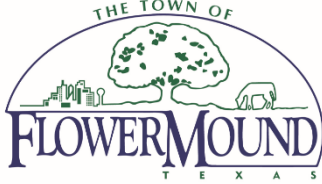


Town Council Regular Meeting



May 6, 2024
Town Hall
2121 Cross Timbers Road
Flower Mound, TX 75028

6:00 p.m.

In accordance with section 551.127 of the Texas Government Code (Open Meeting Act) this meeting will be an in-person meeting with a single member of Town Council participating by video conference. The public meeting location will be Flower Mound Town Hall, 2121 Cross Timbers Rd Flower Mound, Texas. The Mayor, as presiding officer of Town Council, and a quorum of the Town Council will be physically present at this location. The location where the Mayor is physically present shall be open to the public during the open portions of the meeting.

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. Certificate of Achievements presented to Flower Mound High School's Robotics Club and Team Captain Harish Pravin for awards achieved at FIRST Youth Robotics Championship in Houston.

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
 - a. Introduction of new Chief of Police, David Coulon
 - b. Introduction of new Director of Library Services, Dr. Rachel Hadidi

H. FUTURE AGENDA ITEM(S)

The purpose of this item is to allow the Mayor and members of Council an opportunity to bring forward items they wish to discuss at a future meeting, with the understanding that a consensus of Council is needed in order for that item to be placed on a future agenda and in accordance with the Town Council Agenda Setting Policy (Ord. 65-15).

I. COORDINATION OF CALENDARS

1. May 14 - Special Meeting - Election Canvass
2. May 16 - Work Session - Annual Board/Commission Reports
3. May 20 - Regular Meeting

J. CONSENT ITEM(S)

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

1. Minutes - 4/15 & 4/18 - Consider approval of the minutes from a regular meeting held on April 15, 2024, and a work session held on April 18, 2024.
2. Park Board ordinance amendment - Consider approval of an ordinance to amend the Park Board duties by removing Section 2-114, related to updating the Sweet Flower Mound Land book.
3. High Road Water Line Phase 2 - Material Testing PSA - Consider approval of a Professional Services Agreement with ETTL, Inc., to provide construction materials engineering and testing for the High Road Water Line Phase 2 project for an amount not to exceed \$29,167.00; and authorization for the Mayor to execute same on behalf of the Town.
4. US 377 Water Line Loop and Relocation - Material Testing PSA - Consider approval of a Professional Services Agreement with ECS Southwest LLP., to provide construction materials engineering and testing, for the US 377 Water Line Loop and Relocation project for an amount not to exceed \$51,129.00; and authorization for the Mayor to execute same on behalf of the Town.
5. Peters Colony Memorial Park PSA Third Amendment - Consider approval of the Third Amendment to the Professional Services Agreement with Mesa Design Associates, Inc., for the design services associated with the Peters Colony Memorial Park project, in the amount of \$26,525.00; and authorization for the Mayor to execute same on behalf of the Town.

6. Community Activity Center Electronic Monument Display Sign - Consider approval of the purchase and installation of a LED monument display sign for the Community Activity Center, from Casteel Sign, through the Texas Local Government Purchasing Cooperative, in the amount of \$84,628.64.
7. Canyon Falls Park - Consider approval of a Compromise and Settlement Agreement with US Casualty and Surety Insurance Company resolving the Town's claim against the performance bond in furtherance of the Canyon Falls Park improvement project.

K. REGULAR ITEM(S)

1. No items.

L. BOARDS/COMMISSIONS

Discuss and consider resignations, appointments, evaluations, reassignments, discipline, or dismissals for the following boards or commissions: Animal Services Board, Capital Improvements Advisory Committee, Cultural Arts Commission, Denton County Transportation Authority, Environmental Conservation Commission, Historical Commission, Parks Board, School Liaison Committee, SMARTGrowth Commission, Tax Increment Reinvestment Zone Number (TIRZ #1), Tax Increment Reinvestment Zone Number (TIRZ #2), Transportation Commission, and Veterans Liaison Board.

M. CLOSED MEETING

The Town Council to convene into closed meeting pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.071, 551.072, 551.074, and 551.087 for consultation with Town Attorney, and to discuss matters relating to real property, personnel, and economic development negotiations, as 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
2. Discuss and consider purchase, exchange, lease or value of real property for parks, cultural arts, public safety, public rights-of-way, economic development, 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

O. ADJOURN

I do hereby certify that the Notice of Meeting was posted on the bulletin board at the Town Hall for the Town of Flower Mound, Texas, in a place convenient and readily accessible to the general public at all times and said Notice was also posted on the Town's website in accordance with GC Section 551.056 on the following date and time: May 2, 2024, at 4:25 p.m., at least 72 hours prior to the scheduled time of said meeting.

Theresa Scott, Town Secretary

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

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

Town Council Regular Meeting



April 15, 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
Lexin Murphy, Director of Development Services
Clay Riggs, Director of Public Works
Matt Woods, Director of Environmental Services

B. INVOCATION

Chaplain Liles gave the invocation.

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

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

Mayor France led the pledges.

D. PRESENTATION(S)

1. Proclamation to Police Chief Andy Kancel for his retirement
Mayor France recited the proclamation and presented it to Chief Kancel.

2. Proclamation and presentation of Hometown Hero banner to Robert Aguirre
Mayor France recited the proclamation and presented it to Mr. Aguirre.
3. CASA of Denton County-Proclamation - Child Abuse Prevention Month
Mayor France recited the Proclamation and presented it to Debra Furst (CASA Board of Directors Vice President) and Cheri Fry (CASA Program Director).
4. Keep Flower Mound Beautiful Annual Report
Marilyn Lawson, Treasurer of Keep Flower Mound Beautiful (KFMB), provided a report on KFMB's work activities. She also recognized key sponsors.

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.	Si Simonson, 3104 Native Oak	Memorial Day
2.	Elmer McKeegan, 645 Lake Bluff Dr	Motorcycle safety and Awareness month (May)
3.	Darryl Shelton, 524 Hearth Ter, Argyle	Election
4.	Laura Truebenbach, 6305 Crossvine Trl	Argyle ISD Bond 2024
5.	Pamela York, 5504 Lake Geneva Ct	Helicopter landing in a residential area

** Indicates person did not wish to speak*

F. ANNOUNCEMENTS

1. Announcements from the mayor and council members
There were announcements from council regarding:
 - Chief Kancel (appreciation for service)
 - voting starts next week
 - candidate forum

- KFMB trash event
- National Prescription Drug Take-back Day
- Concerts in the Park
- Kid Fish
- Bike with the Blue

G. TOWN MANAGER'S REPORT

1. Capital Improvement Projects
2. Economic Development Projects
3. Organizational Updates
 - a. Chief of Police
David Coulan will be the next Police Chief starting on May 1.
 - b. Employee Service Recognition
Mayor France and Mr. Childers recognized Town employees with 15+ years of service and who had anniversary dates in the month of April.

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 request to discuss options regarding regulations associated with helicopters, and there was Council consensus to do so.

I. COORDINATION OF CALENDARS

Mayor France confirmed that all members of Council plan to attend the following meetings.

1. April 18 Work Session
2. May 6 Regular Meeting
3. July 18 (9am - 4pm) Strategic Planning Retreat

J. 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.

Mayor France announced that the Town Council is convening into a closed meeting at 6:56 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
 - b. Short term rentals
 - c. Enforcement of zoning regulations
 - d. 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

K. RECONVENE

The Town Council reconvened into an open meeting at 9:06 p.m., and no action was taken on the above items.

L. 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: Jim Engel moved to approve consent items 1 - 8 as presented in the agenda caption. Adam Schiestel seconded the motion.
AYES: Ann Martin, Jim Engel, Adam Schiestel, Brian Taylor, Chris Drew
NAYS: None
ABSTAIN: None
RESULT: 5 : 0

1. Minutes - 4/1 - Consider approval of the minutes from a regular meeting held on April 1, 2024.
2. CIP Amendment No. 3 - Consider approval of Amendment No. 3 to the fiscal year 2023-2024 Capital Improvement Program
3. Purchase Hydro Excavator Truck (PW-Drainage & ROW Division) - Consider approval of the award of Bid No. 2024-73-B, a best value bid, for the purchase of one 2025 Freightliner SD114 Hydro Excavator from Dogget Freightliner of South Texas, LLC. in the total amount of \$523,934.
4. Purchase of Hydro Excavator Truck (PW-Utility Line Maint. Division) - Consider approval of the award of Bid No. 2024-72-B, a best value bid, for the purchase of one 2024 Freightliner 108SD Hydro Excavator from Dogget Freightliner of South Texas, LLC. in the total amount of \$400,000.
5. Timber Creek Road Panel Replacements - Consider approval of the purchase of concrete removal and replacement services from Apex Concrete Construction Inc, for work associated with the Timber Creek Road Panel Replacement project, through the Town of Flower Mound contract No. 2023-56-A, Concrete and Drainage Improvement Services, in the amount of \$780,006.00.
6. Spring Meadow Park Improvements - Consider approval of the purchase and installation of a new picnic pavilion, associated site amenities, and repair of playground surfacing for the Spring Meadow Park Improvements proejct, from Child's Play, Inc., through the Texas Local Government Purchasing Cooperative, in the amount of \$88,046.00
7. Legislative Consultant - Consider approval of a Professional Services Agreement with Bird Advocacy and Consulting, Inc. to provide legislative consulting to the Town, in the amount of \$38,500.
8. Employee Assistance Program - Consider approval of Request for Proposal Number 2024-22-A with Deer Oaks EAP Services, LLC, to provide an employee assistance program in the total amount of \$4,939; and authorization for the Mayor to execute same on behalf of the Town.

M. REGULAR ITEM(S)

1. US 377 Waterline Loop & Relocation - Construction Award - Consider approval of a Construction Agreement with Mountain Cascade of Texas, LLC., for the US 377 Water Line Loop and Relocation project, in the amount of \$6,212,538.00; and authorization for the Mayor to execute same on behalf of the Town.

Mr. Riggs gave a presentation identifying or noting the following:

- what the project includes
- water master plan
- verified bid results
- project funding and schedule

and he responded to questions from council regarding:

- clarification on the TxDot reimbursement amount
- traffic impact

ACTION: Brian Taylor moved to approve M.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. RC24-0001 - Lungren Addition Lot 1, Block A - Consider a request for a Record Plat (RC24-0001-Lungren Addition Lot 1 Block A) to create a residential subdivision with an exception to lot width to depth ratio pursuant to Section 90-272(a), of the Code of Ordinances. The property is generally located North of Stapleton and west of Kirkpatrick Lane. (PZ recommended approval by a vote of 5 to 0 at its April 8, 2024, meeting.)

Ms. Murphy gave a presentation identifying or noting:

- general and detailed location
- land use and zoning
- plat exhibit
- site photo
- exception request

ACTION: Jim Engel moved to approve M.2. 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

3. CSP24-0001 - Tesla - Public Hearing to consider a request for a Comprehensive Sign Package (CSP24-0001- Tesla) to allow a ground sign and additional wall signs on the building. The property is generally located south of Justin Road and west of Stone Hill Farms Parkway. (PZ recommended approval by a vote of 5 to 0 at its April 8, 2024, meeting.)

Ms. Murphy gave a presentation identifying or noting the following:

- land use and zoning
- detailed location
- CSP purpose
- sign exhibit
- site photos

and she responded to questions from Council regarding the option of off-site sign placement on 407.

Mayor France opened the public hearing at 9:22 p.m., and no one spoke. Mayor France closed the public hearing at 9:22 p.m.

ACTION: Jim Engel moved to approve M.3. as presented in the agenda caption. Adam Schiestel seconded the motion.
AYES: Ann Martin, Jim Engel, Adam Schiestel, Brian Taylor, Chris Drew
NAYS: None
ABSTAIN: None
RESULT: 5 : 0

4. MPA23-0009 - Box Investment Group - Public Hearing to consider an ordinance for a Master Plan Amendment (MPA23-0009 – Box Investment Group) to amend Section 1.0, Land Use Plan and Section 2.0, Area Plans, of the Master Plan by changing the current land use designation within the Lakeside Business District Area Plan from Campus Commercial uses to Campus Industrial uses. The property is generally located south of Lakeside Parkway and east of Silveron Boulevard. (PZ recommended approval by a vote of 5 to 0 at its April 8, 2024, meeting.)

Mayor France opened items 4, 5, and 6 at the same time.

Ms. Murphy gave a presentation identifying or noting the following:

- general and detailed location
- land use and zoning
- master plan exhibit
- conceptual site plan
- site photos
- exception requests (slope, driveway spacing, street buffers, and use modification)
- conceptual landscaping plan
- tree survey
- conceptual elevations
- conceptual renderings

and she, or Mr. Woods responded to questions from Council regarding:

- if the tree that is requested to be removed in an area that is above 12% grade
- setbacks
- overnight parking
- retention pond
- the type of tree requested for removal
- space finish out

Applicant presentation: Todd Marchesani, Box Investment Group, Kori Haug, Belle Firma, Mark Sullivan, GDA Architects

Mr. Marchesani, Mr. Firma, or Mr. Sullivan gave a presentation identifying or noting:

- project name of Lakeside Ridge
- introduction of design team
- proactive outreach
- development analysis
- environmental sensitivity
- landscape plan
- building design, including loading docks
- proposed development standards
- primary economic impact/tax analysis
- drone video footage

and they responded to questions from Council regarding:

- clarification regarding the underground retention pond

- setbacks
- parking
- easements
- hours of operation and concerns regarding truck traffic and back up alarms from the trucks for neighbors
- what is over moisture conditioning and the tree impact

Mayor France opened the public hearing for items 4, 5, and 6 at 10:07 p.m., and no one spoke. Mayor France closed the public hearing for items 4, 5, and 6 at 10:07 p.m.

ORDINANCE NO. 14-24

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 CHANGING THE ZONING ON CERTAIN PROPERTY DESCRIBED AS AN APPROXIMATELY 10.698 ACRE TRACT OF LAND IN THE JOSEPH KNIGHT SURVEY, ABSTRACT NO. 692, DENTON COUNTY, TEXAS, FROM PLANNED DEVELOPMENT DISTRICT-31 (PD-31) WITH CC CAMPUS COMERCIAL DISTRICT USES TO PLANNED DEVELOPMENT DISTRICT-201 (PD-201) WITH CERTAIN CI CAMPUS INDUSTRIAL DISTRICT USES IN ACCORDANCE WITH THE TOWN'S MASTER PLAN AND SPECIFIC REQUIREMENTS AND EXHIBITS INCORPORATED HEREIN; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

ACTION:	Jim Engel moved to approve M.4. as presented in the agenda caption. Brian Taylor seconded the motion.
AYES:	Ann Martin, Jim Engel, Adam Schiestel, Brian Taylor, Chris Drew
NAYS:	None
ABSTAIN:	None
RESULT:	5 : 0

5. ZPD23-0015 - Box Investment Group - Public Hearing to consider an ordinance amending the zoning (ZPD23-0015 - Box Investment Group) from Planned Development District No. 31 (PD-31) with Campus Commercial District (CC) uses to Planned Development District No. 201 (PD-201) with Campus Commercial District (CC) uses and certain Campus Industrial District (CI) uses, with certain waivers, exceptions and modifications to the Code of Ordinances including but not limited to an exception to Section 98-147, "Topographical Slope Protection", and an exception to the access management policy and criteria, regarding driveway spacing, contained in the Town's Engineering Design Criteria

and Construction Standards adopted through Chapter 32 of the Code of Ordinances. The property is generally located south of Lakeside Parkway and east of Silveron Boulevard. (PZ recommended approval by a vote of 5 to 0 at its April 8, 2024, meeting.)

ORDINANCE NO. 15-24

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 CHANGING THE ZONING ON CERTAIN PROPERTY DESCRIBED AS AN APPROXIMATELY 10.698 ACRE TRACT OF LAND IN THE JOSEPH KNIGHT SURVEY, ABSTRACT NO. 692, DENTON COUNTY, TEXAS, FROM PLANNED DEVELOPMENT DISTRICT-31 (PD-31) WITH CC CAMPUS COMMERCIAL DISTRICT USES TO PLANNED DEVELOPMENT DISTRICT-201 (PD-201) WITH CERTAIN CI CAMPUS INDUSTRIAL DISTRICT USES IN ACCORDANCE WITH THE TOWN'S MASTER PLAN AND SPECIFIC REQUIREMENTS AND EXHIBITS INCORPORATED HEREIN; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

ACTION: Jim Engel moved to approve M.5. 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

6. TRP24-0002 – Box Investment Group - Public Hearing to consider an application for a tree removal permit (TRP24-0002) for one (1) specimen tree on property proposed for development as Box Investment Group. The property is generally located south of Lakeside Parkway and east of Silveron Boulevard. (The Environmental Conservation Commission recommended approval by a vote of 5 to 1 at its March 6, 2024, meeting.)

ACTION: Jim Engel moved to approve M.6. as presented in the agenda caption. Brian Taylor seconded the motion.
AYES: Ann Martin, Jim Engel, Adam Schiestel, Brian Taylor, Chris Drew
NAYS: None
ABSTAIN: None

RESULT: 5 : 0

7. TIRZ #2 Capital Improvement Agreement - Public Hearing to consider approval of a Capital Improvement Agreement for the Furst Ranch Development, establishing a process and providing for the reimbursement of impact fees, and TIRZ #2 revenues for qualified capital improvement costs.

Mr. Childers provided background information on the item, and Mary Petty, P3 Works, TIRZ administrator, outlined the purpose of the item and responded to questions from Council regarding:

- how would capital improvement projects be financed if not for the agreement
- clarification regarding statutory verification language

Mayor France opened the public hearing at 9:09 p.m., and no one spoke. Mayor France closed the public hearing at 9:09 p.m.

N. BOARDS/COMMISSIONS

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

No action was taken.

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.

O. ADJOURN

Mayor France adjourned the meeting at 10:09 p.m. and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

DEREK FRANCE, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY

Town Council Work Session



April 18, 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 work session 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
Tommy Dalton, Assistant Town Manager
Tiffany Bruce, Assistant Town Manager/Town Engineer
Lexin Murphy, Director of Development Services
John Zagurski, Chief Financial Officer

B. INVOCATION

Mayor France gave the invocation.

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

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

Mayor France led the pledges.

D. PUBLIC COMMENT

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

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

There were no speakers.

E. WORK SESSION ITEM(S)

1. FloMo Convos - Development

Ms. Murphy gave a presentation identifying or noting:

- purpose of FloMo Convos
- background information on the development community FloMo Convo
- service improvements (13 areas)
- items requiring council direction
- opportunities for improvement based on feedback provided during the FloMo Convo and the topic of development

and she responded to questions from Council regarding the following:

- 3rd party contracts, including an inspection opportunity
- response times by planning for reviewing development applications in comparison to benchmark cities
- Master Plan Amendments
- development application submittal process
- planned development language
- administrative variances
- exception process
- infill sites
- inspector availability
- responding to code questions
- site plan application review process
- boards and commissions training

2. Merchant Card Processing Fees

Mr. Zagurski gave a presentation identifying or noting:

- Merchant card fees growth
- payment type and volume
- changes and impact
- benchmark cities (where we stand)
- merchant card fee philosophy

and he responded to questions from Council regarding:

- fee versus transaction cost
- full cost recovery option

3. Budget Strategies FY 2025

Mr. Childers provided background information regarding the item, and Mr. Zagurski, or John Martin, Hilltop Securities gave a presentation identifying or noting the following:

- prior budget philosophy, including a short-term cash approach during uncertain times
- strategic alignment (goal 4: financial stability and operational soundness)
- general fund personnel (personnel vs population)
- FY25 decision points
- non-discretionary (managing inflation's impact on the general fund)
- sales tax
- property tax rate, including SB2 (2019) M & O impact
- the SB2 cliff (managing the impact on the general fund)
- Debt and capacity - opportunities to refinance and capture increment
- large capital needs
- certificates of obligation
- general obligation bonds
- utility system revenue bonds
- voted vs non voted bonds, including statistics
- paths forward

and they responded to questions from Council regarding:

- personnel ratios
- interest in seeing what benchmark cities do in the area of personnel ratios
- inflation rates
- property tax and SB2
- exemptions
- TIRZ revenues
- capital projects on the horizon
- bond packages
- tax rates, including voter approval rate

F. ADJOURN

Mayor France adjourned the work session at 9:01 p.m. and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

DEREK FRANCE, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY



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

DATE: May 6, 2024

FROM: Theresa Scott, Town Secretary

ITEM: **Consider approval of an ordinance to amend the Park Board duties by removing Section 2-114, related to updating the Sweet Flower Mound Land book.**

BACKGROUND: This item removes the following language from the Park Board's duties regarding updates to the Sweet Flower Mound Land book since this responsibility has been moved to the Historical Commission:

Parks Board [Section 2-114 \(h\)](#):

Oversee and advise the Town Council and staff regarding any issues or updates to the recorded history of Flower Mound in the book Sweet Flower Mound Land.

Historical Commission Section 3 (2) (C):

Advise staff regarding any issues or updates to the recorded history of Flower Mound in the book *Sweet Flower Mound Land*.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES: Keeping language in both governing documents may cause confusion for board members as well as the public.

FISCAL IMPACT: N/A

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

ATTACHMENTS:

1. Parks Board Ordinance Revised

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

**TOWN OF FLOWER MOUND, TEXAS
ORDINANCE NO. ____24**

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING DIVISION 2, "PARKS BOARD," OF ARTICLE III, "BOARDS, COMMITTEES, COMMISSIONS," OF CHAPTER 2, "ADMINISTRATION," OF THE CODE OF ORDINANCES, TOWN OF FLOWER MOUND, TEXAS, BY MODIFYING THE AUTHORITY OF SAID BOARD; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, the Town Council of the Town has previously established certain Boards and Commissions that effectuate good government; and,

WHEREAS, the Town Council has determined that modifying the Parks Board's powers and duties will best serve the interests of the citizens of the Town;

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

SECTION 1

Section 2-114, "Powers and Duties," of Division 2, "Parks Board," of Article III, "Boards, Committees, Commissions," of Chapter 2, "Administration," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended by deleting Section 2-114(h) and renumbering accordingly, to read as follows:

"DIVISION 2. - PARKS BOARD

* * *

Sec. 2-114. - Powers and duties.

* * *

- (h) Consider, investigate, make findings, report and recommend upon any special matter or question coming before the board within the scope of its duties and responsibilities or referred to it by the town council or town manager."

SECTION 2

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

SECTION 3

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

SECTION 4

This Ordinance shall be in full force and effect from and after the date of its passage and it is so ordained.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF _____ TO _____, ON THIS THE _____ DAY OF MAY 6, 2024.

APPROVED:

Derek France, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY



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

DATE: May 6, 2024

FROM: Brian Waltenburg, Assistant Director of Engineering

ITEM: **Consider approval of a Professional Services Agreement with ETTL, Inc., to provide construction materials engineering and testing for the High Road Water Line Phase 2 project for an amount not to exceed \$29,167.00; and authorization for the Mayor to execute same on behalf of the Town.**

BACKGROUND: The Professional Services Agreement includes construction materials engineering and testing for the High Road Water Line Phase II project. The construction project was awarded to A&B Construction LLC on November 6, 2023. The project includes replacement of approximately 10,200 linear feet of substandard and undersized water line with a new 8-inch water line.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES: N/A

FISCAL IMPACT: \$29,167.00

Proposed Expenditure/(Revenue)
\$29,167.00

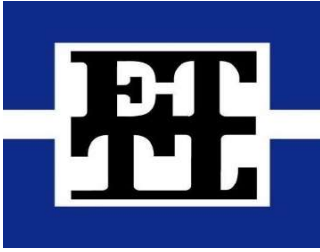
Account Number(s):
630-960-98848-6170

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. Material Testing PSA
2. Form 1295 - Internal Use

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



March 11, 2024

Brian Waltenburg
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, TX 75028

Reference: High Road Phase 2
Flower Mound, TX
P12-2606-24

Mr. Waltenburg,

ETTL Engineers and Consultants (ETTL) is pleased to submit this proposal for providing Construction Materials Testing (CMT) and related quality control services for the referenced project. For the purpose of this proposal, we have estimated quantities and tests that will be required in accordance with the information supplied. This is only an estimate for budgetary purposes. The actual costs for CMT services can decrease or increase with changes in the scope of work or with the contractor's work method. ETTL's total fee will be based on the actual amount of technician time and laboratory testing required for the project. These services will be performed on a unit price basis in accordance with the attached Schedule of Services and Fees.

ETTL meets the requirements of ASTM E329 and is an active participant in the CCRL and AMRL sample proficiency programs and is currently AASHTO accredited as well as USACE Validated. ETTL has experienced personnel to perform the necessary CMT services in accordance with the project specifications.

By execution of the proposal, the undersigned Client acknowledges and agrees that the document entitled "Terms and Conditions" has been provided or made available to Client and Client agrees that such Terms and Conditions shall be applied to the present Proposal and shall be fully binding upon Client. The Terms and Conditions are fully incorporated into this Proposal by reference as if set forth at length.

We appreciate the opportunity to submit this proposal for CMT services and look forward to working with you during the construction phase of this project. If there are any questions concerning this proposal or if we can be of further assistance, please contact us at your convenience.

Respectfully submitted,

Chris Taylor
Vice President - Operations

ETTL Professional Engineering Certified of Registration F-3208

Samuel Welch
Estimator- Central and North Texas

Tyler - Longview - Texarkana - DFW - Austin

March 11, 2024
P12-2606-24

ETTL Engineers and Consultants
Construction Materials Engineering and Testing
Basic Services and Cost Estimate

Project: High Road Phase 2
Flower Mound, TX

DESCRIPTION	Estimated Quantity	Unit Rate	Estimated Total
Paving Subgrade Earthwork			
Moisture Density Relationship ASTM D-698 (each)	3.0	\$205.00	\$615.00
Atterberg Limits ASTM D-4318 (each)	3.0	\$55.00	\$165.00
Percent Passing #200 Sieve ASTM D-1140 (each)	3.0	\$45.00	\$135.00
Engineering Technician (hourly)	48.0	\$45.00	\$2,160.00
Engineering Technician Overtime (hourly)	0.0	\$67.50	\$0.00
Nuclear Gauge Usage (trip)	16.0	\$75.00	\$1,200.00
Vehicle Charge (trip)	16.0	\$50.00	\$800.00
Report Review (hourly)	6.4	\$85.00	\$544.00
Utilities Earthwork			
Moisture Density Relationship ASTM D-698 (each)	6.0	\$205.00	\$1,230.00
Atterberg Limits ASTM D-4318 (each)	6.0	\$55.00	\$330.00
Percent Passing #200 Sieve ASTM D-1140 (each)	6.0	\$45.00	\$270.00
Engineering Technician (hourly)	135.0	\$45.00	\$6,075.00
Engineering Technician Overtime (hourly)	0.0	\$67.50	\$0.00
Nuclear Gauge Usage (trip)	45.0	\$75.00	\$3,375.00
Vehicle Charge (trip)	45.0	\$50.00	\$2,250.00
Report Review (hourly)	18.0	\$85.00	\$1,530.00
Hardscape and Paving Concrete			
Engineering Technician (hourly)	96.0	\$45.00	\$4,320.00
Engineering Technician Overtime (hourly)	0.0	\$67.50	\$0.00
4x8 Concrete Test Cylinders (each)	80.0	\$18.50	\$1,480.00
Vehicle Charge (trip)	32.0	\$50.00	\$1,600.00
Report Review (hourly)	12.8	\$85.00	\$1,088.00
ESTIMATED BUDGET			\$29,167.00

Town of Flower Mound

P12-2606-24

Assumptions

The sampling/testing and observation noted in the proposal estimate represents all the services to be provided by ETTL on this project unless additional services are requested by the client. No other sampling/testing or observation of any kind is included in this proposal estimate.

We have estimated sampling/testing and observation quantities for this project based on our past experience with projects of similar type and scope.

Soil Testing Frequencies

Trench Backfill: 1 density test for every 200 lineal feet

¹ If required to be onsite full time, additional charges will apply.

Note: If ETTL is not onsite full time we will not be responsible for assuring soils testing/quantity is in compliance with project requirements.

Concrete Frequencies

1 set of 5 concrete test cylinders for every 100 yards (4x8 cylinders)

Concrete inspection time is based on delivery of concrete at 50 yards per hour

² Confirmation cylinders additional

Structural Steel

Note: If out of town fabrication inspection is required there will be additional charges for travel.

Project Manager

Note: Requires five working days notice for project review letter.

Limitations of Authority of ETTL

ETTL is not authorized to release, revoke, alter or enlarge requirements of the Contract Documents. ETTL will not approve or accept any portion of the work. ETTL is providing sampling/testing/observation services as outlined in this proposal to verify compliance on a random basis at the frequencies indicated. ETTL is not responsible for providing access to areas to be tested/observed unless specifically noted in this proposal. ETTL has no authority to stop and/or reject any work performed on the project. ETTL will perform observations of ongoing construction, sampling/testing of materials as described in this proposal as requested by our client. ETTL is not responsible for site safety.

Additional services will be provided when required by the Architect/Engineer and authorized by the client.

Clarifications

ETTL's office is located at:

2000 E. Randol Mill Rd. Ste. 613
Arlington, TX 76011
Phone: 817-962-0048

ETTL sampling/testing/observation services must be scheduled through dispatch including cancellations. Our dispatch is available at the number noted above, Monday through Thursday between the hours of 7:30am and 5:00pm and Fridays 8:00am through 12:00pm with the exception of Holidays. Calls received outside of this time frame will be handled by our voice mail system and will be checked the next working day morning. It is recommended that you schedule services through our dispatch during our regular working hours noted above. We require one working day (24 hours) advance notice for our services. Same day call-ins or after hour voice mail call-ins for work the following day are subject to the availability of personnel.

Service is not guaranteed for same day call-in's.

Reinforcing Steel Inspections require adequate lighting in order to perform the inspection. The inspection needs to be scheduled during daylight hours and/or jobsite illumination needs to be provided by others in order to allow us to perform the required inspection. These inspections need to be scheduled independently of the concrete inspection.

At your request, ETTT's project manager will attend the pre-construction meeting for the project. Our project manager will answer any relevant questions regarding our service's for the project at that time. As the project progresses our project manager will be available to answer any questions you may have concerning our service's.

Three (3) paper copies of test reports are included for mail distribution as directed by the client at no additional charge. Additional mail copies of test reports requested and approved by the client will be charged at \$0.45 per page to cover copying and mailing costs. There is no charge for additional distribution through our e-mail and web distribution system.

Compensation for our services will be based upon the actual sampling/testing/observations performed in accordance with the unit rates shown. The estimated budget that we have indicated is approximate and is based on our past experience with projects of similar type and scope. The estimated budget does not include cancellations/re-testing/re-inspection, and/or any changes and/or modifications to the contract documents.

Clarifications

If E TTL is selected to perform the sampling/testing/observation for the project we will require the following items in order to perform our services on your project.

Two complete sets of drawings and specifications.
Approved concrete mix designs for the project.
Report distribution list.

In addition, please be sure to add E TTL to the distribution list for all addendums and revisions on the project and notification of pre-construction meetings, where applicable, regarding soils, piers, concrete, masonry and structural steel.

All time is for a minimum of two hours or as noted. Overtime will be charged for all hours worked before 7:00am and after 5:00pm, for any time in excess of 8 hours per day or 40 hours per week, Saturdays, Sundays and Holidays. All time is Portal to Portal.

Project Engineering services on materials engineering and testing for consultation, analysis, report preparation and review, supervision and scheduling of field and laboratory personnel will typically be 0.4 to 0.7 hours per report.

This proposal is valid for sixty days from the listed proposal date.

All Invoices for our services are payable within 30 days with no retainage.



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

DATE: May 6, 2024
FROM: Brian Waltenburg, Assistant Director of Engineering
ITEM: **Consider approval of a Professional Services Agreement with ECS Southwest LLP., to provide construction materials engineering and testing, for the US 377 Water Line Loop and Relocation project for an amount not to exceed \$51,129.00; and authorization for the Mayor to execute same on behalf of the Town.**

BACKGROUND: The Professional Services Agreement includes construction materials engineering and testing for the US 377 Water Line Loop and Relocation project. The construction project was awarded to Mountain Cascade of Texas, LLC., on April 15, 2024. The project includes the installation of approximately 8,200 linear feet of 20-inch to 36-inch water lines.

Because the existing water line is in an exclusive easement, material testing costs associated with the forced relocation is eligible for reimbursement from TxDOT. A Standard Utility Agreement (SUA) between TxDOT and the Town was approved by the Town Council on 4/1/2024. The SUA includes reimbursement for 84.1% of the total project costs.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES: N/A

FISCAL IMPACT: \$51,129.00

Proposed Expenditure/(Revenue)
\$51,129.00

Account Number(s):
630-960-98671-6170

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

ATTACHMENTS:

1. Material Testing PSA
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
ECS SOUTHWEST, LLP**

This contract is entered into on this 6th day of May, 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, and **ECS SOUTHWEST, LLP**, (“hereinafter referred to as “CONSULTANT”) whose address is 2621 White Settlement Road, Fort Worth, TX 76107

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to construction materials engineering and testing and other services for the US 377 Water Line Loop and Relocation project; and

WHEREAS, CONSULTANT is a construction materials engineering and testing firm qualified to provide such services and is willing to undertake the performance of such services for 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 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 the 377 Water Line Loop and Relocation Construction Materials Engineering and Testing

specifically including, but not necessarily limited to, the tasks enumerated more fully in Appendix "A" hereto entitled "Scope of Work" (hereafter referred to as the "Project"). Appendix "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 Appendix "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 Fifty-One Thousand One Hundred Twenty-Nine and No/100 Dollars (\$51,129.00). 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.

CONSULTANT will bill TOWN on an hourly basis for certain services provided combined with a flat fee for specific tests performed in accordance with Appendix "B"; provided however that this Contract shall control in the event of any conflict between the language in Appendix "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 actual services performed and reimbursable expenses incurred by CONSULTANT during the previous month for which payment is sought. Each invoice shall be itemized to show the amount of work performed that month broken down by the identity of the person(s) performing such work, the amount of time expended by such person(s) in performing that work, the billing rate for each such person, and a brief summary of the work or testing performed by each such person. 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, within thirty (30) days of receipt of each such monthly invoice TOWN shall make monthly payments in the amount shown by CONSULTANT's approved monthly statements and other documentation submitted.

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 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:

Brian Waltenburg, P.E.
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6234 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.

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 sub-contractor involving transactions to the subcontract, and further, that TOWN shall have access during normal working hours to all such engineer or sub-contractor facilities and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of the paragraph. TOWN shall give any such engineer or sub-contractor reasonable advance notice of intended audits.

X. **Successors and Assigns**

TOWN and CONSULTANT each bind themselves and their successors, executors, administrators and assigns to the other party to this Contract and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this Contract. Neither TOWN nor CONSULTANT shall assign or transfer its interest herein without the prior written consent of the other.

XI.
CONSULTANT's Liability

Acceptance of the final plans by the TOWN shall not constitute nor be deemed a release of the responsibility and liability of CONSULTANT, its employees, associates, agents or consultants for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by TOWN for any defect in the designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by TOWN for any defect in the designs, working drawings, specifications or other documents and work prepared by said CONSULTANT, its employees, associates, agents or sub-consultants. In this regard, CONSULTANT acknowledges that TOWN is retaining CONSULTANT to provide the services described herein, in reliance upon CONSULTANT's specialized expertise and experience, and in reliance thereon.

XII.
Indemnification

THE PROVISIONS OF THIS SECTION ARE SUBJECT TO THE LIMITATIONS OF TEXAS LOCAL GOVERNMENT CODE SECTION 271.904 AND SHALL BE CONSTRUED TO THAT EFFECT. THE CONSULTANT AS ALLOWED BY TEXAS LOCAL GOVERNMENT CODE SECTION 271.904 WILL STILL NAME TOWN AS ADDITIONAL INSURED IN ITS GENERAL LIABILITY POLICY AND PROVIDE ANY DEFENSE AS ALLOWED BY THE POLICY. CONSULTANT DOES HEREBY COVENANT AND CONTRACT TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY AND HOLD HARMLESS TOWN AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS OR CAUSES OF ACTION, INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, THAT MAY ARISE BY REASON OF DEATH OR INJURY TO PERSONS OR DAMAGE TO OR LOSS OF USE OF PROPERTY OCCASIONED BY ANY WRONGFUL INTENTIONAL ACT OR OMISSION OF CONSULTANT AS WELL AS ANY NEGLIGENT OMISSION, ACT OR ERROR OF CONSULTANT, ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, OR OTHER PERSONS FOR WHOM CONSULTANT IS LEGALLY LIABLE WITH REGARD TO THE PERFORMANCE OF THIS CONTRACT, REGARDLESS OF WHETHER SUCH LIABILITY, CLAIMS, SUITS, DEMANDS OR CAUSES OF ACTION IS THE RESULT IN PART OF TOWN'S NEGLIGENCE OR FAULT, AND CONSULTANT WILL, AT ITS OWN COST AND EXPENSE, DEFEND AND PROTECT TOWN AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS.

XIII. Independent Contractor

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

XIV. Default

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

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 in an amount not to exceed:

(1) The amount of any applicable insurance coverage CONSULTANT is required to purchase and maintain under this Contract plus any deductible amount to be paid by CONSULTANT in conjunction with said coverage regardless of whether CONSULTANT has actually purchased and maintained said coverage, plus any additional insurance maintained by CONSULTANT in excess or in addition to the coverage required under this Contract; plus

(2) The total dollar amount of this Contract.

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:

Brian Waltenburg, P.E.
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
Telephone: 972-874- 6234

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:

Vince Elizarde, P.E.
ECS Southwest, LLP
3033 Kellway Drive, Suite 110
Carrollton, Texas 75006
Telephone: 972-392-3222
Email: VELizarde@ecslimited.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. Situs of this Contract is agreed to be Denton County, Texas, for all purposes, including performance and execution.

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

This Contract is fully performable in Denton County, Texas, and the parties to this Contract agree and covenant that this Contract will be enforceable in Flower Mound, Texas; and that if legal action is necessary to enforce this Contract, exclusive venue will lie in Denton County, Texas.

XXX.
No Third Party Beneficiary

For purposes of this Contract, including its intended operation and effect, the parties (TOWN and CONSULTANT) specifically agree and contract that: (1) the Contract

only affects matters/disputes between the parties to this Contract, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship with TOWN or CONSULTANT or both; and (2) the terms of this Contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either TOWN or CONSULTANT.

[The remainder of this page left blank intentionally]

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

CONSULTANT:
ECS SOUTHWEST, LLP

THE TOWN OF FLOWER MOUND, TEXAS

By: Sneekhra

By: _____

Name: Siddharth Neekhra

Name: _____

Title: Senior Vice President

Title: _____

Dated: 04/25/24

Dated: _____

APPENDIX A: SCOPE OF SERVICES

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

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

We anticipate the following services for this project:

Earthwork

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

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

Cast-In-Place Concrete

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

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

Project Administration, Clerical, & Dispatching

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

1. Perform Field Services Dispatching.
2. Perform additional administrative and clerical duties to aid in project execution.

Project Management

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

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

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

ADDITIONAL SERVICES

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

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

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

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

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

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

APPENDIX B: ESTIMATED FEES & STANDARD FEE SCHEDULE

ESTIMATED FEES

Description of Services	Detail	Estimate	Quantity	Unit	Rate	Total
Earthwork						
Engineering Technician	<i>Sample Pickups</i>	<i>1 events</i>	4	hours	\$ 55.00	\$ 220.00
Engineering Technician	<i>Utility Lines</i>	<i>88 events</i>	396	hours	\$ 55.00	\$ 21,780.00
Engineering Technician	<i>Launch Pit Pour Backs</i>	<i>1 events</i>	4	hours	\$ 55.00	\$ 220.00
Nuclear Gauge Fee	<i>Nuclear Gauge Fee</i>		88	events	\$ 75.00	\$ 6,600.00
St. Proctor (Moist./Dens. Rel.)	<i>Standard Proctor</i>		4	each	\$ 140.00	\$ 560.00
Atterberg Limits Tests	<i>Plasticity Index</i>		4	each	\$ 80.00	\$ 320.00
Washed Sieve (- #200 Sieve)	<i>Percent Fines</i>		4	each	\$ 60.00	\$ 240.00
Vehicle Charge			90	trips	\$ 55.00	\$ 4,950.00
Subtotal:						\$ 34,890.00
Concrete						
Engineering Technician	<i>Cellular Concrete Fill</i>	<i>5 events</i>	20	hours	\$ 55.00	\$ 1,100.00
Engineering Technician	<i>Gate Valve Vaults</i>	<i>6 events</i>	24	hours	\$ 55.00	\$ 1,320.00
Engineering Technician	<i>Launch Pit Pour Backs</i>	<i>1 event</i>	4	hours	\$ 55.00	\$ 220.00
Conc. Cylinders (Comp. Str.)			48	each	\$ 18.00	\$ 864.00
Material Sample Pickup			12	trips	\$ 165.00	\$ 1,980.00
Vehicle Charge			12	trips	\$ 55.00	\$ 660.00
Subtotal:						\$ 6,144.00
Project Management						
Administrator / Clerical / Dispatch			21	hours	\$ 50.00	\$ 1,050.00
Project Manager			43	hours	\$ 120.00	\$ 5,160.00
Project Principal			21	hours	\$ 185.00	\$ 3,885.00
Subtotal:						\$ 10,095.00
PROJECT TOTAL:						\$ 51,129.00

General Assumptions:

Based on the general project information and our scope of services outlined above, the general assumptions utilized in the preparation of our estimated fees are listed below:

1. All material sample pickups and transport to our Laboratory are separate trips, independent of scheduled services.
2. Utility trench excavation backfilling will be completed at a rate of 2 lifts per day for a length of 100 linear feet per day.
3. Utility structures includes box culverts, headwalls, storm structures, inlets, manholes, light pole bases, etc.
4. Subgrade preparation (stabilization/compaction) will be completed and concrete for road pavement will be placed at a rate of roughly 200 linear feet per event (pour). Two sets of concrete sample cylinders are expected for each concrete placement event.
5. Subgrade preparation (stabilization/compaction) will be completed and concrete for sidewalks will be placed at a rate of 50-100 linear feet per event (pour). One 1 set of concrete sample cylinders is expected for each concrete placement event.
6. Concrete for curbs will be completed at a rate of 200 linear feet per event (pour) in two phases for joints.
7. Subgrade preparation (compaction) and concrete for sidewalks will be completed each with each individual section completed on separate/independent events at a minimum.
8. Subgrade preparation (compaction) and concrete for driveways will be completed each with one to two completed on separate/independent events at a minimum.
9. Concrete sample sets will consist of 4 sample cylinders measuring 6 inches in height by 12 inches in diameter and will be tested: 2 at 7 Days, 2 at 28 Days.
10. Overtime is not expected due to the project location and construction work hours constraints.
11. For budgeting purposes, all onsite services (example: earthwork and concrete) are estimated to be performed on separate trips and independent of each other.
12. Reinforcing steel will be observed by the Town of Flower Mound Inspectors.

STANDARD FEE SCHEDULE

Description of Services	Notes	Unit Rate
Field Services		
• Engineering Technician		\$ 55.00 / hour
• Senior Engineering Technician		\$ 60.00 / hour
• Specialty Engineering Technician		\$ 75.00 / hour
• Structural Steel Technician		\$ 80.00 / hour
• Nuclear Gauge Fee		\$ 75.00 / day
• Core Drilling (Crew)		\$ 100.00 / hour
• Core Drilling (Equip. & Matls)		\$ 15.00 / each
Project Management & Engineering Services		
• Administrator / Clerical / Dispatch		\$ 50.00 / hour
• Project Manager		\$ 120.00 / hour
• Project Principal		\$ 185.00 / hour
• Concrete Mix Design Review		\$ 300.00 / each
• Certification Letter		\$ 325.00 / each
Laboratory Services		
• St. Proctor (Moist./Dens. Rel.)	ASTM D-698	\$ 140.00 / each
• Mod. Proctor (Moist./Dens. Rel.)	ASTM D-1557	\$ 140.00 / each
• Atterberg Limits Tests	ASTM D-4318	\$ 80.00 / each
• Washed Sieve (- #200 Sieve)	ASTM D-1440	\$ 60.00 / each
• Lime Series	ASTM D-6276	\$ 160.00 / each
• Lime Gradations	ASTM D-6913	\$ 15.00 / each
• Free-Swell Test	ASTM D-4546	\$ 100.00 / each
• Conc. Cylinders (Comp. Str.)	ASTM C-39	\$ 18.00 / each
• Conc. Cores (Comp. Str.)	ASTM C-39	\$ 50.00 / each
• Grout Prisms (Comp. Str.)	ASTM C-1019	\$ 30.00 / each
• Mortar Cubes (Comp. Str.)	ASTM C-270	\$ 18.00 / each
• Masonry Block Prisms (Comp. Str.)	ASTM C-1314	\$ 300.00 / each
Mobilization & Transportation		
• Core Drilling (Mobilization)		\$ 350.00 / each
• Floor Flatness (Mobilization)		\$ 300.00 / hour
• Material Sample Pickup		\$ 165.00 / trip
• Vehicle Charge		\$ 55.00 / trip

General Notes:

1. There will be no minimum charge for services rendered on this project; billing will be based on specific unit rates reflecting only the actual time spent and tests performed on this project.
2. Hourly unit rates are based on a normal 10 hour work day, Monday through Friday (non-holidays), between normal business hours of 7:00 a.m. to 5:00 p.m. Hourly rates outside normal hours (excluding travel time and report preparation/lab time), and on Saturday, Sunday, and Holidays, will be invoiced at a rate of 1.5 times the normal hourly rate indicated above.
3. All vehicle charges account for a round trip from the **ECS Southwest, LLP Fort Worth, Texas** office to the project site.



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

DATE: May 6, 2024
FROM: Brennon Peltier, Park Development Manager
ITEM: **Consider approval of the Third Amendment to the Professional Services Agreement with Mesa Design Associates, Inc., for the design services associated with the Peters Colony Memorial Park project, in the amount of \$26,525.00; and authorization for the Mayor to execute same on behalf of the Town.**

BACKGROUND: On June 16, 2020, the Town entered into a Professional Services Agreement (PSA) with Mesa Design Associates, Inc., to implement the Master Plan for Peters Colony Memorial Park, in the amount of \$194,730.00. The Master Plan was recommended by the Parks Board at the October 3, 2019, meeting and approved by Town Council on November 4, 2019.

On September 13, 2021, the First Amendment to the Professional Services Agreement was approved through Manager Communication in the amount of \$13,500.00, raising the total contract amount to \$208,230.00. This amendment added additional civil engineering sheets to the plan set as required for Town permitting and as a result of the Town's DRC reviews.

On December 19, 2022, the Second Amendment to the Professional Services Agreement was approved by Town Council in the amount of \$55,040.00, raising the total contract amount to \$263,270.00. This amendment added a task for the development and implementation of an interpretive signage design package to include project definition, content development & schematic design, and design intent documentation.

The project was advertised for bid and received three bids on January 23, 2024. The bids ranged in price from \$4,636,355.00 to \$5,873,767.75, all exceeding the approximately \$3.3 million remaining project balance (this amount includes the \$750,000 Texas Parks & Wildlife reimbursement grant approved for the project). After reviewing the qualifications and experience of the bidders, it was determined that none of the bids received were acceptable due to lack of experience on similar projects and unanticipated high bids.

After this determination, Staff began to work with the design consultant on updating construction documents to include value-engineered bidding options. These options would allow certain items within the park design to be constructed with less costly materials that would not affect the overall aesthetic, durability, or safety of the design. Additionally, extraneous elements of the design have been removed where they do not affect the overall design intent and user experience. This extra time and effort from the project architect in adjusting the project construction and bid documents would be outside the already approved scope of work of their agreement, but would serve to help bring the project back within budget while still maintaining a high degree of quality. In preparation for potential higher project costs due to inflation or other unforeseen circumstances, Staff also submitted an amendment to the FY 23-24 Parks CIP plan to add \$675,000 to the project. The CIP amendment was approved by Town Council during the April 15th, 2024 meeting.

If approved, this Third Amendment to the Professional Services agreement would provide for the

preparation of value-engineered construction & bidding documents that will be used for rebidding the project. Additional bidding coordination and negotiation efforts will also be provided by the consultant with this amendment. If approved, the Third Amendment to the Professional Services Agreement with Mesa Design Associates will increase the design contract by \$26,525.00 for a total contract amount of \$289,795.00.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES: N/A

FISCAL IMPACT: \$26,525.00

Proposed Expenditure/(Revenue)

Account Number(s):

308-110-90731-6070

\$26,525.00

LEGAL REVIEW: The Town's standard Amendment to 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 Third Amendment
2. Form 1295 (Internal Use)

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

**THIRD AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT WITH
MESA DESIGN ASSOCIATES, INC.**

This Third Amendment to Professional Services Agreement (“Third Amendment”) is entered into on this 6th day of May, 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, and **MESA DESIGN ASSOCIATES, INC.**, (“hereinafter referred to as “Consultant”) regarding the following project:

PETER’S COLONY MEMORIAL PARK

I. RECITALS

WHEREAS, Town entered into a professional engineering design and related construction services from Consultant for the Peters Colony Memorial Park project (“Services”) on or about the 6th day of May, 2024 (the “Contract”); and

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

II. TERMS OF AMENDMENT

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

**A.
Recitals Incorporated**

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

**B.
Amendment of Paragraph No. II**

From and after the approval of this Third Amendment, Section II of the Contract, entitled “Scope of Services” is hereby deleted in its entirety and replaced with a new Paragraph No. II to read as follows:

“CONSULTANT shall perform such professional engineering services, not necessarily limited to, the tasks enumerated more fully in Attachment “A-3” entitled “Scope of

Services”, as are necessary to complete the Peter’s Colony Memorial Park (hereafter referred to collectively as the “Project”). Attachment “A-3” 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-3” and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.”

C.

Amendment of Paragraph No. III

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

“Total payment for services described herein for the Services for the Project shall be a sum not to exceed Two Hundred Eighty-Nine Thousand Seven Hundred Ninety-Five Dollars and 00/100 (\$289,795.00) as specified in Attachment “B-3”.”

D.

Revisions of the Scope of Services

From and after the approval of this Third Amendment, Attachment “A”, is replaced by the document attached hereto and incorporated herein by reference as Attachment “A-3” to the Contract. In case of conflict in the language of Attachment “A-3” and any other provision of the Contract, as amended by this Third Amendment, the terms and conditions of the Contract, as amended by the Third Amendment, shall control, and shall be final and binding upon both parties hereto.

From and after the approval of this Third Amendment, Attachment “B”, is replaced by the document attached hereto and incorporated herein by reference as Attachment “B-3” to the Contract. In case of conflict in the language of Attachment “B-3” and any other provision of the Contract, as amended by this Third Amendment, the terms and conditions of the Contract, as amended by the Third Amendment, shall control, and be final and binding upon both parties hereto.

E.

Contract Controls

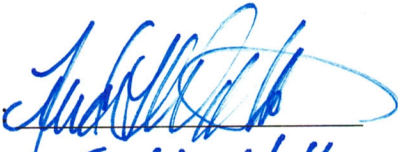
All other provisions of the Contract remain in full force and effect. In the event of a conflict or an inconsistency between the Contract and/or the Third Amendment, the terms of the Third Amendment shall control.

[Signature Page to Follow]

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

CONSULTANT:
MESA DESIGN ASSOCIATES, INC.

THE TOWN OF FLOWER MOUND, TEXAS

By: 
Name: Fred L. Klalters
Title: Principal
Dated: 4/8/2024

By: _____
Name: _____
Title: _____
Dated: _____

ATTACHMENT A-3 SCOPE OF SERVICES

April 2, 2024

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

Project: Peter's Colony Memorial Park Detail Design & Construction Documents Flower Mound, Texas

We are pleased to present this proposal and contract describing the landscape architectural services to be provided by MESA, the costs of these services and general terms and conditions under which these services would be executed. We have prepared our approach and proposal based upon meetings and conversations to date. The scope of work described herein for the project, and the responsibilities and teaming relationships between MESA and its sub consultants to achieve the project goals for the design and implementation of the master plan for Peter's Colony Memorial Park, with an estimated construction budget of approximately \$2.3 million. Based on our understanding, MESA's design and proposal approach is structured as a three-part process:

- Part 1: Detailed design services
- Part 2: Construction document services
- Part 3: Construction related services

SCOPE OF SERVICES

This proposal addresses the construction of Peter's Colony Memorial Park which responds to the Master Plan previously approved by Park Board and Town Council. The proposal describes the design scope needed to address anticipated construction program per a final budget yet to be determined. MESA will be prime consultant and retain the services of sub-consultants for Architectural, Civil, Structural, and MEP Engineering and Irrigation. Geotechnical Survey (by Town contract).

- | | | |
|-------------------------------------|--|------------------------------|
| • Demolition | • Park entry/portal | • Enhanced pathway selection |
| • Tree Mitigation (current survey) | • Remembrance/memorial | • Site/security lighting |
| • Geotechnical survey | • Signature Pavilion (Custom) | • Children's Play Area |
| • Grading/Drainage (Civil) | • Furnishings | • Event Lawn |
| • Utilities (Civil + MEP) | • Children's Play Area | • Soft Trail |
| • Fountain design (Structural +MEP) | • Water feature wall | • Project Identity Signage |
| • Flagpole area | • Sculpture element (art selection not included) | • Landscape and Irrigation |

It is understood by MESA that the site is currently zoned for recreational uses and the site will not require zoning or variance requests to accommodate the proposed site plan. MESA also understands that the final plats exist, is recorded, and is in conformance with City standards.

PART 1: DETAILED DESIGN SERVICES

Task 1.1: Data Collection and Project Kick-Off

Data Collection

MESA and the consultant team will use existing base information and tree survey for the design scope of this project. MESA has the right to rely on this information. Additional to the existing data, the design team will require information to include, but not limited to:

- A. Street design data for Peter's Colony Drive, Old Settlers Road (existing and proposed)
- B. Utility information with the R.O.W.s and adjoining library property and improvements.
- C. Utility Easement information and Town liaison
- D. Any applicable Town of Flower Mound design standards and construction details
- E. Any future or initiatives by the Town which may affect the project
- F. Topographic survey verification
- G. Geotechnical investigation

Kickoff & Programming

MESA will attend a Kick-off meeting with the Client to confirm project scope, points of contact, schedule, and deliverable expectations. It understood the Town will provide final direction/content for the following:

- A. Final Library Construction Plans, especially civil engineering
- B. Boundary/project limits verification
- C. Topographic survey verification
- D. Geotechnical survey – by Town
- E. Commemorative and Interpretive Content (text, drawings, photos, etc.)-by Town

Deliverable: Technical Base information and confirmation of project expectations.

Meetings: As described under Task 1.5

Task 1.2: Schematic Design

Based on the Client budget and master plan programming, MESA will prepare one (1) schematic design layout for the project areas identified. The schematic design will include one (1) AutoCAD plan of the park as well as sections or other diagrams to help convey the concept and intent of the design. An associated cost projection will be included, delineating the estimate of probable cost of the proposed design based on the current construction market.

The following addresses the assumed design program for the critical elements of the Architecture, Remembrance Feature, and Water Wall.

Pavilion:

- A. An open covered pavilion amenity of approximately 3,000 square feet.
 - 1. Communications, security, and audio-visual systems are not included in the electrical fee except as noted.
 - 2. Fire protection design services are limited to criteria specifications only, with actual design services, hydraulic calculations, and piping design documents by the design/build sprinkler subcontractor.
 - 3. All site utilities are presumed to be adequate for building requirements without need for supplemental or booster systems.

Remembrance Feature:

- A. A feature element designed to commemorate the Town's community heroes and leaders.
- B. Designed to accommodate future additions
- C. Create a feature focal point that is iconic and inspirational

- D. Please note the following exclusions to the scope:
1. Copywriting for interpretive signing and remembrance wall
 2. Logo design and branding
 3. Temporary signing
 4. Print & Amenity design
 5. Sculptures / Feature pieces
 6. Fabrication of prototypes nor the coordination of prototypes.

Water Wall:

- A. An underground equipment vault located under the paving near the feature to house all the pumps, filtration, and controls for the feature.
- B. A separate small vault to contain the chemical erosion feeder for adding sanitizing chemicals.
- C. This water feature will not be considered interactive, and therefore not be subject to the Texas Title 25 code.
- D. The design will include hydraulic calculations, plan sheet development, and specifications for the pumps, pipes, controls, and filtration of the water. Plans will also include equipment selection and equipment room/vault layout.
- E. Details will be provided such as water stops, nozzles, diverter plates, anti-vortex plates, pipe penetrations, eyeball fittings, skimmers, and other details deemed necessary by MESA.
- F. Details for lighting within the water feature basin as well as plans depicting the wire routing and electrical requirements within the fountain structure back to the control panel.

Deliverable: Plan and detail studies of the park based on the master plan as adopted by the Town for input and approval by staff. At the conclusion of the schematic design phase, Cost projections will be analyzed in relation to the budget.

Meetings: As described under Task 1.5

Task 1.3: Schematic Design Revisions

If the Client desires additional design alternatives, MESA will prepare up to two (2) schematic design revisions depicting the program elements of the approved master plan. These revisions will address questions or concerns posed by the Town regarding the ability to execute the design as envisioned. This task will address specific layout, detail concepts of site elements (remembrance wall, pavilion, water feature, etc.) to a sufficient level of approval that the design development task may be initiated. MESA will prepare up to two (2) revised opinions of probable costs for review by the Client if needed.

Deliverable: Up to two (2) Schematic Design revisions, if requested, including plans, sketches, images, and diagrams depicting the overall design intent, and revised opinion of probable cost.

Meetings: As described under Task 1.5

Task 1.4: Opinion of Probable Construction Cost

MESA and the consultant team will prepare an opinion of probable construction costs (cost projection) for the proposed improvements in the park. This projection will identify the assumed construction means, materials, and sequencing for construction of the park improvements. Through this process, MESA, and the consultant team along with Town staff will identify and agree on the final design program for the team to proceed with design development and construction documentation.

Deliverable: MESA and the consultant team will provide the Town staff cost projections that depict the facilities within the master plan for design and engineering. These projections will be based on a single phase of construction for the park.

Meetings: As described under Task 1.5

Task 1.5: Staff Guidance Meetings and Consultant Coordination for Part 1

Anticipated coordination meetings, conference calls, and presentations for Part One are listed below
Meetings for Part 1 are as follows:

Meetings: Up to Three (3) meetings as detailed below:

Task 1.1: One (1) kickoff/coordination meeting

Task 1.2: Two (2) meetings/presentations with Town staff

Task 1.3: One (1) meeting/presentation with Town staff

Task 1.4: Assumed as part of meeting agenda for other tasks.

Additional meetings and presentations, as required or requested, and the preparation of additional presentation materials other than those described above shall be considered Additional Services and will be invoiced in accordance with the attached hourly rate schedule.

PART 2: CONSTRUCTION DOCUMENT SERVICES

Task 2.1: Design Development

Based upon the approved schematic design submittal, MESA will finalize the design program with input from Town staff. This input will include budgetary considerations, maintenance, and operational considerations. This level of development will deal with more detailed and refined aspects of the design such as materials selection, budget refinement, and consultation with contractors about construction methods. These design documents and an accompanying refinement of the cost analysis will be presented to the Parks Department for review, comment, and endorsement prior to initiating bidding and construction documents. This task includes refinement of the following areas:

- A. Preliminary Engineering Plans
 1. Preliminary Drainage Area Map: Prepare one Preliminary Drainage Area Map and associated hydraulic calculations to show the pre- and post-development discharge from the site. MESA and its sub consultants understand that there is an existing detention pond adjacent to the site. Therefore, Detention Pond Design or Downstream Assessment is not included in this task.
 2. Preliminary Storm Design: MESA and its sub consultants anticipate that the site will drain towards area drains which will be approved by the Town. The area drains will connect to a storm drainpipe that will discharge to the existing detention pond adjacent to the site. This line will also include an inlet for the existing parking lot per the Town's request. It is assumed that no quality control measures will be required. It is also assumed that the existing detention pond was sized to accommodate the proposed drainage from this site. If a detention pond or subsurface detention is required, it will be billed as an Additional Service. The Town is to provide grading plan and storm line locations for preliminary analysis.
 3. Preliminary Water Plan: It is MESA and its sub consultants' understanding that a water line exists which has adequate capacity to serve the proposed development. A water study has therefore not been included in this scope.
 4. Preliminary Erosion and Sediment Control Plan: MESA and its sub consultants will prepare a preliminary erosion and sediment control plan with erosion control details for the project site in accordance with local, state, and federal regulations and Best Management Practices (BMPs).
 5. Preliminary Lighting and Conduit Plan: MESA and its sub consultants will prepare one Preliminary Lighting and Conduit Plan based on Client lighting design along with irrigation conduit locations and sizes.
 6. Preliminary Traffic Control Plan: MESA and its sub consultants will prepare a Preliminary Traffic Control Plan. The plan will show the necessary traffic control measures required during construction of the site.
- B. Preliminary hardscape layout plans
- C. Preliminary landscape grading
- D. Preliminary landscape lighting layout and fixture selection
- E. Preliminary landscape planting layout plans for all areas within project scope
- F. Development of hardscape details
- G. Begin selection of hardscape materials, plant palette and plant species
- H. Finalize and coordinate hardscape designs, review of materials, patterns and textures and coordinate solutions with the Client for areas identified in MESA's scope of work.
- I. Coordinate irrigation system requirements with design team for water source, water usage, and water saving concepts. Coordinate with electrical consultant all irrigation controller locations. Our scope includes designing the irrigation system per State Ordinance 1656 and the City of Flower Mound requirements. Any additional city requirements will be considered additional services.
- J. Update projections of probable costs based on progress of work.
- K. Outline specifications.

Deliverable: Design Development Documents.

Meetings: As described under Task 2.4

Task 2.2: Park Board Presentation

As requested by Town staff, MESA will attend the Park Board meeting and present an update to the project for the Board's information prior to submitting for Plat/Site Plan approval and beginning Construction Documents. The presentation is assumed to be a briefing rather than focused on gathering any input from the Board or the public at large. Should any design changes result from the meeting, they will be considered as Additional Services.

Deliverable: One (1) Park Board meeting and presentation.

Meetings: As described under Task 2.4

Task 2.3: Construction Documents

Upon approval of the design development documents as well as any value engineering efforts that result from the Client's direction, MESA will prepare Construction Documents and specifications necessary to communicate the scope of work to a competent contractor. Construction documents shall include:

- A. Drainage Area Map: MESA and its sub consultants will prepare one pre and post Drainage Area Map and associated hydraulic calculations to show the pre- and post-development discharge from the site. Detention Pond Design or Downstream Assessment is not included in this task.
- B. Storm Design: MESA and its sub consultants anticipate that the site will surface drain to the existing pond on the southeast corner of the site and that no quality control measures will be required. The civil engineering consultant anticipates handling increased storm runoff through sheet flows with limited area drains across the site into the existing detention pond. We assume that the existing storm water detention pond will not need further analysis; however, this may not be accepted by the Town in which case an analysis of the existing detention pond may be required. If analysis of the existing detention pond is required, it will be billed as an Additional Service.
- C. Water Plan: It is MESA and its sub consultants' understanding that existing water lines have adequate capacity to serve the proposed development. A water study has therefore not been included in this scope.
- D. The Architect or the Town will determine if a fire suppression system is required for this development. If one is required, the consultant will need this information in sufficient time prior to final plan design to accommodate this connection.
- E. Erosion and Sediment Control Plan: MESA and its sub consultants will prepare an erosion and sediment control plan with erosion control details for the project site in accordance with local, state, and federal regulations and Best Management Practices (BMPs).
- F. Traffic Control Plan: MESA and its sub consultants will prepare a Traffic Control Plan. The plan will show the necessary traffic control measures required during construction of the site.
- G. Lighting and Conduit Plan: MESA and its sub consultants will prepare one Lighting and Conduit Plan based on Client provided light pole base, light pole conduit, and irrigation conduit locations and sizes. Lighting specifications, photometric analysis, wiring, and all associated details to be provided by others.
- H. MESA and its sub consultants will prepare an application and one set of exhibits to coordinate with Oncor power pole relocations and easement encroachments.
- I. Storm Water Pollution Prevention Plan: MESA and its sub consultants will prepare one Storm Water Prevention Pollution Plan per TCEQ and City standards including specifications.
- J. Final landscape grading and drainage plans at appropriate scales for all architecture and hardscape elements. MESA will coordinate landscape drain locations with Civil Engineer.
- K. MEP documentation of water feature plans (MESA will provide MEP light fixture locations and cut-sheets for incorporation into final documents – MESA will provide review during final documentation process)
- L. Hardscape details and specifications for exterior paving, pavilion, water wall, miscellaneous park structures/foundations within scope, and retaining walls at appropriate scales. Structural details, anchoring, and foundations for any playground apparatus are not included, and will be per manufacturer's recommendation or typical Town standards.
- M. Planting plans, details, and specifications.
- N. Irrigation plans, details, and specifications.
- O. Coordination with fountain consultant (MEP) on water feature edge placement and grading.
- P. Final material selections – Deliverable, colors, textures, and sizes.
- Q. Selection of site furnishings including benches, bike racks, etc.
- R. Landscape lighting plans, details, and specifications (electrical engineering by others).

- S. Tree Mitigation Plans and calculations.
- T. Submittal for TDLR/TAS review and inspection upon substantial completion.
- U. Final construction cost projections.

Permitting

Based on the 90% Construction Documents, MESA will format the documents as part of the Building Permit Application for Town review. Any attendance at City review, coordination or presentation meetings are not included but will be billed per our hourly fee schedule. It is assumed Park Department staff will lead this effort internally with other Town departments.

Deliverable: The Design/Planning Team will provide the following sets for the park throughout the construction phase:

1. One electronic drawing set, 24" x 36" format
2. One electronic set of bid forms and specifications at 95% progress
3. One electronic set each of drawings, specifications, and bid forms.

Meetings: As described under Task 2.4

**Revisions to plans in response to budgetary overages outside of MESA's budget will be prepared as an additional service.*

Task 2.4: Staff Guidance Meetings and Consultant Coordination for Part 2

MESA will perform the role of "prime consultant" for the project. In that capacity, we will coordinate the input of the other design team members as necessary as it relates to the final accepted project vision and construction program. MESA will provide meeting minutes for any meetings attended as well as any resulting schedule updates to be distributed via e-mail. Any necessary meetings and coordination outside of our office will be billed on an hourly basis. Services for this task will be billed as hourly services according to the attached hourly rate schedule. Anticipated coordination meetings, conference calls, and presentations for Part 2 are as follows:

Meetings: Up to Twelve (8) meetings as detailed below:

Task 2.1: Two (2) meetings/presentations with the Client

Task 2.2: Assumed as part of meeting agenda for other tasks

Task 2.3: One (1) Park Board meeting and briefing, one (1) review phone call

Task 2.4: Three (3) meetings/presentations with the Client to review the construction and bid documents

Task 2.5: Up to Two (2) periodic meetings during execution of Part 2 services

Additional meetings and presentations, as required or requested, and the preparation of additional presentation materials other than those described above shall be considered Additional Services and will be invoiced in accordance with the attached hourly rate schedule.

PART 3: CONSTRUCTION RELATED SERVICES

Task 3.1: Bidding and Negotiation

MESA will provide assistance to the Client with the following services in conjunction with completion of the construction documents described in the task above.

- A. Prepare and bid proposals related to the hardscape, landscape, and irrigation construction
- B. Attend pre-bid and bid opening meetings
- C. Answer questions and interpret drawings and specifications during the bidding period
- D. Prepare and distribute any required addendums
- E. Provide review and analysis of the bids as submitted
- F. Plans will be distributed via BidSync (or similar service). Any printing or distribution of hardcopies for bidding will be charged as an additional reimbursable expense.

Deliverable: Successful contractor on budget with final construction scope ready for preparation of contracts by Client. Consultation with client to form strategies for bid alternates, if needed to maintain the aesthetic value, vision, and budget.

Meetings: As described under Task 3.4

Task 3.2: TDLR Review Coordination

MESA will prepare submission drawings for TDLR submittal. Upon completion of the review, MESA will work with all consultants in formulating a response to any issues raised.

Deliverable: Coordination of TDLR submission.

Meetings: As described under Task 3.4

Task 3.3: Contract Administration/Construction Observation

MESA will conduct contract administration and construction observation services as related to the implementation of the construction documents described in this proposal. Construction observation services will be as follows:

- A. MESA will make up to ten (10) site visits as necessary to the construction sites as they progress to determine conformance of the work to the design as portrayed in the construction documents. These will occur at regularly scheduled site meetings and other periodic inspections as appropriate through the course of construction. Site visits will be documented in field memos provided to the Town staff. These memos will generally describe MESA's response to issues identified by the staff and other issues that the team feels merit consideration. This scope assumes various meetings /site visits during the construction sequence.
- B. MESA will clarify questions regarding the construction as the staff and contractors present them (RFI's), provide consultation, and advise the staff. MESA will prepare supplementary sketches where such sketches are needed to resolve conflicts between field conditions and the requirements of the drawings.
- C. Review of contractor submittals and shop drawings as submitted by the contractor, for conformance with the project design. An evaluation of the submittal will be provided.
- D. Tagging and inspection of plant materials (via photos before delivery and on site) to assure conformance with the plans and specifications. (Plant tagging trips at nursery can be provided as an optional service).
- E. Approve the staking of tree locations, plant material layout, and quality of material installation.
- F. Approve the placement of irrigation head locations, materials layout, and quality of the irrigation system installed.
- G. Review of certificates for payment submitted by the contractor.
- H. Preparation of change orders agreed to by the Client for the Client's approval and execution that pertains to the project scope.
- I. Coordinate final site walk-through with the Client (at the conclusion of construction) and provide a punch list of incomplete or non-conforming items to the Contractor to complete the project.
- J. Perform a post completion project inspection (at Town's request) within one year after final acceptance and issue a punch list of incomplete and non-conforming items prior to release of maintenance agreement

Deliverable: Response to field conditions and contractor questions as they develop. Field reports will be distributed regarding the status of the project after each site visit.

Meetings: As described under Task 3.4

Task 3.4: Staff Guidance Meetings and Consultant Coordination for Part 3

Anticipated coordination meetings, conference calls, and presentations for Part 3 are listed below

Meetings for Part 1 are as follows:

Meetings: Up to Five (5) meetings as detailed below:

Task 3.1: Three (3) review/coordination meetings

Task 3.2: Two (2) walk through/final punch list meetings

Task 3.3: none anticipated other than included field visits

Additional site visits or meetings will be billed as additional services as per the attached hourly rate schedule and the preparation of presentation materials other than those described above shall be considered Additional Services and will be invoiced in accordance with the attached hourly rate schedule.

Task 4: Additional Civil Design Sheets

Prepared by Shield Engineering at the request of the Town's plan reviewer and will include site plan, dimensional control plan, grading plan, paving plan, demo/tree preservation plan, tree survey, and additional detail sheets. MESA will provide coordination efforts for existing drawings and base files, as well as QC and review of the additional civil design sheets.

Task 5: Interpretive Signage Design Services provided by fd2s

To include Project Definition, Content Development and Schematic Design, Design Intent Documentation, Bidding Assistance and Contract Administration.

Task 6: Rebidding and Negotiation

Upon completion of Task 3.1, Client has elected to rebid the project with a modified scope of construction and will require the following services:

- A. Preparation of Construction Drawings and Specifications necessary to communicate the scope of changes listed below:
 - a. Removal of three (3) park monument signs and associated landscaping and irrigation
 - b. Removal of concrete trail and associated tree demolition, fencing, landscaping, and irrigation
 - c. Removal of select planting and irrigation at detention basin
 - d. Move concrete pavers and concrete subbase to Bid Alternate. Provide new detail(s) and/or revise existing detail(s) of concrete sidewalk pavement interface with adjacent walls, footings, and stairs.
 - e. Move playground artificial turf surfacing and subdrainage to Bid Alternate. Provide new detail(s) of engineered wood fiber mulch surfacing and subdrainage for Base Bid.
 - f. Provide new mounting requirements for Legacy Monuments to bid associated concrete footings and conduit separately from the Legacy Monuments. Provide new mounting requirements for concrete sidewalk pavement interface. Remove Corian panel option. Update sign location plan.
 - g. Children's Memorials & Environmental Education Factoids to Bid Alternate
 - h. Tree lighting to Bid Alternate
 - i. Removal of Pavilion corrugated metal roof bid option
 - j. Amend and prepare Project Manual and Bid Proposal to reflect modified scope of construction and schedule
- B. Answer questions and interpret drawings and specifications during the bidding period
- C. Prepare and distribute any required addendums
- D. Provide review and analysis of the bids as submitted

In anticipation of rebid, additional efforts by MESA have been performed at the Town's request and include production of two (2) opinion of probable cost to identify modified scope of construction, communication efforts with General Contractors and subcontractors who submitted bids, one (1) bid analysis teleconference, one (1) rebid discussion teleconference, and one (1) grant discussion teleconference. These efforts total \$11,005.00 and are included in the Cost of Services Lump Sum Fee.

Deliverables: Sealed construction drawings and specifications to include the above modifications ready for rebid.

One electronic set of construction documents with drawings formatted to 24"x36 and bid specifications formatted to 8.5" x 11".

ATTACHMENT B-3

COST OF SERVICES

COST OF SERVICES

The below scope of services will be billed on a percentage completion basis or hourly not to exceed as applicable (in accordance with the fee schedule specified below) with the total cost of services not to exceed the amount specified for each without a written addendum to this contract. The below tasks shall be billed as follows:

Task	Base Fees
PART 1: DETAILED DESIGN SERVICES	
Task 1.1: Data Collection and Project Kick-Off <i>Lump Sum Fee</i>	\$6,450.00
Task 1.2: Schematic Design <i>Lump Sum Fee</i>	\$15,000.00
Task 1.3: Schematic Design Revisions <i>Lump Sum Fee</i>	\$2,500.00
Task 1.4: Opinion of Probable Construction Cost <i>Lump Sum</i>	\$2,500.00
Task 1.5: Staff Guidance Meetings and Consultant Coordination for Part 1 <i>Lump Sum Fee</i>	\$2,000.00
PART 2: CONSTRUCTION DOCUMENT SERVICES	
Task 2.1: Design Development <i>Lump Sum Fee</i>	\$52,500.00
Task 2.2: Park Board Presentation <i>Lump Sum Fee</i>	\$3,000.00
Task 2.3: Construction Documents <i>Lump Sum Fee</i>	\$73,280.00
Task 2.4: Staff Guidance Meetings and Consultant Coordination for Part 2 <i>Lump Sum Fee</i>	\$4,500.00
PART 3: CONSTRUCTION RELATED SERVICES	
Task 3.1: Bidding and Negotiation <i>Lump Sum Fee</i>	\$5,000.00
Task 3.2: TDLR Review Coordination <i>Lump Sum Fee</i>	\$2,700.00
Task 3.3: Contract Administration/Construction Observation <i>Lump Sum Fee</i>	\$22,500.00
Task 3.4: Staff Guidance Meetings and Consultant Coordination for Part 3 <i>Lump Sum Fee</i>	\$2,800.00
Task 4: Additional Civil Design Sheets <i>Lump Sum Fee</i>	\$13,500.00
Task 5: Interpretive Signage Design <i>Lump Sum Fee</i>	\$55,040.00
Task 6: Rebidding and Negotiation <i>Lump Sum Fee</i>	\$26,525.00
Total Cost of Base Services:	\$289,795.00

Reimbursable Expenses are included in the Fee, not to exceed \$10,500.00. Out of Town travel not included for MESA or sub consultants.

Note: Fees required for TDLR review are not to exceed \$1,500.00 and included in the fee proposal. **Changes to the fees required by any regulatory agency will be billed as an Additional Service.**

Permitting, Platting, Testing, and impact fees are not included.

Sub consultant fees for, Architecture, Civil Engineering, MEP (lighting and water feature), Structural Engineering, Irrigation, and Survey are included within the fees quoted above:

Architecture:	\$26,000.00
Civil Engineering:	\$24,460.00
MEP:	\$25,000.00
Interpretive Graphics:	\$26,000.00
Structural Engineering:	\$ 2,500.00
Geotechnical:	\$ 4,450.00
Irrigation:	\$ 1,275.00

No other sub-consultants are anticipated at this time for the Construction phase of this project.

ADDITIONAL SERVICES/HOURLY FEE SCHEDULE

Services requested, but not specifically included in the scope of services listed above, will be considered additional services. Modifications to drawings, after approval by Owner, because of changes requested by Owner or other consultant will be considered additional services and billed at an hourly rate as follows:

Senior Principal	\$235.00
Principal	\$180.00
Associate	\$150.00
Senior Project Manager	\$120.00
Project Manager	\$100.00
Senior Designer	\$ 90.00
Designer	\$ 80.00
Marketing/Acct./Admin	\$ 75.00
Intern	\$ 65.00

1. The client will provide the following and MESA has the right to rely on this information and rely on any information provided by others:
 - a. Boundary and general survey locating structures, property lines, utilities that cross the property and interior lobby plans in AutoCAD format.
 - b. Soils Report (if required).
 - c. Budgetary Considerations.
2. Not included are the following:
 - a. Public Engagement of Focus group input on design elements
 - b. Structural design for remembrance wall or other final recognition content (by contractor)
 - c. Content or illustrations for interpretive signage.
 - d. Vehicular Paving Improvements outside of scope area
 - e. Utilities (water, sewer, storm, electrical, cable, telephone, etc.) outside of scope area
 - f. Architectural and Mechanical Engineering design outside of described scope
 - g. Geotechnical
 - h. Landscape Lighting Electrical Plans
 - i. Design of new or additional elements added to the scope of work or any related off-site improvements
 - j. Redesign of elements due to site plan changes (i.e., buildings relocated, site grading changes)
 - k. Illustrative plans, models and drawings not specifically described in the Scope of Services
 - l. As Built or Record Drawings other than irrigation and plumbing, based on information provided by contractor.

- m. Permitting
 - n. Site Safety, Operations and Maintenance
 - o. Changes in the project scope/objectives or changes to items that were previously approved by the Client will constitute a change order. Change orders will be scoped and bid as additional projects. Turnaround time for change orders will be subject to Square Peg Design resource availability.
 - p. LEED and/or green building programs, documentation and analyses are not included.
 - q. All work associated with expediting and/or procuring permits is excluded.
 - r. Communications, security, and audio-visual systems are not included in the electrical fee except as noted.
 - s. Traffic Study and Modeling, Traffic Analysis, Parking Flow Study, Signal Warrant Study Studies: Line of Sight, Water, Sanitary Sewer, Drainage, Feasibility
 - t. City Encroachment Agreements
 - u. Community Facilities Agreements (CFA), Community Facilities Contracts (CFC)
 - v. TxDOT Driveway/Utility Permit, Design and Details
 - w. Permits: Grading, Tree Removal, Tree Preservation Plan, Urban Forestry Compliance Plan, Water Appropriations, Dam Safety, FAA, TxDOT, TRA, Railroad, Driveway
 - x. Environmental assessment, impact statement, Waters of the US/Wetland delineations or permits
3. MESA Design Associates may subcontract consultants in the performance of any services described in this agreement.
4. MESA Design Associates does not act as General Contractor in any way or accept responsibility for poor craftsmanship.



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

DATE: May 6, 2024
FROM: Brennon Peltier, Park Development Manager
ITEM: **Consider approval of the purchase and installation of a LED monument display sign for the Community Activity Center, from Casteel Sign, through the Texas Local Government Purchasing Cooperative, in the amount of \$84,628.64.**

BACKGROUND: The Community Development Corporation and Town Council approved the Electronic Reader Board Sign at Gerault Park project in the Fiscal Year 2023-2024 budget. The Parks Board also recommended Electronic Reader Board Sign for the Capital Improvement Program projects. Town Staff contacted multiple vendors listed on the Texas Local Government Purchasing Cooperative, also known as Buyboard, and determined that Casteel Sign offered the best available option based on cost and previous experience with the vendor.

While investigating the best possible location for the sign, Town Staff determined that the location of the existing Community Activity Center monument sign would best suit the purposes of the sign. This is due in part to the condition of the existing sign foundation, visibility from both directions of Gerault Road, existing electrical service availability, and avoids utility conflicts along the ROW of Gerault Road. Additionally, the double sided display will be positioned so that it does not face directly towards any of the nearby residential lots.

The proposed design was one of three presented to the Parks Board during the March 7th, 2024 and was the preferred design. This purchase will provide for the delivery and installation of all required materials, software training for Town Staff, lifetime data plan for control of the sign, and associated warranties.

BOARD REVIEW/CITIZEN FEEDBACK: The proposed sign design was presented to and selected by the Parks Board.

ALTERNATIVES: N/A

FISCAL IMPACT: \$84,628.64

Proposed Expenditure/(Revenue)
\$84,628.64

Account Number(s):
317-110-90835-6210

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Purchase Proposal
2. Design Mockup
3. Form 1295 (Internal Use)

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



Casteel Sign

11106 Morrison Ln, Dallas, TX 75229

PROPOSAL

230168-10

Date: 04/15/2024

Expires: 05/30/2024

Drawing Numbers:

Project: Town of Flower Mound - Electronic Monument Sign 6579
1200 Gerault Road
Flower Mound, TX 75028

Client: Town of Flower Mound
2121 Cross Timbers Rd
Flower Mound , TX 75028

Contact: Brennen Peltier,LI, CPSI Park Development Manager

972-874-6278 Brennon.Peltier@flower-mound.com

We are pleased to offer this proposal for the following services at the above location.

Project Description:

Item Total:

TIPS # 22010201

BUYBOARD # 678-22

\$84,628.64

OPTION C.3 EDU 10mm

Monument Sign - One (1) 113" x 131" - Double sided EDU ONLY - Bricks on top of sign. See new art.

- 53" x 99" Watchfire Electronic Display Unit (EDU)
- 120 x 240 matrix unit; Watchfire - W10mm LED RGB pixels
- Software Training: Web Based Software Training
- Communications: Life-of-sign Cellular Data Plan by Verizon
- Standard 5 year warranty on parts only by Watchfire
- One (1) year labor and material limited warranty on non-Watchfire portion & one (1) year labor limited warranty on Watchfire portion by Casteel

Top & Bottom of Monument: Bricks

Made of cast stone, Sand blasted copy; Community Activity Center

COMMUNITY ACTIVITY CENTER - 8" Sandblasted

1200 Gerault Road - 6" Sandblasted

- Sandblast stencils
- Brick, stone masonry
- Cast stone on bottom with copy on both sides;
- Engineering, included
- Use existing foundation

Salesperson: House



Casteel Sign

11106 Morrison Ln, Dallas, TX 75229

PROPOSAL

230168-10

Date: 04/15/2024

Expires: 05/30/2024

Drawing Numbers:

Project: Town of Flower Mound - Electronic Monument Sign 6579
1200 Gerault Road
Flower Mound, TX 75028

Client: Town of Flower Mound
2121 Cross Timbers Rd
Flower Mound , TX 75028

Contact: Brennen Peltier,LI, CPSI Park Development Manager

972-874-6278 Brennon.Peltier@flower-mound.com

NOTE: Electrical service to be by others.

If you are sales tax exempt, please provide a current certificate to us.

Subtotal: \$84,628.64

Total: \$84,628.64

This is based on current material pricing. We reserve the right to adjust pricing if materials increase in pricing

PLUS TAX & PERMITS IF REQUIRED

Notes: All prices are subject to applicable sales tax. Prices are based on available information given at the time and are subject to change. **DUE TO VOLATILITY IN MATERIAL COSTS, SUPPLY CHAIN ISSUES AND LABOR COSTS, PRICING IS SUBJECT TO ESCALATION COSTS.**

Exclusions: Sign permits, structural engineering, traffic control equipment and permits, unless specifically quoted above, are not included in the above quotations and if required shall be invoiced on a time and material basis. Electrical services to the proposed sign(s), unless specifically quoted above, is assumed to be existing or provided by others.

Warranty: 12 months against defective materials and 12 month limited warranty on parts and labor.

Terms: Net 30 Day Payment terms

Buyboard Contract Terms will apply in lieu of those listed on the proposal

NOTE: THIS QUOTATION IS SUBJECT TO THE TERMS AND CONDITIONS ATTACHED TO THIS QUOTATION.. PLEASE READ THEM BEFORE SIGNING.

CONTRACT TERMS AND CONDITIONS

A. SECURITY INTEREST: Seller has and retains a security interest in the SIGN to secure Buyer's obligations under this agreement. Title to the SIGN shall be and remain in Seller until the contract balance, all interest, and the whole of any collection costs and fees properly chargeable to Buyer hereunder are paid in full, at which time title shall pass to Buyer.

B. RESALE AND MOVING: Until the SIGN is paid for in full, Buyer agrees that he will not sell, transfer or assign all or any part of his right, title or interest in the SIGN, nor will he remove it from its place of original installation or attachment, without the written consent of Seller. Should the SIGN suffer any loss, damage or injury, Buyer agrees, not withstanding, to purchase and pay for the SIGN in full according to the terms hereof.

C. MAINTENANCE: Buyer agrees to maintain the SIGN and keep it in good repair and condition until all sums payable hereunder have been paid.

D. SIGN REMAINS PERSONALTY: At all times prior to the complete performance of the covenants of this agreement by Buyer, the SIGN shall be deemed personal property, and shall not, by reason of attachment or connection to any realty, become or be deemed a fixture or appurtenance to such realty but shall at

Salesperson: House



Casteel Sign

11106 Morrison Ln, Dallas, TX 75229

PROPOSAL

230168-10

Date: 04/15/2024

Expires: 05/30/2024

Drawing Numbers:

Project: Town of Flower Mound - Electronic Monument Sign 6579
1200 Gerault Road
Flower Mound, TX 75028

Client: Town of Flower Mound
2121 Cross Timbers Rd
Flower Mound , TX 75028

Contact: Brennen Peltier,LI, CPSI Park Development Manager

972-874-6278 Brennon.Peltier@flower-mound.com

all times be severable therefrom, and shall be and remain the property of Seller, free of any claim or right of Buyer, of the person to whose property the SIGN may be affixed, or the creditors of either. The security interest of Seller herein granted attaches to the SIGN and its component parts and all proceeds as soon as each given component part, or material for its fabrication is selected for use in the construction or installation of the SIGN.

E. DESTRUCTION OR DAMAGE: Seller shall not be liable for any damage to or destruction of the SIGN, except such as may result from the acts of its agents or employees, replace the same; provided, however, that Seller shall be entitled to carry insurance upon the SIGN and exercise any rights of ownership in connection therewith which deems a proper exercise of rights for the purpose of protecting its security interest in the SIGN.

F. REPOSSESSION: If Buyer shall default in the performance of any of the conditions of this agreement, or if Seller deems itself insecure, or if a proceeding in bankruptcy, the composition or extension of debts or other obligations be instituted by or against Buyer or his property, the full amount then unpaid shall immediately become due and thereupon Seller shall have the right to take immediate possession of the SIGN without demand, and for this purpose, Seller may, without liability for trespass lawfully, where the SIGN may be and remove the same and retain the same and the payments theretofore made thereon. Buyer shall be liable and pay for any and all expenses labor, in removal of such sign so long as this can be done without a breach of peace. The waiver or indulgence of any default will not operate as a waiver of any subsequent default.

G. DEFAULT: Buyer agrees that in the event he shall be in default in the payment of any installment when due, or shall fail to perform any other of his obligations hereunder, or bankruptcy,

receivership, assignment for benefit of creditors or other insolvency proceedings are commenced by or against Buyer, Buyer shall, without notice, immediately be indebted to and hereby agrees to pay Seller forthwith the entire balance payable hereunder. In the event of default by Buyer in any of the covenants herein, the exercise of the right of repossession set forth in the next preceding paragraph shall be a remedy in addition to and not as an alternative to the right of Seller to recover from Buyer any damages that is may have suffered by reason of Buyer's default. In the event this agreement is placed by Seller in the hands of an attorney after default for enforcement or collection, Buyer will pay Seller's reasonable attorney fees.

H. SCOPE OF SALESPERSON'S AUTHORITY: This agreement contains all of the covenants between the parties hereto pertaining to the SIGN and no representations shall be binding unless incorporated herein in writing. This agreement, although signed by a salesperson of Seller, shall not be binding upon Seller for any purpose until the same is executed by an executive officer or another authorized agent of Seller.

I. VENUE: Any and all action under this agreement shall be brought in the State of Texas in Dallas County

J. BUYER'S SPECIAL DUTIES: Buyer will obtain for, does warrant to, and will maintain for Seller full rights, including rights of access, ingress and egress, to install and maintain the SIGN on the premises for which it is ordered, and to remove the same therefrom free and clear of lien or encumbrance. Buyer will indemnify Seller against and hold Seller harmless from damage or expense resulting from a breach of this provision. At its own expense Buyer is to furnish power lines and electrical controls of suitable capacity to operate the SIGN and to install the same as designated by Seller ready and in place and including for connection to the SIGN, and pay all charges for electrical current. Unless specifically provided herein to the contrary, Buyer shall provide all necessary reinforcements to the building on which the SIGN is installed.

K. DISCLAIMER OF WARRANTIES: Seller disclaims the warranties of MERCHANTABILITY and FITNESS OF PURPOSE and all other warranties not appearing in this agreement. Seller warrants that the SIGN shall comply with Buyer's specifications and all components of the SIGN shall function. This warranty, however, shall not apply where the SIGN is received by Buyer or Buyer's agents or designees in damaged condition. Casteel & Associates, Inc. warranties signs manufactured and installed by the company for a period of ninety (90) days after installation. This warranty covers the entire display and all its components against defects in workmanship and materials. In addition to the above full coverage ninety (90) day guarantee, Casteel & Associates, Inc. extends a warranty of one (1) year on our ballasts, power supplies and transformers from date of installation. Labor for installation of the replacement ballasts or transformer will be charged at list rate.

L. INSPECTION: Buyer shall inspect the SIGN at point of delivery before moving the SIGN from that point. Where the SIGN is delivered by a common carrier, Buyer or consignee shall, besides carefully inspecting the shipment for damage before moving same, promptly notify carrier of any damage found, retain all packing materials, and otherwise comply with all requirements to preserve all claims against carrier. If Buyer or consignee moves the SIGN before inspection or fails otherwise to comply with terms of this paragraph, Seller shall not be liable for any defects in said SIGN notwithstanding the warranty expressed hereinabove.

M. LANDSCAPING, OBSTRUCTIONS, UNDERGROUND: Buyer shall be responsible for all landscaping repair, remediation and / or renewal due to damage by Seller related to the installation of the sign, unless otherwise stated in writing. The price herein was agreed to on the premise that overhead and subsurface conditions to be encountered on installation will be normal and subsurface soil readily workable. In the event abnormal digging conditions, subsurface water, hard-

Salesperson: House



Casteel Sign

11106 Morrison Ln, Dallas, TX 75229

PROPOSAL

230168-10

Date: 04/15/2024

Expires: 05/30/2024

Drawing Numbers:

Project: Town of Flower Mound - Electronic Monument Sign 6579
1200 Gerault Road
Flower Mound, TX 75028

Client: Town of Flower Mound
2121 Cross Timbers Rd
Flower Mound , TX 75028

Contact: Brennen Peltier,LI, CPSI Park Development Manager

972-874-6278 Brennon.Peltier@flower-mound.com

pan, rock, or other hard substances are encountered in the course of the excavation incident to installation of the SIGN, all costs or expenses of or incident to excavation which are in excess of the cost of handling normal subsurface conditions and readily workable soil shall be paid by Buyer. Seller or its agents shall not be liable to Buyer or any third party and Buyer shall indemnify Seller for any such liability for damage to underground improvements unless notified in writing by Buyer of the existence of such improvements prior to commencement of work, and Seller shall be responsible for damage to above ground improvements only if such results from unreasonable or negligent installation, maintenance or removal of the SIGN.

N. MISCELLANEOUS: It is agreed by the parties hereto that the SIGN is of special construction, made for the uses and purposes of Buyer and no other, and that except for use by Buyer the SIGN has no value.

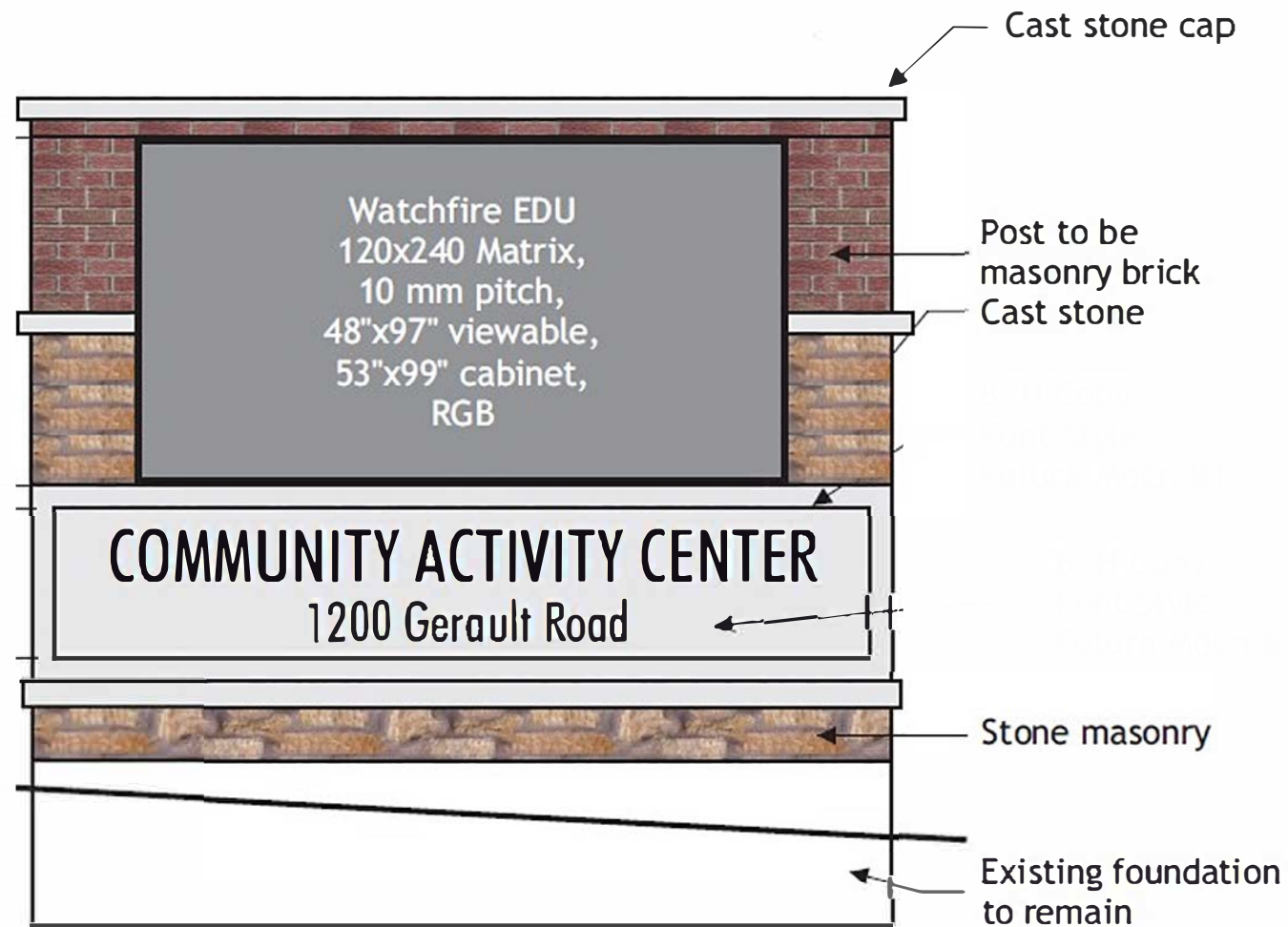
It is understood and agreed that Seller may desire to assign, pledge, discount or in some other manner transfer or negotiate this agreement, and it is agreed that Seller may do so without notice to Buyer. Buyer will not assert against an assignee, pledgee or transferee of this agreement any claim Buyer has or may have against Seller.

Performance by Seller is subject to delay by strikes, breakage, fire, unforeseen commercial delays, governmental requirements and acts of God.

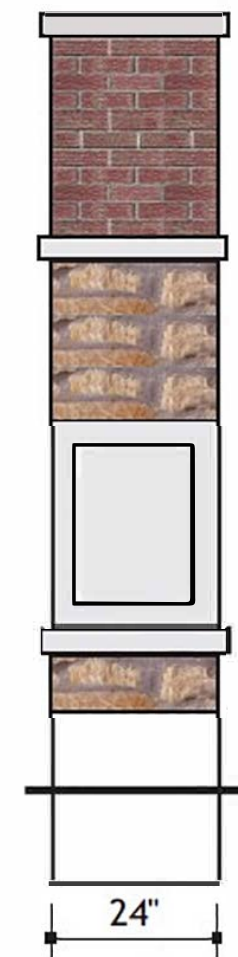
If the SIGN cannot, for any reason other than fault of Seller, be installed on the premises for which it was ordered when Seller is ready to install the same, Buyer's payment obligation shall immediately thereupon accrue unless a specific and subsequent payment date is specified elsewhere herein.

Buyer shall be responsible for all necessary landlord approvals, taxes, and removal expenses related to the installation of the Sign.

All of the terms and conditions hereof shall be binding upon and inure to the benefit of the successors, assigns and legal representatives of the respective parties.
Electrical Sign Contractor #18003



1 FACE VIEW
SCALE: 3/8" = 1'-0"



SIDE VIEW



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

DATE: May 6, 2024
FROM: Brian Waltenburg, Assistant Director of Engineering
ITEM: **Consider approval of a Compromise and Settlement Agreement with US Casualty and Surety Insurance Company resolving the Town's claim against the performance bond in furtherance of the Canyon Falls Park improvement project.**

BACKGROUND: On November 16, 2020, a construction agreement for the construction of Canyon Falls Park was approved by Town Council. Notice to proceed was issued on January 11, 2021. Due to material lead time issues and labor shortages, the start of the project was significantly delayed. After the contractor mobilized, the Town worked diligently with the contractor and their suppliers to complete the project. However, on June 19, 2023, the Town terminated the construction contract due to poor performance and excessive delays by the contractor. Following the contract termination, the Town filed a claim under the project's performance and payment bonds. The attached agreement is the final agreement resulting from the claim.

The Town, in collaboration with multiple vendors, has invested considerable effort over the past several months to finalize the necessary repairs to Canyon Falls Park. We are pleased to announce that Town staff anticipates opening the park to the public in late May. Furthermore, we have scheduled a ribbon-cutting ceremony for Saturday, June 8, to mark this significant milestone.

We eagerly anticipate the unveiling of this expansive 10.5-acre park, boasting a diverse range of amenities including a shaded splash pad, a captivating nature-themed playground, a regulation-sized basketball court, state-of-the-art fitness equipment, picturesque trails, a reservable pavilion, ample parking, and modern restroom facilities.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES: N/A

FISCAL IMPACT: (\$70,000)
Proposed Expenditure/(Revenue)
(\$70,000)

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

ATTACHMENTS:

1. Compromise and Settlement Agreement

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

COMPROMISE AND SETTLEMENT AGREEMENT

This **Compromise and Settlement Agreement** (the “Agreement”) is entered into by and between The Town of Flower Mound, Texas (“Flower Mound”) and US Casualty and Surety Insurance Company (the “Surety”). Flower Mound and the Surety shall collectively be referred to as the “Parties.” Now therefore, in consideration of the following good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual promises and agreements herein contained, the Parties agree as follows.

1. The Project. MSB Constructors, Inc. (“MSB”) and Flower Mound entered into a contract on or about November 16, 2020, for a project identified as Canyon Falls Park (the “Project”).

2. The Bond. The Surety issued Performance Bond No. UCSX384X1259 (the “Performance Bond”) and Payment Bond No. UCSX384X1259 (the “Payment Bond”), both in the penal sum of \$2,625,996, with MSB as Principal in favor of Flower Mound on the Project.

3. Claim Against the Performance Bond by Flower Mound. Flower Mound asserted a claim against the Performance Bond alleging that MSB failed to complete the Project.

4. A Settlement Has Been Reached. To avoid the costs, inconvenience, and burdens associated with contested litigation and, without admitting liability on any outstanding claim, Flower Mound and the Surety enter into this Agreement to avoid litigating the issues between them relating to the Performance Bond and/or the Project.

5. Settlement Consideration. The Surety agrees to pay SEVENTY THOUSAND DOLLARS AND ZERO CENTS (\$70,000.00) (the “Settlement Consideration”) to Flower Mound within twenty (20) days of execution of this Agreement.

6. Full Satisfaction. Flower Mound agrees to accept the Settlement Consideration in full and complete satisfaction of all claims, which have been, or could have been, now or in the future, asserted against the Surety in connection with the Performance Bond and/or the Project, including any claims of Flower Mound for costs or damages related to MSB’s default, including any engineering or architectural fees.

7. Assignment by Flower Mound to the Surety. In connection with the receipt of the Settlement Consideration, and only with respect to the Project, Flower Mound hereby assigns and transfers to the Surety any and all claims, liens and/or causes of actions it may have against MSB and/or its owners up to the amount of the Settlement Consideration.

8. Parties Bear Own Costs. The Parties agree that each party will be responsible for its costs, expenses and attorney’ fees incurred in connection with the Project; provided however, that nothing herein shall be construed as a release by the Surety of any claims it has for indemnity against MSB and/or other corporate or personal indemnitors.

9. Release by Flower Mound. Flower Mound, for itself, its affiliates, officers (present and former), directors (present and former), agents, attorneys, employees, legal representatives, successors and permitted assigns, releases, acquits, and discharges the Surety, its affiliates, officers (present and former), directors (present and former), agents, attorneys, employees, representatives, successors and permitted assigns from any and all claims, demands, and causes of action of whatever nature or character, whether in contract or in tort, but not limited thereto, known or unknown, that relate to the Performance Bond and/or the Project. Flower Mound agrees that Performance Bond No. UCSX384X1259 is released and that Performance Bond No. UCSX384X1259 has no further force or effect. Flower Mound further agrees to return Performance Bond No. UCSX384X1259 to the Surety marked "CANCELLED" within five (5) days of receipt of the Settlement Consideration.

10. Entire Consideration. It is agreed and understood that this Agreement sets forth the entire consideration for the agreements and understandings of the Parties and that all agreements and understandings among the Parties are embodied and expressed in this Agreement.

11. Payment Bond Remains in Effect. The Payment Bond shall remain in full force and effect, and the Surety retains all obligations, rights, and defenses related thereto under Texas law or otherwise. All payments made by the Surety for payment of claims on the Payment Bond shall be credited against the penal limit of the Payment Bond. The Surety shall not, under any circumstances, be obligated to expend more than the penal limit of the Payment Bond. The Surety shall in no way be responsible under the Payment Bond for any costs or damages suffered by Flower Mound as a result of MSB's default on the Project, including any engineering or architectural fees.

12. Indemnity. Flower Mound warrants that it has paid or will pay for all architectural and/or engineering fees on the Project, and to the extent permitted by law, Flower Mound agrees to indemnify, hold harmless, and defend the Surety from any and all liability or loss whatsoever on account of any claim against the Surety by any other party claiming entitlement to architectural or engineering fees/costs for services rendered on the Project.

13. All Representations Contained in Agreement. The Parties expressly agree that they are not relying on any representation, statement or promise that is not expressly stated herein. In particular, Flower Mound represents and warrants that no agent, servant, employee, attorney, representative or any other person representing or claiming to represent the Surety has made any representations, promises, or statements to Flower Mound or its representatives to induce it to enter into this Agreement, other than those expressly contained in this Agreement. Similarly, the Surety represents and warrants that no agent, servant, employee, attorney, representative or any person representing or claiming to represent Flower Mound have made any representations, promises or statements to the Surety or its representatives to induce it to enter into this Agreement, other than those expressly contained in this Agreement. The consideration expressed in this Agreement is contractual and is not expressed merely as a recital.

14. No Oral Agreements. It is agreed and understood by the Parties that there have been no oral or other agreements or representations of any kind whatsoever as a condition precedent or to induce the execution and delivery of this Agreement by any party hereto. It is further agreed that no change, addition or amendment shall be made herein or to any of the terms, covenants or conditions hereto except in writing, signed by the Parties to this Agreement. Each of the Parties represent that they have read this Agreement, understand its terms and have voluntarily entered into this Agreement after consultation with legal counsel of their choice.

15. Legal Owners of All Claims. Flower Mound and the Surety represent and warrant that they are the current legal and beneficial owners of any and all claims herein released, and that they have not assigned, pledged or contracted to assign or pledge any such claim to any person or entity.

16. Choice of Law. This Agreement shall be governed in all respects, including the validity, interpretation and effect, by the laws of the State of Texas, without giving effect to the principles of conflict of laws of that state.

17. Venue. The Parties hereby stipulate and agree that if it becomes necessary for either Party to file any action in connection with this Agreement including, without limitation, to enforce any breach of this Agreement, that such action shall be brought in U.S. District Court for the Northern District of Texas – Fort Worth Division, if there is federal subject-matter jurisdiction. The Parties further stipulate and agree that venue is proper in U.S. District Court for the Northern District of Texas – Fort Worth Division, if there is federal subject-matter jurisdiction. Otherwise, the Parties stipulate to venue in District Court for Denton County, Texas.

18. No Third-Party Rights. This Agreement is solely between Flower Mound and the Surety. Performance of the respective obligations of each Party under this Agreement shall be rendered solely to the other Party. This Agreement may not be assigned in whole or in part by any party without the prior written approval of each of the Parties to this Agreement. In no event shall any group, individual, or third party have any rights under this Agreement.

19. No Admissions by the Parties. This Agreement is a compromise, settlement and release of disputed claims and does not constitute, nor can it be construed to constitute, nor shall it ever be treated as evidence of, or an admission of, liability by or against any party hereto for any purpose whatsoever.

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

21. Date of Execution. This Agreement shall be in effect on the date of execution of the last party hereto.

The Town of Flower Mound, Texas

By: _____

Name: _____

Title: _____

Date: _____

STATE OF TEXAS §

§

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2024, by
_____ of the Town of Flower Mound, Texas, on behalf of said municipality.

Notary Public in and for the
State of Texas

(Seal)

US Casualty and Surety Insurance Company

By: _____

Name: _____

Title: _____

Date: _____

STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2024, by _____ of US Casualty and Surety Insurance Company, on behalf of said entity.

Notary Public in and for the
State of _____

(Seal)