relocation and reinstallation of that necessary work and will allow Flower Mound to review associated plans for the needed modifications.

Section 6. Termination of Agreement

This Agreement shall remain in effect as stated above during the Term, until such time as either party desires to amend or terminate this Agreement, with or without cause. Either party may terminate this Agreement, for any reason, or no reason, upon ninety (90) days prior written notice of the date of termination to the other party, except as otherwise specifically provided for herein. The written notice of termination shall be mailed to the below-noted addresses via U.S. certified mail, postage prepaid and return receipt requested, and the date of mailing shall be deemed the date of the postmark. Upon notice of the desire to terminate or amend the Agreement, both Parties may negotiate any mutually satisfactory amendment or renewal of the Agreement.

In the event of early termination of this Agreement by Lewisville, Lewisville will remove the Traffic Signal and all equipment located within the City of Lewisville in a timely manner, at its expense, and will return said Traffic Signal and equipment to the Town of Flower Mound. In the event of early termination of this Agreement by Flower Mound, Flower Mound will remove the Traffic Signal and all equipment located in both cities in a timely manner at its expense. In the case of such removal, Lewisville grants Flower Mound permission to remove said Traffic Signal and equipment within Lewisville's jurisdiction.

Section 7. Miscellaneous Provisions

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Denton County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party, and any assignment without such consent shall be void.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Flower Mound warrants and represents that the individual executing this Agreement on behalf of Flower Mound has full authority to execute this Agreement and bind Flower Mound to the same. Lewisville warrants and

represents that the individual executing this Agreement on Lewisville's behalf has full authority to execute this Agreement and bind it to the same.

- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, declared disaster, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.
- (h) **Immunity and Defenses; Hold Harmless.** It is expressly understood and agreed that, in the execution of this Agreement, no party waives, nor shall be deemed hereby to have waived any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto. Each party shall be responsible for its sole negligence or its percentage of concurrent negligence, for any actual damages or losses suffered by the other or a third party, arising from any breakdown, malfunction, failure, use or loss of use of the Traffic Signal, however caused. This shall apply to all cases of negligence of either Party, their respective officers, employees, agents, contractors or otherwise. Notwithstanding the foregoing to the contrary, nothing herein shall be construed as a waiver by either party of any defense or immunity available to said Party with respect to any damage or injury relating to the Party's performance pursuant to this Agreement.
- (i) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to Flower Mound:	The Town of Flower Mound, Texas 2121 Cross Timbers Drive Flower Mound, Texas 75028 Attn: Town Manager Telephone: 972-874-6000
if to Lewisville:	The City of Lewisville, Texas 151 W. Church Street

	Lewisville, Texas 75057 Attn: City Manager Telephone: 972-219-3400
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- (j) **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.
- (k) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.

[The Remainder of this Page Intentionally Left Blank]

APPROVED by The Town Council of The Town of Flower Mound, Texas, in its meeting held on the _____ day of _____ 2022 and executed by its authorized representative.

TOWN OF FLOWER MOUND, TEXAS,
A Texas home-rule municipality

By: _____
Derek France, Mayor

ATTEST:

Theresa Scott, Town Secretary

APPROVED AS TO FORM:

Bryn Meredith, Town Attorney

APPROVED by The City Council of The City of Lewisville, Texas, in its meeting held on the _____ day of _____ 2022 and executed by its authorized representative.

CITY OF LEWISVILLE, TEXAS,
A Texas home-rule municipality

By: _____
TJ Gilmore, Mayor

ATTEST:

Julie Worster, City Secretary

APPROVED AS TO FORM:

Liz Plaster, City Attorney

**TOWN COUNCIL AGENDA ITEM NO. 09****CONSENT ITEM****DATE:** January 3, 2022**FROM:** Dale Crown, Senior Project Engineer**ITEM:** Consider approval of a Professional Services Agreement with Teague Nall and Perkins, Inc., for the design phase services associated with the Timber Creek Road at College Parkway Intersection Reconstruction & Melody Court Reconstruction project, in the amount of \$98,620.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The Timber Creek Road at College Parkway Intersection Reconstruction & Melody Court Reconstruction project was approved in this year's budget process. The project consists of reconstruction of the Timber Creek Road and College Parkway intersection, ADA improvements along College Parkway (between Timber Creek Road and Whitney Lane) and reconstruction of Melody Court (approx. 165 feet). The project also includes the replacement of water and sewer along Melody Court.

The scope of the Professional Services Agreement (PSA) includes the preparation of design plans, contract specifications, construction cost estimates and record drawings.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: The existing concrete streets have experienced pavement failures. The existing water and sewer lines along the Melody Court have had past maintenance issues and are undersized. A decision not to approve the PSA would result in pavement failures worsening over time and continued maintenance/service issues with the existing water and sewer lines.

FISCAL IMPACT: \$98,620.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$68,620.00	316-560-78043-6160 (Timber Crk@College)
\$30,000.00	316-560-78044-6160 (Melody Ct)

Finance Review by: Tammy Wilson, Executive Director of Fiscal and Administrative Services/CFO *tw*

Total project cost Timber Creek Road @ College Parkway Intersection Reconstruction is \$600,000. Funding sources are:

- Dedicated Sales Tax \$ 355,000
- Other \$ 245,000

Total project cost Melody Court Reconstruction is \$300,000. Funding sources are:

- Other \$ 300,000

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

ATTACHMENTS:

1. Professional Services Agreement

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH
TEAGUE NALL AND PERKINS, INC.**

This contract is entered into on this 3rd day of January, 2022, 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 **Teague Nall and Perkins, Inc.** (“hereinafter referred to as “CONSULTANT”) whose address is 3200 South Interstate 35E, Suite 1129, Denton, Texas 76210.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to surveying, design and providing construction documents for the Timber Creek Road at College Parkway Intersection Reconstruction and Melody Court Reconstruction project; and

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

TERMS OF AGREEMENT

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

I.

Employment of Consultant

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

II. **Scope of Services**

CONSULTANT shall perform such services as are necessary to provide services for the Timber Creek Road at College Parkway Intersection Reconstruction and Melody Court Reconstruction project specifically including, but not necessarily limited to, the tasks enumerated more fully in Article I hereto entitled "Scope of Work" (hereafter referred to as the "Project"). Article I 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 Article I 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 Ninety Eight Thousand Six Hundred Twenty and No/100 Dollars (\$98,620.00). 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 Article II; provided however that this Contract shall control in the event of any conflict between the language in Article II 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:

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

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

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

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

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

D. CONSULTANT agrees to the following:

1. CONSULTANT hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of

recovery or subrogation against TOWN, it being the intention that the insurance policies shall protect all parties to this Contract and be primary coverage for all losses covered by the policies;

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

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

IX.

Right to Inspect Records

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

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:

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

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

Christopher Hartke, P.E.
Principal in Charge
Teague Nall and Perkins, Inc.
3200 South Interstate 35E, Ste. 1129
Denton, Texas 76210
940-205-4409 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:
Teague Nall and Perkins, Inc.

By: Christopher Hartke
Name: Christopher Hartke, P.E.
Title: Director of Engineering Services

Date Signed: 12/6/2021

State of Texas §
 §
County of Denton §

This instrument was acknowledged before me on the 6th day of December, 2021, by Christopher Hartke in his capacity as Director of Engineering Services of Teague Nall & Perkins, 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 Teague Nall & Perkins.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 6th DAY OF December, 2021.

[Signature]
Notary Public, State of Texas

My Commission Expires:
3/20/22



AUTHORIZATION FOR PROFESSIONAL SERVICES

PROJECT NAME: Timber Creek Road at College Parkway Intersection Reconstruction and Melody Court Reconstruction

TNP PROJECT NUMBER: TBD

CLIENT: Town of Flower Mound, TX

ADDRESS: 2121 Cross Timbers Road
Flower Mound, TX 75028

The Town of Flower Mound (the **CLIENT**) hereby requests and authorizes Teague Nall and Perkins, Inc., (the **CONSULTANT** or **TNP**) to perform the following services:

Article I

SCOPE OF BASIC SERVICES:

In general, the scope of Basic Services will be to provide professional engineering and surveying services for preparation of construction plans and bid documents for reconstruction of Melody Ct, the intersection of Timber Creek Rd at College Pkwy, and sidewalk reconstruction along College Pkwy. Attachment 'A' reflects the project limits.

The scope of work is more specifically outlined below.

Task 1: Design Survey

CONSULTANT shall provide all office and field work necessary to perform a Topographic Design Survey for:

1. Approximately 165 linear feet on Melody Ct, including the Homestead St intersection and 50 linear feet in both directions.
2. The intersection of Timber Creek Rd at College Pkwy, including radius returns and 50 linear feet in all four legs.
3. Up to 1,000 linear feet of sidewalk for replacement. The project area is 2,400 linear feet along the north side of College Parkway between Timber Creek Rd and Colony Park and approximately 1,600 linear feet along the south side of College Parkway between Timber Creek Rd and the east side of Prescott Dr. The survey limits will be from the top of existing curb to the approximate right-of-way location and include top of curb, front and back of sidewalk, and existing ground at approximate ROW. Features such as utilities and signs will not be included.

The Topographic Design Survey will identify topography (one-foot contours), visible features and above ground improvements including pavement, curbs, structures, fences, sidewalks, utilities, valves, manholes, hydrants and other pertinent features within the project area as necessary for engineering design. *Boundary surveys and underground utility information, including invert measurements, are not included in the scope of services proposed herein.* A minimum of 2 (two) benchmarks will be provided at strategic locations within or near the project area for use during design and construction.

Texas811 will be notified to coordinate marking of underground utilities. However, lacking excavation, the exact location of underground utilities and features cannot be accurately, completely, and reliably depicted. In some jurisdictions, 811 or other similar utility locate requests from surveyors may be ignored or result in an incomplete response. Where additional or more detailed information is required, the **CLIENT** is advised that excavation may be necessary.

All survey information provided by the CONSULTANT will be referenced to Grid North of the Texas Coordinate System of 1983 {North Central Zone No. 4202; NAD83(2011) Epoch 2010} as derived locally from Allterra Central's continuously operating reference stations via real time kinematic survey methods. Elevations will be referenced to NAVD88 datum as derived from RTK observations. Orthometric heights will be calculated by applying the Geoid 12B model to ellipsoid heights.

CONSULTANT shall perform all surveying services in accordance with the General Rules and Procedures of Practice, and the Professional and Technical Standards established by the Texas Board of Professional Engineers and Land Surveyors.

Task 2: Subsurface Utility Engineering (SUE); Melody Ct Only

CONSULTANT shall provide Subsurface Utility Engineering Quality Level B (QL-B) and two (2) Quality Level A (QL-A) test holes on Melody Ct. Below is a list of the quality levels and methodologies.

Utility engineering investigation includes utility investigations subsurface and above ground prepared in accordance with ASCE/CI Standard 38-02 [(<http://www.fhwa.dot.gov/programadmin/asce.cfm>)] and Utility Quality Levels.

A. Utility Quality Levels (QL)

Utility Quality Levels are defined in cumulative order (least to greatest) as follows:

1. Quality Level D - Quality level value assigned to a utility segment or utility feature after a review and compilation of data sources such as existing records, oral recollections, locations marked by DIGTESS, and data repositories.
2. Quality Level C - Quality level value assigned to a utility segment or utility feature after surveying aboveground (i.e., visible) utility features and using professional judgement to correlate the surveyed locations of these features with those from existing utility records.
3. Quality Level B - Designate: Quality level value assigned to a utility segment or subsurface utility feature whose existence and position is based upon appropriate surface geophysical methods combined with professional judgment and whose location is tied to the project survey datum. Horizontal accuracy of Designated Utilities is 18" (including survey tolerances) unless otherwise indicated for a specific segment of the deliverable. Quality Level B incorporates quality levels C and D information. A composite plot is created.
4. Quality Level A – Quality level value assigned to a portion (x, y, and z geometry) of a point of a subsurface utility feature that is directly exposed, measured, and whose location and dimensions are tied to the project survey datum. Other measurable, observable, and judged utility attributes are also recorded (per District Best Practices). The utility location must be tied to the project survey datum with an accuracy of 0.1 feet (30-mm) vertical and to 0.2 feet (60-mm) horizontal. As test holes may be requested up front or during the project, test holes done prior to completion of QL D, C, or B deliverables must be symbolized on the QL B deliverable with a call out indicating test holes number. This is in addition to and not in lieu of the test hole.

B. Utility Investigations Methodology

1. Utility Investigation Quality Level D

The Engineer shall:

- a. Perform records research from all available resources. Sources include: Texas811, Railroad Commission of Texas (Texas RRC), verbal recollection, as-built information from plans, plats, permits and any other applicable information provided by the utility owners or other stakeholders.
- b. Document utility owners and contact information.

- c. Create a utility drawing of information gathered.
2. Utility Investigation Quality Level C
The Engineer shall:
 - a. In combination with existing Quality Level D information, utilize surveyed above-ground utility features and professional judgement to upgrade Quality Level D information to Quality Level C. For those utilities unable to be upgraded, retain as Quality Level D.
 - b. Overhead utilities information must be gathered and depicted. Sag elevations of lowest utility must be documented at road crossings, per best practices document.
 - c. Storm and sanitary sewer information must be gathered from Level D and upgraded to Level C as possible, unless otherwise directed by the state.
 - d. Mapping of underground vaults may be requested by the state.
 - e. Create composite utility drawing of information gathered.
 3. Designate (Quality Level B)
Designate means to indicate the horizontal location of underground utilities by the application and interpretation of appropriate non-destructive surface geophysical techniques and reference to established survey control. Designating (Quality Level B) services are inclusive of Quality Levels C and D.

The Engineer must:

- a. As requested by the State, compile "as-built" information from plans, plats and other location data as provided by the utility owners.
- b. Coordinate with utility owner when utility owner's policy is to designate their own facilities at no cost for preliminary survey purposes. The Engineer shall examine utility owner's work to ensure accuracy and completeness.
- c. Designate, record, and mark the horizontal location of the existing utility facilities using non-destructive surface geophysical techniques.
- d. Using both active and passive scans to attempt to locate any additional utilities, including unrecorded and abandoned storm and sanitary sewer facilities, at the direction of the state, may be investigated using additional methods such as rodding that would then classify them as Quality Level B. A non-water based pink paint or pink pin flags must be used on all surface markings of underground utilities.
- e. Correlate utility owner records with designating data and resolve discrepancies using professional judgment. The Engineer must prepare and deliver to State a color-coded composite utility facility plan with utility owner names, quality levels, line sizes and subsurface utility locate (test hole) locations. The Engineer and State acknowledge that the line sizes of designated utility facilities detailed on the deliverable will be from the best available records and that an actual line size is normally determined from a test hole vacuum excavation. A note must be placed on the designate deliverable only that states "line sizes are from best available records". All above-ground utility feature locations must be included in the deliverable to the State. This information must be provided in the latest version of OpenRoads civil design system used by the State. The Engineer shall deliver the electronic file on CD, DVD, or USB flash drive, as requested by the State. A hard copy is required and must be signed, sealed, and dated by the registered engineer overseeing the utility engineering investigation. When requested by the State, the designated utility information must be overlaid on the State's design plans.

- f. Determine and inform the State of the approximate electronic utility depths at critical locations as determined by the State. The limits of this additional information should be determined prior to the commencement of work. This depth indication is understood by both the Engineer and the State to be approximate only and is not intended to be used preparing the ROW and construction plans.
 - g. Provide a monthly summary, with weekly updates, of work completed and in process with adequate detail to verify compliance with agreed work schedule.
 - h. Close-out permits as required.
 - i. Clearly identify all utilities that were discovered from Quality Levels C and D investigation, but cannot be depicted in Quality Level B standards. These utilities must have a unique line style and symbology in the designate (Quality Level B) deliverable.
 - j. Comply with all applicable TxDOT policy and procedural manuals.
4. Subsurface Utility Locate (Test Hole) Service (Quality Level A)
- Locate is the process used to obtain precise horizontal and vertical position, material type, condition, size, and other data that may be obtainable about the utility facility and its surrounding environment through exposure by non-destructive excavation techniques that ensures the integrity of the utility facility. Subsurface Utility Locate (Test Hole) Services (Quality Level A) are inclusive of Quality Levels B, C, and D.

The Engineer must:

- a. Review requested test hole locations and advise the State in the development of an appropriate locate (test hole) work plan relative to the existing utility infrastructure and proposed highway design elements.
- b. Coordinate with utility owner inspectors as may be required by law or utility owner policy.
- c. Place Texas 811 ticket 48 hours prior to excavation.
- d. Neatly cut and remove existing pavement material, such that the cut does not exceed 0.10 square meters (1.076 square feet) unless unusual circumstances exist.
- e. Measure and record the following data on an appropriately formatted test hole data sheet that has been sealed and dated by the Engineer:
 - (1) Elevation of top of utility tied to the datum of the furnished plan.
 - (2) Minimum of two benchmarks utilized. Elevations must be within an accuracy of 15mm (.591 inches) of utilized benchmarks.
 - (3) Elevation of existing grade over utility at test hole location.
 - (4) Horizontal location referenced to project coordinate datum.
 - (5) Outside diameter of pipe or width of duct banks and configuration of non-encased multi-conduit systems.
 - (6) Utility facility materials.
 - (7) Utility facility condition.
 - (8) Pavement thickness and type.
 - (9) Coating/wrapping information and condition.
 - (10) Unusual circumstances or field conditions.
- f. Excavate test holes in such a manner as to prevent any damage to wrappings, coatings, cathodic protection, and other protective coverings and features. Water excavation can only be utilized with written approval from the appropriate TxDOT district office.
- g. Be responsible for any damage to the utility during the locating process. In the event of damage, the Engineer must stop work, notify the appropriate utility facility owner, the State, and appropriate regulatory agencies. The regulatory agencies include: the Railroad Commission of Texas and the Texas Commission on Environmental Quality. The Engineer shall not resume work until the utility facility

- owner has determined the corrective action to be taken. The Engineer is liable for all costs involved in the repair or replacement of the utility facility.
- h. Back fill all excavations with appropriate material, compact backfill by appropriate mechanical means, and restore pavement and surface material. The Engineer is responsible for the integrity of the backfill and surface restoration for a period of three years.
 - i. Furnish and install a permanent above-ground marker (as specified by the State, directly above center line of the utility facility).
 - j. Provide complete restoration of work site and landscape to equal or better condition than before excavation. If a work site and landscape is not appropriately restored, the Engineer shall return to correct the condition at no extra charge to the State.
 - k. Plot utility location position information to scale and provide a comprehensive utility plan signed and sealed by the responsible professional engineer. This information must be provided in the latest version of MicroStation and be fully compatible with the OpenRoads civil design system used by the State. The electronic file will be delivered on CD, DVD or USB flash drive as requested. When requested by the State, the locate information must be over laid on the State's design plans.
 - l. Return plans, profiles, and test hole data sheets to the State. If requested, conduct a review of the findings with the State.
 - m. Close-out permits as required.

Task 3: Geotechnical Investigation

No Geotechnical Investigation will be performed. The proposed pavement structure will match the existing pavement structure as shown on the As-built, dated June 1980. Proposed pavement structure will be 6-in hot-mix asphalt over 6-in lime stabilized subgrade.

Task 4: Construction Plans & Bid Documents

The CONSULTANT will develop construction plans for the streets based on the survey and applicable Town requirements.

On Melody Ct, the design will include reconstruction of the roadway, sidewalk and cul-de sac. The existing grass infield for the cul-de-sac will remain as will the mailbox. Construction will include driveway apron reconstruction to right-of-way. Sidewalk ramps on the west side of Homestead St, at Melody Ct will be evaluated for ADA compliance and reconstructed if necessary. The design will also include approximately 185 linear feet of new 8-in sanitary sewer and approximately 200 linear feet of new 8-in water main and all service reconnections. The profile will be reviewed to determine drainage issues and revised accordingly.

At the intersection of Timber Creek Rd at College Pkwy, the design intent will be to replace the roadway pavement without any utility work or drainage. Street grades will remain unchanged except as necessary to ensure ADA compliance and an adequate crown is maintained for proper drainage.

Sidewalk construction along College Parkway will include approximately 1,000 linear feet of sidewalk within the limits described above. These locations will be evaluated with a site visit and approximate limits determined prior to topographic survey of the area.

TNP will provide the following deliverables:

- Schematic Plans (30%): The schematic submittal will consist of
- Preliminary Plans, Opinion of Construction Cost, Technical Specification (90%)

- Bid Documents
 - Sealed Construction Plans
 - Opinion of Construction Cost
 - Project Manual (Contract documents and technical specification)

The bid documents will include technical specifications, estimated quantities, instructions to bidders regarding insurance and bonds, maps identifying the streets to be rehabilitated, and plans and details as necessary to convey the intent of the work. The CONSULTANT will prepare an Opinion of Probable Construction Cost based on the proposed improvements.

The construction documents will include:

- Cover Sheet
- General Notes and Typical Sections
- Street Plans
 - Plan and Profile Sheets
 - Driveway profiles or connection details
 - Proposed cross sections
- Utility Plans (Melody Ct only)
 - Water Plan and Profile Sheets
 - Sewer Plan and Profile Sheets
 - Water and sewer services to be replaced
 - Call out utilities to be adjusted as needed
- Detail Sheets
 - The construction plans will include any necessary special construction details
 - Applicable Town standard details
- Project Manual
 - Contract Documents
 - Pay item list / bid form
 - Project technical specifications

Task 5: Site Accessibility (RAS)

The CONSULTANT will coordinate with and provide plans for review and comment by a Registered Accessibility Specialist (RAS). It is anticipated that both project locations will be submitted for a single review and registration.

Task 6: Public Meeting

The CONSULTANT will provide an exhibit and plans for coordination and review at a public meeting for the Melody Ct Reconstruction. The CONSULTANT will provide up to three (3) staff to attend the public meeting. No presentation is included.

Task 7: Bid Support

The CONSULTANT will provide up to 10 hard copy sets and an electronic version of the bid documents for use in bidding, award of contracts and construction. The Town will be responsible for advertisement for bids and for dispersing all plans and specifications to prospective bidders. The CONSULTANT will provide technical support to the Town during the bidding and contract award phase by responding to questions. This task will be billed at hourly rates.

Task 8: Construction Phase Services

The CONSULTANT will provide construction support services as requested by the Town staff. The likely services are as follows:

The CONSULTANT will attend and participate in a preconstruction meeting with the Contractor and Town staff to identify points of contact and clarify any construction issues.

The CONSULTANT will visit the site on an irregular basis as necessary, up to 4 visits are assumed.

The CONSULTANT will consult and advise the Town, prepare routine change orders as required, review shop drawings submittals and materials testing reports, make monthly pay recommendations based on contractor pay requests, address questions during construction, and coordinate with the field inspector. This task will be billed at hourly rates.

ASSUMPTIONS AND EXCLUSIONS

1. The fees shown are for the scope of work as indicated above. Changes in the scope of work will require a reconsideration of the fees shown or may be completed as Additional Services.
2. No boundary surveying is included in the scope of this agreement.
3. The scope of this agreement does not include construction staking, construction inspection or materials testing. However, all these services can be provided upon request.
4. No traffic control plans will be prepared as part of the scope of this agreement. The CONSULTANT will provide criteria (allowable lane closures, etc.) for the contractor to use in preparing traffic control plans.
5. It is understood that the existing drainage system may or may not have the capacity to convey any specific design storm. It is assumed that storm sewer modifications will not be made, therefore no capacity calculations or proposed drainage design will be performed.
6. All the streets listed above will be bid as one complete project.

Article II

COMPENSATION to be on a basis of the following:

1. **BASIC SERVICES FIXED FEE:** The CLIENT agrees to pay the CONSULTANT the following fees for **BASIC SERVICES** as outlined above. **BASIC SERVICES** shall be in accordance with payment terms.

Task	Timber Creek Road at College Parkway Intersection and Sidewalk Reconstruction	Melody Court Reconstruction	Total
Task 1: Topographic Design Survey	\$6,000	\$5,000	\$11,000
Task 2: Subsurface Utility Engineering (SUE)	\$-	\$9,000	\$9,000
Task 3: Geotechnical Services	\$ -	\$ -	\$ -
Task 4: Construction Plans and Bid Documents	\$35,000	\$28,000	\$63,000
Task 5: Site Accessibility (RAS)	\$1,250	Inc.	\$1,250
Task 6: Public Meeting	\$ -	\$2,000	\$2,000
Task 7: Bid Support	\$-	\$-	\$-
Task 8: Construction Administration (Hourly)	\$5,000	\$4,000	\$9,000
Task 7: Reimbursable Expenses (3%)	\$1,930	\$1,400	\$3,370
Total	\$49,180	\$49,440	\$98,620

1. **BASIC SERVICES FIXED FEE:** The CLIENT agrees to pay the CONSULTANT the fees shown above for the tasks identified not identified as Hourly. **BASIC SERVICES** shall be in accordance with payment terms.
2. **BASIC SERVICES HOURLY:** The ENGINEER shall be compensated on an hourly basis for those tasks identified above as Hourly tasks. Payment will be at ENGINEER's standard hourly rates for personnel working on the project. A schedule of ENGINEER's hourly rates is provided as Attachment 'B'. Services shall be billed monthly based on actual time spent working on the project by ENGINEER's staff. The fees shown above for hourly services are estimates only. The ENGINEER makes no guarantee that the fees will not exceed the amounts shown. The ENGINEER will not exceed the CLIENT prior to exceeding the estimated fees shown.
3. **ADDITIONAL SERVICES:** **ADDITIONAL SERVICES** shall be any service provided by the CONSULTANT which is not specifically included in **BASIC SERVICES** as defined above.

ADDITIONAL SERVICES shall be considered additional work and shall be reimbursed at standard TNP hourly rates or TNP standard rates for items provided in-house, or direct expenses times a multiplier of 1.10 for non-labor, subcontract or mileage items.
4. **PAYMENT TERMS:** Per the Provisions identified in Attachment 'C', the CLIENT shall be billed monthly for services rendered and pay promptly upon receipt of invoice. Billings for fixed

fee services shall be based on the percentage of work complete. Delays of payment in excess of 30 days from invoice date may result in cessation of services until payment is received. Additionally, CONSULTANT may withhold all work products and documents until payment is received in full. Time shall be added to the project schedule for any work stoppages resulting from CLIENT's failure to render timely payment.

Agreement by CLIENT to this contract acknowledges available funding for the proposed services provided by the CONSULTANT. Payment for services shall not be contingent upon the CLIENT's available project specific funds or anticipated future funding.

Article III

SCHEDULE: The project will proceed generally as follows:

The design survey and geotechnical investigation will be conducted concurrently.

Construction Plans and Bid Documents

Design Survey

Will begin within ten working
days of written authorization

Preliminary Plans (60%)

10 weeks from written authorization

Final Plans (95%)

6 weeks from receipt of preliminary comments

Bid Documents (100%)

4 weeks after receipt of final comments

Attachment 'A' Project Limits

Melody Ct



Timber Creek Rd at College Pkwy; and sidewalk Reconstruction on College Pkwy



Attachment 'B'
Teague Nall and Perkins, Inc.
2020 - 2021 Standard Hourly Rates
Effective January 1, 2020 to December 31, 2021

Engineering/Landscape Architecture/ROW	Hourly Billing Rate
Principal	\$250
Team Leader	\$230
Senior Project Manager	\$220
Project Manager	\$175
Senior Engineer	\$230
Project Engineer	\$160
Engineer III/IV	\$135
Engineer I/II	\$125
Landscape Architect / Planner	\$160
Landscape Designer	\$120
Senior Designer	\$140
Designer	\$130
Senior CAD Technician	\$125
CAD Technician	\$110
IT Technician	\$170
Clerical	\$80
ROW Manager	\$190
Senior ROW Agent	\$160
ROW Agent	\$125
Relocation Agent	\$160
ROW Admin	\$70
Intern	\$70

Surveying	Hourly Billing Rate
Survey Manager	\$230
Registered Professional Land Surveyor (RPLS)	\$195
Field Coordinator	\$140
S.I.T. or Senior Survey Technician	\$140
Survey Technician	\$110
1-Person Field Crew w/Equipment**	\$145
2-Person Field Crew w/Equipment**	\$175
3-Person Field Crew w/Equipment**	\$200
4-Person Field Crew w/Equipment**	\$220
Flagger	\$50
Abstractor (Property Deed Research)	\$90
Small Unmanned Aerial Systems (sUAS) Equipment Use	\$250 (4 hr. min.)

Utility Management, Utility Coordination, and SUE	Hourly Billing Rate
Senior Utility Coordinator	\$165
Utility Coordinator	\$150
SUE Project Manager	\$190
SUE Engineer	\$170
Field Coordinator	\$140
Sr. Utility Location Specialist	\$140
Utility Location Specialist	\$90
1-Person Designator Crew w/Equipment***	\$145
2-Person Designator Crew w/Equipment***	\$170
2-Person Vac Excavator Crew w/Equip (Exposing Utility Only)	\$275 (4 hr. min.)
Core Drill (equipment only)	\$750 per day
SUE QL-A Test Hole (0 < 4 ft)	\$1,250 each
SUE QL-A Test Hole (> 4 < 6 ft)	\$1,500 each
SUE QL-A Test Hole (> 6 < 8 ft)	\$1,750 each
SUE QL-A Test Hole (> 8 < 10 ft)	\$2,000 each
SUE QL-A Test Hole (> 10 < 12 ft)	\$2,250 each
SUE QL-A Test Hole (> 12 < 14 ft)	\$2,500 each

Construction Management, Construction Engineering, and Inspection (CEI)	Hourly Billing Rate
Construction Inspector II	\$100
Construction Inspector III	\$110
Senior Construction Inspector	\$130
Construction Superintendent	\$180
Senior Project Manager	\$220

Direct Cost Reimbursables

A fee equal to 3% of labor billings shall be included on each monthly invoice for prints, plots, photocopies, plans or documents on CD, DVD or memory devices, and mileage. No individual or separate accounting of these items will be performed by TNP.

Any permit fees, filing fees, or other fees related to the project and paid on behalf of the client by TNP to other entities shall be invoiced at 1.10 times actual cost.

Notes:

All subcontracted and outsourced services shall be billed at rates comparable to TNP's billing rates above or cost times a multiplier of 1.10.

* Rates shown are for calendar year 2019 are subject to change in subsequent years.

** Survey equipment may include truck, ATV, Robotic Total Station, GPS Units and Digital Level.

*** Includes crew labor, vehicle costs, and field supplies.



TOWN COUNCIL AGENDA ITEM NO. 10

CONSENT ITEM

DATE: January 3, 2022

FROM: Ronnie Bates, Assistant Director of Public Works

ITEM: Consider approval of the purchase of street leveling services from Nortex Concrete Lift & Stabilization, Inc., through a City of Grand Prairie contract, in the estimated annual amount of \$75,000.00.

BACKGROUND INFORMATION: This item is to approve the purchase of street leveling services for the Street Services division, using the City of Grand Prairie's contract with Nortex Concrete Lift & Stabilization, Inc.

Each fiscal year, funds are allocated through the Street Services division's budget for pavement lifting and stabilization, in areas where concrete has settled creating a water ponding issue. Public Works is interested in utilizing the City of Grand Prairie contract with Nortex to provide the street leveling services. Nortex Concrete Lift & Stabilization, Inc. has provided the Town with this service in the past several years, and staff is confident of their ability to perform this service satisfactorily.

The City of Grand Prairie contract is a one (1) year period that was awarded by their Council and implemented on October 12, 2021 and consists of four (4) optional one-year renewal periods Staff is interested in utilizing the contract for the first year and the four-year renewal periods as well.

Local governments are authorized by the Interlocal Cooperation Act, V.T.C.A. Government Code, Chapter 791, to enter into joint contracts and agreements for the performance of governmental functions and services, including administrative functions normally associated with the operation of government (such as purchasing necessary materials and equipment). The Town of Flower Mound and Grand Prairie entered an interlocal agreement effective June 1, 2010 and continue to use each other's contracts as needed.

FISCAL IMPACT: \$75,000.00 estimated annually

Proposed Expenditure:	Account Number(s):
\$75,000.00	100-690-92240-4303

Finance Review by: Tammy Wilson, Executive Director of Fiscal and Administrative Services/CFO

LEGAL REVIEW: N/A

ATTACHMENTS:

1. City of Grand Prairie Contract

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

tw



Contract Coversheet

Dept: * Purchasing

Contract ID: 21259

For: Public Works

Bid Number: 21158

Contact Name: Angi Mize

Contact Phone: * 8262

Contact Email: * amize@gptx.org

Vendor Name: Nortex Concrete Lift & Stabilization, Inc.

Vendor Email: casey@nortexconcretelift.com

Project Name: Pavement Leveling Services (21158)

Summary: initial contract

Permanent Retention *

☐ Yes

☒ No

Contract Amount

\$ 827,187.50

Total Contract Amount over all terms

\$ 4,135,937.50

Account #

Work Order #

Dates

Implementation Date

11/1/2021

Termination Date

10/31/2022

Council Approval Date

10/12/2021

Contract Approvals

Department Manager:

Caryn Riggs

Date 10/22/2021

City Attorney Signature

PATRICK M. WILSON

Date 10/26/2021

City Manager Signature

WILLIAM A. HILLS

Date 10/26/2021

City Secretary Signature

Gloria Colvin

Date 10/28/2021

CITY OF GRAND PRAIRIE SERVICES PRICE AGREEMENT

THIS CONTRACT is made and entered into this date by and between the **CITY OF GRAND PRAIRIE**, a Texas municipal corporation (hereinafter referred to as the “CITY”), and **NORTEX CONCRETE LIFT & STABILIZATION, INC.** (hereinafter referred to as “VENDOR”) and evidences the following:

I. PURPOSE

VENDOR shall provide pavement leveling services per bid award resulting from VENDOR’s response to RFB #21158, submitted by Casey Derosa, on September 16, 2021.

II. DESCRIPTION OF SERVICES

The services which VENDOR shall provide for the CITY shall include the following:

- A. VENDOR hereby covenants and agrees that VENDOR is to work closely with the CITY’s Public Works Director or their designee, and/or other appropriate officials of the CITY, and that VENDOR is to perform any and all tasks required of VENDOR to fulfill the purposes of this Contract.
- B. VENDOR and the CITY covenant and agree that VENDOR shall perform all of the services and work contained in CITY specifications and VENDORS bid to CITY (attached hereto as “Exhibit A”); said document being part of this Contract and incorporated in its entirety herein. The parties agree that should there be any conflict between the terms of the incorporated document and this Contract, the provisions of this Contract shall control. The parties understand that quantity of services to be furnished to the City is an estimate and that the City may order more, less, or none of the services depending on the projects and the work of the City that requires the services. The price of the services shall remain constant throughout the term of contract.
- C. VENDOR expressly covenants and agrees to provide the CITY with such written reports or documentation of guaranties as may be required by the scope of the submittal.

III. PERFORMANCE OF WORK

VENDOR or VENDOR’S associates and employees shall perform all the work called for in this Contract. VENDOR hereby covenants and agrees that all of VENDOR’S associates and employees who work on this project shall be competent and fully qualified to do the work described in this Contract, the services performed shall be performed in a good and workmanlike manner, and the finished product shall be fit for the particular use(s) contemplated by this agreement.

IV. PAYMENT

The CITY shall pay to VENDOR a sum not to exceed those unit prices, or percentage discount from list price where applicable in the submittal for the purchase of services designated herein and in no event shall total payments under the base contract exceed \$827,187.50 without additional approval. VENDOR'S invoices must be delivered to the attention of the department placing the order. The city will pay invoices as work is completed and within 30 days after receipt of an invoice or certification by the City that the work is performed in a good and workmanlike manner, whichever is later. Payment will be made by means of a City issued check, an ACH, or with a City issued Procurement Card (Mastercard).

V. TERM OF THE CONTRACT

This Contract is for an initial term of one year with the option to renew for four additional one year periods. This Contract is effective as of November 1, 2021. No new orders shall be accepted, against this Contract term, after midnight on October 31, 2022. Contract shall terminate upon completion of all requirements for orders placed by said date, unless the parties mutually agree in writing to extend the term of the Contract through allowable renewal option, or unless otherwise terminated as provided in Paragraph XVI herein. The parties shall evidence the renewal in writing, with any additional terms set out in the said writing.

VI. CONTRACT ASSIGNMENT

VENDOR and the CITY hereby covenant and agree that this Contract provides for services and that these services are not to be assigned or sublet in whole or part without the prior written consent of the CITY.

VII. CONFLICT OF INTEREST

VENDOR hereby covenants and agrees that during the Contract period that VENDOR and any of VENDOR'S associates and employees will have no interest nor acquire any 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 VENDOR pursuant to this Contract will be conducted by employees or associates of VENDOR. VENDOR further covenants and agrees that it understands that the Code of Ordinances of the City of Grand Prairie prohibits any officer or employee of the CITY from having any financial interest, either direct or indirect, in any business transaction with the CITY. Any violation of this paragraph which occurred with the actual or constructive knowledge of VENDOR will render this Contract voidable by the CITY.

VIII. CHANGE IN WORK

The CITY, through its Purchasing Manager or their designee, may request changes in the scope and focus of the activities and duties called for under this Contract. Any such change which, in the opinion of VENDOR or the CITY varies significantly from the scope and focus of the work set out herein or entails a significant increase in cost or expense to VENDOR must be mutually agreed upon by VENDOR and the CITY. The parties herein acknowledge that any change in the scope or focus of the work which results in the increase in compensation to VENDOR of the fee stated in Paragraph IV hereof must first be approved by the CITY's Purchasing Manager, City Manager or City Council, where applicable.

IX. CONFIDENTIAL WORK

Any reports, designs, plan, information, project evaluations, data or any other documentation given to or prepared or assembled by VENDOR under this Contract shall be kept confidential and may not be made available to any individual or organization by VENDOR without the prior written approval of the CITY except as may be required by law.

X. OWNERSHIP OF DOCUMENTS

VENDOR acknowledges that CITY owns all notes, reports, or other documents, intellectual property or documentation produced by the vendor pursuant to this agreement or in connection with its work which are not otherwise public records. VENDOR acknowledges that CITY shall have copyright privileges to those notes, reports, documents, processes, and information.

VENDOR shall provide CITY a copy of all such notes, reports, documents, and information (except to the extent that they contain confidential information about third parties) at CITY expense upon written request.

XI. NONDISCRIMINATION

As a condition of this Contract, VENDOR covenants and agrees that VENDOR shall take all necessary actions to ensure, in connection with any work under this Contract, VENDOR, VENDOR'S associates, sub-vendors, and employees will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or physical or mental handicap, either directly or indirectly or through contractual or other arrangements. In this regard, VENDOR shall keep, retain, and safeguard all records relating to this Contract for work performed hereunder for a minimum period of three (3) years from final contract completion, with full access allowed to authorized representatives of the CITY upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

XII. INDEPENDENT VENDOR

By the execution of this Contract, the CITY and VENDOR do not change the independent vendor status of VENDOR. No term or provision of this Contract or any act of VENDOR in the performance of this Contract may be construed as making VENDOR the agent or representative of the CITY. All employees of VENDOR shall perform their duties under the supervision of VENDOR, which shall have the exclusive right to dictate to the VENDOR'S employees how to perform their tasks. VENDOR agrees and covenants that each of its employees will be properly qualified and will use reasonable care in the performance of the assigned duties. VENDOR shall post all applicable warning signs if such work will disrupt normal traffic or workplace activities.

XIII. WARRANTY, HOLD HARMLESS, AND INDEMNITY

VENDOR warrants that the services it performs for CITY will be performed in a good and workmanlike manner, and that any items delivered to the CITY under this contract will be fit for the particular purpose for which it was furnished. VENDOR shall defend, indemnify, and hold the CITY whole and harmless against any and all claims for damages, costs, and expenses to persons or property that may arise out of, or be occasioned by, the execution or performance of this Contract or any of VENDOR'S activities or any act of commission or omission related to this Contract of any representative, agent, customer, employee, sub-vendor or invitee of VENDOR or any representative, agent, employee, or servant of the CITY. If an item is covered by a manufacturer's warranty, it is the responsibility of the VENDOR to obtain the information for CITY and to get the manufacturer to honor the warranty.

XIV. INSURANCE

Prior to the commencement of work under this Contract, VENDOR shall obtain and shall continue to maintain at no cost to the CITY, in full force and effect during the term of this Contract, a comprehensive liability insurance policy with a company licensed to do business in the State of Texas and rated not less than "A" in the current Best Key Rating Guide, which shall include bodily injury, death, automobile liability, worker's compensation, and property damage coverage, in accordance with any CITY ordinance or directive. The minimum limits for this coverage shall be \$1,000,000.00 per occurrence / \$2,000,000 aggregate for general liability and for property damage, and \$1,000,000 combined single limit for automobile liability unless modified in accordance with any ordinance or directive. Insurance obtained by VENDOR shall be primary and noncontributory, and CITY shall be named as an additional insured under the general liability and automobile policies. A provision shall be incorporated in the policies whereby CITY shall be given at least thirty (30) days prior notice of any material change in coverage or of cancellation of such policies, and VENDOR shall provide the City with a copy of any such notice of material change in coverage or cancellation of any such policies, within three (3) business days of its receipt of such a notice. For purposes of this section, a material change in coverage includes, but is not limited to, a reduction in coverage below the amounts required under this agreement. VENDOR shall provide a waiver of subrogation in favor of the CITY on all coverages and represents that it has taken all actions necessary under the policy or policies for the City to have the status of additional insured and to effectuate any required waiver of subrogation. VENDOR shall furnish the CITY with original copies of the policies or certificates evidencing such coverage prior to commencement of any work under this Contract.

XV. NO VERBAL AGREEMENT

This Contract contains the entire commitments and agreements of the parties to the Contract. Any verbal or written commitment not contained in this Contract or expressly referred to in this Contract and incorporated by reference shall have no force or effect.

XVI. TERMINATION

The CITY may, at its option and without prejudice to any other remedy to which it may be entitled at law or in equity, terminate further work under this Contract, in whole or in part, by giving at least thirty (30) days prior written notice thereof to VENDOR with the understanding that all services being terminated shall cease upon the date specified in such notice. The CITY shall equitably compensate VENDOR, in accordance with the terms of this Contract for the services properly performed prior to the date specified in such notice following inspection and acceptance of same by the CITY. VENDOR shall not, however, be entitled to lost or anticipated profits should the CITY choose to exercise its option to terminate.

XVII. VENUE

The parties to this Contract agree and covenant that this Contract will be performable in Grand Prairie, Texas, and that if legal action is necessary to enforce this Contract, exclusive venue will lie in Dallas County, Texas.

XVIII. APPLICABLE LAWS

This Contract is made subject to the existing provisions of the Charter of the City of Grand Prairie, its rules, regulations, procedures, and ordinances, present and future, and all applicable laws of the State of Texas and the United States.

XIX. ADDITIONAL VERIFICATIONS

VENDOR VERIFIES THAT: (1) It does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, as defined in Texas Government Code § 2274.001, and that it will not during the term of the contract discriminate against a firearm entity or firearm trade association; (2) It does not “boycott Israel” as that term is defined in Texas Government Code § 808.001 and it will not boycott Israel during the term of this contract; and (3) It does not “boycott energy companies,” as those terms are defined in Texas Government Code §§ 809.001 and 22774.001, and it will not boycott energy companies during the term of the contract.

XX. CONTRACT INTERPRETATION

The parties to this Contract covenant and agree that in any litigation relating to this Contract, the terms and conditions of the Contract will be interpreted according to the laws of the State of Texas, without regard to any conflict of law rules.

XXI. NOTICES

All notices, requests, or other communications (excluding invoices) hereunder must be in writing and transmitted via overnight courier, email, hand delivery, or certified or registered mail, postage prepaid and return receipt requested to the CITY and VENDOR as follows:

CITY:

City of Grand Prairie
ATTN: Angi Mize, Purchasing Manager | Purchasing Division
300 Main Street, Grand Prairie, TX 75050
PO Box 534045, Grand Prairie, TX 75053-4045
Phone 972-237-8266 | Email purchasingfax@gptx.org
Accounts Payable Contact: accountspayable@gptx.org

City of Grand Prairie
ATTN: Leland Miller, Manager, Streets Division
1821 S SH161, Grand Prairie, TX 75052
PO Box 534045, Grand Prairie, TX 75053-4045
Phone 972-237-8529 | Email lmiller@gptx.org

VENDOR:

Nortex Concrete Lift & Stabilization, Inc.
ATTN: Casey DeRosa
201 NW 26th St., Fort Worth, TX, 76164
Phone 817-831-1240 | Email casey@nortexconcretelift.com

Any notice required or desired to be given to either party hereto shall be deemed to be delivered: (i) on the date of delivery, if hand delivered or emailed; (ii) one (1) day after sending, if sent by overnight courier; or (iii) three (3) days after the same is deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by registered or certified mail, return receipt requested, and addressed to such party at the address hereinafter specified. Either party hereto may change such party's address for notice to another address within the United States of America, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

XXII. SEVERABILITY

In the event that any provision contained in this Contract is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in the Contract.

XXIII. RIGHT OF REVIEW

VENDOR covenants and agrees that the CITY, upon reasonable notice to VENDOR, may review any of the work performed by VENDOR under this Contract.

XXIV. WAIVER OF ATTORNEYS FEES

VENDOR and CITY expressly covenant and agree that in the event of any litigation arising between the parties to this contract, each party shall be solely responsible for payment of its attorneys and that in no event shall either party be responsible for the other party's attorney's fees regardless of the outcome of the litigation.

XXV. NON-COLLUSION

VENDOR represents and warrants that VENDOR has not given, made, promised, or paid, nor offered to give, make, promise, or pay any gift, bonus, commission, money, or other consideration to any person as an inducement to or in order to obtain the work to be provided to the CITY under this Contract. VENDOR further agrees that VENDOR shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the CITY under this Contract) for any of the services performed by VENDOR under or related to this Contract. If any such gift, bonus, commission, money, or other consideration is received by or offered to VENDOR, VENDOR shall immediately report that fact to the CITY and, at the sole option of the CITY, the CITY may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to VENDOR under this Contract.

EXECUTED this the 21 day of October, 2021.

CITY OF GRAND PRAIRIE, TEXAS

By: 
Deputy City Manager

ATTEST:


for Mona Lisa Galicia, City Secretary

**NORTEX CONCRETE LIFT &
STABILIZATION, INC.**

By: 
Printed Casey DeHosa
Name: GM
Title: GM

Gloria Colvin

APPROVED AS TO FORM:

Megan Mahan, City Attorney



CITY OF GRAND PRAIRIE, TEXAS

REQUEST FOR BIDS

RFB # 21158 – PAVEMENT LEVELING SERVICE

DUE DATE: PRIOR TO 2PM September 20, 2021

DUE TO: Angi Mize, Purchasing Manager
Purchasing Division
Grand Prairie, Texas 75050
www.PublicPurchase.com

CLEARLY MARK BID AS “RFB # 21158”

Late responses will be unopened and not accepted for consideration. The City of Grand Prairie is not responsible for lateness or failure of timely delivery via mail (whether delays are internal/external), carrier, etc. Please ensure you allow time to provide your response timely so that you may be properly considered. EMAIL BIDS WILL NOT BE ACCEPTED.

Table of Contents

ADVERTISEMENT FOR BIDS	3
1. PROJECT SCOPE	4
2. SERVICE REQUIREMENTS	4
3. CINCRETE JOINT GRIDING	6
4. SOIL DINSIFICATION.....	6
5. TRAFFIC CONTROL	6
6. CONTRACTOR RESPONSIBILITIES	7
7. SAFETY REQUIREMENTS.....	7
8. WARRANTY.....	8
9. PAYMENT AND INVOICING	8
10. PROCUREMENT SCHEDULE	8
11. CONTACT.....	8
12. BID EVALUATION	8
13. EVALUATION CRITERIA.....	9
14. SUBMITTAL RESPONSE GUIDELINES	9
15. AGREEMENT TERMS AND AWARD.....	9
SOLICITATION STANDARD TERMS AND CONDITIONS.....	11
SUBMITTAL FORMS	14

CITY OF GRAND PRAIRIE
ADVERTISEMENT FOR BIDS

Sealed bids will be received via www.PublicPurchase.com until **September 20, 2021**, at 2:00 PM, and publicly opened and read via teleconference for the purchase of the following:

RFB # 21158 – PAVEMENT LEVELING SERVICE

Further information and specifications may be obtained at www.PublicPurchase.com, www.gptx.org, or from the Purchasing division at (972) 237-8262.

The city reserves the right to reject any or all bids and to waive formalities. The city also reserves the right to purchase these items through state awarded contracts or other intergovernmental agreements when it is in the best interest of the city.

Publish: September 5th & September 12th, 2021

1. PROJECT SCOPE

It is the intent of this specification to obtain an annual price agreement for the purchase of pavement leveling services by the City of Grand Prairie Streets Division.

2. SERVICE REQUIREMENTS

- 2.1. Vendor shall furnish all equipment and supplies needed for raising and undersealing of concrete slabs, sidewalks, and pavement. All equipment and supplies used must be capable of performing all operations in accordance with the specification.
- 2.2. Vendor shall cut any exposed rebar or concrete joints that are preventing a level surface.
- 2.3. All debris in way of performing work shall be cleaned and picked up prior to and after work is completed.
- 2.4. Vendor shall provide written summary report containing location, area (sf), and quantity (lb.) to be signed off by a City representative at end of each workday.
- 2.5. Each location shall be marked and noted for warranty purposes.
- 2.6. Vendor shall ensure each location is level and no pooling of water will occur.
- 2.7. Retainage will not be held for this project.
- 2.8. Material

2.8.1 The material shall be a hydrophobic, closed cell, high density polyurethane system with the following physical characteristics and properties:

Property	Requirement
Density, minimum, per ASTM D 1622	4.0 ± ½ lb./ft³ (64 ± 8 kg/m³)
Compressive Strength, minimum, per ASTM D 1621	80 psi (550 kPa)
Tensile Strength, minimum	90 psi (620 kPa)
Volume Change, maximum	+5.0 percent
Curing Rate	90 percent of compressive strength within 15 minutes after injection

- 2.8.2 The polyurethane foam system will have a free rise density of 4.0 +/- lb./cubic foot, with a minimum compressive strength of 80 psi. The expansion of the polyurethane foam under pressure increases the foam density above the original free rise density value. The compressive strength is a function of density of the tested material; therefore, the foam produced during the lifting process will have a higher compressive strength than foam produced without restriction (free rise).
- 2.8.3 Final elevations shall be within ¼" (0.02 ft.) of the elevations proposed by profile. A tight string line or straight edge may be used to monitor elevations. Final elevations shall be verified. The Contractor shall be responsible for any blowouts or excessive lifting which may result from process and shall repair the damaged area to the satisfaction of the owner without additional cost.
- 2.8.4 The high-density polyurethane formulation shall reach 90% of full compressive strength within 15 minutes from injection. The method for verification of quantity used must be approved by the Owner prior to work being pre-formed.
- 2.8.5 Pumping units shall be equipped with a manufacturer's certified flow meter to measure the amount of high-density polyurethane injected at each location. The certified flow meter shall have a digital output in both pounds and gallons.

2.8.6 A picture shall be taken of the flow meter prior to starting a project and another picture of the meter shall be taken after completion on each project to verify quantities. Flow meter shall be cleared to zero before starting work at each project. Project inspector shall verify the quantities for each project. Pictures of each location will be submitted daily.

2.8.7 The polyurethane material shall be measured in pounds.

3. CONCRETE JOINT GRINDING WITH WALK-BEHIND SCARIFIER/GRINDER

3.1 Use of walk-behind scarifier concrete grinder to eliminate mismatched or offset joints on arterial or residential concrete roadways at specified locations. Process to be used in conjunction with residential and arterial undersealing. Joints mismatched $\frac{3}{4}$ " or below may be ground for ride quality improvement. Anything greater than $\frac{3}{4}$ " should seek alternate method of repair. Offset maximum allowance after grinding has been performed will be $\frac{1}{8}$ ".

3.2 Use of vacuum is required for all concrete grinding performed on roadways. Vacuum must meet all OSHA Standards and requirement for silica dust control as described exposure.

3.3 Approval of work to be performed at each specified location must be given by owner before work can begin. Work not approved will not be paid. Crew that is on location for Residential and Arterial Concrete Pavement Undersealing will perform specified concrete grinding services while onsite.

3.4 Pavement ride quality will be verified by placing a 4' straight edge at selected concrete pavement joints to determine if an elevation variance greater than $\frac{1}{8}$ " still exists. Testing locations will be selected by the city. Any variance greater than $\frac{1}{8}$ " will be grinded again until it meets the $\frac{1}{8}$ " variance requirement.

3.5 The work performed, and equipment furnished in accordance with this item and measured as provided under "Measurement" will be paid for at the unit price bid for items "Concrete Joint Grinding with walk-behind Scarifier Grinder".

4. SOIL DENSIFICATION WITH HIGH DENSITY POLYURETHANE FOAM (HDPF)

4.1 Soil densification to stabilize, strengthen and lift (when needed) base and sub-base soils under concrete bridge approach slabs, concrete pavements and/or asphalt pavements by furnishing and injecting High Density Polyurethane foam (HDPF) into the foundation soils beneath the pavement through holes or injection tubes at locations shown on the plans or as directed, while monitoring for movement at the surface.

4.2 Provide a portable Dynamic Cone Penetrometer (DCP) for on-site soils investigation to assist in location and depth of weak foundation soils and determination of correct injection pattern and injection elevations through tubes to densify weak soils. The DCP must be capable of taking readings to a depth of 20 ft. Extension rods are required to perform this investigation. Provide a minimum of five (5) Dynamic Cone Penetrometer (DCP) Test Reports previously completed in association from projects. Provide documentation from a third-party testing lab that the HDPF has passed the Hydro-insensitivity of High-Density Polyurethane Grout Panel Test. Provide certified calibration documents for the flow meters to be used on the project. Certification date should be within 1 year from the start date of the project.

- 4.3 All prequalification documents are to be submitted with the bid/proposal. Any item not provided will cause bidder to be ineligible/non-responsive.
- 4.4 Furnish a two-part 1:1 by volume closed cell hydrophobic High Density Polyurethane Foam (HDPF). The material must reach 90% compressive strength within 30 minutes of injection.
- 4.5 Provide machinery, tools, and equipment necessary for proper execution of the work.
- 4.6 If settlement greater than 1/4" occurs during the standard two (2) year period from injection date the contractor will be required to reinject material to densify the soil and restore the pavement to grade at no cost to the Department.
- 4.7 This item will be measured by the pound of HDPF injected and accepted. Measure the two chemical components shown on the certified flow meter displays to calculate the total weight of the material for each location. Flow meters shall be reset to 0 (zero) before injecting at a new location.
- 4.8 The work performed, and materials furnished in accordance with this item and measured as provided under "measurement" will be paid for at the unit price bid for "Soil Densification with High Density Polyurethane Foam (HDPF)".

5. TRAFFIC CONTROL

- 5.1 The contractor shall provide construction and maintenance signs, construction lights, barricades, channelizing devices, and flagmen as required to provide for the safety of the traveling public. These items shall be in accordance with the recommended practices of the latest version of the Texas Manual on Uniform Traffic Control Devices for Streets and Highways (M.U.T.C.D.) (<http://www.tx.dot.gov/government/enforcement/signage/tmutcd.html>).
- 5.2 Traffic control will be broken into the following two categories:
 - 5.2.1 Residential: The contractor will be required to provide all traffic control on residential streets as part of the unit cost.
 - 5.2.2 Thoroughfare: Traffic control on thoroughfares will be paid for as a separate unit cost as provided in the contract. Thoroughfare street work cannot begin prior to 8:45 am and must be clear by 4:30 pm unless prior written approval is given by city.
- 5.3 Construction signs shall not be removed from the project until approved by the city.
- 5.4 No street shall be closed except upon written authority from the city.
- 5.5 At the end of each day, the contractor shall prepare the work to the satisfaction of the city to ensure safe driving at night; and shall place temporary pavement markings and maintain it until the city has approved the final inspection.
- 5.6 Contractor shall submit a traffic control plan for approval four (4) days prior to starting work at any location. All barricades, detour signs for total closure of the street, and all maintenance of signs and removals upon completion of project shall be in accordance with the Texas M.U.T.C.D.
- 5.7 All street work and closures will require a four (4) day notice to city so it may be publicized in the local paper, as necessary.
- 5.8 Contractor shall provide all temporary pavement marking as needed and placed before removal of barricades for the safety of public until permanent markings are installed by owner.

6. CONTRACTOR RESPONSIBILITIES

- 6.1** Bidder must be engaged in the business of providing pavement leveling services for a minimum of five years within the last seven years.
- 6.2** Bidder must be in good financial standing, not in any form of bankruptcy, current in payment of all taxes and fees such as state franchise fees. The City reserves the right to request a copy of vendor's audited or un-audited financial statement. When financial statements are requested, the City will review the vendor's audited or un-audited financial statement to this solicitation in accordance with Texas Government Code, Title 10, Subtitle D, Section 2156.007 to evaluate the sufficiency of the vendor's financial resources and ability to perform the contract or provide the service required in the solicitation. The city will be the sole judge in determining the sufficiency of the vendor's financial resources and ability to perform the contract or provide the service.
- 6.3** Bidder must provide a list of three (3) governmental or commercial references for work of a similar scope to this specification. The bidder shall choose references that illustrate the Bidder's ability, capacity, and skill to perform the contract as specified.

7. SAFETY REQUIREMENTS

- 7.1** The Contractor must be thoroughly familiar with all prevailing safety measures pertinent to its operation and shall meet or exceed those measures. This shall include, but not necessarily be limited to Environmental Health Agency (EPA) regulations, State of Texas regulations, local city ordinances, and Occupational Safety and Health Agency (OSHA) regulations. In addition, the Contractor shall be wholly responsible for instructing its employees in these safety measures and seeing that they are fully complied with in every respect.
- 7.2** Vendor will provide all required safety signage, barricades, and flashers/strobes.
- 7.3** All employees shall follow all applicable safety procedures, have appropriate fuel safety training certification when required by federal or state law, have immediate access to all appropriate safety equipment, and shall be trained in the use of that equipment.
- 7.4** All vehicles shall have proper safety signage, be fit for their intended purpose, and meet all OSHA, and State of Texas requirements.
- 7.5** Vendors discovered working without necessary safety devices or equipment in place will be required to stop all work in progress until adequate equipment has been obtained and approved by to the Contract Administrator.
- 7.6** Any hazardous condition or any damage to City property is to be immediately reported to the City Contract Administrator.
- 7.7** Vendor will not permit unsafe practices. Examples of unsafe practices include but are not limited to using inappropriate equipment for the job, removing chains or other safety devices from equipment, traveling and operating equipment at excessive speed. Unsafe practices will be grounds for termination of the contract.

8. WARRANTY

If settlement greater than ¼" occurs during the standard two-year period from injection date the contractor will be required to reinject material to densify the soil and restore the pavement to grade at no cost to the City. After two years DCP testing will be performed to evaluate base soil conditions at no cost to the City. If no underlying conditions are found, then location will be reworked one (1) additional time at no cost to the City. If underlying conditions are found, then soil densification will be performed at contract price and additional two-year warranty will take effect at the date of injection.

9. PAYMENT AND INVOICING

9.1 Payment - The City will authorize payment upon satisfactory completion, inspection and acceptance by the City. All work will be performed in accordance with the outlined quote and purchase order furnished by the city. Vendors are subject to non-payment for any/all unauthorized repair/restoration work.

9.2 Invoicing - The following requirement applies to all invoices. Invoices for parts and repair services must reference a purchase order number and have attached a copy of the matching estimate(s). The invoice should include the following:

- Purchase Order number
- Invoice number
- Total Hours Charged
- Contract rates
- Total amount due

10. PROCUREMENT SCHEDULE

The projected schedule for this procurement is as follows:

Activity	Target Dates
Release Bid	Monday, September 6, 2021
Deadline for Questions	Wednesday, September 15, 2021
Responses to Questions	Thursday, September 16, 2021
Deadline for Receipt of Bids	Monday, September 20, 2021
Council Date	Tuesday, October 5, 2021

11. CONTACT

Information, questions, or clarification concerning the intent of this RFB should be in writing and addressed to Angi Mize, Sr. Buyer at amize@gptx.org / 972-237-8262 by 4:30 p.m. (CST) of the Deadline for Questions outlined in the Procurement Schedule. City of Grand Prairie's response to questions and requests for clarification will be posted to Public Purchase (www.publicpurchase.com).

12. BID EVALUATION

Award will be based on responsive bids best value as outlined in the Evaluation Criteria below. The City of Grand Prairie reserves the right to accept or reject all bids in whole or in part and waive any informality in the competitive bid process. Further, the city reserves the right to enter any contract deemed to be in the best interest of the city.

13. EVALUATION CRITERIA

The following evaluation criteria will be utilized in the selection of a vendor:

CRITERIA	POINTS
1. Price	50
2. Reputation	20
3. Experience	20
4. Past Relationship with the City and/or other Municipalities	10
TOTAL POSSIBLE POINTS	100

14. SUBMITTAL RESPONSE GUIDELINES

Offeror response to this Request for Bid shall include:

- 14.1** Completed and signed submittal check list.
- 14.2** Bid Pricing Form filled in with unit prices, extended prices, and total.
- 14.3** Questionnaire and References pages 16 - 18 answered. References provided should be for similar work/projects with up-to-date contact information (phone and email).
- 14.4** Submittal Affirmation form reviewed and signed.
- 14.5** Completed Historically Underutilized Business Questionnaire and House Bill 89 Verification Form.

15. AGREEMENT TERMS AND AWARD

The term of the agreement will be for an initial one-year agreement with the option to renew for up to four (4) additional one-year periods. The price agreement shall be awarded to the vendor(s) submitting the bid(s) deemed to be in the best interest of the City. The City may award one Primary and one Secondary vendor by portions or for the entire bid. The City of Grand Prairie may award to a single vendor, multiple vendors, or use any combination that serves the best interest of the City. Successful bidder will enter into a contract with the City for an annual agreement in accordance with the terms and conditions found within.

16. BONDS**16.1 PERFORMANCE AND PAYMENT BONDS**

The successful bidder shall furnish a Performance Bond and Payment Bond, on the forms which are attached hereto, in the amount of 100% of the contract price from an approved surety company holding a permit from the State of Texas to act as surety (and acceptable according to the latest list of companies holding certificates of authority from the Secretary of the Treasury of the United States) or other surety or sureties acceptable to the OWNER.

16.2 MAINTENANCE BOND

The successful bidder shall furnish a Maintenance Bond in the amount of fifty (50%) percent of the total bid price. This bond secures maintenance of the improvements by the City. It shall be executed by the CONTRACTOR as Principal and by a corporate surety such as an insurance company or bonding company. No individual surety will be accepted. A Power of Attorney for the Attorney-in Fact, who signs for

the surety must be attached. All bonds shall be by a company acceptable to the City. The companies shall be adequately capitalized and is an insurance company admitted in Texas. If not an insurance company, it shall have sufficient assets bonded in Texas, as shown by affidavit, to satisfy any judgments which may be taken.

SOLICITATION STANDARD TERMS AND CONDITIONS

1. **INSTRUCTIONS:** These standard terms apply to all solicitations.
2. **BEST INTEREST:** The City reserves the right to reject any or all responses and to waive formalities. The City also reserve the right to purchase through State awarded contracts or other intergovernmental agreements when it is in the best interest of the City.
3. **PRICING:** Price(s) quoted must be held firm for ninety (90) days to allow for evaluation unless otherwise noted in this document.
4. **SILENCE OF SPECIFICATION:** The apparent silence of these specifications as to any detail or to the apparent omission of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.
5. **F.O.B.:** All shipping shall be F.O.B. Destination.
6. **COOPERATIVE/INTERLOCAL PURCHASING:** If the vendor checked yes on the submittal affirmation form to allow for Interlocal Purchasing the following will apply: Government Entities utilizing Inter-Governmental Contracts with the City of Grand Prairie will be eligible, but not obligated, to purchase goods and services under this contract (s) awarded as a result of this solicitation. All purchases by Governmental Entities other than the City of Grand Prairie will be billed directly to that Governmental Entity and paid by that Governmental Entity. The City of Grand Prairie will not be responsible for another Governmental Entity's debts. Each Governmental Entity will order their goods and services as needed.
7. **SPLIT AWARD:** The City of Grand Prairie reserves the right to award a separate contract to separate vendors for each item/group or to award one contract for the entire bid.
8. **WITHDRAWAL OF RESPONSE TO SOLICITATION:** A response may not be withdrawn or cancelled by the vendor for a period of ninety (90) days following the date designated for the receipt without approval by the City.
9. **ERROR-QUANTITY:** Submittals must be made on units of quantity specified, extend, and show total(s). In the event of discrepancies in extension, the unit price shall govern.
10. **LATE SUBMITTALS:** Submittals received after the submission deadline shall be returned unopened and will be considered void and unacceptable. The City of Grand Prairie is not responsible for lateness from any carrier for any reason.
11. **TAXES:** The City of Grand Prairie is exempt from Federal Manufacture's Excise, and State Sales taxes. **TAX MUST NOT BE INCLUDED IN PRICING.** Tax exemption certificates will be executed by the City and furnished upon request.
12. **ADDENDA:** Any interpretations, corrections or changes to these specifications will be made by addenda. Sole issuing authority of the addenda shall be vested in the City of Grand Prairie Purchasing Department. Addenda will be mailed to all who are known to have received a copy of this solicitation. It is the responsibility of proposers to ensure they have received and understand any issued addenda.
13. **PROTEST:** Protests shall be submitted in writing and filed with the Purchasing Division no less than three business days prior to the City Council meeting at which the award appears on the agenda. A written response will be prepared by the Purchasing Manager in consultation with the end user department and City Attorney in accordance with the City Purchasing Manual. If the protesting vendor does not agree with the staff recommendation, they may appeal to the City Council. Protesting vendors must contact the City Secretary in order to be acknowledged and heard by City Council at the first available Council meeting.
14. **PAYMENT TERMS:** Payment terms are Net 30 unless otherwise specified by the City in this document.
15. **PATENT RIGHTS:** The vendor agrees to indemnify and hold the City harmless from any claim involving patent right infringement or copyrights on goods supplied.
16. **FUNDING:** The City of Grand Prairie is a home-rule municipal corporation operated and funded on an annual basis for Oct. 1 to Sept. 30. The City reserves the right to terminate, without liability to the City, any contract for which funding is not available.
17. **ASSIGNMENT:** Vendor shall not sell, assign, transfer, or convey this contract in whole or in part, without the prior written consent of the City.
18. **VENUE:** This agreement will be governed and construed according to the laws of the State of Texas.
19. **RIGHT OF REVIEW:** Vendor covenants and agrees that the City, upon reasonable notice to vendor, may review any of the work performed by vendor under this Contract.
20. **DELIVERY TIMES:** Deliveries will be acceptable only during normal working hours at the designated City Municipal Facility.
21. **STANDARD WARRANTY:** Standard manufacturer's warranty shall be provided and submitted to the City of Grand Prairie upon request.
22. **PACKAGING:** Unless otherwise indicated, items will be new, unused, and in first class condition in containers suitable for damage-free shipment and storage.
23. **ORDERS AND INVOICING:** A Purchase Order Number is required for all purchases. All invoices must identify the purchase order number, include the bid unit pricing by item, identify the ordering department/user, and include contact phone and email.

- 24. CONFLICT OF INTEREST:** The successful vendor hereby covenants and agrees that during the Contract period that vendor and any of vendor's associates and employees will have no interest nor acquire any 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 vendor pursuant to this Contract will be conducted by employees or associates of vendor. Vendor further covenants and agrees that it understands that the Code of Ordinances of the City of Grand Prairie prohibits any officer or employee of the City from having any financial interest, either direct or indirect, in any business transaction with the City. Any violation of this paragraph which occurred with the actual or constructive knowledge of vendor will render this contract voidable by the City.
- a. **FORM CIQ** – is required when a conflict exists in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law, this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor. This form may be obtained from the Texas Ethic Commission's website.
- 25. CONFIDENTIAL WORK:** Any reports, designs, plan, information, project evaluations, data or any other documentation given to or prepared or assembled by vendor under this contract shall be kept confidential and may not be made available to any individual or organization by vendor without the prior written approval of the City except as may be required by law.
- 26. WARRANTY, HOLD HARMLESS, AND INDEMNITY:** Vendor warrants that the commodities it delivers to the City shall be delivered in a good and workmanlike manner, and that any items delivered to the City under this contract will be fit for the particular purpose for which it was furnished. Vendor shall defend, indemnify, and hold the City whole and harmless against any and all claims for damages, costs, and expenses to persons or property that may arise out of, or be occasioned by, the execution or performance of this Contract or any of vendor's activities or any act of commission or omission related to this Contract of any representative, agent, customer, employee, sub-vendor or invitee of vendor or any representative, agent, employee, or servant of the City. If an item is covered by a manufacturer's warranty, it is the responsibility of the vendor to obtain the information for City and to get the manufacturer to honor the warranty.
- 27. PROPRIETARY INFORMATION:** Any material or information that is considered proprietary in nature must be clearly marked as such and will be treated as confidential by the City of Grand Prairie to the extent permitted under the Open Records Act.
- 28. WAIVER OF ATTORNEYS FEES:** Vendor and City expressly covenant and agree that in the event of any litigation arising between the parties to this contract, each party shall be solely responsible for payment of its attorneys and that in no event shall either party be responsible for the other party's attorney's fees regardless of the outcome of the litigation.
- 29. CHANGE ORDERS:** No Oral statement of any person shall modify or otherwise change or affect the terms, conditions, or specifications stated in the resulting contract. All change orders to the contract will be made in writing by the City of Grand Prairie.
- 30. TERMINATION:** The City may, at its option and without prejudice to any other remedy to which it may be entitled at law or in equity, terminate the right for vendor to accept further orders under this Contract, in whole or in part, by giving at least thirty (30) days prior written notice thereof to vendor with the understanding that no further orders may be accepted after the date specified in such notice. The City shall equitably compensate vendor, in accordance with the terms of this Contract for the commodities properly ordered prior to the date specified in such notice following inspection and acceptance of same by the City. Vendor shall not, however, be entitled to lost or anticipated profits should the City choose to exercise its option to terminate.
- 31. TERMINATION FOR DEFAULT:** The CITY reserves the right to enforce the performance of this purchase order in any manner prescribed by law or deemed to be in the best interest of the CITY in the event of breach or default. The CITY reserves the right to terminate the purchase order immediately in the event the VENDOR fails to: (1) meet delivery schedules, or (2) otherwise perform in accordance with this contract and incorporated documents. Breach of contract or default authorizes the CITY to award to another VENDOR, purchase elsewhere and charge the full increase in cost and handling to the defaulting VENDOR.
- 32. PERFORMANCE OF WORK:** Vendor or vendor's associates and employees shall perform all the work called for in this Contract. Vendor hereby covenants and agrees that all of vendor's associates and employees who work on this project shall be fully qualified to undertake same and competent to do the work described in this Contract, and the services performed shall be performed in a good and workmanlike manner, and that the finished product shall be fit for the particular use(s) contemplated by this agreement.
- 33. OWNERSHIP OF DOCUMENTS:** VENDOR acknowledges that City owns all notes, reports, or other documents, intellectual property or documentation produced by the vendor pursuant to this agreement or in connection with its work which are not otherwise public records. Vendor acknowledges that City shall have copyright privileges to those notes, reports, documents, processes, and information. Vendor shall provide City a copy of all such notes, reports, documents, and information (except to the extent that they contain confidential information about third parties) at City expense upon written request.

- 34. PRICE REDETERMINATION:** Price redetermination shall only be considered by the City forty-five (45) days prior to the anniversary date of the initial contract award and subsequent renewals. Price redetermination requests must be substantiated in writing. The City of Grand Prairie reserves the right to reject the request when it is deemed to be in the best interest of the City.
- 35. DRUG FREE WORKPLACE:** VENDOR hereby covenants and agrees that during the contract period that VENDOR and any of VENDOR's associates and employees shall follow the CITY'S drug free workplace policy.
- 36. INSPECTION:** All goods and services will be subject to inspection and testing by CITY prior to acceptance. Goods rejected and goods supplied in excess of quantities ordered may be returned to the VENDOR at its expense. If any of the goods or services are found at any time to be defective in material or workmanship, or otherwise not in conformity with the requirements of this purchase order, including any applicable drawings and specifications, then CITY, in addition to such other rights and remedies it may have by contract or by law or equity, at its sole discretion may reject and return such goods at VENDOR's expense, require VENDOR to inspect the goods and remove nonconforming goods and/or require VENDOR to replace nonconforming goods or services with conforming goods or services.
- 37. PACKAGING:** All goods must be packaged in the manner as specified by CITY and shipped in the manner and by the route and carrier designated by CITY. If CITY does not specify the manner in which the goods must be packaged, VENDOR shall package the goods so as to avoid any damage in transit. If CITY does not specify the manner of shipment, route or carrier, VENDOR shall ship the goods at the lowest possible transportation rates, consistent with VENDOR's obligation to meet the delivery schedule set forth in this Order.
- 38. AUDIT:** the CITY reserves the right to audit the records and performance of contractor during the contract and for three years thereafter.
- 39. INSURANCE:** Prior to the commencement of work under this Contract, vendor shall obtain and shall continue to maintain in full force and effect during the term of this Contract any insurance required by Law and any additional insurance that may be required pursuant to the specification. Performance under the contract will not start until this obligation has been met. Carrier must be authorized to do business in Texas rated "A" or better in the current Best Key Rating Guide. All policies shall be of the "occurrence type" and the city of Grand Prairie shall be listed as an additional insured (to the extent Contractor/City are indemnified pursuant to the indemnity provisions herein) on all certificates of insurance. Additional Insured Clauses does not apply to Workers' Compensation and Employer's Liability. A waiver of Subrogation Clause, naming

the city of Grand Prairie "shall be included" on all types of coverages.

TYPE AMOUNT

Insurance Type	Limit
Commercial General Liability	\$1,000,000 Per Occurrence \$2,000,000 Aggregate
Automobile Liability	\$1,000,000 Combined Single Limit
Worker's Compensation / Employer's Liability	Statutory \$1,000,000

HB 1295 FORM: At time of contract execution vendor must provide a signed HB 1295 Form received directly from the State of Texas.

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

- 40. CONTRACT EXECUTION AND START DATE:** The awarded vendor will have ten calendar days after receiving the notice of award to return the executed contract, certificate of insurance, HB 1295 form, and vendor setup packet (when applicable). The CITY reserves the right to terminate the contract immediately, place the VENDOR on the City's debarred vendor list, and award to another VENDOR in the event the VENDOR fails to return the required documents by the indicated time. After documentation is received by the City a notice to proceed or purchase order will be issued. The vendor will have up to five calendar days to begin performance under this contract, unless otherwise agreed in writing between the CITY and VENDOR.
- 41. STORMWATER REQUIREMENTS:** The Contractor shall implement Best Management Practices (BMPs) and good housekeeping measures to prevent stormwater pollution in accordance with the current City of Grand Prairie Stormwater Discharges Ordinance (Article XXIII, Section 13).
- 42. LOCAL PREFERENCE:** Section 271.9051 of the Texas Local Government Code authorizes a municipality, when considering competitive sealed bids when the bid evaluation is setup to award to the lowest responsible bidder, to enter into a contract for certain purchases with a bidder whose principal place of business is in the municipality and whose bid is within five percent of the lowest bid if the lowest bid is from a business outside the municipality and contracting with the local bidder would provide the best combination price and other economic benefits to the municipality. *Application for Local Bidder Preference must be submitted with bid to be considered by the City of Grand Prairie.* If your principal place of business is within the Grand Prairie city limits and you want to apply for local preference consideration, then you must provide a tax certificate for the most current year marked PAID, included with your Application for Local Bidder Preference.

SUBMITTAL FORMS

SUBMITTAL CHECK LIST – Company Name Nortex Concrete Lift & Stabilization, Inc.

Interested parties MUST submit the following items for consideration by either of the following delivery methods:

- Online through www.PublicPurchase.com
contact vendorsupport@publicpurchase.com for assistance in responding via the website.
- One (1) hard copy, and one (1) electronic copy (flash drive or CD)
delivered to the Purchasing Division:
City Hall
300 W. Main Street
Grand Prairie, TX 75050

The submission should be in the order stated below.

	Item	Check List
1	Proposal Submittal Check List	☒
2	Bid Pricing	☒
3	Questionnaire and References	☒
4	Submittal Affirmation Form	☒
5	Historically Underutilized Business Questionnaire and House Bill 89 Verification Form	☒

By my signature I affirm all items as listed above have been completed and submitted as part of my firm's proposal.


Authorized Signature

David Simpson

Print/Type Name

CFO

Title

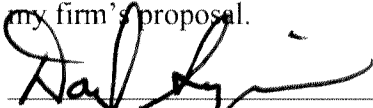
9/16/21

Date

BID PRICING

	DESCRIPTION	QTY	UOM	UNIT PRICE	EXTENDED PRICE
1	Pavement Leveling Services	170000	LB	\$3.55	\$603,500.00
2	Joint Grinding 0-12 LF	50	LF	\$3.75	\$187.50
3	Joint Grinding 13-120 LF	1000	LF	\$3.50	\$3,500.00
4	Joint Grinding 121-600 LF	3000	LF	\$3.25	\$9,750.00
5	Joint Grinding 601-3000 LF	4000	LF	\$3.00	\$12,000.00
6	Joint Grinding 3001+ LF	5000	LF	\$3.00	\$15,000.00
7	Soil Densification 4ft - 8ft	15000	LB	\$4.55	\$68,250.00
8	Soil Densification 8ft - 15ft	15000	LB	\$4.60	\$69,000.00
9	Soil Densification 15ft +	10000	LB	\$4.60	\$46,000.00
	TOTAL				\$827,187.50

By my signature I affirm all items as listed above have been completed and submitted as part of my firm's proposal.



Authorized Signature

David Simpson

Print/Type Name

CFO

Title

9/16/21

Date

QUESTIONNAIRE

All questions should be answered clearly and completely. Marketing materials WILL NOT be accepted in lieu of this questionnaire. This questionnaire will assist the City in understanding your submittal and will be used in the evaluation process and therefore it is critical that the questionnaire be completed and submitted with your submittal.

GENERAL CONTACT INFORMATION					
Primary Contact:	Casey DeRosa			Title:	GM
Vendor Name:	Nortex Concrete Lift & Stabilization, Inc.				
Vendor Address:	201 NW 26th St.				
City:	Fort Worth	State:	TX	Zip:	76164
Phone:	817-831-1240		Fax:	817-831-1245	
Email:	casey@nortexconcretelift.com			Tax ID:	20-0291992

Provide at Least 3 References, including contact name, agency name, title, phone number and email of those you have provided similar services in the past three years. This information will be used in the evaluation of your submittal.

REFERENCE #1			
Reference Name:	Chris Best	Title:	PW Construction Superintendent
Reference Organization:	City of Plano, TX		
Project Title:	Project #6986 - Residential and Arterial Concrete Pavement Undersealing		
Email:	Chrisbe@plano.gov	Phone:	(972) 769-4128

REFERENCE #2			
Reference Name:	Leland Miller	Title:	Streets Superintendent
Reference Organization:	City of Grand Prairie, TX		
Project Title:	Project # 16-137 Pavement Leveling Services		
Email:	Lrmiller@gptx.org	Phone:	(972) 237-8529

REFERENCE #3			
Reference Name:	Andrew Ferrier	Title:	Project Manager
Reference Organization:	North Texas Tollway Authority		
Project Title:	2020 Systemwide Pavement Profiling with Soil Densification		
Email:	Aferrier@ntta.org	Phone:	(214) 224-2491

EXPERIENCE					
How many years has your company been involved in providing these types of commodities or services?					
Years:	17	Months:	0		
Do you have a corporate office, branch office or warehouse located in the Grand Prairie city limits? (5 points)	Yes	☐	No	☒	
Address if different from above:					
Please list all government entities your firm has worked with in the past three (3) years:					
See completed projects list					

BILLING					
What is the timeframe an invoice should be expected after services/commodities are delivered?					
Days	10	Weeks	0	Months	0
Briefly explain how your business maintains and executes a service schedule for various locations:					
Locations for repair are provided by agency. Locations are reviewed and a tentative schedule is sent to agency. Depending on individual agency preferences priority list may be provided and crew/s is sent out to start performing repairs as early as next day.					

LEGAL INFORMATION				
Has your firm failed to complete a contract?	Yes		No	X
<i>If yes, please identify the project and date:</i>				
Do you have any litigation issues pending in the last three (3) years?	Yes		No	X
<i>If yes, please explain:</i>				
Are there any judgements, claims, arbitration proceedings, or suits pending or outstanding against your organization or officers?	Yes		No	X
<i>If yes, please explain:</i>				

SUBMITTAL AFFIRMATION FORM**FORM AND ADDENDA ACKNOWLEDGEMENT**

This will acknowledge your submittal contains all items and receipt of the following addenda which are part of the solicitation documents:

X All items identified in Submittal Checklist have been submitted

Addendum No. #1 ✓

INTERLOCAL PURCHASING

Should other Government entities decide to participate in this contract, would you, the Vendor, agree that all terms, conditions, specifications and pricing would apply:

Yes ☒

No ☐

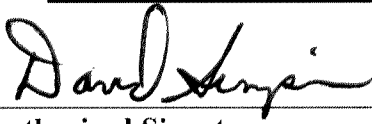
OTHER CONDITIONS

The undersigned agrees to the following:

- ✓ A. Agrees that the submittal is complete and all required information/forms were submitted.
- ✓ B. Agrees that the bid package was fully reviewed and fully understands the requirements.
- ✓ C. Agrees to the Terms & Conditions as included in this bid packet and have noted any exceptions.
- ✓ D. Agrees that their submittal shall be good and may not be withdrawn for a period of 90 calendar days after the scheduled closing time.
- ✓ E. Will supply all required insurance, and execute contract within the time stated on the notice of award.
- ✓ F. Affirms that the submittal was not prepared in collusion with any other firm and the contents of this submittal have not been communicated by the undersigned or any agent with any other person engaged in this type of business.

SUBMITTAL CERTIFICATION

By my signature I affirm that I am duly authorized to execute this proposal as an offer to contract and in compliance with this solicitation, the undersigned firm having examined the specifications, and being familiar with the conditions to be met, hereby submits a proposal for consideration of being selected as COGP 's provider for said services; and agrees to enter into negotiations if selected as a finalist for said services.



Authorized Signature

CFO

Title

David Simpson

Print/Type Name

9/16/21

Date

HISTORICALLY UNDERUTILIZED BUSINESS (HUB) QUESTIONNAIRE

A Historically Underutilized Business (HUB) is a for-profit entity that has not exceeded the size standards prescribed by 34 TAC §20.23, and has its principal place of business in Texas, and is at least 51% owned by an Asian Pacific American, Black American, Hispanic American, Native American, American woman and/or Service-Disabled Veteran, who reside in Texas and actively participate in the control, operations, and management of the entity's affairs.

1. Is your business a certified historically underutilized business (HUB) or Disadvantaged Business Enterprise (DBE)?

 X No

 Yes; and certifying agency: _____

If you answered in the affirmative, please include a copy of my certification as an attachment to your proposal.

HOUSE BILL 89 VERIFICATION

I hereby verify that the company named in this submittal, under the provisions of Subtitle F, Title 10, Government Code Chapter 2270:

1. Does not boycott Israel currently; and
2. Will not boycott Israel during the term of the contract.

Pursuant to Section 2270.01, Texas Government Code:

1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israel-controlled territory, but does not include an action made for ordinary business purposes; and
2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.

By my signature I affirm the information provided in this submittal is accurate to the best of my knowledge.



 Authorized Signature

David Simpson

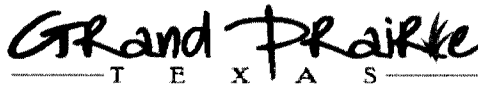
Print/Type Name

CFO

 Title

9/16/21

 Date



ADDENDUM #1
RFB # 21158
Pavement Leveling Services

September 17, 2021

1. Seeing as how that it is critical to have a water-resistant polymer, which can be utilized in dry or very wet soil conditions, is the city requiring that the winning contractor use a polymer that is at least 90% hydro-insensitive? If so, will you require that the material is tested and certified by an independent third-party testing laboratory?

: The product needs to be hydrophobic, and testing may be conducted if deemed necessary.

Per the specification:

4.4 Furnish a two-part 1:1 by volume closed cell hydrophobic High Density Polyurethane Foam (HDPF). The material must reach 90% compressive strength within 30 minutes of injection.

36. **INSPECTION:** All goods and services will be subject to inspection and testing by CITY prior to acceptance. Goods rejected and goods supplied in excess of quantities ordered may be returned to the VENDOR at its expense. If any of the goods or services are found at any time to be defective in material or workmanship, or otherwise not in conformity with the requirements of this purchase order, including any applicable drawings and specifications, then CITY, in addition to such other rights and remedies it may have by contract or by law or equity, at its sole discretion may reject and return such goods at VENDOR's expense, require VENDOR to inspect the goods and remove nonconforming goods and/or require VENDOR to replace nonconforming goods or services with conforming goods or services.

2. Does the City of Grand Prairie plan to conduct water absorption testing on the winning contractor's polyurethane? Polyurethane that takes in water will deteriorate and rot, ultimately causing the polyurethane to fail. It can also produce a strong, unpleasant odor that will emanate from the treated area. Compressive testing should be conducted on material samples, per ASTM D1621, and those results recorded. Then conduct water absorption testing on a separate set of samples, per ASTM D2842, and record those results. After the results of ASTM D2842 are completed and recorded, conduct compressive testing per ASTM D1621 on the same samples that underwent ASTM D2842 water absorption testing and record the compressive strength results. A minimum of 90% compressive strength should be required after ASTM 2842 is conducted when compared to the samples that did not undergo ASTM 2842.

We only do product testing as we deem necessary.

3. Since there is not a specific standard, or testing required, in order to determine water absorption, you will allow contractors to supply any kind of polyurethane, as long as it is two-part 1:1 by volume closed cell hydrophobic high density polyurethane foam?

The product must be equal to or better than the specification in paragraph 2.8 of the bid packet.

4. In section 5 regarding traffic control, it states in 5.2.2-Thoroughfare: Traffic control on thoroughfares will be paid for as a separate unit cost as provided in the contract. There is no line item for traffic control, so will contractors be able to bill the city separately for traffic control on thoroughfares?

No, traffic control will be included into their pay item pricing.

5. Do we need to have a bid bond included with the bid packet?

A bid bond is NOT required. This is for services as needed.

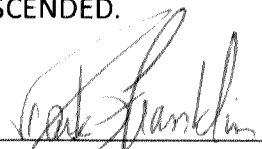
CORPORATE RESOLUTION

EXCERPT FROM MINUTES OF MEETING OF THE BOARD OF DIRECTORS OF
NORTEX CONCRETE LIFT & STABILIZATION, INCORPORATED.

AT THE MEETING OF DIRECTORS OF NORTEX CONCRETE LIFT &
STABILIZATION, INC., INCORPORATED, DULY NOTICED AND HELD ON
JANUARY 04, 2021. A QUORUM BEING THERE PRESENT, ONE MOTION
DULY MADE AND SECONDED. IT WAS

RESOLVED: THAT DAVID SIMPSON, BE AND IS HEREBY APPOINTED,
CONSTITUTED AND DESIGNATED AS AGENT AND ATTORNEY-IN-FACT
OF THE CORPORATION WITH FULL POWER AND AUTHORITY TO ACT
ON BEHALF OF THIS CORPORATION IN ALL NEGOTIATIONS, BIDDING,
CONCERNS AND TRANSACTIONS WITH ALL CITIES AND STATES OF ANY
OF ITS AGENCIES, DEPARTMENTS, EMPLOYEES OR AGENTS, INCLUDING
BUT NOT LIMITED TO, THE EXECUTION OF ALL BIDS, PAPERS, DOCUMENTS,
AFFIDAVITS, BONDS, SURETIES, CONTRACTS AND ACTS AND TO RECEIVE
AND RECEIPT THEREFORE ALL PURCHASE ORDERS AND NOTICES ISSUED
PURSUANT TO THE PROVISIONS OF ANY SUCH BID OR CONTRACT, THIS
CORPORATION HEREBY RATIFYING, APPROVING, CONFIRMING, AND
ACCEPTING EACH AND EVERY SUCH ACT PERFORMED BY SAID AGENT AND
ATTORNEY-IN-FACT.

I HEREBY CERTIFY THE FOREGOING
TO BE A TRUE AND CORRECT COPY OF AND
EXCERPT OF THE MINUTES OF THE ABOVE
DATED MEETING OF THE BOARD OF
DIRECTORS OF SAID CORPORATION, AND
THE SAME HAS NOT BEEN REVOKED OR
RESCENDED.



Mark A. Franklin, President

01/05/2021

DATE

Dynamic Cone Penetrometer Log Sheet
LOCATION INFORMATION

County <u>Denton County</u>	Pavement Material <u>Concrete</u>
State <u>Texas</u>	Pavement Thickness <u>10"</u>
Roadway <u>SB SRT at Lake Vista Dr</u>	Data Recorder <u>Jacob McDonald</u>
Start Time <u>10:45PM</u>	Date <u>3/10/2020</u>
Finish Time <u>11:10PM</u>	
Penetrometer test # <u>Test Site #1 - SB SRT #78</u>	

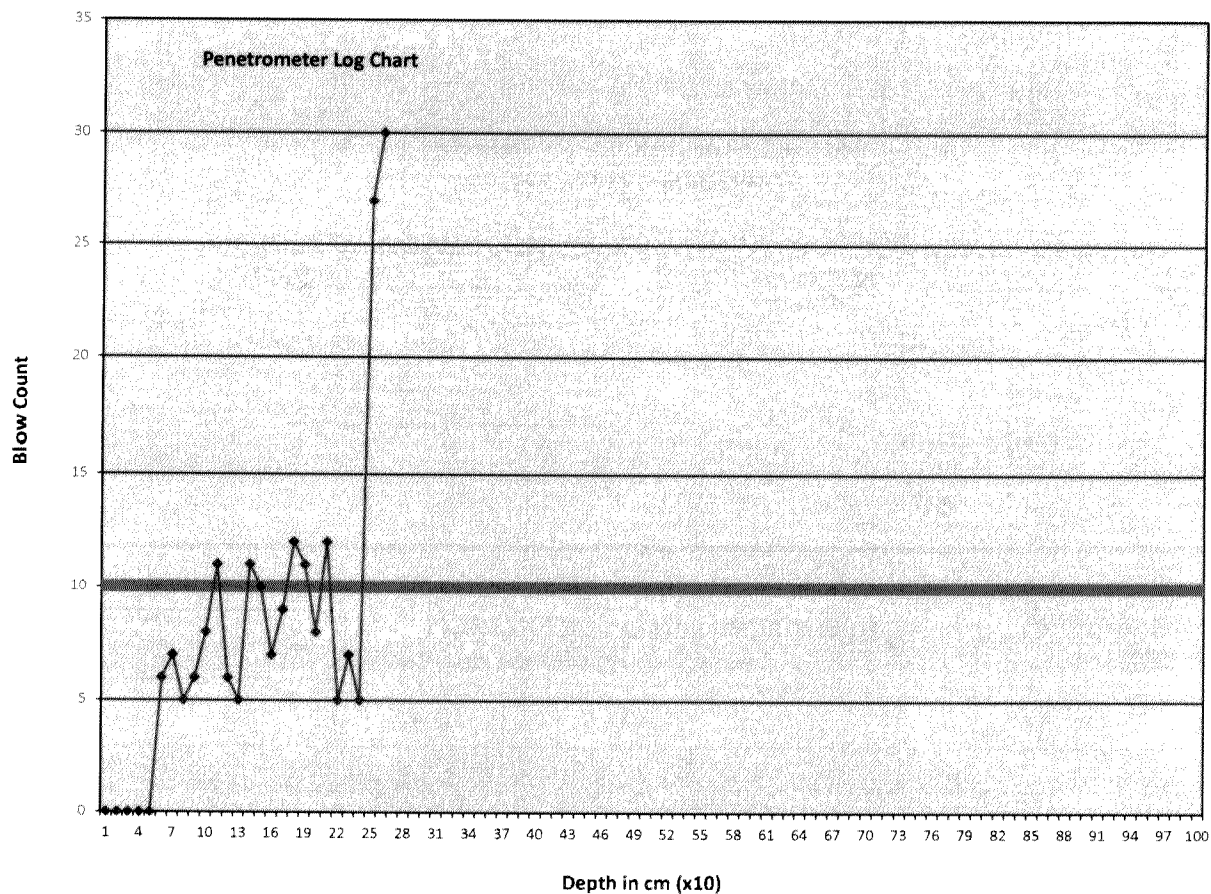
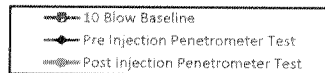
in	ft	cm	Pre	Blow	Post	in	ft	cm	Pre	Blow	Post
depth	depth	depth	Blows	Baseline	Blows	depth	depth	depth	Blows	Baseline	Blows
3.94	0.33	10	Core	10		200.79	16.73	510		10	
7.87	0.66	20	Core	10		204.72	17.06	520		10	
11.81	0.98	30	Core	10		208.66	17.38	530		10	
15.75	1.31	40	Core	10		212.60	17.71	540		10	
19.69	1.64	50	Core	10		216.54	18.04	550		10	
23.62	1.97	60	6	10		220.47	18.37	560		10	
27.56	2.30	70	7	10		224.41	18.70	570		10	
31.50	2.62	80	5	10		228.35	19.02	580		10	
35.43	2.95	90	6	10		232.28	19.35	590		10	
39.37	3.28	100	8	10		236.22	19.68	600		10	
43.31	3.61	110	11	10		240.16	20.01	610		10	
47.24	3.94	120	6	10		244.09	20.34	620		10	
51.18	4.26	130	5	10		248.03	20.66	630		10	
55.12	4.59	140	11	10		251.97	20.99	640		10	
59.06	4.92	150	10	10		255.91	21.32	650		10	
62.99	5.25	160	7	10		259.84	21.65	660		10	
66.93	5.58	170	9	10		263.78	21.98	670		10	
70.87	5.90	180	12	10		267.72	22.30	680		10	
74.80	6.23	190	11	10		271.65	22.63	690		10	
78.74	6.56	200	8	10		275.59	22.96	700		10	
82.68	6.89	210	12	10		279.53	23.29	710		10	
86.61	7.22	220	5	10		283.46	23.62	720		10	
90.55	7.54	230	7	10		287.40	23.94	730		10	
94.49	7.87	240	5	10		291.34	24.27	740		10	
98.43	8.20	250	27	10		295.28	24.60	750		10	
102.36	8.53	260	30	10		299.21	24.93	760		10	
106.30	8.86	270		10		303.15	25.26	770		10	
110.24	9.18	280		10		307.09	25.58	780		10	
114.17	9.51	290		10		311.02	28.91	790		10	
118.11	9.84	300		10		314.96	26.24	800		10	
122.05	10.17	310		10		318.90	26.57	810		10	
125.98	10.50	320		10		322.83	26.90	820		10	
129.92	10.82	330		10		326.77	27.22	830		10	
133.86	11.15	340		10		330.71	27.55	840		10	
137.80	11.48	350		10		334.65	27.88	850		10	
141.73	11.81	360		10		338.58	28.21	860		10	
145.67	12.14	370		10		342.52	28.54	870		10	
149.61	12.46	380		10		346.46	28.86	880		10	
153.54	12.79	390		10		350.39	29.19	890		10	
157.48	13.12	400		10		354.33	29.52	900		10	
161.42	13.45	410		10		358.27	29.85	910		10	
165.35	13.78	420		10		362.20	30.18	920		10	
169.29	14.10	430		10		366.14	30.50	930		10	
173.23	14.43	440		10		370.08	30.83	940		10	
177.17	14.76	450		10		374.02	31.16	950		10	
181.10	15.09	460		10		377.95	31.49	960		10	
185.04	15.42	470		10		381.89	31.82	970		10	
188.98	15.74	480		10		385.83	32.14	980		10	
192.91	16.07	490		10		389.76	32.47	990		10	
196.85	16.40	500		10		393.70	32.80	1000		10	

Dynamic Cone Penetrometer Log Sheet

LOCATION INFORMATION

County Denton County
State Texas
Roadway SB SRT at Lake Vista Dr
Start Time 10:45PM
Finish Time 11:10PM
Penetrometer test # Test Site #1 - SB SRT #78

Pavement Material Concrete
Pavement Thickness 10"
Data Recorder Jacob McDonald
Date 3/10/2020



Dynamic Cone Penetrometer Log Sheet
LOCATION INFORMATION

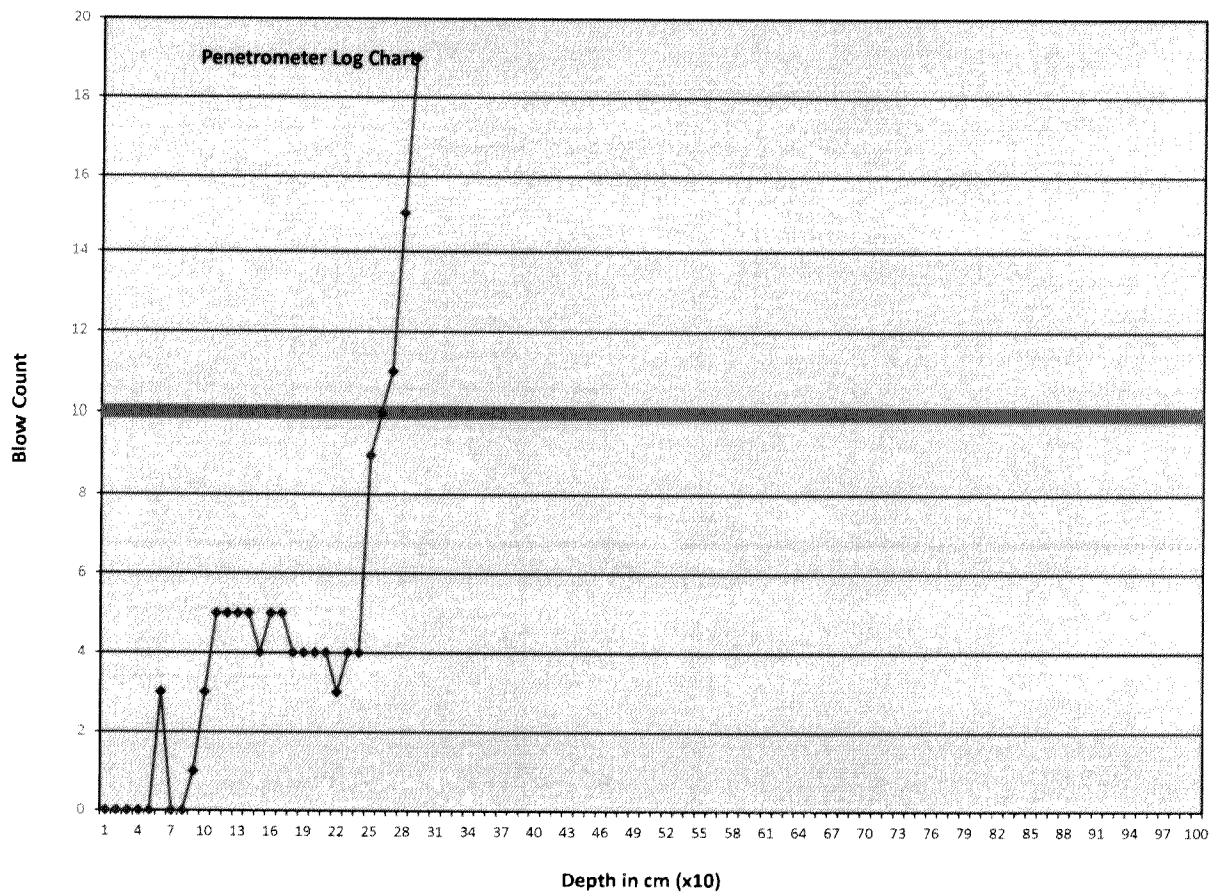
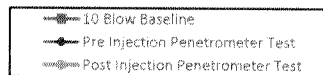
County <u>Denton County</u>	Pavement Material <u>Concrete</u>
State <u>Texas</u>	Pavement Thickness <u>10"</u>
Roadway <u>NB PG&T S of Gateway Dr; series of 2</u>	Data Recorder <u>Jacob McDonald</u>
Start Time <u>9:45pm</u>	Date <u>7/9/2020</u>
Finish Time <u>10:00pm</u>	
Penetrometer test # <u>Test Site #1 - NB PG&T #18</u>	

in	ft	cm	Pre	Blow	Post	in	ft	cm	Pre	Blow	Post
depth	depth	depth	Blows	Baseline	Blows	depth	depth	depth	Blows	Baseline	Blows
3.94	0.33	10	Core	10		200.79	16.73	510		10	
7.87	0.66	20	Core	10		204.72	17.06	520		10	
11.81	0.98	30	Core	10		208.66	17.38	530		10	
15.75	1.31	40	Core	10		212.60	17.71	540		10	
19.69	1.64	50	Core	10		216.54	18.04	550		10	
23.62	1.97	60	3	10		220.47	18.37	560		10	
27.56	2.30	70	0	10		224.41	18.70	570		10	
31.50	2.62	80	0	10		228.35	19.02	580		10	
35.43	2.95	90	1	10		232.28	19.35	590		10	
39.37	3.28	100	3	10		236.22	19.68	600		10	
43.31	3.61	110	5	10		240.16	20.01	610		10	
47.24	3.94	120	5	10		244.09	20.34	620		10	
51.18	4.26	130	5	10		248.03	20.66	630		10	
55.12	4.59	140	5	10		251.97	20.99	640		10	
59.06	4.92	150	4	10		255.91	21.32	650		10	
62.99	5.25	160	5	10		259.84	21.65	660		10	
66.93	5.58	170	5	10		263.78	21.98	670		10	
70.87	5.90	180	4	10		267.72	22.30	680		10	
74.80	6.23	190	4	10		271.65	22.63	690		10	
78.74	6.56	200	4	10		275.59	22.96	700		10	
82.68	6.89	210	4	10		279.53	23.29	710		10	
86.61	7.22	220	3	10		283.46	23.62	720		10	
90.55	7.54	230	4	10		287.40	23.94	730		10	
94.49	7.87	240	4	10		291.34	24.27	740		10	
98.43	8.20	250	9	10		295.28	24.60	750		10	
102.36	8.53	260	10	10		299.21	24.93	760		10	
106.30	8.86	270	11	10		303.15	25.26	770		10	
110.24	9.18	280	15	10		307.09	25.58	780		10	
114.17	9.51	290	19	10		311.02	28.91	790		10	
118.11	9.84	300		10		314.96	26.24	800		10	
122.05	10.17	310		10		318.90	26.57	810		10	
125.98	10.50	320		10		322.83	26.90	820		10	
129.92	10.82	330		10		326.77	27.22	830		10	
133.86	11.15	340		10		330.71	27.55	840		10	
137.80	11.48	350		10		334.65	27.88	850		10	
141.73	11.81	360		10		338.58	28.21	860		10	
145.67	12.14	370		10		342.52	28.54	870		10	
149.61	12.46	380		10		346.46	28.86	880		10	
153.54	12.79	390		10		350.39	29.19	890		10	
157.48	13.12	400		10		354.33	29.52	900		10	
161.42	13.45	410		10		358.27	29.85	910		10	
165.35	13.78	420		10		362.20	30.18	920		10	
169.29	14.10	430		10		366.14	30.50	930		10	
173.23	14.43	440		10		370.08	30.83	940		10	
177.17	14.76	450		10		374.02	31.16	950		10	
181.10	15.09	460		10		377.95	31.49	960		10	
185.04	15.42	470		10		381.89	31.82	970		10	
188.98	15.74	480		10		385.83	32.14	980		10	
192.91	16.07	490		10		389.76	32.47	990		10	
196.85	16.40	500		10		393.70	32.80	1000		10	

Dynamic Cone Penetrometer Log Sheet
LOCATION INFORMATION

County Denton County
 State Texas
 Roadway NB PGBT S of Gateway Dr; series of 2
 Start Time 9:45pm
 Finish Time 10:00pm
 Penetrometer test # Test Site #1 - NB PGBT #18

Pavement Material Concrete
 Pavement Thickness 10"
 Data Recorder Jacob McDonald
 Date 7/9/2020



Dynamic Cone Penetrometer Log Sheet

LOCATION INFORMATION

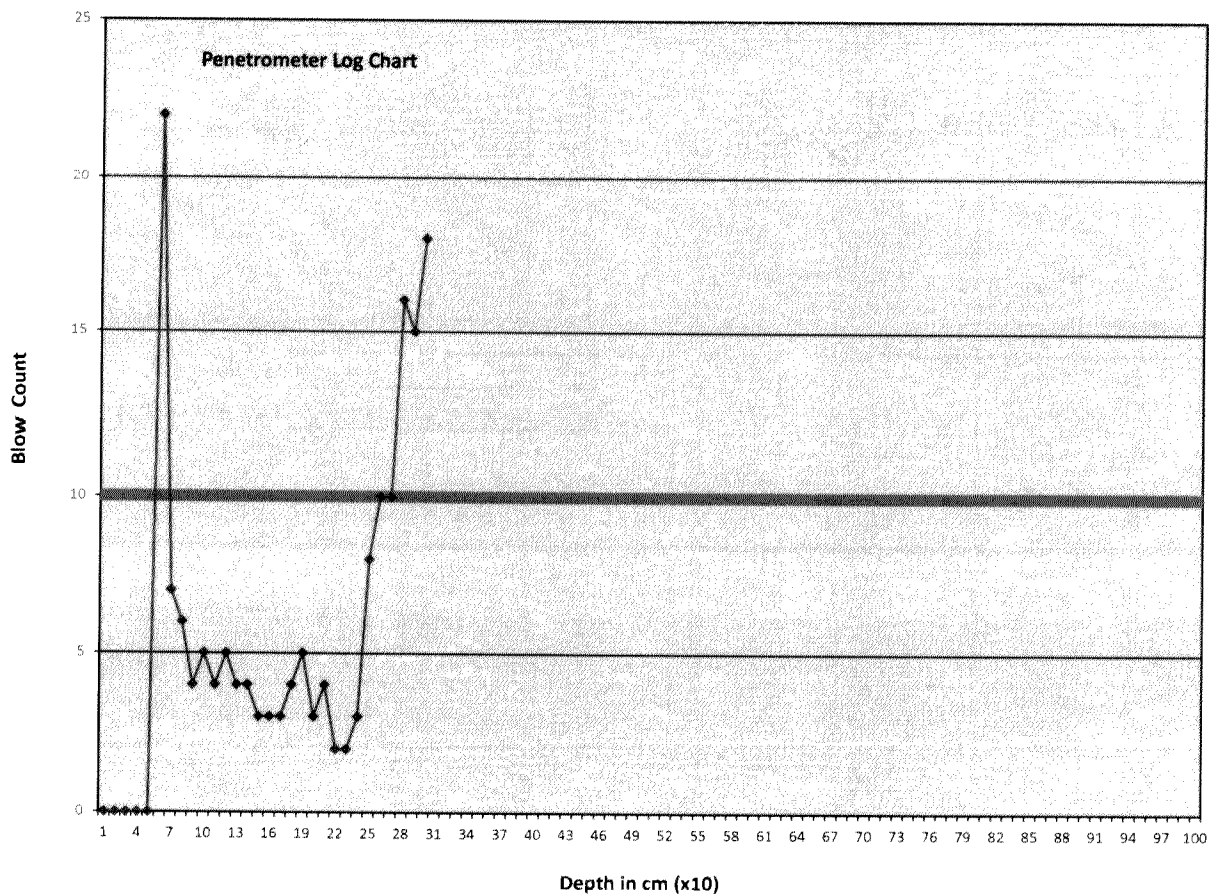
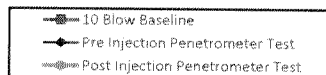
County	Dallas County	Pavement Material	Concrete
State	Texas	Pavement Thickness	10"
Roadway	NB PGBT at N of Miller Rd - Heave	Data Recorder	Jacob McDonald
Start Time	11:15pm	Date	8/26/2020
Finish Time	11:30pm		
Penetrometer test #	Test Site #1 - NB PGBT #24 station 1507		

in	ft	cm	Pre	Blow	Post	in	ft	cm	Pre	Blow	Post
depth	depth	depth	Blows	Baseline	Blows	depth	depth	depth	Blows	Baseline	Blows
3.94	0.33	10	Core	10		200.79	16.73	510		10	
7.87	0.66	20	Core	10		204.72	17.06	520		10	
11.81	0.98	30	Core	10		208.66	17.38	530		10	
15.75	1.31	40	Core	10		212.60	17.71	540		10	
19.69	1.64	50	Core	10		216.54	18.04	550		10	
23.62	1.97	60	22	10		220.47	18.37	560		10	
27.56	2.30	70	7	10		224.41	18.70	570		10	
31.50	2.62	80	6	10		228.35	19.02	580		10	
35.43	2.95	90	4	10		232.28	19.35	590		10	
39.37	3.28	100	5	10		236.22	19.68	600		10	
43.31	3.61	110	4	10		240.16	20.01	610		10	
47.24	3.94	120	5	10		244.09	20.34	620		10	
51.18	4.26	130	4	10		248.03	20.66	630		10	
55.12	4.59	140	4	10		251.97	20.99	640		10	
59.06	4.92	150	3	10		255.91	21.32	650		10	
62.99	5.25	160	3	10		259.84	21.65	660		10	
66.93	5.58	170	3	10		263.78	21.98	670		10	
70.87	5.90	180	4	10		267.72	22.30	680		10	
74.80	6.23	190	5	10		271.65	22.63	690		10	
78.74	6.56	200	3	10		275.59	22.96	700		10	
82.68	6.89	210	4	10		279.53	23.29	710		10	
86.61	7.22	220	2	10		283.46	23.62	720		10	
90.55	7.54	230	2	10		287.40	23.94	730		10	
94.49	7.87	240	3	10		291.34	24.27	740		10	
98.43	8.20	250	8	10		295.28	24.60	750		10	
102.36	8.53	260	10	10		299.21	24.93	760		10	
106.30	8.86	270	10	10		303.15	25.26	770		10	
110.24	9.18	280	16	10		307.09	25.58	780		10	
114.17	9.51	290	15	10		311.02	25.91	790		10	
118.11	9.84	300	18	10		314.96	26.24	800		10	
122.05	10.17	310		10		318.90	26.57	810		10	
125.98	10.50	320		10		322.83	26.90	820		10	
129.92	10.82	330		10		326.77	27.22	830		10	
133.86	11.15	340		10		330.71	27.55	840		10	
137.80	11.48	350		10		334.65	27.88	850		10	
141.73	11.81	360		10		338.58	28.21	860		10	
145.67	12.14	370		10		342.52	28.54	870		10	
149.61	12.46	380		10		346.46	28.86	880		10	
153.54	12.79	390		10		350.39	29.19	890		10	
157.48	13.12	400		10		354.33	29.52	900		10	
161.42	13.45	410		10		358.27	29.85	910		10	
165.35	13.78	420		10		362.20	30.18	920		10	
169.29	14.10	430		10		366.14	30.50	930		10	
173.23	14.43	440		10		370.08	30.83	940		10	
177.17	14.76	450		10		374.02	31.16	950		10	
181.10	15.09	460		10		377.95	31.49	960		10	
185.04	15.42	470		10		381.89	31.82	970		10	
188.98	15.74	480		10		385.83	32.14	980		10	
192.91	16.07	490		10		389.76	32.47	990		10	
196.85	16.40	500		10		393.70	32.80	1000		10	

Dynamic Cone Penetrometer Log Sheet
LOCATION INFORMATION

County Dallas County
 State Texas
 Roadway NB PGBT at N of Miller Rd - Heave
 Start Time 11:15pm
 Finish Time 11:30pm
 Penetrometer test # Test Site #1 - NB PGBT #24 station 150

Pavement Material Concrete
 Pavement Thickness 10"
 Data Recorder Jacob McDonald
 Date 8/26/2020



Dynamic Cone Penetrometer Log Sheet
LOCATION INFORMATION

County <u>Dallas County</u>	Pavement Material <u>Concrete</u>
State <u>Texas</u>	Pavement Thickness <u>10"</u>
Roadway <u>NB DNT at Panther Creek Bridge - Dep</u>	Data Recorder <u>Jacob McDonald</u>
Start Time <u>11:05am</u>	Date <u>10/22/2020</u>
Finish Time <u>11:30am</u>	
Penetrometer test # <u>Test Site #2 Sta. 1550 - SB DNT #11</u>	

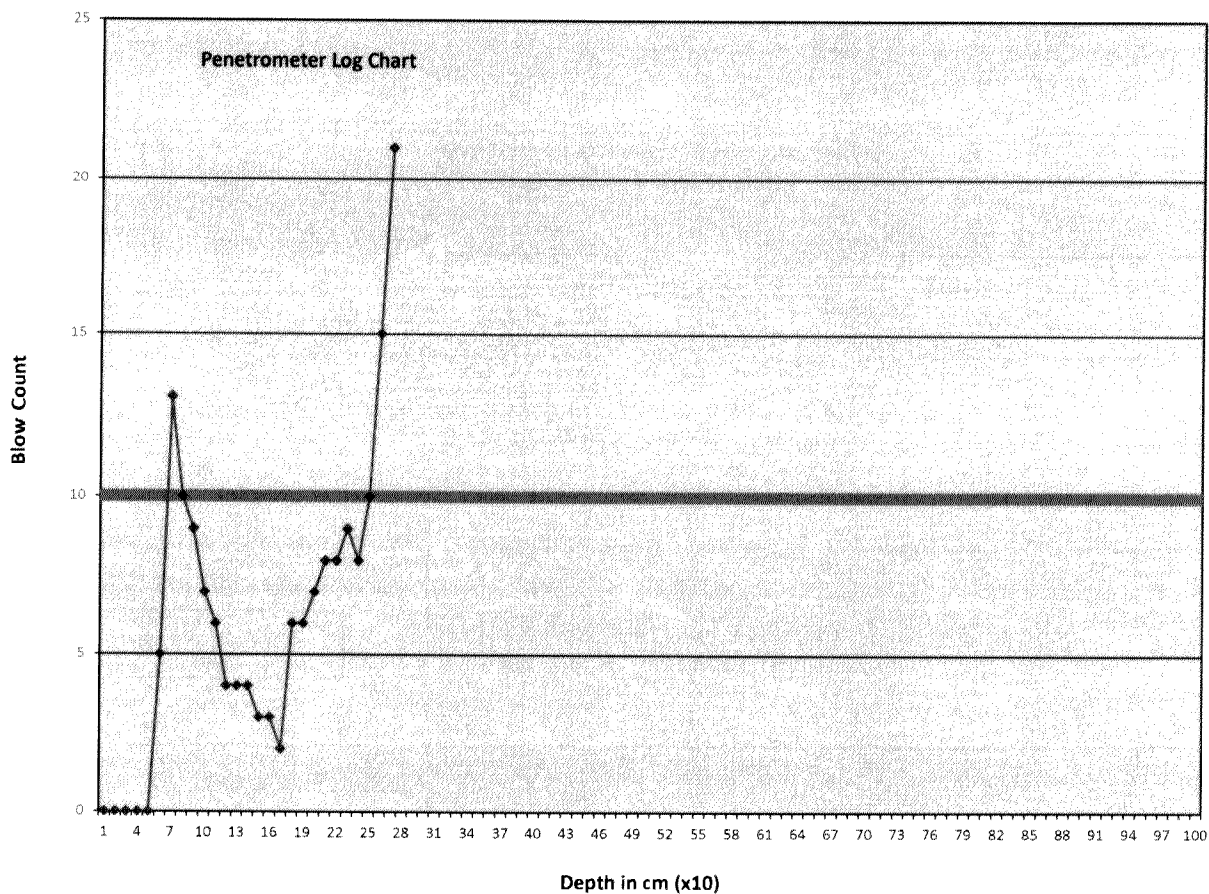
in	ft	cm	Pre	Blow	Post	in	ft	cm	Pre	Blow	Post
depth	depth	depth	Blows	Baseline	Blows	depth	depth	depth	Blows	Baseline	Blows
3.94	0.33	10	Core	10		200.79	16.73	510		10	
7.87	0.66	20	Core	10		204.72	17.06	520		10	
11.81	0.98	30	Core	10		208.66	17.38	530		10	
15.75	1.31	40	Core	10		212.60	17.71	540		10	
19.69	1.64	50	Core	10		216.54	18.04	550		10	
23.62	1.97	60	5	10		220.47	18.37	560		10	
27.56	2.30	70	13	10		224.41	18.70	570		10	
31.50	2.62	80	10	10		228.35	19.02	580		10	
35.43	2.95	90	9	10		232.28	19.35	590		10	
39.37	3.28	100	7	10		236.22	19.68	600		10	
43.31	3.61	110	6	10		240.16	20.01	610		10	
47.24	3.94	120	4	10		244.09	20.34	620		10	
51.18	4.26	130	4	10		248.03	20.66	630		10	
55.12	4.59	140	4	10		251.97	20.99	640		10	
59.06	4.92	150	3	10		255.91	21.32	650		10	
62.99	5.25	160	3	10		259.84	21.65	660		10	
66.93	5.58	170	2	10		263.78	21.98	670		10	
70.87	5.90	180	6	10		267.72	22.30	680		10	
74.80	6.23	190	6	10		271.65	22.63	690		10	
78.74	6.56	200	7	10		275.59	22.96	700		10	
82.68	6.89	210	8	10		279.53	23.29	710		10	
86.61	7.22	220	8	10		283.46	23.62	720		10	
90.55	7.54	230	9	10		287.40	23.94	730		10	
94.49	7.87	240	8	10		291.34	24.27	740		10	
98.43	8.20	250	10	10		295.28	24.60	750		10	
102.36	8.53	260	15	10		299.21	24.93	760		10	
106.30	8.86	270	21	10		303.15	25.26	770		10	
110.24	9.18	280		10		307.09	25.58	780		10	
114.17	9.51	290		10		311.02	28.91	790		10	
118.11	9.84	300		10		314.96	26.24	800		10	
122.05	10.17	310		10		318.90	26.57	810		10	
125.98	10.50	320		10		322.83	26.90	820		10	
129.92	10.82	330		10		326.77	27.22	830		10	
133.86	11.15	340		10		330.71	27.55	840		10	
137.80	11.48	350		10		334.65	27.88	850		10	
141.73	11.81	360		10		338.58	28.21	860		10	
145.67	12.14	370		10		342.52	28.54	870		10	
149.61	12.46	380		10		346.46	28.86	880		10	
153.54	12.79	390		10		350.39	29.19	890		10	
157.48	13.12	400		10		354.33	29.52	900		10	
161.42	13.45	410		10		358.27	29.85	910		10	
165.35	13.78	420		10		362.20	30.18	920		10	
169.29	14.10	430		10		366.14	30.50	930		10	
173.23	14.43	440		10		370.08	30.83	940		10	
177.17	14.76	450		10		374.02	31.16	950		10	
181.10	15.09	460		10		377.95	31.49	960		10	
185.04	15.42	470		10		381.89	31.82	970		10	
188.98	15.74	480		10		385.83	32.14	980		10	
192.91	16.07	490		10		389.76	32.47	990		10	
196.85	16.40	500		10		393.70	32.80	1000		10	

Dynamic Cone Penetrometer Log Sheet
LOCATION INFORMATION

County Dallas County
 State Texas
 Roadway NB DNT at Panther Creek Bridge - Dep
 Start Time 11:05am
 Finish Time 11:30am
 Penetrometer test # Test Site #2 Sta. 1550 - SB DNT #11

Pavement Material Concrete
 Pavement Thickness 10"
 Data Recorder Jacob McDonald
 Date 10/22/2020

--- 10 Blow Baseline
 ● Pre Injection Penetrometer Test
 ○ Post Injection Penetrometer Test



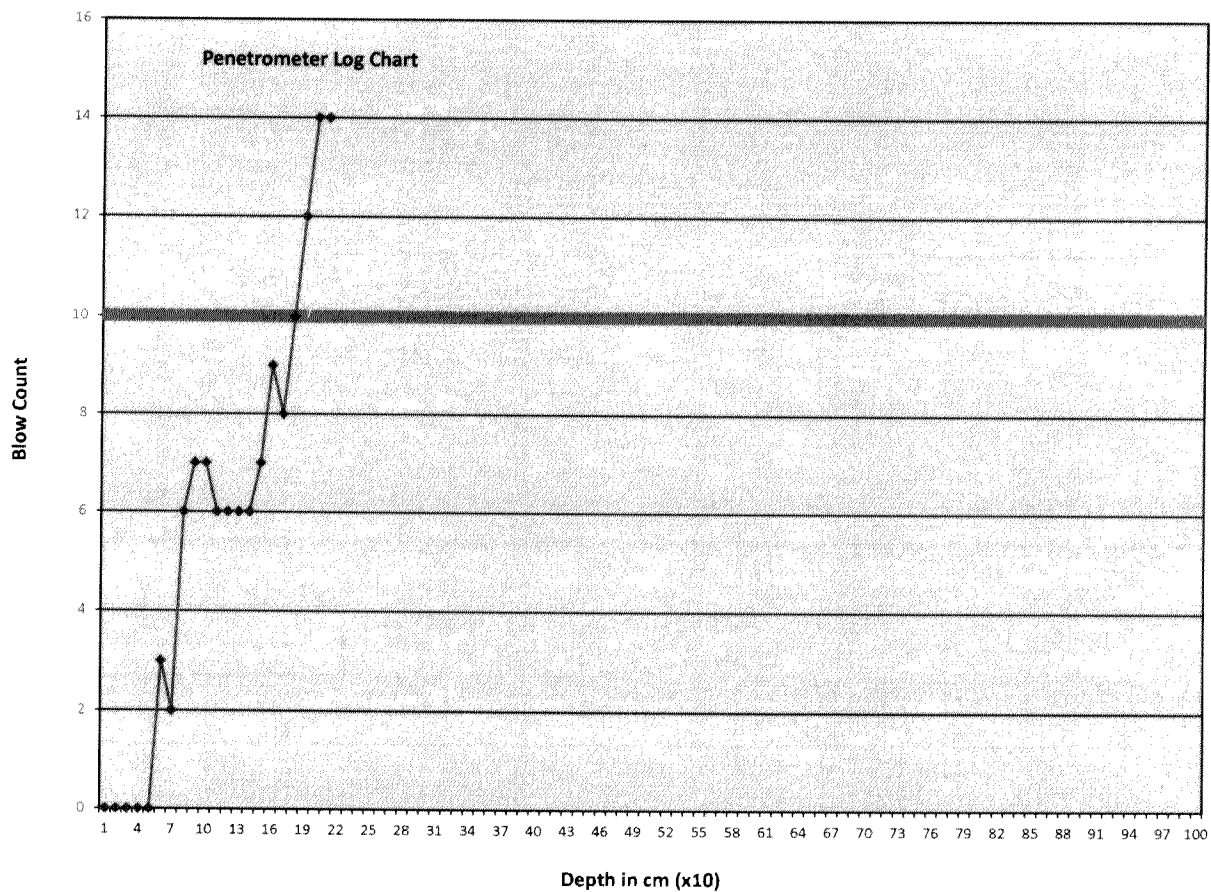
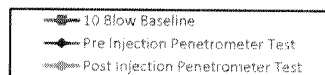
Dynamic Cone Penetrometer Log Sheet											
LOCATION INFORMATION											
County <u>Denton County</u>						Pavement Material <u>Concrete</u>					
State <u>Texas</u>						Pavement Thickness <u>10"</u>					
Roadway <u>SB SRT at S of Carrollton Pkwy</u>						Data Recorder <u>Jacob McDonald</u>					
Start Time <u>10:00pm</u>						Date <u>11/16/2020</u>					
Finish Time <u>10:20pm</u>											
Penetrometer test # <u>Test Site #1 - SB SRT #85</u>											

in	ft	cm	Pre	Blow	Post	in	ft	cm	Pre	Blow	Post
depth	depth	depth	Blows	Baseline	Blows	depth	depth	depth	Blows	Baseline	Blows
3.94	0.33	10	Core	10		200.79	16.73	510		10	
7.87	0.66	20	Core	10		204.72	17.06	520		10	
11.81	0.98	30	Core	10		208.66	17.38	530		10	
15.75	1.31	40	Core	10		212.60	17.71	540		10	
19.69	1.64	50	Core	10		216.54	18.04	550		10	
23.62	1.97	60	3	10		220.47	18.37	560		10	
27.56	2.30	70	2	10		224.41	18.70	570		10	
31.50	2.62	80	6	10		228.35	19.02	580		10	
35.43	2.95	90	7	10		232.28	19.35	590		10	
39.37	3.28	100	7	10		236.22	19.68	600		10	
43.31	3.61	110	6	10		240.16	20.01	610		10	
47.24	3.94	120	6	10		244.09	20.34	620		10	
51.18	4.26	130	6	10		248.03	20.66	630		10	
55.12	4.59	140	6	10		251.97	20.99	640		10	
59.06	4.92	150	7	10		255.91	21.32	650		10	
62.99	5.25	160	9	10		259.84	21.65	660		10	
66.93	5.58	170	8	10		263.78	21.98	670		10	
70.87	5.90	180	10	10		267.72	22.30	680		10	
74.80	6.23	190	12	10		271.65	22.63	690		10	
78.74	6.56	200	14	10		275.59	22.96	700		10	
82.68	6.89	210	14	10		279.53	23.29	710		10	
86.61	7.22	220		10		283.46	23.62	720		10	
90.55	7.54	230		10		287.40	23.94	730		10	
94.49	7.87	240		10		291.34	24.27	740		10	
98.43	8.20	250		10		295.28	24.60	750		10	
102.36	8.53	260		10		299.21	24.93	760		10	
106.30	8.86	270		10		303.15	25.26	770		10	
110.24	9.18	280		10		307.09	25.58	780		10	
114.17	9.51	290		10		311.02	28.91	790		10	
118.11	9.84	300		10		314.96	26.24	800		10	
122.05	10.17	310		10		318.90	26.57	810		10	
125.98	10.50	320		10		322.83	26.90	820		10	
129.92	10.82	330		10		326.77	27.22	830		10	
133.86	11.15	340		10		330.71	27.55	840		10	
137.80	11.48	350		10		334.65	27.88	850		10	
141.73	11.81	360		10		338.58	28.21	860		10	
145.67	12.14	370		10		342.52	28.54	870		10	
149.61	12.46	380		10		346.46	28.86	880		10	
153.54	12.79	390		10		350.39	29.19	890		10	
157.48	13.12	400		10		354.33	29.52	900		10	
161.42	13.45	410		10		358.27	29.85	910		10	
165.35	13.78	420		10		362.20	30.18	920		10	
169.29	14.10	430		10		366.14	30.50	930		10	
173.23	14.43	440		10		370.08	30.83	940		10	
177.17	14.76	450		10		374.02	31.16	950		10	
181.10	15.09	460		10		377.95	31.49	960		10	
185.04	15.42	470		10		381.89	31.82	970		10	
188.98	15.74	480		10		385.83	32.14	980		10	
192.91	16.07	490		10		389.76	32.47	990		10	
196.85	16.40	500		10		393.70	32.80	1000		10	

Dynamic Cone Penetrometer Log Sheet
LOCATION INFORMATION

County Denton County
State Texas
Roadway SB SRT at S of Carrollton Pkwy
Start Time 10:00pm
Finish Time 10:20pm
Penetrometer test # Test Site #1 - SB SRT #85

Pavement Material Concrete
Pavement Thickness 10"
Data Recorder Jacob McDonald
Date 11/16/2020





PO Box 1528 * Mount Airy, NC 27030-1528 * 336-789-9161
www.NCFI.com

***Report of Results for NCFI Polyurethanes
TerraThane System 24-003
Hydrophobic/Hydro-Insensitive
Geotechnical Polymer.***



Hydro-Insensitivity of High Density Polyurethane Grout - Panel Test Data Sheet

Polymer Type & Manufacturer NCFI Polyurethane Foam System 24-003

Lot # & Date on Component Containers Resin, mfg'd 8/6/2020

PROPORTIONING EQUIPMENT

Proportioner PMC PH-40

Hose Length (ft.) 50 ft.

Gun GX-7

Gun Set-up 42/42 pour module

A/B/H Temperature (°F) 110°/110°/110°

A/B Pressure (psi) 1000 static / 800 dynamic

CALIBRATION TEST

11:05:00 Time at Beginning of Injection (HH:MM:SS)

11:05:22 Time at End of Injection (HH:MM:SS)

5 Sample Weight (lbs.) vs. NA Certified Flow Meter Weight (lbs.)

INJECTION PROCEDURE – DRY INJECTION PROCEDURE - WET

✓ (✓) 5 lbs. of Material Injected
into Box

✓ (✓) After 10 minutes, Remove Top Cover

✓ (✓) After 30 minutes, Sample the HDP

✓ (✓) Add 15 lbs. of Water into
Box

✓ (✓) 5 lbs. of Material
Injected into Box

✓ (✓) After 10 minutes,
Material Remove Top Cover

✓ (✓) After 30 minutes, Sample
the HDP Material

MATERIAL ANALYSIS

Dry Injection Shots

	Density (pcf)	Compressive Strength (psi)
Sample 1	<u>4.34</u>	<u>72.51</u>

Wet Injection Shots

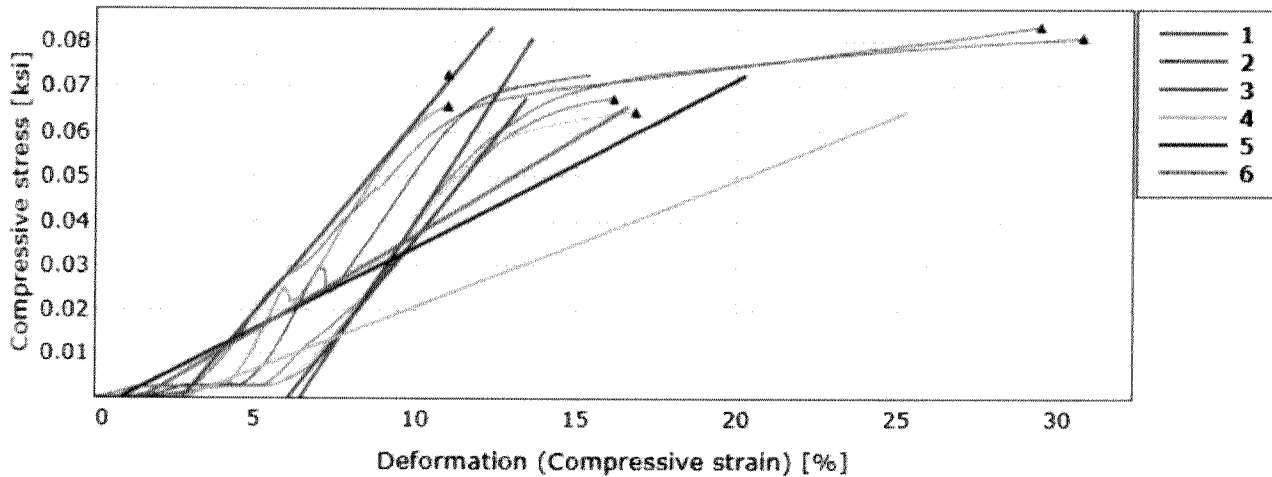
	Density (pcf)	Compressive Strength (psi)
	<u>4.16</u>	<u>48.04</u>

% Retention of
Density

Sample 1 96%Technician Ellis Wysinger/Steve BarnesDate 9/30/2020

TEST RESULTS
GTP-9 DRY TEST RESULTS

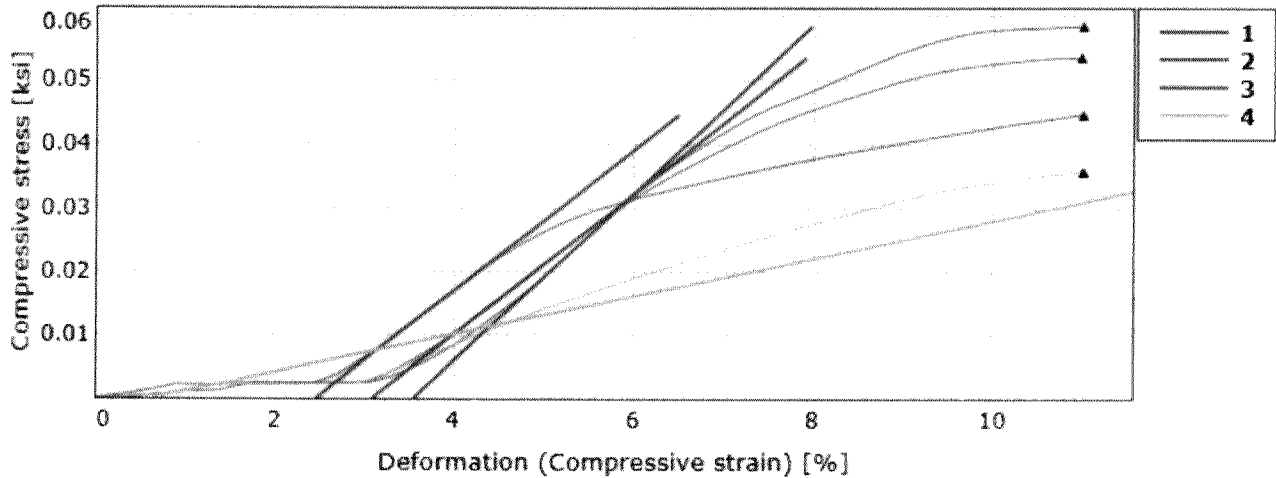
Specimen 1 to 6



	Compressive Strength @ Max Load [psi]	% Deformation at Max Load [%]	Compressive Strength @ 10% Deformation [psi]	Load at 10 % Deformation [lbf]	Modulus (Automatic Young's) [psi]
1	83.37	29.42	56.48	225.92	865.16
2	80.85	30.73	39.86	159.46	1121.66
3	67.65	16.18	36.14	144.56	914.15
4	64.77	16.86	39.34	157.37	287.73
5	72.63	15.41	51.20	204.79	280.33
6	65.79	11.00	61.29	245.14	436.28
Mean	72.51	19.94	47.39	189.54	650.88

GTP-9 WET TEST RESULTS

Specimen 1 to 4



	Compressive Strength @ Max Load [psi]	% Deformation at Max Load [%]	Compressive Strength @ 10% Deformation [psi]	Load at 10 % Deformation [lbf]	Modulus (Automatic Young's) [psi]
1	44.66	11.00	42.61	170.46	1104.90
2	53.40	10.99	52.46	209.84	1107.76
3	58.34	10.99	57.65	230.60	1317.14
4	35.76	11.00	34.11	136.42	299.24
Mean	48.04	11.00	46.71	186.83	957.26

SUBMERGED PERFORMANCE TESTING RESULTS

172-25 Test 1 Dry		172-25 Test 2 Wet		
Test Sample Name #	Compressive Strength [psi]		Compressive Strength [psi]	%Differential
Sample 1	88.38	Sample 1	86.18	2%
Sample 2	89.68	Sample 2	87.56	2%
Sample 3	93.36	Sample 3	90.68	3%
Sample 4	89.1	Sample 4	85.21	4%
Sample 5	96.49	Sample 5	93.01	4%
Average:	91.40	Average:	88.53	3%

TERRATHANE™

GEOTECHNICAL POLYURETHANE

24-003

Technical Data Sheet

TERRATHANE™ Polyurethanes

TerraThane™ Polyurethanes by NCFI are uniquely formulated for a variety of geotechnical applications. Each batch goes through stringent testing and quality assurance standards to ensure reliability in the field.

24-003 APPLICATIONS

Bridge Approaches and Departures
Highway and Streets
Airport Runways and Taxiways
Concrete Slab Lifting
Joint Matching
Void Filling
Deep Soil Injection

About 24-003

TerraThane™ 24-003 is a hydrophobic/hydro-insensitive, MDI-based polymer formula that is specially designed for exceptional flow or spread under concrete structures when water is present. The 24-003 flowability ensures voidfill and support before lifting. 24-003 is available with an NSF/ANSI 61 Section 5 – 2017 certification.

Reaction Curve at 110°

Cream Time	7 seconds
Gel Time	13 Seconds
Tack Free Time	19 seconds



CERTIFIED TO
NSF/ANSI 61

Physical Properties

Physical Properties	Test Method	Free Rise	Restrained
Density	ASTM D1622	4.0 pcf	5-6 pcf
Compressive Strength	ASTM D1621	68 psi	80-100 psi
Compressive Modulus	ASTM D1621	1900 psi	2400-3200 psi
Tensile Strength	ASTM D1623	79 psi	100-120 psi
Tensile Modulus	ASTM D1623	1446 psi	3100 psi
Water Absorption	ASTM D2842	≤ 0.04 lbs/ft ²	≤ 0.04 lbs/ft ²
Closed Cell Content		>92%	>92%
Max Service Temp		200°F	200°F
Elongation	ASTM D1623	5.1%	
Shear Strength	ASTM C273	52.0 psi	90 psi
Shear Modulus	ASTM C273	602 psi	677 psi
Flexural Strength	ASTM D790	80 psi	387 psi
Flexural Modulus	ASTM D790	1625 psi	13502 psi

TerraThane Geotechnical Division • NCFI Polyurethanes

Div. of Barnhardt Manufacturing Co. • P.O. Box 1528 • Mounty Airy, NC 27030 • 800-346-8229

WWW.TERRATHANE.COM

TERRATHANE™ 24-003
Technical Data Sheet



Results for Delta Urethanes Norfill 4.0 Polyurethane Grout Material Hydro-insensitivity Test – GTP-9

Testing performed on October 13, 2020

Page 333 of 405
**Hydro-Insensitivity of High Density Polyurethane Grout -
Panel Test Data Sheet**

Polymer Type & Manufacturer NorFill Grout Resin (Mfg by Delta Urethane LLC)
Lot # & Date on Component Containers Lot# A-side: 0319011278 Date: 03/19/2020
Lot# B-side: CL4.0B-090320 Date: 09/03/2020

PROPORTIONING EQUIPMENT

Proportioner GRACO H 25/35 Hose Length (ft.) 75 ft
Gun GX-7 Gun Set-up 01 / 90 mix chamber
A/B/H Temperature (°F) 90/95/95 A/B Pressure (psi) 1000 / 1000 static

CALIBRATION TEST

00:00 00:00 Time at Beginning of Injection (HH:MM:SS)
00:16 00:17 Time at End of Injection (HH:MM:SS)
5.0 lbs 5.0 lbs Sample Weight (lbs.) vs. - Certified Flow Meter Weight (lbs.)

INJECTION PROCEDURE – DRY

done (✓) 5 lbs. of Material Injected into Box
done (✓) After 10 minutes, Remove Top Cover
done (✓) After 30 minutes, Sample the HDP Material

INJECTION PROCEDURE - WET

done (✓) Add 15 lbs. of Water into Box
done (✓) 5 lbs. of Material Injected into Box
done (✓) After 10 minutes, Remove Top Cover
done (✓) After 30 minutes, Sample the HDP Material

MATERIAL ANALYSIS

Dry Injection Shots

	Density (pcf)	Compressive Strength (psi)
Sample 1	<u>4.52</u>	<u>54.1</u>
Sample 2	<u>4.97</u>	<u>63.6</u>

Wet Injection Shots

	Density (pcf)	Compressive Strength (psi)
	<u>4.38</u>	<u>50.4</u>
	<u>4.79</u>	<u>62.0</u>

	% Retention of Density
Sample 1	<u>96.9 (PASS)</u>
Sample 2	<u>96.4 (PASS)</u>

Technician 
Date 10/13/20

Nor-Fill Grout

Product Description:

Nor-fill Grout is a two component, closed cell polyurethane hydrophobic grout system used for soil stabilization, lifting foundations, road beds, driveways or any surface that needs to be secured or lifted to grade. The product is formed by the reaction of a resin blend and polymeric methylene diphenyl diisocyanate. The resin blend is comprised of polyols, additives and blowing agents. The unique composition of Nor-Fill Grout allows the material to perform well in wet environments frequently found below grade.

Typical Chemical Attributes:

	<u>Isocyanate</u>	<u>Resin</u>
Viscosity	190 cps	820 cps
Density	10.3 lbs./gal	8.5 lbs./gal
Appearance	brown liquid	dark grey liquid

Typical Reaction Profile:

	Hand Mix @ 72 °F	Machine Mix @120°F
Cream Time (sec)	19	7
Gel Time (sec)	70	-
Tack Free Time (sec)	90	14-16
Rise Time (sec)	110	20-22
Density (Free Rise)	4.1 pcf	3 - 4 pcf

Typical Physical Properties:

Restrained Core Density (ASTM D1622)	5.3 pcf
Compressive Strength (ASTM D1621)	85 psi
Tensile Strength (ASTM D1623)	105 psi
Closed Cell Content (ASTM 2856)	>93%
Water Absorption (ASTM D2842)	<0.04 lbs./sq.ft.
Dimensional Stability (ASTM D2126)	Volume change
Heat age, 93°C, 7 days	- 1.6%
Humid age 70°C, 97% R.H. 7 days	- 1.0%
Cold age, -40°C, 7 days	0.1%
Resistance to Solvents	Excellent
Resistance to Mold and Mildew	Excellent
Maximum Service Temperature	200°F

*These are typical values obtained from laboratory experiments and are provided as general information only.

Processing Parameters:

Nor-Fill is designed to be applied by trained contractors using high pressure, plural component proportioners. The proportioner must be able to maintain the designed temperature and pressure for Nor-Fill Grout™ products:

Pressure	1000 to 1750 psi
Pre-heater temperature	95 to 125°F
Hose temperature	95 to 125°F

Optimal settings will vary with proportioner, hose dimensions, gun configuration and ambient conditions. It is critical for installers to understand the limitations associated with their equipment.

Storage & Shelf Life:

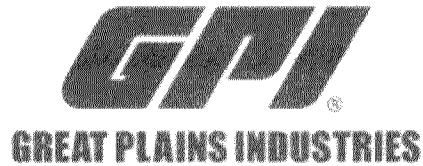
Nor-Fill Grout™ components have an optimal shelf life of 6 months when stored in unopened containers at temperature between 50° and 70°F. Excessively high temperatures may reduce optimal shelf life. Store the isocyanate and the resin components in a conditioned area, away from exposure to direct sun light and precipitation. Keep material containers tightly closed. Material in opened containers should be kept under a blanket of dry air or nitrogen.

Store material at 70° – 80°F for 48 hours prior to application.

Safety and Handling Information:

It is critical to read and become familiar with the Material Safety Datasheets prior to working with Nor-Fill Grout™ liquid components. When handling these materials and during application, always use appropriate personal protective equipment. Avoid prolonged breathing of vapors; avoid contact with skin, eyes and mucous membranes. In case of chemical contact with eyes, flush with water for at least 15 minutes and get medical attention. For more information, consult the Material Safety Datasheets.

The descriptions, data, designs and information contained herein are presented in good faith and believed to be accurate. This information is provided for guidance ONLY. Many factors will affect the processing or application of Delta Urethanes LLC products. It is necessary that you make tests to determine ultimate suitability for Delta Urethanes LLC products for your particular application. No warranties of any kind, either expressed or implied, including warranties of merchantability or fitness for a particular purpose, are made regarding products described, data or designs presented. In no case shall the descriptions, information, data or designs provided be considered a part of our terms and conditions of sale. All information and technical assistance is given without warranty or guarantee and is subject to change without notice. You expressly agree to release Delta Urethanes LLC from all liability in tort or contract based on the technical information provided. All such information is accepted at your own risk.



5252 E. 36th St. N.
Wichita, KS 67220-3205
(316) 686-7361
GPI.net

To: Departments of Transportations, City Governments, Engineering Firms, and Private Customers

Re: High Density Polyurethane Flow Meter Certification Requirement

To whom it may concern:

Nortex Concrete Lift & Stabilization, Inc. through distributor Hatfield and Co. purchased new flow meters and displays from March 2020 to June 2020. Part numbers and part totals are listed below. Certification is good from 1 year from date of install. Standard industry practices require meters and displays to be field tested every 6 months thereafter to ensure continued accuracy.

Pictures and/or videos are sent directly to requesting agency if agency can't be onsite when testing is performed. Individual contractor may be required to send new certifications 1-2 times per year as equipment ages as required by individual customer as to individual specifications.

If sales receipts are required then they can be provided by contractor.

Equipment/Parts Information Purchased:

OMO25A101-222 1" GPI oval gear meter high viscosity TY PPS rotors flow range 2.6-40 GPM

Amount Purchased: 24

RT14 2DOFM GPI lithium battery powered digital display calibrated and certified

Amount Purchased: 24

Sincerely,

Compliance/Technical Department

FLOW METER TEST REPORT

TRUCK # 2

DRIVER SIDE

PASSENGER SIDE

MATERIAL TYPE

"A" MATERIAL

"B" MATERIAL

MODEL # GM 6ARP-2Z

VERSION PULSE

CALIBRATION Meter will not need to be recalibrated when a fluid changes viscosity. Positive Displacement flow meters have been proven to last for years and remain accurate. Recommended that field testing be performed once per year to ensure continued accuracy.

GPI Industrial Meter Department

Matt Logan

www.gpi.net

316-686-7261

In house testing to verify flow meter:

Flow meters certified for accuracy using pounds set on meter to a gallon of material outflow in a bucket. Gallon of material was then weighed to verify accuracy.

Testing performed by: Ronnie Hobson Date: 8/6/21Verified by: A. Vazquez Date: 8/6/21

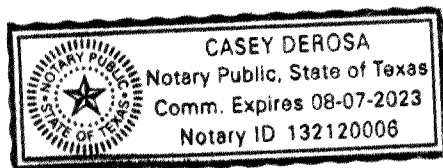
STATE OF TEXAS

COUNTY OF TARRANT

Before me this day came Ronnie Hobson, who is either known by me or produced _____, as identification and acknowledged that he has certified flow meters as performing correctly.

Subscribed and sworn on before me this 6 day of August, 2021My commission Expires: 08/07/2023 Notary Public: [Signature]

Seal:



FLOW METER TEST REPORT

TRUCK # 2

DRIVER SIDE

PASSENGER SIDE

MATERIAL TYPE

"A" MATERIAL

"B" MATERIAL

MODEL # GM 6ARP-2Z

VERSION PULSE

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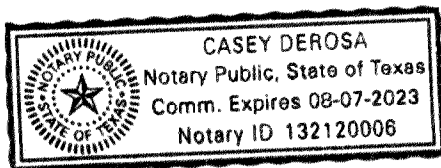
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Seal:



FLOW METER TEST REPORT

TRUCK # 3

DRIVER SIDE

PASSENGER SIDE

MATERIAL TYPE

"A" MATERIAL

"B" MATERIAL

MODEL # GM 6ARP-2Z

VERSION PULSE

CALIBRATION Meter will not need to be recalibrated when a fluid changes viscosity. Positive Displacement flow meters have been proven to last for years and remain accurate. Recommended that field testing be performed once per year to ensure continued accuracy.

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In house testing to verify flow meter:

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Testing performed by: Ronnie Hobson Date: 8/6/21Verified by: [Signature] Date: 8/6/21

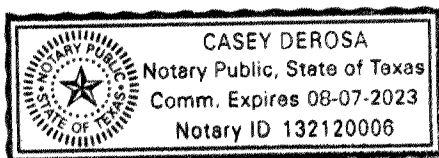
STATE OF TEXAS

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Subscribed and sworn on before me this 6 day of August, 2021My commission Expires: 08/07/2023 Notary Public: [Signature]

Seal:



FLOW METER TEST REPORT

TRUCK # 3

DRIVER SIDE

PASSENGER SIDE

MATERIAL TYPE

"A" MATERIAL

"B" MATERIAL

MODEL # GM 6ARP-2Z

VERSION PULSE

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GPI Industrial Meter Department

Matt Logan

www.gpi.net

316-686-7261

In house testing to verify flow meter:

Flow meters certified for accuracy using pounds set on meter to a gallon of material outflow in a bucket. Gallon of material was then weighed to verify accuracy.

Testing performed by:

Ronnie Hobson

Date:

8/6/21

Verified by:

[Signature]

Date:

8/6/21

STATE OF TEXAS

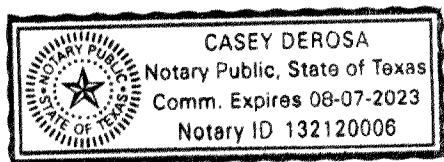
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Subscribed and sworn on before me this 6 day of August, 2021

My commission Expires: 08/07/2023 Notary Public:[Signature]

Seal:



FLOW METER TEST REPORT

TRUCK # 5

DRIVER SIDE

PASSENGER SIDE

MATERIAL TYPE

"A" MATERIAL

"B" MATERIAL

MODEL # GM 6ARP-2Z

VERSION PULSE

CALIBRATION Meter will not need to be recalibrated when a fluid changes viscosity. Positive Displacement flow meters have been proven to last for years and remain accurate. Recommended that field testing be performed once per year to ensure continued accuracy.

GPI Industrial Meter Department

Matt Logan

www.gpi.net

316-686-7261

In house testing to verify flow meter:

Flow meters certified for accuracy using pounds set on meter to a gallon of material outflow in a bucket. Gallon of material was then weighed to verify accuracy.

Testing performed by: Ronnie Hobson Date: 8/6/21Verified by: [Signature] Date: 8/6/21

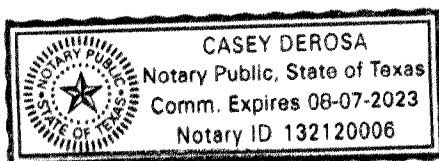
STATE OF TEXAS

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Seal:



FLOW METER TEST REPORT

TRUCK # 5

DRIVER SIDE

PASSENGER SIDE

MATERIAL TYPE

"A" MATERIAL

"B" MATERIAL

MODEL # GM 6ARP-2Z

VERSION PULSE

CALIBRATION Meter will not need to be recalibrated when a fluid changes viscosity. Positive Displacement flow meters have been proven to last for years and remain accurate. Recommended that field testing be performed once per year to ensure continued accuracy.

GPI Industrial Meter Department

Matt Logan

www.gpi.net

316-686-7261

In house testing to verify flow meter:

Flow meters certified for accuracy using pounds set on meter to a gallon of material outflow in a bucket. Gallon of material was then weighed to verify accuracy.

Testing performed by: Ronnie Hobson Date: 8/6/21Verified by: [Signature] Date: 8/6/21

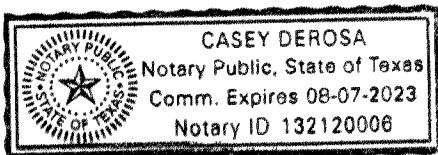
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Seal:



FLOW METER TEST REPORT

TRUCK # 6

DRIVER SIDE

PASSENGER SIDE

MATERIAL TYPE

"A" MATERIAL

"B" MATERIAL

MODEL # GM 6ARP-2Z

VERSION PULSE

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GPI Industrial Meter Department

Matt Logan

www.gpi.net

316-686-7261

In house testing to verify flow meter:

Flow meters certified for accuracy using pounds set on meter to a gallon of material outflow in a bucket. Gallon of material was then weighed to verify accuracy.

Testing performed by: Ronnie Hobson Date: 8/13/21Verified by: Bariah Lill Date: 8/13/21

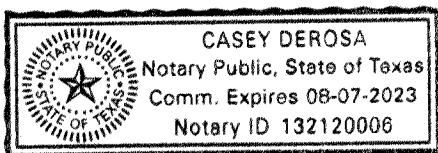
STATE OF TEXAS

COUNTY OF TARRANT

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Subscribed and sworn on before me this 13 day of August, 2021
My commission Expires: 08/07/2023 Notary Public: Casey Derosa

Seal:



FLOW METER TEST REPORT

TRUCK # 6

DRIVER SIDE

PASSENGER SIDE

MATERIAL TYPE

"A" MATERIAL

"B" MATERIAL

MODEL # GM 6ARP-2Z

VERSION PULSE

CALIBRATION Meter will not need to be recalibrated when a fluid changes viscosity. Positive Displacement flow meters have been proven to last for years and remain accurate. Recommended that field testing be performed once per year to ensure continued accuracy.

GPI Industrial Meter Department

Matt Logan

www.gpi.net

316-686-7261

In house testing to verify flow meter:

Flow meters certified for accuracy using pounds set on meter to a gallon of material outflow in a bucket. Gallon of material was then weighed to verify accuracy.

Testing performed by: Bonnie Hobson Date: 8/13/21Verified by: Isiah Lee Date: 8/13/21

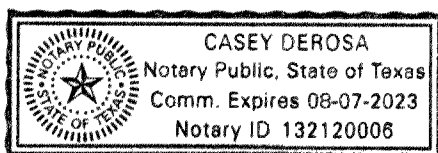
STATE OF TEXAS

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Subscribed and sworn on before me this 13 day of August, 2021My commission Expires: 08/07/2023 Notary Public: Casey Derosa

Seal:



FLOW METER TEST REPORT

TRUCK # 9

DRIVER SIDE

PASSENGER SIDE

MATERIAL TYPE

"A" MATERIAL

"B" MATERIAL

MODEL # GM 6ARP-2Z

VERSION PULSE

CALIBRATION Meter will not need to be recalibrated when a fluid changes viscosity. Positive Displacement flow meters have been proven to last for years and remain accurate. Recommended that field testing be performed once per year to ensure continued accuracy.

GPI Industrial Meter Department

Matt Logan

www.gpi.net

316-686-7261

In house testing to verify flow meter:

Flow meters certified for accuracy using pounds set on meter to a gallon of material outflow in a bucket. Gallon of material was then weighed to verify accuracy.

Testing performed by: Ronnie Hobson Date: 8/13/21Verified by: Frank Lee Date: 8/13/21

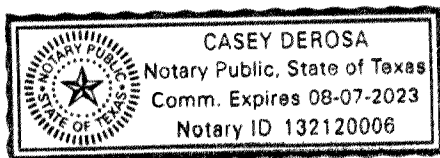
STATE OF TEXAS

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Subscribed and sworn on before me this 13 day of August, 2021My commission Expires: 08/07/2023 Notary Public: [Signature]

Seal:



FLOW METER TEST REPORT

TRUCK # 9

DRIVER SIDE

PASSENGER SIDE

MATERIAL TYPE

"A" MATERIAL

"B" MATERIAL

MODEL # GM 6ARP-2Z

VERSION PULSE

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GPI Industrial Meter Department

Matt Logan

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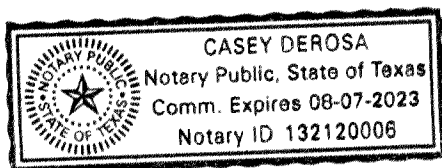
STATE OF TEXAS

COUNTY OF TARRANT

Before me this day came Ronnie Hobson, who is either known by me or produced _____, as identification and acknowledged that he has certified flow meters as performing correctly.

Subscribed and sworn on before me this 13 day of August, 2021!My commission Expires: 08/07/2023 Notary Public: Casey Derosa

Seal:



FLOW METER TEST REPORT

TRUCK # 10

DRIVER SIDE

PASSENGER SIDE

MATERIAL TYPE

"A" MATERIAL

"B" MATERIAL

MODEL # GM 6ARP-2Z

VERSION PULSE

CALIBRATION Meter will not need to be recalibrated when a fluid changes viscosity. Positive Displacement flow meters have been proven to last for years and remain accurate. Recommended that field testing be performed once per year to ensure continued accuracy.

GPI Industrial Meter Department

Matt Logan

www.gpi.net

316-686-7261

In house testing to verify flow meter:

Flow meters certified for accuracy using pounds set on meter to a gallon of material outflow in a bucket. Gallon of material was then weighed to verify accuracy.

Testing performed by:

Bonnie Hobson

Date:

8/13/21

Verified by:

Isaiah Lih

Date:

8/13/21

STATE OF TEXAS

COUNTY OF TARRANT

Before me this day came

Bonnie Hobson, who is either known by me or

produced

, as identification and acknowledged that he has certified flow meters as performing correctly.

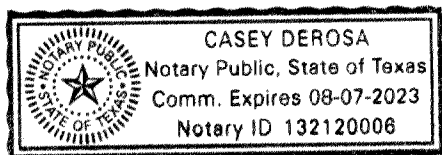
Subscribed and sworn on before me this

13

day of

August, 2021My commission Expires: 08/07/2023 Notary Public:[Signature]

Seal:



FLOW METER TEST REPORT

TRUCK # 10

DRIVER SIDE

PASSENGER SIDE

MATERIAL TYPE

"A" MATERIAL

"B" MATERIAL

MODEL # GM 6ARP-2Z

VERSION PULSE

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Matt Logan

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316-686-7261

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Testing performed by: Ronnie Hobson Date: 8/13/21Verified by: Isiah Lil Date: 8/13/21

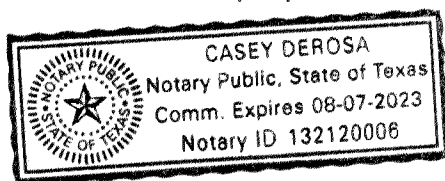
STATE OF TEXAS

COUNTY OF TARRANT

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Subscribed and sworn on before me this 13 day of August, 2021My commission Expires: 08/07/2023 Notary Public: Casey Derosa

Seal:



FLOW METER TEST REPORT

TRUCK # 28

DRIVER SIDE

PASSENGER SIDE

MATERIAL TYPE

"A" MATERIAL

"B" MATERIAL

MODEL # GM 6ARP-2Z

VERSION PULSE

CALIBRATION Meter will not need to be recalibrated when a fluid changes viscosity. Positive Displacement flow meters have been proven to last for years and remain accurate. Recommended that field testing be performed once per year to ensure continued accuracy.

GPI Industrial Meter Department

Matt Logan

www.gpi.net

316-686-7261

In house testing to verify flow meter:

Flow meters certified for accuracy using pounds set on meter to a gallon of material outflow in a bucket. Gallon of material was then weighed to verify accuracy.

Testing performed by: Ronnie Hobson Date: 8/13/21Verified by: Isiah Lil Date: 8/13/21

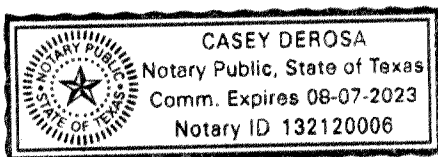
STATE OF TEXAS

COUNTY OF TARRANT

Before me this day came Ronnie Hobson, who is either known by me or produced _____, as identification and acknowledged that he has certified flow meters as performing correctly.

Subscribed and sworn on before me this 13 day of August, 2021My commission Expires: 08/07/2023 Notary Public: [Signature]

Seal:



FLOW METER TEST REPORT

TRUCK # 28

DRIVER SIDE

PASSENGER SIDE

MATERIAL TYPE

"A" MATERIAL

"B" MATERIAL

MODEL # GM 6ARP-2Z

VERSION PULSE

CALIBRATION Meter will not need to be recalibrated when a fluid changes viscosity. Positive Displacement flow meters have been proven to last for years and remain accurate. Recommended that field testing be performed once per year to ensure continued accuracy.

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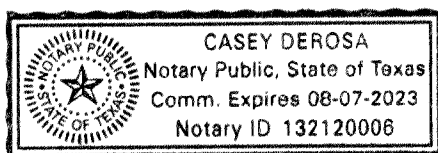
STATE OF TEXAS

COUNTY OF TARRANT

Before me this day came Bonnie Hobson, who is either known by me or produced _____, as identification and acknowledged that he has certified flow meters as performing correctly.

Subscribed and sworn on before me this 13 day of August, 2020!My commission Expires: 08/07/2023 Notary Public: Casey Derosa

Seal:





201 NW 26th St.
 Fort Worth, TX 76164
 (817) 831-1240 office
 (817) 831-1245 fax

COMPLETED DEPT OF TRANS JOBS/ REFERENCE LIST 2016 - PRESENT

<u>PROJECT</u>	<u>DATE</u>	<u>AMOUNT</u>
TEXAS DEPT OF TRANSPORTATION MCCLENNON CO BRIDGE APPROACH SLABS CONTACT BRUCE JOHNSON 254-230-7296	JAN 2016	\$108,755.00
OKLAHOMA TURNPIKE AUTHORITY H.E. BAILEY TURNPIKE DIPS AND UNDERSEALING CONTACT KEVIN SIMPSON	APRIL 2016	\$169,688.00
ARKANSAS HIGHWAYS DEPARTMENT VARIOUS DISTRICTS BRIDGE APPROACH SLABS/DIPS/UNDERSEALING CONTACT VARIES	APRIL 2016	\$181,801.00
TJ CAMPBELL CONSTRUCTION ODOT- DISTRICT #4 BRIDGE APPROACHES/JOINT SEALING CONTACT: ADAM HODGES 405-620-1831	MAY 2016	\$102,087.00
WEBBER, LLC HWY 290 EXPRESSWAY BRIDGE APPROACHES/VOID FILLING AT RETAINING WALLS CONTACT: EMILIO CHAPA 346-305-1955	JUNE 2016	\$68,476.00
CORNERSTONE PAVING AND CONSTRUCTION TXDOT-BRENHAM TX OFFICE HWY 290 BRIDGE APPROACH SLABS CONTACT: DAVID BAKER 979-412-1111	JULY 2016	\$214,404.00
CTRMA (AUSTIN, TX TOLLWAY AUTHORITY) HWY 290 BRIDGE APPROACH SLABS/DIPS CONTACT JOHN JONES (512) 568-2285	AUGUST 2016	\$147,857.00

TEXAS DEPT OF TRANSPORTATION MONTGOMERY CO BRIDGE APPROACH SLABS/DIPS CONTACT: BRYCE SHULER (936) 538-0022	SEPT 2016	\$501,513.00
NORTH TEXAS TOLLWAY AUTHORITY DALLAS NORTH TOLLWAY, SAM RAYBURN TOLLWAY BRIDGE APPROACH SLABS/DIPS CONTACT: ELI LERMA	OCT 2016	\$184,644.00
DBI SERVICES – TXDOT WACO MCCLENNAN CO BRIDGE APPROACHES CONTACT JON-DAVID JENKINS 254-848-4139	JAN 2017	\$108,640.00
LANE CONSTRUCTION COMPANY – TXDOT WACO MCCLENNAN CO BRIDGE APPROACHES/ JOINT SEALING CONTACT ERNEST TRUSSELL	FEB 2017	\$119,750.00
KANSAS DEPT OF TRANSPORTATION DISTRICT ONE BRIDGE APPROACH SLABS/DIPS CONTACT: CLINTON PROSE	MARCH 2017	\$163,800.00
OK DEPT OF TRANSPORTATION DISTRICT 1 VOID FILLING/UNDERSEALING CONTACT: JON ARPS 918-687-5407	APRIL 2017	\$439,642.00
ARKANSAS HIGHWAYS DEPARTMENT VARIOUS DISTRICTS BRIDGE APPROACH SLABS/DIPS/UNDERSEALING CONTACT: BRUCE STREET DIST. 5	MAY 2017	\$316,780.00
MISSISSIPPI DEPT OF TRANSPORTATION BARRIERE CONSTRUCTION VOID FILLING/UNDERSEALING CONTACT: BARRIERE CONSTRUCTION	MAY 2017 – JULY 2017	\$1,614,384.00
OK DEPT OF TRANSPORTATION DISTRICT 1 VOID FILLING/UNDERSEALING CONTACT: JON ARPS 918-687-5407	AUGUST 2017	\$217,552.00
CTRMA (AUSTIN, TX TOLLWAY AUTHORITY) HWY 290 BRIDGE APPROACH SLABS/DIPS CONTACT JOHN JONES (512) 568-2285	AUGUST 2017	\$155,927.00

CITY OF MCKINNEY, TX AIRPORT RD AND EL DORADO RD VOID FILLING/UNDERSEALING CONTACT EDDIE GARZA	SEPT 2017	\$560,000.00
WILLIAMS BROTHERS CONSTRUCTION TXDOT – SAN ANTONIO BRIDGE APPROACH SLABS CONTACT: ROGELIO PENA (281) 740-9139	OCT 2017	\$56,230.00
PSC – JAMES CONSTRUCTION GROUP TXDOT – WACO, TX BRIDGE APPROACH SLABS CONTACT: DENNIS WALTER (254) 541-7593	NOV 2017	\$35,275.00
ARKANSAS HIGHWAYS DEPARTMENT DISTRICT 5 BRIDGE APPROACH SLABS/UNDERSEALING CONTACT: BRUCE STREET DIST. 5	NOV 2017	\$141,851.00
OK DEPT OF TRANSPORTATION DISTRICT 7 BRIDGE APPROACH SLABS CONTACT: JOE HENNESSEY 580-467-1835	NOV 2017	\$41,695.00
OK DEPT OF TRANSPORTATION DISTRICT 8 VOID FILLING/UNDERSEALING CONTACT: TRAPPER PARKS 918-892-2314	DEC 2017	\$304,034.00
OK DEPT OF TRANSPORTION DISTRICT 6 BRIDGE APPROACH SLABS CONTACT: WAYNE ROESNER	DEC 2017	\$59,034.00
OK TURNPIKE AUTHORITY BAILEY TURNPIKE DIPS/UNDERSEALING CONTACT: KEVIN SIMPSON	JAN 2018	\$57,925.00
DBI SERVICES – TXDOT WACO MCCLENNAN CO DIPS/HEAVES CONTACT JON-DAVID JENKINS 254-848-4139	JAN 2018	\$80,325.00
DBI SERVICES – TXDOT HILLSBORO HILL COUNTY JOINT MATCHING/DIPS CONTACT JON-DAVID JENKINS 254-848-4139	FEB 2018	\$103,960.00

ARKANSAS HIGHWAYS DEPARTMENT DISTRICT 5 VOID FILLING/UNDERSEALING CONTACT: JASON SEATON 870-612-7638	MARCH 2018	\$177,312.00
OK TURNPIKE AUTHORITY KILPATRICK TURNPIKE VOID FILLING/JOINT MATCHING CONTACT: STEVE ANSHUTZ 405-409-6294	APRIL 2018	\$44,040.00
TEXAS STERLING CONSTRUCTION CITY OF FRISCO, TX – MAIN ST PHASE 1 VOID FILLING/UNDERSEALING CONTACT: JASON NAJIM 214-907-1014	APRIL 2018	\$550,000.00
ARKANSAS HIGHWAYS DEPARTMENT DISTRICT 5 VOID FILLING/UNDERSEALING CONTACT: JASON SEATON 870-612-7638	MAY 2018	\$199,858.00
OK DEPT OF TRANSPORATION DISTRICT 3 BRIDGE APPROACH SLABS CONTACT: BILL WILKINSON 580-421-5552	JUN 2018	\$61,763.00
ROY JORGENSEN ASSOC – TXDOT AUSTIN SH 130 DIPS/HEAVES CONTACT: HARRY LUDWIG 281-212-7044	JULY 2018	\$703,760.00
OK TURNPIKE AUTHORITY CHEROKEE TURNPIKE DIPS/VOID FILLING CONTACT: CODY BENTON 918-801-8345	AUG 2018	\$49,926.00
CITY OF FRISCO, TX SB DNT FRONTAGE RD VOID FILLING/UNDERSEALING CONTACT: BRAD WOOLEY 972-292-5833	AUG 2018	\$334,480.00
CITY OF MCKINNEY, TX COLLEGE ST VOID FILLING/UNDERSEALING CONTACT: EDDIE GARZA	SEPT 2018	\$103,200.00
NORTH TEXAS TOLLWAY AUTHORITY GEORGE BUSH TOLLWAY DIPS/VOID FILLING CONTACT: ELI LERMA 972-447-3312	SEPT 2018	\$190,312.00

OK DEPT OF TRANSPORTATION DISTRICT 3 VOID FILLING/UNDERSEALING/ SOIL DENSIFICATION CONTACT: BILL WILKINSON 580-421-5552	OCT 2018	\$187,342.00
OK TURNPIKE AUTHORITY BAILEY TURNPIKE DIPS CONTACT: CODY BENTON 918-801-8345	NOV 2018	\$121,768.00
TEXAS STERLING CONSTRUCTION CITY OF FRISCO, TX MAIN ST – PHASE 2 VOID FILLING/UNDERSEALING CONTACT: JASON NAJIM 214-907-1014	DEC 2018	\$550,000.00
OK TURNPIKE AUTHORITY INDIAN NATION TURNPIKE FAULTED PAVEMENT REPAIR CONTACT: BENNIE WESTER 918-318-0078	DEC 2018	\$122,508.00
O'TREVINO CONSTRUCTION – TXDOT DALLAS SH-75 DIPS/HEAVES	DEC 2018	\$76,708.00
OK DEPT OF TRANSPORTATION DISTRICT 3 VOID FILLING/UNDERSEALING CONTACT: JON LARSEN 405-669-5994	JAN 2019	\$132,000.00
O'TREVINO CONSTRUCTION – TXDOT LUBBOCK BRIDGE APPROACH SLABS CONTACT: PAT PACE (817) 430-2410	MARCH 2019	\$62,408.00
HUEY STOCKSTILL CONSTRUCTION – MSDOT DISTRICT 6 – PAVEMENT REHABILITATION VOID FILLING/UNDERSEALING	MAY 2019	\$120,400.00
GIBSON ASSOCIATES – MSDOT DISTRICT 2 – BRIDGE REHABILITATION	SEPT 2019	\$506,480.00
O'TREVINO CONST. – TXDOT DALLAS CO BRIDGE APPROACHES/DIPS/VOID FILLING CONTACT: PAT PACE (817) 430-2410	OCT-DEC 2019	\$178,577.00
NORTH TEXAS TOLLWAY AUTHORITY BRIDGE APPROACHES/ SOIL DENSIFICATION ANDREW FERRIER (214) 224-2491	FEB 2020 – DEC 2020	\$2,595,450.00
TXDOT – CORSICANA OFFICE DIPS ON I-45 CONTACT: JOE LANOUE (214) 616-0969	MARCH 2020	\$48,333.00

ARDOT – D4 – FORT SMITH, AR DIPS/BRIDGE APPROACHES CONTACT: CHAD DAVIS (479) 461-2712	MAY 2020	\$153,794.00
ODOT – D8 – TULSA, OK BRIDGE APPROACHES/ SOIL DENSIFICATION CONTACT: TRAPPER PARKS (918) 892-2314	JUNE 2020	\$226,501.00
CHESTER BROSS GROUP/ ESS, INC. – ARDOT D5 VOID FILLING/UNDERSEALING CONTACT: HAL BRENTON (573) 999-0176	JULY 2020	\$1,020,000.00
DICKERSON & BOWEN – MSDOT PAVEMENT RESTORATION VOID FILLING/UNDERSEALING CONTACT: BLAKE CLARK (601) 969-2002	JULY 2020	\$165,000.00
C&D HUGHES, INC – MICHIGAN DOT VOID FILLING/UNDERSEALING CONTACT: STEVE (617) 719-5111	AUG 2020 – SEPT 2020	\$1,320,044.00
TXDOT FORT WORTH DISTRICT – JOHNSON CO BRIDGE APPROACHES ON SH-67 CONTACT: BRIAN ANDERSON (817) 202-2900	SEPT 2020	\$100,900.00
OK DEPT OF TRANSPORTATION DISTRICT 1 BRIDGE APPROACH/ SOIL DENSIFICATION DEEP INJECTION CONTACT: MIKE KELLY (918) 687-5407	NOV 2020	\$135,687.00
OK TURNPIKE AUTHORITY CREEK TURNPIKE FAULTED PAVEMENT REPAIR, DIPS CONTACT: GORDON MANES (918) 859-2696	DEC 2020	\$89,320.00
CTRMA – AUSTIN, TX HWY 290 EXPRESSWAY BRIDGE APPROACHES, HEAVES, SOIL DENSIFICATION CONTACT: JOHN JONES (512) 568-2285	FEB 2021	\$322,180.00
CAPMETRO TRANSIT AUTHORITY 2910 BUS YARD – AUSTIN, TX UNDERSEALING/PAVEMENT LIFTING CONTACT: RICHARD RAMIREZ (512) 389-7411	FEB 2021	\$48,000.00
TEINERT CONSTRUCTION – LUBBOCK, TX PLAINVIEW ISD ESTACADO MS ADDITIONS UNDERSEALING/ SOIL DENSIFICATION CONTACT: KAIN ALEXANDER (806) 507-4809	MARCH 2021	\$76,038.00
TXDOT FORT WORTH DISTRICT – TARRANT CO BRIDGE APPROACHES ON I-20 CONTACT: RECO CHAZARETTE (817) 235-3392	APRIL 2021	\$64,266.00

ZACHRY CONSTRUCTION HOT WELLS PUMP STATION – SOIL DENSIFICATION CONTACT: CURTIS SCHWARTZ (817) 822-6092	APRIL 2021	\$105,000.00
ODOT – D8 – LAWTON, OK DISTRICT 7 BRIDGE APPROACH SLABS/ SOIL DENSIFICATION CONTACT: BRYCE LAWSON (580) 255-7586	MAY 2021	\$95,425.00
ODOT – D8 – TULSA, OK BRIDGE APPROACHES/ SOIL DENSIFICATION CONTACT: TRAPPER PARKS (918) 892-2314	JULY 2021	\$165,784.00
TXDOT FORT WORTH DISTRICT – TARRANT CO BRIDGE APPROACHES ON I-30/ SOIL DENSIFICATION CONTACT: JUSTIN DERDEN (817) 586-5575	AUGUST 2021	\$67,418.00
ROY JORGENSEN ASSOCIATES – TXDOT DALLAS CO DIPS/HEAVES/BRIDGE APPROACHES CONTACT: N/A AT THIS TIME	SUB CONTRACT APPROVED TENTATIVELY SET FOR 2022	\$110,000.00
ROY JORGENSEN ASSOCIATES – TXDOT TRAVIS CO. DIPS/HEAVES/BRIDGE APPROACHES CONTACT: N/A AT THIS TIME	SUB CONTRACT APPROVED TENTATIVELY SET FOR 2022	\$480,000.00

3.48 PAYMENT BOND

STATE OF TEXAS

COUNTY OF Tarrant

KNOW ALL MEN BY THESE PRESENTS:

That Nortex Concrete Lift & Stabilization, Inc. of the City of Fort Worth, County of Tarrant, and State of Texas, as Principal, and SureTec Insurance Company authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto the City of Grand Prairie (Owner), in the panel sum of Eight Hundred Twenty-Seven Thousand One Hundred Eighty-Seven and 50/100 Dollars (\$ 827,187.50) for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by the presents:

WHEREAS, the Principal has entered into a certain written contract with the OWNER, dated the 1st day of November, 2021, to which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall pay all claimants supplying labor and materials to him or a subcontractor in the prosecution of the work provided for in said contract, then this obligation shall be void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Article 5160 of the Revised Civil Statutes of Texas as amended and all liabilities on this bond shall be determined in accordance with the provision of said Article to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to terms of the contract, or to work performed thereunder, or the plans, specifications or drawings accompanying the same, shall in anywise affect its obligation on this bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument the 15th day of October, 2021

Nortex Concrete Lift & Stabilization, Inc.

PRINCIPAL

By: [Signature]Title: SEC/CRGAddress: 201 NW 26th St.Fort Worth, TX 76164SureTec Insurance Company

SURETY

By: [Signature]Title: Attorney-In-FactAddress: 675 Town Square Blvd., Suite 200, Bldg 1AGarland, TX 75040Name and address of the Resident Agent of Surety is: Steve Nelson 469-241-14887943 Caruth Court, Dallas, TX 75225

3.47 PERFORMANCE BOND

STATE OF TEXAS

COUNTY OF Tarrant

KNOW ALL MEN BY THESE PRESENTS:

That Nortex Concrete Lift & Stabilization, Inc. of the City of Fort Worth, County of Tarrant, and State of Texas, as Principal, and SureTec Insurance Company authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto the City of Grand Prairie (Owner), in the sum of Eight Hundred Twenty-Seven Thousand One Hundred Eighty-Seven and 50/100 Dollars (\$ 827,187.50) as a proper measure of liquidated damages, for payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by the presents:

WHEREAS, the Principal has entered into a certain written contract with the OWNER, dated the 1st day of November, 2021, to which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform said Contract and shall in all respects duly and faithfully contract agreed and covenanted by the Principal to be observed and performed and according to the true intent and meaning of said Contract and the Plans and Specifications hereto annexed, then this obligation shall be void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Article 5160 of the Revised Civil Statutes of Texas as amended and all liabilities on this bond shall be determined in accordance with the provision of said Article to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to terms of the contract, or to work performed thereunder, or the plans, specifications or drawings accompanying the same, shall in anywise affect its obligation on this bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument the 15th day of October, 2021

Nortex Concrete Lift & Stabilization, Inc.

PRINCIPAL

By: [Signature]Title: SEC/CFOAddress: 201 NW 26th St.Fort Worth, TX 76164SureTec Insurance Company

SURETY

By: [Signature]Title: Attorney-In-FactAddress: 675 Town Square Blvd., Suite 200, Bldg 1AGarland, TX 75040Name and address of the Resident Agent of Surety is: Steve Nelson 469-241-14887943 Caruth Court, Dallas, TX 75225

3.49 MAINTENANCE BOND

STATE OF TEXAS
COUNTY OF Texas

KNOW ALL MEN BY THESE PRESENTS:

That Nortex Concrete Lift & Stabilization, Inc. of the City of Fort Worth, County of Tarrant, and State of Texas, as Principal, and SureTec Insurance Company a corporation authorized under the laws of the State of Texas to act as surety on bonds for principals, do hereby acknowledge themselves to be held and firmly bound to pay unto the City of Grand Prairie (Owner), a municipal corporation of the State of Texas, its successors and assigns, at Grand Prairie, Dallas County, Texas, the sum of Four Hundred Thirteen Thousand Five Hundred Ninety-Three and 75/100 Dollars (\$ 413,593.75), 50% of the total amount of the contract for the payment of which sum said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by the presents:

This obligation is conditioned, however, that:

WHEREAS, the Principal has entered into a certain written contract with the OWNER, dated the 1st day of November, 20 21, to City of Grand Prairie which contract and the plans and specifications therein mentioned, adopted by the City of Grand Prairie, are filed with the City Secretary of said City and are hereby expressly incorporated herein by reference and made a part hereof as though the same were written and set out in full herein, and

WHEREAS, under the said plans, specifications and contracts, it is provided that the Contractor will maintain and keep in good repair the work therein contracted to be done and performed for a period of two (2) years from the date of acceptance thereof and perform all necessary work toward the repair of any defective condition growing out of or arising from the improper construction of the improvements contemplated by the said Contractor on account of any breaking of such improvements, caused by the said Contractor on constructing the same, it being understood that the purpose of this section is to cover all defective conditions arising by reason of defective material, work or labor performed by said Contractor, and in case the said Contractor shall fail to repair, reconstruct or make said improvements it is agreed that the City may do said work in accordance with said contract and supply such materials and charge the same against the said Contractor and its surety on this obligation, and said Contractor and surety shall be subject to the damages in said contract for each day's failure on the part of said Contractor to comply with the terms and provisions of said Contract and this bond.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Contractor shall perform its agreement to maintain said construction and keep same in repair for the maintenance period of two (2) years as herein and in said contract provided, then this obligation shall be null and void and have no further effect; otherwise, to remain in full force and effect;

It is further agreed that this obligation shall be a continuing one against the Principal and Surety and that successive recoveries may be had hereon for successive breaches of the conditions herein provided until the full amount of this bond shall have been exhausted, and it is further understood that the obligation to maintain said work shall continue throughout said maintenance period, and the same shall not be changed, diminished, or any matter affected from any cause during said time.

IN WITNESS WHEREOF, the said Nortex Concrete Lift & Stabilization, Inc. as Contractor and Principal and the said SureTec Insurance Company, Attorney-in-Fact, and the said Attorney-in-Fact has hereunto set his hand this the 15th day of October, 20 21

Nortex Concrete Lift & Stabilization, Inc.

PRINCIPAL

By: [Signature]

Title: Sec/CFD

Address: 201 NW 26th St.

Fort Worth, TX 76164

SureTec Insurance Company

SURETY

By: [Signature]

Title: Attorney-In-Fact

675 Town Square Blvd., Suite 200, Bldg 1A
Address: Garland, TX 75040

Faith Lane

Attorney-in-Fact

SureTec Insurance Company THIS BOND RIDER CONTAINS IMPORTANT COVERAGE INFORMATION
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FORCE MAJEURE RIDER

The obligations of the Surety and Principal under the Bond or Bonds to which this Rider is annexed are subject to the following limitations and conditions, to wit: that, it is a condition precedent to their liability hereunder that the contractual obligation (the contract or subcontract, as the case may be, being referred to in this Rider as the "Contract") between the Principal and the Obligees underlying this Bond includes (or shall be considered amended to include) a *Force Majeure* exclusion holding that the Principal and its Sureties shall not be held liable under this Bond or under the Contract for any impacts, delays, defaults, or damages related to Principal's work arising from, or related to epidemics, pandemics, medical emergencies, supply line interruptions, or natural disasters impacting the work required by the Contract, regardless of where such events occur, acts of God, terrorism, war, acts of government or administrative suspension, limitation, or shut-down, or the direct or indirect consequences or aftermath of any of the foregoing, and the Contract further provides that the Principal shall be entitled to an extension of the Contract Time and an equitable adjustment of the Contract Price, as a result of any of the exclusions heretofore cited. In the event the provisions for *force majeure*, time extensions, or equitable adjustment for time and money are more favorable to Principal in the Contract, than in this Rider, the more favorable shall apply.

POA #: 4221801

SureTec Insurance Company

LIMITED POWER OF ATTORNEY

Know All Men by These Presents, That SURETEC INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Texas, and having its principal office in Houston, Harris County, Texas, does by these presents make, constitute and appoint

Linda Dailey, Crystal Langhorn, Faith Lane

its true and lawful Attorney-in-fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include waivers to the conditions of contracts and consents of surety for, providing the bond penalty does not exceed

Five Million and 00/100 Dollars (\$5,000,000.00)

and to bind the Company thereby as fully and to the same extent as if such bond were signed by the President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolutions of the Board of Directors of the SureTec Insurance Company:

Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and of behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached. (Adopted at a meeting held on 20th of April, 1999.)

In Witness Whereof, SURETEC INSURANCE COMPANY has caused these presents to be signed by its President, and its corporate seal to be hereto affixed this 13th day of May, A.D. 2021.

SURETEC INSURANCE COMPANY

By:

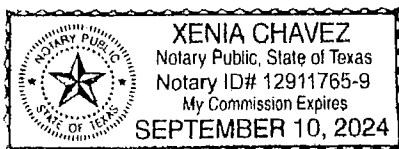
Michael C. Keimig
Michael C. Keimig, President

State of Texas
County of Harris

ss:



On this 13th day of May, A.D. 2021 before me personally came Michael C. Keimig, to me known, who, being by me duly sworn, did depose and say, that he resides in Houston, Texas, that he is President of SURETEC INSURANCE COMPANY, the company described in and which executed the above instrument; that he knows the seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto by like order.



Xenia Chavez
Xenia Chavez, Notary Public
My commission expires September 10, 2024

I, M. Brent Beaty, Assistant Secretary of SURETEC INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Company, which is still in full force and effect; and furthermore, the resolutions of the Board of Directors, set out in the Power of Attorney are in full force and effect.

Given under my hand and the seal of said Company at Houston, Texas this _____ day of _____, A.D.

M. Brent Beaty
M. Brent Beaty, Assistant Secretary

Any instrument issued in excess of the penalty stated above is totally void and without any validity. 4221801
For verification of the authority of this power you may call (713) 812-0800 any business day between 8:30 am and 5:00 pm CST.

	CERTIFICATE OF LIABILITY INSURANCE	DATE (MM/DD/YYYY) 10/13/2021
PRODUCER HALEY CARTER STATE FARM 328 W MAIN ST., STE 1 AZLE, TX 76020 	THIS CERTIFICATE IS ISSUED AS MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED NORTEX CONCRETE LIFT & STABILIZATION, INC. 201 NW 26 TH ST FORT WORTH, TX 76164	INSURERS AFFORDING COVERAGE INSURER A: State Farm Mutual Auto Insurance Company 25178 INSURER B: INSURER C: INSURER D: INSURER E:	NAIC #

COVERAGES

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
		GENERAL LIABILITY ☐ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPOP AGG \$
A	X	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☒ SCHEDULED AUTOS ☒ HIRED AUTOS ☒ NON-OWNED AUTOS	96 0737-A01-43	07/01/21	07/01/22	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY ☐ ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
		EXCESS/UMBRELLA LIABILITY ☐ OCCUR ☐ CLAIMS MADE DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
		OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

City of Grand Prairie is listed as additional insured with waiver of subrogation

RFB #21158 Pavement Leveling Services

CERTIFICATE HOLDER**CANCELLATION**

City of Grand Prairie Purchasing Department
 PO Box 534045
 Grand Prairie, TX 75053-4045

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
 JUDY BUTLER, SSA

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

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).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/25/2021

PRODUCER Bondtex Agency P.O. Box 1797 Azle, TX 76098		Phone: (817)747-2663	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURED Nortex Concrete Lift & Stabilization, Inc. David Simpson 201 NW 26th St. Fort Worth, TX 76164		INSURERS AFFORDING COVERAGE	NAIC #
		INSURER A: All Risks/Admiral Insurance Company	
		INSURER B: Texas Mutual Insurance Company	
		INSURER C: Admiral Insurance company	
		INSURER D:	
		INSURER E:	

COVERAGES

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS		
A	Y	GENERAL LIABILITY	CA000017139-09	11/09/2020	11/09/2021	EACH OCCURRENCE	\$ 1,000,000	
		☒ COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 50,000	
		☐ CLAIMS MADE ☒ OCCUR				MED EXP (Any one person)	\$ 5,000	
						PERSONAL & ADV INJURY	\$ 1,000,000	
						GENERAL AGGREGATE	\$ 2,000,000	
						PRODUCTS - COMP/OP AGG	\$ 2,000,000	
		GEN'L AGGREGATE LIMIT APPLIES PER:						
		☐ POLICY ☒ PRO-JECT ☐ LOC						
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	\$	
		☐ ANY AUTO				BODILY INJURY (Per person)	\$	
		☐ ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$	
		☐ SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$	
		☐ HIRED AUTOS						
		☐ NON-OWNED AUTOS						
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$	
		☐ ANY AUTO				OTHER THAN EA ACC	\$	
						AUTO ONLY: AGG	\$	
A	Y	EXCESS/UMBRELLA LIABILITY	ELD300002134700	11/09/2020	11/09/2021	EACH OCCURRENCE	\$ 3,000,000	
		☒ OCCUR ☐ CLAIMS MADE				AGGREGATE	\$ 3,000,000	
							\$	
							\$	
							\$	
		DEDUCTIBLE						
		RETENTION \$						
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	0002041319	12/09/2020	12/09/2021	☒ WC STATU-TORY LIMITS ☐ 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		
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below						
C		OTHER	MKLV4EUE100376	11/09/2020	11/09/2021			
		UMBRELLA					2,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

The General Liability policy and the Umbrella policy have a blanket additional insured endorsement and a blanket waiver of subrogation endorsement. The Workers Compensation policy has a blanket waiver of subrogation on the policy.

RFB #21158 Pavement Leveling Services

CERTIFICATE HOLDER**CANCELLATION**

City of Grand Prairie
300 Main Street
Grand Prairie, TX 75050

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL _____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Faith Lane

(FZL)

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

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).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.



TOWN COUNCIL AGENDA ITEM NO. 11

CONSENT ITEM

DATE: January 3, 2022

FROM: Lexin Murphy, Director of Planning Services

ITEM: **Consider termination of a Development Agreement for the property located at 800 Enterprise Rd; and authorization for the Mayor to execute the same on behalf of the Town.**

SUMMARY DATA: In 2008, the Town entered into a Development Agreement (DA) with CCM Design, Inc. that would have allowed them to construct a temporary driveway access onto the subject site at 800 Enterprise Rd. The property has since been sold and developed through other means, so the current property owner is requesting the termination of the 2008 DA.

BACKGROUND INFORMATION: In conjunction with the proposed site plan for an office building, SP24-07, on September 2, 2008, Town Council approved both an exception to driveway spacing for the property located at 800 Enterprise Rd and a Development Agreement (DA) that would provide for the elimination of the second driveway on the property once the site to the north or south developed. The necessary escrow payment to the Town to cover the demolition of the temporary second driveway per the DA was made on August 29, 2008. However, these funds were refunded to the applicant on August 4, 2009, as they indicated that due to the economy, construction was being postponed indefinitely.

On December 19, 2016, Town Council approved a Specific Use Permit on this property for a mini-warehouse facility with a permanent driveway spacing exception. Due to the minimal amount of traffic associated with self-storage facilities, there were less concerns about the potential for traffic issues or hazards being created by both driveways staying in place long-term. On March 10, 2017, CCM Design, Inc. sold the subject property to Enterprise Drive Storage, LLC; and on October 2, 2017, Town Council approved a new site plan for development of the property as a mini-warehouse facility. At this point, the previous DA became irrelevant. The property has since been developed in conformance with the approved site plan. For clarity purposes, the current property owner is requesting that the previous DA be officially terminated.

FISCAL IMPACT: N/A

LEGAL REVIEW: Bryn Meredith, of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the Termination Agreement as to form and legality.

ATTACHMENTS:

1. Termination Agreement
2. Previous Development Agreement

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

Termination of Development Agreement

Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

Date: _____, 2022

Town: The Town of Flower Mound, Texas

Town's Mailing Address: _____

Owner: MSC Flower Mound, LLC, a Delaware limited liability company

Grantee's Mailing Address: 725 Park Center Drive, Matthews, North Carolina 2810

RECITALS

WHEREAS, the Town and Owner's predecessor-in-title, CCM Design, Inc., entered into that certain Development Agreement dated September 2, 2008, filed as document number 2008-103747 in the Official Public Records of Denton County, Texas and further filed as instrument number D220014347 in the Official Public Records of Tarrant County, Texas (the "Development Agreement"), pursuant to which certain rights and obligations were established with respect to the real property more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Property"), all as more particularly described in the Development Agreement; and

WHEREAS, Owner, as the current owner of fee simple title to the Property, and the Town desire to terminate the Development Agreement.

NOW, THEREFORE, Owner, as the owner of Property, and the Town hereby terminate the Development Agreement and all rights and obligations set forth therein effective as of the date hereof. Developer and the Town hereby mutually release each other from any obligations under the Development Agreement.

[SIGNATURES CONTAINED ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the duly authorized representatives of the Town and Owner have executed this Termination of Development Agreement as of the day and year first written above.

TOWN:

THE TOWN OF FLOWER MOUND, TEXAS,

By: _____
 Name: _____
 Title: _____

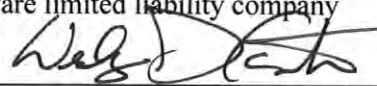
STATE OF _____ §
 COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2022, by _____ of the Town of Flower Mound, Texas, on behalf of the Town of Flower Mound, Texas.

 Notary Public – State of _____

OWNER:

MSC FLOWER MOUND, LLC,
a Delaware limited liability company

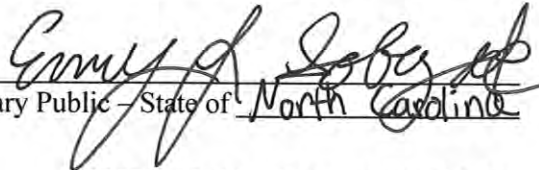
By: 

Name: Wesley G. Carter

Title: Chief Financial Officer

STATE OF North Carolina §
COUNTY OF Mecklenburg §
§

This instrument was acknowledged before me on the 30th day of September, 2021, by Wesley G. Carter, Chief Financial Officer of MSC Flower Mound, LLC, a Delaware limited liability company, on behalf of said company.


Notary Public - State of North Carolina



AFTER RECORDING RETURN TO:

MSC Flower Mound, LLC
725 Park Center Drive
Matthews, North Carolina 2810
Attention: Mindy Hart

EXHIBIT A

DESCRIPTION OF PROPERTY

Lot 1R, Block A, of SOUTHPOINT ADDITION, an Addition to the Town of Flower Mound, Tarrant County, Texas, according to the Map or Plat recorded in Document No. D218054720, Plat Records of Tarrant County, Texas.

D220014347 1/21/2020 9:51 AM

PGS 12

Fee: \$63.00

Submitter: SIMPLIFILE

Electronically Recorded by Tarrant County Clerk in Official Public Records

Mary Louise Nicholson

Mary Louise Nicholson



70 2008 00103747

Denton County
Cynthia Mitchell
County Clerk
Denton, Tx 76202

Capital Title

GF# 19-460070 FN

Instrument Number: 2008-103747

As

Recorded On: September 23, 2008

Agreement

Parties: THE TOWN OF FLOWER MOUND

To

Billable Pages: 12

Number of Pages: 12

Comment:

(Parties listed above are for Clerks reference only)

** Examined and Charged as Follows: **

Agreement	55.00
Total Recording:	55.00

***** DO NOT REMOVE. THIS PAGE IT IS PART OF THE INSTRUMENT *****

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY
because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 2008-103747

Receipt Number: 523515

Recorded Date/Time: September 23, 2008 08:01:32A

User / Station: D Fahrney - Cash Station 3

Record and Return To:

TOWN OF FLOWER MOUND
ATTN: TOWN SECRETARYS OFFICE
2121 CROSS TIMBERS RD
FLOWER MOUND TX 75022



THE STATE OF TEXAS }
COUNTY OF DENTON }

I hereby certify that this instrument was FILED in the File Number sequence on the date/time
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

C. J. Hall

County Clerk
Denton County, Texas



Please return to:
Town of Flower Mound
Town Secretary's Office
2121 Cross Timbers Rd.
Flower Mound, TX 75028

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this 2nd day of September, 2008, by and between the Town of Flower Mound, Texas (the "Town") and CCM Design, Inc. (the "Developer"), as follows:

WITNESSETH:

WHEREAS, Developer is the owner of that certain real property located within the Town, situated in the Joseph Turner Survey, Abstract No. 1251, Denton County, Texas comprising approximately 1.7 acres, and as more particularly described in Exhibit A attached hereto, (the "Property") and desires to construct certain improvements thereon; and

WHEREAS, the Property is generally located west of Enterprise Drive and north of F.M. 2499 in the Town of Flower Mound, Texas; and

WHEREAS, the adjoining properties to the north and the south of the Property have not yet been developed; and

WHEREAS, two points of ingress and egress are desired for the Property; and

WHEREAS, the cross-access driveway connections that will provide permanent secondary points of access to the Property have not yet been constructed and cannot be constructed until additional development occurs on the properties to the north or the south of the Property; and

WHEREAS, Developer has requested that the Property be allowed a temporary secondary access driveway connection to Enterprise Drive until at least one of the cross-access driveway connections providing a permanent secondary point of access has been constructed, at which time the temporary access driveway will be removed pursuant to the Driveway Removal Plan attached hereto as Exhibit B; and

WHEREAS, the development requirements set forth herein including the payment to the Town of the monies set forth herein, if any, remain consistent with the Town's commitment to provide for the health, safety and welfare of the residents of the Town.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Town and Developer covenant and agree as follows:

1. Developer shall be entitled to construct and shall have a temporary access driveway to Enterprise Drive (the "Temporary Access Driveway") as depicted on the Driveway Removal Plan until such time as one of the permanent cross-access driveway connections that are required to be constructed on the adjoining properties to the north

DEVELOPMENT AGREEMENT --

Page 1



and the south of the Property has been completed and accepted by the Town. Developer agrees to abandon and remove at Developer's sole cost the Temporary Access Driveway upon satisfaction of the following conditions:

(a) the owner(s) of the tract of land located adjacent to and adjoining the southern boundary of the Property (the "Southern Adjacent Tract") shall identify upon the plat or Site Plan of the Southern Adjacent Tract and grant to the Developer and any subsequent owners, purchasers, successors or assigns of the Property, a perpetual non-exclusive mutual access easement and right-of-way for cross-access, ingress and egress for all pedestrian and vehicular traffic to and from the Property ("Mutual Access Easement") over and across the easement areas (the "Easement Areas") located on the Southern Adjacent Tract in a form acceptable to the Developer (the "Southern Easement Agreement"); or

(b) the owner(s) of the tract of land located adjacent to and adjoining the northern boundary of the Property (the "Northern Adjacent Tract") shall identify upon the plat or Site Plan of the Northern Adjacent Tract and grant to the Developer and any subsequent owners, purchasers, successors or assigns of the Property, a perpetual non-exclusive mutual access easement and right-of-way for cross-access, ingress and egress for all pedestrian and vehicular traffic to and from the Property ("Mutual Access Easement") over and across the easement areas (the "Easement Areas") located on the Northern Adjacent Tract in a form acceptable to the Developer (the "Northern Easement Agreement"); and

(c) the Developer shall identify upon the Site Plan for the Property the location at which the Mutual Access Easement will connect to and with the Easement Areas located on the Southern Adjacent Tract and the Northern Adjacent Tract (whether collectively or individually the "Adjacent Tracts") in a form acceptable to the Town; and

(d) at least one of the Easement Agreements for either the Southern Adjacent Tract or the Northern Adjacent Tract shall have been recorded in the Real Property Records of Denton County, Texas; and

(e) the Developer shall construct and stub out pavement and improvements to that portion of the Property's southern property line in the area at which the Mutual Access Easement along and across the Southern Adjacent Tract shall connect to and with the Property at no cost to the Town or the owner(s) of the Southern Adjacent Tract, as evidenced by a certificate of completion from the contractor constructing such driveway improvements and the written acceptance of such driveway improvements by the Town of Flower Mound; and

(f) the Developer shall construct and stub out pavement and improvements to that portion of the Property's northern property line in the area at which the Mutual Access Easement along and across the Northern Adjacent

DEVELOPMENT AGREEMENT -

Page 2



Tract shall connect to and with the Property at no cost to the Town or the owner(s) of the Northern Adjacent Tract, as evidenced by a certificate of completion from the contractor constructing such driveway improvements and the written acceptance of such driveway improvements by the Town of Flower Mound; and

(g) the owner(s) of at least one of the Adjacent Tracts shall construct the pavement, curb cut and permanent driveway improvements for the Mutual Access Easement across the Easement Areas on that respective Adjacent Tract and connect said Easement Areas to and with the Property at the location on the Property that is constructed and stubbed out for such Mutual Access Easement at no cost to the Town or Developer, as evidenced by a certificate of completion from the contractor constructing such driveway improvements and the written acceptance of such driveway improvements by the Town of Flower Mound; and

(h) the curb cut and permanent driveway improvements constructed on the Adjacent Tracts shall have sufficient capacity to provide cross-access, ingress and egress for all pedestrian and vehicular traffic to and from the Adjacent Tract in question and the Property as determined by the Town Engineer.

The immediately foregoing conditions are hereinafter referred to collectively as the "Alternative Access Conditions."

2. Developer shall escrow with the Town an amount equal to one hundred twenty-five percent (125%) of the following projected construction costs as reasonably approved by the Town Engineer:

- a. the removal of the Temporary Access Driveway and construction or re-construction of the curb and gutter along that portion of Enterprise Drive;
- b. soil stabilization; and,
- c. installation of the required landscaping necessary to restore and maintain the landscape buffer, if any, required by the Town's Code of Ordinances and Master Plan 2001, as amended, and comply with any approved landscape plan for the Property.

The funds to be paid into escrow with the Town shall be deposited with the Town contemporaneously with the execution of this Agreement. The amount of the projected construction costs, as reasonably approved by the Town Engineer, are reflected in Exhibit C which is attached hereto and incorporated herein by reference for all purposes allowed by law.

DEVELOPMENT AGREEMENT -

Page 3



3. The Temporary Access Driveway shall be removed, the curb and gutter along Enterprise Drive intersecting the Temporary Access Driveway shall be constructed, any exposed soil stabilized, and required landscaping installed within ninety (90) days after the Alternative Access Conditions have been satisfied. If the Developer timely removes said Temporary Access Driveway, constructs the curb and gutter along Enterprise Drive intersecting the Temporary Access Driveway, stabilizes any exposed soil, and installs all required landscaping the Developer may request payment from the escrow funds upon completion and approval of the removal of the Temporary Access Driveway, curb and gutter construction, soil stabilization, and installation of all required landscaping. If, however, the Developer fails to remove the Temporary Access Driveway, construct the curb and gutter along Enterprise Drive intersecting the Temporary Access Driveway, stabilize any exposed soil, and install all required landscaping within ninety (90) days after the satisfaction of the Alternative Access Conditions, the Town may, but has no corresponding obligation to, go onto the Property and remove the Temporary Access Drive, construct the curb and gutter along Enterprise Drive intersecting the Temporary Access Driveway, stabilize any exposed soil, and install all required landscaping. The Town may pay all associated costs for the removal of said Temporary Access Driveway, curb and gutter construction, soil stabilization, and landscaping from the amount escrowed for that purpose by the Developer. The Developer or the then Owner of the Property shall be liable to the Town for any unpaid costs in excess of the escrow amount and, if unpaid, the Town may assert a priority lien on the Property for their payment. **The Developer or the then owner shall release, defend, indemnify and hold the Town harmless from and against any and all damages, loss or liability of any kind, whatsoever, including the Town's attorney's fees, costs and expenses by reason of death or injury to property or third persons which may arise out of or be related to the Town's performance of Developer's obligations in accordance with this provision.**

4. The provisions of the Easement Agreements shall include, without limitation, that (i) no barrier which would prevent the normal flow of vehicular or pedestrian traffic over and across the Easement Areas shall be constructed, placed or maintained on the Adjacent Tracts, except landscaping, curbing, speed bumps, and traffic control signs or signals which may be reasonably necessary or appropriate for the development and improvement thereof, as long as same do not preclude or unreasonably interfere with cross-access, egress, and ingress from, over and across the Easement Areas, (ii) Developer shall be entitled to review the plans for, and assert reasonable objections to, any improvements to be constructed on the Easement Areas prior to the construction thereof, (iii) the owner(s) of the Adjacent Tracts shall be required to maintain all improvements within Easement Areas located on their respective Adjacent Tracts in good condition and repair and sufficient to sustain vehicular and pedestrian traffic over and across such Easement Areas, including, without limitation, repaving, resurfacing, patching, and re-striping as needed, (iv) Developer may exercise self help and lien rights in the event of a default by the owner(s) of one or both of the Adjacent Tracts under the Easement Agreements, and (v) any and all lien holders of the Adjacent Tracts shall execute the Easement Agreement for the purpose of confirming that the Easement Agreement will survive the foreclosure

DEVELOPMENT AGREEMENT -

Page 4



or deed-in-lieu of foreclosure of such lien(s). The covenants, conditions, and easements created under the Easement Agreements shall be appurtenant to and run with the land and shall be binding upon and shall inure to the benefit of the owner(s) of the Property and the Adjacent Tracts and their respective heirs, successors, and assigns.

5. In exchange for the promises exchanged herein and the benefits provided by this Agreement Developer individually and collectively for himself and his respective successors, heirs, assigns, vendors, grantees, and trustees does hereby agree to grant unto the owner(s) of the Adjacent Tracts and the Town and their respective officers, officials, employees, agents, contractors, subcontractors, successors, assigns, vendors, grantees, and trustees a temporary construction easement over a portion of the Property in a location to be reasonably approved by the parties at the time of the construction of the improvements on, in, about and across the Easement Area.

6. Notwithstanding anything to the contrary set forth in this Agreement, in the event subsequent to the removal of the Temporary Access Driveway pursuant to Section 2 above, Developer is prevented from utilizing the easement evidenced by the Easement Agreement due to a failure of title in connection with the conveyance of the Easement Agreement, then Developer shall be entitled to re-construct a curb-cut and driveway within the Temporary Access Driveway for purposes of providing direct access to and from Enterprise Drive.

7. The parties hereby agree and acknowledge that the Developer's failure to timely escrow the amounts required herein above and/or remove the Temporary Access Drive will result in violation(s) of the Town's ordinances for which the Town cannot be adequately compensated. It is therefore agreed that this Agreement is intended to be specifically performable and the Town may appropriately seek an order from a court of appropriate jurisdiction requiring Developer to specifically perform those covenants.

8. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton County, Texas. Venue for any action arising under this Agreement shall lie in Denton County, Texas.

9. Any notices required or permitted to be given hereunder shall be given by certified or registered mail, return receipt requested, to the addresses set forth below or to such other single address as either party hereto shall notify the other:

If to the Town: The Town of Flower Mound, Texas
 2121 Cross Timbers Road
 Flower Mound, Texas 75028
 Attn: Town Manager's Office

DEVELOPMENT AGREEMENT -

Page 5



If to Developer: CCM Design, Inc.
801 Enterprise Drive
Flower Mound, Texas 75028
Attn: Jeff Crannell

10. In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

11. This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

12. A telecopied facsimile of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms herein.

13. The Town Council shall authorize the Mayor of the Town of Flower Mound to execute this Agreement on behalf of the Town.

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

15. This Agreement shall be filed in the deed records of Denton County, Texas. Upon any sale or other transfer of ownership rights in the Property, save and except the sale of individual platted lots, Owner shall notify the Town in writing of such sale or transfer within ten (10) business days of such sale or transfer.

16. The Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The Town warrants and represents that the individual executing this Agreement on behalf of the Town has full authority to execute this Agreement and bind the Town to the same. Developer warrants and represents that the individual executing this Agreement on his/her/its behalf has full authority to execute this Agreement and bind Developer to same.

17. In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to mediation.

18. Developer has been represented by legal counsel in the negotiation of this Agreement and been advised, or has had the opportunity to have legal counsel review this Agreement and advise Developer, regarding Developer's rights under Texas and federal law. Developer hereby waives any requirement that the Town retain a

DEVELOPMENT AGREEMENT -

Page 6



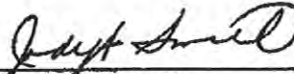
professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions required by the Town as a condition of approval for the development of this Property are roughly proportional or roughly proportionate to the proposed development's anticipated impact. (These exactions may include but are not limited to the making of dedications or reservations of land, the payment of fees, the construction of facilities, and the payment of construction costs for public facilities.) Developer specifically reserves its right to appeal the apportionment of municipal infrastructure costs in accordance with Tex. Loc. Gov't Code § 212.904. However, notwithstanding the foregoing, Developer hereby releases the Town from any and all liability under Tex. Loc. Gov't Code § 212.904 regarding or related to the cost of those municipal infrastructure improvements required for the development of the Property.

It is the intent of this Agreement that the provision for roadway improvements made herein constitutes a proportional allocation of Developer's responsibility for roadway improvements for the Property. Developer hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution and Chapter 395 of the Tex. Loc. Gov't. Code. Both Developer and the Town further agree to waive and release all claims one may have against the other related to any and all rough proportionality and individual determination requirements mandated by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny, as well as any other requirements of a nexus between development conditions and the projected impact of the terms of this Agreement. Developer further acknowledges that the benefits of zoning and platting have been accepted with full knowledge of potential claims and causes of action which may be raised now and in the future, and Developer acknowledges the receipt of good and valuable consideration for the release and waiver of such claims. **Developer shall indemnify and hold harmless Town from any claims and suits of third parties, including but not limited to Developer's successors, assigns, grantees, vendors, trustees or representatives, brought pursuant to this Agreement or the claims or types of claims described in this paragraph.**

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

THE TOWN:

THE TOWN OF FLOWER MOUND, TEXAS

By: 

Name: Jody A. Smith

Title: Mayor, Town of Flower Mound

DEVELOPMENT AGREEMENT -

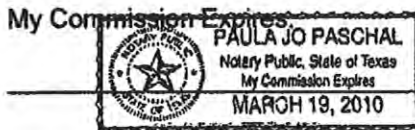
Page 7



State of Texas §
 §
County of Denton §

This instrument was acknowledged before me on the 2nd day of September, 2008, by Jody A. Smith, Mayor of the Town of Flower Mound, Texas, on behalf of the Town of Flower Mound, Texas.

Paula Jo Paschal
Notary Public, State of Texas



DEVELOPER:

CCM DESIGN, INC.

By: [Signature]
Name: Jeff Crannell
Title: President

State of Texas §
 §
County of Denton §

This instrument was acknowledged before me on the 28 day of August, 2008, by Jeff Crannell known to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for and on behalf of CCM Design, Inc. for the purposes therein stated.

[Signature]
Notary Public, State of Texas

My Commission Expires:

10/22/08



DEVELOPMENT AGREEMENT -

Page 8





Austin Bridge & Road

An Austin Industries Company

100% Employee Owned

May 2, 2008

Austin Bridge & Road, L.P.
6330 Commerce Drive, Suite 150
Irving, Texas 75063
214/596-7300

Cranell, Cranell, & Martin
Attn.: Mr. Robert Valenzuela
610 Office Park Circle, Suite 130
Lewisville, Texas 75057

Gentlemen:

BUDGET PROPOSAL ONLY

We propose to furnish all labor, materials and equipment to construct, as an independent contractor, the following described work:

DESCRIPTION AND LOCATION: **SOUTHPOINT ADDITION DRIVEWAY RECONFIGURATION**
Flower Mound, Texas

Description	Bid Item Quantity	Unit	Unit Price	Bid Item Total
Sawcut for Removal Curb & Gutter, Sidewalk	125.000	LF	\$3.50	\$437.50
Remove Existing Concrete Driveway & Walk	151.000	SY	\$12.00	\$1,812.00
Connect to Existing Concrete Pavement	111.000	LF	\$4.00	\$444.00
24" Concrete Curb & Gutter	111.500	LF	\$24.00	\$2,664.00
4" Concrete Sidewalk 3' Wide	38.000	LF	\$18.00	\$684.00
Bid Total:				\$6,041.50
City of Flower Mound Bond				\$185.00
Bid Total:				\$6,226.50

This Proposal is subject to the "Bid Qualifications" attached.

Your acceptance of this proposal by signing and returning the original copy to us within (10) ten days and the approval by us of credit arrangements will constitute a contract.

ACCEPTED:

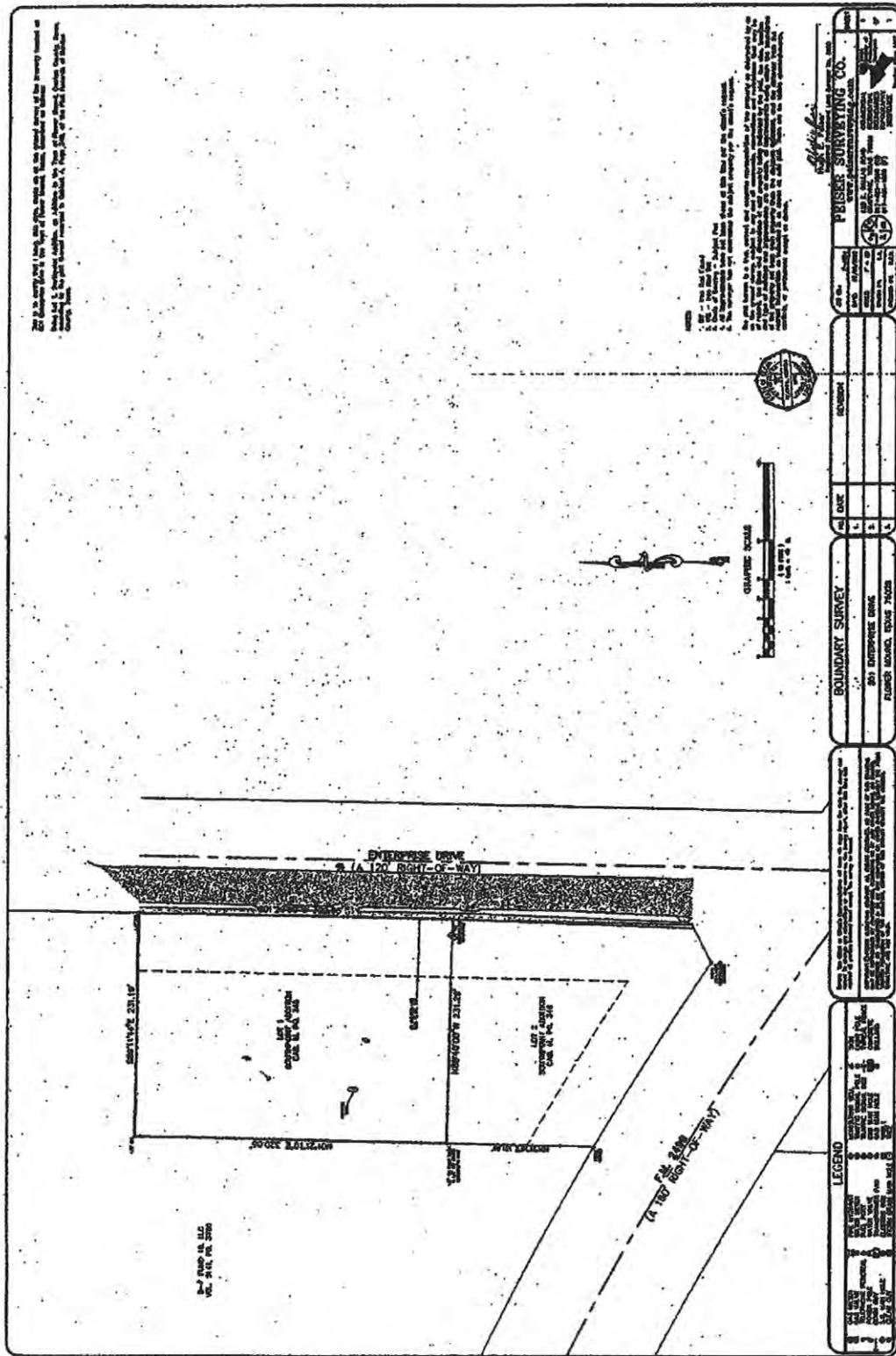
BY: _____

TITLE: _____

DATE: _____

AUSTIN BRIDGE & ROAD, LP
BY:
Larry Simpson
Estimator
Austin Bridge & Road, L.P.
6330 Commerce Dr., Suite 150
Irving, Texas 75063
214.596.7300 (Main)
214.596.7399 (Fax)







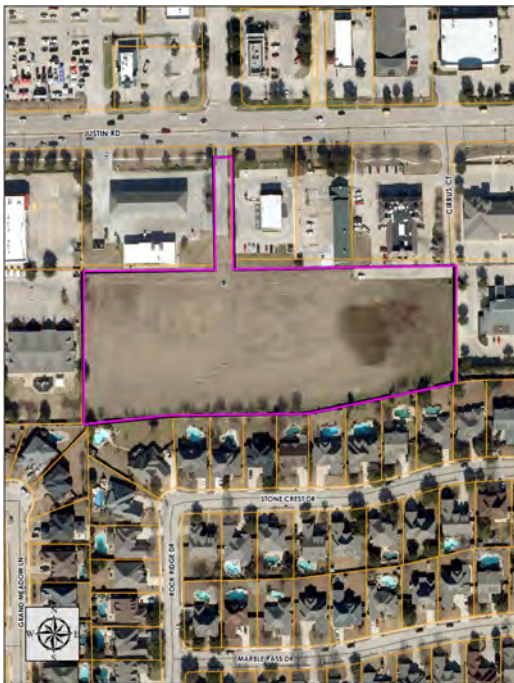
TOWN COUNCIL AGENDA ITEM NO. 12

REGULAR ITEM

DATE: January 3, 2022

FROM: Poornima Kashyap, Principal Planner

ITEM: **Public Hearing to consider an ordinance granting Specific Use Permit No. 473 (SUP21-0007 – Stone Hill Boat Sales) to permit Retail, general (outdoors) facility for a boat dealership, with an exception to ‘Underground Utilities’ pursuant to Section 82-377, “Exceptions,” of the Code of Ordinances. The property is generally located south of Justin Road and west of Stone Hill Farms Parkway. (*The Planning and Zoning Commission recommended denial by a vote of 6 to 0 at its October 11, 2021, meeting.*)**



SUMMARY DATA:

- Lot Size – 5.33 acres
- Building square feet – Two story, 28,376 sf building
- SMARTGrowth – Passed
- Traffic Analysis – Passed, based on the TA completed for this development, the traffic generated by this development is not anticipated to exceed the 5% threshold on any Town Collector or arterial links due to the low trip generation and direct access to a State Highway.
- Exceptions – Underground Utilities
- Incentives – None

BACKGROUND INFORMATION: Below is the link for the Planning and Zoning Commission (P&Z) report and backup for this item. During P&Z deliberation, lighting and the location of service doors facing the adjacent residential neighborhood and its possible impacts in terms of noise from boat servicing were discussed. To address these concerns, the following conditions were added to the SUP ordinance:

- 1) No outdoor servicing of boats shall be permitted on the property.
- 2) No rack storage of boats shall be permitted.
- 3) The light fixtures of light poles shall be completely shielded and the foot-candle readings along the entire length of the southern property line shall be limited to zero (0).
- 4) Boat servicing shall be limited to area accessed from the two western bay doors only.
- 5) Boat service area shall be separated from the boat photography bays located on the southern façade by means of a wall that will not allow the passage of boats/vehicles.

As the project received a recommendation for denial from the P&Z, this SUP will require a super majority vote by the Town Council for approval.

ATTACHMENTS:

1. [Planning and Zoning Commission Staff Report Link](#)
2. Draft Ordinance

LEGAL REVIEW: Fritz Quast, 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.

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. 473 (SUP-473) TO PERMIT A RETAIL, GENERAL (OUTDOORS) FACILITY FOR A BOAT DEALERHIP ON CERTAIN PROPERTY DESCRIBED AS 5.33 ACRES OF LAND AND BEING ALL OF LOT 3R, BLOCK A, OF THE STONE HILL FARMS RETAIL ADDITION AND ZONED PLANNED DEVELOPMENT DISTRICT NO. 43 (PD-43) WITH COMMERCIAL DISTRICT-2 (C-2) USES; GRANTING AN EXCEPTION TO SECTION 82-376, UNDERGROUND UTILITIES; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF IN ACCORDANCE WITH SECTION 1-13 OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Flower Mound is a home rule city 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 5.33 acres of land and being all of Lot 3R, Block A, of the Stone Hill Farms Retail Addition has filed an application for a Specific Use Permit for a Retail, general (outdoor) facility for a boat dealership; and,

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on October 11, 2021, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on January 3, 2022, 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; 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.

Ordinance No. _____

Page 2

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:

5.33 acres of land and being all of Lot 3R, Block A, of the Stone Hill Farms Retail Addition, Denton County, Texas.

Specific Use Permit No. 473 is granted to allow retail, general (outdoors) facility for a boat dealership, as more fully described in the exhibits attached hereto and incorporated herein, subject to the following conditions:

- 1) The hours of operation are limited to 8 a.m. to 7 p.m., Monday to Saturday.
- 2) Gates crossing the fire lane must remain open during business hours.
- 3) Outdoor storage shall be limited to operable boats only. No ancillary storage of materials, trash, equipment, storage pods, or similar items shall be allowed on the property unless it meets the standards outlined below:
 - a. Ancillary storage, excluding screened dumpster area, shall be limited to no more than 650 square feet of the boat display area as designated on the concept plan. This square footage is exclusive of the one (1) proposed dumpster enclosure area.
 - b. Ancillary storage shall be screened by a masonry wall constructed of or finished with materials that match the main building.
 - c. Ancillary storage shall not exceed one foot less than said masonry wall in height.
 - d. Enclosure gates shall be constructed of sheet metal with steel frame and painted to complement the main building.
 - e. Administrative approval of a site plan and obtaining necessary permits is required prior to placing ancillary storage on the property and installing associated masonry wall.
- 4) No outdoor servicing of boats shall be permitted on the property.
- 5) No rack storage of boats shall be permitted.
- 6) The light fixtures of light poles shall be completely shielded and the foot-candle readings along the entire length of the southern property line shall be limited to zero (0).
- 7) Boat servicing shall be limited to area accessed from the two western bay doors only.
- 8) Boat service area shall be separated from the boat photography bays located on the southern façade by means of a wall that will not allow the passage of boats/vehicles.

SECTION 2

The conceptual site plan, conceptual landscape plan, and conceptual elevations of the proposed boat dealership, attached hereto as Exhibits "A", "B", and "C" each incorporated herein for all purposes allowed by law, are hereby approved as the conceptual site plan, conceptual landscape plan, and conceptual elevations for this Specific Use Permit.

SECTION 3

The official map of the Town of Flower Mound is amended and the Executive Director of Development 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-43 (PD-43).

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.

Ordinance No. _____

Page 4

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 3RD DAY OF JANUARY, 2022.

APPROVED:_____
Derek France, MAYOR**ATTEST:**_____
Theresa Scott, TOWN SECRETARY

SHEET NO:
C1

LANDSCAPE CALCULATIONS

STREET YARD LANDSCAPING			
STANDARD	TOTAL STREET YARD (SQ. FT.)	REQUIRED	PROVIDED
MIN. 20% OF STREET YARD	0 SF FM 407	N/A	N/A
STREET YARD TREES			
STANDARD	TOTAL STREET YARD (SQ. FT.)	REQUIRED	PROVIDED
10,000 TO 100,000 SF = 1 PER 2,500 SF + 10 TREES	0 SF FM 407	N/A	N/A
TREES REQUIRED TO SATISFY OTHER PROVISIONS OF LANDSCAPING REQUIREMENTS AND LYING WITHIN THE STREET YARD MAY BE USED TO SATISFY THE REQUIREMENTS OF OTHER SECTIONS.			
STREET BUFFER LANDSCAPING			
STREET NAME	REQUIRED BUFFER WIDTH	PROVIDED	
	FM 407	25 FT	
STREET BUFFER TREES			
STANDARD	STREET FRONTAGE (LINEAR FT.)	REQUIRED	PROVIDED
1 PER 30 LF	FM 407 40 LF	1 TREE	1 TREE
PARKING AREA LANDSCAPING			
STANDARD	NO. OF PARKING SPACES	REQUIRED	PROVIDED
90 SF PER 12 SPACES	92 SPACES	690 SF	2,000+ SF
PARKING AREA TREES			
STANDARD	NO. OF PARKING SPACES	REQUIRED	PROVIDED
1 PER 10 PARKING SPACES	92 SPACES	10 TREES	10 TREES
ALL PARKING SPACES ARE LOCATED WITHIN 50FT OF A TREE.			

* TREE COUNT CANNOT BE MET DUE TO UTILITY, EASEMENT, AND EXITING TREE LOCATIONS.

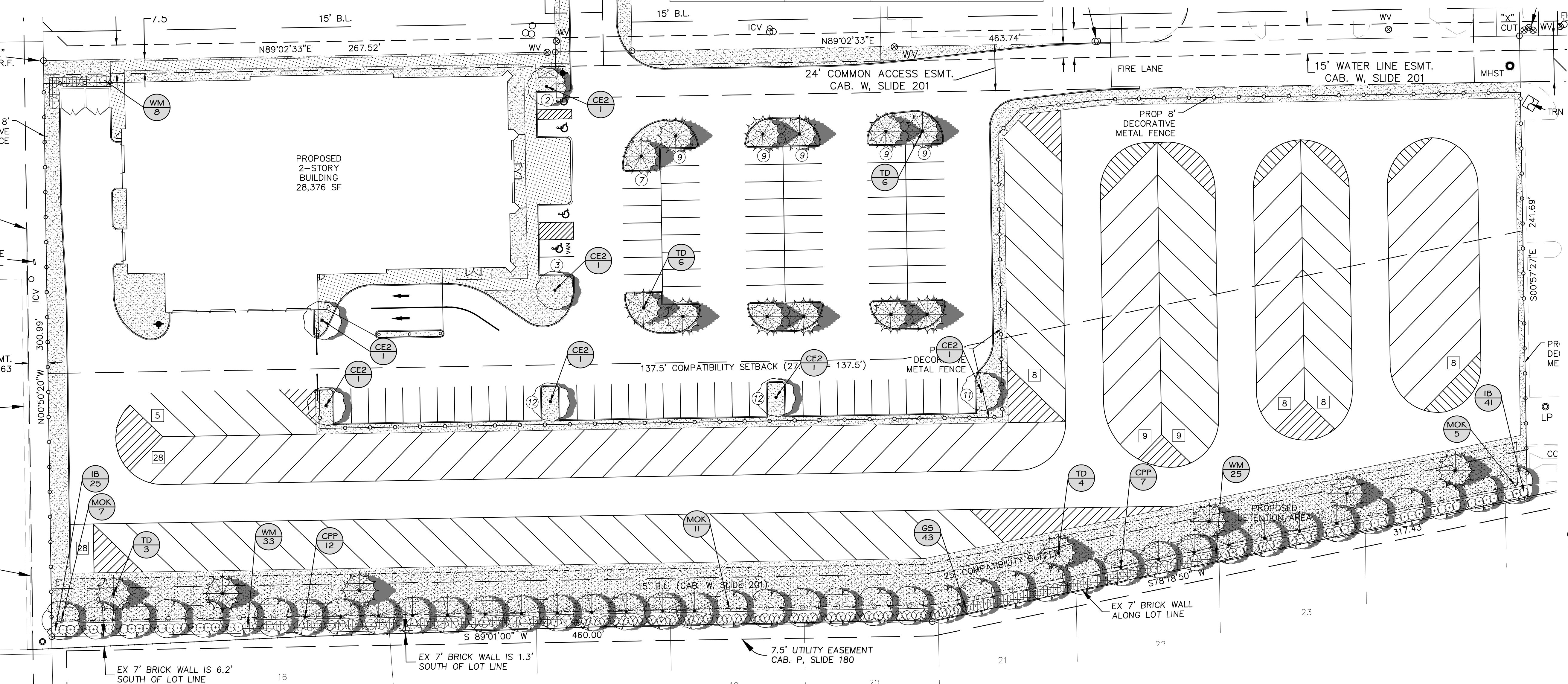
GENERAL GRADING AND PLANTING NOTES

- BY SUBMITTING A PROPOSAL FOR THE LANDSCAPE PLANTING SCOPE OF WORK, THE CONTRACTOR CONFIRMS THAT HE HAS READ, AND WILL COMPLY WITH, THE ASSOCIATED NOTES, SPECIFICATIONS, AND DETAILS WITH THIS PROJECT.
- THE GENERAL CONTRACTOR IS RESPONSIBLE FOR REMOVING ALL EXISTING VEGETATION (EXCEPT WHERE NOTED TO REMAIN).
- IN THE CONTEXT OF THESE PLANS, NOTES, AND SPECIFICATIONS, "FINISH GRADE" REFERS TO THE FINAL ELEVATION OF THE SOIL SURFACE (NOT TOP OF MULCH) AS INDICATED ON THE GRADING PLANS.
 - BEFORE STARTING WORK, THE LANDSCAPE CONTRACTOR SHALL VERIFY THAT THE ROUGH GRADES OF ALL LANDSCAPE AREAS ARE WITHIN +/-0.1' OF FINISH GRADE. SEE SPECIFICATIONS FOR MORE DETAILED INSTRUCTION ON TURF AREA AND PLANTING BED PREPARATION.
 - CONSTRUCT AND MAINTAIN FINISH GRADES AS SHOWN ON GRADING PLANS, AND CONSTRUCT AND MAINTAIN SLOPES AS RECOMMENDED BY THE GEOTECHNICAL REPORT. ALL LANDSCAPE AREAS SHALL HAVE POSITIVE DRAINAGE AWAY FROM STRUCTURES AT THE MINIMUM SLOPE SPECIFIED IN THE REPORT AND ON THE GRADING PLANS, AND AREAS OF POTENTIAL PONDING SHALL BE REGRADED TO BLEND IN WITH THE SURROUNDING GRADES AND ELIMINATE PONDING POTENTIAL.
 - THE LANDSCAPE CONTRACTOR SHALL DETERMINE WHETHER OR NOT THE EXPORT OF ANY SOIL WILL BE NEEDED, TAKING INTO ACCOUNT THE ROUGH GRADE PROVIDED, THE AMOUNT OF SOIL AMENDMENTS TO BE ADDED (**BASED ON A SOIL TEST**, PER SPECIFICATIONS), AND THE FINISH GRADES TO BE ESTABLISHED.
 - AFTER INSTALLING SOIL AMENDMENTS IN SHRUB AREAS, AND IN ORDER TO ALLOW FOR PROPER MULCH DEPTH, ENSURE THAT THE FINISH GRADE IMMEDIATELY ADJACENT TO WALKS AND OTHER WALKING SURFACES IS 3" BELOW FINISH GRADE, TAPERING TO MEET FINISH GRADE AT APPROXIMATELY 18" AWAY FROM THE SURFACE.
 - AFTER INSTALLING SOIL AMENDMENTS IN TURF AREAS, ENSURE THAT THE FINISH GRADE IN TURF AREAS IMMEDIATELY ADJACENT TO WALKS AND OTHER WALKING SURFACES IS 1" BELOW FINISH GRADE, TAPERING TO MEET FINISH GRADE AT APPROXIMATELY 18" AWAY FROM THE SURFACE.
 - SHOULD ANY CONFLICTS AND/OR DISCREPANCIES ARISE BETWEEN THE GRADING PLANS, GEOTECHNICAL REPORT, THESE NOTES AND PLANS, AND ACTUAL CONDITIONS, THE CONTRACTOR SHALL IMMEDIATELY BRING SUCH ITEMS TO THE ATTENTION OF THE LANDSCAPE ARCHITECT, GENERAL CONTRACTOR, AND OWNER.
- ALL PLANT LOCATIONS ARE DIAGRAMMATIC. ACTUAL LOCATIONS SHALL BE VERIFIED WITH THE LANDSCAPE ARCHITECT OR DESIGNER PRIOR TO PLANTING. THE LANDSCAPE CONTRACTOR SHALL ENSURE THAT ALL REQUIREMENTS OF THE PERMITTING AUTHORITY ARE MET (I.E., MINIMUM PLANT QUANTITIES, PLANTING METHODS, TREE PROTECTION METHODS, ETC.).
 - THE LANDSCAPE CONTRACTOR IS RESPONSIBLE FOR DETERMINING PLANT QUANTITIES; PLANT QUANTITIES SHOWN ON LEGENDS AND CALLOUTS ARE FOR GENERAL INFORMATION ONLY. IN THE EVENT OF A DISCREPANCY BETWEEN THE PLAN AND THE PLANT LEGEND, THE PLANT QUANTITY AS SHOWN ON THE PLAN (FOR INDIVIDUAL SYMBOLS) OR CALLOUT (FOR GROUNDCOVER PATTERNS) SHALL TAKE PRECEDENCE.
 - NO SUBSTITUTIONS OF PLANT MATERIALS SHALL BE ALLOWED WITHOUT THE WRITTEN PERMISSION OF THE LANDSCAPE ARCHITECT.** IF SOME OF THE PLANTS ARE NOT AVAILABLE, THE LANDSCAPE CONTRACTOR SHALL NOTIFY THE LANDSCAPE ARCHITECT IN WRITING (VIA PROPER CHANNELS).
 - THE CONTRACTOR SHALL, AT A MINIMUM, PROVIDE REPRESENTATIVE PHOTOS OF ALL PLANTS PROPOSED FOR THE PROJECT. THE CONTRACTOR SHALL ALLOW THE LANDSCAPE ARCHITECT AND THE OWNER/OWNERS REPRESENTATIVE TO INSPECT, AND APPROVE OR REJECT, ALL PLANTS DELIVERED TO THE OBSITE. REFER TO SPECIFICATIONS FOR ADDITIONAL REQUIREMENTS FOR SUBMITTALS.
- THE CONTRACTOR SHALL MAINTAIN THE LANDSCAPE IN A HEALTHY CONDITION FOR 90 DAYS AFTER ACCEPTANCE BY THE OWNER. REFER TO SPECIFICATIONS FOR CONDITIONS OF ACCEPTANCE FOR THE START OF THE MAINTENANCE PERIOD, AND FOR FINAL ACCEPTANCE AT THE END OF THE MAINTENANCE PERIOD.
- CONTRACTOR SHALL MODIFY EXISTING IRRIGATION SYSTEM TO ACCOMMODATE PROPOSED PLANTINGS & ENSURE FULL FUNCTIONALITY OF SYSTEM.
- SEE SPECIFICATIONS AND DETAILS FOR FURTHER REQUIREMENTS.
- SITE FURNISHINGS ARE SCHEMATIC FOR REGULATORY APPROVAL. CONTACT (866) 284-1780 FOR ADDITIONAL PRODUCT INFORMATION.
- UNDERSTORY TREES SHALL BE MAINTAINED TO PROVIDE A CONTINUOUS DENSE SCREEN.

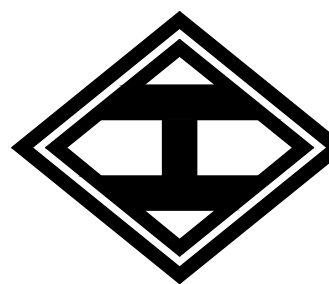
COMPATIBILITY BUFFER LANDSCAPING			
STANDARD	SQUARE FOOTAGE	REQUIRED	PROVIDED
25' BUFFER AT SO. BOUNDARY	N/A	25'	25' BUFFER
1 SHADE TREE PER 400 SF	19,425 SF	49	49
MIN. 6' MASONRY WALL	N/A	6'	7' EXIST. WALL
UNDERSTORY SCREENING PLANTS	N/A	6' UNDERSTORY SHRUBS	6' UNDERSTORY SHRUBS
137.5' COMPATIBILITY SETBACK	N/A	137.5'	137.5'

PLANT SCHEULE

TREES	CODE	COMMON / BOTANICAL NAME	SIZE	CONTAINER	QTY
	XX	Existing Tree to Remain	exist.		1
	CPP	Live Oak / Quercus virginiana buffer tree	CONT.	3"Cal/min. 10' ht.	19
	MOK	Monterey Oak / Quercus polymorpha 'Monterey' buffer tree	CONT.	3"Cal/min. 10' ht.	23
	TD	Montezuma Cypress / Taxodium distichum buffer & parking lot tree	CONT.	3"Cal/min. 10' ht.	19
	CE2	Cedar Elm / Ulmus crassifolia parking lot tree	CONT.	3"Cal/min. 10' ht.	7
SHRUBS	CODE	COMMON / BOTANICAL NAME	SIZE		QTY
	IB	Burford Holly / Ilex cornuta 'Burfordii' min. 48" ht.; 48" o.c.	15 gal.		66
	GS	Nellie Stevens Holly / Ilex x 'Nellie R. Stevens' min. 48" ht.; 48" o.c.	15 gal		43
	WM	Wax Myrtle / Myrica cerifera min. 48" ht.; 60" o.c.	10 gal		66
GROUND COVERS	CODE	COMMON / BOTANICAL NAME	SIZE		QTY
	SA	Ornamental Aggregate / 3" depth over weed fabric; dark color; submit for owner approval prior to bid/installation	n/a		101 sf
	CD	Bermuda Grass / Cynodon dactylon 'tif 419'	sod		39,230 sf

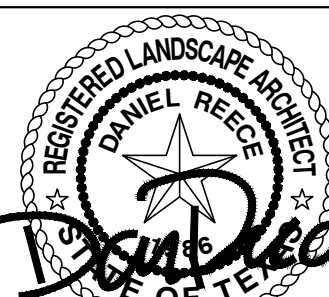


HOMMEYER
ENGINEERING, INC.
TBE FIRM REGISTRATION NO. F-8440
P.O. BOX 294527 • LEWISVILLE, TEXAS • 75029
972-906-9985 PHONE • 972-906-9987 FAX
WWW.HEI.US.COM



STONE HILL BOAT SALES
5.33 ACRES
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

LANDSCAPE PLANTING

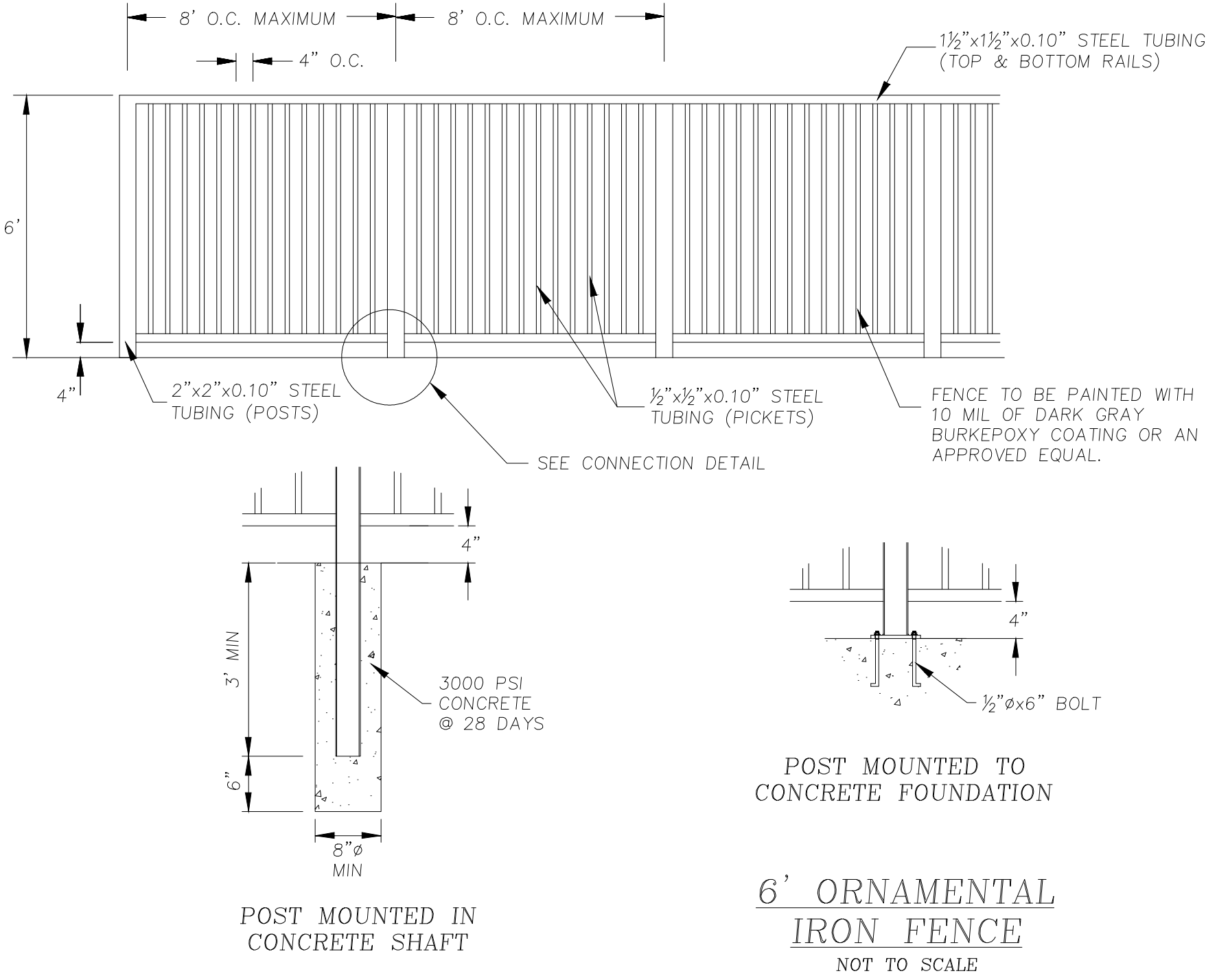


9-1-21

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HEI #: 21-0504

SHEET NO:
LP-1



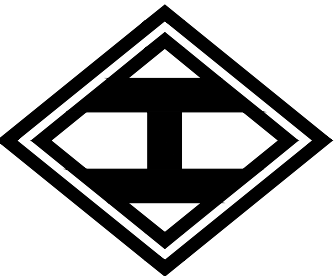


NOTE: A SEPARATE FENCE PERMIT THROUGH BUILDING INSPECTIONS IS REQUIRED PRIOR TO CONSTRUCTION.

PRELIMINARY PLANS

THIS DOCUMENT IS FOR INTERIM REVIEW AND IS NOT INTENDED FOR CONSTRUCTION, BIDDING OR PERMIT PURPOSES.
STEVEN R. HOMEYER, PE # 86942
DATE: 08/02/2021

HOMEYER
ENGINEERING, INC.
TBPE FIRM REGISTRATION NO. F-8440
P.O. BOX 294527 ♦ LEWISVILLE ♦ TEXAS ♦ 75029
972-906-9985 PHONE ♦ 972-906-9987 FAX
WWW.HEI.US.COM



STONE HILL BOAT SALES
5.33 ACRES
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

DETAILS

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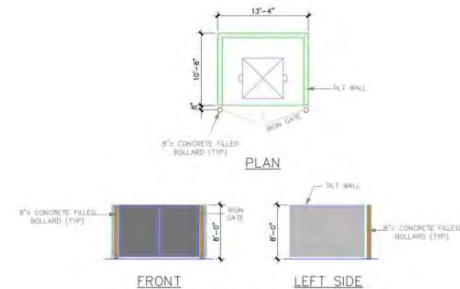
DATE: 05/21/21

HEI #: 21-0504

SHEET NO:
C2

	East	West	South	North
1. Total Facade S.F.	3,008 s.f.	3,080 s.f.	3,523 s.f.	3,227 s.f.
2. Facade S.F. (exclusive of doors and windows)	2,353 s.f. and 445 s.f. 1	2,518 s.f. and 395 s.f. 1	4,314 s.f. and 785 s.f. 1	3,497 s.f. and 695 s.f. 1
3. Doors and Windows S.F.	1,205 s.f. and 34 s.f. 1	371 s.f. and 145 s.f. 1	1,208 s.f. and 275 s.f. 1	730 s.f. and 125 s.f. 1
* Glass Doors & Windows	1,205 s.f. and 107 s.f. 5	371 s.f. and 35 s.f. 5	808 s.f. and 50 s.f. 5	730 s.f. and 100 s.f. 5
* Metal Doors (no glass)	0 s.f. and 3 s.f. 5	352 s.f. and 52 s.f. 5	800 s.f. and 50 s.f. 5	0 s.f. and 0 s.f. 5
4. Primary Military Units (Min. 500)	2,353 s.f. and 100 s.f. 2	2,519 s.f. and 100 s.f. 2	4,314 s.f. and 100 s.f. 2	3,497 s.f. and 100 s.f. 2
* Stone s.f. (as recorded)	548 s.f. and 23 s.f. 3	845 s.f. and 23 s.f. 3	819 s.f. and 27 s.f. 3	819 s.f. and 15 s.f. 3
* Tile Roof s.f. (as recorded)	181 s.f. and 77 s.f. 2	187 s.f. and 75 s.f. 2	236 s.f. and 99 s.f. 2	465 s.f. and 35 s.f. 2
* Brick s.f. (as recorded)	0 s.f. and 0 s.f. 2	0 s.f. and 0 s.f. 2	0 s.f. and 0 s.f. 2	0 s.f. and 0 s.f. 2

EXTERIOR FINISH MATERIAL SCHEDULE			
MATERIAL	MANUFACTURER	PRODUCT NO.	DESCRIPTION
CONCRETE TILT WALL	PAINTED TILT WALL	BARRO RED - D 156	VALPAR PAINT
STONE	LOVE STAR STONE	ARACH CHALK	STONE
METAL CAP, FASDA & TRIM	PAINT GRP METAL PANELS	GOLDEN SUNSET - D 85	VALPAR PAINT
METAL ROOF	PAINT GRP METAL PANELS	HOT STONE - D 163	VALPAR PAINT
METAL STORE FRONT	ALLIANCE	BRONZE	METAL / GLASS STOREFRONT
METAL GUTTER	ALUMINUM	BRONZE	VALPAR PAINT



DUMPSTER ENCLOSURE



East Elevation

Scale: 1/8" = 1'-0"



South Elevation

Scale: 1/8" = 1'-0"

STONE HILL FM, LLC
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

A3

	East	West	South	North
1. Total Facade S.F.	3098 s.f.	3098 s.f.	5623 s.f.	8127 s.f.
2. Facade S.F. (exclusive of doors and windows)	2355 s.f. and 64% of 1	2319 s.f. and 80% of 1	4314 s.f. and 76% of 1	3497 s.f. and 88% of 1
3. Doors and Windows S.F.	1205 s.f. and 34% of 1	571 s.f. and 18% of 1	1208 s.f. and 22% of 1	730 s.f. and 12% of 1
• Glass Doors & Windows	1205 s.f. and 100% of 3	571 s.f. and 58% of 3	809 s.f. and 50% of 3	730 s.f. and 100% of 3
• Metal Doors (no glass)	0 s.f. and 0% of 3	352 s.f. and 62% of 3	600 s.f. and 50% of 3	0 s.f. and 0% of 3
4. Primary Memory Intake (sq. ft.)	2355 s.f. and 100% of 2	2518 s.f. and 100% of 2	4314 s.f. and 100% of 2	5487 s.f. and 100% of 2
• Store s.f. (in applicable)	548 s.f. and 23% of 2	640 s.f. and 25% of 2	916 s.f. and 21% of 2	876 s.f. and 16% of 2
• TMI wall s.f. (in applicable)	1807 s.f. and 77% of 2	1879 s.f. and 75% of 2	5198 s.f. and 79% of 2	4611 s.f. and 84% of 2
• Store s.f. (in applicable)	0 s.f. and 0% of 1	0 s.f. and 0% of 1	0 s.f. and 0% of 1	0 s.f. and 0% of 1

EXTERIOR FINISH MATERIAL SCHEDULE			
MATERIAL	MANUFACTURER	PRODUCT NO.	DESCRIPTION
CONCRETE TILT WALL	PAINTED TILT WALL	BAMBOO REED - D 158	VALSPAR PAINT
STONE	LOVE STAR STONE	APACHE CHALK	STONE
METAL CAP, FASCIA & TRIM	PAINT GRP METAL PANELS	GOLDEN SUNSET - D 36	VALSPAR PAINT
METAL ROOF	PAINT GRP METAL PANELS	HOT STONE - G 165	VALSPAR PAINT
METAL STORE FRONT	ALUMINUM	BRONZE	METAL / GLASS STOREFRONT
METAL OUTLET	ALUMINUM	BRONZE	VALSPAR PAINT



STONE HILL FM, LLC
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

DATE: 06/16/20
REV: 04/20
SHEET

A4



TOWN COUNCIL AGENDA ITEM NO. 13

REGULAR ITEM

DATE: January 3, 2022

FROM: James Hoefert, Environmental Review Analyst

ITEM: **Public Hearing to consider an application for a tree removal permit (TRP21-0024) for one (1) specimen tree on Lot 8, Block B of the Pepper Creek Ranch Addition subdivision. The property is located at 4709 Angels Landing. (The Environmental Conservation Commission recommended approval by a vote of 6 to 0 at its December 7, 2021, meeting).**

BACKGROUND INFORMATION: Lot 8, Block B of the Pepper Creek Ranch Addition subdivision is located at 4709 Angles Landing. The lot is approximately 0.752 acres in size. The lot is currently zoned for Planned Development District No. 162 (PD-162) for a cluster development and is master planned for the Cross Timbers Conservation Development District. The applicant is requesting to remove one (1) of two (2) specimen trees from the residential lot because of the tree's proximity to the building pad. The specimen tree proposed for removal (Tree #3718 – 22" post oak) is in good condition and is located within the buildable area of the lot.

The Town's tree ordinance requires that specimen trees removed from the site be replaced at a rate of two times their caliper inches. However, since the specimen tree being proposed for removal is located in Upland Habitat, the Upland Habitat mitigation fee applies to this project/permit, and was paid by the developer of the subdivision.

BOARD REVIEW/CITIZEN FEEDBACK: This application was considered by the Environmental Conservation Commission (ECC) at its December 7, 2021, meeting. The ECC recommended approval of the requested permit to remove one (1) specimen tree. The ECC meeting can be viewed at: <https://flowermoundtx.swagit.com/play/12082021-850>

As of December 17, 2021, staff has not received feedback related to this item.

ALTERNATIVES/OPTIONS: The Town Council may approve or deny the requested tree removal permit or may choose to approve the permit with conditions or changes.

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Letter of Intent.
2. Specimen tree removal permit application.
3. Photographs of specimen tree.
4. Tree Survey/Plot Plan.

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

Letter of Intent

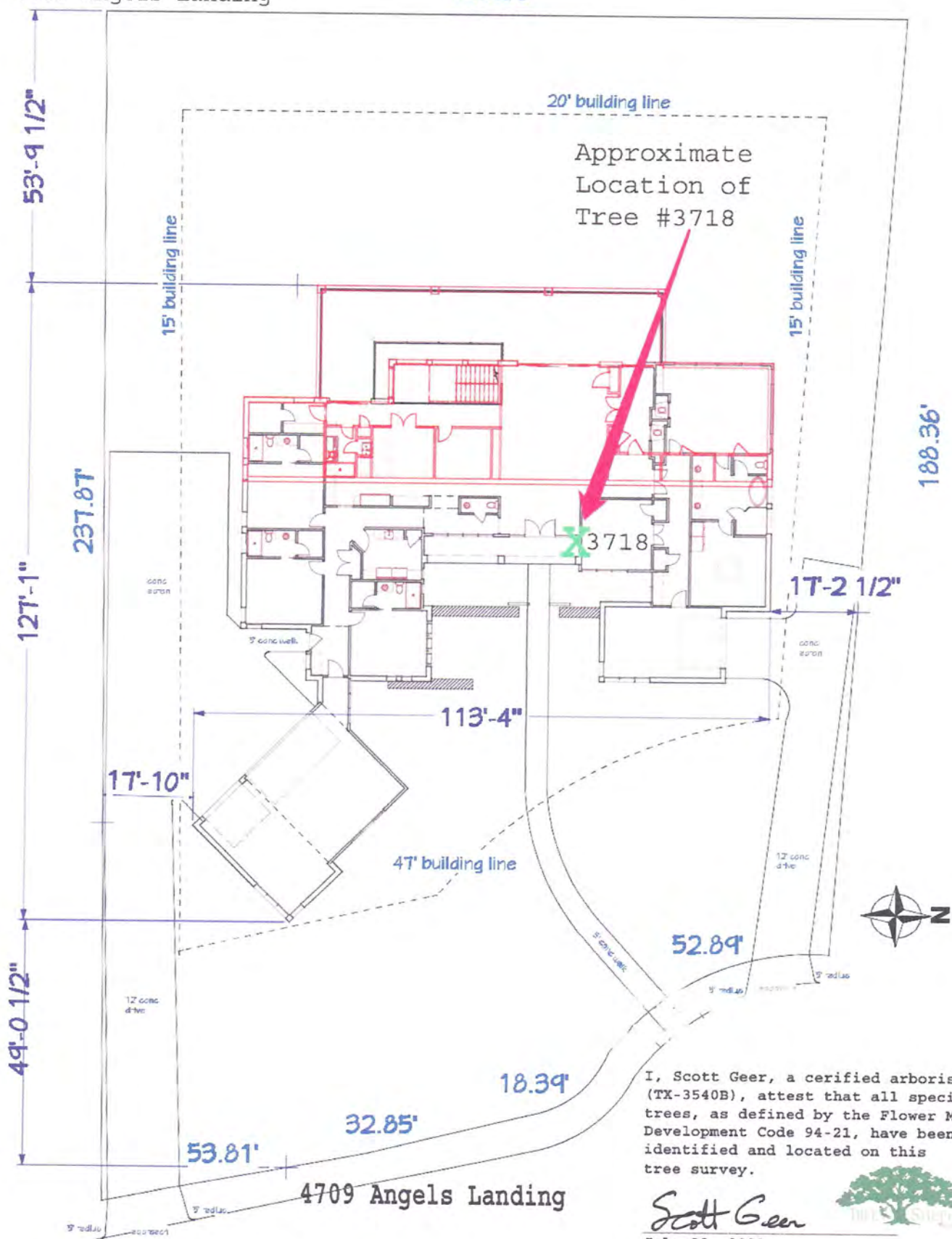
Lewis & Earley Custom Homes, LLC requests to remove Tree 3718 from the lot because we don't believe there is any way to build a house without removing it. It is sitting almost in the exact middle of the lot.(see attached)

A handwritten signature in black ink, appearing to be 'Brian Earley', with a stylized, flowing script.

Brian Earley

V.P., Lewis & Earley Custom Homes, LLC

158.50'



Tree#	Species	DBH	Condition	Classification	Status
3718	Post Oak	22.5"	Healthy	Specimen	Remove

Attachment 2



Town of Flower Mound Environmental Services
 Mailing Address: 2121 Cross Timbers Road, Flower Mound, TX 75028
 Telephone: 972-874-6340 Website: www.flower-mound.com

TREE REMOVAL PERMIT

(Effective for Developments submitted 10/6/08 - present)

Check one: ☐ Protected Tree ☐ Specimen Tree ☐ Historic Tree

This application is required to be submitted 30 days prior to the next available ECC hearing.

1. Applicant- Note: Must be an ISA certified arborist, certified forester, or a registered landscape architect.

Name: Scott Geer

Address:

433 Cannon Lane
 Lewisville

Phone:

972-765-9310

Applicant's Legal Interest in the Property:

None

2. Property Owner(s)

Name(s): EQUIP & EMPLOYMENT MINISTRIES INC
 Address: 2791 W MALCOLM BLVD Suite 5 #205
 Santa Ana CA 92704

3. Location and Legal Description of Property:

lot at 4709 Angels Landing, Flower Mound, Texas

Page 2 of 3.

4. Owner's Authorization of Representation

I, Nichols Carne / Equip and Empower ministries, the owner of the above described real property, do hereby authorize Scott Gear to represent my interests and to file an Application for Tree Removal Permit for said real property, pursuant to the terms and provisions of Chapter 94 (Trees), of the Land Development Regulations of the Town of Flower Mound, Texas Code of Ordinances.

N. G. Gear

Signature of Owner

See Attached
Acknowledgment

Given Under My Hand and Seal of Office
This the ___ Day of ___, 20__

Notary Public
In and For _____ County, Texas.

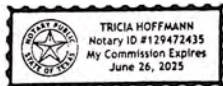
5. Applicants Affidavit- Note: Applicant must be an ISA certified arborist, certified forester, or a registered landscape architect.

Subject to criminal penalties contained in Subpart B, the Land Development Regulations of the Town of Flower Mound, Texas Code of Ordinances, I

Scott Gear, do hereby swear or affirm that all of the Information contained herein and submitted herein is, to the best of my knowledge, true, correct and complete and that no false, misleading or incomplete information has been intentionally provided or submitted with this Application for a Tree Removal Permit.

Scott Gear
Signature of Applicant

Landscape Architect License No. _____
State of Licensure _____
Or ISA Certified Arborist No. TX-35403
Or Certified Forester No. _____



Given Under My Hand and Seal of Office
This the 24 Day of December, 20 21
Tricia Hoffmann

Notary Public
In and For Denton County, Texas

6. Received by Town of Flower Mound on (Date) 8/15/2021 by
(initials) JRH.

Page 400 of 405

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CALIFORNIA }

County of ORANGE }

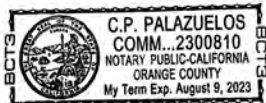
On DECEMBER 3, 2021 before me, C. P. Palazuelos
(Here insert name and title of the officer)

personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

C. P. Palazuelos
Notary Public Signature (Notary Public Seal)



ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

DESCRIPTION OF THE ATTACHED DOCUMENT

Tree Removal Permit
(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
☐ Corporate Officer

(Title)

- ☐ Partner(s)
☐ Attorney-in-Fact
☐ Trustee(s)
☐ Other _____

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is/are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ✧ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ✧ Indicate title or type of attached document, number of pages and date.
 - ✧ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

Pepper Creek Ranch Addition, Lot 8, Block B -
Specimen tree proposed for removal



Tree Survey

TAG	SIZE (in.)	COMMON/SCIENTIFIC NAME	TAG	SIZE (in.)	COMMON/SCIENTIFIC NAME
3701	10	Post Oak / Quercus Stellata	3724	6	Blackjack Oak / Quercus Marilandica
3702	9	Post Oak / Quercus Stellata	3725	6	Blackjack Oak / Quercus Marilandica
3704	10	Cedar Elm / Ulmus Crassifolia	3726	10	Blackjack Oak / Quercus Marilandica
3705	8.5	Post Oak / Quercus Stellata	3727	6	Blackjack Oak / Quercus Marilandica
3706	9	Post Oak / Quercus Stellata	3728	7	Pecan / Carya ilionensis
3707	11	Post Oak / Quercus Stellata	3729	10.5	Post Oak / Quercus Stellata
3708	10.5	Post Oak / Quercus Stellata	3730	11	Post Oak / Quercus Stellata
3709	20	Post Oak / Quercus Stellata	3731	13	Post Oak / Quercus Stellata
3710	14	Post Oak / Quercus Stellata	3732	18	Post Oak / Quercus Stellata
3711	18	Post Oak / Quercus Stellata	3733	13	Post Oak / Quercus Stellata
3712	25	Post Oak / Quercus Stellata	3734	12.5	Post Oak / Quercus Stellata
3713	20	Post Oak / Quercus Stellata	3735	14.5	Post Oak / Quercus Stellata
3714	16.5	Post Oak / Quercus Stellata	3736	17	Post Oak / Quercus Stellata
3715	13	Post Oak / Quercus Stellata	3737	14.5	Blackjack Oak / Quercus Marilandica
3716	17.5	Post Oak / Quercus Stellata	3738	15	Blackjack Oak / Quercus Marilandica
3717	18	Blackjack Oak / Quercus Marilandica	3739	14	Blackjack Oak / Quercus Marilandica
3718	22.5	Post Oak / Quercus Stellata	3740	15	Post Oak / Quercus Stellata
3720	7.5	Post Oak / Quercus Stellata	3741	8.5	Green Ash / Fraxinus Pennsylvanica
3721	MT 19	Post Oak / Quercus Stellata	3742	14	Post Oak / Quercus Stellata
3722	12	Post Oak / Quercus Stellata	3743	12	Post Oak / Quercus Stellata

Two Specimen Trees:
3712 - Post Oak - 25.0" - Healthy - Specimen - Preserve
3718 - Post oak - 22.5" - Healthy - Specimen - Remove

Trees to Remain (not specimen trees): 3726, 3727, 3728.
All other protected trees are to be removed.

NOTE: See Tree Preservation Plan for #3712 on page two

LEGAL DESCRIPTION

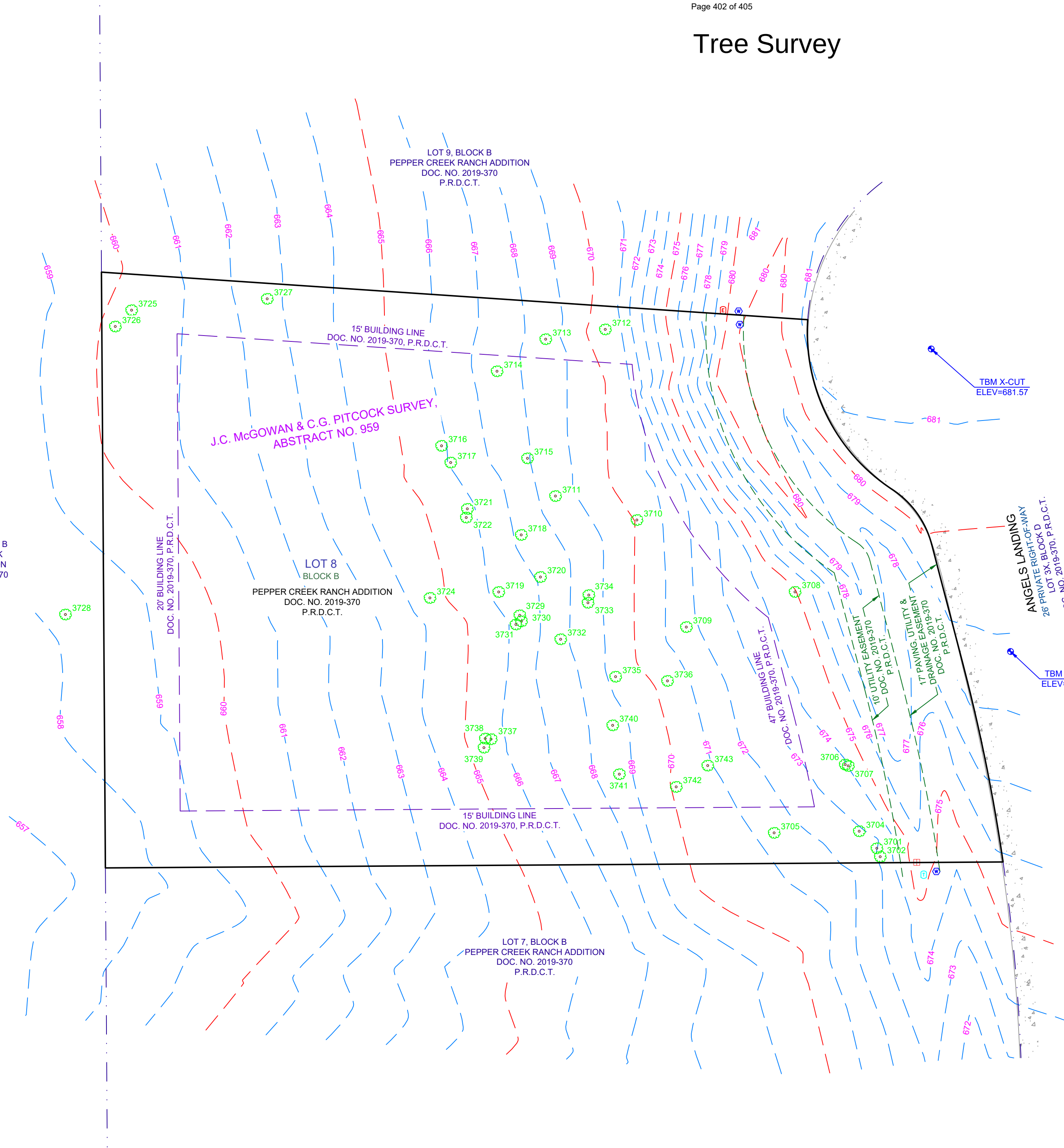
Being Lot 8, Block B, of Pepper Creek Ranch Addition, an Addition to the Town of Flower Mound, Denton County, Texas, according to the Plat thereof recorded under Document Number 2019-370, Plat Records, Denton County, Texas.

SURVEYOR NOTES

1. This survey was performed without the benefit of an Abstract of Title or Title Commitment. Research of record documents done by Eagle Surveying was performed for the purpose of determining the boundary of this property and adjoining parcels. Additional record documents may exist and encumber this property.
2. Elevations shown on this survey are based on GPS observations utilizing the AllTerra RTK Network. North American Vertical Datum of 1988, (Geoid 12A).
3. This document represents an accurate on the ground survey of 4709 Angels Landing in the Town of Flower Mound, Denton County, Texas, on March 29, 2021.

FLOOD NOTE

This property is located in **Non-Shaded Zone "X"** as scaled from the F.E.M.A. Flood Insurance Rate Map dated April 18, 2011 and is located in Community Number 480777 as shown on Map Number 48121C0520G. The location of the Flood Zone is approximate, no vertical datum was collected at the time of the survey. For the exact Flood Zone designation, please contact 1-(877) FEMA MAP.



JOB NUMBER
2101.067

DATE
04-02-2021

REVISION
-

DRAWN BY
CHM



Eagle Surveying, LLC
210 South Elm Street
Suite: 104
Denton, TX 76201
940.222.3009
www.eaglesurveying.com
TX Firm # 10194177

TOPOGRAPHIC
EXHIBIT

Temporary Benchmark

Water Meter

DOC. NO. Document Number

Plat Records
Denton County, Texas

Electric Riser

Electric Transformer

AT&T Pedestal

Tree Trunk

Tree Canopy

Tree I.D.

LEGEND



1" = 20'

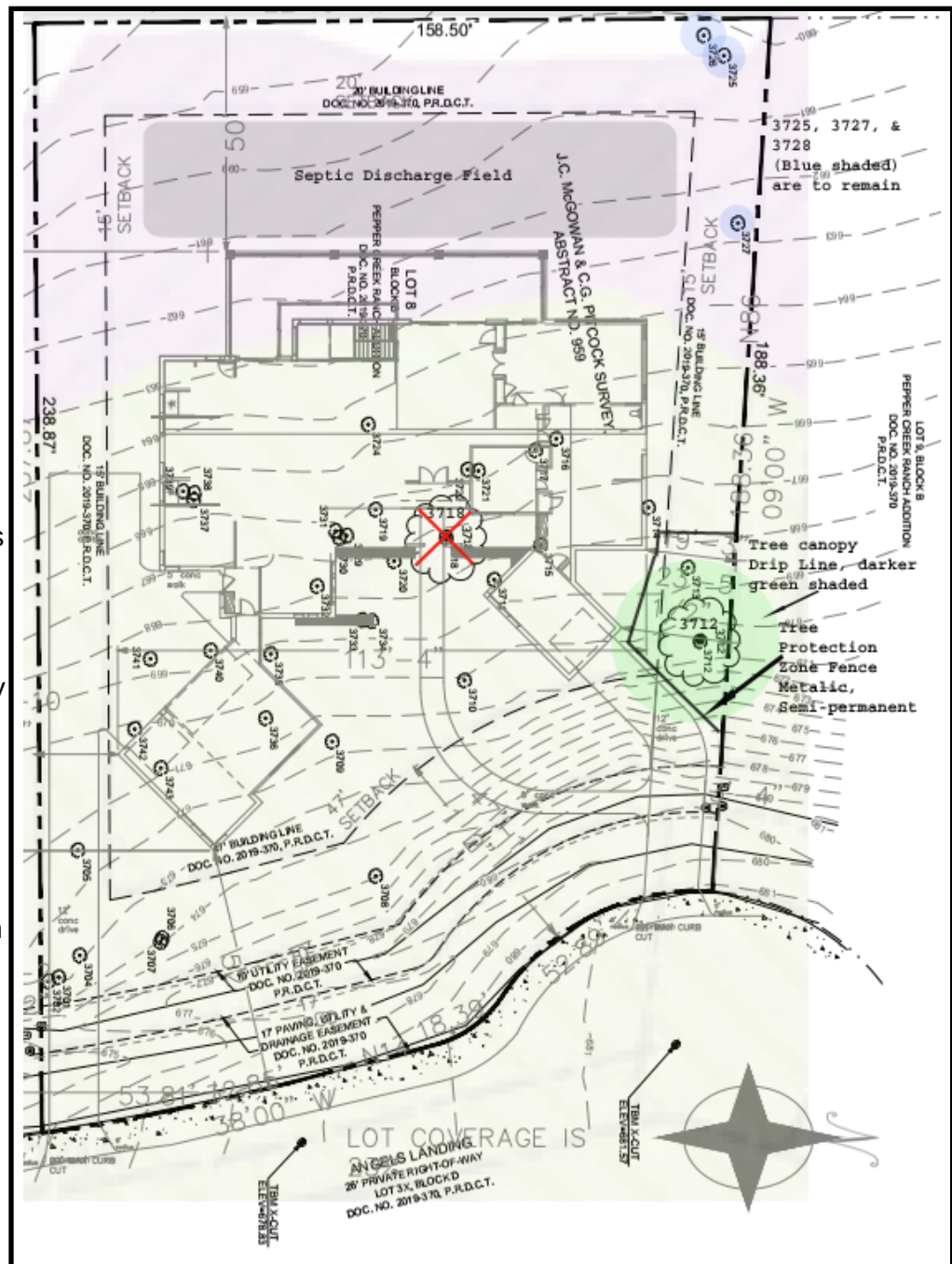
0 10 20

Tree Removal and Preservation Plan

- 1) Tree 3718 is to be removed.
 - 2) Tree 3712 is to be preserved
- House plans have been altered to preserve this tree. Preservation plan below. (Green Shaded in site plan to the right)
- 3) 3726, 3727, 3728 will remain and the root zone will be undisturbed (blue shaded on site plan to the right)

Preservation Plan for #3712

- 1) Remove all vegetation that is within the Tree Protection Zone (TPZ)
 - 2) Cover the TPZ with 3" Shredded Hardwood Mulch. Replenish if project last for one year or more
 - 3) Uncover the root flare of the tree if determined by a certified arborist that this is necessary
 - 4) Reduce the crown no more than 25% to adjust the crown demand to the reduced root capacity. This can be done in conjunction with pruning that may be necessary to accommodate the driveway and house.
 - 4) Apply a Tree Growth Regulator to aid the tree in re-establishing the fine absorbing roots
 - 5) Apply a systemic insecticide (Imidacloprid) as a preventive against borers and foliar feeding insects. Apply in February
 - 5) Install a metallic semi-permanent fence on the perimeter of the TPZ. This fence is to remain in place until final completion of the project, including final landscaping.
- No entry into the TPZ is allowed without the permission of the site Supervisor and appointed certified arborist.
- 6) No grading (fill or removal) of the soil is allowed in the TPZ
 - 7) No trenching is allowed within the TPZ
 - 8) Root prune all roots over 1" diameter at the edge of the driveway forms. Cut the roots cleanly with a sharp saw. No roots are to be ripped or dug from the area until the root pruning is completed.
 - 9) During the warm seasons and in the absence of appreciable rain for two weeks, irrigate the TPZ deeply with 1-1/2" of water.



Purple shaded
area is Impacted
Prairie Habitat

Green shaded
area is Impacted
Upland Habitat

TAG	SIZE	COMMON/SCIENTIFIC NAME	SPECIMEN	CONDITION
3701	10	Post Oak / Quercus Stellata		
3702	9	Post Oak / Quercus Stellata		
3704	10	Cedar Elm / Ulmus Crassifolia		
3705	8.5	Post Oak / Quercus Stellata		
3706	9	Post Oak / Quercus Stellata		
3707	11	Post Oak / Quercus Stellata		
3708	10.5	Post Oak / Quercus Stellata		
3709	20	Post Oak / Quercus Stellata		
3710	14	Post Oak / Quercus Stellata		
3711	18	Post Oak / Quercus Stellata		
3712	25	Post Oak / Quercus Stellata	YES	
3713	20	Post Oak / Quercus Stellata		Hypoxylon Canker
3714	16.5	Post Oak / Quercus Stellata		
3715	13	Post Oak / Quercus Stellata		Hypoxylon Canker
3716	17.5	Post Oak / Quercus Stellata		
3717	18	Blackjack Oak / Quercus Marilandica		
3718	22.5	Post Oak / Quercus Stellata	YES	
3720	7.5	Post Oak / Quercus Stellata		
3721	MT 19	Post Oak / Quercus Stellata		
3722	12	Post Oak / Quercus Stellata		
3724	6	Blackjack Oak / Quercus Marilandica		
3725	6	Blackjack Oak / Quercus Marilandica		
3726	10	Blackjack Oak / Quercus Marilandica		
3727	6	Blackjack Oak / Quercus Marilandica		
3728	7	Pecan / Carya Illioninensis		
3729	10.5	Post Oak / Quercus Stellata		
3730	11	Post Oak / Quercus Stellata		
3731	13	Post Oak / Quercus Stellata		
3732	18	Post Oak / Quercus Stellata		
3733	13	Post Oak / Quercus Stellata		
3734	12.5	Post Oak / Quercus Stellata		
3735	14.5	Post Oak / Quercus Stellata		
3736	17	Post Oak / Quercus Stellata		
3737	14.5	Blackjack Oak / Quercus Marilandica		
3738	15	Blackjack Oak / Quercus Marilandica		
3739	14	Blackjack Oak / Quercus Marilandica		
3740	15	Post Oak / Quercus Stellata		
3741	8.5	Green Ash / Fraxinus Pennsylvanica		
3742	14	Post Oak / Quercus Stellata		
3743	12	Post Oak / Quercus Stellata		



TOWN COUNCIL AGENDA ITEM NO. 14

REGULAR ITEM

DATE: January 3, 2022

FROM: Theresa Scott, Town Secretary

ITEM: Consider appointment of a regular member and selection of Chair for the Tax Increment Reinvestment Zone Number 1 (TIRZ # 1).

BACKGROUND INFORMATION: The structure and organization of the Tax Increment Reinvestment Zone Number 1 (TIRZ #1) board members is described by [Town Ordinance](#) and requires the Town Council to designate a voting member of the board to serve as chair for a period of one year beginning January 1st. The board shall elect from its members a vice chair and other officers as it sees fit.

The current voting members of the board that may be considered for the position of chair are:

Jim Engel
David Johnson
Larry Lipscomb
Paul Stone (current chair)

Ex officio non-voting members of the board include the Mayor and Town Manager and cannot serve as chair.

Town Council also needs to appoint a regular member given the resignation of Bill Collins, Place 1, effective 12/31/21.

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS: N/A

DRAFT MOTION: For the Tax Increment Reinvestment Zone # 1 Board, I move to designate _____ as Chair effective immediately and through December 31, 2022, and to appoint Mark Hargreaves as Place 1 effective immediately and with a term expiration date of 12/31/2023.

Town Council Future Agenda Items



SCHEDULED	1/18/2022	Regular	Public Hearing to consider an ordinance amending the zoning (ZPD18-0014 – Silveron Park) from Planned Development District No. 31 (PD-31) with Campus Commercial District (CC) uses to Planned Development District No.171 (PD-171) with Campus Commercial District (CC) and multifamily uses, and with certain waivers, exceptions and modifications to the Code of Ordinances. The property is generally located south of International Parkway and east of Lakeside Village Boulevard. (P&Z recommended approval/denial by a vote of 0 to 0 at its January 10, 2022, meeting.)
		Regular	Public Hearing to consider an ordinance for a Master Plan Amendment (MPA21-0005 - Silveron Flower Mound Duke) to amend Section 1.0, Land Use Plan and Section 2.0, Area Plans, of the Master Plan by changing the current land use designation within the Lakeside Business District Area Plan from Campus Commercial uses to Campus Industrial uses. The property is generally located north of International Parkway and east of Silveron Boulevard. (Town Council reconsidered the application on November 1, 2021 and moved to remand the project back to the Planning and Zoning Commission by a vote of 4 to 0.) (P & Z recommended approval/denial by a vote of 0 to 0 at its January 10, 2022, meeting.)
		Regular	Public Hearing to consider an ordinance amending the zoning (ZPD21-0003 - Silveron Flower Mound Duke) from Planned Development District No. 31 (PD-31) with Campus Commercial District (CC) uses to Planned Development District No.181 (PD-181) with Campus Industrial District (CI) uses and certain Campus Commercial District (CC) uses, with certain waivers, exceptions and modifications to the Code of Ordinances including but not limited to an exception to Section 98-147, “Topographical Slope Protection”, and an exception to Section 82-302, Compatibility buffer. The property is generally located north of International Parkway and east of Silveron Boulevard. (Town Council reconsidered the application on November 1, 2021 and moved to remand the project back to the Planning and Zoning Commission by a vote of 4 to 0.) (P & Z recommended approval/denial by a vote of 0 to 0 at its January 10, 2022, meeting.)
2/7/2022	Consent		City Works Migration and Implementation Services
	Consent		Sunrise Circle Wastewater Connection - Design Award
	Consent		Consider approval of a resolution calling for a general election to be held May 7, 2022, for the offices of Town Council Place 1 and Town Council Place 3; establishing procedures for those elections; and providing an effective date.
	Consent		Water Emergency Preparedness Plan
	Consent		Consider approval of Amendment No. 2 to the Fiscal Year 2021-2022 Capital Improvement Program.
		Regular	Discuss a continuation of training for boards and commissions, as well as staff and legal support roles

SCHEDULED	2/7/2022	Regular	Public Hearing to consider an ordinance granting Specific Use Permit No. 472 (SUP21-0005 – Bosco Boat Dealership) to permit inclusion of Retail, general (outdoors) use for a boat dealership within an existing car dealership facility. The property is generally located south of Justin Road and east of Stone Hill Farms Parkway. (The Planning and Zoning Commission recommended approval with conditions by a vote of 6 to 0 at its December 13, 2021, meeting.)
	2/21/2022	Consent	Consider Approval of the purchase of traffic signal detection systems, signal cabinets, and traffic related parts, in the estimated annual amount of \$250,000.00, from Mobotrex, through the BuyBoard Cooperative Purchasing contract.
		Consent	Consider approval of an ordinance amending Appendix A "Fee Schedule" to update Library fees.
		Presentation	Environmental Conservation Commission Update
		Presentation	Salvation Army to present a thank you to Town of Flower Mound
	3/7/2022	Consent	Consider approval of a Construction Agreement with CONSTRUCTION COMPANY for the Hillside Water Line Connection project, in the amount of \$XXX; and authorization for the Mayor to execute same on behalf of the Town.
	3/21/2022	Consent	Consider approval of the Annual Comprehensive Financial Report (ACFR) for the fiscal year ended September 30, 2021.
		Presentation	School Liaison Committee Update
	4/18/2022	Presentation	Community Development Corporation and Parks Board Update
	5/16/2022	Presentation	Transportation Commission Update
	5/18/2022	Consent	Placeholder: Canvass May 7 election
	6/16/2022	Presentation	All Together Flower Mound Commission Update
	6/20/2022	Presentation	Veterans Liaison Board Update