

Town Council Regular Meeting



May 1, 2023
Town Hall
2121 Cross Timbers Road
Flower Mound, TX 75028

6:00 p.m.

Comments regarding any agenda item can be sent to the Town Council by emailing towncouncil@flower-mound.com or by calling 972.874.6005 and leaving a message.

AGENDA

A. CALL 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. PRESENTATION(S)

1. Presentation to Mayor for the Day (Ava McIntire)

E. PUBLIC COMMENT

The purpose of this item is to allow the public an opportunity to address the Town Council regarding any item on this agenda that is not a "Public Hearing." Issues regarding daily operational or administrative matters should first be dealt with by calling Town Hall at 972.874.6000 during business hours.

In accordance with the Texas Open Meetings Act, the Town Council is restricted from discussing or acting on items not listed on the agenda.

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

- Speakers are limited to 3 minutes, a tone will sound at 30 seconds left and when time has expired, and times may be adjusted by the mayor
- Speakers must address their comments to the Town Council
- Please state your name and address when speaking

F. ANNOUNCEMENTS

1. Announcements from the mayor and council members

G. TOWN MANAGER'S REPORT

1. Capital Improvement Projects
2. Economic Development Projects

a. 2023 Business Survey

3. Organizational Updates

4. Legislative Update and matters related thereto, including possible action.

H. FUTURE AGENDA ITEM(S)

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 that 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. May 16 (Tue) - Regular meeting

2. May 18 - Work session

J. CONSENT ITEM(S)

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 4/17 & 4/20 - Consider approval of the minutes from a regular meeting on 4/17 and a work session held on 4/20.

2. PSA - Flock Group - Consider approval of a Professional Services Agreement with Flock Group, Inc., to provide equipment, installation, technical support, and software for license plate reader technology at five (5) locations along Town roadways as part of a sixty-day pilot period as a no cost-effectiveness trial to evaluate effectiveness for consideration as a decision package in the FY 23 - 24 fiscal budget; and authorization for the Mayor to execute same on behalf of the Town.

3. Evidence Storage Server Expansion - Consider approval of the expansion of the Assureon, "Chain of Evidence" storage servers, on GSA contract, from Soccour Solutions, in the amount of \$51,171.

4. Upper Trinity Board Appointment - Consider approval of a resolution appointing Clay Riggs as the Town's representative, to serve on the Upper Trinity Regional Water District (UTRWD) Board of Directors for a four-year term ending May 31, 2027; and authorization for the Mayor to sign on behalf of the Town.

K. REGULAR ITEM(S)

1. None - There are no regular items on this agenda.

L. BOARDS/COMMISSIONS

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

M. CLOSED MEETING

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

1. Consultation with Town Attorney.
 - a. Oncor transmission line, switch, and substation projects.
2. Discuss and consider purchase, exchange, lease or value of real property for parks, public rights-of-way, and/or other municipal purposes and all matters incident and related thereto.
3. 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.
4. Discuss and consider economic development incentives, including retail centers, corporate relocation/expansion/retention, hospitality projects, performance related to certain incentive agreements, and proposed Tax Increment Reinvestment Zone (TIRZ) #1, TIRZ #2, PID, MMD, and MUD.

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

P. FUTURE AGENDA

1. Future Agenda

I do hereby certify that the Notice of Meeting was posted on the bulletin board at the Town Hall for the Town of Flower Mound, Texas, in a place convenient and readily accessible to the general public at all times and said Notice was also posted on the Town's website in accordance with GC Section 551.056 on the following date and time: April 28, 2023, at 2:52 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 accommodation or interpretive services must be made 48 hours prior to this meeting by contacting Town Hall at 972.874.6000. Additional time limits will be provided for members of the public that need to address the Town Council through a translator.

Town Council Regular Meeting



April 17, 2023
Town Hall
2121 Cross Timbers Road
Flower Mound, TX 75028

6:00 p.m.

DRAFT MINUTES

A. CALL TO ORDER

Mayor France called the regular meeting to order at 6:00 p.m. with the following members present:

Derek France, Mayor
Sandeep Sharma, Mayor Pro Tem
Ann Martin, Deputy Mayor Pro Tem
Adam Schiestel, Councilmember Place 1
Brian Taylor, Councilmember Place 3
Jim Engel, Councilmember Place 4

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

Theresa Scott, Town Secretary
James W. Childers, Town Manager
Bryn Meredith, Town Attorney
Tommy Dalton, Assistant Town Manager
Tiffany Bruce, Assistant Town Manager/Town Engineer
Lexin Murphy, Director of Development Services
Julie Taylor, Director of Treasury Operations
Clay Riggs, Director of Public Works
Paul Henley, Fire Chief
Melody Eby, Senior Economic Development Specialist

B. INVOCATION

Chaplain Mike Liles gave the invocation.

C. PLEDGE OF ALLEGIANCE TO THE AMERICAN FLAG AND TO THE TEXAS FLAG

"Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible."

Mayor France led the pledges.

D. PRESENTATION(S)

1. Texas Fire Chiefs Association special recognition to Flower Mound Fire Department.

Representatives from the Fire Chief's Association (Neil Howard – Rowlett Fire, James Mallinger – Cedar Park Fire, Joel Baker- Austin Fire, and Dave Parker – Aldine Fire), presented Fire Chief Henley and Fire Department personnel with a special recognition for their best practices.

2. Junior Leadership Flower Mound

Ms. Eby gave a presentation identifying or noting:

- program overview
- business partners
- next steps

and she responded to questions from Council regarding:

- who can participate in the program and how could they find out more information
- possibility of including other school districts
- how could a business get involved in the program

E. PUBLIC COMMENT

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- Speakers must address their comments to the Town Council
- Please state your name and address when speaking

	Speaker name and address	Subject (as written on the form)
1.	Drew Murray, 2824 Stratford Ln, Flower Mound	gun sales

F. ANNOUNCEMENTS

1. Announcements from the mayor and council members

Councilmember Engel announced the Police Department retirement and promotion events, as well as information about the Town's Earth Day native plant giveaway.

Deputy Mayor Pro Tem Martin announced that yesterday was National Librarian Day and she also provided information about an upcoming book sale.

Mayor France offered congratulations to the Marcus girls soccer team for winning the state championship and he announced voting information for the May 6th election.

G. TOWN MANAGER'S REPORT

1. Capital Improvement Projects
2. Economic Development Projects
3. Organizational Updates
4. Legislative Updates

Mr. Childers reported on a few bills being circulated in the Texas legislative session and noted that there will be additional discussion on this topic at this Thursday's work session. And he, or Mr. Meredith, responded to questions regarding what qualified immunity means.

H. FUTURE AGENDA ITEM(S)

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 that 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).

There were no future agenda item request.

I. COORDINATION OF CALENDARS

1. May 1 - Regular meeting
2. May 16 (Tuesday) - Regular meeting

Mayor France confirmed that all members plan to attend the above referenced meetings.

J. CONSENT ITEM(S)

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 3/30 & 4/3 - Consider approval of the minutes from the 3/30 work session and 4/3 regular meeting.

ACTION: Mayor Pro Tem Sandeep Sharma moved to approve item J.1. as presented in the agenda caption. Councilmember Adam Schiestel seconded the motion.

AYES: Ann Martin, Jim Engel, Adam Schiestel, Brian Taylor, Sandeep Sharma

NAYS: None

ABSTAIN: None

RESULT: 5 : 0

K. REGULAR ITEM(S)

1. Oakbridge Crossing Development Agreement - Consider approval of a Development Agreement with Toll Southwest LLC., for park land dedication and construction of park improvements, and for construction of Aberdeen Drive with associated utility improvements for the Oakbridge Crossing residential development; for \$1,304,619.38 and authorization for the Mayor to execute same on behalf of the Town.

Mr. Riggs gave a presentation identifying or noting:

- Oakbridge Crossing Development Agreement
- map of location
- project schedule

ACTION: Mayor Pro Tem Sandeep Sharma moved to approve item K.1. as presented in the agenda caption. Councilmember Jim Engel seconded the motion.

AYES: Ann Martin, Jim Engel, Adam Schiestel, Brian Taylor, Sandeep Sharma

NAYS: None

ABSTAIN: None

RESULT: 5 : 0

2. ZPD22-0006 - Oncor Dunham Substation - Public Hearing to consider an ordinance amending the zoning (ZPD22-0006 – Oncor Dunham Substation) from Interim Holding (IH) uses to Planned Development District No. 195 (PD-195) with Single Family Estate (SF-E) uses, with certain modifications and exceptions to the Code of Ordinances. The property is generally located south of Dunham Road and east of Haynes Road. (PZ recommended approval by a vote of 6 to 0 at its March 27, 2023, meeting.)

Ms. Murphy gave a presentation identifying or noting:

- general and detailed location
- land use and zoning
- zoning exhibit
- overall concept plan
- exceptions and modifications
- site photos
- concept plan
- concept elevations

and she responded to questions from Council regarding:

- fencing
- trees in area
- distance from the road

Seth Sampson, Siting Specialist, Oncor, responded to comments or questions from Council regarding:

- fencing
- landscape buffer and future options
- future plans for adjacent property
- build out time frame
- adjacent property uses
- security standards

Mayor France opened the public hearing at 7:01 p.m.

	SUPPORT	OPPOSITION	QUESTIONS OR COMMENTS ONLY
1.	James Wallace, 3500 Haynes Rd	None	Dru Murray, 2824 Stratford

Mayor France closed the public hearing at 7:05 p.m.

ORDINANCE NO. 13-23

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, "LAND DEVELOPMENT REGULATIONS," OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY CHANGING THE ZONING ON APPROXIMATELY 158.80 ACRES OF LAND SITUATED IN THE RHODY KING SURVEY, ABSTRACT NO. 700, DENTON COUNTY, TEXAS, FROM IH

INTERIM HOLDING USES TO PLANNED DEVELOPMENT DISTRICT-195 (PD-195) WITH SF-E SINGLE FAMILY-ESTATE USES IN ACCORDANCE WITH THE TOWN'S MASTER PLAN AND SPECIFIC REQUIREMENTS AND EXHIBITS INCORPORATED HEREIN; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

ACTION: Councilmember Adam Schiestel moved to approve item K.2. as presented in the agenda caption, and with the modification to update the exhibits to match the applicants' exhibits. Councilmember Brian Taylor seconded the motion.

AYES: Ann Martin, Jim Engel, Adam Schiestel, Brian Taylor, Sandeep Sharma

NAYS: None

ABSTAIN: None

RESULT: 5 : 0

3. Certificates of Obligation, Series 2023 - Consider approval of a resolution approving and authorizing publication of notice of intention to issue Certificates of Obligation, Series 2023, in the principal amount not to exceed \$7,895,000, for the purpose of paying for waterworks and sewer system improvements.

Ms. Taylor and Mr. John Martin, Hilltop Securities, provided background information.

RESOLUTION NO. 07-23

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, APPROVING AND AUTHORIZING PUBLICATION OF NOTICE OF INTENTION TO ISSUE CERTIFICATES OF OBLIGATION.

ACTION: Mayor Pro Tem Sandeep Sharma moved to approve item K.3. as presented in the agenda caption. Councilmember Brian Taylor seconded the motion.

AYES: Ann Martin, Jim Engel, Adam Schiestel, Brian Taylor, Sandeep Sharma

NAYS: None

ABSTAIN: None

RESULT: 5 : 0

L. BOARDS/COMMISSIONS

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 (TIRZ #1), Transportation Commission, and Veterans Liaison Board.

No action taken.

M. CLOSED MEETING

The Town Council convened into a closed meeting at 7:18 p.m. on April 17, 2023, 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,

1. Consultation with Town Attorney.
 - a. Oncor transmission line, switch, and substation projects.
2. Discuss and consider purchase, exchange, lease or value of real property for parks, public rights-of-way, and/or other municipal purposes and all matters incident and related thereto.
3. 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.
4. Discuss and consider economic development incentives, including retail centers, corporate relocation/expansion/retention, hospitality projects, performance related to certain incentive agreements, and proposed Tax Increment Reinvestment Zone (TIRZ) #1, TIRZ #2, PID, MMD, and MUD.

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 reconvened into an open meeting at 7:49 p.m. on April 17, 2023, and no action was taken on the above items.

O. ADJOURN

Mayor France adjourned the meeting at 7:49 p.m.

TOWN OF FLOWER MOUND, TEXAS

DEREK FRANCE, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY

Town Council Work Session



April 20, 2023
Town Hall
2121 Cross Timbers Road
Flower Mound, TX 75028

6:00 p.m.

DRAFT MINUTES

A. CALL TO ORDER

Mayor France called the work session to order at 6:00 p.m. and with the following members present:

Derek France, Mayor
Sandeep Sharma, Mayor Pro Tem
Ann Martin, Deputy Mayor Pro Tem
Adam Schiestel, Councilmember Place 1
Brian Taylor, Councilmember Place 3
Jim Engel, Councilmember Place 4

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

Theresa Scott, Town Secretary
James W. Childers, Town Manager
Tommy Dalton, Assistant Town Manager
Tiffany Bruce, Assistant Town Manager/Town Engineer
Lexin Murphy, Director of Development Services
JP Walton, Strategic Services Manager
Paul Henley, Fire Chief
Brandon Barth, Deputy Chief/Administration

B. INVOCATION

Mayor France gave the invocation.

C. PLEDGE OF ALLEGIANCE TO THE AMERICAN FLAG AND TO THE TEXAS FLAG

"Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible."

Mayor France led the pledges.

D. PUBLIC COMMENT

The purpose of this item is to allow the public an opportunity to address the Town Council regarding any item on this agenda that is not a "Public Hearing." Issues regarding daily operational or administrative matters should first be dealt with by calling Town Hall at 972.874.6000 during business hours.

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- Speakers must address their comments to the Town Council
- Please state your name and address when speaking

No one spoke.

E. WORK SESSION ITEM(S)

4. Presentation and discussion regarding legislative updates and possible action with a resolution related thereto (1 of 2).

Item 4 was moved to first on the agenda. Mr. Childers provided background information. Mr. Walton provided a bill summary and Town impact for the following bills:

Bill	Council Questions	Council Discussion
HB 2127 (preemption)	• timeline for the senate committee • which version of the bill does the senate hear	• intent is confusing • much uncertainty • waiver of immunity for municipalities is a concern • bill will result in a lot of lawsuits and waste taxdollars • no guardrails - it's wide open and there will be unintended consequences that will end up in court • what works for one community doesn't work for another (can't be a one size fits all) • taxation without representation • proposed amendments • unfunded mandates • support of taking a strong stance against the bill • disappointed in state house for passing this bill • preemption is not defined (no one knows what the impact will be) • hope the bill gets revised or stopped

		relationship between house and senate
HB 2 (property tax)	- does HB 2 change the amount of revenue the Town can collect - gap between assessed and appraisal	- appraisal cap - how this bill is for political reasons - school funding could solve the issue with property taxes
HB 14 (3rd party inspection/review of development applications)	- who would be doing the 3rd party inspection and if they are qualified - who is paying for it	how there is a pattern where local legislation is being taken away from municipalities and shifted to Austin
HB 2925 (civil service)		how this bill tries to fix something that is not broken

For HB 2127:

ACTION: Deputy Mayor Pro Tem Martin moved to authorize the mayor and Councilmembers to sign the letter of opposition and the mayor to sign the Resolution opposing HB 2127 and SB 814. Councilmember Taylor seconded the motion

AYES: Ann Martin, Jim Engel, Adam Schiestel, Brian Taylor, Sandeep Sharma

NAYS: None

ABSTAIN: None

RESULT: 5 : 0

RESOLUTION NO. 08-23

A RESOLUTION OF THE TOWN OF FLOWER MOUND, TEXAS OPPOSING THE CONTINUED PREEMPTION OF MUNICIPAL REGULATION AND OPPOSING HOUSE BILL 2127 AND SENATE BILL 814 RELATING TO STATE PREEMPTION OF AND THE EFFECT OF CERTAIN STATE OR FEDERAL LAW ON CERTAIN MUNICIPAL AND COUNTY REGULATION; AND PROVIDING AN EFFECTIVE DATE.

To read the full resolution and accompanying letter on H.B. 2127, [click here](#).

5. Presentation and discussion regarding legislative updates and possible action with a resolution related thereto (2 of 2).

ACTION: Deputy Mayor Pro Tem Ann Martin moved to authorize the mayor to draft and sign a letter and resolution opposing HB 14, HB 866, HB 2925, HB 2789, HB 3921, HB 1489 and relevant companion bills. Councilmember Schiestel seconded the motion.

AYES: Ann Martin, Jim Engel, Adam Schiestel, Brian Taylor, Sandeep Sharma

NAYS: None

ABSTAIN: None

RESULT: 5 : 0

RESOLUTION NO. 09-23

A RESOLUTION OF THE TOWN OF FLOWER MOUND, TEXAS OPPOSING THE CONTINUED PREEMPTION OF MUNICIPAL REGULATION AND OPPOSING HOUSE BILL 14, HOUSE BILL 866, SENATE BILL 494, HOUSE BILL 2925, HOUSE BILL 2789, SENATE BILL 1412, HOUSE BILL 3921, SENATE BILL 1787, AND HOUSE BILL 1489; AND PROVIDING AN EFFECTIVE DATE.

To read the full resolution and accompanying letter on the bills listed above, [click here](#)

1. Denco Area 9-1-1 District (DENCO) overview of public safety activities by Exec. Director Greg Ballentine

Mayor France announced that the reason Mr. Ballentine is here to follow up on questions or comments from some members of Council during a recent tour.

Greg Ballentine, Denco 9-1-1 Executive Director

Mr. Ballentine reported on their network and various systems in place for the 9-1-1 system, as well as some new features that will soon be available, and he responded to questions from Council regarding:

- if there are Texas legislative bills that impact Denco 911 negatively
- coordinates and floor levels
- what contingencies are in place to ensure the system remains operational

and Chief Henley responded to questions regarding:

- importance of having information such as coordinates

Council Discussion:

Several members of Council expressed appreciation for the current and future technological plans.

2. Presentation and discussion of the Town's preparation and response to surface transportation incidents

Chief Henley and Deputy Chief Barth gave a presentation identifying or noting:

- general information (train derailments)
- incident recap
- rail lines present in the Town
- train identification
- response - Standard Operation Guidelines
- classification (levels)
- flow chart (response examples based on type of chemical)
- mutual aid
- recap of steps

and they responded to the following questions from Council:

- clarification as to how staff are made aware of the type of chemical in a specific train
- if types of substances that was involved in the Ohil derailment traveling through Flower Mound
- what caused the train derailments for this area
- is risk assessment available

3. Presentation and discussion on potential updates to the Town's Urban Design Plan

Ms. Murphy gave a presentation identifying or noting:

- Urban design plan (purpose and intent)
- Possible updates
- Facade colors
- Accent colors and schemes
- Gray tones and gray
 - images and graphics
 - windows and doors
 - accents and color schemes

and she responded to questions or comments from Council regarding:

- definitions
- safety concerns
- clarification as to what greater than 60% of glass means
- how frequently do applicants ask about colors that are not in our color palette

There was Council discussion regarding:

Glass:

- different levels might warrant a different look
- how more glass appears more modern instead of urban, so there does need to be a limit
- concerns about glare and reflections if more glass (reflectivity)
- acceptable if the wall of glass faces a natural feature
- interest in seeing both good and bad examples

Colors:

- how some of the colors are subjective
- interest in seeing examples of some of the accent colors discussed
- interest in keeping traditional colors and staying away from trends
- adjacencies (how it interacts with neighboring buildings)
- gray tones
- meritorious design option

Ms. Murphy outlined the next steps.

F. ADJOURN

Mayor France adjourned the meeting at 8:23 p.m.

TOWN OF FLOWER MOUND, TEXAS

DEREK FRANCE, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY



TOWN COUNCIL AGENDA J.2. CONSENT ITEM(S)

DATE: May 1, 2023

FROM: Wendell Mitchell, Assistant Chief of Police

ITEM: **Consider approval of a Professional Services Agreement with Flock Group, Inc., to provide equipment, installation, technical support, and software for license plate reader technology at five (5) locations along Town roadways as part of a sixty-day pilot period as a no cost-effectiveness trial to evaluate effectiveness for consideration as a decision package in the FY 23 - 24 fiscal budget; and authorization for the Mayor to execute same on behalf of the Town.**

BACKGROUND: The police department began reviewing how LPR systems in the Fall of 2014 as a technology to improve our service level to residents, aid in preventing criminal activity, and support investigations. The department continued to follow this technology as it developed and became suitable for broader application. In the fall of 2019, the police department began coordinating a demonstration with the LPR system from Flock Safety, including participating in numerous logistics meetings with Flock Safety and networking with surrounding municipalities that use this LPR system. The LPR system will have cameras mounted on stand-alone poles within the Town's right of way or on Town traffic signal poles. The Flock LPR cameras are solar powered with a battery backup and do not interfere with operating other Town traffic devices or systems. This technology has proven to be a valuable investigative tool. We believe LPR will assist us in maintaining the high level of service we are committed to providing our citizens, improving quality of life. We desire to move forward with the next part of our review of Flock LPR and evaluate five (5) locations for sixty (60) days as part of a no-obligation trial period.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES: N/A

FISCAL IMPACT: N/A

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

ATTACHMENTS:

1. Flock Group Inc. Service Agreement

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

FLOCK GROUP INC. SERVICES AGREEMENT ORDER FORM

This Order Form together with the Terms (as defined herein) describe the relationship between Flock Group Inc. (“**Flock**”) and the customer identified below (“**Customer**”) (each of Flock and Customer, a “**Party**”). This order form (“**Order Form**”) hereby incorporates and includes the “GOVERNMENT AGENCY CUSTOMER AGREEMENT” attached (the “**Terms**”) which describe and set forth the general legal terms governing the relationship (collectively, the “**Agreement**”). The Terms contain, among other things, warranty disclaimers, liability limitations and use limitations.

The Agreement will become effective when this Order Form is executed by both Parties (the “**Effective Date**”).

Customer: TX - Flower Mound PD	Contact Name: Wendell Mitchell
Address: 4150 Kirkpatrick Ln Flower Mound, Texas 75028	Phone: (972) 539-0525 E-Mail: wendell.mitchell@flower-mound.com
Expected Payment Method:	Billing Contact: (if different than above)
Initial Term: 24 Renewal Term: 24 Months	Pilot period: First 60 days of Initial Term; option to cancel contract at no cost. Initial Term invoice due after Pilot period. Billing Term: Annual payment due Net 30 per terms and conditions

Professional Services and One-Time Purchases

Name	Price/Usage Fee	QTY	Subtotal
Professional Services - Standard Implementation Fee	\$350.00	25.00	\$8,750.00

Hardware and Software Products

Annual recurring amounts over subscription term

Name	Price/Usage Fee	QTY	Subtotal
Falcon	\$2,500.00	25.00	\$62,500.00

Subtotal Year 1: \$71,250.00
Subscription Term: 24 Months
Annual Recurring Total: \$62,500.00
Estimated Sales Tax: \$0.00

Total Contract Amount: \$133,750.00

By executing this Order Form, Customer represents and warrants that it has read and agrees all of the terms and conditions contained in the Terms attached. The Parties have executed this Agreement as of the dates set forth below.

Flock Group Inc	Customer:
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

GOVERNMENT AGENCY AGREEMENT

This Government Agency Agreement (this “**Agreement**”) is entered into by and between Flock Group, Inc. with a place of business at 1170 Howell Mill Rd NW Suite 210, Atlanta, GA 30318 (“**Flock**”) and the police department or government agency identified in the signature block of the Order Form (“**Agency**”) (each a “**Party**,” and together, the “**Parties**”).

RECITALS

WHEREAS, Flock offers a software and hardware situational awareness solution for automatic license plates, video and audio detection through Flock’s technology platform (the “**Flock Service**”), and upon detection, the Flock Services are capable of capturing audio, video, image, and recording data (“**Footage**”) and can provide notifications to Agency upon the instructions of Non-Agency End User (as defined below) (“**Notifications**”);

WHEREAS, Agency desires access to the Flock Service on existing cameras, provided by Agency, or Flock provided Flock Hardware (as defined below) in order to create, view, search and archive Footage and receive Notifications, including those from Non-Agency End Users of the Flock Service (where there is an investigative or bona fide lawful purpose) such as schools, neighborhood homeowners associations, businesses, and individual users;

WHEREAS, Flock deletes all Footage on a rolling thirty (30) day basis, excluding Wing Replay which is deleted after seven (7) days. Agency is responsible for extracting, downloading and archiving Footage from the Flock System on its own storage devices for auditing for prosecutorial/administrative purposes; and

WHEREAS, Flock desires to provide Agency the Flock Service and any access thereto, subject to the terms and conditions of this Agreement, solely for the awareness, prevention, and prosecution of crime, bona fide investigations by police departments, and archiving for evidence gathering (“**Permitted Purpose**”).

AGREEMENT

NOW, THEREFORE, Flock and Agency agree that this Agreement, and any addenda attached hereto or referenced herein, constitute the complete and exclusive statement of the Agreement of the Parties with respect to the subject matter of this Agreement, and replace and supersede all prior agreements, term sheets, purchase orders, correspondence, oral or written communications and negotiations by and between the Parties.

1. DEFINITIONS

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

1.1 “**Agency Generated Data**” means the messages, text, illustrations, files, images, graphics, photos, comments, sounds, music, videos, information, content, ratings, reviews, data, questions, suggestions, other information or materials posted, uploaded, displayed, published, distributed, transmitted, broadcasted, or otherwise made available on or submitted through the Wing Suite.

1.2 “**Agency Hardware**” means the third-party camera owned or provided by Agency and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Services.

1.3 “**Aggregated Data**” means information that relates to a group or category of individuals, from which any potential individuals’ personal identifying information has been permanently “anonymized” by commercially available standards to irreversibly alter data in such a way that a data subject (i.e., individual person or impersonal entity) can no longer be identified directly or indirectly.

1.4 “**Authorized End User(s)**” means any individual employees, agents, or contractors of Agency accessing or using the Services through the Web Interface, under the rights granted to Agency pursuant to this Agreement.

1.5 “**Deployment Plan**” means the strategic geographic mapping of the location(s) and implementation of Flock Hardware, and/or other relevant Services required under this Agreement.

1.6 “**Documentation**” means text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the Services which are provided by Flock to Agency in accordance with the terms of this Agreement.

1.7 “**Embedded Software**” means the software and/or firmware embedded or preinstalled on the Flock Hardware or Agency Hardware.

1.8 “**Falcon Flex**” means an infrastructure-free, location-flexible license plate reader camera that enables the Agency to self-install.

1.9 “**Flock Hardware**” means the Flock cameras or device, pole, clamps, solar panel, installation components, and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Flock Services.

1.10 “**Flock IP**” means the Services, the Documentation, the Embedded Software, the Installation Services, and any and all intellectual property therein or otherwise provided to Agency and/or its Authorized End Users in connection with the foregoing.

1.11 “**Flock Safety Falcon™**” means an infrastructure-free license plate reader camera that utilizes Vehicle Fingerprint™ technology to capture vehicular attributes.

1.12 “**Flock Safety Raven™**” means an audio detection device that provides real-time alerting to law enforcement based on programmed audio events such as gunshots, breaking glass, and street racing.

1.13 “**Flock Safety Sparrow™**” means an infrastructure-free license plate reader camera for residential roadways that utilizes Vehicle Fingerprint™ technology to capture vehicular attributes.

1.14 “**Footage**” means still images, video, audio and other data captured by the Flock Hardware or Agency Hardware in the course of and provided via the Services.

1.15 “**Hotlist(s)**” means a digital file containing alphanumeric license plate related information pertaining to vehicles of interest, which may include stolen vehicles, stolen vehicle license plates, vehicles owned or associated with wanted or missing person(s), vehicles suspected of being involved with criminal or terrorist activities, and other legitimate law enforcement purposes. Hotlist also includes, but is not limited to, national data (i.e. NCIC) for similar categories, license plates associated with AMBER Alerts or Missing Persons/Vulnerable Adult Alerts, and includes manually entered license plate information associated with crimes that have occurred in any local jurisdiction.

1.16 “**Implementation Fee(s)**” means the monetary fees associated with the Installation Services, as defined in Section 1.19 below.

1.17 “**Installation Services**” means the services provided by Flock for installation of Agency Hardware and/or Flock Hardware, including any applicable installation of Embedded Software on Agency Hardware.

1.18 “**Non-Agency End User(s)**” means any individual, entity, or derivative therefrom, authorized to use the Services through the Web Interface, under the rights granted to pursuant to the terms (or to those materially similar) of this Agreement.

1.19 “**Services**” or “**Flock Services**” means the provision, via the Web Interface, of Flock’s software applications for automatic license plate detection, alerts, audio detection, searching image records, video and sharing Footage.

1.20 “**Support Services**” means Monitoring Services, as defined in Section 2.10 below.

1.21 “**Usage Fee**” means the subscription fees to be paid by the Agency for ongoing access to Services.

1.22 “**Web Interface**” means the website(s) or application(s) through which Agency and its Authorized End Users can access the Services, in accordance with the terms of this Agreement.

1.23 “**Wing Suite**” means the Flock interface which provides real-time access to the Flock Services, location of Flock Hardware, Agency Hardware, third-party cameras, live-stream video, Wing Livestream, Wing LPR, Wing Replay, alerts and other integrations.

1.24 “**Wing Livestream**” means real-time video integration with third-party cameras via the Flock interface.

1.25 “**Wing LPR**” means software integration with third-party cameras utilizing Flock’s Vehicle Fingerprint Technology™ for license plate capture.

1.26 “**Wing Replay**” means enhanced situational awareness encompassing Footage retention, replay ability, and downloadable content from Hot Lists integrated from third-party cameras.

1.27 “**Vehicle Fingerprint™**” means the unique vehicular attributes captured through Services such as: type, make, color, state registration, missing/covered plates, bumper stickers, decals, roof racks, and bike racks.

2. SERVICES AND SUPPORT

2.1 Provision of Access. Subject to the terms of this Agreement, Flock hereby grants to Agency a non-exclusive, non-transferable right to access the features and functions of the Services via the Web Interface during the Term, solely for the Authorized End Users. The Footage will be available for Agency’s designated administrator, listed on the Order Form, and any Authorized End Users to access and download via the Web Interface for thirty (30) days. Authorized End Users will be required to sign up for an account and select a password and username (“**User ID**”). Flock will also provide Agency with the Documentation to be used in accessing and using the Services. Agency shall

be responsible for all acts and omissions of Authorized End Users, and any act or omission by an Authorized End User which, if undertaken by Agency, would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by Agency. Agency shall undertake reasonable efforts to make all Authorized End Users aware of the provisions of this Agreement as applicable to such Authorized End User's use of the Services and shall cause Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Services, (such as using a third party to host the Web Interface for cloud storage or a cell phone provider for wireless cellular coverage) which makes the Services available to Agency and Authorized End Users. Warranties provided by said third Party service providers are the agency's sole and exclusive remedy and Flock's sole and exclusive liability with regard to such third-Party services, including without limitation hosting the web interface. Agency agrees to comply with any acceptable use policies and other terms of any third-Party service provider that are provided or otherwise made available to Agency from time to time.

2.2 Embedded Software License. Subject to all terms of this Agreement, Flock grants Agency a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Embedded Software as installed on the Flock Hardware or Agency Hardware; in each case, solely as necessary for Agency to use the Services.

2.3 Documentation License. Subject to the terms of this Agreement, Flock hereby grants to Agency a non-exclusive, non-transferable right and license to use the Documentation during the Term in connection with its use of the Services as contemplated herein, and under Section 2.5 below.

2.4 Wing Suite License. Subject to all terms of this Agreement, Flock grants Agency a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Wing Suite software and interface.

2.5 Usage Restrictions.

2.5.1 Flock IP. The Permitted Purpose for usage of the Flock Hardware, Agency Hardware, Documentation, Services, support, and Flock IP are solely to facilitate gathering evidence that could be used in a lawful criminal investigation by the appropriate government agency. Agency will not, and will not permit any Authorized End Users to, (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse engineer, or otherwise attempt to obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Flock IP; (iii) attempt to modify, alter, tamper with or repair any of the Flock IP, or attempt to create any derivative product from any of the foregoing; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within any of the Services or Flock IP; (vi) use the Services, support, Flock Hardware, Documentation, or the Flock IP for anything other than the Permitted Purpose; or (vii) assign, sublicense, sell, resell, lease, rent, or otherwise transfer, convey, pledge as security, or otherwise encumber, Agency's rights under Sections 2.1, 2.2, 2.3, or 2.4.

2.5.2. Flock Hardware. Agency understands that all Flock Hardware is owned exclusively by Flock, and that title to any Flock Hardware does not pass to Agency upon execution of this Agreement. Except for Falcon Flex products, which are designed for self-installation, Agency is not permitted to remove, reposition, re-install, tamper with, alter, adjust or otherwise take possession or control of Flock Hardware. Notwithstanding the notice and cure period set for in Section 6.3, Agency agrees and understands that in the event Agency is found to engage in any of the restricted actions of this Section 2.5.2, all warranties herein shall be null and void, and this Agreement shall be subject to immediate termination (without opportunity to cure) for material breach by Agency.

2.6 Retained Rights; Ownership. As between the Parties, subject to the rights granted in this Agreement, Flock and its licensors retain all right, title and interest in and to the Flock IP and its components, and Agency acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Agency further acknowledges that Flock retains the right to use the foregoing for any purpose in Flock's sole discretion. There are no implied rights.

2.7 Suspension.

2.7.1 Service Suspension. Notwithstanding anything to the contrary in this Agreement, Flock may temporarily suspend Agency's and any Authorized End User's access to any portion or all of the Flock IP or Flock Service if Flock reasonably determines that (a) there is a threat or attack on any of the Flock IP by Agency; (b) Agency's or any Authorized End User's use of the Flock IP disrupts or poses a security risk to the Flock IP or any other customer or vendor of Flock; (c) Agency or any Authorized End User is/are using the Flock IP for fraudulent or illegal activities; (d) Agency has violated any term of this provision, including, but not limited to, utilizing the Services for anything other than the Permitted Purpose ("**Service Suspension**"). Agency shall not be entitled to any remedy for the Service Suspension period, including any reimbursement, tolling, or credit.

2.7.2 Service Interruption. Services may be interrupted in the event that: (a) Flock's provision of the Services to Agency or any Authorized End User is prohibited by applicable law; (b) any third-party services required for Services are interrupted; (c) if Flock reasonably believe Services are being used for malicious, unlawful, or otherwise unauthorized use; (d) there is a threat or attack on any of the Flock IP by a third party; or (e) scheduled or emergency maintenance ("**Service Interruption**"). Flock will make commercially reasonable efforts to provide written notice of any Service Interruption to Agency and to provide updates regarding resumption of access to Flock Services. Flock will use commercially reasonable efforts to resume providing access to the Service as soon as reasonably possible after the event giving rise to the Service Interruption is cured. Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Agency or any Authorized End User may incur as a result of a Service Interruption. To the extent that the Service Interruption is not caused by Agency's direct actions or by the actions of parties associated with the Agency, the expiration of the Term will be tolled by the duration of the Service Interruption (for any continuous suspension lasting at least one full day) prorated for the proportion of cameras on the Agency's account that have been impacted. For example, in the event of a Service Interruption lasting five (5) continuous days, Agency will receive a credit for five (5) free days at the end of the Term.

2.8 Installation Services.

2.8.1 Designated Locations. For installation of Flock Hardware, excluding Falcon Flex products, prior to performing the physical installation of the Flock Hardware, Flock shall advise Agency on the location and positioning of the Flock Hardware for optimal license plate image capture, as conditions and location allow. Flock may consider input from Agency regarding location, position and angle of the Flock Hardware ("**Designated Location**") and collaborate with Agency to design the Deployment Plan confirming the Designated Locations. Flock shall have final discretion on location of Flock Hardware. Flock shall have no liability to Agency resulting from any poor performance, functionality or Footage resulting from or otherwise relating to the Designated Locations or delay in installation due to Agency's delay in confirming Designated Locations, in ordering and/or having the Designated Location ready for installation including having all electrical work preinstalled and permits ready, if necessary. After installation, any subsequent changes to the Deployment Plan ("**Reinstalls**") will incur a charge for Flock's then-current list price for Reinstalls, as listed in the then-current Reinstall policy (available at <https://www.flocksafety.com/reinstall-fee-schedule>) and any equipment fees. For clarity, Agency will receive prior notice and provide approval for any such fees. These changes include but are not limited to re-positioning, adjusting of the mounting, re-angling, removing foliage, replacement, changes to heights of poles, regardless of whether the need for Reinstalls related to vandalism, weather, theft, lack of criminal activity in view, and the like.

2.8.2 Agency Installation Obligations. Agency agrees to allow Flock and its agents reasonable access in and near the Designated Locations with a seven (7) day notice for the purpose of performing the installation work. Although Flock Hardware is designed to utilize solar power, certain Designated Locations may require a reliable source of 120V or 240V AC power. In the event adequate solar power is not available, Agency is solely responsible for costs associated with providing a reliable source of 120V or 240V AC power to Flock Hardware. Flock will provide solar options to supply power at each Designated Location. If Agency refuses recommended solar options, Agency waives any reimbursement, tolling, or credit for any suspension period of Flock Services due to low solar power. Additionally, Agency is solely responsible for (i) any permits or associated costs, and managing the permitting process of installation of cameras or AC power; (ii) any federal, state, or local taxes including property, license, privilege, sales, use, excise, gross receipts, or other similar taxes which may now or hereafter become applicable to, measured by or imposed upon or with respect to the installation of the Flock Hardware, its use (excluding tax exempt entities), or (iii) any other supplementary cost for services performed in connection with installation of the Flock Hardware, including but not limited to contractor licensing, engineered drawings, rental of specialized equipment, or vehicles, third-party personnel (i.e. Traffic Control Officers, Electricians, State DOT-approved poles, etc., if necessary), such costs to be approved by the Agency ("**Agency Installation Obligations**"). In the event that a Designated Location for Flock Hardware requires permits, Flock may provide the Agency with a temporary alternate location for installation pending the permitting process. Once the required permits are obtained, Flock will relocate the Flock Hardware from the temporary alternate location to the permitted location at no additional cost. Without being obligated or taking any responsibility for the foregoing, Flock may pay and invoice related costs to Agency if Agency did not address them prior to the execution of this Agreement or a third party requires Flock to pay. Agency represents and warrants that it has, or shall lawfully obtain, all necessary right title and authority and hereby authorizes Flock to install the Flock Hardware at the Designated Locations and to make any necessary inspections or tests in connection with such installation.

2.8.3 Flock's Obligations. Installation of Flock Hardware shall be installed in a workmanlike manner in accordance with Flock's standard installation procedures, and the installation will be completed within a reasonable time from the time that the Designated Locations are confirmed. Upon removal of Flock Hardware, Flock shall restore

the location to its original condition, ordinary wear and tear excepted. Following the initial installation of the Flock Hardware and any subsequent Reinstalls or maintenance operations, Flock's obligation to perform installation work shall cease; however, for the sole purpose of validating installation, Flock will continue to monitor the performance of Flock Hardware for the length of the Term and will receive access to the Footage for a period of seven (7) business days after the initial installation for quality control and provide any necessary maintenance. Labor may be provided by Flock or a third-party. Flock is not obligated to install, reinstall, or provide physical maintenance to Agency Hardware. Notwithstanding anything to the contrary, Agency understands that Flock will not provide installation services for Falcon Flex products.

2.8.4 Ownership of Hardware. Flock Hardware shall remain the personal property of Flock and will be removed upon the natural expiration of this Agreement at no additional cost to Agency. Agency shall not perform any acts which would interfere with the retention of title of the Flock Hardware by Flock. Should Agency default on any payment of the Flock Services, Flock may remove Flock Hardware at Flock's discretion. Such removal, if made by Flock, shall not be deemed a waiver of Flock's rights to any damages Flock may sustain as a result of Agency's default and Flock shall have the right to enforce any other legal remedy or right.

2.9 Hazardous Conditions. Unless otherwise stated in the Agreement, Flock's price for its services under this Agreement does not contemplate work in any areas that contain hazardous materials, or other hazardous conditions, including, without limit, asbestos, lead, toxic or flammable substances. In the event any such hazardous materials are discovered in the designated locations in which Flock is to perform services under this Agreement, Flock shall have the right to cease work immediately in the area affected until such materials are removed or rendered harmless.

2.10 Support Services. Subject to the payment of fees, Flock shall monitor the performance and functionality of Flock Services and may, from time to time, advise Agency on changes to the Flock Services, Installation Services, or the Designated Locations which may improve the performance or functionality of the Services or may improve the quality of the Footage. The work, its timing, and the fees payable relating to such work shall be agreed by the Parties prior to any alterations to or changes of the Services or the Designated Locations ("**Monitoring Services**"). Flock will use commercially reasonable efforts to respond to requests for support within two (2) business days. Flock will provide Agency with reasonable technical and on-site support and maintenance services ("**On-Site Services**") in-person or by email at support@flocksafety.com, at no additional cost. Notwithstanding anything to the contrary, Agency is solely responsible for installation of Falcon Flex products. Agency further understands and agrees that Flock will not provide monitoring services or on-site services for Falcon Flex.

2.11 Special Terms. From time to time, Flock may offer certain Special Terms related to guarantees, service and support which are indicated in the proposal and on the Order Form and will become part of this Agreement, upon Agency's prior written consent. To the extent that any terms of this Agreement are inconsistent or conflict with the Special Terms, the Special Terms shall control.

2.12 Upgrades to Platform. Flock may, in its sole discretion, make any upgrades to system or platform that it deems necessary or useful to (i) maintain or enhance (a) the quality or delivery of Flock's products or services to its agencies, (b) the competitive strength of, or market for, Flock's products or services, (c) such platform or system's cost efficiency or performance, or (ii) to comply with applicable law. Parties understand that such upgrades are necessary from time to time and will not materially change any terms or conditions within this Agreement.

3. RESTRICTIONS AND RESPONSIBILITIES

3.1 Agency Obligations. Flock will assist Agency Authorized End Users in the creation of a User ID. Agency agrees to provide Flock with accurate, complete, and updated registration information. Agency may not select as its User ID a name that Agency does not have the right to use, or another person's name with the intent to impersonate that person. Agency may not transfer its account to anyone else without prior written permission of Flock. Agency will not share its account or password with anyone and must protect the security of its account and password. Unless otherwise stated and defined in this Agreement, Agency may not designate Authorized End Users for persons who are not officers, employees, or agents of Agency. Authorized End Users shall only use Agency-issued email addresses for the creation of their User ID. Agency is responsible for any activity associated with its account. Agency shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services. Agency agrees to provide reasonable assistance to Flock, including, but not limited to, by means of access to, and use of, Agency facilities, as well as by means of assistance from Agency personnel to the limited extent any of the foregoing may be reasonably necessary to enable Flock to perform its obligations hereunder, including, without limitation, any obligations with respect to Support Services or any Installation Services.

3.2 Agency Representations and Warranties. Agency represents, covenants, and warrants that Agency will use the Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to

any laws relating to the recording or sharing of video, photo, or audio content. Although Flock has no obligation to monitor Agency's use of the Services, Flock may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

4. CONFIDENTIALITY; AGENCY DATA

4.1 Confidentiality. To the extent allowable by applicable FOIA and state-specific Public Records Acts, each Party (the "**Receiving Party**") understands that the other Party (the "**Disclosing Party**") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "**Proprietary Information**" of the Disclosing Party). Proprietary Information of Flock includes non-public information regarding features, functionality and performance of the Services. Proprietary Information of Agency includes non-public data provided by Agency to Flock or collected by Flock via the Flock Hardware or Agency Hardware, to enable the provision of the Services, which includes but is not limited to geolocation information and environmental data collected by sensors. The Receiving Party agrees: (i) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the Party takes with its own proprietary information, but in no event will a Party apply less than reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. Flock's use of the Proprietary Information may include processing the Proprietary Information to send Agency alerts, or to analyze the data collected to identify motion or other events. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third Party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. For clarity, Flock may access, use, preserve and/or disclose the Footage to law enforcement authorities, government officials, and/or third Parties, if legally required to do so or if Flock has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to: (a) comply with a legal process or request; (b) enforce this Agreement, including investigation of any potential violation thereof; (c) detect, prevent or otherwise address security, fraud or technical issues; or (d) protect the rights, property or safety of Flock, its users, a third Party, or the public as required or permitted by law, including respond to an emergency situation. Flock may store deleted Footage in order to comply with certain legal obligations, but such retained Footage will not be retrievable without a valid court order.

4.2 Agency Data. As between Flock and Agency, all right, title and interest in the Agency Data, belong to and are retained solely by Agency. Agency hereby grants to Flock a limited, non-exclusive, royalty-free, worldwide license to (i) use the Agency Data and perform all acts with respect to the Agency Data as may be necessary for Flock to provide the Flock Services to Agency, including without limitation the Support Services set forth in Section 2.10 above, and a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid license to use, reproduce, modify, display, and distribute the Agency Data as a part of the Aggregated Data, (ii) disclose the Agency Data (both inclusive of any Footage) to enable law enforcement monitoring for elected law enforcement Hotlists as well as provide Footage search access to law enforcement for investigative purposes only, and (iii) and obtain Aggregated Data as set forth below in Section 4.4. As between Agency and Non-Agency End Users that have prescribed access of Footage to Agency, each of Agency and Non-Agency End Users will share all right, title and interest in the Non-Agency End User Data. This Agreement does not by itself make any Non-Agency End User Data the sole property or the Proprietary Information of Agency. Flock will automatically delete Footage older than thirty (30) days. Agency has a thirty (30) day window to view, save and/or transmit Footage to the relevant government agency prior to its deletion. Notwithstanding the foregoing, Flock automatically deletes Wing Replay after seven (7) days, during which time Agency may view, save and/or transmit such data to the relevant government agency prior to deletion. Flock does not own and shall not sell Agency Data.

4.3 Agency Generated Data in Wing Suite. Parties understand that Flock does not own any right, title, or interest to third-party video integrated into the Wing Suite. Flock may provide Agency with the opportunity to post, upload, display, publish, distribute, transmit, broadcast, or otherwise make available on or submit through the Wing Suite, messages, text, illustrations, files, images, graphics, photos, comments, sounds, music, videos, information, content, ratings, reviews, data, questions, suggestions, or other information or materials produced by Agency. Agency shall retain whatever legally cognizable right, title, and interest that Agency has in Agency Generated Data. Agency understands and acknowledges that Flock has no obligation to monitor or enforce Agency's intellectual property rights

to Agency Generated Data. To the extent legally permissible, Agency grants Flock a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid license to use, reproduce, modify, display, and distribute the Agency Generated Data for the sole purpose of providing Flock Services. Flock does not own and shall not sell Agency Generated Data.

4.4 Feedback. If Agency provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Agency hereby assigns (and will cause its agents and representatives to assign) to Flock all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.

4.5 Aggregated Data. Flock shall have the right to collect, analyze, and anonymize Agency Data and Agency Generated Data to create Aggregated Data to use and perform the Services and related systems and technologies, including the training of machine learning algorithms. Agency hereby grants Flock a non-exclusive, worldwide, perpetual, royalty-free right (during and after the Term hereof) to use and distribute such Aggregated Data to improve and enhance the Services and for other development, diagnostic and corrective purposes, other Flock offerings, and crime prevention efforts. Parties understand that the aforementioned license is required for continuity of Services. No rights or licenses are granted except as expressly set forth herein. Flock does not sell Aggregated Data.

5. PAYMENT OF FEES

5.1.1 Wing Suite Fees. For Wing Suite products, the Agency will pay Flock the first Usage Fee and the Implementation Fee (as described on the Order Form attached hereto) as set forth on the Order Form on or before the 30th day following the Effective Date of this Agreement. Flock shall have no liability resulting from any delay by the Agency in installing the Embedded Software on the Agency Hardware. If applicable, Agency shall pay the ongoing Usage Fees set forth on the Order Form with such Usage Fees due and payable thirty (30) days in advance of each payment period.

5.1.2 Falcon Fees. For Falcon products during the Term (as defined in Section 6.1), Agency will pay Flock fifty percent (50%) of the Usage Fee, the Implementation Fee as set forth on the Order Form on or before the 30th day following receipt of initial invoice after Effective Date. Upon commencement of installation, Flock will issue an invoice for twenty-five percent (25%) of total fees, and Agency shall pay on or before 30th day following receipt of invoice. Upon completion of installation, Flock will issue an invoice for the remaining balance and Agency shall pay on or before 30th day following receipt of final invoice. Flock is not obligated to commence the Installation Services unless and until the first payment has been made and shall have no liability resulting from any delay related thereto. For a Renewal Term, as defined below, Agency shall pay the entire invoice on or before the 30th day following receipt of invoice.

5.2 Notice of Changes to Fees. Flock reserves the right to change the fees or applicable charges and to institute new charges and fees on subsequent terms by providing thirty (30) days' notice prior to the end of such Initial Term or Renewal Term (as applicable) to Agency (which may be sent by email).

5.3 Invoicing, Late Fees; Taxes. Flock may choose to bill through an invoice, in which case, full payment for invoices must be received by Flock thirty (30) days after the receipt of invoice. If Agency is a non-tax-exempt entity, Agency shall be responsible for all taxes associated with Services other than U.S. taxes based on Flock's net income. If Agency believes that Flock has billed Agency incorrectly, Agency must contact Flock no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Agency acknowledges and agrees that a failure to contact Flock within this sixty (60) day period will serve as a waiver of any claim Agency may have had as a result of such billing error.

6. TERM AND TERMINATION

6.1 Term. The initial term of this Agreement shall be for the period of time set forth on the Order Form (the "**Term**"). Following the Term, unless otherwise indicated on the Order Form, this Agreement will automatically renew for successive renewal terms of the greater of one year or the length set forth on the Order Form (each, a "**Renewal Term**") unless either Party gives the other Party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.

a. For Wing Suite products: the Term shall commence upon execution of this Agreement and continue for one (1) year, after which, the Term may be extended by mutual consent of the Parties, unless terminated by either Party.

- b. For Falcon and Sparrow products: the Term shall commence upon first installation and validation of Flock Hardware.
- c. For Raven products: the Term shall commence upon first installation and validation of Flock Hardware.
- d. For Falcon Flex products: the Term shall commence upon execution of this Agreement.

6.2 Termination for Convenience. At any time during the agreed upon Term, either Party may terminate this Agreement for convenience. Termination for convenience of the Agreement by the Agency will be effective immediately. Termination for convenience by Flock will not result in any removal fees. Upon termination for convenience, a refund will be provided for Flock Hardware, prorated for any fees for the remaining Term length set forth previously. Wing Suite products are not subject to refund for early termination. Flock will provide advanced written notice and remove all Flock Hardware at Flock's own convenience, within a commercially reasonable period of time upon termination.

6.3 Termination. Notwithstanding the termination provisions in Section 2.5.2, in the event of any material breach of this Agreement, the non-breaching Party may terminate this Agreement prior to the end of the Term by giving thirty (30) days prior written notice to the breaching Party; provided, however, that this Agreement will not terminate if the breaching Party has cured the breach prior to the expiration of such thirty (30) day period. Either Party may terminate this Agreement, without notice, (i) upon the institution by or against the other Party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other Party's making an assignment for the benefit of creditors, or (iii) upon the other Party's dissolution or ceasing to do business. Upon termination for Flock's material breach, Flock will refund to Agency a pro-rata portion of the pre-paid fees for Services not received due to such termination.

6.4 No-Fee Term. Flock will provide Agency with complimentary access to Hotlist alerts, as further described in Section 4.2 ("**No-Fee Term**"). In the event a Non-Agency End User grants Agency access to Footage and/or notifications from a Non-Agency End User, Agency will have access to Non-Agency End User Footage and/or notifications until deletion, subject to a thirty (30) day retention policy for all products except Wing Replay, which is subject to a seven (7) day retention policy. Flock may, in their sole discretion, provide access or immediately terminate the No-Fee Term. The No-Fee Term will survive the Term of this Agreement. Flock, in its sole discretion, can determine to impose a price per No-Fee Term upon thirty (30) days' notice to Agency. Agency may terminate any No-Fee Term or access to future No-Fee Terms upon thirty (30) days' notice.

6.5 Survival. The following Sections will survive termination: 2.5, 2.6, 3, 4, 5, 6.4, 7.3, 7.4, 8.1, 8.2, 8.3, 8.4, 10.1 and 10.6.

7. REMEDY; WARRANTY AND DISCLAIMER

7.1 Remedy. Upon a malfunction or failure of Flock Hardware or Embedded Software (a "**Defect**"), Agency must notify Flock's technical support as described in Section 2.10 above. If Flock is unable to correct the Defect, Flock shall, or shall instruct one of its contractors to repair or replace the Flock Hardware or Embedded Software suffering from the Defect. Flock reserves the right in their sole discretion to refuse or delay replacement or its choice of remedy for a Defect until after it has inspected and tested the affected Flock Hardware provided that such inspection and test shall occur within a commercially reasonable time, but no longer than seven (7) business days after Agency notifies the Flock of a known Defect. In the event of a Defect, Flock will repair or replace the defective Flock Hardware at no additional cost to Agency. Absent a Defect, in the event that Flock Hardware is lost, stolen, or damaged, Agency may request that Flock replace the Flock Hardware at a fee according to the then-current Reinstall policy (<https://www.flocksafety.com/reinstall-fee-schedule>). Agency shall not be required to replace subsequently lost, damaged or stolen Flock Hardware, however, Agency understands and agrees that functionality, including Footage, will be materially affected due to such subsequently lost, damaged or stolen Flock Hardware and that Flock will have no liability to Agency regarding such affected functionality nor shall the Usage Fee or Implementation Fees owed be impacted. Flock is under no obligation to replace or repair Flock Hardware or Agency Hardware unless the Flock Hardware contains a Defect.

7.2 Exclusions. Flock will not provide the remedy described in Section 7.1 if Agency has misused the Flock Hardware, Agency Hardware, or Service in any manner.

7.3 Warranty. Flock shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Installation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for

unscheduled emergency maintenance, either by Flock or by third-party providers, or because of other causes beyond Flock's reasonable control, but Flock shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

7.4 Disclaimer. THE REMEDY DESCRIBED IN SECTION 7.1 ABOVE IS AGENCY'S SOLE REMEDY, AND FLOCK'S SOLE LIABILITY, WITH RESPECT TO DEFECTIVE EMBEDDED SOFTWARE. FLOCK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS IS" AND FLOCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS DISCLAIMER OF SECTION 7.4 ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 10.6.

7.5 Insurance. Flock will maintain commercial general liability policies with policy limits reasonably commensurate with the magnitude of Flock's business risk and are in line with the amount required by law. Certificates of Insurance will be provided upon request.

7.6 Force Majeure. Parties are not responsible or liable for any delays or failures in performance from any cause beyond their control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, acts or omissions of third-Party technology providers, riots, fires, earthquakes, floods, power blackouts, strikes, supply chain shortages of equipment or supplies, weather conditions or acts of hackers, internet service providers or any other third Party acts or omissions. Force Majeure includes the novel coronavirus Covid-19 pandemic, and the potential spread of variants, which is ongoing as of the date of the execution of this Agreement.

8. LIMITATION OF LIABILITY; NO FEE TERM; INDEMNITY

8.1 Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOCK AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL HARDWARE AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY, INCOMPLETENESS OR CORRUPTION OF DATA OR FOOTAGE OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND FLOCK'S ACTUAL KNOWLEDGE OR REASONABLE CONTROL INCLUDING REPEAT CRIMINAL ACTIVITY OR INABILITY TO CAPTURE FOOTAGE OR IDENTIFY AND/OR CORRELATE A LICENSE PLATE WITH THE FBI DATABASE; (D) FOR ANY PUBLIC DISCLOSURE OF PROPRIETARY INFORMATION MADE IN GOOD FAITH; (E) FOR CRIME PREVENTION; OR (F) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID AND/OR PAYABLE BY AGENCY TO FLOCK FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT OR OMISSION THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT FLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY OF SECTION 8 ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 10.6.

8.2 Additional No-Fee Term Requirements. IN NO EVENT SHALL FLOCK'S AGGREGATE LIABILITY, IF ANY, ARISING OUT OF OR IN ANY WAY RELATED TO THE COMPLIMENTARY NO-FEE TERM AS DESCRIBED IN SECTION 6.4 EXCEED \$100, WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE. Parties acknowledge and agree that the essential purpose of this Section 8.2 is to allocate the risks under the No-Fee Term described in Section 6.4 and limit potential liability given the aforementioned complimentary service, which would have been substantially higher if Flock were to assume any further liability other than as set forth herein. Flock has relied on these limitations in determining whether to provide the complementary No-Fee Term. The limitations set forth in this Section 8.2 shall not apply to claims or damages resulting from Flock's other obligations under this Agreement.

8.3 Responsibility. Each Party to this Agreement shall assume the responsibility and liability for the acts and omissions of its own employees, deputies, officers, or agents, in connection with the performance of their official

duties under this Agreement. Each Party to this Agreement shall be liable (if at all) only for the torts of its own officers, agents, or employees.

9. MISCELLANEOUS

9.1 Compliance with Laws. The Agency agrees to comply with all applicable local, state and federal laws, regulations, policies and ordinances and their associated record retention schedules, including responding to any subpoena request(s). In the event Flock is legally compelled to comply with a judicial order, subpoena, or government mandate, to disclose Agency Data or Agency Generated Data, Flock will provide Agency with notice.

9.2 Severability. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect.

9.3 Assignment. This Agreement is not assignable, transferable or sublicensable by either Party, without prior consent. Notwithstanding the foregoing, either Party may assign this Agreement, without the other Party's consent, (i) to any parent, subsidiary, or affiliate entity, or (ii) to any purchase of all or substantially all of such Party's assets or to any successor by way of merger, consolidation or similar transaction.

9.4 Entire Agreement. This Agreement, together with the Order Form(s), the then-current Reinstall policy (<https://www.flocksafety.com/reinstall-fee-schedule>), Deployment Plan(s), and any attached addenda are the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both Parties, except as otherwise provided herein. None of Agency's purchase orders, authorizations or similar documents will alter the terms of this Agreement, and any such conflicting terms are expressly rejected. In the event of any conflict of terms found in this Agreement or any other terms and conditions, the terms of this Agreement shall prevail.

9.5 Relationship. Flock shall at all times be and act as an independent contractor.

9.6 Governing Law: Venue. This Agreement shall be governed by the laws of the State in which the Agency is located. The Parties hereto agree that venue would be proper in the chosen courts of the State of which the Agency is located. The Parties agree that the United Nations Convention for the International Sale of Goods is excluded in its entirety from this Agreement.

9.7 Publicity. Upon prior consent from Agency, Flock has the right to reference and use Agency's name and trademarks and disclose the nature of the Services provided hereunder in each case in business and development and marketing efforts, including without limitation on Flock's website.

9.8 Export. Agency may not remove or export from the United States or allow the export or re-export of the Flock IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in Federal Acquisition Regulation ("FAR"), section 2.101, the Services, the Flock Hardware and Documentation are "commercial items" and according to the Department of Defense Federal Acquisition Regulation ("DFAR") section 252.2277014(a)(1) and are deemed to be "commercial computer software" and "commercial computer software documentation." Flock is compliant with FAR Section 889 and does not contract or do business with, use any equipment, system, or service that uses the enumerated banned Chinese telecommunication companies, equipment or services as a substantial or essential component of any system, or as critical technology as part of any Flock system. Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

9.9 Headings. The headings are merely for organization and should not be construed as adding meaning to the Agreement or interpreting the associated sections.

9.10 Authority. Each of the below signers of this Agreement represent that they understand this Agreement and have the authority to sign on behalf of and bind the Parties they are representing.

9.11 Notices. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

FLOCK NOTICES ADDRESS:

1170 HOWELL MILL ROAD, NW SUITE 210

ATLANTA, GA 30318

ATTN: LEGAL DEPARTMENT

EMAIL: legal@flocksafety.com

AGENCY NOTICES ADDRESS:

ADDRESS:

ATTN:

EMAIL:



TOWN COUNCIL AGENDA J.3. CONSENT ITEM(S)

DATE: May 1, 2023
FROM: JP Walton, Strategic Services Manager
ITEM: **Consider approval of the expansion of the Assureon, "Chain of Evidence" storage servers, on GSA contract, from Soccour Solutions, in the amount of \$51,171.**

BACKGROUND: This item is to expand the storage capacity of the Town's Assureon "Chain of Custody" storage servers. Assureon is a modern, redundant storage system that has chain of custody tracking. All evidence data, including in-car and body cam videos will have chain of custody earmarks, which ensures legal validity in court. Currently, the Town has two matching servers which allows for off-site mirroring, furthering data integrity and availability.

This item would expand the storage availability by adding 180TB of additional usable capacity. Video and photographic evidence requires far more storage capacity and body cams are being utilized more and more for police operations and in turn, as evidence in court. This expansion upgrade is required in order to ensure ample storage space available for both current operations as well as future needs.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES: N/A

FISCAL IMPACT: \$51,171

Proposed Expenditure/(Revenue)
\$51,171

Account Number(s):
567-270-84510-2020

LEGAL REVIEW: The Town's standard (construction agreement, professional service agreement, etc) form documents, prepared by Taylor, Olson, Adkins, Sralla, & Elam L.L.P., was used to draft this agreement. No alteration to the legal content of this form document was made.

ATTACHMENTS:

1. Attachment 1 - Soccour Assureon Evidence Storage Expansion

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



TOWN COUNCIL AGENDA J.4. CONSENT ITEM(S)

DATE: May 1, 2023
FROM: Tiffany Bruce, Assistant Town Manager/Town Engineer
ITEM: **Consider approval of a resolution appointing Clay Riggs as the Town's representative, to serve on the Upper Trinity Regional Water District (UTRWD) Board of Directors for a four-year term ending May 31, 2027; and authorization for the Mayor to sign on behalf of the Town.**

BACKGROUND: The Town of Flower Mound has a representative on the Board of Directors for the Upper Trinity Regional Water District (UTRWD). The current term for the representative will be ending on May 31, 2023, and the Council will need to consider the appointment of someone to the new term.

Director of Public Works, Clay Riggs, was appointed by Town Council in 2018 to complete the four-year term that was vacated due to Ken Parr's retirement and was reappointed by Town Council in 2019 to serve the current four-year term.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES: The Town Council could choose to appoint another person to serve on the UTRWD Board of Directors. The representative must be a qualified voter, must reside within the boundaries of UTRWD, may not be an elected official, and may not be an employee of another member-entity of UTRWD.

FISCAL IMPACT: N/A

Proposed Expenditure/(Revenue)
\$

Account Number(s):
100-XXX-XXXXX-XXXX

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

ATTACHMENTS:

1. 2023 UTRWD Appointment

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

TOWN OF FLOWER MOUND, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, REAPPOINTING CLAY RIGGS AS THE TOWN'S REPRESENTATIVE ON THE UPPER TRINITY REGIONAL WATER DISTRICT (UTRWD) BOARD OF DIRECTORS FOR A FOUR-YEAR TERM ENDING MAY 31, 2027; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Upper Trinity Regional Water District (UTRWD) is a conservation and reclamation district created pursuant to Article XVI, Section 59 of the Constitution of the State of Texas and is governed by a board of directors; and,

WHEREAS, a director may not be an official of any governmental entity that has authority to appoint a member of the board, and a director shall serve four years; and,

WHEREAS, directors shall be appointed by the governing bodies of the participants and contract members; and,

WHEREAS, the Town of Flower Mound, as a participating member of the UTRWD, is eligible to have a representative to serve on the UTRWD Board of Directors; and,

WHEREAS, the Town Council recognizes the need to make an appointment for a representative to serve on the UTRWD Board of Directors for a four-year term ending May 31, 2027;

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

SECTION 1

The Town Council of the Town of Flower Mound, Texas, hereby reappoints Clay Riggs to serve as the Town's representative on the UTRWD Board of Directors for a four-year term ending May 31, 2027.

SECTION 2

The Resolution shall take effect immediately upon its passage by the Town Council of the Town of Flower Mound, Texas.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF _____ TO _____, ON THIS THE 1st DAY OF MAY, 2023.

RESOLUTION NO. _____

PAGE 2

APPROVED:

Derek France, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY



TOWN COUNCIL AGENDA K.1. REGULAR ITEM(S)

DATE: May 1, 2023
FROM:
ITEM: There are no regular items on this agenda.

BACKGROUND:

BOARD REVIEW/CITIZEN FEEDBACK:

ALTERNATIVES:

FISCAL IMPACT: \$

Proposed Expenditure/(Revenue)
\$

Account Number(s):
100-XXX-XXXXXX-XXXX

LEGAL REVIEW: (Name of Town Attorney), of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the (contract, agreement, ordinance, resolution, etc.) as to form and legality.

No alteration to the legal content of this (ordinance, resolution, etc) was made, which had originally been approved by Taylor, Olson, Adkins, Sralla, & Elam L.L.P.

The Town's standard (construction agreement, professional service agreement, etc) form documents, prepared by Taylor, Olson, Adkins, Sralla, & Elam L.L.P., was used to draft this agreement. No alteration to the legal content of this form document was made.

ATTACHMENTS:

None

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

No action is required by the Town Council on this item.

Discuss and provide staff with direction.

Action will be considered following the second public hearing.

TOWN COUNCIL FUTURE AGENDA ITEMS

	Meeting Date	Agenda Item	Category
1.	05/16/2023	Oak Street Lift Station and Force Main Phase IV - Testing PSA	Professional Service Agreement
2.	05/16/2023	Consider approval of the minutes from a regular meeting held on 5/1.	Minutes
3.	05/16/2023	Consider approval of Sanitary Sewer Rehabilitation Services for the existing sanitary sewer main related to the Upper Timber Interceptor (Morris Road to One Place Lane) project, to Insituform Technologies, LLC., utilizing The Local Government Purchasing Cooperative Contract #635-21, administered through BuyBoard, in the amount of \$281,576.00.	Contracts
4.	05/16/2023	Consider approval of a Professional Services Agreement with Criado & Associates, Inc., for the design phase services associated with the Forest Vista AC Water Line Decommissioning project, in the amount of \$39,500.00; and authorization for the Mayor to execute same on behalf of the Town.	Professional Service Agreement
5.	05/16/2023	Consider approval of an ordinance canvassing returns and declaring results of a general election held May 6, 2023, for the purpose of electing Council Member Places 2 and 5 and providing an effective date.	Elections
6.	05/16/2023	Consider approval of an ordinance canvassing returns and declaring results of a bond election held May 6, 2023, for the purpose of issuing general obligation bonds for Proposition A.....	Elections
7.	05/16/2023	Administer Oath of Office to reelected Councilmember Place 5, Ann Martin and issue Certificate of Election.	Elections
8.	05/16/2023	May 18 - Work session	Calendar
9.	05/16/2023	June 5 - Regular meeting	Calendar
10.	05/16/2023	Consider approval of a resolution authorizing the application of a grant proposal to the Texas Department of Transportation (TxDOT) Transportation Alternatives Set-Aside Program 2023 Call for Projects; and authorization for the Mayor to execute same on behalf of the Town.	Grant
11.	05/16/2023	Consider approval of a Contract for Services Agreement with Festac Building Construction, Inc. to provide housekeeping services for Twin Coves Park, at the unit prices bid and to establish an annual bid price contract for routine housekeeping services to clean the rented cabins in an annual estimated amount of \$42,000.00; and authorization for the Mayor to execute same on behalf of the Town. This is the award of Bid	Contracts

TOWN COUNCIL FUTURE AGENDA ITEMS

	Meeting Date	Agenda Item	Category
		No 2023-39-A and the contract is for one-year with four one-year renewal options.	
12.	05/16/2023	Future Agenda	Other
13.	05/16/2023	Consider approval of a TIRZ Consulting agreement with P3 Works LLC.	Contracts
14.	05/16/2023	Consider approval of the consumption of alcoholic beverages at the Flower Mound Senior Center during the SIM Auxiliary Elite Chef Competition	Other
15.	05/16/2023	Public Works Week Proclamation (May 21- 27)	Presentation
16.	05/16/2023	Administer Oath of Office to newly elected Councilmember Place 2, _____ and issue Certificate of Election.	Elections
17.	05/16/2023	Discuss and consider election of Mayor Pro Tem and Deputy Mayor Pro Tem	Other
18.	05/16/2023	Certificate of Achievement, Marcus Girls Soccer - UIL 6a State Champions	Presentation
19.	05/18/2023	The following Boards and Commissions to provide update reports:	Other
20.	05/18/2023	All Together Flower Mound	Other
21.	05/18/2023	Animal Services	Other
22.	05/18/2023	Cultural Arts	Other
23.	05/18/2023	Environmental Conservation	Environmental Conservation
24.	05/18/2023	Parks	Other
25.	05/18/2023	School Liaison	Other
26.	05/18/2023	Transportation	Other
27.	05/18/2023	Veterans Liaison	Other
28.	06/05/2023	High Road Water Line Phase II - Construction Agreement	Construction Agreement
29.	06/05/2023	High Road Water Line Phase II - Testing PSA	Professional Service Agreement
30.	06/05/2023	Consider approval of a Professional Services Agreement with Freese and Nichols, Inc., for the design phase services associated with the Lower Timber Interceptor Rehabilitation (Paisley Drive to Rockcreek Court) project, in the amount of \$XXX; and authorization for the Mayor to execute same on behalf of the Town.	Professional Service Agreement

TOWN COUNCIL FUTURE AGENDA ITEMS

	Meeting Date	Agenda Item	Category
31.	06/05/2023	Consider approval of a Professional Services Agreement with Teague Nall and Perkins, Inc., for the design phase services associated with the Lakeside Parkway Capacity Improvements project, in the amount of \$XXX; and authorization for the Mayor to execute same on behalf of the Town.	Professional Service Agreement
32.	06/05/2023	Proclamation and presentation of Hometown Hero banner to Andrew Upchurch.	Presentation