

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

---



June 19, 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](mailto: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. Certificate of Achievement presented to Abigail Counts
2. Proclamation for Founders Classical Academy and their first graduating class
3. Proclamation for National Parks and Recreation Month
4. Community Support Organizations Presentations - Part 2
  - a. [Journey to Dream Foundation](#)
  - b. [Ranch Hands Rescue](#)
  - c. [Lewisville Lake Symphony](#)
  - d. [CASA of Denton County](#)
  - e. [Christian Community Action](#)
  - f. [Communities in Schools of North Texas](#)
  - g. [Humane Tomorrow](#)
  - h. [SPAN of Denton County](#)

**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
  - a. Kirkpatrick Phase III
2. Economic Development Projects
3. Organizational Updates

## **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. July 3 - Regular meeting canceled in observance of the Independence Day holiday
2. July 17 - Regular meeting

## **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 6/5 - Consider approval of the minutes from a regular meeting held on 6/5.
2. Vehicle Telematics/GPS - Consider approval of the purchase of a 3-year licensing contract paid annually for Samsara vehicle asset gateways, a vehicle telematics/GPS solution for a 3 year total cost of \$190,830.55 utilizing Sourcewell Contract # 020221-SAM.
3. Consider approval of the sale and consumption of a - Consider approval of the sale and consumption of alcoholic beverages (beer and wine) at the Heritage Park of Flower Mound during Therapeutic Recreation Group's 2023 Mound Throw Down event. The Parks Board recommended approval by a vote of 6 to 0 at its June 1, 2023, regular meeting.
4. Concrete Replacement - Consider replacement of the damaged concrete at Fire Station One on east and west exterior driveways in the amount of \$224,137.50.



5. 5th FY 22-23 Budget Amendment - Consider approval of an ordinance amending the Town of Flower Mound's Annual Budget for the fiscal year beginning October 1, 2022, and ending on September 30, 2023, as adopted by Ordinance No. 45-22 and amended by Ordinance No. 60-22, No. 06-23, No. 16-23 and No. 19-23 for adjustments to the General Fund, Utility Fund and Stormwater Utility Fund.
6. 2nd FY 22-23 Budget Amendment- Crime District - Town Council acting as the Board of Directors for the Town of Flower Mound Crime Control and Prevention District to consider approval of a resolution amending the Town of Flower Mound Crime Control and Prevention District budget for the fiscal year beginning on October 1, 2022, and ending on September 30, 2023, as adopted by Resolution No. 14-22 and amended by Resolution No. 22-22.
7. 1st FY 22-23 Budget Amendment- Fire District - Town Council acting as the Board of Directors for the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District to consider approval of a resolution amending the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District budget for the fiscal year beginning on October 1, 2022, and ending on September 30, 2023, as adopted by Resolution No. 15-22.
8. Canyon Falls Park Project - Consider ratification of the Termination Declaration of the Construction Agreement between the Town of Flower Mound and MSB Constructors, Inc. - Bid #2021-1-B, delivered to MSB Constructors, Inc. on June 16, 2023 by the Town Attorney.
9. Stormwater cost of service and rate design study - Consider approval of a proposal to conduct a Stormwater Cost of Service and Rate Design Study with NewGen Strategies and Solutions in a not to exceed amount of \$27,500.00.

**K. REGULAR ITEM(S)**

1. TIRZ/PID Consulting Services - Consider approval of a Professional Services Agreement with P3 Works LLC, for TIRZ/PID creation and administration services agreement with a not to exceed amount of \$40,000 - FY22-23.
2. ZPD21-0016 - Landshark Car Wash - Public Hearing to consider an ordinance for rezoning (ZPD21-0016 – Landshark Car Wash) to amend Planned Development District No.114 (PD-114) with Office District (O) and Retail District-2 (R-2) uses, to modify the conceptual plans and elevations, and modify the development standards for Lot 2RA-1, Block A, of the Windsor Ridges Addition to permit a car wash use. The property is generally located east of Long Prairie Road and south of Merriweather Lane. (PZ recommended approval by a vote of 5 to 1 at its June 12, 2023, meeting.)
3. Certificates of Obligation - Consider approval of an ordinance authorizing the issuance of the Town of Flower Mound, Texas, Certificates of Obligation, Series 2023, for the purpose of paying for waterworks and sewer system improvements, establishing parameters for the sale and issuance of such bonds, delegating certain matters to an authorized official of the Town and resolving all matters incident and related thereto.
4. General Obligation Refunding Bonds - Consider approval of an ordinance authorizing the issuance of the Town of Flower Mound, Texas, General

- Obligation Refunding Bonds, Series 2023, establishing parameters for the sale and issuance of such bonds, delegating certain matters to an authorized official of the Town and resolving all matters incident and related thereto.
5. Over 65 Homestead Exemption - Consider approval of an ordinance amending Section 62-51(a) of Chapter 62 of the Code of Ordinances (Taxation), to increase the exempted amount of the appraised value of residence homesteads of individuals 65 years of age or older to \$150,000.
  6. Disabled Homestead Exemption - Consider approval of an ordinance amending Section 62-52 of Chapter 62 of the Code of Ordinances (Taxation), to increase the exempted amount of the appraised value of residence homesteads of disabled individuals \$150,000.
  7. Homestead Exemption - Consider approval of an ordinance increasing the residential homestead ad valorem (property) tax exemption to 12.5%.

#### **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, Historical Commission Task Force, 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
  - b. La Estancia Investments, L.P. v. Town of Flower Mound, Texas, et al
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**

**O. ADJOURN**

I do hereby certify that the Notice of Meeting was posted on the bulletin board at the Town Hall for the Town of Flower Mound, Texas, in a place convenient and readily accessible to the general public at all times and said Notice was also posted on the Town's website in accordance with GC Section 551.056 on the following date and time: June 16, 2023, at 12:25 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.

To preview upcoming items of business that may appear on future agendas click [HERE](#).

# Town Council Regular Meeting

---



June 5, 2023  
Town Hall  
2121 Cross Timbers Road  
Flower Mound, TX 75028

6:00 p.m.

## DRAFT MINUTES

### A. CALL TO ORDER

Mayor Pro Tem Engel called the meeting to order at 6:00 p.m. with the following members present:

Jim Engel, Mayor Pro Tem  
Ann Martin, Deputy Mayor Pro Tem  
Adam Schiestel, Councilmember Place 1  
Chris Drew, Councilmember Place 2  
Brian Taylor, Councilmember Place 3

with the following member(s) absent:  
Derek France, Mayor

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  
Tammy Wilson, Chief Financial Officer  
JP Walton, Director of Strategic Services  
Brittini Barnett, Grants and Financial Analyst

### B. INVOCATION

Chaplain Langstaff 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 Pro Tem Engel led the pledges.

### D. PRESENTATION(S)

1. Proclamation and presentation of Hometown Hero banner to Andrew Upchurch  
Mayor Pro Tem Engel presented Tamra Rodgers (his mother) with the Proclamation.
2. Community Support Organizations Presentations - Part 1  
The following organizations gave presentations regarding services offered and funding needs:
  1. The Actors Conservatory Theatre
  2. Flower Mound Community Orchestra
  3. Flower Mound Performing Arts Theatre (Our Productions Theatre Co.)
  4. Voices of Flower Mound
  5. Camp Summit
  6. Children's Advocacy Center for North Texas
  7. Denton County Friends of the Family
  8. Hearts for Homes
  9. PediPlace
  10. Winning the Fight

#### **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

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

|    | <b>Speaker name and address</b>                                                                                             | <b>Subject (as written on the form)</b> |
|----|-----------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|
| 1. | Sandra Weinstein, 200 Mill Rd                                                                                               | LGBTQ+ Community                        |
| 2. | Diane Beck, 2421 Mercedes Rd,<br>Denton                                                                                     | Conservative Speech                     |
| 3. | Kevin Hutchens, 370 Northwood<br>with donated time from:<br>Julie Hutchens, 4200 Broadway<br>James Harris, 416 Northwood Dr | Zoning ZBD 22-0001/0003                 |

#### **F. ANNOUNCEMENTS**

1. Announcements from the mayor and council members

Councilmember Schiestel expressed appreciation for the representatives in Austin that came through for the Town with respect to legislation that would have had a negative impact on the Town.

Deputy Mayor Pro Tem Martin expressed appreciation for the Town staff that worked on the 2022 Town annual report.

Councilmember Drew expressed congratulations to all the graduating seniors.

Mayor Pro Tem Engel announced that the Flower Mound High School baseball team is in the final 4 for the 6A state championship and there will be a send-off at noon on Thursday at the school baseball field for the team.

## **G. TOWN MANAGER'S REPORT**

1. Capital Improvement Projects
2. Economic Development Projects
3. Organizational Updates
4. Legislative Update  
Mr. Childers summarized the legislative session bills staff is currently tracking, along with their status.
5. Adaptive Signalization Update  
Mr. Childers provided a status update on the adaptive signalization program. He, or Ms. Bruce, responded to questions or comments from Council regarding timing changes.

## **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).

Councilmember Schiestel requested the following future agenda items:

- add mixed-use zoning to the Town's regular tree mitigation standards and require an Environmental Conservation Commission recommendation
- consider adding a green waste disposal program

There was consensus by a majority of Councilmembers to have a discussion on both of those topics.

Councilmember Drew requested a future item to discuss adding schools to the

development standards (SMARTGrowth). There was consensus by a majority of Councilmembers to have a discussion on that topic.

#### **I. COORDINATION OF CALENDARS**

Mayor Pro Tem Engel confirmed that all members plan to be at both of the meetings referenced below.

1. June 15 - Strategic Planning Retreat (10am - 5pm)
2. June 19 - Regular meeting

#### **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.

**ACTION:** Deputy Mayor Pro Tem Ann Martin moved to approve Consent items 1 - 10 as presented in the agenda caption. Councilmember Adam Schiestel seconded the motion.

**AYES:** Ann Martin, Jim Engel, Adam Schiestel, Brian Taylor, Chris Drew

**NAYS:** None

**ABSTAIN:** None

**RESULT:** 5 : 0

1. Minutes 5/16 & 5/18 - Consider approval of the minutes from a regular meeting held on 5/16, and a work session held on 5/18.
2. Lakeside Parkway Capacity Improvements - Design PSA - 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 \$760,000.00; and authorization for the Mayor to execute same on behalf of the Town.
3. Easement Abandonment 2141 Midway Road - Consider approval of an ordinance vacating and abandoning of the existing 15-foot utility easement for 2141 Midway Road located along the east property line of Tract 1, Lot 22A, Block B, Twin Coves Estates Subdivision. The property is located south of Wichita Trail and west of Simmons.

#### **ORDINANCE NO. 17-23**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, VACATING AND ABANDONING THE EXISTING 15-FOOT UTILITY EASEMENT LOCATED ALONG THE NORTH PROPERTY LINE OF TRACT 1, LOT 22A, BLOCK B OF TWIN COVES ESTATES SUBDIVISION, AN ADDITION TO THE TOWN OF FLOWER MOUND, DENTON COUNTY, TEXAS; DETERMINING THAT THERE IS NO CURRENT NOR PROJECTED FUTURE NEED FOR A PORTION OF SAID EASEMENT DEPICTED IN**

**EXHIBIT “A;” AUTHORIZING THE MAYOR TO EXECUTE A QUITCLAIM DEED RELEASING AND ASSIGNING THE REAL PROPERTY TO THE OWNERS OF THE FEE ESTATE; REQUIRING A HOLD HARMLESS AND INDEMNITY AGREEMENT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

4. Easement Abandonment at 4816 Mesquite Street - Consider approval of an ordinance vacating and abandoning the southern 172 feet of the existing 15-foot utility easement located at 4816 Mesquite Street along the east property line of Lot 1R, Block 29, Pecan Acres Subdivision. The Pecan Acres is generally located west of 2499 and north of West Windsor Drive.

**ORDINANCE NO. 18-23**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, VACATING AND ABANDONING THE SOUTHERN 172 FEET OF THE EXISTING 15-FOOT UTILITY EASEMENT LOCATED ALONG THE EAST PROPERTY LINE OF LOT 1R, BLOCK 29 OF PECAN ACRES SUBDIVISION, AN ADDITION TO THE TOWN OF FLOWER MOUND, DENTON COUNTY, TEXAS; DETERMINING THAT THERE IS NO CURRENT NOR PROJECTED FUTURE NEED FOR A PORTION OF SAID EASEMENT DEPICTED IN EXHIBIT “A;” AUTHORIZING THE MAYOR TO EXECUTE A QUITCLAIM DEED RELEASING AND ASSIGNING THE REAL PROPERTY TO THE OWNERS OF THE FEE ESTATE; REQUIRING A HOLD HARMLESS AND INDEMNITY AGREEMENT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

5. 4th FY 22-23 Budget Amendment - Consider approval of an ordinance amending the Town of Flower Mound’s Annual Budget for the fiscal year beginning October 1, 2022, and ending on September 30, 2023, as adopted by Ordinance No. 45-22 and amended by Ordinance No. 60-22, No. 06-23 and No. 16-23 for adjustments to the General Fund and Vehicle and Equipment Replacement Fund.

**ORDINANCE NO. 19-23**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE TOWN’S BUDGET FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2022, AND ENDING ON SEPTEMBER 30, 2023, AS ADOPTED BY ORDINANCE NO. 45-22 AND AMENDED BY ORDINANCE NO. 60-22, NO. 06-23 AND NO. 16-23, BY PROVIDING FOR ADJUSTMENTS TO THE GENERAL FUND AND VEHICLE AND EQUIPMENT REPLACEMENT FUND; PROVIDING THAT EXPENDITURES FOR SAID FISCAL YEAR SHALL BE MADE IN ACCORDANCE WITH SAID BUDGET, AS AMENDED; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

6. Vehicle purchase - Consider approval of the purchase of (1) 2023 Chevrolet Express 3500 Van w/ KUV Body and Side Mount Ladder Racks for a grand total of \$60,566.60 utilizing the TIPS USA Contract # 210907.



7. Forest Vista AC Water Line Decommissioning - Design PSA - 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.
8. Purchase custodial supplies - Consider approval to utilize the City of Mesquite's bid #2020-027 with Master Cleaning Supply, Inc. to provide additional custodial supplies for all Town facilities in the estimated annual amount of \$80,000.
9. Audit Engagement Letter 2023 - Consider approval of the engagement letter with Eide Bailly, L.L.P., to perform external auditing services for the fiscal year ending September 30, 2023; and authorization for the Mayor to execute same on behalf of the Town.
10. 2023 PWERT Message Board Trailer - Consider approval of an MOU to accept the transfer of the Public Works Emergency Response Team (PWERT) message board trailer from the City of Rowlett that was awarded to the City as part of the Homeland Security Grant Program; and authorization for the Mayor to execute same on behalf of the Town.

#### **K. REGULAR ITEM(S)**

1. SUP22-0006– 6201 Shoreview Accessory Dwelling - Public Hearing to consider an ordinance granting Specific Use Permit No. 483 (SUP22-0006– 6201 Shoreview Accessory Dwelling) to permit an accessory dwelling. The property is generally located south of Shoreview Court and west of Bayshore Drive. (PZ recommended approval by a vote of 6 to 0 at its May 8, 2023, meeting.)

Ms. Murphy gave a presentation identifying or noting:

- General and detailed location
- Land use and zoning
- Concept plan
- Site photos
- Accessory dwelling regulations
- Concept elevations
- Material board
- Rendering

Mayor Pro Tem Engel opened the public hearing at 7:57 p.m. No one spoke.  
Mayor Pro Tem Engel closed the public hearing at 7:58 p.m.

#### **ORDINANCE NO.20-23**

#### **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, TOWN OF FLOWER MOUND, TEXAS, BY APPROVING SPECIFIC USE PERMIT NO. 483 (SUP-483) FOR AN ACCESSORY DWELLING ON CERTAIN PROPERTY DESCRIBED AS LOT 22, BLOCK A OF THE LANDING AND ZONED A AGRICULTURAL DISTRICT; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

**ACTION:** Councilmember Adam Schiestel moved to approve as presented in the agenda caption. Councilmember Brian Taylor seconded the motion.

**AYES:** Ann Martin, Jim Engel, Adam Schiestel, Brian Taylor, Chris Drew

**NAYS:** None

**ABSTAIN:** None

**RESULT:** 5 : 0

2. Property Tax Exemptions - Hold a discussion and provide direction for property tax homestead and other exemptions.

Mr. Childers provided an introduction for this item. Mr. Walton reported on current legislation (Senate Bill 3 and Special Session) that could be a factor for future property tax discussions. He responded to questions or comments from Council regarding:

- Clarification regarding the Senate's version of the bill, including time line

Ms. Wilson gave a presentation identifying or noting:

- Homestead exemption
- Over 65 exemption
- Deadline for changes to an existing exemption

Mr. Childers pointed out the future tax rate situation and indicated that staff is seeking feedback from Council.

There was Council discussion or questions regarding:

- interest in seeing modeling for different scenarios, as well as the inflation adjustment amount for the over-65 exemption
- dollars associated with any rate reductions or caps to understand what working with
- interest in seeing something done for the over-65 population to give them some relief and the math behind those options would be helpful
- how appraisal increases are higher than ever and the opportunity that provides

- interest in macro-level reporting for the homestead exemption data
- summary of the action that was taken last year to lower the rate
- homestead and tax rate
- how residential property tax has gone up more than the commercial
- what percentage is homestead versus non-homestead properties
- if there is a way of checking which homes are used for Air B & B to ensure people are paying the right amount based on how they are using their property
- importance of having the certified roll in order to make decisions
- 5% appraisal cap impact
- effect of a senior tax freeze
- interest in comparison information from other cities (tax rate and exemptions) and with consideration of the median home price

3. Employee Surveys and Recruitment / Retention - Presentation and discussion regarding the 2022 Employee Survey, the 2022 Supplemental Employee Survey, and employee recruitment and retention practices.

Mr. Walton gave a presentation identifying or noting:

- 2022 Employee Survey summary, including results
- 2022 Supplemental Employee Survey, including results, and action taken

and he, or Mr. Childers, responded to comments or questions from Council regarding:

- was there a freeform opportunity for comments
- were there ideas that came forward that should be given further consideration
- were the survey results shared with all staff
- interest in seeing the data for police and fire since they are different
- how people want to be heard and that their voice matters, so anything that encourages communication is important
- employee satisfaction changes since 2018

## **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, Historical Commission Task Force, Parks Board, School Liaison Committee, SMARTGrowth Commission, Tax Increment Reinvestment Zone Number (TIRZ #1), Transportation Commission, and Veterans Liaison Board.

No discussion.

## **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:

Mayor Pro Tem Engel announced that the time is 8:42 p.m. and the Town Council is convening into a closed meeting pursuant to Texas Government Code Chapter 551, Sections 551.071, 072, 074, and 087.

1. Consultation with Town Attorney.

- a. Canyon Falls Park Project
- b. Legal advice regarding Interim Holding parcels in Town
- c. Oncor Switch and Substation project, and CCN for the Ramhorn Hill - Dunham 345 kv transmission line
- d. Engagement of outside counsel for La Estancia Investments, L.P. v. Town of Flower Mound, Texas, et al.

**ACTION:** Councilmember Adam Schiestel moved to approve the engagement of outside counsel for La Estancia Investments. Councilmember Chris Drew seconded the motion.

**AYES:** Ann Martin, Jim Engel, Adam Schiestel, Brian Taylor, Chris Drew

**NAYS:** None

**ABSTAIN:** None

**RESULT:** 5 : 0

- e. Potential consultant engagement for economic development services

- 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.

Mayor Pro Tem Engel reconvened the meeting in open session at 9:53 p.m. Action was taken as referenced above.

**O. ADJOURN**

Mayor Pro Tem Engel adjourned the meeting at 9:54 p.m.

**TOWN OF FLOWER MOUND, TEXAS**

---

**JIM ENGEL, MAYOR PRO TEM**

**ATTEST:**

---

**THERESA SCOTT, TOWN SECRETARY**



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

---

**DATE:** June 19, 2023

**FROM:** Billy Sterner, Fleet Services Manager

**ITEM:** Consider approval of the purchase of a 3-year licensing contract paid annually for Samsara vehicle asset gateways, a vehicle telematics/GPS solution for a 3 year total cost of \$190,830.55 utilizing Sourcewell Contract # 020221-SAM.

---

**BACKGROUND:** Consider approval of the purchase of a 3-year licensing contract paid annually for Samsara vehicle asset gateways, a vehicle telematics/GPS solution for a 3 year total cost of \$190,830.55 utilizing Sourcewell Contract # 020221-SAM which consists three annual payments. \$64,210.85 in year 1 and \$63,309.85 in year 2 & 3. A town fleet wide vehicle telematics/GPS option was approved as a decision Package in the FY 22-23 budget and replaces a recently expired vehicle telematics/GPS solution that was functional on a small portion of the town fleet.

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

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** \$190,830.55 total over a 3 year period.

**Proposed Expenditure/(Revenue)**

\$190,830.55

**Account Number(s):**

100-650-59310-5130

**LEGAL REVIEW:** Dean Roggia, of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the contract as to form and legality.

**ATTACHMENTS:**

1. Contract

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



Samsara Inc  
1 De Haro Street  
San Francisco, CA 94107  
www.samsara.com

## QUOTE #Q-416217

Issued 05-31-2023

Expires 07-14-2023

### Prepared For:

Town of Flower Mound  
2121 Cross Timbers Rd  
Flower Mound, Texas  
75028-2602

Sourcewell Contract #: 020221-SAM

## Quote Summary

Subtotal

Hardware and Accessories

\$0.00

### Licenses

License Term – 36  
Months

Shipping and Handling

\$901.00

Upfront Hardware Sales Tax

\$0.00

Annual License Sales Tax

\$0.00

First Year Payment

\$64,210.85

Payments Beginning Year Two

\$63,309.85

If shipping is "Pending" - Amount is pending due to size of order; Shipping and Handling subject to change.  
If Sales tax is "Pending" – Final amount will be provided prior to payment  
\*3% fee  
charged on non-ACH charges (Canada Exempt)  
\*Sales tax subject to change



Samsara Inc  
1 De Haro Street  
San Francisco, CA 94107  
www.samsara.com

**SHIP TO Bill Sterner**  
**1101 Duncan Ln**  
**Flower Mound, Texas, 75028-3488**  
**United States**

| Hardware and Accessories                                                | Quantity | Net Unit Price | Total Price |
|-------------------------------------------------------------------------|----------|----------------|-------------|
| Driver ID Token<br>ACC-DRIVERID                                         | 480      | \$0.00         | \$0.00      |
| VG54 Aux Cable<br>CBL-VG-CAUX                                           | 248      | \$0.00         | \$0.00      |
| Vehicle IoT Gateway, model VG54<br>HW-VG54-NA                           | 224      | \$0.00         | \$0.00      |
| Enhanced VG Series OBDII J1962 L-mount cable<br>CBL-VG-COBDII-Y1        | 221      | \$0.00         | \$0.00      |
| Panic Button (VG54)<br>ACC-CPB                                          | 100      | \$0.00         | \$0.00      |
| AG51 Unpowered Asset Gateway<br>HW-AG51                                 | 74       | \$0.00         | \$0.00      |
| AG52 Powered Asset Gateway<br>HW-AG52                                   | 70       | \$0.00         | \$0.00      |
| CBL-AG-BPWR<br>CBL-AG-BPWR                                              | 70       | \$0.00         | \$0.00      |
| AG26<br>HW-AG26                                                         | 35       | \$0.00         | \$0.00      |
| AG J1939 open wire cable<br>CBL-AG-AOPEN                                | 35       | \$0.00         | \$0.00      |
| Vehicle IoT Gateway, model VG54, for Heavy Duty Vehicles<br>HW-VG54-NAH | 24       | \$0.00         | \$0.00      |
| Enhanced VG Series J1939 or J1708 (9-pin)<br>CBL-VG-CJ1939              | 24       | \$0.00         | \$0.00      |
| CBL-VG-CRP1226<br>CBL-VG-CRP1226                                        | 2        | \$0.00         | \$0.00      |
| Enhanced VG Series Isuzu cable<br>CBL-VG-CIZU                           | 1        | \$0.00         | \$0.00      |
| Hardware Due                                                            |          |                | \$0.00      |

**SHIP TO Billy Sterner**  
**1101 Duncan Ln**  
**Flower Mound, Texas, 75028-3488**  
**United States**

| Hardware and Accessories | Quantity | Net Unit Price | Total Price |
|--------------------------|----------|----------------|-------------|
| Driver ID Token          | 480      | \$0.00         | \$0.00      |





Samsara Inc  
1 De Haro Street  
San Francisco, CA 94107  
www.samsara.com

ACC-DRIVERID

|                                                                         |     |        |        |
|-------------------------------------------------------------------------|-----|--------|--------|
| VG54 Aux Cable<br>CBL-VG-CAUX                                           | 248 | \$0.00 | \$0.00 |
| Vehicle IoT Gateway, model VG54<br>HW-VG54-NA                           | 224 | \$0.00 | \$0.00 |
| Enhanced VG Series OBDII J1962 L-mount cable<br>CBL-VG-COBDII-Y1        | 221 | \$0.00 | \$0.00 |
| Panic Button (VG54)<br>ACC-CPB                                          | 100 | \$0.00 | \$0.00 |
| AG51 Unpowered Asset Gateway<br>HW-AG51                                 | 74  | \$0.00 | \$0.00 |
| AG52 Powered Asset Gateway<br>HW-AG52                                   | 70  | \$0.00 | \$0.00 |
| CBL-AG-BPWR<br>CBL-AG-BPWR                                              | 70  | \$0.00 | \$0.00 |
| AG26<br>HW-AG26                                                         | 35  | \$0.00 | \$0.00 |
| AG J1939 open wire cable<br>CBL-AG-AOPEN                                | 35  | \$0.00 | \$0.00 |
| Vehicle IoT Gateway, model VG54, for Heavy Duty Vehicles<br>HW-VG54-NAH | 24  | \$0.00 | \$0.00 |
| Enhanced VG Series J1939 or J1708 (9-pin)<br>CBL-VG-CJ1939              | 24  | \$0.00 | \$0.00 |
| CBL-VG-CRP1226<br>CBL-VG-CRP1226                                        | 2   | \$0.00 | \$0.00 |
| Enhanced VG Series Isuzu cable<br>CBL-VG-CIZU                           | 1   | \$0.00 | \$0.00 |
| Hardware Due                                                            |     |        | \$0.00 |

| Licenses                                                    | Quantity | Annual Unit Price | Total Annual Price |
|-------------------------------------------------------------|----------|-------------------|--------------------|
| License for Unpowered Asset Tracker<br>LIC-AG-UNPWR         | 74       | \$94.75           | \$7,011.50         |
| License for Basic Powered Asset Tracker<br>LIC-AG-PWR-BASIC | 70       | \$106.80          | \$7,476.00         |
| License for Asset Gateways<br>LIC-AG2-ENT                   | 35       | \$162.01          | \$5,670.35         |
| Annual License                                              |          |                   | \$20,157.85        |



Samsara Inc  
1 De Haro Street  
San Francisco, CA 94107  
www.samsara.com

---

Due

---

| Bundles                                                                         | Quantity | Annual Unit Price  | Total Annual Price |
|---------------------------------------------------------------------------------|----------|--------------------|--------------------|
| License for Vehicle Gateways - Public Sector Only, No WiFi, No ELD<br>LIC-VG-PS | 248      | \$174.00           | \$43,152.00        |
|                                                                                 |          | Annual License Due | \$43,152.00        |



Samsara Inc  
1 De Haro Street  
San Francisco, CA 94107  
[www.samsara.com](http://www.samsara.com)

## **Thank you for considering Samsara for your fleet.**

Samsara provides real-time visibility, business-relevant tools, and powerful analytics that enable customers to increase the productivity of their fleets and reduce operating costs. A solution for your fleet is proposed below.

### **What is included?**

Samsara's fleet tracking solution includes hardware accessories and a per-gateway license. Gateway licenses provide all ongoing elements of the service, including:

- Real-time location and vehicle telematics
- Dashboard access with unlimited administrator accounts
- Driver App for iOS and Android devices with unlimited driver accounts
- Over-the-air software feature upgrades
- API access as it relates to features for integration with 3rd party systems
- Maintenance and phone support

Samsara does not include hidden costs in its licenses. If you want access to Samsara's full set of fleet features--including but not limited to WiFi hotspot and ELD capabilities--you will need to upgrade your license. Samsara reserves the right to audit usage of features unrelated to the solution as well as remove them from the Samsara Dashboard.



Samsara Inc  
1 De Haro Street  
San Francisco, CA 94107  
[www.samsara.com](http://www.samsara.com)

## Payment Terms

This order form includes a license fee for the Samsara Software associated with the Hardware to be paid annually and, if applicable, a one-time Hardware cost to be paid upfront (Net-30). The annual fees are payable by recurring wire transfer. All transfers are subject to a 3% processing fee unless the wire transfer is initiated via ACH, or unless payment is made via check, in which case the 3% processing fee will be waived. Late payments are subject to a 1.5% per month late fee. If license payments are delinquent by 60 days, Samsara may suspend the Service until late payments are remitted.

## License Term

The license term for the Samsara Software licenses purchased under this Order Form begins on the day Samsara activates the applicable Samsara Software license by providing you a claim. A then-unactivated Samsara Software license will be shipped to you under this Order Form, such that the Samsara Software license will be activated on the day the Samsara Hardware ships. Notwithstanding the foregoing, if you are renewing the license term for a previously-activated Samsara Software license under this Order Form, the License Start Date for the renewal license term shall be the day that Samsara extends your access to the Hosted Software for the renewal license term. Samsara Hardware requires a valid license to function.

Samsara may ship Hardware under this Order Form subject to a schedule as mutually agreed between the Parties or as determined by Samsara. To the extent such Hardware is associated with then-unactivated Samsara Software licenses, the Samsara Software license term for each such Hardware device will start on the day that device ships regardless of the shipment schedule for the other such Hardware devices. If all such Hardware is shipped in one shipment, the license term for all such Hardware will be the full license term under this Order Form. If such Hardware is shipped in multiple shipments, only the license term of such Hardware in the initial shipment will be such full license term. The license term of the remaining such Hardware shipped after the initial shipment will be set to match the then-remaining license term of the initial shipment, so that the license term for all such Hardware under this Order Form expires on the same date. The total cost of the licenses for such Hardware shipped after the initial shipment will be pro-rated based on their actual license term, rounded up to the nearest month, as compared to the full license term under this Order Form. Certain payment amounts under this Order Form assume that the entire order is fulfilled at the same time and are subject to potential reduction based on the actual schedule of order fulfillment.

## Support and Warranty

Samsara stands behind its Products. Hardware Products that require a valid license to function come with a warranty that lasts as long as you maintain a valid license for such Hardware. All other Hardware Products, such as accessories, come with a one-year warranty, unless otherwise specified on the relevant Samsara data sheet. During the warranty period, Hardware exhibiting material defects will be replaced pursuant to our Hardware Warranty & RMA policy at [www.samsara.com/support/hardware-warranty](http://www.samsara.com/support/hardware-warranty). Additional support information can be found at [www.samsara.com/support](http://www.samsara.com/support).

## Terms

Unless otherwise set forth herein, your use and access of the Hardware, Products, and Services specified herein are governed by Samsara's terms of service found at <https://www.samsara.com/terms-of-service>, unless the Parties have entered into a separate terms of service agreement and/or a separate terms of service agreement is attached to this Order Form, in which case such separate terms of service agreement shall govern (the "Terms of Service"). You agree to be bound by the Terms of Service, and any capitalized terms not defined



Samsara Inc  
1 De Haro Street  
San Francisco, CA 94107  
[www.samsara.com](http://www.samsara.com)

herein shall have the meaning set forth in the Terms of Service. You further agree that any other Order Forms you enter into for the purchase of Products shall also be governed by the Terms of Service unless otherwise set forth in the applicable Order Form. For clarity, unless otherwise agreed by the Parties or approved by Samsara, the pricing and payment terms under this Order Form shall not apply to any such other Order Forms.

The continuation of this Order Form one (1) year after the license start date and annually thereafter is contingent upon the appropriation of sufficient funds by Customer. If sufficient funds fail to be appropriated by Customer to provide for the continuation of the Order Form for Customer's then-subsequent fiscal year, Customer may terminate this Order Form with prior written notice effective as of the later of the date of the beginning of such subsequent fiscal year and the end of the then-current annual license period. If Customer so terminates this Order Form, Samsara shall be entitled to payment of and for: all amounts due as of the date of termination; deliverables in progress; liabilities, fees, or costs caused by such termination including for obligations that extend beyond the date of termination; and reasonable Order Form close-out costs.



Samsara Inc  
1 De Haro Street  
San Francisco, CA 94107  
www.samsara.com

## Notification of Confidentiality

Except as legally required under applicable public records request laws, provided that you use reasonable efforts to provide Samsara with advance notice of any such disclosure, you agree that the pricing and payment terms specified in this Order Form shall (i) be held in strict confidence; (ii) not be disclosed to any Samsara competitor or other entity, except as pre-approved in writing by Samsara; and (iii) not be used except to evaluate the suitability of the Samsara Products for your business. You will immediately notify Samsara in the event of any unauthorized use or disclosure under these terms. Violation of these obligations will cause irreparable harm to Samsara for which Samsara may obtain compensatory and timely injunctive relief from a court, as well as any other remedies that may be available, including recovery of all reasonable attorney's fees and costs incurred in seeking such remedies. Your obligations specified herein shall last until the pricing and payment terms herein are, through no fault or action by you, public. This Order Form is a legally binding agreement between you ("Customer") and Samsara Inc. ("Samsara"). IN WITNESS WHEREOF, Customer has caused this Order Form to be executed by its duly authorized representative.

I confirm acceptance of this Order Form on behalf of the Customer identified herein and represent and warrant that I have full and complete authority to bind the Customer to this Order Form, including all terms and conditions herein. Please confirm acceptance of this Order Form by signing below:

Signature

---

Print Name:

---

Date:

---

**Samsara Terms of Service**  
**Last Updated: December 2022**

---

Welcome to Samsara. Please read these Terms of Service carefully because they govern your use of our products and services. The Customer, together with Samsara Inc., are referred to as the “**Parties**”.

1. Definitions.

1. “**Account**” means the accounts Customer creates, via the Hosted Software, to access Customer Data.
2. “**Affiliates**” means any other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the Customer.
3. “**Apps**” means software applications for smartphones and tablets distributed by Samsara through Google Play or through the Apple App Store.
4. “**Authorized User**” means Customer’s employees, Affiliates, and/or contractors whom Customer authorizes to use the Samsara Software strictly on its behalf.
5. “**Customer**” or “**you**” means the company or legal entity for which you are accepting these Terms and its Affiliates who enter into Order Forms (for each such Affiliate, solely with respect to Order Forms entered into by it and for so long as it remains a Customer Affiliate).
6. “**Customer Data**” means data captured by Customer’s use of the Hardware, data submitted by Customer or by a third party (including from or through Non-Samsara Products) on Customer’s behalf into Apps and Hosted Software, and the analysis, reports, and alerts generated by the Products containing such data. For the avoidance of doubt, Customer Data does not include any Samsara Software.
7. “**Documentation**” means any Product training, technical services, or documentation made available to Customer through the Samsara website or otherwise made available to Customer by Samsara.
8. “**Equipment**” means the vehicle, equipment, asset, building, structure, or item into which Hardware is installed.
9. “**Firmware**” means software embedded in or otherwise running on the Hardware.
10. “**Hardware**” means the Samsara hardware devices such as gateways, cameras, sensors, controllers, vision systems, and accessories, that Customer has purchased, received for a free trial, or has otherwise acquired via an Order Form.
11. “**Hosted Software**” means Samsara’s cloud-hosted software platform, including the interface accessed online.
12. “**License Expiration Date**” means the later of (i) the original license termination date set forth in the applicable Order Form or other contract you entered into for the original purchase of Products or under which Products were originally made available to you (“**Initial Term**”), and (ii) if applicable to such contract the end of the then-active Renewal Term (as defined below).
13. “**Malicious Code**” means code, files, scripts, agents, software or programs intended to do harm or allow for unauthorized access, including, for example, viruses, worms, time bombs, and Trojan horses.

14. **"Non-Samsara Products"** means any web-based, offline, or mobile applications, or other resources, users, data, systems, networks, products, services, vehicles, equipments, hardware, or software functionality that is provided by Customer or a third party and that interoperates and/or exchanges data with the Products.
15. **"Order Form"** means the quote issued by Samsara and executed by the Customer setting forth the purchase or procurement of Samsara Products and/or licenses thereto, or a purchase order or similar ordering document issued by Customer to Samsara setting forth the purchase or procurement of Samsara Products and/or licenses thereto, which Customer shall ensure references, and reflects identical terms and conditions to, the quote issued by Samsara for such purchase or procurement. By entering into an Order Form hereunder, a Customer Affiliate agrees to be bound by these Terms as if it were Customer.
16. **"Pre-Launch Offerings"** means any Samsara hardware and/or software offerings and related documentation and accessories that are not generally available to Samsara customers and that may be in the research, development, prototyping, and/or testing phase.
17. **"Products"** means the Hardware and Services. For the avoidance of doubt, Products does not include any Non-Samsara Products.
18. **"Professional Services"** means the training, consulting, or other professional services that are provided by Samsara to Customer (i) as purchased separately by Customer pursuant to an Order Form, (ii) in Samsara's sole discretion, or (iii) as otherwise mutually agreed between the Parties.
19. **"Refund"** means an amount refunded to the Customer (or in Samsara's sole discretion to any third party who paid Samsara for Customer's procurement of Products under the applicable Order Form, including a reseller, Lender, or other third party) pursuant to these Terms equal to (i) fees pre-paid to Samsara for the time remaining in an applicable license term prorated to the period of time between (a) the date of termination and (b) the License Expiration Date for the applicable Order Form, and (ii) fees paid to Samsara for the cost of purchased Hardware (if applicable). For the avoidance of doubt, a Refund may only be issued as expressly provided hereunder.
20. **"Samsara Software"** means the Apps, Firmware, and Hosted Software, and any improvements, modifications, patches, updates, and upgrades thereto that Samsara develops or provides in connection with these Terms, and Support Services.
21. **"Samsara Software Systems"** means the Samsara Software and any networks, systems, products, services, or data of Samsara, its providers, its partners, its customers, or any other third party, integrated with or connected to such Samsara Software.
22. **"Services"** means the Samsara Software and Professional Services.
23. **"Support Services"** means the customer support services described at [www.samsara.com/support](http://www.samsara.com/support), and Documentation, but excluding any Professional Services.
24. **"Terms"** means these Terms of Service, together with any amendments or addenda that modify these Terms of Service.
2. **Agreement to Terms.** By clicking a box indicating your acceptance of these Terms, by executing an Order Form or other contract that references these Terms, by purchasing Products or otherwise entering into an Order Form or other contract with Samsara, a Samsara reseller, or any other entity or individual for the purchase of Products or under which Products are made available to you, or by otherwise accessing and/or using the Products, whichever is the earlier, you accept and agree to be bound by these Terms. If you do not agree to these Terms or you are not authorized to access and/or use the Products, you shall not access or use the Products. If you are accessing



and/or using the Products on behalf of a company (such as your employer) or other legal entity that is our Customer, you agree to these Terms on behalf of such company or other legal entity, and you represent and warrant that you have the authority to bind such company or other legal entity to these Terms. If you have entered into a separate contract with Samsara with respect to your purchase of Products or under which Products are made available to you, to the extent there is a conflict between such separate contract with Samsara and these Terms, such separate contract with Samsara shall prevail. References to “you” and “your” in these Terms refer to that company or other legal entity, our Customer. You may not use the Products if you are our direct competitor, as determined in our sole discretion, except with our prior written consent.

3. INTENTIONALLY DELETED.

4. License. Subject to the terms and conditions specified in these Terms or an applicable Order Form, Samsara grants Customer a non-sublicensable, non-exclusive, non-transferable, limited and revocable license to use and access the Samsara Software in accordance with the Documentation, starting from the license start date set forth in the applicable Order Form until the License Expiration Date set forth in such Order Form or the earlier termination of such Order Form or these Terms. The Support Services and the Hosted Software SLA attached as Exhibit B are included as part of the license grant and contingent upon a valid license. The Firmware license for each item of Hardware is contingent upon Customer purchasing and maintaining a valid license to the Samsara Software. For clarity, the license for Samsara Software that is provided in conjunction with a Hardware unit is only valid for use with that Hardware unit, unless the Hardware unit is replaced pursuant to the Hardware Warranty Policy section set forth as attached hereto as Exhibit A.

5. License Restrictions. Customer agrees not to do or attempt to do any of the following without Samsara’s express prior written consent: (i) resell, white label, or reproduce the Samsara Software or any individual element within the Samsara Software, Samsara’s name, any Samsara trademark, logo or other proprietary information, or the layout and design of any part of the Samsara Software; (ii) access, tamper with, or use non-public areas of the Samsara Software Systems; (iii) gain unauthorized access to, interfere with, disable, or disrupt the integrity or security of the Samsara Software Systems; (iv) avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented to protect the Samsara Software Systems or enforce a contractual usage limit; (v) transfer, copy, modify, sublicense, lease, lend, rent or otherwise distribute the Samsara Software to any third party; (vi) decipher, decompile, disassemble or reverse engineer any aspect of the Samsara Software, in whole or in part; (vii) impersonate or misrepresent an affiliation with any person or entity; (viii) use or access the Samsara Software for any competitive purpose; (ix) perform benchmark testing on the Samsara Software; (x) use the Samsara Software to store or transmit Malicious Code; (xi) use the Products to store, publish, submit/receive, upload/download, post, use, copy, or otherwise produce, transmit, or distribute infringing, libelous, defamatory, harassing, threatening, or otherwise unlawful or tortious material; or to store, publish, submit/receive, upload/download, post, use, copy, or otherwise produce, transmit, or distribute material in violation of third-party privacy rights; (xii) violate any applicable law or regulation; or (xiii) authorize, permit, encourage, or enable any other individual or entity to do any of the foregoing. Samsara has the right to investigate violations of this Section or conduct that affects the Samsara Software Systems and immediately suspend or terminate any or all of Customer’s access to the Samsara Software if it reasonably suspects or determines that Customer has violated this Section. Samsara may also consult and cooperate with law enforcement authorities to prosecute users who violate the law.

6. Hardware Installation and Equipment Maintenance. Customer is responsible for installation of the Hardware and ongoing maintenance of any Equipment. Depending on the Customer's intended use of the Products, Customer may require professional installation of the Hardware or ongoing professional maintenance of any Equipment. If Customer is unable to install the Hardware or to conduct such ongoing maintenance, or if Customer is uncertain that Customer has the requisite skills and understanding, Customer agrees to consult with a qualified installer or maintenance professional. Improper installation of the Hardware or maintenance of the Equipment can lead to damage of such Equipment or dangerous or life-threatening conditions, which can cause property damage, bodily injury, and/or death. Customer may notify Samsara if Customer did not order the correct Hardware cables for Hardware installation. For more information on Samsara's Cable Exchange Policy, please visit <https://www.samsara.com/support/hardware-warranty>.
7. Product Updates.
- 7.1 General. Samsara continuously improves the Products, and may from time to time (i) update the Samsara Software and cause Firmware updates to be automatically installed onto Hardware; (ii) update the Apps; or (iii) upgrade Hardware equipment to newer models. Samsara may change or discontinue all or any part of the Products, at any time and without notice, at Samsara's sole discretion. If Samsara discontinues supporting a Hardware model and the associated Samsara Software that you have ordered from Samsara in accordance with these Terms prior to the applicable License Expiration Date without offering to replace them with an updated or comparable version or model, you may terminate the applicable Order Form with respect to the applicable Products and request a Refund for such Products. Updates or upgrades may include security or bug fixes, performance enhancements, or new functionality, and may be issued with or without prior notification to Customer. Customer hereby consents to such automatic updates.
- 7.2 Pre-Launch Offerings. From time to time, Samsara may in its sole discretion make Pre-Launch Offerings available to Customer. Should Customer opt to use Pre-Launch Offerings: Customer agrees to (i) assume sole responsibility and all risk, and waive and release Samsara from any claims directly or indirectly arising from or related to the Pre-Launch Offerings; and (ii) without limitation, defend, indemnify, and hold harmless Samsara from any third party claims directly or indirectly arising from or related to the Pre-Launch Offerings. PRE-LAUNCH OFFERINGS ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND. Customer acknowledges that Pre-Launch Offerings that may interact, interface, or integrate with third party products and/or services may not be validated or supported by such third parties and may interfere with the operations of or void warranties for such third party products and/or services. Except as explicitly set forth otherwise in this Section 7.2, Pre-Launch Offerings are subject to the same terms and conditions as are applicable to a "Product" under these Terms.
- 7.3 Feedback. Customer agrees to use commercially reasonable efforts to provide feedback to Samsara regarding the Products upon request and agrees that Samsara shall have all rights, title, and interest in and to all comments, suggestions, and other feedback (collectively, "**Feedback**") provided by Customer to Samsara related to the Products. Customer shall and hereby does irrevocably transfer and assign to Samsara all right, title, and interest it may have in such Feedback to Samsara, and Samsara hereby accepts such transfer.
8. Payment, Shipping, and Delivery. Customer's payment and billing terms are set forth in the Order Form. Unless otherwise set forth herein or in the applicable Order Form, all payments made to Samsara under an Order Form are non-refundable. Samsara may submit Customer contact information and information related to the timeliness of Customer's payments to credit rating, credit reporting, or similar agencies. Customer is responsible for all payments of applicable taxes, however designated or incurred under these Terms, and Customer shall reimburse Samsara for any taxes paid or payable on behalf of Customer. All shipments are FOB (2010) Origin, Freight Prepaid, and Charged Back.

9. Accounts. Customer shall be solely responsible for administering and protecting Accounts. Customer agrees to provide access to the Samsara Software only to Authorized Users, and to require such Authorized Users to keep Account login information, including user names and passwords, strictly confidential and not provide such Account login information to any unauthorized parties. Customer is solely responsible for monitoring and controlling access to the Samsara Software and maintaining the confidentiality of Account login information and any provided API tokens. In the event that Customer or any Authorized User becomes aware that the security of any Account login information has been compromised, Customer shall immediately notify Samsara and de-activate such Account or change the Account's login information. Authorized Users may only use the Samsara Software strictly on behalf of Customer and subject to the terms and conditions applicable to Customer herein. Customer is responsible and liable for any breach by an Authorized User of his or her obligations hereunder.
10. Customer Data.
- 10.1. Ownership and Usage. Customer Data is accessible via the Samsara Software. Customer owns all Customer Data, and Samsara will keep Customer Data confidential. Customer hereby grants to Samsara a non-exclusive, transferable, sublicenseable, worldwide, royalty-free license to use, copy, modify, create derivative works based upon, display, and distribute Customer Data in connection with operating and providing the Products. Samsara will maintain reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. Samsara will not share Customer Data without Customer consent, except when the release of data is compelled by law or permitted herein. Samsara may collect and use analytics, statistics or other data related to the Customer Data and Customer's use of the Products (i) in order to provide the Products to Customer; (ii) for statistical reporting and use (provided that such data is not personally identifiable); or (iii) to monitor, analyze, develop upon, maintain, and improve the Products; including by providing such data to third party services for the aforementioned purposes. The right to use such data shall survive the termination of these Terms, unless legally prohibited or Customer requests in writing upon termination that such use be limited to non-personally-identifiable data. Customer may export Customer Data at any time during the term of these Terms through the export features in the Samsara dashboard or via the Samsara API. Customer acknowledges that some information may not be exportable via the Samsara dashboard or the API. If these Terms terminate or expire and Customer does not renew, Customer Data may be immediately deleted.
- 10.2. Customer Data Representation and Warranty. Customer represents and warrants that: (i) Customer will obtain all rights and provide any disclosures to or obtain any consents, approvals, authorizations and/or agreements from any employee or third party that are necessary for Samsara to collect, use, and share Customer Data in accordance with these Terms (ii) no Customer Data infringes upon or violates any individual or entity's intellectual property rights, privacy, publicity or other proprietary rights and (iii) Customer will adhere to all applicable state, federal and local laws and regulations in the conduct of its business in relation to Samsara and its receipt and use of the Products.
- 10.3. Data Protection Addendum. The attached "**Data Protection Addendum**" sets forth the Parties' agreement with respect to the terms governing any Processing of Personal Data by Samsara on the Customer's behalf pursuant to these Terms. The Data Protection Addendum forms part of these Terms and supersedes any prior agreements regarding Customer Personal Data. The terms "**Processing**", "**Personal Data**", and "**CustomerPersonal Data**" used in this Section are all defined in the Data Protection Addendum.

11. Confidentiality.

11.1. Confidential Information. “**Confidential Information**” means any technical, financial, or business information disclosed by one Party to the other Party that: (i) is marked or identified as “confidential” or “proprietary” at the time of such disclosure; or (ii) under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary. Samsara Confidential Information includes any information related to the Products, including the pricing thereof, Pre-Launch Offerings, Samsara Software Systems, or Samsara customers or partners, and any data or information that Samsara provides to Customer in the course of providing the Products to Customer. Customer Confidential Information includes Customer Data and any data or information that Customer provides to Samsara for the purpose of evaluating, procuring, or configuring the Services (for example, makes and models of vehicles or equipment, vehicle routes, or similar information). Confidential Information excludes information that: (i) is now or hereafter becomes generally known or available to the public, through no breach of the receiving Party’s confidentiality obligations; (ii) was known, without restriction as to use or disclosure, by the receiving Party prior to receiving such information from the disclosing Party; (iii) is acquired by the receiving Party from a third party who has the right to disclose it and who provides it without restriction as to use or disclosure; or (iv) is independently developed by the receiving Party without use or knowledge of or reference to any Confidential Information of the disclosing Party.

11.2. Confidentiality Obligations. The receiving Party agrees: (i) to maintain the disclosing Party’s Confidential Information in strict confidence; (ii) not to disclose such Confidential Information to any third parties (except for any Affiliates, employees, agents or third party service providers of receiving Party in performing under these Terms under reasonable confidentiality obligations, or except as authorized by disclosing Party); and (iii) not to use any such Confidential Information for any purpose except to perform under these Terms or as authorized by the disclosing Party. Notwithstanding anything to the contrary in these Terms, the receiving Party may disclose the disclosing Party’s Confidential Information to the extent required by law or regulation, provided that, unless prohibited by applicable law or regulation, the receiving Party uses reasonable efforts to give the disclosing Party advance notice of such requirement and reasonably cooperates with the disclosing Party at the disclosing Party’s expense in preventing, limiting, or protecting such disclosure.

12. Proprietary Rights.

12.1. Samsara Software. Samsara and its licensors exclusively own all right, title and interest in and to the Samsara Software that Customer accesses or licenses, including all associated intellectual property rights. Customer acknowledges that the Samsara Software is protected by copyright, trademark, and other laws of the United States and foreign countries. Customer agrees not to remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Services. Customer shall and hereby does irrevocably transfer and assign to Samsara all right, title, and interest it may have in the Samsara Software to Samsara and Samsara hereby accepts such transfer. No ownership rights are being conveyed to Customer under these Terms. Except for the express rights granted herein, Samsara does not grant any other licenses or access rights, whether express or implied, to any other Samsara software, services, technology or intellectual property rights.

12.2. Firmware. The Firmware is licensed, not sold. Except in the case of a free trial and subject to the Product Trial Hardware Returns section set forth at <https://www.samsara.com/support/hardware-warranty/>, Customer owns the Hardware on which the Firmware is recorded. Samsara retains ownership of the copy of the Firmware itself, including all intellectual property rights therein. Customer acknowledges that the Firmware is protected by patent, copyright, trademark, and other laws of the United States and foreign countries. Samsara reserves all rights in the Firmware not expressly granted to Customer in these Terms. Customer acknowledges and

agrees that portions of the Firmware, including but not limited to the source code and the specific design and structure of individual modules or programs, constitute or contain trade secrets of Samsara and its licensors.

13. Wifi Data Usage. The Enterprise Vehicle Gateway License (LIC-VG-ENT) includes up to 500 MB per month of WiFi data. No other Vehicle Gateway license includes WiFi data, unless identified otherwise in the applicable Order Form together with the magnitude of data included. Connectivity between the Vehicle Gateway and Samsara Software does not count towards the monthly WiFi data provision. Samsara reserves the right to limit access to personal entertainment streaming services. Data usage above the monthly threshold may result in the reduction of connection speeds, the restriction of connectivity, the interruption of connectivity, or some combination thereof. Restriction or interruption of connectivity will not impact the function of HOS Logs. Customer may track data usage from the Gateways page within the Settings section of the Samsara dashboard.
14. Non-Samsara Products. The Products may contain links to or have the ability to integrate or interoperate with, import or export data to or from, provide access to, or be accessed by Non-Samsara Products (collectively, "Non-Samsara Product Integrations"). If Customer opts to use any Non-Samsara Product Integrations, including but not limited to with respect to the exchange of data between Products and Non-Samsara Products, Customer agrees to: (i) assume sole responsibility for and all risk arising from Customer's use of Non-Samsara Product Integrations and the content, functionality, or availability of any Non-Samsara Products, including waiving and releasing Samsara from any claims directly or indirectly related thereto. SAMSARA PROVIDES NON-SAMSARA PRODUCT INTEGRATIONS "AS IS" WITHOUT WARRANTY OF ANY KIND AND ONLY AS A CONVENIENCE.
15. Publicity. Customer hereby grants Samsara permission to use the Customer name and logo on Samsara's website, press releases, customer lists, SEC filings, earnings calls, and investor and marketing materials to list Customer as a customer. However, Samsara will not use Customer's name, trademarks, or logos in any other way without Customer's prior consent. Customer agrees to abide by the terms of Samsara's Marks Usage Agreement available at <https://www.samsara.com/resources/brand-assets/>.
16. Term. The term of these Terms begins upon the date on which you accept these Terms, by clicking a box indicating your acceptance, by executing an Order Form or other contract that references these Terms, by purchasing Products or otherwise entering into an Order Form or other contract with Samsara, a Samsara reseller, or any other entity or individual for the purchase of Products or under which Products are made available to you, or by otherwise accessing and/or using the Products, whichever is the earliest, and shall continue until (i) the License Expiration Date for the last active Order Form or other contract you entered into for the purchase of Products or under which Products are made available to you, (ii) you are no longer authorized to access and/or use the Products, or (iii) these Terms are otherwise terminated earlier as provided hereunder, whichever is earliest.
- 16.1. Renewal. Unless you notify Samsara in writing of your intent to cancel the applicable Order Form or other contract you entered into for the purchase of Products or under which Products are made available to you at least thirty (30) days prior to the License Expiration Date, Samsara may renew your license term, effective on the License Expiration Date, for up to the greater of (i) one year, and (ii) the same period as the immediately preceding license term (or, in Samsara's discretion, shorter periods to align license expiration dates across multiple active orders) (each such period, or any renewal license term of the applicable Products after the Initial Term, a "Renewal Term") at any time up to ninety (90) days after the License Expiration Date. Subject to Samsara's renewal rights set forth in the foregoing sentence, you and Samsara may mutually agree to enter into a new Order Form to renew your license term upon the License Expiration

Date, which new Order Form may include additional or different Products or license terms to the extent mutually agreed. If Samsara auto-renews your license term without Customer's execution of a new Order Form as described in the first sentence of this paragraph, your payment method will remain the same as indicated on the applicable original Order Form (e.g., monthly if you were allowed monthly payments, or yearly if you were allowed annual payments or upfront payment). If your license term is renewed after termination of the immediately preceding license term and Samsara in its sole discretion allows you to continue using the applicable Products during such interim period, these Terms shall apply to such use. Please email [renewals@samsara.com](mailto:renewals@samsara.com) for any questions regarding automatic renewal.

- 16.2. Termination. Samsara may terminate these Terms, any Order Form, and your access to and use of the Samsara Software at its sole discretion, at any time upon notice to you. However, if Samsara so terminates for its convenience and not as otherwise set forth in these Terms or the applicable Order Form or due to your breach thereof, then Samsara will provide you with a Refund. Unless otherwise set forth herein or in the applicable Order Form, an Order Form cannot be terminated prior to the License Expiration Date.
- 16.3. Effect of Termination. Upon any termination or expiration of these Terms, the following Sections of these Terms will survive: 5 (License Restrictions), 7.2 (Pre-Launch Offerings), 7.3 (Feedback), 8 (Payment, Shipping, and Delivery), 10 (Customer Data), 11 (Confidentiality), 12 (Proprietary Rights), 16 (Term), 17 (Warranty Disclaimers), 18 (Limitation of Liability), 19 (Dispute Resolution), 20 (Governing Law), and 21 (General Terms). At the Customer's request, and subject to Samsara's data retention and backup policies, Samsara shall delete and remove any Customer Data on the Hosted Software.

17. Warranty and Warranty Disclaimers .

17.1 Hardware Warranty. Samsara provides a Hardware warranty as set forth in the Hardware Warranty Policy section of its Hardware Warranty and RMA Policy.

17.2 Warranty Disclaimers. EXCEPT AS EXPRESSLY PROVIDED UNDER THE LIMITED HARDWARE WARRANTY PROVIDED UNDER SECTION 17.1 (HARDWARE WARRANTY), THE PRODUCTS ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, SAMSARA EXPLICITLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. ACTIVE DRIVER AND PERSONNEL SUPERVISION IS REQUIRED EVEN WHEN THE PRODUCTS ARE IN USE, AND THE PRODUCTS ARE NOT A CRASH OR ACCIDENT AVOIDANCE OR PREVENTION SYSTEM. CUSTOMER IS SOLELY RESPONSIBLE FOR ANY AND ALL SPEEDING, TOLLS, AND OTHER TRAFFIC OR LEGAL VIOLATIONS FOR ITS VEHICLES AND EQUIPMENT EVEN WHEN THE PRODUCTS ARE IN USE. THE CUSTOMER ACKNOWLEDGES AND AGREES THAT THE PRODUCTS ARE NOT A SUBSTITUTE FOR SAFE AND LAWFUL DRIVING AND EQUIPMENT USE OR OTHER APPROPRIATE PERSONNEL OR WORKPLACE CONDUCT AS APPLICABLE AND THAT CUSTOMER SHALL NOT USE THE PRODUCTS AS A CRASH OR ACCIDENT AVOIDANCE OR PREVENTION SYSTEM. Samsara makes no warranty that the Services will meet Customer's requirements or be available on an uninterrupted, secure, or error-free basis. Samsara makes no warranty regarding the quality, accuracy, timeliness, truthfulness, completeness or reliability of any analytics or Customer Data.

18. Limitation of Liability.

- 18.1. No Consequential Damages. NEITHER SAMSARA NOR CUSTOMER NOR ANY OTHER ENTITY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE PRODUCTS WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR

SYSTEM FAILURE OR THE COST OF SUBSTITUTE PRODUCTS ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE PRODUCTS, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT THE OTHER PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS LEGALLY PROHIBIT THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY.

18.2. Cap. EXCEPT AS TO ANY EXPRESS INDEMNIFICATION OBLIGATION SET FORTH IN THESE TERMS, AND EXCEPT AS TO CUSTOMER'S PAYMENT OBLIGATIONS UNDER AN ORDER FORM, IN NO EVENT WILL EITHER PARTY'S TOTAL AGGREGATE LIABILITY, INCLUDING TO THE OTHER PARTY AND ANY OF ITS AFFILIATES, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE PRODUCTS EXCEED THE AMOUNTS CUSTOMER HAS PAID TO SAMSARA HEREUNDER DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE DAMAGE, OR IF CUSTOMER HAS NOT HAD ANY PAYMENT OBLIGATIONS TO SAMSARA (FOR EXAMPLE THROUGH A FREE TRIAL), ONE HUNDRED DOLLARS (\$100).

18.3. THE EXCLUSIONS AND LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN SAMSARA AND CUSTOMER.

19. Dispute Resolution.

19.1. INTENTIONALLY DELETED

19.2. INTENTIONALLY DELETED

20. Governing Law. These Terms and any action related thereto will be governed by the laws of the State of California without regard to its conflict of laws provisions. Subject to the agreement to arbitrate set forth herein, exclusive jurisdiction and venue for actions arising from or related to these Terms or Customer's use of the Products will be the state and federal courts located in San Francisco County, California, United States, and both Parties consent to the jurisdiction of such courts with respect to any such actions.

21. General Terms.

21.1. Miscellaneous. These Terms together with any applicable Order Form constitute the entire and exclusive understanding and agreement between Samsara and you regarding the Products and the subject matter hereof, and these Terms supersede and replace any and all prior oral or written understandings or agreements between Samsara and you regarding the Products and the

subject matter hereof. If there is a conflict between the terms of an Order Form and these Terms, then the terms of the Order Form controls over these Terms. If for any reason a court of competent jurisdiction finds any provision of these Terms invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect. You may not assign or transfer these Terms, by operation of law or otherwise, without Samsara's prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null. Samsara may freely assign or transfer these Terms without restriction. Subject to the foregoing, these Terms will bind and inure solely to the benefit of the Parties, their successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity or Party Affiliate, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms. Customer shall have no right to bring any claims under these Terms against any Samsara Affiliate, employee, director, officer, or shareholder. Any notices or other communications provided by Samsara under these Terms, including those regarding modifications to these Terms, will be given via email. For notices made by e-mail, the date of receipt will be deemed the date on which such notice is transmitted. Either Party's failure to enforce any right or provision of these Terms will not be considered a waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of both Parties. Except as expressly set forth in these Terms, the exercise by either Party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise.

21.2. REPLACED BY ADDENDUM

- 21.3. Export Restrictions. Customer shall not use the Products in violation of applicable export control or sanctions laws of the United States or any other applicable jurisdiction. Customer shall not use the Products if Customer is or is working on behalf of any restricted person or entity, including those listed on the U.S. Treasury Department's list of Specially Designated Nationals, the U.S. Department of Commerce Denied Person's List or Entity List, the State Department's Debarred list, or similar denied parties list without prior authorization by the U.S. Government. Customer shall not export, re-export, or transfer the Products if for use directly or indirectly in any prohibited activity described in Part 744 of the U.S. Export Administration Regulations, including certain nuclear, chemical or biological weapons, rocket systems or unmanned air vehicle end-uses.
- 21.4. Force Majeure. Samsara is not liable or responsible, nor shall be deemed to have defaulted under or breached these Terms, for any failure to perform or delay in performing its obligations under these Terms due to an event of force majeure. An event of force majeure is any event or circumstance beyond Samsara's reasonable control, such as war, hostilities, act of God, earthquake, flood, fire, or other natural disaster, strike or labor conditions, material shortage, epidemic, disease, government action, or failure of utilities, transportation facilities, or communication or electronic systems.
- 21.5. Financed Purchases. If you are accessing the Products through a financing entity ("Lender"), the terms in this Section shall apply. Any obligation you may have to the Lender is absolute and



unconditional, not subject to any setoff or counterclaim as between you and Lender, unless agreed to otherwise in the separate financing agreement ("Financing Agreement") you enter into with the Lender to finance your purchase of the Products. You acknowledge and agree that when you execute the Financing Agreement, the Lender is prepaying Samsara for the Products on your behalf and such prepayment is final and cannot be refunded by Samsara unless otherwise provided under these Terms. You accept the risk that any Products are not provided or are not satisfactory; provided this sentence does not affect your rights against Samsara as limited by these Terms, or Samsara's obligations to you under these Terms. If you choose to discontinue use of the Products for any reason, you will continue to be liable for any outstanding payment obligations specified in the Financing Agreement. If you have any claim against or dispute with Samsara, you may not take action by reason of such claims against Lender. If you are purchasing through a Lender, Samsara may terminate your access to the Products should you breach these Terms or the terms of the Financing Agreement. Any Refunds issued by Samsara under these Terms for Product purchases financed under a Financing Agreement may in Samsara's sole discretion be remitted to the Lender, and any impact such remittance may have on your remaining payment obligations to Lender is governed by the Financing Agreement.

- 21.6. Contact Information. If you have any questions about these Terms or the Products, please contact Samsara at [info@samsara.com](mailto:info@samsara.com).

## **EXHIBIT A**

### **SAMSARA HARDWARE WARRANTY AND RMA POLICY**

**Samsara's Hardware Warranty and RMA Policy is set forth below and is subject to the Parties' Master License and Services Agreement ("Agreement"). All capitalized terms not defined herein shall have the meaning set forth in the Agreement.**

#### **HARDWARE WARRANTY POLICY**

If Customer is experiencing technical issues, please visit our Support Page at [www.samsara.com/support](http://www.samsara.com/support), where you will find many resources to help troubleshoot issues, or contact our Customer Support team for technical assistance. Prior to submitting a Hardware Warranty claim pursuant to this Policy, you must first use all reasonable efforts to find a solution on our Support Page linked above and/or contact our Customer Support team and assist in Samsara's troubleshooting efforts.

#### **Scope of the Samsara Hardware Warranty**

Samsara stands behind its Hardware. Hardware that requires a valid license to function (i.e., Hardware Products associated with a license with a "LIC-" prefix in the applicable SKU) has a warranty that lasts for as long as Customer maintains a valid license for such Hardware.

All other Hardware (e.g., accessories and cables) comes with a one-year warranty as of the date of shipment. During the applicable warranty period, Hardware units exhibiting material defects will be replaced free of charge as described in this Hardware Warranty Returns section. Customers are responsible for replacing any batteries for Hardware and shall do so in accordance with any applicable Documentation.

Samsara warrants that, during the applicable warranty period, eligible Hardware will materially perform in accordance with the Documentation, subject to the limitations and conditions set forth in the Agreement and this Hardware Warranty Policy section of the Hardware Warranty and RMA Policy (the "Hardware Warranty").

Upon Samsara's approval of a warranty claim provided in accordance with this Hardware Warranty Policy section, Samsara will, at its sole discretion, do one of the following (1) repair the Hardware free of charge, (2) replace the Hardware (with the same Hardware or that of substantially similar functionality) free of charge, or (3) to the extent repairing or replacing the Hardware proves commercially unreasonable, terminate the Customer's Order Form(s) for the affected Products and provide a Refund for such Products. To the maximum extent permitted by applicable law, the foregoing constitutes the Customer's sole and exclusive remedy and Samsara's sole and exclusive obligation for any breach of this Hardware Warranty.

This Hardware Warranty only applies to the extent the Customer is up-to-date on its payment obligations. Furthermore, it does not apply (1) to non-Samsara branded products or services, even if sold with Samsara Products; (2) to consumable parts (including batteries), cosmetic damage, normal wear and tear, or aging; (3) if the defect is not reproducible; (4) to circumstances such as accidental or incidental damage, indirect damage, loss, theft, abuse, misuse, misapplication or unauthorized disassembly of or to the Hardware; (5) if the Hardware has been defaced (e.g., the serial number has been removed); (6) if the Hardware is installed, maintained, operated or used in a way that does not comply with the Agreement, Documentation, or other written instructions provided by Samsara; (7) if the defect or damage is caused by an improper voltage supply or the use of third party components, materials, accessories (including cables), products and/or software that are not expressly approved or supplied by Samsara; (8) if the defect or damage is caused by any attempt to service the Hardware other than by Samsara or its representatives; (9) if the defect or damage is caused by the Customer's or its representative's negligence, misuse, neglect, intentional acts or omissions, or breach of its obligations under the Agreement or this Hardware Warranty and RMA Policy; (10) if the Hardware, its functionalities or its capabilities have been altered, modified, repaired or tested by a party other than Samsara or its representatives, and/or without advance written permission of Samsara; and (11) if the Hardware is tampered with or otherwise damaged in a way or by events outside of Samsara's control, such as in the event of a car crash, fire, liquid contact, natural disaster or other external causes.

#### **How to Submit a Warranty Claim**

To request a return materials authorization (“RMA”) under this Hardware Warranty Returns Policy, please contact Samsara Customer Support or submit an RMA request through the Hosted Software dashboard. When submitting an RMA request, you will need to provide the following information:

- Make and model
- Serial number
- Shipping address

If your RMA request is approved by Samsara, Samsara will provide you with an RMA number and a return shipping label for the defective Hardware units free of charge. We will ship all replacement Hardware once your RMA request has been approved and processed.

You must return the defective Hardware units to Samsara for receipt within thirty (30) days of Samsara issuing you the return shipping label. If Samsara does not receive the defective Hardware units within this thirty (30) day period, Samsara reserves the right to deactivate the defective device and/or charge you, and you agree to pay the fees and costs associated with the device replacement. In any event, to the extent Samsara sends you a replacement device, Samsara reserves the right to deactivate the defective device.

Upon return of any Hardware under a Hardware Warranty claim, Samsara may delete all data stored on the Hardware. Before submitting your Hardware Warranty claim and returning your Hardware to us, we therefore recommend that you make a backup copy of the content stored on the device by using the tools available on your Samsara Hosted Software dashboard or otherwise. Samsara disclaims all liability relating to Customer’s loss of Customer Data or other data in connection with the return of Hardware under this Hardware Warranty Policy.

## **PRODUCT TRIAL HARDWARE RETURNS**

In order to return Hardware units from a Product trial, please contact Customer’s Samsara sales representative or email [trials@samsara.com](mailto:trials@samsara.com) to request an RMA number prior to the end of your trial. If Customer’s trial hardware was shipped to a country into which Samsara generally sells Products, Customer will also be able to print out a return shipping label and ship the Hardware units back to Samsara at no charge to Customer. If Customer does not proceed with purchasing the applicable Samsara Software Products following Customer’s trial, Customer must return the trial Hardware units to Samsara for receipt within thirty (30) days of the end of Customer’s trial. If Samsara does not receive the trial Hardware units within this thirty (30) day period, Samsara reserves the right to deactivate the trial Hardware and/or charge Customer, and Customer agrees to pay the fees and costs associated with the Hardware units. At the end of your trial, Samsara may delete all data stored on trial Hardware, unless you purchase the applicable Samsara Products immediately following your trial. We therefore recommend that you make a backup copy of the content stored on the device by using the tools available on your Samsara Hosted Software dashboard or otherwise prior to the end of your trial. Samsara disclaims all liability relating to Customer’s loss of Customer Data or other data in connection with the return or deactivation of trial Hardware hereunder or the failure to purchase the applicable Samsara Products immediately following your trial.

## **PRODUCT REFUND REQUESTS**

If Customer is dissatisfied with its Samsara purchase for any reason, Customer may return Customer’s Product purchase made under an Order Form for a full refund as described in this Product Refund Requests section. This refund option does not apply to Hardware replacements or upgrades, additional purchases of the same Product as previously purchased, Product purchases made after a trial or pilot period, or Product license renewals for which the Product license is renewed or extended beyond the Initial Term (collectively, “Refund Exceptions”). All Product returns must meet the following criteria:

- Customer purchased the Product from Samsara or through an authorized Samsara reseller
- Customer is the original purchaser of the Product
- The Product purchase does not fall under any Refund Exceptions
- The Product is not a license renewal for which the Product license is renewed or extended beyond the Initial Term
- Customer submits its Product Refund Request in writing as described below within thirty (30) days of the date of shipment to you of the applicable original Hardware procured under an Order Form
- The Product is in new or like-new condition, as determined by Samsara in its sole discretion

To request a refund under this Product Refund Requests section, please contact Samsara Customer Support to request an RMA number or submit an RMA request through the Hosted Software dashboard. If Customer refund

request is approved, Samsara will provide Customer with an RMA number and a return shipping label free of charge. In order for the refund to be accepted and processed, Samsara must receive the Hardware units Customer is returning no later than thirty (30) days following the date the RMA number is issued. Once Samsara has received and inspected the Hardware units, Samsara will process the return. If Customer purchased through an authorized Samsara reseller, Customer's refund will be issued by that reseller. If Customer purchased directly from Samsara, Samsara will issue a refund of any unused pre-paid fees (as applicable), typically within thirty (30) days of receiving the Hardware return. Please contact your distributor or reseller for all refund requests of Products purchased through distributors or resellers.

#### **HARDWARE UPGRADE OPTION AS NECESSARY FOR RENEWAL LICENSE ENABLEMENT**

Upon renewal of Customer's Samsara Software license at the end of its then-active license term for a renewal license term of at least three (3) years, if upgraded Hardware that is generally available to Samsara customers is required to enable material functionality included in Customer's renewal license, Customer shall have the one-time option to receive such upgraded Hardware from Samsara for no additional charge beyond the renewal license fees at the then-applicable pricing. To exercise this option, Customer must notify Samsara in writing prior to the License Expiration Date of Customer's intent to renew such license and exercise such option so that Samsara may determine Customer's eligibility for such Hardware upgrade subject to the aforementioned terms and conditions.

#### **CABLE EXCHANGE POLICY**

Customers may exchange Hardware cables ordered under an Order Form at no cost as described in this Cable Exchange Policy section, subject to the following conditions:

- Customer submits its Hardware cable exchange request in writing within thirty (30) days of purchase by contacting Samsara Customer Support or by submitting a cable exchange request through the Hosted Software dashboard, unless a longer period is set forth in Samsara's Customer Success policies
- Customer's cable exchange request must include the following information: 1) Product Code/ SKU Number for cables you are returning, as well as quantity, 2) Product Code/ SKU Number for cables being requested, and quantity, 3) Shipping Address for new cables, and 4) Email Address for Return Label
- Samsara must receive the Hardware cables to be exchanged within thirty (30) days of Customer's submission of its exchange request
- Customer must return the Hardware cables to be exchanged in new or like-new condition, as determined by Samsara in its sole discretion

If the above conditions are not met, Samsara reserves the right to charge Customer, and Customer agrees to pay the fees and costs associated with replacing Hardware cables.

## **EXHIBIT B**

### **HOSTED SOFTWARE SERVICE LEVEL AGREEMENT**

This Service Level Agreement (this “SLA”) is subject to the Parties’ Master License and Services Agreement (“Agreement”) and sets forth Samsara’s obligations and Customers’ rights with respect to the performance of Samsara’s Hosted Software.

**1. Definitions.** For purposes of this SLA, the following terms have the meaning ascribed to each term below:

“Downtime” means when the Customer is unable to log into the Hosted Software dashboard due to failure(s) in the Firmware or Hosted Software, as confirmed by both Customer and Samsara. Please note that individual Hardware device failures are not considered downtime but may be covered under Samsara’s Hardware Warranty Policy set forth in the Hardware Warranty Policy section of Exhibit A (Samsara Hardware Warranty and RMA Policy).

“Monthly Uptime Percentage” means the total number of minutes in a calendar month minus the number of minutes of Downtime suffered in a calendar month, divided by the total number of minutes in a calendar month.

“Service Credit” means the number of days of license to the Samsara Software that Samsara will credit to Customer in the form of a monetary credit applied to Customer’s invoice after receipt of timely written notice of Samsara’s failure to meet the Service Level Warranty, as required by Section 3 herein (Customer Must Request Service Credit).

**2. Service Level Warranty.** During the applicable Order Form term, the Hosted Software will have a Monthly Uptime Percentage of at least 99.99% in any calendar month (the “Service Level Warranty”). If the Monthly Uptime Percentage does not meet the Service Level Warranty in any calendar month, and if Customer is in compliance with its obligations under the Agreement or this SLA, then Customer will be eligible to receive a Service Credit as follows:

| Monthly Uptime Percentage | Number of Days of Service Credit |
|---------------------------|----------------------------------|
| < 99.99% – ≥ 99.9%        | 3                                |
| < 99.9% – ≥ 99.0%         | 7                                |
| < 99.0% – ≥ 90.0%         | 15                               |
| < 90.0%                   | 30                               |

**3. Customer Must Request Service Credit.** In order to receive any of the Service Credits described above, Customer must notify Samsara in writing within thirty (30) days from the time Customer becomes eligible to receive a Service Credit. Failure to comply with this requirement will forfeit Customer’s right to receive a Service Credit.

**4. Maximum Service Credit.** The aggregate maximum amount of Service Credit to be issued by Samsara to Customer for all Downtime that occurs in a single calendar month will not exceed thirty (30) days.

**5. Exclusions.** The Service Level Warranty does not apply to any Products that expressly exclude this Service Level Warranty (as stated in the Documentation for such Products) or any Downtime caused in part or in full by any of the following: (i) strikes (other than strikes of a party’s own employees), shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions (other than with respect to a party’s own employees), earthquakes, material shortages, epidemic, disease, failure of utilities or communication or electronic systems, or any other causes that are beyond the reasonable control of a party so long as the parties use commercially reasonable efforts, including the implementation of business continuity measures, to mitigate the effects of such force majeure; (ii) Customer and/or third party equipment, systems, networks, or infrastructure (not within the primary control of Samsara); (iii) Customer’s breach of the Agreement or this SLA or improper use of the Products; (iv) a third party cloud-hosting, cellular, or internet service provider; (v) improper installation of or damage to the Hardware or partial or full disconnection of such Hardware from the Equipment; or (vi) any cause that is not solely failure(s) in the Firmware or Hosted Software.

**6. Exclusive Remedy.** This SLA states Customer’s sole and exclusive remedy for any failure by Samsara to meet the Service Level Warranty.



LAST UPDATED: JANUARY 2023

# Data Protection Addendum

## Additional Links

Knowledge Base

Training Webinars and Videos

Contact Support

Hosted Software SLA

Hardware Warranty and RMA Policy

Product End-of-Life (EOL) Policy

Samsara Terms of Service

Data Protection Addendum

Privacy Policy

Partner Code of Conduct

Apps Privacy Policy

By executing an Order Form under the Agreement that references this Addendum, Customer agrees to be bound by this Addendum.

### 1. Definitions

In this Addendum, the following terms will have the meanings set out below:

1.1 "Agreement" means the agreement between Customer and Samsara that sets forth the terms and conditions pursuant to which Customer will access certain Samsara solutions and contract for certain services from Samsara.

1.2 "Customer Personal Data" means any Personal Data subject to Data Protection Laws contained in Customer Data that the Customer provides or has made available to Samsara and is Processed by Samsara on Customer's behalf pursuant to the Agreement; and

1.3 "Data Protection Laws" means, as applicable, (i) the EU General Data Protection Regulation (EU 2016/679) (the "EU GDPR"), its incorporation into the laws of England and Wales, Scotland, and Northern Ireland by virtue of the UK European Union (Withdrawal) Act 2018 (the "UK GDPR"); (ii) the Swiss Federal Act on Data Protection ("FADP"); (iii) United States federal and/or state data protection or privacy statutes, including but not limited to the California Consumer Privacy Act of 2018 as amended by The California Privacy Rights Act of 2020 (together with its implementing regulations, the "CPRA"); and/or (iv) any other applicable national legislation in the European Economic Area or United Kingdom which supplements the EU GDPR or UK GDPR (as applicable), and/or the applicable data privacy, and/or data protection laws in the U.S.A., Canada, and Mexico; in each case, as may be amended, superseded or replaced from time to time.

1.4 "Controller" means the entity that determines the means and purposes of processing Personal Data.

1.5 "Data Subject" means the individual who is the subject of Personal Data.

1.6 "EU SCCs" means the Standard Contractual Clauses annexed to the EU Commission's Implementing Decision 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of Personal Data to third

countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council.

1.7 "Personal Data" means "personal data", "personal information" or "personally identifiable information" or any analogous term under Data Protection Laws, as these terms are defined under Data Protection Laws.

1.8 "Personal Data Breach" means any security breach that Data Protection Laws would require (i) Samsara to report to Customer or (ii) Customer to report to a Supervisory Authority or affected individuals, or to maintain a record of, that involves Personal Data subject to this Addendum.

1.9 "Processing" means any operation or set of operations which is performed on Personal Data or on sets of Personal Data.

1.10 "Processor" means an entity that processes Personal Data on behalf of a Controller.

1.11 "Supervisory Authority," means a government or regulatory authority responsible for administering, overseeing compliance with, and/or enforcing Data Protection Laws.

1.12 Capitalized terms not otherwise defined herein will have the meaning given to them in the Agreement.

## 2. Processing of Customer Personal Data

2.1. As between the parties, Samsara acts as a Processor of the Customer Personal Data on Customer's behalf. As a Processor, Samsara will:

2.1.1. Process Customer Personal Data as specifically set forth in the Agreement, this Addendum, Documentation and/or Customer's documented instructions, or as otherwise required by applicable law to which Samsara is subject (the "**Customer Instructions**"). If Samsara is required by applicable law to Process Customer Personal Data other than in accordance with the Customer Instructions, Samsara will to the extent permitted by applicable law inform the Customer of that legal requirement before such Processing, unless that law prohibits such information on important grounds of public interest.

2.1.2. Not be responsible for obtaining consent, authorization, approval, or agreement as may be required under applicable laws or policies, or for providing notices with regard to Customer Personal Data, in order to enable Samsara to receive and Process the Customer Personal Data in accordance with the Agreement. It will be the Customer's sole responsibility for the accuracy, quality and legality of the Customer Personal Data, the means by which it acquires and uses the Customer Personal Data, and for the Customer Instructions regarding the Processing of Customer Personal Data. Customer shall ensure that its acts or omissions, including its Customer Instructions, do not put Samsara in breach of any applicable laws or regulations. Where Samsara believes that an instruction would be in breach of applicable law or if Samsara determines it can no longer meet its obligations under the CPRA, Samsara shall notify Customer of such belief without undue delay. Samsara shall be entitled to suspend performance of such instruction until Customer confirms or modifies such instruction.

## 3. Samsara Personnel

3.1. Samsara will hold Customer Personal Data in confidence pursuant to the confidentiality provisions of the Agreement and will require Samsara personnel granted access to Customer Personal Data to protect all Customer Personal Data accordingly. Any person entitled to Process Customer Personal Data on behalf of Customer has undertaken a commitment to secrecy or is subject to an appropriate statutory obligation to secrecy. All such secrecy obligations shall survive the termination or expiration of such Processing.

#### 4. Security

4.1. Samsara will implement appropriate technical and organizational measures designed to safeguard Customer Personal Data and to ensure the adequate protection of Customer Personal Data, which measures shall address the requirements of Data Protection Laws. Samsara shall at least implement measures contained in the attached Security Description herein as Annex II to the Standard Contractual Clauses. Samsara may modify such measures from time to time, provided that such modifications will not materially reduce the overall level of protection for Customer Personal Data.

#### 5. Subprocessing

5.1. Customer authorizes each Samsara affiliates, as well as such other third parties noted in Documentation, to be sub-processors (each a "**Sub-processor**"). Samsara may disclose Customer Personal Data to its Sub-processors for the purposes of providing the Products, provided that Samsara will impose substantially similar obligations on its Sub-processors regarding the security and confidentiality of Customer Personal Data as those set forth in this Addendum to meet the requirements of Data Protection Laws.

5.2. To the extent required under Data Protection Laws, Customer shall be entitled to object to any change of Sub-processors as notified by Samsara from time to time within thirty (30) calendar days of such notification, and only for materially important reasons. Where Customer fails to object to such change within such period of time, Customer shall be deemed to have consented to such change. Where a materially important reason for such objection exists and is provided in writing to Samsara, and failing an amicable resolution of this matter by the parties (each Party acting reasonably and in good faith), Customers subject to the EU and UK GDPR may terminate the applicable Order Form(s) in relation only to the impacted features or functionalities of the Products.

5.3. Samsara will remain responsible for the acts or omissions of Sub-processors to the same extent required by Data Protection Laws as if the acts or omissions were performed by Samsara ("**Sub-processor Liability**"), and shall be permitted to re-perform or to procure the re-performance of any obligations. Customer acknowledges and accepts that such re-performance shall diminish any claim that Customer has against Samsara in respect of any Sub-processor Liability.

#### 6. Data Subject Requests

6.1. Where Samsara directly receives requests from Data Subjects, or anyone acting on their behalf, to exercise their rights under Data Protection Laws ("**Data Subject Request**"), and provided Samsara can reasonably identify from the information provided that such request relates to the



Customer and/or Customer Personal Data, then unless prohibited by applicable law, Samsara will (a) promptly notify Customer of such request; and (b) not respond to any such request unless required by applicable law to which Samsara is subject, in which case Samsara will, to the extent permitted by applicable law, inform Customer of that legal requirement before responding to such request. Samsara may require the Customer to bear the actual costs incurred as a result of the assistance provided in accordance with this Section based on the then currently applicable service rates of Samsara.

6.2. For avoidance of doubt, Customer is responsible as Controller for responding to Data Subject Requests. Samsara's Products include technical and organizational measures that have been designed, taking into account the nature of its Processing, to assist Customer, insofar as this is possible, in fulfilling its obligations to respond to Data Subject Requests.

6.3. If Samsara receives a request from a law enforcement or government agency for Customer Data, Samsara will assess its legality and shall comply with it only if and to the extent Samsara assesses it is valid, lawful, and compulsory (a "Law Enforcement or Government Agency Request"). To the extent Samsara is legally permitted to do so, Samsara will inform the Customer and/or, as required, the relevant Supervisory Authority of such Law Enforcement or Government Agency Request and, if relevant, whether Samsara will comply with any such Law Enforcement or Government Agency Request. To the extent Samsara is able to identify the relevant Data Subject(s) in scope of any Law Enforcement or Government Agency Request and provided Samsara acts in accordance with its obligations under the Agreement and applicable Data Protection Laws, Customer may expressly notify or authorize Samsara in writing to notify the relevant Data Subject(s) of such Law Enforcement or Government Agency Request received in order to enable the Data Subject(s) to seek further information and exercise any available rights. Unless it is legally prohibited from doing so, Samsara will use reasonable efforts to document and demonstrate to the Customer, upon the Customer's reasonable request, the actions Samsara has taken in relation to any Law Enforcement or Government Agency Request.

## 7. Personal Data Breach

7.1. Samsara will notify Customer without undue delay upon Samsara becoming aware of a Personal Data Breach affecting Customer Personal Data. For the avoidance of any doubt, a Personal Data Breach shall not include (i) acts or omissions which do not breach Samsara's security or the security of any Sub-processor; or (ii) any access to or Processing of Customer Personal Data that is consistent with Customer Instructions. At Customer's request, Samsara will provide reasonable assistance and co-operation to assist Customer in fulfilling any applicable notification obligations under applicable Data Protection Laws with respect to the Personal Data Breach. Samsara's notification of, or response to, a Personal Data Breach shall not be construed as an acknowledgement by Samsara or, if relevant, its Sub-processors of any fault or liability with respect to the performance of Products. Samsara may require the Customer to bear the actual costs incurred as a result of the assistance provided in accordance with this Section based on the then currently applicable service rates of Samsara.

## 8. Data Protection Impact Assessment and Prior Consultation

8.1. At Customer's request, Samsara will provide reasonable assistance to Customer with any data protection impact assessments and prior consultations with Supervising Authorities required by Data Protection Laws, in each case solely in relation to Samsara's Processing of Customer Personal Data under the Agreement, and taking into account the nature of the Processing and information available to Samsara. Samsara reserves the right to charge a reasonable fee for such requested assistance, to the extent permitted by applicable law.

#### 9. Audit rights

9.1. Samsara may retain independent third-party auditors to prepare a Service Organization Control 2 (Type I or II) report, or other industry-standard successor report ("Report"). Upon Customer's written request, Samsara will provide to Customer at no cost a copy of the most recent Report, up to once a year. Such Reports will be Samsara's Confidential Information under the confidentiality provisions of the Agreement. Customer agrees that the Reports will be used to satisfy any audit or inspection request by or on behalf of Customer in relation to Data Protection Laws, this Addendum, and/or Agreement.

9.2. If a Report is not available, Customer may request, upon 30 days' prior written notice and up to once per calendar year, to perform a review at its own expense, with a scope, dates, duration, auditor and any security and/or confidentiality controls to be mutually agreed, of relevant Samsara policies and procedures governing Samsara's handling of Customer Personal Data in connection with the Products, for purposes of verifying Samsara's compliance with this Addendum (including with regards to Section 6.3). This review will be conducted in a manner that does not compromise Samsara's confidentiality obligations to Samsara's other customers. The parties acknowledge and agree that Samsara's policies and procedures and all findings of the Customer's review are Samsara's Confidential Information under the confidentiality provisions of the Agreement.

9.3. To the extent required by Data Protection Laws, Customer has the right, upon written notice to Samsara, to take reasonable and appropriate steps to stop and remediate any use of Customer Personal Data that is in violation of the Agreement.

#### 10. Data Transfers

10.1. Samsara may transfer Customer Personal Data to any country or territory, as reasonably necessary for the provision of the Products, consistent with this Addendum. To the extent the provision of Products under the Agreement involves a transfer of Customer Personal Data that is protected by Data Protection Laws applicable to the European Union, the United Kingdom, and/or Switzerland, and such Customer Personal Data is transferred to a country that is not recognized by the European Commission (or, in the case of transfers from Switzerland, the competent authority for Switzerland, and transfers from the UK, the competent United Kingdom regulatory authority or governmental body for the United Kingdom) as providing an adequate level of protection under applicable Data Protection Laws, Samsara and Customer agree to abide by and Process Customer Personal Data in compliance with the transfer mechanisms specified below.

10.1.1. **Transfers from the EEA.** With regards to transfers of Customer Personal Data protected by the EU GDPR, Module Two of the EU SCCs

attached hereto (including the annexes attached) shall apply as follows (unless the Customer is a Processor, in which case Module Three applies):

- The optional docking clause under Clause 7 of the EU SCCs shall not apply.
- For the purposes of clause 8.1(a) of the EU SCCs, the following is deemed to be an instruction by the Customer for Samsara and its Sub-processors to Process Personal Data: (a) Processing in accordance with the Agreement; (b) Processing initiated by the Customer in their use of the Products; and (c) Processing to comply with other reasonable instructions as provided by Customer from time to time (e.g., via email) where such instructions are consistent with the terms of the Agreement.
- The Customer's right of audit under clause 8.9 of the EU SCCs may be exercised as specified in Section 9 of this Addendum.
- Pursuant to clause 9(a) of the EU SCCs, Samsara's Affiliates may be retained as Sub-processors, and Samsara and its Affiliates respectively are generally authorized by Customer and may engage third-party Sub-processors in connection with delivering the Products. Samsara will make available its then-current list of Sub-processors available to Customer in accordance with Section 5 of this Addendum. Pursuant to clause 9(a) of the EU SCCs, Samsara may engage new Sub-processors as described in Sections 5.2 of this Addendum. The parties agree that copies of Sub-processor agreements that Samsara must provide to Customer pursuant to clause 9(c) of the EU SCCs may have all commercial information, or clauses unrelated to the EU SCCs or their equivalent, removed by Samsara beforehand; and, that such copies will be provided by Samsara, in a manner to be determined in its discretion, only upon request by Customer. Any such agreements provided to the Customer in accordance with this Section 10.1.1 of this Addendum shall be considered the Confidential Information of Samsara.
- For purposes of clauses 8.5 and 16(d) of the EU SCCs, Samsara will comply with its obligations to return or destroy all Personal Data as specified in Section 11 of this Addendum.
- The optional redress language under Clause 11(a) of the EU SCCs will not apply;
- In Clause 17, Option 1 will apply, and the EU SCCs will be governed by the laws of the Republic of Ireland;
- In Clause 18(b), the choice of forum and jurisdiction for any disputes shall be resolved before the courts of the Republic of Ireland;
- Annex I shall be completed with the information set out in Annex I to this DPA
- Annex II shall be completed with the information set out in Annex II to this DPA
- Annex III shall be completed with the information set out in Annex III to this DPA

10.1.2. **Transfers from Switzerland.** With regards to transfers of Samsara Data protected by the Swiss FADP, the EU SCCs shall apply as specified in section 10.1.1 above, except that:

- the competent supervisory authority is the Swiss Federal Data Protection and Information Commissioner;
- references to “Member State” in the EU SCCs refer to Switzerland, and data subjects located in Switzerland may exercise and enforce their rights under the EU SCCs in Switzerland; and
- references to the “General Data Protection Regulation,” “Regulation 2016/679,” and “GDPR,” in the EU SCCs refer to the Swiss FADP (as amended or replaced).

10.1.3. **Transfers from the UK.** With regards to transfers of Samsara Data protected by the UK GDPR, the UK Addendum to the EU Standard Contractual Clauses (“UK Addendum”) issued by the Information Commissioner’s Office (“ICO”) under s.119A(1) of the Data Protection Act 2018 is hereby incorporated and shall apply as follows:

- the EU SCCs, completed as set out in section 10.1.1 above and as attached hereto, shall also apply to transfers of such Customer Personal Data;
- the UK Addendum shall be deemed executed between Samsara and Customer and the EU SCCs shall be deemed amended as specified by the UK Addendum in respect of the transfer of such Customer Personal Data; and
- the competent supervisory authority for such Samsara Data protected by the UK GDPR shall be the ICO.

10.2. If, in the performance of this Addendum, Samsara transfers any Personal Data to a Sub-processor that Processes Personal Data outside the European Union, Switzerland or the United Kingdom, then Samsara will in advance of any such transfer ensure that a mechanism to achieve adequacy in respect of that Processing is in place, such as: (a) the requirement for Samsara to execute or procure that the third-party execute Standard Contractual Clauses; or (b) any other specifically approved safeguard for data transfers (as recognised under Data Protection Laws) and/or a European Commission finding of adequacy.

10.3. To the extent the transfer mechanism relied on for any extra-territorial Personal Data transfers from a Customer in the European Union, Switzerland, or the United Kingdom, as applicable, hereunder to a location that is no longer deemed to provide an adequate level of protection under applicable Data Protection Laws, the Parties will promptly meet, within 60 days of Samsara being made aware of such inadequacy, to discuss and agree an alternative transfer mechanism or alternative supplementary measures in line with relevant guidance provided in respect of Data Protection Laws as soon as reasonably possible. Samsara shall use reasonable efforts to monitor the effectiveness of its supplementary measures, and may make any appropriate changes or adjustments it deems necessary (acting reasonably and in good faith).

10.4. Samsara remains certified under the E.U.-U.S. and Swiss-U.S. Privacy Shield Frameworks.

10.5. It is not the intention of the Customer or Samsara to contradict or restrict any of the provisions set forth in the EU SCCs and UK Addendum and, accordingly, if and to the extent the EU SCCs and/or UK Addendum conflict with any provisions of the Agreement, the EU SCCs and/or UK Addendum shall prevail to the extent of such conflict.

#### 11. Retrieval and Deletion of Customer Personal Data

11.1. Customer hereby acknowledges and accepts the functionality of the Products and the data retention and deletion policies as provided to Customer by Samsara, which may impact Customer Personal Data. Samsara will enable Customer to delete Customer Personal Data during the term of the Agreement in a manner consistent with the functionality of the Products. Upon termination or expiration of the Agreement, Customer may retrieve its Customer Personal Data in accordance with the Agreement and Samsara will promptly delete Customer Personal Data from its systems following such retrieval period, unless applicable law requires storage of the Customer Personal Data.

#### 12. Liability

12.1. Any claims brought under this Addendum (including under the Standard Contractual Clauses) shall be subject to the terms and conditions, including but not limited to, the exclusions and limitations of liability set forth in the Agreement.

#### 13. Additional California-Specific Provisions

13.1. To the extent that Customer Personal Data relates to California residents, Samsara will not retain, use, sell, share, or otherwise disclose Customer Personal Data (including for any commercial purpose or other purpose outside of the direct business relationship between the parties) other than as allowed by law or as needed to provide and support the Products, as set forth in the Agreement. For purposes of this section, the terms "sell" and "share" shall have the meaning given to them in the CPRA.

13.2. To the extent that Customer Personal Data relates to California residents, Samsara will comply with any applicable restrictions under the CPRA on combining such Customer Personal Data that Samsara receives from, or on behalf of, Customer with Personal Data that Samsara receives from, or on behalf of, another person or persons, or that Samsara collects from any interaction between it and a Data Subject.

13.3. To the extent that Customer Personal Data relates to California residents, Samsara will comply with the CPRA and, taking into consideration Samsara's role in the Processing, provide the level of protection for the relevant Customer Personal Data required by the CPRA.

#### 14. Changes in Data Protection Laws

14.1. If a new Data Protection Law becomes effective and is applicable to Samsara, Samsara and Customer will take all reasonable steps required by such Data Protection Law to ensure the parties' ability to comply with its

obligations under applicable law and ensure Samsara's compliance with all Data Protection Laws applicable to Samsara.

## **Standard Contractual Clauses**

### **Module Two - Transfer Controller to Processor**

#### **SECTION I Clause 1 Purpose and scope**

(a) The purpose of these standard contractual clauses is to ensure compliance with the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation or "GDPR")(1) for the transfer of personal data to a third country.

(b) The Parties:

(i) the natural or legal person(s), public authority/ies, agency/ies or other body/ies (hereinafter "entity/ies") transferring the personal data, as listed in Annex I.A (hereinafter each "data exporter"), and

(ii) the entity/ies in a third country receiving the personal data from the data exporter, directly or indirectly via another entity also Party to these Clauses, as listed in Annex I.A (hereinafter each "data importer")

have agreed to these standard contractual clauses (hereinafter "Clauses").

(c) These Clauses apply with respect to the transfer of personal data as specified in Annex I.B.

(d) The Appendix to these Clauses containing the Annexes referred to therein forms an integral part of these Clauses.

#### **Clause 2 Effect and invariability of the Clauses**

(a) These Clauses set out appropriate safeguards, including enforceable data subject rights and effective legal remedies, pursuant to Article 46(1) and Article 46(2)(c) of Regulation (EU) 2016/679 and, with respect to data transfers from controllers to processors, standard contractual clauses pursuant to Article 28(7) of Regulation (EU) 2016/679, provided they are not modified, except to select the appropriate Module(s) or to add or update information in the Appendix. This does not prevent the Parties from including the standard contractual clauses laid down in these Clauses in a wider contract and/or to add other clauses or additional safeguards, provided that they do not contradict, directly or indirectly, these Clauses or prejudice the fundamental rights or freedoms of data subjects.

(b) These Clauses are without prejudice to obligations to which the data exporter is subject by virtue of Regulation (EU) 2016/679.

#### **Clause 3 Third-party beneficiaries**

(a) Data subjects may invoke and enforce these Clauses, as third-party beneficiaries, against the data exporter and/or data importer, with the

following exceptions:

(i) Clause 1, Clause 2, Clause 3, Clause 6, Clause 7; (ii) Clause 8.1(b), 8.9(a), (c), (d) and (e); (iii) Clause 9(a), (c), (d) and (e); (iv) Clause 12(a), (d) and (f); (v) Clause 13; (vi) Clause 15.1(c), (d) and (e); (vii) Clause 16(e); (viii) Clause 18(a) and (b).

(b) Paragraph (a) is without prejudice to rights of data subjects under Regulation (EU) 2016/679.

#### **Clause 4 Interpretation**

(a) Where these Clauses use terms that are defined in Regulation (EU) 2016/679, those terms shall have the same meaning as in that Regulation.

(b) These Clauses shall be read and interpreted in the light of the provisions of Regulation (EU) 2016/679.

(c) These Clauses shall not be interpreted in a way that conflicts with rights and obligations provided for in Regulation (EU) 2016/679.

#### **Clause 5 Hierarchy**

In the event of a contradiction between these Clauses and the provisions of related agreements between the Parties, existing at the time these Clauses are agreed or entered into thereafter, these Clauses shall prevail.

#### **Clause 6 Description of the transfer(s)**

The details of the transfer(s), and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred, are specified in Annex I.B.

#### **Clause 7 – Intentionally Omitted**

### **SECTION II – OBLIGATIONS OF THE PARTIES**

#### **Clause 8 Data protection safeguards**

The data exporter warrants that it has used reasonable efforts to determine that the data importer is able, through the implementation of appropriate technical and organisational measures, to satisfy its obligations under these Clauses.

**8.1 Instructions** (a) The data importer shall process the personal data only on documented instructions from the data exporter. The data exporter may give such instructions throughout the duration of the contract.

(b) The data importer shall immediately inform the data exporter if it is unable to follow those instructions.

**8.2 Purpose limitation** The data importer shall process the personal data only for the specific purpose(s) of the transfer, as set out in Annex I.B, unless on further instructions from the data exporter.

**8.3 Transparency** On request, the data exporter shall make a copy of these Clauses, including the Appendix as completed by the Parties, available to the data subject free of charge. To the extent necessary to protect business secrets or other confidential information, including the measures described in Annex II and personal data, the data exporter may redact part of the text of the Appendix to these Clauses prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand its content or exercise their rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information. This Clause is without prejudice to the obligations of the data exporter under Articles 13 and 14 of Regulation (EU) 2016/679.

**8.4 Accuracy** If the data importer becomes aware that the personal data it has received is inaccurate, or has become outdated, it shall inform the data exporter without undue delay. In this case, the data importer shall cooperate with the data exporter to erase or rectify the data.

**8.5 Duration of processing and erasure or return of data** Processing by the data importer shall only take place for the duration specified in Annex I.B. After the end of the provision of the processing services, the data importer shall, at the choice of the data exporter, delete all personal data processed on behalf of the data exporter and certify to the data exporter that it has done so, or return to the data exporter all personal data processed on its behalf and delete existing copies. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit return or deletion of the personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process it to the extent and for as long as required under that local law. This is without prejudice to Clause 14, in particular the requirement for the data importer under Clause 14(e) to notify the data exporter throughout the duration of the contract if it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under Clause 14(a).

**8.6 Security of processing** (a) The data importer and, during transmission, also the data exporter shall implement appropriate technical and organisational measures to ensure the security of the data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to that data (hereinafter "personal data breach"). In assessing the appropriate level of security, the Parties shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing



and the risks involved in the processing for the data subjects. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner. In case of pseudonymisation, the additional information for attributing the personal data to a specific data subject shall, where possible, remain under the exclusive control of the data exporter. In complying with its obligations under this paragraph, the data importer shall at least implement the technical and organisational measures specified in Annex II. The data importer shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security.

(b) The data importer shall grant access to the personal data to members of its personnel only to the extent strictly necessary for the implementation, management and monitoring of the contract. It shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

(c) In the event of a personal data breach concerning personal data processed by the data importer under these Clauses, the data importer shall take appropriate measures to address the breach, including measures to mitigate its adverse effects. The data importer shall also notify the data exporter without undue delay after having become aware of the breach. Such notification shall contain the details of a contact point where more information can be obtained, a description of the nature of the breach (including, where possible, categories and approximate number of data subjects and personal data records concerned), its likely consequences and the measures taken or proposed to address the breach including, where appropriate, measures to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.

(d) The data importer shall cooperate with and assist the data exporter to enable the data exporter to comply with its obligations under Regulation (EU) 2016/679, in particular to notify the competent supervisory authority and the affected data subjects, taking into account the nature of processing and the information available to the data importer.

**8.7 Sensitive data** Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions and offences (hereinafter 'sensitive data'), the data importer shall apply the specific restrictions and/or additional safeguards described in Annex I.B.

**8.8 Onward transfers** The data importer shall only disclose the personal data to a third-party on documented instructions from the data exporter. In addition, the data may only be disclosed to a third-party located outside the European Union<sup>(2)</sup> (in the same country as the data importer or in another

third country, hereinafter "onward transfer") if the third-party is or agrees to be bound by these Clauses, under the appropriate Module, or if:

- (a) the onward transfer is to a country benefiting from an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 that covers the onward transfer;
- (b) the third-party otherwise ensures appropriate safeguards pursuant to Articles 46 or 47 Regulation of (EU) 2016/679 with respect to the processing in question;
- (c) the onward transfer is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or
- (d) the onward transfer is necessary in order to protect the vital interests of the data subject or of another natural person.

Any onward transfer is subject to compliance by the data importer with all the other safeguards under these Clauses, in particular purpose limitation.

**8.9 Documentation and compliance** (a) The data importer shall promptly and adequately deal with enquiries from the data exporter that relate to the processing under these Clauses.

(b) The Parties shall be able to demonstrate compliance with these Clauses. In particular, the data importer shall keep appropriate documentation on the processing activities carried out on behalf of the data exporter.

(c) The data importer shall make available to the data exporter all information necessary to demonstrate compliance with the obligations set out in these Clauses and at the data exporter's request, allow for and contribute to audits of the processing activities covered by these Clauses, at reasonable intervals or if there are indications of non-compliance. In deciding on a review or audit, the data exporter may take into account relevant certifications held by the data importer.

(d) The data exporter may choose to conduct the audit by itself or mandate an independent auditor. Audits may include inspections at the premises or physical facilities of the data importer and shall, where appropriate, be carried out with reasonable notice.

(e) The Parties shall make the information referred to in paragraphs (b) and (c), including the results of any audits, available to the competent supervisory authority on request.

**Clause 9 Use of sub-processors** (a) The data importer has the data exporter's general authorisation for the engagement of sub-processor(s) from an agreed list. The data importer shall specifically inform the data exporter in writing of any intended changes to that list through the addition or replacement of sub-processors at least 10 calendar days in advance, thereby giving the data exporter sufficient time to be able to object to such

changes prior to the engagement of the sub-processor(s). The data importer shall provide the data exporter with the information necessary to enable the data exporter to exercise its right to object.

(b) Where the data importer engages a sub-processor to carry out specific processing activities (on behalf of the data exporter), it shall do so by way of a written contract that provides for, in substance, the same data protection obligations as those binding the data importer under these Clauses, including in terms of third-party beneficiary rights for data subjects. The Parties agree that, by complying with this Clause, the data importer fulfils its obligations under Clause 8.8. The data importer shall ensure that the sub-processor complies with the obligations to which the data importer is subject pursuant to these Clauses.

(c) The data importer shall provide, at the data exporter's request, a copy of such a sub-processor agreement and any subsequent amendments to the data exporter. To the extent necessary to protect business secrets or other confidential information, including personal data, the data importer may redact the text of the agreement prior to sharing a copy.

(d) The data importer shall remain fully responsible to the data exporter for the performance of the sub-processor's obligations under its contract with the data importer. The data importer shall notify the data exporter of any failure by the sub-processor to fulfil its obligations under that contract.

(e) The data importer shall agree a third-party beneficiary clause with the sub-processor whereby – in the event the data importer has factually disappeared, ceased to exist in law or has become insolvent – the data exporter shall have the right to terminate the sub-processor contract and to instruct the sub-processor to erase or return the personal data.

**Clause 10 Data subject rights** (a) The data importer shall promptly notify the data exporter of any request it has received from a data subject. It shall not respond to that request itself unless it has been authorised to do so by the data exporter.

(b) The data importer shall assist the data exporter in fulfilling its obligations to respond to data subjects' requests for the exercise of their rights under Regulation (EU) 2016/679. In this regard, the Parties shall set out in Annex II the appropriate technical and organisational measures, taking into account the nature of the processing, by which the assistance shall be provided, as well as the scope and the extent of the assistance required.

(c) In fulfilling its obligations under paragraphs (a) and (b), the data importer shall comply with the instructions from the data exporter.

**Clause 11 Redress** (a) The data importer shall inform data subjects in a transparent and easily accessible format, through individual notice or on its website, of a contact point authorised to handle complaints. It shall deal promptly with any complaints it receives from a data subject.

(b) In case of a dispute between a data subject and one of the Parties as regards compliance with these Clauses, that Party shall use its best efforts to resolve the issue amicably in a timely fashion. The Parties shall keep each other informed about such disputes and, where appropriate, cooperate in resolving them.

(c) Where the data subject invokes a third-party beneficiary right pursuant to Clause 3, the data importer shall accept the decision of the data subject to:

(i) lodge a complaint with the supervisory authority in the Member State of his/her habitual residence or place of work, or the competent supervisory authority pursuant to Clause 13;

(ii) refer the dispute to the competent courts within the meaning of Clause 18.

(d) The Parties accept that the data subject may be represented by a not-for-profit body, organisation or association under the conditions set out in Article 80(1) of Regulation (EU) 2016/679.

(e) The data importer shall abide by a decision that is binding under the applicable EU or Member State law.

(f) The data importer agrees that the choice made by the data subject will not prejudice his/her substantive and procedural rights to seek remedies in accordance with applicable laws.

**Clause 12 Liability** (a) Each Party shall be liable to the other Party/ies for any damages it causes the other Party/ies by any breach of these Clauses.

(b) The data importer shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data importer or its sub-processor causes the data subject by breaching the third-party beneficiary rights under these Clauses.

(c) Notwithstanding paragraph (b), the data exporter shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data exporter or the data importer (or its sub-processor) causes the data subject by breaching the third-party beneficiary rights under these Clauses. This is without prejudice to the liability of the data exporter and, where the data exporter is a processor acting on behalf of a controller, to the liability of the controller under Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, as applicable.

(d) The Parties agree that if the data exporter is held liable under paragraph (c) for damages caused by the data importer (or its sub-processor), it shall be entitled to claim back from the data importer that part of the compensation corresponding to the data importer's responsibility for the damage.

(e) Where more than one Party is responsible for any damage caused to the data subject as a result of a breach of these Clauses, all responsible Parties

shall be jointly and severally liable and the data subject is entitled to bring an action in court against any of these Parties.

(f) The Parties agree that if one Party is held liable under paragraph (e), it shall be entitled to claim back from the other Party/ies that part of the compensation corresponding to its/their responsibility for the damage.

(g) The data importer may not invoke the conduct of a sub-processor to avoid its own liability.

**Clause 13 Supervision** (a) Where the data exporter is established in an EU Member State: The supervisory authority with responsibility for ensuring compliance by the data exporter with Regulation (EU) 2016/679 as regards the data transfer, as indicated in Annex I.C, shall act as competent supervisory authority.

Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) and has appointed a representative pursuant to Article 27(1) of Regulation (EU) 2016/679: The supervisory authority of the Member State in which the representative within the meaning of Article 27(1) of Regulation (EU) 2016/679 is established, as indicated in Annex I.C, shall act as competent supervisory authority.

Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) without however having to appoint a representative pursuant to Article 27(2) of Regulation (EU) 2016/679: The supervisory authority of one of the Member States in which the data subjects whose personal data is transferred under these Clauses in relation to the offering of goods or services to them, or whose behaviour is monitored, are located, as indicated in Annex I.C, shall act as competent supervisory authority.

(b) The data importer agrees to submit itself to the jurisdiction of and cooperate with the competent supervisory authority in any procedures aimed at ensuring compliance with these Clauses. In particular, the data importer agrees to respond to enquiries, submit to audits and comply with the measures adopted by the supervisory authority, including remedial and compensatory measures. It shall provide the supervisory authority with written confirmation that the necessary actions have been taken.

### **SECTION III – LOCAL LAWS AND OBLIGATIONS IN CASE OF ACCESS BY PUBLIC AUTHORITIES**

#### **Clause 14 Local laws and practices affecting compliance with the Clauses**

(a) The Parties warrant that they have no reason to believe that the laws and practices in the third country of destination applicable to the processing of the personal data by the data importer, including any requirements to disclose personal data or measures authorising access by public authorities, prevent the data importer from fulfilling its obligations under these Clauses. This is based on the understanding that laws and practices that respect the essence of the fundamental rights and freedoms and do not exceed what is necessary and proportionate in a democratic

society to safeguard one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679, are not in contradiction with these Clauses.

(b) The Parties declare that in providing the warranty in paragraph (a), they have taken due account in particular of the following elements:

(i) the specific circumstances of the transfer, including the length of the processing chain, the number of actors involved and the transmission channels used; intended onward transfers; the type of recipient; the purpose of processing; the categories and format of the transferred personal data; the economic sector in which the transfer occurs; the storage location of the data transferred;

(ii) the laws and practices of the third country of destination – including those requiring the disclosure of data to public authorities or authorising access by such authorities – relevant in light of the specific circumstances of the transfer, and the applicable limitations and safeguards(3);

(iii) any relevant contractual, technical or organisational safeguards put in place to supplement the safeguards under these Clauses, including measures applied during transmission and to the processing of the personal data in the country of destination.

(c) The data importer warrants that, in carrying out the assessment under paragraph (b), it has made its best efforts to provide the data exporter with relevant information and agrees that it will continue to cooperate with the data exporter in ensuring compliance with these Clauses.

(d) The Parties agree to document the assessment under paragraph (b) and make it available to the competent supervisory authority on request.

(e) The data importer agrees to notify the data exporter promptly if, after having agreed to these Clauses and for the duration of the contract, it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under paragraph (a), including following a change in the laws of the third country or a measure (such as a disclosure request) indicating an application of such laws in practice that is not in line with the requirements in paragraph (a).

(f) Following a notification pursuant to paragraph (e), or if the data exporter otherwise has reason to believe that the data importer can no longer fulfil its obligations under these Clauses, the data exporter shall promptly identify appropriate measures (e.g. technical or organisational measures to ensure security and confidentiality) to be adopted by the data exporter and/or data importer to address the situation. The data exporter shall suspend the data transfer if it considers that no appropriate safeguards for such transfer can be ensured, or if instructed by the competent supervisory authority to do so. In this case, the data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses. If the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise. Where the contract is terminated pursuant to this Clause, Clause 16(d) and (e) shall apply.

**Clause 15** Obligations of the data importer in case of access by public authorities 15.1 Notification

(a) The data importer agrees to notify the data exporter and, where possible, the data subject promptly (if necessary with the help of the data exporter) if it:

(i) receives a legally binding request from a public authority, including judicial authorities, under the laws of the country of destination for the disclosure of personal data transferred pursuant to these Clauses; such notification shall include information about the personal data requested, the requesting authority, the legal basis for the request and the response provided; or

(ii) becomes aware of any direct access by public authorities to personal data transferred pursuant to these Clauses in accordance with the laws of the country of destination; such notification shall include all information available to the importer.

(b) If the data importer is prohibited from notifying the data exporter and/or the data subject under the laws of the country of destination, the data importer agrees to use its best efforts to obtain a waiver of the prohibition, with a view to communicating as much information as possible, as soon as possible. The data importer agrees to document its best efforts in order to be able to demonstrate them on request of the data exporter.

(c) Where permissible under the laws of the country of destination, the data importer agrees to provide the data exporter, at regular intervals for the duration of the contract, with as much relevant information as possible on the requests received (in particular, number of requests, type of data requested, requesting authority/ies, whether requests have been challenged and the outcome of such challenges, etc.).

(d) The data importer agrees to preserve the information pursuant to paragraphs (a) to (c) for the duration of the contract and make it available to the competent supervisory authority on request.

(e) Paragraphs (a) to (c) are without prejudice to the obligation of the data importer pursuant to Clause 14(e) and Clause 16 to inform the data exporter promptly where it is unable to comply with these Clauses.

15.2 Review of legality and data minimisation

(a) The data importer agrees to review the legality of the request for disclosure, in particular whether it remains within the powers granted to the requesting public authority, and to challenge the request if, after careful assessment, it concludes that there are reasonable grounds to consider that the request is unlawful under the laws of the country of destination, applicable obligations under international law and principles of international comity. The data importer shall, under the same conditions, pursue possibilities of appeal. When challenging a request, the data importer shall seek interim measures with a view to suspending the effects of the request until the competent judicial authority has decided on its merits. It shall not disclose the personal data requested until required to do so under the applicable procedural rules. These requirements are without prejudice to the obligations of the data importer under Clause 14(e).

(b) The data importer agrees to document its legal assessment and any challenge to the request for disclosure and, to the extent permissible under the laws of the country of destination, make the documentation available to the data exporter. It shall also make it available to the competent supervisory authority on request.

(c) The data importer agrees to provide the minimum amount of information permissible when responding to a request for disclosure, based on a reasonable interpretation of the request.

#### **SECTION IV – FINAL PROVISIONS Clause 16** Non-compliance with the Clauses and termination

(a) The data importer shall promptly inform the data exporter if it is unable to comply with these Clauses, for whatever reason.

(b) In the event that the data importer is in breach of these Clauses or unable to comply with these Clauses, the data exporter shall suspend the transfer of personal data to the data importer until compliance is again ensured or the contract is terminated. This is without prejudice to Clause 14(f).

(c) The data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses, where:

(i) the data exporter has suspended the transfer of personal data to the data importer pursuant to paragraph (b) and compliance with these Clauses is not restored within a reasonable time and in any event within one month of suspension;

(ii) the data importer is in substantial or persistent breach of these Clauses; or

(iii) the data importer fails to comply with a binding decision of a competent court or supervisory authority regarding its obligations under these Clauses.

In these cases, it shall inform the competent supervisory authority of such non-compliance. Where the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise.

(d) Personal data that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall at the choice of the data exporter immediately be returned to the data exporter or deleted in its entirety. The same shall apply to any copies of the data. The data importer shall certify the deletion of the data to the data exporter. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit the return or deletion of the transferred personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process the data to the extent and for as long as required under that local law.

(e) Either Party may revoke its agreement to be bound by these Clauses where (i) the European Commission adopts a decision pursuant to Article 45(3) of Regulation (EU) 2016/679 that covers the transfer of personal data



to which these Clauses apply; or (ii) Regulation (EU) 2016/679 becomes part of the legal framework of the country to which the personal data is transferred. This is without prejudice to other obligations applying to the processing in question under Regulation (EU) 2016/679.

**Clause 17 Governing law** These Clauses shall be governed by the law of one of the EU Member States, provided such law allows for third-party beneficiary rights. The Parties agree that this shall be the law of the Republic of Ireland.

**Clause 18 Choice of forum and jurisdiction** (a) Any dispute arising from these Clauses shall be resolved by the courts of an EU Member State.

(b) The Parties agree that those shall be the courts of the Republic of Ireland.

(c) A data subject may also bring legal proceedings against the data exporter and/or data importer before the courts of the Member State in which he/she has his/her habitual residence.

(d) The Parties agree to submit themselves to the jurisdiction of such courts.

## APPENDIX

### ANNEX I

#### A. LIST OF PARTIES

##### **Data exporter(s):**

Name: Customer, as detailed in the relevant Order Form (notwithstanding that Customer may be an entity or entities located outside of the European Union/Switzerland/the UK, as applicable)

Address: As detailed in the relevant Order Form

Contact person's name, position and contact details: FAO DPO, Privacy/  
Legal Team

Activities relevant to the data transferred under these Clauses: As detailed in Annex I.B

Role: Controller

##### **Data importer(s):**

Name: Samsara Inc.

Address: 1 De Haro Street, San Francisco, CA 94107, USA

Contact person's name, position and contact details:  
legalnotices@samsara.com

Activities relevant to the data transferred under these Clauses: As detailed in Annex I.B

Role: Processor

## B. DESCRIPTION OF TRANSFER

### **Categories of data subjects whose personal data is transferred**

Data subjects include the individuals whose Personal Data is provided to Samsara via the Products by (or at the direction of) Customer or by any employee or end user of the Customer which may include, but is not limited to Personal Data relating to users, employees, officers, directors, contractors, agents, vendors, customers, clients, visitors, and such other individuals who may be captured by the Products; the extent of which, in each and every case, is determined and controlled by the data exporter in its sole discretion, depending on its use of the Products.

### **Categories of personal data transferred**

Personal Data relating to individuals provided to Samsara via the Products, by (or at the direction of) Customer or by any employee or end user of the Customer which may include, but is not limited to Personal Data relating to the following categories of Personal Data: names, contact information (e.g., company, email, address, telephone number), ID data, connection data, location data, profile pictures, images and video captured by the Products (e.g., images of individuals inside a vehicle operating a dash cam, and other information capable of identifying individuals from such imagery e.g., vehicle registration and license plates, signposts for buildings, houses and other landmarks); the extent of which, in each and every case, is determined and controlled by the data exporter in its sole discretion, depending on its use of the Products.

**Sensitive data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures.**

Data exporter may submit special categories of data to the Products and/or Samsara may create special categories of data within the Products, the

extent of which is determined and controlled by the data exporter in its sole discretion, depending on its use of the Products. If applicable, data exporter agrees that it has reviewed and assessed the restrictions and safeguards applied to such special categories of Personal Data, including the measures described in Annex II of the Addendum, and has determined that such restrictions and safeguards are sufficient for the purposes of complying with Data Protection Laws.

**The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis).**

Samsara will Process Customer Personal Data for as long as is necessary in order to provide the Products to the Customer in accordance with, and as otherwise permitted by, the Agreement, and for any disclosures compelled by law.

**Nature of the processing**

Samsara will Process Customer Personal Data for the purposes of providing the Products to the Customer in accordance with, and as otherwise permitted by, the Agreement, and for any disclosures compelled by law.

**Purpose(s) of the data transfer and further processing**

Samsara will Process Customer Personal Data for the purposes of providing the Products to the Customer in accordance with, and as otherwise permitted by, the Agreement, and for any disclosures compelled by law.

**The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period**

The term of the Agreement plus the period from the expiry or termination of the Agreement until deletion of all Customer Data by Samsara in accordance with the Agreement. Specific Customer Personal Data may have specific data retention and deletion policies in place (e.g., video data from dash cameras utilized by the customers located in the EEA, which is uploaded to the Hosted Software have a six months retention policy and deletion schedule in place as a default setting; which the Customer accepts, which can be amended due to Customer requirements).

**For transfers to (sub-)processors, also specify subject matter, nature and duration of the processing**

As detailed [here](#). You can also opt-in to receive updates to Sub-processors via that link.

**C. COMPETENT SUPERVISORY AUTHORITY**

**Identify the competent supervisory authority/ies in accordance with Clause 13**

Where the data exporter is established in an EU Member State: The supervisory authority with responsibility for ensuring compliance by the data exporter with Regulation (EU) 2016/679 as regards the data transfer, shall act as competent supervisory authority.

Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) and has appointed a representative pursuant to Article 27(1) of Regulation (EU) 2016/679: The supervisory authority of the Member State in which the representative within the meaning of Article 27(1) of Regulation (EU) 2016/679 is established, shall act as competent supervisory authority.

Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) without however having to appoint a representative pursuant to Article 27(2) of Regulation (EU) 2016/679: The supervisory authority of one of the Member States in which the data subjects whose personal data is transferred under these Clauses in relation to the offering of goods or services to them, or whose behaviour is monitored, are located, shall act as competent supervisory authority.

**ANNEX II**

**TECHNICAL AND ORGANISATIONAL MEASURES INCLUDING TECHNICAL AND ORGANISATIONAL MEASURES TO ENSURE THE SECURITY OF THE DATA**

Samsara, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the Processing as well as the risk of varying likelihood and severity for the legally protected interests of natural persons, shall implement the necessary technical and organizational measures to ensure a level of security appropriate to the risk when Processing Personal Data, in particular as regards the processing of special categories of Personal Data.

These measures may include pseudonymization and encryption of personal data, if such means are possible in view of the purposes of Processing.

In particular:

Samsara takes steps to restrict access to Customer Personal Data to Customer, its users, and authorized Samsara personnel and Sub-processors. In addition, Samsara has processes designed to protect its systems containing or accessing the Customer's Personal Data against

Personal Data Breaches. The underlying infrastructure leverages Amazon AWS, which is ISO 27001 and SOC 1 Type II certified. Network devices, including firewall and other boundary devices, are in place to monitor and control communications at the external boundary of the network and at key internal boundaries within the network. These boundary devices employ rule sets, access control lists (ACL), and configurations to enforce the flow of information to specific information system services. ACLs, or traffic flow policies, are established on each managed interface, which manage and enforce the flow of traffic.

Data is logically separated across distributed databases with required authentication checks for every application-layer and data-layer access made to any tenant's data. The logical separation is designed to associate data with exactly one customer and required authentication checks at the application and data layers aim to isolate data by customer and accounts provisioned for that customer.

The Products employ a Virtual Private Cloud to provide resource isolation and minimize attack surface area. The Products are protected by IP- and port-based firewalls. Administrative access to Samsara's infrastructure is restricted and verified by AWS Identity and Access Management. Distributed Denial of Service (DDoS) attacks can be mitigated with elastic load balancing and highly available DNS services.

When a storage device containing Customer Personal Data has reached the end of its useful life, procedures include a decommissioning process that is designed to prevent the data from being exposed to unauthorized individuals. Techniques detailed in DoD 5220.22-M ("National Industrial Security Program Operating Manual ") or NIST 800-88 ("Guidelines for Media Sanitization") are used to destroy data as part of the decommissioning process. All decommissioned magnetic storage devices are degaussed and physically destroyed in accordance with industry-standard practices.

Samsara implements measures designed to enhance the physical security of its networks, servers, cloud and other information systems in which Customer Data is stored, processed, transmitted, or accessed and to maintain them in a secure manner that satisfies the requirements of this Appendix.

Samsara reviews information technology security measures annually. On an annual basis a qualified independent third-party conducts penetration tests of Samsara's system for security vulnerabilities. Samsara maintains suitable processes to identify, isolate and remediate security vulnerabilities.

**ANNEX III****LIST OF SUB-PROCESSORS**

The controller has authorised the use of the sub-processors listed [here](#).

---

**Footnotes:**

(1) Where the data exporter is a processor subject to Regulation (EU) 2016/679 acting on behalf of a Union institution or body as controller, reliance on these Clauses when engaging another processor (sub-processing) not subject to Regulation (EU) 2016/679 also ensures compliance with Article 29(4) of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39), to the extent these Clauses and the data protection obligations as set out in the contract or other legal act between the controller and the processor pursuant to Article 29(3) of Regulation (EU) 2018/1725 are aligned. This will in particular be the case where the controller and processor rely on the standard contractual clauses included in Decision 2021/915.

(2) The Agreement on the European Economic Area (EEA Agreement) provides for the extension of the European Union's internal market to the three EEA States Iceland, Liechtenstein and Norway. The Union data protection legislation, including Regulation (EU) 2016/679, is covered by the EEA Agreement and has been incorporated into Annex XI thereto. Therefore, any disclosure by the data importer to a third party located in the EEA does not qualify as an onward transfer for the purpose of these Clauses.

(3) As regards the impact of such laws and practices on compliance with these Clauses, different elements may be considered as part of an overall assessment. Such elements may include relevant and documented practical experience with prior instances of requests for disclosure from public authorities, or the absence of such requests, covering a sufficiently representative time-frame. This refers in particular to internal records or other documentation, drawn up on a continuous basis in accordance with due diligence and certified at senior management level, provided that this information can be lawfully shared with third parties. Where this practical experience is relied upon to conclude that the data importer will not be prevented from complying with these Clauses, it needs to be supported by other relevant, objective elements, and it is for the Parties to consider carefully whether these elements together carry sufficient weight, in terms of their reliability and representativeness, to support this conclusion. In particular, the Parties have to take into account whether their practical experience is corroborated and not contradicted by publicly available or otherwise accessible, reliable information on the existence or absence of

requests within the same sector and/or the application of the law in practice, such as case law and reports by independent oversight bodies.

Products

- Platform Overview
- Video-Based Safety
- Vehicle Telematics
- Apps & Driver Workflows
- Equipment Monitoring
- Site Visibility
- Hardware
- Explore More Products

Integrations

- OEM Integrations
- App Marketplace
- Expert Marketplace

Resources

- Customer Stories
- Support Center
- Customer Referral Program
- Partner Programs
- Guides
- Product Tours
- Webinars
- Brand Assets

For Developers

- Developers
- API Changelog
- Developer APIs

Company

- About
- Careers
- Diversity
- Sustainability
- Investor Relations
- News
- Blog
- Privacy
- Security
- Contact

United States

## **TOWN'S TERMS AND CONDITIONS ADDENDUM TO SAMSARA, INC. FLEET TRACKING PROPOSAL TO THE TOWN OF FLOWER MOUND, TEXAS**

The Town of Flower Mound, Texas ("Town" or "Customer") and Samsara, Inc. ("Samsara") agree to comply with the following terms and conditions ("Terms and Conditions" or this "Addendum"). **These Terms and Conditions and Samara's proposal and its attachments and exhibits collectively shall constitute a contract between the Town and Samsara ("Contract"). The Contract is not valid until both the Proposal and this Addendum have been executed by each party. The Contract shall be effective on the last signature date on either the Proposal or this Addendum.**

1. **SAMSARA TO PACKAGE GOODS:** Samsara will package goods in accordance with good commercial practice.
2. **SHIPMENT UNDER RESERVATION PROHIBITED:** Samsara is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.
3. **DELIVERY TERMS AND TRANSPORTATION CHARGES:** F.O.B. (2010) Origin, Freight Prepaid, and Charged Back, Town of Flower Mound, Texas, with all delivery and packing costs to be prepaid by Samsara, unless delivery terms are specified otherwise in bid. Town agrees to reimburse Samsara for transportation costs in the amount specified in Samsara's bid, or actual costs, whichever is lower, if the quoted delivery terms do not include transportation costs, provided Town shall have the right to designate what method of transportation shall be used to ship the goods.
4. **PLACE OF DELIVERY:** The place of delivery shall be set forth on the purchase order. Any change thereto shall be affected by modification as provided for the Clause 18 "Modifications," hereof. The terms of this Contract are "no arrival, no sale".
5. **SALES TAX EXEMPTION:** Do not include Federal Excise, State or Town Sales Tax. Town shall furnish tax exemption certificate, if required.
6. **INVOICES AND PAYMENTS:** (a) Samsara shall submit separate invoices on each purchase order after each delivery. Invoices shall indicate the purchase order number, shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading, and the freight weigh bill when applicable, should be attached to the invoice. Mail to: Town of Flower Mound, Accounts Payable, \_\_\_\_\_, Flower Mound, Texas 75028. In accordance with the Texas Prompt Payment Act, payments shall be made thirty days after the goods are delivered to the Town, or a correct invoice is received, whichever is later. Suppliers should keep the Accounts Payable Office advised of any changes in remittance addresses.
7. **SPECIAL TOOLS AND TEST EQUIPMENT:** If the price stated on the face hereof includes the cost of any special tooling or test equipment fabricated or required by the Samsara for the purpose of filling this order, such special tooling and any process sheets related thereto shall become the property of the Town and to the extent feasible shall be identified by the Samsara as such.
8. **WARRANTY PRICE:** The Samsara warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Samsara for the purpose of securing business.
9. **SAFETY WARRANTY:** Samsara warrants that the product sold to Town shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, Town may return the product for correction or replacement at Samsara's expense.
10. **NO WARRANTY BY TOWN AGAINST INFRINGEMENTS:** As part of the Contract, Samsara agrees to ascertain whether goods manufactured in accordance with the specifications attached to the Contract will give rise to the rightful claim of any third person by way of infringement or the like. Town makes no warranty that the production of goods according to the specification will give rise to such a claim; and in no event shall Town be liable to Samsara for indemnification in the event that Samsara is sued on the grounds of infringement or the like. If Samsara is of the opinion that an infringement or the like will result, he will notify Town to this effect in writing within two weeks after the signing of the Contract. If Town does not receive notice and is subsequently held liable for the infringement or the like, Samsara will save Town harmless. If Samsara in good faith ascertains that production of the goods in accordance with the specifications will result in infringement or the like, this contract shall be null and void except that Town will pay Samsara reasonable cost of his search as to infringements.



11. **MODIFICATIONS:** This contract can be modified or rescinded only in writing signed by both of the parties or their duly authorized agents. This shall include any change orders.
12. **ASSIGNMENT OR DELEGATION:** No right or interest in this contract shall be assigned or delegated of any obligation made by Samsara without the written permission of the Town, except in the case of a merger, acquisition, or sale of all or substantially all of its assets. Any attempted assignment or delegation by Samsara shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.
13. **WAIVER:** No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver of renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.
14. **CONFLICT BETWEEN PROPOSAL AND TERMS AND CONDITIONS:** In the event of a conflict between the Town's Terms and Conditions in this Addendum, the Purchase Order, or the Samsara Terms of Service, the Town's Terms and Conditions in this Addendum shall prevail.
15. **INTERPRETATION PAROL EVIDENCE:** This writing is intended by the parties as a final expression of their agreement and is intended also as the complete and exclusive statement of terms of their agreement. No course of prior dealings between the parties, and no usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or acquiescence in the course of performance rendered under the Contract shall not be relevant to determine the meaning of the Contract even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in the Contract, the definition of the Code is to control.
16. **APPLICABLE LAW:** The Contract shall be governed by the Uniform Commercial Code. Whenever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of the Contract.
17. **VENUE:** Both parties agree that venue or any litigation arising from this contract shall lie in Tarrant County, Texas.
18. **INDEPENDENT CONTRACTOR:** Samsara shall be considered an independent contractor and not an agent, servant, employee, or representative of Town in the performance of the work. No term or provision herein or act of the Samsara shall be construed as changing that status.
19. **PATENT RIGHTS/INDEMNIFICATION:** Samsara will release, hold harmless, indemnify, defend (or settle), at its expense, any actual or threatened third-party action, suit or proceeding against Customer ("Claim") to the extent such Claim is based on an allegation that Samsara's Products or any part thereof, as of its delivery date under the Contract, infringes a valid United States patent or copyright or misappropriates a third party's trade secret, and will indemnify Customer for any costs, damages and reasonable attorneys' fees attributable to such Claim that are awarded against Customer. Samsara's obligations under this section are contingent upon: (a) Customer providing Samsara with prompt written notice of such Claim; (b) Customer providing reasonable cooperation to Samsara, at Samsara's expense, in the defense and settlement of such Claim; and (c) Samsara having sole authority to defend or settle such Claim. In the event that Samsara's right to provide the Products is enjoined or in Samsara's reasonable opinion is likely to be enjoined, Samsara may obtain the right to continue providing the Products, replace or modify the Products so that it becomes non-infringing, or, if such remedies are not reasonably available, terminate the Contract without liability to Customer and Customer will be provided a Refund. **THE FOREGOING STATES THE ENTIRE OBLIGATION OF SAMSARA AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS BY THE PRODUCTS.** Samsara will have no liability under this section to the extent that any Claim results from: (a) modifications to the Products made by a party other than Samsara or a party acting on Samsara's behalf; (b) the combination, operation or use of the Products with equipment, devices, software or data not supplied by Samsara; (c) Customer's failure to use updated or modified versions of the Products provided by Samsara; (d) Samsara's compliance with any designs, specifications or plans provided by Customer; or (e) Customer's use of the Products other than in accordance with the Contract or any Documentation.
20. **SEVERABILITY:** In case any one or more of the provisions contained in these Terms and Conditions shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and these Terms and Conditions shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

21. GRATUITIES: The Town may, by written notice to Samsara, cancel this contract without liability to Samsara if it is determined by Town that gratuities, in the form of entertainment, gifts, or otherwise were offered or given by the Samsara, or any agent or representative of the Samsara, to any officer or employee of the Town of Flower Mound with the view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making or any determinations with respect to the performing of such a contract.

22. DISCLOSURE: Pursuant to Chapter 176 of the Texas Local Government Code, a person or agent of a person who contracts or seeks to contract with the Town of Flower Mound must complete a conflict of interest questionnaire if the person or agent has an affiliation or business relationship that might cause a conflict of interest with the Town. The conflict of interest questionnaire, which is available online at [ethics.state.tx.us](https://ethics.state.tx.us), must be filed with the Town Secretary of the Town of Flower Mound no later than the seventh business day after the person or agent begins contract discussions or negotiations with the Town of Flower Mound or submits to the Town of Flower Mound an application, response to a request for proposal or bid, correspondence, or another writing related to a potential agreement with the Town of Flower Mound. An updated conflict of interest questionnaire must be filed in accordance with Chapter 176 of the Local Government Code. Samsara should consult with legal counsel if you have questions regarding its compliance with the requirements of Chapter 176. It is the responsibility of each person or agent who is contracting or seeking to contract with the Town of Flower Mound to comply with the filing requirements of Chapter 176.

23. CERTIFICATE OF INTERESTED PARTIES. A Samsara that will be awarded a contract that is greater than \$50,000 is required to electronically create a Certificate of Interested Parties Form 1295 through the Texas Ethics Commission website:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

and submit a signed copy of the form to the Town prior to the award of the contract. A contract, including a Town-issued purchase order, will not be enforceable or legally binding until the Town receives and acknowledges receipt of the properly completed Form 1295 from the Samsara.

24. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS: No officer or employee of the Town of Flower Mound shall have a financial interest, direct or indirect, in any contract with the Town, or shall be financially interested, directly or indirectly, in the sale to the Town of Flower Mound of any land, materials, supplies or service, except on behalf of the Town as an officer or employee. Any willful violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall be subject to removal from his/her office or position. Any violation of this section with the knowledge expressed or implied, of the person or corporation contracting with the Town, shall render the involved contract voidable.

25. NO BOYCOTT OF ISRAEL: Pursuant to Texas Government Code, Chapter 2270, the Samsara agrees that acceptance of these Terms & Conditions serves as written verification that Contractor: (a) does not boycott Israel, as defined by Texas Government Code Section 808.001; and (b) will not boycott Israel during the term of the contract.

26. NO BOYCOTT OF ENERGY COMPANIES: Pursuant to Texas Government Code, Chapter 2274, the Samsara, should it meet the requirements of Chapter 2274, agrees that acceptance of these Terms & Conditions serves as written verification that Contractor: (a) does not boycott energy companies, as defined by Texas Government Code Chapter 2274; and (b) will not boycott energy companies during the term of the contract.

27. NO DISCRIMINATION AGAINST FIREARM AND AMMUNITION COMPANIES: Pursuant to Texas Government Code, Chapter 2274, the Samsara, should it meet the requirements of Chapter 2274, agrees that acceptance of these Terms & Conditions serves as written verification that Contractor: (a) does not discriminate against firearm and ammunition companies, as defined by Texas Government Code Chapter 2274; and (b) will not discriminate against firearm and ammunition companies during the term of the contract.

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

29. TEXAS PUBLIC INFORMATION ACT: Notwithstanding any other provision to the contrary in the Agreement, all information, documents, and communications relating to the Agreement may be subject to the Texas Public Information Act ("Act"), including the confidentiality or proprietary exceptions in the Act, and any opinion of the Texas Attorney General or a court of competent jurisdiction relating to the Act.

30. Section 21.2 of the Samsara Terms of Service is deleted in its entirety and replaced with the following provision:

Section 21.2 "NONDISCRIMINATION": To the fullest extent required by federal law, the parties to the Contract covenant and agree that they will take all necessary actions to ensure that, in connection with any terms, conditions, obligations, or operations under the agreement, the parties, their officers, and employees, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly or indirectly. Each party shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, the parties shall keep, retain, and safeguard all records relating to the Contract or work performed hereunder for a minimum period of three (3) years from final completion or termination the agreement, with electronic access allowed to authorized representatives of the parties, upon reasonable request, at most once annually, for purposes of evaluating compliance with this and other provisions of the agreement.

31. GOVERNMENTAL IMMUNITY: The parties hereby acknowledge and agree that the Customer is entering into the Contract in the performance of and pursuant to its governmental functions for the health, safety, and welfare of the citizens of the Town of Flower Mound, the general public, and the State of Texas, and nothing contained in the Contract shall be construed as constituting a waiver of the Customer's governmental immunity from suit or liability, which is expressly reserved to the extent allowed by Texas law.

32. NO ABROGATION OF MUNICIPAL POWERS: The Customer expressly reserves its legislative and municipal police power in accordance with the laws of the state of Texas. Any provision, term, or condition in the Contract requiring the Customer to waive its rights under the Texas or Federal Constitution, or requiring settlement of claims through binding mediation or arbitration are void and shall be given no effect to the extent they are construed as a limitation on the Town Council's legislative or police powers, which cannot be abrogated under Texas law.

----- Signature page and insurance waiver request follow -----

**Samsara, Inc.**

\_\_\_\_\_  
Signature

Signed on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**Town of Flower Mound, Texas**

\_\_\_\_\_  
Signature

Signed on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

# CERTIFICATE OF INTERESTED PARTIES

**FORM 1295**

1 of 1

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

**OFFICE USE ONLY  
CERTIFICATION OF FILING****1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

Samsara Inc  
San Francisco, CA United States

**Certificate Number:**  
2023-1027261

**Date Filed:**  
05/30/2023

**Date Acknowledged:**

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

Town of Flower Mound

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**

Sourcewell: 020221-SAM  
SAM / Telematics Services

| 4 | Name of Interested Party | City, State, Country (place of business) | Nature of interest<br>(check applicable) |              |
|---|--------------------------|------------------------------------------|------------------------------------------|--------------|
|   |                          |                                          | Controlling                              | Intermediary |
|   |                          |                                          |                                          |              |
|   |                          |                                          |                                          |              |
|   |                          |                                          |                                          |              |
|   |                          |                                          |                                          |              |
|   |                          |                                          |                                          |              |
|   |                          |                                          |                                          |              |
|   |                          |                                          |                                          |              |
|   |                          |                                          |                                          |              |
|   |                          |                                          |                                          |              |

**5 Check only if there is NO Interested Party.****6 UNSWORN DECLARATION**

My name is \_\_\_\_\_, and my date of birth is \_\_\_\_\_.

My address is \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(month) (year)

\_\_\_\_\_  
Signature of authorized agent of contracting business entity  
(Declarant)



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

---

**DATE:** June 19, 2023  
**FROM:** Travis Cunniff, Assistant Director of Parks and Recreation  
**ITEM:** **Consider approval of the sale and consumption of alcoholic beverages (beer and wine) at the Heritage Park of Flower Mound during Therapeutic Recreation Group's 2023 Mound Throw Down event. The Parks Board recommended approval by a vote of 6 to 0 at its June 1, 2023, regular meeting.**

---

**BACKGROUND:** Therapeutic Recreation Group, a Flower Mound based 501 C3 focused on local veterans & first responders is planning to hold their second annual Mound Throw Down corn hole tournament. The event will be held on Saturday, November 11 at Heritage Park. All proceeds from the event will go directly to Therapeutic Recreation Group to continue their mission.

The event will be held from 11am – 5pm (with registration opening at 10am) and beyond the corn hole tournament, the event will include a variety of activities and games for families and participants. Event objectives include:

- Building a network of veterans, first responders, and their families who can gather and share similar life experiences.
- Raising awareness that the combination of a strong community blended with outdoor activity will bring down rates of suicide and other significant health issues amongst our veterans and first responders.

Therapeutic Recreation Group expects to have over 300 in attendance with 175 or more corn hole players. Approximately 14 businesses and nonprofits will be on site to network with attendees. Activities will be set up for attendees, including a kids' zone and an entertainment area for those who are not actively participating in the tournament. There will also be a food vendor on site and, if approved, beer and wine will be served in a regulated area for event participants 21 and older.

Therapeutic Recreation Group is proposing to fence in a portion of the site so that beer can be sold and consumed during the event. There will be manned gates for entrance and exit into the area to ensure no alcohol is brought into or taken out of the designated area. The group will be hiring a Texas Alcohol & Beverage Commission (TABC) licensed server to provide the beverages. Therapeutic Recreation Group will be required to secure a TABC Permit for the event and provide security at the entrance/exit gates. Therapeutic Recreation Group and/or a third party retailer will take on the risk and liability of selling alcohol at the event. The Town will be named as an additional insured on their liability insurance.

The sale of beer or wine on park property requires Parks Board consideration and the Town Council's approval since the event will be held at The Heritage Park of Flower Mound. An excerpt from the Code of Ordinances states: It shall be unlawful to possess alcoholic beverages in any portion of a public park or recreation facility, with the exception that the use of alcoholic beverages

may be permitted during designated activities upon recommendation of the Town's Parks Board and with approval of the Town Council.

**BOARD REVIEW/CITIZEN FEEDBACK:** The Parks Board recommended approval by a unanimous vote of 6 to 0 at its June 1, 2023, regular meeting.

**ALTERNATIVES:** The Town Council can deny the request and the Therapeutic Recreation Group can work with Town staff to host their event without offering alcoholic beverages.

**FISCAL IMPACT:** \$240 (revenue)

The Town's Parks and Recreation Department will receive revenue from the Therapeutic Recreation Group in accordance with the rental policy which outlines pavilion rental fees.

**LEGAL REVIEW:** N/A

**ATTACHMENTS:**

1. Event Sitemap

**DRAFT MOTION:** Move to approve the sale and consumption of alcoholic beverages (beer and wine) at the Heritage Park of Flower Mound during the Therapeutic Recreation Group's 2023 Mound Throw Down event.







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

---

**DATE:** June 19, 2023  
**FROM:** Jeff Garner, Director of Facilities Management  
**ITEM:** **Consider replacement of the damaged concrete at Fire Station One on east and west exterior driveways in the amount of \$224,137.50.**

---

**BACKGROUND:** The entire concrete approach on the east and west side of the apparatus bays at Fire Station one is deteriorating and needs to be replaced. Due to the size and weight of the new fire apparatus, the current concrete design of the approach is no longer adequate for the larger and heavier equipment. Oxley Williams Tharp Architects has completed a new design study (thickness, steel reinforcement, subbase, concrete mix). Stovall Commercial Contractors LLC has provided a cost estimate in the amount of \$225,137.50 for the replacement of the failing 6" thick concrete approaches. The project includes removal and disposal of approximately 11,750 square feet of existing paving, new steel reinforcement, compaction of the sub straight, and pouring back of new concrete 8" thick. Stovall Commercial Contractors LLC proposes to utilize the BUYBOARD purchasing network, which the Town is also a member of.

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

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** \$224,137.50

**Proposed Expenditure/(Revenue)**  
\$224,137.50

**Account Number(s):**  
100-655-59200-6210

**LEGAL REVIEW:** N/A

**ATTACHMENTS:**

1. Estimate

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



# STOVALL COMMERCIAL CONTRACTORS LLC

609 S CTY Road 810  
ALVARADO, TEAXS 76009  
817-480-9022  
TCEQ CR0000187/TDLR 35472/BUYBOARD 673-22

# Estimate

Date  
5/26/2023

Estimate No.  
426

## Name/Address

TOWN OF FLOWER MOUND  
3911 Broadway Ave.  
Flower Mound, Tx 75028

## Project Location

Flower Mound Fire Station # 1  
Jeff Garner

PO #

| Description                                                                                                         | Qty | Rate       | Total      |
|---------------------------------------------------------------------------------------------------------------------|-----|------------|------------|
| <b>SCOPE OF WORK</b>                                                                                                |     |            |            |
| Remove and replace 11750 sq ft of concrete in the approach area                                                     |     |            |            |
| Removing and disposing of 6" concrete in 2 stages. If concrete is thicker than 6" we will negotiate with the client |     |            |            |
| Install 11350 sq ft of concrete in the approach area with 8" 4000 psi concrete using 1/2" rebar on 18" o/c smooth   |     |            |            |
| dowel and epoxy along the street edge                                                                               |     |            |            |
| Remove and dispose of any extra sub grade material and bring in roller for good compaction                          |     |            |            |
| We will be removing and pouring the concrete in 2 stages to allow access for moving in and out of the fire          |     |            |            |
| station bays.                                                                                                       |     |            |            |
| Form and pour a 400 sq ft 6" pad for new air conditioning units in specified area .                                 |     |            |            |
|                                                                                                                     |     |            |            |
| Demolition and removal of 11350 sq ft of concrete                                                                   |     | 50,154.17  | 50,154.17  |
| Equipment Expense - compactor and skid steer                                                                        |     | 6,116.67   | 6,116.67   |
| Concrete por back 8" thickness 4000PSI                                                                              |     | 148,791.67 | 148,791.67 |
| Concrete testing and soil compaction testing                                                                        |     | 9,416.67   | 9,416.67   |
|                                                                                                                     |     |            |            |
| Project Admin and Coordination                                                                                      |     | 7,616.67   | 7,616.67   |
| Mileage travel to and from site                                                                                     |     | 2,041.65   | 2,041.65   |
|                                                                                                                     |     |            |            |
| EXCLUDES: UTILITY DISCONNECTS/REROUTING, PUMPING OR DISPOSAL OF ANY FLUIDS MINUS WHAT IS                            |     |            |            |
| IN OLD UST, ANY AND ALL SUB-GRADE MECHANICAL EXCAVATION, SUB GRADE PIPE EXCAVATION,                                 |     |            |            |
| ASBESTOS SURVEY, REMOVAL OF ANY AND ALL HAZARDOUS                                                                   |     |            |            |
| MATERIALS, CONTAMINATED MATERIALS, EROSION CONTROL, SW3P, SITE SECURITY FENCE, FINAL GRADE                          |     |            |            |
| AND MULTIPLE MOBILIZATIONS.                                                                                         |     |            |            |

**Total \$224,137.50**

## TERMS OF THE PROPOSAL

The terms of the Proposal shall be effective for 30 days after presentation to Client. In the event this Agreement is not executed by Client within the time identified, the Proposal, together with any related terms and conditions and deliverables, may be subject to amendment, change or substitution.  
"Regulated by The Texas Department of Licensing and Regulation, P.O. Box 12157, Austin Texas 78711, 1-800-803-9202, 512-463-6599, [www.license.state.tx.us/complaints](http://www.license.state.tx.us/complaints)"



## TOWN COUNCIL AGENDA J.5. CONSENT ITEM(S)

---

**DATE:** June 19, 2023  
**FROM:** Kay Wilkinson, Director of Budget Services  
**ITEM:** **Consider approval of an ordinance amending the Town of Flower Mound's Annual Budget for the fiscal year beginning October 1, 2022, and ending on September 30, 2023, as adopted by Ordinance No. 45-22 and amended by Ordinance No. 60-22, No. 06-23, No. 16-23 and No. 19-23 for adjustments to the General Fund, Utility Fund and Stormwater Utility Fund.**

---

**BACKGROUND:** The attached budget amendment represents the fifth proposed adjustment of the FY 2022-2023 Annual Budget. According to Section 9.14 of the Town Charter, "During the fiscal year, the Town Council shall have the power to transfer funds allocated by the budget from one department to another department, and to re-estimate revenues and expenditures." Transfers such as these are presented to the Town Council throughout the fiscal year in an effort to resolve variances from the Annual Budget and reallocate resources to cover unanticipated expenditures.

If approved, General Fund expenditures will increase by \$394,063 from \$87,858,065 to \$88,252,128. Utility Fund expenditures will increase by \$65,181 from \$52,345,696 to \$52,410,877. Stormwater Utility Fund expenditures will increase by \$2,621 from \$2,215,487 to \$2,218,108.

One of Town Council's top priorities is the recruitment and retention of employees of Team Flower Mound. To this end, in FY 22-23, Council approved a comprehensive compensation and classification study to ensure Town employees are fairly compensated in accordance with market comparators. The compensation study gave the Town the opportunity to evaluate job titling procedures, job descriptions and market evaluation. If approved, the resulting pay changes will be reflected on paychecks dated July 14, 2023. The implementation of the compensation study will help the Town recruit and retain team members.

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

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** \$461,865

**Proposed Expenditure/(Revenue)**

\$394,063

\$65,181

\$2,621

**Account Number(s):**

Fund 100- General Fund

Fund 200- Utility Fund

Fund 230- Stormwater Utility Fund

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

**ATTACHMENTS:**

1. Ordinance- 5th FY 22-23 Budget Amendment

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

**TOWN OF FLOWER MOUND, TEXAS**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE TOWN'S BUDGET FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2022, AND ENDING ON SEPTEMBER 30, 2023, AS ADOPTED BY ORDINANCE NO. 45-22 AND AMENDED BY ORDINANCE NO. 60-22, NO. 06-23, NO. 16-23 AND NO. 19-23, BY PROVIDING FOR ADJUSTMENTS TO THE GENERAL FUND, UTILITY FUND AND STORMWATER UTILITY FUND; PROVIDING THAT EXPENDITURES FOR SAID FISCAL YEAR SHALL BE MADE IN ACCORDANCE WITH SAID BUDGET, AS AMENDED; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town Council of the Town of Flower Mound, Texas ("Town Council") has heretofore adopted its Annual Budget for the fiscal year beginning on October 1, 2022, and ending on September 30, 2023; and,

**WHEREAS**, said Annual Budget was adopted by Ordinance No. 45-22 on September 19, 2022 and amended by Ordinance 60-22 on December 19, 2022, Ordinance 06-23 on March 6, 2023, Ordinance 16-23 on May 16, 2023 and Ordinance 19-23 on June 6, 2023; and,

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

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

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

**SECTION 1**

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

**SECTION 2**

The Annual Budget of the Town of Flower Mound, Texas, for the fiscal year beginning on October 1, 2022, and ending on September 30, 2023, as heretofore adopted by Ordinance No. 45-22 and amended by Ordinance No. 60-22, No. 06-23, No. 16-23 and No. 19-23, is hereby amended to provide for adjustments to the General Fund, Utility Fund and Stormwater Utility Fund, as shown in Exhibit "A," attached hereto and incorporated herein, and expenditures for said fiscal year shall be made in accordance with said Annual Budget, as amended.

**SECTION 3**

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

#### **SECTION 4**

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

#### **SECTION 5**

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

#### **SECTION 6**

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

#### **SECTION 7**

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

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF \_\_\_\_ TO \_\_\_\_, ON THIS 19<sup>th</sup> DAY OF JUNE, 2023.**

**APPROVED:**

\_\_\_\_\_  
**Derek France, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**Theresa Scott, TOWN SECRETARY**

**EXHIBIT "A"**

**Town of Flower Mound  
Amended Budget  
Fiscal Year 2022-2023**

**REASON FOR ADJUSTING THE GENERAL FUND APPROPRIATION:**

If approved, General Fund expenditures will increase by \$394,063 from \$87,858,065 to \$88,252,128. One of Town Council's top priorities is the recruitment and retention of employees of Team Flower Mound. To this end, in FY 22-23, Council approved a comprehensive compensation and classification study to ensure Town employees are fairly compensated in accordance with Market comparators. The compensation study gave the Town the opportunity to evaluate job titling procedures, job descriptions and market evaluation. If approved, the resulting pay changes will be reflected on paychecks dated July 14, 2023. The implementation of the compensation study will help the Town recruit and retain team members.

| <b>General Fund</b>           | <b>Original<br/>Budget</b> | <b>Current<br/>Budget</b> | <b>Amended<br/>Budget</b> | <b>Increase /<br/>(Decrease)</b> |
|-------------------------------|----------------------------|---------------------------|---------------------------|----------------------------------|
| <b>Expenditures:</b>          |                            |                           |                           |                                  |
| Town Manager's Office         | \$ 3,633,625               | \$ 3,633,625              | \$ 3,638,627              | \$ 5,002                         |
| Town Secretary's Office       | 547,589                    | 598,329                   | 603,310                   | 4,981                            |
| Development Services          | 2,365,145                  | 2,365,145                 | 2,381,270                 | 16,125                           |
| Parks and Recreation Services | 10,772,827                 | 10,831,100                | 10,875,283                | 44,183                           |
| Library Services              | 2,123,151                  | 2,129,173                 | 2,150,113                 | 20,940                           |
| Police Services               | 17,976,186                 | 18,105,409                | 18,240,478                | 135,069                          |
| Financial Services            | 4,234,015                  | 4,259,015                 | 4,282,157                 | 23,142                           |
| Administrative Services       | 7,807,437                  | 8,440,674                 | 8,481,932                 | 41,258                           |
| Fire and Emergency Services   | 19,499,281                 | 21,158,946                | 21,223,132                | 64,186                           |
| Communications                | 834,813                    | 834,813                   | 843,595                   | 8,782                            |
| Non-Departmental Services     | 4,098,834                  | 5,948,834                 | 5,948,834                 | -                                |
| Public Works                  | 7,782,525                  | 7,948,690                 | 7,967,776                 | 19,086                           |
| Environmental Services        | 1,604,312                  | 1,604,312                 | 1,615,621                 | 11,309                           |
| <b>Total</b>                  | <b>\$ 83,279,740</b>       | <b>\$ 87,858,065</b>      | <b>\$ 88,252,128</b>      | <b>\$ 394,063</b>                |



**REASON FOR ADJUSTING THE UTILITY FUND APPROPRIATION:**

If approved, Utility Fund expenditures will increase by \$65,181 from \$52,345,696 to \$52,410,877. One of Town Council's top priorities is the recruitment and retention of employees of Team Flower Mound. To this end, in FY 22-23, Council approved a comprehensive compensation and classification study to ensure Town employees are fairly compensated in accordance with Market comparators. The compensation study gave the Town the opportunity to evaluate job titling procedures, job descriptions and market evaluation. If approved, the resulting pay changes will be reflected on paychecks dated July 14, 2023. The implementation of the compensation study will help the Town recruit and retain team members.

| <b>Utility Fund</b>       | <b>Original<br/>Budget</b> | <b>Current<br/>Budget</b> | <b>Amended<br/>Budget</b> | <b>Increase /<br/>(Decrease)</b> |
|---------------------------|----------------------------|---------------------------|---------------------------|----------------------------------|
| <b>Expenditures:</b>      |                            |                           |                           |                                  |
| Financial Services        | \$ 1,908,968               | \$ 1,978,184              | \$ 1,982,840              | \$ 4,656                         |
| Non-Departmental Services | 12,772,799                 | 12,772,799                | 12,772,799                | -                                |
| Public Works              | 37,377,380                 | 37,594,713                | 37,655,238                | 60,525                           |
| <b>Total</b>              | <b>\$ 52,059,147</b>       | <b>\$ 52,345,696</b>      | <b>\$ 52,410,877</b>      | <b>\$ 65,181</b>                 |

**REASON FOR ADJUSTING THE STORMWATER UTILITY FUND APPROPRIATION:**

If approved, Stormwater Utility Fund expenditures will increase by \$2,621 from \$2,215,487 to \$2,218,108. One of Town Council's top priorities is the recruitment and retention of employees of Team Flower Mound. To this end, in FY 22-23, Council approved a comprehensive compensation and classification study to ensure Town employees are fairly compensated in accordance with Market comparators. The compensation study gave the Town the opportunity to evaluate job titling procedures, job descriptions and market evaluation. If approved, the resulting pay changes will be reflected on paychecks dated July 14, 2023. The implementation of the compensation study will help the Town recruit and retain team members.

| <b>Stormwater Utility Fund</b> | <b>Original<br/>Budget</b> | <b>Current<br/>Budget</b> | <b>Amended<br/>Budget</b> | <b>Increase /<br/>(Decrease)</b> |
|--------------------------------|----------------------------|---------------------------|---------------------------|----------------------------------|
| <b>Expenditures:</b>           |                            |                           |                           |                                  |
| Public Works                   | \$ 2,105,779               | \$ 2,129,372              | \$ 2,131,993              | \$ 2,621                         |
| Environmental Services         | 86,115                     | 86,115                    | 86,115                    | -                                |
| <b>Total</b>                   | <b>\$ 2,191,894</b>        | <b>\$ 2,215,487</b>       | <b>\$ 2,218,108</b>       | <b>\$ 2,621</b>                  |



## TOWN COUNCIL AGENDA J.6. CONSENT ITEM(S)

---

**DATE:** June 19, 2023  
**FROM:** Kay Wilkinson, Director of Budget Services  
**ITEM:** **Town Council acting as the Board of Directors for the Town of Flower Mound Crime Control and Prevention District to consider approval of a resolution amending the Town of Flower Mound Crime Control and Prevention District budget for the fiscal year beginning on October 1, 2022, and ending on September 30, 2023, as adopted by Resolution No. 14-22 and amended by Resolution No. 22-22.**

---

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

The attached budget amendment represents an adjustment of the FY 2022-2023 Crime District Budget. According to Section 12 of Resolution No. 06-08, "During the fiscal year, the Town Council shall have the power to transfer funds allocated by the budget from one department to another department, and to re-estimate revenues and expenditures."

Expenditures in the Crime District Fund will increase by \$29,277. One of Town Council's top priorities is the recruitment and retention of employees of Team Flower Mound. To this end, in FY 22-23, Council approved a comprehensive compensation and classification study to ensure Town employees are fairly compensated in accordance with Market comparators. The compensation study gave the Town the opportunity to evaluate job titling procedures, job descriptions and market evaluation. If approved, the resulting pay changes will be reflected on paychecks dated July 14, 2023. The implementation of the compensation study will help the Town recruit and retain team members.

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

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** \$29,277

**Proposed Expenditure/(Revenue)**  
\$29,277

**Account Number(s):**  
Fund 318- Crime District

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

**ATTACHMENTS:**

1. Resolution -2nd FY 22-23 Budget Amendment

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



**TOWN OF FLOWER MOUND, TEXAS**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ACTING AS THE BOARD OF DIRECTORS OF THE TOWN OF FLOWER MOUND CRIME CONTROL AND PREVENTION DISTRICT, AMENDING THE BUDGET FOR THE TOWN OF FLOWER MOUND CRIME CONTROL AND PREVENTION DISTRICT FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2022, AND ENDING SEPTEMBER 30, 2023, AS ADOPTED BY RESOLUTION NO. 14-22 AND AMENDED BY RESOLUTION NO. 22-22; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.**

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

**WHEREAS,** the Town Council acting as the Board of Directors of the Crime District caused to be filed with the Town Secretary, in accordance with the procedures adopted therefore, a budget to cover all proposed expenditures of the Crime District for the fiscal year beginning October 1, 2022, and ending September 30, 2023; and

**WHEREAS,** said Crime District Budget was adopted by Resolution No. 14-22 on September 19, 2022 and amended by Resolution No. 22-22 on December 19, 2022; and

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

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

**SECTION 1**

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

**SECTION 2**

The Crime District Budget, for the fiscal year beginning on October 1, 2022, and ending on September 30, 2023, as heretofore adopted by Resolution No. 14-22 and amended by Resolution 22-22 on December 19, 2022, is hereby amended to provide for adjustments as shown in Exhibit "A", attached hereto and incorporated herein.

**SECTION 3**

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

**SECTION 4**

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

**SECTION 5**

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

**SECTION 6**

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

**DULY PASSED, APPROVED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF \_\_\_\_\_ TO \_\_\_\_\_ ON THIS 19<sup>th</sup> DAY OF JUNE, 2023.**

**APPROVED:**

\_\_\_\_\_  
**Derek France, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**Theresa Scott, TOWN SECRETARY**

**EXHIBIT "A"**

**Town of Flower Mound  
Crime Control and Prevention District  
Amended Budget  
Fiscal Year 2022-2023**

**REASON FOR ADJUSTING THE CRIME DISTRICT FUND APPROPRIATION:**

Expenditures in the Crime District Fund will increase by \$29,277 from \$4,132,252 to \$4,161,529. One of Town Council's top priorities is the recruitment and retention of employees of Team Flower Mound. To this end, in FY 22-23, Council approved a comprehensive compensation and classification study to ensure Town employees are fairly compensated in accordance with Market comparators. The compensation study gave the Town the opportunity to evaluate job titling procedures, job descriptions and market evaluation. If approved, the resulting pay changes will be reflected on paychecks dated July 14, 2023. The implementation of the compensation study will help the Town recruit and retain team members.

| <u>Crime District- Sales Tax</u> | <u>Original<br/>Budget</u> | <u>Current<br/>Budget</u> | <u>Amended<br/>Budget</u> | <u>Increase /<br/>(Decrease)</u> |
|----------------------------------|----------------------------|---------------------------|---------------------------|----------------------------------|
| <b>Expenditures:</b>             |                            |                           |                           |                                  |
| Police Services                  | \$ 4,113,412               | \$ 4,132,252              | \$ 4,161,529              | \$ 29,277                        |
| <b>Total</b>                     | <b>\$ 4,113,412</b>        | <b>\$ 4,132,252</b>       | <b>\$ 4,161,529</b>       | <b>\$ 29,277</b>                 |



## TOWN COUNCIL AGENDA J.7. CONSENT ITEM(S)

---

**DATE:** June 19, 2023  
**FROM:** Kay Wilkinson, Director of Budget Services  
**ITEM:** **Town Council acting as the Board of Directors for the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District to consider approval of a resolution amending the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District budget for the fiscal year beginning on October 1, 2022, and ending on September 30, 2023, as adopted by Resolution No. 15-22.**

---

**BACKGROUND:** At the March 3, 2008 Town Council meeting, the Town Council acting as the Board of Directors for the Fire District, adopted alternative budget procedures for the Fire District to follow similar procedures and dates to the Town's annual budget. The attached budget amendment represents an adjustment of the FY 2022-2023 Fire District Budget.

Expenditures in the Fire District Fund will increase by \$10,142. One of Town Council's top priorities is the recruitment and retention of employees of Team Flower Mound. To this end, in FY 22-23, Council approved a comprehensive compensation and classification study to ensure Town employees are fairly compensated in accordance with Market comparators. The compensation study gave the Town the opportunity to evaluate job titling procedures, job descriptions and market evaluation. If approved, the resulting pay changes will be reflected on paychecks dated July 14, 2023. The implementation of the compensation study will help the Town recruit and retain team members.

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

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** \$10,142

**Proposed Expenditure/(Revenue)**  
\$10,142

**Account Number(s):**  
Fund 319- Fire District

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

**ATTACHMENTS:**

1. Resolution- 1st FY 22-23 Budget Amendment- Fire District

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

**TOWN OF FLOWER MOUND, TEXAS**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ACTING AS THE BOARD OF DIRECTORS OF THE TOWN OF FLOWER MOUND FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL SERVICES DISTRICT, AMENDING THE BUDGET FOR THE TOWN OF FLOWER MOUND FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL SERVICES DISTRICT FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2022, AND ENDING SEPTEMBER 30, 2023, AS ADOPTED BY RESOLUTION NO. 15-22; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.**

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

**WHEREAS,** the Town Council acting as the Board of Directors of the Fire District caused to be filed with the Town Secretary, in accordance with the procedures adopted therefore, a budget to cover all proposed expenditures of the Fire District for the fiscal year beginning October 1, 2022, and ending September 30, 2023; and

**WHEREAS,** said Fire District Budget was adopted by Resolution No. 15-22 on September 19, 2022; and

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

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

**SECTION 1**

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

**SECTION 2**

The Fire District Budget, for the fiscal year beginning on October 1, 2022, and ending on September 30, 2023, as heretofore adopted by Resolution No. 15-22, is hereby amended to provide for adjustments as shown in Exhibit "A", attached hereto and incorporated herein.



**SECTION 3**

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

**SECTION 4**

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

**SECTION 5**

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

**SECTION 6**

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

**DULY PASSED, APPROVED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF \_\_\_\_\_ TO \_\_\_\_\_ ON THIS 19<sup>th</sup> DAY OF JUNE, 2023.**

**APPROVED:**

\_\_\_\_\_  
Derek France, MAYOR

**ATTEST:**

\_\_\_\_\_  
Theresa Scott, TOWN SECRETARY

**EXHIBIT "A"**

**Town of Flower Mound  
Fire Control, Prevention, and Emergency Medical Services District  
Amended Budget  
Fiscal Year 2022-2023**

**REASON FOR ADJUSTING THE FIRE DISTRICT FUND APPROPRIATION:**

In the Fire District Fund, expenditures will increase by \$10,142 from \$3,396,878 to \$3,407,020. One of Town Council's top priorities is the recruitment and retention of employees of Team Flower Mound. To this end, in FY 22-23, Council approved a comprehensive compensation and classification study to ensure Town employees are fairly compensated in accordance with Market comparators. The compensation study gave the Town the opportunity to evaluate job titling procedures, job descriptions and market evaluation. If approved, the resulting pay changes will be reflected on paychecks dated July 14, 2023. The implementation of the compensation study will help the Town recruit and retain team members.

| <u>Fire District- Sales Tax</u> | <u>Original<br/>Budget</u> | <u>Current<br/>Budget</u> | <u>Amended<br/>Budget</u> | <u>Increase /<br/>(Decrease)</u> |
|---------------------------------|----------------------------|---------------------------|---------------------------|----------------------------------|
| <b>Expenditures:</b>            |                            |                           |                           |                                  |
| Fire and Emergency Services     | \$ 3,396,878               | \$ 3,396,878              | \$ 3,407,020              | \$ 10,142                        |
| <b>Total</b>                    | <b>\$ 3,396,878</b>        | <b>\$ 3,396,878</b>       | <b>\$ 3,407,020</b>       | <b>\$ 10,142</b>                 |



## TOWN COUNCIL AGENDA J.8. CONSENT ITEM(S)

**DATE:** June 19, 2023

**FROM:** Clay Riggs, Dir of Public Works

**ITEM:** **Consider ratification of the Termination Declaration of the Construction Agreement between the Town of Flower Mound and MSB Constructors, Inc. - Bid #2021-1-B, delivered to MSB Constructors, Inc. on June 16, 2023 by the Town Attorney.**

**BACKGROUND:** On November 16, 2020, MSB Contractors, Inc., was awarded the Canyon Falls Park project with a base bid of \$2,574,800 and bid alternates in the amount of \$51,196.00 for a total award amount of \$2,625,996.00.

The project is part of the Parks Master plan and includes amenities of a nature-themed playground, pavilion, restrooms, basketball court, splash pad, fitness equipment, trails, and parking.

The opening of the park has been delayed due to issues related to the contractor's performance. Staff worked with the contractor, the contractor's bonding company, and with the Town's legal firm to address performance issues and bring the project to completion. The contractor refused to meet their contractual obligations and complete the work. On June 5, 2023, the Town declared MSB Contractors, Inc in Breach of the agreement and demanded the contractor satisfactorily address items, within ten days, listed in the Declaration of Breach and Demand for Cure Letter sent to the contractor that same day. MSB Contractors, Inc, failed to address the items and, in accordance with the construction agreement section 16.9 of the General Conditions, the Town moved to terminate the agreement.

On June 16, 2023, MSB Contractors, Inc. was sent the attached Termination Declaration, terminating the Construction Agreement between the Town and MSB Contractors, Inc.

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

**ALTERNATIVES:** Choose not to ratify the Termination Declaration of the Construction Agreement.

**FISCAL IMPACT:** N/A

**Proposed Expenditure/(Revenue)**

**Account Number(s):**

**LEGAL REVIEW:** James Donovan, of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., prepared the termination declaration.

**ATTACHMENTS:**

1. Town Declaration of Breach Letter
2. Termination of Declaration

**DRAFT MOTION:** Motion to ratify the Termination Declaration of the Construction Agreement between the Town of Flower Mound and MSB Constructors, Inc. - Bid #2021-1-B.

6000 WESTERN PLACE, SUITE 200  
1-30 AT BRYANT IRVIN ROAD  
FORT WORTH, TEXAS 76107  
EMAIL: TOASE@TOASE.COM  
James Donovan

[jdonovan@toase.com](mailto:jdonovan@toase.com)

**TOASE**  
**TAYLOR • OLSON • ADKINS • SRALLA • ELAM**  
LLP  
ATTORNEYS & COUNSELORS

TELEPHONE: (817) 332-2580  
TOLL FREE: (800) 318-3400  
FACSIMILE: (817) 332-4740  
WEBSITE: WWW.TOASE.COM

June 5, 2023

*Via email - [kevinbonner@bcswlaw.com](mailto:kevinbonner@bcswlaw.com)*

Kevin K. Bonner  
Baird, Crews, Schiller & Whitaker, P.C.  
15 North Main Street  
Temple, TX 76501

Mark Berry  
MSB Constructors, Inc.  
103 Oak Grove Lane  
Boyd, TX 76023

US Casualty and Surety Insurance Company  
Attn: Zachary R. Bradley  
292 Newbury St., #105  
Boston, MA 02115

Re: Construction Agreement (“Agreement”) between Town of Flower Mound (the “Town”) and MSB Constructors, Inc. (“MSB”) – Bid #2021-1-B - Canyon Falls Park (the “Project”) - **Declaration of Breach and Demand for Cure.**

This letter serves as the Town’s declaration of breach by MSB and demand for cure with regard to MSB’s failure to comply with the Project contract documents.

Pursuant to Sec. 16.9 of the General Conditions, MSB shall be considered in default under the contract documents if it “(e) substantially violate[s] any provision of the Contract Documents...” Article 2 of the Construction Agreement states that MSB “shall perform all work necessary to complete the improvements in a good and workmanlike manner, ready for use, within the specified time for substantial completion of one hundred and eighty (180) calendar days, and final completion of two hundred and forty (240) calendar days ready for final payment, as measured from the Effective Start Date shown in the Notice to Proceed.” The original start date of the Project was January 11, 2021 making substantial completion set for July 10, 2021 (180 days) and final completion set for September 8, 2021 (240 days). Through the seven approved change orders on the Project, the Project’s schedule has been extended to where substantial completion should have been achieved on November 25, 2021, and final completion on January 24, 2022. Those dates are well past.

The Project has yet to reach substantial completion. Attached hereto as Exhibit A is a list of items MSB has failed to complete in the allotted contract time.

June 5, 2023

Page 2

---

**Therefore, the Town hereby declares MSB to be in breach of the agreement and demands that MSB satisfactorily address every item listed on Exhibit A with ten (10) days of the date of this letter. If MSB fails to do so, the Town will move to terminate the Agreement in accordance with Section 16.9 of the General Conditions.**

**In terminating the Agreement, the Town will take possession of the Project and complete the Project by whatever means the Town deems most expedient (General Conditions 16.9.1). If the cost of the Town finishing the Project exceeds the remaining contract balance, MSB will be held responsible for any overages (General Conditions 16.9.2).**

If you have any questions, please contact Bryn Meredith or myself.

Sincerely,



James Donovan

JD:tmj

encl

cc: Brian Waltenburg – *Via email at [Brian.Waltenburg@flower-mound.com](mailto:Brian.Waltenburg@flower-mound.com)*  
Tiffany Bruce – *Via email at [Tiffany.Bruce@flower-mound.com](mailto:Tiffany.Bruce@flower-mound.com)*  
Bryn Meredith (Firm)

# EXHIBIT A

CANYON FALLS PARK  
FLOWER MOUND, TEXAS

REVISED: 6/6/2023

| #  | CATEGORY         | ITEMS/ISSUES | REFERENCE                                             | COMMENTS                                                                                                                                                                                                                | STATUS     |
|----|------------------|--------------|-------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 1  | Basketball Court | General      |                                                       | Contractor to schedule and perform operational walk-through with Owner, Maintenance Staff, and Architect to verify Basketball Court meets Owner's operational requirements and all components installed as specified.   | INCOMPLETE |
| 2  | Basketball Court | Masonry      | Field Report 5, Item 4 and Field Report #7, Item 3    | Repair masonry retaining wall to follow dimensioned radius as shown on plans.                                                                                                                                           | INCOMPLETE |
| 3  | Basketball Court | Concrete     | Field Report #9, Item 1                               | Examine and repair all deficiencies to concrete slab (i.e. smooth or unfinished areas)                                                                                                                                  | INCOMPLETE |
| 4  | Basketball Court | Concrete     | 5/23 Site Walk                                        | Striping incomplete. Stripe court according to plans.                                                                                                                                                                   | INCOMPLETE |
| 5  | Basketball Court | Masonry      | Field Report #5, Item 4                               | Examine and repair all deficiencies in masonry wall (i.e. loose/dislodged masonry and capstones, cracked or poorly installed hidden mortar joints)                                                                      | INCOMPLETE |
| 6  | Basketball Court | Masonry      | Field Report #11, Item 9, Sheet C5.1, and Sheet L3.03 | Repair masonry wall to meet designed height.                                                                                                                                                                            | INCOMPLETE |
| 7  | Basketball Court | Masonry      | Submittal 32 32 49, Field Report #11, Item 9, A/L4.06 | Repair masonry wall weep holes currently at or below grade to 6" above adjacent finished grade.                                                                                                                         | INCOMPLETE |
| 8  | Basketball Court | Masonry      | Field Report #11, Item 9                              | Repair damage to southern tip of masonry wall                                                                                                                                                                           | INCOMPLETE |
| 9  | Basketball Court | Equipment    |                                                       | Rim netting not installed properly. Install netting per manufacturer instructions. Rims installed lower than specified height.                                                                                          | INCOMPLETE |
| 10 | Basketball Court | Equipment    |                                                       | Install backboard bracing arms per manufacturer instructions.                                                                                                                                                           | INCOMPLETE |
| 11 | Basketball Court | Surfacing    |                                                       | Install surfacing around base of basketball goals per plans and specifications.                                                                                                                                         | INCOMPLETE |
| 12 | Entry Sign       | General      |                                                       | Contractor to schedule and perform operational walk-through with Owner, Maintenance Staff, and Architect to verify Entry Sign meets Owner's operational requirements and all components installed as specified.         | INCOMPLETE |
| 13 | Entry Sign       | Electrical   | Sheet E100                                            | Verify entry sign light fixture models. Verify light fixtures are located per plans. Adjust orientation.                                                                                                                | INCOMPLETE |
| 14 | Entry Sign       | Masonry      | Field Report #11, Item 1, C/L4.01                     | Angle of masonry columns incorrect. Correct angle of masonry columns per plans.                                                                                                                                         | INCOMPLETE |
| 15 | Entry Sign       | Masonry      | C/L4.01                                               | Examine and repair all deficiencies in entry sign (i.e. loose/dislodged stone or capstone, cracked or poorly installed hidden mortar joints)                                                                            | INCOMPLETE |
| 16 | Fitness Area     | General      |                                                       | Contractor to schedule and perform operational walk-through with Owner, Maintenance Staff, and Architect to verify Fitness Area meets Owner's operational requirements and all components installed as specified.       | INCOMPLETE |
| 17 | Fitness Area     | Furnishings  | L0.01                                                 | Confirm play equipment is free of damage and scrapes. Replace missing or damaged labels as required. Remove all tape and debris from equipment.                                                                         | INCOMPLETE |
| 18 | Fitness Area     | Furnishings  | L0.01                                                 | Confirm all equipment is in working order.                                                                                                                                                                              | INCOMPLETE |
| 19 | Fitness Area     | Furnishings  | L0.01                                                 | Verify surfacing is clean and free of damage                                                                                                                                                                            | INCOMPLETE |
| 20 | Hardscape        | General      |                                                       | Contractor to schedule and perform operational walk-through with Owner, Maintenance Staff, and Architect to verify all hardscape items meet Owner's operational requirements and all components installed as specified. | INCOMPLETE |
| 21 | Hardscape        | Parking Lot  |                                                       | Wheel stops not installed. Install wheel stops according to plans.                                                                                                                                                      | INCOMPLETE |
| 22 | Hardscape        | Parking Lot  |                                                       | Striping incomplete. Stripe parking lot and accessible stalls according to plans.                                                                                                                                       | INCOMPLETE |
| 23 | Hardscape        | Parking Lot  |                                                       | Accessible signage not installed. Install accessible parking signage according to plans.                                                                                                                                | INCOMPLETE |
| 24 | Hardscape        | Parking Lot  |                                                       | Contractor to submit solution for revised handicap parking stall accommodations.                                                                                                                                        | INCOMPLETE |

|    |           |             |                                                     |                                                                                                                                                                                                                               |            |
|----|-----------|-------------|-----------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 25 | Hardscape | Trail       |                                                     | Remove and replace damaged concrete trail.                                                                                                                                                                                    | INCOMPLETE |
| 26 | Hardscape | Trail       |                                                     | River rock drainage swales not installed. Install river rock drainage swales and associated grading and backfill per plans and specifications.                                                                                | INCOMPLETE |
| 27 | Hardscape | Drainage    | Culvert Crossing Exhibits; Field Report #11, Item 2 | River rock at culvert crossing not installed. Install river rock as specified.                                                                                                                                                | INCOMPLETE |
| 28 | Hardscape | Drainage    | Culvert Crossing Exhibits; Field Report #11, Item 2 | RCP not cut to sit flush with culvert wall. Cut RCP as specified.                                                                                                                                                             | INCOMPLETE |
| 29 | Hardscape | Trail       |                                                     | Expansion joints not sealed. Seal expansion joints, including space between wall and splashpad surface, according to specifications.                                                                                          | INCOMPLETE |
| 30 | Hardscape | Trail       | 5/23 Site Walk                                      | Concrete trail has been damaged/broken in dozens of locations along trail edges and shall be repaired.                                                                                                                        | INCOMPLETE |
| 31 | Hardscape | Trail       |                                                     | Concrete step has been significantly damaged and shall be repaired.                                                                                                                                                           | INCOMPLETE |
| 32 | Landscape | General     |                                                     | Contractor to schedule and perform operational walk-through with Owner, Maintenance Staff, and Architect to verify Irrigation and Landscape meets Owner's operational requirements and all components installed as specified. | INCOMPLETE |
| 33 | Landscape | Irrigation  |                                                     | Confirm all irrigation zones provide full coverage of landscape material. Three (3) zones inoperable during 5/23 site walk (potentially tree bubblers).                                                                       | INCOMPLETE |
| 34 | Landscape | Irrigation  | L6.01; L6.02                                        | Confirm tree bubbler irrigation for all trees. Tree bubblers not observed at 5/23 site walk.                                                                                                                                  | INCOMPLETE |
| 35 | Landscape | Irrigation  | 5/23 Site Walk                                      | Irrigation mainline Installed in location of river rock swale along stairs. Contractor to submit solution to correct conflict between paved drainage swale and main line.                                                     | INCOMPLETE |
| 36 | Landscape | Irrigation  |                                                     | Water meter box not installed. Install meter box according to plans and specifications.                                                                                                                                       | INCOMPLETE |
| 37 | Landscape | Irrigation  |                                                     | RPZ strongbox enclosure not installed. Install strongbox enclosure.                                                                                                                                                           | INCOMPLETE |
| 38 | Landscape | Preparation | Section 32 92 10                                    | Submit product data for turf fertilizer for review and approval.                                                                                                                                                              | INCOMPLETE |
| 39 | Landscape | Preparation |                                                     | Seeded areas contain construction debris, large stones/gravel, and garbage. Prep seeded areas per plans and specifications.                                                                                                   | INCOMPLETE |
| 40 | Landscape | Preparation |                                                     | Remove weeds from all plant beds and landscaped areas. Weeds in beds with plant material must be pulled by hand/mechanically. Herbicide not acceptable.                                                                       | INCOMPLETE |
| 41 | Landscape | Preparation | Section 32 93 10                                    | Submit report for soil fertility test for review and approval.                                                                                                                                                                | INCOMPLETE |
| 42 | Landscape | Preparation | Section 32 93 10                                    | Submit sandy loam soil product data if importing soil for use in planting bed for review and approval.                                                                                                                        | INCOMPLETE |
| 43 | Landscape | Preparation | Section 32 93 10                                    | Submit product data for planting fertilizer for review and approval.                                                                                                                                                          | INCOMPLETE |
| 44 | Landscape | Preparation | Section 32 93 10                                    | Submit product data for composted organic material to be used in plant beds for review and approval.                                                                                                                          | INCOMPLETE |
| 45 | Landscape | Preparation |                                                     | Plant beds have not been prepared according to plans and specifications. Amend and correct plant beds per plans and specifications.                                                                                           | INCOMPLETE |
| 46 | Landscape | Preparation | 5/23 Site Walk                                      | Mulch installation incomplete. Where installed, mulch installed at 1/2" depth. Install mulch according to depth specified in plans and specifications.                                                                        | INCOMPLETE |
| 47 | Landscape | Plantings   |                                                     | Areas disturbed outside limits of work have not been repaired. Provide submittal of plant material to be installed for review and approval. Provide temporary irrigation to area of repair.                                   | INCOMPLETE |
| 48 | Landscape | Plantings   |                                                     | Seeded areas incomplete. Incorrect seed mixes applied in certain locations. Reseed per plans and specifications.                                                                                                              | INCOMPLETE |
| 49 | Landscape | Plantings   | Section 32 95 10                                    | Replaced any and all plant material that is dead or damaged. Multiple trees dead at 5/23 site walk.                                                                                                                           | INCOMPLETE |
| 50 | Landscape | Plantings   | L5.01, L5.02, L5.03                                 | Plant material installation is incomplete or incorrectly installed. Install plant material quantities and design per landscape plans.                                                                                         | INCOMPLETE |



|    |            |            |                          |                                                                                                                                                                                                                 |            |
|----|------------|------------|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 51 | Landscape  | Plantings  | L5.05                    | Confirm installation of Root Ball Anchor Ring on all trees. Anchor rings not installed at 5/23 site walk.                                                                                                       | INCOMPLETE |
| 52 | Landscape  | Plantings  | L5.04                    | (24) of (24) Eastern red cedar (45 gal.) installed. (1) dead to be replaced by contractor.                                                                                                                      | INCOMPLETE |
| 53 | Landscape  | Plantings  | L5.04                    | (16) of (16) Eastern redbud (45 gal.) installed. (1) dead to be replaced by contractor.                                                                                                                         | INCOMPLETE |
| 54 | Landscape  | Plantings  | L5.04                    | (16) of (18) Eve's necklace (45 gal.) installed.                                                                                                                                                                | INCOMPLETE |
| 55 | Landscape  | Plantings  | L0.01, Bid item #73      | Confirm installation of Tree Pit Sump or deduct.                                                                                                                                                                | INCOMPLETE |
| 56 | Landscape  | Plantings  | L5.04                    | (6) of (8) American Beauty Berry (7 gal.) installed. (1) dead to be replaced by contractor.                                                                                                                     | INCOMPLETE |
| 57 | Landscape  | Plantings  | L5.04                    | (43) of (186) Coral Berry (3 gal.) installed.                                                                                                                                                                   | INCOMPLETE |
| 58 | Landscape  | Plantings  | L5.04                    | (0) of (150) Creeping Thyme (4" pot) installed. Thyme substitute not approved. Plant material at parking lot not installed at time of 5/23 site walk.                                                           | INCOMPLETE |
| 59 | Landscape  | Plantings  | L5.04                    | (80) of (83) Fragrant Sumac 'Grow Low' (3 gal.) installed.                                                                                                                                                      | INCOMPLETE |
| 60 | Landscape  | Plantings  | L5.04                    | (81) of (83) Salvia X 'Indigo Spires' (1 gal.) installed.                                                                                                                                                       | INCOMPLETE |
| 61 | Landscape  | Plantings  | L5.04                    | (0) of (13) Trailing Rosemary (1 gal.) installed. Upright Rosemary acceptable as a substitute.                                                                                                                  | INCOMPLETE |
| 62 | Landscape  | Plantings  | L5.04                    | (169) of (198) Turks Cap (3 gal.) installed. Layout at playground does not match plans.                                                                                                                         | INCOMPLETE |
| 63 | Landscape  | Plantings  | L5.04                    | (657) of (601) Inland Sea Oats (1 gal.) Layout at overlook does not match plans.                                                                                                                                | INCOMPLETE |
| 64 | Landscape  | Plantings  | L5.04                    | (36) of (42) Wine Cup (1 gal.) installed.                                                                                                                                                                       | INCOMPLETE |
| 65 | Landscape  | Plantings  | L5.04                    | (90) of (120) Blue Gramma Grass (1 gal.) installed.                                                                                                                                                             | INCOMPLETE |
| 66 | Landscape  | Plantings  | L5.04                    | (120) of (138) Little Blue Stem Grass (1 gal.) installed. (4) incorrectly placed at playground.                                                                                                                 | INCOMPLETE |
| 67 | Landscape  | Plantings  | L5.04                    | (183) of (237) Sideoats Gramma (1 gal.) installed. Layout at playground does not match plans.                                                                                                                   | INCOMPLETE |
| 68 | Landscape  | Edging     | L5.03, L5.04             | Steel edging installed instead of specified trench edging. Submittal for steel edging not received. Confirm edging installed at specified locations.                                                            | INCOMPLETE |
| 69 | Landscape  | Edging     |                          | Landscape and edging has been installed at parking lot curb cut and requires correction to prevent washout or damming of surface flow.                                                                          | INCOMPLETE |
| 70 | Pavilion   | General    |                          | Contractor to schedule and perform operational walk-through with Owner, Maintenance Staff, and Architect to verify Pavilion meets Owner's operational requirements and all components installed as specified.   | INCOMPLETE |
| 71 | Pavilion   | Masonry    | Field Report #11, Item 6 | Examine and repair all deficiencies in masonry columns (i.e. loose/dislodged stone or capstone, cracked or poorly installed hidden mortar joints)                                                               | INCOMPLETE |
| 72 | Pavilion   | Electrical |                          | Verify all electrical receptacles work properly                                                                                                                                                                 | INCOMPLETE |
| 73 | Pavilion   | Electrical | Field Report #11, Item 6 | Solar powered lighting not installed. Install solar powered lighting per plans and specifications                                                                                                               | INCOMPLETE |
| 74 | Playground | General    |                          | Contractor to schedule and perform operational walk-through with Owner, Maintenance Staff, and Architect to verify Playground meets Owner's operational requirements and all components installed as specified. | INCOMPLETE |
| 75 | Playground | Masonry    |                          | Examine and repair all deficiencies in stone wall (i.e. loose/dislodged stone material, free of sharp edges and undersized material)                                                                            | INCOMPLETE |
| 76 | Playground | Drainage   |                          | Replace all damaged perforated drain pipe at stone wall                                                                                                                                                         | INCOMPLETE |

|     |            |             |                          |                                                                                                                                                                                                                                      |            |
|-----|------------|-------------|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 77  | Playground | Furnishings | Field Report #11, Item 8 | Verify a minimum 6'-0" clearance between all play equipment fall zones and perimeter edge of boulders has been provided.                                                                                                             | INCOMPLETE |
| 78  | Playground | Furnishings | L0.01                    | Confirm play equipment is free of damage and scrapes. Replace missing or damaged labels as required.                                                                                                                                 | INCOMPLETE |
| 79  | Playground | Furnishings | L0.01                    | Confirm play equipment is in working order.                                                                                                                                                                                          | INCOMPLETE |
| 80  | Playground | Surfacing   |                          | Examine and repair all deficiencies to artificial turf (i.e. creasing, unsecured edges, holes, etc.)                                                                                                                                 | INCOMPLETE |
| 81  | Playground | Surfacing   |                          | Examine and correct surfacing infill to be brushed in per manufacturer instructions.                                                                                                                                                 | INCOMPLETE |
| 82  | Playground | Surfacing   |                          | Repair or replace artificial turf under playground benches                                                                                                                                                                           | INCOMPLETE |
| 83  | Playground | Drainage    |                          | Verify playground subdrainage is operable, undamaged, and connects to storm drain structure.                                                                                                                                         | INCOMPLETE |
| 84  | Restroom   | General     |                          | Contractor to schedule and perform operational walk-through with Owner, Maintenance Staff, and Architect to verify Restroom meets Owner's operational requirements and all components installed as specified.                        | INCOMPLETE |
| 85  | Restroom   | General     | Field Report #5, item 1  | Confirm interior and exterior of structure is free of paint scratches or damage. Multiple paint scratches observed on exterior frame and metal flashing at 5/23 site walk. Restroom interior requires paint touchup to match finish. | INCOMPLETE |
| 86  | Restroom   | General     |                          | Porch posts installed. Rusting observed on posts at 5/23 site walk. Posts installed on concrete pavement without required water gap to prevent rusting at base.                                                                      | INCOMPLETE |
| 87  | Restroom   | General     |                          | Utility room doors are damaged and must be replaced with new doors supplied by restroom manufacturer. Submit product data for review and approval.                                                                                   | INCOMPLETE |
| 88  | Restroom   | General     | 5/23 Site Walk           | Power wash concrete splatter from face of stone veneer.                                                                                                                                                                              | INCOMPLETE |
| 89  | Restroom   | General     | 5/23 Site Walk           | Stone wainscot damaged on either side of utility doors and requires repair.                                                                                                                                                          | INCOMPLETE |
| 90  | Restroom   | Hardware    |                          | Verify all hinges, latches, and stops work properly. Could not verify - left door locked at 5/23 site walk.                                                                                                                          | INCOMPLETE |
| 91  | Restroom   | Hardware    |                          | Verify all doors are tightly sealed and open/close properly. Install sweep at all doors.                                                                                                                                             | INCOMPLETE |
| 92  | Restroom   | Plumbing    | Field Report #5, Item 1  | Verify plumbing fixtures are operable (i.e. toilets, lavs, sensors, faucets, and floor drains). Plumbing non-operable at 5/23 site walk.                                                                                             | INCOMPLETE |
| 93  | Restroom   | Plumbing    | 5/23 Site Walk           | Verify drinking fountain and bottle filler is operable. Drinking fountain non-operable at 5/23 site walk. Left drinking fountain appears to be leaking and may require correction.                                                   | INCOMPLETE |
| 94  | Restroom   | Plumbing    |                          | Verify utility accessories are provided and operable (i.e. water heater, interior hose bib, exterior hose bib). Per 5/23 site walk, water heater non-operable, plumbing in chase leaking.                                            | INCOMPLETE |
| 95  | Restroom   | Plumbing    |                          | Raise water valve in front of bathrooms to be level with surrounding concrete                                                                                                                                                        | INCOMPLETE |
| 96  | Restroom   | Plumbing    |                          | Per 5/23 site walk, plumbing filters appear to be leaking and require correction.                                                                                                                                                    | INCOMPLETE |
| 97  | Restroom   | Plumbing    | 5/23 Site Walk           | Repair cracked fill funnel in utility room.                                                                                                                                                                                          | INCOMPLETE |
| 98  | Restroom   | Electrical  |                          | Verify electrical accessories are provided and operable (i.e. labeled electrical panel, radiant heater, interior and exterior lights, GFCI receptacles, occupancy sensors, exterior photos cell control, time clocks)                | INCOMPLETE |
| 99  | Restroom   | Electrical  | SP-301                   | Verify installation of breakers/network cable for cameras                                                                                                                                                                            | INCOMPLETE |
| 100 | Restroom   | Electrical  |                          | Verify internet modem is provided and operable                                                                                                                                                                                       | INCOMPLETE |
| 101 | Restroom   | Furnishings |                          | Verify accessories are provided and operable (i.e. changing stations, sanitary disposals, hand dryers, utility hook, grab bars, paper roll holders, signage)                                                                         | INCOMPLETE |
| 102 | Restroom   | Furnishings |                          | Verify door hardware is provided and operable (i.e. deadbolts, pull plates, closers, strips, sweeps, thresholds, crash stop, magnetic locks)                                                                                         | INCOMPLETE |

|     |            |                 |                                 |                                                                                                                                                                                                                    |            |
|-----|------------|-----------------|---------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 103 | Restroom   | Furnishings     |                                 | Verify door paper towel and soap dispensers provided and operable                                                                                                                                                  | INCOMPLETE |
| 104 | Site       | Drainage        | Culvert Crossing Exhibits       | Drainage swale at culvert crossing not graded properly. Grade drainage swales as specified.                                                                                                                        | INCOMPLETE |
| 105 | Site       | Electrical      | Sheet E-100                     | Relocate conduit for light pole at fitness equipment to extend through foundation and inside the anchor bolts adjacent to manhole                                                                                  | INCOMPLETE |
| 106 | Site       | Electrical      |                                 | Confirm light poles are free of damage and scrapes. Repair as needed.                                                                                                                                              | INCOMPLETE |
| 107 | Site       | Electrical      | 5/23 Site Walk                  | Concrete footing at pole light is chipped and damaged in multiple locations. Repair as needed.                                                                                                                     | INCOMPLETE |
| 108 | Site       | Electrical      |                                 | Contractor to schedule and perform operational walk-through with Owner, Maintenance Staff, and Architect to verify Site Lighting meets Owner's operational requirements and all components installed as specified. | INCOMPLETE |
| 109 | Site       | Masonry         |                                 | Examine and repair all deficiencies in overlook walls (i.e. loose/dislodged stone or capstone, cracked or poorly installed hidden mortar joints)                                                                   | INCOMPLETE |
| 110 | Site       | Masonry         | Field Report #8, Item 3         | Power wash concrete sealer from face of overlook retaining wall to leave wall in same cosmetic appearance as it was installed.                                                                                     | INCOMPLETE |
| 111 | Site       | Earthwork       | Field Report #6, Item 1         | Backfill all concrete trails to bring adjacent grade to finished elevation indicated on plans.                                                                                                                     | INCOMPLETE |
| 112 | Site       | Earthwork       | Field Report #11, Item 5, C5.0  | Verify finish grade of disturbed grade west of overlook trail meets designed grades per plans.                                                                                                                     | INCOMPLETE |
| 113 | Site       | Erosion Control |                                 | Maintain and repair erosion control measures until substantial completion of construction activities. Clean existing sediment runoff.                                                                              | INCOMPLETE |
| 114 | Site       | Erosion Control |                                 | Remove erosion control measures upon substantial completion of construction activities.                                                                                                                            | INCOMPLETE |
| 115 | Site       | Demolition      | CO #6                           | Remove and dispose of trees and tree stumps marked for removal.                                                                                                                                                    | INCOMPLETE |
| 116 | Site       | Clean-up        | Field Report #11, Item 10       | Site shall be free of construction waste and debris.                                                                                                                                                               | INCOMPLETE |
| 117 | Site       | Utilities       |                                 | Ensure headwall for splashpad overflow if properly graded for positive drainage away                                                                                                                               | INCOMPLETE |
| 118 | Site       | Furnishings     | L0.01                           | Confirm quantity and placement of (6) benches. Examine and repair any damage.                                                                                                                                      | INCOMPLETE |
| 119 | Site       | Furnishings     | L0.01                           | Confirm quantity and placement of (2) radial benches. Damage or incorrect installation observed on radial benches. Examine and repair any damage.                                                                  | INCOMPLETE |
| 120 | Site       | Furnishings     | L0.01                           | Confirm quantity and placement of (1) ADA picnic table. Examine and repair any damage.                                                                                                                             | INCOMPLETE |
| 121 | Site       | Furnishings     | L0.01                           | Confirm quantity and placement of (3) picnic tables. Examine and repair any damage.                                                                                                                                | INCOMPLETE |
| 122 | Site       | Furnishings     | L0.01                           | Confirm quantity and placement of (4) bike racks. Examine and repair any damage.                                                                                                                                   | INCOMPLETE |
| 123 | Site       | Furnishings     | L0.01                           | Confirm quantity and placement of (13) trash receptacles. Damage to rain bonnets observed. Examine and repair any damage.                                                                                          | INCOMPLETE |
| 124 | Site       | Furnishings     | 5/23 Site Walk                  | Contractor to sawcut picnic table surface mount bolts to max 1/2" exposed length.                                                                                                                                  | INCOMPLETE |
| 125 | Site       | General         | 5/23 Site Walk                  | Contractor to compile and submit all warranties, manuals, keys, etc. to Owner as outlined in project specifications.                                                                                               | INCOMPLETE |
| 126 | Site       | Earthwork       |                                 | Finish grade is incomplete. Bring all site disturbance to finish grade per plans.                                                                                                                                  | INCOMPLETE |
| 127 | Splash Pad | General         |                                 | Contractor to schedule and perform operational walk-through with Owner, Maintenance Staff, and Architect to verify Splash Pad meets Owner's operational requirements and all components installed as specified.    | INCOMPLETE |
| 128 | Splash Pad | Drainage        | Field Report #11, Item 7, L3.01 | Verify installation of 4" rigid perforated drain pipe at back of seat wall per L3.01                                                                                                                               | INCOMPLETE |

|     |            |                 |                                                     |                                                                                                                                                                                                                           |            |
|-----|------------|-----------------|-----------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 129 | Splash Pad | Masonry         | Field Report #11, Item 7                            | Examine and repair all deficiencies in stone wall (i.e. loose/dislodged stone material, free of sharp edges and undersized material)                                                                                      | INCOMPLETE |
| 130 | Splash Pad | Plumbing        | Field Report #5, Item 5                             | Verify splashpad slam latch has been installed on holding tank hatch.                                                                                                                                                     | INCOMPLETE |
| 131 | Splash Pad | Plumbing        | Holding Tank Submittal                              | Verify method for sensing the water level in holding tank                                                                                                                                                                 | INCOMPLETE |
| 132 | Splash Pad | Plumbing        | SP-301                                              | Examine and repair all plumbing items that have been damaged or do not operate. Verify all plumbing and associated water treatment accessories are operational to Manufacturer and Owner standards.                       | INCOMPLETE |
| 133 | Splash Pad | Plumbing        | SP-302                                              | Concrete apron and insect mesh guard not installed at gooseneck vent on holding tank. Install concrete apron and insect mesh guard per drawings.                                                                          | INCOMPLETE |
| 134 | Splash Pad | Plumbing        | SP-201                                              | Trench drain does not sit flush with adjacent surfacing. Examine and repair trench drain to sit flush with surfacing per drawings.                                                                                        | INCOMPLETE |
| 135 | Splash Pad | Plumbing        | SP-201                                              | Confirm location of cleanout for splashpad storm drain.                                                                                                                                                                   | INCOMPLETE |
| 136 | Splash Pad | Plumbing        | 5/23 Site Walk                                      | Return pipe from splash pad to tank and storm drain valves is leaking at outfall structure and shall be inspected and corrected to prevent leak.                                                                          | INCOMPLETE |
| 137 | Splash Pad | Surfacing       |                                                     | Inspect and clean all splashpad surfacing panels. Replace or repair all panels that have been damaged or are not secured to concrete pad. Multiple surfacing panels were observed in damaged condition at 5/23 site walk. | INCOMPLETE |
| 138 | Splash Pad | Furnishings     | Splashpad Submittal No. 5, SP-101                   | Confirm spray equipment is free of damage and scrapes.                                                                                                                                                                    | INCOMPLETE |
| 139 | Splash Pad | Shade Structure | Splashpad Submittal, Shade Set Up Submittal, AS1.01 | Confirm shade fabric is installed properly and appropriately tightened. Correct as determined.                                                                                                                            | INCOMPLETE |
| 140 | Splash Pad | Shade Structure | 5/23 Site Walk                                      | Verify shade structure posts are free of paint scratches or damage.                                                                                                                                                       | INCOMPLETE |

6000 WESTERN PLACE, SUITE 200  
I-30 AT BRYANT IRVIN ROAD  
FORT WORTH, TEXAS 76107  
EMAIL: TOASE@TOASE.COM



TELEPHONE: (817) 332-2580  
TOLL FREE: (800) 318-3400  
FACSIMILE: (817) 332-4740  
WEBSITE: WWW.TOASE.COM

James Donovan  
jdonovan@toase.com

June 16, 2023

Via email - kevinbonner@bcswlaw.com

Kevin K. Bonner  
Baird, Crews, Schiller & Whitaker, P.C.  
15 North Main Street  
Temple, TX 76501

Mark Berry  
MSB Constructors, Inc.  
103 Oak Grove Lane  
Boyd, TX 76023

US Casualty and Surety Insurance Company  
Attn: Zachary R. Bradley  
292 Newbury St., #105  
Boston, MA 02115

Re: Construction Agreement (“Agreement”) between Town of Flower Mound (the “Town”) and MSB Constructors, Inc. (“MSB”) – Bid #2021-1-B - Canyon Falls Park (the “Project”) – **Termination for Failure to Cure.**

This letter serves as the Town’s declaration of termination of the Agreement for failure of MSB to cure the defaults listed in the Town’s June 5, 2023 letter (the “Letter”).

Pursuant to Section 16.9 of the General Conditions, the “Town may, without prejudice to any other right or remedy, terminate the Agreement after ten (10) days from delivery of a written notice to the Contractor and his surety in the event of breach of the Agreement or of any default by the Contractor.” The Letter detailed that the Project is well past due for both substantial completion (November 25, 2021) and final completion (January 24, 2022), and listed 140 specific items remaining for MSB to address in order to cure MSB’s default. MSB has failed to cure the defaults listed in the Letter within the cure period allowed. The Project remains unfinished.

**Therefore, the Town hereby terminates the Agreement in accordance with Section 16.9 of the General Conditions.**

**In terminating the Agreement, the Town does hereby take possession of the Project and shall complete the Project by whatever means the Town deems most expedient (General Conditions 16.9.1). If the cost of the Town finishing the Project exceeds the remaining contract balance, MSB will be held responsible for any overages (General Conditions 16.9.2).**

If you have any questions, please contact Bryn Meredith or myself.

Sincerely,



James Donovan

JD:tmj

cc: Brian Waltenburg – *Via email at [Brian.Waltenburg@flower-mound.com](mailto:Brian.Waltenburg@flower-mound.com)*  
Tiffany Bruce – *Via email at [Tiffany.Bruce@flower-mound.com](mailto:Tiffany.Bruce@flower-mound.com)*  
Bryn Meredith (Firm)



## TOWN COUNCIL AGENDA J.9. CONSENT ITEM(S)

---

**DATE:** June 19, 2023  
**FROM:** Clay Riggs, Dir of Public Works  
**ITEM:** **Consider approval of a proposal to conduct a Stormwater Cost of Service and Rate Design Study with NewGen Strategies and Solutions in a not to exceed amount of \$27,500.00.**

---

**BACKGROUND:** In order to achieve a rate structure that will assure adequate revenue for the Stormwater Utility System's operations, debt service requirements, and to ensure the Stormwater Utility System is operating on a self-supporting basis while considering the economic impact on our customers, Staff requests the Town Council consider the proposal with NewGen Strategies & Solutions (NewGen) to conduct a stormwater cost of service and rate design study which will entail an analysis of the Utility Fund's operations and if needed, recommend alternate rate designs for the Town Council's consideration.

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

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** \$27,500

**Proposed Expenditure/(Revenue)**  
\$27,500

**Account Number(s):**  
230-690-94100-5110

**LEGAL REVIEW:** N/A

**ATTACHMENTS:**

1. Stormwater Rate Study Proposal

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



275 W Campbell Rd  
Suite 440  
Richardson, TX 75080  
Phone: (972) 680-2000

June 6, 2023

Mr. Clayton Riggs, PE, CFM  
Director of Public Works  
Town of Flower Mound  
2121 Cross Timbers Road  
Flower Mound, TX 75028

Re: **Stormwater Fee Study**

Dear Mr. Riggs:

Based on our conversations, NewGen Strategies and Solutions (NewGen) is pleased to have this opportunity to assist the Town of Flower Mound (Town) in updating the Town's Stormwater Fees (Study). The remainder of this letter outlines our proposed scope of services and proposed pricing for the engagement. On review, we look forward to further discussion with you to determine what adjustments may be needed to the scope to fully align with the Town's goals and objectives. We appreciate our relationship with the Town and look forward to continuing to serve the Town through this engagement.

## Proposed Scope of Services

### Task 1 — Project Kickoff Meeting and Initial Data Collection Efforts

To begin the engagement, the Project Team will work with the Town to schedule a kickoff meeting. The primary reason for the kickoff meeting is to allow the key Project Team consultants and participants from the Town to be introduced and lay the general framework for how the study will be conducted. This meeting will also allow for the finalization of the proposed work approach and for the identification of the overall goals and objectives for the project.

Also, as part of Task 1, and prior to the initial kickoff meeting, the Project Team will provide an initial data request to the Town for informational items which may assist in the establishment of the stormwater cost of service as well as to define the customer billing database and basis for stormwater billing.

### Task 2 — Billing Determinants Analysis

The Project Team will examine the level of revenue and basis of billing for current stormwater services within the Town and, based on data provided by the Town, evaluate the appropriateness of the current fee design/structure as well as the current classification of customers. At this time, the Project Team understands that the Town is not necessarily interested in alternative fee structures, but discussions will be held with Town representatives to address pricing goals and objectives and to determine if changes are warranted in light of these discussions. Please note that the proposed pricing for this engagement does not include the development of supplemental data relative to impervious cover or contemplate the need for comprehensive GIS analysis or advanced data analytics in support of evaluating the appropriate classification of customers. To the extent such services are required, changes will be required relative to the proposed scope and fee.



Mr. Clay Riggs

June 6, 2023

Page 2

### Task 3 – Cost of Service Analysis

In Task 3, the Project Team will review and, where appropriate, update the cost of service associated with stormwater service. As defined in Section 552.044 of the Local Government Code, the cost of service will include the following, as applicable:

- Cost of land acquisition;
- Capital cost of drainage facilities;
- Professional services fees including, but not limited to, architectural, engineering, planning financial, and/or legal services;
- Operations and maintenance (O&M) and major repair and replacement expenses associated with drainage facilities;
- Cost of rolling stock and other machinery and equipment;
- Interest and issuance costs associated with financing;
- Amortization of non-recurring costs (e.g., start-up costs, etc.); and/or
- Direct and indirect administrative cost including, but not limited to, support services costs (e.g., utility billing, etc.).

In developing the cost of service, the Project Team will consider all of the data collected in Task 1 as well as any capital improvement planning applicable to drainage service provided by the Town.

### Task 4 – Forecasted Cost of Service Analysis

After completion of the test year Cost of Service analysis, the Project Team will forecast the cost of service analysis for a five (5) year period. This forecast will include, but is not limited to, the following variables:

- Variations in number of customers and/or billing units inclusive of upcoming annexation efforts (if applicable);
- Mandatory and discretionary customer exemptions;
- Population growth rates;
- Inflation and O&M cost escalation factors;
- Timing and sequencing of drainage capital improvements;
- CIP Program Funding (cash and/or debt financing);
- Debt issuance assumptions (e.g., term, rate, coverage requirements, etc.); and,
- General and/or other fund transfer and/or contributions to reserves.

### Task 5 – Determination of Recommended Stormwater Fee Adjustments

After developing the forecasted cost of service, the Project Team will utilize the billing dataset from Task 2 to develop recommendations for adjustments to the Town's current stormwater fees. Please note that the proposed pricing for this task includes the development of up to three (3) different fee alternatives and/or the examination of alternative discretionary exemptions.

Mr. Clay Riggs

June 6, 2023

Page 3

### Task 6 – Regional Comparison of Stormwater Fees

Once the recommendations for stormwater fee adjustments have been developed, the Project Team will prepare a comparison of the Town's current and proposed stormwater fee to other municipalities in the geographical area. In doing so, the Project Team will work with the Town to identify specific entities which the Town desires to be included in the analysis.

### Task 7 – Draft Letter Report

The Project Team will develop a draft letter report summarizing findings, conclusions, and recommendations of the Study. The Project Team is committed to ensuring that the Town thoroughly understands the recommendations in the draft report and will ensure that Town staff has sufficient time to address their concerns and/or questions prior to finalizing the report.

### Task 8 – Final Report and Presentation

Upon receipt of Town staff comments, the Project Team will make appropriate changes and provide the Town with the final report. After completion of the final report, the Project Team will present its recommendations to the Town Council at the direction of Town staff.

## Proposed Budget

**Based on the scope of services outlined above, costs incurred by NewGen under this agreement will not exceed \$27,5000, inclusive of expenses, without prior written authorization of the Town.**

Assistance provided to the Town will be performed at the direction of the Town Council and/or Town Staff. As services are requested and performed, NewGen will invoice the Town on a monthly basis for actual hours worked at our then applicable hourly billing rates, plus out-of-pocket expenses incurred at cost. Payment is due within thirty (30) days upon receipt of invoice.

Our standing hourly billing rates at this time, which will remain in effect through December 31, 2023, are as follows:

| NewGen Strategies and Solutions<br>2023 Billing Rates |                     |
|-------------------------------------------------------|---------------------|
| Position                                              | Hourly Billing Rate |
| Partner                                               | \$250 – \$385       |
| Principal                                             | \$235 – \$385       |
| Senior Manager                                        | \$210 – \$265       |
| Manager                                               | \$185 – \$210       |
| Senior Consultant                                     | \$160 – \$185       |
| Consultant                                            | \$150 – \$160       |
| Administrative Services                               | \$120               |

Note: Billing rates are subject to change based on annual reviews and salary increases.

NewGen shall not be required to furnish services or incur expenses above \$27,500 without prior written authorization and additional funding committed by the Town. This agreement is subject to cancellation by the Town with thirty (30) days prior written notice provided to NewGen. In the event of cancellation,

Mr. Clay Riggs  
June 6, 2023  
Page 4

all labor and expense charges incurred by NewGen through the date of cancellation will be considered due at the time notice of cancellation is delivered, regardless of work product and/or engagement status.

By executing this letter, you agree that the services rendered by NewGen will be performed in accordance with instructions or specifications received by the Town and will be provided with the degree of skill and judgment exercised by recognized professionals performing services of similar nature and consistent with the applicable industry best practices.

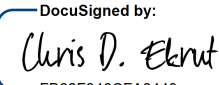
All payments made under this engagement should be remitted to:

NewGen Strategies and Solutions, LLC  
275 W Campbell Rd, Ste. 440  
Richardson, Texas 75082

If this letter and its terms and conditions are acceptable, please execute one copy and return to our Richardson, Texas office. If you should have any questions regarding this letter and/or require additional information, please contact Chris Ekrut at (972) 232-2234.

Very truly yours,

DocuSigned by:



FB62F346CFA8440...

NewGen Strategies and Solutions  
Chris D. Ekrut  
Partner, Chief Financial Officer

**Town of Flower Mound, Texas (\$27,500)**

Signed\_\_\_\_\_

Printed\_\_\_\_\_

Title\_\_\_\_\_

Date\_\_\_\_\_



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

---

**DATE:** June 19, 2023  
**FROM:** JP Walton, Strategic Services Manager  
**ITEM:** **Consider approval of a Professional Services Agreement with P3 Works LLC, for TIRZ/PID creation and administration services agreement with a not to exceed amount of \$40,000 - FY22-23.**

---

**BACKGROUND:** This item is to approve a professional services agreement with P3 Works LLC, for TIRZ /PID creation and administration services. This agreement allows the Town to utilize P3 Works professional services to provide the Town with guidance on the creation of a potential TIRZ #2 and a potential PID #2. For the Town to fully understand both the benefits and costs of implementing a potential TIRZ and/or PID, P3 Works assists in analyzing the future projects that are needed, their associated costs, the Town's financial commitments, and assists in finding the best way to pay for future projects while mitigating the impact of future growth and its associated costs to current tax payers and the Town's general fund.

This agreement is written in a way to allow for P3 Works LLC to continue providing the Town with consulting services during the potential creation phase, without committing the Town to either, and allowing for a transition from creation to administration if both or either finance tools are approved. As the Town considers a potential TIRZ and/or PID to mitigate the impact of future projects on the Town's current tax base, P3 Works assists the Town in the creation phase in order to provide Town Council with the information and tools it needs to make a future decision on how the Town will approach future growth/needs.

P3 Works will perform duties as directed by the Town Manager as it pertains to a potential TIRZ #2 and PID #2 and will be compensated on an hourly basis per work completed. Approving this agreement secures P3 consulting services for both this fiscal year and future fiscal years, subject to annual appropriation by the Town Council. Approving this item appropriates funds for this FY, while funding in future years is contingent on approval by Town Council through the budget process.

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

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** Not to exceed \$40,000 - FY22-23

**Proposed Expenditure/(Revenue)**  
\$40,000

**Account Number(s):**  
100-600-01000-5230

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

**ATTACHMENTS:**

1. P3 Works Agreement

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

**AGREEMENT FOR TAX INCREMENT REINVESTMENT ZONE #2 AND PUBLIC  
IMPROVEMENT DISTRICT (PID)#2 CREATION AND ADMINISTRATION SERVICES.**

This Agreement for Tax Increment Reinvestment Zone (“TIRZ #2”) and Public Improvement District (PID #2) Creation and Administration Services (“Agreement”) is entered into this 19th day of June, 2023, by and between P3Works, LLC (“P3Works”), and the Town of Flower Mound, Texas (“Town”), acting by and through their respective authorized representatives; P3 Works and the Town may individually be referred to as “Party” and collectively as the “Parties.”

**RECITALS**

WHEREAS, the Town may consider the creation of Tax Increment Reinvestment Zone #2 (“TIRZ #2”), to fund certain improvements as authorized by the Tax Increment Financing Act, of the Texas Tax Code, Chapter 311, as amended; and

WHEREAS, the Town Council may consider the creation of a Public Improvement District #2 (“PID #2”), the boundary of which may or may not be commensurate with the boundary of TIRZ #2, and subject to voter approval pursuant to Section § 7.16 of the Town Charter, to finance the costs of certain public improvements for the benefit of property within PID #2; and

WHEREAS, the Town may consider issuing bonds to fund certain improvements within PID #2 as authorized by the Public Improvement District Assessment Act, Texas Local Government Code, Chapter 372, as amended; and

WHEREAS, P3Works has the expertise to provide consultation services and properly establish and administer TIRZ #2 and PID #2 and ensure compliance with Texas Local Government Code Chapter 372, and Texas Tax Code Chapter 311; and

WHEREAS, the Town requires specialized consultation services related to the possible creation of both TIRZ #2 and PID #2; and

WHEREAS, if Town Council approves the creation of either TIRZ #2, PID #2, or both, the Town requires specialized services related to the creation, revision and updating of the Service and Assessment Plan (“Service and Assessment Plan”), bond issuance, and the administration of the PID #2; the creation, revision and updating of the Final Project and Finance Plan (“Final Plan”) and the Annual Reporting of TIRZ #2, as more fully set forth in this Agreement; and

WHEREAS, if Town Council approves the creation of either TIRZ #2, PID #2, or both, the Town desires to retain P3Works to provide creation and administration services, and the parties acknowledge and agree that this Agreement is made in the exercise of the Town’s governmental functions in the interest of the health, safety, and welfare of the general public.

NOW THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and for good and valuable consideration, P3Works and the Town agree as follows:

## **ARTICLE I**

### **TERM OF AGREEMENT**

1.0 The Agreement shall be effective as of its date of approval by all Parties, and shall be for a period of three (3) years, subject to annual appropriation by the Town Council, and shall automatically renew thereafter, on a year to year basis, until terminated pursuant to Article IV of this Agreement.

## **ARTICLE II**

### **SERVICES TO BE PROVIDED BY P3WORKS**

2.0 The scope and timing of services to be performed by P3Works are set forth in Exhibits A and B, which are attached hereto and incorporated into this Agreement by this reference.

2.1 P3Works agrees that its services pursuant to this Agreement shall at all times be subject to the control and supervision of the Town and that nothing in this Agreement shall constitute an assignment of any right or obligation of the Town under any applicable contract, agreement, or law. P3Works shall not represent to any property owner or any other person that it or any of its employees are acting as the Town or as employees of the Town.

2.2 No substantial changes in the scope of services shall be made without the prior written approval of both P3Works and the Town.

2.3 P3Works shall supply all tools and means necessary to perform the services and production of the work product described in Exhibit A. P3Works agrees to devote such time as reasonably necessary for the satisfactory performance of the services under this Agreement, Exhibits A and B.

2.4 P3Works shall furnish the facilities, equipment, and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

## **ARTICLE III**

### **PAYMENT TERMS AND CONDITIONS**

3.0 In consideration for the services to be performed by P3Works, the Town agrees to pay P3Works the fees for all services and related costs and expenses set forth in Exhibit A and B, beginning the first day of the month following the execution of this Agreement.

3.1 In the event TIRZ #2 or PID #2, or both are created, the parties agree that an amendment to this Agreement should be negotiated to ensure that all respective work by P3Works related to TIRZ #2 and/or PID #2, is funded solely by such Reinvestment Zone and/or District, only, and not from the Town's general fund; recognizing also that the Parties have the right to terminate this Agreement in the alternative, pursuant to Article IV, hereof. .

3.2 Monthly invoices shall be submitted to the Town for work completed under the rates provided in Exhibit A. Town agrees to pay the amount due to P3Works in accordance with the Texas Prompt

Payment Act, Texas Gov't Code Ch. 2251, except as otherwise provided in this Agreement.

3.3 Copies of all invoices from P3Works for expenses, materials, or services provided by P3Works will accompany the invoice to the Town. Mileage will be billed at the P3Works travel rate, as provided in Exhibit A. P3Works will pass any third-party cost through to the Town without markup and will not incur any printing or publication expense in excess of \$200 without written consent of the Town.

## **ARTICLE IV**

### **TERMINATION OF THIS AGREEMENT**

4.0 Notwithstanding any other provisions of this Agreement, either party may terminate this Agreement at any time, with or without cause, by giving sixty (60) days written notice to the other Party without penalty and without limitation of its right to seek damages. Town shall pay any final invoices provided by P3Works, within 30 days of such termination, which shall include all of P3Works' fees and expenses actually accrued or incurred up to and including the date of termination, including any amount incurred or accrued in connection with work in progress.

4.1 This Agreement may be terminated without compensation beyond the date of occurrence of any of the following: conviction of a felony or other crime involving moral turpitude; violations of the provisions of the Charter or of any ordinance, rule, or of special orders applicable to P3Works.

## **ARTICLE V**

### **GENERAL PROVISIONS**

5.0 This Agreement supersedes any and all prior agreements, including any Original PID Administration Agreement, either oral or written, between the parties hereto with respect to services related to the contemplated TIRZ #2 and PID # 2 detailed herein, only. Each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party which are not embodied herein and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.

5.1 This Agreement shall be administered and interpreted under the laws of the State of Texas and venue for any action concerning this Agreement shall be in the State District Court of Denton County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

5.2 This Agreement shall not be construed for or against any party by reason of who drafted the provisions set forth herein. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall remain in full force and effect.

5.3 Neither this Agreement or any duties or obligations under this Agreement may be assigned by P3Works without the prior written consent of the Town.

5.4 P3Works is a PID Administration firm, does not provide financial advice, and is not an Independent Registered Municipal Advisor under the SEC and MSRB Rules, therefore, P3Works will



request an IRMA Exemption Letter if not already provided on the Town's website, and then will provide to the Town an IRMA Exemption Acceptance Letter in the general form attached as Exhibit B upon execution of the Agreement.

5.5 Upon acceptance or approval by Town, all deliverables prepared or assembled by P3Works under this Agreement, and any other related documents or items shall be delivered to Town, in hard copy and digital format for Town use only. All digital data which contains algorithms, formulas, methodologies and related content provided to the Town by the P3Works shall remain the property of the P3Works, and is provided as backup documentation to the deliverables, but shall not be released in digital format to any third-parties due to the proprietary nature of the intellectual data, unless otherwise required by Texas law.

5.6 P3Works agrees to meet all insurance requirements, and to require all consultants who perform work for P3Works to meet all insurance requirements, as set forth in Exhibit C, which is attached hereto and thereby made a part of this Agreement.

5.7 The Town acknowledges P3Works' ownership of its software, programs, inventions, know-how, trade secrets, confidential knowledge, source code, or other proprietary information relating to products, processes, services, software, formulas, developmental or experimental work, business plans, financial information, or other subject matter ("Confidential Information") pertaining to the business of P3Works. This Agreement shall not in any way give rise to any requirement or obligation for P3Works to disclose or release any Confidential Information, unless otherwise required by Texas law.

5.8 It is understood and agreed by and between the Parties that P3Works, in satisfying the conditions of this Agreement, is acting independently, and that the Town assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by P3Works pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the Town. P3Works shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

5.9 P3WORKS DOES HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, INDEMNIFY, AND HOLD HARMLESS THE TOWN, ITS TOWN COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGEMENTS, LOSSES PENALTIES OR SUITS, CAUSED BY OR RESULTING FROM THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY P3WORKS, ITS AGENT, ITS CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH P3WORKS EXERCISES CONTROL

INDEMNIFIED ITEMS SHALL INCLUDE REASONABLE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS IN PROPORTION TO P3WORKS'S LIABILITY.

5.10 All notices, requests, demands, and other communications which are required to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery by registered or certified mail, return receipt requested, postage prepaid thereon, as follows:

To P3Works:

Mary V. Petty  
Managing Partner  
P3Works, LLC  
9284 Huntington Square, Ste. 100  
North Richland Hills, Texas 76182

To Town:

James W. Childers  
Town Manager  
Town of Flower Mound  
2121 Cross Timbers Road Flower Mound, TX 75028

5.11 This Agreement may be amended by the mutual written agreement of the Parties.

5.12 This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

5.13 The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

5.14 The waiver by either party of a breach or violation of any provision of this Agreement will not operate as or be construed to be a waiver of any subsequent breach thereof.

5.15 The headings and article titles of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part hereof.

5.16 Should either party commence any legal action or proceeding against the other based upon this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs.

5.17 The parties hereby acknowledge and agree that the Town is entering into this Agreement pursuant to its governmental function(s) and that nothing contained in this Agreement shall be construed as constituting a waiver of the Town's police power, legislative power, or governmental immunity from suit or liability, which are expressly reserved to the extent allowed by law. To the extent a Court of competent jurisdiction determines that the Town's governmental immunity from suit or liability is waived in any manner, or that this Agreement is subject to the provisions of Chapter 271 of the Texas Local Gov't Code, as amended, the Town's immunity from suit shall be waived only as set forth in Subchapter I of Chapter 271, Texas Local Gov't Code.

5.18 The parties hereby warrant that the persons executing this Agreement are authorized to execute this Agreement and are authorized to obligate the respective parties to perform this Agreement. A facsimile signature on this Agreement shall be treated for all purposes as an original signature.

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

P3Works, LLC

BY: \_\_\_\_\_  
Mary V. Petty  
Managing Partner

Town of Flower Mound

BY: \_\_\_\_\_  
Derek France  
Mayor

**EXHIBIT A**  
**TAX INCREMENT REINVESTMENT ZONE SERVICES TO BE PROVIDED**  
**TIRZ FORMATION, PRELIMINARY AND FINAL PROJECT AND FINANCE PLAN**  
**PREPARATION SERVICES**

*Billed at P3Works' prevailing hourly rates, which are currently as follows:*

| <i><b>Title</b></i>    | <i><b>Hourly Rate</b></i> |
|------------------------|---------------------------|
| <i>Partner</i>         | <i>\$250</i>              |
| <i>Project Manager</i> | <i>\$210</i>              |
| <i>Senior Analyst</i>  | <i>\$185</i>              |
| <i>Analyst II</i>      | <i>\$160</i>              |
| <i>Analyst</i>         | <i>\$135</i>              |
| <i>Administrative</i>  | <i>\$100</i>              |

*\*P3Works' hourly rates may be adjusted from time to time to reflect increased costs of labor and/or adding/reclassifying titles. P3Works shall give notice of such adjustment at least (60) days in advance of the effective date of adjustment. Travel times will be billed at hourly rates.*

**District Due Diligence and Preparation of TIRZ Project and Finance Plan**

1. P3Works will review project information and prepare a Preliminary Plan for the proposed creation, including:
  - a) Assessed value schedules and overall structuring to achieve Town goals and objectives.
  - b) Drafting the TIRZ Agreement.
  - c) At the direction of Staff, facilitate presentations to the Council and the TIRZ Board.
2. Estimated annual TIRZ Credit by lot type for each improvement area.

**Preparation of Preliminary and Final Project Plan**

1. P3Works will prepare a Preliminary Project and Finance Plan ("PPFP") and a Final Project and Finance Plan ("FPFP") to be adopted by the TIRZ Board and the Town Council and included in the Official Statement for the PID Bonds based on the Plan of Finance.
2. P3Works will prepare a draft TIRZ Agreement to be adopted by the TIRZ Board
3. P3Works will present the PPFP to the Council at the creation of the TIRZ and request approval of TIRZ Creation Ordinance.
4. P3Works will present the FPFP to the Council after conducting all necessary steps for public hearings and notifications and request approval of TIRZ FPFP.
5. P3Works will file the necessary creation forms with the Secretary of the State of Texas after the creation of the TIRZ.

**Bond Issuance Support**

1. P3Works will ensure bond documents, including the bond indenture and official statement are all consistent with the TIRZ Final Plan.
2. P3Works will provide ad-hoc analysis as requested by the underwriter in preparation of the preliminary official statement.

**Participation in Presentations to Town Council or other Public Forums**

1. P3Works will prepare and present information as requested to the Town Council or any other

- public forum.
2. If requested by the Town, P3Works will respond to any calls and or emails relating to the TIRZ.
3. P3Works will only provide technical answers relating to the annual TIRZ Credit or the TIRZ generally.
4. P3Works will not provide any commentary on Town policy relating to TIRZs.

## **BASIC DISTRICT ADMINISTRATION SERVICES**

*Billed at P3Works' prevailing hourly rates, which are currently as follows:*

| <b><i>Title</i></b>    | <b><i>Hourly Rate</i></b> |
|------------------------|---------------------------|
| <i>Partner</i>         | <i>\$250</i>              |
| <i>Project Manager</i> | <i>\$210</i>              |
| <i>Senior Analyst</i>  | <i>\$185</i>              |
| <i>Analyst II</i>      | <i>\$160</i>              |
| <i>Analyst</i>         | <i>\$135</i>              |
| <i>Administrative</i>  | <i>\$100</i>              |

*Preparation of the Annual Report to be filed with the Secretary of State and then presented to the TIRZ Board and Town Council for approval.*

*See Section below related to "Consulting Services Relating to Future Improvement Areas and related Bond Issuance" for hourly fees if future TIRZ changes are contemplated.*

### Consulting Services Relating to Future Improvement Areas and related Bond Issuance (to be paid from Developer funds advanced to Town)

1. P3Works will coordinate with Town's bond counsel, financial advisor, and the bond underwriter to ensure the Bonds and all related documents are in compliance with State Law.
2. P3Works will prepare any additional reports or analyses as needed to successfully issue the Bonds.

### Prepare Annual Report

1. If possible, obtain updated construction cost estimates (or actual costs for completed facilities) for TIRZ improvements
2. Update Annual Report as necessary to account for any changes in development plan or land uses.
3. Identify parcel subdivisions, conveyance to owners' associations, changes in land use, and any other information relevant to anticipated estimate of Tax Increment to be generated.
4. Calculate annual TIRZ Credit for each parcel.
5. Present preliminary Annual Report to TIRZ Board. Upon approval by TIRZ Board, submit final Annual Report to the Texas Secretary of State.

**EXHIBIT B**  
**PUBLIC IMPROVEMENT DISTRICT SERVICES TO BE PROVIDED**

**PID FORMATION, SERVICE AND ASSESSMENT PLAN PREPARATION, AND BOND ISSUANCE SUPPORT SERVICES**

*Billed at P3Works' prevailing hourly rates, which are currently as follows:*

| <b>Title</b>           | <b>Hourly Rate</b> |
|------------------------|--------------------|
| <i>Partner</i>         | <i>\$250</i>       |
| <i>Project Manager</i> | <i>\$210</i>       |
| <i>Senior Analyst</i>  | <i>\$185</i>       |
| <i>Analyst II</i>      | <i>\$160</i>       |
| <i>Analyst</i>         | <i>\$135</i>       |
| <i>Administrative</i>  | <i>\$100</i>       |

*\*P3Works' hourly rates may be adjusted from time to time to reflect increased costs of labor and/or adding/reclassifying titles. P3Works shall give notice of such adjustment at least (60) days in advance of the effective date of adjustment. Travel times will be billed at hourly rates.*

**District Due Diligence and Preparation of PID Plan of Finance**

1. P3Works will review project information and in conjunction with the Town's Financial Advisor review the plan of finance for the proposed transaction, including:
  - Assessed value schedules, value to lien analysis, and overall structuring to achieve Town goals and objectives
  - Identify areas of risk and with the Town's Financial Advisor, solutions to mitigate the risks,
  - Bond sizing and bond phasing by improvement area,
  - Sources and uses of funds by improvement area,
  - Debt service schedules, and;
  - Assessment allocation and associated estimated annual installment by lot type for each improvement area.

**Preparation of Service and Assessment Plan**

1. P3Works will prepare a complete and final Service and Assessment Plan to be adopted by Town Council and included in the Official Statement for the Bonds based on the Plan of Finance.
2. P3Works will present the Service and Assessment Plan to Town Council and request approval of Assessment Roll.

**Bond Issuance Support**

1. P3Works will ensure bond documents, including the PID financing agreement, bond indenture, and official statement are all consistent with the Service and Assessment Plan.
2. P3Works will provide ad-hoc analysis as requested by the underwriter in preparation of the preliminary official statement.

**Participation in Presentations to Town Council or other Public Forums**

1. P3Works will prepare and present information as requested to the Town Council or any other

public forum.

## **BASIC DISTRICT ADMINISTRATION SERVICES**

MONTHLY COLLECTION FEES WILL BEGIN ONCE ASSESSMENTS ARE LEVIED

*If no bonds are sold:*

*Monthly Fee = \$1,500 beginning the first of the month following levy of assessments for PID #2 for the first improvement area; and \$1,000 per month for each improvement area thereafter. (Proration will occur for any partial month if not begun on the 1<sup>st</sup> day of the month.)*

*If bonds are sold:*

*Monthly Fee amounts will be \$2,500 for the first improvement area beginning the first month following the issuance of bonds; and \$1,250 per month for each improvement area thereafter.*

*For PIDs that P3Works did not create: Monthly Collection Fees will not begin until the first Annual SAP Update is drafted by P3Works and approved by Council, therefore all work completed to that point will be billed hourly. The Town must approve any work performed (and any associated billing) for PIDs that P3Works did not create.*

*See Section below related to “Consulting Services Relating to Future Improvement Areas and related Bond Issuance” for hourly fees if bonds are contemplated.*

Once assessments have been levied the Monthly Collection Fees will begin, and then the February 1 following the levy of assessments, and each February 1 thereafter, the fees shall increase by 2%.

### Prepare Annual Service and Assessment Plan Update

1. If possible, obtain updated construction cost estimates (or actual costs for completed facilities) for PID #2 improvements, and update service and assessment plan text and tables.
2. Update service and assessment plan text and tables as necessary to account for any changes in development plan or land uses.
3. Update annual PID #2 assessment roll.
4. Identify parcel subdivisions, conveyance to owners' associations, changes in land use, and any other information relevant to the levy of special assessments.
5. Review maps of tax parcels to compile/audit list of parcels that are within PID #2 for the upcoming bond year. Classify each parcel pursuant to the approved service and assessment plan.
6. Identify any parcels dedicated to any property types classified as exempt by the service and assessment plan.
7. Update PID #2 database with newly subdivided parcels and property type classifications.
8. Calculate annual special assessment for each parcel. Verify the sum of annual installments for all parcels in the PID #2 is sufficient to meet the annual debt service requirement, administration expenses, and any provisions for delinquency or prepayment reserves.
9. Calculate other funds available, such as reserve fund income, capitalized interest, and interest income. Reduce annual assessment based on findings according to approved service and assessment plan.
10. Present preliminary annual assessment roll to Town. Upon approval by Town, submit final annual assessment roll to County Tax Collector.

### Administration of Bond Funds (if bonds are sold)

1. Review and summarize the account statements for the funds maintained by the trustee.

Ensure annual special assessment calculation is compliant with Indenture as it relates to each fund.

2. Provide annual summary of all PID #2 accounts maintained by Trustee at the time the annual service and assessment plan update is performed.

#### Provide Public Information Request Support

1. If requested, P3Works will respond to any calls and or emails relating to PID #2. P3Works will only provide technical answers relating to the annual assessments or the PID #2 generally. P3Works will not provide any commentary on Town policy relating to PIDs.
2. If the Town receives a notice from a property owner alleging an error in the calculation of any matters related to the annual assessment roll for PID #2, P3Works will review and provide a written response to the Town. If a calculation error occurred, P3Works will take corrective action as required to correct the error.

#### Delinquency Management

1. After the end of the annual assessment installment collection period, P3Works will prepare a delinquent special assessment report, which details which parcels are delinquent and the amount of delinquency.
2. P3Works will notify the Town what action must be taken relating to delinquent parcels, if any, to remain in compliance with the PID #2 bond documents.

#### Website Setup

1. Prepare for the P3Works website database searchable by property tax ID for use by property owners, title companies, mortgage companies, or other interested parties. The search results will provide assessment information, including outstanding principal, annual installment amount, payment information, and a breakdown of the assessment installment by use (principal, interest, reserve fund accounts, administrations, etc.)
2. Prepare "PID #2 Information" page for website. Information will include a background of PID #2 formation and bond issuance process, PID #2 boundary map, and description of improvements. In addition, P3Works will provide a link to PID #2 documents.

### **DISTRICT ADMINISTRATION SETUP SERVICES (Required for any existing PID not created by P3Works.)**

*\$7,500 One Time Lump Sum Fee*

1. P3Works will review the full bond transcript and identify all requirements of the Town relating to District administration and/or disclosure requirements.
2. Prepare written summary of all Town administration and disclosure requirements.
3. Prepare calendar of all relevant dates and deadlines for District administration and disclosure requirements.
4. Meet with County Assessor's office to establish procedure for obtaining parcel information for assessment roll.
5. Meet with County Tax Office to establish procedure to include District assessment roll on property tax bill.



6. Meet with Town representatives to finalize policies and procedures relating to District Administration.

#### **ADDITIONAL DISTRICT SERVICES**

*Billed at P3Works' prevailing hourly rates, which are currently as follows:*

| <b>Title</b>           | <b>Hourly Rate</b> |
|------------------------|--------------------|
| <i>Partner</i>         | <i>\$250</i>       |
| <i>Project Manager</i> | <i>\$210</i>       |
| <i>Senior Analyst</i>  | <i>\$185</i>       |
| <i>Analyst II</i>      | <i>\$160</i>       |
| <i>Analyst</i>         | <i>\$135</i>       |
| <i>Administrative</i>  | <i>\$100</i>       |

*\*P3Works' hourly rates may be adjusted from time to time to reflect increased costs of labor and/or adding/reclassifying titles. P3Works shall give notice of such adjustment at least (60) days in advance of the effective date of adjustment. Travel will be billed at the hourly rates.*

#### Continuing Disclosure Services

1. P3Works will prepare the form of the annual report as required by the continuing disclosure agreements and work with the Town and the Developer to complete.
2. P3Works will request from developer the reports due pursuant to the developer disclosure agreement and disseminate these reports pursuant to the disclosure agreement; including Seller's Disclosures.
3. Upon notification by any responsible party or if P3Works independently becomes aware of such knowledge, P3Works will prepare notices of material events covering the events enumerated in the disclosure agreements.
4. P3Works will coordinate with the Trustee or the Town's dissemination agent to disseminate the annual reports, quarterly reports from the developer, and notice of significant events to the Municipal Securities Rulemaking Board (MSRB) and any other parties required in the continuing disclosure agreement.

#### Developer Payment Request Administration

1. P3Works will review all developer payment requests to ensure the request complies with the PID Financing Agreement, PID #2 service and assessment plan, and any other relevant provisions contained in PID #2 documents.
2. P3Works will audit the developer payment request to ensure there is proper backup documentation and that the accounting is accurate.
3. P3Works will coordinate with the Town's designated representative to ensure the improvements were built to the standards of the accepting governing body.
4. P3Works will ensure improvements to be dedicated are free and clear of all liens and encumbrances.

#### Consulting Services Relating to Future Improvement Areas and related Bond Issuance (to be paid from Developer funds advanced to Town)

1. P3Works will update the Service and Assessment Plan to comply with Bond documents.
2. P3Works will prepare an updated Assessment Roll including the future Improvement Area
3. P3Works will coordinate with Town's bond counsel, financial advisor, and the bond

- underwriter to ensure the Bonds and all related documents are in compliance with State Law.
4. P3Works will prepare any additional reports or analyses as needed to successfully issue the Bonds.

Development Agreement Review Specific to the PID/TIRZ Boundary

1. Participate in meetings or calls at Town Manager's, or his/her designee, direction.
2. Review and comment on Development Agreement drafts.
3. Prepare Ad hoc analysis, as requested.

**EXHIBIT C**  
**IRMA EXEMPTION LETTER**



P3Works, LLC.  
9284 Huntington Sq.  
Suite 100  
North Richland Hills,  
Texas 76182

Mary V. Petty  
Managing Partner  
+1.817.393-0353 Phone  
[Admin@P3-Works.com](mailto:Admin@P3-Works.com)

Date

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

RE: IRMA Exemption/Acceptance Letter

To Whom It May Concern:

We have received your written representation, dated \_\_\_\_\_, 20\_\_, that the Town of Flower Mound \_\_\_\_\_ (the "Town") has engaged and is represented by \_\_\_\_\_, an independent registered Municipal Advisor ("IRMA"). In accordance with Section 15Ba1-1(d)(3)(vi) of the Securities Exchange Act of 1934 ("Securities Exchange Act"), we understand and intend for the Town to rely on IRMA's advice in evaluating recommendations brought forward by P3Works, LLC that constitute "advice" as defined in the Securities Exchange Act ("IRMA Exemption").

Furthermore, P3Works, LLC has conducted reasonable due diligence and is confirming that to the best of our knowledge, the IRMA is independent from P3Works, LLC, that P3Works, LLC is not a municipal advisor and is not subject to the fiduciary duty to municipal entities that the Security and Exchange Act imposes on municipal advisors, and that P3Works, LLC has a reasonable basis for relying on the IRMA Exemption. We will advise you, in writing, if we become aware of any changes.

P3Works, LLC provides PID Administration as consult services to Cities and Counties.

As required by the relevant sections of the Securities Exchange Act regarding Municipal Advisors, we are informing your identified IRMA of these facts.

Mary V. Petty  
Managing Partner  
P3Works, LLC

Jon Snyder  
Managing Partner  
P3Works, LLC

#### INSURANCE REQUIREMENTS



## TOWN COUNCIL AGENDA K.2. REGULAR ITEM(S)

---

**DATE:** June 19, 2023

**FROM:** Claire Barnes, Planner

**ITEM:** **Public Hearing to consider an ordinance for rezoning (ZPD21-0016 – Landshark Car Wash) to amend Planned Development District No.114 (PD-114) with Office District (O) and Retail District-2 (R-2) uses, to modify the conceptual plans and elevations, and modify the development standards for Lot 2RA-1, Block A, of the Windsor Ridges Addition to permit a car wash use. The property is generally located east of Long Prairie Road and south of Merriweather Lane. (PZ recommended approval by a vote of 5 to 1 at its June 12, 2023, meeting.)**

---

### **BACKGROUND:**

- Size –0.9831 acres
- Existing Zoning – Planned Development No. 114 with Retail District-2 zoning
- Proposed Zoning – Add car wash, automatic as a permitted use for lot 2RA-1 as part of the existing PD
- SMARTGrowth – Passed
- Traffic Analysis – Based upon the transportation analysis completed for this development, the traffic generated is not anticipated to exceed the 5% threshold.
- Exceptions – N/A
- Incentives – None
- [Planning and Zoning Commission Staff Report Link](#)

**BOARD REVIEW/CITIZEN FEEDBACK:** The Planning & Zoning Commission recommended approval by a vote of 5 to 1 at its June 12, 2023, meeting.

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** N/A

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

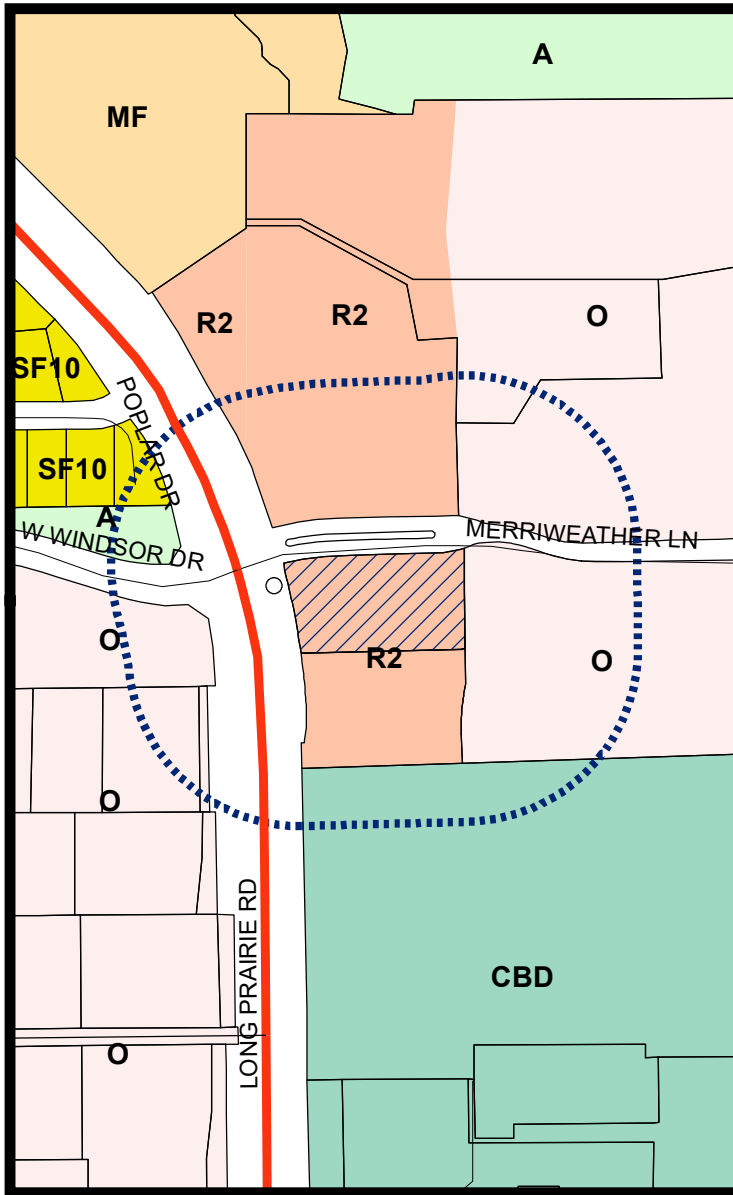
### **ATTACHMENTS:**

1. Vicinity and Aerial Maps
2. DRAFT Ordinance
3. DRAFT Exhibits

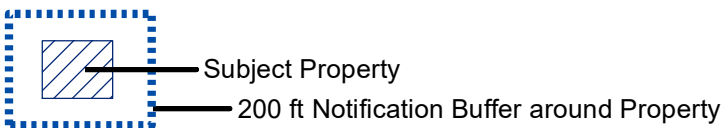
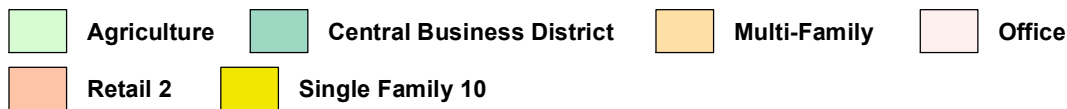
**DRAFT MOTION:** Move to approve as presented in the agenda caption.

# Vicinity Map

Reference Project: ZPD21-0016

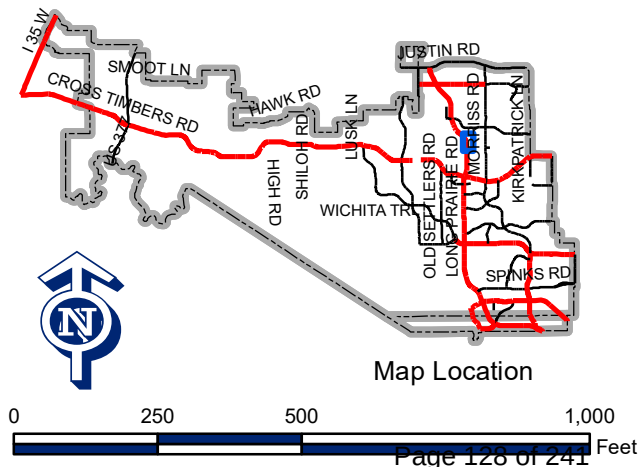


## LEGEND



Visit [www.fmdevmap.com](http://www.fmdevmap.com) to learn more about this project.

Visit <https://www.flower-mound.com/notifyme> to sign up for text message and/or email alerts for future projects.



**TOWN OF FLOWER MOUND, TEXAS**  
**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING ORDINANCE NOS. 75-10, 17-13, 05-17, AND 41-17, WHICH ESTABLISHED AND LATER AMENDED PLANNED DEVELOPMENT DISTRICT NO. 114 (PD-114) ON CERTAIN PROPERTY DESCRIBED AS APPROXIMATELY .9831 ACRES OF LAND AND BEING ALL OF LOT 2RA-1, BLOCK A, OF THE WINDSOR RIDGES ADDITION, BY AMENDING PARAGRAPH B, "RETAIL DISTRICT-2 (R-2) USES," OF EXHIBIT "B," "DEVELOPMENT STANDARDS," BY ADDING "CAR WASH, AUTOMATIC" AS A PERMITTED USE AND BY ADDING A CONCEPTUAL SITE PLAN, CONCEPTUAL ELEVATIONS, AND CONCEPTUAL LANDSCAPE PLAN IN ACCORDANCE WITH SPECIFIC REQUIREMENTS STATED HEREIN AND EXHIBITS ATTACHED HERETO; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.**

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

**WHEREAS**, the Town Council of the Town heretofore adopted the Land Development Regulations of the Town, as amended, which ordinance regulates and restricts the location and use of buildings, structures, and land for trade, industry, residence, and other purposes, and provides for the establishment of zoning districts of such number, shape, and area as may be best suited to carry out these regulations; and,

**WHEREAS**, in accordance with Chapter 78 of the Land Development Regulations, the owners of the property described as approximately .9831 acres of land and being all of Lot 2RA-1, Block A of the Windsor Ridges Addition, have filed an application for a Zoning Planned Development amendment to amend Ordinance Nos. 75-10, 17-13, 05-17, and 41-17 for Planned Development District No. 114 (PD-114); and,

**WHEREAS**, the Planning and Zoning Commission of the Town held a public hearing on June 12, 2023, and the Town Council of the Town held a public hearing on June 19, 2023, with respect to the proposed Zoning Planned Development amendment as described herein; and,

**WHEREAS**, the Town has complied with all requirements of Chapter 211 of the Local Government Code, Chapter 78 of the Land Development Regulations, and all other laws dealing with notice, publication and procedural requirements for the approval of a Zoning Planned Development amendment on the property; and,

**WHEREAS**, the Town Council finds that amendment of Ordinance Nos. 75-10, 17-13, 05-17, and 41-17 for Planned Development District No. 114 (PD-114) as outlined herein is in the best interest of the Town and will promote the health, safety, and general welfare of the citizens of the Town and the general public;

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

### **SECTION 1**

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

Approximately .9831 acres of land being all of Lot 2RA-1, Block A of the Windsor Ridges Addition, Denton County, Texas, as described more fully on the attached Exhibit "A."

Subparagraph B.1., "Permitted Uses," of Paragraph B, "Retail District-2 (R-2) Uses," of "Exhibit "B," "Development Standards," for Planned Development No. 114 (PD-114), as amended, is hereby amended in part to add "Car Wash, Automatic" as permitted use with the condition that the car wash use shall be enclosed as depicted in the conceptual site plan, conceptual elevations, and conceptual landscape plan (Exhibits "B," "C," and "D" attached).

Exhibits "C," "D," and "E" to Ordinance Nos. 75-10, 17-13, 05-17, and 41-17, are hereby amended to amend the conceptual site plan, conceptual elevations, and conceptual landscape plan for Lot 2RA-1, Block A, of the Windsor Ridges Addition, attached as Exhibits "B," "C," and "D" hereto and incorporated herein.

### **SECTION 2**

The use of the property described above shall be subject to all restrictions, terms, and conditions contained herein, as well as the applicable regulations contained in Ordinance Nos. 75-10, 17-13, 05-17, and 41-17 for Planned Development District No. 114 (PD-114), the Land Development Regulations, and all other applicable and pertinent ordinances of the Town.

### **SECTION 3**

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

### **SECTION 4**

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

### **SECTION 5**

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



**SECTION 6**

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

**SECTION 7**

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

**SECTION 8**

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

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF \_\_\_\_ TO \_\_\_\_, ON THIS THE 19TH DAY OF JUNE, 2023.**

**APPROVED:**

\_\_\_\_\_  
Derek France, **MAYOR**

**ATTEST:**

\_\_\_\_\_  
Theresa Scott, **TOWN SECRETARY**

## EXHIBIT "A" – PROPERTY DESCRIPTION

Being a 0.9831 acre tract of land situated in the Carlos Chacon Survey, Abstract No. 299, City of Flower Mound, Denton County, Texas, being all of Lot 2RA-1, Block "A", Windsor Ridges, an addition to the City of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Instrument No. 20190122000204, Official Public Records, Denton County, Texas, as conveyed to Southside Bank and recorded in Instrument No. 2020-1901, of the Official Public Records, Denton County, Texas and being more particularly described as follows:

**BEGINNING** at an "X" Cut in concrete (Control Monument (CM)) found at the intersection of the south right-of-way line of Merriweather Lane (variable width right-of-way), and the east right-of-way line of Long Prairie Road (variable width right-of-way), and on the northeast corner of said Lot 2RA-1, said "X" cut also being the beginning of a curve to the right having a central angle of 12 degrees 15 minutes 21 seconds, a radius of 467.50 feet and being subtended by a chord bearing of North 82 degrees 27 minutes 31 seconds East, a chord distance of 99.13 feet;

**THENCE**, in a northeasterly direction, along the north line of said Lot 2RA-1, an arc distance of 99.32 feet to a an "X" cut in concrete set for corner;

**THENCE**, North 88 degrees 30 minutes 26 seconds East, along the common south right-of-way line of said Merriweather Lane, and the north line of said Lot 2RA-1, a distance of 180.31 feet to an "X" cut in concrete found on a northeast corner of said Lot 2RA-1, and also being the beginning of a curve to the left having a central angle of 17 degrees 46 minutes 11 seconds, a radius of 100.00 feet and being subtended by a chord bearing of North 79 degrees 33 minutes 13 seconds East, a chord distance of 30.89 feet;

**THENCE**, in a northeasterly direction, along the north line of said Lot 2RA-1, an arc distance of 31.01 feet to a mag nail found on the northeast corner of said Lot 2RA-1, and also being on the northwest corner of Lot 1R, Block A of said Windsor Ridges;

**THENCE**, South 01 degrees 27 minutes 02 seconds East, along the common east line of said Lot 2RA-1 and the west line of said Lot 1R, a distance of 149.53 feet to an "X" cut in concrete (CM) found on the southeast corner of said Lot 2RA-1, and also being on the northeast corner of a Lot 2RB, Block A, Timber Creek Medical Office Plaza, an addition to the City of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Instrument Number 2016-98, Official Public Records, Denton County, Texas;

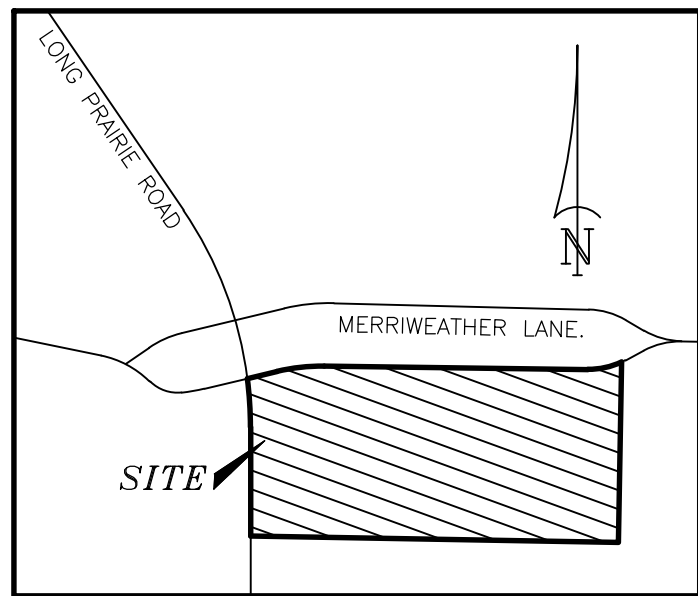
**THENCE**, South 88 degrees 30 minutes 00 seconds West, along the common south line of said Lot 2RA-1 and the north line of said Lot 2RB a distance of 287.16 feet to a 1/2 inch iron rod with cap (CM) found on the southwest corner of said Lot 2RA-1 and on the northwest corner of said Lot 2RB, and also being on the east right-of-way line of said Long Prairie Road;

**THENCE**, North 07 degrees 34 minutes 28 seconds West, along the common west line of said Lot 2RA-1 and the east right-of-way line of said Long Prairie Road, a distance of 44.17 feet to a 1/2 inch iron rod with cap (CM) found on a southwest corner of said Lot 2RA-1;

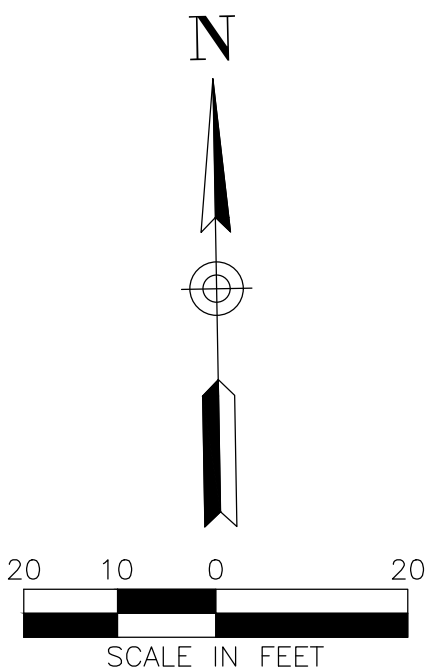
**THENCE**, North 12 degrees 25 minutes 09 seconds West, along the common west line of said Lot 2RA-1 and the east right-of-way line of said Long Prairie Road, a distance of 92.06 feet to the **POINT**

**OF BEGINNING** and containing 0.9831 acres (42,825 square feet) of land, more or less.

Exhibit A



VICINITY MAP  
NOT TO SCALE



The Basis of Bearings is from the Texas State Plane Coordinate System, NAD83, North Central Zone as derived from GPS observations using the Allterra RTK Network and adjusted to surface using a surface scale factor of 1.00015063.

MASTER PLAN FEATURES

|                   |                       |
|-------------------|-----------------------|
| LAND USE PLAN     | CAR WASH DEVELOPMENT  |
| SPECIFIC PLANS    | NONE                  |
| URBAN DESIGN PLAN | LONG PRAIRIE DISTRICT |
| PARKS AND TRAILS  | N/A                   |
| OPEN SPACE PLAN   | N/A                   |
| THOROUGHFARE PLAN | N/A                   |
| WATER PLAN        | LONG PRAIRIE DISTRICT |
| WASTEWATER PLAN   | LONG PRAIRIE DISTRICT |

LEGEND

|              |                                                 |
|--------------|-------------------------------------------------|
| —            | BOUNDARY LINE                                   |
| ----         | ADJOINER BOUNDARY LINE                          |
| - - - - -    | EASEMENT LINE (AS NOTED)                        |
| —W—          | WATER LINE                                      |
| —SAN—        | SANITARY SEWER LINE                             |
| -----        | STORM DRAIN LINE (AS NOTED)                     |
| —OHE—        | OVERHEAD ELECTRIC LINE                          |
| ○            | SET IRON ROD (AS NOTED)                         |
| ●            | FOUND IRON ROD (AS NOTED)                       |
| ⊗            | "X" CUT FOUND                                   |
| ⊗            | "X" CUT SET                                     |
| WM           | WATER METER                                     |
| WV           | WATER VALVE                                     |
| ○ FH         | FIRE HYDRANT                                    |
| SM           | GAS METER                                       |
| ○ SS         | SANITARY SEWER MAN HOLE                         |
| ● PCS        | PEDESTRIAN CONTROL SIGN                         |
| □ CP         | CABLE PEDESTAL                                  |
| □ TSB        | TRAFFIC SIGNAL BOX                              |
| ● TSL        | TRAFFIC SIGNAL LIGHT                            |
| □ TS         | TRAFFIC SIGN                                    |
| ⊗            | STORM MAN HOLE                                  |
| ⊙            | LIGHT POLE                                      |
| ⊙            | POWER POLE                                      |
| ⊙            | BENCH MARK                                      |
| (CM)         | CONTROL MONUMENT                                |
| O.P.R.D.C.T. | OFFICIAL PUBLIC RECORDS<br>DENTON COUNTY, TEXAS |

BENCHMARK NOTES

The Benchmarks and elevations shown are based on the North American Vertical Datum 1988 (NAVD88) by using GPS observations in conjunction with the AllTerra RTK Network, adjusted to the Town of Flower Mound Benchmark No. 7.

Benchmark No. 1  
Square with an "X" cut in the top of curb inlet, east side of Long Prairie Road, approximately 38' +/- south of the northwest corner of the subject property.  
Elevation: 586.34

Benchmark No. 2  
Square with an "X" cut in the top of curb, west side of drive, east side of property, approximately 48' +/- southwest of the northeast corner of the subject property.  
Elevation: 584.46

FLOOD NOTES

No portion of the subject property shown hereon lies within the 100 year flood hazard area according to the Flood Insurance Rate Map, Community Panel No. 48121C0540G, dated April 18, 2011. The subject property is located in the area designated as Zone "X", (areas determined to be outside the 0.2% annual chance floodplain).

GENERAL NOTES

- All underground utilities shown hereon were taken from existing plans, none of the underground utilities shown hereon have been field verified by the surveyor.
- Subject property is not affected by the blanket "Avigation Easement" according to Town of Flower Mound Avigation Easements Map.
- Zoning Classification: Planned Development 114  
Zoning Code: R2

LAND DESCRIPTION

Being a 0.9831 acre tract of land situated in the Carlos Chacon Survey, Abstract No. 299, City of Flower Mound, Denton County, Texas, being all of Lot 2RA-1, Block "A", Windsor Ridges, an addition to the City of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Instrument No. 20190122000204, Official Public Records, Denton County, Texas, as conveyed to Southside Bank and recorded in Instrument No. 2020-1901, of the Official Public Records, Denton County, Texas and being more particularly described as follows:

**BEGINNING** at an "X" Cut in concrete (Control Monument (CM)) found at the intersection of the south right-of-way line of Merriweather Lane (variable width right-of-way), and the east right-of-way line of Long Prairie Road (variable width right-of-way), and on the northeast corner of said Lot 2RA-1, said "X" cut also being the beginning of a curve to the right having a central angle of 12 degrees 15 minutes 21 seconds, a radius of 467.50 feet and being subtended by a chord bearing of North 82 degrees 27 minutes 31 seconds East, a chord distance of 99.13 feet;

**THENCE**, in a northeasterly direction, along the north line of said Lot 2RA-1, an arc distance of 99.32 feet to a an "X" cut in concrete set for corner;

**THENCE**, North 88 degrees 30 minutes 26 seconds East, along the common south right-of-way line of said Merriweather Lane, and the north line of said Lot 2RA-1, a distance of 180.31 feet to an "X" cut in concrete found on a northeast corner of said Lot 2RA-1, and also being the beginning of a curve to the left having a central angle of 17 degrees 46 minutes 11 seconds, a radius of 100.00 feet and being subtended by a chord bearing of North 79 degrees 33 minutes 13 seconds East, a chord distance of 30.89 feet;

**THENCE**, in a northeasterly direction, along the north line of said Lot 2RA-1, an arc distance of 31.01 feet to a mag nail found on the northeast corner of said Lot 2RA-1, and also being on the northwest corner of Lot 1R, Block A of said Windsor Ridges;

**THENCE**, South 01 degrees 27 minutes 02 seconds East, along the common east line of said Lot 2RA-1 and the west line of said Lot 1R, a distance of 149.53 feet to an "X" cut in concrete (CM) found on the southeast corner of said Lot 2RA-1, and also being on the northeast corner of a Lot 2RB, Block A, Timber Creek Medical Office Plaza, an addition to the City of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Instrument Number 2016-98, Official Public Records, Denton County, Texas;

**THENCE**, South 88 degrees 30 minutes 00 seconds West, along the common south line of said Lot 2RA-1 and the north line of said Lot 2RB a distance of 287.16 feet to a 1/2 inch iron rod with cap (CM) found on the southwest corner of said Lot 2RA-1 and on the northwest corner of said Lot 2RB, and also being on the east right-of-way line of said Long Prairie Road;

**THENCE**, North 07 degrees 34 minutes 28 seconds West, along the common west line of said Lot 2RA-1 and the east right-of-way line of said Long Prairie Road, a distance of 44.17 feet to a 1/2 inch iron rod with cap (CM) found on a southwest corner of said Lot 2RA-1;

**THENCE**, North 12 degrees 25 minutes 09 seconds West, along the common west line of said Lot 2RA-1 and the east right-of-way line of said Long Prairie Road, a distance of 92.06 feet to the **POINT OF BEGINNING** and containing 0.9831 acres (42,825 square feet) of land, more or less.

ZONING EXHIBIT

LOT 2RA-1, BLOCK A,  
WINDSOR RIDGES ADDITION  
CARLOS CHACON SURVEY, ABSTRACT NO. 299  
TOWN OF FLOWER MOUND, DENTON COUNTY, TEXAS

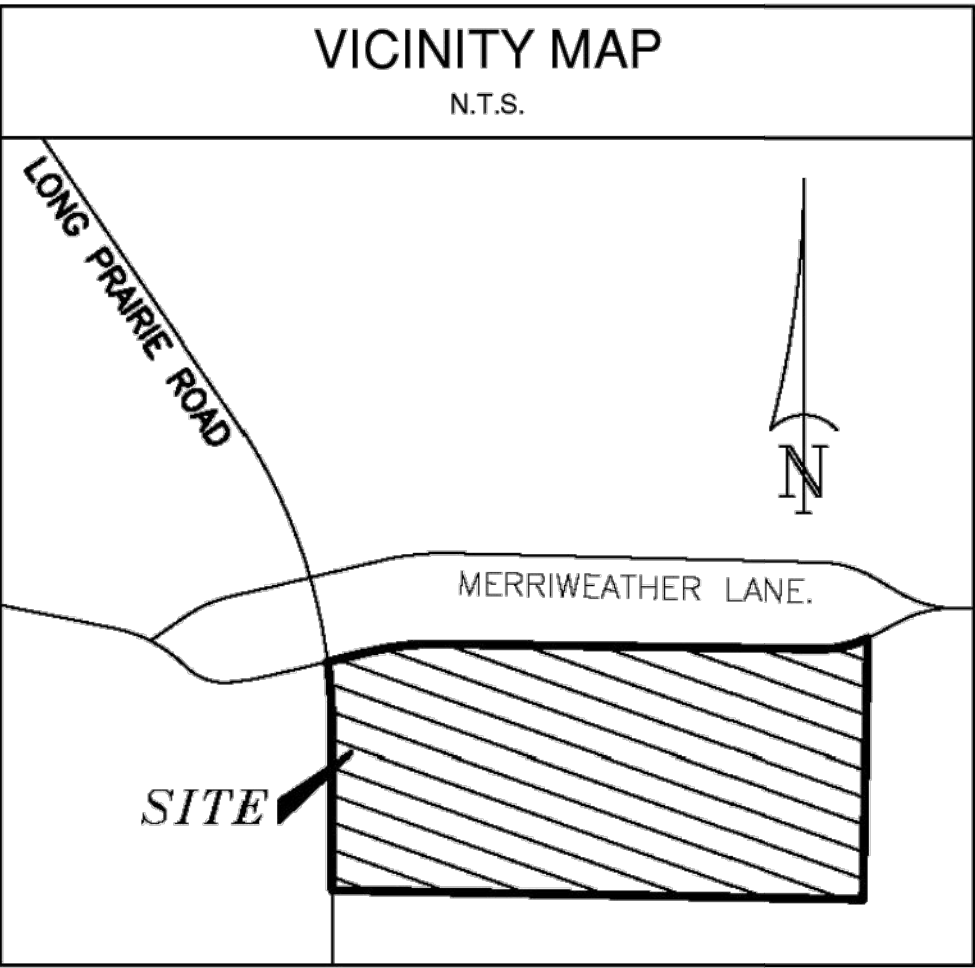
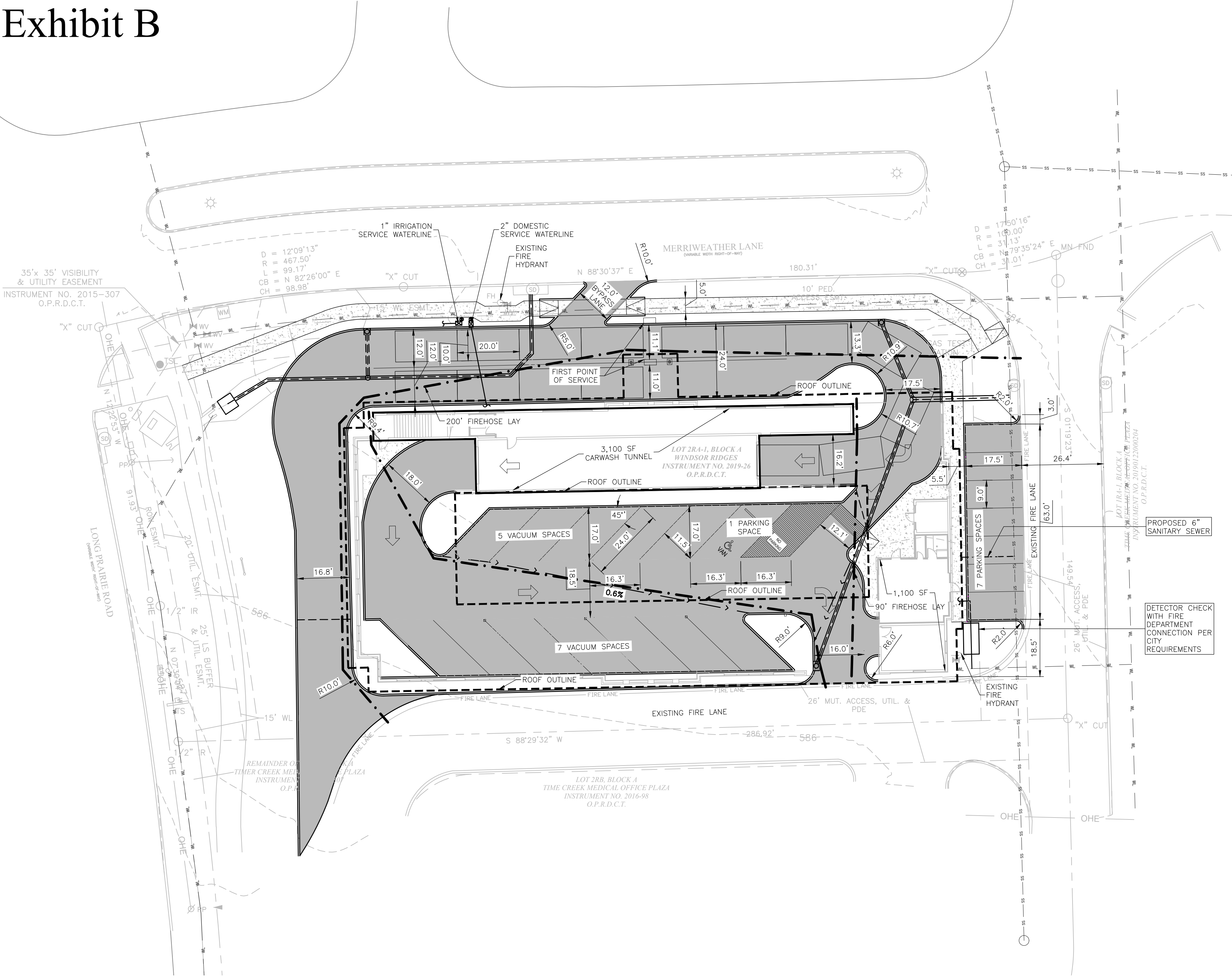


Surveying | Construction Staking | Platting

|       |       |           |          |             |
|-------|-------|-----------|----------|-------------|
| DRAWN | CHECK | DATE      | SCALE    | PROJECT NO. |
| CRC   | MAN   | 8-25-2021 | 1" = 20' | TR-67-2021  |



Exhibit B



| FIRE LEGEND |               |
|-------------|---------------|
| ---         | FIRE HOSE LAY |

| DRAWING LEGEND                         |                                                                                                                      |
|----------------------------------------|----------------------------------------------------------------------------------------------------------------------|
| ---                                    | PROPERTY LINE                                                                                                        |
| ---                                    | ADJOINING PROPERTY LINE                                                                                              |
| ---                                    | PROP. EDGE OF PAYEMENT                                                                                               |
| ---                                    | CURB LINE                                                                                                            |
| ---                                    | PROP. STRIPING                                                                                                       |
| ---                                    | EASEMENT/SETBACK LINES                                                                                               |
| (10)                                   | PARKING COUNT LABEL                                                                                                  |
| (v1)                                   | VACUUM PARKING COUNT LABEL                                                                                           |
| [Pattern]                              | PROP. CONCRETE SURFACE (SIDEWALK OR PAD)                                                                             |
| [Pattern]                              | PROP. CONCRETE PAVING PER PROJECT CIV PLANS.                                                                         |
| EXIST. PROP. BFR RW TYP. HC T.A.S. MFR | EXISTING PROPOSED PROP. BARRIER FREE RAMP RETAINING WALL TYPICAL HANDICAP TEXAS ACCESSIBILITY STANDARDS MANUFACTURER |

ENGINEERING NOTES:  
1. ALL CONSTRUCTION SHALL BE IN STRICT ACCORDANCE WITH THESE PLANS AND THE TOWN OF FLOWER MOUND STANDARDS AND SPECIFICATIONS.  
2. ALL DIMENSIONS SHOWN ARE TO THE FACE OF CURB UNLESS OTHERWISE NOTED.  
3. ALL ROAD WORK AND UTILITY WORK IN TXDOT RIGHT-OF-WAY SHALL REQUIRE A TXDOT PERMIT.  
4. THE TOWN OF FLOWER MOUND STANDARDS APPLY WHETHER INDICATED ON THESE PLANS OR NOT.  
FLAG POLES MUST COMPLY WITH THE REGULATIONS IN SECTION 86-4. - PROHIBITED SIGNS.

- NOTES:
- ALL PROP. STRIPING (INCLUDING THE FIRE LINE STRIPING) SHALL CONFORM TO CITY STANDARDS AND REQUIREMENTS.
  - ALL REQUIRED PERMITS/APPROVALS SHALL BE OBTAINED BY THE CONTRACTOR PRIOR TO COMMENCING AND DURING CONSTRUCTION.
  - ALL CURVE RADII ARE 3.0'R UNLESS NOTED OTHERWISE ON THE PLAN.
  - RE: ARCH PLANS FOR EXACT BUILDING DIMENSIONS.
  - UNLESS NOTED OTHERWISE, ALL DIMENSIONS ARE TO FACE OF CURB OR EDGE OF PAVING.
  - IF THE DIMENSIONS SHOWN ON THE PLANS ARE INCONSISTENT WITH MEASUREMENTS FOUND IN THE FIELD, PLEASE CONTACT THE ENGINEER IMMEDIATELY.
  - SIGN LOCATION AND DIMENSIONS SHALL BE VERIFIED WITH THE SIGN MFR AND ARCH.

| SITE DATA TABLE       |                                                      |            |
|-----------------------|------------------------------------------------------|------------|
| Physical Address      | TBD                                                  |            |
| Gross Site Area       | 42825/0.9831                                         | S.F./acres |
| Net Site Area         | 42825/0.9831                                         | S.F./acres |
| Zoning                | R-2                                                  |            |
| Current Use           | Vacant                                               |            |
| Lot Coverage Data     |                                                      |            |
| Building Coverage     | 23.3/10,010                                          | %/S.F.     |
| Total Impervious Area | 80/34,705.90                                         | %/S.F.     |
| Pervious Area         | 20/8,119.14                                          | %/S.F.     |
| Parking Summary       | Required                                             | Provided   |
| Surface Parking       | 1/750 sf for carwash building area of 3,455 S.F.     |            |
| Carwash               | 5                                                    | 5          |
| Surface Parking       | 1/250 sf for office/lounge building area of 745 S.F. |            |
| Carwash               | 3                                                    | 3          |
| Total Parking         | 8                                                    | 8          |
| Building Data         |                                                      |            |
| Building Data         | One (1)                                              | Story      |
| Peak Height           | 34'-0"                                               | FT.        |
| Mean Height           | 24'-0"                                               | FT.        |
| Total Square Footage  | 4,200                                                | S.F.       |

- CITY NOTES:
- ALL RETAINING/DETAINING WALLS, TURN-DOWN CURBS, TREE RETAINING WALLS SHALL BE CLAD IN A MATERIAL TO MATCH THE MATERIALS ON THE MAIN BUILDING.
  - OR ALL RETAINING/DETAINING WALLS, TURN-DOWN CURBS, TREE RETAINING WALLS SHALL BE CLAD IN A MATERIAL TO COMPLEMENT THE MATERIALS AND COLORS WITHIN THIS DEVELOPMENT.
  - ALL GROUND BASED HVAC SHALL BE SCREENED WITH LIVE SCREENING OR MASONRY ENCLOSURE. MASONRY ENCLOSURE SHALL BE CLAD IN THE SAME MATERIAL AS THE MAIN BUILDING.
  - ALL ROOF-MOUNTED MECHANICAL UNITS AND/OR EQUIPMENT SHALL BE SCREENED FROM VIEW.
  - DUMPSTER SCREENING WALL SHALL BE CLAD IN A MATERIAL TO MATCH THE MATERIALS ON THE MAIN BUILDING.
  - DUMPSTER SCREENING WALL REQUIRES A SEPARATE BUILDING PERMIT.
  - SIGNS REQUIRE A SEPARATE BUILDING PERMIT. ANY SIGNS DEPICTED ON THE SUBJECT SITE PLAN/ELEVATIONS ARE NOT APPROVED AS A PART OF THIS REVIEW AND MUST COMPLY WITH ALL APPLICABLE TOWN REGULATIONS

| MASTER PLAN FEATURES |                                              |
|----------------------|----------------------------------------------|
| Land Use Plan        | Retail                                       |
| Urban Design Plan    | Long Prairie District                        |
| Parks and Trails     | 8' Town Trail along FM 2499 and Timber Creek |
| Open Space Plan      |                                              |
| Thoroughfare Plan    | FM 2499 - Major Arterial                     |
| Water Plan           | Long Prairie District                        |
| Wastewater Plan      | Long Prairie District                        |
| Economic Impact      |                                              |

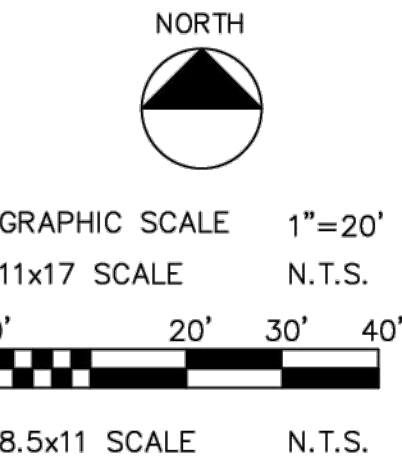
BENCHMARK NOTES

The Benchmarks and elevations shown are based on the North American Vertical Datum 1988 (NAVD83) by using GPS observations in conjunction with the AllTerra RTK Network, adjusted to the Town of Flower Mound Benchmark No. 7.

- Benchmark No. 1  
Square with an "X" cut in the top of curb inlet, east side of Long Prairie Road, approximately 38' +/- south of the northwest corner of the subject property.  
Elevation: 585.34
- Benchmark No. 2  
Square with an "X" cut in the top of curb, west side of drive, east side of property, approximately 48' +/- southwest of the northeast corner of the subject property.  
Elevation: 584.46

FLOOD NOTES

No portion of the subject property shown hereon lies within the 100 year flood hazard area, according to the Flood Insurance Rate Map, Community Panel No. 48101C0540G, dated April 18, 2011. The subject property is located in the area designated as Zone "X", (areas determined to be outside the 0.2% annual chance floodplain).



OWNER/DEVELOPER:  
SOUTHSIDE BANK  
KYLE GIBSON  
1201 S. BECKHAM AVE.  
TYLER, TX 75701  
(903) 531-7111

PROPOSED CARWASH  
SEC OF MERRIWEATHER & LONG PRAIRIE LN.  
FLOWER MOUND, TEXAS

CONCEPTUAL SITE PLAN

ISSUED FOR PERMIT

**CARNEY ENGINEERING, PLLC.**  
5465 LEGACY DRIVE, SUITE 650  
PLANO, TEXAS 75024  
PH (469) 443-0861  
FAX (469) 443-0863

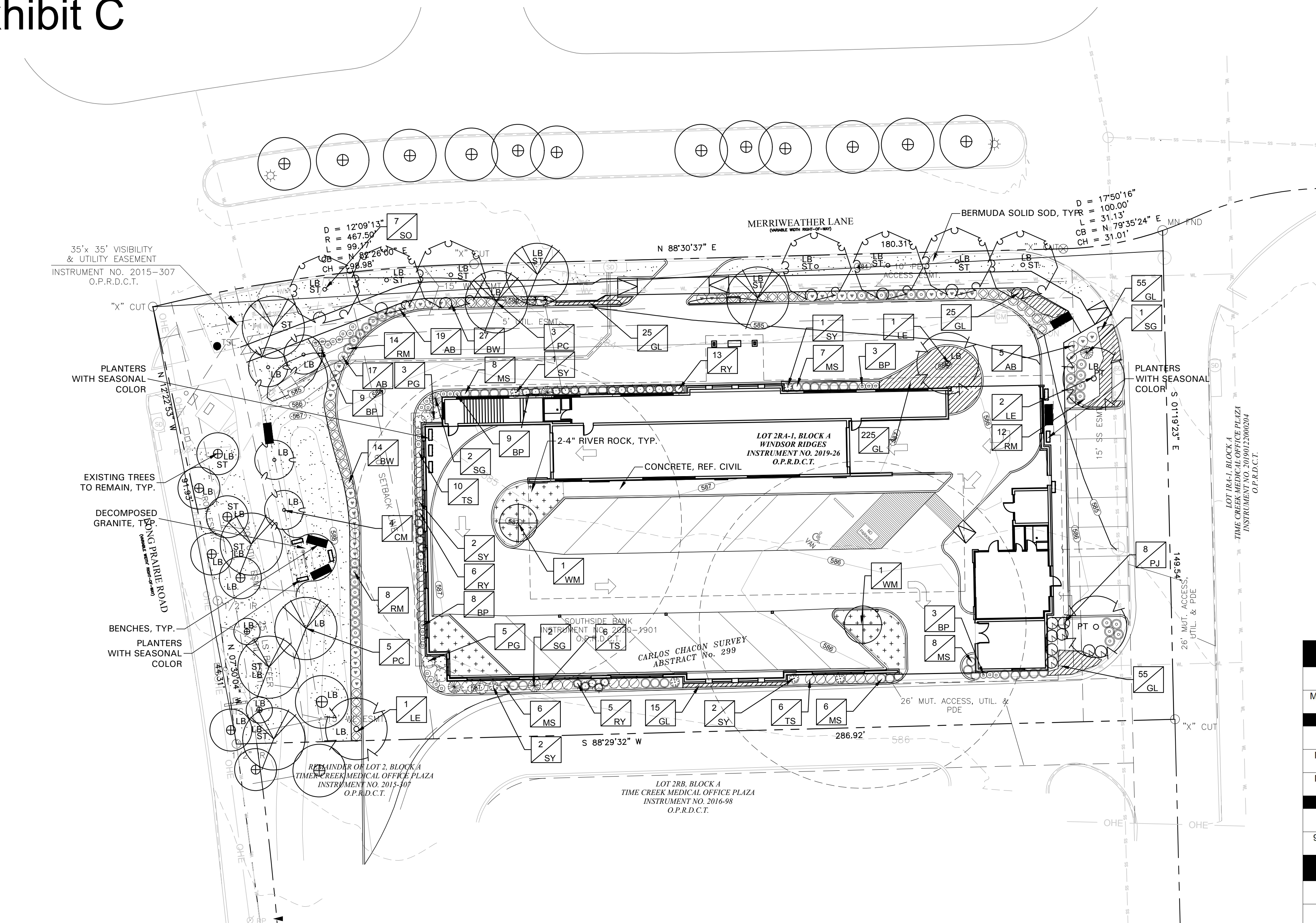
T. CRAIG CARNEY  
55714  
REGISTERED PROFESSIONAL ENGINEER  
TYPE FIRM REGISTRATION NO. F-5653  
6/6/2025

|             |            |
|-------------|------------|
| DRAWN BY:   | JMC        |
| CHECKED BY: | JAH        |
| START DATE: | 11/17/2022 |
| ISSUE DATE: | 6-6-2023   |
| SCALE:      | AS SHOWN   |
| PROJECT NO. | 2068-231   |

SHEET  
**SP-1**



## Exhibit C



| PLANT SCHEDULE                  |       |                            |                                              |         |                            |
|---------------------------------|-------|----------------------------|----------------------------------------------|---------|----------------------------|
| QTY                             | LABEL | COMMON NAME                | SCIENTIFIC NAME                              | SIZE    | NOTES                      |
| <b>SHADE TREES</b>              |       |                            |                                              |         |                            |
| 4                               | LE    | 'Bosque' Lacebark Elm (PT) | <i>Ulmus parvifolia</i> 'UPMPT'              | 3" cal. | 12' ht., 5" spread         |
| 8                               | PC    | Pond Cypress (ST)          | <i>Taxodium ascendens</i>                    | 3" cal. | 12' ht., 5" spread         |
| 7                               | SO    | Shumard Oak (ST)           | <i>Quercus shumardii</i>                     | 3" cal. | 12' ht., 5" spread         |
| <b>ORNAMENTAL TREES</b>         |       |                            |                                              |         |                            |
| 4                               | CM    | Crepe Myrtle 'Natchez'     | <i>Lagerstromia indica</i> 'Natchez'         | 30 gal. | 8' ht. 3' spread, matching |
| 2                               | WM    | Wax Myrtle (PT)            | <i>Myrica cerifera</i>                       | 30 gal. | 8' ht. 3' spread, matching |
| <b>SHRUBS</b>                   |       |                            |                                              |         |                            |
| 41                              | AB    | Abelia 'Twist of Lime'     | <i>Abelia x grandiflora</i> 'Hopley's'       | 5 gal.  | full, 24" spread, 36" o.c. |
| 32                              | BP    | Bid Pink Texas Sage        | <i>Salvia greggi</i> 'Big Pink'              | 3 gal.  | full, 24" o.c.             |
| 41                              | BW    | Bridal Wreath Spirea       | <i>Spiraea x vanhouttei</i>                  | 5 gal.  | full, 24" spread, 36" o.c. |
| 32                              | MS    | Morning Light Miscanthus   | <i>Miscanthus sinensis</i> 'Morning Light'   | 5 gal.  | full, 20" spread, 36" o.c. |
| 8                               | PG    | Pampas Grass               | <i>Cortaderia selloana</i>                   | 7 gal.  | full, 30" sprd, 42" o.c.   |
| 8                               | PJ    | Pinkrose Jasmine           | <i>Jasminum mesnyi</i>                       | 5 gal.  | full, 24" sprd, 42" o.c.   |
| 34                              | RM    | Tuscan Blue Rosemary       | <i>Rosmarinus officinalis</i> 'Tuscan Blue'  | 5 gal.  | full, 24" sprd, 36" o.c.   |
| 24                              | RY    | Red Yucca                  | <i>Hesperaloe parvifolia</i>                 | 5 gal.  | full, 24" sprd, 30" o.c.   |
| 5                               | SG    | Switchgrass                | <i>Panicum virgatum</i>                      | 5 gal.  | full, 24" spread, 48" o.c. |
| 8                               | SY    | Sofoleaf Yucca             | <i>Yucca recurvifolia</i>                    | 5 gal.  | full, 30" o.c.             |
| 22                              | TS    | Texas Sage 'Green Cloud'   | <i>Leucophyllum frutescens</i> 'Green Cloud' | 5 gal.  | full, 24" sprd, 36" o.c.   |
| <b>GROUND COVER/VINES/GRASS</b> |       |                            |                                              |         |                            |
| 400                             | GL    | Giant Liriope              | <i>Liriope gigantea</i>                      | 1 gal.  | full, 18" o.c.             |
| 80                              | SC    | Seasonal Color             | (in planter boxes - mix of height and color) | 4" pots | full, 12" o.c. / 24" o.c.  |
|                                 |       | 2-4" River Rock            |                                              |         |                            |
|                                 |       | Bermuda Solid Sod          | <i>Cynodon dactylon</i>                      |         |                            |

Plant list is an aid to bidders only. Contractor shall verify all quantities on plan. All heights and spreads are minimums. Trees shall have a strong central leader and be of matching specimens. All plant material shall meet or exceed remarks as indicated.

TOWN OF FLOWER MOUND CONSTRUCTION  
STANDARDS APPLY WHETHER INDICATED  
ON THESE PLANS OR NOT.

- ### GENERAL LAWN NOTES

1. CONTRACTOR SHALL COORDINATE OPERATIONS AND AVAILABILITY OF EXISTING TPOISL WITH ON-SITE CONSTRUCTION MANAGER
2. LAWN AREAS SHALL BE LEFT 1' BELOW FINAL FINISHED GRADE PRIOR TO TPOISL INSTALLATION
3. CONTRACTOR TO FIND GRADE AREAS TO ACHIEVE FINAL CONTOURS AS SHOWN ON CIVIL DRAWINGS. POSITIVE DRAINAGE SHALL BE PROVIDED FOR ALL AREAS, BUT ALL BUT ONE (1) DRAINAGE AREA SHALL BE OPEN. DRAINAGE SHALL BE PROVIDED AND IN OTHER BREAKS IN GRADE, CORRECT AREAS WHERE STANDING WATER MAY OCCUR.
4. ALL LAWN AREAS SHALL BE FINE GRADED, IRRIGATION TRENCHES COMPLETELY SETTING AND SHALL BE APPROVED BY THE OWNERS CONSTRUCTION MANAGER OR LANDSCAPE ARCHITECT PRIOR TO LAWN INSTALLATION.
5. CONTRACTOR SHALL REMOVE ALL ROCKS 3/4" IN DIAMETER AND LARGER. REMOVE ALL DIRT CLODS, STICKS, CONCRETE SPLDS, TRASH ETC PRIOR TO PLACING TPOISL AND GRASS INSTALLATION.
6. CONTRACTOR SHALL MAINTAIN ALL LAWN AREAS UNTIL FINAL ACCEPTANCE.
7. CONTRACTOR SHALL MAINTAIN ALL AREAS OF ACCEPTABLE TURF AREA AND SHALL PROVIDE REPLACEMENT IF NECESSARY.

SOLID SOD:

1. SOLID SOD SHALL BE PLACED ALONG ALL IMPERVIOUS EDGES, AT A MINIMUM THIS SHALL INCLUDE CURBS, WALKS, INTERS, MANHOLES AND ALL FINISHED AREAS. SOD SHALL BE PLACED TO COVER ALL AREAS AS INDICATED BY PLAN.
2. SOD SHALL BE STRONGLY ROOTED AND TEND TO RESIST SOD, NOT LESS THAN 12" DEEP. SOD SHOULD BE WEEDS AND UNDERGROWTH, BATTLE GRASS AND MACHINE CUT TO PAD THICKNESS OF 3/4" (+1/-4), EXCLUDING TOP GROWTH AND THATCH.
3. SOD SHALL BE LAYED BY HAND TO COVER INDICATED AREAS COMPLETELY, ENSURING EDGES ARE TOUCHING WITH TIGHTLY FITTING JOINTS, NO OVERLAPS WITH TAGGED STRIPS.
4. SOD SHALL BE LAYED BY HAND WITH TOPSOIL TO FILL VOIDS TO NEARLY 1" TO PRESS JOINTS IN SOD BY HAND WITH TOPSOIL TO FILL VOIDS TO NEARLY 1" IF NECESSARY.
5. SOD SHALL BE ROLLED TO CREATE A SMOOTH EVEN SURFACE. SOD SHOULD BE WATERED THOROUGHLY DURING INSTALLATION PROCESS.
6. SHOULD INSTALLATION OCCUR BETWEEN OCTOBER 1ST AND MARCH 1ST, COARSEER PERMIANURASS SOD WITH WINTER RYEGRASS AT A RATE OF 4 POUNDS PER 1000 S.F.

HYDROMULCH:

1. SCARIFY AND LOOSEN ALL AREAS TO BE HYDROMULCHED TO A MINIMUM DEPTH OF 4" PRIOR TO TOPSOIL AND HYDROMULCH INSTALLATION
2. BERMUDA GRASS SEED SHALL BE EXTRA HULLED, TREATED LAWN TYPE. SEED SHALL BE DELIVERED TO THE SITE IN ITS ORIGINAL UNOPENED CONTAINER AND SHALL BE COVERED BY A LAW OF 2 POUNDS PER 1000 S.F.
3. FIBER SHALL BE 100% WOOD CELLULOSE FIBER, DELIVERED TO THE SITE IN ITS ORIGINAL UNOPENED CONTAINER AS MANUFACTURED BY CONVEYER, OR EQUIV.
4. FIBER TACK SHALL BE DELIVERED TO THE SITE IN ITS UNOPENED CONTAINER AND SHALL BE "TERRA-TACK" ONE, AS MANUFACTURED BY GROWERS, INC. OR APPROVED EQUAL.
5. HYDROMULCH WITH BERMUDA GRASS SEED AT A RATE OF 2 POUNDS PER 1000 S.F.
6. USE A BATTER BOARD AGAINST ALL BED AREAS TO PREVENT OVER SPRAY.
7. IF INADEQUATE MOISTURE IS PRESENT IN SOIL, APPLY WATER AS NECESSARY FOR OPTIMUM MOISTURE FOR SEED APPLICATION.
8. IF INSTALLATION OCCURS BETWEEN SEPTEMBER 1ST AND MAY 1ST, ALL AREAS TO BE HYDROMULCHED SHALL BE COVERED WITH WINTER RYE GRASS AT A RATE OF FOUR POUNDS PER ONE THOUSAND SQUARE FEET.
9. CONTRACTOR SHALL BE REQUIRED TO RE-HYDROMULCH WITH BERMUDA GRASS SEED FOLLOWING ANY FUTURE DISCOVERY OF UNCOVERED SOIL. AFTER APPLICATION, NO EQUIPMENT SHALL OPERATE OVER APPLIED AREAS. WATER SEEDED AREAS IMMEDIATELY AFTER INSTALLATION TO SATURATION.
10. ALL LAWN AREAS TO BE HYDROMULCHED SHALL ACHIEVE 100% COVERAGE PRIOR TO FINAL ACCEPTANCE.

- LANDSCAPE NOTES

1. CONTRACTOR TO VERIFY AND LOCATE ALL PROPOSED AND EXISTING ELEMENTS. NOTIFY LANDSCAPE ARCHITECT OR DESIGNATED REPRESENTATIVE FOR ANY LAYOUT DISCREPANCIES OR ANY CONDITION OF THE WILD AND PROPOSED AREAS. CONDUCT SURVEY DATA OF EXISTING CONDITIONS WAS SUPPLIED BY THE OTHERS.
2. CONTRACTOR SHALL CALL 811 TO VERIFY AND LOCATE ANY AND ALL UTILITIES ON SITE PRIOR TO COMMENCING WORK. LANDSCAPE ARCHITECT SHOULD BE NOTIFIED OF ANY CONFLICTS. CONTRACTOR TO EXERCISE EXTREME CAUTION WHEN WORKING NEAR UNDERGROUND UTILITIES.
3. A MINIMUM OF 2% SLOPE SHALL BE PROVIDED AWAY FROM ALL STRUCTURES.
4. CONTRACTOR SHALL FINE GRADE AREAS TO ACHIEVE FINAL CONTOURS. ALL MINOR KINKS LEAVE AREA TO RELY ON THE 2% SLOPE. FINISHED GRADE IN PLANTING AREAS AND 1' BELOW FINAL FINISHED GRADE IN LAWN AREAS.
5. PLANTING ISLANDS SHALL BE CROWNED, AND UNIFORM THROUGHOUT THE SITE.
6. PLANTING AREAS AND SO/D TO BE SEPARATED BY STEEL EDGING. NO STEEL EDGING SHALL BE INSTALLED ADJACENT TO BUILDINGS, WALKS OR CURBS. EDGING NOT TO BE MORE THAN 1/2" ABOVE FINISHED GRADE. EDGING SHALL BE CUT AT 45 DEGREE ANGLE WHERE IT INTERSECTS WALKS AND/OR CURBS.
7. MULCH SHALL BE INSTALLED AT 1/2" BELOW THE TOPS OF SIDEWALKS AND CURBS.
8. QUANTITIES ON THESE PLANS ARE FOR REFERENCE ONLY. THE SPACING OF PLANTS SHOULD BE AS INDICATED ON PLANS OR OTHERWISE NOTED. ALL TREES AND SHRUBS SHALL BE PLANTED PER DETAILS.
9. CONTAINMENT GROWN IN PLANTING AREAS SHALL BE COVERED BY HOVER BALL AND BURLAP PLANT MATERIAL CAN BE SUBSTITUTED IF NEED BE AND IS APPROPRIATE TO THE SIZE AND QUALITY INDICATED ON THE PLANT MATERIAL LIST.
10. TREES SHALL BE PLANTED AT A MINIMUM OF 5' FROM ANY UTILITY LINE, SIDEWALK OR CURB. TREES SHALL ALSO BE 1' CLEAR FROM FIRE HYDRANTS.
11. 4" OF SHREDDED HARDWOOD MULCH (2" SETTLED THICKNESS) SHALL BE PLACED OVER WEED BARRIER FABRIC. MULCH SHALL BE SHREDDED HARDWOOD MULCH OR APPROVED EQUIV. PINE STRAW MULCH IS PROHIBITED.
12. WEED BARRIER FABRIC SHALL BE USED IN PLANT BEDS AND AROUND ALL TREES AND SHRUBS SHALL BE MIRAFI 1405 WEED BARRIER OR APPROVED EQUIV.
13. CONTRACTOR TO PROVIDE UNIT PRICE FOR LANDSCAPE MATERIALS AND BE RESPONSIBLE FOR OBTAINING ALL LANDSCAPE AND IRRIGATION PERMITS.

IRRIGATION:

1. ALL REQUIRED LANDSCAPE AREAS SHALL HAVE AN AUTOMATIC IRRIGATION SYSTEM WITH A FREEZE/RAIN SENSOR. SYSTEM SHALL ALSO HAVE AN ET WEATHER BASED CONTROLLER AND BE DESIGNED AND INSTALLED BY A LICENSED IRRIGATOR.

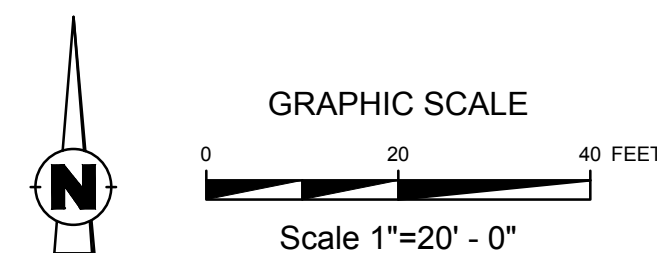
## MAINTENANCE REQUIREMENTS

1. VEGETATION SHOULD BE INSPECTED REGULARLY TO ENSURE THAT PLANT MATERIAL IS ESTABLISHING PROPERLY AND REMAINS IN A HEALTHY GROWING CONDITION APPROPRIATE FOR THE SEASON. IF DAMAGED OR REMOVED, PLANTS MUST BE REPLACED BY A SIMILAR VARIETY AND SIZE.
2. MOWING, TRIMMING, EDGING AND SUPERVISION OF WATER APPLICATIONS SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR UNTIL THE OWNER OR OWNER'S REPRESENTATIVE ACCEPTS AND ASSUMES REGULAR MAINTENANCE.
3. ALL LANDSCAPE AREAS SHOULD BE CLEANED AND KEPT FREE OF TRASH, DEBRIS, WEEDS AND OTHER MATERIAL.

MISCELLANEOUS MATERIALS:

1. STEEL EDGING SHALL BE 3/16" X 4 X 16' DARK GREEN DURAEDGE STEEL LANDSCAPE EDGING UNLESS NOTED OTHERWISE ON PLANS/DETAILS.
2. RIVER ROCK SHALL BE ARIZONA RIVER ROCK, 2" - 4" DIAMETER. RIVER ROCK SHALL BE COMPACTED TO A MINIMUM OF 3" DEPTH OVER FILTER FABRIC.

| LANDSCAPE TABULATIONS                                                                                                                                 |                                                                                      |                   |                                       |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|-------------------|---------------------------------------|
| Streetyard Landscaping                                                                                                                                |                                                                                      |                   |                                       |
| Standard                                                                                                                                              | Total Street Yard<br>(Square Feet)                                                   | Required          | Provided                              |
| Minimum 20% of street<br>yard                                                                                                                         | 19,625 s.f.                                                                          | 3925 s.f.         | 7992 s.f.                             |
| Street Buffer Landscaping                                                                                                                             |                                                                                      |                   |                                       |
|                                                                                                                                                       | Street Frontage                                                                      | Required          | Provided                              |
| Minimum Landscape<br>Buffer                                                                                                                           | Long Prairie Road                                                                    | 25'               | 25'                                   |
| Minimum Landscape<br>Buffer                                                                                                                           | Merriweather Lane                                                                    | 15'               | 15'                                   |
| Parking Area Landscaping                                                                                                                              |                                                                                      |                   |                                       |
| Standard                                                                                                                                              | No. of Parking Spaces                                                                | Required          | Provided                              |
| 90 s.f. per 12 parking<br>spaces                                                                                                                      | 8                                                                                    | 60                | 1258 s.f.                             |
| SCREENING                                                                                                                                             |                                                                                      |                   |                                       |
| Parking Areas                                                                                                                                         |                                                                                      |                   |                                       |
| Standard                                                                                                                                              | Street Frontage                                                                      | Required          | Provided                              |
| 3' ht. parking/drive<br>screen                                                                                                                        | Long Prairie Road                                                                    | YES               | bern and evergreen<br>planting        |
| 3' ht. parking/drive<br>screen                                                                                                                        | Merriweather Lane                                                                    | YES               | evergreen planting                    |
| Outdoor Storage Areas                                                                                                                                 |                                                                                      |                   |                                       |
| Standard                                                                                                                                              | Street Frontage                                                                      | Required          | Provided                              |
| 6' ht. screening device<br>from street view                                                                                                           | all sides                                                                            | YES               | YES                                   |
| Loading and Service Bays                                                                                                                              |                                                                                      |                   |                                       |
| Standard                                                                                                                                              | Street Frontage                                                                      | Required          | Provided                              |
| 6' ht. screening device<br>from street view                                                                                                           |                                                                                      | YES               | YES                                   |
| PLANTING STANDARDS                                                                                                                                    |                                                                                      |                   |                                       |
| Street Yard Trees                                                                                                                                     |                                                                                      |                   |                                       |
| Standard                                                                                                                                              | Total Street Yard<br>(square feet)                                                   | Required          | Provided                              |
| 10,000 - 110,000 s.f. = 1<br>tree per 2,500 s.f. +10<br>trees                                                                                         | 19,625 s.f.                                                                          | 14 trees, 3" cal. | 18 trees, 3" cal.                     |
| Trees required to satisfy other provisions of this division and lying within the street yard may be used to satisfy the requirements of this section. |                                                                                      |                   |                                       |
| Street Buffer Trees                                                                                                                                   |                                                                                      |                   |                                       |
| Standard                                                                                                                                              | Street Frontage (Linear<br>Feet)                                                     | Required          | Provided                              |
| 1 tree, 3" cal., per 30 l.f.                                                                                                                          | Long Prairie Road- 136<br>l.f.                                                       | 5 trees, 3" cal.  | 5 trees, 3" cal.                      |
| 1 tree, 3" cal., per 30 l.f.                                                                                                                          | Merriweather Lane- 310<br>l.f.                                                       | 10 trees, 3" cal. | 10 trees, 3" cal.                     |
| Parking Area Trees                                                                                                                                    |                                                                                      |                   |                                       |
| Standard                                                                                                                                              | No. of Parking Spaces                                                                | Required          | Provided                              |
| 1 tree, 3" cal., per 10<br>Parking Spaces                                                                                                             | 8 exterior parking<br>spaces; all other spaces<br>are located within the<br>building | 1 trees, 3" cal.  | 2 located within back<br>parking area |
| All parking spaces are located within 50 ft. of a tree.                                                                                               |                                                                                      |                   |                                       |



PD-114

AWR Designs, LLC  
P.O. Box 1746  
Aledo, Texas 76008  
amanda@awr-designs.com  
c. 512.517.5589

# PROPOSED CARWASH

SEC OF MERRIWEATHER & LONG PRAIRIE LN.  
FLOWER MOUND, TX



Project Number: 22230

Drawn By: AWR

Checked By: AWR

Issue Date: 11-22-22

## Revisions

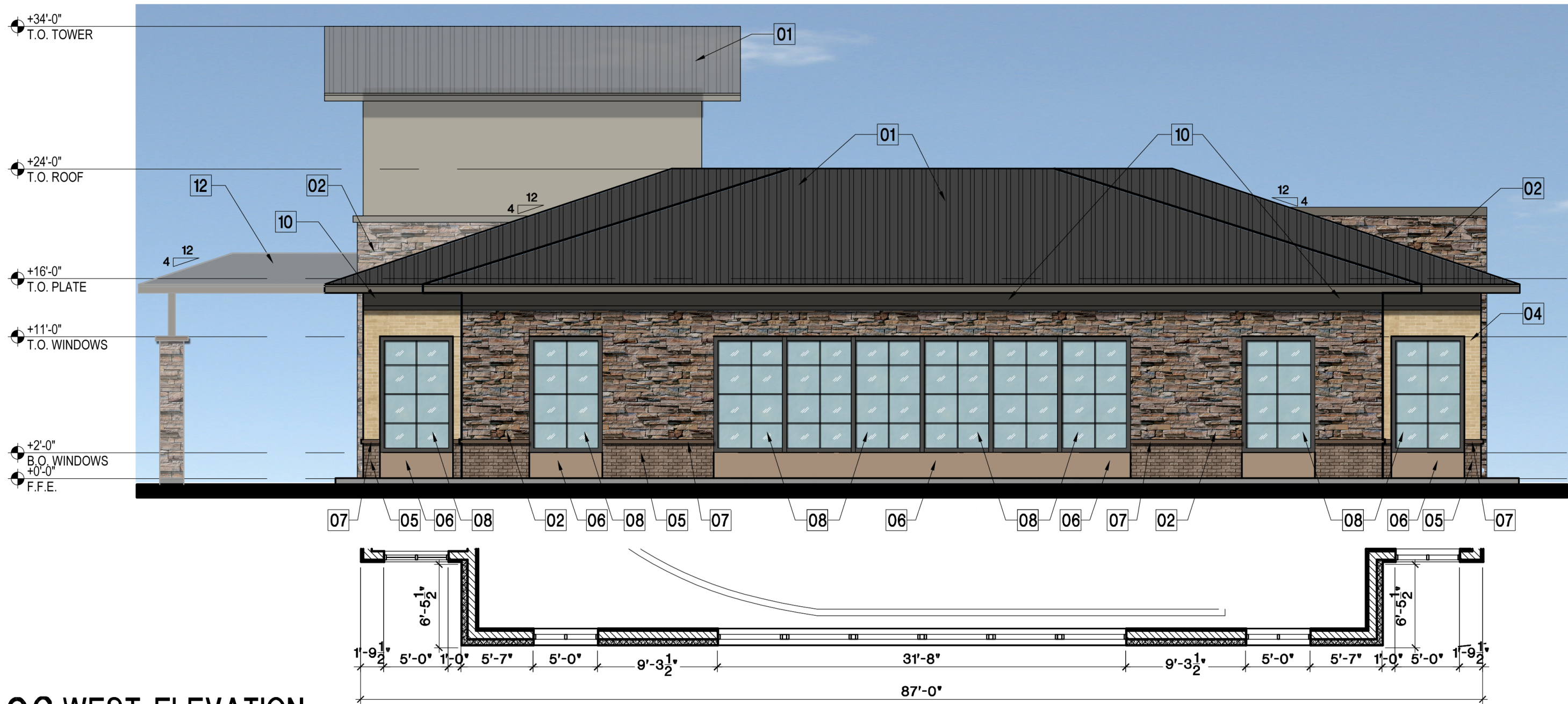
Sheet Title:

# CONCEPTUAL LANDSCAPE PLAN

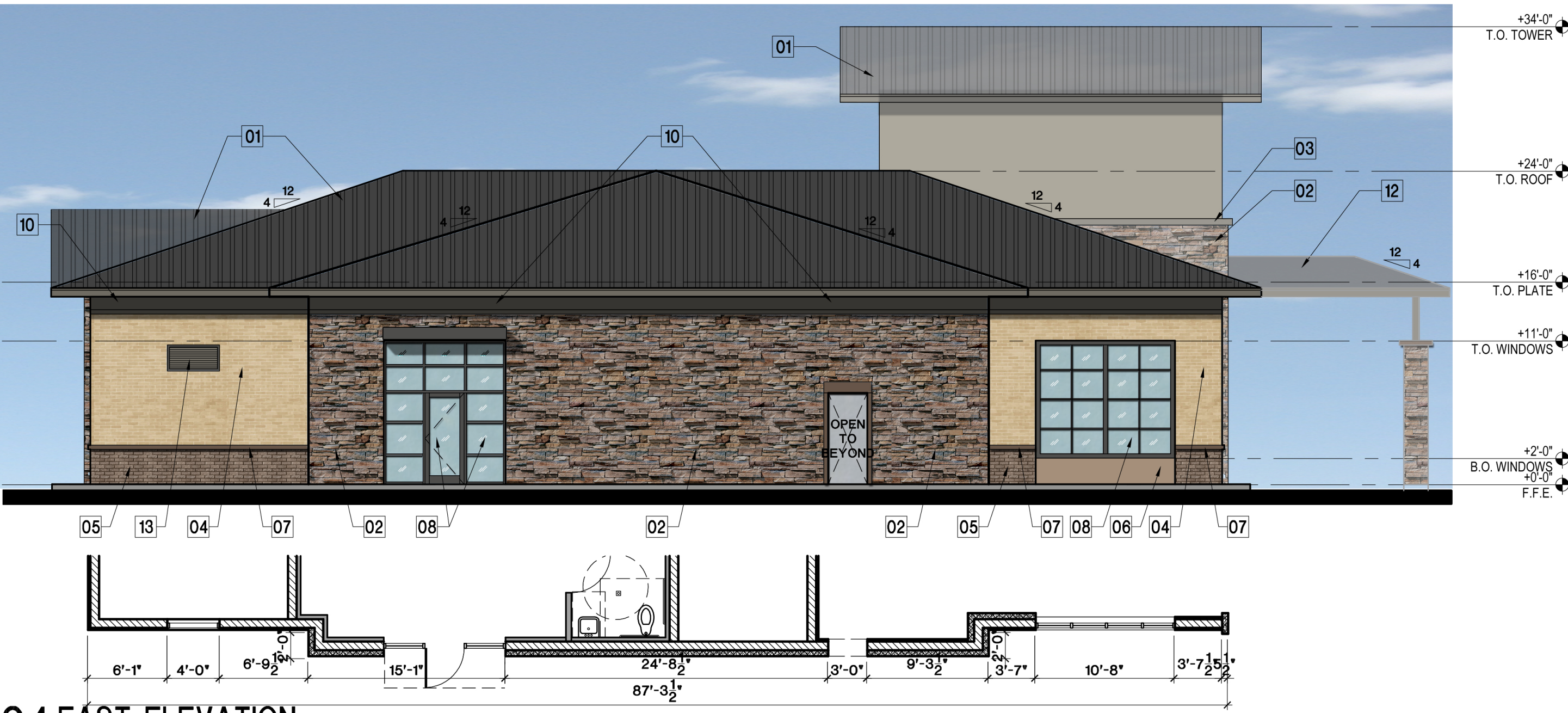
Sheet Number:

## L1.01





03 WEST ELEVATION  
SCALE: 1/8" = 1'-0"



04 EAST ELEVATION  
SCALE: 1/8" = 1'-0"

| EXTERIOR MATERIALS LEGEND |                                           |                         |                         |                       |
|---------------------------|-------------------------------------------|-------------------------|-------------------------|-----------------------|
|                           |                                           | N. ELEVATION            | S. ELEVATION            | E. ELEVATION          |
| 1                         | TOTAL FACADE AREA                         | 3,120 S.F.              | 2,716 S.F.              | 1,244 S.F.            |
| 2                         | FACADE S.F. (EXCLUDING DOORS AND WINDOWS) | 2,388 S.F.              | 2,120 S.F.              | 964 S.F.              |
| 3                         | DOORS & WINDOWS                           | 732 S.F.                | 596 S.F.                | 280 S.F.              |
| 4                         | PRIMARY MASONRY TOTALS (MIN. 80%)         |                         |                         |                       |
|                           | STONE S.F.                                | 1,920 S.F. & 80.4% OF 2 | 1,950 S.F. & 92.0% OF 2 | 870 S.F. & 90.0% OF 2 |
|                           | BRICK S.F.                                | 1,075 S.F. & 45.0% OF 2 | 925 S.F. & 43.6% OF 2   | 520 S.F. & 54.0% OF 2 |
| 5                         | EIFS SECONDARY MASONRY TOTALS (MAX. 20%)  |                         |                         |                       |
|                           | BRICK S.F.                                | 845 S.F. & 35.4% OF 2   | 1,025 S.F. & 48.4% OF 2 | 350 S.F. & 36.0% OF 2 |
|                           | EIFS S.F.                                 | 468 S.F. & 19.6% OF 2   | 170 S.F. & 8.0% OF 2    | 94 S.F. & 10.0% OF 2  |

NOTES BY  
NUMBER

- 01 STANDING SEAM METAL ROOF
- 02 STONE VENEER/WAINSCOT
- 03 CAST STONE CAP
- 04 BRICK VENEER FIELD COLOR
- 05 BRICK VENEER - ACCENT COLOR
- 06 EIFS ASSEMBLY - FIELD COLOR
- 07 CAP OVER WAINSCOT
- 08 ALUM/GLASS WINDOW/DOOR
- 09 OPENING IN WALL
- 10 CORNICE/SOFFIT TRIM
- 11 PAY STATION KIOSK
- 12 AWNING FOR PAY STATION
- 13 LOUVERS
- 14 EIFS ASSEMBLY - ACCENT COLOR

NOTE  
ALL COLORS SHALL BE PER PROVIDED MATERIAL BOARD.

NOTE  
ANY EXTERNAL ELECTRICAL PANELS WILL BE PAINTED/TEXTURED TO MATCH THE MATERIAL AND COLOR OF THE BUILDING.



02 SOUTH ELEVATION  
SCALE: 1/8" = 1'-0"



01 NORTH ELEVATION  
SCALE: 1/8" = 1'-0"

DATE: 01.28.2022  
JOB NO: 21016  
DRAWN: STAFF  
CHECKED: CM

**AG**  
AG DESIGN GROUP, LLC  
PO BOX 383023  
DUNCANVILLE, TX 75138

LANDSHARK  
4550 MERRIWEATHER LN  
FLOWER MOUND, TX 75028

REVISIONS

CONCEPTUAL  
COLOR  
ELEVATIONS

SHEET NUMBER

A5.01



Exhibit D



FIELD BRICK - ACME BRICK  
-COLOR: WEATHERED GRAY



ACCENT BRICK - ACME BRICK  
-COLOR: DRIFTWOOD



EIFS/STUCCO FIELD COLOR  
SHERWIN WILLIAMS SW6157 - FAVORITE TAN



EIFS/STUCCO ACCENT COLOR  
SHERWIN WILLIAMS SW6427 - SPROUT



STONE - MANUFACTURED STONE VENER - EL DORADO MOUNTAIN LEDGE (YUKON)



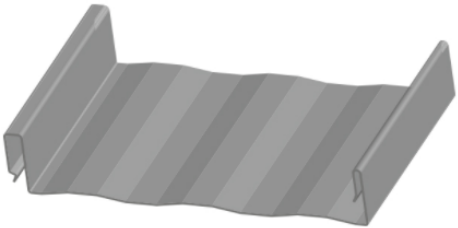
**Kawneer Anodize finishes**  
Kawneer gives you a wide variety of anodized finishes with attractive alternatives. The benefit of a durable, anodized finish is married to the beauty of some very dynamic and exciting colors.

|                                                                                       |     |             |              |                                            |
|---------------------------------------------------------------------------------------|-----|-------------|--------------|--------------------------------------------|
|  | #40 | DARK BRONZE | AA-M10C21A44 | Architectural Class I<br>(.7 mils minimum) |
|---------------------------------------------------------------------------------------|-----|-------------|--------------|--------------------------------------------|

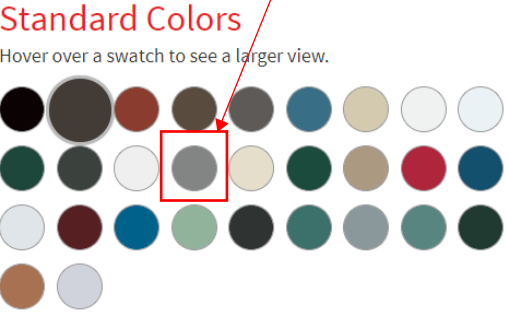
STOREFRONT SELECTION: KAWNEER - DARK BRONZE

LokSeam®

LokSeam® is a snap-together standing seam roof system with a 1-3/4" tall vertical rib, for use on roofs with a minimum slope of 3:12.



ROOF COLOR - SLATE GRAY



[View Color Charts >](#)

STANDING SEAM METAL ROOF.





## TOWN COUNCIL AGENDA K.3. REGULAR ITEM(S)

**DATE:** June 19, 2023

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

**ITEM:** **Consider approval of an ordinance authorizing the issuance of the Town of Flower Mound, Texas, Certificates of Obligation, Series 2023, for the purpose of paying for waterworks and sewer system improvements, establishing parameters for the sale and issuance of such bonds, delegating certain matters to an authorized official of the Town and resolving all matters incident and related thereto.**

**BACKGROUND:** The Financial Services staff and Hilltop Securities, the Town's financial advisor, request the Town Council's approval of an ordinance authorizing the potential issuance of Certificates of Obligation, Series 2023, ("the Certificates").

At the Town Council meeting on April 17, 2023, the Town Council authorized the publication of notice to issue Certificates of Obligation, Series 2023, (the "Certificates") in the principal amount not to exceed \$7,895,000.

In order to efficiently complete the sale, the attached ordinance establishes the following parameters, giving Town Manager and the Chief Financial Officer the authority to approve all necessary documents and finalize the sale. The authorization will expire 180 days after passage of the ordinance.

|                            |               |
|----------------------------|---------------|
| Maximum Principal Amount   | \$7,895,000   |
| Maximum True Interest Cost | 5.00%         |
| Final Maturity Date        | March 1, 2043 |

The Certificates will pay for the contractual obligations incurred for water and wastewater projects approved on the FY 2022-2023 Five-year Capital Improvement Program ("CIP") as listed on Attachment 1. On October 17, 2022, the Town Council approved a reimbursement resolution for an amount not to exceed \$7,895,000 to fund improvements to water and wastewater system projects and the costs of issuance of the debt.

The issuance will be conducted as a negotiated sale with the pricing to occur on June 20, 2023. The Certificates will begin accruing interest on July 1, 2023 (the Dated Date), which the Town will receive upon delivery of the funds on July 12, 2023. US Bank will serve as the Paying Agent/Registrar for the Certificates. The preliminary official statement, which discloses details related to the issuance of the Certificates and the Town, is available in the Financial Services Department for review.

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

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** \$7,895,000

**Proposed Expenditure/(Revenue)**

\$7,895,000

**Account Number(s):**

The utilities system will fund the waterworks and sewer system improvements.

**LEGAL REVIEW:** The Town's Bond Counsel, Norton Rose Fulbright US LLP, prepared the proposed ordinance. No alteration to the legal content of this ordinance, which was originally approved by Taylor, Olson, Adkins, Sralla, & Elam L.L.P, was made.

**ATTACHMENTS:**

1. CO 23 Projects
2. CO 2023 Ordinance
3. CO 2023 PAR Agmt - US Bank

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

**Utility Capital Projects****Water Projects:**

|                                                            |                     |
|------------------------------------------------------------|---------------------|
| Cedarcrest Water Line                                      | \$ 1,080,000        |
| Morriss Road Water Lines Phase III (Eaton to Waketon Road) | 2,278,000           |
| Royal Oaks Water Line Replacement Phase I                  | 1,230,000           |
| US 377 at FM 1171 Water Line Loop/Relocation               | 1,000,000           |
|                                                            | <u>\$ 5,588,000</u> |

**Wastewater Projects:**

|                                                                            |                     |
|----------------------------------------------------------------------------|---------------------|
| Lower Timber Interceptor Rehabilitation (Paisley Drive to Rockcreek Court) | <u>\$ 2,155,000</u> |
|----------------------------------------------------------------------------|---------------------|

**Total Utility****\$ 7,743,000****Estimated financing costs**\$ 152,000**Grand Total of Debt Issuance****\$ 7,895,000**

## TOWN OF FLOWER MOUND, TEXAS

## ORDINANCE NO. \_\_\_\_-23

AN ORDINANCE authorizing the issuance of "TOWN OF FLOWER MOUND, TEXAS, CERTIFICATES OF OBLIGATION, SERIES 2023"; providing for the payment of said certificates of obligation by the levy of an ad valorem tax upon all taxable property within the Town and a limited pledge of the net revenues derived from the operation of the Town's waterworks and sewer system; providing the terms and conditions of such certificates and resolving other matters incident and relating to the issuance, payment, security and delivery of said certificates of obligation; delegating matters relating to the sale and issuance of said certificates to an authorized Town official; and providing an effective date.

WHEREAS, the Town Council of the Town of Flower Mound, Texas, has heretofore determined that certificates of obligation should be issued in the maximum principal amount not to exceed \$7,895,000 for the purpose of paying contractual obligations to be incurred for authorized needs and purposes, to wit: (i) constructing waterworks and sewer system improvements and extensions, including the acquisition of land and rights-of-way therefor and (ii) professional services rendered in connection therewith; and

WHEREAS, a "Notice of Intention to Issue Town of Flower Mound, Texas, Certificates of Obligation" was (a) duly published in *The Denton Record-Chronicle*, a newspaper hereby found and determined to be of general circulation in the Town of Flower Mound, Texas, on April 30, 2023 and May 7, 2023, the date of the first publication of such notice being not less than forty-six (46) days prior to the tentative date stated therein for the passage and adoption of this Ordinance and (b) duly published continuously on the City's website for at least forty-five (45) days before the tentative date stated therein for the passage of the ordinance authorizing the issuance of such certificates; and

WHEREAS, no petition protesting the issuance of such certificates of obligation and bearing valid petition signatures of at least 5% of the qualified voters of the Town, has been presented to or filed with the Mayor, Town Secretary or any other official of the Town on or prior to the date of the passage of this Ordinance; and

WHEREAS, the Town Council hereby finds and determines that all of the certificates of obligation described in such notice should be issued and sold at this time in the amount and manner as hereinafter provided; and

WHEREAS, the Town Council by this Ordinance, in accordance with the provisions of Texas Government Code, Chapter 1371, as amended ("Chapter 1371"), delegates to a Pricing Officer (hereinafter designated) the authority to determine the principal amount of the Certificates to be issued and to negotiate the terms of sale thereof; and

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

SECTION 1: Authorization – Designation – Principal Amount – Purpose. Certificates of obligation of the Town shall be and are hereby authorized to be issued in an amount not to exceed

the aggregate original principal amount hereinafter set forth to be designated and bear the title "TOWN OF FLOWER MOUND, TEXAS, CERTIFICATES OF OBLIGATION, SERIES 2023" or such other designation as specified in the Pricing Certificate (hereinafter referred to as the "Certificates"), for the purpose of paying contractual obligations to be incurred for authorized needs and purposes, to wit: (i) constructing waterworks and sewer system improvements and extensions, including the acquisition of land and rights-of-way therefor and (ii) professional services rendered in connection therewith, pursuant to authority conferred by and in conformity with the Constitution and laws of the State of Texas, including Texas Local Government Code, Subchapter C of Chapter 271, as amended, and Chapter 1371.

SECTION 2: Fully Registered Obligations - Authorized Denominations - Stated Maturities - Interest Rates - Date. The Certificates are issuable in fully registered form only; shall be dated as provided in the Pricing Certificate (the "Certificate Date") and shall be in denominations of \$5,000 or any integral multiple thereof (within a Stated Maturity) and the Certificates shall become due and payable on a date certain in each of the years and in principal amounts (the "Stated Maturities") and bear interest at the per annum rates in accordance with the details of the Certificates as provided in the Pricing Certificate.

The Certificates shall bear interest on the unpaid principal amounts from the date specified in the Pricing Certificate (calculated on the basis of a 360-day year of twelve 30-day months) and shall be payable in each year, on the dates and commencing on the date, set forth in the Pricing Certificate.

SECTION 3: Delegation of Authority to Pricing Officer. (a) As authorized by Chapter 1371, the Town Manager or the Chief Financial Officer of the Town (either a "Pricing Officer") is hereby authorized to act on behalf of the Town in selling and delivering the Certificates and carrying out the other procedures specified in this Ordinance determining the aggregate principal amount of the Certificates, the date of the Certificates, any additional or different designation or title by which the Certificates shall be known, the price at which the Certificates will be sold, the manner of sale (negotiated, privately placed or competitively bid), the years in which the Certificates will mature, the principal amount to mature in each of such years, the rate of interest to be borne by each such maturity, the date from which interest on the Certificates will accrue, the interest payment dates, the record date, the price and terms upon and at which the Certificates shall be subject to redemption prior to maturity at the option of the Town, as well as any mandatory sinking fund redemption provisions, determination of the use of a book-entry-only securities clearance, settlement and transfer system, the terms of any bond insurance applicable to the Certificates, any modification of the continuing disclosure undertaking contained in Section 32 hereof as may be required by the purchasers of the Certificates in connection with any amendments to Rule 15c2-12, and all other matters relating to the issuance, sale and delivery of the Certificates, all of which shall be specified in the Pricing Certificate, provided that:

- (i) the aggregate original principal amount of the Certificates shall not exceed \$7,895,000;
- (ii) the maximum true interest cost for the Certificates shall not exceed 5.00%; and
- (iii) the maximum maturity date of the Certificates shall not exceed March 1, 2043.

The execution of the Pricing Certificate shall evidence the sale date of the Certificates by the Town to the Purchasers (hereinafter defined).

If the Pricing Officer determines that bond insurance results in a net reduction of the Town's interest costs associated with the Certificates, then the Pricing Officer is authorized, in connection with effecting the sale of the Certificates, to make the selection of the municipal bond insurance company for the Certificates (the "Insurer") and to obtain from the Insurer a municipal bond insurance policy in support of the Certificates. The Pricing Officer shall have the authority to determine the provisions of the commitment for any such policy and to execute any documents to affect the issuance of said policy by the Insurer.

(b) In establishing the aggregate principal amount of the Certificates, the Pricing Officer shall establish an amount not exceeding the amount authorized in subsection (a)(i) above, which shall be sufficient in amount to provide for the purposes for which the Certificates are authorized and to pay costs of issuing the Certificates. The delegation made hereby shall expire if not exercised by the Pricing Officer within one (1) year of the date of the adoption of this Ordinance. The Certificates shall be sold to the purchaser(s)/underwriter(s) named in the Pricing Certificate (the "Purchasers"), at such price and with and subject to such terms as set forth in the Pricing Certificate and the Purchase Contract (hereinafter defined), and may be sold by negotiated or competitive sale or by private placement. The Pricing Officer is hereby delegated the authority to designate the Purchasers, which delegation shall be evidenced by the execution of the Pricing Certificate.

**SECTION 4: Terms of Payment-Paying Agent/Registrar.** The principal of, premium, if any, and the interest on the Certificates, due and payable by reason of maturity, redemption or otherwise, shall be payable only to the registered owners or holders of the Certificates (hereinafter called the "Holders") appearing on the registration and transfer books maintained by the Paying Agent/Registrar and the payment thereof shall be in any coin or currency of the United States of America, which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

The selection and appointment of U.S. Bank Trust Company, National Association, Dallas, Texas, to serve as "Paying Agent/Registrar" for the Certificates is hereby approved and confirmed. Books and records relating to the registration, payment, exchange and transfer of the Certificates (the "Security Register") shall at all times be kept and maintained on behalf of the Town by the Paying Agent/Registrar, all as provided herein, in accordance with the terms and provisions of a "Paying Agent/Registrar Agreement," substantially in the form attached hereto as **Exhibit A** and such reasonable rules and regulations as the Paying Agent/Registrar and the Town may prescribe. The Mayor or Mayor Pro Tem and Town Secretary are hereby authorized to execute and deliver such Paying Agent/Registrar Agreement in connection with the delivery of the Certificates. The Town covenants to maintain and provide a Paying Agent/Registrar at all times until the Certificates are paid and discharged, and any successor Paying Agent/Registrar shall be a commercial bank, trust company, financial institution, or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Certificates, the Town agrees to promptly cause a written notice thereof to be sent to each Holder by United States mail, first-class, postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

Principal of and premium, if any, on the Certificates, shall be payable at the Stated Maturities or the redemption thereof only upon presentation and surrender of the Certificates to the Paying Agent/Registrar at its designated offices initially in St. Paul, Minnesota, or, with respect to a successor Paying Agent/Registrar, at the designated offices of such successor (the "Designated Payment/Transfer Office"). Interest on the Certificates shall be paid to the Holder

whose name appears in the Security Register at the close of business on the Record Date (which shall be set forth in the Pricing Certificate) and shall be paid by the Paying Agent/Registrar (i) by check sent United States mail, first-class, postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder. If the date for the payment of the principal or of interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when such banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

In the event of a non-payment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class, postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

SECTION 5: Registration - Transfer - Exchange of Certificates - Predecessor Certificates. The Paying Agent/Registrar shall obtain, record and maintain in the Security Register the name and address of each and every owner of the Certificates issued under and pursuant to the provisions of this Ordinance or, if appropriate, the nominee thereof. Any Certificate may be transferred or exchanged for Certificates of other authorized denominations by the Holder, in person or by his duly authorized agent, upon surrender of such Certificate to the Paying Agent/Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender of any Certificate (other than the Initial Certificate authorized in Section 8 hereof) for transfer at the Designated Payment/Transfer Office of the Paying Agent/Registrar, the Paying Agent/Registrar shall register and deliver, in the name of the designated transferee or transferees, one or more new Certificates, executed on behalf of, and furnished by, the Town, of authorized denominations and having the same Stated Maturity and of a like aggregate principal amount as the Certificate or Certificates surrendered for transfer.

At the option of the Holders, Certificates (other than the Initial Certificate authorized in Section 8 hereof) may be exchanged for other Certificates of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Certificates surrendered for exchange upon surrender of the Certificates to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Certificates are so surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Certificates, executed on behalf of, and furnished by the Town, to the Holder requesting the exchange.

All Certificates issued upon any transfer or exchange of Certificates shall be delivered at the Designated Payment/Transfer Office of the Paying Agent/Registrar, or sent by United States mail, first-class, postage prepaid, to the Holder and, upon the registration and delivery thereof, the same shall be valid obligations of the Town, evidencing the same obligation to pay, and



entitled to the same benefits under this Ordinance, as the Certificates surrendered in such transfer or exchange.

All transfers or exchanges of Certificates pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Certificates canceled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Certificates," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the new Certificate or Certificates registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Certificates" shall include any mutilated, lost, destroyed, or stolen Certificate for which a replacement Certificate has been issued, registered and delivered in lieu thereof pursuant to Section 25 hereof and such new replacement Certificate shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Certificate.

Neither the Town nor the Paying Agent/Registrar shall be required to issue or transfer to an assignee of a Holder any Certificate called for redemption, in whole or in part, within 45 days of the date fixed for the redemption of such Certificate; provided, however, such limitation on transferability shall not be applicable to an exchange by the Holder of the unredeemed balance of a Certificate called for redemption in part.

**SECTION 6: Book-Entry-Only Transfers and Transactions.** Notwithstanding the provisions contained herein relating to the payment and transfer/exchange of the Certificates, the Town hereby approves and authorizes the use of "Book-Entry-Only" securities clearance, settlement and transfer system provided by The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York ("DTC"), in accordance with the operational arrangements referenced in the Blanket Issuer Letter of Representations by and between the Town and DTC (the "Depository Agreement").

In the event the Pricing Officer elects to utilize DTC's "Book-Entry-Only" System, which election shall be made by the Pricing Officer in the Pricing Certificate, pursuant to the Depository Agreement and the rules of DTC, the Certificates shall be deposited with DTC who shall hold said Certificates for its participants (the "DTC Participants"). While the Certificates are held by DTC under the Depository Agreement, the Holder of the Certificates on the Security Register for all purposes, including payment and notices, shall be Cede & Co., as nominee of DTC, notwithstanding the ownership of each actual purchaser or owner of each Certificate (the "Beneficial Owners") being recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Certificates or otherwise ceases to provide book-entry clearance and settlement of securities transactions in general, or in the event the Town decides to discontinue use of the system of book-entry transfers through DTC, the Town covenants and agrees with the Holders of the Certificates to cause Certificates to be printed in definitive form and issued and delivered to DTC Participants and Beneficial Owners, as the case may be. Thereafter, the Certificates in definitive form shall be assigned, transferred and exchanged on the Security Register maintained by the Paying Agent/Registrar and payment of such Certificates shall be made in accordance with the provisions of Sections 4 and 5 hereof.

SECTION 7: Execution - Registration. The Certificates shall be executed on behalf of the Town by the Mayor or the Mayor Pro Tem under its seal reproduced or impressed thereon and countersigned by the Town Secretary. The signature of said officers on the Certificates may be manual or facsimile. Certificates bearing the manual or facsimile signatures of said individuals who are or were the proper officers of the Town on the date of the adoption of this Ordinance shall be deemed to be duly executed on behalf of the Town, notwithstanding that such individuals or any of them shall cease to hold such offices prior to the delivery of the Certificates to the initial purchaser(s), and with respect to Certificates delivered in subsequent exchanges and transfers, all as authorized and provided by Texas Government Code, Chapter 1201, as amended.

No Certificate shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Certificate either a certificate of registration substantially in the form provided in Section 9(c), manually executed by the Comptroller of Public Accounts of the State of Texas or his or her duly authorized agent, or a certificate of registration substantially in the form provided in Section 9(d), manually executed by an authorized officer, employee or representative of the Paying Agent/Registrar, and either such certificate duly signed upon any Certificate shall be conclusive evidence, and the only evidence, that such Certificate has been duly certified, registered and delivered.

SECTION 8: Initial Certificate. The Certificates herein authorized shall be initially issued as a single fully registered certificate in the total principal amount with principal installments to become due and payable as provided in the Pricing Certificate and numbered T-1 (hereinafter called the "Initial Certificate") and the Initial Certificate shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Certificate shall be the Certificate submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s). Any time after the delivery of the Initial Certificate, the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Certificate delivered hereunder and exchange therefor definitive Certificates of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 9: Forms.

(a) Forms Generally. The Certificates, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of Paying Agent/Registrar, and the form of Assignment to be printed on the Certificates, shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and to be completed and modified with the information set forth in the Pricing Certificate and may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including insurance legends in the event the Certificates, or any maturities thereof, are purchased with bond insurance and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the Town or determined by the Pricing Officer. The Pricing Officer shall set forth the final and controlling forms and terms of the Certificates. Any portion of the text of any Certificates may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Certificate.

The Certificates, including the Initial Certificate, shall be typewritten, printed, lithographed, or photocopied, or produced in any other similar manner, all as determined by the officers executing such Certificates as evidenced by their execution.

(b) Form of Definitive Certificate.

REGISTERED  
NO. \_\_\_\_\_

REGISTERED  
\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF TEXAS  
TOWN OF FLOWER MOUND, TEXAS  
CERTIFICATE OF OBLIGATION  
SERIES 2023

Certificate Date:  
\_\_\_\_\_, 2023

Interest Rate:  
\_\_\_\_\_ %

Stated Maturity:  
\_\_\_\_\_, \_\_\_\_

CUSIP No.:

Registered Owner:

Principal Amount: \_\_\_\_\_ DOLLARS

The Town of Flower Mound (hereinafter referred to as the "Town"), a body corporate and municipal corporation in the Counties of Denton and Tarrant, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, on the Stated Maturity date specified above the Principal Amount stated above (or so much thereof as shall not have been paid upon prior redemption) and to pay interest on the unpaid principal amount hereof from the interest payment date next preceding the "Registration Date" of this Certificate appearing below (unless this Certificate bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of this Certificate is prior to the initial interest payment date, in which case it shall bear interest from \_\_\_\_\_) at the per annum rate of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on \_\_\_\_\_ and \_\_\_\_\_ of each year, commencing \_\_\_\_\_, 20\_\_\_\_, until maturity or prior redemption of this Certificate. Principal of this Certificate is payable at its Stated Maturity or redemption to the registered owner hereof upon presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar executing the registration certificate appearing hereon, or its successor; provided, however, while the Certificate is registered to Cede & Co., the payment of principal upon a partial redemption of the principal amount may be accomplished without presentation and surrender of this Certificate. Interest is payable to the registered owner of this Certificate (or one or more Predecessor Certificates, as defined in the Ordinance hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the \_\_\_\_\_ day of the month next preceding each interest payment date and interest shall be paid by the Paying Agent/Registrar by check sent United States mail, first-class, postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding

day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Certificate shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Certificate is one of the series specified in its title issued in the aggregate principal amount of \$\_\_\_\_\_ to be designated and bear the title "TOWN OF FLOWER MOUND, TEXAS, CERTIFICATES OF OBLIGATION, SERIES 2023" (hereinafter referred to as the "Certificates"), for the purpose of paying contractual obligations to be incurred for authorized needs and purposes, to wit: (i) constructing waterworks and sewer system improvements and extensions, including the acquisition of land and rights-of-way therefor and (ii) professional services rendered in connection therewith, under and in strict conformity with the Constitution and laws of the State of Texas, particularly Texas Local Government Code, Subchapter C of Chapter 271, as amended, and Texas Government Code, Chapter 1371, as amended, and pursuant to an ordinance adopted by the Town Council of the Town (herein referred to as the "Ordinance").

[The Certificates having Stated Maturities on and after \_\_\_\_ 1, 20\_\_\_\_ may be redeemed prior to their Stated Maturities, at the option of the Town, in whole or in part, in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on \_\_\_\_ 1, 20\_\_\_\_, or on any date thereafter, at the redemption price of par, together with accrued interest to the date of redemption.

At least thirty (30) days prior to a redemption date, the Town shall cause a written notice of such redemption to be sent by United States mail, first-class, postage prepaid, to the registered owners of each Certificate to be redeemed at the address shown on the Security Register and subject to the terms and provisions relating thereto contained in the Ordinance. If a Certificate (or any portion of its principal sum) shall have been duly called for redemption and notice of such redemption duly given, then upon the redemption date such Certificate (or the portion of its principal sum to be redeemed) shall become due and payable, and, if moneys for the payment of the redemption price and the interest accrued on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar, interest shall cease to accrue and be payable from and after the redemption date on the principal amount redeemed.

In the event a portion of the principal amount of a Certificate is to be redeemed and the registered owner is someone other than Cede & Co., payment of the redemption price of such principal amount shall be made to the registered owner only upon presentation and surrender of such Certificate to the Designated Payment/Transfer Office of the Paying Agent/Registrar, and a new Certificate or Certificates of like maturity and interest rate in any authorized denominations provided by the Ordinance for the then unredeemed balance of the principal sum thereof will be issued to the registered owner, without charge. If a Certificate is selected for redemption, in whole or in part, the Town and the Paying Agent/Registrar shall not be required to transfer such Certificate to an assignee of the registered owner within forty-five (45) days of the redemption date therefor; provided, however, such limitation on transferability shall not be applicable to an exchange by the registered owner of the unredeemed balance of a Certificate redeemed in part.

With respect to any optional redemption of the Certificates, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Certificates to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption,

such notice may state that said redemption may, at the option of the Town, be conditional upon the receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon the satisfaction of any prerequisites set forth in such notice of redemption; and, if sufficient moneys are not received, such notice shall be of no force and effect, the Town shall not redeem such Certificates and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Certificates have not been redeemed.]

The Certificates are payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the Town and are additionally payable from and secured by a lien on and limited pledge of the Net Revenues (as defined in the Ordinance) of the Town's combined waterworks and sewer system (the "System"), such lien and pledge being limited to the amount of \$1,000 and being junior and subordinate to the lien on and pledge of the Net Revenues of the System securing the payment of "Prior Lien Bonds" (identified and defined in the Ordinance) now outstanding and hereafter issued by the Town. In the Ordinance, the Town reserves and retains the right to issue Prior Lien Bonds while the Certificates are outstanding without limitation as to principal amount but subject to any terms, conditions or restrictions as may be applicable thereto under law or otherwise, as well as the right to issue additional obligations payable from the same sources as the Certificates and, together with the Certificates, equally and ratably secured by a parity lien on and pledge of the Net Revenues of the System.

Reference is hereby made to the Ordinance, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all the provisions of which the Holder by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of the Certificates; the Net Revenues of the System pledged to the payment of the principal of and interest on the Certificates; the nature and extent and manner of enforcement of the limited pledge; the terms and conditions relating to the transfer or exchange of this Certificate; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the Town and the Paying Agent/Registrar; the terms and provisions upon which the tax levy and the liens, pledges, charges and covenants made therein may be discharged at or prior to the maturity of this Certificate, and this Certificate deemed to be no longer Outstanding thereunder; and for the other terms and provisions contained therein. Capitalized terms used herein and not otherwise defined have the meanings assigned in the Ordinance.

This Certificate, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the registered owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Certificates of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The Town and the Paying Agent/Registrar, and any agent of either, may treat the registered owner hereof whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Certificate as the owner entitled to payment of principal hereof at its Stated Maturity or its redemption, in whole or in part, and (iii) on any other date as the owner for all other purposes, and neither the Town

nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of a non-payment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class, postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented and covenanted that the Town is duly organized and legally incorporated under and by virtue of the Constitution and laws of the State of Texas; that the issuance of the Certificates is duly authorized by law; that all acts, conditions and things required to exist and be done precedent to and in the issuance of the Certificates to render the same lawful and valid obligations of the Town have been properly done, have happened and have been performed in regular and due time, form and manner as required by the Constitution and laws of the State of Texas, and the Ordinance; that the Certificates do not exceed any constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Certificates by the levy of a tax and a pledge of the Net Revenues of the System as aforesated. In case any provision in this Certificate or any application thereof shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions and applications shall not in any way be affected or impaired thereby. The terms and provisions of this Certificate and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the Town Council of the Town has caused this Certificate to be duly executed under the official seal of the Town as of the Certificate Date.

TOWN OF FLOWER MOUND, TEXAS

\_\_\_\_\_  
[Mayor][Mayor Pro Tem]

COUNTERSIGNED:

\_\_\_\_\_  
Town Secretary

(TOWN SEAL)

(c) Form of Registration Certificate of Comptroller of Public Accounts to appear on the Initial Certificate only.

REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER  
OF PUBLIC ACCOUNTS

THE STATE OF TEXAS

(  
(  
(  
(

REGISTER NO. \_\_\_\_\_

I HEREBY CERTIFY that this Certificate has been examined, certified as to validity and approved by the Attorney General of the State of Texas and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this \_\_\_\_\_.

\_\_\_\_\_  
Comptroller of Public Accounts  
of the State of Texas

(SEAL)

(d) Form of Certificate of Paying Agent/Registrar to appear on Definitive Certificates only.

#### REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Certificate has been duly issued and registered under the provisions of the within-mentioned Ordinance; the certificate or certificates of the above entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

The designated office of the Paying Agent/Registrar located in St. Paul, Minnesota is the Designated Payment/Transfer Office for this Certificate.

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION, Dallas, Texas,  
as Paying Agent/Registrar

Registration Date:

\_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signature

(e) Form of Assignment.

#### ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto (Print or typewrite name, address, and zip code of transferee:)

\_\_\_\_\_

\_\_\_\_\_



(Social Security or other identifying number: \_\_\_\_\_)  
 the within Certificate and all 7rights thereunder, and hereby irrevocably constitutes and appoints  
 \_\_\_\_\_ attorney to transfer the within Certificate on the books kept  
 for registration thereof, with full power of substitution in the premises.

DATED: \_\_\_\_\_

Signature guaranteed:  
 \_\_\_\_\_

NOTICE: The signature on this  
 assignment must correspond with the  
 name of the registered owner as it appears  
 on the face of the within Certificate in every  
 particular.

(f) The Initial Certificate shall be in the form set forth in paragraph (b) of this  
 Section, except that the heading and first paragraph shall be modified as follows:

REGISTERED:  
 NO. T-1

REGISTERED:  
 \$\_\_\_\_\_

UNITED STATES OF AMERICA  
 STATE OF TEXAS  
 TOWN OF FLOWER MOUND, TEXAS,  
 CERTIFICATE OF OBLIGATION  
 SERIES 2023

Certificate Date: \_\_\_\_\_, 2023

Registered Owner: \_\_\_\_\_

Principal Amount: \_\_\_\_\_ DOLLARS

The Town of Flower Mound (hereinafter referred to as the "Town"), a body corporate and municipal corporation in the Counties of Denton and Tarrant, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, the above stated Principal Amount on \_\_\_\_\_ 1 in each of the years and in principal installments in accordance with the following schedule:

| <u>YEAR</u> | <u>PRINCIPAL<br/>INSTALLMENT (\$)</u> | <u>INTEREST<br/>RATE (%)</u> |
|-------------|---------------------------------------|------------------------------|
|-------------|---------------------------------------|------------------------------|

(Information to be inserted from the Pricing Certificate).

(or so much thereof as shall not have been redeemed prior to maturity) and to pay interest on the unpaid Principal Amount from the interest payment date next preceding the "Registration Date" of this Certificate appearing below (unless this Certificate bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of this Certificate is prior to the initial interest payment date, in which case it

shall bear interest from the \_\_\_\_\_) at the per annum rate(s) of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on \_\_\_\_\_ and \_\_\_\_\_ of each year, commencing \_\_\_\_\_ 1, 20\_\_\_\_, until maturity or prior redemption of this Certificate. Principal installments of this Certificate are payable at the year of maturity or on a redemption date to the registered owner hereof by U.S. Bank Trust Company, National Association, Dallas, Texas (the "Paying Agent/Registrar"), upon presentation and surrender at its designated offices in St. Paul, Minnesota, or, with respect to a successor paying agent/registrar, at the designated office of such successor (the "Designated Payment/Transfer Office"). Interest is payable to the registered owner of this Certificate whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the \_\_\_\_\_ day of the month next preceding each interest payment date hereof and interest shall be paid by the Paying Agent/Registrar by check sent United States mail, first-class, postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Certificate shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

SECTION 10: Definitions. For purposes of this Ordinance and for clarity with respect to the issuance of the Certificates herein authorized, and the levy of taxes and appropriation of Net Revenues therefor, the following words or terms, whenever the same appear herein without qualifying language, are defined to mean as follows:

(a) The term "Additional Certificates" shall mean tax and revenue obligations hereafter issued under and pursuant to the provisions of Texas Local Government Code, Subchapter C of Chapter 271, or other law and payable from ad valorem taxes and additionally payable from and secured by a lien on and pledge of the Net Revenues of the System on a parity with and of equal rank and dignity with the lien and pledge securing the payment of the Certificates.

(b) The term "Certificate Fund" shall mean the special Fund created and established under the provisions of Section 11 of this Ordinance.

(c) The term "Certificates" shall mean the "Town of Flower Mound, Texas, Certificates of Obligation, Series 2023" authorized by this Ordinance.

(d) The term "Collection Date" shall mean, when reference is being made to the levy and collection of annual ad valorem taxes, the date the annual ad valorem taxes levied each year by the Town become delinquent.

(e) The term "Fiscal Year" shall mean the twelve month period ending on September 30 of each year.

(f) The term "Net Revenues" shall mean the gross revenues of the System, less the expense of operation and maintenance, including all salaries, labor, materials, interest, repairs and extensions necessary to render efficient service; provided, however, that only such repairs and extensions, as in the judgment of the Town Council, reasonably and fairly exercised, are necessary to keep the System in operation and render adequate service to the Town and the inhabitants thereof, or such as might be necessary to meet some physical accident or condition which would otherwise impair the security of any obligations payable from and secured by a lien on the Net Revenues of the System, shall be deducted in determining "Net Revenues".

(g) The term "Outstanding" when used in this Ordinance with respect to Certificates means, as of the date of determination, all Certificates theretofore issued and delivered under this Ordinance, except:

(1) those Certificates canceled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;

(2) those Certificates deemed to be duly paid by the Town in accordance with the provisions of Section 24 hereof; and

(3) those Certificates that have been mutilated, destroyed, lost, or stolen and replacement Certificates have been registered and delivered in lieu thereof as provided in Section 25 hereof.

(h) The term "Prior Lien Bonds" shall mean all bonds or other similar obligations now outstanding and hereafter issued that are payable from and secured by a lien on and pledge of the Net Revenues of the System, which is prior in right and claim to the lien on and pledge of the Net Revenues securing the payment of the Certificates.

(i) The term "System" shall mean the Town's combined waterworks and sewer system, including all properties (real, personal or mixed and tangible or intangible) owned, operated, maintained and vested in the Town for the supply, treatment and distribution of treated water for domestic commercial, industrial and other uses and the together with all future additions, extensions replacements and improvements thereto.

SECTION 11: Certificate Fund. For the purpose of paying the interest on and to provide a sinking fund for the payment, redemption and retirement of the Certificates, there shall be and is hereby created a special account on the books of the Town to be designated "SPECIAL 2023 TAX AND REVENUE CERTIFICATE OF OBLIGATION FUND," and all moneys deposited to the credit of such account shall be kept and maintained in a banking fund maintained at the Town's depository. The Mayor, Mayor Pro Tem, Deputy Mayor Pro Tem, Town Manager, Chief Financial Officer or Town Secretary, individually or collectively, are hereby authorized and directed to make withdrawals from the Certificate Fund sufficient to pay the principal of and interest on the Certificates as the same become due and payable, and, shall cause to be transferred to the Paying Agent/Registrar from moneys on deposit in the Certificate Fund an amount sufficient to pay the amount of principal and/or interest falling due on the Certificates, such transfer of funds to the Paying Agent/Registrar to be made in such manner as will cause immediately available funds to be deposited with the Paying Agent/Registrar on or before the last business day next preceding each interest and principal payment date for the Certificates.

Pending the transfer of funds to the Paying Agent/Registrar, money in the Certificate Fund may, at the option of the Town, be invested in obligations identified in, and in accordance with the

provisions of the Town's Investment Policy as the same may be amended from time to time and the "Public Funds Investment Act" relating to the investment of "bond proceeds"; provided that all such investments shall be made in such a manner that the money required to be expended from said Fund will be available at the proper time or times. All interest and income derived from deposits and investments in said Certificate Fund shall be credited to, and any losses debited to, the said Certificate Fund. All such investments shall be sold promptly when necessary to prevent any default in connection with the Certificates.

SECTION 12: Tax Levy. To provide for the payment of the "Debt Service Requirements" on the Certificates being (i) the interest on said Certificates and (ii) a sinking fund for their redemption at maturity or a sinking fund of 2% (whichever amount shall be the greater), there shall be and there is hereby levied, within the limitations prescribed by law, for the current year and each succeeding year thereafter while said Certificates or any interest thereon shall remain Outstanding, a sufficient tax on each one hundred dollars' valuation of taxable property in said Town, adequate to pay such Debt Service Requirements, full allowance being made for delinquencies and costs of collection; said tax shall be assessed and collected each year and applied to the payment of the Debt Service Requirements, and the same shall not be diverted to any other purpose. The taxes so levied and collected shall be paid into the Certificate Fund. The Town Council hereby declares its purpose and intent to provide and levy a tax legally and fully sufficient to pay the said Debt Service Requirements, it having been determined that the existing and available taxing authority of the Town for such purpose is adequate to permit a legally sufficient tax in consideration of all other outstanding indebtedness.

The amount of taxes to be provided annually for the payment of the principal of and interest on the Certificates shall be determined and accomplished in the following manner:

(a) Prior to the date the Town Council establishes the annual tax rate and passes an ordinance levying ad valorem taxes each year, the Town Council shall determine:

(1) The amount on deposit in the Certificate Fund after (a) deducting therefrom the total amount of Debt Service Requirements to become due on Certificates prior to the Collection Date for the ad valorem taxes to be levied and (b) adding thereto the amount of the Net Revenues of the System appropriated and allocated to pay such Debt Service Requirements prior to the Collection Date for the ad valorem taxes to be levied.

(2) The amount of Net Revenues of the System, and any other lawfully available revenues which are appropriated and to be set aside for the payment of the Debt Service Requirements on the Certificates between the Collection Date for the taxes then to be levied and the Collection Date for the taxes to be levied during the next succeeding calendar year.

(3) The amount of Debt Service Requirements to become due and payable on the Certificates between the Collection Date for the taxes then to be levied and the Collection Date for the taxes to be levied during the next succeeding calendar year.

(b) The amount of taxes to be levied annually each year to pay the Debt Service Requirements on the Certificates shall be the amount established in paragraph (3) above less the sum total of the amounts established in paragraphs (1) and (2), after taking into consideration delinquencies and costs of collecting such annual taxes.

SECTION 13: Limited Pledge of Net Revenues. The Town hereby covenants and agrees that, subject to the prior lien on and pledge of the Net Revenues of the System to the payment and security of Prior Lien Bonds, the Net Revenues of the System in the amount of \$1,000 are hereby irrevocably pledged, equally and ratably, to the payment of the principal of and interest on the Certificates, and the limited pledge of \$1,000 of the Net Revenues of the System herein made for the payment of the Certificates shall constitute a lien on the Net Revenues of the System until such time as the Town shall pay all of such \$1,000, after which time the pledge shall cease. Furthermore, such lien on and pledge of the Net Revenues securing the payment of the Certificates shall be valid and binding and fully perfected from and after the date of adoption of this Ordinance without physical delivery or transfer or transfer of control of the Net Revenues, the filing of this Ordinance or any other act; all as provided in Texas Government Code, Chapter 1208, as amended.

Texas Government Code, Section 1208, as amended, applies to the issuance of the Certificates and the pledge of the Net Revenues of the System granted by the Town under this Section 13, and such pledge is therefore valid, effective and perfected. If Texas law is amended at any time while the Certificates are Outstanding such that the pledge of the Net Revenues of the System granted by the Town under this Section 13 is to be subject to the filing requirements of Texas Business and Commerce Code, Chapter 9, as amended, then in order to preserve to the registered owners of the Certificates the perfection of the security interest in said pledge, the Town agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Texas Business and Commerce Code, Chapter 9, as amended, and enable a filing to perfect the security interest in said pledge to occur.

SECTION 14: Revenue Fund. The Town hereby covenants and agrees that so long as the pledge of the Net Revenues is made to the payment of the Certificates all revenues derived from the operation of the System shall be kept separate and apart from all other funds, accounts and moneys of the Town, and all such revenues shall be deposited as collected into the "Town of Flower Mound, Texas, Waterworks and Sewer System Revenue Fund" (heretofore created and established and hereinafter called the "Revenue Fund"). All moneys deposited to the credit of the Revenue Fund shall be pledged and appropriated to the extent required for the following purposes and in the order of priority shown, to wit:

First: To the payment of the reasonable and proper operating and maintenance expenses as defined herein or required by statute to be a first charge on and claim against the gross revenues of the System.

Second: To the payment of all amounts required to be deposited in the special Funds created and established for the payment, security and benefit of Prior Lien Bonds in accordance with the terms and provisions of any ordinance authorizing the issuance of Prior Lien Bonds.

Third: To the payment, equally and ratably, of the limited amounts required to be deposited in the special funds and accounts created and established for the payment of the debt service requirements of the Certificates and Additional Certificates.

Any Net Revenues remaining in the Revenue Fund after satisfying the foregoing payments, or making adequate and sufficient provision for the payment thereof, may be appropriated and used for any other Town purpose now or hereafter permitted by law.

SECTION 15: Deposits to Certificate Fund. Subject to the provisions of Section 13 hereof, the Town hereby covenants and agrees to cause to be deposited in the Certificate Fund from the pledged Net Revenues of the System in the Revenue Fund, the amount of Net Revenues of the System pledged to the payment of the Certificates.

The Town covenants and agrees that the amount of pledged Net Revenues of the System (\$1,000), together with other lawfully available revenues appropriated by the Town for payment of the debt service requirements on the Certificates and ad valorem taxes levied, collected, and deposited in the Certificate Fund for and on behalf of the Certificates, will be an amount equal to one hundred percent (100%) of the amount required to fully pay the interest and principal due and payable on the Certificates. In addition, any surplus proceeds from the sale of the Certificates not expended for authorized purposes shall be deposited in the Certificate Fund, and such amounts so deposited shall reduce the sums otherwise required to be deposited in said Fund from ad valorem taxes and the Net Revenues of the System.

SECTION 16: Security of Funds. All moneys on deposit in the Funds for which this Ordinance makes provision (except any portion thereof as may be at any time properly invested) shall be secured in the manner and to the fullest extent required by the laws of Texas for the security of public funds, and moneys on deposit in such Funds shall be used only for the purposes permitted by this Ordinance.

SECTION 17: Special Covenants. The Town hereby further covenants as follows:

(1) It has the lawful power to pledge the Net Revenues of the System supporting this issue of Certificates and has lawfully exercised said powers under the Constitution and laws of the State of Texas, including said power existing under Texas Government Code, Chapter 1502, as amended, and Texas Local Government Code, Sections 271.041, et seq., as amended.

(2) Other than for the payment of the Prior Lien Bonds and the Certificates, the Net Revenues of the System are not pledged to the payment of any debt or obligation of the Town or of the System.

SECTION 18: Issuance of Prior Lien Bonds and Additional Certificates. The Town hereby expressly reserves the right to hereafter issue Prior Lien Bonds, without limitation as to principal amount but subject to any terms, conditions or restrictions applicable thereto under law or otherwise, and also reserves the right to issue Additional Certificates which, together with the Certificates, shall be secured by a parity lien on and pledge of the Net Revenues of the System.

SECTION 19: Application of Prior Lien Bonds Covenants and Agreements. It is the intention of this governing body and accordingly hereby recognized and stipulated that the provisions, agreements and covenants contained herein bearing upon the management and operations of the System, and the administering and application of revenues derived from the operation thereof, shall to the extent possible be harmonized with like provisions, agreements and covenants contained in the ordinances authorizing the issuance of the Prior Lien Bonds, and to the extent of any irreconcilable conflict between the provisions contained herein and in the ordinances authorizing the issuance of the Prior Lien Bonds, the provisions, agreements and covenants contained therein shall prevail to the extent of such conflict and be applicable to this Ordinance but in all respects subject to the priority of rights and benefits, if any, conferred thereby to the holders of the Prior Lien Bonds. Notwithstanding the above, any change or modification affecting the application of revenues derived from the operation of the System shall not impair the

obligation of contract with respect to the pledge of revenues herein made for the payment and security for the Certificates.

**SECTION 20: Further Procedures.** Any one or more of the Mayor, Mayor Pro Tem, Deputy Mayor Pro Tem, Town Manager, Chief Financial Officer and Town Secretary are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of the Town all agreements, instruments, certificates or other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the issuance of the Certificates. In addition, prior to the initial delivery of the Certificates, the Mayor, Mayor Pro Tem, Deputy Mayor Pro Tem, Town Manager, Chief Financial Officer or Bond Counsel to the Town are each hereby authorized and directed to approve any changes or corrections to this Ordinance or to any of the documents authorized and approved by this Ordinance: (i) in order to cure any ambiguity, formal defect, or omission in the Ordinance or such other document; or (ii) as requested by the Attorney General of the State of Texas or his representative to obtain the approval of the Certificates by the Attorney General and if such officer or counsel determines that such changes are consistent with the intent and purpose of the Ordinance, which determination shall be final. In the event that any officer of the Town whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

**SECTION 21: Notices to Holders Waiver.** Wherever this Ordinance provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States mail, first-class, postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the business day next preceding the mailing of such notice.

In any case where notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Certificates. Where this Ordinance provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

**SECTION 22: Cancellation.** All Certificates surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly canceled by it and, if surrendered to the Town, shall be delivered to the Paying Agent/Registrar and, if not already canceled, shall be promptly canceled by the Paying Agent/Registrar. The Town may at any time deliver to the Paying Agent/Registrar for cancellation any Certificates previously certified or registered and delivered which the Town may have acquired in any manner whatsoever, and all Certificates so delivered shall be promptly canceled by the Paying Agent/Registrar. All canceled Certificates held by the Paying Agent/Registrar shall be returned to the Town.

**SECTION 23: Covenants to Maintain Tax-Exempt Status.**

(a) **Definitions.** When used in this Section, the following terms have the following meanings:

*“Closing Date”* means the date on which the Certificates are first authenticated and delivered to the initial purchasers against payment therefor.

*“Code”* means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

*“Computation Date”* has the meaning set forth in Section 1.148-1(b) of the Regulations.

*“Gross Proceeds”* means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Certificates.

*“Investment”* has the meaning set forth in Section 1.148-1(b) of the Regulations.

*“Nonpurpose Investment”* means any investment property, as defined in Section 148(b) of the Code, in which Gross Proceeds of the Certificates are invested and which is not acquired to carry out the governmental purposes of the Certificates.

*“Rebate Amount”* has the meaning set forth in Section 1.148-1(b) of the Regulations.

*“Regulations”* means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Certificates. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

*“Yield”* of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Certificates has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The Town shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Certificate to become includable in the gross income, as defined in Section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the Town receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Certificate, the Town shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, the Town shall at all times prior to the last Stated Maturity of Certificates:



(1) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Certificates, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(2) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Certificates or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the Town or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by Section 141 of the Code and the Regulations and rulings thereunder, the Town shall not use Gross Proceeds of the Certificates to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the Town shall not at any time prior to the final Stated Maturity of the Certificates directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Certificates.

(f) Not Federally Guaranteed. Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the Town shall not take or omit to take any action which would cause the Certificates to be federally guaranteed within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The Town shall timely file the information required by Section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in Section 148(f) of the Code and the Regulations and rulings thereunder:

(1) The Town shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last outstanding Certificate is discharged. However, to the extent permitted by law, the Town may commingle Gross Proceeds of the Certificates with other money of the Town, provided that the Town separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the Town shall calculate the Rebate Amount in accordance with rules set forth in Section 148(f) of the Code and the Regulations and rulings thereunder. The Town shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Certificates until six years after the final Computation Date.

(3) As additional consideration for the purchase of the Certificates by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the Town shall pay to the United States from the general fund, other appropriate fund, or if permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State of Texas, the Certificate Fund, the amount that when added to the future value of previous rebate payments made for the Certificates equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(4) The Town shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the Issuer shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Certificates, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Certificates not been relevant to either party.

(j) Elections. The Town hereby directs and authorizes the Mayor, Mayor Pro Tem, Deputy Mayor Pro Tem, Town Manager and Chief Financial Officer, either or any combination of them to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Certificates, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document.

(k) Qualified Tax-Exempt Obligations. The Pricing Officer is hereby authorized to designate in the Pricing Certificate the designation of the Certificates as "qualified tax-exempt obligations" in accordance with the provisions of the paragraph (3) of subsection (b) of Section 265 of the Code in the event the Certificates qualify for such designation and confirm that the Certificates are not "private activity bonds" as defined in the Code and confirm the amount of "tax-exempt obligations" to be issued by the Town (including all subordinate entities of the Town) for the calendar year in which the Certificates are issued will not exceed the applicable limitation.

**SECTION 24: Satisfaction of Obligations of Town.** If the Town shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Certificates, at the times and in the manner stipulated in this Ordinance, then the pledge of taxes levied under this Ordinance and the Net Revenues of the System (to the extent such limited pledge of Net Revenues shall not have been discharged or terminated by prior payment of principal of or interest on the Certificates) and all covenants, agreements, and other obligations of the Town to the Holders shall thereupon cease, terminate, and be discharged and satisfied.

Certificates or any principal amount(s) thereof shall be deemed to have been paid within the meaning and with the effect expressed above in this Section ("Defeased Certificates") when (i) money sufficient to pay in full such Certificates or the principal amount(s) thereof at maturity or the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (ii) Government Securities (as defined below) shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Securities have been certified by an independent accounting or consulting firm to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any moneys deposited therewith, if any, to pay when due the principal of and interest on such Certificates, or the principal amount(s) thereof, on and prior to the Stated Maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/ Registrar have been made) the redemption date thereof. At such time as Certificates shall be deemed to be Defeased Certificates hereunder, as aforesaid, such Certificates and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of, the taxes or revenues levied and pledged as provided in this Ordinance, and such principal and interest shall be payable solely from such money or Government Securities. Notwithstanding any other provision of this Ordinance to the contrary, it is hereby provided that any determination not to redeem the Defeased Certificates that is made in conjunction with the payment arrangements specified in (i) or (ii) above in this paragraph shall not be irrevocable, provided that in the proceedings providing for such payment arrangements, the Town: (1) expressly reserves the right to call the Defeased Certificates for redemption; (2) gives notice of the reservation of that right to the registered owners of the Defeased Certificates immediately following the making of the payment arrangements; and (3) directs that notice of the reservation be included in any redemption notices that it authorizes. The Town covenants that no deposit of moneys or Government Securities will be made under this Section and no use made of any such deposit which would cause the Certificates to be treated

as “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, or regulations adopted pursuant thereto.

Any moneys so deposited with the Paying Agent/Registrar, or an authorized escrow agent, and all income from Government Securities held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Certificates, or any principal amount(s) thereof, or interest thereon with respect to which such moneys have been so deposited shall be remitted to the Town or deposited as directed by the Town. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Certificates and remaining unclaimed for a period of three (3) years after the Stated Maturity, or applicable redemption date, of the Certificates such moneys were deposited and are held in trust to pay shall upon the request of the Town be remitted to the Town against a written receipt therefor. Notwithstanding the above and foregoing, any remittance of funds from the Paying Agent/Registrar to the Town shall be subject to any applicable unclaimed property laws of the State of Texas.

Unless otherwise modified by the Pricing Officer, the term “Government Securities” as used herein, means (a) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (b) noncallable obligations of an agency or instrumentality of the United States, including obligations unconditionally guaranteed or insured by the agency or instrumentality and on the date of their acquisition or purchase by the Town are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, (c) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and on the date of their acquisition or purchase by the Town, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, and (d) any other then authorized securities or obligations that may be used to defease obligations such as the Certificates under the then applicable laws of the State of Texas.

SECTION 25: Mutilated, Destroyed, Lost, and Stolen Certificates. In case any Certificate shall be mutilated, or destroyed, lost or stolen, the Paying Agent/Registrar may execute and deliver a replacement Certificate of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Certificate, or in lieu of and in substitution for such destroyed, lost or stolen Certificate, only upon the approval of the Town and after (i) the filing by the Holder thereof with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss or theft of such Certificate, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying Agent/Registrar of indemnification in an amount satisfactory to hold the Town and the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Certificate shall be borne by the Holder of the Certificate mutilated, or destroyed, lost or stolen.

Every replacement Certificate issued pursuant to this Section shall be a valid and binding obligation, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Certificates; notwithstanding the enforceability of payment by anyone of the destroyed, lost, or stolen Certificates.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost or stolen Certificates.

SECTION 26: Ordinance a Contract - Amendments. This Ordinance, together with the Pricing Certificate, shall constitute a contract with the Holders from time to time, be binding on the Town, and shall not be amended or repealed by the Town so long as any Certificate remains Outstanding except as permitted in this Section and Section 32 hereof. The Town, may, without the consent of or notice to any Holders, from time to time and at any time, amend this Ordinance in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the Town may, with the written consent of Holders holding a majority in aggregate principal amount of the Certificates and Additional Certificates then Outstanding, amend, add to, or rescind any of the provisions of this Ordinance; provided that, without the consent of all Holders of Outstanding Certificates, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of, premium, if any, and interest on the Certificates, reduce the principal amount thereof, the redemption price, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of, premium, if any, or interest on the Certificates, (2) give any preference to any Certificate over any other Certificate, or (3) reduce the aggregate principal amount of Certificates required to be held by Holders for consent to any such amendment, addition, or rescission.

SECTION 27: Sale of the Certificates – Official Statement. The Certificates authorized by this Ordinance are to be sold by the Town to the Purchasers in accordance with a bond purchase agreement in the event of a negotiated sale, letter agreement to purchase in the event of a private placement, or the successful bid form in the event of a competitive sale, as applicable (the “Purchase Contract”), the terms and provisions of which Purchase Contract are to be determined by the Pricing Officer in accordance with Section 3 hereof. The Pricing Officer is hereby authorized and directed to execute the Purchase Contract for and on behalf of the Town, as the act and deed of this Council, and to make a determination as to whether the terms are in the Town’s best interests, which determination shall be final.

With regard to such terms and provisions of the Purchase Contract, the Pricing Officer is hereby authorized to come to an agreement with the Purchasers on the following, among other matters:

1. The details of the purchase and sale of the Certificates;
2. The details of any public offering of the Certificates by the Purchasers, if any;
3. The details of any Official Statement or similar disclosure document (and, if appropriate, any Preliminary Official Statement) relating to the Certificates and the Town’s Rule 15c2-12 compliance, if applicable;
4. A security deposit for the Certificates, if any;
5. The representations and warranties of the Town to the Purchasers;
6. The details of the delivery of, and payment for, the Certificates;
7. The Purchasers’ obligations under the Purchase Contract;
8. The certain conditions to the obligations of the Town under the Purchase Contract;
9. Termination of the Purchase Contract;
10. Particular covenants of the Town;
11. The survival of representations made in the Purchase Contract;

12. The payment of any expenses relating to the Purchase Contract;
13. Notices; and
14. Any and all such other details that are found by the Pricing Officer to be necessary and advisable for the purchase and sale of the Certificates.

The Mayor or Mayor Pro Tem and Town Secretary of the Town and the Pricing Officer are each further authorized and directed to deliver for and on behalf of the Town copies of a Preliminary Official Statement and Official Statement prepared in connection with the offering of the Certificates by the Purchasers, in final form as may be required by the Purchasers, and such final Official Statement as delivered by said officials shall constitute the Official Statement authorized for distribution and use by the Purchasers.

**SECTION 28: Proceeds of Sale.** The proceeds of sale of the Certificates excluding accrued interest, if any, received from the Purchasers, and amounts to pay costs of issuance and any additional proceeds to be deposited to the Certificate Fund as specified in the Pricing Certificate, shall be deposited in a fund maintained at a Town depository bank (the "Construction Fund"). Pending expenditure for authorized projects and purposes, such proceeds of sale may be invested in authorized investments in accordance with the provisions of Texas Government Code, Chapter 2256, as amended, including specifically guaranteed investment contracts permitted by Texas Government Code, Section 2256.015, et seq., and the Town's investment policies and guidelines, and any investment earnings realized may be expended for such authorized projects and purposes or deposited in the Certificate Fund as shall be determined by the Town Council. Accrued interest, if any, received from the Purchasers as well as proceeds of sale, including investment earnings thereon, remaining after completion of all authorized projects or purposes shall be deposited to the credit of the Certificate Fund.

**SECTION 29: Control and Custody of Certificates.** The Mayor or Mayor Pro Tem of the Town shall be and is hereby authorized to take and have charge of all necessary orders and records pending the sale of the Certificates, the investigation by the Attorney General of the State of Texas, including the printing and supply of definitive Certificates, and shall take and have charge and control of the Initial Certificate pending the approval thereof by the Attorney General and its registration thereof by the Comptroller of Public Accounts.

Furthermore, the Mayor, Mayor Pro Tem, Deputy Mayor Pro Tem, Town Manager, Chief Financial Officer and Town Secretary individually or collectively, are hereby authorized and directed to furnish and execute such documents and certifications relating to the Town and the issuance of the Certificates, including a certification as to facts, estimates, circumstances and reasonable expectations pertaining to the use and expenditure and investment of the proceeds of the Certificates as may be necessary for the approval of the Attorney General and their registration by the Comptroller of Public Accounts. In addition, such officials, together with the Town's financial advisor, bond counsel and the Paying Agent/Registrar, are authorized and directed to make the necessary arrangements for the delivery of the Initial Certificate to the initial purchasers.

**SECTION 30: Bond Counsel's Opinion.** The Purchasers' obligation to accept delivery of the Certificates is subject to being furnished a final opinion of Norton Rose Fulbright US LLP, Dallas, Texas, approving the Certificates as to their validity, said opinion to be dated and delivered as of the date of delivery and payment for the Certificates. An executed counterpart of said opinion shall accompany the global certificates deposited with The Depository Trust Company or a reproduction thereof shall be printed on the definitive Certificates in the event the book-entry-

only system shall be discontinued. The Town Council confirms the continuation of the engagement of Norton Rose Fulbright US LLP as the Town's bond counsel.

SECTION 31: CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Certificates. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Certificates shall be of no significance or effect as regards the legality thereof and neither the Town nor attorneys approving said Certificates as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Certificates.

SECTION 32: Continuing Disclosure Undertaking. This Section shall apply unless the Pricing Officer determines in the Pricing Certificate that an undertaking is not required pursuant to the Rule (defined below).

(a) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

*"Financial Obligation"* means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that "financial obligation" shall not include municipal securities as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

*"MSRB"* means the Municipal Securities Rulemaking Board.

*"Rule"* means SEC Rule 15c2-12, as amended from time to time.

*"SEC"* means the United States Securities and Exchange Commission.

(b) Annual Reports.

The Town shall provide annually to the MSRB (1) within six months after the end of each fiscal year, beginning with the year stated in the Pricing Certificate, financial information and operating data with respect to the Town of the general type included in the Official Statement approved by the Pricing Officer and described in the Pricing Certificate, and (2) if not provided as part of such financial information and operating data, audited financial statements of the Town within twelve months after the end of each fiscal year, when and if available. Any financial statements so provided shall be prepared in accordance with the accounting principles described in the Pricing Certificate, or such other accounting principles as the Town may be required to employ from time to time pursuant to state law or regulation. If audited financial statements are not available by the required time, the Town will file unaudited financial statements within such twelve-month period and audited financial statements when and if such audited financial statements become available.

If the Town changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the Town otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any documents available to the public on the MSRB's internet web site or filed with the SEC.

(c) Notice of Certain Events.

The Town shall provide notice of any of the following events with respect to the Certificates to the MSRB in a timely manner and not more than ten (10) business days after occurrence of the event:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Certificates, or other material events affecting the tax status of the Certificates;
- (7) Modifications to rights of holders of the Certificates, if material;
- (8) Certificate calls, if material, and tender offers;
- (9) Defeasances;
- (10) Release, substitution, or sale of property securing repayment of the Certificates, if material;
- (11) Rating changes;
- (12) Bankruptcy, insolvency, receivership, or similar event of the Town, which shall occur as described below;
- (13) The consummation of a merger, consolidation, or acquisition involving the Town or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (14) Appointment of a successor or additional trustee or the change of name of a trustee, if material;
- (15) Incurrence of a Financial Obligation of the Town, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Town, any of which affect security holders, if material; and
- (16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Town, any of which reflect financial difficulties.

For these purposes, (a) any event described in the immediately preceding item (12) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent,



or similar officer for the Town in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Town, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Town and (b) the Town intends the words used in the immediately preceding items (15) and (16) to have the meanings ascribed to them in SEC Release No. 34-83885, dated August 20, 2018.

The Town shall notify the MSRB, in a timely manner, of any failure by the Town to provide financial information or operating data in accordance with Subsection (b) of this Section of this Ordinance by the time required by such Section.

(d) Filings with the MSRB.

All financial information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Section shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

(e) Limitations, Disclaimers, and Amendments.

The Town shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the Town remains an “obligated person” with respect to the Certificates within the meaning of the Rule, except that the Town in any event will give the notice required by Subsection (c) of this Section of any Certificate calls and defeasance that cause the Town to be no longer such an “obligated person.”

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Certificates; and, nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The Town undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section. Except as expressly provided within this Section, the Town does not undertake to provide any other information, whether or not it may be relevant or material to a complete presentation of the Town’s financial results, condition, or prospects; nor does the Town undertake to update any information provided in accordance with this Section or otherwise. Furthermore, the Town does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Certificates at any future date.

UNDER NO CIRCUMSTANCES SHALL THE TOWN BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY CERTIFICATE OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE TOWN, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the Town in observing or performing its obligations under this Section shall constitute a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the Town under federal and state securities laws.

Notwithstanding anything herein to the contrary, the provisions of this Section may be amended by the Town from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Town, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Certificates in the primary offering of the Certificates in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Certificates consent to such amendment or (b) a person that is unaffiliated with the Town (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Certificates. The provisions of this Section may also be amended from time to time or repealed by the Town if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the Town's right to do so would not prevent underwriters of the initial public offering of the Certificates from lawfully purchasing or selling Certificates in such offering. If the Town so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided pursuant to subsection (b) of this Section an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

SECTION 33: Municipal Bond Insurance. The Certificates may be sold with the principal of and interest thereon being insured by a municipal bond insurance provider authorized to transact business in the State of Texas. The Pricing Officer is hereby authorized to make the selection of municipal bond insurance (if any) for the Certificates and make the determination of the provisions of any commitment therefor.

SECTION 34: Benefits of Ordinance. Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon any person other than the Town, the Paying Agent/Registrar, and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof, this Ordinance and all its provisions being intended to be and being for the sole and exclusive benefit of the Town, the Paying Agent/Registrar and the Holders.

SECTION 35: Inconsistent Provisions. All ordinances, orders, or resolutions, or parts thereof which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict and the provisions of this Ordinance shall be and remain controlling as to the matters contained herein.

SECTION 36: Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 37: Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 38: Severability. If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance or the application thereof to other circumstances shall nevertheless be valid, and this governing body hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 39: Construction of Terms. If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

SECTION 40: Incorporation of Findings and Determinations. The findings and determinations of the Town Council contained in the preamble hereof are hereby incorporated by reference and made a part of this Ordinance for all purposes as if the same were restated in full in this Section.

SECTION 41: Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 42: Effective Date. In accordance with the provisions of Texas Government Code, Section 1201.028, as amended, this Ordinance shall be in force and effect from and after its passage on the date shown below and it is so ordained.

*[Remainder of page intentionally left blank]*

DULY PASSED AND APPROVED BY THE TOWN COUNCIL ON JUNE 19, 2023.

TOWN OF FLOWER MOUND, TEXAS

(Town Seal)

---

Derek France, MAYOR

ATTEST:

---

Theresa Scott, TOWN SECRETARY

**EXHIBIT A**  
**PAYING AGENT/REGISTRAR AGREEMENT**

## **PAYING AGENT/REGISTRAR AGREEMENT**

THIS AGREEMENT is entered into as of \_\_\_\_\_, 2023 (this "Agreement"), by and between U.S. Bank Trust Company, National Association, a banking association duly organized and existing under the laws of the United States of America, or its successors (the "Bank") and the Town of Flower Mound, Texas (the "Issuer"),

### **RECITALS**

WHEREAS, the Issuer has duly authorized and provided for the issuance of its "Town of Flower Mound, Texas Certificates of Obligation, Series 2023" (the "Securities"), dated \_\_\_\_\_, 2023, such Securities scheduled to be delivered to the initial purchasers thereof on or about \_\_\_\_\_, 2023; and

WHEREAS, the Issuer has selected the Bank to serve as Paying Agent/Registrar in connection with the payment of the principal of, premium, if any, and interest on said Securities and with respect to the registration, transfer and exchange thereof by the registered owners thereof; and

WHEREAS, the Bank has agreed to serve in such capacities for and on behalf of the Issuer and has full power and authority to perform and serve as Paying Agent/Registrar for the Securities;

NOW, THEREFORE, it is mutually agreed as follows:

### **ARTICLE ONE APPOINTMENT OF BANK AS PAYING AGENT AND REGISTRAR**

**Section 1.01 Appointment.** The Issuer hereby appoints the Bank to serve as Paying Agent with respect to the Securities, and, as Paying Agent for the Securities, the Bank shall be responsible for paying on behalf of the Issuer the principal, premium (if any), and interest on the Securities as the same become due and payable to the registered owners thereof; all in accordance with this Agreement and the "Authorizing Document" (hereinafter defined). The Issuer hereby appoints the Bank as Registrar with respect to the Securities and, as Registrar for the Securities, the Bank shall keep and maintain for and on behalf of the Issuer books and records as to the ownership of said Securities and with respect to the transfer and exchange thereof as provided herein and in the Authorizing Document.

The Bank hereby accepts its appointment, and agrees to serve as the Paying Agent and Registrar for the Securities.

**Section 1.02 Compensation.** As compensation for the Bank's services as Paying Agent/Registrar, the Issuer hereby agrees to pay the Bank the fees and amounts set forth in **Annex A** attached hereto; provided however, notwithstanding anything herein or in Annex A to the contrary, the aggregate value of this agreement shall be less than the dollar limitation set forth in Section 2271.002(a)(2) and Section 2274.002(a)(2) of the Texas Government Code, as amended.

In addition, the Issuer agrees to reimburse the Bank upon its request for all reasonable expenses, disbursements and advances incurred or made by the Bank in accordance with any of

the provisions hereof (including the reasonable compensation and the expenses and disbursements of its agents and counsel).

## **ARTICLE TWO DEFINITIONS**

**Section 2.01 Definitions.** For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

“Acceleration Date” on any Security means the date, if any, on and after which the principal or any or all installments of interest, or both, are due and payable on any Security which has become accelerated pursuant to the terms of the Security.

“Authorizing Document” means the resolution, order, or ordinance of the governing body of the Issuer pursuant to which the Securities are issued, as the same may be amended or modified, including any pricing certificate related thereto, certified by the secretary or any other officer of the Issuer and delivered to the Bank.

“Bank Office” means the designated office of the Bank at the address shown in Section 3.01 hereof. The Bank will notify the Issuer in writing of any change in location of the Bank Office.

“Holder” and “Security Holder” each means the Person in whose name a Security is registered in the Security Register.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision of a government.

“Predecessor Securities” of any particular Security means every previous Security evidencing all or a portion of the same obligation as that evidenced by such particular Security (and, for the purposes of this definition, any mutilated, lost, destroyed, or stolen Security for which a replacement Security has been registered and delivered in lieu thereof pursuant to Section 4.06 hereof and the Authorizing Document).

“Redemption Date”, when used with respect to any Security to be redeemed, means the date fixed for such redemption pursuant to the terms of the Authorizing Document.

“Responsible Officer”, when used with respect to the Bank, means the Chairman or Vice-Chairman of the Board of Directors, the Chairman or Vice-Chairman of the Executive Committee of the Board of Directors, the President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer, any Assistant Treasurer, the Cashier, any Assistant Cashier, any Trust Officer or Assistant Trust Officer, or any other officer of the Bank customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any

other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

“Security Register” means a register maintained by the Bank on behalf of the Issuer providing for the registration and transfers of Securities.

“Stated Maturity” means the date specified in the Authorizing Document the principal of a Security is scheduled to be due and payable.

**Section 2.02 Other Definitions.** The terms “Bank,” “Issuer,” and “Securities (Security)” have the meanings assigned to them in the recital paragraphs of this Agreement.

The term “Paying Agent/Registrar” refers to the Bank in the performance of the duties and functions of this Agreement.

### **ARTICLE THREE PAYING AGENT**

**Section 3.01 Duties of Paying Agent.** As Paying Agent, the Bank shall pay, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, on behalf of the Issuer the principal of each Security at its Stated Maturity, Redemption Date or Acceleration Date, to the Holder upon surrender of the Security to the Bank at the following address:

U.S. Bank Trust Company, National Association  
Attention: Bond Operations  
111 Fillmore Avenue East  
St. Paul, Minnesota 55107-1402

As Paying Agent, the Bank shall, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, pay on behalf of the Issuer the interest on each Security when due, by computing the amount of interest to be paid each Holder and making payment thereof to the Holders of the Securities (or their Predecessor Securities) on the Record Date (as defined in the Authorizing Document). All payments of principal and/or interest on the Securities to the registered owners shall be accomplished (1) by the issuance of checks, payable to the registered owners, drawn on the paying agent account provided in Section 5.05 hereof, sent by United States mail, first class postage prepaid, to the address appearing on the Security Register or (2) by such other method, acceptable to the Bank, requested in writing by the Holder at the Holder’s risk and expense.

**Section 3.02 Payment Dates.** The Issuer hereby instructs the Bank to pay the principal of and interest on the Securities on the dates specified in the Authorizing Document.

### **ARTICLE FOUR REGISTRAR**

**Section 4.01 Security Register - Transfers and Exchanges.** The Bank agrees to keep and maintain for and on behalf of the Issuer at the Bank Office books and records (herein sometimes referred to as the “Security Register”) for recording the names and addresses of the Holders of the Securities, the transfer, exchange and replacement of the Securities and the payment of the principal of and interest on the Securities to the Holders and containing such other



information as may be reasonably required by the Issuer and subject to such reasonable regulations as the Issuer and the Bank may prescribe. The Bank represents and warrants that it will at all times have immediate access to the Security Register by electronic or other means and will be capable at all times of producing a hard copy of the Security Register for use by the Issuer. All transfers, exchanges and replacements of Securities shall be noted in the Security Register.

Every Security surrendered for transfer or exchange shall be duly endorsed or be accompanied by a written instrument of transfer, the signature on which has been guaranteed by an officer of a federal or state bank or a member of the Financial Industry Regulatory Authority, such written instrument to be in a form satisfactory to the Bank and duly executed by the Holder thereof or his agent duly authorized in writing.

The Bank may request any supporting documentation it feels necessary to effect a re-registration, transfer or exchange of the Securities.

To the extent possible and under reasonable circumstances, the Bank agrees that, in relation to an exchange or transfer of Securities, the exchange or transfer by the Holders thereof will be completed and new Securities delivered to the Holder or the assignee of the Holder in not more than three (3) business days after the receipt of the Securities to be cancelled in an exchange or transfer and the written instrument of transfer or request for exchange duly executed by the Holder, or his duly authorized agent, in form and manner satisfactory to the Paying Agent/Registrar.

**Section 4.02 Securities.** The Issuer shall provide additional Securities when needed to facilitate transfers or exchanges thereof. The Bank covenants that such additional Securities, if and when provided, will be kept in safekeeping pending their use and reasonable care will be exercised by the Bank in maintaining such Securities in safekeeping, which shall be not less than the care maintained by the Bank for debt securities of other governments or corporations for which it serves as registrar, or that is maintained for its own securities.

**Section 4.03 Form of Security Register.** The Bank, as Registrar, will maintain the Security Register relating to the registration, payment, transfer and exchange of the Securities in accordance with the Bank's general practices and procedures in effect from time to time. The Bank shall not be obligated to maintain such Security Register in any form other than those which the Bank has currently available and currently utilizes at the time.

The Security Register may be maintained in written form or in any other form capable of being converted into written form within a reasonable time.

**Section 4.04 List of Security Holders.** The Bank will provide the Issuer at any time requested by the Issuer, upon payment of the required fee, a copy of the information contained in the Security Register. The Issuer may also inspect the information contained in the Security Register at any time the Bank is customarily open for business, provided that reasonable time is allowed the Bank to provide an up-to-date listing or to convert the information into written form.

The Bank will not release or disclose the contents of the Security Register to any person other than to, or at the written request of, an authorized officer or employee of the Issuer, except upon receipt of a court order or as otherwise required by law. Upon receipt of a court order and prior to the release or disclosure of the contents of the Security Register, the Bank will notify the Issuer so that the Issuer may contest the court order or such release or disclosure of the contents of the Security Register.

**Section 4.05 Return of Cancelled Securities.** The Bank will, at such reasonable intervals as it determines, surrender to the Issuer, all Securities in lieu of which or in exchange for which other Securities have been issued, or which have been paid.

**Section 4.06 Mutilated, Destroyed, Lost or Stolen Securities.** The Issuer hereby instructs the Bank, subject to the provisions of the Authorizing Document, to deliver and issue Securities in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities as long as the same does not result in an overissuance.

In case any Security shall be mutilated, destroyed, lost or stolen, the Bank may execute and deliver a replacement Security of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Security, or in lieu of and in substitution for such mutilated, destroyed, lost or stolen Security, only upon the approval of the Issuer and after (i) the filing by the Holder thereof with the Bank of evidence satisfactory to the Bank of the destruction, loss or theft of such Security, and of the authenticity of the ownership thereof and (ii) the furnishing to the Bank of indemnification in an amount satisfactory to hold the Issuer and the Bank harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Security shall be borne by the Holder of the Security mutilated, destroyed, lost or stolen.

**Section 4.07 Transaction Information to Issuer.** The Bank will, within a reasonable time after receipt of written request from the Issuer, furnish the Issuer information as to the Securities it has paid pursuant to Section 3.01, Securities it has delivered upon the transfer or exchange of any Securities pursuant to Section 4.01, and Securities it has delivered in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities pursuant to Section 4.06.

## **ARTICLE FIVE THE BANK**

**Section 5.01 Duties of Bank.** The Bank undertakes to perform the duties set forth herein and agrees to use reasonable care in the performance thereof.

**Section 5.02 Reliance on Documents, Etc.**

(a) The Bank may conclusively rely, as to the truth of the statements and correctness of the opinions expressed therein, on certificates or opinions furnished to the Bank.

(b) The Bank shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Bank was negligent in ascertaining the pertinent facts.

(c) No provisions of this Agreement shall require the Bank to expend or risk its own funds or otherwise incur any financial liability for performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity satisfactory to it against such risks or liability is not assured to it.

(d) The Bank may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. Without limiting the generality

of the foregoing statement, the Bank need not examine the ownership of any Securities, but is protected in acting upon receipt of Securities containing an endorsement or instruction of transfer or power of transfer which appears on its face to be signed by the Holder or an agent of the Holder. The Bank shall not be bound to make any investigation into the facts or matters stated in a resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document supplied by the Issuer.

(e) The Bank may consult with counsel, and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection with respect to any action taken, suffered, or omitted by it hereunder in good faith and in reliance thereon.

(f) The Bank may exercise any of the powers hereunder and perform any duties hereunder either directly or by or through agents or attorneys of the Bank.

(g) The Bank is also authorized to transfer funds relating to the closing and initial delivery of the Securities in the manner disclosed in the closing memorandum or letter as prepared by the Issuer, Issuer's financial advisor or other agent. The Bank may act on a facsimile or e-mail transmission of the closing memorandum or letter acknowledged by the Issuer, the Issuer's financial advisor or other agent as the final closing memorandum or letter. The Bank shall not be liable for any losses, costs or expenses arising directly or indirectly from the Bank's reliance upon and compliance with such instructions.

**Section 5.03 Recitals of Issuer.** The recitals contained herein with respect to the Issuer and in the Securities shall be taken as the statements of the Issuer, and the Bank assumes no responsibility for their correctness.

The Bank shall in no event be liable to the Issuer, any Holder or Holders of any Security, or any other Person for any amount due on any Security from its own funds.

**Section 5.04 May Hold Securities.** The Bank, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Issuer with the same rights it would have if it were not the Paying Agent/Registrar, or any other agent.

**Section 5.05 Moneys Held by Bank - Paying Agent Account/Collateralization.** A paying agent account shall at all times be kept and maintained by the Bank for the receipt, safekeeping, and disbursement of moneys received from the Issuer under this Agreement for the payment of the Securities, and money deposited to the credit of such account until paid to the Holders of the Securities shall be continuously collateralized by securities or obligations which qualify and are eligible under both the laws of the State of Texas and the laws of the United States of America to secure and be pledged as collateral for paying agent accounts to the extent such money is not insured by the Federal Deposit Insurance Corporation. Payments made from such paying agent account shall be made by check drawn on such account unless the owner of the Securities shall, at its own expense and risk, request an alternative method of payment.

Subject to the applicable unclaimed property laws of the State of Texas, any money deposited with the Bank for the payment of the principal of, premium (if any), or interest on any Security and remaining unclaimed for three years after final maturity of the Security has become due and payable will be held by the Bank and disposed of only in accordance with Title 6 of the Texas Property Code, as amended. The Bank shall have no liability by virtue of actions taken in compliance with this provision.

The Bank is not obligated to pay interest on any money received by it under this Agreement.

This Agreement relates solely to money deposited for the purposes described herein, and the parties agree that the Bank may serve as depository for other funds of the Issuer, act as trustee under indentures authorizing other bond transactions of the Issuer, or act in any other capacity not in conflict with its duties hereunder.

**Section 5.06 Indemnification.** To the extent permitted by law, the Issuer agrees to indemnify the Bank for, and hold it harmless against, any loss, liability, or expense incurred without negligence or bad faith on its part, arising out of or in connection with its acceptance or administration of its duties hereunder, including the cost and expense against any claim or liability in connection with the exercise or performance of any of its powers or duties under this Agreement.

**Section 5.07 Interpleader.** The Issuer and the Bank agree that the Bank may seek adjudication of any adverse claim, demand, or controversy over its person as well as funds on deposit, in either a Federal or State District Court located in the state and county where the administrative office of the Issuer is located, and agree that service of process by certified or registered mail, return receipt requested, to the address referred to in Section 6.03 of this Agreement shall constitute adequate service. The Issuer and the Bank further agree that the Bank has the right to file a Bill of Interpleader in any court of competent jurisdiction in the State of Texas to determine the rights of any Person claiming any interest herein.

**Section 5.08 DTC Services.** It is hereby represented and warranted that, in the event the Securities are otherwise qualified and accepted for “Depository Trust Company” services or equivalent depository trust services by other organizations, the Bank has the capability and, to the extent within its control, will comply with the “Operational Arrangements”, which establishes requirements for securities to be eligible for such type depository trust services, including, but not limited to, requirements for the timeliness of payments and funds availability, transfer turnaround time, and notification of redemptions and calls.

## **ARTICLE SIX MISCELLANEOUS PROVISIONS**

**Section 6.01 Amendment.** This Agreement may be amended only by an agreement in writing signed by both of the parties hereto.

**Section 6.02 Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other.

**Section 6.03 Notices.** Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted hereby to be given or furnished to the Issuer or the Bank shall be mailed or delivered to the Issuer or the Bank, respectively, at the addresses shown on the signature page(s) hereof.

**Section 6.04 Effect of Headings.** The Article and Section headings herein are for convenience of reference only and shall not affect the construction hereof.

**Section 6.05 Successors and Assigns.** All covenants and agreements herein by the Issuer shall bind its successors and assigns, whether so expressed or not.

**Section 6.06 Severability.** In case any provision herein shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**Section 6.07 Merger, Conversion, Consolidation, or Succession.** Any corporation or association into which the Bank may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion, or consolidation to which the Bank shall be a party, or any corporation or association succeeding to all or substantially all of the corporate trust business of the Bank shall be the successor of the Bank as Paying Agent under this Agreement without the execution or filing of any paper or any further act on the part of either parties hereto.

**Section 6.08 Benefits of Agreement.** Nothing herein, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any benefit or any legal or equitable right, remedy, or claim hereunder.

**Section 6.09 Entire Agreement.** This Agreement and the Authorizing Document constitute the entire agreement between the parties hereto relative to the Bank acting as Paying Agent/Registrar and if any conflict exists between this Agreement and the Authorizing Document, the Authorizing Document shall govern.

**Section 6.10 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

**Section 6.11 Termination.** This Agreement will terminate (i) on the date of final payment of the principal of and interest on the Securities to the Holders thereof or (ii) may be earlier terminated by either party upon sixty (60) days written notice; provided, however, an early termination of this Agreement by either party shall not be effective until (a) a successor Paying Agent/Registrar has been appointed by the Issuer and such appointment accepted and (b) notice has been given to the Holders of the Securities of the appointment of a successor Paying Agent/Registrar. However, if the Issuer fails to appoint a successor Paying Agent/Registrar within a reasonable time, the Bank may petition a court of competent jurisdiction within the State of Texas to appoint a successor. Furthermore, the Bank and the Issuer mutually agree that the effective date of an early termination of this Agreement shall not occur at any time which would disrupt, delay or otherwise adversely affect the payment of the Securities.

Upon an early termination of this Agreement, the Bank agrees to promptly transfer and deliver the Security Register (or a copy thereof), together with the other pertinent books and records relating to the Securities, to the successor Paying Agent/Registrar designated and appointed by the Issuer.

The provisions of Section 1.02 and of Article Five shall survive and remain in full force and effect following the termination of this Agreement.

**Section 6.12 Iran, Sudan or Foreign Terrorist Organizations.** The Bank represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or  
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Bank and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Bank understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with the Bank and exists to make a profit.

**Section 6.13 Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Texas.

*[Remainder of page left blank intentionally.]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION

By: \_\_\_\_\_

Title: \_\_\_\_\_

Address: 13737 Noel Road, Suite 800  
Dallas, Texas 75240

TOWN OF FLOWER MOUND, TEXAS

By: \_\_\_\_\_  
Mayor

Address: 2121 Cross Timbers Road  
Flower Mound, Texas 75028

Attest:

\_\_\_\_\_  
Town Secretary



## ANNEX A



## TOWN COUNCIL AGENDA K.4. REGULAR ITEM(S)

**DATE:** June 19, 2023

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

**ITEM:** **Consider approval of an ordinance authorizing the issuance of the Town of Flower Mound, Texas, General Obligation Refunding Bonds, Series 2023, establishing parameters for the sale and issuance of such bonds, delegating certain matters to an authorized official of the Town and resolving all matters incident and related thereto.**

**BACKGROUND:** The Financial Services staff and Hilltop Securities Inc., the Town's financial advisor, request the Town Council's approval of an ordinance authorizing the potential issuance of General Obligation Refunding Bonds, Series 2023, ("the Bonds").

A refunding opportunity has been identified which would prepay or refund a portion of the Town's outstanding tax-supported issues, lowering the overall debt service requirements of the Town. In accordance with the Town's Financial Policies, "an advance refunding of outstanding debt shall only be considered when present value savings of at least 3.50% of the principal amount of the refunded bonds is produced." Please note that all debt refunded with the Bonds will be structured to maintain the existing maturity pattern to ensure no debt will be extended as a result of the refunding. Based on volatility in the municipal bond market and the interest rate levels at the time of pricing, the amount of bonds refunded may be decreased.

| Refunded Issue                          | Refunded Bonds | Current Interest Rates | Refunded Years |
|-----------------------------------------|----------------|------------------------|----------------|
| Certificates of Obligation, Series 2013 | \$6,995,000    | 3.250% - 4.375%        | 2024-2033      |

In order to efficiently complete the refunding, the attached ordinance establishes the following parameters, giving the Town Manager and the Chief Financial Officer the authority to approve all necessary documents and finalize the sale.

|                                   |               |
|-----------------------------------|---------------|
| Maximum Principal Amount          | \$7,300,000   |
| Minimum Net Present Value Savings | 3.50%         |
| Maximum True Interest Cost        | 3.50%         |
| Final Maturity Date               | March 1, 2033 |

The Town Manager and/or Chief Financial Officer's authorization to complete the sale of the Bonds will expire 180 days after passage of the ordinance. The issuance will be conducted as a negotiated sale with the pricing to occur on June 20, 2023. The Bonds will begin accruing interest on July 1, 2023 (the Dated Date), which the Town will receive upon delivery of the funds on July 12, 2023. The US Bank will serve as the Paying Agent/Registrar for the Bonds. The preliminary official statement, which discloses details related to the issuance of the Bonds and the Town, is available in the Financial Services Department for review.

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

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** \$7,300,000

**Proposed Expenditure/(Revenue)**

\$7,300,000

**Account Number(s):**

Ad valorem taxes and utilities system revenues will fund the bonds, proportionately.

**LEGAL REVIEW:** The Town's Bond Counsel, Norton Rose Fulbright US LLP, prepared the proposed ordinance. No alteration to the legal content of this ordinance, which was originally approved by Taylor, Olson, Adkins, Sralla, & Elam L.L.P, was made.

**ATTACHMENTS:**

1. FLOWER MOUND GO REF 2023 - Ordinance
2. GO REF 2023 - PAR Agmt - US Bank

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

TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO. \_\_\_\_-23

AN ORDINANCE authorizing the issuance of "TOWN OF FLOWER MOUND, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2023"; levying a continuing direct annual ad valorem tax for the payment of said Bonds; resolving other matters incident and related to the issuance, sale, payment and delivery of said Bonds; establishing procedures for the sale and delivery of said Bonds; and delegating matters relating to the sale and issuance of said Bonds to an authorized Town official.

WHEREAS, the Town of Flower Mound, Texas (the "Town") currently has outstanding obligations of the Town of the following issue or series, to wit: "Town of Flower Mound, Texas, Certificates of Obligation, Series 2013," dated August 1, 2013 (hereinafter called the "Refunded Obligations"); and

WHEREAS, pursuant to the provisions of Texas Government Code, Chapter 1207, as amended ("Chapter 1207"), the Town Council of the Town (the "Council") is authorized to issue refunding bonds and deposit the proceeds of sale directly with any place of payment for the Refunded Obligations, or other authorized depository, and such deposit, when made in accordance with Chapter 1207 and the ordinances authorizing the issuance of the Refunded Obligations, shall constitute the making of firm banking and financial arrangements for the discharge and final payment of the Refunded Obligations; and

WHEREAS, the Town shall by this Ordinance, in accordance with the provisions of Section 1207.007, Texas Government Code, as amended, and Chapter 1371, Texas Government Code, as amended, delegate to a Pricing Officer (hereinafter designated) the authority to determine the principal amount and certain other specified terms of the Bonds to be issued, negotiate the terms of sale thereof and select the specific maturities, in whole or in part, of the Refunded Obligations to be refunded; and

WHEREAS, the Council hereby finds and determines that it is a public purpose and in the best interests of the Town to refund the Refunded Obligations in order to achieve a present value debt service savings, with such savings, among other information and terms, to be included in a pricing certificate (the "Pricing Certificate") to be executed by the Pricing Officer, all in accordance with the provisions of Texas Government Code, Section 1207.007, as amended; now, therefore

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

SECTION 1. Authorization - Series Designation - Principal Amount - Purpose - Bond Date. General obligation refunding bonds of the Town shall be and are hereby authorized to be issued in the maximum aggregate principal amount hereinafter set forth to be designated and bear the title "TOWN OF FLOWER MOUND, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2023", or such other designation as specified in the Pricing Certificate (herein referred to as the "Bonds"), for the purpose of providing funds for the discharge and final payment of certain obligations of the Town (described in the preamble hereof and finally identified in the Pricing Certificate and referred to herein as the "Refunded Obligations") and to pay the costs and expenses of issuance, in accordance with the authority conferred by and in conformity with the Constitution and laws of the State of Texas, including Texas Government Code, Chapter 1207,

as amended, and Texas Government Code, Chapter 1371, as amended ("Chapter 1371"). The Bonds shall be dated (the "Bond Date") as provided in the Pricing Certificate.

**SECTION 2. Fully Registered Obligations - Terms.** The Bonds shall be issued as fully registered obligations, without coupons, and (other than the Initial Bonds referenced in Section 8 hereof) shall be in denominations of \$5,000 or any integral multiple (within a Stated Maturity) thereof, shall be lettered "R" and numbered consecutively from one (1) upward and principal shall become due and payable on a date certain in each of the years (the "Stated Maturities") and in amounts and bear interest at the rate(s) per annum in accordance with the details of the Bonds as set forth in the Pricing Certificate.

The Bonds shall bear interest on the unpaid principal amounts from the date specified in the Pricing Certificate at the rate(s) per annum shown in the Pricing Certificate (calculated on the basis of a 360-day year consisting of twelve 30-day months). Interest on the Bonds shall be payable in each year, on the dates, and commencing on the date, set forth in the Pricing Certificate.

**SECTION 3. Delegation of Authority to Pricing Officer.** (a) As authorized by Texas Government Code, Section 1207.007, as amended, and Chapter 1371, the Town Manager or the Chief Financial Officer of the Town (either, the "Pricing Officer") is hereby authorized to act on behalf of the Town in selling and delivering the Bonds and carrying out the other procedures specified in this Ordinance, including selection of the specific maturities, in whole or in part, of the Refunded Obligations to be refunded, determining the aggregate principal amount of the Bonds, the date of the Bonds, any additional or different designation or title by which the Bonds shall be known, the price at which the Bonds will be sold, the manner of sale (negotiated, privately placed or competitively bid), the years in which the Bonds will mature, the principal amount to mature in each of such years, the rate of interest to be borne by each such maturity, the date from which interest on the Bonds will accrue, the interest payment dates, the record date, the compounding dates, the price and terms upon and at which the Bonds shall be subject to redemption prior to maturity at the option of the Town, as well as any mandatory sinking fund redemption provisions, determination of the use of a book-entry-only securities clearance, settlement and transfer system, the designation of an escrow agent satisfying the requirements of Chapter 1207, the terms of any bond insurance applicable to the Bonds, any modification of the continuing disclosure undertaking contained in Section 31 hereof as may be required by the purchasers of the Bonds in connection with any amendments to Rule 15c2-12, and all other matters relating to the issuance, sale and delivery of the Bonds, all of which shall be specified in the Pricing Certificate, provided that:

(i) the aggregate original principal amount of the Bonds shall not exceed \$7,300,000;

(ii) the refunding must produce a net present value debt service savings of at least 3.50%, net of any Town contribution;

(iii) the maximum true interest cost for the Bonds shall not exceed 3.50%; and

(iv) the maximum maturity date of the Bonds shall not exceed March 1, 2033.

The execution of the Pricing Certificate shall evidence the sale date of the Bonds by the Town to the Purchasers (hereinafter defined).

If the Pricing Officer determines that bond insurance results in a net reduction of the Town's interest costs associated with the Bonds, then the Pricing Officer is authorized, in connection with effecting the sale of the Bonds, to make the selection of the municipal bond insurance company for the Bonds (the "Insurer") and to obtain from the Insurer a municipal bond insurance policy in support of the Bonds. The Pricing Officer shall have the authority to determine the provisions of the commitment for any such policy and to execute any documents to effect the issuance of said policy by the Insurer.

(b) In establishing the aggregate principal amount of the Bonds, the Pricing Officer shall establish an amount for the Bonds not exceeding the amount authorized in subsection (a)(i) above, which shall be sufficient in amount to provide for the purposes for which the Bonds are authorized and to pay costs of issuing the Bonds. The delegation made hereby shall expire if not exercised by the Pricing Officer within one (1) year of the date hereof. The Bonds shall be sold to the purchaser(s)/underwriter(s) named in the Pricing Certificate (the "Purchasers"), at such price and with and subject to such terms as set forth in the Pricing Certificate and the Purchase Contract (hereinafter defined), and may be sold by negotiated or competitive sale or by private placement. The Pricing Officer is hereby delegated the authority to designate the Purchasers, which delegation shall be evidenced by the execution of the Pricing Certificate.

**SECTION 4. Terms of Payment - Paying Agent/Registrar.** The principal of, premium, if any, and the interest on the Bonds, due and payable by reason of maturity, redemption, or otherwise, shall be payable only to the registered owners or holders of the Bonds (hereinafter called the "Holders") appearing on the registration and transfer books maintained by the Paying Agent/Registrar, and the payment thereof shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

The selection and appointment of U.S. Bank Trust Company, National Association, Dallas, Texas, to serve as "Paying Agent/Registrar" for the Bonds is hereby approved and confirmed. Books and records relating to the registration, payment, exchange and transfer of the Bonds (the "Security Register") shall at all times be kept and maintained on behalf of the Town by the Paying Agent/Registrar, all as provided herein, in accordance with the terms and provisions of a "Paying Agent/Registrar Agreement," substantially in the form attached hereto as **Exhibit A** and such reasonable rules and regulations as the Paying Agent/Registrar and the Town may prescribe. The Mayor or Mayor Pro Tem and Town Secretary are hereby authorized to execute and deliver such Paying Agent/Registrar Agreement in connection with the delivery of the Bonds. The Town covenants to maintain and provide a Paying Agent/Registrar at all times until the Bonds are paid and discharged, and any successor Paying Agent/Registrar shall be a commercial bank, trust company, financial institution, or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Bonds, the Town agrees to promptly cause a written notice thereof to be sent to each Holder by United States mail, first-class, postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

The Bonds shall be payable at their Stated Maturities or upon their earlier redemption, only upon the presentation and surrender of the Bonds to the Paying Agent/Registrar at its designated offices, initially in St. Paul, Minnesota, or, with respect to a successor Paying Agent/Registrar, at the designated offices of such successor (the "Designated Payment/Transfer

Office"); provided, however, while a Bond is registered to Cede & Co., the payment thereof upon a partial redemption of the principal amount thereof may be accomplished without presentation and surrender of such Bond. Interest on a Bond shall be paid by the Paying Agent/Registrar to the Holders whose names appears in the Security Register at the close of business on the Record Date (which shall be set forth in the Pricing Certificate) and such interest payments shall be made (i) by check sent United States mail, first-class, postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which such banking institutions are authorized to be closed; and payment on such date shall have the same force and effect as if made on the original date payment was due.

In the event of a non-payment of interest on one or more maturities of the Bonds on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such past due interest have been received from the Town. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class, postage prepaid, to the address of each Holder of the Bonds appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

**SECTION 5. Registration - Transfer - Exchange of Bonds - Predecessor Bonds.** The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each and every Holder of the Bonds issued under and pursuant to the provisions of this Ordinance, or if appropriate, the nominee thereof. Any Bond may be transferred or exchanged for Bonds of like maturity and amount and in authorized denominations upon the Security Register by the Holder, in person or by his duly authorized agent, upon surrender of such Bond to the Paying Agent/Registrar at its Designated Payment/Transfer Office for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender for assignment or transfer of any Bond (other than the Initial Bonds authorized in Section 8 hereof) for transfer at the Designated Payment/Transfer Office of the Paying Agent/Registrar, one or more new Bonds, executed on behalf of and furnished by the Town, shall be registered and issued to the assignee or transferee of the previous Holder; such Bonds to be of authorized denominations, of like Stated Maturity, and of a like aggregate principal amount as the Bond or Bonds surrendered for transfer.

At the option of the Holder, Bonds (other than the Initial Bonds authorized in Section 8 hereof) may be exchanged for other Bonds of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Bonds surrendered for exchange, upon surrender of the Bonds to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Bonds are surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Bonds, executed on behalf of and furnished by the Town, to the Holder requesting the exchange.

All Bonds issued upon any such transfer or exchange of Bonds shall be delivered to the Holders at the Designated Payment/Transfer Office of the Paying Agent/Registrar or sent by United States mail, first-class, postage prepaid, to the Holders, and, upon the registration and delivery thereof, the same shall be the valid obligations of the Town, evidencing the same obligation to pay and entitled to the same benefits under this Ordinance, as the Bonds surrendered in such transfer or exchange.

All transfers or exchanges of Bonds pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Bonds canceled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Bonds," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the new Bond or Bonds registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Bonds" shall include any mutilated, lost, destroyed, or stolen Bond for which a replacement Bond has been issued, registered, and delivered in lieu thereof pursuant to the provisions of Section 11 hereof, and such new replacement Bond shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Bond.

Neither the Town nor the Paying Agent/Registrar shall be required to transfer or exchange any Bond called for redemption, in whole or in part, within forty-five (45) days of the date fixed for the redemption of such Bond; provided, however, such limitation on transferability shall not be applicable to an exchange by the Holder of the unredeemed balance of a Bond called for redemption in part.

SECTION 6. Book-Entry-Only Transfers and Transactions. Notwithstanding the provisions contained in Sections 4 and 5 hereof relating to the payment and transfer/exchange of the Bonds, the Town hereby approves and authorizes the use of "Book-Entry-Only" securities clearance, settlement, and transfer system provided by The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York ("DTC"), in accordance with the requirements and procedures identified in the current DTC Operational Arrangements memorandum, as amended, the Blanket Issuer Letter of Representations, by and between the Town and DTC, and the Letter of Representations from the Paying Agent/Registrar to DTC (collectively, the "Depository Agreement") relating to the Bonds.

In the event the Pricing Officer elects to utilize DTC's "Book-Entry-Only" System, which election shall be made by the Pricing Officer in the Pricing Certificate, pursuant to the Depository Agreement and the rules of DTC, the Bonds shall be deposited with DTC and who shall hold said Bonds for its participants (the "DTC Participants"). While the Bonds are held by DTC under the Depository Agreement, the Holder of the Bonds on the Security Register for all purposes, including payment and notices, shall be Cede & Co., as nominee of DTC, notwithstanding the ownership of each actual purchaser or owner of each Bond (the "Beneficial Owners") being recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Bonds or otherwise ceases to provide book-entry clearance and settlement of securities transactions in general or the Town decides to discontinue the use of the system of book-entry transfers through DTC, the Town covenants and agrees with the Holders of the Bonds to cause Bonds to be printed



in definitive form and provide for the Bond certificates to be issued and delivered to DTC Participants and Beneficial Owners, as the case may be. Thereafter, the Bonds in definitive form shall be assigned, transferred and exchanged on the Security Register maintained by the Paying Agent/Registrar and payment of such Bonds shall be made in accordance with the provisions of Sections 4 and 5 hereof.

SECTION 7. Execution - Registration. The Bonds shall be executed on behalf of the Town by the Mayor or Mayor Pro Tem under the Town's seal reproduced or impressed thereon and attested by the Town Secretary. The signature of said officials on the Bonds may be manual or facsimile. Bonds bearing the manual or facsimile signatures of individuals who are or were the proper officials of the Town on the date of the adoption of this Ordinance shall be deemed to be duly executed on behalf of the Town, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Bonds to the initial purchaser(s) and with respect to Bonds delivered in subsequent exchanges and transfers, all as authorized and provided in Texas Government Code, Chapter 1201, as amended.

No Bond shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Bond either a certificate of registration substantially in the form provided in Section 9(c), manually executed by the Comptroller of Public Accounts of the State of Texas, or his or her duly authorized agent, or a certificate of registration substantially in the form provided in Section 9(d), manually executed by an authorized officer, employee or representative of the Paying Agent/Registrar, and either such certificate duly signed upon any Bond shall be conclusive evidence, and the only evidence, that such Bond has been duly certified, registered, and delivered.

SECTION 8. Initial Bonds. The Bonds herein authorized shall be initially issued as fully registered Bonds as specified in the Pricing Certificate, being a single, fully registered Bond in the aggregate principal amount noted and principal installments to become due and payable as provided in the Pricing Certificate and numbered T-1, (hereinafter called the "Initial Bond") and the Initial Bond shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Bond shall be the Bond submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s). Any time after the delivery of the Initial Bond, the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Bond delivered hereunder and exchange therefor definitive Bonds and of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 9. Forms.

(a) Forms Generally. The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of Paying Agent/Registrar, and the form of Assignment to be printed on each of the Bonds, shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and, with the Bonds to be completed and modified with the information set forth in the Pricing Certificate, may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and

endorsements (including insurance legends on insured Bonds and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the Town or determined by the Pricing Officer. The Pricing Certificate shall set forth the final and controlling forms and terms of the Bonds. Any portion of the text of any Bonds may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond.

The definitive Bonds and the Initial Bond shall be printed, lithographed, engraved, typewritten, photocopied or otherwise reproduced in any other similar manner, all as determined by the officers executing such Bonds as evidenced by their execution thereof.

(b) Form of Definitive Bonds.

REGISTERED  
NO. R-\_\_\_\_\_

PRINCIPAL AMOUNT  
\$\_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF TEXAS  
TOWN OF FLOWER MOUND  
GENERAL OBLIGATION REFUNDING BOND  
SERIES 2023

Bond Date:  
\_\_\_\_\_, 20\_\_

Interest Rate:  
\_\_\_\_\_%

Stated Maturity:  
\_\_\_\_\_, 20\_\_

CUSIP No.:  
\_\_\_\_\_

Registered Owner:

Principal Amount:

DOLLARS

The Town of Flower Mound (hereinafter referred to as the "Town"), a body corporate and political subdivision in the Counties of Denton and Tarrant, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, on the Stated Maturity date specified above the Principal Amount hereinabove stated (or so much thereof as shall not have been paid upon prior redemption), and to pay interest on the unpaid principal amount hereof from the interest payment date next preceding the "Registration Date" of this Bond appearing below (unless this Bond bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of this Bond is prior to the initial interest payment date in which case it shall bear interest from the \_\_\_\_\_) at the per annum rate of interest specified above computed on the basis of a 360 day year of twelve 30 day months; such interest being payable on \_\_\_\_\_ and \_\_\_\_\_ in each year, commencing \_\_\_\_\_, 20\_\_, until maturity or prior redemption. Principal of this Bond is payable at its Stated Maturity or upon its prior redemption to the registered owner hereof, upon presentation and surrender, at the designated offices of the Paying Agent/Registrar executing the registration certificate appearing hereon, initially in St. Paul, Minnesota, or, with respect to a successor Paying Agent/Registrar, at the designated offices of such successor (the "Designated Payment/Transfer Office"); provided, however, while this Bond is registered to Cede & Co., the payment of principal upon a partial redemption of the principal amount hereof may be accomplished without presentation and surrender of this Bond. Interest is payable to the registered owner of this Bond (or one or more Predecessor Bonds, as defined in the Ordinance hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the \_\_\_\_\_ day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United

States mail, first-class, postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Bond is one of the series specified in its title issued in the aggregate principal amount of \$\_\_\_\_\_ (herein referred to as the "Bonds") for the purpose of providing funds for the discharge and final payment of certain outstanding obligations of the Town and to pay the costs and expenses of issuance, under and in strict conformity with the Constitution and laws of the State of Texas, including Texas Government Code, Chapters 1207 and 1371, as amended, and pursuant to an Ordinance adopted by the Town Council of the Town (herein referred to as the "Ordinance").

[The Bonds maturing on the dates hereinafter identified (the "Term Bonds") are subject to mandatory redemption prior to maturity with funds on deposit in the Interest and Sinking Fund established and maintained for the payment thereof in the Ordinance, and shall be redeemed in part prior to maturity at the price of par and accrued interest thereon to the date of redemption, and without premium, on the dates and in the principal amounts as follows:

|                                                |                                                |
|------------------------------------------------|------------------------------------------------|
| Term Bonds due _____, 20__                     | Term Bonds due _____, 20__                     |
| <u>Redemption Date</u> <u>Principal Amount</u> | <u>Redemption Date</u> <u>Principal Amount</u> |
| _____, 20__                                    | _____, 20__                                    |
| _____, 20__*                                   | _____, 20__*                                   |

\* Stated maturity.

The particular Term Bonds of a Stated Maturity to be redeemed on each redemption date shall be chosen by lot by the Paying Agent/Registrar; provided, however, that the principal amount of Term Bonds for a Stated Maturity required to be redeemed on a mandatory redemption date may be reduced, at the option of the Town, by the principal amount of Term Bonds of like Stated Maturity which, at least fifty (50) days prior to a mandatory redemption date, (1) shall have been acquired by the Town at a price not exceeding the principal amount of such Term Bonds plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation or (2) shall have been redeemed pursuant to the optional redemption provisions appearing below and not theretofore credited against a mandatory redemption requirement.]

The Bonds maturing on and after \_\_\_\_\_, 20\_\_, may be redeemed prior to their Stated Maturities, at the option of the Town, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on \_\_\_\_\_, 20\_\_, or on any date thereafter, at the redemption price of par, together with accrued interest to the date of redemption.

At least thirty (30) days prior to the date fixed for any redemption of Bonds, the Town shall cause a written notice of such redemption to be sent by United States mail, first-class, postage prepaid, to the registered owners of each Bond to be redeemed, in whole or in part, at the address shown on the Security Register and subject to the terms and provisions relating thereto contained in the Ordinance. If a Bond (or any portion of its principal sum) shall have been duly called for redemption and notice of such redemption duly given, then upon such redemption date such Bond (or the portion of its principal sum to be redeemed) shall become due and payable, and interest thereon shall cease to accrue from and after the redemption date therefor; provided moneys for the payment of the redemption price and the interest on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar.

In the event a portion of the principal amount of a Bond is to be redeemed and the registered owner is someone other than Cede & Co., payment of the redemption price of such principal amount shall be made to the registered owner only upon presentation and surrender of such Bond to the Designated Payment/Transfer Office of the Paying Agent/Registrar, and a new Bond or Bonds of like maturity and interest rate in any authorized denominations provided by the Ordinance for the then unredeemed balance of the principal sum thereof will be issued to the registered owner, without charge. If a Bond is selected for redemption, in whole or in part, the Town and the Paying Agent/Registrar shall not be required to transfer such Bond to an assignee of the registered owner within forty-five (45) days of the redemption date therefor; provided, however, such limitation on transferability shall not be applicable to an exchange by the registered owner of the unredeemed balance of a Bond redeemed in part.

With respect to any optional redemption of the Bonds, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption is conditional upon the receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon the satisfaction of any prerequisites set forth in such notice of redemption; and, if sufficient moneys are not received, such notice shall be of no force and effect, the Town shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

The Bonds are payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the Town. Reference is hereby made to the Ordinance, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all of the provisions of which the owner or holder of this Bond by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of the Bonds; the terms and conditions relating to the transfer or exchange of this Bond; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the Town and the Paying Agent/Registrar; the terms and provisions upon which this Bond may be discharged at or prior to its maturity or redemption, and deemed to be no longer Outstanding thereunder; and for other terms and provisions contained therein. Capitalized terms used herein and not otherwise defined have the meanings assigned in the Ordinance.

This Bond, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the registered owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Bonds of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the

same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The Town and the Paying Agent/Registrar, and any agent of either, shall treat the registered owner whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Bond as the owner entitled to payment of principal at the Stated Maturity, or its redemption, in whole or in part, and (iii) on any other date as the owner for all other purposes, and neither the Town nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of nonpayment of interest on a Bond on a scheduled payment date and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the Town. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class, postage prepaid, to the address of each registered owner of a Bond appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented, and declared that the Town is a body corporate and political subdivision duly organized and legally existing under and by virtue of the Constitution and laws of the State of Texas; that the issuance of the Bonds is duly authorized by law; that all acts, conditions, and things required to exist and be done precedent to and in the issuance of the Bonds to render the same lawful and valid obligations of the Town have been properly done, have happened, and have been performed in regular and due time, form, and manner as required by the Constitution and laws of the State of Texas, and the Ordinance; that the Bonds do not exceed any Constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Bonds by the levy of a tax as aforestated. In case any provision in this Bond shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The terms and provisions of this Bond and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the Town Council of the Town has caused this Bond to be duly executed under the official seal of the Town.

TOWN OF FLOWER MOUND, TEXAS

ATTEST:

\_\_\_\_\_  
[Mayor][Mayor Pro Tem]

\_\_\_\_\_  
Town Secretary

(Town Seal)

(c) Form of Registration Certificate of Comptroller of Public Accounts to appear on Initial Bond only.

REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER  
OF PUBLIC ACCOUNTS  
THE STATE OF TEXAS

(  
( REGISTER NO. \_\_\_\_\_  
(

I HEREBY CERTIFY that this Bond has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this \_\_\_\_\_.

\_\_\_\_\_  
Comptroller of Public Accounts  
of the State of Texas

(Seal)

(d) Form of Certificate of Paying Agent/Registrar to appear on Definitive Bonds only.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Bond has been duly issued and registered in the name of the Registered Owner shown above under the provisions of the within-mentioned Ordinance; the bond or bonds of the above entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas, as shown by the records of the Paying Agent/Registrar.

The designated office of the Paying Agent/Registrar in St. Paul, Minnesota, is the Designated Payment/Transfer Office for this Bond.

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION, Dallas, Texas

\_\_\_\_\_  
as Paying Agent/Registrar

Registration Date:

\_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signature

(e) Form of Assignment.

## ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto  
(Print or typewrite name, address, and zip code of transferee): \_\_\_\_\_

(Social Security or other identifying number: \_\_\_\_\_  
\_\_\_\_\_) the within Bond and all rights thereunder, and hereby  
irrevocably constitutes and appoints \_\_\_\_\_  
attorney to transfer the within Bond on the books kept for registration thereof, with full power of  
substitution in the premises.

DATED: \_\_\_\_\_

Signature guaranteed:  
\_\_\_\_\_

NOTICE: The signature on this assignment  
must correspond with the name of the  
registered owner as it appears on the face of  
the within Bond in every particular.

(f) The Initial Bond shall be in the form set forth therefor in subsection (b) of this  
Section, except the heading and paragraph one shall be amended to read as follows:

NO. T-1

\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF TEXAS  
TOWN OF FLOWER MOUND  
GENERAL OBLIGATION REFUNDING BOND  
SERIES 2023

Bond Date: \_\_\_\_\_, 20\_\_

Registered Owner:

Principal Amount:

DOLLARS

The Town of Flower Mound (hereinafter referred to as the "Town"), a body corporate and  
political subdivision in the Counties of Denton and Tarrant, State of Texas, for value received,  
acknowledges itself indebted to and hereby promises to pay to the registered owner named  
above, or the registered assigns thereof, the Principal Amount hereinabove stated on  
\_\_\_\_\_ in the years and in principal installments in accordance with the following  
schedule:

STATED  
MATURITY

PRINCIPAL  
AMOUNT

INTEREST  
RATE(S)

(Information to be inserted from Pricing Certificate)

(or so much principal thereof as shall not have been redeemed prior to maturity) and to pay  
interest on the unpaid principal installments hereof from the \_\_\_\_\_ at the per annum rates  
of interest specified above computed on the basis of a 360-day year of twelve 30-day months;  
such interest being payable on \_\_\_\_\_, 20\_\_, and each \_\_\_\_\_ and  
\_\_\_\_\_ thereafter, until maturity or prior redemption. Principal installments of this

Bond are payable in the year of maturity or on a redemption date to the registered owner hereof by U.S. Bank Trust Company, National Association, Dallas, Texas (the "Paying Agent/Registrar"), upon presentation and surrender at its designated offices, initially in St. Paul, Minnesota, or, with respect to a successor paying agent/registrar, at the designated office of such successor (the "Designated Payment/Transfer Office"). Interest is payable to the registered owner of this Bond whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date," which is the \_\_\_\_\_ day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States mail, first-class, postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the registered owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to be closed; and payment on such date shall have the same force and effect as if made on the original date payment was due.

SECTION 10. Levy of Taxes. To provide for the payment of the "Debt Service Requirements" of the Bonds, being (i) the interest on the Bonds and (ii) a sinking fund for their redemption at maturity or a sinking fund of 2% (whichever amount is the greater) there is hereby levied, and there shall be annually assessed and collected in due time, form, and manner, a tax on all taxable property in the Town, within the limitations by law prescribed, sufficient to pay the Debt Service Requirements on the Bonds as the same becomes due and payable; and such tax hereby levied on each one hundred dollars' valuation of taxable property in the Town for the payment of the Debt Service Requirements of the Bonds shall be at a rate from year to year as will be ample and sufficient to provide funds each year to pay the principal of and interest on said Bonds while Outstanding; full allowance being made for delinquencies and costs of collection; the taxes levied, assessed, and collected for and on account of the Bonds shall be accounted for separate and apart from all other funds of the Town and shall be deposited in the "SPECIAL SERIES 2023 GENERAL OBLIGATION REFUNDING BOND FUND", or such other fund designation as specified in the Pricing Certificate (the "Interest and Sinking Fund") to be maintained at an official depository of the Town's funds; and such tax hereby levied, and to be assessed and collected annually, is hereby pledged to the payment of the Bonds.

PROVIDED, however, with regard to any payment to become due on the Bonds prior to the tax delinquency date next following the annual assessment of taxes levied which next follows the Bond Date, if any, sufficient current funds will be available and are hereby appropriated to make such payments; and the Mayor, Mayor Pro Tem, Town Manager, Chief Financial Officer and Town Secretary of the Town, individually or jointly, are hereby authorized and directed to transfer and deposit in the Interest and Sinking Fund such current funds which, together with the accrued interest received from the initial purchasers, will be sufficient to pay the payments due on the Bonds prior to the tax delinquency date next following the annual assessment of taxes levied which next follows the Bond Date.

The Mayor, Mayor Pro Tem, Town Manager, Chief Financial Officer and Town Secretary of the Town, individually or jointly, are hereby authorized and directed to cause to be transferred



to the Paying Agent/Registrar for the Bonds, from funds on deposit in the Interest and Sinking Fund, amounts sufficient to fully pay and discharge promptly each installment of interest and principal of the Bonds as the same accrues or matures or comes due by reason of redemption prior to maturity; such transfers of funds to be made in such manner as will cause collected funds to be deposited with the Paying Agent/Registrar on or before each principal and interest payment date for the Bonds.

SECTION 11. Mutilated - Destroyed - Lost and Stolen Bonds. In case any Bond shall be mutilated, or destroyed, lost, or stolen, the Paying Agent/Registrar may execute and deliver a replacement Bond of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Bond; and with respect to a lost, destroyed, or stolen Bond, a replacement Bond may be issued only upon the approval of the Town and after (i) the filing by the Holder with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss, or theft of such Bond, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying Agent/Registrar of indemnification in an amount satisfactory to hold the Town and the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Bond shall be borne by the Holder of the Bond mutilated, or destroyed, lost, or stolen.

Every replacement Bond issued pursuant to this Section shall be a valid and binding obligation of the Town, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Bonds; notwithstanding the enforceability of payment by anyone of the destroyed, lost, or stolen Bonds.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost, or stolen Bonds.

SECTION 12. Satisfaction of Obligation of Town. If the Town shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Bonds, at the times and in the manner stipulated in this Ordinance and the Pricing Certificate, then the pledge of taxes levied under this Ordinance and all covenants, agreements, and other obligations of the Town to the Holders shall thereupon cease, terminate, and be discharged and satisfied.

Bonds or any principal amount(s) thereof shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Bonds or the principal amount(s) thereof at maturity or to the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (ii) Government Securities (as defined below) shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Securities have been certified by an independent accounting or consulting firm to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any moneys deposited therewith, if any, to pay when due the principal of and interest on such Bonds, or the principal amount(s) thereof, on and prior to the Stated Maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/Registrar have been made) the redemption date thereof. The Town covenants that no deposit of moneys or Government Securities will be made under this Section and no use made of any such deposit which would cause the Bonds to be treated as "arbitrage bonds" within

the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, or regulations adopted pursuant thereto.

Any moneys so deposited with the Paying Agent/Registrar, or an authorized escrow agent, and all income from Government Securities held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Bonds, or any principal amount(s) thereof, or interest thereon with respect to which such moneys have been so deposited shall be remitted to the Town or deposited as directed by the Town. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Bonds and remaining unclaimed for a period of three (3) years after the Stated Maturity, or applicable redemption date, of the Bonds such moneys were deposited and are held in trust to pay shall upon the request of the Town be remitted to the Town against a written receipt therefor. Notwithstanding the above and foregoing, any remittance of funds from the Paying Agent/Registrar to the Town shall be subject to any applicable unclaimed property laws of the State of Texas, including the provisions of Title 6 of the Texas Property Code, as amended.

Unless otherwise modified by the Pricing Officer, the term "Government Securities" shall mean (a) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (b) noncallable obligations of an agency or instrumentality of the United States of America, including obligations unconditionally guaranteed or insured by the agency or instrumentality and, on the date of their acquisition or purchase by the Town, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, (c) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date of their acquisition or purchase by the Town, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent and (d) any other then authorized securities or obligations that may be used to defease obligations such as the Bonds under the then applicable laws of the State of Texas.

The Town reserves the right, subject to satisfying the requirements of (i) and (ii) above, to substitute other Government Securities for the Government Securities originally deposited, to reinvest the uninvested moneys on deposit for such defeasance and to withdraw for the benefit of the Town moneys in excess of the amount required for such defeasance.

Upon such deposit as described above, such Bonds shall no longer be regarded to be outstanding or unpaid. Provided, however, the Town has reserved the option, to be exercised at the time of the defeasance of the Bonds, to call for redemption, at an earlier date, those Bonds which have been defeased to their maturity date, if the Town: (i) in the proceedings providing for the firm banking and financial arrangements, expressly reserves the right to call the Bonds for redemption; (ii) gives notice of the reservation of that right to the Holders of the Bonds immediately following the making of the firm banking and financial arrangements; and (iii) directs that notice of the reservation be included in any redemption notices that it authorizes.

**SECTION 13. Ordinance a Contract - Amendments - Outstanding Bonds.** This Ordinance, together with the Pricing Certificate, shall constitute a contract with the Holders from time to time, be binding on the Town, and shall not be amended or repealed by the Town so long as any Bond remains Outstanding except as permitted in this Section and in Section 31 hereof. The Town may, without the consent of or notice to any Holders, from time to time and at any time, amend this Ordinance or any provision in the Pricing Certificate in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the Town may, with the consent of Holders who own a majority

of the aggregate of the principal amount of the Bonds then Outstanding, amend, add to, or rescind any of the provisions of this Ordinance or any provision in the Pricing Certificate; provided that, without the consent of all Holders of Outstanding Bonds, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of and interest on the Bonds, reduce the principal amount thereof, the redemption price, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of or interest on the Bonds, (2) give any preference to any Bond over any other Bond, or (3) reduce the aggregate principal amount of Bonds required to be held by Holders for consent to any such amendment, addition, or rescission.

The term "Outstanding" when used in this Ordinance with respect to Bonds means, as of the date of determination, all Bonds theretofore issued and delivered under this Ordinance, except:

(1) those Bonds cancelled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;

(2) those Bonds deemed to be duly paid by the Town in accordance with the provisions of Section 12 hereof; and

(3) those mutilated, destroyed, lost, or stolen Bonds which have been replaced with Bonds registered and delivered in lieu thereof as provided in Section 11 hereof.

#### SECTION 14. Covenants to Maintain Tax-Exempt Status.

(a) Definitions. When used in this Section, the following terms have the following meanings:

"*Closing Date*" means the date on which the Bonds are first authenticated and delivered to the initial purchasers against payment therefor.

"*Code*" means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

"*Computation Date*" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"*Gross Proceeds*" means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Bonds.

"*Investment*" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"*Nonpurpose Investment*" means any investment property, as defined in Section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and which is not acquired to carry out the governmental purposes of the Bonds.

"*Rebate Amount*" has the meaning set forth in Section 1.148-1(b) of the Regulations.

*“Regulations”* means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

*“Yield”* of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The Town shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction, or improvement of which is to be financed (or refinanced) directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in Section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the Town receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the Town shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, the Town shall at all times prior to the last Stated Maturity of Bonds:

(i) exclusively own, operate, and possess all property the acquisition, construction, or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Bonds (including property financed with Gross Proceeds of the Refunded Obligations), and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed, or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department, and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(ii) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Bonds or any property the acquisition, construction, or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds (including property financed with Gross Proceeds of the Refunded Obligations), other than taxes of general application within the Town or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by Section 141 of the Code and the Regulations and rulings thereunder, the Town shall not use Gross Proceeds of the Bonds to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be “loaned” to a person or entity if: (1) property acquired, constructed, or improved with such Gross Proceeds is

sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output, or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed, or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the Town shall not at any time prior to the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Bonds.

(f) Not Federally Guaranteed. Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the Town shall not take or omit to take any action which would cause the Bonds to be federally guaranteed within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The Town shall timely file the information required by Section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in Section 148(f) of the Code and the Regulations and rulings thereunder:

(i) The Town shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six (6) years after the day on which the last outstanding Bond is discharged. However, to the extent permitted by law, the Town may commingle Gross Proceeds of the Bonds with other money of the Town, provided that the Town separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(ii) Not less frequently than each Computation Date, the Town shall calculate the Rebate Amount in accordance with rules set forth in Section 148(f) of the Code and the Regulations and rulings thereunder. The Town shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(iii) As additional consideration for the purchase of the Bonds by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the Holders thereof for federal income tax purposes, the Town shall pay to the United States out of the general fund, other appropriate fund, or, if permitted by applicable Texas statute, regulation, or opinion of the Attorney General of the State of Texas, the Interest and Sinking Fund, the amount that when added to the future value of previous rebate payments made for the Bonds equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate

Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place, and in the manner as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(iv) The Town shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the Town shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Bonds not been relevant to either party.

(j) Elections. The Town hereby directs and authorizes the Mayor, Mayor Pro Tem, Deputy Mayor Pro Tem, Town Manager and Chief Financial Officer of the Town, individually or jointly, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as one or more of such persons deems necessary or appropriate in connection with the Bonds, in the Certificate as to Tax Exemption, or similar or other appropriate certificate, form, or document.

(k) Bonds Not Hedge Bonds. At the time the original obligations refunded by the Bonds were issued, the Town reasonably expected to spend at least 85% of the spendable proceeds of such obligations within three years after such obligations were issued and (2) not more than 50% of the proceeds of the original obligations refunded by the Bonds were invested in Nonpurpose Investments having a substantially guaranteed Yield for a period of 4 years or more.

(l) Current Refunding. The Bonds are being issued to pay and discharge in full the Refunded Obligations and such payment of the Refunded Obligations will occur within ninety (90) days after the issuance of the Bonds.

(m) Qualified Tax-Exempt Obligations. The Pricing Officer is hereby authorized to designate in the Pricing Certificate the designation of the Bonds as "qualified tax-exempt obligations" in accordance with the provisions of the paragraph (3) of subsection (b) of Section 265 of the Code in the event the Bonds qualify for such designation and confirm that the Bonds are not "private activity bonds" as defined in the Code and confirm the amount of "tax-exempt obligations" to be issued by the Town (including all subordinate entities of the Town) for the calendar year in which the Bonds are issued will not exceed the applicable limitation.

SECTION 15. Sale of Bonds - Official Statement. The Bonds authorized by this Ordinance are to be sold by the Town to the Purchasers in accordance with a bond purchase agreement in the event of a negotiated sale, letter agreement to purchase in the event of a private placement, or the successful bid form in the event of a competitive sale, as applicable (the "Purchase Contract"), the terms and provisions of which Purchase Contract are to be determined by the Pricing Officer in accordance with Section 3 hereof. The Pricing Officer is hereby authorized and directed to execute the Purchase Contract for and on behalf of the Town, as the act and deed of this Council, and to make a determination as to whether the terms are in the Town's best interests, which determination shall be final.

With regard to such terms and provisions of the Purchase Contract, the Pricing Officer is hereby authorized to come to an agreement with the Purchasers on the following, among other matters:

1. The details of the purchase and sale of the Bonds;
2. The details of any public offering of the Bonds by the Purchasers, if any;
3. The details of any Official Statement or similar disclosure document (and, if appropriate, any Preliminary Official Statement) relating to the Bonds and the Town's Rule 15c2-12 compliance, if applicable;
4. A security deposit for the Bonds, if any;
5. The representations and warranties of the Town to the Purchasers;
6. The details of the delivery of, and payment for, the Bonds;
7. The Purchasers' obligations under the Purchase Contract;
8. The certain conditions to the obligations of the Town under the Purchase Contract;
9. Termination of the Purchase Contract;
10. Particular covenants of the Town;
11. The survival of representations made in the Purchase Contract;
12. The payment of any expenses relating to the Purchase Contract;
13. Notices; and
14. Any and all such other details that are found by the Pricing Officer to be necessary and advisable for the purchase and sale of the Bonds.

The Mayor or Mayor Pro Tem and Town Secretary of the Town and the Pricing Officer are further authorized and directed to deliver for and on behalf of the Town copies of a Preliminary Official Statement and Official Statement prepared in connection with the offering of the Bonds by the Purchasers, in final form as may be required by the Purchasers, and such final Official Statement as delivered by said officials shall constitute the Official Statement authorized for distribution and use by the Purchasers.

SECTION 16. Escrow Agreement. An "Escrow Agreement" (the "Escrow Agreement") by and between the Town and an authorized escrow agent (the "Escrow Agent"), if any such agreement is required in connection with the issuance of the Bonds, shall be attached to and approved in the Pricing Certificate. Such Escrow Agreement is hereby authorized to be finalized and executed by the Pricing Officer for and on behalf of the Town and as the act and deed of this Council; and such Escrow Agreement as executed by said Pricing Officer shall be deemed

approved by this Council and constitute the Escrow Agreement herein approved. With regard to the finalization of certain terms and provisions of any Escrow Agreement, a Pricing Officer is hereby authorized to come to an agreement with the Escrow Agent on the following details, among other matters:

1. The identification of the Refunded Obligations;
2. The creation and funding of the Escrow Fund or Funds; and
3. The Escrow Agent's compensation, administration of the Escrow Fund or Funds, and the settlement of any paying agents' charges relating to the Refunded Obligations.

Furthermore, appropriate officials of the Town in cooperation with the Escrow Agent are hereby authorized and directed to make the necessary arrangements for the purchase of the escrowed securities referenced in the Escrow Agreement, if any, and the delivery thereof to the Escrow Agent on the day of delivery of the Bonds to the Purchasers for deposit to the credit of the "TOWN OF FLOWER MOUND, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2023 ESCROW FUND" (referred to herein as the "Escrow Fund"), or such other designation as specified in the Pricing Certificate; all as contemplated and provided in Chapter 1207, the Ordinance, the Pricing Certificate and the Escrow Agreement.

On or immediately prior to the date of the delivery of the Bonds to the Purchasers, the Pricing Officer, or other authorized Town official listed in Section 33 hereof, shall also cause to be deposited (and is hereby authorized to cause to be deposited) with the Escrow Agent or the paying agent for the Refunded Obligations from any moneys on deposit in the debt service fund(s) maintained for the payment of the Refunded Obligations an amount which, together with the proceeds of sale of the Bonds, and the investment earnings thereon, will be sufficient to pay in full the Refunded Obligations (or the amount of accrued interest due thereon) scheduled to mature and authorized to be redeemed on the earliest date established in the Pricing Certificate for the redemption of any of the Refunded Obligations (or the earliest date of payment, to be made from moneys in the Escrow Fund(s), as established in the Pricing Certificate, of the amount of accrued interest due thereon).

To the extent an Escrow Agreement is not required in connection with the issuance of the Bonds, the Pricing Officer is authorized to enter into a deposit letter agreement or such other comparable document which evidences the receipt of refunding bond proceeds with the paying agent for the Refunded Obligations. The deposit letter agreement or such other comparable document as executed by the Pricing Officer shall be deemed approved by the Town Council and constitute the agreement herein approved.

**SECTION 17. Refunded Obligations.** (a) In order to provide for the refunding, discharge, and retirement of the Refunded Obligations as selected by the Pricing Officer, the Refunded Obligations, identified, described, and in the amount set forth in the Pricing Certificate, are called for redemption on the first date such Refunded Obligations are subject to redemption or such other date specified by the Pricing Officer in the Pricing Certificate at the price of par plus accrued interest to the redemption date, and a notice of such redemption shall be given in accordance with the applicable provisions of the ordinance adopted by this Council, which authorized the issuance of the Refunded Obligations. The Pricing Officer is hereby authorized and directed to issue or cause to be issued a Notice of Redemption for the Refunded Obligations, in substantially the form set forth as an exhibit to the Pricing Certificate, to the paying agent/registrar for the Refunded Obligations, in accordance with the redemption provisions applicable to the Refunded Obligations.



(b) The paying agent/registrar for Refunded Obligations is hereby directed to provide the appropriate notice of redemption as required by the ordinance authorizing the issuance of the Refunded Obligations and is hereby directed to make appropriate arrangements so that the Refunded Obligations may be redeemed on the redemption date specified in the Pricing Certificate.

(c) The source of funds for payment of the principal of and interest on the Refunded Obligations on their respective maturity or redemption dates shall be from the funds deposited with the Escrow Agent, pursuant to the Escrow Agreement, if any, or with the paying agent/registrar for the Refunded Obligations pursuant the provisions of Chapter 1207, this Ordinance and the Pricing Certificate finalized by the Pricing Officer.

SECTION 18. Control and Custody of Bonds. The Mayor or Mayor Pro Tem of the Town shall be and is hereby authorized to take and have charge of all necessary ordinances, resolutions, orders and records, including the definitive Bonds and the Initial Bonds, pending the investigation and approval of the Initial Bonds by the Attorney General of the State of Texas, and the registration of the Initial Bonds to the Comptroller of Public Accounts and the delivery thereof to the Purchasers.

Furthermore, the Mayor, Mayor Pro Tem, Deputy Mayor Pro Tem, Town Manager, Chief Financial Officer and Town Secretary individually or collectively, are hereby authorized and directed to furnish and execute such documents and certifications relating to the Town and the issuance of the Bonds, including a certification as to facts, estimates, circumstances and reasonable expectations pertaining to the use and expenditure and investment of the proceeds of the Bonds as may be necessary for the approval of the Attorney General and their registration by the Comptroller of Public Accounts. In addition, such officials, together with the Town's financial advisor, bond counsel and the Paying Agent/Registrar, are authorized and directed to make the necessary arrangements for the delivery of the Initial Bonds to the initial purchasers.

SECTION 19. Proceeds of Sale. Immediately following the delivery of the Bonds, the proceeds of sale (less those proceeds of sale designated to pay costs of issuance and any accrued interest received from the Purchasers of the Bonds or additional proceeds being deposited to the Interest and Sinking Fund) shall be deposited with the Escrow Agent for application and disbursement in accordance with the provisions of the Escrow Agreement or deposited with the paying agent/registrar for the Refunded Obligations for the payment and redemption of the Refunded Obligations. The proceeds of sale of the Bonds not so deposited with the Escrow Agent (or the paying agent/registrar for the Refunded Obligations) for the refunding of the Refunded Obligations shall be disbursed for payment of costs of issuance, or deposited in the Interest and Sinking Fund for the Bonds, all in accordance with written instructions from the Town or its financial advisor. Such proceeds of sale may be invested in authorized investments and any investment earnings realized may be (with respect to the accrued interest received from the Purchasers) deposited in the Interest and Sinking Fund as shall be determined by this Council.

Additionally, the Pricing Officer shall determine the amount of any Town contribution to the refunding from moneys on deposit in the interest and sinking fund maintained for the payment of the Refunded Obligations.

SECTION 20. Notices to Holders - Waiver. Wherever this Ordinance or the Pricing Certificate provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States mail, first-

class, postage prepaid, to the address of each Holder appearing in the Security Register at the close of business on the business day next preceding the mailing of such notice.

In any case in which notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Bonds. Where this Ordinance or the Pricing Certificate provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 21. Cancellation. All Bonds surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly cancelled by it and, if surrendered to the Town, shall be delivered to the Paying Agent/Registrar and, if not already cancelled, shall be promptly cancelled by the Paying Agent/Registrar. The Town may at any time deliver to the Paying Agent/Registrar for cancellation any Bonds previously certified or registered and delivered which the Town may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly cancelled by the Paying Agent/Registrar. All cancelled Bonds held by the Paying Agent/Registrar shall be returned to the Town.

SECTION 22. Bond Counsel Opinion. The obligation of the Purchasers to accept delivery of the Bonds is subject to being furnished a final opinion of Norton Rose Fulbright US LLP, Dallas, Texas, approving the Bonds as to their validity, said opinion to be dated and delivered as of the date of delivery and payment for the Bonds. A true and correct reproduction of said opinion is hereby authorized to be printed on the Bonds, or an executed counterpart thereof is hereby authorized to be either printed on definitive printed obligations or deposited with DTC along with the global certificates for the implementation and use of the Book-Entry-Only System used in the settlement and transfer of the Bonds. The Town Council confirms the continuation of the engagement of Norton Rose Fulbright US LLP as the Town's bond counsel.

SECTION 23. CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Bonds shall be of no significance or effect as regards the legality thereof, and neither the Town nor attorneys approving the Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Bonds.

SECTION 24. Benefits of Ordinance. Nothing in this Ordinance or the Pricing Certificate, expressed or implied, is intended or shall be construed to confer upon any person other than the Town, the Paying Agent/Registrar and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof or the Pricing Certificate, this Ordinance and all of its provisions and the Pricing Certificate being intended to be and being for the sole and exclusive benefit of the Town, the Paying Agent/Registrar, and the Holders.

SECTION 25. Inconsistent Provisions. All ordinances or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance or the Pricing Certificate are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters contained herein.

SECTION 26. Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 27. Effect of Headings. The Section headings herein are for convenience of reference only and shall not affect the construction hereof.

SECTION 28. Construction of Terms. If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine, or neuter gender shall be considered to include the other genders.

SECTION 29. Severability. If any provision of this Ordinance or the Pricing Certificate or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the Pricing Certificate and the application thereof to other circumstances shall nevertheless be valid, and this Council hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 30. Incorporation of Findings and Determinations. The findings and determinations of this Council contained in the preamble hereof are hereby incorporated by reference and made a part of this Ordinance for all purposes as if the same were restated in full in this Section.

SECTION 31. Continuing Disclosure Undertaking. This Section shall apply unless the Pricing Officer determines in the Pricing Certificate that an undertaking is not required pursuant to the Rule (defined below).

(a) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

“*Financial Obligation*” means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that “financial obligation” shall not include municipal securities as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

“*MSRB*” means the Municipal Securities Rulemaking Board.

“*Rule*” means SEC Rule 15c2-12, as amended from time to time or officially interpreted by the SEC.

“*SEC*” means the United States Securities and Exchange Commission.

(b) Annual Reports. The Town shall provide annually to the MSRB (1) within six months after the end of each fiscal year, beginning with the year stated in the Pricing Certificate, financial information and operating data with respect to the Town of the general type included in the final Official Statement approved by the Pricing Officer and described in the Pricing Certificate and (2) if not provided as part of such financial information and operating data, audited financial statements of the Town within twelve months after the end of each fiscal year, when and if available. Any financial statements so provided shall be prepared in accordance with the accounting principles described in the Pricing Certificate, or such other accounting principles as

the Town may be required to employ from time to time pursuant to state law or regulation, and audited, if the Town commissions an audit of such statements and the audit is completed within the period during which they must be provided. If audited financial statements are not available by the required time, the Town will file unaudited financial statements within such twelve-month period and audited financial statements when and if such audited financial statements become available.

If the Town changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the Town otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document available to the public on the MSRB's Internet Web site or filed with the SEC.

(c) Notice of Certain Events. The Town shall provide notice of any of the following events with respect to the Bonds to the MSRB in a timely manner and not more than 10 business days after occurrence of the event:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
7. Modifications to rights of holders of the Bonds, if material;
8. Bond calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Bonds, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership, or similar event of the Town, which shall occur as described below;
13. The consummation of a merger, consolidation, or acquisition involving the Town or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.
15. Incurrence of a Financial Obligation of the Town, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Town, any of which affect security holders, if material; and

16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Town, any of which reflect financial difficulties.

For these purposes, (a) any event described in the immediately preceding item 12 is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the Town in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Town, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Town and (b) the Town intends the words used in the immediately preceding items 15 and 16 to have the meanings ascribed to them in SEC Release No. 34-83885, dated August 20, 2018.

The Town shall notify the MSRB, in a timely manner, of any failure by the Town to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such Section.

(d) Filings with the MSRB. All financial information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Section shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

(e) Limitations, Disclaimers and Amendments. The Town shall be obligated to observe and perform the covenants specified in this Section while, but only while, the Town remains an “obligated person” with respect to the Bonds within the meaning of the Rule, except that the Town in any event will give the notice required by subsection (c) hereof of any Bond calls and defeasance that cause the Town to be no longer such an “obligated person.”

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The Town undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the Town’s financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The Town does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE TOWN BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE TOWN, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the Town in observing or performing its obligations under this Section shall constitute a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the Town under federal and state securities laws.

Notwithstanding anything to the contrary in this Ordinance, the provisions of this Section may be amended by the Town from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Town, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Bonds consent to such amendment or (b) a person that is unaffiliated with the Town (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Bonds. The provisions of this Section may also be amended from time to time or repealed by the Town if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the Town's right to do so would not prevent an underwriter of the initial public offering of the Bonds from lawfully purchasing or selling Bonds in such offering. If the Town so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided pursuant to subsection (b) of this Section an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

SECTION 32. Municipal Bond Insurance. The Bonds may be sold with the principal of and interest thereon being insured by a municipal bond insurance provider authorized to transact business in the State of Texas. The Pricing Officer is hereby authorized to make the selection of municipal bond insurance (if any) for the Bonds and make the determination of the provisions of any commitment therefor.

SECTION 33. Further Procedures. Any one or more of the Mayor, Mayor Pro Tem, Deputy Mayor Pro Tem, Town Manager, Chief Financial Officer and Town Secretary are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of the Town all agreements, instruments, certificates or other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the issuance of the Bonds. In addition, prior to the initial delivery of the Bonds, the Mayor, Mayor Pro Tem, Deputy Mayor Pro Tem, Town Manager, Chief Financial Officer or Bond Counsel to the Town are each hereby authorized and directed to approve any changes or corrections to this Ordinance or to any of the documents authorized and approved by this Ordinance, including the Pricing Certificate: (i) in order to cure any ambiguity, formal defect or omission in this Ordinance or such other document; or (ii) as requested by the Attorney General of the State of Texas or his representative to obtain the approval of the Bonds by the Attorney General and if such officer or counsel determines that such changes are consistent with the intent and purpose of this Ordinance, which determination shall be final. In the event that any officer of the Town whose signature shall appear on any document shall cease to be such officer before

the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 34. Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 35. Effective Date. In accordance with the provisions of Texas Government Code, Section 1201.028, as amended, this Ordinance shall be in force and effect from and after its passage on the date shown below and it is so ordained.

*[Remainder of page left blank intentionally]*

DULY PASSED AND APPROVED BY THE TOWN COUNCIL ON JUNE 19, 2023.

TOWN OF FLOWER MOUND, TEXAS

---

Derek France, MAYOR

(Town Seal)

ATTEST:

---

Theresa Scott, TOWN SECRETARY



EXHIBIT A  
PAYING AGENT/REGISTRAR AGREEMENT

## **PAYING AGENT/REGISTRAR AGREEMENT**

THIS AGREEMENT is entered into as of \_\_\_\_\_, 2023 (this "Agreement"), by and between U.S. Bank Trust Company, National Association, a banking association duly organized and existing under the laws of the United States of America, or its successors (the "Bank") and the Town of Flower Mound, Texas (the "Issuer"),

### **RECITALS**

WHEREAS, the Issuer has duly authorized and provided for the issuance of its "Town of Flower Mound, Texas General Obligation Refunding Bonds, Series 2023" (the "Securities"), dated \_\_\_\_\_, 2023, such Securities scheduled to be delivered to the initial purchasers thereof on or about \_\_\_\_\_, 2023; and

WHEREAS, the Issuer has selected the Bank to serve as Paying Agent/Registrar in connection with the payment of the principal of, premium, if any, and interest on said Securities and with respect to the registration, transfer and exchange thereof by the registered owners thereof; and

WHEREAS, the Bank has agreed to serve in such capacities for and on behalf of the Issuer and has full power and authority to perform and serve as Paying Agent/Registrar for the Securities;

NOW, THEREFORE, it is mutually agreed as follows:

### **ARTICLE ONE APPOINTMENT OF BANK AS PAYING AGENT AND REGISTRAR**

**Section 1.01 Appointment.** The Issuer hereby appoints the Bank to serve as Paying Agent with respect to the Securities, and, as Paying Agent for the Securities, the Bank shall be responsible for paying on behalf of the Issuer the principal, premium (if any), and interest on the Securities as the same become due and payable to the registered owners thereof; all in accordance with this Agreement and the "Authorizing Document" (hereinafter defined). The Issuer hereby appoints the Bank as Registrar with respect to the Securities and, as Registrar for the Securities, the Bank shall keep and maintain for and on behalf of the Issuer books and records as to the ownership of said Securities and with respect to the transfer and exchange thereof as provided herein and in the Authorizing Document.

The Bank hereby accepts its appointment, and agrees to serve as the Paying Agent and Registrar for the Securities.

**Section 1.02 Compensation.** As compensation for the Bank's services as Paying Agent/Registrar, the Issuer hereby agrees to pay the Bank the fees and amounts set forth in **Annex A** attached hereto; provided however, notwithstanding anything herein or in Annex A to the contrary, the aggregate value of this agreement shall be less than the dollar limitation set forth in Section 2271.002(a)(2) and Section 2274.002(a)(2) of the Texas Government Code, as amended.

In addition, the Issuer agrees to reimburse the Bank upon its request for all reasonable expenses, disbursements and advances incurred or made by the Bank in accordance with any of

the provisions hereof (including the reasonable compensation and the expenses and disbursements of its agents and counsel).

## **ARTICLE TWO DEFINITIONS**

**Section 2.01 Definitions.** For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

“Acceleration Date” on any Security means the date, if any, on and after which the principal or any or all installments of interest, or both, are due and payable on any Security which has become accelerated pursuant to the terms of the Security.

“Authorizing Document” means the resolution, order, or ordinance of the governing body of the Issuer pursuant to which the Securities are issued, as the same may be amended or modified, including any pricing certificate related thereto, certified by the secretary or any other officer of the Issuer and delivered to the Bank.

“Bank Office” means the designated office of the Bank at the address shown in Section 3.01 hereof. The Bank will notify the Issuer in writing of any change in location of the Bank Office.

“Holder” and “Security Holder” each means the Person in whose name a Security is registered in the Security Register.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision of a government.

“Predecessor Securities” of any particular Security means every previous Security evidencing all or a portion of the same obligation as that evidenced by such particular Security (and, for the purposes of this definition, any mutilated, lost, destroyed, or stolen Security for which a replacement Security has been registered and delivered in lieu thereof pursuant to Section 4.06 hereof and the Authorizing Document).

“Redemption Date”, when used with respect to any Security to be redeemed, means the date fixed for such redemption pursuant to the terms of the Authorizing Document.

“Responsible Officer”, when used with respect to the Bank, means the Chairman or Vice-Chairman of the Board of Directors, the Chairman or Vice-Chairman of the Executive Committee of the Board of Directors, the President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer, any Assistant Treasurer, the Cashier, any Assistant Cashier, any Trust Officer or Assistant Trust Officer, or any other officer of the Bank customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any

other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

“Security Register” means a register maintained by the Bank on behalf of the Issuer providing for the registration and transfers of Securities.

“Stated Maturity” means the date specified in the Authorizing Document the principal of a Security is scheduled to be due and payable.

**Section 2.02 Other Definitions.** The terms “Bank,” “Issuer,” and “Securities (Security)” have the meanings assigned to them in the recital paragraphs of this Agreement.

The term “Paying Agent/Registrar” refers to the Bank in the performance of the duties and functions of this Agreement.

### **ARTICLE THREE PAYING AGENT**

**Section 3.01 Duties of Paying Agent.** As Paying Agent, the Bank shall pay, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, on behalf of the Issuer the principal of each Security at its Stated Maturity, Redemption Date or Acceleration Date, to the Holder upon surrender of the Security to the Bank at the following address:

U.S. Bank Trust Company, National Association  
Attention: Bond Operations  
111 Fillmore Avenue East  
St. Paul, Minnesota 55107-1402

As Paying Agent, the Bank shall, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, pay on behalf of the Issuer the interest on each Security when due, by computing the amount of interest to be paid each Holder and making payment thereof to the Holders of the Securities (or their Predecessor Securities) on the Record Date (as defined in the Authorizing Document). All payments of principal and/or interest on the Securities to the registered owners shall be accomplished (1) by the issuance of checks, payable to the registered owners, drawn on the paying agent account provided in Section 5.05 hereof, sent by United States mail, first class postage prepaid, to the address appearing on the Security Register or (2) by such other method, acceptable to the Bank, requested in writing by the Holder at the Holder’s risk and expense.

**Section 3.02 Payment Dates.** The Issuer hereby instructs the Bank to pay the principal of and interest on the Securities on the dates specified in the Authorizing Document.

### **ARTICLE FOUR REGISTRAR**

**Section 4.01 Security Register - Transfers and Exchanges.** The Bank agrees to keep and maintain for and on behalf of the Issuer at the Bank Office books and records (herein sometimes referred to as the “Security Register”) for recording the names and addresses of the Holders of the Securities, the transfer, exchange and replacement of the Securities and the payment of the principal of and interest on the Securities to the Holders and containing such other

information as may be reasonably required by the Issuer and subject to such reasonable regulations as the Issuer and the Bank may prescribe. The Bank represents and warrants that it will at all times have immediate access to the Security Register by electronic or other means and will be capable at all times of producing a hard copy of the Security Register for use by the Issuer. All transfers, exchanges and replacements of Securities shall be noted in the Security Register.

Every Security surrendered for transfer or exchange shall be duly endorsed or be accompanied by a written instrument of transfer, the signature on which has been guaranteed by an officer of a federal or state bank or a member of the Financial Industry Regulatory Authority, such written instrument to be in a form satisfactory to the Bank and duly executed by the Holder thereof or his agent duly authorized in writing.

The Bank may request any supporting documentation it feels necessary to effect a re-registration, transfer or exchange of the Securities.

To the extent possible and under reasonable circumstances, the Bank agrees that, in relation to an exchange or transfer of Securities, the exchange or transfer by the Holders thereof will be completed and new Securities delivered to the Holder or the assignee of the Holder in not more than three (3) business days after the receipt of the Securities to be cancelled in an exchange or transfer and the written instrument of transfer or request for exchange duly executed by the Holder, or his duly authorized agent, in form and manner satisfactory to the Paying Agent/Registrar.

**Section 4.02 Securities.** The Issuer shall provide additional Securities when needed to facilitate transfers or exchanges thereof. The Bank covenants that such additional Securities, if and when provided, will be kept in safekeeping pending their use and reasonable care will be exercised by the Bank in maintaining such Securities in safekeeping, which shall be not less than the care maintained by the Bank for debt securities of other governments or corporations for which it serves as registrar, or that is maintained for its own securities.

**Section 4.03 Form of Security Register.** The Bank, as Registrar, will maintain the Security Register relating to the registration, payment, transfer and exchange of the Securities in accordance with the Bank's general practices and procedures in effect from time to time. The Bank shall not be obligated to maintain such Security Register in any form other than those which the Bank has currently available and currently utilizes at the time.

The Security Register may be maintained in written form or in any other form capable of being converted into written form within a reasonable time.

**Section 4.04 List of Security Holders.** The Bank will provide the Issuer at any time requested by the Issuer, upon payment of the required fee, a copy of the information contained in the Security Register. The Issuer may also inspect the information contained in the Security Register at any time the Bank is customarily open for business, provided that reasonable time is allowed the Bank to provide an up-to-date listing or to convert the information into written form.

The Bank will not release or disclose the contents of the Security Register to any person other than to, or at the written request of, an authorized officer or employee of the Issuer, except upon receipt of a court order or as otherwise required by law. Upon receipt of a court order and prior to the release or disclosure of the contents of the Security Register, the Bank will notify the Issuer so that the Issuer may contest the court order or such release or disclosure of the contents of the Security Register.

**Section 4.05 Return of Cancelled Securities.** The Bank will, at such reasonable intervals as it determines, surrender to the Issuer, all Securities in lieu of which or in exchange for which other Securities have been issued, or which have been paid.

**Section 4.06 Mutilated, Destroyed, Lost or Stolen Securities.** The Issuer hereby instructs the Bank, subject to the provisions of the Authorizing Document, to deliver and issue Securities in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities as long as the same does not result in an overissuance.

In case any Security shall be mutilated, destroyed, lost or stolen, the Bank may execute and deliver a replacement Security of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Security, or in lieu of and in substitution for such mutilated, destroyed, lost or stolen Security, only upon the approval of the Issuer and after (i) the filing by the Holder thereof with the Bank of evidence satisfactory to the Bank of the destruction, loss or theft of such Security, and of the authenticity of the ownership thereof and (ii) the furnishing to the Bank of indemnification in an amount satisfactory to hold the Issuer and the Bank harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Security shall be borne by the Holder of the Security mutilated, destroyed, lost or stolen.

**Section 4.07 Transaction Information to Issuer.** The Bank will, within a reasonable time after receipt of written request from the Issuer, furnish the Issuer information as to the Securities it has paid pursuant to Section 3.01, Securities it has delivered upon the transfer or exchange of any Securities pursuant to Section 4.01, and Securities it has delivered in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities pursuant to Section 4.06.

## **ARTICLE FIVE THE BANK**

**Section 5.01 Duties of Bank.** The Bank undertakes to perform the duties set forth herein and agrees to use reasonable care in the performance thereof.

**Section 5.02 Reliance on Documents, Etc.**

(a) The Bank may conclusively rely, as to the truth of the statements and correctness of the opinions expressed therein, on certificates or opinions furnished to the Bank.

(b) The Bank shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Bank was negligent in ascertaining the pertinent facts.

(c) No provisions of this Agreement shall require the Bank to expend or risk its own funds or otherwise incur any financial liability for performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity satisfactory to it against such risks or liability is not assured to it.

(d) The Bank may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. Without limiting the generality

of the foregoing statement, the Bank need not examine the ownership of any Securities, but is protected in acting upon receipt of Securities containing an endorsement or instruction of transfer or power of transfer which appears on its face to be signed by the Holder or an agent of the Holder. The Bank shall not be bound to make any investigation into the facts or matters stated in a resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document supplied by the Issuer.

(e) The Bank may consult with counsel, and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection with respect to any action taken, suffered, or omitted by it hereunder in good faith and in reliance thereon.

(f) The Bank may exercise any of the powers hereunder and perform any duties hereunder either directly or by or through agents or attorneys of the Bank.

(g) The Bank is also authorized to transfer funds relating to the closing and initial delivery of the Securities in the manner disclosed in the closing memorandum or letter as prepared by the Issuer, Issuer's financial advisor or other agent. The Bank may act on a facsimile or e-mail transmission of the closing memorandum or letter acknowledged by the Issuer, the Issuer's financial advisor or other agent as the final closing memorandum or letter. The Bank shall not be liable for any losses, costs or expenses arising directly or indirectly from the Bank's reliance upon and compliance with such instructions.

**Section 5.03 Recitals of Issuer.** The recitals contained herein with respect to the Issuer and in the Securities shall be taken as the statements of the Issuer, and the Bank assumes no responsibility for their correctness.

The Bank shall in no event be liable to the Issuer, any Holder or Holders of any Security, or any other Person for any amount due on any Security from its own funds.

**Section 5.04 May Hold Securities.** The Bank, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Issuer with the same rights it would have if it were not the Paying Agent/Registrar, or any other agent.

**Section 5.05 Moneys Held by Bank - Paying Agent Account/Collateralization.** A paying agent account shall at all times be kept and maintained by the Bank for the receipt, safekeeping, and disbursement of moneys received from the Issuer under this Agreement for the payment of the Securities, and money deposited to the credit of such account until paid to the Holders of the Securities shall be continuously collateralized by securities or obligations which qualify and are eligible under both the laws of the State of Texas and the laws of the United States of America to secure and be pledged as collateral for paying agent accounts to the extent such money is not insured by the Federal Deposit Insurance Corporation. Payments made from such paying agent account shall be made by check drawn on such account unless the owner of the Securities shall, at its own expense and risk, request an alternative method of payment.

Subject to the applicable unclaimed property laws of the State of Texas, any money deposited with the Bank for the payment of the principal of, premium (if any), or interest on any Security and remaining unclaimed for three years after final maturity of the Security has become due and payable will be held by the Bank and disposed of only in accordance with Title 6 of the Texas Property Code, as amended. The Bank shall have no liability by virtue of actions taken in compliance with this provision.

The Bank is not obligated to pay interest on any money received by it under this Agreement.

This Agreement relates solely to money deposited for the purposes described herein, and the parties agree that the Bank may serve as depository for other funds of the Issuer, act as trustee under indentures authorizing other bond transactions of the Issuer, or act in any other capacity not in conflict with its duties hereunder.

**Section 5.06 Indemnification.** To the extent permitted by law, the Issuer agrees to indemnify the Bank for, and hold it harmless against, any loss, liability, or expense incurred without negligence or bad faith on its part, arising out of or in connection with its acceptance or administration of its duties hereunder, including the cost and expense against any claim or liability in connection with the exercise or performance of any of its powers or duties under this Agreement.

**Section 5.07 Interpleader.** The Issuer and the Bank agree that the Bank may seek adjudication of any adverse claim, demand, or controversy over its person as well as funds on deposit, in either a Federal or State District Court located in the state and county where the administrative office of the Issuer is located, and agree that service of process by certified or registered mail, return receipt requested, to the address referred to in Section 6.03 of this Agreement shall constitute adequate service. The Issuer and the Bank further agree that the Bank has the right to file a Bill of Interpleader in any court of competent jurisdiction in the State of Texas to determine the rights of any Person claiming any interest herein.

**Section 5.08 DTC Services.** It is hereby represented and warranted that, in the event the Securities are otherwise qualified and accepted for “Depository Trust Company” services or equivalent depository trust services by other organizations, the Bank has the capability and, to the extent within its control, will comply with the “Operational Arrangements”, which establishes requirements for securities to be eligible for such type depository trust services, including, but not limited to, requirements for the timeliness of payments and funds availability, transfer turnaround time, and notification of redemptions and calls.

## **ARTICLE SIX MISCELLANEOUS PROVISIONS**

**Section 6.01 Amendment.** This Agreement may be amended only by an agreement in writing signed by both of the parties hereto.

**Section 6.02 Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other.

**Section 6.03 Notices.** Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted hereby to be given or furnished to the Issuer or the Bank shall be mailed or delivered to the Issuer or the Bank, respectively, at the addresses shown on the signature page(s) hereof.

**Section 6.04 Effect of Headings.** The Article and Section headings herein are for convenience of reference only and shall not affect the construction hereof.

**Section 6.05 Successors and Assigns.** All covenants and agreements herein by the Issuer shall bind its successors and assigns, whether so expressed or not.



**Section 6.06 Severability.** In case any provision herein shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**Section 6.07 Merger, Conversion, Consolidation, or Succession.** Any corporation or association into which the Bank may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion, or consolidation to which the Bank shall be a party, or any corporation or association succeeding to all or substantially all of the corporate trust business of the Bank shall be the successor of the Bank as Paying Agent under this Agreement without the execution or filing of any paper or any further act on the part of either parties hereto.

**Section 6.08 Benefits of Agreement.** Nothing herein, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any benefit or any legal or equitable right, remedy, or claim hereunder.

**Section 6.09 Entire Agreement.** This Agreement and the Authorizing Document constitute the entire agreement between the parties hereto relative to the Bank acting as Paying Agent/Registrar and if any conflict exists between this Agreement and the Authorizing Document, the Authorizing Document shall govern.

**Section 6.10 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

**Section 6.11 Termination.** This Agreement will terminate (i) on the date of final payment of the principal of and interest on the Securities to the Holders thereof or (ii) may be earlier terminated by either party upon sixty (60) days written notice; provided, however, an early termination of this Agreement by either party shall not be effective until (a) a successor Paying Agent/Registrar has been appointed by the Issuer and such appointment accepted and (b) notice has been given to the Holders of the Securities of the appointment of a successor Paying Agent/Registrar. However, if the Issuer fails to appoint a successor Paying Agent/Registrar within a reasonable time, the Bank may petition a court of competent jurisdiction within the State of Texas to appoint a successor. Furthermore, the Bank and the Issuer mutually agree that the effective date of an early termination of this Agreement shall not occur at any time which would disrupt, delay or otherwise adversely affect the payment of the Securities.

Upon an early termination of this Agreement, the Bank agrees to promptly transfer and deliver the Security Register (or a copy thereof), together with the other pertinent books and records relating to the Securities, to the successor Paying Agent/Registrar designated and appointed by the Issuer.

The provisions of Section 1.02 and of Article Five shall survive and remain in full force and effect following the termination of this Agreement.

**Section 6.12 Iran, Sudan or Foreign Terrorist Organizations.** The Bank represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or  
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Bank and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Bank understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with the Bank and exists to make a profit.

**Section 6.13 Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Texas.

*[Remainder of page left blank intentionally.]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION

By: \_\_\_\_\_

Title: \_\_\_\_\_

Address: 13737 Noel Road, Suite 800  
Dallas, Texas 75240

TOWN OF FLOWER MOUND, TEXAS

By: \_\_\_\_\_  
Mayor

Address: 2121 Cross Timbers Road  
Flower Mound, Texas 75028

Attest:

\_\_\_\_\_  
Town Secretary

## ANNEX A



## TOWN COUNCIL AGENDA K.5. REGULAR ITEM(S)

---

**DATE:** June 19, 2023

**FROM:** Tammy Wilson, Chief Financial Officer

**ITEM:** **Consider approval of an ordinance amending Section 62-51(a) of Chapter 62 of the Code of Ordinances (Taxation), to increase the exempted amount of the appraised value of residence homesteads of individuals 65 years of age or older to \$150,000.**

---

**BACKGROUND:** The Town currently has an Over 65 Homestead Exemption in the amount of \$100,000. Pursuant to the Texas Constitution, Article VIII, Section 1-b, the Town has the authority to designate an amount to exempt from the assessed value of the residence homestead for persons married and unmarried and 65 years of age or older, on January 1 of each year. The proposed Ordinance will change the Over 65 Homestead Exemption to \$150,000.

Any changes to an existing exemption, must be approved by June 30 each tax year to go into effect the next fiscal year. This item is to increase the over 65 homestead tax exemption to \$150,000 of the appraised value of residence homesteads for married or unmarried persons 65 years of age or older on or before January 1 of the tax year in which such exemption shall be applied, including those living alone, from ad valorem taxes levied and hereafter to be levied by the Town Council of the Town of Flower Mound, Texas, such amount exempted being not less than \$3,000.00.

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

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** N/A  
N/A

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

**ATTACHMENTS:**

1. Property Tax Exemption Ordinance for Over-65

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

**TOWN OF FLOWER MOUND, TEXAS**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING SECTION 62-51(a), "HOMESTEAD EXEMPTION FOR ELDERLY," DIVISION 2, "EXEMPTIONS," ARTICLE II "PROPERTY TAXES," OF CHAPTER 62, "TAXATION," OF THE CODE OF ORDINANCES, TOWN OF FLOWER MOUND, TEXAS, BY INCREASING THE EXEMPTED AMOUNT OF THE APPRAISED VALUE OF RESIDENCE HOMESTEADS OF INDIVIDUALS SIXTY-FIVE (65) YEARS OF AGE OR OLDER TO ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00); PROVIDING A SAVINGS/REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

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

**WHEREAS**, the Town Council of the Town of Flower Mound, Texas ("Town Council"), has the authority conferred by Texas Constitution Article VIII, Section 1-b, and Texas Tax Code Section 11.13 to exempt a designated amount of the appraised value of the residence homesteads of individuals sixty-five (65) years of age or older, from ad valorem taxes levied and to be levied by the Town Council; and,

**WHEREAS**, the Town Council finds and determines that such an exemption be granted to those who apply and qualify as provided in Texas Tax Code Section 11.13; and,

**WHEREAS**, the Town Council has previously adopted an exemption under Texas Tax Code Section 11.13 in the amount of One Hundred Thousand Dollars (\$100,000.00); and,

**WHEREAS**, the Town Council finds that it is in the public interest to change this exemption to One Hundred and Fifty Thousand Dollars (\$150,000.00) so that the tax rate calculations can be properly calculated with the increased amount; and,

**WHEREAS**, the Town Council has investigated and determined that it would be advantageous and beneficial to the Town of Flower Mound and its citizens to adopt and increase the over 65 homestead exemption in accordance with Section 11.13 of the Texas Tax Code, as set forth below.

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

**ORDINANCE NO. \_\_\_\_\_**

### **SECTION 1**

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

### **SECTION 2**

Section 62-51(a), "Homestead Exemption for Elderly," Division 2, "Exemptions," Article II, "Property Taxes," of Chapter 62, "Taxation," of the Code of Ordinances, Town of Flower Mound, Texas is hereby amended to read as follows:

#### **"Sec. 62-51. - Homestead exemption for elderly.**

- (a) The Town Council of the Town of Flower Mound, Texas, shall, and hereby does, exempt One Hundred and Fifty Thousand Dollars (\$150,000.00) of the appraised value of residence homesteads for married or unmarried persons sixty-five (65) years of age or older on or before January 1 of the tax year in which such exemption shall be applied, including those living alone, from ad valorem taxes levied and hereafter to be levied by the Town Council of the Town of Flower Mound, Texas, such amount exempted being not less than Three Thousand Dollars (\$3,000.00)."

### **SECTION 3**

The exemption set forth in Section 2 of this Ordinance shall become effective beginning with the 2023 tax year, and shall remain effective for each successive tax year until otherwise amended or repealed by the Town Council or other appropriate authority.

### **SECTION 4**

All provisions of any ordinance in conflict with this Ordinance are hereby repealed, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent prosecution from being commenced for any violation occurring prior to the repeal of the ordinance. Any remaining portions of conflicting ordinances shall remain in full force and effect.

### **SECTION 5**

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The Town Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.



ORDINANCE NO. \_\_\_\_\_

**SECTION 6**

This Ordinance shall become effective immediately upon its passage.

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF  
FLOWER MOUND, TEXAS, BY A VOTE OF \_\_\_\_ TO \_\_\_\_, ON THIS THE 19<sup>TH</sup> DAY OF  
JUNE, 2023.**

**APPROVED:**

\_\_\_\_\_  
**Derek France, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**Theresa Scott, TOWN SECRETARY**



## TOWN COUNCIL AGENDA K.6. REGULAR ITEM(S)

---

**DATE:** June 19, 2023  
**FROM:** Tammy Wilson, Chief Financial Officer  
**ITEM:** **Consider approval of an ordinance amending Section 62-52 of Chapter 62 of the Code of Ordinances (Taxation), to increase the exempted amount of the appraised value of residence homesteads of disabled individuals \$150,000.**

---

**BACKGROUND:** The Town currently has a Disability Homestead Exemption in the amount of \$100,000. Pursuant to the Texas Constitution, Article VIII, Section 1-b, the Town has the authority to designate an amount to exempt from the assessed value of the residence homestead for disabled persons on January 1 of each year. The proposed Ordinance will change the Disability Homestead Exemption to \$150,000.

Any changes to an existing exemption, must be approved by June 30 each tax year to go into effect the next fiscal year. This item is to increase the disabled homestead tax exemption to \$150,000 on the assessed value of residential homesteads within the corporate limits of the town.

If the ordinance is approved, it will become effective beginning with Tax Year 2023/Fiscal Year 2023-2024.

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

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** N/A  
N/A

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

**ATTACHMENTS:**

1. Property Tax Exemption Ordinance for Disabled

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

**TOWN OF FLOWER MOUND, TEXAS**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING SECTION 62-52, "HOMESTEAD EXEMPTION FOR DISABLED," DIVISION 2, "EXEMPTIONS," ARTICLE II, "PROPERTY TAXES," OF CHAPTER 62, "TAXATION," OF THE CODE OF ORDINANCES, TOWN OF FLOWER MOUND, TEXAS, BY INCREASING THE EXEMPTED AMOUNT OF THE APPRAISED VALUE OF RESIDENCE HOMESTEADS OF DISABLED INDIVIDUALS TO ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000.00); PROVIDING A SAVINGS/REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

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

**WHEREAS**, the Town Council of the Town of Flower Mound, Texas ("Town Council"), has the authority conferred by Texas Constitution Article VIII, Section 1-b, and Texas Tax Code Section 11.13 to exempt a designated amount of the appraised value of the residence homesteads of disabled individuals from ad valorem taxes levied and to be levied by the Town Council; and,

**WHEREAS**, the Town Council finds and determines that such an exemption be granted to those who apply and qualify as provided in Texas Tax Code Section 11.13; and,

**WHEREAS**, the Town Council has previously adopted an exemption under Texas Tax Code Section 11.13 in the amount of One Hundred Thousand Dollars (\$100,000.00); and;

**WHEREAS**, the Town Council finds that it is in the public interest to change this exemption to One Hundred and Fifty Thousand Dollars (\$150,000.00) so that the tax rate calculations can be properly calculated with the increased amount; and,

**WHEREAS**, the Town Council has investigated and determined that it would be advantageous and beneficial to the Town of Flower Mound and its citizens to adopt and increase the disabled homestead exemption in accordance with Section 11.13 of the Texas Tax Code, as set forth below.

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

### **SECTION 1**

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

### **SECTION 2**

Section 62-52 "Homestead Exemption for Disabled," Division 2, "Exemptions," Article II, "Property Taxes," of Chapter 62 "Taxation," of the Code of Ordinances, Town of Flower Mound, Texas is hereby amended to read as follows:

#### **"Sec. 62-52. - Homestead exemption for disabled.**

As provided in Texas Tax Code Section 11.13, for each fiscal year, until otherwise provided, a One Hundred and Fifty Thousand Dollars (\$150,000.00) ad valorem tax exemption for disabled persons on the assessed value of residential homesteads within the corporate limits of the town shall be provided."

### **SECTION 3**

The exemption set forth in Section 2 of this Ordinance shall become effective beginning with the 2023 tax year, and shall remain effective for each successive tax year until otherwise amended or repealed by the Town Council or other appropriate authority.

### **SECTION 4**

All provisions of any ordinance in conflict with this Ordinance are hereby repealed, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent prosecution from being commenced for any violation occurring prior to the repeal of the ordinance. Any remaining portions of conflicting ordinances shall remain in full force and effect.

### **SECTION 5**

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The Town Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

### **SECTION 6**

This Ordinance shall become effective immediately upon its passage.

ORDINANCE NO. \_\_\_\_\_

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF  
FLOWER MOUND, TEXAS, BY A VOTE OF \_\_\_\_ TO \_\_\_\_, ON THIS THE 19<sup>TH</sup> DAY OF  
JUNE, 2023.

APPROVED:

\_\_\_\_\_  
Derek France, MAYOR

ATTEST:

\_\_\_\_\_  
Theresa Scott, TOWN SECRETARY



## TOWN COUNCIL AGENDA K.7. REGULAR ITEM(S)

---

**DATE:** June 19, 2023  
**FROM:** Tammy Wilson, Chief Financial Officer  
**ITEM:** **Consider approval of an ordinance increasing the residential homestead ad valorem (property) tax exemption to 12.5%.**

---

**BACKGROUND:** In 2018, Town Council approved a homestead tax exemption that states the owner of a residence homestead is entitled to an exemption from Flower Mound ad valorem taxation in an amount equal to the greater of five thousand dollars (\$5,000) or 2.5 percent (2.5%). In 2021, Town Council approved an increase to the homestead tax exemption that states the owner of a residence homestead is entitled to an exemption from Flower Mound ad valorem taxation in an amount equal to the greater of five thousand dollars (\$5,000) or 5 percent (5%). In 2022, Town Council approved an increase to the homestead tax exemption that states the owner of a residence homestead is entitled to an exemption from Flower Mound ad valorem taxation in an amount equal to the greater of five thousand dollars (\$5,000) or 10 percent (10%).

A homestead exemption, or any changes to an existing exemption, must be approved by June 30 each tax year to go into effect the next fiscal year. This item is to increase the homestead tax exemption that states the owner of a residence homestead is entitled to an exemption from Flower Mound ad valorem taxation in an amount equal to the greater of five thousand dollars (\$5,000) or 12.5 percent (12.5%).

If the ordinance is approved, it will become effective beginning with Tax Year 2023/Fiscal Year 2023-2024.

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

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** N/A  
N/A

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

**ATTACHMENTS:**

1. Property Tax Exemption Ordinance for Homestead Property 12.5%

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

**TOWN OF FLOWER MOUND, TEXAS**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING SECTION 62-55, "RESIDENCE HOMESTEAD EXEMPTION," DIVISION 2, "EXEMPTIONS," ARTICLE II, "PROPERTY TAXES," OF CHAPTER 62, "TAXATION", OF THE CODE OF ORDINANCES, TOWN OF FLOWER MOUND, TEXAS, BY INCREASING THE RESIDENTIAL HOMESTEAD AD VALOREM (PROPERTY) TAX EXEMPTION TO 12.5 PERCENT (12.5%) OF THE APPRAISED VALUE OF THE RESIDENCE HOMESTEAD; PROVIDING A SAVINGS/REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

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

**WHEREAS**, Section 11.13(n) of the Texas Tax Code authorizes the Town Council of the Town of Flower Mound, Texas ("Town Council") to adopt an exemption from taxation of a portion of the appraised value of an individual's residence homestead; and,

**WHEREAS**, the Town Council has previously adopted an exemption under Texas Tax Code Section 11.13(n) in the amount of ten percent (10%); and,

**WHEREAS**, the Town Council finds that it is in the public interest to change this exemption to 12.5 percent (12.5%) so that the tax rate calculations can be properly calculated with the increased amount; and,

**WHEREAS**, the Town Council has investigated and determined that it would be advantageous and beneficial to the Town of Flower Mound and its citizens to adopt and increase the residential homestead ad valorem (property) tax exemption in accordance with Section 11.13(n) of the Texas Tax Code, as set forth below.

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

**SECTION 1**

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

## **SECTION 2**

Section 62-55 "Residence Homestead Exemption," Division 2, "Exemptions," Article II, "Property Taxes," of Chapter 62 "Taxation," of the Code of Ordinances, Town of Flower Mound, Texas is hereby amended to read as follows:

### **"Sec. 62-55. - Residence homestead exemption.**

In addition to any other exemption provided by Texas law or Flower Mound ordinance, the owner of a residence homestead shall be entitled to an exemption from Flower Mound ad valorem taxation in an amount equal to the greater of Five Thousand Dollars (\$5,000.00) or 12.5 percent (12.5%) of the appraised value of the residence homestead, subject to the limitations set forth in Texas law, including Section 11.13(n) of the Texas Tax Code, as it exists or may be amended. The exemption shall be granted to any such residential homestead and the improvements qualifying for same, as provided by law."

## **SECTION 3**

The exemption set forth in Section 2 of this Ordinance shall become effective beginning with the 2023 tax year, and shall remain effective for each successive tax year until otherwise amended or repealed by the Town Council or other appropriate authority.

## **SECTION 4**

All provisions of any ordinance in conflict with this Ordinance are hereby repealed, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent prosecution from being commenced for any violation occurring prior to the repeal of the ordinance. Any remaining portions of conflicting ordinances shall remain in full force and effect.

## **SECTION 5**

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The Town Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

## **SECTION 6**

This Ordinance shall become effective immediately upon its passage.



ORDINANCE NO. \_\_\_\_\_

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF  
FLOWER MOUND, TEXAS, BY A VOTE OF \_\_\_\_\_ TO \_\_\_\_\_, ON THIS THE 19<sup>TH</sup> DAY OF  
JUNE, 2023. APPROVED:

\_\_\_\_\_  
Derek France, MAYOR

ATTEST:

\_\_\_\_\_  
Theresa Scott, TOWN SECRETARY