

**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**

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September 18, 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. Proclamation for Live United
2. Food Safety Awards

**E. PUBLIC COMMENT**

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

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

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

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

**F. ANNOUNCEMENTS**

1. Announcements from the mayor and council members

**G. TOWN MANAGER'S REPORT**

1. Capital Improvement Projects
2. Economic Development Projects
3. Organizational Updates
4. Resident Survey Results
5. Tax Increment Reinvestment Zone (TIRZ) #2

#### **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. September 19 & 21 - Board & Commission Interview sessions
2. October 2 - 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 8/21 - Consider approval of the minutes from a regular meeting held on August 21.
2. Karnes Road Street Improvements - Consider approval of a Construction Agreement with Cam-Crete Contracting, LLC, for the Karnes Road Street Improvements project, in the amount of \$474,797.00; and authorization for the Mayor to execute same on behalf of the Town.
3. Waketon Rd Phase II - Material Testing PSA Amendment - Consider approval of a First Amendment to the Professional Services Agreement with ECS Southwest, LLP., to increase the fee for material testing services for the Waketon Road Phase II project, in the amount of \$15,264.88; and authorization for the Mayor to execute same on behalf of the Town.
4. Sidewalk Program Annual Contract - Consider approval of the purchase of Concrete Services from Apex Concrete Construction, Inc., for the annual sidewalk program through a City of Southlake interlocal agreement contract, in the estimated annual amount of \$100,000.00
5. Fire Dept. Joint Training Facility - Amendment - Consider the approval of an Amendment to the Interlocal Agreement between the City of Lewisville, the Town of Flower Mound, and the City of Highland Village for the design, construction, maintenance, operation, and management of a Joint Firefighting Training Facility.
6. TexPool Authorized Representatives - Consider approval of the Town's authorized representatives form as required by the Texas Local Government Investment Pool (TexPool).

7. Investment Policy Resolution - Consider approval of a resolution adopting an Investment Policy for funds for the Town of Flower Mound as required annually by the Public Funds Investment Act.
8. Debt obligations paying agent/registrar - Consider all matters incident and related to appointing a successor paying agent/registrar for certain outstanding debt obligations of the Town, including the adoption of a resolution pertaining thereto.
9. 2024 TSLAC Texas Reads Grant - Consider acceptance of grant funds from the Texas State Library and Archives Commission (TSLAC) for the FY 2024 Texas Reads Grant Program and execution of an agreement with TSLAC; and authorization for the Mayor to execute said agreement on behalf of the Town.
10. Atmos Rate Case - Consider approval of a resolution adopting Atmos Energy Corp., Mid-Tex Division's rate tariffs that reflect the negotiated rate change pursuant to the Rate Review Mechanism process.
11. Roof Repair/Replace - Town buildings - Consider the approval of a proposal from Paragon Multi Family Roofing Inc. for the replacement of steep slope shingle roof systems in the amount of \$148,599.00 through the TIPS Purchasing Network utilizing contract number 22010702.
12. CAC HVAC Refurbish - Consider the approval of quotes from Trane USA Inc. for the evaluation and refurbishment of the primary HVAC systems at the Community Activity Center in the amount of \$54,596 utilizing Co-op or Federal Contract ID: Omnia Racine #3341.
13. Trotter Park Master Plan Design - Consider the approval of a Professional Services Agreement with MHS Planning & Design, LLC for the master planning of Trotter Park, in the amount of \$46,920.00; and authorization for the Mayor to execute same on behalf of the Town.
14. Vehicle Purchases - PD - Consider approval of purchasing two (2) 2023 Chevrolet Tahoes with Police Equipment Packages as per Town of Flower Mound Specifications and Vendor estimate from Lake Country Chevrolet for \$132,454.
15. Health Science Feasibility Study - Consider approval of a Professional Services Agreement with Tripp Umbach, INC for a feasibility study on expanding academic health sciences and clinical programs in Flower Mound, in a not to exceed amount of \$70,000.
16. Denton County DA Local Agreement - Consider approval to terminate the existing Local Agreement and enter into a new Local Agreement with the Denton County District Attorney's Office and the Flower Mound Police Department in regards to seizures filed under Chapter 59 and Article 18.18 of the Texas Code of Criminal Procedure in Denton County, Texas
17. Food Protection Manager - Ord. Amendment - Consider approval of an ordinance amending Chapter 18, "Businesses," Article III "Food and Food Establishments," by amending Section 18-151, "Registration required," and amending Appendix A, "Fee Schedule," by removing the registration fee for Section 18-123, of the Code of Ordinances of the Town of Flower Mound in response to S.B 577.

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

1. FY 23-24 Town Budget Adoption - Consider approval of an ordinance adopting the budget for the fiscal year beginning on October 1, 2023, and ending on September 30, 2024, and making appropriations for each fund and department.
2. FY 23-24 Fire District Budget Adoption - 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 adopting the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District budget for the fiscal year beginning on October 1, 2023, and ending on September 30, 2024.
3. FY 23-24 Crime District Budget Adoption - 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 adopting the Town of Flower Mound Crime Control and Prevention District budget for the fiscal year beginning on October 1, 2023, and ending on September 30, 2024.
4. FY 23-24 Tax Rate Adoption - Public Hearing to consider approval of an ordinance adopting the 2023 tax rolls and fixing and levying municipal ad valorem taxes for the fiscal year beginning on October 1, 2023, and ending on September 30, 2024, and for each fiscal year thereafter until otherwise provided, at the rate of \$0.3873 per \$100 assessed valuation on all taxable property within the corporate limits of the Town of Flower Mound as of January 1, 2023.
5. Morriss Road Water Lines Phase III (Eaton to Waketon) - Consider approval of a Construction Agreement with Flow-Line Construction, Inc., for the Morriss Road Water Lines Phase III (Eaton to Waketon) project, in the amount of \$6,999,712.00; and authorization for the Mayor to execute same on behalf of the Town.
6. CSP23-0003 - Flower Mound Cemetery Ground Sign - Public Hearing to consider a request for a Comprehensive Sign Package (CSP23-0003 – Flower Mound Cemetery Ground Sign) for Flower Mound Cemetery. The property is generally located south of Flower Mound Road and west of Strait Lane. (PZ recommended approval by a vote of 6 to 0 at its September 11, 2023, meeting.)

## **L. BOARDS/COMMISSIONS**

Discuss and consider resignations, appointments, evaluations, reassignments, discipline, or dismissals for the following boards or commissions: 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. 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: September 15, 2023, at 11:18 a.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](#).

FLOWER MOUND TOWN COUNCIL REGULAR MEETING;  
TOWN OF FLOWER MOUND FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL  
SERVICES DISTRICT SPECIAL MEETING;  
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August 21, 2023  
Town Hall  
2121 Cross Timbers Road  
Flower Mound, TX 75028

6:00 p.m.

## DRAFT MINUTES

### A. CALL TO ORDER

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

Derek France, Mayor  
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

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  
Matt Hotelling, Assistant Director of Public Works & Transportation  
Kay Wilkinson, Director of Budget Services  
Brian Waltenburg, Assistant Director of Engineering  
Tammy Wilson, Chief Financial Officer  
Clay Riggs, Director of Public Works  
Matt Woods, Director of Environmental Services  
Jason Hawley, Police Captain

### B. INVOCATION

Chaplain Joseph Agbo gave the invocation.

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

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

Mayor France led the pledges.

## D. PRESENTATION(S)

1. Suicide Prevention Awareness Month Proclamation  
Mayor France recited the proclamation and presented it to Sherri McCarthy.
2. National Senior Center Month Proclamation  
Mayor France recited the proclamation and presented it to Jaime Jaco-Cooper, Senior Program Manager, as well as some Seniors in Motion members.
3. Historical Commission Task Force Update  
Jacque Narrell, Chair, Historical Commission Task Force (HCTF), provided an update on the work of the HiCTF to date.

## E. PUBLIC COMMENT

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- 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.*

|    | Speaker name and address                                                                               | Subject (as written on the form) |
|----|--------------------------------------------------------------------------------------------------------|----------------------------------|
| 1. | Beth Bankhead, 420 Northwood Dr*                                                                       | ZPD 22-0001/0003                 |
| 2. | Fred Vincent, 3933 Bordeaux                                                                            | Historic Commission              |
| 3. | Gerald Dehoney, 2221 Timberglen                                                                        | PD/FD comment                    |
| 4. | James Harris, 416 Northwood Dr<br>with donated time from:<br>Clare Harris, 416 Northwood Dr            | ZPD 22-0001/0003                 |
| 5. | Rebecca Karatzis, 408 Northwood Dr<br>with donated time from:<br>Kevin Hutchens, 370 Northwood Dr      | ZPD 22-0001/0003                 |
| 6. | Jennifer Boosing, 2920 Cromwell                                                                        | ZPD 22-0001/0003                 |
| 7. | Joe Bernard (address not provided)<br>with donated time from:<br>Dana Ellsworth (address not provided) | Public comment                   |

|  |                                      |  |
|--|--------------------------------------|--|
|  | Matthew Hurst (address not provided) |  |
|--|--------------------------------------|--|

*\* Indicates person did not wish to speak*

## **F. ANNOUNCEMENTS**

1. Announcements from the mayor and council members  
Mayor/Councilmembers had announcements regarding:
  - various future town events
  - statue unveiling at the Library

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

1. Capital Improvement Projects
2. Economic Development Projects
3. Organizational Updates  
Mr. Childers reported on how the Town is prepared to handle wildfire events should they occur. He also pointed out steps residents can take to mitigate fires.

## **H. FUTURE AGENDA ITEM(S)**

The purpose of this item is to allow the Mayor and members of Council an opportunity to bring forward items they wish to discuss at a future meeting, with the understanding that a consensus of Council is needed in order for that item to be placed on a future agenda and in accordance with the Town Council Agenda Setting Policy (Ord. 65-15).  
There were no future agenda item request.

## **I. COORDINATION OF CALENDARS**

Mayor France confirmed that all members of Council plan to be in attendance on the following meeting dates.

1. September 4 - Regular meeting canceled due to the Labor Day holiday
2. September 18 - Regular meeting
3. September 19 and 21 (Board/Commission Interviews)

## **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:** Councilmember Brian Taylor moved to approve Consent items 1 - 11 as presented in the agenda caption. Councilmember Chris Drew seconded the motion.

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

**NAYS:** None

**ABSTAIN:** None

**RESULT:** 5 : 0

1. Minutes - 8/7 & 8/17 - Consider approval of the minutes from a regular meeting held on August 7, and a work session held on August 17.
2. CIP Amendment No. 4 - Consider Approval of Amendment No. 4 to the Fiscal Year 2022-2023 Capital Improvement Program.
3. Purchase Pool Chemicals - Consider approval of Buy Board Contract No. 701-23 for DCC, Inc. to provide Swimming Pool Chemicals for Parks and Recreation aquatic facilities in the estimated annual amount of \$27,000.
4. Transportation Service Agreement-SPAN - Consider approval of a Service Agreement for Demand Response Transit Service with SPAN, Inc., in an amount not-to-exceed \$32,800.00, to provide transportation service for Town citizens who are age 65 or older and Town citizens with verifiable disabilities that prevent them from driving; and authorization for the Mayor to execute same on behalf of the Town.
5. Water System Leak Detection - Consider approval of the agreement with Asterra to provide satellite leak detection services of the Town's water distribution system associated with the Water System Leak Detection & Repair project, in the amount of \$116,000; and authorization for the Mayor to execute same on behalf of the Town.
6. Cybersecurity - MDR Service/Agreement - Consider approval of the agreement with Center for Internet Security (CIS) to provide Cybersecurity Managed Detection and Response services in the estimated annual amount of \$42,900.
7. LISD Security Agreement - Consider approval of the 2023 Lewisville Independent School District (LISD) for a contract with the Town of Flower Mound for law enforcement services at all Marcus High School & Flower Mound High School Varsity and Jr. Varsity home games and authorize the Mayor to execute same on behalf of the Town.
8. Work Order System Migration PSA - Consider approval of a Professional Services Agreement with Burns & McDonnell Engineering Company, Inc., for

Work Order System Migration and GIS services for the Utility Asset Management project, in the amount of \$147,000.00; and authorization for the Mayor to execute same on behalf of the Town.

9. CoServ Gas Rate Case - Consider approval of a resolution suspending the September 1, 2023, effective date of CoServ Gas Ltd.'s requested rate increase in order for the Town to study the request with other cities in the service area.

#### **RESOLUTION NO 18-23**

**RESOLUTION OF THE TOWN OF FLOWER MOUND SUSPENDING THE SEPTEMBER 1, 2023 EFFECTIVE DATE OF COSERV GAS, LTD.'S REQUESTED RATE CHANGE TO PERMIT THE TOWN TIME TO STUDY THE REQUEST AND TO ESTABLISH REASONABLE RATES; APPROVING COOPERATION WITH OTHER CITIES IN THE COSERV SERVICE AREA, TO HIRE LEGAL AND CONSULTING SERVICES AND TO NEGOTIATE WITH THE COMPANY AND DIRECT ANY NECESSARY LITIGATION AND APPEALS; REQUIRING REIMBURSEMENT OF THE STEERING COMMITTEE OF CITIES SERVED BY COSERV GAS' RATE CASE EXPENSES; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL**

10. Crack and Joint Seal Contract - Consider approval of the purchase of Pavement Crack & Joint Sealant Services from Curtco, Inc., through a City of Grand Prairie contract, in the estimated annual amount of \$100,000.00
11. HB 3699 Resolution - Consider approval of a resolution delegating plat approval authority and extension approval authority pursuant to House Bill 3699.

#### **RESOLUTION NO 19-23**

**A RESOLUTION OF THE TOWN OF FLOWER MOUND, TEXAS, DELEGATING PLAT APPROVAL AUTHORITY AND EXTENSION APPROVAL AUTHORITY PURSUANT TO HB 3699; AND PROVIDING AN EFFECTIVE DATE.**

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

1. Town Budget Public Hearing - Public Hearing to consider the proposed budget for the fiscal year beginning on October 1, 2023, and ending on September 30, 2024.

Mayor France opened items 1 - 3 at the same time.

Mr. Childers provided background information regarding the budget process to date.

Ms. Wilkinson or Mr. Waltenburg gave a presentation identifying or noting:

- proposed budget (defined)
- phases of the budget cycle
- types of budget
- operating budget structure
- how Flower Mound compares (benchmark cities) - population, tax rate, debt tax rate, governmental debt per capita, total debt per capita
- changes since proposed budget presented in July
- compensation and benefits
- additional personnel
- FTE summary
- general fund (revenues and expenses)
- 2024 proposed tax rate
- no-new revenue tax rate
- voter approval tax rate
- average property tax bill
- sales tax breakdown
- general fund balance
- how Flower Mound compares (fund balance and financial policy)
- enterprise funds (utility and stormwater fund)
- utility fund (revenue and expenses)
- utility fund - fund balance
- water/wastewater rates
- stormwater utility fund (revenue and expenses)
- stormwater rates
- stormwater utility fund - fund balance
- internal service funds
- small equipment replacement fund
- special revenue funds
- Crime Control & Prevention district
- Fire Control Prevention & Emergency Medical Services District
- COVID-19 fund: American Rescue Plan Act (ARPA)
- ARPA grant
- debt service fund
- next steps

#### CIP Projects:

- changes since the proposed budget
- projects: streets, signal, street reconstruction, facility, parks, water, stormwater, wastewater

and she, Mr. Childers, or Ms. Wilson responded to questions or comments from Mayor/Councilmembers regarding:

- clarification regarding the fire joint training facility
- fund balance

### **Council Discussion**

There was Council discussion regarding:

- proposed tax rate
- interest in using ARPA funds with the goal of reducing debt
- merchant card fees
- voter approval tax rate
- interest in maintaining the Town's level of service
- rapid increase in home values
- average property tax bill
- homestead exemption

Mayor France opened the public hearing for items 1, 2, and 3 at 7:32 p.m. No one spoke. Mayor France closed the public hearing at 7:33 p.m.

No Council action is required for items 1, 2, and 3 at this time.

2. Crime District Budget Public Hearing - Public Hearing by the Town Council acting as the Board of Directors for the Town of Flower Mound Crime Control and Prevention District to consider the Flower Mound Crime Control and Prevention District proposed budget for the fiscal year beginning on October 1, 2023, and ending on September 30, 2024.
3. Fire District Budget Public Hearing - Public Hearing by the Town Council acting as the Board of Directors for the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District to consider the Flower Mound Fire Control, Prevention, and Emergency Medical Services District proposed budget for the fiscal year beginning on October 1, 2023, and ending on September 30, 2024.
4. SUP23-0001 - Super Star Car Wash - Public Hearing to consider a request for a Specific Use Permit No. 484 (SUP23-0001 – Super Star Car Wash) to permit an automatic car wash. The property is generally located northeast of Flower Mound Road and west of Long Prairie Road. (PZ recommended denial by a vote of 6 to 0 at its June 26, 2023, meeting.)

Mayor France announced that the applicant has requested their application be denied without prejudice.

Mayor France opened the Public Hearing at 7:52 p.m. No one spoke. Mayor France closed the Public Hearing at 7:52 p.m.

**ACTION:** Councilmember Adam Schiestel moved to deny item K.4 without prejudice. Mayor Pro Tem Jim Engel seconded the motion.

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

**NAYS:** None

**ABSTAIN:** None

**RESULT:** 5 : 0

5. (DP23-0001 - Whyburn) - Consider a request for a Development Plan (DP23-0001 – Whyburn) to develop a residential subdivision. The property is generally located east of Long Prairie Road and south of Dixon Lane. (PZ recommended approval by a vote of 6 to 0 at its August 14, 2023, meeting.)

Ms. Murphy gave a presentation identifying or noting:

- general and detailed location
- land use and zoning
- development plan
- site photos
- landscape plan

and she responded to questions or comments from Mayor/Councilmembers regarding:

- the concept plan

**ACTION:** Councilmember Adam Schiestel moved to approve item K.5 as presented in the agenda caption. Councilmember Chris Drew seconded the motion.

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

**NAYS:** None

**ABSTAIN:** None

**RESULT:** 5 : 0

6. CON23-0003 – Montalcino Estates, Phases III and IV - Public Hearing to consider an ordinance for amending the zoning (CON23-0003 – Montalcino Estates, Phases III and IV) from Interim Holding (IH) uses to Planned Development District No. 198 (PD-198) with Agricultural (A) uses for a conservation development. The property is generally located north of Cross Timbers Road and east of Montalcino Boulevard. (PZ recommended approval by a vote of 6 to 0 at its August 14, 2023, meeting.) Mayor France opened items 6, 7, and 8 at the same time.

Ms. Murphy gave a presentation for items 6, 7, and 8 identifying or noting:

- general location
- land use and zoning
- 2010 approved development plan
- site photos
- record plat detailed views
- exceptions:
  - lot grading and drainage: house pad benching, lot-to-lot drainage for some lots
  - topographic slope
  - floodplain (construction-related activity within FEMA floodplain)
- landscape plan
- tree survey

and she, Mr. Riggs, or Mr. Meredith responded to questions or comments from council regarding (some of which was after the public hearing):

- drainage plans
- flood zone
- topographical maps (resource)
- past or pending litigation as a result of poor development practices (flood damages)
- performance bonds
- disappointment that the applicant didn't meet with residents
- grading and elevation changes
- impact if exceptions are not granted
- monitoring and enforcement process for various requirements (house pad benching exception language)
- the risk associated with the proposed road in the floodplain
- possibility of using one of the trees as a feature in the roundabout
- possibility of saving a tree on lot 68
- interest in preserving trees and having a wildlife corridor
- set backs (2010 plan)
- lot depths

### **Applicant Presentation**

Darren Andrews, McAdams

Mr. Andrews responded to questions from council regarding:

- resident meetings/outreach
- road construction timeline
- interest in increasing setbacks (50') to allow for green space in the back of the lots
- security during construction
- fencing
- future growth
- FEMA timing for approval

- concerns regarding flooding; drainage study

Mayor France opened the public hearing for items 6 and 8 at 8:51 p.m.

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

|     | SUPPORT | OPPOSITION                                                                                         | QUESTIONS OR COMMENTS ONLY |
|-----|---------|----------------------------------------------------------------------------------------------------|----------------------------|
| 1.  | None    | JP Parnell, 5901 Southern Hills Dr                                                                 | None                       |
| 2.  |         | Dominique Bossauy, 8900 Baltusrol Dr                                                               |                            |
| 3.  |         | Michael Tilbury, 8604 Baltusrol Dr with donated time from:<br>Brian Kinard, 5808 Southern Hills Dr |                            |
| 4.  |         | Todd Mabraten, 8904 Baltusrol Dr with donated time from:<br>Christy Mabraten, 8904 Baltusrol Dr    |                            |
| 5.  |         | Alyssa Francis, 8109 Firestone Dr with donated time from:<br>Heather Snider, 8608 Baltusrol Dr     |                            |
| 6.  |         | Aaron Sadler, 8605 Baltusrol Dr                                                                    |                            |
| 7.  |         | Thomas Ricci, 4800 Tour 18 Dr                                                                      |                            |
| 8.  |         | Heather Brock, 8105 Firestone Dr                                                                   |                            |
| 9.  |         | Paul Poley, 4704 Tour 18 Dr                                                                        |                            |
| 10. |         | Dominique Bossavy, 8900 Baltusrol Dr*                                                              |                            |
| 11. |         | JP Parnell, 5901 Southern Hills Dr*                                                                |                            |
| 12. |         | Jeff Rettig, 6200 Sawgrass Ct*                                                                     |                            |
| 13. |         | Jimmy Marta, 5601 Lighthouse*                                                                      |                            |
| 14. |         | Rita Jackson, 5501 Muirfield Ct*                                                                   |                            |
| 15. |         | Steve Jackson, 5505 Muirfield Ct*                                                                  |                            |
| 16. |         | Danielle Strange, 5501 Lighthouse*                                                                 |                            |

|     |  |                                          |  |
|-----|--|------------------------------------------|--|
| 17. |  | John Brock, 8105 Firestone Dr*           |  |
| 18. |  | Laverne Amsterdam, 5705 Pine Valley*     |  |
| 19. |  | Pam Sadler, 8605 Baltusrol*              |  |
| 20. |  | Celeste Parnell, 5901 Southern Hills Dr* |  |
| 21. |  | Jason Snider, 8608 Baltusrol*            |  |
| 22. |  | Michelle Acosta, 4500 Tour 18 Dr         |  |

\* Indicates person did not wish to speak

Mayor France closed the Public Hearing for items 6 and 8 at 9:25 p.m.

Town Council convened in a closed meeting pursuant to Texas Government Code Chapter 551.071 at 9:41 p.m., for consultation with the Town Attorney on this item. Town Council reconvened at 10:03 p.m.

Mr. Meredith summarized the legal aspects involved.

**ACTION:** Councilmember Adam Schiestel moved to approve item K.6 as presented, with the additional requirement for new or replacement iron fencing between existing homes and new homes as requested by the existing property owner, and a 50-foot landscape buffer along the rear of lots 61, and 64 - 74. Deputy Mayor Pro Tem Ann Martin seconded the motion.

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

**NAYS:** None

**ABSTAIN:** None

**RESULT:** 5 : 0

#### **ORDINANCE NO. 35-23**

**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 CHANGING THE ZONING ON APPROXIMATELY 197.97 ACRES OF LAND SITUATED IN THE JESSE GIBSON SURVEY, ABSTRACT NO. 479, T. & P. R.R. CO. SURVEY, ABSTRACT NO. 1303, AND A.M. FELTUS SURVEY, ABSTRACT NO. 1595, DENTON COUNTY, TEXAS, FROM IH INTERIM HOLDING USES TO PLANNED DEVELOPMENT DISTRICT-198 (PD-198) WITH A AGRICULTURAL USES FOR A CONSERVATION DEVELOPMENT IN ACCORDANCE WITH THE TOWN'S MASTER PLAN AND SPECIFIC**

**REQUIREMENTS AND EXHIBITS INCORPORATED HEREIN; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

7. RC22-0006 – Montalcino Estates, Phase III - Consider a request for a Record Plat (RC22-0006 – Montalcino Estates, Phase III) to create a residential subdivision with certain exceptions, modifications, and waivers to the Code of Ordinances. The property is generally located north of Cross Timbers Road and east of Montalcino Boulevard. (PZ recommended approval by a vote of 6 to 0 at its August 14, 2023, meeting.)
- ACTION:** Councilmember Adam Schiestel moved to approve item K.7 as presented in the agenda caption, and with the exceptions recommended by staff. Mayor Pro Tem Jim Engel seconded the motion.
- AYES:** Adam Schiestel, Jim Engel, Brian Taylor, Ann Martin
- NAYS:** Chris Drew
- ABSTAIN:** None
- RESULT:** 4 : 1
8. TRP23-008 - Montalcino Estates - Public Hearing to consider an application for a tree removal permit (TRP23-0008) for seven (7) specimen trees on property proposed for development as Montalcino Phase III. The property is generally located north of Cross Timbers Road and east of Montalcino Boulevard. (The Environmental Conservation Commission recommended approval by a vote of 6-0-0 at its August 1, 2023, meeting)
- ACTION:** Councilmember Adam Schiestel moved to approve item K.8 as presented in the agenda caption. Mayor Pro Tem Jim Engel seconded the motion.
- AYES:** Chris Drew, Adam Schiestel, Jim Engel, Brian Taylor, Ann Martin
- NAYS:** None
- ABSTAIN:** None
- RESULT:** 5 : 0
9. Concrete & Drainage Services - Consider approval of the award of Bid No. 2023-56-A Concrete and Drainage Improvement Services to F&F Concrete, LLC., Apex Concrete Construction, Inc., and Quick Set Concrete, Inc. to establish an annual unit bid price contract for the installation of miscellaneous concrete and drainage projects in an annual estimated amount of \$1,500,000; and authorization for the Mayor to execute same on behalf of the Town. The contract is for one year with four one-year renewal options.
- Mr. Riggs gave a presentation identifying or noting:

- summary of annual contract

and he responded to questions from Council regarding:

- how providers get selected

**ACTION:** Councilmember Brian Taylor moved to approve item K.9 as presented in the agenda caption. Mayor Pro Tem Jim Engel seconded the motion.

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

**NAYS:** None

**ABSTAIN:** None

**RESULT:** 5 : 0

10. Traffic Signals Construction Agreement - Consider approval of a Construction Agreement with Road Solutions, LLC, for the CIP Traffic Signal and Partial Traffic Signal Rehabilitation Projects: FM 1171/Canyon Falls; Garden Ridge/Forest Vista; FM 2499/Firewheel project, in the amount of \$1,136,409.37; and authorization for the Mayor to execute same on behalf of the Town
- Mr. Hotelling gave a presentation identifying or noting:

- locations
- recommendation

and he responded to questions from Council regarding:

- timing
- if we have the equipment on hand to install
- availability of supplies

**ACTION:** Councilmember Chris Drew moved to approve item K.10 as presented in the agenda caption. Mayor Pro Tem Jim Engel seconded the motion.

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

**NAYS:** None

**ABSTAIN:** None

**RESULT:** 5 : 0

11. Purchase Portable Radios - Consider approval of a Professional Services and Purchase Agreement for \$1,880,004.80 with Motorola Solutions, Inc., to provide equipment, technical support, and software for portable radios for the Police and Fire Departments; and authorization for the Mayor to execute the same on behalf of the Town.

Captain Hawley gave a presentation identifying or noting:

- overview
- options - APX NEXT (features included)
- cost of radios
- contract modification since packet published

and he, or Chief Henley responded to questions from Council regarding:

- support from Motorola
- clarification regarding warranty
- training on the new equipment by Motorola
- accessories that come with the radio
- blue tooth technology for firefighters

|                 |                                                                                                                                             |
|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| <b>ACTION:</b>  | Deputy Mayor Pro Tem Ann Martin moved to approve item K.11 as presented in the agenda caption. Mayor Pro Tem Jim Engel seconded the motion. |
| <b>AYES:</b>    | Chris Drew, Adam Schiestel, Jim Engel, Brian Taylor, Ann Martin                                                                             |
| <b>NAYS:</b>    | None                                                                                                                                        |
| <b>ABSTAIN:</b> | None                                                                                                                                        |
| <b>RESULT:</b>  | 5 : 0                                                                                                                                       |

#### **L. BOARDS/COMMISSIONS**

Discuss and consider resignations, appointments, evaluations, reassignments, discipline, or dismissals for the following boards or commissions: 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 action taken.

#### **M. CLOSED MEETING**

The Town Council convened into a closed meeting at 10:37 p.m. on August 21, 2023, pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.071, 551.072, 551.074, and 551.087 for consultation with attorney, and to discuss matters relating to real property, personnel, and economic development negotiations.

1. Consultation with Town Attorney.
  - a. Building Permit Fee Requirements

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, health care facilities, 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**

The Town Council reconvened into an open meeting a 11:23 p.m. on August 21, 2023, and no action was taken on the above items.

**O. ADJOURN**

The Town Council meeting was adjourned at 11:24 p.m.

**TOWN OF FLOWER MOUND, TEXAS**

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**DEREK FRANCE, MAYOR**

**ATTEST:**

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**THERESA SCOTT, TOWN SECRETARY**



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

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**DATE:** September 18, 2023  
**FROM:** Dale Crown, Senior Project Engineer  
**ITEM:** **Consider approval of a Construction Agreement with Cam-Crete Contracting, LLC, for the Karnes Road Street Improvements project, in the amount of \$474,797.00; and authorization for the Mayor to execute same on behalf of the Town.**

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**BACKGROUND:** On July 18, 2023, bids were received and opened for the Karnes Road Street Improvements project (Bid # 2023-87-B). Cam-Crete Contracting, LLC submitted the lowest qualified bid of the 9 responding bidders at a base bid totaling \$474,797.00. The project consists of the reconstruction of Karnes Road, a local commercial road from Old Settler Road to Cross Timbers Road (FM 1171). The project will improve the existing road by widening it from a 21-foot wide asphalt rural section to a 26-foot wide concrete street with curb and gutter. The street widening is limited to 26-feet due to grading constraints along Karnes Road.

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

**ALTERNATIVES:** Street reconstruction is needed due to pavement failures along Karnes Road. A decision not to approve the Construction Agreement would result in pavement failures worsening over time.

**FISCAL IMPACT:** \$474,797.00

**Proposed Expenditure/(Revenue)**  
\$474,797.00

**Account Number(s):**  
308-103-70632-6160

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

**ATTACHMENTS:**

1. Attachment 1\_Bid Tabs
2. Attachment 2\_Construction Award
3. FORM 1295

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



**Town of Flower Mound  
Verified Bid Tab**

| <b>Bid No: 2023-87-B – Karnes Road Street Improvements</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
| <b>Bid Opening: 7/18/2023 at 11:00 AM</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                            |
| <b>Company</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <b>Total Bid</b>           |
| <b>Cam-Crete Contracting Inc</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>\$ 474,797.00</b>       |
| <b>XIT Paving &amp; Construction Inc</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <b>\$ 626,570.00</b>       |
| <b>3D Paving &amp; Contracting LLC</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <b>\$ 699,829.00</b>       |
| <b>Candor Builders LLC</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>\$ 720,489.00</b>       |
| <b>Wall Contractors LLC</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <b>\$ 745,194.00</b>       |
| <b>Quick Set Concrete</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>\$ 746,270.50</b>       |
| <b>Capko Concrete Structures LLC</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <b>\$ 749,033.00</b>       |
| <b>Don Smith Concrete LLC</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <b>\$ 933,078.00</b>       |
| <b>Ken-Do Contracting</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>\$ 980,476.00</b>       |
| <p><b>**All bids/proposals submitted for the designated project are reflected on this tabulation sheet. However, the listing of the bid/proposal on this tabulation sheet shall not be construed as a comment on the responsiveness of such bid/proposal or as any indication that the agency accepts such bid/proposal as being responsive. The agency will make a determination as to the responsiveness of the vendor responses submitted based upon compliance with all applicable laws, purchasing guidelines and project documents, including but not limited to the project specifications and contract documents. The agency will notify the successful vendor upon award of the contract and, as according to the law, all bid/proposal responses received will be available for inspection at that time.</b></p> |                            |
| <p>Certified By: Sabrina Zadow<br/>Purchasing Manager<br/>Town of Flower Mound, Texas</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <p>Date: July 18, 2023</p> |

**TOWN OF FLOWER MOUND**  
**KARNES ROAD STREET IMPROVEMENTS**

**Bid # 2023-87-B**

**CONSTRUCTION AGREEMENT**

THIS CONSTRUCTION AGREEMENT (the “Agreement”), made and entered into this 18<sup>th</sup> day of September, 2023, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the “Town,” and Cam-Crete Contracting, Inc., a corporation, hereinafter referred to as the “Contractor.” For and in consideration of the payment, agreements, and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

**KARNES ROAD STREET IMPROVEMENTS;**  
**Bid # 2023-87-B**

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

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

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

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

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

ARTICLE 2. For performance of the Work in accordance with the Contract Documents, the Town shall pay the Contractor in current funds an amount not to exceed **Four Hundred Seventy Four Thousand Seven Hundred Ninety Seven Dollars and Zero cents (\$474,797.00)** taking into consideration additions to or deductions from the Total Bid through properly executed change orders by reason of alterations or modifications of the original quantities or by reason of “Extra Work” authorized under this Agreement in accordance with the provisions of the Contract Documents. It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the Contractor by the Town, the said Contractor shall furnish all labor, equipment, and material (except as otherwise specified above) and shall perform all work necessary to complete the improvements in a good and workmanlike manner, ready for use, within the specified time for substantial completion of one-hundred and twenty (120) calendar days, and final completion of one-hundred and fifty (150) calendar days ready for final payment, as measured from the Effective Start Date shown in the Notice to Proceed. The work shall be in strict accordance with this Agreement, a copy of which is filed pursuant to law in the office of the legal representative of the Town.

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

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

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

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

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

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

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

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

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

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

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

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

Retainage shall be withheld and may be paid to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This Agreement will be effective on the \_\_\_\_ day of \_\_\_\_\_, 2023.

TOWN OF FLOWER MOUND

CONTRACTOR

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Signature)  
(Printed Name)  
(Position)

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST: \_\_\_\_\_  
Theresa Scott, TOWN SECRETARY

ATTEST: \_\_\_\_\_  
\_\_\_\_\_  
(Signature)  
(Position)



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

---

**DATE:** September 18, 2023  
**FROM:** Brian Waltenburg, Assistant Director of Engineering  
**ITEM:** **Consider approval of a First Amendment to the Professional Services Agreement with ECS Southwest, LLP., to increase the fee for material testing services for the Waketon Road Phase II project, in the amount of \$15,264.88; and authorization for the Mayor to execute same on behalf of the Town.**

---

**BACKGROUND:** On June 7, 2021, Town Council approved a Professional Services Agreement with ECS Southwest, LLP to provide construction materials engineering and testing, for the Waketon Road (Cross Timbers Drive to 1,350' East of Chinn Chapel) project, in the amount of \$121,308.00.

Additional material testing, beyond what was originally anticipated, was needed for subgrade densities, utility backfill densities, and concrete roadway and sidewalk paving along Waketon Road in both the Town of Flower Mound and the Town of Double Oak. The additional testing was required due to the contractor's project timeline. It was estimated that the contractor would pour larger sections of concrete at a time, but due to concrete shortages, smaller pours were required. These smaller pours required more trips from the material testing lab than originally anticipated. Additionally, there were material tests that did not pass. Costs associated with the non-passing materials were paid by the Town and reimbursed by the contractor. The failed test reimbursement amount is \$11,914.91. If approved, the Second Amendment to the Professional Services Agreement will adjust the revised not to exceed fee by \$15,264.88 for an updated total amount of \$136,572.88.

Of the \$136,572.88, the contractor is responsible for \$11,914.91 due to failed tests. Double Oak is responsible for reimbursing the Town of Flower Mound \$86,514.49 for material testing completed in Double Oak. The Town of Flower Mound is responsible for the remaining 61,973.30 for material testing completed in Flower Mound.

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

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** \$15,264.88

**Proposed Expenditure/(Revenue)**  
\$15,264.88

**Account Number(s):**  
308-103-70465-6160

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

**ATTACHMENTS:**

1. First Amendment to the PSA

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

THE STATE OF TEXAS     §  
COUNTY OF DENTON     §

**FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT WITH  
ECS SOUTHWEST, LLP**

This First Amendment to Professional Services Agreement (“First Amendment”) is entered into on this 5th day of June, 2023, by and between the **TOWN OF FLOWER MOUND, TEXAS**, a municipal corporation located in Denton County, Texas, (hereinafter referred to as “Town”), acting by and through its Mayor, and **ECS SOUTHWEST, LLP**, (“hereinafter referred to as “Consultant”) regarding the following project:

**WAKETON ROAD**

**I.     RECITALS**

WHEREAS, Town entered into a professional engineering design and related construction services from Consultant for the Waketon Road project (“Services”) on or about the 7th day of June, 2021 (the “Contract”); and

WHEREAS, Town and Consultant both desire to amend the Contract and Consultant is willing to undertake the performance of such additional services and agrees to the increased cost for such services as expressed herein;

**II.    TERMS OF AMENDMENT**

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

**A.**

**Recitals Incorporated**

The foregoing recitals are found to be true and correct, are fully incorporated into the body of this First Amendment, and made a part hereof by reference just as though they are set out in their entirety.

**B.**

**Amendment of Paragraph No. III**

From and after the approval of this First Amendment, Section III of the Contract entitled “Payment for Services” is amended in part by deleting the first paragraph of said Section III and replacing it with a new paragraph reading as follows and leaving all other provisions of Section III intact and unchanged:

“Total payment for services described herein for the Services for the Project shall be a sum not to exceed one hundred thirty-six thousand five hundred seventy-two Dollars and 88/100 (\$136,572.88) as specified in Attachment “B-1”.”

**C.**

**Revisions of the Scope of Services**

From and after the approval of this First Amendment, Appendix “B”, is replaced by the document attached hereto and incorporated herein by reference as Appendix “B-1” to the Contract. In case of conflict in the language of Appendix “B-1” and any other provision of the Contract, as amended by this First Amendment, the terms and conditions of the Contract, as amended by the First Amendment, shall control, and be final and binding upon both parties hereto.

**D.**

**Contract Controls**

All other provisions of the Contract remain in full force and effect. In the event of a conflict or an inconsistency between the Contract and/or the First Amendment, the terms of the First Amendment shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and year first written above.

**THE TOWN OF FLOWER MOUND, TEXAS**

By: \_\_\_\_\_  
The Honorable Derek France  
Mayor, Town of Flower Mound

Date Signed: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Town Secretary

**ECS SOUTHWEST, LLP**

By: Siddhartha Neekhra  
Name Siddharth Neekhra  
Title Senior Vice President

Date Signed: 08/23/23

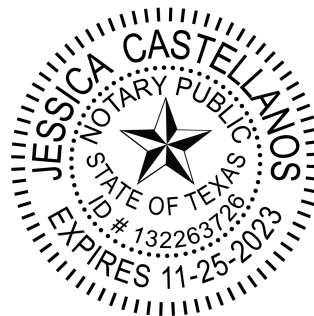
State of Texas           §  
                                  §  
County of Denton       §

This instrument was acknowledged before me on the 23rd day of August, 2023, by Siddhartha Neekhra., in his capacity as Senior Vice President of ECS SOUTHWEST, LLP, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of ECS SOUTHWEST, LLP.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 23rd  
DAY OF August, 2023.

Jessica Castellanos  
Notary Public, State of Texas

My Commission Expires:  
11/25/2023



## APPENDIX A: SCOPE OF SERVICES

Our construction materials engineering & testing services scope is limited to providing periodic testing and/or observations for the expected general construction activities for this project. We understand that the client or their designated representative will be scheduling our services, and the number of hours and level of effort that we based our proposal on should be considered approximate for budgetary purposes since it is not based on a published construction schedule or contractor material quantities. If a schedule becomes available, we can review this schedule against our assumptions and be more definitive in our proposed scope of services.

Unless otherwise noted, we agree to provide an engineering technician(s) or an engineer to perform our construction materials field testing, sampling, and observation services as noted in the following sections. *To most effectively serve the client and facilitate the construction process, our services should be scheduled 24-hours in advance. We understand that the construction process incorporates a large degree of variability and as such, we will do our best to accommodate scheduling calls made on the same day as our services are needed but we cannot guarantee that we can satisfy service requests made after-hours or on the same day as the services are needed to be performed.*

We anticipate the following services for this project:

### Earthwork

Perform as-scheduled earthwork (soils) observation, sampling, and testing services including:

1. Obtain (pick up) soil samples and perform laboratory soil tests generally including moisture/density relationship (Standard Proctor) tests, soil classification tests (Atterberg Limits and percent finer than the no. 200 sieve) for each requested soil-type. Additional soil testing may be required depending on project-specific requirements.
2. Perform in-place moisture/density tests on placed and compacted backfill soils and prepared subgrades.
3. Perform cement-stabilized laboratory and in-field testing for pavement subgrades.

### Cast-In-Place Concrete

Perform as-scheduled observation, sampling, and testing services for concrete placement events including:

1. Perform concrete field tests and associated measurements including: slump, air content, unit weight, and ambient air & concrete temperature. Sample placed concrete materials.
2. Pick up concrete sample cylinders the following work-day and transport them to the ECS concrete laboratory for processing, moisture curing, and subsequent compressive strength testing. *Appropriate onsite storage areas (curing boxes, shades, etc) for initial sample curing and any other field curing of concrete samples shall be provided by the contractor.*

### Project Administration, Clerical, & Dispatching

Project Administrators / Clerical Staff will work on the project as follows:

1. Perform Field Services Dispatching.
2. Process Field Reports and Laboratory Test Result Reports.
3. Perform additional administrative and clerical duties to aid in project execution.

## Project Management

Project Managers and Principal Engineers will manage the project as follows:

1. Coordinate with Client's field and office staff.
2. Attend the Pre-Construction meeting (if held) and periodic site meetings (as requested).
3. Coordinate field and lab services with the project general contractor and dispatch our field staff as scheduled.
4. Process, finalize, and distribute all field and laboratory reports.
5. Manage our project operation and services delivery as well as provide general material engineering consultation.

Our field staff or project professionals will provide documentation of events in the field and notify the project general contractor and the client (as needed) upon recognition of deficiencies.

## ADDITIONAL SERVICES

The following services are not included in the Scope of Services and will be considered as *Additional Services*, if and when they are required, requested, or occur:

1. Additional construction material samples for laboratory testing including early test samples or additional sample sets beyond the frequency required in the project documents.\*
2. Service cancellations while our staff is in transit to the project site or once at the project site.\*
3. Onsite delays and standby time.\*
4. Failed Tests.\*
5. Field (on site) curing facilities and/or storage for the cementitious samples.
6. Attend project meetings or routine construction meetings throughout the duration of the construction process.
7. Observation and testing of non-structural or temporary components.
8. Any additional services not specifically included in the above Scope of Services for this project.\*

\* Including all associated time, materials, and vehicle charges.

The additional services noted above are not factored into our scope and estimated fees and will be invoiced as additional services to be addressed by the Town of Flower Mound with the contractor. *These additional services will be invoiced as Task 2 charges.* Unless defined specifically, all additional services will be invoiced at their standard rates (subject to overtime modification, where applicable) shown on the "Standard Fee Schedule" provided in Appendix B.

Beyond the scope of services presented in this proposal for this project, ECS offers the following construction materials engineering and testing services, locally, that could prove beneficial to the client and the project in general:

- Erosion Control Status Observation
- Ground Penetrating Radar (GPR)
- Concrete Coring and Core Sample Testing
- Asphalt Observation, Testing, and Coring

## APPENDIX B1: ESTIMATED FEES & STANDARD FEE SCHEDULE

### ESTIMATED FEES

| Description of Services             | Detail                         | Quantity | Unit   | Rate      | Total                |
|-------------------------------------|--------------------------------|----------|--------|-----------|----------------------|
| <b>Earthwork</b>                    |                                |          |        |           |                      |
| Engineering Technician              | <i>Sample Pickups</i>          | 16       | hours  | \$ 55.00  | \$ 880.00            |
| Engineering Technician              | <i>Utility Lines</i>           | 158      | hours  | \$ 55.00  | \$ 8,690.00          |
| Engineering Technician              | <i>Utility Structures</i>      | 68       | hours  | \$ 55.00  | \$ 3,740.00          |
| Engineering Technician              | <i>Riprap &amp; Ret. Walls</i> | 40       | hours  | \$ 55.00  | \$ 2,200.00          |
| Engineering Technician              | <i>Pavement - Road</i>         | 172      | hours  | \$ 55.00  | \$ 9,460.00          |
| Engineering Technician              | <i>Pavement - Driveway</i>     | 40       | hours  | \$ 55.00  | \$ 2,200.00          |
| Engineering Technician              | <i>Stamped Concrete</i>        | 30       | hours  | \$ 55.00  | \$ 1,650.00          |
| Engineering Technician              | <i>Sidewalks &amp; Ramps</i>   | 56       | hours  | \$ 55.00  | \$ 3,080.00          |
| Engineering Technician (OT)         | <i>Saturday Work</i>           | 27       | hours  | \$ 82.50  | \$ 2,227.88          |
| Senior Engineering Technician       | <i>Asphalt</i>                 | 7        | hours  | \$ 53.00  | \$ 371.00            |
| Nuclear Gauge Fee                   |                                | 90       | events | \$ 75.00  | \$ 6,750.00          |
| Gradation/Depth Check               |                                | 98       | each   | \$ 15.00  | \$ 1,470.00          |
| St. Proctor (Moist./Dens. Rel.)     | <i>Standard Proctor</i>        | 21       | each   | \$ 140.00 | \$ 2,940.00          |
| Atterberg Limits Tests              | <i>Plasticity Index</i>        | 21       | each   | \$ 80.00  | \$ 1,680.00          |
| Washed Sieve (- #200 Sieve)         | <i>Percent Fines</i>           | 23       | each   | \$ 60.00  | \$ 1,380.00          |
| Vehicle Charge                      |                                | 112      | trips  | \$ 35.00  | \$ 3,920.00          |
| <b>Subtotal:</b>                    |                                |          |        |           | <b>\$ 52,638.88</b>  |
| <b>Concrete</b>                     |                                |          |        |           |                      |
| Engineering Technician              | <i>Utility Structures</i>      | 95       | hours  | \$ 55.00  | \$ 5,225.00          |
| Engineering Technician              | <i>Riprap &amp; Ret. Walls</i> | 82       | hours  | \$ 55.00  | \$ 4,510.00          |
| Engineering Technician              | <i>Pavement - Road</i>         | 231      | hours  | \$ 55.00  | \$ 12,705.00         |
| Engineering Technician              | <i>Pavement - Driveway</i>     | 56       | hours  | \$ 55.00  | \$ 3,080.00          |
| Engineering Technician              | <i>Stamped Concrete</i>        | 44       | hours  | \$ 55.00  | \$ 2,420.00          |
| Engineering Technician              | <i>Sidewalks &amp; Ramps</i>   | 98       | hours  | \$ 55.00  | \$ 5,390.00          |
| Conc. Cylinders (Comp. Str.)        |                                | 793      | each   | \$ 18.00  | \$ 14,274.00         |
| Material Sample Pickup              |                                | 113      | trips  | \$ 55.00  | \$ 6,215.00          |
| Vehicle Charge                      |                                | 113      | trips  | \$ 35.00  | \$ 3,955.00          |
| <b>Subtotal:</b>                    |                                |          |        |           | <b>\$ 57,774.00</b>  |
| <b>Project Management</b>           |                                |          |        |           |                      |
| Administrator / Clerical / Dispatch |                                | 59       | hours  | \$ 50.00  | \$ 2,950.00          |
| Project Manager                     |                                | 112      | hours  | \$ 120.00 | \$ 13,440.00         |
| Project Principal                   |                                | 59       | hours  | \$ 165.00 | \$ 9,735.00          |
| Vehicle Charge                      |                                | 1        | trips  | \$ 35.00  | \$ 35.00             |
| <b>Subtotal:</b>                    |                                |          |        |           | <b>\$ 26,160.00</b>  |
| <b>PROJECT TOTAL:</b>               |                                |          |        |           | <b>\$ 136,572.88</b> |



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

---

**DATE:** September 18, 2023  
**FROM:** Manuel Palacios, Assistant Director of Public Works  
**ITEM:** **Consider approval of the purchase of Concrete Services from Apex Concrete Construction, Inc., for the annual sidewalk program through a City of Southlake interlocal agreement contract, in the estimated annual amount of \$100,000.00**

---

**BACKGROUND:** This item is to approve the purchase of concrete services for the annual Sidewalk Program, using the City of Southlake interlocal contract with Apex Concrete Construction, Inc.

Each fiscal year, funds are allocated to the Street Services division's budget for the Sidewalk Program, to replace defective sidewalks within residential neighborhoods. The program allows residents to utilize the competitively bid contract pricing for sidewalk work on their property and be administered by the Town. The cost of the sidewalk work can be differed over a twelve-month period through their utility bill. Public Works is interested in utilizing the City of Southlake contract with Apex Concrete Construction, Inc., for concrete services for the sidewalk program. Apex Concrete Construction, Inc. is currently providing concrete services and staff is confident of their ability to perform this service satisfactorily.

The City of Southlake contract was awarded by their Council on June 21, 2022, and consists of four (4) optional one-year renewal periods. Staff is interested in utilizing the contract for the remainder of this fiscal year and the remaining four 1-year renewal periods.

Local governments are authorized by the Interlocal Cooperation Act, V.T.C.A. Government Code, Chapter 791, to enter into joint contracts and agreements for the performance of governmental functions and services, including administrative functions normally associated with the operation of government (such as purchasing necessary materials and equipment). The Town of Flower Mound and the City of Southlake have an active interlocal agreement. The initial term of the agreement was one year, and automatically renews annually unless cancelled by either part.

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

**ALTERNATIVES:** A decision not to approve this item would limit the amount of participation in the Sidewalk Program. Other contracts could be used. However, the unit costs would be more expensive, limiting the amount of work that could be completed with the program's budgeted amount.

**FISCAL IMPACT:** \$100,000.00

**Proposed Expenditure/(Revenue)**  
\$100,000.00

**Account Number(s):**  
375-630-70390-5110

**LEGAL REVIEW:** N/A

**ATTACHMENTS:**

1. City of Southlake Contract No. RFP2201B308AB220002 - Award (002)

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



ORIGINAL DOCUMENT

CITY OF SOUTHLAKE

Council Action YN

Ord./Res. No. \_\_\_\_\_

Date Approved 6/21/22

Apex Concrete Construction Inc.  
1080 Katy Road  
Keller, Texas 76244

Attn: Mr. Danny Porter

Subject: Contract Award Notification for Concrete Services RFP2201B380AB220002

Dear Mr. Porter:

The City of Southlake is pleased to inform you that Apex Concrete Construction Inc., of Keller, Texas is the awarded vendor for "Concrete Services RFP2201B380AB220002" The award and this agreement are based on your proposal to the City, copy enclosed. This is a single vendor award contract. Your company's award is attached. This award was approved by the City of Southlake City Council on 6/21/22.

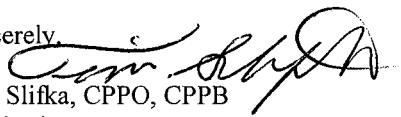
The terms and conditions proposed and accepted in this agreement are as follows:

|                       |                                                                                                                                                                                                      |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Payment Terms:        | Net 30 days (Unless otherwise noted – such as pre- and/or partial payment)                                                                                                                           |
| Estimated Quantities: | The City does not guarantee to purchase any minimum or maximum quantity but does contemplate purchasing the awarded items exclusively during the term of the contract from the successful vendors.   |
| Method of Payment:    | Shall be made by City procurement card or purchase order                                                                                                                                             |
| Delivery Terms:       | FOB Destination                                                                                                                                                                                      |
| Delivery Locations:   | Vendor Delivery or City employee pick-up.                                                                                                                                                            |
| Term of Contract:     | The term of awarded contract shall remain in effect for twelve months from date of award and is eligible for up to four (4) one (1) year annual renewals                                             |
| City Contact:         | Anthony Blain 817-748-8604                                                                                                                                                                           |
| Send all billing to:  | City of Southlake<br><a href="mailto:accountspayable@ci.southlake.tx.us">accountspayable@ci.southlake.tx.us</a> (preferred) or<br>1400 Main Street, Suite 420, Accounts Payable, Southlake, TX 76092 |
| Other Charges:        | The City of Southlake is a tax-exempt municipal corporation and is exempt from all federal, state, and local sales taxes.                                                                            |

All other specifications, terms and conditions shall be as provided in the original procurement documents. No other attachments to or in response to this agreement will be accepted unless approved in writing by the Purchasing Manager or an authorized representative of the City of Southlake.

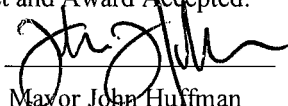
Thank you for participating in our procurement process. Please call 817-748-8312 with any questions.

Sincerely,

  
Tim Slifka, CPPO, CPPB  
Purchasing Manager  
City of Southlake  
1400 Main Street, Suite 420  
Southlake, Texas 76092  
[tslifka@ci.southlake.tx.us](mailto:tslifka@ci.southlake.tx.us)

Contract and Award Accepted:

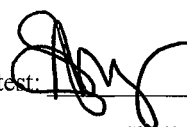
Signed:

  
Mayor John Huffman  
City of Southlake

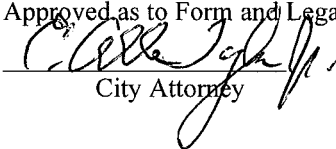
Date:

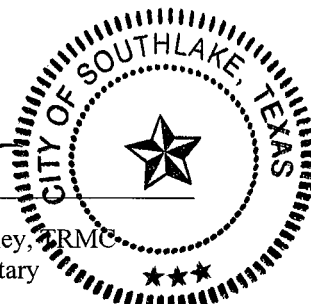
6/21/22

Attest:

  
Amy Shelley, RMC  
City Secretary

Approved as to Form and Legality:

  
City Attorney



## Primary Responses

Success: All data is valid!

| STATUS | Bid/No Bid Decision | # | Item | Quantity | Numeric                          | Numeric                                     | Text         | Total Price |
|--------|---------------------|---|------|----------|----------------------------------|---------------------------------------------|--------------|-------------|
|        |                     |   |      |          | Per Item Description Normal Work | Per Item After Hour Services Additional Fee | Vendor Notes |             |

### Flatwork to Perform all Concrete work NO REMOVAL OR DISPOSAL Per Square Foot

|                              |     |      |                                                                                          |   |          |         |                 |          |
|------------------------------|-----|------|------------------------------------------------------------------------------------------|---|----------|---------|-----------------|----------|
| Success: All values provided | Bid | #1-1 | 4" Thick (1-500 SF) (Flatwork to perform all concrete work / NO REMOVAL OR DISPOSAL      | 1 | \$ 8.00  | \$ 2.50 | per square foot | \$ 10.50 |
| Success: All values provided | Bid | #1-2 | 6" Thick (1-500 SF) (Flatwork to perform all concrete work / NO REMOVAL OR DISPOSAL      | 1 | \$ 10.00 | \$ 2.50 | per square foot | \$ 12.50 |
| Success: All values provided | Bid | #1-3 | 8" Thick (1-500 SF) (Flatwork to perform all concrete work / NO REMOVAL OR DISPOSAL      | 1 | \$ 10.50 | \$ 2.50 | per square foot | \$ 13.00 |
| Success: All values provided | Bid | #1-4 | 4" Thick (500 and up SF) (Flatwork to perform all concrete work / NO REMOVAL OR DISPOSAL | 1 | \$ 7.50  | \$ 2.50 | per square foot | \$ 10.00 |
| Success: All values provided | Bid | #1-5 | 6" Thick (500 and up SF) (Flatwork to perform all concrete work / NO REMOVAL OR DISPOSAL | 1 | \$ 9.50  | \$ 2.50 | per square foot | \$ 12.00 |
| Success: All values provided | Bid | #1-6 | 8" Thick (500 and up SF) (Flatwork to perform all concrete work / NO REMOVAL OR DISPOSAL | 1 | \$ 10.25 | \$ 2.50 | per square foot | \$ 12.75 |

### Flatwork to Perform all Concrete Work INCLUDING REMOVAL AND DISPOSAL Per Square Foot

|                              |     |      |                                                                                                  |   |          |         |                 |          |
|------------------------------|-----|------|--------------------------------------------------------------------------------------------------|---|----------|---------|-----------------|----------|
| Success: All values provided | Bid | #2-1 | 4" Thick (1-500 SF) (Flatwork to perform all concrete work / INCLUDING REMOVAL AND DISPOSAL      | 1 | \$ 10.20 | \$ 2.50 | per square foot | \$ 12.70 |
| Success: All values provided | Bid | #2-2 | 6" Thick (1-500 SF) (Flatwork to perform all concrete work / INCLUDING REMOVAL AND DISPOSAL      | 1 | \$ 12.96 | \$ 2.50 | per square foot | \$ 15.46 |
| Success: All values provided | Bid | #2-3 | 8" Thick (1-500 SF) (Flatwork to perform all concrete work / INCLUDING REMOVAL AND DISPOSAL      | 1 | \$ 14.75 | \$ 2.50 | per square foot | \$ 17.25 |
| Success: All values provided | Bid | #2-4 | 4" Thick (500 and up SF) (Flatwork to perform all concrete work / INCLUDING REMOVAL AND DISPOSAL | 1 | \$ 10.20 | \$ 2.50 | per square foot | \$ 12.70 |
| Success: All values provided | Bid | #2-5 | 6" Thick (500 and up SF) (Flatwork to perform all concrete work / INCLUDING REMOVAL AND DISPOSAL | 1 | \$ 12.50 | \$ 2.50 | per square foot | \$ 15.00 |
| Success: All values provided | Bid | #2-6 | 8" Thick (500 and up SF) (Flatwork to perform all concrete work / INCLUDING REMOVAL AND DISPOSAL | 1 | \$ 14.08 | \$ 2.50 | per square foot | \$ 16.58 |

### Retaining Wall - Perform all Concrete Work Per Linear Foot

|                              |     |      |                                                                                                 |   |           |         |    |           |
|------------------------------|-----|------|-------------------------------------------------------------------------------------------------|---|-----------|---------|----|-----------|
| Success: All values provided | Bid | #3-1 | 6" thick, Vertical Retaining Wall (to Perform all concrete work) For projects of 1-2' High Wall | 1 | \$ 32.00  | \$ 0.00 | NA | \$ 32.00  |
| Success: All values provided | Bid | #3-2 | 6" thick, Vertical Retaining Wall (to Perform all concrete work) For projects of 2-3' High Wall | 1 | \$ 40.00  | \$ 0.00 | NA | \$ 40.00  |
| Success: All values provided | Bid | #3-3 | 6" thick, Vertical Retaining Wall (to Perform all concrete work) For projects of 3-4' High Wall | 1 | \$ 110.00 | \$ 0.00 | NA | \$ 110.00 |
| Success: All values provided | Bid | #3-4 | 8" thick, Vertical Retaining Wall (to Perform all concrete work) For projects of 1-2' High Wall | 1 | \$ 32.00  | \$ 0.00 | NA | \$ 32.00  |
| Success: All values provided | Bid | #3-5 | 8" thick, Vertical Retaining Wall (to Perform all concrete work) For projects of 2-3' High Wall | 1 | \$ 45.00  | \$ 0.00 | NA | \$ 45.00  |
| Success: All values provided | Bid | #3-6 | 8" thick, Vertical Retaining Wall (to Perform all concrete work) For projects of 3-4' High Wall | 1 | \$ 125.00 | \$ 0.00 | NA | \$ 125.00 |
| Success: All values provided | Bid | #3-7 | 1' thick, Vertical Retaining Wall (to Perform all concrete work) For projects of 1-2' High Wall | 1 | \$ 42.00  | \$ 0.00 | NA | \$ 42.00  |

|                                                                                 |     |       |                                                                                                 |   |             |         |                 |             |
|---------------------------------------------------------------------------------|-----|-------|-------------------------------------------------------------------------------------------------|---|-------------|---------|-----------------|-------------|
| Success: All values provided                                                    | Bid | #3-8  | 1' thick, Vertical Retaining Wall (to Perform all concrete work) For projects of 2-3' High Wall | 1 | \$ 45.00    | \$ 0.00 | NA              | \$ 45.00    |
| Success: All values provided                                                    | Bid | #3-9  | 1' thick, Vertical Retaining Wall (to Perform all concrete work) For projects of 3-4' High Wall | 1 | \$ 135.00   | \$ 0.00 | NA              | \$ 135.00   |
| <b>Curb and Gutter NO REMOVAL OR DISPOSAL Per Linear Foot</b>                   |     |       |                                                                                                 |   |             |         |                 |             |
| Success: All values provided                                                    | Bid | #4-1  | 0 - 100 linear feet of 6" curb and 18" gutter. NO REMOVAL OR DISPOSAL                           | 1 | \$ 38.00    | \$ 3.00 | per linear foot | \$ 39.00    |
| Success: All values provided                                                    | Bid | #4-2  | 101 - 500 linear feet of 6" curb and 18" gutter. NO REMOVAL OR DISPOSAL                         | 1 | \$ 35.00    | \$ 3.00 | per linear foot | \$ 38.00    |
| Success: All values provided                                                    | Bid | #4-3  | 501 - 1,000 linear feet of 6" curb and 18" gutter. NO REMOVAL OR DISPOSAL                       | 1 | \$ 32.00    | \$ 0.00 | per linear foot | \$ 32.00    |
| Success: All values provided                                                    | Bid | #4-4  | 1,001 - 1,500 linear feet of 6" curb and 18" gutter. NO REMOVAL OR DISPOSAL                     | 1 | \$ 32.00    | \$ 0.00 | per linear foot | \$ 32.00    |
| Success: All values provided                                                    | Bid | #4-5  | 1,001 - 1,500 linear feet of 6" curb and 18" gutter. NO REMOVAL OR DISPOSAL                     | 1 | \$ 32.00    | \$ 0.00 | per linear foot | \$ 32.00    |
| Success: All values provided                                                    | Bid | #4-6  | 3,001 and Up linear feet of 6" curb and 18" gutter. NO REMOVAL OR DISPOSAL                      | 1 | \$ 32.00    | \$ 0.00 | per linear foot | \$ 32.00    |
| <b>Curb and Gutter INCLUDING REMOVAL AND DISPOSAL Per Linear Foot</b>           |     |       |                                                                                                 |   |             |         |                 |             |
| Success: All values provided                                                    | Bid | #5-1  | 0 - 100 linear feet of 6" curb and 18" gutter. INCLUDING REMOVAL AND DISPOSAL                   | 1 | \$ 39.50    | \$ 3.00 | per linear foot | \$ 42.50    |
| Success: All values provided                                                    | Bid | #5-2  | 101 - 500 linear feet of 6" curb and 18" gutter. INCLUDING REMOVAL AND DISPOSAL                 | 1 | \$ 38.50    | \$ 3.00 | per linear foot | \$ 41.50    |
| Success: All values provided                                                    | Bid | #5-3  | 501 - 1,000 linear feet of 6" curb and 18" gutter. INCLUDING REMOVAL AND DISPOSAL               | 1 | \$ 36.50    | \$ 0.00 | per linear foot | \$ 36.50    |
| Success: All values provided                                                    | Bid | #5-4  | 1,001 - 1,500 linear feet of 6" curb and 18" gutter. INCLUDING REMOVAL AND DISPOSAL             | 1 | \$ 36.50    | \$ 0.00 | per linear foot | \$ 36.50    |
| Success: All values provided                                                    | Bid | #5-5  | 1,501 - 3,000 linear feet of 6" curb and 18" gutter. INCLUDING REMOVAL AND DISPOSAL             | 1 | \$ 35.00    | \$ 0.00 | per linear foot | \$ 35.00    |
| Success: All values provided                                                    | Bid | #5-6  | 3,001 and Up linear feet of 6" curb and 18" gutter. INCLUDING REMOVAL AND DISPOSAL              | 1 | \$ 35.00    | \$ 0.00 | per linear foot | \$ 35.00    |
| <b>Construct Barrier-Free Curb Ramp</b>                                         |     |       |                                                                                                 |   |             |         |                 |             |
| Success: All values provided                                                    | Bid | #6-1  | Construct Barrier-Free Curb Ramp per Scope of Services                                          | 1 | \$ 2,450.00 | \$ 0.00 | each            | \$ 2,450.00 |
| <b>French Drain Installation Includes all Required Services Per Linear Foot</b> |     |       |                                                                                                 |   |             |         |                 |             |
| Success: All values provided                                                    | Bid | #7-1  | Four Inch (4") French Drain Installation                                                        | 1 | \$ 25.00    | \$ 0.00 | per linear foot | \$ 25.00    |
| Success: All values provided                                                    | Bid | #7-2  | Six Inch (6") French Drain Installation                                                         | 1 | \$ 30.00    | \$ 0.00 | per linear foot | \$ 30.00    |
| Success: All values provided                                                    | Bid | #7-3  | Eight Inch (8") French Drain Installation                                                       | 1 | \$ 35.00    | \$ 0.00 | per linear foot | \$ 35.00    |
| <b>Unclassified Excavation and Disposal Per Cubic Yard</b>                      |     |       |                                                                                                 |   |             |         |                 |             |
| Success: All values provided                                                    | Bid | #8-1  | Unclassified Excavation and Disposal Per Scope of Services                                      | 1 | \$ 40.00    | \$ 0.00 | per cubic yard  | \$ 40.00    |
| <b>Manhole Ring and Lid Adjustment - Labor Only Per Hour</b>                    |     |       |                                                                                                 |   |             |         |                 |             |
| Success: All values provided                                                    | Bid | #9-1  | Manhole Ring and Lid Adjustment Per Scope of Services                                           | 1 | \$ 150.00   | \$ 0.00 | each            | \$ 150.00   |
| <b>Water Valve Adjustment Labor Only Per Hour</b>                               |     |       |                                                                                                 |   |             |         |                 |             |
| Success: All values provided                                                    | Bid | #10-1 | Water Valve Adjustment Per Scope of Services                                                    | 1 | \$ 150.00   | \$ 0.00 | each            | \$ 150.00   |

#### Install, Remove and/or Replace Headwalls Per Each

|                              |     |       |                                                    |   |             |         |            |             |
|------------------------------|-----|-------|----------------------------------------------------|---|-------------|---------|------------|-------------|
| Success: All values provided | Bid | #11-1 | Remove and Replace Headwalls per Scope of Services | 1 | \$ 3,600.00 | \$ 0.00 | 0-36" each | \$ 3,600.00 |
| Success: All values provided | Bid | #11-2 | Construct New Headwall, Per Each                   | 1 | \$ 3,600.00 | \$ 0.00 | 0-36" each | \$ 3,600.00 |

#### Install, Remove and/or Reset 12" to 36" Reinforced Concrete Pipe (RCP) all inclusive Per Linear Foot

|                              |     |       |                                                                                     |   |           |         |                 |           |
|------------------------------|-----|-------|-------------------------------------------------------------------------------------|---|-----------|---------|-----------------|-----------|
| Success: All values provided | Bid | #12-1 | Remove and Reset Reinforced Concrete Pipe (RCP) per Scope of Services               | 1 | \$ 75.00  | \$ 0.00 | per linear foot | \$ 75.00  |
| Success: All values provided | Bid | #12-2 | Install New 12" to 36" Reinforced Concrete Pipe (RCP) all inclusive Per Linear Foot | 1 | \$ 150.00 | \$ 0.00 | per linear foot | \$ 150.00 |

#### Rough and Finish Grading including Labor and Equipment Required (Material not included) Per Square Foot

|                              |     |       |                                                |   |         |         |                 |         |
|------------------------------|-----|-------|------------------------------------------------|---|---------|---------|-----------------|---------|
| Success: All values provided | Bid | #13-1 | Rough and Finish Grading per Scope of Services | 1 | \$ 1.10 | \$ 0.00 | per square foot | \$ 1.10 |
|------------------------------|-----|-------|------------------------------------------------|---|---------|---------|-----------------|---------|

#### General Laborer Services including Required Equipment Per Man, Per Hour

|                              |     |       |                                                |   |           |         |               |           |
|------------------------------|-----|-------|------------------------------------------------|---|-----------|---------|---------------|-----------|
| Success: All values provided | Bid | #14-1 | General Laborer Services per Scope of Services | 1 | \$ 135.00 | \$ 0.00 | Equip + 2 men | \$ 135.00 |
|------------------------------|-----|-------|------------------------------------------------|---|-----------|---------|---------------|-----------|

#### Install 4"-6" Rip-Rap including all required Material, Labor, Equipment Per Square Foot

|                              |     |       |                                            |   |         |         |    |         |
|------------------------------|-----|-------|--------------------------------------------|---|---------|---------|----|---------|
| Success: All values provided | Bid | #15-1 | Rip-Rap Installation per Scope of Services | 1 | \$ 5.75 | \$ 0.00 | NA | \$ 5.75 |
|------------------------------|-----|-------|--------------------------------------------|---|---------|---------|----|---------|

#### Exposed Aggregate Finish Per Square Foot

|                              |     |       |                                                              |   |          |         |                 |          |
|------------------------------|-----|-------|--------------------------------------------------------------|---|----------|---------|-----------------|----------|
| Success: All values provided | Bid | #16-1 | Exposed Aggregate Finish 1 to 500 SF per Scope of Services   | 1 | \$ 11.50 | \$ 0.00 | per square foot | \$ 11.50 |
| Success: All values provided | Bid | #16-2 | Exposed Aggregate Finish 501 and up SF per Scope of Services | 1 | \$ 10.50 | \$ 0.00 | per square foot | \$ 10.50 |

#### Colored Concrete Per Square Foot

|                              |     |       |                                                      |   |          |         |                 |          |
|------------------------------|-----|-------|------------------------------------------------------|---|----------|---------|-----------------|----------|
| Success: All values provided | Bid | #17-1 | Colored Concrete 1 to 500 SF per Scope of Services   | 1 | \$ 11.50 | \$ 0.00 | per square foot | \$ 11.50 |
| Success: All values provided | Bid | #17-2 | Colored Concrete 501 and up SF per Scope of Services | 1 | \$ 10.50 | \$ 0.00 | per square foot | \$ 10.50 |

#### Installation of Brick Pavers and Truncated Domes - Labor Only Per Square Foot

|                              |     |       |                                                                    |   |         |         |                 |         |
|------------------------------|-----|-------|--------------------------------------------------------------------|---|---------|---------|-----------------|---------|
| Success: All values provided | Bid | #18-1 | Brick Paver and Truncated Domes Installation per Scope of Services | 1 | \$ 6.85 | \$ 0.00 | per square foot | \$ 6.85 |
|------------------------------|-----|-------|--------------------------------------------------------------------|---|---------|---------|-----------------|---------|

#### Stamped Concrete, Per Square Foot

|                              |     |       |                                        |   |          |         |                 |          |
|------------------------------|-----|-------|----------------------------------------|---|----------|---------|-----------------|----------|
| Success: All values provided | Bid | #19-1 | Stamped Concrete Per Scope of Services | 1 | \$ 14.50 | \$ 0.00 | per square foot | \$ 14.50 |
|------------------------------|-----|-------|----------------------------------------|---|----------|---------|-----------------|----------|

#### Erosion Control Measures

|                              |     |       |                                                                          |   |          |         |                 |          |
|------------------------------|-----|-------|--------------------------------------------------------------------------|---|----------|---------|-----------------|----------|
| Success: All values provided | Bid | #20-1 | Rock Filter Dam, Per Scope of Services, Per Cubic Yard                   | 1 | \$ 32.00 | \$ 0.00 | per cubic yard  | \$ 32.00 |
| Success: All values provided | Bid | #20-2 | Temporary Sediment Control Fence, Per Scope of Services, Per Linear Foot | 1 | \$ 2.10  | \$ 0.00 | per linear foot | \$ 2.10  |
| Success: All values provided | Bid | #20-3 | Curb Inlet Protection, Per Scope of Services, Per Linear Foot            | 1 | \$ 10.00 | \$ 0.00 | per linear foot | \$ 10.00 |

#### Flowable Backfill, Per Cubic Yard

|                              |     |       |                                                          |   |           |         |    |           |
|------------------------------|-----|-------|----------------------------------------------------------|---|-----------|---------|----|-----------|
| Success: All values provided | Bid | #21-1 | Flowable Backfill, Per Scope of Services, Per Cubic Yard | 1 | \$ 175.00 | \$ 0.00 | NA | \$ 175.00 |
|------------------------------|-----|-------|----------------------------------------------------------|---|-----------|---------|----|-----------|

#### Embankment Per Scope of Services, Per Cubic Yard

|                              |     |       |                                                 |   |          |         |                |          |
|------------------------------|-----|-------|-------------------------------------------------|---|----------|---------|----------------|----------|
| Success: All values provided | Bid | #22-1 | Embankment per Scope of Services Per Cubic Yard | 1 | \$ 46.00 | \$ 0.00 | per cubic yard | \$ 46.00 |
|------------------------------|-----|-------|-------------------------------------------------|---|----------|---------|----------------|----------|

#### Handrail Removal and Reinstallation Services Per Linear Foot

|                              |     |       |                                                                                                      |   |          |         |    |          |
|------------------------------|-----|-------|------------------------------------------------------------------------------------------------------|---|----------|---------|----|----------|
| Success: All values provided | Bid | #23-1 | Handrail Removal and Reinstallation Services Per Scope of Services Per TxDOT Type PR1 Specifications | 1 | \$ 56.00 | \$ 0.00 | NA | \$ 56.00 |
| Success: All values provided | Bid | #23-2 | Handrail Removal and Reinstallation Services Per Scope of Services Per ACI318-06 Specification       | 1 | \$ 85.00 | \$ 0.00 | NA | \$ 85.00 |

#### New Handrail Installation Services Per Linear Foot

|                              |     |       |                                                                                                          |   |           |         |            |           |
|------------------------------|-----|-------|----------------------------------------------------------------------------------------------------------|---|-----------|---------|------------|-----------|
| Success: All values provided | Bid | #24-1 | New Handrail Installation Services Per Scope of Services Per TxDOT PR1 Specification                     | 1 | \$ 350.00 | \$ 0.00 | Decorative | \$ 350.00 |
| Success: All values provided | Bid | #24-2 | New Handrail Installation Services Per Scope of Services Per Decorative Handrail ACI381-06 Specification | 1 | \$ 350.00 | \$ 0.00 | Galvanized | \$ 350.00 |

#### Fence Removal and Reinstallation Services Per Scope of Services, Per Linear Foot

|                              |     |       |                    |   |           |         |                    |           |
|------------------------------|-----|-------|--------------------|---|-----------|---------|--------------------|-----------|
| Success: All values provided | Bid | #25-1 | Chain Link Fence   | 1 | \$ 42.00  | \$ 0.00 | 8' High            | \$ 42.00  |
| Success: All values provided | Bid | #25-2 | Wooden Fence       | 1 | \$ 68.00  | \$ 0.00 | 6' Cedar           | \$ 68.00  |
| Success: All values provided | Bid | #25-3 | Wrought Iron Fence | 1 | \$ 84.00  | \$ 0.00 | 5'                 | \$ 84.00  |
| Success: All values provided | Bid | #25-4 | Barbed Wire Fence  | 1 | \$ 55.00  | \$ 0.00 | 5 Strand           | \$ 55.00  |
| Success: All values provided | Bid | #25-5 | Vinyl Fence        | 1 | \$ 62.00  | \$ 0.00 | 6'                 | \$ 62.00  |
| Success: All values provided | Bid | #25-6 | Metal Pipe Fence   | 1 | \$ 75.00  | \$ 0.00 | paint not included | \$ 75.00  |
| Success: All values provided | Bid | #25-7 | Brick Fence        | 1 | \$ 150.00 | \$ 0.00 | 6'                 | \$ 150.00 |

#### Install FlexBase including all required Material, Labor, Equipment Per Square Yard

|                              |     |       |                                        |   |          |         |          |          |
|------------------------------|-----|-------|----------------------------------------|---|----------|---------|----------|----------|
| Success: All values provided | Bid | #26-1 | Install FlexBase Per Scope of Services | 1 | \$ 22.50 | \$ 0.00 | 6" Thick | \$ 22.50 |
|------------------------------|-----|-------|----------------------------------------|---|----------|---------|----------|----------|

#### Install Top Soil including all required Material, Labor, Equipment Per Square Yard

|                              |     |       |                                        |   |          |         |          |          |
|------------------------------|-----|-------|----------------------------------------|---|----------|---------|----------|----------|
| Success: All values provided | Bid | #27-1 | Install Top Soil per Scope of Services | 1 | \$ 27.00 | \$ 0.00 | 6" Thick | \$ 27.00 |
|------------------------------|-----|-------|----------------------------------------|---|----------|---------|----------|----------|

#### Additional Vendor Charges Not Listed. Please Describe.

|             |        |       |                                               |   |  |  |  |  |
|-------------|--------|-------|-----------------------------------------------|---|--|--|--|--|
| Not Bidding | No Bid | #28-1 | Additional Vendor Fee Not Specifically Listed | 1 |  |  |  |  |
| Not Bidding | No Bid | #28-2 | Additional Vendor Fee Not Specifically Listed | 1 |  |  |  |  |
| Not Bidding | No Bid | #28-3 | Additional Vendor Fee Not Specifically Listed | 1 |  |  |  |  |
| Not Bidding | No Bid | #28-4 | Additional Vendor Fee Not Specifically Listed | 1 |  |  |  |  |

## Appendix B – Proposal

**Submittal Checklist:** (To determine validity of proposal)

- ☒ Appendix B (pages 35 through 44) must be included in the proposal submittal
- ☒ Appendix C Conflict of Interest Form (page 44) must be included in the proposal submittal.
- ☒ Form 1295 Certificate of Interested Party must be included in the proposal submittal. See page 2.
- ☒ HB 89, SB 252, SB 13, and SB 19. See Page 41.

All proposals submitted to the City of Southlake shall include this page with the submitted Proposal.

|                                                                                                                                                   |                                             |                    |   |
|---------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|--------------------|---|
| <b>RFP Number:</b>                                                                                                                                | <b>RFP2201B380AB220002</b>                  |                    |   |
| <b>Project Title:</b>                                                                                                                             | <b>Concrete Services</b>                    |                    |   |
| <b>Submittal Deadline:</b>                                                                                                                        | <b>3:00 P.M. (CST), Friday May 20, 2022</b> |                    |   |
| <b>Submit Electronically* to: <a href="https://southlake.bonfirehub.com/login">https://southlake.bonfirehub.com/login</a></b>                     |                                             |                    |   |
| * Requires email account login and password.                                                                                                      |                                             |                    |   |
| <b>Proposer Information:</b>                                                                                                                      |                                             |                    |   |
| <b>Proposer's Legal Name:</b>                                                                                                                     | Apex Concrete Construction Inc.             |                    |   |
| <b>Address:</b>                                                                                                                                   | 1080 Katy Road                              |                    |   |
| <b>City, State &amp; Zip</b>                                                                                                                      | Keller TX 76244                             |                    |   |
| <b>Federal Employers Identification Number #</b>                                                                                                  | 41-4965326                                  |                    |   |
| <b>Phone Number:</b>                                                                                                                              | 817-454-1995                                | <b>Fax Number:</b> | — |
| <b>E-Mail Address:</b>                                                                                                                            | APEXCONSTRUCTION57@GMAIL.COM                |                    |   |
| <b>Proposer Authorization</b>                                                                                                                     |                                             |                    |   |
| I, the undersigned, have the authority to execute this Proposal in its entirety as submitted and enter into a contract on behalf of the Proposer. |                                             |                    |   |
| Printed Name and Position of Authorized Representative: <u>Danny Porter, President</u>                                                            |                                             |                    |   |
| Signature of Authorized Representative: <u>[Signature]</u>                                                                                        |                                             |                    |   |
| Signed this <u>17<sup>th</sup></u> (day) of <u>MAY</u> (month) <u>2022</u> (year)                                                                 |                                             |                    |   |

**I. REQUIRED PROPOSAL INFORMATION, IN ORDER FOR A PROPOSAL TO BE CONSIDERED COMPLETE, AND TO BE EVALUATED FOR A CONTRACT AWARD BY THE CITY, PROPOSER MUST SUBMIT ALL OF THE FOLLOWING INFORMATION:**

- A. Product or Service Description: Proposers should utilize this section to describe the technical aspects, capabilities, features and options of the product and/or service proposed in accordance with the required Scope of Services as identified in Appendix A. Promotional literature, brochures, or other technical information may be used.
- B. Additional Hardware Descriptions: Proposers should also include in this section a detailed description of what additional hardware and/or software, if any, would be required by the City in order to fully utilize the goods and/or services proposed.
- C. Guarantees and Warranties: Each Proposer shall submit a complete copy of any warranties or guarantees provided by the manufacturer or Proposer with the Proposal submitted.
- D. Project Schedule/Delivery Date: Proposer must provide a project schedule noting all projected completion dates for segments of the Project, from start-up to completion, and all delivery dates for goods covered by the RFP. The Proposal must show the number of days required to deliver and install the product or equipment after the receipt of the City's Purchase Order.

A. **Pricing:** Pricing shall reflect the full Scope of Services defined herein, inclusive of all associated cost for delivery, labor, insurance, taxes, overhead, and profit.

B. **Schedule of Pricing:** Proposer shall quote unit pricing in accordance with the itemized listing of products or contract segments stated in the Scope of Services and using the following format:

[illegible]

### 3. Term of Contract and Option to Extend

**City of Southlake**

- A. Option Clause: It is agreed that City will have the option to extend the contract for up to four (4) additional years, in one-year intervals. To exercise this option, the City shall serve notice 30 days prior to contract termination or to the end of any one-year extension. The Option to Extend will not be considered if funding is unavailable or if the contractor's past performance is not within the industry standard.
- B. Escalation Clause: Should market conditions prevail which dictate an increase, the successful contractor may submit documentation requesting permission to increase pricing no later than 30 days after receiving notice from the City of its intent to extend the agreement. Escalation may only occur at the time of renewal and only upon securing the approval of the City in writing. Requests for price adjustments must be solely for the purpose of accommodating an increase in the contractor's cost, not profits.

Vendors shall show in this quote their anticipated percent of escalation if/when the option to extend is exercised. The percent quoted will be a maximum. In addition, the percentage proposed will be a factor in determining the best value to the City. It is the average price over the period of the contract that will be the price factor considered in the evaluation of this quote. Quotes in which negative or no escalation is shown will be considered as 0% escalation.

- C. Price Increases Upon Extension: If approved by the City, the Contractor shall modify the rates charged by the Contractor to reflect any changes shown in the comparative statement delivered to the City. The maximum increase allowed under this provision shall be four percent (4%) per year. The City shall have authority, in its reasonable discretion, to determine the validity of any change in Contractor's rates. City cannot exercise the Option to Extend with any price increases unless the Vendor completes the section of the Quote requesting anticipated percentage of annual escalation.

First Additional Year Escalation Percentage ..... 4 %

Second Additional Year Escalation Percentage ..... 4 %

Third Additional Year Escalation Percentage ..... 4 %

Fourth Additional Year Escalation Percentage ..... 4 %

#### 4. **Proposer's Experience / Staff**

- A. Project Team: Identify all members of the Proposer's team (including both team members and management) who will be providing any services proposed and include information which details their experience.
- B. Removal or Replacement of Staff: If an assigned staff person must be removed or replaced for any reason, the replacement person must be approved by City prior to joining the project.
- C. Business Establishment: State the number of years the Proposer's business has been established and operating. If Proposer's business has changed names or if the principals operating the business operate any similar businesses under different names, or have operated any other businesses or changed the legal status or form of the business within the last five (5) years, all names, of predecessor business names, affiliated entities, and previous business entities operated by the principals, if different than present, must be provided;

State the number of years' experience the business has: 10; and the number of employees: 15.

- D. Project Related Experience: All Proposals must include detailed information that details the Proposer's experience and expertise in providing the requested services that demonstrates the Proposer's ability to logically plan and complete the requested project.

## 5. References

Proposer shall provide four (4) references where Proposer has performed similar to or the same types of services as described herein.

### Reference #1:

|                                                                   |                                         |
|-------------------------------------------------------------------|-----------------------------------------|
| Client / Company Name: <u>TOWN OF Flower Mound.</u>               |                                         |
| Contact Name: <u>Rick Addington</u>                               | Contact Title: <u>STREET SUPERVISOR</u> |
| Phone: <u>817-454-8080</u>                                        | Email: <u>RICK.ADDINGTON@</u>           |
| Date and Scope of Work Provided: <u>Flower - Mound. com</u>       |                                         |
| <u>CURRENTLY + ANNUAL CONTRACT</u>                                |                                         |
| <u>CONCRETE STREETS - ALLEYS - CURB &amp; GUTTER - EXCAVATION</u> |                                         |

### Reference #2:

|                                                            |                                         |
|------------------------------------------------------------|-----------------------------------------|
| Client / Company Name: <u>CITY OF North Richland Hills</u> |                                         |
| Contact Name: <u>Chris Turner</u>                          | Contact Title: <u>PW-SUPERINTENDENT</u> |
| Phone: <u>817-703-8527</u>                                 | Email: <u>CTURNER@NRH7X.COM</u>         |
| Date and Scope of Work Provided: <u>ANNUAL CONTRACT</u>    |                                         |
| <u>CONCRETE STREETS - ALLEYS, C&amp;G EXCAVATION ETC.</u>  |                                         |

### Reference #3:

|                                                                            |                                       |
|----------------------------------------------------------------------------|---------------------------------------|
| Client / Company Name: <u>CITY OF KELLER</u>                               |                                       |
| Contact Name: <u>Stanley Moore</u>                                         | Contact Title: <u>PW-SUPERVISOR</u>   |
| Phone: <u>817-743-4212</u>                                                 | Email: <u>SMOORE@CITYOFKELLER.COM</u> |
| Date and Scope of Work Provided: <u>ANNUAL CONTRACT</u>                    |                                       |
| <u>SIDEWALKS, CONCRETE STREETS C&amp;G, ALLEYS - DRAINAGE - EXCAVATION</u> |                                       |

### Reference #4:

|                                                      |                             |
|------------------------------------------------------|-----------------------------|
| Client / Company Name: <u>Western Welding</u>        |                             |
| Contact Name: <u>Matt Green</u>                      | Contact Title: <u>owner</u> |
| Phone: <u>817-319-9027</u>                           | Email: <u></u>              |
| Date and Scope of Work Provided: <u>(COMMERCIAL)</u> |                             |
| <u>MULTIPLE BUILDING FOUNDATIONS - DRIVEWAYS</u>     |                             |

6. **Trade Secrets and/or Confidential Information**

Trade Secrets and/or Confidential Information: This proposal \_\_\_\_ (does) X (does not) contain trade secrets and/or confidential information. If applicable, describe such trade secrets and confidential information, and the basis for your assertion that such material qualifies for legal protection from disclosure.

7. **Federal, State and/or Local Identification Information**

A. Centralized Master Bidders List registration number: \_\_\_\_\_.

B. Prime contractor HUB / MWBE registration number: \_\_\_\_\_.

C. An individual Proposer acting as a sole proprietor must also enter the Proposer's Social Security Number: # \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_.

8. **Emergency Business Services Contact Notice**

During a natural disaster, or homeland security event, there may be a need for the City of Southlake to access your business for products or services after normal business hours and/or holidays. The City may request City employee pick up or vendor delivery of product or services.

For this purpose, a primary and secondary emergency contact name and phone number are required. It is critical the vendor's emergency contact information remains current. City shall be contacted by E-mail with any change to a contact name or phone number of these emergency contacts. Updates may be emailed to [vendors@ci.southlake.tx.us](mailto:vendors@ci.southlake.tx.us).

All products or services requested during an emergency event are to be supplied as per the established contract prices, terms and conditions. The vendor shall provide the fee (pricing) for an after-hours emergency opening of the business, if any. In general, orders will be placed using a City of Southlake procurement card (Master Card) or City issued Purchase Order. The billing is to include the emergency opening fee, if applicable.

The contractor shall provide the names, phone numbers and fee (pricing), if any, for an after-hours emergency opening of the business listed below.

Business Name: Apex Concrete Construction Inc.

Contract #: RFP 2201B380AB220002

Description: CONCRETE SERVICES

Primary Contact (Name): DANNY PORTER

Primary Contact Phone Numbers: Home: 817-454-1995 Cell: SAME

Secondary Contact (Name): ROBERT SLANINA

Secondary Contact Phone Numbers: Home: 817-454-1996 Cell: SAME

After Hours emergency opening fee, if applicable: \$ NONE

9. **Cooperative Governmental Purchasing Notice**

Other governmental entities maintaining interlocal agreements with the City, may desire, but are not obligated, to purchase goods and services defined in this RFP from the successful Proposer. All purchases by governmental entities, other than the City, will be billed directly to and paid by that governmental entity. The City will not be responsible for another governmental entity's debts. Each governmental entity will place their own orders with the successful Proposer and be responsible for ensuring full compliance with the RFP specifications. Prior to other governmental entities placing orders, the City will notify the successful Proposer of their intent.

Please indicate below if you will permit other governmental entities to purchase from your agreement with the City.

☒ **Yes, Others can purchase**      ☐ **No, Only the City can purchase**

II. ***CONTRACT TERMS AND CONDITIONS. EXCEPT WHERE PROPOSER MAKES SPECIFIC EXCEPTION IN THE SUBMITTED PROPOSAL, ANY CONTRACT RESULTING FROM THIS RFP WILL CONTAIN THE FOLLOWING TERMS AND CONDITIONS, WHICH PROPOSER HEREBY ACKNOWLEDGES, AND TO WHICH PROPOSER AGREES BY SUBMITTING A PROPOSAL:***

1. **Delivery of Products and/or Services**

- A. **Payment Terms:** Unless otherwise specified in the Scope of Services or otherwise agreed to in writing by the City, payment terms for the City are Net 30 days upon receipt of invoice.
- B. **Warranty of Products and Services:** All products furnished under this contract shall be warranted to be merchantable and good quality and fit for the purposes intended as described in this Proposal, to the satisfaction of City and in accordance with the specifications, terms, and conditions of the Scope of Services, and all services performed shall be warranted to be of a good and workmanlike quality, in addition to, and not in lieu of, any other express written warranties provided.
- C. **Late Delivery or Performance:** If Proposer fails to deliver acceptable goods or services within the timeframes established in the Project Schedule, the City shall be authorized to purchase the goods or services from another source and assess any increase in costs to the defaulting Proposer, who agrees to pay such costs within ten days of invoice.
- D. **Title to Goods and Risk of Loss:** For goods to be provided by Proposers hereunder, if any, the title and risk of loss of the goods shall not pass to City until City actually receives, takes possession, and accepts the goods and the installation of such goods, has tested the system, and determined that it is in good and acceptable working order.

2. **Miscellaneous**

- A. **Independent Contractor:** Proposer agrees that Proposer and Proposer's employees and agents have no employer-employee relationship with City. Proposer agrees that if Proposer is selected and awarded a contract, City shall not be responsible for the Federal Insurance Contribution Act (FICA) payments, Federal or State unemployment taxes, income tax withholding, Workers Compensation Insurance payments, or any other insurance payments, nor will City furnish any medical or retirement benefits or any paid vacation or sick leave.
- B. **Assignments:** The rights and duties awarded the successful Proposer shall not be assigned to another without the written consent of the Purchasing Manager. Such consent shall not relieve the assigner of liability in the event of default by the assignee.

- C. Liens: Proposer shall indemnify and save harmless the City against any and all liens and encumbrances for all labor, goods, and services which may be provided to the City by Proposer or Proposer's vendor(s), and if the City requests, a proper release of all liens or satisfactory evidence of freedom from liens shall be delivered to the City.
- D. Gratuities / Bribes: Proposer certifies that no bribes in the form of entertainment, gifts, or otherwise, were offered or given by the successful Proposer, or its agent or representative, to any City officer, employee or elected representative, with respect to this RFP or any contract with the City, and that if any such bribe is found to have been made this shall be grounds for voiding of the contract
- E. Financial Participation: Proposer certifies that it has not received compensation from the City to participate in preparing the specifications or RFP on which the Proposal is based and acknowledges that this contract may be terminated and/or payment withheld if this certification is inaccurate.
- F. Required Licenses: Proposer certifies that he holds all licenses required by the State of Texas for a provider of the goods and/or services described by the Scope of Services herein.
- G. Authority to Submit Proposal and Enter Contract: The person signing on behalf of Proposer certifies that the signer has authority to submit the Proposal on behalf of the Proposer and to bind the Proposer to any resulting contract.
- H. Compliance with Applicable Law: Proposer agrees that the contract will be subject to, and Proposer will strictly comply with, all applicable federal, state, and local laws, ordinances, rules, and regulations.
- I. Compliance with HB 89: Proposer agrees per HB 89 vendor shall not boycott Israel at any time while providing products or services to the City of Southlake.

☒ Yes, we agree

☐ No, we do not agree

☐ N/A

- J. Compliance with SB 252: Proposer agrees per SB 252 vendor shall not do business with Iran, Sudan or a foreign terrorist organization while providing products or services to the City of Southlake.

☒ Yes, we agree

☐ No, we do not agree

- K. Compliance with SB 13: Proposer agrees per SB 13 vendor does not boycott energy companies as those terms are defined in the Texas Government Code § 809.001, and will not boycott energy companies during the term of any contract with the City of Southlake.

☒ Yes, we agree

☐ No, we do not agree

- L. Compliance with SB 19: Proposer agrees per SB 19 vendor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association as those terms are defined in the Texas Government Code § 2274.001, and that vendor will not so discriminate during the term of any contract with the City of Southlake.

☒ Yes, we agree

☐ No, we do not agree

### 3. Financial Responsibility Provisions

- A. Insurance: The Proposer, consistent with its status as an independent contractor, shall carry, and shall require any of its subcontractors to carry, at least the following insurance in such form, with such companies, and in such amounts (unless otherwise specified) as City may require:
- i. Worker's Compensation and Employer's Liability insurance, including All States Endorsement, to the extent required by federal law and complying with the laws of the State of Texas;

- ii. Commercial General Liability insurance, including Blanket Contractual Liability, Broad Form Property Damage, Personal Injury, Completed Operations/Products Liability, Premises Liability, Medical Payments, Interest of Employees as additional insureds, and Broad Form General Liability Endorsements, for at least One Million Dollars (\$1,000,000) Combined Single Limit Bodily Injury and Property Damage on an occurrence basis;
  - iii. Comprehensive Automobile Liability insurance covering all owned, non-owned or hired automobiles to be used by the Contractor, with coverage for at least One Million Dollars (\$1,000,000) Combined Single Limit Bodily Injury and Property Damage.
- B. **Indemnification:** Proposer agrees to defend, indemnify and hold harmless the City, all of its officers, Council members, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages and liabilities, including reasonable attorneys' fees, court costs and related expenses, arising out of, connected with, or resulting from any acts or omissions of Proposer or any agent, employee, subcontractor, or supplier of Proposer in the execution or performance of this contract without regard to whether such persons are under the direction of City agents or employees.

## Appendix C – Form CIQ

### **INFORMATION REGARDING VENDOR CONFLICT OF INTEREST QUESTIONNAIRE**

**WHO:** The following persons must file a Conflict of Interest Questionnaire with the City if the person has an employment or business relationship with an officer of the City that results in taxable income exceeding \$2,500 during the preceding twelve – month period, or an officer or a member of the officer’s family has accepted gifts with an aggregate value of more than \$250 during the previous twelve – month period and the person engages in any of the following actions:

1. contracts or seeks to contract for the sale or purchase of property, goods or services with the City, including any of the following:
  - a. written and implied contracts, utility purchases, purchase orders, credit card purchases and any purchase of goods and services by the City;
  - b. contracts for the purchase or sale of real property, personal property including an auction of property;
  - c. tax abatement and economic development agreements;
2. submits a bid to sell goods or services, or responds to a request for proposal for services;
3. enters into negotiations with the City for a contract; or
4. applies for a tax abatement and/or economic development incentive that will result in a contract with the City

#### **THE FOLLOWING ARE CONSIDERED OFFICERS OF THE CITY:**

1. Mayor and City Council Members;
2. City Manager;
3. Board and Commission members and appointed members by the Mayor and City Council;
4. Directors of 4A and 4B development corporations;
5. The executive directors or managers of 4A and 4B development corporations; and
6. Directors of the City of Southlake who have authority to sign contracts on behalf of the City.

**EXCLUSIONS:** A questionnaire statement need not be filed if the money paid to a local government official was a political contribution, a gift to a member of the officer’s family from a family member; a contract or purchase of less than \$2,500 or a transaction at a price and subject to terms available to the public; a payment for food, lodging, transportation or entertainment; or a transaction subject to rate or fee regulation by a governmental entity or agency.

**WHAT:** A person or business that contracts with the City or who seeks to contract with the City must file a “Conflict of Interest Questionnaire” (FORM CIQ) which is available online at [www.ethics.state.tx.us](http://www.ethics.state.tx.us) and a copy of which is attached to this guideline. The form contains mandatory disclosures regarding “employment or business relationships” with a municipal officer. Officials may be asked to clarify or interpret various portions of the questionnaire.

**WHEN:** The person or business must file:

1. the questionnaire – no later than seven days after the date the person or business begins contract discussions or negotiations with the municipality, or submits an application, responds to a request for proposals or bids, correspondence, or other writing related to a potential contract or agreement with the City; and
2. an updated questionnaire – within seven days after the date of an event that would make a filed questionnaire incomplete or inaccurate.

It does not matter if the submittal of a bid or proposal results in a contract. The statute requires a vendor to file a FORM CIQ at the time a proposal is submitted or negotiations commence.

**WHERE:** The vendor or potential vendor must mail or deliver a completed questionnaire to the Finance Department. *The Finance Department is required by law to post the statements on the City’s website.*

**ENFORCEMENT:** Failure to file a questionnaire is a Class C misdemeanor punishable by a fine not to exceed \$500. It is an exception to prosecution that the person files a FORM CIQ not later than seven business days after the person received notice of a violation.

**NOTE:** The City does not have a duty to ensure that a person files a Conflict of Interest Questionnaire.

# CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

## OFFICE USE ONLY

Date Received

1 Name of person who has a business relationship with local governmental entity.

NONE

2 ☐ Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

\_\_\_\_\_  
Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

☐ Yes

☐ No

N/A

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐ Yes

☐ No

N/A

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐ Yes

☐ No

N/A

D. Describe each employment or business relationship with the local government officer named in this section.

4

\_\_\_\_\_  
Signature of person doing business with the governmental entity

\_\_\_\_\_  
Date

05/17/2022

Adopted 06/29/2007

# 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

Certificate Number:  
2022-887409

Date Filed:  
05/17/2022

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Apex Concrete Construction Inc.  
Keller, TX United States

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

City of Southlake, Texas

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.

RFP2201B380AB220002  
Concrete Services

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

5 Check only if there is NO Interested Party.



### 6 UNSWORN DECLARATION

My name is DANNY PORTER, and my date of birth is 07/01/1957

My address is 1101 Templemore DR. Keller TX 76248 U.S.  
(street) (city) (state) (zip code) (country)

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

Executed in TARRANT County, State of TEXAS, on the 17<sup>th</sup> day of MAY, 20 22  
(month) (year)

D. Porter  
Signature of authorized agent of contracting business entity  
(Declarant)



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

---

**DATE:** September 18, 2023  
**FROM:** Paul Henley, Fire Chief  
**ITEM:** **Consider the approval of an Amendment to the Interlocal Agreement between the City of Lewisville, the Town of Flower Mound, and the City of Highland Village for the design, construction, maintenance, operation, and management of a Joint Firefighting Training Facility.**

---

**BACKGROUND:** On October 21, 2021, the Town of Flower Mound entered into an interlocal agreement (ILA) with the City of Lewisville and City of Highland Village regarding the joint funding for design, construction, and operation of a fire training facility to be located in the City of Lewisville. Under the ILA, the City of Lewisville is responsible for the bidding and construction of the facility on behalf of all three municipalities. Additionally, the City of Lewisville will own and operate the facility. Operational and use policies for the facility will be set by a Facility Executive Committee and a Facility Operations Committee whose members consist of representatives of all three fire departments. The ILA presently provides that the parties share in the cost to design, construct, and equip the Facility for an amount not to exceed \$4,961,250. The Town of Flower Mound share being 40.8% or \$2,013,494.00.

Recently, the City of Lewisville advised the City of Highland Village and the Town that several factors related to the COVID pandemic, supply chain delays, and other inflationary factors have resulted in an increase in the initial estimated cost for design and construction of the Facility to \$6,874,160.00, an increase of \$1,912,910.00 (38.5%) over the original estimate. Based on the Town's original 40.8% share of the costs set forth in the ILA, the City of Lewisville has requested the Town increase its participation in the project from \$2,013,494.00 to \$2,790,135.46. As a comparison, Lewisville's share increases from \$2,561,165 to \$3,548,226.56, and Highland Village share increases from \$386,591 to \$535,797.98.

Pursuant to its request, the City of Lewisville has prepared and presented a proposed amendment to the ILA providing for each City to pay for the increased cost to construct the facility based on the original cost sharing percentages set forth in the ILA.

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

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** \$776,642

Funding availability is subject to the adoption of FY 23-24 budget

**Proposed Expenditure/(Revenue)**

\$ 40,000  
\$156,642  
\$580,000

**Account Number(s):**

319-560-63000-5110  
378-588-00000-5110  
Fund 533

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

**ATTACHMENTS:**

1. Project Summary Costs
2. First Amendment To Interlocal Agreement

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

**City of Lewisville - Fire Training Structures Project**  
**Project Summary**

Updated on 01 AUG 2023  
 Printed on 8/1/2023 at 6:48 AM

| Item # | Description                                                                                         | Total Cost w/03 JUL GMP |                  |                          | Comments                                                 |
|--------|-----------------------------------------------------------------------------------------------------|-------------------------|------------------|--------------------------|----------------------------------------------------------|
|        |                                                                                                     | 18 JUL Budget           | 01 AUG Budget    | Delta: 01 AUG vs. 18 JUL |                                                          |
| 1.01.A | Guaranteed Maximum Price per Design-Builder on 03 JUL 2023                                          | 6,105,086               | 6,105,086        | 0                        | Alt #s 1 & 2 Not Included                                |
| 1.01.B | Owner's Contingency Inside the GMP at 8.5% (Large Site; Unknowns)                                   | 381,266                 | 381,266          | 0                        | Use Subject to City OK; Buys Alts if \$\$s Remaining     |
|        | <b>Subtotal: Design-Builder's Contract Amount</b>                                                   | <b>6,486,352</b>        | <b>6,486,352</b> | <b>0</b>                 |                                                          |
| 2.01   | Independent Architect (Basis of Design, Quality Oversight @ Const, etc.)                            | 65,000                  | 47,500           | (17,500)                 | Original Contract Amount for G2                          |
| 2.02   | Other Professional Services (CxA, PM, Legal, QA/Mat'l Testing, etc.)                                | 225,000                 | w/Below          | (225,000)                |                                                          |
| 2.03   | 3rd Party Commissioning                                                                             | w/Above                 | 10,000           | 10,000                   | Gas Distribution & Prop Testing                          |
| 2.04   | Project Controls During Construction (PPV's Services Similar to Fleet & Fleet Maintenance Facility) | w/Above                 | 93,660           | 93,660                   | Assumes 20 SEP 2023 Start; 01 AUG 2024 FD Starts Moving  |
| 2.05   | Materials Testing & Special Inspections (Geotech, Concrete & Masonry)                               | w/Above                 | 102,500          | 102,500                  | Large Site; Lots of Soils & Concrete Testing will be     |
| 2.06   | Reimbursable Expenses for Professional Services Above                                               | w/Above                 | w/Above          | N/A                      |                                                          |
| 2.07   | In-House City FacMan Staff Time (Not Billed to Project per City)                                    | Excluded                | Excluded         | N/A                      |                                                          |
| 2.08   | Underwriting Fees, Bond Issuance Costs, Financing & Capital Interest                                | Excluded                | Excluded         | N/A                      | per Owner                                                |
| 2.09   | Legal and Accounting Fees for Bond Underwriting                                                     | Excluded                | Excluded         | N/A                      | per Owner                                                |
| 2.10   | Water & Sewer Tap Fees                                                                              | Pending                 | Pending          | N/A                      | Assume None per Current Info; Final Plan Review Underway |
| 2.11   | Relocation of Fiber to New Building MDF                                                             | Not Required            | Not Required     | N/A                      |                                                          |
| 2.12   | Permits & Governmental Fees (Including County Health Dept Fees)                                     | 48,648                  | 48,648           | N/A                      |                                                          |
| 2.13   | Land Acquisition & Easement Costs (Including DOT Impact Fees)                                       | Excluded                | Excluded         | N/A                      | Land Previously Purchased & Access is Acceptable         |
| 2.14   | Environmental & Hazardous Material Mitigation & Removal                                             | Excluded                | Excluded         | N/A                      |                                                          |
| 2.15   | Fire Dept Furnishings, Fixtures & Equipment + Teledata/Security/AV                                  | None Req'd              | 10,500           | 10,500                   | Fiber Run to Bldg                                        |
| 2.16   | Owner's Preconstruction Contingency (Discovery + Stakeholder Input)                                 | None                    | None             | N/A                      | Preconstruction is Complete                              |
| 2.17   | Owner's Construction Contingency (Unforeseeables + AHJ Input, etc.)                                 | 75,000                  | 75,000           | N/A                      | Carried Outside the GMP; May be Needed for AHJ, etc.     |
| 2.0    | <b>Subtotal: Project Soft Costs</b>                                                                 | <b>413,648</b>          | <b>387,808</b>   | <b>(25,840)</b>          |                                                          |
|        | <b>Owners Budget - Construction Procurement Complete</b>                                            | <b>6,900,000</b>        | <b>6,874,160</b> | <b>(25,840)</b>          |                                                          |
| 3.01   | Escalation (Assumes 20 SEP 2023 Start)                                                              | w/Above                 | w/Above          | w/Above                  | None Req'd; GMP in Place                                 |
| 3.0    | <b>Owner's Uses Budget 2022 Construction + Bank Bldg Purchase</b>                                   | <b>6,900,000</b>        | <b>6,874,160</b> | <b>(25,840)</b>          |                                                          |

**FIRST AMENDMENT TO INTERLOCAL AGREEMENT  
AMONG THE CITY OF LEWISVILLE, THE TOWN OF FLOWER MOUND AND  
THE CITY OF HIGHLAND VILLAGE**

This First Amendment to Interlocal Agreement (the “**First Amendment**”) is entered into by and among the City of Lewisville (“**Lewisville**”), the Town of Flower Mound (“**Flower Mound**”), and the City of Highland Village (“**Highland Village**”), all entities being located in Denton County, Texas and hereinafter referred to collectively as “**Cities**” or individually as a “**City**”. The Cities execute this First Amendment in accordance with the Texas Government Code, Chapter 791, known as the Interlocal Cooperation Act:

**RECITALS**

**WHEREAS**, the Cities previously entered into a certain Interlocal Agreement (the “**Agreement**”), effective October 21, 2021, establishing the terms by which the Cities will jointly design, construct, maintain, operate, manage, and use a fire training facility on property owned by Lewisville; and

**WHEREAS**, the Cities acknowledge they have each paid their respective shares of the Shared Capital Costs in accordance with Section 3.2 of the Agreement; and

**WHEREAS**, the Facility Operations Committee determined that the original estimate of Shared Capital Cost for the initial design, construction, and equipping of the Facility is insufficient, resulting in cost overruns; and

**WHEREAS**, the Cities desire to amend the terms of the Agreement to account for said cost overruns, as more specifically provided herein.

**NOW, THEREFORE**, for and in consideration of the mutual benefits and obligations set forth in this Agreement, the Cities agree as follows:

**SECTION 1.** Recitals. The recitals are incorporated into this First Amendment and are true and correct for all purposes.

**SECTION 2.** Definitions. Capitalized terms used in this First Amendment and not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

**SECTION 3.** Amendments to Agreement.

(a) Article I, Definitions, is hereby amended as by adding the following definitions:

“**Cost Overruns**” means the actual Shared Capital Costs for the initial design, construction, and equipping of the Facility that exceeds the Original Estimate.

**“Original Estimate”** shall have the meaning given that phrase as set forth in Section 3.2.A.

- (b) Article III, Design and Construction of Facility, Section 3.2., Advance Payment to Paying City, subsections A and B are hereby amended to read in their entirety, as follows:
- A. The original estimate of the Shared Capital Costs for the initial design, construction, and equipping of the Facility is FOUR MILLION NINE HUNDRED SIXTY-ONE THOUSAND TWO HUNDRED FIFTY AND 00/100 DOLLARS (\$4,961,250.00) (the “Original Estimate”).
  - B. The amount of the Cost Overruns is ONE MILLION NINE HUNDRED TWELVE THOUSAND NINE HUNDRED TEN AND 00/100 DOLLARS (\$1,912,910.00).
- (c) Article V, Division of Costs, is hereby amended to add a new Section 5.5 “Allocation and Payment of Cost Overruns,” to read as follows:

**5.5 Allocation and Payment of Cost Overruns.**

- A. The Cities agree that the proportionate share of Cost Overruns shall be allocated as follows:
- (1) Lewisville shall pay a 51.6% undivided interest, not to exceed NINE HUNDRED EIGHTY-SEVEN THOUSAND SIXTY-ONE AND 56/100 DOLLARS (\$987,061.56).
  - (2) Flower Mound shall pay a 40.6% undivided interest, not to exceed SEVEN HUNDRED SEVENTY-SIX THOUSAND SIX HUNDRED FORTY-ONE AND 46/100 DOLLARS (\$776,641.46).
  - (3) Highland Village shall pay a 7.8% undivided interest, not to exceed ONE HUNDRED FORTY-NINE THOUSAND TWO HUNDRED SIX AND 98/100 DOLLARS (\$149,206.98).
- B. Each City shall pay its share of the Cost Overruns to Lewisville no later than January 15, 2024. Funds paid by each City for Cost Overruns are in addition to the Shared Capital Costs as set forth in Section 3.2. Lewisville, as the Paying City, will place the funds paid by the Cities for Cost Overruns into a restricted project account and spend such funds only to pay the Cost

Overruns.

**SECTION 4.** Effect on Agreement; Integration. Except as specifically amended by this First Amendment, all other terms and provisions of the Agreement shall remain in full force and effect, and as applicable, shall apply to this First Amendment. In the event of any conflict or inconsistency between this First Amendment and the Agreement, the terms and provisions of this First Amendment shall govern and prevail to the extent necessary to resolve such conflict or inconsistency.

**SECTION 5.** Amendments. This First Amendment may be amended or modified only by the mutual agreement of the Cities. Such amendment or modification must be in writing and executed by an authorized representative of each City.

**SECTION 6.** Severability. In case any one or more of the provisions contained in this First Amendment 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 or any other provision of the Agreement, and this First Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**SECTION 7.** Counterparts. This First Amendment may be executed in multiple counterparts and shall be binding on and inure to the benefit of each City, and each counterpart shall be deemed an original for all purposes when duly authorized by the governing body of each City and signed by such City's duly authorized representative.

**SECTION 8.** Binding Nature. This First Amendment shall be binding on and inure to the benefit of the Cities and their respective heirs, executors, administrators, legal representatives, successors, and assigns as permitted by this First Amendment and the Agreement.

**IN WITNESS WHEREOF,** the Cities hereto have executed this First Amendment to be effective upon execution and dating by each City. The First Amendment shall be effective from the last date signed and marked on this First Amendment by a participating City.

**Signatures on Following Pages**

**APPROVED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS**

**BY:**

\_\_\_\_\_  
Claire Powell, CITY MANAGER

**DATE:**\_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Thomas Harris III, CITY SECRETARY

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lizbeth Plaster, CITY ATTORNEY

**APPROVED BY THE CITY COUNCIL OF THE CITY OF THE HIGHLAND VILLAGE,  
TEXAS**

**BY:**

\_\_\_\_\_  
Paul Stevens, CITY MANAGER

**DATE:** \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Angela Miller, CITY SECRETARY

**APPROVED AS TO FORM AND LEGALITY:**

\_\_\_\_\_  
Kevin B. Laughlin, CITY ATTORNEY

**APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND,  
TEXAS**

**BY:**

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

**DATE:** \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Theresa Scot, TOWN SECRETARY

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Bryn Meredith, TOWN ATTORNEY



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

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**DATE:** September 18, 2023  
**FROM:** Julie Taylor, Director of Treasury Operations  
**ITEM:** **Consider approval of the Town's authorized representatives form as required by the Texas Local Government Investment Pool (TexPool).**

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**BACKGROUND:** The Town currently utilizes the local government investment pool, TexPool, and requests that the Town Council approve the authorized representative form to address staff changes within the Financial Services Department.

Local government investment pools are entities which invest public funds jointly on behalf of the entities that participate and whose investment objectives are, in order of priority, preservation and safety of principal, liquidity, and yield. Pools invest funds in authorized investments as permitted by the Public Funds Investment Act. Pools offer public fund investors the ability to diversify funds in a short-term portfolio and the ability to lock in rates in longer-term maturities, thus providing the opportunity to enhance returns and minimize interest rate risks.

The attached form will provide TexPool with the authorization to grant Tammy Wilson, Chief Financial Officer, Julie Taylor, Director of Treasury Operations, and Mary Huning, Director of Accounting Services, the authority to transmit funds for investment in TexPool, or withdraw funds from time to time, to issue letters of instructions, and to take all other actions deemed necessary or appropriate for the investment of local funds on behalf of the Town.

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

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** N/A

**LEGAL REVIEW:** N/A

**ATTACHMENTS:**

1. TexPool Authorized Representative Form

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



# Resolution Amending Authorized Representatives

Please complete this form to amend or designate Authorized Representatives. *This document supersedes all prior Authorized Representative forms.*

## \* Required Fields

### 1. Resolution

#### WHEREAS,

Town of Flower Mound

7 7 3 9 3

Participant Name\*

Location Number\*

("Participant") is a local government of the State of Texas and is empowered to delegate to a public funds investment pool the authority to invest funds and to act as custodian of investments purchased with local investment funds; and

WHEREAS, it is in the best interest of the Participant to invest local funds in investments that provide for the preservation and safety of principal, liquidity, and yield consistent with the Public Funds Investment Act; and

WHEREAS, the Texas Local Government Investment Pool ("TexPool / Texpool Prime"), a public funds investment pool, were created on behalf of entities whose investment objective in order of priority are preservation and safety of principal, liquidity, and yield consistent with the Public Funds Investment Act.

NOW THEREFORE, be it resolved as follows:

- That the individuals, whose signatures appear in this Resolution, are Authorized Representatives of the Participant and are each hereby authorized to transmit funds for investment in TexPool / TexPool Prime and are each further authorized to withdraw funds from time to time, to issue letters of instruction, and to take all other actions deemed necessary or appropriate for the investment of local funds.
- That an Authorized Representative of the Participant may be deleted by a written instrument signed by two remaining Authorized Representatives provided that the deleted Authorized Representative (1) is assigned job duties that no longer require access to the Participant's TexPool / TexPool Prime account or (2) is no longer employed by the Participant; and
- That the Participant may by Amending Resolution signed by the Participant add an Authorized Representative provided the additional Authorized Representative is an officer, employee, or agent of the Participant;

List the Authorized Representative(s) of the Participant. Any new individuals will be issued personal identification numbers to transact business with TexPool Participant Services.

1. Julie Taylor Director of Treasury Operations

Name Title

9 7 2 8 7 4 6 0 2 4 Phone Fax julie.taylor@flower-mound.com Email

Signature *Julie Taylor*
2. Tammy Wilson Chief Financial Officer

Name Title

9 7 2 8 7 4 6 0 2 1 Phone Fax tammy.wilson@flower-mound.com Email

Signature *Tammy Wilson*
3. Mary Huning Director of Accounting Services

Name Title

9 7 2 8 7 4 6 0 2 3 Phone Fax mary.huning@flower-mound.com Email

Signature *Mary Huning*

## 1. Resolution (continued)

4.

|                      |                      |                      |                      |
|----------------------|----------------------|----------------------|----------------------|
| <input type="text"/> |                      | <input type="text"/> |                      |
| Name                 |                      | Title                |                      |
| <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| Phone                | Fax                  | Email                |                      |
| <input type="text"/> |                      |                      |                      |
| Signature            |                      |                      |                      |

List the name of the Authorized Representative listed above that will have primary responsibility for performing transactions and receiving confirmations and monthly statements under the Participation Agreement.

Julie Taylor

Name

In addition and at the option of the Participant, one additional Authorized Representative can be designated to perform only inquiry of selected information. *This limited representative cannot perform transactions.* If the Participant desires to designate a representative with inquiry rights only, complete the following information.

|                      |                      |                      |                      |
|----------------------|----------------------|----------------------|----------------------|
| <input type="text"/> |                      | <input type="text"/> |                      |
| Name                 |                      | Title                |                      |
| <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| Phone                | Fax                  | Email                |                      |

D. That this Resolution and its authorization shall continue in full force and effect until amended or revoked by the Participant, and until TexPool Participant Services receives a copy of any such amendment or revocation. This Resolution is hereby introduced and adopted by the Participant at its regular/special meeting held on the  1  8  day of  September ,  2  0  2  3 .

**Note:** Document is to be signed by your Board President, Mayor or County Judge and attested by your Board Secretary, City Secretary or County Clerk.

Town of Flower Mound

Name of Participant\*

### SIGNED

Signature\*

Derek France

Printed Name\*

Mayor

Title\*

### ATTEST

Signature\*

Theresa Scott

Printed Name\*

Town Secretary

Title\*

## 2. Delivery Instructions

Please return this document to **TexPool Participant Services:**

**Email:** [texpool@dstdsystems.com](mailto:texpool@dstdsystems.com)

**Fax:** 866-839-3291



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

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**DATE:** September 18, 2023  
**FROM:** Julie Taylor, Director of Treasury Operations  
**ITEM:** **Consider approval of a resolution adopting an Investment Policy for funds for the Town of Flower Mound as required annually by the Public Funds Investment Act.**

---

**BACKGROUND:** The Town Council is required by the Public Funds Investment Act of 1987 (“Act”) and the Town’s Investment Policy (“Policy”) to review the investment policy and strategies, not less than annually, and adopt a resolution stating that the investment policy has been reviewed and revised if required.

The Policy provides the guidelines by which the Town of Flower Mound will maintain the minimum amount of cash in its bank accounts to meet daily needs and to provide protection for its principal while maximizing the investment of all available cash. The Policy was adopted pursuant to the provisions of the Act, as amended, Chapter 2256, Texas Government Code.

The Town Council is required by the Act and the Policy to review the investment policy and strategies, not less than annually, and adopt a resolution stating that the Policy has been reviewed. No revisions are recommended at this time.

Approval of the attached proposed resolution will not only continue compliance with the Act; but will also continue the Town’s safe and prudent investment of available funds.

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

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** N/A

**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. Proposed Resolution and Investment Policy

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

**TOWN OF FLOWER MOUND, TEXAS**

**RESOLUTION NO.**

**A RESOLUTION BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS ("TOWN"), ADOPTING AN INVESTMENT POLICY FOR FUNDS FOR THE TOWN AS REQUIRED ANNUALLY BY THE PUBLIC FUNDS INVESTMENT ACT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Director of Treasury Operations for the Town has prepared, and the Town Council has previously adopted, a policy regarding the investment of Town funds to comply with the Public Funds Investment Act of 1987, located in Title 2, Chapter 11, of the Town's Personnel and Administrative Regulations Manual ("Investment Policy"); and,

**WHEREAS**, the purpose of the Investment Policy is to provide guidelines by which the Town will maintain the minimum amount of cash in its bank accounts to meet daily needs, and to provide protection for the Town's principal while receiving the highest yield possible from investing all temporary excess cash; and,

**WHEREAS**, the Town Council is required by the Public Funds Investment Act, Chapter 2256, Texas Government Code, as amended, and the Investment Policy to review the investment policies and strategies, not less than annually, and adopt a resolution stating that the Investment Policy has been reviewed and updated if updates are required; and,

**WHEREAS**, the Director of Treasury Operations has determined that no revisions to the Investment Policy are necessary; and,

**WHEREAS**, the Town Council has reviewed and desires to adopt the Investment Policy, pursuant to the recommendation by the Director of Treasury Operations, as the official Town policy regarding investment of Town funds;

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

**SECTION 1**

The following policy, attached hereto as Exhibit A and made a part hereof by reference, has been reviewed by the Town Council and is hereby adopted as the official Investment Policy of the Town pursuant to the provisions of the Public Funds Investment Act.

**SECTION 2**

The attached policy shall be filed with the Town Secretary as an official record of the Town.

**SECTION 3**

The attached policy replaces the Investment Policy which was adopted by the Town by Resolution No.12-22 and became effective September 19, 2022.

**SECTION 4**

This resolution shall take effect immediately from and after the date of its passage.

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ON THIS 18th DAY OF SEPTEMBER, 2023.**

**APPROVED:**

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

**ATTEST:**

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

## **TITLE II ADMINISTRATIVE POLICIES**

### **CHAPTER 11: INVESTMENT POLICY**

#### **11.01 Purpose**

This policy shall provide the guidelines by which the Town of Flower Mound will maintain the minimum amount of cash in its bank accounts to meet daily needs, and to provide protection for its principal while receiving the highest yield possible from investing all temporary excess cash. The Town Council on an annual basis shall consider a resolution stating they reviewed the policy and investment strategies. This policy is being adopted pursuant to the provisions of the Public Funds Investment Act of 1987, Chapter 2256 of the Texas Government Code, as amended, and supersedes all other investment policies.

#### **11.02 Scope**

This Investment Policy applies to the investment activities of the Town of Flower Mound, excluding the specific funds cited hereafter.

This policy shall not govern funds which are managed under separate investment programs. Such funds currently include Employees' Retirement Funds of the Town of Flower Mound, other funds established by the Town for deferred employee compensation, and certain private donations. The Town shall and will maintain responsibility for these funds to the extent required by Federal and State Law, the Town Charter, and donor stipulations.

The following funds, as well as other funds that may be created from time to time, shall be administered in accordance with the provisions of this policy: cash equivalent assets of the General Fund, Utility Fund, Capital Project Funds, Debt Service Fund, Special Revenue Funds and any other fund of the Town not specifically excluded in these policy guidelines.

#### **11.03 Investment Strategy**

The overall strategy of the Town's investment objective shall be to ensure a) the understanding of suitability of investment to the financial requirements of the Town, b) preservation and safety of principal, c) liquidity, d) marketability of the investment, if the need arises to liquidate the investment before maturity, e) diversification of the investment portfolio; and f) yield.

The Town maintains portfolios which utilize four specific investment strategy considerations designed to address the unique characteristics of the fund groups represented in the portfolios:

- A. Investment strategies for operating funds and commingled pools containing operating funds have as their primary objective to assure that anticipated cash flows are matched with adequate investment liquidity.

The Town may invest various types of funds in a commingled pool in order to achieve efficiencies in the investment program. The secondary objective is to create a portfolio structure which will experience minimal volatility during economic cycles. This may be accomplished by purchasing high quality, short to medium-term securities which will compliment each other in a ladder or barbell maturity structure. A dollar weighted average maturity of 365 days or less will be maintained and calculated by using the stated final maturity date of each security.

- B. Investment strategies for debt service funds, if invested separately, shall have as the primary objective the assurance of investment liquidity adequate to cover the debt service obligation on the required payment date. Securities purchased shall not have a stated final maturity date which exceeds the debt service payment date. The dollar weighted average maturity will be 180 days or less to accomplish this goal.
- C. Investment strategies for debt service reserve funds shall have as the primary objective the ability to generate a dependable revenue stream to the appropriate debt service fund from securities with a low degree of volatility. Securities should be of high quality and, except as may be required by the bond ordinance specific to an individual issue, of short to intermediate-term maturities. Volatility shall be further controlled through the purchase of securities carrying the highest coupon available, within the desired maturity and quality range, without paying a premium. Such securities will tend to hold their value during economic cycles. The dollar weighted average maturity will be no greater than 730 days.
- D. Investment strategies for special projects or special purpose fund portfolios, if invested separately, will have as their primary objective to assure that anticipated cash flows are matched with adequate investment liquidity. These portfolios should include at least 10% in highly liquid securities to allow for flexibility and unanticipated project outlays. The stated final maturity dates of securities held should not exceed the estimated project completion date. The dollar weighted average maturity will be 90 days or less to accomplish this goal.
- E. Investment strategies for capital project funds will have as their primary objective to assure that anticipated cash flows are matched with adequate investment liquidity. These portfolios should include at least 10% in highly liquid securities to allow for flexibility and unanticipated project outlays. The stated final maturity dates of securities held should not exceed the estimated project completion date. The dollar weighted average maturity will be 365 days or less to accomplish this goal.

#### **11.04 Objective**

In terms of day-to-day investment purposes, the core objectives of the Town's investment policy shall be to first preserve the capital in the overall portfolio. Each investment transaction shall seek to first ensure that capital losses are

avoided, whether they are from securities defaults or erosion of market value. The second objective shall be liquidity and the final objective shall be the yield of the investment.

- A. To prevent the possibility of loss of resources, the Town will attempt to identify and limit exposure to market price risk and default risk, or not invest in a manner which is contrary to applicable Federal and State regulations. To further protect the Town's resources, credit rating changes for securities held by the Town will be monitored in coordination with the Town's financial advisor.
- B. To enable the Town to meet operating requirements that might be reasonably anticipated, the Town's investment portfolio will remain sufficiently liquid. Liquidity shall be achieved by matching investment maturities with forecasted cash flow requirements and by investing in securities with active secondary markets.
- C. Management of the investment portfolio will strive to achieve a rate of return commensurate with the legal, safety and liquidity considerations. In any return of event, yield should exceed the average rate of secondarily-traded three (3) months U.S. Treasury Bills, or the monthly average of the Federal Funds Effective rate, whichever is higher. The first measure of success in this area will be the attainment of enough income to offset inflationary increases. Even though steps will be taken to obtain this goal, the Town's staff shall constantly be cognizant of risk limitations pursuant to the provisions of the amended Public Funds Investment Act, Section 2256.006(a) of the Texas Government Code.
- D. All participants in the investment process shall seek to act responsibly as stewards of public assets. Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment programs, or which could impair their ability to make impartial investment decisions. Any investment officer who is related within the second degree by affinity or consanguinity as determined pursuant to the Texas nepotism statute, Chapter 573 of the Texas Government Code, as amended, to an individual seeking to sell an investment to the Town, or who has a prohibited personal business relationship, as defined in Section 2256.005 of the Texas Government Code, as amended, shall file a statement disclosing that relationship and any personal business relationship or material financial interests with the Town Council and the Texas Ethics Commission. The Director of Treasury Operations, or anyone involved in investment activity, shall avoid any transactions that might impair public confidence in the Town's ability to govern effectively. The governing body recognizes that in diversifying the portfolio, occasional measured losses due to market volatility are inevitable, and must be considered within the content of the overall portfolio's investment return, provided that adequate diversification has been implemented.

#### **11.05 Investment Committee**

There is hereby created an Investment Committee consisting of the Town Manager and/or his designee, the Chief Financial Officer (CFO) and/or his designee, and the Director of Treasury Operations. The Investment Committee shall meet at least quarterly to determine general strategies and to monitor results. Included in its deliberations will be such topics as: economic outlook, portfolio diversification, maturity structure, potential risk to the Town's funds, authorization of brokers and dealers, and the target rate of return on the investment portfolio. The committee shall establish its own rules of procedures, including, but not limited to maintaining a record of their meetings and discussions included therein.

#### **11.06 Responsibility and Standard**

- A. The management responsibility for the investment program is hereby delegated to the CFO who shall establish written procedures for the operation of the investment program, consistent with this investment policy. Such procedures shall include explicit delegation of authority to the individual(s) responsible for investment transactions. The primary individual who shall be involved in investment activities will be the Director of Treasury Operations. Both the CFO and the Director of Treasury Operations are designated as investment officers. To ensure the maturity and the quality and capability of the investment management, the investment officers are required to have three years of progressively responsible experience. Accordingly, the investment officers shall attend at least one training session containing at least 10 hours of instruction relating to their responsibility under the Act within 12 months after assuming duties. Thereafter, the investment officers shall attend additional investment training sessions containing at least 8 hours of instruction relating to investment responsibilities under the Act not less than once every two years, beginning on the first day of the Town's fiscal year, October 1, and consisting of the two consecutive fiscal years after that date. The training sessions must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio and compliance with the Public Funds Investment Act. The investment training sessions shall be provided by an independent source approved by the Investment Committee. For purposes of this policy, an "independent source" from which investment training shall be obtained shall include a professional organization, an institute of higher learning or any other sponsor other than a business organization with whom the Town may engage in an investment transaction. No persons may engage in investment transactions except as provided under the terms of this policy and the procedures established by the CFO. The CFO shall be responsible for all transactions undertaken, and shall establish a system of control to regulate the activities of the Director of Treasury Operations. The controls shall include a monthly review and an annual review by an external auditor. The reviews will provide internal control by assuring compliance with policies and procedures.

- B. The Town Manager, CFO, Director of Treasury Operations, and other Town employees associated with investment functions shall be personally indemnified in the event of investment loss provided the Investment Policies and Guidelines are followed.
- C. The standard of prudence to be used by the investment officials shall be the Prudent Investor Rule, and will be applied in the context of managing an overall portfolio: Investments shall be made with judgment and care under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

Investment officials meeting this standard will be relieved of personal responsibilities for an individual security's credit risk or market price change, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

- D. The CFO shall direct the preparation and presentation of a written report on the Town's investment transactions for the preceding reporting period for the Town Council and Town Manager. The report shall be provided quarterly, and shall contain the following:
  - 1. A detailed description of the investment position of the Town as of the end of the reporting period.
  - 2. A summary statement of each pooled fund covering:
    - a. Beginning market value for the period (monitored by the Wall Street Journal and software).
    - b. The book and market value of each invested asset at the end of the reporting period by type of fund.
  - 3. The maturity date of each invested asset.
  - 4. Fully accrued interest for the period.
  - 5. The fund group for each individual investment.
  - 6. The compliance of the investment portfolio of the Town as it relates to the investment strategy of the Town and the Public Funds Investment Act.
  - 7. Signatures of all investment officers.
- E. The guidelines of retaining records for seven years, as recommended in the Texas State Library Municipal Records Manual should be followed. The Director of Treasury Operations shall oversee the filing and/or storing

of investment records.

- F. Wire transfer authorization forms shall be kept on file with banking institutions. The authorization form shall identify individuals authorized to make wire transfers and the institutions designated to receive the wire transfer. The Director of Treasury Operations or other authorized representative of the Town should complete a transfer notice and give it to the proper Finance Department personnel. The transfer confirmation received from the bank should be agreed with this notice and the appropriate journal entry made. Wire transfers shall not be executed without written confirmation from authorized Town staff and the proper exchange and verification of personal identification numbers. The Director of Treasury Operations will be authorized to execute repetitive transfers based on appropriate security measures, as established by the CFO.
- G. In the event of the absence of the Director of Treasury Operations, the authority to invest shall be regulated by the controls and procedures outlined by the CFO.

#### **11.07 Investment**

- A. Idle funds of the Town of Flower Mound may be invested in:
  - 1. Obligations of the United States of America, its agencies and instrumentalities (maturing in five (5) years or less).
  - 2. Direct obligations of the State of Texas and agencies thereof (maturing in two (2) years) or less.
  - 3. Other obligations, the principal of and interest on which are unconditionally guaranteed or insured by the State of Texas or United States of America or their agencies and instrumentalities (maturing in less than two (2) years) including obligations that are fully guaranteed or insured by the Federal Deposit Insurance Corporation or by the explicit full faith and credit of the United States.
  - 4. Obligations of the states, agencies thereof, counties, cities, and other political subdivisions of any state having been rated as investment quality by a nationally recognized investment rating firm, and having received a rating of not less than "A" or its equivalent (maturing in two (2) years or less).
  - 5. Certificates of deposit and share certificates (maturing in two (2) years or less) issued by state and/or national banks or savings and loans associations with main or branch offices in Texas that are:
    - a. Guaranteed or insured by the Federal Deposit Insurance Corporation (FDIC) or National Credit Union Share

Insurance Fund (NCUSIF) or their successors; or

- b. Secured as described in section 11.09 Principal Protection and Safekeeping.

In addition to the authority to invest funds in certificates of deposit, funds which are secured as described in Section 11.09 Principal Protection and Safekeeping, are invested through:

- a. A broker that has its main office or branch office in Texas and is selected from a list adopted by the Investment Committee; or
- b. A depository institution that has its main office or branch office in Texas and is selected by the Town.

- 6. Fully collateralized direct repurchase agreements with a defined termination date secured by a combination of cash and obligations of the United States or its agencies and instrumentalities. Purchases are required to be pledged to the entity, held in the entity's name and deposited at the time investment is made with the entity or a third party, selected by the Director of Treasury Operations, other than an agency for the pledgor. Repurchase agreements must be purchased through a primary government securities dealer, as defined by the Federal Reserve, or a bank domiciled in Texas. Each issuer of repurchase agreements must sign a copy of the Town's Master Repurchase Agreement (termination date must be 30 days or less).
- 7. An eligible investment pool, if the Town Council by official Town action authorizes investment in the particular pool. An investment pool shall invest the funds it receives from entities in authorized investments permitted by state statutes. Funds may be invested in money market mutual funds to the extent permitted by and consistent with state statutes and the investment policies and objectives adopted by the investment pool and by providing, at a minimum, the following information:
  - a. The types of investments in which money is allowed to be invested.
  - b. The maximum average dollar-weighted maturity allowed, based on the stated maturity date, of the pool.
  - c. The maximum stated maturity date of any investment security within the portfolio.
  - d. The objectives of the pool.
  - e. The size of the pool.

- f. The names of the members of the advisory board of the pool and the dates their terms expire.
- g. The custodian bank that will safekeep the pool's assets.
- h. Whether the intent of the pool is to maintain a net asset value of \$1 and the risk of market price fluctuation.
- i. Whether the only source of payment is the assets of the pool at market value or whether there is a secondary source of payment, such as insurance or guarantees, and a description of the secondary source of payment.
- j. The name and address of the independent auditor of the pool.
- k. The requirements to be satisfied for an entity to deposit funds in and withdraw funds from the pool and any deadlines or other operating policies required for the entity to invest funds in and withdraw funds from the pool.
- l. The performance history of the pool, including yield, average dollar weighted average maturities, and expense ratios.
- m. Information presented in disclosure instruments or reports must be posted on Internet websites.
- n. Annual audited financial statements must be made available.
- o. Disclose fee breakpoints and state the lowest possible level of return based on the smallest level of funds invested.

To be eligible to receive funds from and investments on behalf of the Town, an investment pool must be rated no lower than AAA or AAA-m or at an equivalent rating by at least one nationally recognized rating service. (Maximum dollar average weighted maturity must be 60 days or less).

To maintain eligibility to receive funds from and invest funds on behalf of the Town, an investment pool must furnish to the investment officer investment transaction confirmations and a monthly report that contains, at a minimum, the following information:

- a. The types and percentage breakdown of securities in which the pool has invested.
- b. The current average dollar-weighted maturity, based on the

stated maturity date, of the pool.

- c. The current percentage of the pool's portfolio in investments that have stated maturities more than one year.
- d. The book value verses the market value of the pool's portfolio, using amortized cost valuation.
- e. The size of the pool.
- f. The number of participants in the pool.
- g. The custodian bank that is safekeeping the assets of the pool.
- h. A listing of daily transaction activity of the entities participating in the pool.
- i. The yield and expense ratio of the pool and a statement regarding how yield is calculated.
- j. The portfolio managers of the pool.
- k. Any changes or addenda to the offering circular.

The Town, by contract, may delegate to an investment pool the authority to hold legal title as custodian of investments purchased with its local funds.

For purposes of investment in an investment pool, yield shall be calculated in accordance with regulations governing the registration of open-end management investment companies under the Investment Company Act of 1940, as promulgated from time to time by the Federal Securities and Exchange Commission ("SEC"). If an investment pool is functioning as a money market mutual fund, yield must be reported in accordance with the SEC.

- 8. No-load money market mutual funds regulated by the Securities and Exchange Commission which have a dollar weighted average stated maturity of 90 days or fewer and include in their investment objectives the maintenance of a stable net asset value of \$1 for each share. A no-load mutual fund is an authorized investment under this subchapter if the mutual fund is registered with the Securities and Exchange Commission, has an average weighted maturity less than two years, is invested exclusively in obligations approved by Chapter 2256.014, Government Code, is continuously rated as to investment quality by at least one nationally recognized investment rating firm of not less than AAA or its equivalent, and conforms to the requirements set forth in Sections 2256.016(b) and (c), Government Code, relating to the eligibility of investment pools

to receive and invest funds of investing entities. The Town of Flower Mound is not authorized to invest in the aggregate more than 15% of its monthly average fund balance, excluding bond proceeds and reserves and other funds held for debt service, in mutual funds as herein set forth above, or invest its funds or funds under its control, including bond proceeds and reserves and other funds held for debt service, in any one mutual fund as herein set out above in an amount that exceeds 10% of the total assets of the mutual fund.

- B. The Town's authorized investment options are more restrictive than those allowed by state law. Furthermore, this policy specifically prohibits investment in the following investment securities:
1. Obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal.
  2. Obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest.
  3. Collateralized mortgage obligations that have a stated final maturity date of greater than 10 years.
  4. Collateralized mortgage obligations, the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.
- C. It is the policy of the Town of Flower Mound to diversify its investment portfolios. The diversification will protect interest income from the volatility of interest rates and the avoidance of undue concentration of assets in a specific maturity sector; therefore, portfolio maturities shall be staggered. Securities shall also be selected which provide for stability of income and reasonable liquidity. Diversification strategies shall be determined and revised periodically by the Investment Committee. In establishing specific diversification strategies, the following general policies and constraints shall apply:
1. Risk of market price volatility shall be controlled through maturity diversification such that aggregate price losses on instruments with maturities exceeding one (1) year shall not be greater than coupon interest and investment income received from the balance of the portfolio.
  2. The Investment Committee shall establish strategies and guidelines for the percentage of the total portfolio that may be invested in U.S. Treasury Securities, federal agencies instrumentalities, repurchase agreements, insured/collateralized certificates of deposit and other

securities or obligations. The Investment Committee shall conduct a quarterly review of these guidelines and shall evaluate the probability of market and default risk in various investment sectors as part of its considerations.

Risk of principal loss in the portfolio as a whole shall be minimized by diversifying investment types according to the following limitations:

| <u>Investment Type</u>                  | <u>% of Portfolio</u> |
|-----------------------------------------|-----------------------|
| • U.S. Treasury Notes/Bonds/Bills       | 100%                  |
| • U.S. Agencies and Instrumentalities   | 75%                   |
| • State of Texas Obligations & Agencies | 10%                   |
| • No-Load Money Market Mutual Fund      | 25%                   |
| • Local Government Investment Pools     | 70%                   |
| • Local Government Obligations          | 10%                   |
| • Repurchase Agreements - Operating     | 10%                   |
| • Repurchase Agreements - Construction  | 100%                  |
| • Certificates of Deposit               | 100%                  |

- D. Investments will be solicited on a competitive basis with at least three (3) institutions. The Investment Committee can approve exceptions on a case by case basis or on a general basis in the form of guidelines. These guidelines shall take into consideration the investment type maturity date, amount, and potential disruptiveness to the Town's investment strategy. The investment will be made with the broker/dealer offering the best yield/quality to the Town.

#### **11.08 Selection of Banks and Dealers**

- A. Town Council shall, by ordinance, select and designate one banking institution as the primary depository for the monies and funds of the Town. The primary depository shall be selected based on solvency and stability and secondly, on rate of interest, services, and cost.
- B. The Director of Treasury Operations shall conduct a comprehensive review of the prospective primary depository's credit characteristics and financial history.
- C. The primary depository shall be selected through a formalized bidding process in response to the Town's request for proposal (RFP) outlining all services required. The Investment Committee shall have the discretion to determine the time span for rebidding the banking services contract; however, a five-year period will be the maximum length of time between rebidding, as permitted by state law.
- D. Banks and savings and loans associations seeking to establish eligibility for the Town's competitive certificate of deposit purchase program, shall submit financial statements, evidence of federal insurance and other

information as required by the Director of Treasury Operations.

- E. The Investment Committee shall be responsible for selecting brokers and dealers of government securities. Their selection shall be among only primary government securities dealers that report directly to the New York Federal Reserve Bank or other secondary firms that are adequately financed to conduct public business. The Investment Committee shall base its evaluation of security dealers and financial institutions upon:
  - 1. Financial conditions, strength and capability to fulfill commitments.
  - 2. Overall reputation with other dealers and investors.
  - 3. Regulatory status of the dealer.
  - 4. Background and expertise of the individual representatives.
- F. Approved brokers and dealers must complete Exhibit A and return it to the Director of Treasury Operations. In dealing with Town funds, the Director of Treasury Operations shall conduct business with securities dealers approved annually by the Investment Committee or with banks selected as outlined above.

#### **11.09 Principal Protection and Safekeeping**

- A. All bank and savings and loan associations deposits and investments of Town funds shall be secured by pledged collateral with a market value equal to no less than 103 percent of the principal plus accrued interest less an amount insured by FDIC or NCUSIF. Evidence of proper collateralization in the form of original safekeeping receipts held in institution's trust department or at a third party institution not affiliated with the bank or bank holding company will be maintained in the office of the Director of Treasury Operations at all times. The CFO, Director of Treasury Operations, or other authorized Town representative will approve and release all pledged collateral. Collateral will be reviewed monthly to assure the market value of the securities pledged exceeds the related bank balances. The Town shall request additional collateral in the event that deposits are not sufficiently protected by the pledged collateral.
- B. Safekeeping procedures shall be established by the Investment Committee which clearly define steps for gaining access to the collateral should the Town determine that the Town's funds are in jeopardy. Collateral safekeeping and substitution agreements will be a part of the procedure.
- C. Only securities allowed by the Public Funds Collateral Act shall be eligible to be pledged as collateral. The CFO has the discretion to additionally restrict the securities used as collateral.

- D. All security transactions will be accomplished with authorized security dealers and financial institutions on a delivery-versus-payment (DVP) basis. Securities will be held by the Town's safekeeping agent, which shall be selected through a competitive process (RFP) or that agent's representative in New York City, or in its account at the Federal Reserve Bank.

## EXHIBIT A

### TEXAS PUBLIC FUNDS INVESTMENT ACT CERTIFICATION BY BUSINESS ORGANIZATION

This certification is executed on behalf of the **Town of Flower Mound** (the Investor) and \_\_\_\_\_ (the Business Organization) pursuant to the Public Funds Investment Act, Chapter 2256, Texas Government Code (the Act), in connection with investment transactions conducted between the Investor and the Business Organization.

The undersigned Qualified Representative of the Business Organization hereby certifies on behalf of the Business Organization that:

1. The undersigned is a Qualified Representative of the Business Organization offering to enter into an investment transaction with the Town of Flower Mound as such terms are used in the Public Funds Investment Act, Chapter 2256, Texas Government Code;
2. The Qualified Representative of the Business Organization has received and reviewed the Investment Policy furnished by the Town of Flower Mound; and
3. The Qualified Representative of the Business Organization has implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the Business Organization and the Town of Flower Mound that are not authorized by the entity's investment policy, except to the extent that this authorization is dependent on an analysis of the makeup of the entity's entire portfolio or requires an interpretation of subjective investment standards.

Qualified Representative of the Business Organization

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT B

### INVESTMENT GLOSSARY

**AGENCIES:** Federal agency securities.

**ASKED:** The price at which securities are offered.

**BANKERS' ACCEPTANCE (BA):** A draft, bill, or exchange accepted by a bank or trust company. The accepting institution guarantees payment of the bill, as well as the issuer.

**BID:** The price offered by a buyer of securities. (When you are selling securities, you ask for a bid.) See Offer.

**BROKER:** A broker brings buyers and sellers together for a commission.

**CERTIFICATE OF DEPOSIT (CD):** A time deposit with a specific maturity evidenced by a certificate. Large denomination CD's are typically negotiable.

**COLLATERAL:** Securities, evidence of deposit or other property which a borrower pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposits of public monies.

**ANNUAL COMPREHENSIVE FINANCIAL REPORT:** The official annual report for the Town of Flower Mound. It includes combined statements for each individual fund and account group prepared in conformity with GAAP. It also includes supporting schedules necessary to demonstrate compliance with finance related legal and contractual provisions, extensive introductory material, and a detailed Statistical Section.

**COUPON:** (a) The annual rate of interest that a bond's issuer promises to pay the bondholder on the bond's face value. (b) A certificate attached to a bond evidencing interest due on a payment date.

**DEALER:** A dealer, as opposed to a broker, acts as a principal in all transactions, buying and selling for his own account.

**DEBENTURE:** A bond secured only by the general credit of the issuer.

**DELIVERY VERSUS PAYMENT:** There are two

methods of delivery of securities: delivery versus payment and delivery versus receipt. Delivery versus payment is delivery of securities with an exchange of money for the securities. Delivery versus receipt is delivery of securities with an exchange of a signed receipt for the securities.

**DISCOUNT:** The difference between the cost price of a security and its maturity when quoted at lower than face value. A security selling below original offering price shortly after sale also is considered to be at a discount.

**DISCOUNT SECURITIES:** Non-interest bearing money instruments that are issued at a discount and redeemed at maturity for full face value, e.g. U.S. Treasury Bills.

**DIVERSIFICATION:** Dividing investment funds among a variety of securities offering independent returns.

**FEDERAL CREDIT AGENCIES:** Agencies of the federal government set up to supply credit to various classes of institutions and individuals, e.g., S&L's, small business firms, students, farmers, farm cooperatives, and exporters.

**FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC):** A federal agency that insures bank deposits, currently up to \$250,000 per deposit.

**FEDERAL FUNDS RATE:** The rate of interest at which Fed funds are traded. This rate is currently pegged by the Federal Reserve through open-market operations.

**FEDERAL HOME LOAN BANKS (FHLB):** The institutions that regulate and lend to savings and loan associations. The Federal Home Loan Banks play a role analogous to that played by the Federal Reserve Banks vis-a-vis member commercial banks.

**FEDERAL NATIONAL MORTGAGE ASSOCIATION (FNMA):** FNMA, like GNMA was chartered under the Federal National Mortgage Association Act in 1938. FNMA is a federal corporation working under the auspices of the Department of Housing and Urban Development (HUD). It is the largest single provider of residential mortgage funds in the United States.

Fannie Mae, as the corporation is called, is a private stockholder-owned corporation. The corporation's purchases include a variety of adjustable mortgages and second loans, in addition to fixed-rate mortgages. FNMA's securities are also highly liquid and are widely accepted. FNMA assumes and guarantees that all security holders will receive timely payment of principal and interest.

**FEDERAL OPEN MARKET COMMITTEE (FOMC):** Consists of seven members of the Federal Reserve Board and five of the twelve Federal Reserve Bank Presidents. The President of the New York Federal Reserve Bank is a permanent member, while the other Presidents serve on a rotating basis. The Committee periodically meets to set Federal Reserve guidelines regarding purchases and sales of Government Securities in the open market as a means of influencing the volume of bank credit and money.

**FEDERAL RESERVE SYSTEM:** The central bank of the United States created by Congress and consisting of a seven member Board of Governors in Washington, D.C., 12 regional banks and about 5,700 commercial banks that are members of the system.

**GOVERNMENT NATIONAL MORTGAGE ASSOCIATION (GNMA or Ginnie Mae):** Securities influencing the volume of bank credit guaranteed by GNMA and issued by mortgage bankers, commercial banks, savings and loan associations, and other institutions. Security holder is protected by full faith and credit of the U.S. Government. Ginnie Mae securities are backed by the FHA, VA or FMHM mortgages. The term "pass throughs" is often used to describe Ginnie Maes.

**LETTERS OF CREDIT:** A financial instrument in which the issuing bank promises to pay a third party on behalf of a second party.

**LIQUIDITY:** A liquid asset is one that can be converted easily and rapidly into cash without a substantial loss of value. In the money market, a security is said to be liquid if the spread between bid and asked prices is narrow and reasonable sized can be done at those quotes.

**LOCAL GOVERNMENT INVESTMENT POOL (LGIP):** The aggregate of all funds from political subdivisions that are placed in the custody of the State Treasurer for investment and reinvestment.

**MARKET VALUE:** The price at which a security is trading and could presumably be purchased or sold.

**MASTER REPURCHASE AGREEMENT:** A written contract covering all future transactions between the parties to repurchase-reverse repurchase agreements that establishes each party's rights in the transactions. A master agreement will often specify, among other things, the right of the buyer-lender to liquidate the underlying securities in the event of default by the seller-borrower.

**MATURITY:** The date upon which the principal or stated value of an investment becomes due and payable.

**MONEY MARKET:** The market in which short-term debt instruments (bills, commercial paper, bankers' acceptances, etc.) are issued and traded.

**OFFER:** The price asked by a seller of securities. (When you are buying securities, you ask for an offer.) See Asked and Bid.

**OPEN MARKET OPERATIONS:** Purchases and sales of government and certain other securities in the open market by the New York Federal Reserve Bank as directed by the FOMC in order to influence the volume of money and credit in the economy. Purchases inject reserves into the bank system and stimulate growth of money and credit; sales have the opposite effect. Open market operations are the Federal Reserve's most important and most flexible monetary policy tool.

**NATIONAL CREDIT UNION SHARE INSURANCE FUND:** The federal fund to insure member's deposits in federally insured credit unions. Administered by the National Credit Union Administration, and is backed by the "full faith and credit" of the U.S. Government.

**PORTFOLIO:** Collection of securities held by an investor.

**PRIMARY DEALER:** A group of government securities dealers who submit daily reports of market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight. Primary dealers include Securities and Exchange Commission (SEC)-registered securities broker-dealers, banks, and a few

unregulated firms.

**PRUDENT PERSON RULE:** An investment standard. In some states, the law requires that a fiduciary, such as a trustee, may invest money only in a list of securities selected by the custody state the so-called legal list. In other states the trustee may invest in a security if it is one which would be bought by a prudent person of discretion and intelligence who is seeking a reasonable income and preservation of capital.

**QUALIFIED PUBLIC DEPOSITORIES:** A financial institution which does not claim exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state, which has segregated for the benefit of the commission eligible collateral having a value of not less than its maximum liability and which has been approved by the Public Deposit Protection Commission to hold public deposits.

**RATE OF RETURN:** The yield obtainable on a security based on its purchase price or its current market price. This may be the amortized yield to maturity on a bond or the current income return.

**REPURCHASE AGREEMENT (RP OR REPO):** A holder of securities sells these securities to an investor with an agreement to repurchase them at a fixed price on a fixed date. The security "buyer" in effect lends the "seller" money for the period of the agreement, and the terms of the agreement are structured to compensate him for this. Dealers use RP extensively to finance their positions. Exception: When the Fed is said to be doing RP, it is lending money, that is, increasing bank reserves.

**SAFEKEEPING:** A service to customers rendered by banks for a fee whereby securities and valuables of all types and descriptions are held in the bank's vaults for protection.

**SECONDARY MARKET:** A market made for the purchase and sale of outstanding issues following the initial distribution.

**SECURITIES & EXCHANGE COMMISSION:** Agency created by Congress to protect investors in securities transactions by administering securities legislation.

**SEC RULE 15C3-1:** See Uniform Net Capital Rule.

**TREASURY BILLS:** A non-interest-bearing discount security issued by the U.S. Treasury to finance the national debt. Most bills are issued to mature in three months, six months, or one year.

**TREASURY BONDS:** Long-term coupon bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturities of more than 10 years.

**TREASURY NOTES:** A medium-term coupon-bearing U.S. Treasury securities issued as direct obligation of the U.S. Government and having initial maturities from two to 10 years.

**UNIFORM NET CAPITAL RULE:** Securities and Exchange Commission requirement that member firms as well as nonmember broker-dealers in securities maintain a maximum ratio of indebtedness to liquid capital of 15 to 1; also called *net capital rule* and *net capital ratio*. Indebtedness covers all money owed to a firm, including margin loans and commitments to purchase securities, one reason new public issues are spread among members of underwriting syndicates. Liquid capital includes cash and assets easily converted into cash.

**YIELD:** The rate of annual income return on an investment, expressed as a percentage. (a) **INCOME YIELD** is obtained by dividing the current dollar income by the current market price for the security. (b) **NET YIELD** or **YIELD TO MATURITY** is the current income yield minus any premium above par or plus any discount from par in purchase price, with the adjustment spread over the period from the date of purchase to the date of maturity of the bond.

\_\_\_\_\_  
The Town of Flower Mound Investment Policy is hereby approved this 18th day of  
September 2023.

\_\_\_\_\_  
James W. Childers, Town Manager



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

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**DATE:** September 18, 2023  
**FROM:** Julie Taylor, Director of Treasury Operations  
**ITEM:** **Consider all matters incident and related to appointing a successor paying agent/registrar for certain outstanding debt obligations of the Town, including the adoption of a resolution pertaining thereto.**

---

**BACKGROUND:** The Bank of New York Mellon Trust Company, N.A. ("BNY") currently serves as paying agent/registrar for the outstanding obligations pursuant to certain Paying Agent/Registrar Agreements (the "Existing Agreements"), and the Town desires to terminate the Existing Agreements and appoint U.S. Bank Trust Company, National Association ("U.S. Bank") as a successor paying agent/registrar for the obligations.

The termination of the Existing Agreements with BNY and the appointment of U.S. Bank as Paying Agent/Registrar for the Obligations will not disrupt, delay or otherwise adversely affect the payment of the Obligations. The appointment of U.S. Bank will increase the efficiency of the administration of the outstanding obligations plus realize an estimated annual cost savings of \$4,000.00.

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

**ALTERNATIVES:**

**FISCAL IMPACT:** N/A

**Proposed Expenditure/(Revenue)**

**Account Number(s):**

**LEGAL REVIEW:** The Town's Bond Counsel, Norton Rose Fulbright US LLP, prepared the proposed resolution and related agreement.

**ATTACHMENTS:**

1. Proposed Resolution and Paying Agent Agreement

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

**TOWN OF FLOWER MOUND, TEXAS**

**RESOLUTION NO. [ ]-23**

**A RESOLUTION APPOINTING A SUCCESSOR PAYING AGENT/REGISTRAR FOR CERTAIN OUTSTANDING DEBT OBLIGATIONS OF THE TOWN; APPROVING AND AUTHORIZING THE EXECUTION OF ONE OR MORE PAYING AGENT/REGISTRAR AGREEMENTS WITH SUCH SUCCESSOR PAYING AGENT/REGISTRAR; AND RESOLVING OTHER MATTERS INCIDENT AND RELATED THERETO.**

**WHEREAS**, the Town Council (the "Town Council") of the Town of Flower Mound, Texas (the "Town") has previously issued bonds and other debt obligations identified on Schedule I hereto (the "Obligations"); and

**WHEREAS**, The Bank of New York Mellon Trust Company, N.A. ("BNY") currently serves as Paying Agent/Registrar for the Obligations pursuant to certain Paying Agent/Registrar Agreements (the "Existing Agreements"), and the Town desires to terminate the Existing Agreements and appoint U.S. Bank Trust Company, National Association ("U.S. Bank") as a successor Paying Agent/Registrar for the Obligations pursuant to the ordinances authorizing the issuance of the Obligations (the "Prior Ordinances") and the Existing Agreements; and

**WHEREAS**, the Town hereby finds and determines that the termination of the Existing Agreements with BNY and the appointment of U.S. Bank as Paying Agent/Registrar for the Obligations will not disrupt, delay or otherwise adversely affect the payment of the Obligations; and

**WHEREAS**, the Town Manager, Chief Financial Officer, and Director of Treasury Operations are each hereby authorized to provide the requisite notice to the appropriate persons at BNY to effectuate the transfer of Paying Agent/Registrar functions for the Obligations to U.S. Bank; and

**WHEREAS**, a form of the written agreement with U.S. Bank setting forth the duties and responsibilities of the Paying Agent/Registrar for such Obligations has been prepared and submitted to the Town Council for approval and authorization to execute.

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

**SECTION 1**

U.S. Bank is hereby appointed as the successor Paying Agent/Registrar for the Obligations in accordance with the terms and provisions of the Prior Ordinances and the Existing Agreements. The Town Council hereby approves the form of "Paying Agent/Registrar Agreement" to be entered into with U.S. Bank, attached hereto as Exhibit A (the "U.S. Bank Paying Agent Agreement"), with such changes thereto as approved by the Town Manager, Chief Financial Officer or Director of Treasury Operations (each an "Authorized Town Official"), such approval to be evidenced by execution of the U.S. Bank Paying Agent/Registrar Agreement by the Mayor or Mayor Pro Tem. Each of the Mayor or Mayor Pro Tem is hereby authorized to enter into one or more U.S. Bank Paying Agent/Registrar Agreements for the Obligations and is directed to execute such agreement(s) for and on behalf of the Town.

## **SECTION 2**

The Town shall cause to be sent to each registered owner of the Obligations (each, a "Holder") by United States Mail, first class postage prepaid, the requisite written notice that U.S. Bank has been appointed as the successor Paying Agent/Registrar for the Obligations; such notice to read substantially in the form and content of Exhibit B attached hereto (the "Notice of Successor Paying Agent"), which notice shall also give the address of U.S. Bank as the new Paying Agent/Registrar. The effective date of the transfer of Paying Agent/Registrar services for the Obligations to U.S. Bank will be at least 60 days from the date hereof as determined by an Authorized Town Official.

## **SECTION 3**

The Town Manager, the Chief Financial Officer, the Director of Treasury Operations or the Town Secretary is hereby directed to provide a copy of this Resolution to BNY as notice that it has been replaced as the Paying Agent/Registrar for the Obligations. Such notice shall also inform BNY of the effective date of the transfer of the Paying Agent/Registrar services to U.S. Bank.

## **SECTION 4**

Each Authorized Town Official is directed to coordinate with BNY and U.S. Bank to ensure each Security Register, as defined in the Existing Agreements, applicable to the Obligations, together with other pertinent books and records pertaining to the Obligations, currently maintained at BNY are transferred in a timely manner to U.S. Bank in order to allow U.S. Bank to assume the functions as successor Paying Agent/Registrar for the Obligations.

## **SECTION 5**

The Town Council hereby authorizes each Authorized Town Official to pay BNY any outstanding fees and expenses owed by the Town with respect to the Obligations and to coordinate the delivery of all funds held by BNY to U.S. Bank to effectuate the transfer of Paying Agent/Registrar services.

## **SECTION 6**

The Town Council hereby authorizes the Town Manager, Chief Financial Officer or Director of Treasury Operations to cause an appropriate notice to be filed with the Municipal Securities Rulemaking Board regarding the change to the Paying Agent/Registrar for the Obligations pursuant to this Resolution.

## **SECTION 7**

If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the Town Council hereby declares that this Resolution would have been enacted without such invalid provision.

### **SECTION 8**

The recitals contained in the preamble hereof are hereby found to be true, and such recitals and other statements therein are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the Town Council.

### **SECTION 9**

It is officially found, determined, and declared that the meeting at which this Resolution 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 Resolution, was given, all as required by Chapter 551, as amended, Texas Government Code.

### **SECTION 10**

This Resolution shall take effect on the date of its passage.

*[remainder of page left blank intentionally]*

RES. [ ]-23

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ON THIS 18TH DAY OF SEPTEMBER, 2023.**

**TOWN OF FLOWER MOUND, TEXAS**

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

**(Town Seal)**

**ATTEST:**

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

# SCHEDULE I

| <b>Title</b>                                                                  | <b>Original Par Amount (\$)</b> | <b>Dated Date</b> |
|-------------------------------------------------------------------------------|---------------------------------|-------------------|
| Town of Flower Mound, Texas, Certificates of Obligation, Series 2022          | 8,550,000                       | July 1, 2022      |
| Town of Flower Mound, Texas, General Obligation Refunding Bonds, Series 2021  | 1,905,000                       | July 1, 2021      |
| Town of Flower Mound, Texas, Certificates of Obligation, Series 2021          | 9,090,000                       | July 1, 2021      |
| Town of Flower Mound, Texas, General Obligation Refunding Bonds, Series 2020  | 4,535,000                       | July 1, 2020      |
| Town of Flower Mound, Texas, Certificates of Obligation, Series 2020          | 7,910,000                       | July 1, 2020      |
| Town of Flower Mound, Texas, Certificates of Obligation, Series 2019          | 26,500,000                      | August 1, 2019    |
| Town of Flower Mound, Texas, Certificates of Obligation, Series 2018A         | 10,040,000                      | August 1, 2018    |
| Town of Flower Mound, Texas, Certificates of Obligation, Series 2018          | 10,505,000                      | February 1, 2018  |
| Town of Flower Mound, Texas, Certificates of Obligation, Series 2017A         | 21,555,000                      | August 15, 2017   |
| Town of Flower Mound, Texas, Certificates of Obligation, Series 2017          | 9,640,000                       | March 15, 2017    |
| Town of Flower Mound, Texas, Certificates of Obligation, Series 2016          | 12,315,000                      | September 1, 2016 |
| Town of Flower Mound, Texas, General Obligation Refunding Bonds, Series 2016  | 20,225,000                      | April 15, 2016    |
| Town of Flower Mound, Texas, Certificates of Obligation, Series 2015A         | 11,405,000                      | August 15, 2015   |
| Town of Flower Mound, Texas, Certificates of Obligation, Series 2015          | 3,015,000                       | April 15, 2015    |
| Town of Flower Mound, Texas, General Obligation Refunding Bonds, Series 2014A | 21,170,000                      | December 15, 2014 |
| Town of Flower Mound, Texas, Certificates of Obligation, Series 2014          | 15,025,000                      | August 15, 2014   |
| Town of Flower Mound, Texas, General Obligation Refunding Bonds, Series 2014  | 6,075,000                       | April 15, 2014    |
| Town of Flower Mound, Texas, Certificates of Obligation, Series 2012          | 7,055,000                       | August 1, 2012    |
| Town of Flower Mound, Texas, General Obligation Refunding Bonds, Series 2012  | 8,410,000                       | April 1, 2012     |

EXHIBIT A

FORM OF PAYING AGENT/REGISTRAR AGREEMENT

## **PAYING AGENT/REGISTRAR AGREEMENT**

THIS AGREEMENT is entered into as of \_\_\_\_\_ (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 previously issued the securities identified on **Annex A** hereto (the "Securities"); and

WHEREAS, the Issuer has terminated the services of the prior paying agent/registrar for the Securities and the Issuer has selected the Bank to serve as successor 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 each 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, with respect to each series of the Securities identified on Annex A hereto, the fees and amounts set forth in **Annex B** attached hereto; provided however, notwithstanding anything herein or in Annex B 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 a series of 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 each 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 each 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 each 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 each 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 each 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 each 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.

**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 each 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 an 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 No Boycott of Israel.** To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2271.002, Texas Government Code, the Bank hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to enable the Issuer to comply with such Section and to the extent such Section does not contravene applicable Federal or Texas law. As used in the foregoing verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Bank understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Bank within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

**Section 6.13 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 the following page of such officer's internet website:

<https://comptroller.texas.gov/purchasing/publications/divestment.php>

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 within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

**Section 6.14 No Discrimination Against Fossil-Fuel Companies.** To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Bank hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to enable the Issuer to comply with such Section and to the extent such Section does not contravene applicable Federal or Texas law. As used in the foregoing verification, "boycott energy companies" shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A) above. The Bank understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Bank within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

**Section 6.15 No Discrimination Against Firearm Entities and Firearm Trade Associations.** To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Bank hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to enable the Issuer to comply with such Section and to the extent such Section does not contravene applicable Federal or Texas law.

As used in the foregoing verification and the following definitions,

(a) "discriminate against a firearm entity or firearm trade association" (A) means, with respect to the firearm entity or firearm trade association, to (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as

a firearm entity or firearm trade association, (ii) refrain from continuing an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association and (B) does not include (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories and (ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association,

(b) "firearm entity" means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (i.e. weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (i.e. devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (i.e. a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (i.e. a business establishment, private club, or association that operates an area for the discharge or other use of firearms for silhouette, skeet, trap, black powder, target, self-defense, or similar recreational shooting), and

(c) "firearm trade association" means any person, corporation, unincorporated association, federation, business league, or business organization that (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.

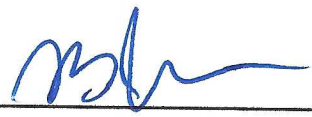
The Bank understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Bank within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

**Section 6.16 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: \_\_\_\_\_ VICE PRESIDENT \_\_\_\_\_

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

**ANNEX A**  
**SECURITIES**

| <b>Title</b>                                                                  | <b>Original Par Amount (\$)</b> | <b>Dated Date</b> |
|-------------------------------------------------------------------------------|---------------------------------|-------------------|
| Town of Flower Mound, Texas, Certificates of Obligation, Series 2022          | 8,550,000                       | July 1, 2022      |
| Town of Flower Mound, Texas, General Obligation Refunding Bonds, Series 2021  | 1,905,000                       | July 1, 2021      |
| Town of Flower Mound, Texas, Certificates of Obligation, Series 2021          | 9,090,000                       | July 1, 2021      |
| Town of Flower Mound, Texas, General Obligation Refunding Bonds, Series 2020  | 4,535,000                       | July 1, 2020      |
| Town of Flower Mound, Texas, Certificates of Obligation, Series 2020          | 7,910,000                       | July 1, 2020      |
| Town of Flower Mound, Texas, Certificates of Obligation, Series 2019          | 26,500,000                      | August 1, 2019    |
| Town of Flower Mound, Texas, Certificates of Obligation, Series 2018A         | 10,040,000                      | August 1, 2018    |
| Town of Flower Mound, Texas, Certificates of Obligation, Series 2018          | 10,505,000                      | February 1, 2018  |
| Town of Flower Mound, Texas, Certificates of Obligation, Series 2017A         | 21,555,000                      | August 15, 2017   |
| Town of Flower Mound, Texas, Certificates of Obligation, Series 2017          | 9,640,000                       | March 15, 2017    |
| Town of Flower Mound, Texas, Certificates of Obligation, Series 2016          | 12,315,000                      | September 1, 2016 |
| Town of Flower Mound, Texas, General Obligation Refunding Bonds, Series 2016  | 20,225,000                      | April 15, 2016    |
| Town of Flower Mound, Texas, Certificates of Obligation, Series 2015A         | 11,405,000                      | August 15, 2015   |
| Town of Flower Mound, Texas, Certificates of Obligation, Series 2015          | 3,015,000                       | April 15, 2015    |
| Town of Flower Mound, Texas, General Obligation Refunding Bonds, Series 2014A | 21,170,000                      | December 15, 2014 |
| Town of Flower Mound, Texas, Certificates of Obligation, Series 2014          | 15,025,000                      | August 15, 2014   |
| Town of Flower Mound, Texas, General Obligation Refunding Bonds, Series 2014  | 6,075,000                       | April 15, 2014    |
| Town of Flower Mound, Texas, Certificates of Obligation, Series 2012          | 7,055,000                       | August 1, 2012    |

| <b>Title</b>                                                                 | <b>Original Par Amount (\$)</b> | <b>Dated Date</b> |
|------------------------------------------------------------------------------|---------------------------------|-------------------|
| Town of Flower Mound, Texas, General Obligation Refunding Bonds, Series 2012 | 8,410,000                       | April 1, 2012     |

*[Remainder of page left blank intentionally.]*

**ANNEX B**  
**BANK FEES**



Schedule of Fees for Services as  
Successor Paying Agent/Registrar/Transfer Agent  
For  
Town of Flower Mound, Texas

|                                                                                                                                                                                                                                                         |                    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| <b>Paying Agent / Registrar / Transfer Agent</b> - Annual fee for the standard paying agent, registrar and transfer agent services associated with the administration of the account. Administration fees are payable in advance. ( <i>per series</i> ) | Amount<br>\$500.00 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|

**Direct Out of Pocket Expenses.** Reimbursement of expenses associated with the performance of our duties, including but not limited to publications, legal counsel's fees and expenses after the initial closing, travel expenses, and filing fees will be billed at cost.

**Extraordinary Administration Services.** Extraordinary Administration Services ("EAS") are duties, responsibilities or activities not expected to be provided by the trustee or agent at the outset of the transaction, not routine or customary, and/or not incurred in the ordinary course of business, and may require analysis or interpretation. Billing for fees and expenses related to EAS is appropriate in instances where particular inquiries, events or developments are unexpected, even if the possibility of such circumstances could have been identified at the inception of the transaction, or as changes in law, procedures, or the cost of doing business demand. At our option, EAS may be charged on an hourly (time expended multiplied by current hourly rate), flat or special fee basis at such rates or in such amounts in effect at the time of such services, which may be modified by us in our sole and reasonable discretion from time to time. In addition, all fees and expenses incurred by the trustee or agent, in connection with the trustee's or agent's EAS and ordinary administration services and including without limitation the fees and expenses of legal counsel, financial advisors and other professionals, charges for wire transfers, checks, internal transfers and securities transactions, travel expenses, communication costs, postage (including express mail and overnight delivery charges), copying charges and the like will be payable, at cost, to the trustee or agent. EAS fees are due and payable in addition to annual or ordinary administration fees. Failure to pay for EAS owed to U.S. Bank when due may result in interest being charged on amounts owed to U.S. Bank for extraordinary administration services fees and expenses at the prevailing market rate.

**General.** Your obligation to pay under this Fee Schedule shall govern the matters described herein and shall not be superseded or modified by the terms of the governing documents, and survive any termination of the transaction or governing documents and the resignation or removal of the trustee or agent. This Fee Schedule shall be construed and interpreted in accordance with the laws of the state identified in the governing documents without giving effect to the conflict of laws principles thereof. You agree to the sole and exclusive jurisdiction of the state and federal courts of the state identified in the governing documents over any proceeding relating to or arising regarding the matters described herein. Payment of fees constitutes acceptance of the terms and conditions described herein.

Account approval is subject to review and qualification. Fees are subject to change at our discretion and upon written notice. Fees paid in advance will not be prorated. The fees set forth above and any subsequent modifications thereof are part of your agreement. Finalization of the transaction constitutes agreement to the above fee schedule, including agreement to any subsequent changes upon proper written notice. In the event your transaction is not finalized, any related out-of-pocket expenses will be billed to you directly. Absent your written instructions to sweep or otherwise invest, all sums in your account will remain uninvested and no accrued interest or other compensation will be credited to the account. Payment of fees constitutes acceptance of the terms and conditions set forth.

**IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT:**

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account.

For a non-individual person such as a business entity, a charity, a Trust or other legal entity we will ask for documentation to verify its formation and existence as a legal entity. We may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

EXHIBIT B

NOTICE TO HOLDERS  
OF CHANGE IN PAYING AGENT/REGISTRAR

U.S. Bank Trust Company, National Association has been appointed successor Paying Agent/Registrar for the obligations set forth in Schedule I attached hereto, effective [\_\_\_\_\_]. The address for such Paying Agent/Registrar is as follows:

U.S. Bank Trust Company, National Association  
13737 Noel Road, Suite 800  
Dallas, Texas 75240  
Attention: Global Corporate Trust

Dated this \_\_\_\_\_, 2023.

Tammy Wilson  
Chief Financial Officer  
Town of Flower Mound, Texas  
2121 Cross Timbers Road  
Flower Mound, Texas 75028



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

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**DATE:** September 18, 2023  
**FROM:** Brittni Barnett, Grants and Financial Analyst  
**ITEM:** **Consider acceptance of grant funds from the Texas State Library and Archives Commission (TSLAC) for the FY 2024 Texas Reads Grant Program and execution of an agreement with TSLAC; and authorization for the Mayor to execute said agreement on behalf of the Town.**

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**BACKGROUND:** The Town applied for and was awarded a grant in the amount of \$10,000.00 from the Texas State Library and Archives Commission (TSLAC) as part of its Texas Reads Grant Program.

If approved, the grant will be used to expand the programs and services for children from birth to five through an early literacy activity space in the Library's Children's Area. It will provide additional programs to emphasize learning through play, kits for checkout that will reinforce early literacy at home, and an annual literacy workshop for caregivers.

All funds must be spent by August 2024, with a final report due by September 7, 2024.

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

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** \$0.00

**Proposed Expenditure/(Revenue)**  
\$(10,000.00)  
\$10,000.00

**Account Number(s):**  
370-4605  
Grant Fund

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

**ATTACHMENTS:**

1. TSLAC Grant Agreement

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

**TEXAS STATE LIBRARY & ARCHIVES COMMISSION  
TEXAS READS GRANT PROGRAM**

**Grant Number: TXR-24006**

**I. CONTRACTING PARTIES**

Grantor: Texas State Library and Archives Commission (TSLAC)  
Subrecipient: Town of Flower Mound, Flower Mound Public Library  
3030 Broadmoor Ln  
Flower Mound, TX 75022-2703  
Federal Unique Entity ID: 027941160

**II. TERM OF GRANT**

September 1, 2023, through August 31, 2024 (State Fiscal Year (SFY) 2024)

**III. STATEMENT OF SERVICES TO BE PERFORMED**

Subrecipient shall provide services as outlined in the grant application (Texas Reads Grant for SFY 2024) as approved by TSLAC. Grant funds must be used to meet TSLAC and Federal goals. The Subrecipient must report information relating to best practices and performance outcomes during the period of this contract. The approved grant application submitted by Subrecipient is incorporated into this contract as if fully set forth herein. In the event of any conflict between the grant application and this contract, this contract shall prevail.

**IV. GRANT AMOUNTS AND DISBURSEMENT REQUIREMENTS**

- A. The total amount of the grant shall not exceed: \$10,000.00. Indirect costs, as included in the total amount awarded, shall not exceed 0.000 or \$ 0.00 as indicated in the budget below.
- B. Source of funds:  
Institute of Museum and Library Services (IMLS)  
Assistance Listing Number/Title: 45.310 Grants to States  
Federal Award Identification #: LS-253655-OLS-23; Federal Award Date: February 9, 2023
- C. The Subrecipient is restricted to one of two methods for requesting funds from TSLAC. The Subrecipient may request reimbursement of actual and allowable expenditures for the Subrecipient's normal billing cycle, or advance payment for estimated and allowable expenditures to be incurred in the 30-day period following the request. Only Subrecipients providing documentation to demonstrate a lack of sufficient working capital and the ability to minimize the time elapsing between transfer of funds from TSLAC and disbursement of grant funds will be allowed to request advance payments.
- D. The Subrecipient must request payments from TSLAC using TSLAC's Request for Funds form (RFF) via TSLAC's online Grant Management System (GMS), located at <https://grants.tsl.texas.gov>. Requests may be submitted to TSLAC no more frequently than once every 30 days, and no less frequently than once per quarter. Funds will be processed and paid to the Subrecipient provided TSLAC has received a fully executed contract, and Subrecipient has fulfilled all reporting and training requirements for current and preceding contracts and submitted supporting documentation with the RFF.
- E. When submitting an RFF for reimbursement, the Subrecipient must provide TSLAC with supporting documentation, such as receipts, paid invoices, time sheets, and/or pay stubs to support the amount requested before payment will be processed.
- F. The Subrecipient may not obligate or encumber grant funds after **July 31, 2024**. Subrecipient must submit the final request for reimbursement no later than **August 1, 2024**. All supporting documentation must be submitted no later than **August 31, 2024**. Requests or documentation received after the deadline(s) will generally be declined but may be considered on a case-by-case basis if the request does not create an undue burden on TSLAC business operations and Subrecipient demonstrates good cause for missing the deadline(s) (i.e., the reason for missing the deadline is due to no unreasonable delay or fault of Subrecipient).
- G. If the Subrecipient does not expend funds within the parameters described above (Section IV. D.) or fails to provide notice relating to unexpended funds by **May 31, 2024**, TSLAC reserves the right to act as necessary to reduce any unexpended balances, including reducing the amount specified in Section IV. A. above.
- H. Interest earned in excess of \$500 on advanced funds must be returned to TSLAC per requirements in the State of Texas Grant Management Standards (TxGMS). All unexpended grant funds must be returned to TSLAC per requirements in TxGMS.
- I. Per the approved grant application, funds are authorized according to the following budget:

|                         |             |
|-------------------------|-------------|
| Salaries/Wages/Benefits | \$ 0.00     |
| Travel                  | \$ 0.00     |
| Equipment               | \$ 0.00     |
| Supplies/Materials      | \$10,000.00 |
| Services                | \$ 0.00     |
| Consultant Fees         | \$ 0.00     |
| Indirect Costs          | \$ 0.00     |
| Total                   | \$10,000.00 |

## V. REQUEST FOR FISCAL AND PROGRAMMATIC CHANGES

If the Subrecipient anticipates a need for a budget or program revision, Subrecipient must notify TSLAC and, if approved by TSLAC, request a budget and/or program revision for fiscal and/or programmatic changes as outlined in this Section. Subrecipient must submit a change request for budget and/or program revisions electronically on TSLAC's GMS. Under no condition may a Subrecipient request to exceed the total grant amount. Any such requests will be declined. TSLAC must receive all change requests on or before **June 15, 2024**. Requests received after this date will generally be declined but may be considered on a case-by-case basis if extenuating circumstances exist. **Subrecipient must submit a budget and/or program change request to TSLAC before obligating or expending grant funds as follows:**

- A. Fiscal changes require an approved budget revision under any of the following conditions:
  - 1. Making cumulative transfers among budget cost categories or projects that are expected to exceed ten (10) percent of the total grant;
  - 2. Transferring any funds into a budget cost category that currently equals zero (\$0);
  - 3. Expending any program income earned through the utilization of resources funded by this grant; or,
  - 4. Changing the items listed in the approved budget categories if an item's cost or features are substantially different from what the approved grant application specifies, or from a previously approved fiscal or program revision.
- B. Programmatic changes to the approved grant application require an approved Program Revision under any of the following conditions:
  - 1. Obtaining the services of a third party to perform activities that are central to the purposes of the grant; or,
  - 2. Changing the scope or objectives of the approved program, regardless of whether there is an associated budget revision. A change in scope is a substantive difference in the approach or method used to reach program objectives as described in the grant application that was awarded grant funding.

## VI. EQUIPMENT AND PROPERTY REQUIREMENTS

- 1. If conditions described in Section V.A.1. are met, any fiscal change to items listed in the Equipment budget category specified in Section IV. I. of this contract will require an approved Budget Revision before making the change. A fiscal change includes a change in the cost of the equipment and/or property, and any cost necessary to put the item into service, including, but not limited to, the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make the item usable for the purpose for which it is acquired. Ancillary charges such as taxes, duty, protective in-transit insurance, freight, and installation should be included in or excluded from the expenditure cost in accordance with the Subrecipient's regular accounting practices and Generally Accepted Accounting Practices (GAAP). TSLAC will not advise Subrecipient on ancillary charges.
- 2. The Subrecipient will comply with TxGMS, Property Standards, Equipment, requiring certain items of equipment to be maintained on inventory.
- 3. Equipment costing \$5,000 or more per unit requires approval before purchase. In those instances, TSLAC will secure approval from IMLS on behalf of the Subrecipient and inform Subrecipient of approval once received.
- 4. Subject to the obligations and conditions set forth in TxGMS, title to equipment acquired under a grant will vest in the Subrecipient upon acquisition. Subrecipient must include any equipment/property acquired with grant funds in the required biennial property inventory and follow the TxGMS requirement that the Subrecipient reconcile the equipment/property records with a physical inventory of the equipment/property every two years. This biennial inventory does not need to be submitted to TSLAC but must be maintained by the Subrecipient and will be subject to review and/or audit by TSLAC. When property is vested in the Subrecipient, Subrecipient will dispose of equipment/property in accordance with TxGMS. When the Subrecipient has been given federally or state-owned equipment/property, Subrecipient will follow the guidance as set forth in TxGMS.

## VII. REPORTING REQUIREMENTS

The State Legislature has charged TSLAC with submitting performance measurement reports that specify the level of services provided by its programs and services. In accepting these grant funds, the Subrecipient acknowledges responsibility for performing certain services on behalf of TSLAC, as outlined in the approved grant application. Therefore, the Subrecipient is responsible for submitting periodic reports that reflect the Subrecipient's level of performance on these services to TSLAC. To comply with these requirements, the Subrecipient agrees to submit reports that are timely, accurate, auditable, and consistent with definitions.

- a. The Subrecipient agrees to develop or revise, as necessary, any specific written documentation of its current procedures for (1) collecting and reporting performance measures; (2) conducting a fixed asset inventory; and/or, (3) any other issues identified in the Subrecipient's grant activities or internal audit. Drafts of this procedural documentation will be submitted to TSLAC by dates established mutually between TSLAC and Subrecipient. TSLAC will provide review and guidance to enable final versions to be approved on or before established deadlines.
- b. The Subrecipient agrees to submit quarterly performance reports detailing grant-funded activities via the TSLAC GMS on or before due dates listed in the following schedule. In the event that a due date falls on a weekend or state holiday, the respective report will be due on the next business day. Subrecipient agrees to submit Legislative Budget Board (LBB) measures, as defined by TSLAC, in the reports, and to work with agency staff in the development and reporting of Project outcomes. LBB measures may include the numbers of: a) books and other materials purchased with grant funds; b) persons provided grant-sponsored services; and/or c) library staff trained or assisted in order to carry out the grant-funded activities.

**Reporting Period**

**P1 (September 1, 2023– February 28, 2024)**  
**P2 (March 1, 2024–August 31, 2024)**

**Due Date**

**March 7, 2024**  
**September 7, 2024**

- C. The Subrecipient will ensure that all fiscal reports or vouchers requesting payment under this agreement will include a certification, signed by an official who is authorized to legally bind the Subrecipient, that the reports are true, complete, and accurate, and the expenditures, disbursements, and cash receipts are for the purposes and objectives set forth in the terms and conditions of the award. The Subrecipient acknowledges that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject the signing official to criminal, civil or administrative penalties for fraud, false statements, false claims, or otherwise. (2 CFR §200.415(a))
- D. The Subrecipient agrees to submit an audit certification form for the auditable period including August 31, 2024, to TSLAC no later than **December 31, 2024, or alternate due date as specified by TSLAC.**
- E. If a single audit is required, the Subrecipient will comply with the Supercircular (2 CFR §200.512 Report Submission). The audit shall be completed and the required data collection form submitted to the Federal Audit Clearinghouse (FAC) within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the state agency that provided the funding or a different period is specified in a program-specific audit guide.
- F. TSLAC reserves the right to withhold final payment on this Grant until all required reports and forms are received.

**VIII. GENERAL TERMS AND CONDITIONS**

- A. The Subrecipient will comply with the Texas Reads Grant Program Guidelines for SFY 2024.
- B. The Subrecipient will comply with the Rules for Administering the Texas Reads Grant Program, Texas Administrative Code (TAC), Title 13, Part 1, Chapter 2, Subchapter C, Division 4, Rules 2.410–2.412; and Title 13, Part 1, Chapter 2, Subchapter C, Division 1, Rules 2.110–2.119 regarding General Grant Guidelines.
- C. The Subrecipient will comply with all applicable federal and state laws and any other requirements relevant to the performance of Subrecipient under this contract, including the following rules and guidance as applicable:
  - 1. Texas Grant Management Standards (TxGMS) (<https://comptroller.texas.gov/purchasing/grant-management/>); and
  - 2. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR §200 and §3187 (Supercircular)) (<https://federalregister.gov/a/2013-30465>).
- D. The Subrecipient may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. Subrecipient understands that IMLS and TSLAC reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal or state government purposes, and to authorize others to do so. (2 CFR §200.315)
- E. All publicity relating to the grant award must include acknowledgment of the Institute of Museum and Library Services ([www.imls.gov/recipients/imls\\_acknowledgement.aspx](http://www.imls.gov/recipients/imls_acknowledgement.aspx)) and the Texas State Library and Archives Commission. Publicity includes, but is not limited to, press releases, media events, public events, displays in the benefiting library, announcements on the Subrecipient's website, and materials distributed through the grant project. The Subrecipient will provide TSLAC with one set of all public relations materials produced under this grant with the final quarterly performance report.
- F. Subrecipients will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) that prohibits discrimination on the basis of race, color, or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and §§1685-1686), that prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), that prohibits discrimination on the basis of disability and the Americans With Disabilities Act of 1990; (d) the Age Discrimination Act of 1974, as amended (42 U.S.C. §§6101-6107), that prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §523 and §527 of the Public Health Service Act of 1912 (42 U.S.C. §290 dd-3 and §290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) that may apply to the application.
- G. Subrecipient understands that acceptance of funds under this contract acts as acceptance of the authority of duly authorized representatives of TSLAC, IMLS, the Comptroller General of the United States, and the Texas State Auditor's Office, or any successor agencies, to conduct an audit or investigation in connection with those funds. Subrecipient further agrees to cooperate fully with said representatives in the conduct of the audit or investigation and agrees to provide access to all books, documents, papers, examinations, excerpts, transcripts, copies, and any other records necessary to conduct the audit and/or investigation. Subrecipient will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Subrecipient, and the requirement to cooperate, is included in the contract for any sub-grant awarded. The Subrecipient also represents and warrants that it will comply with Texas Government Code, §321.022, which requires that suspected fraud and unlawful conduct be reported to the Texas State Auditor's Office.

- h. The Subrecipient, *if a private entity*, will comply with Federal law pertaining to trafficking in persons. Subrecipient and its employees may not:
  - 1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
  - 2. Procure a commercial sex act during the period of time that the award is in effect; or
  - 3. Use forced labor in the performance of the award or subawards under the award
- i. The Subrecipient agrees to maintain all financial and programmatic records, supporting documents, statistical records, and other records relating to this grant award for three years after the last State Program Report for the Texas LSTA 5-Year Plan 2023-2027 is submitted (anticipated date of submission is **January 29, 2024**). **This means the Subrecipient must maintain all grant-related records through January 29, 2032. In addition, Subrecipients that operate as state agencies must comply with (Texas Government Code, §441.1855), relating to state agency contracting and the retention of all contract-related documents.**

**In the event the Subrecipient or receiving entity ceases to exist, the Subrecipient will notify TSLAC in writing providing the name of the legal entity that will maintain the records and the location of the records.**
- j. This grant may be terminated by written notice and mutual agreement of both parties. The termination notice must be given no less than 30 days prior to the termination date. Where notice of termination is given, the Subrecipient shall:
  - 1. Take immediate steps to bring the work or grant activities to a close in a prompt and orderly manner. Subrecipient will complete reporting requirements outlined in Section VII of this document and in a manner mutually agreed upon by both parties as part of the closeout process.
  - 2. Reduce expenses to a minimum and not undertake any forward commitment. All contracted funds that are not spent, encumbered, or obligated at the time of notice of termination shall revert to TSLAC according to processes established in Section IV.H. of this document and according to a timeline mutually agreed upon by both parties.
- K. The Subrecipient shall notify TSLAC in writing of any changes to key grant personnel (i.e., program manager, library director, financial contact, etc.) within seven (7) days of the change occurrence.
- L. Loss of all of Subrecipient's staff prior to the end of the grant period or the termination date, whichever is earlier, does not relieve the Subrecipient of its obligation to fulfill all terms and conditions of the grant with regard to reporting requirements, retention of records and requirements for disposition of equipment and supplies.
- M. The parties agree that no provision of this contract is in any way intended to constitute a waiver by TSLAC or the State of Texas of any immunities from suit or from liability that TSLAC or the State of Texas may have by operation of law.
- N. The dispute resolution process provided in Texas Government Code, Chapter 2009, is available to the parties to resolve any dispute arising under the agreement.

## IX. ENFORCEMENT

- A. Remedies for noncompliance. If a Subrecipient materially fails to comply with any term of the contract, whether stated in a state or federal statute or regulation, an assurance in a state plan or application, a notice of award, or elsewhere, TSLAC may take one or more of the following actions or impose other sanctions as appropriate in the circumstances:
  - 1. Temporarily withhold cash payments pending correction of the deficiency by the Subrecipient, or more severe enforcement action by TSLAC;
  - 2. Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;
  - 3. Wholly or partly suspend or terminate the current contract for the Subrecipient's program;
  - 4. Withhold further awards for the program; or
  - 5. Take other remedies that may be legally available.
- B. Hearings, appeals. In taking an enforcement action, TSLAC will provide the Subrecipient an opportunity for such hearing, appeal, or other administrative proceeding to which the Subrecipient is entitled under any statute or regulation applicable to the action involved. Appeal/protest procedures are outlined in the Texas Administrative Code (TAC), Title 13, Part 1, Chapter 2, Subchapter A, Rule 2.55.
- C. Effects of suspension and termination. Costs to Subrecipient resulting from obligations incurred by the Subrecipient during a suspension or after termination of an award are not allowable unless TSLAC expressly authorizes them in writing. Other Subrecipient costs incurred during suspension or after termination that are necessary and not reasonably avoidable are allowable if:
  - 1. The costs relate to obligations that were properly incurred by the Subrecipient before the effective date of suspension or termination and were not incurred in anticipation of suspension or termination, and, in the case of a termination, the costs are noncancelable; and,
  - 2. The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.
- D. Relationship to Debarment and Suspension — The enforcement remedies identified in this section, including suspension and termination, do not preclude Subrecipient from being subject to "Debarment and Suspension" under Executive Order 12549 (See TxGMS, Appendix 6, Debarment and Suspension) and state law.

## **X. CONTACTS AT TSLAC**

Questions or concerns about programmatic issues, budget and/or program revisions, performance reports, and equipment/property should be directed to:

Dominic Gonzales, Grants Coordinator  
Phone: 512-463-5581  
E-mail: [dgonzales@tsl.texas.gov](mailto:dgonzales@tsl.texas.gov)

Questions or documentation relating to requests for funds, payments, and financial status should be directed to:

Arturo Villarreal, Grants Accountant  
Phone: 512-463-5472 / Fax: 512-475-0185  
E-mail: [grants.accounting@tsl.texas.gov](mailto:grants.accounting@tsl.texas.gov)

Questions or concerns about advance payments and other financial issues should be directed to:

Rebecca Cannon, Manager, Accounting and Grants  
Phone: 512-463-6626 / Fax: 512-475-0185  
E-mail: [rcannon@tsl.texas.gov](mailto:rcannon@tsl.texas.gov)

Payments from Subrecipient to TSLAC, such as refunds and those for excess advanced funds or for interest earned on advanced funds, should be mailed to the following address with an explanation of the purpose of the payment and the grant number:

Grants Accountant  
Accounting and Grants Department  
Texas State Library and Archives Commission  
PO Box 12516  
Austin, TX 78711-2516

## **XI. APPLICABLE AND GOVERNING LAW**

- A. The laws of the State of Texas shall govern this grant.
- B. All duties of either party shall be legally performable in Texas. The applicable law for any legal disputes arising out of this contract shall be the law of (and all actions hereunder shall be brought in) the State of Texas, and the forum and venue for such disputes shall be Travis County, District Court.
- C. This grant contract is subject to the availability of funds. TSLAC may reduce or terminate this grant contract when the availability of funding is reduced or eliminated.

## **XII. GRANT CERTIFICATIONS**

- A. TSLAC certifies that: (1) the services specified in the approved grant application and this contract are necessary and essential for activities that are properly within the statutory functions and programs of the affected organizations; (2) the services, supplies or materials contracted for are not required by Section 21 of Article 16 of the Constitution of Texas to be supplied under contract given to the lowest bidder; and, (3) the grant is in compliance with Texas Government Code §441.006, Texas Government Code §441.135; Texas Administrative Code, Title 13, Part 1, Chapter 2, Subchapter C, Division 4, Rules 2.410–2.412 regarding the Texas Reads Grant Program; Texas Administrative Code, Title 13, Part 1, Chapter 2, Subchapter C, Division 1, Rules 2.110–2.119 regarding General Grant Guidelines; the Library Services and Technology Act (LSTA); the State Plan for the LSTA in Texas; and TxGMS.
- B. The Subrecipient certifies that all costs included in this grant award are properly allocable to federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements.
- C. The Subrecipient certifies that the same costs that have been treated as indirect costs have not been claimed as direct costs, that similar types of costs have been accounted for consistently, and that the negotiating agency will be notified of any accounting changes that would affect the predetermined rate.
- D. For any agreement exceeding \$100,000, the Subrecipient certifies that no federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress on its behalf in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement. If non-federal funds are used by Subrecipient to conduct such lobbying activities, the Subrecipient shall promptly file the prescribed disclosure form. The Subrecipient acknowledges and agrees that it is responsible for ensuring that each subrecipient and subcontractor certifies its compliance with the expenditure prohibition and the declaration requirement in compliance with 31 U.S.C. §1352.
- E. Subrecipient has provided to TSLAC the mandatory Internet Safety Certification (Certification) that it is in compliance with requirements of the Children's Internet Protection Act (CIPA) for any Federal funds under this grant that will be used to purchase computers used to access the Internet or pay for the direct costs of accessing the Internet. Subrecipient agrees to collect, as required and appropriate, Certification forms from all libraries receiving benefits of Federal funds expended under this contract.
- F. Subrecipient certifies that neither subrecipient nor any of its principals (a) are presently excluded or disqualified; (b) have been convicted within the preceding three years of any of the offenses listed in 2 CFR §180.800(a) or had a civil judgment rendered against it or them for one of those offenses within that time period; (c) are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in 2 CFR §180.800(a); or (d) have had one or more public transactions (Federal, State, or local) terminated within the preceding three years for cause or

default. Where the Subrecipient is unable to certify to any of the statements in this certification, the Subrecipient shall attach an explanation to these Certifications.

- G. The Subrecipient certifies all applicable activities related to this grant will be in compliance with the Copyright Law of the United States (Title 17, U.S. Code).
- H. In addition to Federal requirements, state law requires a number of assurances from applicants for Federal pass-through or other state-appropriated funds (TxGMS, Appendix 6, Uniform Assurances by Local Governments), The Subrecipient hereby represents and warrants its compliance with all applicable required assurances.
- I. The subrecipient certifies that it will comply with drug-free workplace requirements in Subpart B of 2 CFR 3186, which adopts the government-wide implementation (2 CFR 182) of Sections 5152-515 of the Drug-Free Workplace Act of 1988 (P.L. 100-690, Title V, Subtitle D; 41 U.S.C. §§ 701–707). This includes, but is not limited to: making a good faith effort, on a continuing basis, to maintain a drug-free workplace; publishing a drug-free workplace statement; establishing a drug-free awareness program for employees; taking actions concerning employees who are convicted of violating drug statutes in the workplace; and identifying (either at the time of application or upon award, or in documents kept on file in the recipient’s offices) all known workplaces under Federal awards.
- J. The Subrecipient represents and warrants that it will comply, and assure compliance of all its subrecipients and contractors, with all applicable federal and state laws, rules, regulations, and policies in effect or hereafter established. In addition, Subrecipient represents and warrants that it will comply with all requirements imposed by the awarding agency concerning special requirements of law, program requirements, and other administrative requirements. In instances where multiple requirements apply to Subrecipient, the more restrictive requirement applies.
- K. The Subrecipient represents and warrants its compliance with Texas Government Code, §2054.5191, relating to the cybersecurity training program for local government employees who have access to a local government computer system or database.
- L. The Subrecipient represents and warrants its compliance with 2 CFR §200.113, which requires the disclosure in writing of violations of federal criminal law involving fraud, bribery, and gratuity and the reporting of certain civil, criminal, or administrative proceedings to SAM.
- M. The Subrecipient represents and warrants that it will comply with Texas Government Code, §2252.906, relating to disclosure protections for certain charitable organizations, charitable trusts, and private foundations.
- N. In accordance with Texas Government Code, §669.003, relating to contracting with the executive head of a state agency, Subrecipient certifies that it is not (1) the executive head of TSLAC, (2) a person who at any time during the four years before the date of the contract or grant was the executive head of TSLAC, or (3) a person who employs a current or former executive head of TSLAC.
- O. The Subrecipient represents that it possesses legal authority to apply for the grant. A resolution, motion or similar action has been duly adopted or passed as an official act of Subrecipient’s governing body, authorizing the filing of the agreement, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative, or the designee of Subrecipient to act in connection with the agreement to provide such additional information as may be required.
- P. The Subrecipient represents and warrants that TSLAC’s payments to Subrecipient and Subrecipient’s receipt of funds under the contract or grant are not prohibited by Texas Government Code, §§ 403.1067 or 556.0055, which restrict lobbying expenditures.
- Q. The Subrecipient represents and warrants that performance under the contract or grant will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety. The Subrecipient has not given, or offered to give, nor does Subrecipient intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant or employee of TSLAC, at any time during the negotiation of this contract or in connection with this contract, except as allowed under relevant state or federal law. Further, the Subrecipient represents and warrants that in the administration of the grant, it will comply with all conflict of interest prohibitions and disclosure requirements required by applicable law, rules, and policies, including Chapter 176 of the Texas Local Government Code. If circumstances change during the course of the contract or grant, Subrecipient shall promptly notify TSLAC. The Subrecipient will establish safeguards to prohibit its employees from using their positions for a purpose that constitutes or presents the appearance of a personal or organizational conflict of interest or personal gain. The Subrecipient will operate with complete independence and objectivity without an actual, potential or apparent conflict of interest with respect to its performance under this contract. The Subrecipient must disclose, in writing, within fifteen (15) calendar days of discovery, any existing or potential conflicts of interest relative to its performance under this contract. The Subrecipient represents and warrants its compliance with the Federal awarding agency’s conflict of interest policies in accordance with 2 CFR § 200.112.

**XIII. SIGNATURES**

The undersigned hereby execute this contract.

**GRANTOR**

**Texas State Library and Archives Commission**

\_\_\_\_\_  
Gloria Meraz, Director and Librarian

\_\_\_\_\_  
Date

\_\_\_\_\_  
Donna Osborne, Chief Financial Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sarah Karnes, Library Development and Networking Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Dominic Gonzales, Grants Coordinator

\_\_\_\_\_  
Date

**SUBRECIPIENT**

**Town of Flower Mound, Flower Mound Public Library**

\_\_\_\_\_  
Signature (official empowered to enter into contracts)

\_\_\_\_\_  
Typewritten or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



## TOWN COUNCIL AGENDA J.10. CONSENT ITEM(S)

---

**DATE:** September 18, 2023  
**FROM:** Kay Wilkinson, Director of Budget Services  
**ITEM:** **Consider approval of a resolution adopting Atmos Energy Corp., Mid-Tex Division's rate tariffs that reflect the negotiated rate change pursuant to the Rate Review Mechanism process.**

---

**BACKGROUND:** The Town, along with 181 other Mid-Texas cities served by Atmos Energy Corporation, Mid-Tex Division, is a member of the Atmos Cities Steering Committee (ACSC). In 2007, ACSC and Atmos Mid-Tex settled a rate application filed by the Company pursuant to Section 104.301 of the Texas Utilities Code for an interim rate adjustment commonly referred to as a GRIP filing (arising out of the Gas Reliability Infrastructure Program legislation). That settlement created a substitute rate review process, referred to as Rate Review Mechanism (RRM), as a substitute for future filings under the GRIP statute.

Since 2007, there have been several modifications to the original RRM Tariff. The most recent iteration of an RRM Tariff was reflected in an ordinance adopted by ACSC members in 2018. On or about March 31, 2023, the Company filed a rate request pursuant to the RRM Tariff adopted by ACSC members. The Company claimed that its cost-of-service in a test year ending December 31, 2022, entitled it to additional system-wide revenues of \$165.9 million.

Application of the standards set forth in ACSC's RRM Tariff reduces the Company's request to \$156.1 million, \$113.8 million of which would be applicable to ACSC members. After reviewing the filing and conducting discovery, ACSC's consultants concluded that the system-wide deficiency under the RRM regime should be \$130.9 million instead of the claimed \$156.1 million.

After several settlement meetings, the parties have agreed to settle the case for \$142 million. This is a reduction of \$23.9 million to the Company's initial request. This includes payment of ACSC's expenses. The settlement also includes an additional \$19.5 million for the securitization regulatory asset expenses related to Winter Storm Uri. This was previously approved by the Texas Legislature and Railroad Commission.

The impact of the settlement on average residential rates is an increase of \$6.47 on a monthly basis, or 7.31%. The increase for average commercial usage will be \$24.72 or 5.19%. The Effective Date for new rates is October 1, 2023. ACSC members should take action approving the Resolution before September 30, 2023.

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

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** N/A

**LEGAL REVIEW:** Thomas Brocato, of Lloyd Gosselink Rochelle & Townsend, P.C., created the proposed resolution for the cities in the Steering Committee of Cities Served by Atmos.

**ATTACHMENTS:**

1. Proposed Resolution
2. Average Bill Comparison

**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, APPROVING A NEGOTIATED SETTLEMENT BETWEEN THE ATMOS CITIES STEERING COMMITTEE (“ACSC”) AND ATMOS ENERGY CORP., MID-TEX DIVISION REGARDING THE COMPANY’S 2023 RATE REVIEW MECHANISM FILING; DECLARING EXISTING RATES TO BE UNREASONABLE; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT; FINDING THE RATES TO BE SET BY THE ATTACHED SETTLEMENT TARIFFS TO BE JUST AND REASONABLE AND IN THE PUBLIC INTEREST; APPROVING AN ATTACHMENT ESTABLISHING A BENCHMARK FOR PENSIONS AND RETIREE MEDICAL BENEFITS; REQUIRING THE COMPANY TO REIMBURSE ACSC’S REASONABLE RATEMAKING EXPENSES; DETERMINING THAT THIS RESOLUTION WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; ADOPTING A SAVINGS CLAUSE; DECLARING AN EFFECTIVE DATE; AND REQUIRING DELIVERY OF THIS RESOLUTION TO THE COMPANY AND THE ACSC’S LEGAL COUNSEL.**

**WHEREAS**, the Town of Flower Mound, Texas (“Town”) is a gas utility customer of Atmos Energy Corp., Mid-Tex Division (“Atmos Mid-Tex” or “Company”), and a regulatory authority with an interest in the rates, charges, and services of Atmos Mid-Tex; and

**WHEREAS**, the Town is a member of the Atmos Cities Steering Committee (“ACSC”), a coalition of similarly-situated cities served by Atmos Mid-Tex (“ACSC Cities”) that have joined together to facilitate the review of, and response to, natural gas issues affecting rates charged in the Atmos Mid-Tex service area; and

**WHEREAS**, ACSC and the Company worked collaboratively to develop a Rate Review Mechanism (“RRM”) tariff that allows for an expedited rate review process by ACSC Cities as a substitute to the Gas Reliability Infrastructure Program (“GRIP”) process instituted by the Legislature, and that will establish rates for the ACSC Cities based on the system-wide cost of serving the Atmos Mid-Tex Division; and

**WHEREAS**, the current RRM tariff was adopted by the Town in a rate ordinance in 2018; and

**WHEREAS**, on about March 1, 2023, Atmos Mid-Tex filed its 2023 RRM rate request with ACSC Cities based on a test year ending December 31, 2022; and

**WHEREAS**, ACSC coordinated its review of the Atmos Mid-Tex 2023 RRM filing through its Executive Committee, assisted by ACSC's attorneys and consultants, to resolve issues identified in the Company's RRM filing; and

**WHEREAS**, the Executive Committee, as well as ACSC's counsel and consultants, recommend that ACSC Cities approve an increase in base rates for Atmos Mid-Tex of \$142 million on a system-wide basis with an Effective Date of October 1, 2023; and

**WHEREAS**, ACSC agrees that Atmos' plant-in-service is reasonable; and

**WHEREAS**, with the exception of approved plant-in-service, ACSC is not foreclosed from future reasonableness evaluation of costs associated with incidents related to gas leaks; and

**WHEREAS**, the attached tariffs (Exhibit A) implementing new rates are consistent with the recommendation of the ACSC Executive Committee, are agreed to by the Company, and are just, reasonable, and in the public interest; and

**WHEREAS**, the settlement agreement sets a new benchmark for pensions and retiree medical benefits (Exhibit 2); and

**WHEREAS**, the RRM Tariff contemplates reimbursement of ACSC's reasonable expenses associated with RRM applications; and

**WHEREAS**, the RRM Tariff includes Securitization Interest Regulatory Asset amount of \$19.5 million;

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

#### **Section 1.**

That the findings set forth in this Resolution are hereby in all things approved.

#### **Section 2.**

That, without prejudice to future litigation of any issue identified by ACSC, the Town Council finds that the settled amount of an increase in revenues of \$142 million on a system-wide basis represents a comprehensive settlement of gas utility rate issues affecting the rates, operations, and services offered by Atmos Mid-Tex within the municipal limits arising from Atmos Mid-Tex's 2023 RRM filing, is in the public interest,

and is consistent with the Town's authority under Section 103.001 of the Texas Utilities Code.

### **Section 3.**

That despite finding Atmos Mid-Tex's plant-in-service to be reasonable, ACSC is not foreclosed in future cases from evaluating the reasonableness of costs associated with incidents involving leaks of natural gas.

### **Section 4.**

That the existing rates for natural gas service provided by Atmos Mid-Tex are unreasonable. The new tariffs attached hereto and incorporated herein as Exhibit A, are just and reasonable, and are designed to allow Atmos Mid-Tex to recover annually an additional \$142 on a system-wide basis, over the amount allowed under currently approved rates. Such tariffs are hereby adopted.

### **Section 5.**

That the ratemaking treatment for pensions and retiree medical benefits in Atmos Mid-Tex's next RRM filing shall be as set forth on Exhibit B, attached hereto and incorporated herein.

### **Section 6.**

That Atmos Mid-Tex shall reimburse the reasonable ratemaking expenses of the ACSC in processing the Company's 2023 RRM filing.

### **Section 7.**

That to the extent any resolution or ordinance previously adopted by the Council is inconsistent with this Resolution, it is hereby repealed.

### **Section 8.**

That the meeting at which this Resolution was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

### **Section 9.**

That if any one or more sections or clauses of this Resolution is adjudged to be unconstitutional or invalid, such judgment shall not affect, impair, or invalidate the remaining provisions of this Resolution, and the remaining provisions of the Resolution shall be interpreted as if the offending section or clause never existed.

**Section 10.**

That consistent with the Town Ordinance that established the RRM process, this Resolution shall become effective from and after its passage with rates authorized by attached tariffs to be effective for bills rendered on or after September 30, 2023.

**Section 11.**

That a copy of this Resolution shall be sent to Atmos Mid-Tex, care of Chris Felan, Vice President of Rates and Regulatory Affairs Mid-Tex Division, Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1862, Dallas, Texas 75240, and to Thomas Brocato, General Counsel to ACSC, at Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701.

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF \_\_\_\_ TO \_\_\_\_, ON THIS THE 18<sup>th</sup> DAY OF SEPTEMBER, 2023.**

**APPROVED:**

\_\_\_\_\_  
**Derek France, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Theresa Scott, Town Secretary**

**MID-TEX DIVISION  
ATMOS ENERGY CORPORATION**

|                        |                                                                   |  |
|------------------------|-------------------------------------------------------------------|--|
| <b>RATE SCHEDULE:</b>  | <b>R – RESIDENTIAL SALES</b>                                      |  |
| <b>APPLICABLE TO:</b>  | <b>ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF</b> |  |
| <b>EFFECTIVE DATE:</b> | <b>Bills Rendered on or after 10/01/2023</b>                      |  |

**Application**

Applicable to Residential Customers for all natural gas provided at one Point of Delivery and measured through one meter.

**Type of Service**

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

**Monthly Rate**

Customer's monthly bill will be calculated by adding the following Customer and Ccf charges to the amounts due under the riders listed below:

| <b>Charge</b>                     | <b>Amount</b>                  |
|-----------------------------------|--------------------------------|
| Customer Charge per Bill          | \$ 22.25 per month             |
| Rider CEE Surcharge               | \$ 0.05 per month <sup>1</sup> |
| <b>Total Customer Charge</b>      | <b>\$ 22.30 per month</b>      |
| Commodity Charge – All <u>Ccf</u> | \$0.48567 per Ccf <sup>2</sup> |

Gas Cost Recovery: Plus an amount for gas costs and upstream transportation costs calculated in accordance with Part (a) and Part (b), respectively, of Rider GCR.

Weather Normalization Adjustment: Plus or Minus an amount for weather normalization calculated in accordance with Rider WNA.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

**Agreement**

An Agreement for Gas Service may be required.

**Notice**

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

<sup>1</sup>Reference Rider CEE - Conservation and Energy Efficiency as approved in GUD 10170. Surcharge billing effective July 1, 2023.

<sup>2</sup>The commodity charge includes the base rate amount of \$0.46724 per Ccf and Securitization Regulatory Asset amounts related to financing costs in the amount of \$0.01843 per Ccf until recovered.

|                        |                                                                   |  |
|------------------------|-------------------------------------------------------------------|--|
| <b>RATE SCHEDULE:</b>  | <b>C – COMMERCIAL SALES</b>                                       |  |
| <b>APPLICABLE TO:</b>  | <b>ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF</b> |  |
| <b>EFFECTIVE DATE:</b> | <b>Bills Rendered on or after 10/01/2023</b>                      |  |

### Application

Applicable to Commercial Customers for all natural gas provided at one Point of Delivery and measured through one meter and to Industrial Customers with an average annual usage of less than 30,000 Ccf.

### Type of Service

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

### Monthly Rate

Customer's monthly bill will be calculated by adding the following Customer and Ccf charges to the amounts due under the riders listed below:

| <b>Charge</b>                | <b>Amount</b>                    |
|------------------------------|----------------------------------|
| Customer Charge per Bill     | \$ 72.00 per month               |
| Rider CEE Surcharge          | (\$ 0.02) per month <sup>1</sup> |
| <b>Total Customer Charge</b> | <b>\$ 71.98 per month</b>        |
| Commodity Charge – All Ccf   | \$ 0.18280 per Ccf <sup>2</sup>  |

Gas Cost Recovery: Plus an amount for gas costs and upstream transportation costs calculated in accordance with Part (a) and Part (b), respectively, of Rider GCR.

Weather Normalization Adjustment: Plus or Minus an amount for weather normalization calculated in accordance with Rider WNA.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

### Agreement

An Agreement for Gas Service may be required.

### Notice

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

### Presumption of Plant Protection Level

For service under this Rate Schedule, plant protection volumes are presumed to be 10% of normal, regular, historical usage as reasonably calculated by the Company in its sole discretion. If a customer believes it needs to be modeled at an alternative plant protection volume, it should contact the company at [mdtx.plantprotection@atmosenergy.com](mailto:mdtx.plantprotection@atmosenergy.com).

<sup>1</sup> Reference Rider CEE - Conservation and Energy Efficiency as approved in GUD 10170. Surcharge billing effective July 1, 2023.

<sup>2</sup>The commodity charge includes the base rate amount of \$0.16437 per Ccf and Securitization Regulatory Asset amounts related to financing costs in the amount of \$0.01843 per Ccf until recovered.

|                        |                                                                   |  |
|------------------------|-------------------------------------------------------------------|--|
| <b>RATE SCHEDULE:</b>  | <b>I – INDUSTRIAL SALES</b>                                       |  |
| <b>APPLICABLE TO:</b>  | <b>ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF</b> |  |
| <b>EFFECTIVE DATE:</b> | <b>Bills Rendered on or after 10/01/2023</b>                      |  |

### Application

Applicable to Industrial Customers with a maximum daily usage (MDU) of less than 200 MMBtu per day for all natural gas provided at one Point of Delivery and measured through one meter. Service for Industrial Customers with an MDU equal to or greater than 200 MMBtu per day will be provided at Company's sole option and will require special contract arrangements between Company and Customer.

### Type of Service

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

### Monthly Rate

Customer's monthly bill will be calculated by adding the following Customer and MMBtu charges to the amounts due under the riders listed below:

| <b>Charge</b>                | <b>Amount</b>                    |
|------------------------------|----------------------------------|
| Customer Charge per Meter    | \$ 1,382.00 per month            |
| First 0 MMBtu to 1,500 MMBtu | \$ 0.7484 per MMBtu <sup>1</sup> |
| Next 3,500 MMBtu             | \$ 0.5963 per MMBtu <sup>1</sup> |
| All MMBtu over 5,000 MMBtu   | \$ 0.2693 per MMBtu <sup>1</sup> |

Gas Cost Recovery: Plus an amount for gas costs and upstream transportation costs calculated in accordance with Part (a) and Part (b), respectively, of Rider GCR.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

### Curtailment Overpull Fee

Upon notification by Company of an event of curtailment or interruption of Customer's deliveries, Customer will, for each MMBtu delivered in excess of the stated level of curtailment or interruption, pay Company 200% of the midpoint price for the Katy point listed in *Platts Gas Daily* published for the applicable Gas Day in the table entitled "Daily Price Survey."

### Replacement Index

In the event the "midpoint" or "common" price for the Katy point listed in *Platts Gas Daily* in the table entitled "Daily Price Survey" is no longer published, Company will calculate the applicable imbalance fees

<sup>1</sup> The tiered commodity charges include the base rate amounts of \$0.5684, \$0.4163, and \$0.0893 per MMBtu, respectively, plus Securitization Regulatory Asset amounts related to financing costs in the amount of \$0.1800 per MMBtu until recovered.

**MID-TEX DIVISION  
ATMOS ENERGY CORPORATION**

|                        |                                                                   |  |
|------------------------|-------------------------------------------------------------------|--|
| <b>RATE SCHEDULE:</b>  | <b>I – INDUSTRIAL SALES</b>                                       |  |
| <b>APPLICABLE TO:</b>  | <b>ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF</b> |  |
| <b>EFFECTIVE DATE:</b> | <b>Bills Rendered on or after 10/01/2023</b>                      |  |

utilizing a daily price index recognized as authoritative by the natural gas industry and most closely approximating the applicable index.

**Agreement**

An Agreement for Gas Service may be required.

**Notice**

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

**Special Conditions**

In order to receive service under Rate I, Customer must have the type of meter required by Company. Customer must pay Company all costs associated with the acquisition and installation of the meter.

**Presumption of Plant Protection Level**

For service under this Rate Schedule, plant protection volumes are presumed to be 10% of normal, regular, historical usage as reasonably calculated by the Company in its sole discretion. If a customer believes it needs to be modeled at an alternative plant protection volume, it should contact the company at [mdtx.plantprotection@atmosenergy.com](mailto:mdtx.plantprotection@atmosenergy.com).

**MID-TEX DIVISION  
ATMOS ENERGY CORPORATION**

|                        |                                                                   |  |
|------------------------|-------------------------------------------------------------------|--|
| <b>RATE SCHEDULE:</b>  | <b>T – TRANSPORTATION</b>                                         |  |
| <b>APPLICABLE TO:</b>  | <b>ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF</b> |  |
| <b>EFFECTIVE DATE:</b> | <b>Bills Rendered on or after 10/01/2023</b>                      |  |

**Application**

Applicable, in the event that Company has entered into a Transportation Agreement, to a customer directly connected to the Atmos Energy Corp., Mid-Tex Division Distribution System (Customer) for the transportation of all natural gas supplied by Customer or Customer's agent at one Point of Delivery for use in Customer's facility.

**Type of Service**

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

**Monthly Rate**

Customer's bill will be calculated by adding the following Customer and MMBtu charges to the amounts and quantities due under the riders listed below:

| <b>Charge</b>                | <b>Amount</b>         |
|------------------------------|-----------------------|
| Customer Charge per Meter    | \$ 1,382.00 per month |
| First 0 MMBtu to 1,500 MMBtu | \$ 0.5684 per MMBtu   |
| Next 3,500 MMBtu             | \$ 0.4163 per MMBtu   |
| All MMBtu over 5,000 MMBtu   | \$ 0.0893 per MMBtu   |

Upstream Transportation Cost Recovery: Plus an amount for upstream transportation costs in accordance with Part (b) of Rider GCR.

Retention Adjustment: Plus a quantity of gas as calculated in accordance with Rider RA.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

**Imbalance Fees**

All fees charged to Customer under this Rate Schedule will be charged based on the quantities determined under the applicable Transportation Agreement and quantities will not be aggregated for any Customer with multiple Transportation Agreements for the purposes of such fees.

**Monthly Imbalance Fees**

Customer shall pay Company the greater of (i) \$0.10 per MMBtu, or (ii) 150% of the difference per MMBtu between the highest and lowest "midpoint" price for the Katy point listed in *Platts Gas Daily* in the table entitled "Daily Price Survey" during such month, for the MMBtu of Customer's monthly Cumulative Imbalance, as defined in the applicable Transportation Agreement, at the end of each month that exceeds 10% of Customer's receipt quantities for the month.

**MID-TEX DIVISION  
ATMOS ENERGY CORPORATION**

|                        |                                                                   |  |
|------------------------|-------------------------------------------------------------------|--|
| <b>RATE SCHEDULE:</b>  | <b>T – TRANSPORTATION</b>                                         |  |
| <b>APPLICABLE TO:</b>  | <b>ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF</b> |  |
| <b>EFFECTIVE DATE:</b> | <b>Bills Rendered on or after 10/01/2023</b>                      |  |

**Curtailment Overpull Fee**

Upon notification by Company of an event of curtailment or interruption of Customer's deliveries, Customer will, for each MMBtu delivered in excess of the stated level of curtailment or interruption, pay Company 200% of the midpoint price for the Katy point listed in *Platts Gas Daily* published for the applicable Gas Day in the table entitled "Daily Price Survey."

**Replacement Index**

In the event the "midpoint" or "common" price for the Katy point listed in *Platts Gas Daily* in the table entitled "Daily Price Survey" is no longer published, Company will calculate the applicable imbalance fees utilizing a daily price index recognized as authoritative by the natural gas industry and most closely approximating the applicable index.

**Agreement**

A transportation agreement is required.

**Notice**

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

**Special Conditions**

In order to receive service under Rate T, customer must have the type of meter required by Company. Customer must pay Company all costs associated with the acquisition and installation of the meter.

**MID-TEX DIVISION  
ATMOS ENERGY CORPORATION**

|                        |                                                                   |  |
|------------------------|-------------------------------------------------------------------|--|
| <b>RIDER:</b>          | <b>WNA – WEATHER NORMALIZATION ADJUSTMENT</b>                     |  |
| <b>APPLICABLE TO:</b>  | <b>ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF</b> |  |
| <b>EFFECTIVE DATE:</b> | <b>Bills Rendered on or after 10/01/2023</b>                      |  |

Provisions for Adjustment

The Commodity Charge per Ccf (100 cubic feet) for gas service set forth in any Rate Schedules utilized by the cities of the Mid-Tex Division service area for determining normalized winter period revenues shall be adjusted by an amount hereinafter described, which amount is referred to as the "Weather Normalization Adjustment." The Weather Normalization Adjustment shall apply to all temperature sensitive residential and commercial bills based on meters read during the revenue months of November through April. The five regional weather stations are Abilene, Austin, Dallas, Waco, and Wichita Falls.

Computation of Weather Normalization Adjustment

The Weather Normalization Adjustment Factor shall be computed to the nearest one-hundredth cent per Ccf by the following formula:

$$WNAF_i = R_i \frac{(HSF_i \times (NDD-ADD))}{(BL_i + (HSF_i \times ADD))}$$

Where

- $i$  = any particular Rate Schedule or billing classification within any such particular Rate Schedule that contains more than one billing classification
- $WNAF_i$  = Weather Normalization Adjustment Factor for the  $i^{th}$  rate schedule or classification expressed in cents per Ccf
- $R_i$  = Commodity Charge rate of temperature sensitive sales for the  $i^{th}$  schedule or classification.
- $HSF_i$  = heat sensitive factor for the  $i^{th}$  schedule or classification divided by the average bill count in that class
- $NDD$  = billing cycle normal heating degree days calculated as the simple ten-year average of actual heating degree days.
- $ADD$  = billing cycle actual heating degree days.
- $BL_i$  = base load sales for the  $i^{th}$  schedule or classification divided by the average bill count in that class

The Weather Normalization Adjustment for the  $j$ th customer in  $i$ th rate schedule is computed as:

$$WNA_i = WNAF_i \times q_{ij}$$

Where  $q_{ij}$  is the relevant sales quantity for the  $j$ th customer in  $i$ th rate schedule.

|                        |                                                                   |  |
|------------------------|-------------------------------------------------------------------|--|
| <b>RIDER:</b>          | <b>WNA – WEATHER NORMALIZATION ADJUSTMENT</b>                     |  |
| <b>APPLICABLE TO:</b>  | <b>ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF</b> |  |
| <b>EFFECTIVE DATE:</b> | <b>Bills Rendered on or after 10/01/2023</b>                      |  |

Base Use/Heat Use Factors

| Weather Station | <u>Residential</u>     |                            | <u>Commercial</u>      |                            |
|-----------------|------------------------|----------------------------|------------------------|----------------------------|
|                 | Base use<br><u>Ccf</u> | Heat use<br><u>Ccf/HDD</u> | Base use<br><u>Ccf</u> | Heat use<br><u>Ccf/HDD</u> |
| Abilene         | 9.51                   | 0.1415                     | 88.91                  | 0.7010                     |
| Austin          | 8.87                   | 0.1213                     | 213.30                 | 0.7986                     |
| Dallas          | 12.54                  | 0.2007                     | 185.00                 | 0.9984                     |
| Waco            | 8.81                   | 0.1325                     | 125.26                 | 0.7313                     |
| Wichita Falls   | 10.36                  | 0.1379                     | 122.10                 | 0.6083                     |

Weather Normalization Adjustment (WNA) Report

On or before June 1 of each year, the company posts on its website at [atmosenergy.com/mtx-wna](http://atmosenergy.com/mtx-wna), in Excel format, a *Weather Normalization Adjustment (WNA) Report* to show how the company calculated its WNAs factor during the preceding winter season. Additionally, on or before June 1 of each year, the company files one hard copy and an Excel version of the *WNA Report* with the Railroad Commission of Texas' Gas Services Division, addressed to the Director of that Division.

**ATMOS ENERGY CORP., MID-TEX DIVISION**  
**MID-TEX RATE REVIEW MECHANISM**  
**PENSIONS AND RETIREE MEDICAL BENEFITS FOR CITIES APPROVAL**  
**TEST YEAR ENDING DECEMBER 31, 2022**

| Line No. | Description                                                          | Shared Services      |                              | Mid-Tex Direct       |                              |                                     | Adjustment Total |
|----------|----------------------------------------------------------------------|----------------------|------------------------------|----------------------|------------------------------|-------------------------------------|------------------|
|          |                                                                      | Pension Account Plan | Post-Employment Benefit Plan | Pension Account Plan | Post-Employment Benefit Plan | Supplemental Executive Benefit Plan |                  |
|          | (a)                                                                  | (b)                  | (c)                          | (d)                  | (e)                          | (f)                                 | (g)              |
| 1        | Proposed Benefits Benchmark -                                        |                      |                              |                      |                              |                                     |                  |
|          | Fiscal Year 2023 Willis Towers Watson Report as adjusted (1) (2) (3) | \$ 1,434,339         | \$ (518,336)                 | \$ 2,336,419         | \$ (2,678,818)               | \$ 267,917                          |                  |
| 2        | Allocation Factor                                                    | 44.92%               | 44.92%                       | 78.74%               | 78.74%                       | 100.00%                             |                  |
| 3        | Proposed Benefits Benchmark Costs Allocated to Mid-Tex (Ln 1 x Ln 2) | \$ 644,336           | \$ (232,848)                 | \$ 1,839,667         | \$ (2,109,267)               | \$ 267,917                          |                  |
| 4        | O&M and Capital Allocation Factor                                    | 100.00%              | 100.00%                      | 100.00%              | 100.00%                      | 100.00%                             |                  |
| 5        | Proposed Benefits Benchmark Costs to Approve (Ln 3 x Ln 4)           | \$ 644,336           | \$ (232,848)                 | \$ 1,839,667         | \$ (2,109,267)               | \$ 267,917                          | \$ 409,804       |
| 6        |                                                                      |                      |                              |                      |                              |                                     |                  |
| 7        | O&M Expense Factor (WP_F-2.3, Ln 2)                                  | 78.60%               | 78.60%                       | 39.63%               | 39.63%                       | 11.00%                              |                  |
| 8        |                                                                      |                      |                              |                      |                              |                                     |                  |
| 9        | Summary of Costs to Approve (1):                                     |                      |                              |                      |                              |                                     |                  |
| 10       | Total Pension Account Plan                                           | \$ 506,464           |                              | \$ 729,006           |                              |                                     | \$ 1,235,469     |
| 11       | Total Post-Employment Benefit Plan                                   |                      | \$ (183,024)                 |                      | \$ (835,840)                 |                                     | (1,018,864)      |
| 12       | Total Supplemental Executive Benefit Plan                            |                      |                              |                      |                              | \$ 29,471                           | 29,471           |
| 13       | Total (Ln 10 + Ln 11 + Ln 12)                                        | \$ 506,464           | \$ (183,024)                 | \$ 729,006           | \$ (835,840)                 | \$ 29,471                           | \$ 246,076       |

ATMOS ENERGY CORP., MID-TEX DIVISION  
MID-TEX RATE REVIEW MECHANISM  
AVERAGE BILL COMPARISON - BASE RATES  
TEST YEAR ENDING DECEMBER 31, 2022

| Line No. | Description                                | Current  | Proposed | Change  |         |
|----------|--------------------------------------------|----------|----------|---------|---------|
|          |                                            |          |          | Amount  | Percent |
|          | (a)                                        | (b)      | (c)      | (d)     | (e)     |
| 1        | <b>Rate R @ 43.6 Ccf</b>                   |          |          |         |         |
| 2        | Customer charge                            | \$ 21.55 |          |         |         |
| 3        | Consumption charge 43.6 CCF X \$ 0.36223 = | 15.79    |          |         |         |
| 4        | Rider GCR Part A 43.6 CCF X \$ 0.63625 =   | 27.74    |          |         |         |
| 5        | Rider GCR Part B 43.6 CCF X \$ 0.41732 =   | 18.20    |          |         |         |
| 6        | Subtotal                                   | \$ 83.28 |          |         |         |
| 7        | Rider FF & Rider TAX \$ 83.28 X 0.06237 =  | 5.19     |          |         |         |
| 8        | Total                                      | \$ 88.47 |          |         |         |
| 9        |                                            |          |          |         |         |
| 10       | Customer charge                            |          | \$ 22.25 |         |         |
| 11       | Consumption charge 43.6 CCF X \$ 0.48567 = |          | 21.18    |         |         |
| 12       | Rider GCR Part A 43.6 CCF X \$ 0.63625 =   |          | 27.74    |         |         |
| 13       | Rider GCR Part B 43.6 CCF X \$ 0.41732 =   |          | 18.20    |         |         |
| 14       | Subtotal                                   |          | \$ 89.37 |         |         |
| 15       | Rider FF & Rider TAX \$ 89.37 X 0.06237 =  |          | 5.57     |         |         |
| 16       | Total                                      |          | \$ 94.94 | \$ 6.47 | 7.31%   |
| 17       |                                            |          |          |         |         |

ATMOS ENERGY CORP., MID-TEX DIVISION  
MID-TEX RATE REVIEW MECHANISM  
AVERAGE BILL COMPARISON - BASE RATES  
TEST YEAR ENDING DECEMBER 31, 2022

| Line No. | Description                                 | Current   | Proposed  | Change   |         |
|----------|---------------------------------------------|-----------|-----------|----------|---------|
|          |                                             |           |           | Amount   | Percent |
|          | (a)                                         | (b)       | (c)       | (d)      | (e)     |
| 18       | <b>Rate C @ 356.6 Ccf</b>                   |           |           |          |         |
| 19       | Customer charge                             | \$ 63.50  |           |          |         |
| 20       | Consumption charge 356.6 CCF X \$ 0.14137 = | 50.41     |           |          |         |
| 21       | Rider GCR Part A 356.6 CCF X \$ 0.63625 =   | 226.86    |           |          |         |
| 22       | Rider GCR Part B 356.6 CCF X \$ 0.30202 =   | 107.69    |           |          |         |
| 23       | Subtotal                                    | \$ 448.46 |           |          |         |
| 24       | Rider FF & Rider TAX \$ 448.46 X 0.06237 =  | 27.97     |           |          |         |
| 25       | Total                                       | \$ 476.43 |           |          |         |
| 26       |                                             |           |           |          |         |
| 27       | Customer charge                             |           | \$ 72.00  |          |         |
| 28       | Consumption charge 356.6 CCF X \$ 0.18280 = |           | 65.18     |          |         |
| 29       | Rider GCR Part A 356.6 CCF X \$ 0.63625 =   |           | 226.86    |          |         |
| 30       | Rider GCR Part B 356.6 CCF X \$ 0.30202 =   |           | 107.69    |          |         |
| 31       | Subtotal                                    |           | \$ 471.73 |          |         |
| 32       | Rider FF & Rider TAX \$ 471.73 X 0.06237 =  |           | 29.42     |          |         |
| 33       | Total                                       |           | \$ 501.15 | \$ 24.72 | 5.19%   |
| 34       |                                             |           |           |          |         |

ATMOS ENERGY CORP., MID-TEX DIVISION  
MID-TEX RATE REVIEW MECHANISM  
AVERAGE BILL COMPARISON - BASE RATES  
TEST YEAR ENDING DECEMBER 31, 2022

| Line No. | Description                       |             |       |   |    |         |   | Current             | Proposed            | Change           |              |
|----------|-----------------------------------|-------------|-------|---|----|---------|---|---------------------|---------------------|------------------|--------------|
|          |                                   |             |       |   |    |         |   |                     |                     | Amount           | Percent      |
|          | (a)                               |             |       |   |    |         |   | (b)                 | (c)                 | (d)              | (e)          |
| 35       | <b><u>Rate I @ 1720 MMBTU</u></b> |             |       |   |    |         |   |                     |                     |                  |              |
| 36       | Customer charge                   |             |       |   |    |         |   | \$ 1,204.50         |                     |                  |              |
| 37       | Consumption charge                | 1,500       | MMBTU | X | \$ | 0.4939  | = | 740.85              |                     |                  |              |
| 38       | Consumption charge                | 220         | MMBTU | X | \$ | 0.3617  | = | 79.64               |                     |                  |              |
| 39       | Consumption charge                | 0           | MMBTU | X | \$ | 0.0776  | = | -                   |                     |                  |              |
| 40       | Rider GCR Part A                  | 1,720       | MMBTU | X | \$ | 6.2134  | = | 10,688.12           |                     |                  |              |
| 41       | Rider GCR Part B                  | 1,720       | MMBTU | X | \$ | 0.6267  | = | 1,078.08            |                     |                  |              |
| 42       | Subtotal                          |             |       |   |    |         |   | \$ 13,791.19        |                     |                  |              |
| 43       | Rider FF & Rider TAX              | \$13,791.19 |       | X |    | 0.06237 | = | 860.17              |                     |                  |              |
| 44       | Total                             |             |       |   |    |         |   | <u>\$ 14,651.36</u> |                     |                  |              |
| 45       |                                   |             |       |   |    |         |   |                     |                     |                  |              |
| 46       | Customer charge                   |             |       |   |    |         |   |                     | \$ 1,382.00         |                  |              |
| 47       | Consumption charge                | 1,500       | MMBTU | X | \$ | 0.7484  | = |                     | 1,122.62            |                  |              |
| 48       | Consumption charge                | 220         | MMBTU | X | \$ | 0.5963  | = |                     | 131.30              |                  |              |
| 49       | Consumption charge                | 0           | MMBTU | X | \$ | 0.2693  | = |                     | -                   |                  |              |
| 50       | Rider GCR Part A                  | 1,720       | MMBTU | X | \$ | 6.2134  | = |                     | 10,688.12           |                  |              |
| 51       | Rider GCR Part B                  | 1,720       | MMBTU | X | \$ | 0.6267  | = |                     | 1,078.08            |                  |              |
| 52       | Subtotal                          |             |       |   |    |         |   |                     | \$ 14,402.12        |                  |              |
| 53       | Rider FF & Rider TAX              | \$14,402.12 |       | X |    | 0.06237 | = |                     | 898.28              |                  |              |
| 54       | Total                             |             |       |   |    |         |   |                     | <u>\$ 15,300.40</u> | <u>\$ 649.04</u> | <u>4.43%</u> |
| 55       |                                   |             |       |   |    |         |   |                     |                     |                  |              |

ATMOS ENERGY CORP., MID-TEX DIVISION  
MID-TEX RATE REVIEW MECHANISM  
AVERAGE BILL COMPARISON - BASE RATES  
TEST YEAR ENDING DECEMBER 31, 2022

| Line No. | Description                                  | Current     | Proposed    | Change |         |
|----------|----------------------------------------------|-------------|-------------|--------|---------|
|          |                                              |             |             | Amount | Percent |
|          | (a)                                          | (b)         | (c)         | (d)    | (e)     |
| 56       | <b>Rate T @ 4720 MMBTU</b>                   |             |             |        |         |
| 57       | Customer charge                              | \$ 1,204.50 |             |        |         |
| 58       | Consumption charge 1,500 MMBTU X \$ 0.4939 = | 740.85      |             |        |         |
| 59       | Consumption charge 3,220 MMBTU X \$ 0.3617 = | 1,164.50    |             |        |         |
| 60       | Consumption charge 0 MMBTU X \$ 0.0776 =     | -           |             |        |         |
| 61       | Rider GCR Part B 4,720 MMBTU X \$ 0.6267 =   | 2,957.85    |             |        |         |
| 62       | Subtotal                                     | \$ 6,067.70 |             |        |         |
| 63       | Rider FF & Rider TAX \$ 6,067.70 X 0.06237 = | 378.45      |             |        |         |
| 64       | Total                                        | \$ 6,446.15 |             |        |         |
| 65       |                                              |             |             |        |         |
| 66       | Customer charge                              |             | \$ 1,382.00 |        |         |
| 67       | Consumption charge 1,500 MMBTU X \$ 0.5684 = | 852.60      |             |        |         |
| 68       | Consumption charge 3,220 MMBTU X \$ 0.4163 = | 1,340.29    |             |        |         |
| 69       | Consumption charge 0 MMBTU X \$ 0.0893 =     | -           |             |        |         |
| 70       | Rider GCR Part B 4,720 MMBTU X \$ 0.6267 =   | 2,957.85    |             |        |         |
| 71       | Subtotal                                     | \$ 6,532.74 |             |        |         |
| 72       | Rider FF & Rider TAX \$ 6,532.74 X 0.06237 = | 407.45      |             |        |         |
| 73       | Total                                        | \$ 6,940.19 | \$ 494.04   |        | 7.66%   |



## TOWN COUNCIL AGENDA J.11. CONSENT ITEM(S)

---

**DATE:** September 18, 2023  
**FROM:** Jeff Garner, Director of Facilities Management  
**ITEM:** **Consider the approval of a proposal from Paragon Multi Family Roofing Inc. for the replacement of steep slope shingle roof systems in the amount of \$148,599.00 through the TIPS Purchasing Network utilizing contract number 22010702.**

---

**BACKGROUND:** During a recent hail storm on 6/11/2023 several Town buildings sustained significant roof damage from wind and hail and will require replacement of shingles. Roof inspections were completed on Town buildings by Facilities Management and TML roof inspectors/adjusters. Eight buildings were inspected by Paragon Multi Family Roofing Inc. (PMR). PMR has provided a proposal through the TIPS contract for replacement of the roof shingles on eight buildings and to upgrade the new shingles to Class IV at a cost of \$148,599.00. Facilities Management is recommending that we upgrade the laminated shingles to Class IV impact resistant shingles. If damaged wood decking is identified, the cost of repair will be \$5.00 per square foot and damaged wood fascia will be replaced at a cost of \$11.00 per linear foot. The Town will receive insurance reimbursement in the amount of approximately \$111,000.00, town out-of-pocket expenses will be around \$40,000. The Town's deductible is \$5,000 for this loss.

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

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** \$148,599.00

**Proposed Expenditure/(Revenue)**  
\$148,599.00

**Account Number(s):**  
100-655-59200-4301

**LEGAL REVIEW:** N/A

**ATTACHMENTS:**

1. TIPS Proposal
2. Flower Mound - Executive Summary\_8-22-23 HDF

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

**AUGUST 11TH, 2023**

**CITY OF FLOWER MOUND**

1200 GERAULT RD

FLOWER MOUND, TEXAS 75028



**TMLID 43, 88, 107, 164, 165, 166, 228 & 274**

### **ROOFING PROPOSAL -**

We are pleased to submit this proposal for the replacement of the steep slope shingle roof systems for the referenced project through Paragon Multi Family Roofing Inc. TIPS contract number, 22010702. This proposal includes both labor and materials for the installation as described below. We are confident our team will complete this project efficiently and smoothly.

### **SCOPE OF WORK:**

1. See attached TIPS vetting sheet for specific quantities, building locations and pricing
2. Includes performance payment bond (Maintenance guarantee under the Performance bond is valid until one year anniversary of substantial completion date. Extended coverage beyond one year anniversary of substantial completion is available via Maintenance Bond at an additional charge per year beyond the first year.)
3. Includes 5 year contractor workmanship warranty

### **PROJECT TERMS AND CONDITIONS**

1. Contractor shall carry Worker's Compensation and General Liability Insurance.
2. Contractor shall coordinate all schedules and work hours with the Owner or the designated representative. Standard work hours shall apply to this project. Only one mobilizations is included to complete the entire scope of work
3. Once work commences, Contractor shall proceed diligently to final completion.
4. Payment Schedule shall be as follows with all invoices due upon receipt:
  - A. Contractor to submit invoices for those units/TMLIRP ID# as completed and audited on or before the 25<sup>th</sup> of each month. Payment less 10% retainage by the 10<sup>th</sup> of the following month
5. This proposal, if accepted, shall become the agreement between the parties. There are no agreements either express or implied that extend beyond the face of this proposal.
6. Price is good for delivery of materials for 45 days from the date of this proposal.

#### **CONTACT**

469.409.ROOF  
PMRroofing.com



#### **ADDRESS**

7239 Envoy Court  
Dallas, TX 75247

**AUGUST 11TH, 2023**

**CITY OF FLOWER MOUND**

1200 GERAULT RD

FLOWER MOUND, TEXAS 75028



**TOTAL VALUE OF ROOFING WORK AS OUTLINED ABOVE:**

Tax 8.25%

\$ N/A

**Total                      \$ 137,626.50**

**ALTERNATE OPTIONS**

1. Damaged wood decking will be repaired at unit cost of \$5.00 per square foot
2. Damaged wood fascia will be replaced at unit cost of \$11.00 per linear foot
3. Price to upgrade laminated shingles to Class IV impact resistant shingle

**3.1. ADD \$10,972.50                      initial if accepted**

**ACCEPTANCE**

If accepted the city will need to simply issue a Purchase Order or sign this document and send to Paragon Multi Family Roofing, Inc. by email Q@PMRroofing.com using your normal procedure.

Should you have any questions or concerns please contact our office at the number listed below.

**ACCEPTED:**

Company: \_\_\_\_\_

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

Authorized Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Mr. Quantan Tobolka**  
President, PMR Roofing  
m. 214.336.0316

**CONTACT**  
469.409.ROOF  
PMRroofing.com



**ADDRESS**  
7239 Envoy Court  
Dallas, TX 75247

| CLAIM MANAGER:                           |                                              |                    |                                            |                                          |                                             |                                             |
|------------------------------------------|----------------------------------------------|--------------------|--------------------------------------------|------------------------------------------|---------------------------------------------|---------------------------------------------|
| TOWN OF FLOWER MOUND<br>CLAIM # PR194959 |                                              |                    |                                            | MEMBER LOSS SUMMARY<br>EXECUTIVE SUMMARY |                                             |                                             |
| TML ID#                                  | BLDG/UNIT #<br>BUILDING / UNIT # (REFERENCE) | BLDG./UNIT ADDRESS | TML<br>ADJUSTMENT<br>DATE: 00/00/00<br>RCV |                                          | TIPS #01<br>VETTED<br>5/23/2023<br>PROPOSAL | CLASS IV<br>ALTERNATE/UPGRADE               |
| 43                                       | PAVILION W/ PICNIC TABLES                    | 1200 GERAULT RD.   |                                            |                                          | OPTION #1                                   | UPGRADE CLASS IV + LAMINATED                |
|                                          |                                              |                    |                                            |                                          |                                             |                                             |
|                                          |                                              |                    | \$ 7,853.76                                |                                          | \$ 4,500.00                                 | \$ 400.00                                   |
| 88                                       | CONCESSION/RESTROOM/PAVILION                 | 1200 GERAULT RD.   |                                            |                                          | OPTION #1                                   | UPGRADE CLASS IV + LAMINATED                |
|                                          |                                              |                    |                                            |                                          |                                             |                                             |
|                                          |                                              |                    | \$ 15,737.09                               |                                          | \$ 15,600.00                                | \$ 1,200.00                                 |
| 107                                      | FIRE STATION #2/GENERATOR/LIGHT/FLAG POLE    | 4401 SHILOH ROD.   |                                            |                                          | OPTION #1                                   | UPGRADE CLASS IV + LAMINATED                |
|                                          |                                              |                    |                                            |                                          |                                             |                                             |
|                                          |                                              |                    | \$ 62,383.47                               |                                          | \$ 65,500.00                                | \$ 5,100.00                                 |
| 164                                      | RESTROOMS-BLDG B                             | 1201 DUNCAN LN.    |                                            |                                          | OPTION #1                                   | UPGRADE CLASS IV + LAMINATED                |
|                                          |                                              |                    |                                            |                                          |                                             |                                             |
|                                          |                                              |                    | \$ 7,505.59                                |                                          | \$ 6,100.00                                 | \$ 475.00                                   |
| 165                                      | RESTROOMS-BLDG A                             | 1201 DUNCAN LN.    |                                            |                                          | OPTION #1                                   | UPGRADE CLASS IV + LAMINATED                |
|                                          |                                              |                    |                                            |                                          |                                             |                                             |
|                                          |                                              |                    | \$ 17,462.79                               |                                          | \$ 15,300.00                                | \$ 1,200.00                                 |
| 166                                      | PAVILION W/PICNIC TABLES                     | 1201 DUNCAN LN.    |                                            |                                          | OPTION #1                                   | UPGRADE CLASS IV + LAMINATED                |
|                                          |                                              |                    |                                            |                                          |                                             |                                             |
|                                          |                                              |                    | \$ 5,713.36                                |                                          | \$ 4,600.00                                 | \$ 375.00                                   |
| 228                                      | PAVILION W/PICNIC TABLES                     | 1201 DUNCAN LN.    |                                            |                                          | OPTION #1                                   | UPGRADE CLASS IV + LAMINATED                |
|                                          |                                              |                    |                                            |                                          |                                             |                                             |
|                                          |                                              |                    | \$ 16,946.48                               |                                          | \$ 15,500.00                                | \$ 1,400.00                                 |
| 274                                      | RESTROOM BUILDING                            | 600 SPINKS RD.     |                                            |                                          | OPTION #1                                   | UPGRADE CLASS IV + LAMINATED                |
|                                          |                                              |                    |                                            |                                          |                                             |                                             |
|                                          |                                              |                    | \$ 4,660.91                                |                                          | \$ 4,600.00                                 | \$ 350.00                                   |
|                                          |                                              |                    | \$ 138,263.45                              |                                          | \$ 131,700.00                               | \$ 10,500.00                                |
|                                          |                                              |                    | TML<br>RCV                                 |                                          | TIPS<br>LQK                                 | ALTERNATE / UPGRADE<br>CLASS IV (ALL ID#'s) |
|                                          | EXECUTIVE SUMMARY:                           |                    | EXCLUDED                                   |                                          | OPTION #1                                   | OPTION #3                                   |
|                                          | BASE PROPOSAL                                |                    | \$ 138,263.45                              |                                          | \$ 131,700.00                               | \$ 10,500.00                                |
|                                          | TIPS FEE                                     |                    | EXCLUDED                                   |                                          | \$ 2,634.00                                 | \$ 210.00                                   |
|                                          | BOND FEE                                     |                    | EXCLUDED                                   |                                          | \$ 3,292.50                                 | \$ 262.50                                   |
|                                          | TAX                                          |                    | EXCLUDED                                   |                                          | EXCLUDED                                    | EXCLUDED                                    |
|                                          | PERMIT                                       |                    | EXCLUDED                                   |                                          | EXCLUDED                                    | EXCLUDED                                    |
|                                          | TMLIRP TOTAL ADJUSTMENT                      |                    | \$ 138,263.45                              |                                          | \$ 137,626.50                               | \$ 10,972.50                                |

| CLAIM MANAGER:<br>TOWN OF FLOWER MOUND<br>CLAIM # PR194959                                |                                     |                                                |                                                                    |                         |                   |                      |                                                  |                               |       |
|-------------------------------------------------------------------------------------------|-------------------------------------|------------------------------------------------|--------------------------------------------------------------------|-------------------------|-------------------|----------------------|--------------------------------------------------|-------------------------------|-------|
| RFP I - PACKAGE I<br>DETAILED BREAKDOWN BY ID#<br>ROOFING & EXTERIOR<br>EXECUTIVE SUMMARY |                                     |                                                |                                                                    |                         |                   |                      |                                                  |                               |       |
| ITEM #                                                                                    | BLDG/UNIT #                         | TMLIRP ADJUSTER<br>SCOPE FO WORK               | TMLIRP<br>ADJUSTMENT<br>RCV<br>STATEMENT OF LOSS                   | UNITS<br>S.F./L.F./EACH | UNIT QTY<br>TOTAL | TMLIRP<br>ADJUSTMENT | TIPS #01<br>VETTED<br>PROPOSAL<br>DATE: 00/00/00 | CLASS IV<br>ALTERNATE/UPGRADE | DELTA |
| ALL                                                                                       |                                     | PROJECT MANAGER                                | INCLUDE FULL TIME PM / ENGLISH SPEAKING                            |                         | ALL ID#'s         |                      |                                                  |                               |       |
|                                                                                           |                                     | DEMO / DEBRIS                                  | INCLUDE ALL DEMO COLLECTION AND HAUL OFF                           |                         | ALL ID#'s         |                      |                                                  |                               |       |
|                                                                                           | TOTAL                               |                                                | INCLUDED                                                           |                         |                   | TMLIRP ADJUSTMENT    | INCLUDED<br>TIPS BASE PROPOSAL                   | UPGRADE CLASS IV + LAMINATED  | DELTA |
| 43                                                                                        | PAVILION W/ PICNIC TABLES           | 1200 GERAULT RD.                               |                                                                    |                         |                   |                      |                                                  |                               |       |
|                                                                                           | ROOF                                |                                                |                                                                    |                         |                   |                      |                                                  |                               |       |
|                                                                                           |                                     | TEAR OFF/HAUL/DISPOSE COMP. SHINGLES-LAMINATED | TEAR OFF/HAUL/DISPOSE COMP. SHINGLES-LAMINATED                     | SQ                      | 9.89              |                      |                                                  |                               |       |
|                                                                                           |                                     | LAMINATED COMP.SHINGLE RFG. W/OUT FELT         | LAMINATED COMP.SHINGLE RFG. W/OUT FELT-6 NAILS                     | SQ                      | 11.67             |                      |                                                  |                               |       |
|                                                                                           |                                     | ROOFING FELT 30LB                              | ROOFING FELT 30LB/REPLACE WITH SYNTHETIC                           | SQ                      | 9.89              |                      |                                                  |                               |       |
|                                                                                           |                                     | DRIP EDGE                                      | DRIP EDGE/REPLACE WITH "B" DRIP                                    | LF                      | 119               |                      |                                                  |                               |       |
|                                                                                           |                                     | ASPHALT STATER-UNIVERSAL COURSE                | ASPHALT STATER-UNIVERSAL COURSE                                    | LF                      | 119               |                      |                                                  |                               |       |
|                                                                                           |                                     | HIP/RIDGE CAP-HIGH PROFILE COMP. SHINGLES      | HIP/RIDGE CAP-HIGH PROFILE COMP. SHINGLES/ INSTALL NEW RIDGE VENT  | LF                      | 89.08             |                      |                                                  |                               |       |
|                                                                                           |                                     |                                                | PAINT ALL FLASHINGS                                                |                         |                   |                      |                                                  |                               |       |
|                                                                                           | SUB-TOTAL                           |                                                |                                                                    |                         |                   |                      | \$ 1.00                                          | \$ 1.00                       |       |
|                                                                                           | ELEVATIONS                          |                                                |                                                                    |                         |                   |                      |                                                  |                               |       |
|                                                                                           |                                     | PAINT TRIM-ONE COAT                            | PAINT TRIM-ONE COAT                                                | LF                      | 119               |                      |                                                  |                               |       |
|                                                                                           | SUB-TOTAL                           |                                                |                                                                    |                         |                   |                      | \$ -                                             | N/A                           |       |
|                                                                                           | WARRANTY                            |                                                |                                                                    |                         |                   |                      |                                                  |                               |       |
|                                                                                           |                                     |                                                | 5-YEAR CONTRACTOR WARRANTY                                         |                         |                   |                      |                                                  |                               |       |
|                                                                                           |                                     |                                                | 20-YEAR WORKMANSHIP / 45-YEAR MATERIAL                             |                         |                   |                      |                                                  |                               |       |
|                                                                                           | SUB-TOTAL                           |                                                |                                                                    |                         |                   |                      | INCLUDED                                         | N/A                           |       |
|                                                                                           | TOTAL                               |                                                |                                                                    |                         |                   | \$ 5,678.07          | \$ 4,500.00                                      | \$ 400.00                     |       |
|                                                                                           |                                     |                                                |                                                                    |                         |                   | TMLIRP ADJUSTMENT    | TIPS BASE PROPOSAL                               | UPGRADE CLASS IV + LAMINATED  | DELTA |
| 88                                                                                        | CONCESSION/RESTROOM/PAVILION        | 1200 GERAULT RD.                               |                                                                    |                         |                   |                      |                                                  |                               |       |
|                                                                                           |                                     |                                                |                                                                    |                         |                   |                      |                                                  |                               |       |
|                                                                                           |                                     | TEAR OFF/HAUL/DISPOSE COMP. SHINGLES-LAMINATED | TEAR OFF/HAUL/DISPOSE COMP. SHINGLES-LAMINATED                     | SQ                      | 34.7              |                      |                                                  |                               |       |
|                                                                                           |                                     | LAMINATED COMP.SHINGLE RFG. W/OUT FELT         | LAMINATED COMP.SHINGLE RFG. W/OUT FELT-6 NAILS                     | SQ                      | 40                |                      |                                                  |                               |       |
|                                                                                           |                                     | ROOFING FELT 30LB                              | ROOFING FELT 30LB/REPLACE WITH SYNTHETIC                           | SQ                      | 34.7              |                      |                                                  |                               |       |
|                                                                                           |                                     | DRIP EDGE                                      | DRIP EDGE/REPLACE WITH "B" DRIP                                    | LF                      | 237.83            |                      |                                                  |                               |       |
|                                                                                           |                                     | FLASHING-PIPE JACK                             | REMOVE / REPLACE LEAD JACKS                                        | EA                      | 2                 |                      |                                                  |                               |       |
|                                                                                           |                                     | ASPHALT STARTER-UNIVERSAL STARTER COURSE       | ASPHALT STATER-UNIVERSAL COURSE                                    | LF                      | 237.83            |                      |                                                  |                               |       |
|                                                                                           |                                     | HIP/RIDGE CAP-HIGH PROFILE COMP. SHINGLES      | HIP/RIDGE CAP-HIGH PROFILE COMP. SHINGLES/ INSTALL NEW RIDGE VENT  | LF                      | 150.85            |                      |                                                  |                               |       |
|                                                                                           |                                     | DETACH & RESET EXHAUST CAP-THROUGH ROOF 6"-8"  | DETACH & RESET EXHAUST CAP-THROUGH ROOF 6"-8"                      | EA                      | 1                 |                      |                                                  |                               |       |
|                                                                                           |                                     | CONTINUOUS RIDGE VENT-SHINGLE OVER STYLE       | INSTALL NEW RIDGEVENT                                              | LF                      | 50                |                      |                                                  |                               |       |
|                                                                                           |                                     |                                                | PAINT ALL FLASHINGS                                                |                         |                   |                      |                                                  |                               |       |
|                                                                                           | SUB-TOTAL                           |                                                |                                                                    |                         |                   |                      | \$ 1.00                                          | \$ 1.00                       |       |
|                                                                                           | ELEVATIONS                          |                                                |                                                                    |                         |                   |                      |                                                  |                               |       |
|                                                                                           |                                     | NO STORM RELATED DAMAGES OBSERVED TO ELEVATION | NO STORM RELATED DAMAGES OBSERVED TO ELEVATION                     |                         |                   |                      |                                                  |                               |       |
|                                                                                           | SUB-TOTAL                           |                                                |                                                                    |                         |                   | NO DAMAGE            | NO DAMAGE                                        | N/A                           |       |
|                                                                                           | WARRANTY                            |                                                |                                                                    |                         |                   |                      |                                                  |                               |       |
|                                                                                           |                                     |                                                | 5-YEAR CONTRACTOR WARRANTY                                         |                         |                   |                      |                                                  |                               |       |
|                                                                                           |                                     |                                                | 20-YEAR WORKMANSHIP / 45-YEAR MATERIAL                             |                         |                   |                      |                                                  |                               |       |
|                                                                                           | SUB-TOTAL                           |                                                |                                                                    |                         |                   |                      | INCLUDED                                         | N/A                           |       |
|                                                                                           | TOTAL                               |                                                |                                                                    |                         |                   | \$ 17,912.78         | \$ 15,600.00                                     | \$ 1,200.00                   |       |
|                                                                                           |                                     |                                                |                                                                    |                         |                   | TMLIRP ADJUSTMENT    | TIPS BASE PROPOSAL                               | UPGRADE CLASS IV + LAMINATED  | DELTA |
| 107                                                                                       | E STATION #2/GENERATOR/LIGHT/FLAG P | 4401 SHILOH ROD.                               |                                                                    |                         |                   |                      |                                                  |                               |       |
|                                                                                           | ROOF                                |                                                |                                                                    |                         |                   |                      |                                                  |                               |       |
|                                                                                           |                                     | TEAR OFF/HAUL/DISPOSE COMP. SHINGLES-LAMINATED | TEAR OFF/HAUL/DISPOSE COMP. SHINGLES-LAMINATED                     | SQ                      | 145.42            |                      |                                                  |                               |       |
|                                                                                           |                                     | LAMINATED COMP.SHINGLE RFG. W/OUT FELT         | LAMINATED COMP.SHINGLE RFG. W/OUT FELT                             | SQ                      | 160               |                      |                                                  |                               |       |
|                                                                                           |                                     | ROOFING FELT 30LB                              | REMOVE ROOFING FELT 30LB                                           | SQ                      | 4.55              |                      |                                                  |                               |       |
|                                                                                           |                                     | ROOFING FELT 15LB                              | REMOVE ROOFING FELT 15LB                                           | SQ                      | 140.87            |                      |                                                  |                               |       |
|                                                                                           |                                     |                                                | INSTALL NEW SYNTHETIC                                              |                         |                   |                      |                                                  |                               |       |
|                                                                                           |                                     | DRIP EDGE                                      | DRIP EDGE -"B" DRIP EDGE                                           | LF                      | 1003              |                      |                                                  |                               |       |
|                                                                                           |                                     | FLASHING-PIPE JACK - LEAD                      | FLASHING-PIPE JACK - LEAD                                          | EA                      | 6                 |                      |                                                  |                               |       |
|                                                                                           |                                     | PRIME & PAINT ROOF JACK                        | PRIME & PAINT ROOF JACK                                            | EA                      | 6                 |                      |                                                  |                               |       |
|                                                                                           |                                     | VALLEY METAL                                   | VALLEY METAL/ INSTALL WEBBED VALLEY W/ P-N-S                       | LF                      | 144               |                      |                                                  |                               |       |
|                                                                                           |                                     | ASPHALT STARTER-UNIVERSAL STARTER COURSE       | ASPHALT STARTER-UNIVERSAL STARTER COURSE                           | LF                      | 1003              |                      |                                                  |                               |       |
|                                                                                           |                                     | HIP/RIDGE CAP-HIGH PROFILE COMP. SHINGLES      | HIP/RIDGE CAP-HIGH PROFILE COMP. SHINGLES/ REPLACE WITH RIDGE VENT | LF                      | 288               |                      |                                                  |                               |       |
|                                                                                           |                                     | EXHAUST CAP-THROUGH ROOF 6"-8"                 | R&R EXHAUST CAP-THROUGH ROOF 6"-8"/TOP/DIVERTER/FLASHING           | EA                      | 11                |                      |                                                  |                               |       |
|                                                                                           |                                     |                                                | PAINT FLASHINGS                                                    |                         |                   |                      |                                                  |                               |       |

|     |                          |                                                |                                                                 |    |        |                   |                    |                              |           |
|-----|--------------------------|------------------------------------------------|-----------------------------------------------------------------|----|--------|-------------------|--------------------|------------------------------|-----------|
|     |                          |                                                |                                                                 |    |        |                   |                    |                              |           |
|     | SUB-TOTAL                |                                                |                                                                 |    |        |                   |                    | \$ 1.00                      | \$ 1.00   |
|     | LIGHTNING PROTECTION     |                                                |                                                                 |    |        |                   |                    |                              |           |
|     |                          | LIGHTNING PROTECTION SYSTEM - DETACH & RESET   | LIGHTNING PROTECTION SYSTEM - DETACH & RESET                    | EA | E      |                   |                    |                              |           |
|     |                          |                                                | CERTIFY 5-YEARS                                                 |    |        |                   |                    |                              |           |
|     | SUB-TOTAL                |                                                |                                                                 |    |        |                   |                    | \$ -                         | N/A       |
|     | ELEVATIONS               |                                                |                                                                 |    |        |                   |                    |                              |           |
|     |                          | NO STORM RELATED DAMAGES OBSERVED TO ELEVATION | NO STORM RELATED DAMAGES OBSERVED TO ELEVATION                  |    |        |                   |                    |                              |           |
|     | SUB-TOTAL                |                                                |                                                                 |    |        |                   | NO DAMAGE          | NO DAMAGE                    | NO DAMAGE |
|     | WARRANTY                 |                                                |                                                                 |    |        |                   |                    |                              |           |
|     |                          |                                                | 5-YEAR CONTRACTOR WARRANTY                                      |    |        |                   |                    |                              |           |
|     |                          |                                                | 20-YEAR WORKMANSHIP / 45-YEAR MATERIAL                          |    |        |                   |                    |                              |           |
|     | SUB-TOTAL                |                                                |                                                                 |    |        |                   |                    | INCLUDED                     | INCLUDED  |
|     | TOTAL                    |                                                |                                                                 |    |        | \$ 62,383.47      | \$ 65,500.00       | \$ 5,100.00                  |           |
|     |                          |                                                |                                                                 |    |        | TMLIRP ADJUSTMENT | TIPS BASE PROPOSAL | UPGRADE CLASS IV + LAMINATED | DELTA     |
| 164 | RESTROOMS-BLDG B         | 1201 DUNCAN LN.                                |                                                                 |    |        |                   |                    |                              |           |
|     | ROOF 2                   |                                                |                                                                 |    |        |                   |                    |                              |           |
|     |                          | TEAR OFF/HAUL/DISPOSE COMP. SHINGLES-LAMINATED | TEAR OFF/HAUL/DISPOSE COMP. SHINGLES-LAMINATED                  | SF | 1356   |                   |                    |                              |           |
|     |                          | LAMINATED COMP.SHINGLE RFG. W/OUT FELT         | LAMINATED COMP.SHINGLE RFG. W/OUT FELT                          | SF | 1567   |                   |                    |                              |           |
|     |                          | ROOFING FELT 30LB                              | REMOVE ROOFING FELT 30LB                                        | SF | 1356   |                   |                    |                              |           |
|     |                          |                                                | INSTALL NEW SYNTHETIC                                           | SF | 1356   |                   |                    |                              |           |
|     |                          | DRIP EDGE                                      | DRIP EDGE "B" DRIP EDGE                                         | LF | 142.67 |                   |                    |                              |           |
|     |                          | FLASHING-PIPE JACK                             | FLASHING-PIPE JACK - LEAD                                       | EA | 1      |                   |                    |                              |           |
|     |                          | ASPHALT STARTER-UNIVERSAL STARTER COURSE       | ASPHALT STARTER-UNIVERSAL STARTER COURSE                        | LF | 142.67 |                   |                    |                              |           |
|     |                          | HIP/RIDGE CAP-HIGH PROFILE COMP. SHINGLES      | REMOVE RIDGE / HIP/REPLACE ITH RIDGEVENT                        | LF | 98     |                   |                    |                              |           |
|     |                          | CONTINUOUS RIDGE VENT-SHINGLE OVER STYLE       | NEW RIDGE VENT                                                  | LF | 20     |                   |                    |                              |           |
|     |                          |                                                | PAINT ALL FLASHINGS                                             |    |        |                   |                    |                              |           |
|     |                          |                                                |                                                                 |    |        |                   |                    | \$ 1.00                      | \$ 1.00   |
|     | ELEVATIONS               |                                                |                                                                 |    |        |                   |                    |                              |           |
|     |                          | NO STORM RELATED DAMAGES OBSERVED TO ELEVATION | NO STORM RELATED DAMAGES OBSERVED TO ELEVATION                  |    |        |                   |                    |                              |           |
|     | SUB-TOTAL                |                                                | \$ 7,505.59                                                     |    |        | NO DAMAGE         | NO DAMAGE          |                              |           |
|     | WARRANTY                 |                                                |                                                                 |    |        |                   |                    |                              |           |
|     |                          |                                                | 5-YEAR CONTRACTOR WARRANTY                                      |    |        |                   |                    |                              |           |
|     |                          |                                                | 20-YEAR WORKMANSHIP / 45-YEAR MATERIAL                          |    |        |                   |                    |                              |           |
|     | SUB-TOTAL                |                                                |                                                                 |    |        |                   |                    | INCLUDED                     | INCLUDED  |
|     | TOTAL                    |                                                |                                                                 |    |        | \$ 7,505.59       | \$ 6,100.00        | \$ 475.00                    |           |
|     |                          |                                                |                                                                 |    |        | TMLIRP ADJUSTMENT | TIPS BASE PROPOSAL | UPGRADE CLASS IV + LAMINATED | DELTA     |
| 165 | RESTROOMS-BLDG A         | 1201 DUNCAN LN.                                |                                                                 |    |        |                   |                    |                              |           |
|     | ROOF                     |                                                |                                                                 |    |        |                   |                    |                              |           |
|     |                          | TEAR OFF/HAUL/DISPOSE COMP. SHINGLES-LAMINATED | TEAR OFF/HAUL/DISPOSE COMP. SHINGLES-LAMINATED                  | SF | 3384   |                   |                    |                              |           |
|     |                          | LAMINATED COMP.SHINGLE RFG. W/OUT FELT         | LAMINATED COMP.SHINGLE RFG. W/OUT FELT                          | SF | 3900   |                   |                    |                              |           |
|     |                          | ROOFING FELT 30LB                              | ROOFING FELT 30LB                                               | SF | 3384   |                   |                    |                              |           |
|     |                          | DRIP EDGE                                      | DRIP EDGE                                                       | LF | 240    |                   |                    |                              |           |
|     |                          | FLASHING-PIPE JACK                             | FLASHING-PIPE JACK                                              | EA | 2      |                   |                    |                              |           |
|     |                          | ASPHALT STARTER-UNIVERSAL STARTER COURSE       | ASPHALT STARTER-UNIVERSAL STARTER COURSE                        | LF | 240    |                   |                    |                              |           |
|     |                          | HIP/RIDGE CAP-HIGH PROFILE COMP. SHINGLES      | HIP/RIDGE CAP-HIGH PROFILE COMP. SHINGLES                       | LF | 149.68 |                   |                    |                              |           |
|     |                          | CONTINUOUS RIDGE VENT-SHINGLE OVER STYLE       | CONTINUOUS RIDGE VENT-SHINGLE OVER STYLE                        | LF | 51     |                   |                    |                              |           |
|     |                          |                                                | PAINT ALL FLASHINGS                                             |    |        |                   |                    |                              |           |
|     |                          |                                                |                                                                 |    |        |                   |                    | \$ 1.00                      | \$ 1.00   |
|     | ELEVATIONS               |                                                |                                                                 |    |        |                   |                    |                              |           |
|     |                          | NO STORM RELATED DAMAGES OBSERVED TO ELEVATION | NO STORM RELATED DAMAGES OBSERVED TO ELEVATION                  |    |        |                   |                    |                              |           |
|     | SUB-TOTAL                |                                                |                                                                 |    |        | NO DAMAGE         | NO DAMAGE          | NO DAMAGE                    |           |
|     | WARRANTY                 |                                                |                                                                 |    |        |                   |                    |                              |           |
|     |                          |                                                | 5-YEAR CONTRACTOR WARRANTY                                      |    |        |                   |                    |                              |           |
|     |                          |                                                | 20-YEAR WORKMANSHIP / 45-YEAR MATERIAL                          |    |        |                   |                    |                              |           |
|     | SUB-TOTAL                |                                                |                                                                 |    |        |                   |                    | INCLUDED                     | INCLUDED  |
|     | TOTAL                    |                                                |                                                                 |    |        | \$ 17,462.79      | \$ 15,300.00       | \$ 1,200.00                  |           |
|     |                          |                                                |                                                                 |    |        | TMLIRP ADJUSTMENT | TIPS BASE PROPOSAL | UPGRADE CLASS IV + LAMINATED | DELTA     |
| 166 | PAVILION W/PICNIC TABLES | 1201 DUNCAN LN.                                |                                                                 |    |        |                   |                    |                              |           |
|     | ROOF                     |                                                |                                                                 |    |        |                   |                    |                              |           |
|     |                          | TEAR OFF/HAUL/DISPOSE COMP. SHINGLES-LAMINATED | TEAR OFF/HAUL/DISPOSE COMP. SHINGLES-LAMINATED                  | SF | 1039   |                   |                    |                              |           |
|     |                          | LAMINATED COMP.SHINGLE RFG. W/OUT FELT         | LAMINATED COMP.SHINGLE RFG. W/OUT FELT                          | SF | 1200   |                   |                    |                              |           |
|     |                          | ROOFING FELT 30LB                              | ROOFING FELT 30LB/NEW SYNTHETIC                                 | SF | 1039   |                   |                    |                              |           |
|     |                          | DRIP EDGE                                      | DRIP EDGE/NEW "B" DRIP EDGE                                     | LF | 119.83 |                   |                    |                              |           |
|     |                          | ASPHALT STARTER-UNIVERSAL STARTER COURSE       | ASPHALT STARTER-UNIVERSAL STARTER COURSE                        | LF | 119.83 |                   |                    |                              |           |
|     |                          | HIP/RIDGE CAP-HIGH PROFILE COMP. SHINGLES      | HIP/RIDGE CAP-HIGH PROFILE COMP. SHINGLES/INSTALL NEW RIDGEVENT | LF | 91.7   |                   |                    |                              |           |
|     |                          |                                                | PAINT ALL FLASHINGS                                             |    |        |                   |                    |                              |           |
|     |                          |                                                |                                                                 |    |        |                   |                    |                              |           |
|     | SUB-TOTAL                |                                                |                                                                 |    |        |                   |                    | \$ 1.00                      | \$ 1.00   |
|     | ELEVATIONS               |                                                |                                                                 |    |        |                   |                    |                              |           |
|     |                          | NO STORM RELATED DAMAGES OBSERVED TO ELEVATION | NO STORM RELATED DAMAGES OBSERVED TO ELEVATION                  |    |        |                   |                    |                              |           |
|     | SUB-TOTAL                |                                                |                                                                 |    |        | NO DAMAGE         | NO DAMAGE          | NO DAMAGE                    |           |

|                    |                                                                       |                                                |                                                                  |       |        |                   |                     |                               |             |
|--------------------|-----------------------------------------------------------------------|------------------------------------------------|------------------------------------------------------------------|-------|--------|-------------------|---------------------|-------------------------------|-------------|
|                    | WARRANTY                                                              |                                                |                                                                  |       |        |                   |                     |                               |             |
|                    |                                                                       |                                                | 5-YEAR CONTRACTOR WARRANTY                                       |       |        |                   |                     |                               |             |
|                    |                                                                       |                                                | 20-YEAR WORKMANSHIP / 45-YEAR MATERIAL                           |       |        |                   |                     |                               |             |
|                    | SUB-TOTAL                                                             |                                                |                                                                  |       |        |                   | INCLUDED            | INCLUDED                      |             |
|                    | TOTAL                                                                 |                                                |                                                                  |       |        | \$ 5,713.36       | \$ 4,600.00         | \$ 375.00                     |             |
|                    |                                                                       |                                                |                                                                  |       |        | TMLIRP ADJUSTMENT | TIPS BASE PROPOSAL  | UPGRADE CLASS IV + LAMINATED  | DELTA       |
| 228                | PAVILION W/PICNIC TABLES                                              | 1201 DUNCAN LN.                                |                                                                  |       |        |                   |                     |                               |             |
|                    | ROOF                                                                  |                                                |                                                                  |       |        |                   |                     |                               |             |
|                    |                                                                       | TEAR OFF/HAUL/DISPOSE COMP. SHINGLES-LAMINATED | TEAR OFF/HAUL/DISPOSE COMP. SHINGLES-LAMINATED                   | SF    | 3455   |                   |                     |                               |             |
|                    |                                                                       | LAMINATED COMP.SHINGLE RFG. W/OUT FELT         | LAMINATED COMP.SHINGLE RFG. W/OUT FELT-6 NAILS                   | SF    | 4000   |                   |                     |                               |             |
|                    |                                                                       | ROOFING FELT 30LB                              | ROOFING FELT 30LB/NEW SYNTHETIC                                  | SF    | 3455   |                   |                     |                               |             |
|                    |                                                                       | D RIP EDGE                                     | D RIP EDGE/ NEW "B" D RIP EDGE                                   | LF    | 237.92 |                   |                     |                               |             |
|                    |                                                                       | ASPHALT STARTER-UNIVERSAL STARTER COURSE       | ASPHALT STARTER-UNIVERSAL STARTER COURSE                         | LF    | 237.92 |                   |                     |                               |             |
|                    |                                                                       | HIP/RIDGE CAP-HIGH PROFILE COMP. SHINGLES      | HIP/RIDGE CAP-HIGH PROFILE COMP. SHINGLES/NEW RIDGE VENT         | LF    | 150    |                   |                     |                               |             |
|                    |                                                                       |                                                | PAINT ALL FLASHINGS                                              | SQ    | 34.55  |                   |                     |                               |             |
|                    | SUB-TOTAL                                                             |                                                |                                                                  |       |        |                   | \$ 1.00             | \$ 1.00                       |             |
|                    | ELEVATIONS                                                            |                                                |                                                                  |       |        |                   |                     |                               |             |
|                    |                                                                       | NO STORM RELATED DAMAGES OBSERVED TO ELEVATION | NO STORM RELATED DAMAGES OBSERVED TO ELEVATION                   |       |        |                   |                     |                               |             |
|                    | SUB-TOTAL                                                             |                                                |                                                                  |       |        | NO DAMAGE         | NO DAMAGE           | N/A                           |             |
|                    | WARRANTY                                                              |                                                |                                                                  |       |        |                   |                     |                               |             |
|                    |                                                                       |                                                | 5-YEAR CONTRACTOR WARRANTY                                       |       |        |                   |                     |                               |             |
|                    |                                                                       |                                                | 20-YEAR WORKMANSHIP / 45-YEAR MATERIAL                           |       |        |                   |                     |                               |             |
|                    | SUB-TOTAL                                                             |                                                |                                                                  |       |        |                   | INCLUDED            | INCLUDED                      |             |
|                    | TOTAL                                                                 |                                                |                                                                  |       |        | \$ 16,946.48      | \$ 15,500.00        | \$ 1,400.00                   |             |
|                    |                                                                       |                                                |                                                                  |       |        | TMLIRP ADJUSTMENT | TIPS BASE PROPOSAL  | UPGRADE CLASS IV + LAMINATED  | DELTA       |
| 274                | RESTROOM BUILDING                                                     | 600 SPINKS RD.                                 |                                                                  |       |        |                   |                     |                               |             |
|                    | ROOF                                                                  |                                                |                                                                  |       |        |                   |                     |                               |             |
|                    |                                                                       | TEAR OFF/HAUL/DISPOSE COMP. SHINGLES-LAMINATED | TEAR OFF/HAUL/DISPOSE COMP. SHINGLES-LAMINATED                   | SF    | 1000   |                   |                     |                               |             |
|                    |                                                                       | LAMINATED COMP.SHINGLE RFG. W/OUT FELT         | LAMINATED COMP.SHINGLE RFG. W/OUT FELT-6 NAILS                   | SF    | 1100   |                   |                     |                               |             |
|                    |                                                                       | ROOFING FELT 15LB                              | ROOFING FELT 15LB/NEW SYNTHETIC                                  | SF    | 1500   |                   |                     |                               |             |
|                    |                                                                       | D RIP EDGE                                     | D RIP EDGE/NEW "B" D RIP EDGE                                    | LF    | 127.31 |                   |                     |                               |             |
|                    |                                                                       | FLASHING-PIPE JACK                             | FLASHING-PIPE JACK                                               | EA    | 1      |                   |                     |                               |             |
|                    |                                                                       | ASPHALT STARTER-UNIVERSAL STARTER COURSE       | ASPHALT STARTER-UNIVERSAL STARTER COURSE                         | LF    | 127.31 |                   |                     |                               |             |
|                    |                                                                       | HIP/RIDGE CAP-HIGH PROFILE COMP. SHINGLES      | HIP/RIDGE CAP-HIGH PROFILE COMP. SHINGLES/NEW RIDGE VENT         | LF    | 28.17  |                   |                     |                               |             |
|                    |                                                                       | DETACH & RESET EXHAUST CAP-THROUGH ROOF 6"-8"  | DETACH & RESET EXHAUST CAP-THROUGH ROOF 6"-8"/TOP/DIVERTER/FLASH | EA    | 1      |                   |                     |                               |             |
|                    |                                                                       |                                                | PAINT ALL FLASHINGS                                              |       |        |                   |                     |                               |             |
|                    | SUB-TOTAL                                                             |                                                |                                                                  |       |        |                   | \$ 1.00             | \$ 1.00                       |             |
|                    | ELEVATIONS                                                            |                                                |                                                                  |       |        |                   |                     |                               |             |
|                    |                                                                       | NO STORM RELATED DAMAGES OBSERVED TO ELEVATION | NO STORM RELATED DAMAGES OBSERVED TO ELEVATION                   |       |        |                   |                     |                               |             |
|                    | SUB-TOTAL                                                             |                                                |                                                                  |       |        | NO DAMAGE         | NO DAMAGE           | N/A                           |             |
|                    | WARRANTY                                                              |                                                |                                                                  |       |        |                   |                     |                               |             |
|                    |                                                                       |                                                | 5-YEAR CONTRACTOR WARRANTY                                       |       |        |                   |                     |                               |             |
|                    |                                                                       |                                                | 20-YEAR WORKMANSHIP / 45-YEAR MATERIAL                           |       |        |                   |                     |                               |             |
|                    | SUB-TOTAL                                                             |                                                |                                                                  |       |        |                   | INCLUDED            | INCLUDED                      |             |
|                    | TOTAL                                                                 |                                                |                                                                  |       |        | \$ 4,660.91       | \$ 4,600.00         | \$ 350.00                     |             |
|                    |                                                                       |                                                |                                                                  |       |        | TMLIRP ADJUSTMENT | TIPS                | TIPS                          | DELTA       |
|                    |                                                                       |                                                | TMLIRP RCV ADJUSTMENT                                            |       |        | ADJUSTMENT        | BASE PROPOSAL       | CLASS IV UPGRADE ALL CLASS IV | DELTA       |
| EXECUTIVE SUMMARY: |                                                                       |                                                |                                                                  |       |        |                   |                     |                               |             |
|                    | BASE PROPOSAL                                                         |                                                |                                                                  | TOTAL |        | \$ 138,263.45     | \$ 131,700.00       | \$ 10,500.00                  | \$ 6,563.45 |
|                    | TIPS FEE                                                              |                                                | EXCLUDED                                                         |       |        | EXCLUDED          | \$ 2,634.00         | \$ 210.00                     |             |
|                    | BOND FEE                                                              |                                                | EXCLUDED                                                         |       |        | EXCLUDED          | \$ 3,292.50         | \$ 262.50                     |             |
|                    | TAX                                                                   |                                                | EXCLUDED                                                         |       |        |                   | EXCLUDED            | EXCLUDED                      |             |
|                    | TOTAL LOSS/TIPS                                                       | INCLUDES TIPS = P&P BOND                       |                                                                  |       |        | \$ 138,263.45     | \$ 137,626.50       | \$ 10,972.50                  |             |
|                    | TIPS BASE PROPOSAL                                                    |                                                | INCLUDES TOIPS & BOND FEE's                                      |       |        |                   | \$ 131,700.00       |                               |             |
|                    | TIPS UPGRADE CLASS IV                                                 | COST ADD TO UPGRADE TO CLASS IV                | INCLUDES TOIPS & BOND FEE's                                      |       |        |                   | \$ 10,972.50        |                               |             |
|                    | TOTAL TIPS (WITH UPGRADE)                                             |                                                | INCLUDES TOIPS & BOND FEE's                                      |       |        | \$ 138,263.45     | \$ 142,672.50       | \$ (4,409.05)                 |             |
|                    |                                                                       |                                                |                                                                  |       |        | \$ (131,700.00)   |                     |                               |             |
|                    |                                                                       |                                                |                                                                  |       |        | \$ 6,563.45       |                     |                               |             |
|                    |                                                                       |                                                |                                                                  |       |        | TMLIRP ADJUSTMENT | BASE (LQK) PROPOSAL |                               |             |
|                    | WARRANTY / GUARANTY:                                                  |                                                |                                                                  |       |        |                   |                     |                               |             |
|                    | Manufacture Warranty                                                  | PLATINUM WARRANTY                              | N/A                                                              |       |        |                   | INCLUDED            |                               |             |
|                    | Contractor Warranty                                                   | 5-Year Contractors Warranty                    | N/A                                                              |       |        |                   | INCLUDED            |                               |             |
|                    | UNIT PRICES:                                                          |                                                |                                                                  |       |        |                   | TIPS #1             |                               |             |
|                    | INSTALL WALL TO DECK COUNTER FLASHING AT WALLS                        |                                                | N/A                                                              |       | S.F.   |                   | \$ 42,500.00        |                               |             |
|                    | 4x8                                                                   | 4'x8'                                          | N/A                                                              |       | L.F.   |                   | \$ 5.00             |                               |             |
|                    | 2x12                                                                  | 2"x12"                                         |                                                                  |       |        |                   | \$ 13.00            |                               |             |
| CONTRACTOR NOTES:  |                                                                       |                                                |                                                                  |       |        |                   |                     |                               |             |
|                    | Cost to include all material, labor, bond, warranties to perform work |                                                |                                                                  |       |        |                   |                     |                               |             |
|                    | Proposal to be good for 90 days                                       |                                                |                                                                  |       |        |                   |                     |                               |             |
|                    | EXCLUSIONS / COMMENTS:                                                |                                                |                                                                  |       |        |                   |                     |                               |             |



## TOWN COUNCIL AGENDA J.12. CONSENT ITEM(S)

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**DATE:** September 18, 2023  
**FROM:** Jeff Garner, Director of Facilities Management  
**ITEM:** **Consider the approval of quotes from Trane USA Inc. for the evaluation and refurbishment of the primary HVAC systems at the Community Activity Center in the amount of \$54,596 utilizing Co-op or Federal Contract ID: Omnia Racine #3341.**

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**BACKGROUND:** The 120 ton Trane chiller (CH1), Innovent heating, recovery, ventilating, venting (HRVU) unit, and Pool Pak Dehumidification Unit (PDU) are critical pieces of equipment which are responsible for the indoor air quality of the Community Activity Center. The equipment was installed in 2008 and is operated 24 hours per day. Facilities Management performs day to day and 60 day scheduled preventative maintenance of the equipment. Due to the age, technical expertise, and availability of parts, Trane USA Inc. was contacted to provide proposals for the evaluation and refurbishment of three pieces of HVAC equipment and the Community Activity Center.

After Trane's initial site visit, they provided service quotes with recommendations for each piece of equipment, which totals \$54,596. It is necessary to utilize Trane's exclusive service procedures provided by factory trained and experienced technicians, which guarantees the Town will receive the full benefit of Trane's expertise derived from being Trane's equipment manufacturer. The equipment is highly specialized and technically advanced. Trane's factory authorized software is used to evaluate the performance of the equipment to ensure optimum performance. These services will be performed utilizing CO-OP or Federal Contract ID: OMNIA Racine #3341. Trane also provided a proposal for a 12-month quarterly Scheduled Service Agreement for the Pool Pak Dehumidification Unit (PDU) in the amount of \$26,400, which we are not planning to utilize, as Facilities Management technicians perform preventative maintenance on a 60-day basis.

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

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** \$54,596.00

**Proposed Expenditure/(Revenue)**  
\$54,596.00

**Account Number(s):**  
100-655-59200-4030

**LEGAL REVIEW:** N/A

**ATTACHMENTS:**

1. Flower Mound Activity Center Innovent Repairs-7357755
2. Flower Mound Activity Center Pool Pak Repairs-7357755
3. Flower Mound Activity Center RTAA Repairs-7357755

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





Trane U.S. Inc.  
1617 Hutton Drive  
Carrollton, Texas 75006  
Phone: (469) 758-3000  
Fax: (972) 243-1398

August 23, 2023

Town Of Flowermound  
2121 Cross Timber Road  
Flower Mound, Texas 75028-7502

Site Address:  
Flower Mound Community Activity Center  
1200 Gerault Rd  
Flower Mound, Texas 75028

**ATTENTION:** Jeff Garner

**PROJECT NAME:** Flower Mound Activity Center Innovent Repairs

**CO-OP QUOTE NUMBER:** L3-02-10514-23-010 **CO-OP OR FEDERAL CONTRACT ID:** OMNIA Racine #3341

We are pleased to propose the following Trane services for the equipment listed. Services will be performed using Trane's exclusive service procedures provided by factory trained and experienced technicians. You receive the full benefit of our expertise derived from being Trane equipment's original manufacturer. Our procedures are environmentally and safety conscious while providing for the efficient delivery of these services.

#### **EQUIPMENT LIST**

| <b>Equipment</b>  | <b>Manufacturer</b>   | <b>Model Number</b> | <b>Serial Number</b> |
|-------------------|-----------------------|---------------------|----------------------|
| Self-Contained AC | Innovent Air Handling | E-5000-1C-          | 206298               |

#### **SCOPE OF SERVICE**

1. Perform annual inspection
  - Verify damper operation.
  - Verify proper voltages and amp draws.
  - Manual log of unit
2. Replace fan belts and air filters
3. Clean up compartments and controls
4. Write up any deficiencies found during annual inspection and provide a quote.

PRICING AND ACCEPTANCE

TOTAL PRICE:.....\$4,697.00

CLARIFICATIONS

- 1. Applicable taxes are not included and will be added to the invoice.
- 2. Any service not listed is not included.
- 3. Work will be performed during normal Trane business hours.
- 4. This proposal is valid for 30 days from August 23, 2023.

I appreciate the opportunity to earn your business and look forward to helping you with all of your service needs. Please contact me if you have any questions or concerns.

Sincerely,

Kevin Bryan  
Account Manager

This agreement is subject to Customer’s acceptance of the attached Trane Terms and Conditions – Quoted Service.

| CUSTOMER ACCEPTANCE                  |
|--------------------------------------|
| _____                                |
| Authorized Representative            |
| _____                                |
| Printed Name                         |
| _____                                |
| Title                                |
| _____                                |
| Purchase Order                       |
| _____                                |
| Acceptance Date                      |
| Trane’s License Number: TACLA101787C |

## TERMS AND CONDITIONS – QUOTED SERVICE

“Company” shall mean Trane U.S. Inc..

To obtain repair service within the scope of Services as defined, contact your local Trane District office identified on the first page of the Agreement by calling the telephone number stated on that page. That Trane District office is responsible for Company's performance of this Agreement. Only Trane authorized personnel may perform service under this Agreement. For Service covered under this Agreement, Company will be responsible for the cost of transporting a part requiring service.

**1. Agreement.** These terms and conditions are an integral part of Company's offer and form the basis of any agreement (the “Agreement”) resulting from Company's proposal (the “Proposal”) for the services (the “Services”) on equipment listed in the Proposal (the “Covered Equipment”). **COMPANY'S TERMS AND CONDITIONS ARE SUBJECT TO PERIODIC CHANGE OR AMENDMENT.**

**2. Connected Services.** In addition to these terms and conditions, the Connected Services Terms of Service (“Connected Services Terms”), available at <https://www.trane.com/TraneConnectedServicesTerms>, as updated from time to time, are incorporated herein by reference and shall apply to the extent that Company provides Customer with Connected Services, as defined in the Connected Services Terms.

**3. Acceptance.** The Proposal is subject to acceptance in writing by the party to whom this offer is made or an authorized agent (“Customer”) delivered to Company within 30 days from the date of the Proposal. If Customer accepts the Proposal by placing an order, without the addition of any other terms and conditions of sale or any other modification, Customer's order shall be deemed acceptance of the Proposal subject to Company's terms and conditions. If Customer's order is expressly conditioned upon the Company's acceptance or assent to terms and/or conditions other than those expressed herein, return of such order by Company with Company's terms and conditions attached or referenced serves as Company's notice of objection to Customer's terms and as Company's counteroffer to provide Services in accordance with the Proposal. If Customer does not reject or object in writing to Company within 10 days, the Company's counteroffer will be deemed accepted. Customer's acceptance of the Services by Company will in any event constitute an acceptance by Customer of Company's terms and conditions. In the case of a dispute, the applicable terms and conditions will be those in effect at the time of delivery or acceptance of the Services. This Agreement is subject to credit approval by Company. Upon disapproval of credit, Company may delay or suspend performance or, at its option, renegotiate prices and/or terms and conditions with Customer. If Company and Customer are unable to agree on such revisions, this Agreement shall be cancelled without any liability, other than Customer's obligation to pay for Services rendered by Company to the date of cancellation.

**4. Cancellation by Customer Prior to Services; Refund.** If Customer cancels this Agreement within (a) thirty (30) days of the date this Agreement was mailed to Customer or (b) twenty (20) days of the date this Agreement was delivered to Customer, if it was delivered at the time of sale, and no Services have been provided by Company under this Agreement, the Agreement will be void and Company will refund to Customer, or credit Customer's account, the full Service Fee of this Agreement that Customer paid to Company, if any. A ten percent (10%) penalty per month will be added to a refund that is due but is not paid or credited within forty-five (45) days after return of this Agreement to Company. Customer's right to cancel this Agreement only applies to the original owner of this Agreement and only if no Services have been provided by Company under this Agreement prior to its return to Company.

**5. Cancellation by Company.** This Agreement may be cancelled by Company for any reason or no reason, upon written notice from Company to Customer no later than 30 days prior to performance of any Services hereunder and Company will refund to Customer, or credit Customer's account, that part of the Service Fee attributable to Services not performed by Company. Customer shall remain liable for and shall pay to Company all amounts due for Services provided by Company and not yet paid.

**6. Services Fees and Taxes.** Fees for the Services (the “Service Fee(s)”) shall be as set forth in the Proposal and are based on performance during regular business hours. Fees for outside Company's regular business hours and any after-hours services shall be billed separately according to the then prevailing overtime or emergency labor/labour rates. In addition to the stated Service Fee, Customer shall pay all taxes not legally required to be paid by Company or, alternatively, shall provide Company with acceptable tax exemption certificates. Customer shall pay all costs (including attorneys' fees) incurred by Company in attempting to collect amounts due.

**7. Payment.** Payment is due upon receipt of Company's invoice. Company reserves the right to add to any account outstanding for more than 30 days a service charge equal to the lesser of the maximum allowable legal interest rate or 1.5% of the principal amount due at the end of each month. Customer shall pay all costs (including attorneys' fees) incurred by Company in attempting to collect amounts due or otherwise enforcing these terms and conditions.

**8. Customer Breach.** Each of the following events or conditions shall constitute a breach by Customer and shall give Company the right, without an election of remedies, to terminate this Agreement or suspend performance by delivery of written notice: (1) Any failure by Customer to pay amounts when due; or (2) any general assignment by Customer for the benefit of its creditors, or if Customer becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors, or makes or proposes to make any proposal or arrangement with creditors, or if any steps are taken for the winding up or other termination of Customer or the liquidation of its assets, or if a trustee, receiver, or similar person is appointed over any of the assets or interests of Customer; (3) Any representation or warranty furnished by Customer in connection with this Agreement is false or misleading in any material respect when made; or (4) Any failure by Customer to perform or comply with any material provision of this Agreement. Customer shall be liable to the Company for all Services furnished to date and all damages sustained by Company (including lost profit and overhead).

**9. Performance.** Company shall perform the Services in accordance with industry standards generally applicable in the state or province where the Services are performed under similar circumstances as of the time Company performs the Services. Company is not liable for any claims, damages, losses, or expenses, arising from or related to work done by or services provided by individuals or entities that are not employed by or hired by Company. Company may refuse to perform any Services or work where working conditions could endanger property or put at risk the safety of people. Parts used for any repairs made will be those selected by Company as suitable for the repair and may be parts not manufactured by Company. Customer must reimburse Company for services, repairs, and/or replacements performed by Company at Customer's request beyond the scope of Services or otherwise excluded under this Agreement. The reimbursement shall be at the then prevailing applicable regular, overtime, or holiday rates for labor/labour and prices for materials. Prior to Company performing the additional services, repairs, and/or replacements, Customer may request a separate written quote stating the work to be performed and the price to be paid by Customer for the work.

**10. Customer Obligations.** Customer shall: (a) provide Company reasonable and safe access to the Covered Equipment and areas where Company is to work; and (b) unless otherwise agreed by Customer and Company, at Customer's expense and before the Services begin, Customer will provide any necessary access platforms, catwalks to safely perform the Services in compliance with OSHA, state, or provincial industrial safety regulations or any other applicable industrial safety standards or guidelines.

**11. Exclusions.** Unless expressly included in the Proposal, the Services do not include, and Company shall not be responsible for or liable to the Customer for, any claims, losses, damages or expenses suffered by the Customer in any way connected with, relating to or arising from any of the following:

- (a) Any guarantee of room conditions or system performance;
- (b) Inspection, operation, maintenance, repair, replacement or performance of work or services outside the Services;
- (c) Damage, repairs or replacement of parts made necessary as a result of the acts or omission of Customer or any Event of Force Majeure;
- (d) Any claims, damages, losses, or expenses, arising from or related to conditions that existed in, on, or upon the premises before the effective date of this Agreement (“Pre-Existing Conditions”) including, without limitation, damages, losses, or expenses involving a Pre-Existing Condition of building envelope issues, mechanical issues, plumbing issues, and/or indoor air quality issues involving mold/mould, bacteria, microbial growth, fungi or other contaminants or airborne biological agents; and
- (e) Replacement of refrigerant is excluded, unless replacement of refrigerant is expressly stated as included with the Proposal.

**12. Limited Warranty.** Company warrants that: (a) the material manufactured by Company and provided to the Customer in performance of the Services is free from defects in material and manufacture for a period of 12 months from the earlier of the date of equipment start-up or replacement and (b) the labor/labour portion of the Services is warranted to have been properly performed for a period of 90 days from date of completion (the “Limited Warranty”). Company obligations of equipment start-up, if any are stated in the Proposal, are coterminous with the Limited Warranty period. Defects must be reported to Company within the Limited Warranty period. Company's obligation under the Limited Warranty is limited to repairing or replacing the defective part at its option and to correcting any improperly performed labor/labour. No liability whatsoever shall attach to Company until the Services have been paid for in full. Exclusions from this Limited Warranty include claims, losses, damages, and expenses in any way connected with, related to, or arising from failure or malfunction of equipment due to the following: wear and tear; end of life failure; corrosion; erosion; deterioration; Customer's failure to follow the Company-provided maintenance plan; unauthorized or improper maintenance; unauthorized or improper parts or material; refrigerant not supplied by Company; and modifications made by others to Company's equipment. Company shall not be obligated to pay for the cost of lost refrigerant or lost product. Some components of Company equipment may be warranted directly from the component supplier, in which case this Limited Warranty shall not apply to those components and any warranty of such components shall be the warranty given by the component supplier. Notwithstanding the foregoing, all warranties provided herein terminate upon termination or cancellation of this Agreement. Equipment, material and/or parts that are not manufactured by Company (“Third-Party Product(s)”) are not warranted by Company and have such warranties as may be extended by the respective manufacturer. **CUSTOMER UNDERSTANDS THAT COMPANY IS NOT THE MANUFACTURER OF ANY THIRD-PARTY PRODUCT(S) AND ANY WARRANTIES, CLAIMS, STATEMENTS, REPRESENTATIONS, OR SPECIFICATIONS ARE THOSE OF THE THIRD-PARTY MANUFACTURER, NOT COMPANY AND CUSTOMER IS NOT RELYING ON ANY WARRANTIES, CLAIMS, STATEMENTS, REPRESENTATIONS, OR**

**SPECIFICATIONS REGARDING THE THIRD-PARTY PRODUCT THAT MAY BE PROVIDED BY COMPANY OR ITS AFFILIATES, WHETHER ORAL OR WRITTEN.**

THE REMEDIES SET FORTH IN THIS LIMITED WARRANTY ARE THE SOLE AND EXCLUSIVE REMEDIES FOR WARRANTY CLAIMS PROVIDED BY COMPANY TO CUSTOMER UNDER THIS AGREEMENT AND ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, CONDITIONS AND REMEDIES, WHETHER IN CONTRACT, WARRANTY, STATUTE, OR TORT (INCLUDING NEGLIGENCE), EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR FITNESS FOR A PARTICULAR PURPOSE AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE. COMPANY EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, ENDORSEMENTS OR CONDITIONS OF ANY KIND. EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF QUALITY, FITNESS, MERCHANTABILITY, DURABILITY AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE OR REGARDING PREVENTION BY THE SCOPE OF SERVICES, OR ANY COMPONENT THEREOF. COMPANY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, INCLUDING WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. ADDITIONALLY, COMPANY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND REGARDING PREVENTING, ELIMINATING, REDUCING OR INHIBITING ANY MOLD, FUNGUS, BACTERIA, VIRUS, MICROBIAL GROWTH, OR ANY OTHER CONTAMINANTS (INCLUDING COVID-19 OR ANY SIMILAR VIRUS) (COLLECTIVELY, "CONTAMINANTS"), WHETHER INVOLVING OR IN CONNECTION WITH EQUIPMENT, ANY COMPONENT THEREOF, SERVICES OR OTHERWISE. IN NO EVENT SHALL COMPANY HAVE ANY LIABILITY FOR THE PREVENTION, ELIMINATION, REDUCTION OR INHIBITION OF THE GROWTH OR SPREAD OF SUCH CONTAMINANTS INVOLVING OR IN CONNECTION WITH ANY EQUIPMENT, THIRD-PARTY PRODUCT, OR ANY COMPONENT THEREOF, SERVICES OR OTHERWISE AND CUSTOMER HEREBY SPECIFICALLY ACKNOWLEDGES AND AGREES THERETO

**13. Indemnity.** To the maximum extent permitted by law, Company and Customer shall indemnify and hold harmless each other from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to real or personal property, to the extent caused by the negligence or misconduct of the indemnifying party, and/or its respective employees or authorized agents in connection with their activities within the scope of this Agreement. Neither party shall indemnify the other against claims, damages, expenses, or liabilities to the extent attributable to the acts or omissions of the other party or third parties. If the parties are both at fault, the obligation to indemnify shall be proportional to their relative fault. The duty to indemnify and hold harmless will continue in full force and effect, notwithstanding the expiration or early termination of this Agreement, with respect to any claims based on facts or conditions that occurred prior to expiration or termination of this Agreement.

**14. Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION REFRIGERANT LOSS, PRODUCT LOSS, LOST REVENUE OR PROFITS, OR LIABILITY TO THIRD PARTIES), INCLUDING CONTAMINANTS LIABILITIES, OR PUNITIVE DAMAGES WHETHER BASED IN CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL THEORY OR FACTS. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE TOTAL AND AGGREGATE LIABILITY OF THE COMPANY TO THE CUSTOMER WITH RESPECT TO ANY AND ALL CLAIMS CONNECTED WITH, RELATED TO OR ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, WHETHER BASED IN CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL THEORY OR FACTS, SHALL NOT EXCEED THE COMPENSATION RECEIVED BY COMPANY UNDER THIS AGREEMENT. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY DAMAGES (WHETHER DIRECT OR INDIRECT) RESULTING FROM MOLD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR OTHER CONTAMINATES OR AIRBORNE BIOLOGICAL AGENTS. TO THE MAXIMUM EXTENT ALLOWED BY LAW, COMPANY SHALL NOT BE LIABLE FOR ANY OF THE FOLLOWING IN CONNECTION WITH PROVIDING THE ENERGY AND BUILDING PERFORMANCE SERVICES: INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION; CUSTOMER'S NETWORK SECURITY; COMPUTER VIRUS; COMMUNICATION FAILURE; THEFT OR DESTRUCTION OF DATA; GAPS IN DATA COLLECTED; AND UNAUTHORIZED ACCESS TO CUSTOMER'S DATA OR COMMUNICATIONS NETWORK.

**15. CONTAMINANTS LIABILITY**

The transmission of COVID-19 may occur in a variety of ways and circumstances, many of the aspects of which are currently not known. HVAC systems, products, services and other offerings have not been tested for their effectiveness in reducing the spread of COVID-19, including through the air in closed environments. **IN NO EVENT WILL COMPANY BE LIABLE UNDER THIS AGREEMENT OR OTHERWISE FOR ANY INDEMNIFICATION, ACTION OR CLAIM, WHETHER BASED ON WARRANTY, CONTRACT, TORT OR OTHERWISE, FOR ANY BODILY INJURY (INCLUDING DEATH), DAMAGED TO PROPERTY, OR ANY OTHER LIABILITIES, DAMAGES OR COSTS RELATED TO CONTAMINANTS (INCLUDING THE SPREAD, TRANSMISSION MITIGATION, ELIMINATION, OR CONTAMINATION THEREOF) (COLLECTIVELY, "CONTAMINANTS LIABILITIES") AND CUSTOMER HEREBY EXPRESSLY RELEASES COMPANY FROM ANY SUCH CONTAMINANT LIABILITIES.**

**16. Asbestos and Hazardous Materials.** The Services expressly exclude any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos or other hazardous materials (collectively, "Hazardous Materials"). Should Company become aware of or suspect the presence of Hazardous Materials, Company may immediately stop work in the affected area and shall notify Customer. Customer will be responsible for taking any and all action necessary to correct the condition in accordance with all applicable laws and regulations. Customer shall be exclusively responsible for any claims, liability, fees and penalties, and the payment thereof, arising out of or relating to any Hazardous Materials on or about the premises, not brought onto the premises by Company. Company shall be required to resume performance of the Services only when the affected area has been rendered harmless.

**17. Insurance.** Company agrees to maintain the following insurance during the term of the contract with limits not less than shown below and will, upon request from Customer, provide a Certificate of evidencing the following coverage:

|                              |                            |
|------------------------------|----------------------------|
| Commercial General Liability | \$2,000,000 per occurrence |
| Automobile Liability         | \$2,000,000 CSL            |
| Workers Compensation         | Statutory Limits           |

If Customer has requested to be named as an additional insured under Company's insurance policy, Company will do so but only subject to Company's manuscript additional insured endorsement under its primary Commercial General Liability policies. In no event does Company or its insurer waive its right of subrogation

**18. Force Majeure.** Company's duty to perform under this Agreement is contingent upon the non-occurrence of an Event of Force Majeure. If Company shall be unable to carry out any material obligation under this Agreement due to an Event of Force Majeure, this Agreement shall at Company's election (i) remain in effect but Company's obligations shall be suspended until the uncontrollable event terminates or (ii) be terminated upon ten (10) days' notice to Customer, in which event Customer shall pay Company for all parts of the Services furnished to the date of termination. An "Event of Force Majeure" shall mean any cause or event beyond the control of Company. Without limiting the foregoing, "Event of Force Majeure" includes: acts of God; acts of terrorism, war or the public enemy; flood; earthquake; lightning; tornado; storm; fire; civil disobedience; pandemic insurrections; riots; labor disputes; labor or material shortages; sabotage; restraint by court order or public authority (whether valid or invalid), and action or non-action by or inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals if not caused by Company and the requirements of any applicable government in any manner that diverts either the material or the finished product to the direct or indirect benefit of the government.

**19. General.** Except as provided below, to the maximum extent provided by law, this Agreement is made and shall be interpreted and enforced in accordance with the laws of the state or province in which the Services are performed without regard to choice of law principles which might otherwise call for the application of a different state's or province's law. Any dispute arising under or relating to this Agreement that is not disposed of by agreement shall be decided by litigation in a court of competent jurisdiction located in the state or province in which the Services are performed. Any action or suit arising out of or related to this Agreement must be commenced within one year after the cause of action has accrued. To the extent the premises are owned and/or operated by any agency of the United States Federal Government, determination of any substantive issue of law shall be according to the United States Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government. This Agreement contains all of the agreements, representations and understandings of the parties and supersedes all previous understandings, commitments or agreements, oral or written, related to the Services. No documents shall be incorporated herein by reference except to the extent Company is a signatory thereon. If any term or condition of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, all other terms and conditions of this Agreement will nevertheless remain in full force and effect as long as the economic or legal substance of the transaction contemplated hereby is not affected in a manner adverse to any party hereto. Customer may not assign, transfer, or convey this Agreement, or any part hereof, without the written consent of Company. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties hereto and their permitted successors and assigns. This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement. A fully executed facsimile copy hereof or the several counterparts shall suffice as an original. No modifications, additions or changes may be made to this Agreement except in a writing signed by Company. No failure or delay by the Company in enforcing any right or exercising any remedy under this Agreement shall be deemed to be a waiver by the Company of any right or remedy.

**20. Equal Employment Opportunity/Affirmative Action Clause.** Company is a United States federal contractor that complies fully with Executive Order 11246, as amended, and the applicable regulations contained in 41 C.F.R. Parts 60-1 through 60-60, 29 U.S.C. Section 793 and the applicable regulations contained in

41 C.F.R. Part 60-741; and 38 U.S.C. Section 4212 and the applicable regulations contained in 41 C.F.R. Part 60-250; and Executive Order 13496 and Section 29 CFR 471, appendix A to subpart A, regarding the notice of employee rights in the United States and with Canadian Charter of Rights and Freedoms Schedule B to the Canada Act 1982 (U.K.) 1982, c. 11 and applicable Provincial Human Rights Codes and employment law in Canada.

**21. U.S. Government Contracts.**

**The following provision applies only to direct sales by Company to the US Government.** The Parties acknowledge that all items or services ordered and delivered under this Agreement / Purchase Order are Commercial Items as defined under Part 12 of the Federal Acquisition Regulation (FAR). In particular, Company agrees to be bound only by those Federal contracting clauses that apply to "commercial" suppliers and that are contained in FAR 52.212-5(e)(1). Company complies with 52.219-8 or 52.219-9 in its service and installation contracting business. **The following provision applies only to indirect sales by Company to the US Government.** As a Commercial Item Subcontractor, Company accepts only the following mandatory flow down provisions: 52.219-8; 52.222-26; 52.222-35; 52.222-36; 52.222-39; 52.247-64. If the Services are in connection with a U.S. government contract, Customer agrees and hereby certifies that it has provided and will provide current, accurate, and complete information, representations and certifications to all government officials, including but not limited to the contracting officer and officials of the Small Business Administration, on all matters related to the prime contract, including but not limited to all aspects of its ownership, eligibility, and performance. Anything herein notwithstanding, Company will have no obligations to Customer unless and until Customer provides Company with a true, correct and complete executed copy of the prime contract. Upon request, Customer will provide copies to Company of all requested written communications with any government official related to the prime contract prior to or concurrent with the execution thereof, including but not limited to any communications related to contractor's Customer's ownership, eligibility or performance of the prime contract. Customer will obtain written authorization and approval from Company prior to providing any government official any information about Company's performance of the Services that are the subject of this offer or agreement, other than the Proposal or this Agreement.

**22. Limited Waiver of Sovereign Immunity.** If Customer is an Indian tribe (in the U.S.) or a First Nation or Band Council (in Canada), Customer, whether acting in its capacity as a government, governmental entity, a duly organized corporate entity or otherwise, for itself and for its agents, successors, and assigns: (1) hereby provides this limited waiver of its sovereign immunity as to any damages, claims, lawsuit, or cause of action (herein "Action") brought against Customer by Company and arising or alleged to arise out of the furnishing by Company of any product or service under this Agreement, whether such Action is based in contract, tort, strict liability, civil liability or any other legal theory; (2) agrees that jurisdiction and venue for any such Action shall be proper and valid (a) if Customer is in the U.S., in any state or United States court located in the state in which Company is performing this Agreement or (b) if Customer is in Canada, in the superior court of the province or territory in which the work was performed; (3) expressly consents to such Action, and waives any objection to jurisdiction or venue; (4) waives any requirement of exhaustion of tribal court or administrative remedies for any Action arising out of or related to this Agreement; and (5) expressly acknowledges and agrees that Company is not subject to the jurisdiction of Customer's tribal court or any similar tribal forum, that Customer will not bring any action against Company in tribal court, and that Customer will not avail itself of any ruling or direction of the tribal court permitting or directing it to suspend its payment or other obligations under this Agreement. The individual signing on behalf of Customer warrants and represents that such individual is duly authorized to provide this waiver and enter into this Agreement and that this Agreement constitutes the valid and legally binding obligation of Customer, enforceable in accordance with its terms.

1-10.48 (0821)  
Supersedes 1-10.48 (0720)



## TRANE'S SAFETY STANDARD

Trane is committed to providing a safe work environment for all employees and to preventing accidents in its business operations. To accomplish our objectives Trane has instituted safety programs, procedures and training that incorporate a progressive approach to injury prevention.

## PROVEN SAFETY SUCCESS

Trane's safety culture in North America is unparalleled in the building services industry and has demonstrated proven results via continuous reduction of injury rates.

## TRANE INJURY RATES V. INDUSTRY COMPETITORS

Since 2003 the US Bureau of Labor Statistics records reflect Trane's Total Recordable Rate (TRIR) and Days away from work (DAFW) rate have been significantly lower than HVAC repair and maintenance contractors and Specialty Trade contractors (construction). Trane's safety culture in America is unparalleled in the building services industry and has demonstrated proven results via continuous reduction of injury rates.

Trane's incident (OSHA) rates are consistently 50-70% below the industry average. This outstanding safety achievement is the end result of the rigorous team-oriented approach to our safety program that creates accountability and empowerment in all employees and management and fuels our institutional safety culture. This is the key to our continual improvement.

## SAFETY TOOLS, TRAINING & EXPERTISE

Trane's service and contracting technicians are not only among the most skilled in the industry they are also extensively trained in safe work procedures. Our technicians receive safety training, equipment, tools, procedures, and management support to identify jobsite hazards and take appropriate measures to prevent personal injuries. The resources available to Trane technicians include:

- Safety Training – 20 hrs per year, including classroom and web-based platforms.
- -Topics include, but are not limited to, Lockout/Tagout, Confined Space Entry, Hazard Communication, Respiratory Protection, Hearing Conservation, Excavations, Scaffolding, Rigging, Powered Industrial Truck operation, Ladders, Vehicle Safety, Fire Protection, PPE, Emergency Response, First Aid / CPR.
- Electrical Safety – NFPA 70E compliant – electrical PPE; flame-resistant clothing; training.
- Fall Protection – full complement of fall arrest and fall restraint equipment for each technician.
- Ergonomics – custom-designed for HVAC field technicians, includes training, material handling equipment and procedures.
- Smith System Safe Driving Program – Trane's safety Managers are certified instructors; safety Managers train technicians; 1-800 "How's My Driving?" stickers are located on the back of service vehicles.
- USDOT compliance – technicians scheduled within Material of Trade and Hours of Service limits and are fully qualified under Department of Transportation rules for driving commercial motor vehicles with GVWR >10,000 and 26,000 lbs.
- Refrigerant Management – Service technicians are trained to manage refrigerant in accordance with U.S. EPA rules using a sophisticated electronic tracking system developed by Trane.
- Empowerment - Technicians are empowered with full management support to address safety hazards as they see fit. If ever in doubt about how to do a job or task safely, the technician is required to ask a qualified person for assistance before proceeding with work.

## MANAGEMENT LEADERSHIP AND COMMITMENT

Accident prevention is a primary responsibility of management at Trane. Trane's safety culture is based on the following management principles:

- Leadership at the local level manages the local organization's safety performance.
- Management is financially accountable for safety performance.
- Local management is actively engaged in risk reduction activities and training and manages safety performance outcomes.
- Management clearly communicates to all Trane employees their safety expectations and strongly enforces compliance with those expectations.
- Employees are held accountable when they fail to meet safety expectations.

Local management and supervisory personnel at the local level are responsible for implementation of the following safety program elements:

- The Safety Management System developed by Trane – developed in accordance with OHSAS 18001.
- Audits and Inspections – Supervisors, Middle and Upper Managers must conduct field inspections. Corporate Safety conducts detailed compliance and management systems audits.
- Company safety compliance programs – ensure that they are fully implemented.
- Safety and environmental performance – tracked using a Balanced Scorecard with leading and lagging indicators and metrics.
- Subcontractor Qualification – implement this process to promote safety and safety plan compliance on multi-employer job sites.
- Six Sigma and Lean – use these productivity tools to enhance safety on job sites.
- Drug and Alcohol Policy – mandatory DOT required for-cause and post-accident testing after recordable injuries and property damage.
- Motor Vehicle Records Search – annual checking of driving records of employees driving company vehicles.

## JOBSITE SAFETY EQUALS CUSTOMER VALUE

At Trane safety is part of our culture for every employee. What this means to our customers is fewer job site accidents and the delays and liability concerns that come along with them. What this means to our staff is greater confidence in the practices and procedures they use on the job and the pride that comes from working for one of the premier service organizations in the world. Tighter safety standards and fewer accidents can also lead to better on-time project completion and higher quality results.

When you use Trane Building Services to install, maintain or upgrade your building systems you will take full advantage of our superior safety program, low incident rates and subcontractor safety management procedures. These help you manage project risk more effectively than you could using multiple contractors or even a single prime contractor with a less impressive safety record.



Trane U.S. Inc.  
1617 Hutton Drive  
Carrollton, Texas 75006  
Phone: (469) 758-3000  
Fax: (972) 243-1398

August 25, 2023

Town Of Flowermound  
2121 CROSS TIMBER ROAD  
Flower Mound, Texas 75028-7502

Site Address:  
Flower Mound Community Activity Center  
1200 Gerault Rd  
Flower Mound, Texas 75028

**ATTENTION:** Jeff Garner

**PROJECT NAME:** Flower Mound Activity Center Pool Pak Repairs

**CO-OP QUOTE NUMBER:** L3-02-10514-23-010 **CO-OP OR FEDERAL CONTRACT ID:** OMNIA Racine #3341

We are pleased to propose the following Trane services for the equipment listed. Services will be performed using Trane's exclusive service procedures provided by factory trained and experienced technicians. You receive the full benefit of our expertise derived from being Trane equipment's original manufacturer. Our procedures are environmentally and safety conscious while providing for the efficient delivery of these services.

#### EQUIPMENT LIST

| Equipment                    | Manufacturer          | Model Number | Serial Number |
|------------------------------|-----------------------|--------------|---------------|
| Vertical Self-Contained Unit | Pool Pak Incorporated | SWHP300-40   | PPK071001     |

#### SCOPE OF SERVICE

1. Perform annual inspection to include cleaning condenser coil on Bohn Split Condenser.
2. Clean up unit compartments and control panel.
3. Replace defective compressor, crank case heater, liquid line drier and compressor contactor.
4. Repair damaged and miscolored terminals on all compressor contactors and compressor motor leads where needed.
5. Replace fan belts and air filters (filter media)
6. Write up any other deficiencies found during annual inspection and provide quote
7. Start unit and check operation upon completion of work.
8. Provide a written report of all work performed.

➤ Note: Extra refrigerant, if needed, is not included and will be extra pending customer approval.

PRICING AND ACCEPTANCE

TOTAL PRICE:.....\$22,833.00

CLARIFICATIONS

- 1. Applicable taxes are not included and will be added to the invoice.
- 2. Any service not listed is not included.
- 3. Work will be performed during normal Trane business hours.
- 4. This proposal is valid for 30 days from August 25, 2023.

I appreciate the opportunity to earn your business and look forward to helping you with all of your service needs. Please contact me if you have any questions or concerns.

Sincerely,

Kevin Bryan  
Account Manager

This agreement is subject to Customer’s acceptance of the attached Trane Terms and Conditions – Quoted Service.

| CUSTOMER ACCEPTANCE                  |
|--------------------------------------|
| _____                                |
| Authorized Representative            |
| _____                                |
| Printed Name                         |
| _____                                |
| Title                                |
| _____                                |
| Purchase Order                       |
| _____                                |
| Acceptance Date                      |
| Trane’s License Number: TACLA101787C |

## TERMS AND CONDITIONS – QUOTED SERVICE

“Company” shall mean Trane U.S. Inc..

To obtain repair service within the scope of Services as defined, contact your local Trane District office identified on the first page of the Agreement by calling the telephone number stated on that page. That Trane District office is responsible for Company's performance of this Agreement. Only Trane authorized personnel may perform service under this Agreement. For Service covered under this Agreement, Company will be responsible for the cost of transporting a part requiring service.

**1. Agreement.** These terms and conditions are an integral part of Company's offer and form the basis of any agreement (the “Agreement”) resulting from Company's proposal (the “Proposal”) for the services (the “Services”) on equipment listed in the Proposal (the “Covered Equipment”). **COMPANY'S TERMS AND CONDITIONS ARE SUBJECT TO PERIODIC CHANGE OR AMENDMENT.**

**2. Connected Services.** In addition to these terms and conditions, the Connected Services Terms of Service (“Connected Services Terms”), available at <https://www.trane.com/TraneConnectedServicesTerms>, as updated from time to time, are incorporated herein by reference and shall apply to the extent that Company provides Customer with Connected Services, as defined in the Connected Services Terms.

**3. Acceptance.** The Proposal is subject to acceptance in writing by the party to whom this offer is made or an authorized agent (“Customer”) delivered to Company within 30 days from the date of the Proposal. If Customer accepts the Proposal by placing an order, without the addition of any other terms and conditions of sale or any other modification, Customer's order shall be deemed acceptance of the Proposal subject to Company's terms and conditions. If Customer's order is expressly conditioned upon the Company's acceptance or assent to terms and/or conditions other than those expressed herein, return of such order by Company with Company's terms and conditions attached or referenced serves as Company's notice of objection to Customer's terms and as Company's counteroffer to provide Services in accordance with the Proposal. If Customer does not reject or object in writing to Company within 10 days, the Company's counteroffer will be deemed accepted. Customer's acceptance of the Services by Company will in any event constitute an acceptance by Customer of Company's terms and conditions. In the case of a dispute, the applicable terms and conditions will be those in effect at the time of delivery or acceptance of the Services. This Agreement is subject to credit approval by Company. Upon disapproval of credit, Company may delay or suspend performance or, at its option, renegotiate prices and/or terms and conditions with Customer. If Company and Customer are unable to agree on such revisions, this Agreement shall be cancelled without any liability, other than Customer's obligation to pay for Services rendered by Company to the date of cancellation.

**4. Cancellation by Customer Prior to Services; Refund.** If Customer cancels this Agreement within (a) thirty (30) days of the date this Agreement was mailed to Customer or (b) twenty (20) days of the date this Agreement was delivered to Customer, if it was delivered at the time of sale, and no Services have been provided by Company under this Agreement, the Agreement will be void and Company will refund to Customer, or credit Customer's account, the full Service Fee of this Agreement that Customer paid to Company, if any. A ten percent (10%) penalty per month will be added to a refund that is due but is not paid or credited within forty-five (45) days after return of this Agreement to Company. Customer's right to cancel this Agreement only applies to the original owner of this Agreement and only if no Services have been provided by Company under this Agreement prior to its return to Company.

**5. Cancellation by Company.** This Agreement may be cancelled by Company for any reason or no reason, upon written notice from Company to Customer no later than 30 days prior to performance of any Services hereunder and Company will refund to Customer, or credit Customer's account, that part of the Service Fee attributable to Services not performed by Company. Customer shall remain liable for and shall pay to Company all amounts due for Services provided by Company and not yet paid.

**6. Services Fees and Taxes.** Fees for the Services (the “Service Fee(s)”) shall be as set forth in the Proposal and are based on performance during regular business hours. Fees for outside Company's regular business hours and any after-hours services shall be billed separately according to the then prevailing overtime or emergency labor/labour rates. In addition to the stated Service Fee, Customer shall pay all taxes not legally required to be paid by Company or, alternatively, shall provide Company with acceptable tax exemption certificates. Customer shall pay all costs (including attorneys' fees) incurred by Company in attempting to collect amounts due.

**7. Payment.** Payment is due upon receipt of Company's invoice. Company reserves the right to add to any account outstanding for more than 30 days a service charge equal to the lesser of the maximum allowable legal interest rate or 1.5% of the principal amount due at the end of each month. Customer shall pay all costs (including attorneys' fees) incurred by Company in attempting to collect amounts due or otherwise enforcing these terms and conditions.

**8. Customer Breach.** Each of the following events or conditions shall constitute a breach by Customer and shall give Company the right, without an election of remedies, to terminate this Agreement or suspend performance by delivery of written notice: (1) Any failure by Customer to pay amounts when due; or (2) any general assignment by Customer for the benefit of its creditors, or if Customer becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors, or makes or proposes to make any proposal or arrangement with creditors, or if any steps are taken for the winding up or other termination of Customer or the liquidation of its assets, or if a trustee, receiver, or similar person is appointed over any of the assets or interests of Customer; (3) Any representation or warranty furnished by Customer in connection with this Agreement is false or misleading in any material respect when made; or (4) Any failure by Customer to perform or comply with any material provision of this Agreement. Customer shall be liable to the Company for all Services furnished to date and all damages sustained by Company (including lost profit and overhead).

**9. Performance.** Company shall perform the Services in accordance with industry standards generally applicable in the state or province where the Services are performed under similar circumstances as of the time Company performs the Services. Company is not liable for any claims, damages, losses, or expenses, arising from or related to work done by or services provided by individuals or entities that are not employed by or hired by Company. Company may refuse to perform any Services or work where working conditions could endanger property or put at risk the safety of people. Parts used for any repairs made will be those selected by Company as suitable for the repair and may be parts not manufactured by Company. Customer must reimburse Company for services, repairs, and/or replacements performed by Company at Customer's request beyond the scope of Services or otherwise excluded under this Agreement. The reimbursement shall be at the then prevailing applicable regular, overtime, or holiday rates for labor/labour and prices for materials. Prior to Company performing the additional services, repairs, and/or replacements, Customer may request a separate written quote stating the work to be performed and the price to be paid by Customer for the work.

**10. Customer Obligations.** Customer shall: (a) provide Company reasonable and safe access to the Covered Equipment and areas where Company is to work; and (b) unless otherwise agreed by Customer and Company, at Customer's expense and before the Services begin, Customer will provide any necessary access platforms, catwalks to safely perform the Services in compliance with OSHA, state, or provincial industrial safety regulations or any other applicable industrial safety standards or guidelines.

**11. Exclusions.** Unless expressly included in the Proposal, the Services do not include, and Company shall not be responsible for or liable to the Customer for, any claims, losses, damages or expenses suffered by the Customer in any way connected with, relating to or arising from any of the following:

- (a) Any guarantee of room conditions or system performance;
- (b) Inspection, operation, maintenance, repair, replacement or performance of work or services outside the Services;
- (c) Damage, repairs or replacement of parts made necessary as a result of the acts or omission of Customer or any Event of Force Majeure;
- (d) Any claims, damages, losses, or expenses, arising from or related to conditions that existed in, on, or upon the premises before the effective date of this Agreement (“Pre-Existing Conditions”) including, without limitation, damages, losses, or expenses involving a Pre-Existing Condition of building envelope issues, mechanical issues, plumbing issues, and/or indoor air quality issues involving mold/mould, bacteria, microbial growth, fungi or other contaminants or airborne biological agents; and
- (e) Replacement of refrigerant is excluded, unless replacement of refrigerant is expressly stated as included with the Proposal.

**12. Limited Warranty.** Company warrants that: (a) the material manufactured by Company and provided to the Customer in performance of the Services is free from defects in material and manufacture for a period of 12 months from the earlier of the date of equipment start-up or replacement and (b) the labor/labour portion of the Services is warranted to have been properly performed for a period of 90 days from date of completion (the “Limited Warranty”). Company obligations of equipment start-up, if any are stated in the Proposal, are coterminous with the Limited Warranty period. Defects must be reported to Company within the Limited Warranty period. Company's obligation under the Limited Warranty is limited to repairing or replacing the defective part at its option and to correcting any improperly performed labor/labour. No liability whatsoever shall attach to Company until the Services have been paid for in full. Exclusions from this Limited Warranty include claims, losses, damages, and expenses in any way connected with, related to, or arising from failure or malfunction of equipment due to the following: wear and tear; end of life failure; corrosion; erosion; deterioration; Customer's failure to follow the Company-provided maintenance plan; unauthorized or improper maintenance; unauthorized or improper parts or material; refrigerant not supplied by Company; and modifications made by others to Company's equipment. Company shall not be obligated to pay for the cost of lost refrigerant or lost product. Some components of Company equipment may be warranted directly from the component supplier, in which case this Limited Warranty shall not apply to those components and any warranty of such components shall be the warranty given by the component supplier. Notwithstanding the foregoing, all warranties provided herein terminate upon termination or cancellation of this Agreement. Equipment, material and/or parts that are not manufactured by Company (“Third-Party Product(s)”) are not warranted by Company and have such warranties as may be extended by the respective manufacturer. **CUSTOMER UNDERSTANDS THAT COMPANY IS NOT THE MANUFACTURER OF ANY THIRD-PARTY PRODUCT(S) AND ANY WARRANTIES, CLAIMS, STATEMENTS, REPRESENTATIONS, OR SPECIFICATIONS ARE THOSE OF THE THIRD-PARTY MANUFACTURER, NOT COMPANY AND CUSTOMER IS NOT RELYING ON ANY WARRANTIES, CLAIMS, STATEMENTS, REPRESENTATIONS, OR**

**SPECIFICATIONS REGARDING THE THIRD-PARTY PRODUCT THAT MAY BE PROVIDED BY COMPANY OR ITS AFFILIATES, WHETHER ORAL OR WRITTEN.**

THE REMEDIES SET FORTH IN THIS LIMITED WARRANTY ARE THE SOLE AND EXCLUSIVE REMEDIES FOR WARRANTY CLAIMS PROVIDED BY COMPANY TO CUSTOMER UNDER THIS AGREEMENT AND ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, CONDITIONS AND REMEDIES, WHETHER IN CONTRACT, WARRANTY, STATUTE, OR TORT (INCLUDING NEGLIGENCE), EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR FITNESS FOR A PARTICULAR PURPOSE AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE. COMPANY EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, ENDORSEMENTS OR CONDITIONS OF ANY KIND. EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF QUALITY, FITNESS, MERCHANTABILITY, DURABILITY AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE OR REGARDING PREVENTION BY THE SCOPE OF SERVICES, OR ANY COMPONENT THEREOF. COMPANY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, INCLUDING WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. ADDITIONALLY, COMPANY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND REGARDING PREVENTING, ELIMINATING, REDUCING OR INHIBITING ANY MOLD, FUNGUS, BACTERIA, VIRUS, MICROBIAL GROWTH, OR ANY OTHER CONTAMINANTS (INCLUDING COVID-19 OR ANY SIMILAR VIRUS) (COLLECTIVELY, "CONTAMINANTS"), WHETHER INVOLVING OR IN CONNECTION WITH EQUIPMENT, ANY COMPONENT THEREOF, SERVICES OR OTHERWISE. IN NO EVENT SHALL COMPANY HAVE ANY LIABILITY FOR THE PREVENTION, ELIMINATION, REDUCTION OR INHIBITION OF THE GROWTH OR SPREAD OF SUCH CONTAMINANTS INVOLVING OR IN CONNECTION WITH ANY EQUIPMENT, THIRD-PARTY PRODUCT, OR ANY COMPONENT THEREOF, SERVICES OR OTHERWISE AND CUSTOMER HEREBY SPECIFICALLY ACKNOWLEDGES AND AGREES THERETO

**13. Indemnity.** To the maximum extent permitted by law, Company and Customer shall indemnify and hold harmless each other from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to real or personal property, to the extent caused by the negligence or misconduct of the indemnifying party, and/or its respective employees or authorized agents in connection with their activities within the scope of this Agreement. Neither party shall indemnify the other against claims, damages, expenses, or liabilities to the extent attributable to the acts or omissions of the other party or third parties. If the parties are both at fault, the obligation to indemnify shall be proportional to their relative fault. The duty to indemnify and hold harmless will continue in full force and effect, notwithstanding the expiration or early termination of this Agreement, with respect to any claims based on facts or conditions that occurred prior to expiration or termination of this Agreement.

**14. Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION REFRIGERANT LOSS, PRODUCT LOSS, LOST REVENUE OR PROFITS, OR LIABILITY TO THIRD PARTIES), INCLUDING CONTAMINANTS LIABILITIES, OR PUNITIVE DAMAGES WHETHER BASED IN CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL THEORY OR FACTS. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE TOTAL AND AGGREGATE LIABILITY OF THE COMPANY TO THE CUSTOMER WITH RESPECT TO ANY AND ALL CLAIMS CONNECTED WITH, RELATED TO OR ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, WHETHER BASED IN CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL THEORY OR FACTS, SHALL NOT EXCEED THE COMPENSATION RECEIVED BY COMPANY UNDER THIS AGREEMENT. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY DAMAGES (WHETHER DIRECT OR INDIRECT) RESULTING FROM MOLD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR OTHER CONTAMINATES OR AIRBORNE BIOLOGICAL AGENTS. TO THE MAXIMUM EXTENT ALLOWED BY LAW, COMPANY SHALL NOT BE LIABLE FOR ANY OF THE FOLLOWING IN CONNECTION WITH PROVIDING THE ENERGY AND BUILDING PERFORMANCE SERVICES: INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION; CUSTOMER'S NETWORK SECURITY; COMPUTER VIRUS; COMMUNICATION FAILURE; THEFT OR DESTRUCTION OF DATA; GAPS IN DATA COLLECTED; AND UNAUTHORIZED ACCESS TO CUSTOMER'S DATA OR COMMUNICATIONS NETWORK.

**15. CONTAMINANTS LIABILITY**

The transmission of COVID-19 may occur in a variety of ways and circumstances, many of the aspects of which are currently not known. HVAC systems, products, services and other offerings have not been tested for their effectiveness in reducing the spread of COVID-19, including through the air in closed environments. **IN NO EVENT WILL COMPANY BE LIABLE UNDER THIS AGREEMENT OR OTHERWISE FOR ANY INDEMNIFICATION, ACTION OR CLAIM, WHETHER BASED ON WARRANTY, CONTRACT, TORT OR OTHERWISE, FOR ANY BODILY INJURY (INCLUDING DEATH), DAMAGED TO PROPERTY, OR ANY OTHER LIABILITIES, DAMAGES OR COSTS RELATED TO CONTAMINANTS (INCLUDING THE SPREAD, TRANSMISSION MITIGATION, ELIMINATION, OR CONTAMINATION THEREOF) (COLLECTIVELY, "CONTAMINANTS LIABILITIES") AND CUSTOMER HEREBY EXPRESSLY RELEASES COMPANY FROM ANY SUCH CONTAMINANT LIABILITIES.**

**16. Asbestos and Hazardous Materials.** The Services expressly exclude any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos or other hazardous materials (collectively, "Hazardous Materials"). Should Company become aware of or suspect the presence of Hazardous Materials, Company may immediately stop work in the affected area and shall notify Customer. Customer will be responsible for taking any and all action necessary to correct the condition in accordance with all applicable laws and regulations. Customer shall be exclusively responsible for any claims, liability, fees and penalties, and the payment thereof, arising out of or relating to any Hazardous Materials on or about the premises, not brought onto the premises by Company. Company shall be required to resume performance of the Services only when the affected area has been rendered harmless.

**17. Insurance.** Company agrees to maintain the following insurance during the term of the contract with limits not less than shown below and will, upon request from Customer, provide a Certificate of evidencing the following coverage:

|                              |                            |
|------------------------------|----------------------------|
| Commercial General Liability | \$2,000,000 per occurrence |
| Automobile Liability         | \$2,000,000 CSL            |
| Workers Compensation         | Statutory Limits           |

If Customer has requested to be named as an additional insured under Company's insurance policy, Company will do so but only subject to Company's manuscript additional insured endorsement under its primary Commercial General Liability policies. In no event does Company or its insurer waive its right of subrogation

**18. Force Majeure.** Company's duty to perform under this Agreement is contingent upon the non-occurrence of an Event of Force Majeure. If Company shall be unable to carry out any material obligation under this Agreement due to an Event of Force Majeure, this Agreement shall at Company's election (i) remain in effect but Company's obligations shall be suspended until the uncontrollable event terminates or (ii) be terminated upon ten (10) days' notice to Customer, in which event Customer shall pay Company for all parts of the Services furnished to the date of termination. An "Event of Force Majeure" shall mean any cause or event beyond the control of Company. Without limiting the foregoing, "Event of Force Majeure" includes: acts of God; acts of terrorism, war or the public enemy; flood; earthquake; lightning; tornado; storm; fire; civil disobedience; pandemic insurrections; riots; labor disputes; labor or material shortages; sabotage; restraint by court order or public authority (whether valid or invalid), and action or non-action by or inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals if not caused by Company and the requirements of any applicable government in any manner that diverts either the material or the finished product to the direct or indirect benefit of the government.

**19. General.** Except as provided below, to the maximum extent provided by law, this Agreement is made and shall be interpreted and enforced in accordance with the laws of the state or province in which the Services are performed without regard to choice of law principles which might otherwise call for the application of a different state's or province's law. Any dispute arising under or relating to this Agreement that is not disposed of by agreement shall be decided by litigation in a court of competent jurisdiction located in the state or province in which the Services are performed. Any action or suit arising out of or related to this Agreement must be commenced within one year after the cause of action has accrued. To the extent the premises are owned and/or operated by any agency of the United States Federal Government, determination of any substantive issue of law shall be according to the United States Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government. This Agreement contains all of the agreements, representations and understandings of the parties and supersedes all previous understandings, commitments or agreements, oral or written, related to the Services. No documents shall be incorporated herein by reference except to the extent Company is a signatory thereon. If any term or condition of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, all other terms and conditions of this Agreement will nevertheless remain in full force and effect as long as the economic or legal substance of the transaction contemplated hereby is not affected in a manner adverse to any party hereto. Customer may not assign, transfer, or convey this Agreement, or any part hereof, without the written consent of Company. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties hereto and their permitted successors and assigns. This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement. A fully executed facsimile copy hereof or the several counterparts shall suffice as an original. No modifications, additions or changes may be made to this Agreement except in a writing signed by Company. No failure or delay by the Company in enforcing any right or exercising any remedy under this Agreement shall be deemed to be a waiver by the Company of any right or remedy.

**20. Equal Employment Opportunity/Affirmative Action Clause.** Company is a United States federal contractor that complies fully with Executive Order 11246, as amended, and the applicable regulations contained in 41 C.F.R. Parts 60-1 through 60-60, 29 U.S.C. Section 793 and the applicable regulations contained in

41 C.F.R. Part 60-741; and 38 U.S.C. Section 4212 and the applicable regulations contained in 41 C.F.R. Part 60-250; and Executive Order 13496 and Section 29 CFR 471, appendix A to subpart A, regarding the notice of employee rights in the United States and with Canadian Charter of Rights and Freedoms Schedule B to the Canada Act 1982 (U.K.) 1982, c. 11 and applicable Provincial Human Rights Codes and employment law in Canada.

**21. U.S. Government Contracts.**

**The following provision applies only to direct sales by Company to the US Government.** The Parties acknowledge that all items or services ordered and delivered under this Agreement / Purchase Order are Commercial Items as defined under Part 12 of the Federal Acquisition Regulation (FAR). In particular, Company agrees to be bound only by those Federal contracting clauses that apply to "commercial" suppliers and that are contained in FAR 52.212-5(e)(1). Company complies with 52.219-8 or 52.219-9 in its service and installation contracting business. **The following provision applies only to indirect sales by Company to the US Government.** As a Commercial Item Subcontractor, Company accepts only the following mandatory flow down provisions: 52.219-8; 52.222-26; 52.222-35; 52.222-36; 52.222-39; 52.247-64. If the Services are in connection with a U.S. government contract, Customer agrees and hereby certifies that it has provided and will provide current, accurate, and complete information, representations and certifications to all government officials, including but not limited to the contracting officer and officials of the Small Business Administration, on all matters related to the prime contract, including but not limited to all aspects of its ownership, eligibility, and performance. Anything herein notwithstanding, Company will have no obligations to Customer unless and until Customer provides Company with a true, correct and complete executed copy of the prime contract. Upon request, Customer will provide copies to Company of all requested written communications with any government official related to the prime contract prior to or concurrent with the execution thereof, including but not limited to any communications related to contractor's Customer's ownership, eligibility or performance of the prime contract. Customer will obtain written authorization and approval from Company prior to providing any government official any information about Company's performance of the Services that are the subject of this offer or agreement, other than the Proposal or this Agreement.

**22. Limited Waiver of Sovereign Immunity.** If Customer is an Indian tribe (in the U.S.) or a First Nation or Band Council (in Canada), Customer, whether acting in its capacity as a government, governmental entity, a duly organized corporate entity or otherwise, for itself and for its agents, successors, and assigns: (1) hereby provides this limited waiver of its sovereign immunity as to any damages, claims, lawsuit, or cause of action (herein "Action") brought against Customer by Company and arising or alleged to arise out of the furnishing by Company of any product or service under this Agreement, whether such Action is based in contract, tort, strict liability, civil liability or any other legal theory; (2) agrees that jurisdiction and venue for any such Action shall be proper and valid (a) if Customer is in the U.S., in any state or United States court located in the state in which Company is performing this Agreement or (b) if Customer is in Canada, in the superior court of the province or territory in which the work was performed; (3) expressly consents to such Action, and waives any objection to jurisdiction or venue; (4) waives any requirement of exhaustion of tribal court or administrative remedies for any Action arising out of or related to this Agreement; and (5) expressly acknowledges and agrees that Company is not subject to the jurisdiction of Customer's tribal court or any similar tribal forum, that Customer will not bring any action against Company in tribal court, and that Customer will not avail itself of any ruling or direction of the tribal court permitting or directing it to suspend its payment or other obligations under this Agreement. The individual signing on behalf of Customer warrants and represents that such individual is duly authorized to provide this waiver and enter into this Agreement and that this Agreement constitutes the valid and legally binding obligation of Customer, enforceable in accordance with its terms.

1-10.48 (0821)  
Supersedes 1-10.48 (0720)



## TRANE'S SAFETY STANDARD

Trane is committed to providing a safe work environment for all employees and to preventing accidents in its business operations. To accomplish our objectives Trane has instituted safety programs, procedures and training that incorporate a progressive approach to injury prevention.

## PROVEN SAFETY SUCCESS

Trane's safety culture in North America is unparalleled in the building services industry and has demonstrated proven results via continuous reduction of injury rates.

## TRANE INJURY RATES V. INDUSTRY COMPETITORS

Since 2003 the US Bureau of Labor Statistics records reflect Trane's Total Recordable Rate (TRIR) and Days away from work (DAFW) rate have been significantly lower than HVAC repair and maintenance contractors and Specialty Trade contractors (construction). Trane's safety culture in America is unparalleled in the building services industry and has demonstrated proven results via continuous reduction of injury rates.

Trane's incident (OSHA) rates are consistently 50-70% below the industry average. This outstanding safety achievement is the end result of the rigorous team-oriented approach to our safety program that creates accountability and empowerment in all employees and management and fuels our institutional safety culture. This is the key to our continual improvement.

## SAFETY TOOLS, TRAINING & EXPERTISE

Trane's service and contracting technicians are not only among the most skilled in the industry they are also extensively trained in safe work procedures. Our technicians receive safety training, equipment, tools, procedures, and management support to identify jobsite hazards and take appropriate measures to prevent personal injuries. The resources available to Trane technicians include:

- Safety Training – 20 hrs per year, including classroom and web-based platforms.
- -Topics include, but are not limited to, Lockout/Tagout, Confined Space Entry, Hazard Communication, Respiratory Protection, Hearing Conservation, Excavations, Scaffolding, Rigging, Powered Industrial Truck operation, Ladders, Vehicle Safety, Fire Protection, PPE, Emergency Response, First Aid / CPR.
- Electrical Safety – NFPA 70E compliant – electrical PPE; flame-resistant clothing; training.
- Fall Protection – full complement of fall arrest and fall restraint equipment for each technician.
- Ergonomics – custom-designed for HVAC field technicians, includes training, material handling equipment and procedures.
- Smith System Safe Driving Program – Trane's safety Managers are certified instructors; safety Managers train technicians; 1-800 "How's My Driving?" stickers are located on the back of service vehicles.
- USDOT compliance – technicians scheduled within Material of Trade and Hours of Service limits and are fully qualified under Department of Transportation rules for driving commercial motor vehicles with GVWR >10,000 and 26,000 lbs.
- Refrigerant Management – Service technicians are trained to manage refrigerant in accordance with U.S. EPA rules using a sophisticated electronic tracking system developed by Trane.
- Empowerment - Technicians are empowered with full management support to address safety hazards as they see fit. If ever in doubt about how to do a job or task safely, the technician is required to ask a qualified person for assistance before proceeding with work.

## MANAGEMENT LEADERSHIP AND COMMITMENT

Accident prevention is a primary responsibility of management at Trane. Trane's safety culture is based on the following management principles:

- Leadership at the local level manages the local organization's safety performance.
- Management is financially accountable for safety performance.
- Local management is actively engaged in risk reduction activities and training and manages safety performance outcomes.
- Management clearly communicates to all Trane employees their safety expectations and strongly enforces compliance with those expectations.
- Employees are held accountable when they fail to meet safety expectations.

Local management and supervisory personnel at the local level are responsible for implementation of the following safety program elements:

- The Safety Management System developed by Trane – developed in accordance with OHSAS 18001.
- Audits and Inspections – Supervisors, Middle and Upper Managers must conduct field inspections. Corporate Safety conducts detailed compliance and management systems audits.
- Company safety compliance programs – ensure that they are fully implemented.
- Safety and environmental performance – tracked using a Balanced Scorecard with leading and lagging indicators and metrics.
- Subcontractor Qualification – implement this process to promote safety and safety plan compliance on multi-employer job sites.
- Six Sigma and Lean – use these productivity tools to enhance safety on job sites.
- Drug and Alcohol Policy – mandatory DOT required for-cause and post-accident testing after recordable injuries and property damage.
- Motor Vehicle Records Search – annual checking of driving records of employees driving company vehicles.

## JOBSITE SAFETY EQUALS CUSTOMER VALUE

At Trane safety is part of our culture for every employee. What this means to our customers is fewer job site accidents and the delays and liability concerns that come along with them. What this means to our staff is greater confidence in the practices and procedures they use on the job and the pride that comes from working for one of the premier service organizations in the world. Tighter safety standards and fewer accidents can also lead to better on-time project completion and higher quality results.

When you use Trane Building Services to install, maintain or upgrade your building systems you will take full advantage of our superior safety program, low incident rates and subcontractor safety management procedures. These help you manage project risk more effectively than you could using multiple contractors or even a single prime contractor with a less impressive safety record.



Trane U.S. Inc.  
1617 Hutton Drive  
Carrollton, Texas 75006  
Phone: (469) 758-3000  
Fax: (972) 243-1398

August 25, 2023

Town Of Flowermound  
2121 Cross Timber Road  
Flower Mound, Texas 75028-7502

Site Address:  
Flower Mound Community Activity Center  
1200 Gerault Rd  
Flower Mound, Texas 75028

**ATTENTION:** Jeff Garner

**PROJECT NAME:** Flower Mound Activity Center RTAA Repairs

**CO-OP QUOTE NUMBER:** L3-02-10514-23-010 **CO-OP OR FEDERAL CONTRACT ID:** OMNIA Racine #3341

We are pleased to propose the following Trane services for the equipment listed. Services will be performed using Trane's exclusive service procedures provided by factory trained and experienced technicians. You receive the full benefit of our expertise derived from being Trane equipment's original manufacturer. Our procedures are environmentally and safety conscious while providing for the efficient delivery of these services.

#### EQUIPMENT LIST

| Equipment  | Manufacturer | Model Number | Serial Number |
|------------|--------------|--------------|---------------|
| CHILLER #1 | Trane        | RTAA1254XT   | U07J04486     |

#### SCOPE OF SERVICE

1. Repair leaks by replacing male load/unload valve and solenoids on both circuits.
2. Replace female step valve and solenoid as well on both circuits.
3. Replace Circuit 2 saturated condenser temp sensor.
4. Recover refrigerant from both circuits, check and verify no leaks on both circuits, reuse recovered refrigerant.
5. Extra refrigerant, if needed, is not included and will be extra pending customer approval.
6. Upgrade to new inverters on condenser fans both circuits.
7. Clean condenser coil.
8. Use degreaser and power washer to clean up oil over spray on unit and roof top.
9. Start unit and check operation upon completion of work.
10. Provide a written report of all work performed.

PRICING AND ACCEPTANCE

TOTAL PRICE:.....\$27,066.00

CLARIFICATIONS

- 1. Applicable taxes are not included and will be added to the invoice.
- 2. Any service not listed is not included.
- 3. Work will be performed during normal Trane business hours.
- 4. This proposal is valid for 30 days from August 25, 2023.

I appreciate the opportunity to earn your business and look forward to helping you with all of your service needs. Please contact me if you have any questions or concerns.

Sincerely,

Kevin Bryan  
Account Manager

This agreement is subject to Customer’s acceptance of the attached Trane Terms and Conditions – Quoted Service.

| CUSTOMER ACCEPTANCE                  |
|--------------------------------------|
| _____                                |
| Authorized Representative            |
| _____                                |
| Printed Name                         |
| _____                                |
| Title                                |
| _____                                |
| Purchase Order                       |
| _____                                |
| Acceptance Date                      |
| Trane’s License Number: TACLA101787C |

## TERMS AND CONDITIONS – QUOTED SERVICE

“Company” shall mean Trane U.S. Inc..

To obtain repair service within the scope of Services as defined, contact your local Trane District office identified on the first page of the Agreement by calling the telephone number stated on that page. That Trane District office is responsible for Company's performance of this Agreement. Only Trane authorized personnel may perform service under this Agreement. For Service covered under this Agreement, Company will be responsible for the cost of transporting a part requiring service.

**1. Agreement.** These terms and conditions are an integral part of Company's offer and form the basis of any agreement (the “Agreement”) resulting from Company's proposal (the “Proposal”) for the services (the “Services”) on equipment listed in the Proposal (the “Covered Equipment”). **COMPANY'S TERMS AND CONDITIONS ARE SUBJECT TO PERIODIC CHANGE OR AMENDMENT.**

**2. Connected Services.** In addition to these terms and conditions, the Connected Services Terms of Service (“Connected Services Terms”), available at <https://www.trane.com/TraneConnectedServicesTerms>, as updated from time to time, are incorporated herein by reference and shall apply to the extent that Company provides Customer with Connected Services, as defined in the Connected Services Terms.

**3. Acceptance.** The Proposal is subject to acceptance in writing by the party to whom this offer is made or an authorized agent (“Customer”) delivered to Company within 30 days from the date of the Proposal. If Customer accepts the Proposal by placing an order, without the addition of any other terms and conditions of sale or any other modification, Customer's order shall be deemed acceptance of the Proposal subject to Company's terms and conditions. If Customer's order is expressly conditioned upon the Company's acceptance or assent to terms and/or conditions other than those expressed herein, return of such order by Company with Company's terms and conditions attached or referenced serves as Company's notice of objection to Customer's terms and as Company's counteroffer to provide Services in accordance with the Proposal. If Customer does not reject or object in writing to Company within 10 days, the Company's counteroffer will be deemed accepted. Customer's acceptance of the Services by Company will in any event constitute an acceptance by Customer of Company's terms and conditions. In the case of a dispute, the applicable terms and conditions will be those in effect at the time of delivery or acceptance of the Services. This Agreement is subject to credit approval by Company. Upon disapproval of credit, Company may delay or suspend performance or, at its option, renegotiate prices and/or terms and conditions with Customer. If Company and Customer are unable to agree on such revisions, this Agreement shall be cancelled without any liability, other than Customer's obligation to pay for Services rendered by Company to the date of cancellation.

**4. Cancellation by Customer Prior to Services; Refund.** If Customer cancels this Agreement within (a) thirty (30) days of the date this Agreement was mailed to Customer or (b) twenty (20) days of the date this Agreement was delivered to Customer, if it was delivered at the time of sale, and no Services have been provided by Company under this Agreement, the Agreement will be void and Company will refund to Customer, or credit Customer's account, the full Service Fee of this Agreement that Customer paid to Company, if any. A ten percent (10%) penalty per month will be added to a refund that is due but is not paid or credited within forty-five (45) days after return of this Agreement to Company. Customer's right to cancel this Agreement only applies to the original owner of this Agreement and only if no Services have been provided by Company under this Agreement prior to its return to Company.

**5. Cancellation by Company.** This Agreement may be cancelled by Company for any reason or no reason, upon written notice from Company to Customer no later than 30 days prior to performance of any Services hereunder and Company will refund to Customer, or credit Customer's account, that part of the Service Fee attributable to Services not performed by Company. Customer shall remain liable for and shall pay to Company all amounts due for Services provided by Company and not yet paid.

**6. Services Fees and Taxes.** Fees for the Services (the “Service Fee(s)”) shall be as set forth in the Proposal and are based on performance during regular business hours. Fees for outside Company's regular business hours and any after-hours services shall be billed separately according to the then prevailing overtime or emergency labor/labour rates. In addition to the stated Service Fee, Customer shall pay all taxes not legally required to be paid by Company or, alternatively, shall provide Company with acceptable tax exemption certificates. Customer shall pay all costs (including attorneys' fees) incurred by Company in attempting to collect amounts due.

**7. Payment.** Payment is due upon receipt of Company's invoice. Company reserves the right to add to any account outstanding for more than 30 days a service charge equal to the lesser of the maximum allowable legal interest rate or 1.5% of the principal amount due at the end of each month. Customer shall pay all costs (including attorneys' fees) incurred by Company in attempting to collect amounts due or otherwise enforcing these terms and conditions.

**8. Customer Breach.** Each of the following events or conditions shall constitute a breach by Customer and shall give Company the right, without an election of remedies, to terminate this Agreement or suspend performance by delivery of written notice: (1) Any failure by Customer to pay amounts when due; or (2) any general assignment by Customer for the benefit of its creditors, or if Customer becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors, or makes or proposes to make any proposal or arrangement with creditors, or if any steps are taken for the winding up or other termination of Customer or the liquidation of its assets, or if a trustee, receiver, or similar person is appointed over any of the assets or interests of Customer; (3) Any representation or warranty furnished by Customer in connection with this Agreement is false or misleading in any material respect when made; or (4) Any failure by Customer to perform or comply with any material provision of this Agreement. Customer shall be liable to the Company for all Services furnished to date and all damages sustained by Company (including lost profit and overhead).

**9. Performance.** Company shall perform the Services in accordance with industry standards generally applicable in the state or province where the Services are performed under similar circumstances as of the time Company performs the Services. Company is not liable for any claims, damages, losses, or expenses, arising from or related to work done by or services provided by individuals or entities that are not employed by or hired by Company. Company may refuse to perform any Services or work where working conditions could endanger property or put at risk the safety of people. Parts used for any repairs made will be those selected by Company as suitable for the repair and may be parts not manufactured by Company. Customer must reimburse Company for services, repairs, and/or replacements performed by Company at Customer's request beyond the scope of Services or otherwise excluded under this Agreement. The reimbursement shall be at the then prevailing applicable regular, overtime, or holiday rates for labor/labour and prices for materials. Prior to Company performing the additional services, repairs, and/or replacements, Customer may request a separate written quote stating the work to be performed and the price to be paid by Customer for the work.

**10. Customer Obligations.** Customer shall: (a) provide Company reasonable and safe access to the Covered Equipment and areas where Company is to work; and (b) unless otherwise agreed by Customer and Company, at Customer's expense and before the Services begin, Customer will provide any necessary access platforms, catwalks to safely perform the Services in compliance with OSHA, state, or provincial industrial safety regulations or any other applicable industrial safety standards or guidelines.

**11. Exclusions.** Unless expressly included in the Proposal, the Services do not include, and Company shall not be responsible for or liable to the Customer for, any claims, losses, damages or expenses suffered by the Customer in any way connected with, relating to or arising from any of the following:

- (a) Any guarantee of room conditions or system performance;
- (b) Inspection, operation, maintenance, repair, replacement or performance of work or services outside the Services;
- (c) Damage, repairs or replacement of parts made necessary as a result of the acts or omission of Customer or any Event of Force Majeure;
- (d) Any claims, damages, losses, or expenses, arising from or related to conditions that existed in, on, or upon the premises before the effective date of this Agreement (“Pre-Existing Conditions”) including, without limitation, damages, losses, or expenses involving a Pre-Existing Condition of building envelope issues, mechanical issues, plumbing issues, and/or indoor air quality issues involving mold/mould, bacteria, microbial growth, fungi or other contaminants or airborne biological agents; and
- (e) Replacement of refrigerant is excluded, unless replacement of refrigerant is expressly stated as included with the Proposal.

**12. Limited Warranty.** Company warrants that: (a) the material manufactured by Company and provided to the Customer in performance of the Services is free from defects in material and manufacture for a period of 12 months from the earlier of the date of equipment start-up or replacement and (b) the labor/labour portion of the Services is warranted to have been properly performed for a period of 90 days from date of completion (the “Limited Warranty”). Company obligations of equipment start-up, if any are stated in the Proposal, are coterminous with the Limited Warranty period. Defects must be reported to Company within the Limited Warranty period. Company's obligation under the Limited Warranty is limited to repairing or replacing the defective part at its option and to correcting any improperly performed labor/labour. No liability whatsoever shall attach to Company until the Services have been paid for in full. Exclusions from this Limited Warranty include claims, losses, damages, and expenses in any way connected with, related to, or arising from failure or malfunction of equipment due to the following: wear and tear; end of life failure; corrosion; erosion; deterioration; Customer's failure to follow the Company-provided maintenance plan; unauthorized or improper maintenance; unauthorized or improper parts or material; refrigerant not supplied by Company; and modifications made by others to Company's equipment. Company shall not be obligated to pay for the cost of lost refrigerant or lost product. Some components of Company equipment may be warranted directly from the component supplier, in which case this Limited Warranty shall not apply to those components and any warranty of such components shall be the warranty given by the component supplier. Notwithstanding the foregoing, all warranties provided herein terminate upon termination or cancellation of this Agreement. Equipment, material and/or parts that are not manufactured by Company (“Third-Party Product(s)”) are not warranted by Company and have such warranties as may be extended by the respective manufacturer. **CUSTOMER UNDERSTANDS THAT COMPANY IS NOT THE MANUFACTURER OF ANY THIRD-PARTY PRODUCT(S) AND ANY WARRANTIES, CLAIMS, STATEMENTS, REPRESENTATIONS, OR SPECIFICATIONS ARE THOSE OF THE THIRD-PARTY MANUFACTURER, NOT COMPANY AND CUSTOMER IS NOT RELYING ON ANY WARRANTIES, CLAIMS, STATEMENTS, REPRESENTATIONS, OR**

**SPECIFICATIONS REGARDING THE THIRD-PARTY PRODUCT THAT MAY BE PROVIDED BY COMPANY OR ITS AFFILIATES, WHETHER ORAL OR WRITTEN.**

THE REMEDIES SET FORTH IN THIS LIMITED WARRANTY ARE THE SOLE AND EXCLUSIVE REMEDIES FOR WARRANTY CLAIMS PROVIDED BY COMPANY TO CUSTOMER UNDER THIS AGREEMENT AND ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, CONDITIONS AND REMEDIES, WHETHER IN CONTRACT, WARRANTY, STATUTE, OR TORT (INCLUDING NEGLIGENCE), EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR FITNESS FOR A PARTICULAR PURPOSE AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE. COMPANY EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, ENDORSEMENTS OR CONDITIONS OF ANY KIND. EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF QUALITY, FITNESS, MERCHANTABILITY, DURABILITY AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE OR REGARDING PREVENTION BY THE SCOPE OF SERVICES, OR ANY COMPONENT THEREOF. COMPANY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, INCLUDING WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. ADDITIONALLY, COMPANY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND REGARDING PREVENTING, ELIMINATING, REDUCING OR INHIBITING ANY MOLD, FUNGUS, BACTERIA, VIRUS, MICROBIAL GROWTH, OR ANY OTHER CONTAMINANTS (INCLUDING COVID-19 OR ANY SIMILAR VIRUS) (COLLECTIVELY, "CONTAMINANTS"), WHETHER INVOLVING OR IN CONNECTION WITH EQUIPMENT, ANY COMPONENT THEREOF, SERVICES OR OTHERWISE. IN NO EVENT SHALL COMPANY HAVE ANY LIABILITY FOR THE PREVENTION, ELIMINATION, REDUCTION OR INHIBITION OF THE GROWTH OR SPREAD OF SUCH CONTAMINANTS INVOLVING OR IN CONNECTION WITH ANY EQUIPMENT, THIRD-PARTY PRODUCT, OR ANY COMPONENT THEREOF, SERVICES OR OTHERWISE AND CUSTOMER HEREBY SPECIFICALLY ACKNOWLEDGES AND AGREES THERETO

**13. Indemnity.** To the maximum extent permitted by law, Company and Customer shall indemnify and hold harmless each other from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to real or personal property, to the extent caused by the negligence or misconduct of the indemnifying party, and/or its respective employees or authorized agents in connection with their activities within the scope of this Agreement. Neither party shall indemnify the other against claims, damages, expenses, or liabilities to the extent attributable to the acts or omissions of the other party or third parties. If the parties are both at fault, the obligation to indemnify shall be proportional to their relative fault. The duty to indemnify and hold harmless will continue in full force and effect, notwithstanding the expiration or early termination of this Agreement, with respect to any claims based on facts or conditions that occurred prior to expiration or termination of this Agreement.

**14. Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION REFRIGERANT LOSS, PRODUCT LOSS, LOST REVENUE OR PROFITS, OR LIABILITY TO THIRD PARTIES), INCLUDING CONTAMINANTS LIABILITIES, OR PUNITIVE DAMAGES WHETHER BASED IN CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL THEORY OR FACTS. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE TOTAL AND AGGREGATE LIABILITY OF THE COMPANY TO THE CUSTOMER WITH RESPECT TO ANY AND ALL CLAIMS CONNECTED WITH, RELATED TO OR ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, WHETHER BASED IN CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL THEORY OR FACTS, SHALL NOT EXCEED THE COMPENSATION RECEIVED BY COMPANY UNDER THIS AGREEMENT. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY DAMAGES (WHETHER DIRECT OR INDIRECT) RESULTING FROM MOLD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR OTHER CONTAMINATES OR AIRBORNE BIOLOGICAL AGENTS. TO THE MAXIMUM EXTENT ALLOWED BY LAW, COMPANY SHALL NOT BE LIABLE FOR ANY OF THE FOLLOWING IN CONNECTION WITH PROVIDING THE ENERGY AND BUILDING PERFORMANCE SERVICES: INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION; CUSTOMER'S NETWORK SECURITY; COMPUTER VIRUS; COMMUNICATION FAILURE; THEFT OR DESTRUCTION OF DATA; GAPS IN DATA COLLECTED; AND UNAUTHORIZED ACCESS TO CUSTOMER'S DATA OR COMMUNICATIONS NETWORK.

**15. CONTAMINANTS LIABILITY**

The transmission of COVID-19 may occur in a variety of ways and circumstances, many of the aspects of which are currently not known. HVAC systems, products, services and other offerings have not been tested for their effectiveness in reducing the spread of COVID-19, including through the air in closed environments. **IN NO EVENT WILL COMPANY BE LIABLE UNDER THIS AGREEMENT OR OTHERWISE FOR ANY INDEMNIFICATION, ACTION OR CLAIM, WHETHER BASED ON WARRANTY, CONTRACT, TORT OR OTHERWISE, FOR ANY BODILY INJURY (INCLUDING DEATH), DAMAGED TO PROPERTY, OR ANY OTHER LIABILITIES, DAMAGES OR COSTS RELATED TO CONTAMINANTS (INCLUDING THE SPREAD, TRANSMISSION MITIGATION, ELIMINATION, OR CONTAMINATION THEREOF) (COLLECTIVELY, "CONTAMINANTS LIABILITIES") AND CUSTOMER HEREBY EXPRESSLY RELEASES COMPANY FROM ANY SUCH CONTAMINANT LIABILITIES.**

**16. Asbestos and Hazardous Materials.** The Services expressly exclude any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos or other hazardous materials (collectively, "Hazardous Materials"). Should Company become aware of or suspect the presence of Hazardous Materials, Company may immediately stop work in the affected area and shall notify Customer. Customer will be responsible for taking any and all action necessary to correct the condition in accordance with all applicable laws and regulations. Customer shall be exclusively responsible for any claims, liability, fees and penalties, and the payment thereof, arising out of or relating to any Hazardous Materials on or about the premises, not brought onto the premises by Company. Company shall be required to resume performance of the Services only when the affected area has been rendered harmless.

**17. Insurance.** Company agrees to maintain the following insurance during the term of the contract with limits not less than shown below and will, upon request from Customer, provide a Certificate of evidencing the following coverage:

|                              |                            |
|------------------------------|----------------------------|
| Commercial General Liability | \$2,000,000 per occurrence |
| Automobile Liability         | \$2,000,000 CSL            |
| Workers Compensation         | Statutory Limits           |

If Customer has requested to be named as an additional insured under Company's insurance policy, Company will do so but only subject to Company's manuscript additional insured endorsement under its primary Commercial General Liability policies. In no event does Company or its insurer waive its right of subrogation

**18. Force Majeure.** Company's duty to perform under this Agreement is contingent upon the non-occurrence of an Event of Force Majeure. If Company shall be unable to carry out any material obligation under this Agreement due to an Event of Force Majeure, this Agreement shall at Company's election (i) remain in effect but Company's obligations shall be suspended until the uncontrollable event terminates or (ii) be terminated upon ten (10) days' notice to Customer, in which event Customer shall pay Company for all parts of the Services furnished to the date of termination. An "Event of Force Majeure" shall mean any cause or event beyond the control of Company. Without limiting the foregoing, "Event of Force Majeure" includes: acts of God; acts of terrorism, war or the public enemy; flood; earthquake; lightning; tornado; storm; fire; civil disobedience; pandemic insurrections; riots; labor disputes; labor or material shortages; sabotage; restraint by court order or public authority (whether valid or invalid), and action or non-action by or inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals if not caused by Company and the requirements of any applicable government in any manner that diverts either the material or the finished product to the direct or indirect benefit of the government.

**19. General.** Except as provided below, to the maximum extent provided by law, this Agreement is made and shall be interpreted and enforced in accordance with the laws of the state or province in which the Services are performed without regard to choice of law principles which might otherwise call for the application of a different state's or province's law. Any dispute arising under or relating to this Agreement that is not disposed of by agreement shall be decided by litigation in a court of competent jurisdiction located in the state or province in which the Services are performed. Any action or suit arising out of or related to this Agreement must be commenced within one year after the cause of action has accrued. To the extent the premises are owned and/or operated by any agency of the United States Federal Government, determination of any substantive issue of law shall be according to the United States Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government. This Agreement contains all of the agreements, representations and understandings of the parties and supersedes all previous understandings, commitments or agreements, oral or written, related to the Services. No documents shall be incorporated herein by reference except to the extent Company is a signatory thereon. If any term or condition of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, all other terms and conditions of this Agreement will nevertheless remain in full force and effect as long as the economic or legal substance of the transaction contemplated hereby is not affected in a manner adverse to any party hereto. Customer may not assign, transfer, or convey this Agreement, or any part hereof, without the written consent of Company. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties hereto and their permitted successors and assigns. This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement. A fully executed facsimile copy hereof or the several counterparts shall suffice as an original. No modifications, additions or changes may be made to this Agreement except in a writing signed by Company. No failure or delay by the Company in enforcing any right or exercising any remedy under this Agreement shall be deemed to be a waiver by the Company of any right or remedy.

**20. Equal Employment Opportunity/Affirmative Action Clause.** Company is a United States federal contractor that complies fully with Executive Order 11246, as amended, and the applicable regulations contained in 41 C.F.R. Parts 60-1 through 60-60, 29 U.S.C. Section 793 and the applicable regulations contained in

41 C.F.R. Part 60-741; and 38 U.S.C. Section 4212 and the applicable regulations contained in 41 C.F.R. Part 60-250; and Executive Order 13496 and Section 29 CFR 471, appendix A to subpart A, regarding the notice of employee rights in the United States and with Canadian Charter of Rights and Freedoms Schedule B to the Canada Act 1982 (U.K.) 1982, c. 11 and applicable Provincial Human Rights Codes and employment law in Canada.

**21. U.S. Government Contracts.**

**The following provision applies only to direct sales by Company to the US Government.** The Parties acknowledge that all items or services ordered and delivered under this Agreement / Purchase Order are Commercial Items as defined under Part 12 of the Federal Acquisition Regulation (FAR). In particular, Company agrees to be bound only by those Federal contracting clauses that apply to "commercial" suppliers and that are contained in FAR 52.212-5(e)(1). Company complies with 52.219-8 or 52.219-9 in its service and installation contracting business. **The following provision applies only to indirect sales by Company to the US Government.** As a Commercial Item Subcontractor, Company accepts only the following mandatory flow down provisions: 52.219-8; 52.222-26; 52.222-35; 52.222-36; 52.222-39; 52.247-64. If the Services are in connection with a U.S. government contract, Customer agrees and hereby certifies that it has provided and will provide current, accurate, and complete information, representations and certifications to all government officials, including but not limited to the contracting officer and officials of the Small Business Administration, on all matters related to the prime contract, including but not limited to all aspects of its ownership, eligibility, and performance. Anything herein notwithstanding, Company will have no obligations to Customer unless and until Customer provides Company with a true, correct and complete executed copy of the prime contract. Upon request, Customer will provide copies to Company of all requested written communications with any government official related to the prime contract prior to or concurrent with the execution thereof, including but not limited to any communications related to contractor's Customer's ownership, eligibility or performance of the prime contract. Customer will obtain written authorization and approval from Company prior to providing any government official any information about Company's performance of the Services that are the subject of this offer or agreement, other than the Proposal or this Agreement.

**22. Limited Waiver of Sovereign Immunity.** If Customer is an Indian tribe (in the U.S.) or a First Nation or Band Council (in Canada), Customer, whether acting in its capacity as a government, governmental entity, a duly organized corporate entity or otherwise, for itself and for its agents, successors, and assigns: (1) hereby provides this limited waiver of its sovereign immunity as to any damages, claims, lawsuit, or cause of action (herein "Action") brought against Customer by Company and arising or alleged to arise out of the furnishing by Company of any product or service under this Agreement, whether such Action is based in contract, tort, strict liability, civil liability or any other legal theory; (2) agrees that jurisdiction and venue for any such Action shall be proper and valid (a) if Customer is in the U.S., in any state or United States court located in the state in which Company is performing this Agreement or (b) if Customer is in Canada, in the superior court of the province or territory in which the work was performed; (3) expressly consents to such Action, and waives any objection to jurisdiction or venue; (4) waives any requirement of exhaustion of tribal court or administrative remedies for any Action arising out of or related to this Agreement; and (5) expressly acknowledges and agrees that Company is not subject to the jurisdiction of Customer's tribal court or any similar tribal forum, that Customer will not bring any action against Company in tribal court, and that Customer will not avail itself of any ruling or direction of the tribal court permitting or directing it to suspend its payment or other obligations under this Agreement. The individual signing on behalf of Customer warrants and represents that such individual is duly authorized to provide this waiver and enter into this Agreement and that this Agreement constitutes the valid and legally binding obligation of Customer, enforceable in accordance with its terms.

1-10.48 (0821)  
Supersedes 1-10.48 (0720)



## TRANE'S SAFETY STANDARD

Trane is committed to providing a safe work environment for all employees and to preventing accidents in its business operations. To accomplish our objectives Trane has instituted safety programs, procedures and training that incorporate a progressive approach to injury prevention.

## PROVEN SAFETY SUCCESS

Trane's safety culture in North America is unparalleled in the building services industry and has demonstrated proven results via continuous reduction of injury rates.

## TRANE INJURY RATES V. INDUSTRY COMPETITORS

Since 2003 the US Bureau of Labor Statistics records reflect Trane's Total Recordable Rate (TRIR) and Days away from work (DAFW) rate have been significantly lower than HVAC repair and maintenance contractors and Specialty Trade contractors (construction). Trane's safety culture in America is unparalleled in the building services industry and has demonstrated proven results via continuous reduction of injury rates.

Trane's incident (OSHA) rates are consistently 50-70% below the industry average. This outstanding safety achievement is the end result of the rigorous team-oriented approach to our safety program that creates accountability and empowerment in all employees and management and fuels our institutional safety culture. This is the key to our continual improvement.

## SAFETY TOOLS, TRAINING & EXPERTISE

Trane's service and contracting technicians are not only among the most skilled in the industry they are also extensively trained in safe work procedures. Our technicians receive safety training, equipment, tools, procedures, and management support to identify jobsite hazards and take appropriate measures to prevent personal injuries. The resources available to Trane technicians include:

- Safety Training – 20 hrs per year, including classroom and web-based platforms.
- -Topics include, but are not limited to, Lockout/Tagout, Confined Space Entry, Hazard Communication, Respiratory Protection, Hearing Conservation, Excavations, Scaffolding, Rigging, Powered Industrial Truck operation, Ladders, Vehicle Safety, Fire Protection, PPE, Emergency Response, First Aid / CPR.
- Electrical Safety – NFPA 70E compliant – electrical PPE; flame-resistant clothing; training.
- Fall Protection – full complement of fall arrest and fall restraint equipment for each technician.
- Ergonomics – custom-designed for HVAC field technicians, includes training, material handling equipment and procedures.
- Smith System Safe Driving Program – Trane's safety Managers are certified instructors; safety Managers train technicians; 1-800 "How's My Driving?" stickers are located on the back of service vehicles.
- USDOT compliance – technicians scheduled within Material of Trade and Hours of Service limits and are fully qualified under Department of Transportation rules for driving commercial motor vehicles with GVWR >10,000 and 26,000 lbs.
- Refrigerant Management – Service technicians are trained to manage refrigerant in accordance with U.S. EPA rules using a sophisticated electronic tracking system developed by Trane.
- Empowerment - Technicians are empowered with full management support to address safety hazards as they see fit. If ever in doubt about how to do a job or task safely, the technician is required to ask a qualified person for assistance before proceeding with work.

## MANAGEMENT LEADERSHIP AND COMMITMENT

Accident prevention is a primary responsibility of management at Trane. Trane's safety culture is based on the following management principles:

- Leadership at the local level manages the local organization's safety performance.
- Management is financially accountable for safety performance.
- Local management is actively engaged in risk reduction activities and training and manages safety performance outcomes.
- Management clearly communicates to all Trane employees their safety expectations and strongly enforces compliance with those expectations.
- Employees are held accountable when they fail to meet safety expectations.

Local management and supervisory personnel at the local level are responsible for implementation of the following safety program elements:

- The Safety Management System developed by Trane – developed in accordance with OHSAS 18001.
- Audits and Inspections – Supervisors, Middle and Upper Managers must conduct field inspections. Corporate Safety conducts detailed compliance and management systems audits.
- Company safety compliance programs – ensure that they are fully implemented.
- Safety and environmental performance – tracked using a Balanced Scorecard with leading and lagging indicators and metrics.
- Subcontractor Qualification – implement this process to promote safety and safety plan compliance on multi-employer job sites.
- Six Sigma and Lean – use these productivity tools to enhance safety on job sites.
- Drug and Alcohol Policy – mandatory DOT required for-cause and post-accident testing after recordable injuries and property damage.
- Motor Vehicle Records Search – annual checking of driving records of employees driving company vehicles.

## JOBSITE SAFETY EQUALS CUSTOMER VALUE

At Trane safety is part of our culture for every employee. What this means to our customers is fewer job site accidents and the delays and liability concerns that come along with them. What this means to our staff is greater confidence in the practices and procedures they use on the job and the pride that comes from working for one of the premier service organizations in the world. Tighter safety standards and fewer accidents can also lead to better on-time project completion and higher quality results.

When you use Trane Building Services to install, maintain or upgrade your building systems you will take full advantage of our superior safety program, low incident rates and subcontractor safety management procedures. These help you manage project risk more effectively than you could using multiple contractors or even a single prime contractor with a less impressive safety record.



## TOWN COUNCIL AGENDA J.13. CONSENT ITEM(S)

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**DATE:** September 18, 2023  
**FROM:** Brennon Peltier, Park Development Manager  
**ITEM:** **Consider the approval of a Professional Services Agreement with MHS Planning & Design, LLC for the master planning of Trotter Park, in the amount of \$46,920.00; and authorization for the Mayor to execute same on behalf of the Town.**

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**BACKGROUND:** Trotter Park (formerly Town Lake Property) is located within the Town Lake Ph. 4 development, south of FM 1171 and to the east of Flower Mound Road. The master plan design for this property was initially added to the Parks Five Year CIP plan in FY 2019-2020. This master plan was put on hold due to the recommendation for a new tennis center at this location based on the April 2022 Tennis Center Feasibility Study. This proposed tennis center construction was ultimately rejected by the voters during the May 2023 election.

The attached agreement will allow Town Staff to begin working with the design consultant, MHS Planning & Design LLC, to develop a master plan document based on feedback from Town of Flower Mound residents. The scope of the agreement includes visits to the site and analysis of the existing conditions; public engagement meetings with residents, Parks Board, and Town Council; interactive online engagement; preparation of preliminary conceptual layouts; and final conceptual layout/design documentation based on feedback received during the public engagement sessions. A cost estimate for future construction will also be developed based on this final conceptual plan.

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

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** \$46,920.00

**Proposed Expenditure/(Revenue)**  
\$46,920.00

**Account Number(s):**  
317-110-70423-6070

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

**ATTACHMENTS:**

1. Professional Services Agreement
2. Form 1295

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

THE STATE OF TEXAS     §  
COUNTY OF DENTON     §

**PROFESSIONAL SERVICES AGREEMENT WITH  
MHS PLANNING & DESIGN, LLC.**

This contract is entered into on this   18   day of   September  , 2023, by and between the **TOWN OF FLOWER MOUND, TEXAS**, a municipal corporation located in Denton County, Texas, (hereinafter referred to as “TOWN”), acting by and through its Mayor, and **MHS PLANNING & DESIGN, LLC.**, (“hereinafter referred to as “CONSULTANT”) whose address is 212 W. 9<sup>th</sup> Street, Tyler, TX 75701.

**RECITALS**

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to surveying, design and providing construction documents for the Trotter Park Master Plan (formerly known as Town Lake Property); and

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

**TERMS OF AGREEMENT**

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

**I.  
Employment of Consultant**

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

## **II.**

### **Scope of Services**

CONSULTANT shall perform such services as are necessary to provide services for the Trotter Park Master Plan (formerly known as Town Lake Property) project specifically including, but not necessarily limited to, the tasks enumerated more fully in Attachment "A" hereto entitled "Scope of Work" (hereafter referred to as the "Project"). Attachment "A" is hereby incorporated herein by reference and made a part hereof as if written word for word. However, in case of conflict in the language of Attachment "A" and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.

## **III.**

### **Payment for Services**

Total payment for services described herein shall be a sum not to exceed Forty-six Thousand Nine-Hundred Twenty and No/100 Dollars (\$46,920.00). This total payment for services includes CONSULTANT's ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT. If CONSULTANT retains any subcontractors to perform any of the work, CONSULTANT acknowledges that payments to such subcontractors are due and payable in accordance with the provisions of Texas Government Code Section 2251.022, and that interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.

CONSULTANT will bill TOWN on a lump sum basis in accordance with Attachment "A"; provided however that this Contract shall control in the event of any conflict between the language in Attachment "A" and the language in this Contract. If additional services, trips or expenses are requested, CONSULTANT will not provide such additional services until authorized by TOWN in writing to proceed. The scope of services shall be strictly limited. TOWN shall not be required to pay any amount in excess of the amount identified in the preceding paragraph unless TOWN shall have approved in writing in advance (prior to the performance of additional work) the payment of additional amounts.

Each month CONSULTANT will submit to TOWN an invoice for supporting the percentage for which payment is sought by CONSULTANT during the previous month for which payment is sought. Each invoice shall also state the percentage of work completed on the Project, the total of the current invoice amount and a running total balance for the Project to date.

Assuming that TOWN agrees with the invoice, that TOWN has not determined any of the work to be unsatisfactory, or that TOWN otherwise does not dispute any of the amounts billed, TOWN shall make payments in the amount shown by CONSULTANT's approved monthly statements and other documentation submitted in compliance with the Texas Prompt Payment Act, Texas Government Code Chapter 2251.

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

#### **IV.**

#### **Revisions of the Scope of Services**

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

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

#### **V.**

#### **Term**

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

#### **VI.**

#### **Contract Termination Provision**

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

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

## **VII.**

### **Ownership of Documents**

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

## **VIII.**

### **Insurance**

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

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

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

The following policies and coverage shall be required:

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

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

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

1. The TOWN shall be named as an additional insured on the Commercial General Liability policy, by using endorsement CG2026 or broader;

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

Brennon Peltier  
Park Development Manager  
Town of Flower Mound  
2121 Cross Timbers Road  
Flower Mound, Texas 75028  
972-874-6278 Telephone

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

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

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

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

D. CONSULTANT agrees to the following:

1. CONSULTANT hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against TOWN, it being the intention that the insurance policies shall protect all parties to this Contract and be primary coverage for all losses covered by the policies;
2. Companies issuing the insurance policies and CONSULTANT shall have no recourse against TOWN for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of CONSULTANT;
3. Approval, disapproval or failure to act by TOWN regarding any insurance supplied by CONSULTANT (or any subcontractors) shall not relieve CONSULTANT of full responsibility or liability for damages and accidents as set forth in the Contract documents. Neither shall the insolvency or denial of liability by the insurance company exonerate CONSULTANT from liability; and
4. No special payments shall be made for any insurance that the CONSULTANT and subcontractors are required to carry; all are included in the contract price and the contract unit prices.

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

## **IX.**

### **Right to Inspect Records**

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

If TOWN agrees that CONSULTANT may retain any subcontractors, CONSULTANT further agrees to include in subcontract(s), if any, a provision that any subcontractor or engineer agrees that TOWN shall have access to and the right to examine any directly pertinent books, documents, papers and records of such engineer or subcontractor involving transactions to the subcontract, and further, that TOWN shall have access during normal working hours to all such engineer or sub-contractor facilities and shall be provided adequate and appropriate work space, in order to conduct audits in

compliance with the provisions of the paragraph. TOWN shall give any such engineer or sub-contractor reasonable advance notice of intended audits.

**X.**  
**Successors and Assigns**

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

**XI.**  
**CONSULTANT's Liability**

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

**XII.**  
**Indemnification**

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

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

### **XIII.**

#### **Independent Contractor**

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

### **XIV.**

#### **Default**

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

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

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

#### **XV. Provisions Surviving Termination**

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

#### **XVI. Changes**

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

#### **XVII. Conflicts of Interest**

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

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

#### **XVIII. Confidential Information**

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

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

### **XIX.** **Notice Information**

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

Brennon Peltier  
Park Development Manager  
Town of Flower Mound  
2121 Cross Timbers Road  
Flower Mound, Texas 75028  
972-874-6278 Telephone

Notices and communications to be mailed or delivered to CONSULTANT shall be sent to the address of CONSULTANT as follows, unless and until TOWN is otherwise notified:

Hunter N. Rush  
Senior Planner & Partner  
MHS PLANNING & DESIGN, LLC  
212 W. 9th Street  
Tyler, Texas 75701  
903-597-6606  
hnrush@mhsplanning.com

Any notices and communications required to be given in writing by one party to the other shall be considered as having been given to the addressee on the date the notice or communication is posted, faxed or personally delivered by the sending party.

**XX.**  
**Applicable Law**

The Contract is entered into subject to the Flower Mound Town Charter and ordinances of TOWN, as same may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and federal laws. CONSULTANT will make any and all reports required per federal, state or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with CONSULTANT's income.

**XXI.**  
**Non-Discrimination**

CONSULTANT shall not discriminate against any employee, applicant for employment, contractor, or sub-contractor because of the race, age, color, religion, sex, or national origin of such person. Engineer shall take affirmative action to insure that all such persons are treated equally during their employment without regard to their race, age, color, religion, sex, or national origin. If CONSULTANT fails to comply with the federal or state laws relating to Equal Employment Opportunity, it is agreed that TOWN, at its option, may do either or both of the following:

- (a) Cancel, terminate, or suspend the Contract in whole or in part; or
- (b) Declare CONSULTANT ineligible for future TOWN contracts until it is determined to be in compliance.

**XXII.**  
**Arbitration**

CONSULTANT agrees not to enter into any agreement to arbitrate arising out of, or relating to, this Contract which would subject TOWN to being a party to any arbitration without TOWN's prior written consent.

**XXIII.**  
**No Waiver of Governmental Immunity**

Nothing in this Contract shall be construed as a waiver of TOWN'S governmental immunity, or of any applicable limitation on damages, or any other legal protection or defense or privilege of TOWN, except to the extent expressly provided otherwise herein.

**XXIV.**  
**Severability**

If any of the terms, provisions, covenants, conditions or any other part of this Contract are for any reason held to be invalid, void or unenforceable, the remainder of

the terms, provisions, covenants, conditions or any other part of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**XXV.**  
**Remedies**

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Contract may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

**XXVI.**  
**Entire Agreement**

This Contract embodies the entire agreement of the parties hereto, superseding all oral or written previous and contemporaneous agreements between the parties relating to matters herein, and except as otherwise provided herein cannot be modified without written agreement of the parties.

**XXVII.**  
**Non-Waiver**

It is further agreed that one (1) or more instances of forbearance by TOWN in the exercise of its rights herein shall in no way constitute a waiver thereof.

**XXVIII.**  
**Headings**

The headings of this Contract are for the convenience of reference only and shall not affect any of the terms and conditions hereof in any manner.

**XXIX.**  
**Venue**

Situs of this Contract is agreed to be Denton County, Texas, for all purposes, including performance and execution, and the parties to this Contract agree and covenant that this Contract will be enforceable in Flower Mound, Texas; and that if legal action is necessary to enforce this Contract, exclusive venue will lie in Denton County, Texas.

**XXX.**  
**No Third Party Beneficiary**

For purposes of this Contract, including its intended operation and effect, the parties (TOWN and CONSULTANT) specifically agree and contract that: (1) the Contract only affects matters/disputes between the parties to this Contract, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship with TOWN or CONSULTANT or both; and (2) the terms of this Contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either TOWN or CONSULTANT.

*[The remainder of this page is left blank intentionally]*

**IN WITNESS WHEREOF**, the parties hereto have caused this document to be executed as of the date first above written.

**THE TOWN OF FLOWER MOUND, TEXAS**

By: \_\_\_\_\_

The Honorable Derek France  
Mayor, Town of Flower Mound

Date Signed: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Town Secretary

CONSULTANT:  
MHS PLANNING & DESIGN, LLC

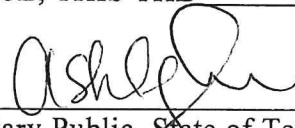
By:   
Name: Hunter N. Rush  
Title: Senior Planner & Partner

Date Signed: 08.30.2023

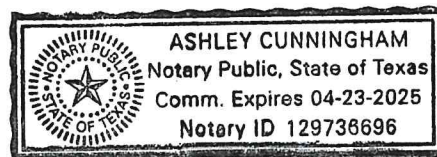
State of Texas           §  
                                     §  
County of Smith       §

This instrument was acknowledged before me on the 30<sup>th</sup> day of August,  
2023, by Hunter N. Rush in his capacity as Sr. Planner & Partner of MHS  
Planning & Design, LLC, a Limited Liability Corporation, known to me to be the  
person whose name is subscribed to the foregoing instrument, and acknowledged that he  
executed the same on behalf of and as the act of MHS Planning & Design, LLC.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 30<sup>th</sup>  
DAY OF 08, 20 23.

  
Notary Public, State of Texas

My Commission Expires:  
04-23-2025



August 18, 2023

Brennon Peltier, Park Development Manager  
Town of Flower Mound  
2121 Cross Timbers Road  
Flower Mound, Texas 75028

Dear Brennon,

It is my pleasure to submit this proposal for professional services regarding the Conceptual Master Planning of Trotter Park located in Flower Mound, TX as shown in Exhibit 'A'. Our scope of services for this project is as follows:

**1. Discovery Phase, Site Analysis & Public Engagement**

- a. Site visit to view the existing conditions at the site and coordination with the Client to obtain the most current and available online data regarding the site.
- b. Coordination and preparation of Topographic Survey.
  - i. Topography
  - ii. Utilities & Easements
  - iii. Trees
- c. Develop base map utilizing existing site conditions.
- d. Conduct Kick-Off Meeting with Town Staff
- e. Develop Citizen Survey.
- f. Develop & Manage ArcGIS StoryMap for interactive online engagement.
- g. Conduct Public Engagement.
  - i. Two (2) Town Hall Meetings open to the General Public
  - ii. Two (2) Focus Group Meetings with Invite Only Residents
  - iii. Two (2) Town Park Board Presentations (Update and Final Approval)
  - iv. Two (2) Town Council Meetings (Update and Final Approval)

**2. Preliminary Conceptual Layout and Design Development**

- a. Work in conjunction with the Client to prepare two (2) preliminary hand-drawn layouts for the proposed property.
- b. Develop design development options.
- c. Meet with Client to review the two layouts, the design development and discuss options for the site.
- d. General coordination with Town regarding the undeveloped 13.1 ac property known as Trotter Park. (Four Town Staff Coordination Meetings)

**3. Final Conceptual Layout**

- a. Revise preferred layout based on notes from meeting with Client.
- b. Meeting with Client to review updated layout and finalize layout with revisions from meeting.

- c. Meeting with the Development Review Committee to present final layout.
- d. Develop final conceptual 2D layout.
- e. Develop three (3) 3D renderings of site-specific locations (Exact Areas To Be Determined).
- f. Develop Cost Estimate based on final conceptual plan.

Once the conceptual layout has been finalized, MHS will provide a proposal for, but not limited to, detailed engineering, landscape architecture, grant writing and/or construction administration.

Preparation of the following items and any other items not listed have been excluded from this proposal but can be provided in an additional service agreement.

|                      |                         |                     |                         |
|----------------------|-------------------------|---------------------|-------------------------|
| Geotechnical Testing | Structural Engineering  | Wetland Delineation | 3-Way Contracts w/ City |
| Detention            | Off-Site Roadway Design | Lake Permitting     | TxDOT Permits           |
| Flood Studies        | Traffic Impact Analysis | Septic Design       | Bidding & Permitting    |
| Off-Site Utilities   |                         |                     |                         |

Based on this scope of services, our lump sum fee for the project is \$43,420. This fee excludes reimbursables such as reproductions, permits, mileage, etc. and will be invoiced based on the attached rate sheet. The Not To Exceed Reimbursable fees are \$3,500. This proposal is subject to the general terms and conditions described in Exhibit 'B'. If you find this proposal meets your needs, please have the appropriate party sign below, retain one copy for your file and return one to us. Once we receive the signed proposal, we will begin work. If you have any questions or need us to modify our proposal, please let me know.

Sincerely,



Hunter N. Rush  
Senior Planner & Partner



# 2023 Hourly Rates

## Engineering

|                              |                   |
|------------------------------|-------------------|
| Senior Professional Engineer | \$195.00 per hour |
| Professional Engineer        | \$140.00 per hour |
| Graduate Engineer            | \$95.00 per hour  |
| Civil Engineering Intern     | \$75.00 per hour  |

## Landscape Architecture

|                            |                   |
|----------------------------|-------------------|
| Senior Landscape Architect | \$195.00 per hour |
| Landscape Architect        | \$135.00 per hour |
| Landscape Designer         | \$85.00 per hour  |
| Landscape Intern           | \$70.00 per hour  |

## Planning

|                 |                   |
|-----------------|-------------------|
| Senior Planner  | \$160.00 per hour |
| Planner         | \$85.00 per hour  |
| Planning Intern | \$70.00 per hour  |

## Graphic Design

|                          |                   |
|--------------------------|-------------------|
| Senior Graphics Designer | \$125.00 per hour |
| Graphics Designer        | \$85.00 per hour  |

## Drafting

|                     |                   |
|---------------------|-------------------|
| Senior CAD Designer | \$125.00 per hour |
| CAD Designer        | \$105.00 per hour |
| CAD Drafter         | \$85.00 per hour  |

## Office Admin

|                                        |                  |
|----------------------------------------|------------------|
| Word Processing/Clerical               | \$70.00 per hour |
| Mileage                                | \$0.655 per mile |
| Reproduction, Aerial photography, etc. | Cost plus 15%    |

A service charge of 1.5% per month (18% annual rate) will be added to all balances 30 days past due and will continue each month until the past due amount is received.



## TOWN COUNCIL AGENDA J.14. CONSENT ITEM(S)

---

**DATE:** September 18, 2023

**FROM:** Wendell Mitchell, Assistant Chief of Police

**ITEM:** **Consider approval of purchasing two (2) 2023 Chevrolet Tahoes with Police Equipment Packages as per Town of Flower Mound Specifications and Vendor estimate from Lake Country Chevrolet for \$132,454.**

---

**BACKGROUND:** The Police Services Department is requesting the purchase of two (2) new 2023 Chevrolet Tahoes with Police Equipment Packages as per Town of Flower Mound Specifications and Vendor estimate #36958 for \$132,454 from Lake Country Chevrolet through TIPS USA Cooperative Contract #210907. This purchase replaces 2 Chevrolet Tahoes assigned to the Uniformed Services (Patrol) Section scheduled to rotate out of service. The Police Department requests to purchase these two vehicles due to availability in a limited police vehicle market and cost savings of the 2023 Tahoe compared to the 2024 Tahoe. Replacing these vehicles is part of the approved Fiscal Year 22-23 Vehicle Equipment Replacement Fund (VERF).

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

**ALTERNATIVES:** Nothing that provides the same benefits and availability

**FISCAL IMPACT:** \$132,454

**Proposed Expenditure/(Revenue)**  
\$132,454

**Account Number(s):**  
565-450-84500-6130 (VERF)

**LEGAL REVIEW:** N/A

**ATTACHMENTS:**

1. Bid Award Recommendation
2. TIPS Product Pricing Summary (Estimate)
3. Vehicle-Equipment Purchase Requisition
4. Defender Emergency Equipment and Install (Estimate)

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



## Bid Award Recommendation

Date: 8/30/2023 – VERF FY2023

Description: **Chevrolet Tahoe Pursuit Rated Vehicle W/ Emergency Equipment**

Qty.: 2

*Replaces: 43500-73 and 43500-85, Chevrolet Police Tahoe's*

Bidder: Lake Country Chevrolet, Seth Gamblin 512-436-1313  
[sgamblin.silsbeefleet@gmail.com](mailto:sgamblin.silsbeefleet@gmail.com)  
Via TIPS USA Cooperative Contract# 210907.

Item: 2 – Chevrolet Tahoe Pursuit Rated Vehicles with Police Emergency Lighting/Equipment Package as identified on Defender Quote 36958

Total Cost of Vehicles, Equipment & Installation:

**\$132,454.00**

It is Fleet Services recommendation to award the bid to **Lake Country Chevrolet** in the amount of **\$132,454.00** utilizing the **TIPS USA Cooperative Contract #210907**.

Fleet Services Manager

8/30/2023

Date

## PRODUCT PRICING SUMMARY

**TIPS USA 210907 AUTOMOBILES**

**VENDOR- 5426 LAKE COUNTRY CHEVROLET, 2152 N. WHEELER STREET JASPER, TX 75951**

**End User:** FLOWER MOUND PD

**Prepared by:** SETH GAMBLIN

**Contact:** DEFENDER SUPPLY BAILMENT POOL

**Phone:** 512.436.1313**Email:**

**Email:** [SGAMBLIN.SILSBEEFLEET@GMAIL.COM](mailto:SGAMBLIN.SILSBEEFLEET@GMAIL.COM)

**Product Description:** CHEVY TAHOE PPV

**Date:** August 25, 2023

**A. Bid Item:** \_\_\_\_\_

|                       |                     |
|-----------------------|---------------------|
| <b>A. Base Price:</b> | <b>\$ 36,524.00</b> |
|-----------------------|---------------------|

## B. Factory Options

| Code    | Description            | Bid Price                      | Code | Description                    | Bid Price   |
|---------|------------------------|--------------------------------|------|--------------------------------|-------------|
| CC10706 | 91C 2023 TAHOE PPV 2WD | \$ 2,995.00                    |      |                                |             |
| L84     | 5.3L V8 W/AUTOMATIC    | \$ -                           | 5T5  | VINYL BACK SEAT                | \$ -        |
| MQC     | 10 SPEED TRANS         | \$ -                           |      |                                |             |
| V76     | HOOKS RECOVERY         | \$ 50.00                       |      | REAR PARK ASSIST / REAR CAMERA |             |
|         |                        |                                |      | WHEELS 20"X9" STEEL            |             |
|         |                        |                                |      | ASSIST STEPS                   |             |
|         |                        |                                |      |                                |             |
|         |                        |                                |      |                                |             |
|         |                        | Total of B. Published Options: |      |                                | \$ 3,045.00 |

|                                       |                    |
|---------------------------------------|--------------------|
| <b>Total of B. Published Options:</b> | <b>\$ 3,045.00</b> |
|---------------------------------------|--------------------|

|                                       |                    |
|---------------------------------------|--------------------|
| <b>Published Option Discount (5%)</b> | <b>\$ (152.25)</b> |
|---------------------------------------|--------------------|

C.  $\$ = 66.7 \%$

[illegible]

|                                         |                     |
|-----------------------------------------|---------------------|
| <b>Total of C. Unpublished Options:</b> | <b>\$ 26,387.00</b> |
|-----------------------------------------|---------------------|

**D. Floor Plan Interest (for in-stock and/or equipped vehicles):**

\$ -

**E. Lot Insurance (for in-stock and/or equipped vehicles):**

|    |        |
|----|--------|
| \$ | 250.00 |
|----|--------|

#### F. Contract Price Adjustment:

\_\_\_\_\_

|           |                                    |    |              |
|-----------|------------------------------------|----|--------------|
| <b>G.</b> | <b>Additional Delivery Charge:</b> | 99 | <b>miles</b> |
|-----------|------------------------------------|----|--------------|

|    |        |
|----|--------|
| \$ | 173.25 |
|----|--------|

**H. Subtotal:**

|    |           |
|----|-----------|
| \$ | 66,227.00 |
|----|-----------|

**I. Quantity Ordered**                      2                      x H =

|    |            |
|----|------------|
| \$ | 132,454.00 |
|----|------------|

**J. Trade in:**

**\$ -**

**K.**

\_\_\_\_\_

**L. Total Purchase Price**

**\$ 132,454.00**

## VEHICLE-EQUIPMENT PURCHASE REQUISITION (For Purchase Process)

Date: 8/30/2023  
 Suggested Vendor: Lake Country Chevrolet  
 Contact (if known): Seth Gamblin  
 Address (if available): \_\_\_\_\_  
 Phone/Fax: 512-436-1313



Ship/Bill To: Town of Flower Mound  
 ATTN: FLEET SERVICES  
 Address: 1101 Duncan Lane  
Flower Mound, TX 75028  
 PO #: \_\_\_\_\_  
 Department Name: POLICE

| G/L Account #<br>(if Decision Package)                                                                   | \$ Estimated<br>Amount | Qty. | Unit Description (Specifications) | Quoted Unit<br>Price | Amount            |
|----------------------------------------------------------------------------------------------------------|------------------------|------|-----------------------------------|----------------------|-------------------|
| 565-450-84500-6130                                                                                       | \$ 90,000              | 2    | 2023 Chevrolet Tahoe PPV          | \$ 39,840            | \$ 79,680         |
|                                                                                                          |                        | 2    | Police Equipment and Install      | \$ 26,387            | \$ 52,774         |
|                                                                                                          |                        | 2    | Police Equipment (Shield)         | \$ 2,500             | \$ 5,000          |
|                                                                                                          |                        |      |                                   |                      | -                 |
|                                                                                                          |                        |      |                                   |                      | -                 |
| *All Pickups come equipped w/ Spray-In Liner, Headache Rack, Across-the-bed Locking Toolbox, and Lights* |                        |      |                                   | <b>TOTAL:</b>        | <b>\$ 137,454</b> |

Name/Phone Ext.: Darren Branch 6587  
 Approved By: \_\_\_\_\_  
 Unit #(s) to be replaced  
 or specify NEW Unit: 43500-73 and 43500-85  
 Spec Name: Defender# 34739  
 \_\_\_\_\_

**APPROVALS:**  
 Fleet Manager: Bill Sterner  
 \_\_\_\_\_  
 Bid/Solicitation #: \_\_\_\_\_  
 Co-Op/Contract #: 210907 Tips USA  
 \_\_\_\_\_

Note: Requisition 'Unit Description' **must** match unit approved through the budget process. Any exceptions **must** accompany a detailed justification and ATM/CFO signature approval.

**DEFENDER SUPPLY™**845 FM 407 W  
Argyle, TX 76226

|                    |                         |
|--------------------|-------------------------|
| <b>Date</b>        | 8/25/2023               |
| <b>Estimate #</b>  | 36958                   |
| <b>Estimate By</b> | Mike Hewitt             |
|                    | mike@defendersupply.com |
|                    | 903-771-1089            |



| <b>Bill To</b>                                                  |
|-----------------------------------------------------------------|
| Lake Country Chevrolet<br>2152 N Wheeler St<br>Jasper, TX 75951 |

| <b>Customer Contact</b> |                                 |
|-------------------------|---------------------------------|
| <b>Customer Phone</b>   | 512-436-1313                    |
| <b>Customer E-mail</b>  | sgamblin.silsbeefleet@gmail.com |



| <b>Item</b>              | <b>Description</b>                                                                                                                                                               | <b>Location</b> | <b>Qty</b> | <b>Price</b> | <b>Total</b> |
|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|------------|--------------|--------------|
|                          | Flower Mound Police Department                                                                                                                                                   |                 |            |              |              |
|                          | 2023 Chevrolet Tahoe PPV - Black Exterior                                                                                                                                        |                 |            |              |              |
| Tint-2Windows-Front      | Window Tint - For Two Front Windows Madico Onyx 55%                                                                                                                              |                 | 1          | 79.00        | 79.00T       |
| DSP-TAH-SPOTLIGHT-D      | Defender Supply TAHOE Driver Side Spot Light with LED Bulb. Includes Installation.                                                                                               |                 | 1          | 560.00       | 560.00       |
| TX-2 Year Inspection     | 2 Year Texas State Inspection Certificate                                                                                                                                        |                 | 1          | 7.00         | 7.00T        |
| DS- DISABLE D/W/L TAH... | Disable Rear Door Window Switches, Door Locks and Door Handles - Tahoe                                                                                                           |                 | 1          | 145.00       | 145.00T      |
| TP-CC-21TH-1008          | Troy 2021 Tahoe 18" Standard Console, 10" slope, 8" level<br><br>Faceplates:<br><br>Cencom<br>Motorola APX6500 Radio - 2 Piece                                                   |                 | 1          | 361.00       | 361.00T      |
| TP-AC-INBHG              | Troy Products Internal Console Mounted Beverage Holder w/Rubber Fingers                                                                                                          |                 | 1          | 39.00        | 39.00T       |
| TP-AC-TB-ARMMNT-58       | Troy Console mounted height adjustable arm rest.                                                                                                                                 |                 | 1          | 124.00       | 124.00T      |
| TP-AC-TICK-2             | Accessory Pocket (3' faceplate, 2' deep)                                                                                                                                         |                 | 1          | 31.00        | 31.00T       |
| TP-CM-SDMT-SLS-HAV       | Troy Computer Mount, Side Clevis                                                                                                                                                 |                 | 1          | 315.00       | 315.00T      |
| HV-DS-DELL-415           | Docking Station for Dell's Latitude 14 Rugged and Latitude 12 & 14 Rugged Extreme Notebooks (Basic Port Replication)                                                             |                 | 1          | 444.00       | 444.00T      |
| PG-PRPSP5704T21A         | Pro-Gard Center Sliding Poly Window for 2021+ Tahoe                                                                                                                              |                 | 1          | 662.00       | 662.00T      |
| PG-S5705T21OSB           | ProGard Cargo Barrier with Metal Mesh insert & Rear Grey ABS Plastic Prisoner Seat with Outboard Seat Belt System for Officer Protection for the 2021+ Chevrolet Tahoe 9C1 & SSV |                 | 1          | 1,184.00     | 1,184.00T    |
| PG-DP57T21               | Pair, Black ABS, Rear Door Panels (for use with WB57T21 & WBP57T21 only)                                                                                                         |                 | 1          | 101.00       | 101.00T      |
| PG-WB57T21               | Pair, Steel Window Bars (for use with DP57T21 ABS Rear Door Panels only)                                                                                                         |                 | 1          | 179.00       | 179.00T      |

Final sale amount may be subject to state and local sales tax. PLEASE NOTE: Once this estimate has been approved, either by signature on this form, written approval referencing the estimate number or the issuance of purchase order, any changes or cancellations of parts made by the customer are subject to a 25% restocking fee. Any additional customer-requested parts/services will be added to the total amount of the sale.

**DEFENDER SUPPLY™**845 FM 407 W  
Argyle, TX 76226

|                    |                         |
|--------------------|-------------------------|
| <b>Date</b>        | 8/25/2023               |
| <b>Estimate #</b>  | 36958                   |
| <b>Estimate By</b> | Mike Hewitt             |
|                    | mike@defendersupply.com |
|                    | 903-771-1089            |



| <b>Bill To</b>                                                  |
|-----------------------------------------------------------------|
| Lake Country Chevrolet<br>2152 N Wheeler St<br>Jasper, TX 75951 |

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| <b>Customer Phone</b>   | 512-436-1313                    |
| <b>Customer E-mail</b>  | sgamblin.silsbeefleet@gmail.com |



| <b>Item</b>   | <b>Description</b>                                                                                                                                                                   | <b>Location</b>  | <b>Qty</b> | <b>Price</b> | <b>Total</b> |
|---------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|------------|--------------|--------------|
| SE-GK10342UHK | Setina Dual T-Rail Weapon System with handcuff key                                                                                                                                   |                  | 1          | 349.00       | 349.00T      |
| SE-PG7529     | Setina T-Rail Universal Lock, EoTech Bracket                                                                                                                                         |                  | 1          | 14.00        | 14.00T       |
| WH-EB2SP3J    | Whelen 54' Legacy WeCanX Light Bar with Super Bright Clear Take Downs and Alley Lights with Red/White/Blue/White Front Light Configuration & Red/Amber/Blue/Amber Rear Configuration |                  | 1          | 1,357.00     | 1,357.00T    |
| WH-STPKT101   | Whelen Light Bar Strap Kit for the 2019+ Silverado 1500 & 2021+ Chevrolet Tahoe 9C1 & SSV                                                                                            |                  | 1          | 51.00        | 51.00T       |
| WH-C399       | Whelen Cencom Core Amp Control Module                                                                                                                                                |                  | 1          | 559.00       | 559.00T      |
| WH-CCTL7      | Whelen WeCanX Console Mount 21 Button/Slide Control Head                                                                                                                             |                  | 1          | 69.00        | 69.00T       |
| WH-C399K6     | 2021 Chevy Tahoe and Suburban Installation Kit for C399                                                                                                                              |                  | 1          | 86.00        | 86.00T       |
| WH-CEM8       | Whelen WeCanX Core 8 Expansion Module                                                                                                                                                |                  | 1          | 88.00        | 88.00T       |
| WH-CV2V       | Whelen Vehicle-to-Vehicle Sync Module                                                                                                                                                |                  | 1          | 11.00        | 11.00T       |
| WH-SA315U     | Whelen 100 Watt All Weather Heavy Duty Composite Siren Speaker                                                                                                                       |                  | 1          | 139.00       | 139.00T      |
| WH-SAK70      | Whelen Behind the Grill Siren (Driver & Passenger Side) Speaker Bracket - 2021+ Chevrolet Tahoe 9C1 & SSV                                                                            |                  | 1          | 22.00        | 22.00T       |
| WH-CEXAMP     | WeCanX External Amp for Core                                                                                                                                                         |                  | 1          | 179.00       | 179.00T      |
| WH-SA315U     | Whelen Speaker, Black Plastic                                                                                                                                                        |                  | 1          | 139.00       | 139.00T      |
| WH-SAK70      | Whelen Behind the Grill Siren (Driver & Passenger Side) Speaker Bracket - 2021+ Chevrolet Tahoe 9C1 & SSV                                                                            |                  | 1          | 22.00        | 22.00T       |
| WH-I3SMJC     | Whelen Surface Mount ION Trio Light Head in Red/Blue/White                                                                                                                           | Running Boards   | 4          | 89.00        | 356.00T      |
| WH-I3JC       | Whelen Trio Color Linear ION Red/Blue/White<br><br>4 Push Bumper Front Facing<br>2 Each Quarter Glass<br>2 Hitch Area/Rear License Plate                                             |                  | 6          | 89.00        | 534.00T      |
| WH-PSJ02FCR   | Whelen Strip-Lite Plus Surface Mount Super-LED Series DUO, Red/Blue                                                                                                                  | Rear Qtr Glass   | 2          | 119.00       | 238.00T      |
| SO-ENT2B3RBW  | Defender Intersector 180 Degree Output LED Tricolor - Red/Blue/White Under Mirror Mounted Light for Critical Intersection & Side Warning Purposes                                    | Sideview Mirrors | 2          | 181.00       | 362.00T      |

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**DEFENDER SUPPLY™**845 FM 407 W  
Argyle, TX 76226

|                    |                         |
|--------------------|-------------------------|
| <b>Date</b>        | 8/25/2023               |
| <b>Estimate #</b>  | 36958                   |
| <b>Estimate By</b> | Mike Hewitt             |
|                    | mike@defendersupply.com |
|                    | 903-771-1089            |



| <b>Bill To</b>                                                  |
|-----------------------------------------------------------------|
| Lake Country Chevrolet<br>2152 N Wheeler St<br>Jasper, TX 75951 |

| <b>Customer Contact</b> |                                 |
|-------------------------|---------------------------------|
| <b>Customer Phone</b>   | 512-436-1313                    |
| <b>Customer E-mail</b>  | sgamblin.silsbeefleet@gmail.com |

| <b>Item</b>        | <b>Description</b>                                                                                                                                                                                                                 | <b>Location</b> | <b>Qty</b> | <b>Price</b> | <b>Total</b> |
|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|------------|--------------|--------------|
| WH-RPWD54          | Whelen Rear Pillar, Duo WeCan                                                                                                                                                                                                      |                 | 1          | 829.00       | 829.00T      |
| WH-CHOWLER         | Whelen WeCanX Low Frequency Howler Siren System Howler for Core programmed to run 60 seconds                                                                                                                                       |                 | 1          | 451.00       | 451.00T      |
| WH-HWLRB32         | Howler Mounting & Bracketry Assembly System for 2021+ Chevrolet Tahoe 9C1 & SSV                                                                                                                                                    |                 | 1          | 0.00         | 0.00T        |
| WH-3SRCCDCR        | Whelen LED Flush Mount Compartment Light in Red & White<br><br>2-Prisoner<br>2-Hatch<br>1-Cargo                                                                                                                                    |                 | 5          | 37.00        | 185.00T      |
| SO-ECVDMTLA00      | Universal Mount 6" Round w/ Red LED Night Light, 10-30v - White LEDs/White Lens                                                                                                                                                    | Front Cabin     | 1          | 49.00        | 49.00T       |
| GR-5168T-4L61-D    | Go Rhino LR Series Steel Push Bumper for 2021+ Chevrolet Tahoe 9C1 & SSV. Bumper has the ability to mount (4) Forward Firing Whelen IONs in the Top Tube Channel, and includes (2) Horizontal ION Brackets for Side Mounted Lights |                 | 1          | 336.00       | 336.00T      |
| SL-20702           | Streamlight SL-20L Nimh Flashlight                                                                                                                                                                                                 |                 | 1          | 112.00       | 112.00T      |
| HV-DS-DA-316       | Power Cord for DS-DELL-410 Series and DS-DELL-600 Series Docking Stations with Internal Power Supplies only.                                                                                                                       |                 | 1          | 73.00        | 73.00T       |
| AC-DSR 2X          | Stalker DSR 2X - 'Ka' Band - Front & Rear Antenna Moving Radar Unit with Remote.                                                                                                                                                   |                 | 1          | 3,471.00     | 3,471.00T    |
| AC-24MONTHEXTENDED | Applied Concepts, Stalker, 24 Month Extended Warranty                                                                                                                                                                              |                 | 1          | 490.00       | 490.00T      |
| AC-200-1475-00     | Stalker Radar display and front antenna bracket for 2021+ Tahoes (Ka and K band)                                                                                                                                                   |                 | 1          | 161.00       | 161.00T      |
| FS-794-AH          | Federal Signal External Use LED Opticom Emitter Designed for Public Service Use (Square One)                                                                                                                                       |                 | 1          | 1,153.00     | 1,153.00T    |
| SS-OPTI-LB-795/794 | Southern Star bracketry for mounting 795 Opticoms (square) to Whelen light bar                                                                                                                                                     |                 | 1          | 140.00       | 140.00T      |
| RD-GP-IN2148       | Panorama GPS-D-2148, GPSD+/C29/C32/C74/CABLES KIT                                                                                                                                                                                  |                 | 1          | 312.00       | 312.00T      |
| RD-AFM-835         | AFM 835 700-800 whip                                                                                                                                                                                                               |                 | 1          | 14.00        | 14.00T       |
| RD-C23F-5M         | Radio Cable FRadio Cable FME(ftd) MPL(ftd) 5m CS23 cable                                                                                                                                                                           |                 | 1          | 21.00        | 21.00T       |
| JO-425-3816        | Jotto Desk Magnetic Console Mic Clip                                                                                                                                                                                               |                 | 2          | 28.00        | 56.00T       |
| HV-C-MCB           | Havis - Console Mount Mic Clip Bracket                                                                                                                                                                                             |                 | 2          | 12.00        | 24.00T       |

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| Customer Contact |                                 |
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| Customer Phone   | 512-436-1313                    |
| Customer E-mail  | sgamblin.silsbeefleet@gmail.com |

| Item                      | Description                                                                                                                                                                                                                                   | Location | Qty | Price     | Total     |
|---------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|-----|-----------|-----------|
| RD-170635-000             | 12-volt vehicular power cable for Cradlepoint                                                                                                                                                                                                 |          | 1   | 51.00     | 51.00T    |
|                           | CABLES for RADIO                                                                                                                                                                                                                              |          |     |           |           |
| TC-HAF4013A               | HAF4013A Motorola Antenna (762-870 mHz)                                                                                                                                                                                                       |          | 1   | 69.00     | 69.00T    |
| TC-HKN4191B               | Main radio power cable                                                                                                                                                                                                                        |          | 1   | 29.00     | 29.00T    |
| TC-HKN6188B               | Power cable plus speaker outs for Motorola XTL 5000                                                                                                                                                                                           |          | 1   | 56.00     | 56.00T    |
| TC-HSN4032B               | Motorola 13-Watt Police Radio Speaker with Mounting Bracket                                                                                                                                                                                   |          | 1   | 77.00     | 77.00T    |
| TC-HKN6169B               | Motorola Two-Piece Radio Remote Cable                                                                                                                                                                                                         |          | 1   | 76.00     | 76.00T    |
| TE-NMO58UPL               | 3/4", Thru-hole Mounts, 17' solid core coax cable                                                                                                                                                                                             |          | 1   | 24.00     | 24.00T    |
| TC-HSN4040A               | Motorola 13W weatherproof / waterproof external speaker                                                                                                                                                                                       |          | 1   | 103.00    | 103.00T   |
| CT-EC16365                | Defender Supply Electronic Equipment mounting system with Protection Cover - Mounts to cargo partition in the Rear Cargo Area to Install and Protect Electronic Equipment and Power Distribution for Cleanliness and Easy Maintenance Access. |          | 1   | 168.00    | 168.00T   |
| Graphics-Design & Install | Professional Design & Installation of Graphics for Customer's Department by Defender Supply - Grafix Shoppe                                                                                                                                   |          | 1   | 555.00    | 555.00    |
| Graphics-Install          | Professional Installation of Graphics by Defender Supply - Doug                                                                                                                                                                               |          | 1   | 152.00    | 152.00    |
| Misc. Shop Supplies       | RED Rocker Switches for Cargo Domes                                                                                                                                                                                                           |          | 2   | 5.00      | 10.00T    |
| WIRE-CUSTOM               | Customer Wiring Harness per FMPD Specs                                                                                                                                                                                                        |          | 1   | 577.00    | 577.00T   |
| Misc                      | CP-GB203212-TL Troy 20" W x 32"L x 12" H w/1 draw-latch handle                                                                                                                                                                                |          | 1   | 1,341.00  | 1,341.00T |
| Misc                      | AC-21TH-CPMNT 2021+ Tahoe cargo mount, 5-piece system                                                                                                                                                                                         |          | 1   | 279.00    | 279.00T   |
| CC-P1063406-031           | Brazos P1063406-031 / Zebra, ZQ520, Vehicle Charger, cig adapter                                                                                                                                                                              |          | 1   | 49.00     | 49.00T    |
| Installation              | Installation of Customer Supplied Items:<br><br>Cradle Point<br>APX6500 Radio<br>Axon Fleet 2 Video System                                                                                                                                    |          | 11  | 117.27273 | 1,290.00  |
| Installation              | Installation of Above Emergency Equipment                                                                                                                                                                                                     |          | 42  | 110.00    | 4,620.00  |
| Shipping                  | Shipping of Above Emergency Parts for Upfit                                                                                                                                                                                                   |          | 1   | 91.00     | 91.00T    |
| Misc. Shop Supplies       | Misc. Shop Supplies                                                                                                                                                                                                                           |          | 1   | 87.00     | 87.00T    |
|                           | Sales Tax                                                                                                                                                                                                                                     |          |     | 0.00%     | 0.00      |

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|                                                |                    |
|------------------------------------------------|--------------------|
| <b>Vehicle &amp; Emergency Equipment Total</b> | <b>\$26,387.00</b> |
|------------------------------------------------|--------------------|

Signature \_\_\_\_\_



## TOWN COUNCIL AGENDA J.15. CONSENT ITEM(S)

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**DATE:** September 18, 2023  
**FROM:** Ray Watson, Director of Economic Development  
**ITEM:** **Consider approval of a Professional Services Agreement with Tripp Umbach, INC for a feasibility study on expanding academic health sciences and clinical programs in Flower Mound, in a not to exceed amount of \$70,000.**

---

**BACKGROUND:** This item is to approve a professional service agreement with Tripp-Umbach Consulting for the creation of a feasibility study of expanding academic health sciences and clinical programs in Flower Mound. This agreement will give the Town a feasibility study that will look at (5) key areas: 1). Workforce Needs, 2). Inventory of Existing Programs, 3). Student Demand, 4). Student Recruitment and 5). Feasibility Analysis of the overall project. As development begins in west Flower Mound and along the I-35W corridor, there is increasing interest in academic health and clinical programs in response to that growth. This study will serve to attract those projects to the Town.

This feasibility study will be utilized to not only attract an academic health science center, but also to attract a clinical partner for the academic facility. The location for both of these is projected to be on the western side of Flower Mound at the intersection of FM 1171 and US 3777, or along the Town's I-35 frontage.

Tripp Umbach will conduct their work with input from both the Town as well as from the university and will be compensated through the ED funds at a fee of \$60,000 with an additional not to exceed \$10,000 in pre-approved expenses. This professional service agreement is a one-time expense. Approving this item appropriates funds from the current FY.

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

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** \$70,000.00

**Proposed Expenditure/(Revenue)**  
\$70,000.00

**Account Number(s):**  
100-600-57000-5320

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

**ATTACHMENTS:**

1. Final Revised UPDATED Proposal for Feasibility Study for Flower Mound TX September 14 2023

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



## **Final Revised Updated Proposal for a Feasibility Study of Expanding Academic Health Sciences and Clinical Programs in Flower Mound, Texas**

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**Prepared for the Town of Flower Mound, Texas**

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# The Tripp Umbach Advantage

Uniquely capable to envision all that is possible, our industry leadership is built on 30 years of successful partnerships turning ideas into actionable outcomes.

SINCE  
**1990**  
TRIPP UMBACH  
HAS WORKED WITH  
**1000+**  
CLIENTS

IN ALL **50 STATES**  
& **15 COUNTRIES**  
WITH PROJECTS GENERATING MORE THAN  
**\$30 BILLION**  
IN ECONOMIC IMPACT THROUGHOUT THE WORLD.

**150+**  
CLIENTS SERVICED IN  
STRATEGIC PLANNING

**1000+**  
ECONOMIC IMPACT  
STUDIES CONDUCTED

**400+**  
COMMUNITY HEALTH  
ASSESSMENTS

TRIPP UMBACH  
HAS WORKED WITH

**40** New or Expanded  
Medical Schools

**500+** Colleges &  
Universities

**800+** Hospitals

CONNECT WITH US

TRIPP UMBACH  
HAS PROFESSIONAL STAFF  
& STRATEGIC PARTNERS  
ACROSS THE UNITED STATES.

**Tripp  
Umbach**

Turning Ideas Into Action

[TrippUmbach.com](http://TrippUmbach.com)

# Tripp Umbach Qualifications

Tripp Umbach is the established national leader in conducting research, financial feasibility, and economic impact analysis for colleges and universities nationwide and internationally. Since 1990, Tripp Umbach has consulted with more than 500 colleges and universities and 800 hospitals and health systems. Tripp Umbach has completed individual studies for over 100 academic medical centers and hospitals. Over the past 30 years, Tripp Umbach has provided feasibility studies nationally for approximately 50 new or expanded medical schools –Allopathic and Osteopathic, nursing, dentistry, pharmacy, and other health science programs.

## Introduction

Tripp Umbach looks forward to working closely with the Town of Flower Mound, Texas, to conduct a feasibility study on expanding health science programs in Flower Mound, Texas. Our proposal is based on the needs expressed to the Town of Flower Mound and outlined in greater detail below.

## Project Objectives

Tripp Umbach will work with The Town of Flower Mound, Texas, over four months to produce a feasibility report document that will be sufficient in research, data analysis, and insight to allow future academic partners to make an informed decision on the implementation of one or more health science programs in Flower Mound, Texas. The Town will use the findings to attract potential healthcare or academic partners. The following is a listing of specific project objectives:

### Workforce Needs

Demonstrating the need for additional graduates in various fields of study is vital. Tripp Umbach will provide short- and long-term evidence of the need for graduates in the Texas and U.S. job markets. Tripp Umbach will cite the Bureau of Labor Statistics, Texas Workforce Commission, professional association data, and other documented data sources to create a supply/demand analysis for various programs identified in the feasibility study. Tripp Umbach's analysis will show how the number of new graduates produced in Texas and nationally compares to the number of job openings that require a degree in the discipline now and in the future.

## Inventory of Existing Programs

Tripp Umbach will provide an inventory of existing programs in Texas and high-ranking programs nationally in areas of study selected by the client. Tripp Umbach will develop a narrative that explains program duplication, capacity, and quality. Tripp Umbach will attempt to identify all existing degree programs in the state in program areas selected by the client. Tripp Umbach will also list peer institutions having similar missions, research/scholarship programs, and research expenditures. Peer institutions include, but are not limited to, out-of-state peer groups identified in the Coordinating Board's Accountability System. Tripp Umbach will identify the existing programs and their locations in Texas. Provide estimated enrollments and the number of graduates of these programs for the last five years and explain how the proposed program would not unnecessarily duplicate existing or similar programs in Texas. Provide evidence that existing Texas programs are at or near capacity and describe how the existing programs are not meeting current workforce needs. Provide the job placement of existing Texas programs. Include an assessment of the capacity to accept additional students in existing Texas programs using the faculty-to-student ratio in existing programs in the discipline and the number of students admitted to a program compared to the number of qualified applicants.

## Student Demand

Tripp Umbach will provide current data and long-term projections of student demand for the proposed programs. Data commonly used to demonstrate this include increased enrollment in related and feeder programs, high enrollment in similar programs at other institutions, qualified applicants rejected at similar programs in the state, and student surveys. Tripp Umbach will document where possible that qualified applicants are leaving Texas for similar programs in other states.

## Student Recruitment

Tripp Umbach will indicate if the proposed program and its discipline are projected to have a unique attraction for students of a particular population and offer specific recommendations for recruiting students from underrepresented groups.

## Feasibility Analysis

Tripp Umbach will recommend the estimated number of students, faculty, staff, and start-up costs for each selected program. Tripp Umbach will also develop an economic impact assessment that will estimate potential economic impacts attributed to the development of the selected programs.

### Step 1: Project Kick-Off and Ongoing Facilitation (October 2023)

Tripp Umbach will develop and present a preliminary feasibility Study template, work plan, and projected timeline to the Flower Mound and Tripp Umbach study team.

Tripp Umbach will facilitate a kick-off meeting to discuss all proposed project elements with Flower Mound's and Tripp Umbach's representatives. The project kick-off call will allow the Tripp Umbach and the client team to:

- Finalize project goals and expectations.
- Finalize timetables and resources to be employed.
- Finalize the structure of the final report and presentation — including how all research products can be structured to guarantee maximum usefulness to the client.

This meeting will ensure that all involved, from Tripp Umbach and the client team, agree to the project process and anticipated outcomes and deliverables. The individuals at this meeting (from Tripp Umbach and the client team) will form the study committee.

This working group will be responsible for the ongoing review of the project progress, data review, and report review. While Tripp Umbach has attempted to be specific within this proposal related to the steps necessary to complete the project, we believe in working interactively with the client and being open to suggestions or additions to the analysis.

Monthly conference calls throughout the project with client contacts will ensure that all involved, from Tripp Umbach and the client team, are in touch with the project's progress and final deliverables.

### Step 2. Market Analysis for Medical and Health Science Programs (November 2023)

The consulting team will collect, update, and analyze primary and secondary data appropriate to evaluate the need and feasibility of developing health science academic programs in Flower Mound.

**Key Stakeholder Interviews:** Up to 20 targeted interviews (with a minimum of 10 completed interviews) will be conducted with key community stakeholders identified and approved by the project committee, including regional and statewide higher education providers and health systems. Interviews will allow Tripp Umbach to identify opportunities and challenges associated with developing selected programs, including funding opportunities, options for clinical education, and partnerships.

**Environmental Scan:** To meet the project objectives outlined above, Tripp Umbach will conduct a detailed analysis of the need for programs identified at the project planning meeting, including demographic, population health, and workforce data in the region and throughout the state based on available data. Finally, the consulting team will investigate other program development plans within the state to provide the committee with a deep understanding of the current education infrastructure and the feasibility of developing new programs in the metroplex.

### Step 3: Planning Session with Committee (January 2024)

Tripp Umbach will facilitate a work session with the Planning Committee to discuss university capabilities and readiness and share all findings. The environmental scan and community need assessment findings present a recommended program model. Input provided by the working group will be incorporated into a final feasibility study report. The planning session will also offer the opportunity to share preliminary recommendations on which selected programs are most feasible, including a rank order of each program in terms of feasibility.

### Step 4: Final report and Presentation (February 2024)

The final report and professionally designed executive summary document will include rationale and support, the recommended programs, and associated economic benefits. Once the final feasibility study and the professionally designed executive summary document are completed and approved by the committee, Tripp Umbach will present the findings, recommendations, and next steps on-site.

## **Additional Consulting Services (additional fees)**

If requested after the completion of phase one, Tripp Umbach will also provide the following services:

- Provide implementation assistance as required and background research for application to accreditation and state approval/accreditation bodies.
- Assistance with strategic planning at the system level to best integrate programs at Flower Mound.

# Project Team

## Paul Umbach

### Founder and President

Paul Umbach founded Tripp Umbach in 1990 and serves as President, overseeing a skilled team of respected and trusted consultants. Paul has a long history of demonstrated leadership and influence in consulting, completing thousands of projects for prestigious organizations nationwide and globally. His distinguished career includes community assessment, market analysis, strategy, and economic design.



Paul pioneered the “healthy community” movement, completing community assessments and health improvement plans in more than 500 communities nationwide. As the leading figure nationally for academic medicine consulting, Paul advised the planning and development of more than 30 of the nation’s new medical schools and has also provided consulting for more than half of all U.S. medical schools and graduate medical education expansion programs throughout the United States. Paul has led hundreds of economic impact assessments for highly regarded clients such as the Association of American Medical Colleges, the Mayo Clinic, the Council of Boston Teaching Hospitals, the Ohio State University, and the National Park Service.

His depth of knowledge and experience makes Paul a sought-after speaker and expert in healthcare, higher education, and economic development. A published author and active contributor of thought leadership, Paul has presented and facilitated dialog at hundreds of state and national conferences on community health, healthcare reform, economic impact, and regional planning. An architect for positive change, Paul has built a company grounded in foundational values and an enduring commitment to community health and collective success. Powered by purpose and inspired by possibility, Paul has centered his life’s work on transforming ideas into action to create impact. This commitment to community health and betterment drives his passion for empowering clients and finding tangible solutions for the greater good. Through his postgraduate research at Harvard University Graduate School of Design, Paul developed the field of Economic Design Thinking, using societal impact analysis as a planning tool to bring value to communities worldwide.

Paul graduated from Harvard University Graduate School of Design, where he completed the Executive Advanced Management Development Program and held Alumni Status. Paul is completing the Doctor of Education in Leadership in Learning Organizations at Vanderbilt University. He also has a Master of Arts from the University of Akron in Geography and Regional

Planning and a Bachelor of Arts from Concordia University in Geography and English Literature while completing the pre-seminary program. Paul holds numerous certificates and academic honors, most recently in Leadership Design Thinking from Harvard's Graduate School of Design. He received the Fisher Award of Distinction from Penn State University, where he served for eight years on Penn State's Outreach Board.

## Julie Chmiel

### Vice President and Managing Senior Principal

As Tripp Umbach's Vice President and Managing Senior Principal, Julie is an established leader with over 15 years of experience providing impact analysis, strategy, and community benefit to hundreds of the most respected organizations and institutions in the United States. She has effectively managed more than 150 customized research and consulting projects in the healthcare, education, government, and corporate sectors to improve communities' economic, social, and physical well-being nationwide.



Julie is driven to understand each client's unique needs and deliver meaningful outcomes for project vision fulfillment. By anticipating potential risks and challenges, she goes beyond standard recommendations, providing added benefits to clients and strengthening project value. Her innate ability to build, advance, and sustain relationships over time positions her as a true asset to client partners and company growth.

Julie's perceptive knowledge of complex challenges and attentive care for client success make her a sought-after lead for high-profile projects. Her clients include leading academic medical centers and institutions, healthcare organizations, and corporations, including Wake Forest School of Medicine, Penn Medicine, Duquesne University, Atrium Health, the Nevada System of Higher Education, and Regions Financial Corporation.

Julie's versatility and vast experience across consulting disciplines make her an invaluable part of the Tripp Umbach team.

## Fees and Payment Terms

Tripp Umbach's Fee to complete the services as specified above equals \$60,000. Tripp Umbach will invoice the client \$30,000 of the total project fee upon authorization and \$30,000 upon completion of deliverables. Tripp Umbach's fees do not include travel expenses and will be billed at actual cost to the client throughout the engagement, pending client approval. All expenses will not exceed the actual cost of \$10,000 during this assignment. Per FAR 31.205-46, Tripp Umbach shall be authorized travel expenses consistent with the substantive provisions of the Federal Travel Regulations (FTR). It will be billed at actual cost to the client throughout the engagement. All additional expenses will not exceed \$10,000 during this assignment and will be preapproved by the client.

It is the understanding of both parties:

- If payment is not received within thirty (30) days of contract execution, Tripp Umbach has the right to suspend services until payment is received.
- Unless otherwise specified in writing, invoices not paid within 30 days of the invoice date will incur interest at the rate of 5% per month, continuously compounding, due from the Client.
- Meeting cancellations and adjustments to scheduled visits made by the client less than two weeks before the planned visit may result in Tripp Umbach seeking financial compensation for flight change fees, hotel cancellation fees, and any other expenses related to booked travel.
- Tripp Umbach's fees are based on completing the analysis of the data requested in the agreement as specified above. Additional fees will be charged if the client requests further investigation beyond the scope of the initial assignment.
- The client and Tripp Umbach may agree to additional services throughout the proposed assignment or may decide to complete different phases of work after completing this assignment. Other services beyond those outlined in this agreement will be provided by Tripp Umbach for additional fees and travel expenses. These could come in another agreement or change order depending on client preference.

## Terms of Engagement

This document, whereas Tripp Umbach (The Consultant) and the Town of Flower Mound, Texas (The Client), will serve as an Agreement between The Consultant and The Client. The Consultant will undertake this project subject to the following terms and conditions:

**Independent Contractor Relationship.** Each party acknowledges acting as an independent contractor to the other party under this Agreement. This Agreement shall not be deemed or interpreted to have a third party, partner, agent, joint venture, employee, or legal representative of another party to this Agreement under any circumstances. As independent contractors, each party shall maintain all insurance coverages, including workers' compensation and comprehensive general liability coverages, as may be required or appropriate to insure against liability or comply with applicable laws. Each party shall also be responsible for paying all the necessary taxes, wages, benefits, and fees concerning the performance of services under this Agreement.

**Performance of Services.** The Consultant represents that the execution and implementation of services under this Agreement: (a) will not violate or infringe upon the rights of any third party; (b) will not conflict with or violate any commitment, agreement, or understanding that Tripp Umbach has or will have with any other person or entity; and (c) will comply with all laws, regulations, and other requirements applicable to this Agreement.

**Disclosure of Information.** The Consultant acknowledges that it shall have access to confidential or proprietary information ("Confidential Information") in connection with the performance of Consulting Services under this Agreement. Confidential Information includes, but is not limited to (a) information or materials related to The Client's operations, objectives, and plans which are marked, otherwise identified, or should reasonably be expected to be maintained as Confidential Information; (b) information that is legally entitled to protection as a trade secret, privileged, or proprietary information; (c) information that The Client is required to keep confidential under applicable laws, regulations, or requirements; and (d) information disclosed to The Client by third parties on a confidential basis, provided The Consultant is advised of that fact. The Consultant agrees to use such Confidential Information only as is reasonably necessary to perform services under this Agreement and not for its benefit or the benefit of third parties. The Consultant shall not disclose such Information to third parties without The Client's written consent. The Consultant shall promptly return or destroy all Confidential Information and any copies, excerpts, or documents containing Confidential Information to The Client upon request or the termination of this Agreement. This section shall survive the termination of this Agreement.

The term "Confidential Information" does not include information that is generally available to the public other than as a result of a breach of this Agreement; or available from a third party on a non-confidential basis unless that party is known to be subject to a confidentiality agreement preventing the disclosure of such information; or disclosed to third parties with The Client's prior written consent. The Consultant shall not request or require that The Client disclose any Protected Health Information (as defined in 45 CFR 164.501) in connection with The

Consultant's performance under this Agreement. Suppose The Consultant inadvertently receives any such Protected Health Information. In that case, The Consultant shall report that disclosure and shall not further use nor disclose such Protected Health Information unless or until The Consultant enters into a business associate agreement with The Client.

Indemnification. To the extent permitted by Texas law, either party shall indemnify and hold the other party harmless from and against all claims and additional costs (including reasonable attorneys' fees) incurred by that other party as a proximate result of the indemnifying party's act or omission.

Confidentiality. The Consultant shall treat all information relating to the activities of The Client, its subsidiaries, or affiliates as confidential and shall not disclose such information to any other party unless and until asked to do so, in writing, by The Client. This covenant shall survive the termination of this agreement.

- The Consultant shall maintain the highest standards of integrity in the performance of this contract and shall take no action in violation of state or federal laws or regulations.
- The Consultant shall not disclose any confidential information gained by this contract to others.
- In connection with this or any other contract or agreement, the Consultant shall not directly or indirectly offer, confer, or agree to offer or confer any pecuniary benefit on anyone as consideration for decision, opinion, recommendation, vote, or another exercise of discretion.
- In connection with this or any other contract or agreement, the Consultant shall not directly or offer, give, or agree or promise to offer or give to anyone any gratuity of the benefit of or at the direction or request of any officer or employee of the clients.
- The Consultant shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.

## Liability and insurance

The Consultant shall perform its services under this contract as an independent contractor and shall provide public liability, property damage, and workers' compensation insurance, insuring as they may appear, in the interests of all parties to this contract against any claims which may arise out of The Consultant's operations under the terms of this contract. The Consultant shall accept full responsibility for paying premiums for workers' compensation and social security and all income tax deductions and other taxes or payroll deductions required by law for its employees performing services specified by this contract.

- The Consultant cannot be held liable for any use by the client of the information or reports generated by the services outlined herein. The Consultant is supplying market and

financial information only: any use of the provided information by The Client is strictly beyond The Consultant's control, and The Consultant accepts no liability for The Client's use of the research, data, findings, information, or reports generated by The Consultant's services.

- By signing this Agreement, The Client and The Consultant at this moment, to the extent permitted by Texas law covenant and agree to indemnify and hold each party harmless against and from any losses, damages, expenses, obligations, claims, and costs arising out of the use of the research, data, findings, information, or reports provided by The Consultant under this Agreement.

The interest of Contractor. The Consultant certifies and agrees that it presently has no interest and shall not acquire any direct or indirect interest that would conflict in any manner or degree with the performance of its services hereunder. The Consultant further certifies and agrees that in the performance of this contract, it shall not knowingly employ any person having such interest. The Consultant further warrants that no member of the contractor's board, its officers, or directors have such an adverse interest.

Termination for Convenience. The client or contractor may terminate this contract at any time by giving written notice to the other party of such termination by specifying the effective date thereof at least thirty (30) days before the effective date of such termination.

## Contract provisions

- a. This Agreement constitutes the entire agreement between the parties relating to its subject matter. This Agreement may only be amended in writing, signed by the parties.
- b. Each party represents a duly organized corporation in good standing under applicable laws and regulations. The individual who has executed this Agreement is duly empowered and authorized to enter into it as a binding obligation of that party.
- c. The venue for any dispute shall lie in the courts of Denton County, TX.
- d. This Agreement shall be construed without regard to the party that drafted it. Any ambiguity shall not be interpreted against either party but shall, instead, be resolved by other applicable rules concerning the interpretation of contracts.
- e. The Consultant may not assign or delegate this Agreement to a third party without The Client's written consent.

To retain Tripp Umbach to perform the research program outlined above, please sign copies of this contract in the space provided below (keeping one for your records and returning the other to Tripp Umbach).

## Authorization

By signing below, you agree to the terms and conditions of this proposal for Phase I services only. Please retain one copy for your records while returning one to the email listed below:

[Finance@trippumbach.com](mailto:Finance@trippumbach.com)

For Tripp Umbach:



September 14, 2023

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(Founder & President)

(Date)

For the Town of Flower Mound, Texas

---

(Authorized signature & title)

(Date)

The Client's Accounts Payable Contact Information:

Name and Email Address: \_\_\_\_\_



## **TOWN COUNCIL AGENDA J.16. CONSENT ITEM(S)**

---

**DATE:** September 18, 2023

**FROM:** Andy Kancel, Police Chief

**ITEM:** **Consider approval to terminate the existing Local Agreement and enter into a new Local Agreement with the Denton County District Attorney's Office and the Flower Mound Police Department in regards to seizures filed under Chapter 59 and Article 18.18 of the Texas Code of Criminal Procedure in Denton County, Texas**

---

**BACKGROUND:** The Local Agreement regarding asset seizure and forfeiture cases under Article 59 of the Texas Code of Criminal Procedure will provide the Denton County Criminal District Attorney's Office with 20% of all money seized and forfeited for the services provided to the Flower Mound Police Department associated with the forfeiture of contraband.

The new agreement will allow the Flower Mound Police Department to receive 80% of all currency seized and forfeited and 100% of all proceeds from the sale of personal property seized and forfeited, and if a motor vehicle is seized the Town will pay the District Attorney's Office \$300.00 as in previous agreements.

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

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** N/A

Fund 333 Revenue

**LEGAL REVIEW:** This is a standard agreement with the Denton County District Attorney's Office. No legal review was necessary.

**ATTACHMENTS:**

1. Denton County DA Chapter 59 Local Agreement

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



Paul Johnson

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**Criminal District Attorney**

Denton County Courts Building  
1450 E. MCKINNEY, STE 3100  
P. O. BOX 2344  
DENTON, TEXAS 76202

Main Number 940-349-2600  
Main Fax 940-349-2601

Hot Checks 940-349-2700  
[www.dentoncounty.com](http://www.dentoncounty.com)

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August 29, 2023

FLOWER MOUND POLICE DEPARTMENT  
4150 Kirkpatrick Lane  
Flower Mound, Texas 75028

**NOTICE OF INTENT TO TERMINATE EXISTING LOCAL AGREEMENT  
AND ENTER INTO NEW LOCAL AGREEMENT**

**RE: Local Agreement between the Denton County District Attorney's Office and LOCAL AGENCY in regards to seizures filed under Chapter 59 and Article 18.18 of the Texas Code of Criminal Procedure in Denton County, Texas**

Dear Whom It May Concern:

Your Agency is receiving this notice because a local agreement currently exists between your Agency and the Denton County District Attorney's Office in regards to distribution of contraband seized and forfeited under Chapter 59 of the Texas Code of Criminal Procedure "hereinafter Existing Local Agreement."

Our office has seen an increase in personal property consisting of stocks, bonds, securities, Cryptocurrencies, negotiable instruments, jewelry, precious metals, and coins. These items are being used as a means of hiding proceeds from law enforcement. Additionally, there has been an increase in negotiated cash settlements in lieu of forfeiting property. In response, our office is adjusting the local agreements with each of our agencies.

Accordingly, the first purpose of this Notice is to inform you that Denton County District Attorney's Office is terminating the above-referenced Agreement under and in accordance with the Article IV of the Existing Local Agreement, which states that either party can terminate the agreement with thirty (30) days prior written notice. The Existing Local Agreement **shall**

Notice of Intent to Terminate and Enter Into New Local Agreement

**terminate September 31, 2023.**

The second purpose of this letter is to enter into a new local agreement that would govern **both Chapter 59 and Article 18.18 forfeiture** cases handled by the Denton County District Attorney's Office filed on behalf of your Agency "hereinafter New Local Agreement." The New Local Agreement is attached for your review and signature. Once executed by all appropriate parties and received by our office, the New Local Agreement **shall take effect on October 1, 2023.**

Please review and sign the attached document. Should you have any questions regarding this Notice or the New Local Agreement, please do not hesitate to contact me.

Sincerely,



Sheena Molsbee  
Assistant District Attorney  
Denton County, Texas  
940-349-2760  
[sheena.molsbee@dentoncounty.gov](mailto:sheena.molsbee@dentoncounty.gov)

Enclosures

*Local Agreement Respecting Forfeited Contraband Under Chapter 59  
and Article 18.18, Texas Code of Criminal Procedure*

**LOCAL AGREEMENT RESPECTING FORFEITED CONTRABAND  
UNDER CHAPTER 59 AND ARTICLE 18.18, TEXAS CODE  
OF CRIMINAL PROCEDURE  
DENTON COUNTY, TEXAS**

***FLOWER MOUND POLICE DEPARTMENT***

This LOCAL AGREEMENT is made and entered into by and between the FLOWER MOUND POLICE DEPARTMENT, hereinafter "the AGENCY," and the Denton County Criminal District Attorney's Office, hereinafter "the DISTRICT ATTORNEY."

**WITNESSETH:**

WHEREAS, the AGENCY and the DISTRICT ATTORNEY desire to enter into an agreement regarding disposition of contraband seized and forfeited under Chapter 59 of the Texas Code of Criminal Procedure and Article 18.18 of the Texas Code of Criminal Procedure; and

WHEREAS, Chapter 59 of the Texas Code of Criminal Procedure provides for the forfeiture to the State of Texas of property found to be "contraband" as defined by Chapter 59 of the Texas Code of Criminal Procedure; and

WHEREAS, Article 18.18 of the Texas Code of Criminal Procedure provides for forfeiture, to the State, any political subdivision of the State, or to any institution or agency, of items believed to be gambling paraphernalia, devices, equipment, real (gambling property), cash proceeds, prohibited weapons, criminal instruments, and other contraband as defined under Article 18.18 of the Texas Code of Criminal Procedure.

WHEREAS, the DISTRICT ATTORNEY represents the State of Texas in all cases regarding the forfeiture of contraband seized in Denton County, Texas, pursuant to Chapter 59 of the Code of Criminal Procedure and Article 18.18 of the Code of Criminal Procedure.

NOW, therefore, this Local Agreement is hereby made and entered into by the AGENCY and the DISTRICT ATTORNEY for the mutual consideration stated herein:

**ARTICLE I.**

A. In consideration for the services provided by the AGENCY and the DISTRICT ATTORNEY associated with the forfeiture of contraband, the AGENCY and the DISTRICT ATTORNEY agree to the following disposition of contraband forfeited under Chapter 59 of Texas Code of Criminal Procedure:

- (1) The AGENCY will receive eighty percent (80%) and DISTRICT ATTORNEY twenty percent (20%) of all **currency** seized and forfeited.
- (2) Personal property consisting of stocks, bonds, securities, Cryptocurrencies, negotiable instruments and other documents representing things of value, jewelry, precious metals, and coins shall be sold and the proceeds allocated between the AGENCY and the DISTRICT ATTORNEY as provided by Article I, Section (A)(1) above. For all other personal property the AGENCY will receive, one hundred percent (100%) of the proceeds from the sale of **personal property**

seized and forfeited that the AGENCY does not use in its law enforcement operations.

- (3) The AGENCY shall pay the DISTRICT ATTORNEY the sum of THREE HUNDRED AND NO/100 DOLLARS (\$300.00) for each final judgment obtained for the forfeiture of a **motor vehicle**. If a motor vehicle is the subject of a final judgment of forfeiture, the AGENCY has the option of taking title to said vehicle and using it for law enforcement purposes in the investigation of alleged violations of the criminal laws of the State of Texas pursuant to the requisites of Chapter 59 of the Texas Code of Criminal Procedure. All costs associated with the use of the motor vehicle shall be borne by the party using said vehicle.
- (4) Proceeds from the sale of **real property** seized and forfeited shall be negotiated between the AGENCY and the DISTRICT ATTORNEY on a case-by-case basis prior to commencement of litigation by the DISTRICT ATTORNEY.
- (5) On property seized other than, cash proceeds, the DISTRICT ATTORNEY may endeavor to negotiate a cash settlement in lieu of forfeiture of the property. Any money received in this manner shall be allocated between the AGENCY and the DISTRICT ATTORNEY as provided by Section (A)(1) above.
- (6) The AGENCY shall pay for all court costs and litigation expenses related to forfeiture proceedings. All costs of title searches and title policies for the forfeiture of real property shall be paid by the AGENCY. All other costs and expenses related to forfeiture proceedings, including the costs of storage, maintenance and auctions of vehicles and property held pending a final forfeiture judgment, shall be paid by the AGENCY.
- (7) It is further specifically agreed by the parties that if special circumstances dictate that a different percentage other than that set out in this Local Agreement should be awarded to the DISTRICT ATTORNEY, that this Local Agreement may be specifically modified in writing by the written consent of both parties prior to the commencement of litigation by the DISTRICT ATTORNEY.

B. All currency seized by the AGENCY under Chapter 59 of the Texas Code of Criminal Procedure shall be deposited in an interest-bearing bank account held by the AGENCY and containing only funds acquired pursuant to Chapter 59 of the Texas Code of Criminal Procedure until a final judgment is rendered. AGENCY shall then transfer currency to the DISTRICT ATTORNEY as noted in Article I, Section A(1) above. Payments to DISTRICT ATTORNEY shall be made pursuant to Article III.

C. In accordance with Chapter 59 of the Texas Code of Criminal Procedure, all of the DISTRICT ATTORNEY's share of forfeited currency; all proceeds from the sale of personal property; all proceeds from the sale of real property; the flat fee of THREE HUNDRED AND NO/100 DOLLARS (\$300.00) for forfeited motor vehicles; and the negotiated cash settlements shall be deposited into a special fund in the County Treasury to be used by the DISTRICT ATTORNEY solely for the official purposes of the office of the DISTRICT ATTORNEY.

D. In accordance with Chapter 59 of the Texas Code of Criminal Procedure, all currency and proceeds from the sale of real property, motor vehicles and personal property received by the AGENCY shall be deposited in a special fund in the City Treasury to be used by the FLOWER MOUND POLICE DEPARTMENT solely for law enforcement purposes.

## ARTICLE II.

A. In consideration for the services provided by the AGENCY and the DISTRICT ATTORNEY associated with the forfeiture of gambling paraphernalia, devices, equipment, real (gambling property), cash proceeds, prohibited weapons, criminal instruments, and other contraband as defined, the AGENCY and the DISTRICT ATTORNEY agree to the following disposition of the forfeited property and proceeds under Article 18.18 of Texas Code of Criminal Procedure:

- (1) The AGENCY will receive eighty percent (80%) and DISTRICT ATTORNEY twenty percent (20%) of all **currency** seized and forfeited.
- (2) On property seized other than cash proceeds, the DISTRICT ATTORNEY may endeavor to negotiate a cash settlement in lieu of forfeiture of the property. Any money received in this manner shall be allocated between the AGENCY and the DISTRICT ATTORNEY as provided by Section (A)(1) above.
- (3) The AGENCY will receive one hundred percent (100%) of the proceeds from the sale of **all other property** seized and forfeited, but not negotiated to cash settlements, that the AGENCY does not use in its law enforcement operations.

B. All currency seized by the AGENCY under Article 18.18 of the Texas Code of Criminal Procedure shall be deposited in an interest-bearing bank account held by the AGENCY and containing only funds acquired pursuant to Article 18.18 of the Texas Code of Criminal Procedure until a final judgment is rendered. AGENCY shall then transfer currency to the DISTRICT ATTORNEY as noted in Article II, Section A(1) above. Payments to DISTRICT ATTORNEY shall be made pursuant to Article III.

C. In accordance with Article 18.18 of the Texas Code of Criminal Procedure, all of the DISTRICT ATTORNEY's share of forfeited currency and the negotiated cash settlements shall be deposited into a special fund in the County Treasury to be used by the DISTRICT ATTORNEY solely for the official purposes of the office of the DISTRICT ATTORNEY.

D. In accordance with Chapter 59 of the Texas Code of Criminal Procedure, all currency and proceeds from the sale of forfeited property received by the AGENCY shall be deposited in a special fund in the City Treasury to be used by the FLOWER MOUND POLICE DEPARTMENT solely for law enforcement purposes.

## ARTICLE III.

This Local Agreement shall apply to currency, real property, personal property and motor vehicles seized for forfeiture purposes by the AGENCY effective upon date of signature by all parties. Currency, real property, motor vehicles and personal property shall be considered forfeited to the State once a forfeiture judgment has become final, and no Motion for New Trial or Notice of Appeal has been taken. Payments to the DISTRICT ATTORNEY shall be made monthly. Each payment shall be based upon the amount of currency forfeited to the State of Texas in that period; upon the proceeds of the sale of forfeited personal property in that period; upon the proceeds of the sale of forfeited real property in that period; upon the flat fee of THREE HUNDRED AND NO/100 DOLLARS (\$300.00) for all motor vehicles forfeited to the AGENCY in that period; and upon the cash settlements negotiated in lieu of forfeiture to the

AGENCY. All costs of court proceedings shall be paid by the AGENCY including the cost of titles searched and title policies issued.

#### ARTICLE IV.

In the event of a special circumstance where the DISTRICT ATTORNEY is required to expend significant time and effort in planning for a forfeiture case, it will be developed as a joint investigation with the AGENCY with the option of the percentage apportioned between parties being modified in a manner commensurate with the time and effort required by each of the Parties and a written Addendum to this Local Agreement will be executed by the parties as it pertains to the particular seizure.

#### ARTICLE V.

The term of this Local Agreement shall be for a period of one (1) year from the date of execution of this agreement. This Agreement shall automatically be renewed on a yearly basis after the initial one (1) year term. This Agreement may be terminated by either party upon thirty (30) days prior written notice thereof to the other of its intention to terminate upon the date specified in such notice. Any pending forfeiture under this Agreement filed prior to the termination date, however, shall not be affected by such notices.

#### ARTICLE VI.

Any notice, payment, statement, or demand required or permitted to be given hereunder by either party to the other may be effected by personal delivery in writing or by mail, postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three days after mailing.

##### If intended for the AGENCY:

FLOWER MOUND POLICE DEPARTMENT  
4150 Kirkpatrick Lane  
Flower Mound, TX 75028

##### If intended for the DISTRICT ATTORNEY:

Denton County Criminal District Attorney  
1450 E. McKinney Street, Suite 3100  
Denton, Texas 76209

**SIGNED** on this the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

CRIMINAL DISTRICT ATTORNEY  
DENTON COUNTY, TEXAS

\_\_\_\_\_  
Paul Johnson  
Criminal District Attorney  
Denton County, Texas

FLOWER MOUND POLICE DEPARTMENT

  
\_\_\_\_\_  
Chief of Police

TOWN OF FLOWER MOUND

\_\_\_\_\_  
Mayor



## TOWN COUNCIL AGENDA J.17. CONSENT ITEM(S)

---

**DATE:** September 18, 2023

**FROM:** Matthew Woods, Director of Environmental Services

**ITEM:** Consider approval of an ordinance amending Chapter 18, “Businesses,” Article III “Food and Food Establishments,” by amending Section 18-151, “Registration required,” and amending Appendix A, “Fee Schedule,” by removing the registration fee for Section 18-123, of the Code of Ordinances of the Town of Flower Mound in response to S.B 577.

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**BACKGROUND:** The Town's Code of Ordinances currently requires each permitted food establishment to employ at least one on-site Food Protection Manager who is required to register with the Town and pay the applicable registration fee. The Texas Legislature recently amended the Texas Health and Safety Code with Senate Bill 577 which prohibits a municipality from requiring local registration and fees for Food Protection Managers or food safety supervisors.

Based on the recent passage of S.B. 577, the Town's regulations are being amended to remove the registration and fee requirements for Food Protection Managers. The Town's Environmental Health Services division will continue to require at least one Food Protection Manager on duty during hours of operation as part of the Town's ongoing food establishment inspection program.

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

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** N/A

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

**ATTACHMENTS:**

1. Proposed Ordinance
2. S.B. 577

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

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

**AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING SECTION 18-151 “REGISTRATION” OF SUBDIVISION III “FOOD PROTECTION MANAGER” OF DIVISION 2 “FOOD SERVICE ESTABLISHMENT” OF ARTICLE III “FOOD AND FOOD ESTABLISHMENTS” OF CHAPTER 18 “BUSINESS” OF THE FLOWER MOUND CODE, TO ELIMINATE LOCAL REGISTRATION OF A FOOD MANAGER; AMENDING APPENDIX A “FEE SCHEDULE” TO REMOVE THE FOOD PROTECTION MANAGER’S REGISTRATION FEE; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Flower Mound (“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 previously adopted regulations for food and food establishments; and,

**WHEREAS**, the Texas State Legislature has enacted Senate Bill 577, which prohibits a municipality from requiring local registration of food safety supervisors; and,

**WHEREAS**, the Town Council finds and determines that Section 18-151 should be amended as set out herein, that the fee schedule should be amended accordingly, and that the amendments proposed are necessary to make the code consistent with state law;

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

**SECTION 1**

Section 18-151 of Subdivision III “Food Protection Manager” of Division 2 “Food Service Establishment” of Article III “Food and Food Establishments” of Chapter 18 “Business” is hereby amended to read as follows:

**“Sec. 18-151. – Certified supervisor required.**

(a) *Employment.*

(1) Within 90 days of the effective date of the ordinance from which this division is derived, a food establishment shall employ at least one individual who is

a full-time, on-site supervisory employee of that food establishment responsible for food preparation, presentation, sales and service, and who has a valid and current food protection manager registration issued by the state.

- (2) A food establishment is in compliance with the provisions of this division if there is one full-time food protection manager "person-in-charge" on duty during all times of operation.
- (3) The town may require additional food protection managers in sufficient number to ensure that all areas of food preparation, presentation, sales and service are under the direction of food protection managers during all times of food establishment operation. It shall be unlawful to own, operate or manage a food establishment with fewer than the required number of food protection managers on duty at the food establishment during all times of operation."

## **SECTION 2**

Subsection (d) of Section 18-123 "Food Establishment Fees" of Appendix A "Fee Schedule" is hereby deleted in its entirety.

## **SECTION 3**

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

## **SECTION 4**

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

## **SECTION 5**

Any person, firm or corporation who violates any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine as provided in Section 1-13 of the Flower Mound Code. 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 of Flower Mound, Texas, are expressly saved as to any and all violations of the provisions of the Flower Mound Code or any other ordinances affecting the matters regulated herein which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

**SECTION 7**

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

**SECTION 8**

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

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

**APPROVED:**

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

**ATTEST:**

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

AN ACT

relating to regulation of food service establishments, retail food stores, mobile food units, roadside food vendors, temporary food service establishments, and food managers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 437, Health and Safety Code, is amended by amending Section 437.009 and adding Sections 437.0091, 437.01235, and 437.027 to read as follows:

Sec. 437.009. INSPECTIONS; INSPECTION FOLLOWING ADOPTION OF CERTAIN LOCAL ORDERS; PROHIBITED DISCIPLINARY ACTION. (a) Authorized agents or employees of the department, a county, or a public health district may enter the premises of a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment under the department's, county's, or district's jurisdiction during normal operating hours to conduct inspections to determine compliance with:

(1) state law, including a requirement to hold and display written authorization under Section 437.021;

(2) rules adopted under state law; and

(3) orders adopted by the department, county, or district.

(b) A municipality or public health district of which the municipality is a member may not conduct an inspection to determine

compliance with an ordinance the municipality adopts that differs from state law or department rules or orders before the 60th day following the date the municipality or district submits a copy of the ordinance to the department for inclusion in the registry established under Section 437.0091.

(c) Notwithstanding any other law, the department, a county, a municipality, or a public health district, including an authorized agent or employee, that conducts an inspection authorized under this section may not take disciplinary action against or otherwise penalize a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment for failing to adhere to easily cleanable surface requirements for wall and ceiling surfaces, decorative items, or attachments in a consumer area, provided the surfaces, items, or attachments are kept clean. For purposes of this subsection, a consumer area includes a dining room, outdoor dining area, or bar seating area in which customers consume food but does not include a table, bar top, or other similar surface where food is regularly prepared or consumed.

Sec. 437.0091. MUNICIPAL ORDINANCE REGISTRY. The department shall establish and maintain on the department's Internet website a registry for municipal ordinances submitted under Section 437.009(b) and post in the registry each submitted ordinance not later than the 10th day after the date the department receives the ordinance.

Sec. 437.01235. FEES FOR PREMISES WITH ALCOHOLIC BEVERAGE PERMIT OR LICENSE. A county or a municipality with a public health

district that charges a fee for issuance or renewal of a permit under Section 437.012 or 437.0123 for a premises located in the county or municipality and permitted or licensed by the Texas Alcoholic Beverage Commission may not also charge a fee under Section 11.38 or 61.36, Alcoholic Beverage Code, for issuance of an alcoholic beverage permit or license for the premises.

Sec. 437.027. PROHIBITED RESTRICTIONS ON PACKAGING, UTENSILS, AND STRAWS. Notwithstanding any other law, the department, a county, a municipality, or a public health district may not restrict the type or quantity of packaging, utensils, or straws a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment provides to customers.

SECTION 2. Subchapter G, Chapter 438, Health and Safety Code, is amended by adding Section 438.1055 to read as follows:

Sec. 438.1055. PROHIBITED REQUIREMENT OF LOCAL FOOD MANAGER CARD OR LOCAL FEE. A local health jurisdiction may not require a food manager who holds a food manager certificate issued under this subchapter to hold a local food manager card or charge a fee for issuance of the certificate under this subchapter.

SECTION 3. (a) As soon as practicable after the effective date of this Act, the Department of State Health Services shall establish the registry required under Section 437.0091, Health and Safety Code, as added by this Act.

(b) The changes in law made by this Act apply only to an inspection conducted or order issued on or after the effective date of this Act.

1           SECTION 4.   This Act takes effect September 1, 2023.

|                                                                                                                        |                                   |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------|
| <hr/> <p>President of the Senate</p>                                                                                   | <hr/> <p>Speaker of the House</p> |
| <p>I hereby certify that S.B. No. 577 passed the Senate on April 27, 2023, by the following vote: Yeas 30, Nays 1.</p> |                                   |

|                                                                                                                                              |                                      |
|----------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|
|                                                                                                                                              | <hr/> <p>Secretary of the Senate</p> |
| <p>I hereby certify that S.B. No. 577 passed the House on May 12, 2023, by the following vote: Yeas 137, Nays 3, two present not voting.</p> |                                      |

|  |                                       |
|--|---------------------------------------|
|  | <hr/> <p>Chief Clerk of the House</p> |
|--|---------------------------------------|

Approved:

|                   |
|-------------------|
| <hr/> <p>Date</p> |
|-------------------|

|                       |
|-----------------------|
| <hr/> <p>Governor</p> |
|-----------------------|



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

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**DATE:** September 18, 2023  
**FROM:** Kay Wilkinson, Director of Budget Services  
**ITEM:** **Consider approval of an ordinance adopting the budget for the fiscal year beginning on October 1, 2023, and ending on September 30, 2024, and making appropriations for each fund and department.**

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**BACKGROUND:** The FY 2023-2024 Proposed Budget is hereby presented for adoption in fund total. Section 9.08 of the Town's Charter states that, "The budget shall be adopted by the favorable vote of three (3) of the members of the Town Council."

The Flower Mound Town Council and staff held the FY 2023-2024 Budget Work Session on August 17, 2023, in the Council Chambers. A public hearing for the Proposed Budget was also held on August 21, 2023. The proposed budget for FY 2023-2024 includes a five-year Capital Improvement Program (CIP).

The proposed budget for the General Fund includes \$92,644,927 in revenues and \$88,140,703 in expenditures, which includes the baseline budget, non-discretionary requests, and decision packages. Agencies that provide community support for the Town of Flower Mound, and meet certain criteria are eligible to request community support funding. The proposed budget includes \$225,800 for community support funding.

The proposed budget for the Utility Fund includes \$58,192,923 in revenues, and \$59,956,084 in expenditures, which includes the baseline budget, non-discretionary requests, and proposed decision packages.

The proposed budget for the Stormwater Utility Fund includes \$1,865,650 in revenues, and \$1,727,128 in expenditures, which includes the baseline budget, non-discretionary requests, and proposed decision packages.

The Town utilizes four Internal Service Funds: the Health Insurance/Flex Fund, the Vehicle and Equipment Replacement Fund, the Technology Replacement Fund, and the Small Equipment Replacement Fund. The Health Insurance/Flex Fund is supported by internal charges and employee contributions. The proposed budget for the Health Insurance/Flex Fund includes \$13,686,000 in revenues, and \$13,622,800 in expenditures. The Vehicle and Equipment Replacement Fund, the Technology Replacement Fund, and the Small Equipment Replacement Fund are supported by internal transfers. The Vehicle and Equipment Replacement Fund includes \$2,487,500 in revenues, and \$3,650,000 in expenditures. The Technology Replacement Fund includes \$620,250 in revenues, and \$825,000 in expenditures. The Small Equipment Replacement Fund includes \$404,205 in revenues, and \$0 in expenditures.

The first year of the five-year General Government Capital Improvement Program (CIP) addresses needs pertaining to streets, signals, street reconstruction, facilities, and parks, and totals \$23,138,500. The largest portion of the CIP for FY 2023-2024 is dedicated to street and signal

projects for \$18,683,500. Facilities projects total \$900,000 and parks projects total \$3,555,000. \$400,000 in new debt will be issued for these projects. These projects will be supported by debt, dedicated sales tax, park development funds, grants and interlocal agreements, impact fees, TIRZ revenue, and cash transfers from the General Fund.

The five-year CIP in the Utility Fund totals \$15,158,000 for FY 2023-2024, which includes water and wastewater lines and stormwater projects. These projects will be supported by \$8,610,000 in additional debt.

A complete listing of Funds approved is included in the Fiscal Impact section.

Since the budget will require raising more revenue from property taxes than in the previous year, Section 102.007(c), Local Government Code, requires a separate vote of the governing body (in addition to and separate from the vote to adopt the budget) to ratify the property tax revenue increase reflected in the budget. This separate motion is set out below under the recommendation.

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

## **ALTERNATIVES: N/A**

## **FISCAL IMPACT: N/A**

### **Proposed Revenue:**

|                                        |                       |
|----------------------------------------|-----------------------|
| General Fund                           | \$ 92,644,927         |
| Utility Fund                           | 58,192,923            |
| Stormwater Utility Fund                | 1,865,650             |
| Health insurance/Flex Fund             | 13,686,000            |
| Vehicle and Equipment Replacement Fund | 2,487,500             |
| Technology Replacement Fund            | 620,250               |
| Small Equipment Replacement Fund       | 404,205               |
| Library Development Fund               | 18,000                |
| TIRZ Fund                              | 8,867,780             |
| Park Development Fund                  | 150,000               |
| Tree Preservation Fund                 | 150,000               |
| Public Education Government (PEG) Fund | 140,000               |
| Street Maintenance Sales Tax Fund      | 5,230,820             |
| 4B Parks Sales Tax Fund                | 5,080,820             |
| Justice Seizures Fund                  | 500                   |
| Animal Care Fund                       | 9,000                 |
| CDBG-HUD Grant Fund                    | 278,855               |
| Neighborhood Improvement Fund          | 76,150                |
| COVID-19 Fund                          | 20,000                |
| Hotel Occupancy Tax Fund               | 465,000               |
| Municipal Court Security Fund          | 38,020                |
| Municipal Court Technology Fund        | 30,775                |
| Municipal Court Jury Fund              | 715                   |
| Municipal Court Truancy Prevention     | 36,440                |
| General Debt Service Fund              | 5,900,170             |
| <b>Total Resources</b>                 | <b>\$ 196,394,500</b> |

**Proposed Expenditures:**

|                                        |                       |
|----------------------------------------|-----------------------|
| General Fund                           | \$ 88,140,703         |
| Utility Fund                           | 59,956,084            |
| Stormwater Utility Fund                | 1,727,128             |
| Health insurance/Flex Fund             | 13,622,800            |
| Vehicle and Equipment Replacement Fund | 3,650,000             |
| Technology Replacement Fund            | 825,000               |
| Library Development Fund               | 20,000                |
| TIRZ Fund                              | 13,822,591            |
| Park Development Fund                  | 451,633               |
| Tree Preservation Fund                 | 244,582               |
| Public Education Government (PEG) Fund | 763,650               |
| Street Maintenance Sales Tax Fund      | 6,612,321             |
| 4B Parks Sales Tax Fund                | 5,080,820             |
| IRS Equitable Sharing Fund             | 2,292                 |
| Justice Seizures Fund                  | 75,014                |
| Chapter 59 Seizures Fund               | 48,445                |
| Animal Care Fund                       | 29,500                |
| Opioid Settlement Fund                 | 67,573                |
| CDBG-HUD Grant Fund                    | 278,855               |
| Neighborhood Improvement Fund          | 130,000               |
| COVID-19 Fund                          | 2,202,848             |
| Hotel Occupancy Tax Fund               | 415,000               |
| Municipal Court Security Fund          | 51,100                |
| Municipal Court Technology Fund        | 34,750                |
| Municipal Court Jury Fund              | 750                   |
| Municipal Court Truancy Prevention     | 35,000                |
| General Debt Service Fund              | 6,144,990             |
| <b>Total Expenditures</b>              | <b>\$ 204,433,429</b> |

**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. Ordinance - FY 23-24 Adopted Budget

**DRAFT MOTION:** Note: Budget adoption must include two motions- the second motion is to ratify the property tax increase reflected in the budget.

1. Move to approve an ordinance adopting the budget for the fiscal year beginning on October 1, 2023, and ending on September 30, 2024, and making appropriations for each fund and department.
2. Move to ratify the property tax revenue increase reflected in the FY 2023-2024 budget.

**TOWN OF FLOWER MOUND, TEXAS**

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

**AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, ADOPTING AND APPROVING THE BUDGET FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2023, AND ENDING SEPTEMBER 30, 2024, AND MAKING APPROPRIATIONS FOR EACH FUND AND DEPARTMENT; PROVIDING FOR THE LEVYING AND COLLECTION OF A SUFFICIENT TAX TO PAY THE INTEREST ON SINKING FUND AND OTHER OBLIGATIONS; REPEALING CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.**

**WHEREAS**, the Town Manager has caused to be filed with the Town Secretary a budget to cover all proposed expenditures of the government of the Town for the fiscal year beginning October 1, 2023, and ending September 30, 2024; and,

**WHEREAS**, said budget shows, as definitely as possible, each of the various projects for which appropriations are made in the budget and the estimated amount of money carried in the budget for each such project; and,

**WHEREAS**, said budget has been filed with the Town Secretary and has been available for inspection by any taxpayer; and,

**WHEREAS**, notice of public hearing on the proposed Annual Budget, stating the date, time, place, and subject matter of said public hearing was given as required by the laws of the State of Texas; and,

**WHEREAS**, one (1) such public hearing was held on August 21, 2023, prior approval of which date being hereby ratified and confirmed by the Town Council, and all those wishing to speak on the budget were heard; and,

**WHEREAS**, the Town Council has studied said budget and listened to the comments of the taxpayers at the public hearing held, and therefore has determined that the budget attached in fund total hereto is in the best interest of the Town of Flower Mound; and,

**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 legislative and factual findings of the Town of Flower Mound and they are hereby approved and incorporated into the body of this Ordinance, as if copied in their entirety.

**SECTION 2**

The budget attached in fund total hereto as Exhibit "A", and incorporated herein for all purposes, is adopted for the fiscal year beginning October 1, 2023, and ending September 30, 2024, and there is hereby appropriated from the funds indicated and for such purposes, respectively, such sums of money for such projects, operations, activities, purchases, and other expenditures as proposed in the attached budget. The budget includes a contingent

appropriation in the General Fund of \$8,814,070 (i.e., 10 percent of total expenditures) to be used in the event of unforeseen items of expenditure. Such contingent appropriations shall be under the control of the Town Manager and distributed by him, after approval of the Town Council.

### **SECTION 3**

No expenditure of the funds of the Town shall hereafter be made except in strict compliance with said budget, except that in the case of public necessity, the Town Council shall authorize amendments to said budget such emergency expenditures to meet unusual and unforeseen conditions which could not, by reasonably diligent thought and attention, have been included in the original budget.

### **SECTION 4**

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

### **SECTION 5**

Any and all ordinances, resolutions, rules, regulations, policies, or provisions in conflict with the provisions of this Ordinance are hereby repealed and rescinded to the extent of any conflict herewith.

### **SECTION 6**

If any section, paragraph, sentence, clause, phrase, or word in this Ordinance, 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 Ordinance; and the Town Council hereby declares it would have passed such remaining portions of the ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

### **SECTION 7**

The necessity of adopting and approving a budget for the next fiscal year as required by the laws of the State of Texas requires that this Ordinance shall take effect immediately from and after its passage.

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

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DULY PASSED, APPROVED AND ADOPTED BY THE TOWN COUNCIL OF THE  
TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF \_\_\_\_\_ TO \_\_\_\_\_ ON THIS 18<sup>th</sup>  
DAY OF SEPTEMBER, 2023.

APPROVED:

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

ATTEST:

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

## EXHIBIT A

Town of Flower Mound, Texas  
FY 23-24

| PROPOSED REVENUES                      | General Fund         | General Debt Service Fund | Utility Fund         | Stormwater Utility Fund | Internal Service Funds |
|----------------------------------------|----------------------|---------------------------|----------------------|-------------------------|------------------------|
| Property Taxes                         | \$ 49,743,065        | \$ 5,579,970              | \$ -                 | \$ -                    | \$ -                   |
| Utility Franchise Fees                 | 7,269,584            | -                         | -                    | -                       | -                      |
| Sales Tax Collections                  | 19,723,285           | -                         | -                    | -                       | -                      |
| Other Taxes                            | 335,780              | -                         | -                    | -                       | -                      |
| Charges for Current Services           | 5,322,810            | -                         | -                    | -                       | -                      |
| Licenses and Permits                   | 2,076,875            | -                         | -                    | -                       | -                      |
| Fines and Forfeitures                  | 1,100,125            | -                         | -                    | -                       | -                      |
| Investment Earnings                    | 500,000              | 50,000                    | 350,000              | 5,000                   | -                      |
| Intergovernmental Revenue              | 2,294,642            | -                         | -                    | -                       | -                      |
| Interfund Transfer                     | 3,729,522            | 270,200                   | -                    | -                       | -                      |
| Other Revenue                          | 549,239              | -                         | 229,000              | -                       | -                      |
| Water Sales                            | -                    | -                         | 42,624,522           | -                       | -                      |
| Sewer Charges                          | -                    | -                         | 14,194,606           | -                       | -                      |
| Stormwater Fees                        | -                    | -                         | -                    | 1,634,650               | -                      |
| Drainage Inspections                   | -                    | -                         | -                    | 215,000                 | -                      |
| Meter and Connect Fees                 | -                    | -                         | 280,000              | -                       | -                      |
| Solid Waste Collection                 | -                    | -                         | 164,795              | -                       | -                      |
| Penalties-Utility Billing              | -                    | -                         | 350,000              | 11,000                  | -                      |
| Health Insurance Fund                  | -                    | -                         | -                    | -                       | 13,686,000             |
| Vehicle and Equipment Replacement Fund | -                    | -                         | -                    | -                       | 2,487,500              |
| Technology Replacement Fund            | -                    | -                         | -                    | -                       | 620,250                |
| Small Equipment Replacement Fund       | -                    | -                         | -                    | -                       | 404,205                |
| <b>TOTAL REVENUE</b>                   | <b>\$ 92,644,927</b> | <b>\$ 5,900,170</b>       | <b>\$ 58,192,923</b> | <b>\$ 1,865,650</b>     | <b>\$ 17,197,955</b>   |

| PROPOSED EXPENDITURES                  | General Fund         | General Debt Service Fund | Utility Fund          | Stormwater Utility Fund | Internal Service Funds |
|----------------------------------------|----------------------|---------------------------|-----------------------|-------------------------|------------------------|
| Town Manager's Office                  | \$ 3,384,801         | \$ -                      | \$ -                  | \$ -                    | \$ -                   |
| Legislative Services                   | 564,753              | -                         | -                     | -                       | -                      |
| Development Services                   | 2,676,032            | -                         | -                     | -                       | -                      |
| Parks & Recreation Services            | 11,097,580           | -                         | -                     | -                       | -                      |
| Library Services                       | 2,258,963            | -                         | -                     | -                       | -                      |
| Police Services                        | 19,410,360           | -                         | -                     | -                       | -                      |
| Financial Services                     | 4,561,668            | -                         | 2,003,798             | -                       | -                      |
| Administrative Services                | 8,548,035            | -                         | -                     | -                       | -                      |
| Fire & Emergency Services              | 20,563,275           | -                         | -                     | -                       | -                      |
| Communications                         | 887,518              | -                         | -                     | -                       | -                      |
| General Fund Non-Departmental          | 5,289,670            | -                         | -                     | -                       | -                      |
| Utility Fund Non-Departmental          | -                    | -                         | 18,400,432            | -                       | -                      |
| Public Works                           | 7,287,310            | -                         | 39,551,854            | 1,628,485               | -                      |
| Environmental Services                 | 1,610,738            | -                         | -                     | 98,643                  | -                      |
| Debt Service                           | -                    | 6,144,990                 | -                     | -                       | -                      |
| Health Insurance Fund                  | -                    | -                         | -                     | -                       | 13,622,800             |
| Vehicle and Equipment Replacement Fund | -                    | -                         | -                     | -                       | 3,650,000              |
| Technology Replacement Fund            | -                    | -                         | -                     | -                       | 825,000                |
| Small Equipment Replacement Fund       | -                    | -                         | -                     | -                       | -                      |
| <b>TOTAL EXPENDITURES</b>              | <b>\$ 88,140,703</b> | <b>\$ 6,144,990</b>       | <b>\$ 59,956,084</b>  | <b>\$ 1,727,128</b>     | <b>\$ 18,097,800</b>   |
| <b>NET CHANGE</b>                      | <b>\$ 4,504,224</b>  | <b>\$ (244,820)</b>       | <b>\$ (1,763,161)</b> | <b>\$ 138,522</b>       | <b>\$ (899,845)</b>    |

| 2023-2024 FUND BALANCE PROJECTION | General Fund         | General Debt Service Fund | Utility Fund         | Stormwater Utility Fund | Internal Service Funds |
|-----------------------------------|----------------------|---------------------------|----------------------|-------------------------|------------------------|
| Fund Balance 10/1/23              | \$ 34,055,945        | \$ 891,258                | \$ 15,959,651        | \$ 155,523              | \$ 13,567,893          |
| Revenue                           | 92,644,927           | 5,900,170                 | 58,192,923           | 1,865,650               | 17,197,955             |
| Expenditure                       | (88,140,703)         | (6,144,990)               | (59,956,084)         | (1,727,128)             | (18,097,800)           |
| Fund Balance 09/30/24             | <b>\$ 38,560,169</b> | <b>\$ 646,438</b>         | <b>\$ 14,196,490</b> | <b>\$ 294,045</b>       | <b>\$ 12,668,048</b>   |

## EXHIBIT A

Town of Flower Mound, Texas  
FY 23-24

| <b>PROPOSED REVENUES</b>  | <b>Library<br/>Development<br/>Fund</b> | <b>TIRZ<br/>Fund</b> | <b>Park<br/>Development<br/>Fund</b> | <b>Tree<br/>Preservation<br/>Fund</b> | <b>Public-Education<br/>Government (PEG)<br/>Fund</b> |
|---------------------------|-----------------------------------------|----------------------|--------------------------------------|---------------------------------------|-------------------------------------------------------|
| Taxes                     | \$ -                                    | \$ 8,467,780         | \$ -                                 | \$ -                                  | \$ 125,000                                            |
| Licenses and Permits      | -                                       | -                    | -                                    | -                                     | -                                                     |
| Intergovernmental Revenue | -                                       | -                    | -                                    | -                                     | -                                                     |
| Charges for Services      | -                                       | -                    | -                                    | -                                     | -                                                     |
| Fines and Forfeitures     | -                                       | -                    | -                                    | -                                     | -                                                     |
| Investment Earnings       | 3,000                                   | 400,000              | 150,000                              | 150,000                               | 15,000                                                |
| Interfund Transfer        | -                                       | -                    | -                                    | -                                     | -                                                     |
| Other Revenue             | 15,000                                  | -                    | -                                    | -                                     | -                                                     |
| <b>TOTAL REVENUE</b>      | <b>\$ 18,000</b>                        | <b>\$ 8,867,780</b>  | <b>\$ 150,000</b>                    | <b>\$ 150,000</b>                     | <b>\$ 140,000</b>                                     |

| <b>PROPOSED EXPENDITURES</b> | <b>Library<br/>Development<br/>Fund</b> | <b>TIRZ<br/>Fund</b> | <b>Park<br/>Development<br/>Fund</b> | <b>Tree<br/>Preservation<br/>Fund</b> | <b>Public-Education<br/>Government (PEG)<br/>Fund</b> |
|------------------------------|-----------------------------------------|----------------------|--------------------------------------|---------------------------------------|-------------------------------------------------------|
| Town Manager's Office        | \$ -                                    | \$ -                 | \$ -                                 | \$ -                                  | \$ -                                                  |
| Legislative Services         | -                                       | -                    | -                                    | -                                     | -                                                     |
| Development Services         | -                                       | -                    | -                                    | -                                     | -                                                     |
| Parks & Recreation Services  | -                                       | -                    | 451,633                              | 170,395                               | -                                                     |
| Library Services             | 20,000                                  | -                    | -                                    | -                                     | -                                                     |
| Police Services              | -                                       | -                    | -                                    | -                                     | -                                                     |
| Financial Services           | -                                       | 13,822,591           | -                                    | -                                     | -                                                     |
| Administrative Services      | -                                       | -                    | -                                    | -                                     | -                                                     |
| Fire & Emergency Services    | -                                       | -                    | -                                    | -                                     | -                                                     |
| Communications               | -                                       | -                    | -                                    | -                                     | 763,650                                               |
| Public Works                 | -                                       | -                    | -                                    | -                                     | -                                                     |
| Environmental Services       | -                                       | -                    | -                                    | 74,187                                | -                                                     |
| <b>TOTAL EXPENDITURES</b>    | <b>\$ 20,000</b>                        | <b>\$ 13,822,591</b> | <b>\$ 451,633</b>                    | <b>\$ 244,582</b>                     | <b>\$ 763,650</b>                                     |

|                   |                   |                       |                     |                    |                     |
|-------------------|-------------------|-----------------------|---------------------|--------------------|---------------------|
| <b>NET CHANGE</b> | <b>\$ (2,000)</b> | <b>\$ (4,954,811)</b> | <b>\$ (301,633)</b> | <b>\$ (94,582)</b> | <b>\$ (623,650)</b> |
|-------------------|-------------------|-----------------------|---------------------|--------------------|---------------------|

| <b>2023-2024 FUND BALANCE PROJECTION</b> | <b>Library<br/>Development<br/>Fund</b> | <b>TIRZ<br/>Fund</b> | <b>Park<br/>Development<br/>Fund</b> | <b>Tree<br/>Preservation<br/>Fund</b> | <b>Public-Education<br/>Government (PEG)<br/>Fund</b> |
|------------------------------------------|-----------------------------------------|----------------------|--------------------------------------|---------------------------------------|-------------------------------------------------------|
| Fund Balance 10/1/23                     | \$ 72,534                               | \$ 4,954,811         | \$ 301,633                           | \$ 2,131,978                          | \$ 790,631                                            |
| Revenue                                  | 18,000                                  | 8,867,780            | 150,000                              | 150,000                               | 140,000                                               |
| Expenditure                              | (20,000)                                | (13,822,591)         | (451,633)                            | (244,582)                             | (763,650)                                             |
| <b>Fund Balance 09/30/24</b>             | <b>\$ 70,534</b>                        | <b>\$ -</b>          | <b>\$ -</b>                          | <b>\$ 2,037,396</b>                   | <b>\$ 166,981</b>                                     |

## EXHIBIT A

Town of Flower Mound, Texas  
FY 23-24

| PROPOSED REVENUES                 | Strt Maint<br>Sales Tax<br>Fund | 4B Parks<br>Sales Tax<br>Fund | IRS Equitable<br>Sharing<br>Fund | Justice<br>Seizures<br>Fund | Chapter 59<br>Seizure<br>Fund |
|-----------------------------------|---------------------------------|-------------------------------|----------------------------------|-----------------------------|-------------------------------|
| Taxes                             | \$ 4,930,820                    | \$ 4,930,820                  | \$ -                             | \$ -                        | \$ -                          |
| Licenses and Permits              | -                               | -                             | -                                | -                           | -                             |
| Intergovernmental Revenue         | -                               | -                             | -                                | -                           | -                             |
| Charges for Services              | -                               | -                             | -                                | -                           | -                             |
| Fines and Forfeitures             | -                               | -                             | -                                | -                           | -                             |
| Investment Earnings               | 300,000                         | 150,000                       | -                                | 500                         | -                             |
| Interfund Transfer                | -                               | -                             | -                                | -                           | -                             |
| Other Revenue                     | -                               | -                             | -                                | -                           | -                             |
| <b>TOTAL REVENUE</b>              | <b>\$ 5,230,820</b>             | <b>\$ 5,080,820</b>           | <b>\$ -</b>                      | <b>\$ 500</b>               | <b>\$ -</b>                   |
| PROPOSED EXPENDITURES             | Strt Maint<br>Sales Tax<br>Fund | 4B Parks<br>Sales Tax<br>Fund | IRS Equitable<br>Sharing<br>Fund | Justice<br>Seizures<br>Fund | Chapter 59<br>Seizure<br>Fund |
| Town Manager's Office             | \$ -                            | \$ -                          | \$ -                             | \$ -                        | \$ -                          |
| Legislative Services              | -                               | -                             | -                                | -                           | -                             |
| Development Services              | -                               | -                             | -                                | -                           | -                             |
| Parks & Recreation Services       | -                               | 5,080,820                     | -                                | -                           | -                             |
| Library Services                  | -                               | -                             | -                                | -                           | -                             |
| Police Services                   | -                               | -                             | 2,292                            | 75,014                      | 48,445                        |
| Financial Services                | -                               | -                             | -                                | -                           | -                             |
| Administrative Services           | -                               | -                             | -                                | -                           | -                             |
| Fire & Emergency Services         | -                               | -                             | -                                | -                           | -                             |
| Communications                    | -                               | -                             | -                                | -                           | -                             |
| Public Works                      | 6,612,321                       | -                             | -                                | -                           | -                             |
| Environmental Services            | -                               | -                             | -                                | -                           | -                             |
| <b>TOTAL EXPENDITURES</b>         | <b>\$ 6,612,321</b>             | <b>\$ 5,080,820</b>           | <b>\$ 2,292</b>                  | <b>\$ 75,014</b>            | <b>\$ 48,445</b>              |
| <b>NET CHANGE</b>                 | <b>\$ (1,381,501)</b>           | <b>\$ -</b>                   | <b>\$ (2,292)</b>                | <b>\$ (74,514)</b>          | <b>\$ (48,445)</b>            |
| 2023-2024 FUND BALANCE PROJECTION | Strt Maint<br>Sales Tax<br>Fund | 4B Parks<br>Sales Tax<br>Fund | IRS Equitable<br>Sharing<br>Fund | Justice<br>Seizures<br>Fund | Chapter 59<br>Seizure<br>Fund |
| Fund Balance 10/1/23              | \$ 1,381,501                    | \$ -                          | \$ 2,292                         | \$ 74,514                   | \$ 48,445                     |
| Revenue                           | 5,230,820                       | 5,080,820                     | -                                | 500                         | -                             |
| Expenditure                       | (6,612,321)                     | (5,080,820)                   | (2,292)                          | (75,014)                    | (48,445)                      |
| Fund Balance 09/30/24             | \$ -                            | \$ -                          | \$ -                             | \$ -                        | \$ -                          |

## EXHIBIT A

Town of Flower Mound, Texas  
FY 23-24

| PROPOSED REVENUES         | Animal<br>Care<br>Fund | Opioid<br>Settlement<br>Fund | CDBG-HUD<br>Grant<br>Fund | Neighborhood<br>Improvement<br>Fund | COVID-19<br>Fund |
|---------------------------|------------------------|------------------------------|---------------------------|-------------------------------------|------------------|
| Taxes                     | \$ -                   | \$ -                         | \$ -                      | \$ -                                | \$ -             |
| Licenses and Permits      | -                      | -                            | -                         | -                                   | -                |
| Intergovernmental Revenue | -                      | -                            | 278,855                   | -                                   | -                |
| Charges for Services      | -                      | -                            | -                         | 75,150                              | -                |
| Fines and Forfeitures     | -                      | -                            | -                         | -                                   | -                |
| Investment Earnings       | 1,000                  | -                            | -                         | 1,000                               | 20,000           |
| Interfund Transfer        | -                      | -                            | -                         | -                                   | -                |
| Other Revenue             | 8,000                  | -                            | -                         | -                                   | -                |
| <b>TOTAL REVENUE</b>      | <b>\$ 9,000</b>        | <b>\$ -</b>                  | <b>\$ 278,855</b>         | <b>\$ 76,150</b>                    | <b>\$ 20,000</b> |

| PROPOSED EXPENDITURES       | Animal<br>Care<br>Fund | Opioid<br>Settlement<br>Fund | CDBG-HUD<br>Grant<br>Fund | Neighborhood<br>Improvement<br>Fund | COVID-19<br>Fund    |
|-----------------------------|------------------------|------------------------------|---------------------------|-------------------------------------|---------------------|
| Town Manager's Office       | \$ -                   | \$ -                         | \$ -                      | \$ -                                | \$ -                |
| Legislative Services        | -                      | -                            | -                         | -                                   | -                   |
| Development Services        | -                      | -                            | -                         | -                                   | -                   |
| Parks & Recreation Services | -                      | -                            | -                         | -                                   | -                   |
| Library Services            | -                      | -                            | -                         | -                                   | -                   |
| Police Services             | 29,500                 | -                            | -                         | -                                   | -                   |
| Financial Services          | -                      | -                            | 278,855                   | -                                   | 445,483             |
| Administrative Services     | -                      | -                            | -                         | -                                   | 172,775             |
| Fire & Emergency Services   | -                      | 67,573                       | -                         | -                                   | 180,000             |
| Communications              | -                      | -                            | -                         | -                                   | -                   |
| Public Works                | -                      | -                            | -                         | 100,000                             | 1,404,590           |
| Environmental Services      | -                      | -                            | -                         | 30,000                              | -                   |
| <b>TOTAL EXPENDITURES</b>   | <b>\$ 29,500</b>       | <b>\$ 67,573</b>             | <b>\$ 278,855</b>         | <b>\$ 130,000</b>                   | <b>\$ 2,202,848</b> |

|                   |                    |                    |             |                    |                       |
|-------------------|--------------------|--------------------|-------------|--------------------|-----------------------|
| <b>NET CHANGE</b> | <b>\$ (20,500)</b> | <b>\$ (67,573)</b> | <b>\$ -</b> | <b>\$ (53,850)</b> | <b>\$ (2,182,848)</b> |
|-------------------|--------------------|--------------------|-------------|--------------------|-----------------------|

| 2023-2024 FUND BALANCE PROJECTION | Animal<br>Care<br>Fund | Opioid<br>Settlement<br>Fund | CDBG-HUD<br>Grant<br>Fund | Neighborhood<br>Improvement<br>Fund | COVID-19<br>Fund |
|-----------------------------------|------------------------|------------------------------|---------------------------|-------------------------------------|------------------|
| Fund Balance 10/1/23              | \$ 97,428              | \$ 67,573                    | \$ -                      | \$ 143,581                          | \$ 2,182,848     |
| Revenue                           | 9,000                  | -                            | 278,855                   | 76,150                              | 20,000           |
| Expenditure                       | (29,500)               | (67,573)                     | (278,855)                 | (130,000)                           | (2,202,848)      |
| <b>Fund Balance 09/30/24</b>      | <b>\$ 76,928</b>       | <b>\$ -</b>                  | <b>\$ -</b>               | <b>\$ 89,731</b>                    | <b>\$ -</b>      |

## EXHIBIT A

Town of Flower Mound, Texas  
FY 23-24

| PROPOSED REVENUES                 | Hotel<br>Occupancy Tax<br>Fund | Muni Court<br>Security<br>Fund | Muni Court<br>Technology<br>Fund | Muni Court<br>Jury<br>Fund | Muni Court<br>Truancy Prevention<br>Fund |
|-----------------------------------|--------------------------------|--------------------------------|----------------------------------|----------------------------|------------------------------------------|
| Taxes                             | \$ 460,000                     | \$ -                           | \$ -                             | \$ -                       | \$ -                                     |
| Licenses and Permits              | -                              | -                              | -                                | -                          | -                                        |
| Intergovernmental Revenue         | -                              | -                              | -                                | -                          | -                                        |
| Charges for Services              | -                              | -                              | -                                | -                          | -                                        |
| Fines and Forfeitures             | -                              | 35,520                         | 29,275                           | 715                        | 35,690                                   |
| Investment Earnings               | 5,000                          | 2,500                          | 1,500                            | -                          | 750                                      |
| Interfund Transfer                | -                              | -                              | -                                | -                          | -                                        |
| Other Revenue                     | -                              | -                              | -                                | -                          | -                                        |
| <b>TOTAL REVENUE</b>              | <b>\$ 465,000</b>              | <b>\$ 38,020</b>               | <b>\$ 30,775</b>                 | <b>\$ 715</b>              | <b>\$ 36,440</b>                         |
| PROPOSED EXPENDITURES             | Hotel<br>Occupancy Tax<br>Fund | Muni Court<br>Security<br>Fund | Muni Court<br>Technology<br>Fund | Muni Court<br>Jury<br>Fund | Muni Court<br>Truancy Prevention<br>Fund |
| Town Manager's Office             | \$ -                           | \$ -                           | \$ -                             | \$ -                       | \$ -                                     |
| Legislative Services              | -                              | -                              | -                                | -                          | -                                        |
| Development Services              | -                              | -                              | -                                | -                          | -                                        |
| Parks & Recreation Services       | -                              | -                              | -                                | -                          | -                                        |
| Library Services                  | -                              | -                              | -                                | -                          | -                                        |
| Police Services                   | -                              | -                              | -                                | -                          | -                                        |
| Financial Services                | 415,000                        | 51,100                         | 34,750                           | 750                        | 35,000                                   |
| Administrative Services           | -                              | -                              | -                                | -                          | -                                        |
| Fire & Emergency Services         | -                              | -                              | -                                | -                          | -                                        |
| Communications                    | -                              | -                              | -                                | -                          | -                                        |
| Public Works                      | -                              | -                              | -                                | -                          | -                                        |
| Environmental Services            | -                              | -                              | -                                | -                          | -                                        |
| <b>TOTAL EXPENDITURES</b>         | <b>\$ 415,000</b>              | <b>\$ 51,100</b>               | <b>\$ 34,750</b>                 | <b>\$ 750</b>              | <b>\$ 35,000</b>                         |
| <b>NET CHANGE</b>                 | <b>\$ 50,000</b>               | <b>\$ (13,080)</b>             | <b>\$ (3,975)</b>                | <b>\$ (35)</b>             | <b>\$ 1,440</b>                          |
| 2023-2024 FUND BALANCE PROJECTION | Hotel<br>Occupancy Tax<br>Fund | Muni Court<br>Security<br>Fund | Muni Court<br>Technology<br>Fund | Muni Court<br>Jury<br>Fund | Muni Court<br>Truancy Prevention<br>Fund |
| Fund Balance 10/1/23              | \$ 268,829                     | \$ 124,896                     | \$ 92,038                        | \$ 847                     | \$ 60,336                                |
| Revenue                           | 465,000                        | 38,020                         | 30,775                           | 715                        | 36,440                                   |
| Expenditure                       | (415,000)                      | (51,100)                       | (34,750)                         | (750)                      | (35,000)                                 |
| Fund Balance 09/30/24             | \$ 318,829                     | \$ 111,816                     | \$ 88,063                        | \$ 812                     | \$ 61,776                                |

## CAPITAL IMPROVEMENT PROGRAM

The first year of the five-year General Government Capital Improvement Program (CIP) addresses needs pertaining to streets, signals, street reconstruction, facilities, and parks, and totals \$23,138,500. The largest portion of the CIP for FY 2023-2024 is dedicated to street and signal projects for \$18,683,500. Facilities projects total \$900,000 and parks projects total \$3,555,000. \$400,000 in new debt will be issued for these projects. These projects will be supported by debt, dedicated sales tax, park development funds, grants and interlocal agreements, impact fees, TIRZ revenue, and cash transfers from the General Fund.

The five-year CIP in the Utility Fund totals \$15,158,000 for FY 2023-2024, which includes water and wastewater lines and stormwater projects. These projects will be supported by \$8,610,000 in additional debt.



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

---

**DATE:** September 18, 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 adopting the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District budget for the fiscal year beginning on October 1, 2023, and ending on September 30, 2024.**

---

**BACKGROUND:** Section 344.204 of the Local Government Code requires the budget to be adopted by the Fire Control, Prevention, and Emergency Medical Services District (Fire District), Board of Directors.

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 Flower Mound Town Council acting as the Board of Directors for the Fire District and staff held the FY 2023-2024 Budget Work Session on August 17, 2023, in the Council Chambers. A public hearing for the Fire District's Proposed Budget was held on August 21, 2023.

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

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** N/A

**Proposed Revenue**  
\$4,889,185

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

**Proposed Expenditure**  
\$3,709,197

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

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

**ATTACHMENTS:**

1. Resolution - Fire Control Budget

**DRAFT MOTION:** The Town Council, acting as the Board of Directors for the Fire Control, Prevention, and Emergency Medical Services District, move to approve a resolution adopting the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District budget for the fiscal year beginning on October 1, 2023, and ending on September 30, 2024.



**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, ADOPTING AND APPROVING THE BUDGET FOR THE TOWN OF FLOWER MOUND FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL SERVICES DISTRICT FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2023, AND ENDING SEPTEMBER 30, 2024; 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 a budget that are different from the procedures outlined in Texas Local Government Code Section 344.204, 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, 2023, and ending September 30, 2024; and

**WHEREAS**, said budget shows, as definitely as possible, each of the various projects for which appropriations are made in the budget and the estimated amount of money carried in the budget for each such project; and

**WHEREAS**, said budget has been filed with the Town Secretary and has been available for inspection by any taxpayer; and

**WHEREAS**, notice of public hearing on the proposed Fire District Budget, stating the date, time, place, and subject matter of said public hearing was given as required by the laws of the State of Texas; and

**WHEREAS**, one (1) such public hearing was held on August 21, 2023, prior approval of such date being hereby ratified and confirmed by the Town Council acting as the Board of Directors for the Fire District, and all those wishing to speak on the budget were heard; and

**WHEREAS**, the Town Council acting as the Board of Directors for the Fire District has studied said budget and listened to the comments of the taxpayers at the public hearing held, and therefore has determined that the budget attached is in the best interest of the Town of Flower Mound Fire District.

**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 budget attached in total hereto as Exhibit "A", and incorporated herein for all purposes, is adopted for the fiscal year beginning October 1, 2023, and ending September 30, 2024, and there is hereby appropriated from the funds indicated and for such purposes, respectively, such sums of money for such projects, operations, activities, purchases, and other expenditures as proposed in the attached budget.

**SECTION 3**

No expenditure of the funds of the Fire District shall hereafter be made except in strict compliance with said budget except that, in the case of public necessity, the Town Council acting as the Board of Directors of the Fire District shall authorize amendments to said budget for emergency expenditures necessary to meet unusual and unforeseen conditions which could not, by reasonably diligent thought and attention, have been included in the original budget.

**SECTION 4**

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

**SECTION 5**

If any section, paragraph, sentence, clause, phrase, or word in this Resolution, or application thereof by any persons or circumstances is held invalid in any Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Resolution; and the Town Council acting as the Board of Directors of the 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**

The necessity of adopting and approving a budget for the next fiscal year as required by the laws of the State of Texas requires that this Resolution shall take effect immediately from and after its passage.

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

PAGE 3

DULY PASSED, APPROVED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF \_\_\_\_\_ TO \_\_\_\_\_ ON THIS 18<sup>th</sup> DAY OF SEPTEMBER, 2023.

APPROVED:

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

ATTEST:

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

## EXHIBIT A

**Town of Flower Mound, Texas  
FY 23-24**

**FIRE CONTROL, PREVENTION, AND EMERGENCY  
MEDICAL SERVICES DISTRICT**

| <b>PROPOSED REVENUES</b>  | <b>Fire District<br/>Sales Tax<br/>Fund</b> |
|---------------------------|---------------------------------------------|
| Taxes                     | \$ 4,869,185                                |
| Licenses and Permits      | -                                           |
| Intergovernmental Revenue | -                                           |
| Charges for Services      | -                                           |
| Fines and Forfeitures     | -                                           |
| Investment Earnings       | 20,000                                      |
| Interfund Transfer        | -                                           |
| Other Revenue             | -                                           |
| <b>TOTAL REVENUE</b>      | <b>\$ 4,889,185</b>                         |

| <b>PROPOSED EXPENDITURES</b> | <b>Fire District<br/>Sales Tax<br/>Fund</b> |
|------------------------------|---------------------------------------------|
| Town Manager's Office        | \$ -                                        |
| Legislative Services         | -                                           |
| Development Services         | -                                           |
| Community Services           | -                                           |
| Police Services              | -                                           |
| Financial Services           | -                                           |
| Fire & Emergency Services    | 3,709,197                                   |
| Communications               | -                                           |
| Public Works                 | -                                           |
| <b>TOTAL EXPENDITURES</b>    | <b>\$ 3,709,197</b>                         |
| <b>NET CHANGE</b>            | <b>\$ 1,179,988</b>                         |

| <b>2023-2024 FUND BALANCE PROJECTION</b> | <b>Fire District<br/>Sales Tax<br/>Fund</b> |
|------------------------------------------|---------------------------------------------|
| Fund Balance 10/1/23                     | \$ 2,882,882                                |
| Revenue                                  | 4,889,185                                   |
| Expenditure                              | (3,709,197)                                 |
| Fund Balance 09/30/24                    | <b>\$ 4,062,870</b>                         |



## TOWN COUNCIL AGENDA K.3. REGULAR ITEM(S)

---

**DATE:** September 18, 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 adopting the Town of Flower Mound Crime Control and Prevention District budget for the fiscal year beginning on October 1, 2023, and ending on September 30, 2024.**

---

**BACKGROUND:** Section 363.204 of the Local Government Code requires the budget to be adopted by the Crime Control and Prevention District (Crime District), Board of Directors.

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 Flower Mound Town Council acting as the Board of Directors for the Crime District and staff held the FY 2023-2024 Budget Work Session on August 17, 2023, in the Council Chambers. A public hearing for the Crime District's Proposed Budget was held on August 21, 2023.

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

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** N/A

**Proposed Revenue**  
\$4,909,545

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

**Proposed Expenditure**  
\$4,622,212

**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 - Crime Control Budget

**DRAFT MOTION:** The Town Council, acting as the Board of Directors for the Crime Control and Prevention District, move to approve a resolution adopting the Town of Flower Mound Crime Control and Prevention District budget for the fiscal year beginning on October 1, 2023, and ending on September 30, 2024.

**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, ADOPTING AND APPROVING THE BUDGET FOR THE TOWN OF FLOWER MOUND CRIME CONTROL AND PREVENTION DISTRICT FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2023, AND ENDING SEPTEMBER 30, 2024; 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 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, 2023, and ending September 30, 2024; and

**WHEREAS**, said budget shows, as definitely as possible, each of the various projects for which appropriations are made in the budget and the estimated amount of money carried in the budget for each such project; and

**WHEREAS**, said budget has been filed with the Town Secretary and has been available for inspection by any taxpayer; and

**WHEREAS**, notice of public hearing on the proposed Crime District Budget, stating the date, time, place, and subject matter of said public hearing was given as required by the laws of the State of Texas; and

**WHEREAS**, one (1) such public hearing was held on August 21, 2023, prior approval of such date being hereby ratified and confirmed by the Town Council acting as the Board of Directors for the Crime District, and all those wishing to speak on the budget were heard; and

**WHEREAS**, the Town Council acting as the Board of Directors for the Crime District has studied said budget and listened to the comments of the taxpayers at the public hearing held, and therefore has determined that the budget attached is in the best interest of the Crime District.

**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 budget attached in total hereto as Exhibit "A", and incorporated herein for all purposes, is adopted for the fiscal year beginning October 1, 2023, and ending September 30, 2024, and there is hereby appropriated from the funds indicated and for such purposes, respectively, such sums of money for such projects, operations, activities, purchases, and other expenditures as proposed in the attached budget.

**SECTION 3**

No expenditure of the funds of the Crime District shall hereafter be made except in strict compliance with said budget except that, in the case of public necessity, the Town Council acting as the Board of Directors of the Crime District shall authorize amendments to said budget for emergency expenditures necessary to meet unusual and unforeseen conditions which could not, by reasonably diligent thought and attention, have been included in the original budget.

**SECTION 4**

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

**SECTION 5**

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

**SECTION 6**

The necessity of adopting and approving a budget for the next fiscal year as required by the laws of the State of Texas requires that this Resolution shall take effect immediately from and after its passage.

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

PAGE 3

DULY PASSED, APPROVED AND ADOPTED BY THE TOWN COUNCIL OF THE  
TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF \_\_\_\_\_ TO \_\_\_\_\_ ON THIS 18<sup>th</sup>  
DAY OF SEPTEMBER, 2023.

APPROVED:

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

ATTEST:

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

## EXHIBIT A

Town of Flower Mound, Texas  
FY 23-24

**CRIME CONTROL AND PREVENTION DISTRICT**

| <b>PROPOSED REVENUES</b>  | <b>Crime District<br/>Sales Tax<br/>Fund</b> |
|---------------------------|----------------------------------------------|
| Taxes                     | \$ 4,879,545                                 |
| Licenses and Permits      | -                                            |
| Intergovernmental Revenue | -                                            |
| Charges for Services      | -                                            |
| Fines and Forfeitures     | -                                            |
| Investment Earnings       | 30,000                                       |
| Interfund Transfer        | -                                            |
| Other Revenue             | -                                            |
| <b>TOTAL REVENUE</b>      | <b>\$ 4,909,545</b>                          |

| <b>PROPOSED EXPENDITURES</b> | <b>Crime District<br/>Sales Tax<br/>Fund</b> |
|------------------------------|----------------------------------------------|
| Town Manager's Office        | \$ -                                         |
| Legislative Services         | -                                            |
| Development Services         | -                                            |
| Community Services           | -                                            |
| Police Services              | 4,622,212                                    |
| Financial Services           | -                                            |
| Fire & Emergency Services    | -                                            |
| Communications               | -                                            |
| Public Works                 | -                                            |
| <b>TOTAL EXPENDITURES</b>    | <b>\$ 4,622,212</b>                          |
| <b>NET CHANGE</b>            | <b>\$ 287,333</b>                            |

| <b>2023-2024 FUND BALANCE PROJECTION</b> | <b>Crime District<br/>Sales Tax<br/>Fund</b> |
|------------------------------------------|----------------------------------------------|
| Fund Balance 10/1/23                     | \$ 4,268,461                                 |
| Revenue                                  | 4,909,545                                    |
| Expenditure                              | (4,622,212)                                  |
| Fund Balance 09/30/24                    | <b>\$ 4,555,794</b>                          |



## TOWN COUNCIL AGENDA K.4. REGULAR ITEM(S)

---

**DATE:** September 18, 2023  
**FROM:** Kay Wilkinson, Director of Budget Services  
**ITEM:** **Public Hearing to consider approval of an ordinance adopting the 2023 tax rolls and fixing and levying municipal ad valorem taxes for the fiscal year beginning on October 1, 2023, and ending on September 30, 2024, and for each fiscal year thereafter until otherwise provided, at the rate of \$0.3873 per \$100 assessed valuation on all taxable property within the corporate limits of the Town of Flower Mound as of January 1, 2023.**

---

**BACKGROUND:** Chapter 26 of the Property Tax Code requires municipalities to comply with truth-in-taxation laws in adopting their tax rates. The laws are designed to make taxpayers aware of tax rate proposals and to allow taxpayers, in certain cases, to limit a tax increase. The Town is required to hold a public hearing on the tax rate before adopting a tax rate that exceeds \$0.359022 the no-new-revenue tax rate. The Town is also required to publish a notice in the newspaper, on TV, and web site before adopting a tax rate. During the public hearing, taxpayers will be given the opportunity to express their views about the rate as it is proposed.

The no-new-revenue tax rate enables the public to evaluate the relationship between taxes for the current year and taxes that a proposed tax rate would produce if applied to the same properties taxed in both years.

The voter-approval rate calculation is split into two separate components: an operating and maintenance rate and a debt rate. The voter-approval rate calculation allows municipalities to raise 103.5 percent of the operating and maintenance money raised in the prior year, plus the necessary debt rate. The Town's voter-approval rate for FY 2023-2024 is \$0.387327.

The Denton Central Appraisal District and the Tarrant Appraisal District provide the final appraisal rolls during the budget process that are utilized by the Town in the calculation of the Town's property tax revenues. The Chief Appraisers certify the appraisal rolls that allow the Town to calculate and submit the no-new-revenue and voter-approval tax rates and estimate revenues. On August 7, 2023, the Town Council approved the certified estimate appraisal roll. The approval of the tax rolls is an annual process required by Section 26.09(e) of the Texas Tax Code.

This ordinance apportions the tax levy for the purpose of defraying the current expenses of the General Fund (i.e., \$0.348344) and for creating an interest and sinking fund for outstanding bonded indebtedness not otherwise provided for (i.e., \$0.038956); it also provides for the collection and payment of taxes and assesses penalties and interest for the nonpayment of taxes within the time set.

An ordinance setting a property tax rate that exceeds the no-new-revenue tax rate (as with this ordinance) requires the affirmative vote of at least 60% of the members of the governing body.

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

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** \$(60,710,145)

**Proposed Revenue**

\$(49,493,065)

\$(5,534,970)

\$(5,682,110)

**Account Number(s):**

100-4105

110-4105

308-4105

**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 - FY 23-24 Tax Rate

**DRAFT MOTION:** "I move that the property tax rate be increased by the adoption of a tax rate of \$0.387300 per \$100 of assessed value, which is effectively a 7.88 percent increase in the tax rate; and move to approve an ordinance adopting the 2023 tax rolls and fixing and levying municipal ad valorem taxes for the fiscal year beginning on October 1, 2023, and ending on September 30, 2024, and for each fiscal year thereafter until otherwise provided, at the rate of \$0.387300 per \$100 assessed valuation on all taxable property within the corporate limits of the Town of Flower Mound as of January 1, 2023."

**TOWN OF FLOWER MOUND, TEXAS**

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

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, FIXING AND LEVYING MUNICIPAL AD VALOREM TAXES FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2023, AND ENDING ON SEPTEMBER 30, 2024, AND FOR EACH FISCAL YEAR THEREAFTER UNTIL OTHERWISE PROVIDED, AT A RATE OF \$0.3873 PER ONE HUNDRED DOLLARS (\$100) ASSESSED VALUATION ON ALL TAXABLE PROPERTY WITHIN THE CORPORATE LIMITS OF THE TOWN AS OF JANUARY 1, 2023; DIRECTING THE ASSESSMENT THEREOF TO PROVIDE REVENUES FOR THE PAYMENT OF CURRENT EXPENSES AND TO PROVIDE AN INTEREST AND SINKING FUND ON ALL OUTSTANDING DEBTS OF THE TOWN; PROVIDING FOR DUE AND DELINQUENT DATES TOGETHER WITH PENALTIES AND INTEREST; PROVIDING FOR APPROVAL OF THE 2023 TAX ROLLS; REPEALING CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.**

**WHEREAS**, the Town Council hereby finds that the tax rate for the fiscal year beginning October 1, 2023, and ending September 30, 2024, hereinafter levied for current expenses of the Town and the general improvements of the Town and its property, must be levied to provide the revenue requirements of the budget for the ensuing year; and

**WHEREAS**, the Town Council has approved by a separate Ordinance adopting the budget for the fiscal year beginning on October 1, 2023, and ending on September 30, 2024; and

**WHEREAS**, the Town Council provided notice of the no-new-revenue tax rate as required by law; and

**WHEREAS**, all statutory and constitutional requirements concerning the levying and assessing of ad valorem taxes have been completed in due and correct time.

**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 legislative and factual determinations of the Town of Flower Mound and they are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

**SECTION 2**

There be and is hereby levied and ordered to be assessed and collected for the fiscal year beginning on October 1, 2023, and ending on September 30, 2024, and for each fiscal year thereafter until otherwise provided, on all taxable property, real, personal, and mixed, situated within the corporate limits of the Town of Flower Mound, Texas, and not exempt by the Constitution of the State and valid state laws, a tax rate of \$0.3873 on each One Hundred Dollars (\$100) assessed value of taxable property, which shall be apportioned and distributed as follows:

- A. For the purpose of defraying the current expenses of the municipal government of the Town, a tax rate of \$0.348344 on each One Hundred Dollars (\$100) assessed value of all taxable property within the Town; and
- B. For the purpose of creating an interest and sinking fund to pay the interest and principal of all outstanding debt obligations of the Town, not otherwise provided for, a tax rate of \$0.038956 on each One Hundred Dollars (\$100) assessed value of all taxable property within the Town.

THIS TAX RATE WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR'S TAX RATE.

THE TAX RATE WILL EFFECTIVELY BE INCREASED BY 3.95 PERCENT AND WILL INCREASE TAXES FOR MAINTENANCE AND OPERATIONS ON A \$100,000 HOME BY APPROXIMATELY \$13.24.

**SECTION 3**

All ad valorem taxes shall become due and payable on October 1, 2023, and all ad valorem taxes shall become delinquent after January 31, 2024. There shall be no discount for payment of taxes prior to said January 31, 2024. If any person fails to pay said ad valorem taxes on or before January 31, 2024, the following penalties shall be payable thereon, to-wit:

|                                                |       |
|------------------------------------------------|-------|
| During the month of February 2024, six percent | ( 6%) |
| During the month of March 2024, seven percent  | ( 7%) |
| During the month of April 2024, eight percent  | ( 8%) |
| During the month of May 2024, nine percent     | ( 9%) |
| During the month of June 2024, ten percent     | (10%) |
| On or after July 1, 2024, twelve percent       | (12%) |

**SECTION 4**

Taxes shall be payable at the offices of the Denton County Tax Office. The Town shall have available all rights and remedies provided by law for enforcement of the collection of taxes levied under this Ordinance.

**SECTION 5**

All delinquent taxes shall bear interest at the rate of twelve percent (12%) per annum, in addition to the penalties.

**SECTION 6**

The Town Council hereby approves the 2023 tax rolls of the Town of Flower Mound, Texas, in the amount of \$60,710,145, based upon the certified appraisal roll and roll under protest as approved by the Appraisal Review Boards of the Denton Central Appraisal District and the Tarrant Appraisal District, to be used for the authorized collection of ad valorem taxes for the fiscal year beginning on October 1, 2023, and ending on September 30, 2024.

**SECTION 7**

Pursuant to the authority granted by Section 33.07 of the Texas Tax Code, in the event that 2023 taxes and taxes for all subsequent years become delinquent on or after February 1 but not later than May 1 of the year in which they become delinquent, and in the event such delinquent taxes are referred to an attorney for collection, an additional amount of twenty percent (20%) of the total amount of tax, penalty and interest then due shall be added as collection costs to be paid by the taxpayer, for all taxes delinquent on or after July 1, 2024.

**SECTION 8**

Pursuant to the authority granted by Section 33.08 of the Texas Tax Code, the Town further provides that all 2023 taxes and taxes for all subsequent years that become delinquent on or after June 1 of the year in which they become delinquent shall, in order to defray the costs of collection, incur an additional 20% of the delinquent tax, penalty and interest.

**SECTION 9**

Any and all ordinances, resolutions, rules, regulations, policies, or provisions in conflict with the provisions of this Ordinance are hereby repealed and rescinded to the extent of the conflict herewith.

**SECTION 10**

If any section, paragraph, sentence, clause, phrase, or word in this Ordinance, 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 Ordinance; and, the Town Council hereby declares it would have passed such remaining portions of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

**SECTION 11**

The fact that it is necessary that this Ordinance be enacted in order to authorize the collection of ad valorem taxes for the fiscal year beginning on October 1, 2023, and ending on September 30, 2024, requires that this Ordinance shall take effect from and after its passage as the law in such cases provides.

**DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF \_\_\_\_\_ TO \_\_\_\_\_ ON THIS 18<sup>th</sup> DAY OF SEPTEMBER, 2023.**

**APPROVED:**

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

**ATTEST:**

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



## TOWN COUNCIL AGENDA K.5. REGULAR ITEM(S)

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**DATE:** September 18, 2023  
**FROM:** Dale Crown, Senior Project Engineer  
**ITEM:** **Consider approval of a Construction Agreement with Flow-Line Construction, Inc., for the Morriss Road Water Lines Phase III (Eaton to Waketon) project, in the amount of \$6,999,712.00; and authorization for the Mayor to execute same on behalf of the Town.**

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**BACKGROUND:** On June 6, 2023, bids were received and opened for the Morriss Road Water Lines Phase III (Eaton to Waketon) project (Bid # 2023-76-B). Flow-Line Construction, Inc. submitted the lowest qualified bid of the four responding bidders at a base bid of \$6,999,712.00.

The Project consists of the construction of 170 linear feet of 16-inch water line, 50 linear feet of 20-inch water line, 4,460 linear feet of 30-inch water line, 270 linear feet of 8-inch water line, 450 linear feet of bore and steel encasement and associated appurtenances.

The proposed 30-inch water line will replace an existing 20-inch water line with past maintenance issues. The proposed water main will provide additional capacity to the Town's distribution system per the Water Master Plan.

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

**ALTERNATIVES:** A decision not to approve the Construction Agreement would result in limited future capacity of the Town's distribution system and continued maintenance issues with the existing 20-inch water line.

**FISCAL IMPACT:** \$6,999,712.00

**Proposed Expenditure/(Revenue)**

\$3,219,001.15

\$3,215,925.85

\$ 564,785.00

**Account Number(s):**

601-900-98802-6170

630-960-98802-6170

378-588-98802-6170

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

**ATTACHMENTS:**

1. Attachment 1\_Bid Tabs
2. Attachment 2\_Construction Agreement
3. Form 1295

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



## Town of Flower Mound

**Bid No: 2023-76-B – Morris Road Water Lines Phase III (Eaton to Waketon)**

**Bid Opening: 6/6/2023 at 11:00 AM**

| Company                           | Total Bid       |
|-----------------------------------|-----------------|
| Flow-Line Construction Inc        | \$ 6,999,712.00 |
| John Burns Construction Company   | \$ 7,562,804.00 |
| Canary Construction, Inc          | \$ 7,672,007.00 |
| Dowager Utility Construction, Ltd | \$ 7,682,656.00 |

**\*\***All bids/proposals submitted for the designated project are reflected on this tabulation sheet. However, the listing of the bid/proposal on this tabulation sheet shall not be construed as a comment on the responsiveness of such bid/proposal or as any indication that the agency accepts such bid/proposal as being responsive. The agency will make a determination as to the responsiveness of the vendor responses submitted based upon compliance with all applicable laws, purchasing guidelines and project documents, including but not limited to the project specifications and contract documents. The agency will notify the successful vendor upon award of the contract and, as according to the law, all bid/proposal responses received will be available for inspection at that time.

Certified By: Sabrina Zadow  
Purchasing Manager  
Town of Flower Mound, Texas

Date: June 6, 2023

**TOWN OF FLOWER MOUND**  
**MORRISS ROAD WATER LINES PHASE III**  
**(EATON TO WAKETON)**

**Bid # 2023-76-B**

**CONSTRUCTION AGREEMENT**

THIS CONSTRUCTION AGREEMENT (the “Agreement”), made and entered into this 18<sup>th</sup> day of September, 2023, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the “Town,” and Flow-Line Construction, Inc., a corporation, hereinafter referred to as the “Contractor.” For and in consideration of the payment, agreements, and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

MORRISS ROAD WATER LINES PHASE III  
(EATON TO WAKETON),  
Bid # 2023-76-B

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

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

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

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

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

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

ARTICLE 2. For performance of the Work in accordance with the Contract Documents, the Town shall pay the Contractor in current funds an amount not to exceed **Six Million Nine Hundred Ninety Nine Thousand Seven Hundred Twelve Dollars and Zero cents (\$ 6,999,712.00)** taking into consideration additions to or deductions from the Total Bid through properly executed change orders by reason of alterations or modifications of the original quantities or by reason of “Extra Work” authorized under this Agreement in accordance with the provisions of the Contract Documents. It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the Contractor by the Town, the said Contractor shall furnish all labor, equipment, and material (except as otherwise specified above) and shall perform all work necessary to complete the improvements in a good and workmanlike manner, ready for use, within the specified time for substantial completion of Three Hundred Thirty (330) calendar days, and final completion of Three Hundred Sixty (360) calendar days ready for final payment, as measured from the Effective Start Date shown in the Notice to Proceed. The work shall be in strict accordance with this Agreement, a copy of which is filed pursuant to law in the office of the legal representative of the Town.

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

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

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

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

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

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

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

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

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

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

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

Retainage shall be withheld and may be paid to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 11. The Contractor understands and agrees that time is of the essence in performing and completing the Work. The Town and Contractor acknowledge that the actual damages the Town may sustain if the Contractor fails to complete the Work on time are uncertain and will be difficult to ascertain. The Contractor agrees that the sum of Two Hundred and Fifty Dollars and Zero/One Hundredths Dollars (\$250.00) per day or portion of a day in Liquidated Damages will be deducted from the Contract price by the Town for each calendar day or portion thereof that the work is not substantially complete beyond the Substantially Complete Contract time, or within such extra time as may have been allowed by an extension approved by the Town. The Contractor also agrees that the sum of Two Hundred and Fifty Dollars and Zero/One Hundredths Dollars (\$250.00) per day or portion of a day in Liquidated Damages for each calendar day or portion thereof the work has not been finally completed by the Contractor beyond the Contract time for final completion, or within such extra time as may have been allowed by an extension approved by the Town. The Town and the Contractor agree that this amount is payable as reasonable and just compensation for failure to complete the Work on time. This amount is payable as liquidated damages and not as a penalty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This Agreement will be effective on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

TOWN OF FLOWER MOUND

CONTRACTOR

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

\_\_\_\_\_(Signature)  
\_\_\_\_\_(Printed Name)  
\_\_\_\_\_(Position)

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST:\_\_\_\_\_  
Theresa Scott, TOWN SECRETARY

ATTEST:\_\_\_\_\_(Signature)  
\_\_\_\_\_(Position)



## TOWN COUNCIL AGENDA K.6. REGULAR ITEM(S)

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**DATE:** September 18, 2023  
**FROM:** Claire Barnes, Planner  
**ITEM:** **Public Hearing to consider a request for a Comprehensive Sign Package (CSP23-0003 – Flower Mound Cemetery Ground Sign) for Flower Mound Cemetery. The property is generally located south of Flower Mound Road and west of Strait Lane. (PZ recommended approval by a vote of 6 to 0 at its September 11, 2023, meeting.)**

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### **BACKGROUND:**

- Lot Size – Approximately 13.513 acres
- Zoning – Agricultural (A) District
- SMARTGrowth – N/A
- CSP – The purpose of the request is to obtain approval of a Comprehensive Sign Package (CSP) in order to construct an updated ground sign for Flower Mound Cemetery. The proposed ground sign requires a CSP for the following reasons:
  - Number of ground signs. Town code permits one ground sign for this property. Including the cemetery sign, three ground signs in total would be located on site.
  - Location of ground sign. Town code requires ground signs to be at least 15 feet from the ROW. The applicant is requesting to locate the sign on the property line.
  - Width of ground sign. Town code allows a maximum width of 10 ft., and the proposed sign is just over 18 ft in width.
- Incentives – N/A
- [Planning and Zoning Commission Staff Report Link](#)

**BOARD REVIEW/CITIZEN FEEDBACK:** The Planning & Zoning Commission recommended approval by a vote of 6 to 0 at its September 11, 2023, meeting.

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** N/A

**LEGAL REVIEW:** N/A

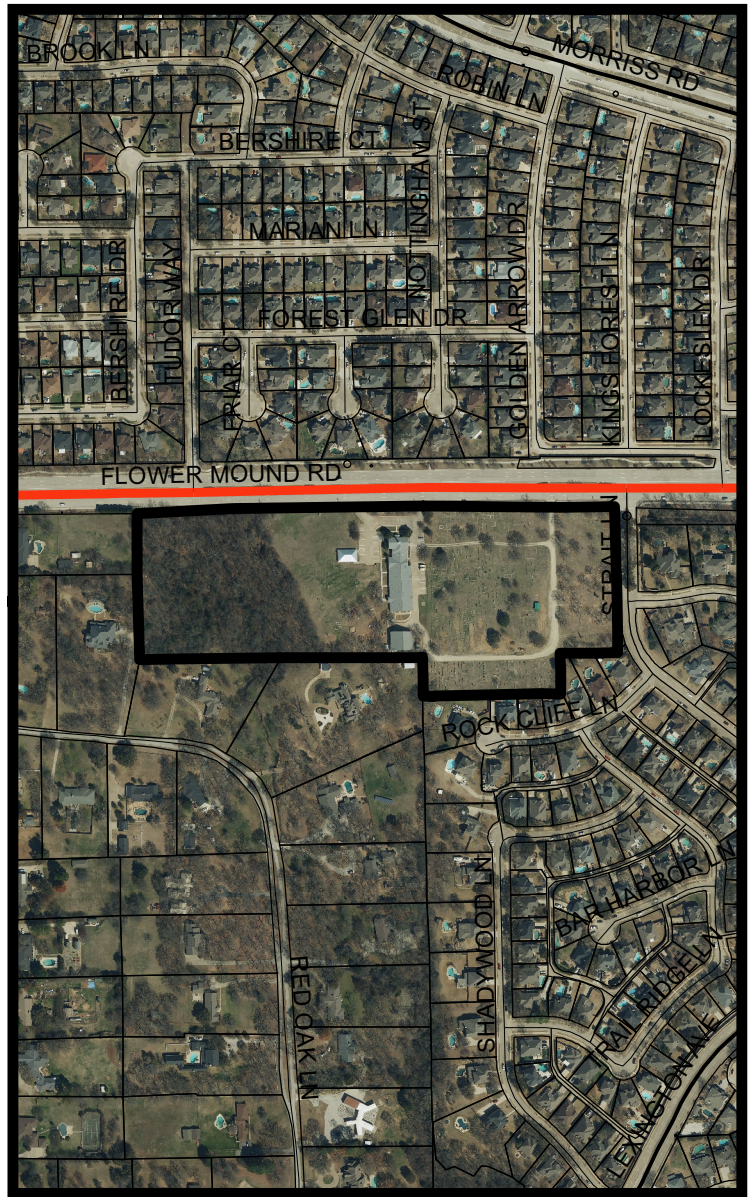
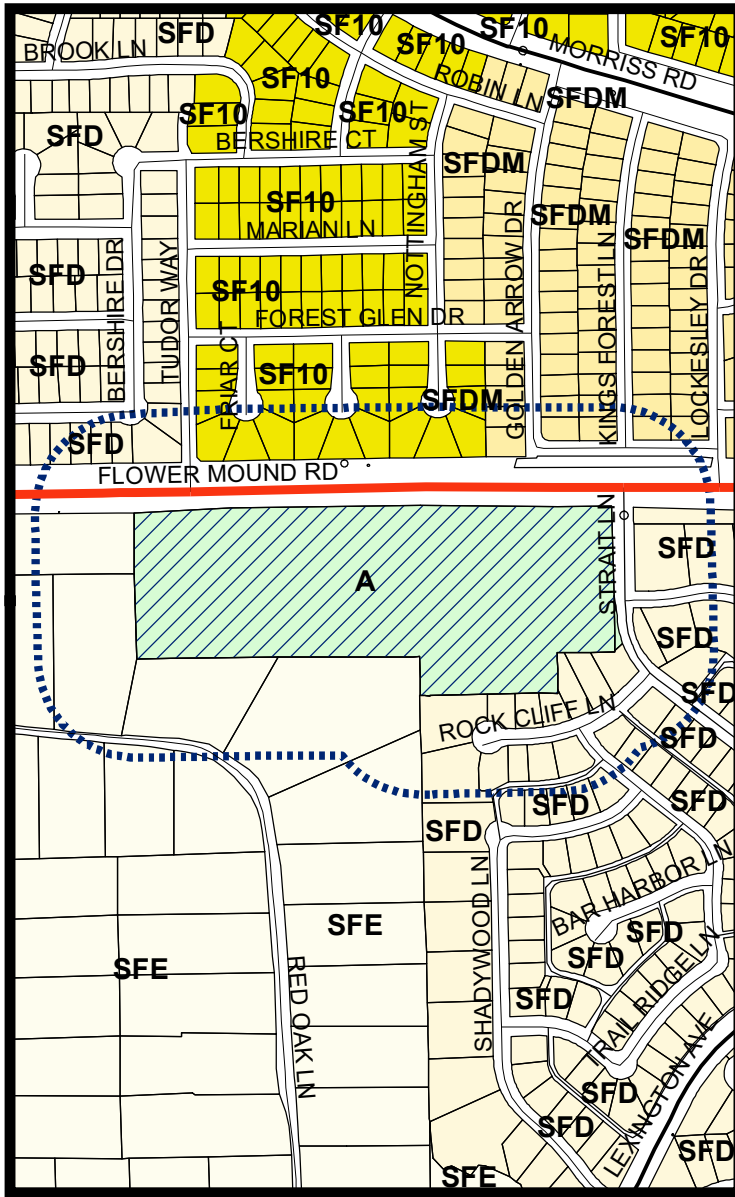
### **ATTACHMENTS:**

1. Map - Zoning & Aerial

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

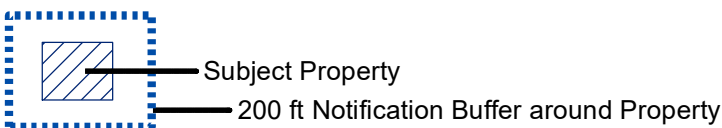
# Vicinity Map

Reference Project: CSP23-0003



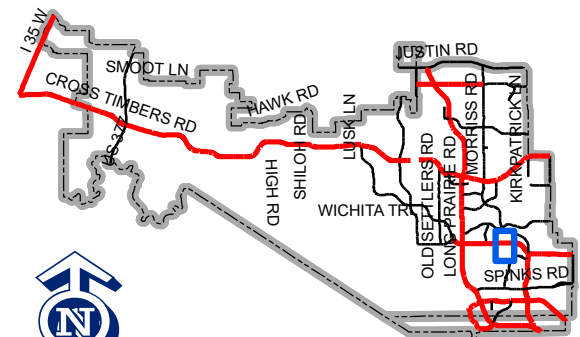
## LEGEND

- Agriculture
- Single Family 10
- Single Family Density Medium
- Single Family Detached
- Single Family Estate



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.



Map Location