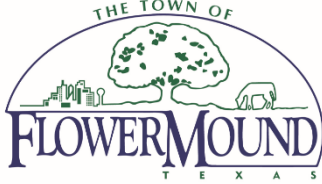


Town Council Regular Meeting



March 18, 2024
Town Hall
2121 Cross Timbers Road
Flower Mound, TX 75028

6:00 p.m.

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

AGENDA

A. CALL TO ORDER

B. INVOCATION

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

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

D. PRESENTATION(S)

1. Proclamation for commemorating Vietnam Veterans Day
2. Texas Municipal Library Directors Association 2023 Achievement of Excellence in Libraries Award

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, including staff announcements
4. LISD Career Out Day

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. March 21 - Work Session
2. April 1 - Regular Meeting

J. BOARDS/COMMISSIONS

Conduct interviews and 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, Parks Board, School Liaison Committee, SMARTGrowth Commission, Tax Increment Reinvestment Zone Number (TIRZ #1), Transportation Commission, and Veterans Liaison Board.

K. CONSENT ITEM(S)

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

1. Minutes 3/4 - Consider approval of the minutes from a regular meeting held on March 4, 2024.
2. Lower Timber Interceptor Rehabilitation - Construction Award - Consider approval of a Construction Agreement with Canary Construction, Inc for the Lower Timber Interceptor Rehabilitation project, in the amount of \$675,995.00; and authorization for the Mayor to execute same on behalf of the Town.
3. Lead and Copper Rule Revisions - PSA - Consider approval of a Professional Service Agreement with Freese and Nichols, Inc. to provide support, a monitoring plan, and asset inventory records review for the EPA Lead and Copper Rule Revision Compliance Program as part of the Utility Asset Management and Utility Replacement project, in the amount of \$95,000.
4. Upper Timber Interceptor - Buy Board Award - Consider approval of Sanitary Sewer Rehabilitation Services related to the Upper Timber Interceptor (Morris Road to One Place Lane) project, with Insituform Technologies, LLC., utilizing

- The Local Government Purchasing Cooperative Contract #635-21, administered through BuyBoard, in the amount of \$912,658.25.
5. Timber Creek Park Collector Rehabilitation - Buy Board Award - Consider approval of Sanitary Sewer Rehabilitation Services related to the Timber Creek Park Collector Rehabilitation (Hanover Drive to Timber Creek Road) project, to Insituform Technologies, LLC., utilizing The Local Government Purchasing Cooperative Contract #635-21, administered through BuyBoard, in the amount of \$897,754.00.
 6. Whyburn Addition Development Agreement - Consider approval of a Developers Agreement with CND Whyburn, LLC., for a 3.525-acre Public Park to be dedicated via special warranty deed to the Town with reimbursement of Park Development fees associated with the Whyburn Addition development for park-related items; and authorization for the Mayor to execute same on behalf of the Town.

L. REGULAR ITEM

1. 2023 ACFR - Consider approval of the Annual Comprehensive Financial Report (ACFR) for the fiscal year ended September 30, 2023.

M. CLOSED MEETING

The Town Council to convene in to a closed meeting pursuant to Texas Government Code Section 551.071 for consultation with Town Attorney, as indicated below. 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 below-referenced items.

1. Consultation with Town Attorney.
 - a. Town regulation of public franchise utilities

N. REGULAR ITEMS

1. Oncor Electric line upgrades on High Road and Rolling Hills - Public Hearing to receive updates and input on the Oncor Electric line upgrade project on High Road and Rolling Hills.
2. TIRZ #2 Final Plan - Consider an ordinance approving the Final Project and Financing Plan for Tax Increment Reinvestment Zone number 2 (TIRZ #2) pursuant to Chapter 311 of the Texas Tax Code.

O. 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 indicated below. 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 below-referenced items.

1. Consultation with Town Attorney.
 - a. La Estancia Investments, L.P. v. Town of Flower Mound, Texas, et al
 - b. Regulation of public art
 - c. Canyon Falls Park
2. Discuss and consider purchase, exchange, lease or value of real property for parks, cultural arts, public safety, 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, grocers, corporate relocation/expansion/retention, hospitality projects, health care facilities, performance related to certain incentive agreements, and Tax Increment Reinvestment Zone (TIRZ) #1, TIRZ #2, River Walk PID No. 1, Proposed PID, MMDs, and MUDs

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.

P. RECONVENE

Q. 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: March 15, 2024, at 2:15 p.m., at least 72 hours prior to the scheduled time of said meeting.

Theresa Scott, Town Secretary

The Flower Mound Town Hall and Jody Smith Hall are wheelchair accessible. Requests for accommodation or interpretive services must be made 48 hours prior to this meeting by contacting Town Hall at 972.874.6000. Additional time limits will be provided for members of the public that need to address the Town Council through a translator.

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

Town Council Regular Meeting



March 4, 2024
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
Ray Watson, Director of Economic Development
Clay Riggs, Director of Public Works

B. INVOCATION

Chaplain McNamer 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. Proclamation and presentation of Hometown Hero banner to Robert Aguirre
Mr. Aguirre was unavailable to attend.

E. PUBLIC COMMENT

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

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

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

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

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

	Speaker name and address	Subject (as written on the form)
1.	Joe Bernard, 10605 Sunrise Cir.	\$40,000 Wasted
2.	Cheryl Moore, 1900 Tennyson Dr.	Candidacy for Mayor
3.	Robert Waters, 5109 Saddle Dr.	Flower Mound Youth Football Academy
4.	Shane Pipkin, 5304 Clear Creek Dr.	Flower Mound Youth Football Academy
5.	Barbara Barrios, 4113 Hide a Way Ln.	Candidacy Announcement
6.	Janvier Werner, 4113 Bob White Ln.	Public participation
7.	Neal Seidner, 3965 High Rd.	Property destruction
8.	Deb Wyse, 7705 Emerson Ln.	High Rd./Oncor
9.	John Kurilecz, 7705 Emerson Ln.	Oncor/Trees
10.	John Van Winkle, 7616 Emerson Ln.	High Road Tree Removal
11.	Clark Canant, 7708 Emerson Ln.	High Rd.
12.	Alley Mathson, 7701 Emerson Ln.*	High Rd. Tree Removal
13.	Sinikka Marter, 7604 Emerson Ln.*	High Rd. Trees cut down by electric company
14.	Gayla Canant, 7708 Emerson Ln.*	Oncor taking trees down on High Rd.
15.	Mark Mathson, 7701 Emerson Ln.*	High Rd. Tree Removal @ Emerson Lane
14.	Tim Runte, 3480 High Rd.*	Oncor/High Road

** Indicates person did not wish to speak*

F. ANNOUNCEMENTS

1. Announcements from the mayor and council members
There were Councilmember announcements regarding:
 - police awards banquet
 - firefighters deployed to the Texas Panhandle
 - Tri City Neighborhood Summit
 - open House at Twin Coves
 - Election Day for Primaries
 - solar eclipse

G. TOWN MANAGER'S REPORT

1. Capital Improvement Projects
2. Economic Development Projects
Mr. Watson provided an update on the Economic Development Strategic Plan.
3. Organizational Updates
Mr. Childers provided a statement of fact regarding the tree cutting on High Road by Oncor.
4. Upcoming Work Sessions
Mr. Childers reported on future work session dates and associated topics.

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 was a future agenda item request to discuss the public utilities easements, the associated codes, and all the questions regarding the destruction of approximately 38 specimen trees, which would include a discussion about tax assessment relief from the County, as well as Oncor's plans for Phase 3. It was suggested that this meeting take place on a date when the Town Attorney and Oncor representatives can attend and that an invitation be extended to Senator Parker, Representatives Bumgarner, and Thimesch.

There was Council consensus to proceed with a future agenda item on that topic.

I. COORDINATION OF CALENDARS

1. March 18 - Regular Meeting

Mayor France confirmed that all members of Council plan on being at this meeting.

J. BOARDS/COMMISSIONS

Conduct interviews and 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, Parks Board, School Liaison Committee, SMARTGrowth Commission, Tax Increment Reinvestment Zone Number (TIRZ #1), Transportation Commission, and Veterans Liaison Board.

Mayor France provided background information that the Town Council will be hearing from applicants for the Historical Commission and Veterans Liaison Board.

The following individuals were interviewed by the Council:

Ricky Clark, for Historical Commission

David Wooten, for Veterans Liaison Board

ACTION: Adam Schiestel moved to appoint John Travis, to the Veterans Liaison Board, Place 5, effective immediately and with a term expiration date of 9/30/25. Chris Drew seconded the motion.

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

NAYS: None

ABSTAIN: None

RESULT: 5 : 0

K. 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: Brian Taylor moved to approve consent items 1 - 8 as presented. Jim Engel seconded the motion.

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

NAYS: None

ABSTAIN: None

RESULT: 5 : 0

1. Minutes 2/15 & 2/19 - Consider approval of the minutes from a work session held on February 15, and a regular meeting held on February 19.
2. Lakeside Pkwy Capacity Improvement - ICA - Consider the approval of an Interlocal Cooperation Agreement with Denton County for the construction of the Lakeside Parkway Capacity Improvement project, and authorize the mayor to execute the same on behalf of the Town.
3. Denton Creek Boulevard Bridge - ICA - Consider the approval of Amendment 1 to the Interlocal Cooperation Agreement with Denton County for the construction of the Denton Creek Boulevard Bridge, and authorize the mayor to execute the same on behalf of the Town.
4. Municipal grounds maintenance - Consider the approval of the award of Best Value Bid No. 2024-56-A Municipal Grounds Maintenance to American Landscape Systems, Inc. at the unit bid, and to establish an annual bid price contract for routine Municipal Grounds Maintenance at specific facilities throughout the town at an annual estimated amount of \$260,000, 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.
5. 2024 Water and Wastewater Model Update - Consider approval of a Professional Services Agreement for the 2024 Water and Wastewater Model update project, with Kimley-Horn, for \$36,400.00; and authorization for the Mayor to execute same on behalf of the Town.
6. Bracewell LLP Engagement Letter - Consider approval of an Engagement Letter with Bracewell LLP, for legal and economic development consulting services associated with TIRZ #2 and the proposed PID.
7. Upgrade Access Control - Consider approval of Schneider Electric to perform the upgrade conversion to remove the obsolete Inet access hardware and install new Security Expert hardware and software in all Town facilities with access control systems for the amount of \$225,000.00.
8. Amendment to Active Network Agreement - Consider approval of an amended Service Agreement Contract with Active Network, LLC. to adjust payment processing, and authorization for the Mayor to execute the same on behalf of the Town.

L. REGULAR ITEM(S)

1. SUP23-0007 - Prairie Plaza Building 2 Veterinary Dental Clinic - Public Hearing to consider an ordinance granting Specific Use Permit No. 489 (SUP23-0007– Prairie Plaza Building 2 Veterinary Dental Clinic) to permit a veterinary hospital

(inside pens) use. The property is generally located north of Cross Timbers Road and west of Long Prairie Road. (PZ recommended approval by a vote of 6 to 0 at its February 26, 2024, meeting.)

Ms. Murphy gave a presentation identifying or noting:

- general and detailed location
- land use and zoning
- SUP site plan
- photos from site
- conceptual landscape plan
- pet yard details
- SUP elevations
- SUP conditions

Applicant Presentation
Rebecca Everett, Bellaire Development

Ms. Everett gave a presentation identifying or noting:

- site plan
- site photos
- proposed yard enclosure
- elevations

and she responded to questions from Council regarding:

- hours of operation
- boarding (overnight)
- appearance of canopy
- adjacency concerns from neighboring business

Mayor France opened the public hearing at 7:22 p.m. No one spoke. Mayor France closed the public hearing at 7:22 p.m.

ORDINANCE NO. 10-24

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, "LAND DEVELOPMENT REGULATIONS," OF THE CODE OF ORDINANCES, TOWN OF FLOWER MOUND, TEXAS, BY APPROVING SPECIFIC USE PERMIT NO. 489 (SUP-489) FOR A VETERINARY HOSPITAL (INSIDE PENS) USE ON CERTAIN PROPERTY DESCRIBED AS 4.7568 ACRES OF LAND AND BEING ALL OF LOT 1, BLOCK A, OF THE PRAIRIE PLAZA ADDITION, AND ZONED PLANNED DEVELOPMENT DISTRICT NO. 150 (PD-150) WITH OFFICE USES; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL

ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

ACTION: Jim Engel moved to approve L.1. as presented in the agenda caption. Chris Drew seconded the motion.
AYES: Ann Martin, Jim Engel, Adam Schiestel, Brian Taylor, Chris Drew
NAYS: None
ABSTAIN: None
RESULT: 5 : 0

2. MPA23-0008-Scenic Drive - Public Hearing to consider a request for a Master Plan Amendment (MPA23-0008 - Scenic Drive) to amend Section 7.0, Thoroughfare Plan, to consider a request to keep Scenic Drive as a Rural Collector street as shown on the Town's Thoroughfare Plan or consider an amendment to the classification of Scenic Drive. (Planning and Zoning recommended approval to keep the existing classification by a vote of 6 to 0 at its February 26, 2024, meeting. Transportation Commission recommended approval to keep the existing classification by a vote of 6 to 0 at its December 12, 2023, meeting.)
Mr. Childers provided background information and offered suggestions about how to proceed.

Council Discussion

There was Council discussion regarding:

- 3 components and the potential impact of each: vehicle lanes, bike lanes, and parkways

Mayor France opened the public hearing at 7:32 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	Fred Vincent, 3933 Bordeaux Circle with donated time from: Terra Klarich, 5005 Glenshire Dr.	Scott Egbert, 2900 Scenic Dr.

2.		Elaine Takacs, 2101 Beachview Dr.	Bronz Peterson, 5104 Saddle Dr.
3.			William Tracewell, 2950 Scenic Dr.

* Indicates person did not wish to speak

Mayor France closed the public hearing at 7:48 p.m.

Council Discussion

There was Council discussion regarding:

- recommendation to leave as is
- concerns regarding holding up a plat for a resident

and Ms. Bruce or Mr. Riggs responded to questions from Council regarding:

- timing and areas affected
- trees with red ribbon

ACTION: Chris Drew moved to rescind this item back to the Transportation Commission for further review. Jim Engel seconded the motion.

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

NAYS: None

ABSTAIN: None

RESULT: 5 : 0

M. CLOSED MEETING

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

Mayor France announced that the Town Council is convening into a closed meeting at 7:56 p.m., pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.071, 551.072, 551.074, and 551.087.

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, cultural arts, public safety, 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, grocers, corporate relocation/expansion/retention, hospitality projects, health care facilities, performance related to certain incentive agreements, and Tax Increment Reinvestment Zone (TIRZ) #1, TIRZ #2, River Walk PID No. 1, Proposed PID, MMDs, and MUDs

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 at 8:30 p.m., and no action was taken on the above items.

O. ADJOURN

Mayor France adjourned the meeting at 8:31 p.m. and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

DEREK FRANCE, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY



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

DATE: March 18, 2024
FROM: Blake Hummel, Senior Project Engineer
ITEM: **Consider approval of a Construction Agreement with Canary Construction, Inc for the Lower Timber Interceptor Rehabilitation project, in the amount of \$675,995.00; and authorization for the Mayor to execute same on behalf of the Town.**

BACKGROUND: On February 13, 2024, bids were received and opened (Bid # 2024-14-B) for the Lower Timber Interceptor Rehabilitation project. Canary Construction, Inc was the only qualified responding bidder at a base bid of \$675,995.00. The Lower Timber Interceptor Rehabilitation project consists of rehabilitation improvements to the existing sanitary sewer system in the Lake Bluff and Tealwood Oaks subdivisions.

The project will provide for the installation of 175-feet of 8-inch sanitary sewer main, 80-feet of 27-inch Cured-in-Place-Pipe (CIPP) rehabilitation, and relocation of 85-feet of 27-inch sanitary sewer main. These improvements will replace the severely deteriorated sanitary sewer mains and will relocate the mains within Town Right of Way (ROW).

Canary Construction has an excellent history of constructing Town projects with a superb performance that did not result in any major issues or significant change orders. Canary Construction also has a history of promptly addressing resident concerns while maintaining consistent progress throughout the projects. Town staff verified that all bid item unit prices were within the expected range, based on bids from other recent projects.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES: A decision not to approve the Construction Agreement would leave the existing sanitary sewer infrastructure in the current deteriorated state and condition. Portions of the sanitary sewer main was discovered to be severely damaged during the design phase of the project, further demonstrating the need for rehabilitation.

FISCAL IMPACT: \$675,995.00

Proposed Expenditure/(Revenue)
\$675,995.00

Account Number(s):
630-970-98932-6180

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. Form 1295 (Internal Use)
2. Bid Tabulation

3. Construction Agreement

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



**Town of Flower Mound
Verified Bid Tab**

Bid No: 2024-14-B – Lower Timber Interceptor Rehabilitation

Bid Opening: 2/13/2024 at 11:00 AM

Company	Total Base Bid
Canary Construction, Inc	\$ 675,995.00

****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.**

Certified By: Sabrina Zadow
Purchasing Manager
Town of Flower Mound, Texas

Date: February 13, 2024

TOWN OF FLOWER MOUND
LOWER TIMBER INTERCEPTOR REHABILITATION

Bid # 2024-14-B

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the “Agreement”), made and entered into this 18th day of March, 2024, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the “Town,” and Canary Construction, a Corporation, hereinafter referred to as the “Contractor.” For and in consideration of the payment, agreements, and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

Lower Timber Interceptor Rehabilitation
Bid # 2024-14-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 Hundred Seventy-Five Thousand Nine Hundred Ninety-Five Dollars and Zero cents (\$ 675,995.00)** 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 and Forty Dollars and Zero/One Hundredths Dollars (\$240.00) per day or portion of a day in Liquidated Damages will be deducted from the Contract price by the Town for each calendar day or portion thereof that the work is not substantially complete beyond the Substantially Complete Contract time, or within such extra time as may have been allowed by an extension approved by the Town. The Contractor also agrees that the sum of Two Hundred and Forty Dollars and Zero/One Hundredths Dollars (\$240.00) per day or portion of a day in Liquidated Damages for each calendar day or portion thereof the work has not been finally completed by the Contractor beyond the Contract time for final completion, or within such extra time as may have been allowed by an extension approved by the Town. The Town and the Contractor agree that this amount is payable as reasonable and just compensation for failure to complete the Work on time. This amount is payable as liquidated damages and not as a penalty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TOWN OF FLOWER MOUND

CONTRACTOR

Derek France, MAYOR

(Signature)

(Printed Name)

(Position)

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST: _____
Theresa Scott, TOWN SECRETARY

ATTEST: _____ (Signature)

(Position)



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

DATE: March 18, 2024
FROM: Manuel Palacios, Assistant Director of Public Works
ITEM: **Consider approval of a Professional Service Agreement with Freese and Nichols, Inc. to provide support, a monitoring plan, and asset inventory records review for the EPA Lead and Copper Rule Revision Compliance Program as part of the Utility Asset Management and Utility Replacement project, in the amount of \$95,000.**

BACKGROUND: The US Environmental Protection Agency (EPA) Lead and Copper Rule Revisions (LCRR) require water systems to prepare and maintain an inventory of service line materials by October 16, 2024. In addition, any water system that has lead or unknown service line material must create a lead service line replacement plan. Water systems are also required to share this information with the public and maintain their inventory until all lead has been removed from the distribution system. The proposed Lead and Copper Rule Improvements (LCRI) requires a full-service line replacement of all identified lead lines within 10 years.

If approved, Freese and Nichols, Inc. will provide support, a monitoring plan, asset inventory of material records and ensure the Town will be able to provide the required documentation by the October 16, 2024 deadline. Freese & Nichols would also assist in preparing and implementing a public outreach plan, as required as part of the new rule revisions.

Freese & Nichols is currently working with many municipal jurisdictions within the Dallas-Forth Worth Metroplex area and was selected as the best qualified engineering firm to provide these services.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES: Public Works staff would perform services which would increase workload and could jeopardize meeting the TCEQ and EPA regulatory compliance deadlines.

FISCAL IMPACT: \$95,000.00

Proposed Expenditure/(Revenue)
\$95,000.00

Account Number(s):
630-960-96004-6170

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. PSA LCRR Compliance Program
2. Form 1295 (Internal Use)

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH
FREESE AND NICHOLS, INC.**

This contract is entered into on this 9th day of February, 2024, 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 / Town Manager, and **Freese and Nichols, Inc.**, (“hereinafter referred to as “CONSULTANT”) whose address is 801 Cherry Street, Suite 2800 Fort Worth, TX 76102.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to providing support, monitoring plan and records review for the Lead and Copper Rule Revisions Compliance Program; 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 Lead and Copper Compliance Program 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 Ninety-Five Thousand No/100 Dollars (\$95,000.00). This total payment for services includes CONSULTANT's ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT. If CONSULTANT retains any subcontractors to perform any of the work, CONSULTANT acknowledges that payments to such subcontractors are due and payable in accordance with the provisions of Texas Government Code Section 2251.022, and that interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.

CONSULTANT will bill TOWN on a lump sum basis in accordance with Attachment "B"; provided however that this Contract shall control in the event of any conflict between the language in Attachment "B" and the language in this Contract. If additional services, trips or expenses are requested, CONSULTANT will not provide such additional services until authorized by TOWN in writing to proceed. The scope of services shall be strictly limited. TOWN shall not be required to pay any amount in excess of the amount identified in the preceding paragraph unless TOWN shall have approved in writing in advance (prior to the performance of additional work) the payment of additional amounts.

Each month CONSULTANT will submit to TOWN an invoice for supporting the percentage for which payment is sought by CONSULTANT during the previous month for which payment is sought. Each invoice shall also state the percentage of work completed on the Project, the total of the current invoice amount and a running total balance for the Project to date.

Assuming that TOWN agrees with the invoice, that TOWN has not determined any of the work to be unsatisfactory, or that TOWN otherwise does not dispute any of the

amounts billed, TOWN shall make payments in the amount shown by CONSULTANT's approved monthly statements and other documentation submitted in compliance with the Texas Prompt Payment Act, Texas Government Code Chapter 2251.

Nothing contained in this Contract shall require TOWN to pay for any work that TOWN has determined has not been successfully completed or is unsatisfactory as determined by TOWN, or which is not otherwise submitted in compliance with the terms of this Contract, nor shall failure to withhold payment pursuant to the provisions of this section constitute a waiver of any right, at law or in equity, which TOWN may have if CONSULTANT is in default, including the right to bring legal action for damages or for specific performance of this Contract. Waiver of any default under this Contract shall not be deemed a waiver of any subsequent default.

IV.

Revisions of the Scope of Services

TOWN reserves the right to revise or expand the scope of services after due approval by TOWN as TOWN may deem necessary, but in such event TOWN shall pay CONSULTANT equitable compensation for such services. In any event, when CONSULTANT is directed to revise or expand the scope of services under this Section of the Contract, CONSULTANT shall provide TOWN a written proposal for the entire costs involved in performing such additional services. Prior to CONSULTANT undertaking any revised or expanded services as directed by TOWN under this Contract, TOWN must authorize in writing the nature and scope of the services and accept the method and amount of compensation and the time involved in all phases of the Project.

It is expressly understood and agreed by CONSULTANT that any compensation not specified in Paragraph III herein above may require Flower Mound Town Council approval and is subject to the current budget year limitations.

V.

Term

This Contract shall begin on the date first written above, and shall terminate when TOWN has approved the Project as being final or otherwise terminates this Contract as provided herein.

VI.

Contract Termination Provision

Notwithstanding any other provision of this Contract, this Contract may be terminated at any time by TOWN for any reason, with or without cause, by providing CONSULTANT thirty (30) days written notice of such termination. Upon receipt of such notice, CONSULTANT shall immediately terminate working on, placing orders or

entering into contracts for supplies, assistance, facilities or materials in connection with this Contract and shall proceed to promptly cancel all existing contracts insofar as they are related to this Contract.

VII.

Ownership of Documents

All materials and documents prepared or assembled by CONSULTANT under this Contract shall become the sole property of TOWN and shall be delivered to TOWN without restriction on future use. CONSULTANT shall provide documents in any commonly-used electronic file format as requested by TOWN. CONSULTANT may retain in its files copies of all drawings, specifications and all other pertinent information for the work. CONSULTANT shall have no liability for changes made to any materials or other documents by others subsequent to the completion of the Contract.

VIII.

Insurance

A. CONSULTANT shall, at its own expense, purchase, maintain and keep in force during the term of this Contract such insurance as set forth below. CONSULTANT shall not commence work under this Contract until CONSULTANT has obtained all the insurance required under this Contract and such insurance has been approved by TOWN, nor shall CONSULTANT allow any subcontractor to commence work on its own subcontract until all similar insurance of the subcontractor has been obtained and approved. All insurance policies provided under this Contract shall be written on an "occurrence" basis save and except the Professional Liability Insurance which may be written on a "claims-made" basis, provided that "tail coverage" or continuation coverage is provided. The insurance requirements shall remain in effect throughout the term of this Contract.

The CONSULTANT shall furnish to TOWN certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Certificates shall reference the Project and be addressed as follows:

Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, TX 75028
Email: purchasing@flower-mound.com

The following policies and coverage shall be required:

1. Worker's Compensation Insurance (as required by law) with the policy endorsed to provide a waiver of subrogation as to TOWN; such policy to provide for Employers' Liability Insurance of not less than \$100,000.00 for

each accident, \$100,000.00 disease-each employee, \$500,000.00 disease-policy limit;

2. Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractor's and Contractual Liability, including but not limited to coverage for all of the indemnification obligations of CONSULTANT under this Contract, and fully insuring CONSULTANT's liability for injury to or death of employees of TOWN and of third parties, extended to include personal injury liability coverage and for damage to property of third parties, with minimum combined single limits of \$1,000,000 per occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate per occurrence. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis;
3. Business Automobile Liability Insurance, covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000.00 per occurrence; and
4. Professional Liability Insurance: CONSULTANT shall obtain and maintain at all times during the prosecution of the work under this Contract professional liability insurance, which may be written on a claims made form provided that "tail coverage" or continuation coverage is provided. Limits of liability shall be \$1,000,000.00 per claim, \$1,000,000.00 annual aggregate. 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:

Manny Palacios Jr.,
Assistant Director of Public Works
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6414 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. EXCEPT FOR CLAIMS COVERED BY THE PROFESSIONAL LIABILITY 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.

FOR CLAIMS COVERED BY THE PROFESSIONAL LIABILITY 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, CONSULTANT WILL, AT ITS OWN COST AND EXPENSE, 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 CONSULTANT OF ITS OBLIGATIONS UNDER THIS SECTION.

XIII. Independent Contractor

CONSULTANT's status shall be that of an Independent Contractor and not an agent, servant, employee or representative of TOWN in the performance of this Contract. No term or provision of or act of CONSULTANT or TOWN under this Contract shall be construed as changing that status. CONSULTANT will have exclusive control of and the exclusive right to control the details of the work performed hereunder, and shall be liable for the acts and omissions of its officers, agents, employees, contractors, subcontractors and engineers and the doctrine of respondent superior shall not apply as between TOWN and CONSULTANT, its officers, agents, employees, contractors, subcontractors and engineers, and nothing herein shall be construed as creating a partnership or joint enterprise between TOWN and CONSULTANT.

XIV. **Default**

If at any time during the term of this Contract, CONSULTANT shall fail to commence the work in accordance with the provisions of this Contract, or fail to diligently provide services in an efficient, timely and careful manner and in strict accordance with the provisions of this Contract, or fail to use an adequate number or quality of personnel to complete the work or fail to perform any of its obligations under this Contract, then TOWN shall have the right, if CONSULTANT shall not cure any such default after thirty (30) days written notice thereof, to terminate this Contract for cause. Any such act by TOWN shall not be deemed a waiver of any other right or remedy of TOWN. If after exercising any such remedy due to CONSULTANT's nonperformance under this Contract, the cost to TOWN to complete the work to be performed under this Contract is in excess of that part of the Contract sum which has not theretofore been paid to CONSULTANT hereunder, CONSULTANT shall be liable for and shall reimburse TOWN for such excess.

TOWN's remedies for CONSULTANT's default or breach under this Contract shall be limited to one or more of the following remedies which may be exercised separately or in combination at TOWN's sole exclusive choice:

- (a) Specific performance of the Contract;
- (b) Re-performance of this Contract at no extra charge to TOWN; or
- (c) Monetary damages.

XV. **Provisions Surviving Termination**

The terms of Sections XII entitled Indemnification, and XVIII entitled Confidential Information shall survive termination of this Contract.

XVI. **Changes**

TOWN may, from time to time, require changes in the scope of services to be performed under this Contract. Such changes as are mutually agreed upon by and between TOWN and CONSULTANT shall be incorporated by written modification to this Contract.

XVII. **Conflicts of Interest**

CONSULTANT covenants and agrees that CONSULTANT and its associates and employees will have no interest, and will acquire no interest, either direct or indirect,

which will conflict in any manner with the performance of the services called for under this Contract. All activities, investigations and other efforts made by CONSULTANT pursuant to this Contract will be conducted by employees, associates or subcontractors of CONSULTANT.

No officer or employee of TOWN shall have any personal, financial interest, direct or indirect, in this Contract nor have any direct financial interest in the sale to TOWN of any land, materials, supplies, or services under this Contract, except on behalf of TOWN as a TOWN officer or employee. Any violation of this prohibition with knowledge, expressed or implied, of the person or corporation contracting with TOWN shall render the Contract voidable by the Director or the Town Council.

XVIII.

Confidential Information

CONSULTANT hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations in accordance with this Contract, which is of a confidential, non-public or proprietary nature. CONSULTANT shall treat any such information received in full confidence and will not disclose or appropriate such Confidential Information for its own use or the use of any third party at any time during or subsequent to this Contract. As used herein, "Confidential Information" means all oral and written information concerning TOWN, its affiliates and subsidiaries, and all oral and written information concerning TOWN or its activities, that is of a non-public, proprietary or confidential nature including, without limitation, information pertaining to customer lists, services, methods, processes and operating procedures, together with all analyses, compilation, studies or other documents, whether prepared by CONSULTANT or others, which contain or otherwise reflect such information. The term "Confidential Information" shall not include such materials that are or become generally available to the public other than as a result of disclosure of CONSULTANT, or are required to be disclosed by a governmental authority or by law, as determined by TOWN's attorney.

XIX.

Notice Information

All notices and communications under this CONTRACT to be mailed to TOWN shall be sent to the address of TOWN's agent as follows, unless and until CONSULTANT is otherwise notified:

Manny Palacios Jr.
Assistant Director of Public Works
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6414 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:

Tanu Kulkarni, P.E.
Project Manager
Freese and Nichols, Inc.
801 Cherry Street, Suite 2800
Fort Worth, Texas 76102
817-735-7300 Telephone
Tanu.Kulkarni@freese.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.

[Signature Page to Follow]

AGREED AND SIGNED by the authorized representatives of the Parties hereto on the dates indicated below.

CONSULTANT:
FREESE & NICHOLS, INC.

THE TOWN OF FLOWER MOUND, TEXAS

By: Trey Shanks

Name: Trey Shanks

Title: Vice President

Dated: February 9, 2024

By: _____

Name: _____

Title: _____

Dated: _____

ATTACHMENT A: SCOPE OF SERVICES AND RESPONSIBILITIES OF CLIENT

LEAD AND COPPER RULE REVISION COMPLIANCE PROGRAM TOWN OF FLOWER MOUND

PROJECT BACKGROUND AND UNDERSTANDING

The U.S. Environmental Protection Agency (EPA) released the long-awaited Lead and Copper Rule Revisions (LCRR) on January 15, 2021, setting new standards aimed at removing harmful levels of lead and copper from drinking water. The LCRR EPA became effective December 16, 2021, with a compliance date of October 16, 2024 by which major deliverables are due, and updated requirements will be in effect for new public outreach, sampling and response measures.

This revision will require cities and other water utilities to take significant action to protect customers from the health risks associated with lead and copper and comply with the LCRR. The following program is proposed to support the Town of Flower Mound (Town) in their compliance with the recently revised Lead and Copper Rule.

This scope of services was developed based on published and finalized LCRR requirements. The scope was evaluated against the proposed LCRI, and was updated to focus on components that the finalized LCRR and proposed LCRI maintain with an October 2024 compliance date. If changes are required to update the actions within this scope to comply with the finalized LCRI, those changes may be negotiated with a contract amendment.

On November 30, 2023, the EPA announced the proposed Lead and Copper Rule Improvements (LCRI). The proposed LCRI maintains the requirement to submit an initial inventory and begin related annual public communications in October 2024, as well as performing public communications related to compliance monitoring results when the 90th Percentile exceeds the Action Level. Remaining compliance activities are proposed to be deferred by 3 years.

Under the proposed rule TCEQ may implement compliance monitoring and schools sampling between October 2024 and October 2027. The task for Monitoring Plan Update and School and Childcare Sampling Plan remain in the proposal as a special service: to be performed only if authorized by the Town, in the event TCEQ offers early implementation.

FNI recommends the following Program to support the Town with compliance with the October 2024 Compliance Date:

- Task 1 – Project Management
- Task 2 – Records Review & Service Line Inventory Support

- Task 3 – Special Service – Performed only if Authorized by Town: Monitoring Plan Update & School and Childcare Sampling Plan
- Task 4 – Public Communications Support
- Task 5 – LCRR Compliance Documentation Submittal

ARTICLE I

BASIC SERVICES

FNI shall render the following professional services in connection with the development of the Project:

TASK 1 - PROJECT MANAGEMENT

1.1 PROJECT KICKOFF MEETING

FNI will conduct a 1-hr kickoff meeting with key project stakeholders to discuss the project approach, roles and deliverables.

1.2 PROJECT ADMINISTRATION

Perform general administrative duties associated with the Project, including planning, progress monitoring and monthly progress reporting, scheduling, quality control/quality assurance, and invoicing for the Project. These duties include maintaining regular contact with the Town to help meet the needs of the Town in a timely manner and executing work in accordance with the work plan, budget, and schedule.

1.3 PROJECT COORDINATION MEETINGS

Lead up to fourteen (14), virtual, one-hour coordination meetings, with the Town's staff to facilitate the progress and completion of the project. Topics for each meeting will be identified in advance and related to the execution of Tasks 2 – 6 of this project.

At each meeting, FNI will be responsible for:

- Developing and distributing the agenda in advance of the meeting.
- Moderating the discussion.
- Distributing meeting minutes and action items.

The Town will be responsible for:

- Reviewing the agenda and securing the participation of relevant staff for each meeting.
- Reviewing meeting minutes and providing timely feedback to FNI.
- Addressing action items in a timely manner.

TASK 2 - SERVICE LINE INVENTORY SUPPORT

FNI will review the development of the SLM Inventory by the Town, in preparation for October 16, 2024, submission to the TCEQ.

2.1 RECORDS REVIEW AND SERVICE LINE INVENTORY SUPPORT

FNI will evaluate the availability and quality of records required to complete the Historical Records Review Section of the TCEQ inventory template. Records will be reviewed for information pertaining to service line age and materials to support a SLM Inventory. FNI will review a small sample set from the available records to assess the quality of the data and the potential for identifying service main material and install date. FNI will present the results of the records evaluation and options for field verification for discussion with the Town staff at a project coordination meeting, and provide text to be used in the records related tabs of the TCEQ inventory template for the Town's use in the inventory submittal for October 2024.

FNI will provide a recommended Standard Operating Procedure (SOP) for service line material inspections with one round of comments to be reviewed during a routine progress meeting. FNI will provide a final SOP to the Town.

FNI will provide up to 4-hours of review over virtual meetings and provide feedback of inventory. Including support for completion of TCEQ Inventory template prior to submittal. FNI will fill out the TCEQ template for the non-inventory related tabs.

TASK 2 DELIVERABLES

- Table summarizing Records Review Results. Text for use in completing the records-related tabs of the TCEQ Inventory Template. (electronic submission)
- Standard Operating Procedures for field identification of SLM (electronic submission)

TASK 3 – MONITORING PLAN UPDATE & SCHOOL AND CHILDCARE SAMPLE PLAN (SPECIAL SERVICE TO BE PERFORMED IF AUTHORIZED)

The LCRI published on November 30, 2023, proposes to defer the compliance deadline for to October 2027 for these sampling components of the rule. If the TCEQ chooses to offer early implementation, the Town may authorize FNI to proceed with the tasks below to prepare the Monitoring Plan and School and Childcare Sampling Plan for the Town.

FNI will update the Town's water quality sampling plan (monitoring plan) based on relevant information available regarding known service line materials, EPA's tiered sampling structure and TCEQ instructions.

3.1 MONITORING PLAN UPDATE (REQUIRED FOR COMPLIANCE)

FNI will review the section of the Town's existing monitoring plan related to Lead and Copper Rule and update in accordance with LCRR and LCRI requirements. The LCRI requirements have yet to be finalized at the time of Notice to Proceed, but it is anticipated the revisions to the sampling plan will not require additional services. If the final LCRI requirements materially affect the effort for the sampling plan update, FNI will notify the Town to coordinate Additional Services prior to proceeding.

Updated Site Selection

FNI will recommend new or re-tiered sites based on the currently available inventory data, EPA's tiered site requirements, historic sample results, and water usage. One alternative site will be recommended for each draft sample site.

FNI will provide outreach surveys to be sent to potential sample sites. The letter will be up to two (2) letter-size pages explaining LCRR sample requirements, what to expect as a sampling participant, and requesting customer agreement to participate, contact information, and interior plumbing materials. The Town will be responsible for communicating with customers to obtain customer agreement to be a sample site.

If the Town does not have enough Tier 1 – 3 sites, research may be required to confirm interior plumbing materials for potential Tier 4 sites. FNI will provide a list of potential Tier 4 addresses for the Town to use to conduct customer outreach for participating sample sites.

FNI will prepare the selected sites in TCEQ's required forms for submittal to TCEQ for review and approval. FNI will provide drafted forms to the Town for review and comment before submittal to the State. FNI will provide support in answering TCEQ questions on the sites selected.

Update of Lead and Copper Monitoring Section

Research will be conducted for the sites, as required, to confirm service line material and interior plumbing materials. FNI will recommend new or re-tiered sites based on the EPA's tiered site requirements, historic sample results, water usage, and the Town's initial inventory results at the time of the plan development. One alternative site will be recommended for each draft sample site. The Town will be responsible for field visits and public outreach to confirm interior plumbing materials, and the homeowners' willingness to participate in sampling.

FNI will update the utility's sample plan with the new frequency of sampling, and materials to be provided to homeowners and/or sampling procedures.

Update of Water Quality Parameter Tap Monitoring Section

FNI will review and recommend sites for water quality parameter (WQP) monitoring which are be required in response to treatment changes, lead and copper trigger level and action level

exceedances to meet the requirements of LCRR and LCRI, and to represent various sources and residence times within the distribution system.

FNI will update the utility's sampling plan with current frequency of sampling, sampling procedures, as required by the LCRR and LCRI. Instructions for the WQP monitoring required as part of "find and fix" assessments will be included in the plan update.

3.2 SCHOOL AND CHILDCARE SAMPLING PLAN (REQUIRED FOR COMPLIANCE)

Based on information available from State of Texas childcare facility and school databases, as well as information provided by the Town, FNI will identify and quantify school and childcare facilities within the Town's jurisdiction. FNI will develop a plan and schedule for sampling facilities.

FNI will develop a School and Childcare Sampling, including sections on the following:

1. Initial outreach to school system officials and other stakeholders
2. Communication with individual locations
3. Sampling responsibility
4. Materials to be provided to schools and/or sampling procedures
5. Laboratory method and reporting requirements
6. Data management
7. Response to elevated concentrations and general recommendations for remedial actions, such as signage, point-of-use filters, and fixture removal.

TASK 3 DELIVERABLES

- Sample site survey/outreach content provided electronically as one (1) letter-sized page (electronic submission)
- Drafted TCEQ Sample Site Selection forms (electronic submission)
- Updated LCR and WQP sections of Monitoring Plan in pdf (electronic submission)
- School and Childcare Sampling Plan (electronic submission)

TASK 4 – PUBLIC COMMUNICATIONS SUPPORT

FNI will coordinate with the Town to develop communication materials to meet the public outreach requirements of LCRR and LCRI, and to assist the Town with communication on LCRR topics.

4.1 FAQs AND WEBSITE MATERIALS

FNI will provide two (2) 8.5"x 11" page of written content and two figures to unify the Town's messaging on key LCRR topics such as:

- LCRR updates to Lead regulations,
- The Town’s monitoring and compliance history,
- Service line material inventory,
- Potential presence of lead materials in premise plumbing,
- Potential lead risks in drinking water related to lead piping, and
- School and Childcare monitoring.

FNI will provide recommended webpage content and up to 20 hours of coordination with the Town’s website developer to create a webpage. The page will provide information from the developed FAQs and will include a placeholder and messaging for the public-facing inventory.

4.2 COMMUNITY MEETING MATERIALS

FNI will provide a PowerPoint presentation, and 1-page handout to support the Town’s communication with school boards, community open houses, and other entities.

4.3 PUBLIC COMMUNICATION REFERENCE MATERIALS, AND TEMPLATES (REQUIRED FOR COMPLIANCE)

FNI will provide a reference table of public communication requirements within the LCRR and LCRI, including the required method, timing, and frequency of communication required for each communication. Templates for each notification will be provided. Topics will be organized for ease of use, for example:

- Annual communication activities:
 - Annual Service line material notification to connections with lead, Galvanized Requiring Replacement (GRR), and unknown materials, and
- Notices of Monitoring Results. Public Educational Materials and Public Notices will be provided in English and, if requested, Spanish. Content will include the topics of:
 - Notification of sampling results to all homeowners participating in tap sampling,
 - Notification required following 90th Percentile Trigger Level, Action Level Exceedances, and
 - Notification required following single exceedances of the Action Level.

TASK 4 DELIVERABLES

- FAQs & Website Materials Provided as text and figures (electronic submission).
- Community Meeting Power Point Slides and 1-Page Handout (electronic submission)
- Public Communication Reference Table and Templates, Flow chart for notices related to water service disruptions. (Electronic Submission)

TASK 5 – LCRR COMPLIANCE DOCUMENTATION SUBMITTAL (REQUIRED FOR COMPLIANCE)

FNI will prepare required compliance documentation in the format required by TCEQ for submission by the October 16, 2024, compliance deadline.

5.1 FNI will review the TCEQ SLM Inventory template populated by the Town with information developed in Tasks 2 and 3.

5.2 FNI will document the Water Quality Sampling Plan in accordance with TCEQ requirements, based on information developed in Task 3.

5.3 FNI will provide the reviewed SLM Inventory, Draft Water Quality Sampling Plan to the Town for review and comment. FNI will meet up to two (2) times with the Town to present and walk through each compliance documentation item and receive Town feedback.

5.4 Upon receipt of final Town feedback, FNI will prepare the reviewed SLM Inventory, Final Water Quality Sampling Plan for submission to TCEQ by the compliance deadline. FNI will provide up to 8 hours of support in answering TCEQs questions on the submitted documents.

TASK 5 DELIVERABLES

- Final SLM Inventory (Agency +)
- Final Water Quality Sample Plan

ARTICLE IV

SCHEDULE & COMPENSATION

FNI recommends implementing the following schedule for the execution of this Scope of Services. Tasks 2, 3, 4, and 5 will be completed by August 15, 2024, to allow for preparation, review, finalization, and submittal of the compliance documents in Task 6. Task 6 will be completed in two (2) months and by the October 16, 2024 compliance deadline, except for the post-submittal TCEQ coordination assistance.

COMPENSATION

FNI will provide the identified Services for the lump sum total of Ninety-Five Thousand Dollars (\$95,000) as detailed in the Fee Schedule provided in Attachment B.

ATTACHMENT B: FEE SCHEDULE

COMPENSATION

FNI will provide the identified Services for the lump sum total of Ninety-Five Thousand Dollars (\$95,000), as detailed below.

SERVICES	FEE	
Task 1: Project Management	\$34,000.00	Basic
Task 2: Records Review & Service Line Inventory Support	\$20,000.00	Basic
Task 3: Monitoring Plan Update & School and Childcare Sampling Plan	\$20,000.00	Special*
Task 4: Public Communications Support	\$15,000.00	Basic
Task 5: LCRR Compliance Documentation Submittal	\$6,000.00	Basic

*Special Services for Monitoring Plan and Schools Sampling Plan will be performed if authorized by the Town.

TOTAL	\$95,000
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TOWN COUNCIL AGENDA K.4. CONSENT ITEM(S)

DATE: March 18, 2024
FROM: Blake Hummel, Senior Project Engineer
ITEM: **Consider approval of Sanitary Sewer Rehabilitation Services related to the Upper Timber Interceptor (Morriss Road to One Place Lane) project, with Insituform Technologies, LLC., utilizing The Local Government Purchasing Cooperative Contract #635-21, administered through BuyBoard, in the amount of \$912,658.25.**

BACKGROUND: The Upper Timber Interceptor (Morriss Road to One Place Lane) project consists of Cured-In-Place Pipe (CIPP) rehabilitation of 1,605 linear feet of 27-inch sanitary sewer main, that extends through the One Place Phase I & II subdivision along One Place Lane. The project also includes rehabilitation of existing manholes via interior spray lining and replacing the manhole frames/covers along the sanitary sewer main alignment. By-pass pumping operations will be required during the rehabilitation in order to maintain service through the existing sanitary sewer main.

If approved, Insituform Technologies, LLC will provide for the repair of the deteriorated sanitary sewer infrastructure and will improve the functionality of this critical sanitary sewer interceptor.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES: A decision not to approve the BuyBoard Proposal for the sanitary sewer rehabilitation would delay work necessary to prolong the service life of the infrastructure.

FISCAL IMPACT: \$912,658.25

Proposed Expenditure/(Revenue)
\$912,658.25

Account Number(s):
630-970-98734-6180

LEGAL REVIEW: Cara Leahy White, of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has previously reviewed the identical language used for the BuyBoard Proposal as to form and legality with the Timber Creek Trunk Line (Morriss Road to Rawlings Street) project approved by Town Council on May 12, 2021.

ATTACHMENTS:

1. Insituform - BuyBoard Proposal
2. Form 1295 (Internal Use)

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

February 26, 2024

SF#: SO-00105147

Mr. Blake Hummel, PE
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, TX 75028-1820

Buyboard Proposal

Project Name: **Town of Flower Mound, TX – Upper Timbercreek Ph 2
Sewer Rehab by CIPP Timber Creek Rd to One Place Ln, MH Ring/Cover Replacement and
Spraywall Manhole Rehab**

INSITUFORM TECHNOLOGIES, LLC herein proposes to furnish a Proposal for all labor, materials, equipment, and services necessary to reconstruct the referenced project (as detailed in the project location maps and other information presented by the Town of Flower Mound) utilizing the Local Purchasing Cooperative Contract #635-21, administered through the BuyBoard.

ASSUMPTIONS AND QUALIFICATIONS

We have based this proposal on a nominal wall thickness for the Insitutube as shown in the price. The design is based on a Fully Deteriorated condition with a 100-year design life. Existing pipe deterioration in excess of the conditions assumed, ground water loads in excess of those assumed, or other loads or conditions may increase the recommended thickness for all or portions of the work. Final recommendations may be submitted to you following the completion of the preliminary TV phase of the project. Stated prices are subject to adjustment if design changes are agreed upon. **It should be noted that Insituform has already completed a preliminary TV and clean assessment of the lines and all quantities are based on those findings. Insituform will do a final TV and clean prior to lining the segment after obstruction removals and to confirm pipe readiness.**

Laterals. No laterals have been identified on this phase.

Water shall be provided at no cost to Insituform Technologies, LLC for all construction phases of this project. The Owner shall furnish Insituform Technologies, LLC with required water meters and pay all associated fees, deposits, and charges. Insituform Technologies, LLC will follow all required backflow prevention and metering procedures.

Insituform will supply the Town of Flower Mound 2-year Maintenance, Payment, and Performance Bonds (if required), and Certificate of Insurance following acceptance of this proposal.

The pricing in this proposal assumes that all Technical Specifications set forth by the BuyBoard will be strictly adhered to. Any changes to these specifications must be noted and agreed upon by both parties prior to finalizing the proposal pricing.

Special:

- 1. Water shall be provided as noted above.**
- 2. Insituform expects to complete the work in approximately 150 days.**
- 3. Quantities are based on the best available information at the time of this proposal. Final actual quantities will be billed.**

PROPOSAL PRICING

PAY ITEM	DESCRIPTION	QTY	U/M	UNIT PRICE	ESTIMATED AMOUNT
1	Travel & Mobilization – CCTV Crew	1	EA	\$7,500.00	\$7,500.00
2	27" Grease Removal	1,544	LF	\$18.00	\$27,792.00
3	Obstruction Removal	15	EA	\$450.00	\$6,750.00
4	Travel & Mobilization – CIPP Crew	1	EA	\$7,500.00	\$7,500.00
5	27" x 10.5mm CIPP	1,605	LF	\$135.00	\$216,675.00
6	27" CIPP Setup Charge Per Install Length	1,605	LF	\$35.00	\$56,175.00
7	CIPP Short Length Add-On (<300 LF)	1,647	IN-DIA/LF	\$20.00	\$32,940.00
8	27" Post TV Inspection After Rehabilitation	1,605	LF	\$5.00	\$8,025.00
9	Bypass Equip/Pipe Delivery, Tear Down, Pick Up 4"	1	EA	\$5,000.00	\$5,000.00
10	Bypass Equip/Pipe Delivery, Tear Down, Pick Up 12"	1	EA	\$50,000.00	\$50,000.00
11	Set Up 4" Pump (Per Pump)	2	EA	\$500.00	\$1,000.00
12	Set Up 8" Pump (Per Pump)	3	EA	\$2,000.00	\$6,000.00
13	Set Up 12" Piping	1,605	LF	\$40.00	\$64,200.00
14	Operate 4" Pumping System (fuel & maint)	2	DAY	\$250.00	\$500.00
15	Operate 8" Pumping System (fuel & maint)	11	DAY	\$1,000.00	\$11,000.00
16	Bypass Pump Watch Labor	13	DAY	\$2,350.00	\$30,550.00
17	Bypass Line Watch Labor	11	DAY	\$1,850.00	\$20,350.00
18	Travel & Mobilization – Excavation Crew	1	EA	\$7,500.00	\$7,500.00
19	Remove Cone & MH 1547 for Bypass Suction to 4'	1	EA	\$8,750.00	\$8,750.00
20	Replace Existing Cone After Bypass	1	EA	\$4,000.00	\$4,000.00
21	Heavy Clearing for Access Behind 4106 One Place Ln	1	LS	\$9,500.00	\$9,500.00
22	Light Clearing for Access Through Park at Lower End	1	LS	\$2,500.00	\$2,500.00
23	Repair/Rehab 6" Concrete Walkway/Driveway	10	SY	\$335.00	\$3,350.00
24	Install and Remove Rock Pad & MH for Bypass Access	1	LS	\$3,500.00	\$3,500.00
25	Excavate, Sawcut MH, Raise to Grade with Rings, Install New 32" Pamtight Ring/Cover (excludes concrete collar)	7	EA	\$9,450.00	\$66,150.00
26	Repair/Rehab 6" Concrete Street	50	SY	\$335.00	\$16,750.00
27	Repair/Rehab Concrete Curb	21	LF	\$245.00	\$5,145.00
28	Sod	80	SF	\$20.00	\$1,600.00
29	Seeding (excludes watering)	4,000	SY	\$0.25	\$1,000.00
30	Placement of Asphalt Bags – Temp Curb Ramp	1	EA	\$750.00	\$750.00
31	Mobilization – MH Rehab Crew	2	EA	\$6,250.00	\$12,500.00
32	Remove or Abrade Existing Spectrashield MH Coating on One 9' Deep MH 3308	113	SF	\$15.00	\$1,695.00
33	Manhole – Spray Rehab ½" Cementitious & 125 mil Spraywall	566	SF	\$42.00	\$23,772.00
34	Manhole – Spray Rehab 1" Cementitious & 250 mil Spraywall	2,191	SF	\$56.75	\$124,339.25
35	Chemical Grout to Stop Water I/I as Needed (Qty TBD)	23	GAL	\$450.00	\$10,350.00
36	Rework Bench/Invert for MH Rehab	8	EA	\$1,100.00	\$8,800.00
37	Traffic Control (Per Setup Per Day)	15	DAY	\$1,000.00	\$15,000.00
38	Lighted Arrow Board (Per Arrow Board)	4	DAY	\$200.00	\$800.00
39	Flaggers	60	HR	\$75.00	\$4,500.00
40	Owner's Contingency Allowance	1	AL	\$10,000.00	\$10,000.00
41	Bonds (2 Year Maintenance)	1	LS	\$18,450.00	\$18,450.00
					\$912,658.25

Note: A Tax-Exempt certificate will need to be provided prior to mobilization.

PROPOSAL INCLUSIONS

The prices stated in this proposal include:

1. Mobilizations and demobilization.
2. Initial pipeline cleaning of segment completed in previous phase to include obstruction removals and grease removal for conditions found in previous phase.
3. Bypass pumping.
4. Traffic control.
5. Pre-Video inspections and documentation of existing pipe prior to reconstruction with the Insituform process for pipe rehabilitated by CIPP.
6. Final video inspection following completion of the installation to document your new pipe rehabilitated by CIPP.
7. Insitutube wetout using 400,000 Flexural Modulus Polyester resin, inversion, curing, and finishing.
8. Manhole Rehab w/ Spraywall and New Pamtight Ring/Covers.
9. Confined space safe entry practices.
10. Two-year standard construction warranty. Three-year for manhole rehab product directly from manufacturer.
11. Two-year Maintenance Bond.
12. Certificate of insurance with a standard coverage.

PROPOSAL EXCLUSIONS

Not included in the prices stated in this estimate are costs associated with the items listed below. These items, if needed or found to be applicable, would be provided by **INSITUFORM TECHNOLOGIES, LLC** at your additional cost; or would be furnished by others, at your direction, at no cost to **INSITUFORM TECHNOLOGIES, LLC**:

- a) If preliminary video inspection of the pipe interior not included in the initial phase indicates excessive damage, or other extra-ordinary condition, which will require excavation, or other extraordinary remedy, to prepare the pipe for installation of the Insitutube, then those services will be provided by change order or allowance, if approved by the Owner.
- b) Additional mobilizations and/or setups may apply due to point repairs, obstruction removals, or delays out of our control.
- c) Manual operation of any pumping and/or metering stations.
- d) Water from fire hydrants within a convenient distance from each cleaning and inversion site location.
- e) Legal dumpsite for debris resulting from pipes cleaning.
- f) *If any hazardous or toxic materials are encountered during the project, the Owner will be responsible for the removal and disposal of the materials.*
- g) Project permits and/or local licenses will be provided by the Owner or Engineer.
- h) State and local sales and/or use taxes on the value of the project. If you are exempt, please submit the appropriate documentation.
- i) Additional premiums for special insurance coverage(s) demanded by you or other parties particular to this project.

PROPOSAL TERMS AND CONDITIONS

- a) LIMITED WARRANTY. IN LIEU OF ALL OTHER EXPRESSED, IMPLIED AND/OR STATUTORY WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, CONTRACTOR AGREES TO CORRECT ANY DEFECTS IN THE MATERIALS OR SERVICES PROVIDED BY CONTRACTOR WHICH ARE BROUGHT TO THE ATTENTION OF CONTRACTOR WITHIN ONE YEAR FOLLOWING COMPLETION OF CONTRACTOR'S WORK, PROVIDED OWNER AFFORDS CONTRACTOR SUITABLE ACCESS AND WORKING CONDITIONS TO ACCOMPLISH SUCH CORRECTION.
- b) CONSEQUENTIAL DAMAGES related to or arising out of this contract shall be limited to 1.5 times the contract value or \$1,368,987.00.
- c)

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- d) PROPOSAL SUBJECT TO NEGOTIATION OF OTHER STANDARD TERMS OF AGREEMENT. This proposal is subject to agreement of the parties on other terms and conditions as are customary in contracts of this nature.
 - e) Quantities are estimated. Unit prices apply for actual invoice and payment.
 - f) Payments are due at net within thirty days of invoice. Final payment is due within thirty days of completion of project.
 - g) Monthly progress partial payments may be requested for the value of work in progress or completed, including materials secured and on site.
 - h) Prices stated are in effect for thirty days from the date of this proposal. The acceptance period may be extended at the sole option of **INSITUFORM TECHNOLOGIES, LLC**.
 - i) A PO must be received by March 30th due to the current Buyboard Contract terminating.

OFFERED BY:

ACCEPTED BY:

INSITUFORM TECHNOLOGIES, LLC

Timothy R. Peterie

SIGNATURE

DATE

**TIMOTHY R. PETERIE
BUSINESS DEVELOPMENT MANAGER**

NAME

**REVIEWED BY:
ANDY OZMENT
AREA MANAGER**

TITLE

ORGANIZATION

cc: Ben Hawkins
Craig Nolen



TOWN COUNCIL AGENDA K.5. CONSENT ITEM(S)

DATE: March 18, 2024
FROM: Blake Hummel, Senior Project Engineer
ITEM: **Consider approval of Sanitary Sewer Rehabilitation Services related to the Timber Creek Park Collector Rehabilitation (Hanover Drive to Timber Creek Road) project, to Insituform Technologies, LLC., utilizing The Local Government Purchasing Cooperative Contract #635-21, administered through BuyBoard, in the amount of \$897,754.00.**

BACKGROUND: The Timber Creek Park Collector Rehabilitation (Hanover Drive to Timber Creek Road) project consists of Cured-In-Place Pipe (CIPP) rehabilitation of approximately 255 linear feet of 8-inch, 1030 linear feet of 12-inch, and 1,225 linear feet of 15-inch sanitary sewer mains, that extend through the Timber Creek Park Addition Phase III subdivision. All fifty-three interconnecting residential sanitary services will also be rehabilitated via a combination of pipe bursting and open cut construction methods including placement of sanitary sewer cleanouts at the Right of Way line.

The project also includes rehabilitation of ten existing manholes via interior spray lining and replacement of manhole frames/covers along the alignment. By-pass pumping operations will be required during the rehabilitation in order to maintain service through the existing sanitary sewer main.

If approved, Insituform Technologies, LLC will provide for the repair of the deteriorated sanitary sewer infrastructure and improve the functionality of this critical sanitary sewer system.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES: A decision not to approve the BuyBoard Proposal for the sanitary sewer rehabilitation would delay upgrades necessary to prolong the service life of this critical infrastructure.

FISCAL IMPACT: \$897,754.00

Proposed Expenditure/(Revenue)
\$897,754.00

Account Number(s):
630-970-98284-6180

LEGAL REVIEW: Cara Leahy White, of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has previously reviewed the identical language used for the BuyBoard Proposal as to form and legality with the Timber Creek Trunk Line (Morris Road to Rawlings Street) project approved by Town Council on May 12, 2021.

ATTACHMENTS:

1. Insituform - BuyBoard Proposal
2. Form 1295 (Internal Use)

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

February 26, 2024

SF#: SO-00158282

Mr. Blake Hummel, PE
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, TX 75028-1820

Buyboard Proposal

Project Name: **Town of Flower Mound, TX – Timber Creek Park Collector Rehab
Sewer Rehab by CIPP, MH Ring/Cover Replacement and Spraywall Manhole Rehab**

INSITUFORM TECHNOLOGIES, LLC herein proposes to furnish a Proposal for all labor, materials, equipment, and services necessary to reconstruct the referenced project (as detailed in the project location maps and other information presented by the Town of Flower Mound) utilizing the Local Purchasing Cooperative Contract #635-21, administered through the BuyBoard.

ASSUMPTIONS AND QUALIFICATIONS

We have based this proposal on a nominal wall thickness for the Insitutube as shown in the price. The design is based on a Fully Deteriorated condition with a 100-year design life. Existing pipe deterioration in excess of the conditions assumed, ground water loads in excess of those assumed, or other loads or conditions may increase the recommended thickness for all or portions of the work. Final recommendations may be submitted to you following the completion of the preliminary TV phase of the project. Stated prices are subject to adjustment if design changes are agreed upon. No initial SSES assessment has been performed on this pipe and all quantities are based on field survey efforts completed prior to this proposal.

Laterals. During TV inspection all side sewers are verified, using best practical efforts, to determine if each is an active hook up. Normal practice only reinstates those, which are active. You may direct us to reinstate all or specific laterals as you desire. This proposal, unless otherwise stated, assumes that all laterals will be reconnected internally using the Insitucutter and then external connections will be completed, cleanouts installed at the property lines, and laterals will be pipe burst from the main to the property line. Specific service connections will not be reconnected only when written directions are received from the Owner. The Owner will indemnify and hold **INSITUFORM TECHNOLOGIES, LLC** harmless from all claims arising from backups and other effects of such actions or inaction's from services not opened at the owner's request.

Water shall be provided at no cost to Insituform Technologies, LLC for all construction phases of this project. The Owner shall furnish Insituform Technologies, LLC with required water meters and pay all associated fees, deposits, and charges. Insituform Technologies, LLC will follow all required backflow prevention and metering procedures.

Insituform will supply the Town of Flower Mound 2-year Maintenance, Payment, and Performance Bonds (if required), and Certificate of Insurance following acceptance of this proposal.

The pricing in this proposal assumes that all Technical Specifications set forth by the BuyBoard will be strictly adhered to. Any changes to these specifications must be noted and agreed upon by both parties prior to finalizing the proposal pricing.

Special:

- 1. Water shall be provided as noted above.**
- 2. Insituform expects to complete the work in approximately 180 days.**
- 3. Quantities are based on the best available information at the time of this proposal.
Final actual quantities will be billed.**

PROPOSAL PRICING

PAY ITEM	DESCRIPTION	QTY	U/M	UNIT PRICE	ESTIMATED AMOUNT
1	Travel & Mobilization – CCTV Crew	1	EA	\$5,000.00	\$5,000.00
2	8" Clean and TV Sanitary Sewer	254	LF	\$5.00	\$1,270.00
3	12" Clean and TV Sanitary Sewer	1,032	LF	\$7.00	\$7,224.00
4	15" Clean and TV Sanitary Sewer	1,225	LF	\$8.00	\$9,800.00
5	Tuberculation Removal in 15" DI Pipe (if necessary)	1,225	LF	\$25.00	\$30,625.00
6	Travel & Mobilization – CIPP Crew	1	EA	\$7,500.00	\$7,500.00
7	8" x 6.0mm CIPP	254	LF	\$35.00	\$8,890.00
8	12" x 6.0mm CIPP	1,032	LF	\$50.00	\$51,600.00
9	15" x 7.5mm CIPP	1,225	LF	\$60.00	\$73,500.00
10	8"-12" CIPP Setup Charge Per Install Length	1,286	LF	\$15.00	\$19,290.00
11	15" CIPP Setup Charge Per Install Length	1,225	LF	\$25.00	\$30,625.00
12	CIPP Short Length Add-On (<300 LF)	4,336	IN-DIA/LF	\$6.00	\$26,016.00
13	Non-Standard Resin System Add-On (VE for Aerial)	32,791	IN-DIA/LF	\$1.00	\$32,791.00
14	Internal Service Relief Prior to External	53	EA	\$200.00	\$10,600.00
15	8"-15" Post TV Inspection After Rehabilitation	2,511	LF	\$4.00	\$10,044.00
16	Bypass Equip/Pipe Delivery, Tear Down, Pick Up 4"	6	EA	\$2,000.00	\$12,000.00
17	Set Up 4" Piping	2,511	LF	\$2.00	\$5,022.00
18	Operate 4" Pumping System (fuel & maint)	7	DAY	\$250.00	\$1,750.00
19	Bypass Pump Watch Labor	7	DAY	\$1,000.00	\$7,000.00
20	Travel & Mobilization – Lateral Rehab Crew	1	EA	\$7,500.00	\$7,500.00
21	External Reconnect (8'-12' deep)	53	EA	\$2,000.00	\$106,000.00
22	Pipeburst or Open Cut Lateral Setup Charge	53	EA	\$1,250.00	\$66,250.00
23	Pipeburst or Open Cut Lateral	1,690	LF	\$60.00	\$101,400.00
24	Potholing for Nearby Utility Location (0'-8' deep up to 4hr)	3	EA	\$1,000.00	\$3,000.00
25	Trench Safety	448	LF	\$20.00	\$8,960.00
26	Granular Backfill	100	TON	\$75.00	\$7,500.00
27	Extra Hand Excavation	16	CY	\$75.00	\$1,200.00
28	Install Cleanout at Property Line	53	EA	\$500.00	\$26,500.00
29	Repair/Rehab 6" Concrete Driveway	120	SF	\$45.00	\$5,400.00
30	Repair/Rehab 4" Concrete Sidewalk	161	SF	\$37.00	\$5,957.00
31	Erosion Control	1	LS	\$6,750.00	\$6,750.00
32	Sod	600	SY	\$20.00	\$12,000.00
33	Repair/Rehab Wooden Fence with New	32	LF	\$50.00	\$1,600.00
34	Traffic Control (per crew at each site)	70	DAY	\$300.00	\$21,000.00
35	Mobilization – Excavation Crew	1	EA	\$7,500.00	\$7,500.00
36	Excavate, Sawcut MH, Raise to Grade with Rings, Install New 32" Pamrex Ring/Cover (excludes concrete collar)	7	EA	\$8,950.00	\$62,650.00
37	Excavate, Sawcut MH, Raise to Grade with Rings, Install New 32" Pamtight Ring/Cover (excludes concrete collar)	3	EA	\$9,450.00	\$28,350.00
38	Repair/Rehab 6" Concrete Street	42	SY	\$345.00	\$14,490.00
39	Repair/Rehab Concrete Curb	45	LF	\$220.00	\$9,900.00
40	Mobilization – MH Rehab Crew	0	EA	\$0.00	\$0.00
41	Manhole – Spray Rehab 1" Cementitious & 250 mil Spraywall	0	SF	\$0.00	\$0.00
42	Rework Bench/Invert for MH Rehab	10	EA	\$1,100.00	\$11,000.00
43	Chemical Grout to Stop Water I/I as Needed (Qty TBD)	33	GAL	\$450.00	\$14,850.00
44	Bonds (2 Year Maintenance)	1	LS	\$17,450.00	\$17,450.00
					\$897,754.00

Note: A Tax-Exempt certificate will need to be provided prior to mobilization.

PROPOSAL INCLUSIONS

The prices stated in this proposal include:

1. Mobilizations and demobilization.
2. Initial pipeline cleaning of segment completed in previous phase to include obstruction removals and grease removal for conditions found in previous phase.
3. Bypass pumping.
4. Traffic control.
5. Pre-Video inspections and documentation of existing pipe prior to reconstruction with the Insituform process for pipe rehabilitated by CIPP.
6. Final video inspection following completion of the installation to document your new pipe rehabilitated by CIPP.
7. Insitutube wetout using 400,000 Flexural Modulus Polyester resin, inversion, curing, and finishing.
8. Manhole Rehab (partial) and New Pamtight/Pamrex Ring/Covers.
9. Confined space safe entry practices.
10. Two-year standard construction warranty. Three-year for manhole rehab product directly from manufacturer.
11. Two-year Maintenance Bond.
12. Certificate of insurance with a standard coverage.

PROPOSAL EXCLUSIONS

Not included in the prices stated in this estimate are costs associated with the items listed below. These items, if needed or found to be applicable, would be provided by **INSITUFORM TECHNOLOGIES, LLC** at your additional cost; or would be furnished by others, at your direction, at no cost to **INSITUFORM TECHNOLOGIES, LLC**:

- a) If preliminary video inspection of the pipe interior not included in the initial phase indicates excessive damage, or other extra-ordinary condition, which will require excavation, or other extraordinary remedy, to prepare the pipe for installation of the Insitutube, then those services will be provided by change order or allowance, if approved by the Owner.
- b) Additional mobilizations and/or setups may apply due to point repairs, obstruction removals, or delays out of our control.
- c) Manual operation of any pumping and/or metering stations.
- d) Water from fire hydrants within a convenient distance from each cleaning and inversion site location.
- e) Legal dumpsite for debris resulting from pipes cleaning.
- f) *If any hazardous or toxic materials are encountered during the project, the Owner will be responsible for the removal and disposal of the materials.*
- g) Project permits and/or local licenses will be provided by the Owner or Engineer.
- h) State and local sales and/or use taxes on the value of the project. If you are exempt, please submit the appropriate documentation.
- i) Additional premiums for special insurance coverage(s) demanded by you or other parties particular to this project.

PROPOSAL TERMS AND CONDITIONS

- a) **LIMITED WARRANTY. IN LIEU OF ALL OTHER EXPRESSED, IMPLIED AND/OR STATUTORY WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, CONTRACTOR AGREES TO CORRECT ANY DEFECTS IN THE MATERIALS OR SERVICES PROVIDED BY CONTRACTOR WHICH ARE BROUGHT TO THE ATTENTION OF CONTRACTOR WITHIN ONE YEAR FOLLOWING COMPLETION OF CONTRACTOR'S WORK, PROVIDED OWNER AFFORDS CONTRACTOR SUITABLE ACCESS AND WORKING CONDITIONS TO ACCOMPLISH SUCH CORRECTION.**
- b)

-
- c) CONSEQUENTIAL DAMAGES related to or arising out of this contract shall be limited to 1.5 times the contract value or \$1,346,631.00.
 - d) PROPOSAL SUBJECT TO NEGOTIATION OF OTHER STANDARD TERMS OF AGREEMENT. This proposal is subject to agreement of the parties on other terms and conditions as are customary in contracts of this nature.
 - e) Quantities are estimated. Unit prices apply for actual invoice and payment.
 - f) Payments are due at net within thirty days of invoice. Final payment is due within thirty days of completion of project.
 - g) Monthly progress partial payments may be requested for the value of work in progress or completed, including materials secured and on site.
 - h) Prices stated are in effect for thirty days from the date of this proposal. The acceptance period may be extended at the sole option of **INSITUFORM TECHNOLOGIES, LLC**.
 - i) A PO must be received by March 30th due to the current Buyboard Contract terminating.

OFFERED BY:

ACCEPTED BY:

INSITUFORM TECHNOLOGIES, LLC

Timothy R. Peterie

SIGNATURE

DATE

**TIMOTHY R. PETERIE
BUSINESS DEVELOPMENT MANAGER**

NAME

**REVIEWED BY:
ANDY OZMENT
AREA MANAGER**

TITLE

ORGANIZATION

cc: Ben Hawkins
Craig Nolen



TOWN COUNCIL AGENDA K.6. CONSENT ITEM(S)

DATE: March 18, 2024
FROM: Robert Pegg, Assistant Director of Engineering
ITEM: **Consider approval of a Developers Agreement with CND Whyburn, LLC., for a 3.525-acre Public Park to be dedicated via special warranty deed to the Town with reimbursement of Park Development fees associated with the Whyburn Addition development for park-related items; and authorization for the Mayor to execute same on behalf of the Town.**

BACKGROUND:

Whyburn Addition development came before the Parks Board on [October 6, 2022](#). The Parks Board recommended approval for a Public Park of 3.525 acres and payment of Park Development Fees in the amount of \$124,920.00 for the Whyburn Addition development. The Park will be owned and maintained by Town of Flower Mound. The Parks Board also recommended park development fee reimbursement for parking spaces associated with the Town Park being dedicated and an upgrade of a 4-foot sidewalk to a 12-foot Town Multi-use Trail. The recommendation passed by a vote of 6 to 0.

On [October 10, 2022](#), staff brought forward the zoning request (ZPD21-0015) to the Planning and Zoning Commission, and on [March 21, 2023](#), the zoning request was brought before Town Council. Planning and zoning moved to recommend approval and the motion passed by a vote of 5 to 1. Town Council moved to recommend approval and the motion passed by a vote of 5 to 0.

BOARD REVIEW/CITIZEN FEEDBACK: On [October 6, 2022](#) by a vote of 6 to 0, the Parks Board recommended approval for a 3.525 Town park and reimbursement of Park Development Fees for park-related items in the amount of \$124,920.00 for the Whyburn Addition residential development.

ALTERNATIVES: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: Alicia Kreh, of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the Development Agreement as to form and legality.

ATTACHMENTS:

1. Form 1295 (Internal Use)
2. Development Agreement

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

DEVELOPMENT AGREEMENT FOR WHYBURN RESIDENTIAL

THIS DEVELOPMENT AGREEMENT FOR WHYBURN RESIDENTIAL (“**Agreement**”) is made and entered into this ____ day of March 2024, by and between the Town of Flower Mound, Texas (the “**Town**”), and CND Whyburn, LLC, a Texas limited liability company (“**Developer**”). The Town and Developer are each referred to herein as a “**Party**” and collectively as the “**Parties**.”

WITNESSETH:

WHEREAS, Developer proposes to develop roughly ninety (90) single-family dwelling units and related infrastructure improvements (the “**Project**”) on property encompassing approximately 42.032 acres in Flower Mound, Texas, generally located east of Long Prairie Road and south of Dixon Road, as more particularly described in **Exhibit A** attached hereto and incorporated herein by reference (the “**Property**”); and

WHEREAS, the Town Council approved planned development zoning for the Project (ZPD21-0015 – Whyburn Farms) on March 20, 2023; and

WHEREAS, said planned development contains a 3.525-acre public park to be dedicated via special warranty deed to the Town; and

WHEREAS, in accordance with the Park Regulations (defined herein), Developer is required to dedicate to the Town 3.36 acres of park space per 100 dwelling units within the Project, and pay fees in lieu of dedication, or a combination thereof; and

WHEREAS, at the February 2, 2023 Parks Board meeting, Developer agreed to dedicate park land and pay park development fees in the amount of \$124,920.00, as further detailed herein; and

WHEREAS, Developer has agreed to coordinate with the Town on the construction of Park Improvements (defined herein) on Lot -19, Whyburn Residential, as generally detailed on **Exhibit B** attached hereto and incorporated herein; and

WHEREAS, the Town and Developer acknowledge that the foregoing issues should be addressed through this Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Town and Developer covenant and agree as follows:

1. Project Subject to Town Ordinances. The Project, or any portion thereof, at all times shall be developed and constructed in accordance with all applicable Town ordinances related to the Project (subject to state law), and shall be subject to said ordinances, as such now exist or may hereafter be amended and/or approved by the Town. Unless otherwise expressly stipulated in this Agreement, nothing herein shall

relieve Developer of its responsibilities for the construction of public improvements under applicable development ordinances of the Town.

2. Park Dedication and Fee in Lieu. In full satisfaction of Developer's obligations, under the Flower Mound Code of Ordinances, Subpart B, "Land Development Regulations," Chapter 90, "Subdivisions," Article VI, "Standards," Division 8, "Parks and Recreational Areas," as amended ("Park Regulations"), to dedicate park land and/or make a payment of cash in lieu of park land dedication, Developer shall dedicate to the Town 3.525 acres of land (the "Park") in the location generally shaded and labeled as "Town Park Land Dedication" on **Exhibit A** (including any Park Improvements (defined herein) constructed or installed by or on behalf of Developer pursuant to Section 4 herein). The Park Dedication shall be the only park land dedication and/or fee in lieu of park land required by the Town for development of the Project and shall fully satisfy Developer's park land dedication requirements (or fee in lieu) under the Park Regulations. The Park Dedication shall be provided to the Town via separate instrument.

3. Park Development Fees. The Parties agree that the total park development fees to be assessed for the Property and the Project under Section 90-446 of the Park Regulations is \$124,920.00 (\$1,388.00 per unit) ("Park Development Fee"). Developer shall be eligible for credits and/or reimbursement for the Park Development Fee as described in Section 5 herein. Subject to credits or reimbursement pursuant to Section 5 herein, the Park Development Fee shall be paid by Developer to the Town prior to acceptance by the Town of public improvements, as applicable, for the number of lots being recorded by final plat of the Property in the Denton County real property records.

4. Park Improvements. Developer agrees to and shall improve the Park by providing ten (10) parking spaces. Developer shall also provide a twelve (12) foot trail along Whyburn Drive in accordance with and as depicted in **Exhibit B**. Under the terms of this Agreement, the Town will reimburse Developer for upgrading the sidewalks from four (4) feet to twelve (12) feet. The parking spaces and trail shall collectively be referred to as the "Park Improvements". Such Park Improvements shall be constructed and completed before the acceptance by the Town of public improvements, as applicable. Any future capital improvements or development of the Park will be made at the Town's discretion, and Developer shall not be required to pay for or provide any improvements other than the Park Improvements described herein. All improvements referenced herein shall be approved by the Town, including but not limited to, materials used, construction methods, and construction details and specifications. Developer also agrees that all such improvements shall meet or exceed current Town standards. Further, the improvements referenced in **Exhibit B** are the minimum improvements to be made by Developer and any increased costs, cost overruns, change orders (made at the discretion of Developer), and related additional charges for such improvements that exceed the Park Development fees shall be borne by Developer. In no event may the Town require the design and construction of Park Improvements that have costs ("Park Improvement Costs"), or an estimate of such costs, that exceed the amount of the Park Development Fee. Otherwise stated, in no event may the Town require Developer to prepare plans for or construct Park Improvements that exceed \$124,920.00 in Park Improvement Costs. The Parties acknowledge that the Park Development Fee is based on the Project containing 90

dwelling units and that the Park Dedication is estimated to be approximately 3.525 acres. Should the lot count change (to be other than 90 dwelling units) or the Park Dedication change (to be other than 3.525 acres), the Fee in Lieu and Park Development Fee, as applicable, shall be adjusted accordingly to reflect the accurate lot count total and/or change in dedication area, if and as applicable.

5. Park Fee Credits and Reimbursement. When Developer completes the Park Improvements, the Town agrees to provide Developer credits against the Park Development Fee ("Park Fee Credit") or reimburse Developer from the Park Development Fee already paid ("Park Fee Reimbursement"), as applicable, in an amount equal to the actual Park Improvements Costs for the Park Improvements, up to \$124,920.00. In order to receive the Park Fee Credit or Park Fee Reimbursement, Developer shall submit actual construction receipts for the Park Improvements to substantiate that such costs have actually been paid. In no event may the Developer require the Town to reimburse Park Development Fees above \$124,920.00.

6. Indemnity. Developer agrees to indemnify, hold harmless, and defend the Town and its officers, agents, and employees from any and all third-party claims, including, but not limited to, third-party claims for damages, attorney's fees, court costs, third party judgments, real and personal property damage, personal injury, and death, arising out of Developer's performance of this Agreement; provided that the foregoing shall not apply to any liability resulting from the gross negligence or willful misconduct of the Town, its officers, agents, or employees, and in the event of any such gross negligence or willful misconduct of the Town, its officers, agents, or employees, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas. This indemnity provision shall survive the termination of this Agreement.

7. Captions and Headings. The captions and headings of the sections of this Agreement are for convenience and reference only and shall not affect, modify, or amplify the provisions of this Agreement, nor shall they be employed to interpret or aid in the construction of this Agreement.

8. Applicable Laws and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Denton County, Texas. Venue for any action arising under this Agreement shall lie in Denton County, Texas.

9. Notices. Any notices required or permitted to be given hereunder shall be given by certified or registered mail, return receipt requested; via hand-delivery service that provides a return receipt showing the date of actual delivery of the same to the addressee, or a courier service that provides a return receipt showing the date of actual delivery of the same to the addressee. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee set forth below, or to such other address as either Party hereto shall notify the other:

If to the Town: The Town of Flower Mound, Texas
2121 Cross Timbers Road
Flower Mound, Texas 75028
Attn: Town Manager's Office

with a copy to: Taylor Olson Adkins Sralla & Elam, LLP
6000 Western Place
Suite 200
Fort Worth, Texas 76107

If to Developer: CND Whyburn, LLC
3301 North I-35
Carrollton, TX 75007
Attn: Garrett Lust

with a copy to: Weekley Homes, LLC
1111 N. Post Oak Road
Houston, Texas 77055
Attn: John Burchfield

10. Attorneys' Fees. In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing Party in any such action or proceeding shall be entitled to recover its reasonable costs and attorneys' fees (including its reasonable costs and attorneys' fees on any appeal). Nothing herein shall constitute a waiver of any claim or defense that could be asserted in any litigation related to this Agreement and the Parties agree that this Agreement is not subject to Subchapter 1 of Chapter 271 of the Texas Local Government Code.

11. Entire Agreement. This Agreement contains the entire agreement between the Parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole, and not strictly for or against any Party.

12. Severability. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, this Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision(s) were not a part hereof.

13. Filing in Denton County Deed Records; Covenant Running with the Land. This Agreement, or a memorandum thereof, shall be filed in the deed records of Denton County, Texas. Upon any sale or other transfer of any ownership rights in the Property, Developer shall notify the Town in writing of such sale or transfer within thirty (30) days of such sale or transfer, provided, however, no notice shall be required for the sale of a lot for which a record plat has been approved and recorded in the deed records. This Agreement shall be deemed a covenant that runs with the land and is binding on all heirs, successors, assigns, grantees, vendors, trustees, representatives of Developer and all others holding any interest now or in the future with the exception of (i) the purchaser of

a lot for which a record plat has been approved and recorded in the deed records and on which a residence has been constructed; and (ii) common areas owned by the Home Owners Association (HOA) or other property owners' association, as applicable (each a "Fully Improved Lot").

14. Binding Obligation; Assignment. This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The Town warrants and represents that the individual executing this Agreement on behalf of the Town has full authority to execute this Agreement and bind the Town to the same. Developer warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind Developer to same. Except as otherwise provided herein, upon written notice to the Town, Developer may assign this Agreement, in whole or in part, including without limitation the maintenance obligations in Section 4 herein and all or part of Developer's right, title, and interest under this Agreement to any person or entity who is or will become an owner of any portion of the Property (except for the purchaser of a lot for which a record plat has been approved and on which a residence has been constructed), and the HOA (each a "Permitted Assignee"). The Town shall not be bound by any assignment of this Agreement unless and until the Town has received a fully signed copy of the assignment. Any Permitted Assignee in accordance with this Agreement and for which notice of assignment has been provided in accordance herewith shall be considered a "Party" for the purposes of this Agreement. The Town shall not assign this Agreement. Developer will file any such assignment in the in the deed records of Denton County, Texas. Further, this Agreement is and shall be binding upon Developer, its successors, heirs, assigns, grantees, vendors, trustees, representatives, and all others holding any interest in the Property, now or in the future, with the exception of the purchaser of a Fully Improved Lot.

15. Mutual Assistance. The Parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions, and certifications supplemental hereto, as may be necessary or appropriate to carry out the terms, provisions and intent of this Agreement.

16. Mediation. In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to non-binding mediation.

17. Default. No Party shall be in default of provisions under this Agreement until written notice of the alleged failure of such Party to perform has been given as provided herein (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given five (5) days after the written notice in the case of the default of a payment obligation, and in all other cases a reasonable time, to cure the alleged failure (such reasonable time determined based upon the nature of the alleged failure, but in no event less than thirty (30) calendar days after written notice of the alleged failure has been given).

18. Roughly Proportionate Determination under Texas Law and Federal Law.

Developer has been represented by legal counsel in the negotiation of this Agreement and has been advised regarding Developer's rights under Texas and federal law. Developer has carefully reviewed the development exactions mandated by the Town pursuant to this Agreement and has been afforded the opportunity to consult with the Town and Developer's own professional consultants in order to ascertain whether Developer objects to same. In executing this Agreement, Developer hereby and in good faith agrees that the development exactions under this Agreement, subject to the Town fulfilling its commitments under this Agreement, are roughly proportionate to the impact of the Project. In addition, Developer knows of no development exaction associated with the obligations under this Agreement that would give rise to a claim relating to rough proportionality (procedural or substantive) arising out of: (1) the Texas Constitution § 212.904 and Chapter 395 of the Texas Local Government Code; and/or (2) the federal constitution, as mandated by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny, and Developer further agrees that there exists an essential nexus between said development exactions and the Project.

19. Reservation of Rights. Except for the matters expressly agreed to by the Parties in this Agreement, Developer does not waive any of Developer's rights under the Town's Code of Ordinances or any state or federal law, including, but not limited to a waiver of any claim of a regulatory taking or illegal exaction or a waiver of any vested rights for the Project or any portion thereof that have already accrued or may accrue in the future under Chapter 245 of the Texas Local Government Code or any other state law.

20. Force Majeure. It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war; civil commotion; acts of God; strike; inclement weather; shortages or unavailability of labor, supplies, or materials; incidence of disease or other illness that reaches outbreak, epidemic, or pandemic proportions or is declared so by a United States federal authority or the State of Texas; or other circumstances which are reasonably beyond the control of the Party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement and any applicable completion deadline shall be extended for a period of time equal to the period such Party was delayed.

21. Estoppel. Either Party shall, at any time upon reasonable request by the other Party, provide an estoppel certificate or similar document evidencing that this Agreement is in full force and effect, that no event of default exists hereunder (or, if appropriate, specifying the nature and duration of any existing event of default and the steps required to cure the same), the status of completion of any improvements, the amount of available impact fee credits or reimbursement due, and/or any other obligations set forth in this Agreement.

22. No Third-Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third-party beneficiaries by entering into this Agreement.

23. Multiple Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other Party.

24. Exhibits. The following exhibits are attached hereto and incorporated into this Agreement for all purposes:

Exhibit A Legal Description of the Property

Exhibit B Park Improvements

[Signatures appear on the following pages.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

THE TOWN OF FLOWER MOUND, TEXAS

By: _____

Name: Derek France
Mayor, Town of Flower Mound

STATE OF TEXAS §
 §
COUNTY OF DENTON §

This instrument was acknowledged before me on this the ____ day of _____, 2024, by Derek France, Mayor of the Town of Flower Mound, Texas, on behalf of the Town of Flower Mound, Texas.

Notary Public, State of Texas

DEVELOPER:

CND-WHYBURN, LLC
a Texas limited liability company

By: _____
Name: _____
Its: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

 This instrument was acknowledged before me on this the ____ day of
_____, 2024, by _____.

Notary Public, State of Texas

After Recording Return to:

Weekley Homes, LLC
Attn: Natalie Thaxton
1111 N. Post Oak Road
Houston, Texas 77055

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

WHEREAS, CND—WHYBURN, LLC, ACTING BY AND THROUGH THE UNDERSIGNED, ITS DULY AUTHORIZED AGENT, IS THE SOLE OWNER OF A TRACT OF LAND LOCATED IN THE EDWIN MARSH SURVEY, ABSTRACT NO. 834, IN THE TOWN OF FLOWER MOUND, DENTON COUNTY, TEXAS, ACCORDING TO THE DEEDS RECORDED IN INSTRUMENT NO. 2023—61329 AND 2023—61330 OFFICIAL PUBLIC RECORDS, DENTON COUNTY, TEXAS (O.P.R.D.C.T.), SAME BEING PART OF LOT 1, BLOCK B OF WHYBURN ADDITION, AN ADDITION TO THE TOWN OF FLOWER MOUND, DENTON COUNTY, TEXAS ACCORDING TO THE PLAT THEREOF RECORDED IN DOCUMENT NO. 2020—187, PLAT RECORDS, DENTON COUNTY, TEXAS (P.R.D.C.T.) AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT MAG NAIL FOUND AT THE NORTHWEST CORNER OF SAID LOT 1, SAID POINT BEING THE INTERSECTION OF THE SOUTH RIGHT—OF—WAY LINE OF DIXON LANE, A VARIABLE WIDTH RIGHT—OF—WAY, WITH THE EAST RIGHT—OF—WAY LINE OF WHYBURN DRIVE, A 60—FOOT RIGHT—OF—WAY;

THENCE SOUTH 89°44'26" EAST, ALONG SAID SOUTH RIGHT—OF—WAY LINE, A DISTANCE OF 888.79 FEET TO A 5/8—INCH IRON ROD WITH A CAP STAMPED "RPLS 5674" SET IN THE WEST LINE OF THE REPLAT OF WINDRIDGE ADDITION, AN ADDITION TO THE TOWN OF FLOWER MOUND, DENTON COUNTY, TEXAS ACCORDING TO THE PLAT THEREOF RECORDED IN CABINET H, SLIDE 31, P.R.D.C.T. AT THE NORTHEAST CORNER OF SAID LOT 1;

THENCE SOUTH 00°25'41" EAST, ALONG THE COMMON LINE OF SAID LOT 1 AND SAID REPLAT OF WINDRIDGE ADDITION AND WINDRIDGE ADDITION, AN ADDITION TO THE TOWN OF FLOWER MOUND, DENTON COUNTY, TEXAS ACCORDING TO THE PLAT THEREOF RECORDED IN CABINET E, SLIDE 74, P.R.D.C.T., A DISTANCE OF 995.26 FEET TO A 1/2—INCH IRON ROD WITH A CAP STAMPED "ARTHUR SURVEY COMPANY" FOUND AT THE WEST COMMON CORNER OF LOTS 4 AND 5 OF SAID WINDRIDGE ADDITION;

THENCE SOUTH 00°29'47" EAST, CONTINUING ALONG THE COMMON LINE OF SAID LOT 1 AND SAID WINDRIDGE ADDITION, PASSING AT A DISTANCE OF 1,053.13 FEET A 3/4—INCH IRON ROD FOUND AT THE SOUTHWEST CORNER OF LOT 9, BLOCK B OF SAID WINDRIDGE ADDITION, AND CONTINUING FOR A TOTAL DISTANCE OF 1,318.44 FEET TO A 5/8—INCH IRON ROD WITH A CAP STAMPED "RPLS 5674" FOUND FOR CORNER;

THENCE NORTH 46°19'53" WEST, LEAVING SAID COMMON LINE, A DISTANCE OF 22.11 FEET TO A 5/8— INCH IRON ROD WITH A CAP STAMPED "RPLS 5674" FOUND FOR CORNER;

THENCE NORTH 86°36'52" WEST, A DISTANCE OF 16.46 FEET TO A 5/8— INCH IRON ROD WITH A CAP STAMPED "RPLS 5674" FOUND FOR CORNER;

THENCE NORTH 32°58'50" WEST, A DISTANCE OF 58.29 FEET TO A 5/8— INCH IRON ROD WITH A CAP STAMPED "RPLS 5674" FOUND FOR CORNER;

THENCE SOUTH 85°08'11" WEST, A DISTANCE OF 58.76 FEET TO A 5/8— INCH IRON ROD WITH A CAP STAMPED "RPLS 5674" FOUND FOR CORNER;

THENCE NORTH 42°33'47" WEST, A DISTANCE OF 48.48 FEET TO A 5/8— INCH IRON ROD WITH A CAP STAMPED "RPLS 5674" FOUND FOR CORNER.

THENCE NORTH 78°36'54" WEST, A DISTANCE OF 32.29 FEET TO A 5/8— INCH IRON ROD WITH A CAP STAMPED "RPLS 5674" FOUND FOR CORNER;

THENCE NORTH 35°04'29" WEST, A DISTANCE OF 171.39 FEET TO A 5/8— INCH IRON ROD WITH A CAP STAMPED "RPLS 5674" FOUND FOR CORNER;

THENCE NORTH 00°00'43" EAST, A DISTANCE OF 141.47 FEET TO A 5/8— INCH IRON ROD WITH A CAP STAMPED "RPLS 5674" FOUND FOR CORNER;

THENCE NORTH 83°39'00" WEST, A DISTANCE OF 177.66 FEET TO A 5/8— INCH IRON ROD WITH A CAP STAMPED "RPLS 5674" FOUND FOR CORNER;

THENCE NORTH 00°29'47" WEST, A DISTANCE OF 53.35 FEET TO A 5/8— INCH IRON ROD WITH A CAP STAMPED "RPLS 5674" FOUND FOR CORNER;

THENCE SOUTH 89°30'13" WEST, A DISTANCE OF 472.43 FEET TO A 5/8— INCH IRON ROD WITH A CAP STAMPED "RPLS 5674" FOUND FOR CORNER;

THENCE NORTH 00°21'37" WEST, PASSING AT A DISTANCE OF 836.40 FEET A 5/8—INCH IRON ROD WITH A CAP STAMPED "SPOONER 5922" FOUND AT THE SOUTHEAST CORNER OF SAID WHYBURN DRIVE, AND CONTINUING ALONG SAID EAST RIGHT—OF—WAY LINE OF WHYBURN DRIVE FOR A TOTAL DISTANCE OF 1,444.08 FEET TO A 5/8—INCH IRON ROD WITH A CAP STAMPED "SPOONER 5922" FOUND FOR CORNER AT THE BEGINNING OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 10°00'00", A RADIUS OF 610.00 FEET AND A CHORD BEARING AND DISTANCE OF NORTH 04°38'23" EAST, 106.33 FEET;

THENCE CONTINUING ALONG SAID EAST RIGHT—OF—WAY LINE, THE FOLLOWING FOUR (4) COURSES AND DISTANCES:

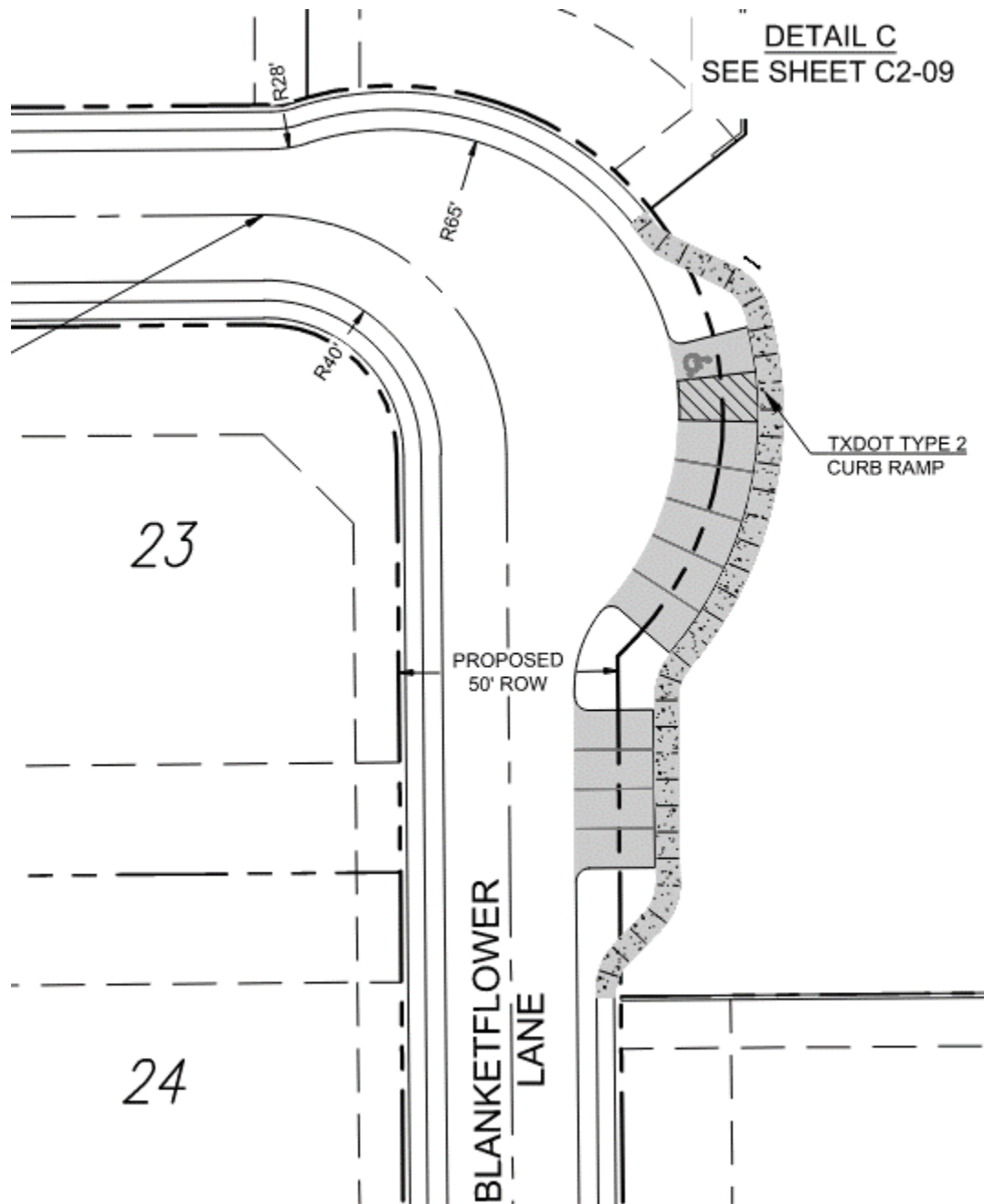
NORTHERLY, ALONG SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 106.47 FEET TO A 5/8—INCH IRON ROD WITH A CAP STAMPED "SPOONER 5922" FOUND FOR CORNER;

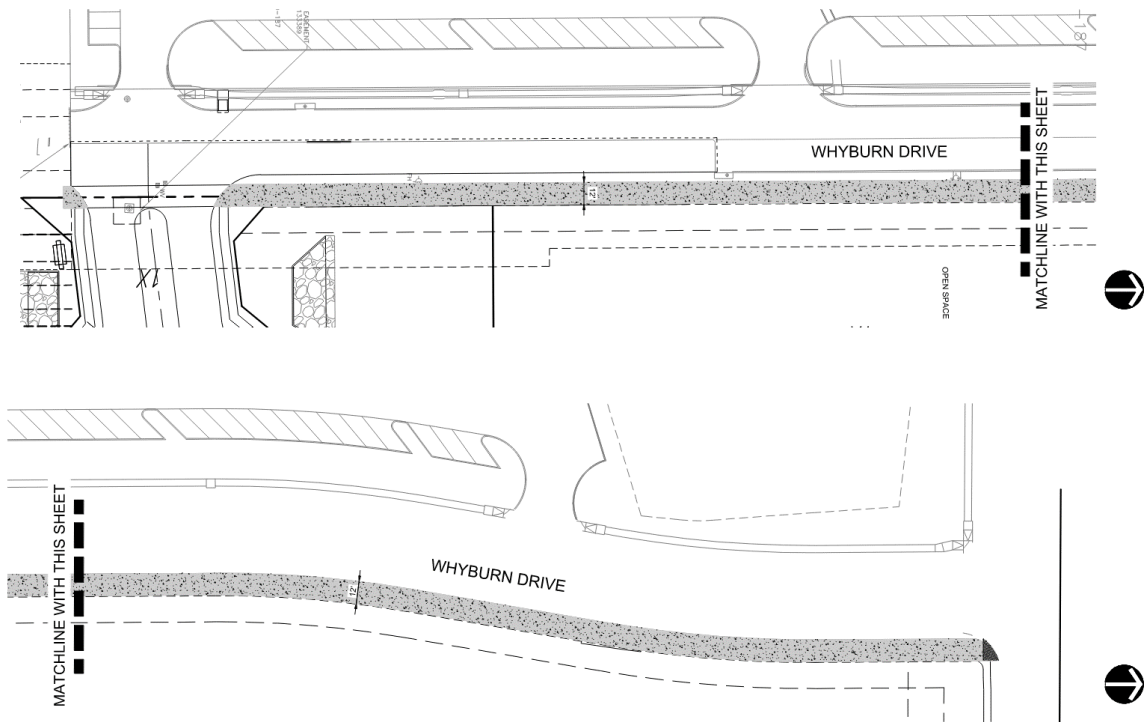
NORTH 09°38'23" EAST, A DISTANCE OF 113.36 FEET TO A 5/8—INCH IRON ROD WITH A CAP STAMPED "SPOONER 5922" FOUND FOR CORNER AT THE BEGINNING OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 10°00'00", A RADIUS OF 670.00 FEET AND A CHORD BEARING AND DISTANCE OF NORTH 04°38'23" EAST, 116.79 FEET;

THENCE NORTHERLY, ALONG SAID CURVE TO THE LEFT, AN ARC DISTANCE OF 116.94 FEET TO A 5/8—INCH IRON ROD WITH A CAP STAMPED "SPOONER 5922" FOUND FOR CORNER;

THENCE NORTH 00°21'37" WEST, A DISTANCE OF 86.57 FEET TO THE POINT OF BEGINNING AND CONTAINING 1,830,926 SQUARE FEET OR 42.032 ACRES OF LAND, MORE OR LESS.

EXHIBIT B
PARK IMPROVEMENTS







TOWN COUNCIL AGENDA L.1. REGULAR ITEM

DATE: March 18, 2024
FROM: Tammy Wilson, Chief Financial Officer
ITEM: **Consider approval of the Annual Comprehensive Financial Report (ACFR) for the fiscal year ended September 30, 2023.**

BACKGROUND: Article III, Section 3.13 of the Town Charter requires that an annual independent audit be performed of “the books and accounts of each and every department of the Town.” The Town has complied with this requirement, and in the opinion of the auditing firm of Eide Bailly, LLP, the basic financial statements contained within the ACFR present fairly, in all material respects, the financial position of the Town as of September 30, 2023.

Copies of the Town of Flower Mound’s Annual Comprehensive Financial Report (ACFR) for the fiscal year ended September 30, 2023, were distributed prior to this meeting, and copies of the reports were placed in the Library for review by the public. There were no significant deficiencies or material weaknesses found during the audit.

The Town Council has adopted financial policies to guide and set goals for the financial administration of the Town. The following table displays the Town’s financial policy results for fiscal year 2018-2019 through fiscal year 2022-2023.

<u>Financial Goals</u>	<u>Goal</u>		<u>09/30/2019</u>	<u>09/30/2020</u>	<u>09/30/2021</u>	<u>09/30/2022</u>	<u>09/30/2023</u>
General Fund fund balance	At/Above	20.00%	33.19%	33.66%	41.17%	47.15%	49.49%
Water & Wastewater capital reserve at 60 days maintained	At/Above	16.70%	24.94%	21.43%	20.79%	26.37%	36.79%
Debt Service fund balance	At/Above	4.00%	11.24%	13.46%	24.12%	18.35%	11.74%
Ratio of net debt to AV	At/Below	1.75%	0.78%	0.65%	0.53%	0.45%	0.35%
Ratio of debt service fund expenditures to total general & debt service funds	At/Below	20.00%	16.46%	15.05%	12.49%	9.43%	7.36%

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

None

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



TOWN COUNCIL AGENDA N.1. REGULAR ITEMS

DATE: March 18, 2024
FROM: Tommy Dalton, Assistant Town Manager
ITEM: **Public Hearing to receive updates and input on the Oncor Electric line upgrade project on High Road and Rolling Hills.**

BACKGROUND: The purpose of this item is to provide an opportunity for public discussion concerning the Oncor Electric line upgrade project that resulted in the removal of numerous trees along High Road and Rolling Hills.

On August 8, 2023, the Town received a permit application from Pike Electric (on behalf of Oncor Electric Delivery) to upgrade electric facilities along High Road and Rolling Hills. The purpose of the permit is to review the work within the Town's right-of-way to ensure Town infrastructure (i.e. water lines and drainage) are not impacted, and not to evaluate the need, design, or application of the proposed electric facility upgrades. The permit was approved on September 27, 2023.

Public electric utilities are regulated under State law which provides broadly that a utility operator may operate within a "municipality with the consent of and subject to the direction of the governing body of the municipality." (Tex. Utilities Code Sec. 181.043 (a).) However, this subject to the more recent electric utility deregulation statutes found in Chapters 11 et seq., of the Utilities Code, the "Public Utility Regulatory Act" ("PURA").

The Town has a Franchise Agreement with both Oncor and CoServ, along with other public franchise utilities that operate within the Town. The Franchise Agreement with Oncor can be found online at the link below.

- https://library.municode.com/tx/flower_mound/codes/code_of_ordinances?nodeId=SPBLADEREAPXBFRARTIVELDIV4ONELDECOLL

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

None

DRAFT MOTION: Discuss and provide staff with direction.



TOWN COUNCIL AGENDA N.2. REGULAR ITEMS

DATE: March 18, 2024
FROM: Tommy Dalton, Assistant Town Manager
ITEM: **Consider an ordinance approving the Final Project and Financing Plan for Tax Increment Reinvestment Zone number 2 (TIRZ #2) pursuant to Chapter 311 of the Texas Tax Code.**

BACKGROUND: The purpose of this item is to consider approval of the TIRZ #2 Final Project and Financing Plan in conformance with [Chapter 311](#) of the Texas Tax Code.

On September 19, 2022, the Town first publicly discussed the potential for a TIRZ to be utilized for infrastructure costs as the western areas of Town begin to develop. That discussion can be viewed [here](#).

Since that time, staff worked with the Town's consultant, P3 Works LLC, in creating the preliminary project and financing plan (Preliminary Plan) for TIRZ #2, which was approved by the Town Council on [November 6, 2023](#). Upon adoption of the Preliminary Plan ordinance, the TIRZ took effect immediately, and is scheduled to terminate on December 31, 2053, unless otherwise terminated in accordance with the ordinance.

Chapter 311 of the Texas Tax Code, the Tax Increment Financing Act (linked above), provides a legal and regulatory framework that governs the process in creating a TIRZ. Administratively, the first steps to creating a TIRZ is calling for a public hearing on the creation of the zone and its benefits to the municipality or county and to property in the proposed zone. The public hearing was called during the [October 2, 2023](#), Town Council meeting. The public hearing allowed for public discussion on the creation of a TIRZ, prior to the Town formally creating one.

Overall, a TIRZ is an economic development tool that can be used by municipalities and counties to finance infrastructure costs in specific geographic areas. While not related to the creation of TIRZ #2, the Town currently has one TIRZ (TIRZ #1) that was established in September 2005 to provide funds for public infrastructure within the Town's FM 2499 corridor. [TIRZ #1](#) consists of approximately 1,465 acres, is compliant with Chapter 311, and continues to accomplish the goals under which it was created.

TIRZ #2 is located in western Flower Mound, generally north and south of the intersection of FM 1171 and US 377, expanding west to property located adjacent to I-35W, and east to Whites Branch. The property contains approximately 3,962 acres which is wholly located within the corporate limits of the Town.

The final project and financing plan (Final Plan) is included as Attachment 1. The Final Plan provides the proposed public improvements, estimated project costs, economic feasibility of the TIRZ, and other details as required by Chapter 311.

Adoption of the Final Plan does not commit the Town to spend funds. Commitments to spend funds

for the identified public improvements will come with a Capital Improvement Agreement. At that time, specific projects will be identified along with approved plans and actual engineering costs.

Once the Final Plan is adopted, the Town will continue its engagement with Denton County regarding their participation in the TIRZ. Generally speaking, the County wants to review the Final Plan prior to making its decision on participation.

The Town retains its right to terminate the Zone prior to the expiration of its stated term if all the project costs have been paid in full.

BOARD REVIEW/CITIZEN FEEDBACK: The TIRZ #2 Board of Directors considered and provided a recommendation on this item at their March 18, 2024, meeting.

ALTERNATIVES: N/A

FISCAL IMPACT: N/A

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

ATTACHMENTS:

1. TIRZ #2 Final Plan

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

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

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, APPROVING A FINAL TAX INCREMENT REINVESTMENT ZONE PROJECT AND FINANCE PLAN FOR REINVESTMENT ZONE NUMBER TWO, TOWN OF FLOWER MOUND, TEXAS; MAKING CERTAIN FINDINGS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on November 6, 2023, the Town Council of the Town of Flower Mound, Texas (the "Town Council"), by the adoption of Ordinance No. 47-23 created Reinvestment Zone Number Two, Town of Flower Mound, Texas; and

WHEREAS, Section 311.011(d), Texas Tax Code, provides that the Town Council must approve a project plan and reinvestment zone finance plan after its adoption by the board of the reinvestment zone; and

WHEREAS, on March 18, 2024, the Board of Reinvestment Zone Number Two, Town of Flower Mound, Texas approved the *Final Project and Finance Plan for Reinvestment Zone Number Two, Town of Flower Mound, Texas* (the "Final Project and Finance Plan"), a copy of which is attached hereto as **Exhibit A**; and

WHEREAS, pursuant to Section 311.011(d), Texas Tax Code, the Town Council finds that the Final Project and Finance Plan is feasible.

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

SECTION 1.

The recitals, findings, and determinations contained in the preamble to this Ordinance are incorporated into the body of this Ordinance as if fully set forth in this Section and are hereby found and declared to be true and correct legislative findings and are adopted as part of this Ordinance for all purposes.

SECTION 2.

The Town Council does hereby approve the Final Project and Finance Plan, a copy of which is attached hereto as **Exhibit A** and incorporated herein for all purposes.

SECTION 3.

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

SECTION 4.

If any provision, section, subsection, sentence, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be invalid, the validity of the remaining provisions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the Town Council in adopting this Ordinance that no provision of this Ordinance shall become inoperative because of the invalidity of another provision; and, therefore, all provisions of this Ordinance are declared severable for that purpose.

SECTION 5.

This Ordinance shall take effect immediately upon its passage as provided by law.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE 18TH DAY OF MARCH, 2024.

APPROVED:

Derek France, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

EXHIBIT A
Reinvestment Zone Number Two, Town of Flower Mound, Texas
Final Project and Finance Plan



REINVESTMENT ZONE NUMBER TWO,
TOWN OF FLOWER MOUND, TEXAS
FINAL PROJECT AND FINANCE PLAN
MARCH 18, 2024

EXHIBIT A
Reinvestment Zone Number Two, Town of Flower Mound, Texas
Final Project and Finance Plan

TABLE OF CONTENTS

Table of Contents	1
Section 1: Definitions	2
Section 2: Introduction	4
Section 3: Description and Maps	6
Section 4: Proposed Changes to Ordinances, Plans, Codes, Rules, and Regulations	6
Section 5: Relocation of Displaced Persons	6
Section 6: Proposed Public Improvements	7
Section 7: Estimated Project Costs	7
Section 8: Economic Feasibility	7
Section 9: Estimated Bonded Indebtedness	8
Section 10: Appraised Value	8
Section 11: Method of Financing	9
Section 12: Duration of the Zone, Termination	9
List of Exhibits	10
Exhibit A – Map of the Zone	11
Exhibit B – List of Non-Project Costs	12
Exhibit C – List of Project Costs	13
Exhibit D – Estimated Timeline of Incurred Project Costs	14
Exhibit E – Feasibility Study	15
Exhibit F – Proposed Uses of the Property	16
Exhibit G – Map of the Public Improvements	17
Exhibit H – Parcel Identification	18

EXHIBIT A
Reinvestment Zone Number Two, Town of Flower Mound, Texas
Final Project and Finance Plan

SECTION 1: DEFINITIONS

Capitalized terms used in this Final Plan shall have the meanings given to them in **Section I** unless otherwise defined in this Final Plan or unless the context in which a term is used clearly requires a different meaning. Unless otherwise defined, a reference to a “Section,” or an “Exhibit,” shall be a reference to a Section of this Final Plan or an Exhibit attached to and made a part of this Final Plan for all purposes.

“Act” means Chapter 311, Texas Tax Code, Tax Increment Financing Act.

“Administrative Costs” means the actual, direct costs paid or incurred by or on behalf of the Town to administer the Zone, including planning, engineering, legal services, organizational costs, publicizing costs, or implementations costs paid by or on behalf of the Town that are directly related to the administration of the Zone.

“Appraisal District” means the Denton Central Appraisal District.

“Board” means the Board of Directors for the Zone.

“Captured Appraised Value” means the new taxable value generated in addition to the Tax Increment Base on a parcel-by-parcel basis for each year during the term of the Zone, as calculated and confirmed annually by the Appraisal District.

“County” means Denton County, Texas.

“County TIRZ Increment” means the portion of the County’s ad valorem tax increment equal to fifty percent (50%) of the ad valorem real property taxes collected and received by the County on the Captured Appraised Value in the Zone.

“Creation Ordinance” means Ordinance No. 47-23 adopted by the Town Council on November 6, 2023, designating the creation of the Zone and the Board.

“Feasibility Study” means the economic feasibility study as evaluated over the term of the Zone and focused only on direct financial benefits, as shown on **Exhibit E**.

“Final Plan” means this *Reinvestment Zone Number Two, Town of Flower Mound, Texas Final Project and Finance Plan*.

EXHIBIT A
Reinvestment Zone Number Two, Town of Flower Mound, Texas
Final Project and Finance Plan

“Non-Project Costs” means those certain costs that will be spent to develop in the Zone, but will not be financed by the Zone, and will be financed by private funds, as described in **Section 6**, and shown on **Exhibit B**.

“Preliminary Plan” means the *Reinvestment Zone Number Two, Town of Flower Mound, Texas Preliminary Project and Finance Plan*, approved by Council on November 6, 2023.

“Project Costs” means the total costs for projects in the Zone, including actual costs of the Public Improvements, and the Administrative Costs, as listed in **Exhibit C**.

“Property” means 3,962.176 acres of land as depicted on **Exhibit A** and identified on **Exhibit H**.

“Public Improvements” means the proposed public improvements to be financed by the Zone, which includes streets, water, storm sewer, sanitary sewer, professional services, public trails, required monumentation, municipal services, public facilities, economic development efforts, parks, and landscaping, as detailed on **Exhibit C**, and depicted on **Exhibit G**.

“Tax Increment Base” means total appraised value of taxable real property in the Zone at the time of creation of the Zone, as calculated and certified by the Appraisal District.

“TIRZ No. 2 Fund” means the tax increment fund created by the Town and segregated from all other funds of the Town.

“Town” means the Town of Flower Mound, Texas.

“Town Council” means the governing body of the Town.

“Town TIRZ Increment” means the portion of the Town’s ad valorem tax increment equal to fifty percent (50%) of the ad valorem real property taxes collected and received by the Town on the Captured Appraised Value of the Zone.

“Zone” means Reinvestment Zone Number Two, Town of Flower Mound, Texas, as depicted on **Exhibit A**, and parcels identified on **Exhibit H**.

EXHIBIT A
Reinvestment Zone Number Two, Town of Flower Mound, Texas
Final Project and Finance Plan

SECTION 2: INTRODUCTION

2.1 Authority and Purpose

The Town has the authority under the Act to designate a contiguous or noncontiguous geographic area within the corporate limits or extraterritorial jurisdiction of the Town as a tax increment reinvestment zone to promote development or redevelopment of the area because the Town Council determined that development or redevelopment would not occur solely through private investment in the reasonably foreseeable future, that the Zone is economically feasible, and that creation of the Zone is in the best interest of the Town and the property in the Zone. The purpose of the Zone is to facilitate such development or redevelopment by financing the costs of public works, public improvements, programs, and other projects benefiting the Zone, plus other costs incidental to those expenditures, all of which costs are authorized by the Act.

2.2 Eligibility Requirements

An area is eligible under the Act to be designated as a tax increment reinvestment zone if the area:

- 1) substantially arrests or impairs the sound growth of the municipality designating the Zone, retard the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition; or
- 2) is predominantly open or undeveloped and, because of obsolete platting, deterioration of structures or site improvements, or other factors, substantially impairs or arrests the sound growth of the Town; or
- 3) is in a federally assisted new community located in the Town or in an area immediately adjacent to a federally assisted new community; or
- 4) is in an area described in a petition requesting that the area be designated as a reinvestment zone, if the petition is submitted to the governing body of the Town by the owners of property constituting at least fifty percent (50%) of the appraised value of the property in the area according to the most recent certified appraisal roll for the county in which the area is located.

The Town cannot, however, designate a zone if more than thirty percent (30%) of the property in the proposed zone, excluding property that is publicly owned, is used for residential purposes, or if the total appraised value of taxable real property in the proposed zone and in existing reinvestment zones exceeds fifty percent (50%) of the total appraised value of taxable real property in the Town and in industrial districts created by the Town.

EXHIBIT A
Reinvestment Zone Number Two, Town of Flower Mound, Texas
Final Project and Finance Plan

2.3 The Zone

The Property within the Zone is currently located within the corporate limits of the Town as shown on **Exhibit A**. The Property is predominantly open, undeveloped or underdeveloped, and substantially impairs and arrests the sound growth of the Town. Due to its size, location, and physical characteristics development would not occur solely through private investment in the foreseeable future. The Property lacks public infrastructure and requires economic incentive to attract development for the purpose of providing long-term economic benefits including, but not limited to, increased real property tax base for all taxing units in the Zone. If the Public Improvements are financed as contemplated by this Final Plan, the Town envisions that the Property will be developed to take full advantage of the opportunity to bring to the Town, and County, a quality development.

2.4 Preliminary Plan and Hearing

Before the Town Council adopted the Creation Ordinance, the Town Council prepared the Preliminary Plan in accordance with the Act and held a public hearing on the creation of the Zone and its benefits to the Town and to the Property, at which public hearing interested persons were given the opportunity to speak for and against the creation of the Zone, the boundaries of the Zone and the concept of tax increment financing, and at which hearing the owners of the Property were given a reasonable opportunity to protest the inclusion of their Property in the Zone. The requirement of the Act for a preliminary reinvestment zone financing plan was satisfied by the Preliminary Plan, the purpose of which was to describe, in general terms, the public improvements that will be undertaken and financed by the Zone. A description of how such public improvements and projects will be undertaken and financed were determined by the Preliminary Plan, which requires approval by the Board and by the Town Council.

2.5 Creation of the Zone

Upon the closing of the above referenced public hearing, the Town Council will consider the Creation Ordinance and the following findings:

- 1) that development or redevelopment of the Property would not occur solely through private investment in the reasonably foreseeable future,
- 2) that the Zone was feasible,
- 3) that improvements in the Zone will significantly enhance the value of all the taxable real property in the Zone and will be of general benefit to the Town, and
- 4) that the Zone meets the eligibility requirements of the Act.

Among other provisions required by the Act, the Creation Ordinance will appoint the Board.

EXHIBIT A
Reinvestment Zone Number Two, Town of Flower Mound, Texas
Final Project and Finance Plan

2.6 Board Recommendations

After the creation of the Zone, the Board reviewed this Final Plan and recommend its approval to the Town Council pursuant to which the Town shall contribute the Town TIRZ increment into the TIRZ No. 2 Fund to pay a portion of the Project Costs benefiting the Zone. If the County participates in the Zone, then pursuant to the County Participation Agreement, the County shall contribute the County TIRZ Increment into the TIRZ No. 2 Fund to pay a portion of the Project Costs benefitting the Zone.

SECTION 3: DESCRIPTION AND MAPS

3.1 Existing Uses and Conditions

The Property is within the corporate limits of the Town, and is currently zoned water recreation, commercial, open space mixed use, interim holding, single family, and combined uses. The Property is primarily undeveloped or underdeveloped, and there is no public infrastructure to support development. Development requires extensive public infrastructure that: (1) the Town could not provide, and (2) would not be provided solely through private investment in the foreseeable future.

3.2 Proposed Uses

The proposed uses of the Property in the Town include residential, and commercial, as shown on **Exhibit F**.

SECTION 4: PROPOSED CHANGES TO ORDINANCES, PLANS, CODES, RULES, AND REGULATIONS

The Property is wholly located in the corporate limits of the Town and is subject to the Town's zoning regulations. The Town has exclusive jurisdiction over the subdivision and platting of the property within the Property and the design, construction, installation, and inspection of water, sewer, drainage, roadway, and other public infrastructure. No proposed changes to zoning ordinances, comprehensive plan, building codes, subdivision rules, or other municipal ordinances are planned at this time. Should zoning changes be desired or needed, request will follow Town subdivision ordinance.

SECTION 5: RELOCATION OF DISPLACED PERSONS

No persons were displaced and in need of relocation due to the creation of the Zone or shall be due to the implementation of this Final Plan.

EXHIBIT A
Reinvestment Zone Number Two, Town of Flower Mound, Texas
Final Project and Finance Plan

SECTION 6: PROPOSED PUBLIC IMPROVEMENTS

6.1 Categories of Public Improvements

All Public Improvements shall be designed and constructed in accordance with all applicable Town standards and shall otherwise be inspected, approved, and accepted by the Town. At the Town's option, the Public Improvements may be expanded to include any other category of improvements authorized by the Act.

6.2 Location of Public Improvements

The estimated locations of the proposed Public Improvements are depicted on **Exhibit G**. These locations may be revised, with the approval of the Town, from time to time without amending this Final Plan.

SECTION 7: ESTIMATED PROJECT COSTS

7.1 Project Costs¹

The total Project Costs are estimated to be \$713,767,301, as detailed on **Exhibit C**. The Administrative Costs are estimated to be \$20,000 per year beginning 2024 and escalating at two percent (2%) thereafter. The Administrative Costs shall be paid each year from the TIRZ No. 2 Fund before any other Project Costs are paid. The cost of the Public Improvements is estimated to be \$712,955,939, as shown in **Exhibit C**.

7.2 Estimated Timeline of Incurred Costs

The Administrative Costs will be incurred annually for the duration of the Zone. It is estimated the Public Improvements will be constructed between 2024 and 2053, as shown on **Exhibit C**, and funded annually over the remaining term of the Zone.

SECTION 8: ECONOMIC FEASIBILITY

8.1 Feasibility Study

The Feasibility Study focuses on only direct financial benefits (i.e. ad valorem tax revenues from the development of Public Improvements in the Zone). Based on the Feasibility Study, during the term of the Zone, the Property will generate approximately \$585,855,105 in total new real property tax revenue for the participation taxing entities. Approximately \$264,721,456 will be

¹ Project Costs include CIP Improvements, which can be reimbursed first through Impact Fees, then by the TIRZ No. 2 Fund.

EXHIBIT A
Reinvestment Zone Number Two, Town of Flower Mound, Texas
Final Project and Finance Plan

deposited into the TIRZ No. 2 Fund to pay for the Project Costs over the life of the Zone. The remaining real property tax revenue over that period, estimated at \$321,133,648 shall be retained by the participating taxing entities as shown in **Exhibit E**.

The Feasibility Study shows the cumulative Town TIRZ Increment is estimated to be \$187,570,727 which will be available to pay a portion of the Project Costs, until the term expires or is otherwise terminated. The remainder of the new Town real property tax revenue generated within the zone and retained by the Town is estimated to be \$187,570,727 over the term.

The Feasibility Study shows the cumulative County TIRZ Increment is estimated to be \$77,150,730, which will be available to pay a portion of the Project Costs, until the term expires or is otherwise terminated. The remainder of the new County real property tax revenue generated within the Zone and retained by the County is estimated to be \$133,562,922 over the term.

One hundred percent (100%) of all taxing revenues generated for other taxing entities by the new development within the Zone will be retained by the respective taxing entities. Based on the foregoing, the feasibility of the Zone has been demonstrated.

SECTION 9: ESTIMATED BONDED INDEBTEDNESS

No tax increment reinvestment zone bonds or public indebtedness by the Town secured by the tax increments pursuant to the Act, is contemplated at this time.

SECTION 10: APPRAISED VALUE

10.1 Tax Increment Base

The Tax Increment Base is estimated to be \$9,135,805 and shall be confirmed by the Appraisal District. Each year, the Appraisal District shall confirm the Captured Appraised Value of the Zone.

10.2 Estimated Captured Appraised Value

It is estimated that upon expiration of the term of the Zone, the total Captured Appraised Value of taxable real property in the Zone will be approximately \$7,211,277,826, as shown on **Exhibit E**. The actual Captured Appraised Value, as certified by the Appraisal District each year, will be used to calculate the annual Town TIRZ Increment, and if applicable, the County TIRZ Increment, pursuant to the County Participation Agreement.

EXHIBIT A
Reinvestment Zone Number Two, Town of Flower Mound, Texas
Final Project and Finance Plan

SECTION 11: METHOD OF FINANCING

The Final Plan would anticipate the Town will deposit the Town TIRZ Increment into the TIRZ No. 2 Fund beginning in 2024. For example, in FY 2024, the Town's ad valorem tax rate was \$0.38730 per \$100 of taxable value, therefore the Town would contribute \$0.19365 per \$100 of the Captured Appraised Value in the Zone levied and collected, to the TIRZ No. 2 Fund.

If applicable, the County will deposit the County TIRZ Increment into the TIRZ No. 2 Fund beginning in 2024. For example, in FY 2024, the County's ad valorem tax rate was \$0.217543 per \$100 of taxable value, therefore the Town would contribute \$0.108772 per \$100 of the Captured Appraised Value in the Zone levied and collected, to the TIRZ No. 2 Fund.

All payments of Project Costs shall be made solely from the TIRZ No. 2 Fund and from no other funds of the Town, or the County unless otherwise approved by their respective governing bodies. The TIRZ No. 2 Fund shall only be used to pay the Project Costs. The Town may amend this Final Plan in compliance with the County Participation Agreement, if applicable, including but not limited to what is considered a Project Cost.

SECTION 12: DURATION OF THE ZONE, TERMINATION

12.1 Duration

The stated term of the Zone shall commence on the creation of the Zone, and shall continue for thirty (30) years, with the last payment being due by January 31, 2054, unless otherwise terminated in accordance with the Creation Ordinance.

12.2 Termination

The Zone will terminate prior to the expiration of its stated term if the Project Costs have been fully funded. If upon expiration of the stated term of the Zone, the Project Costs have not been collected into the TIRZ No. 2 Fund, the Town and, if applicable, the County shall have no obligation to pay the shortfall and the term shall not be extended. Nothing in this section is intended to prevent the Town from extending the term of the Zone in accordance with the Act.

EXHIBIT A
Reinvestment Zone Number Two, Town of Flower Mound, Texas
Final Project and Finance Plan

LIST OF EXHIBITS

Unless otherwise stated, all references to "Exhibits" contained in this Final Plan shall mean and refer to the following exhibits, all of which are attached to and made a part of this Final Plan for all purposes.

Exhibit A	Map of the Zone
Exhibit B	Non-Project Costs
Exhibit C	Project Costs
Exhibit D	Estimated Timeline of Incurred Costs
Exhibit E	Feasibility Study
Exhibit F	Proposed Uses of the Property
Exhibit G	Map of the Public Improvements
Exhibit H	Parcel Identification

EXHIBIT A
Reinvestment Zone Number Two, Town of Flower Mound, Texas
Final Project and Finance Plan

EXHIBIT A – MAP OF THE ZONE

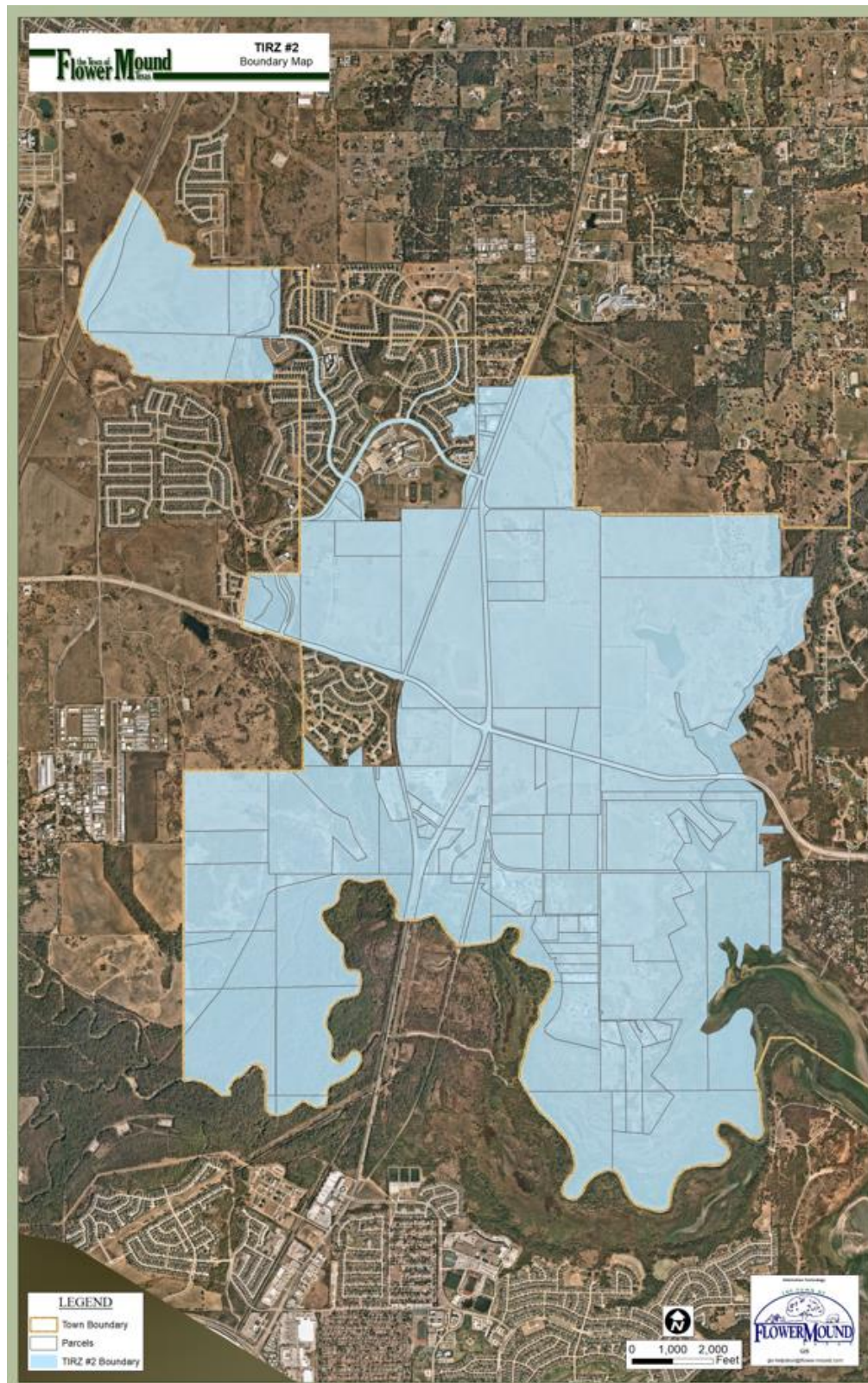


EXHIBIT A
Reinvestment Zone Number Two, Town of Flower Mound, Texas
Final Project and Finance Plan

EXHIBIT B – NON-PROJECT COSTS

Reinvestment Zone Number Two, Town of Flower Mound, Texas Non-Project Costs	
Category	Total ^[a]
STREETS / STORM SEWER	\$ 359,578,249
WATER	\$ 99,457,428
WASTEWATER	\$ 54,459,916
PUBLIC TRAIL LINKAGES AND EXTENSIONS	\$ 3,946,645
IMPROVEMENTS AND LANDSCAPING IN PUBLIC OPEN SPACE (EXCLUDING TRAILS)	\$ 50,268,699
IMPROVEMENTS AND LANDSCAPING IN CONSERVATION OPEN SPACE (EXCLUDING TRAILS)	\$ 54,803,881
PUBLIC PARKWAY IMPROVEMENTS (EXCLUDING TRAILS)	\$ 27,680,790
SOFT COSTS	\$ 381,381,382
CONTINGENCY	\$ 97,529,341
Total	\$ 1,129,106,331
Footnotes:	
[a] Costs shown for illustrative purposes only, subject to change.	

EXHIBIT A
Reinvestment Zone Number Two, Town of Flower Mound, Texas
Final Project and Finance Plan

EXHIBIT C – PROJECT COSTS

Reinvestment Zone Number Two, Town of Flower Mound, Texas Project Costs	
Category	Costs ^[a]
Public Improvements	
Tier One	
STREETS / STORM SEWER	\$ 116,517,700
WATER	\$ 42,198,000
WATER REUSE	\$ 36,517,000
WASTEWATER	\$ 30,972,500
PARKS	\$ 103,100,000
SOFT COSTS	\$ 49,220,843
CONTINGENCY	\$ 19,941,053
Tier Two	
MASTER PLAN TRAILS	\$ 14,471,179
PUBLIC OPEN SPACE IMPROVEMENTS (EXCLUDING TRAILS)	\$ 21,000,000
REQUIRED MONUMENTATION	\$ 1,450,000
SOFT COSTS	\$ 7,896,276
CONTINGENCY	\$ 4,879,071
MUNICIPAL SERVICES	\$ 107,872,317
PUBLIC FACILITIES	\$ 156,920,000
Public Improvements Subtotal	\$ 712,955,939
Administrative Costs	\$ 811,362
Total Project Costs	\$ 713,767,301
Footnotes:	
[a] Costs shown for illustrative purposes only, subject to change.	

EXHIBIT A
Reinvestment Zone Number Two, Town of Flower Mound, Texas
Final Project and Finance Plan

EXHIBIT D – ESTIMATED TIMELINE OF INCURRED PROJECT COSTS

Reinvestment Zone Number Two, Town of Flower Mound, Texas Estimated Timeline of Incurred Project Costs								
Zone	Calendar							
Year	Year	Administrative Costs ^[a]	CIP Projects	Major Improvements	Public Facilities	Parks	DPS Costs	Total Cost ^[b]
Base	2023							
1	2024	\$ 20,000	\$ -	\$ -	\$ -		\$ -	\$ 20,000
2	2025	\$ 20,400	\$ -	\$ -	\$ -		\$ -	\$ 20,400
3	2026	\$ 20,808	\$ 7,137,128	\$ 1,078,624	\$ 3,736,168	\$ 2,454,747	\$ -	\$ 14,427,475
4	2027	\$ 21,224	\$ 7,351,241	\$ 1,110,983	\$ 3,848,253	\$ 2,528,390	\$ -	\$ 14,860,092
5	2028	\$ 21,649	\$ 7,571,779	\$ 1,144,312	\$ 3,963,701	\$ 2,604,241	\$ -	\$ 15,305,682
6	2029	\$ 22,082	\$ 7,798,932	\$ 1,178,642	\$ 4,082,612	\$ 2,682,369	\$ -	\$ 15,764,636
7	2030	\$ 22,523	\$ 8,032,900	\$ 1,214,001	\$ 4,205,090	\$ 2,762,840	\$ -	\$ 16,237,354
8	2031	\$ 22,974	\$ 8,273,887	\$ 1,250,421	\$ 4,331,243	\$ 2,845,725	\$ -	\$ 16,724,250
9	2032	\$ 23,433	\$ 8,273,887	\$ 1,250,421	\$ 4,331,243	\$ 2,845,725	\$ -	\$ 16,724,709
10	2033	\$ 23,902	\$ 8,273,887	\$ 1,250,421	\$ 4,331,243	\$ 2,845,725	\$ -	\$ 16,725,178
11	2034	\$ 24,380	\$ 8,522,104	\$ 1,287,934	\$ 4,461,180	\$ 2,931,097	\$ 2,913,421	\$ 20,140,115
12	2035	\$ 24,867	\$ 8,777,767	\$ 1,326,572	\$ 4,595,016	\$ 3,019,030	\$ 3,237,134	\$ 20,980,385
13	2036	\$ 25,365	\$ 12,771,223	\$ 1,930,097	\$ 6,685,524	\$ 4,392,541	\$ 3,498,231	\$ 29,302,982
14	2037	\$ 25,872	\$ 8,830,472	\$ 1,334,537	\$ 4,622,606	\$ 3,037,157	\$ 3,759,328	\$ 21,609,973
15	2038	\$ 26,390	\$ 9,095,386	\$ 1,374,573	\$ 4,761,284	\$ 3,128,272	\$ 4,020,425	\$ 22,406,330
16	2039	\$ 26,917	\$ 9,368,248	\$ 1,415,810	\$ 4,904,123	\$ 3,222,120	\$ 4,281,523	\$ 23,218,741
17	2040	\$ 27,456	\$ 9,649,295	\$ 1,458,285	\$ 5,051,247	\$ 3,318,784	\$ 4,542,620	\$ 24,047,685
18	2041	\$ 28,005	\$ 9,938,774	\$ 1,502,033	\$ 5,202,784	\$ 3,418,347	\$ 4,803,717	\$ 24,893,660
19	2042	\$ 28,565	\$ 9,938,774	\$ 1,502,033	\$ 5,202,784	\$ 3,418,347	\$ 5,064,814	\$ 25,155,317
20	2043	\$ 29,136	\$ 9,938,774	\$ 1,502,033	\$ 5,202,784	\$ 3,418,347	\$ 5,325,911	\$ 25,416,985
21	2044	\$ 29,719	\$ 10,236,937	\$ 1,547,094	\$ 5,358,867	\$ 3,520,897	\$ 5,587,008	\$ 26,280,523
22	2045	\$ 30,313	\$ 10,544,045	\$ 1,593,507	\$ 5,519,633	\$ 3,626,524	\$ 5,848,105	\$ 27,162,129
23	2046	\$ 30,920	\$ 13,592,383	\$ 2,054,198	\$ 7,115,388	\$ 4,674,971	\$ 6,076,029	\$ 33,543,888
24	2047	\$ 31,538	\$ 14,000,154	\$ 2,115,824	\$ 7,328,849	\$ 4,815,220	\$ 6,303,952	\$ 34,595,538
25	2048	\$ 32,169	\$ 14,420,159	\$ 2,179,299	\$ 7,548,715	\$ 4,959,677	\$ 6,531,875	\$ 35,671,893
26	2049	\$ 32,812	\$ 14,852,764	\$ 2,244,678	\$ 7,775,176	\$ 5,108,467	\$ 6,759,798	\$ 36,773,695
27	2050	\$ 33,468	\$ 15,298,347	\$ 2,312,018	\$ 8,008,432	\$ 5,261,721	\$ 6,987,722	\$ 37,901,707
28	2051	\$ 34,138	\$ 15,757,297	\$ 2,381,378	\$ 8,248,684	\$ 5,419,573	\$ 7,215,645	\$ 39,056,715
29	2052	\$ 34,820	\$ 15,757,297	\$ 2,381,378	\$ 8,248,684	\$ 5,419,573	\$ 7,443,568	\$ 39,285,321
30	2053	\$ 35,517	\$ 15,757,297	\$ 2,381,378	\$ 8,248,684	\$ 5,419,573	\$ 7,671,491	\$ 39,513,941
Total		\$ 811,362	\$ 299,761,136	\$ 45,302,486	\$ 156,920,000	\$ 103,100,000	\$ 107,872,317	\$ 713,767,301
Footnotes								
[a] Values increased at 2% annually.								
[b] Costs shown for illustrative purposes only, subject to change.								

EXHIBIT A
Reinvestment Zone Number Two, Town of Flower Mound, Texas
Final Project and Finance Plan

EXHIBIT E – FEASIBILITY STUDY

Reinvestment Zone Number Two, Town of Flower Mound, Texas Feasibility Study													
Zone Year	Calendar Year	Value Growth/ Year ^[a]	Total Added Development Value ²	Total New Taxable Value	Total Incremental Value	Town TIRZ Increment			County TIRZ Increment ^[b]			Total TIRZ No. 2 Fund Contribution	
						%	Annual	Cumulative	%	Annual	Cumulative	Annual	Cumulative
Base	2023			\$ 9,135,805									
1	2024	3%	\$ -	\$ 9,409,879	\$ 274,074	50%	\$ -	\$ -	50%	\$ -	\$ -	\$ -	\$ -
2	2025	3%	\$ -	\$ 9,692,176	\$ 556,371	50%	\$ 531	\$ 531	50%	\$ 298	\$ 298	\$ 829	\$ 829
3	2026	3%	\$ 100,267,925	\$ 110,250,866	\$ 101,115,061	50%	\$ 1,077	\$ 1,608	50%	\$ 605	\$ 903	\$ 1,683	\$ 2,511
4	2027	3%	\$ 103,275,963	\$ 216,834,355	\$ 207,698,550	50%	\$ 195,809	\$ 197,417	50%	\$ 109,984	\$ 110,888	\$ 305,794	\$ 308,305
5	2028	3%	\$ 106,374,242	\$ 329,713,627	\$ 320,577,822	50%	\$ 402,208	\$ 599,626	50%	\$ 225,917	\$ 336,804	\$ 628,125	\$ 936,430
6	2029	3%	\$ 109,565,469	\$ 449,170,504	\$ 440,034,699	50%	\$ 620,799	\$ 1,220,425	50%	\$ 348,697	\$ 685,502	\$ 969,496	\$ 1,905,926
7	2030	3%	\$ 112,852,433	\$ 575,498,053	\$ 566,362,248	50%	\$ 852,127	\$ 2,072,552	50%	\$ 478,632	\$ 1,164,134	\$ 1,330,760	\$ 3,236,686
8	2031	3%	\$ 116,238,006	\$ 709,001,000	\$ 699,865,195	50%	\$ 1,096,760	\$ 3,169,312	50%	\$ 616,041	\$ 1,780,175	\$ 1,712,801	\$ 4,949,487
9	2032	0.00%	\$ 116,238,006	\$ 825,239,006	\$ 816,103,201	50%	\$ 1,355,289	\$ 4,524,601	50%	\$ 761,254	\$ 2,541,429	\$ 2,116,543	\$ 7,066,030
10	2033	0.00%	\$ 1,116,238,006	\$ 1,941,477,012	\$ 1,932,341,207	50%	\$ 1,580,384	\$ 6,104,985	50%	\$ 887,688	\$ 3,429,116	\$ 2,468,072	\$ 9,534,102
11	2034	3%	\$ 119,725,146	\$ 2,119,446,468	\$ 2,110,310,663	50%	\$ 3,741,979	\$ 9,846,964	50%	\$ 2,101,837	\$ 5,530,953	\$ 5,843,815	\$ 15,377,917
12	2035	3%	\$ 123,316,900	\$ 2,306,346,763	\$ 2,297,210,958	50%	\$ 4,086,617	\$ 13,933,580	50%	\$ 2,295,417	\$ 7,826,369	\$ 6,382,033	\$ 21,759,950
13	2036	3%	\$ 179,420,089	\$ 2,554,957,255	\$ 2,545,821,450	50%	\$ 4,448,549	\$ 18,382,130	50%	\$ 2,498,711	\$ 10,325,080	\$ 6,947,260	\$ 28,707,210
14	2037	3%	\$ 124,057,345	\$ 2,755,663,317	\$ 2,746,527,512	50%	\$ 4,929,983	\$ 23,312,113	50%	\$ 2,769,128	\$ 13,094,208	\$ 7,699,111	\$ 36,406,321
15	2038	3%	\$ 127,779,065	\$ 2,966,112,282	\$ 2,956,976,477	50%	\$ 5,318,651	\$ 28,630,763	50%	\$ 2,987,439	\$ 16,081,648	\$ 8,306,090	\$ 44,712,411
16	2039	3%	\$ 131,612,437	\$ 3,186,708,088	\$ 3,177,572,283	50%	\$ 5,726,185	\$ 34,356,948	50%	\$ 3,216,348	\$ 19,297,995	\$ 8,942,533	\$ 53,654,944
17	2040	3%	\$ 135,560,810	\$ 3,417,870,141	\$ 3,408,734,336	50%	\$ 6,153,369	\$ 40,510,317	50%	\$ 3,456,293	\$ 22,754,288	\$ 9,609,662	\$ 63,264,605
18	2041	3%	\$ 139,627,635	\$ 3,660,033,880	\$ 3,650,898,075	50%	\$ 6,601,014	\$ 47,111,331	50%	\$ 3,707,731	\$ 26,462,020	\$ 10,308,746	\$ 73,573,351
19	2042	0.00%	\$ 139,627,635	\$ 3,799,661,515	\$ 3,790,525,710	50%	\$ 7,069,964	\$ 54,181,295	50%	\$ 3,971,137	\$ 30,433,156	\$ 11,041,101	\$ 84,614,452
20	2043	0.00%	\$ 1,139,627,635	\$ 4,939,289,150	\$ 4,930,153,345	50%	\$ 7,340,353	\$ 61,521,648	50%	\$ 4,123,012	\$ 34,556,168	\$ 11,463,365	\$ 96,077,816
21	2044	3%	\$ 143,816,464	\$ 5,231,284,288	\$ 5,222,148,483	50%	\$ 9,547,242	\$ 71,068,890	50%	\$ 2,894,502	\$ 37,450,670	\$ 12,441,744	\$ 108,519,560
22	2045	3%	\$ 148,130,958	\$ 5,536,353,774	\$ 5,527,217,969	50%	\$ 10,112,691	\$ 81,181,581	50%	\$ 3,137,943	\$ 40,588,613	\$ 13,250,633	\$ 121,770,193
23	2046	3%	\$ 190,956,375	\$ 5,893,400,763	\$ 5,884,264,958	50%	\$ 10,703,458	\$ 91,885,038	50%	\$ 3,393,379	\$ 43,981,992	\$ 14,096,837	\$ 135,867,030
24	2047	3%	\$ 196,685,067	\$ 6,266,887,853	\$ 6,257,752,048	50%	\$ 11,394,879	\$ 103,279,917	50%	\$ 3,703,061	\$ 47,685,053	\$ 15,097,940	\$ 150,964,970
25	2048	3%	\$ 202,585,619	\$ 6,657,480,107	\$ 6,648,344,302	50%	\$ 12,118,137	\$ 115,398,054	50%	\$ 4,028,264	\$ 51,713,317	\$ 16,146,401	\$ 167,111,371
26	2049	3%	\$ 208,663,187	\$ 7,065,867,697	\$ 7,056,731,892	50%	\$ 12,874,519	\$ 128,272,573	50%	\$ 4,369,641	\$ 56,082,958	\$ 17,244,160	\$ 184,355,531
27	2050	3%	\$ 214,923,083	\$ 7,492,766,811	\$ 7,483,631,006	50%	\$ 13,665,361	\$ 141,937,934	50%	\$ 4,727,871	\$ 60,810,829	\$ 18,393,232	\$ 202,748,763
28	2051	3%	\$ 221,370,775	\$ 7,938,920,591	\$ 7,929,784,786	50%	\$ 14,492,051	\$ 156,429,986	50%	\$ 5,103,656	\$ 65,914,485	\$ 19,595,708	\$ 222,344,471
29	2052	0.00%	\$ 221,370,775	\$ 8,160,291,366	\$ 8,151,155,561	50%	\$ 15,356,028	\$ 171,786,014	50%	\$ 5,497,728	\$ 71,412,213	\$ 20,853,756	\$ 243,198,227
30	2053	0.00%	\$ 1,221,370,775	\$ 9,381,662,142	\$ 9,372,526,337	50%	\$ 15,784,713	\$ 187,570,727	50%	\$ 5,738,517	\$ 77,150,730	\$ 21,523,229	\$ 264,721,456
Total			\$ 7,211,277,826			\$ 187,570,727			\$ 77,150,730			\$ 264,721,456	
Assumptions						Footnotes							
Tax Increment Base ^[c] \$ 9,135,805						[a] Values increased at 3% annually with two years of no growth each decade to simulate an economic downturn.							
Town AV Rate \$ 0.387300						[b] County has not yet agreed to participate and is shown for illustrative purposes only.							
County AV Rate ^[b] \$ 0.217543						[c] Tax Increment Base is subject to confirmation by Appraisal District.							

EXHIBIT F – PROPOSED USES OF THE PROPERTY



Every effort was made to ensure the accuracy of this data, but it may not be suitable for legal, engineering, or surveying purposes. As such, no guarantee is given or implied as to the accuracy of this data. For official verification of landuse and zoning boundaries please contact the Planning Department.

EXHIBIT A
Reinvestment Zone Number Two, Town of Flower Mound, Texas
Final Project and Finance Plan

EXHIBIT G – MAP OF THE PUBLIC IMPROVEMENTS

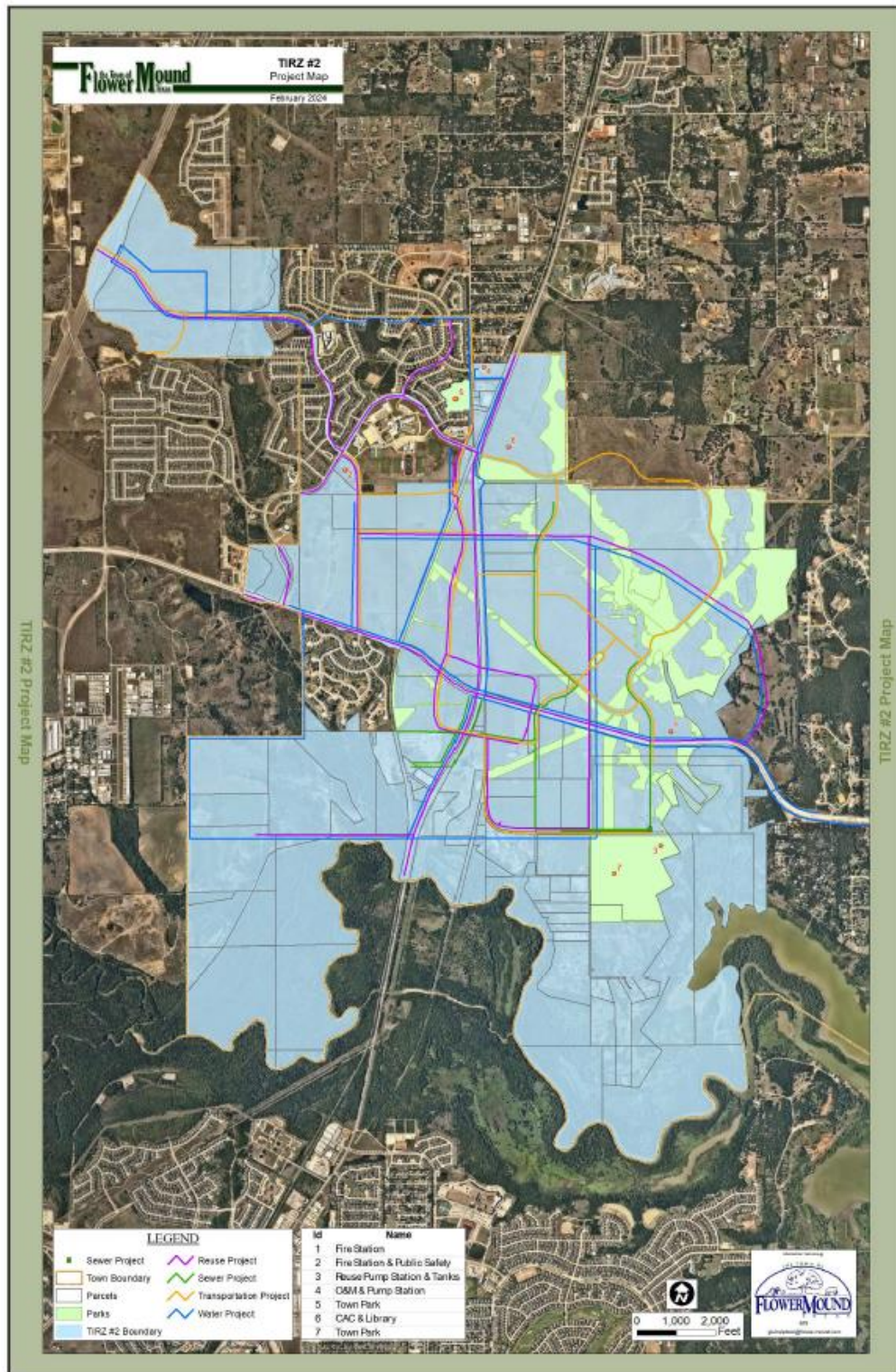


EXHIBIT A
Reinvestment Zone Number Two, Town of Flower Mound, Texas
Final Project and Finance Plan

EXHIBIT H – PARCEL IDENTIFICATION

Property IDs					
757322	68296	64905	464314	165014	1024797
757321	68015	64902	331390	165013	1024796
757320	67692	64791	331389	165012	1024795
752733	67691	64776	303674	165011	1024793
752732	67690	64776	296969	165010	1024792
731177	67689	64622	268308	165009	1024791
731175	67688	64620	258635	162981	1024790
72913	67274	64618	247046	156651	1024789
72908	658831	64596	239350	154820	1024788
715469	657617	64590	219487	151184	1024787
70718	64956	64588	219483	149229	1024786
70663	64955	64588	219477	123004	1024785
70662	64955	64587	219475	122452	1024784
692510	64954	64587	208365	122037	1024783
68684	64953	64583	208108	111156	1024782
68682	64951	64581	208051	111155	1024781
68680	64949	64540	208047	1024803	1024780
68678	64948	64535	208045	1024802	1024779
68669	64945	64530	208044	1024801	1024778
68387	64943	64530	208044	1024800	1024777
68309	64939	537189	178736	1024799	1024776
68307	64937	468689	178735	1024798	