

AGENDA

FLOWER MOUND TOWN COUNCIL REGULAR MEETING

JANUARY 21, 2016

FLOWER MOUND TOWN HALL, 2121 CROSS TIMBERS ROAD
FLOWER MOUND, TEXAS

6:00 P.M.

An agenda information packet is available online at www.flower-mound.com/AgendaCenter

Please silence or turn off all electronic devices in the Council Chambers.

A. CALL MEETING 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. PUBLIC PARTICIPATION

Please fill out a speaker form, available in the Town Hall on the night of the meeting, in order to address the Council and turn it in to the Town Secretary prior to Public Participation. Speakers are normally limited to three minutes. Time limits can be adjusted by the Mayor as to accommodate more or fewer speakers. For additional instructions or to complete your speaker form in advance [click here](#).

The purpose of this item is to allow the public an opportunity to address the Town Council on issues that are not the subject of a public hearing. Any item requiring a public hearing will allow the public to speak at the time that item appears on this agenda as indicated as a "Public Hearing." Items that are the subject matter jurisdiction of the Town Council include Town policy and legislative issues. Issues regarding daily operational or administrative matters should first be dealt with at the administrative level by calling Town Hall at 972-874-6000 during business hours.

E. ANNOUNCEMENTS

1. Announce recent and upcoming civic and social events.

F. TOWN MANAGER'S REPORT

1. Update and status report related to capital improvement projects.
2. Update and discussion on Economic Development projects.
3. Update on the River Walk at Central Park.

G. FUTURE AGENDA ITEMS

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 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).

Town Council Meeting Agenda

January 21, 2016

Page 2

H. COORDINATION OF CALENDARS

1. The next Town Council meeting is a scheduled for February 1st.

2. Consider canceling the following 2016 meetings:

March 7, regular meeting (LISD Spring Break Week)

July 4, regular meeting (Independence Day)

Consider canceling and rescheduling the following 2016 meetings:

August 1, regular and reschedule to August 4 (Thursday)

August 18, work session and reschedule to August 11 (Thursday)

September 5 (Labor Day), regular and reschedule to September 6 (Tuesday)

I. CONSENT AGENDA - Consent Items

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

1. **Minutes 12/7** - Consider approval of the minutes from a regular meeting of the Town Council held on December 7, 2015.
2. **Minutes 12/21** - Consider approval of the minutes from a regular meeting of the Town Council held on December 21, 2015.
3. **Senior Lunch Program (meals)** - Consider approval of the award of Request for Proposal Number 2016-10 to Metroport Meals on Wheels, Incorporated to establish an annual fixed-price contract to provide meals for the Town's Seniors Lunch Program in the estimated amount of \$55,575; and authorization for the Mayor to execute same on behalf of the Town. The contract is for one-year with four one-year renewal options.
4. **Equipment Purchase (backhoe)** - Consider approval of the purchase of one (1) new Caterpillar Backhoe/Loader w/Extend-a Hoe, 2WD for the Public Works Department from Holt Caterpillar, through the Texas Local Government Purchasing Cooperative program, in the total amount of \$72,788.36.
5. **Equipment Purchase (ditch witch)** - Consider approval of the purchase of one (1) new Ditch Witch FX30A FX30 Vacuum System for the Public Works Department from EKA Government Sales Experts, through the Texas Local Government Purchasing Cooperative program, in the total amount of \$53,361.97.
6. **Hazmat Action Plan** - Consider approval of a resolution authorizing adoption of the Denton County Hazard Mitigation Action Plan, January, 2016, and authorization for the Mayor to execute same on behalf of the Town.
7. **Interlocal Agreement (ambulance)** - Consider approval of an Interlocal Cooperation Agreement with Denton County for the provision of ambulance services for the benefit of the citizens of Flower Mound and Denton County, and authorization for the Mayor to execute same on behalf of the Town.

Town Council Meeting Agenda

January 21, 2016

Page 3

8. **Interlocal Agreement (fire)** - Consider approval of an Interlocal Cooperation Agreement with Denton County for the provision of fire protection services for the benefit of the citizens of Flower Mound and Denton County, and authorization for the Mayor to execute same on behalf of the Town.
9. **Signage bid** - Consider approval of the award of Request for Bid Number 2016-12 to the lowest responsive, responsible bidders, U.S. Standard Sign (Group I) and Centerline Supply, LTD (Groups II, III, and IV) at the unit prices bid, for an estimated annual expenditure of \$140,000; and authorization for the Mayor to execute same on behalf of the Town. The contract is for one-year with four one-year renewal options.
10. **Bakersfield Bridge Bank Stabilization (PSA)** - Consider approval of a Professional Services Agreement for the design, construction documents, and bidding phase services for the Bakersfield Bridge Bank Stabilization project, with Kimley Horn and Associates, Inc., for \$38,000.00; and authorization for the Mayor to execute the same on behalf of the Town.

J. REGULAR ITEMS

11. **Investigation report** – Discuss and consider a resolution to refer the “Investigation Report, Town of Flower Mound,” to the Denton County District Attorney’s Office and declaring a public rebuke of Councilmember Itamar Gelbman on the basis of the report.
12. **Public access agreement** - Consider Fourth Amendment to the Contract of Sales Agreement for a public access and utility easement from Janvier Scott; and authorize the Mayor to execute same on behalf of the Town. *(Items 12 – 15 are related)*
13. **Specific Plan Area 2 (MPA15-0008)** **Public Hearing**
 Consider a request for a Master Plan Amendment (MPA15-0008 – Specific Plan Area 2) to amend Section 3, Specific Plans, by modifying the access standards and map for Specific Plan Area 2 (SPA 2) to address the Bob White Lane public access, utility and sidewalk easements per the terms of the approved Contract of Sales Agreement, and to consider adopting an ordinance providing for said amendment. SPA 2 is generally located on both sides of Long Prairie Road (FM 2499) between Sagebrush Drive and Chaparral Lane. *(The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its May 11, 2015, meeting.) (The Town Council tabled this item indefinitely at its November 2, 2015, meeting.)(The official Public Hearing was held on June 1, 2015)*
14. **Easement acquisition (Black Walnut Café)**- Consider approval of the Memorandum of Agreement with Dirk Laukein; and authorization of Mayor to execute same on behalf of the Town.

Town Council Meeting Agenda

January 21, 2016

Page 4

15. **Easement acquisition (My Flooring America)** - Consider approval of the Addendum To Development Agreement with MRK Enterprises, LLC; and authorization for the Mayor to execute the same on behalf of the Town.
16. **Silveron Industrial warehouse (MPA15-0010)** **Public Hearing**
Public Hearing to consider a request for a Master Plan Amendment (MPA15-0010 – Silveron Industrial Warehouse) to amend Section 1.0, Land Use Plan, and Section 2.0, Area Plans, of the Master Plan to change the current land use designation from Campus Commercial uses to Campus Industrial uses on approximately 41.24 acres of land within the Lakeside Business District Area Plan, and to consider adopting an ordinance providing for said amendment. The property is generally located south of Lakeside Parkway and east of Lake Forest Boulevard. *(Planning and Zoning Commission recommended denial by a vote of 4 to 2 at its January 11, 2015, meeting.) (Items 16 – 19 are related)*
17. **Silveron Industrial warehouse (ZPD15-0013)** **Public Hearing**
Public Hearing to consider a request for rezoning (ZPD15-0013 – Silveron Industrial Warehouse) from Planned Development District No. 31 (PD 31) for Campus Commercial District (CC) uses to Planned Development District No. 145 (PD-145) for Campus Industrial District (CI) uses with certain exceptions to the Code of Ordinances, and to consider adopting an ordinance providing for said amendment. The property is generally located south of Lakeside Parkway and east of Lake Forest Boulevard. *(Planning and Zoning Commission recommended denial by a vote of 4 to 2 at its January 11, 2015, meeting.)*
18. **Silveron Blvd – tree removal** **Public Hearing**
Public Hearing to consider an application for a tree removal permit for eight (8) specimen trees on property proposed for development as Silveron DC 1 & 2. The property is generally located north of Silveron Boulevard, south of Lakeside Parkway, and east of Lake Forest Boulevard. *(The Environmental Conservation Commission recommended approval by a vote of 6-0-0 at its October 6, 2015, meeting).*
19. **Stryker Corporation 380 Agreement** **Public Hearing**
Public Hearing to consider approval of a Chapter 380 Agreement between the Town of Flower Mound and Stryker Corporation, and authorization for the Mayor to execute same on behalf of the Town.
20. **Water Main replacement (Oak Drive)** - Consider approval of the award of Bid No. 2016-9 to A&M Construction and Utilities, Inc., for the Oak Drive Water Main Replacement project, in the amount of \$1,083,877.50; and authorization for the Mayor to execute same on behalf of the Town.

Town Council Meeting Agenda

January 21, 2016

Page 5

21. Manchale Alcohol Variance (MISC15-0006)

Public Hearing

Public Hearing to consider a request for a variance (MISC15-0006 - Manchale Alcohol Variance) to permit the sale of alcoholic beverages by a restaurant within 300 feet of a public school. The property is located at 420 Parker Square.

K. BOARDS/COMMISSIONS *(Bold text represents boards with vacancies)*

Discuss and consider resignations, appointments, or evaluations for the following boards or commissions: Animal Services Board, Cultural Arts Commission, Environmental Conservation Commission, Parks, Arts and Library Services Board, SMARTGrowth Commission, Tax Increment Reinvestment Zone Number One (TIRZ #1), and the Transportation Commission.

L. CLOSED MEETING

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

- a. 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, Planning and Zoning Commission, and the Mayor/Town Council.
- b. Discuss and consider economic development incentives, including retail centers, corporate relocation/expansion/retention, hospitality projects, and performance related to certain incentive agreements.
- c. Discuss and consider purchase, exchange, lease or value of real property for parks, public rights of way, and/or other municipal purposes and all matters incident and related thereto.
- d. Consultation with Town Attorney regarding:

1. Town Council investigation

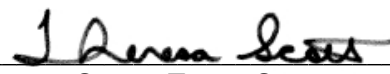
Pursuant to Section 551.071 of the Texas Government Code, the Town Council reserves the right to consult in a closed meeting with its attorney and to receive legal advice regarding any item listed on this agenda.

M. RECONVENE TO REGULAR MEETING

The Town Council to reconvene into an open meeting to take any action deemed necessary as a result of the closed meeting.

N. ADJOURN MEETING

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 posted on the following date and time: January 15, 2016, at 1:30 p.m., at least 72 hours prior to the scheduled time of said meeting.


Theresa Scott, Town Secretary

The Flower Mound Town Hall and Council Chambers are wheelchair accessible. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting by contacting Theresa Scott, Town Secretary, at (972) 874-6076.



TOWN COUNCIL AGENDA ITEM NO. 1

CONSENT ITEM

DATE: January 21, 2016

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a regular meeting of the Town Council held on December 7, 2015.

BACKGROUND INFORMATION: The Town Council held a regular meeting on December 7, 2015.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

Proposed Expenditure:

Account Number(s):

Finance Review by: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Draft minutes

RECOMMENDATION: Move to approve the minutes from a regular meeting of the Town Council held on December 7, 2015.

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 7, 2015 BOOK 43 PAGE 1

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 7TH DAY OF DECEMBER 2015, IN THE FLOWER MOUND TOWN HALL, LOCATED AT 2121 CROSS TIMBERS ROAD IN THE TOWN OF FLOWER MOUND, COUNTY OF DENTON, TEXAS AT 6:00 P.M.

The Town Council met in a regular meeting with the following members present:

Tom Hayden	Mayor
Steve Dixon	Mayor Pro Tem
Itamar Gelbman	Deputy Mayor Pro Tem
Mark Wise	Councilmember Place 1
Bryan Webb	Councilmember Place 2
Kevin Bryant	Councilmember Place 3

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

Theresa Scott	Town Secretary
Bryn Meredith	Town Attorney
Jimmy Stathatos	Town Manager
Gary Sims	Executive Director of Community Services
Doug Powell	Executive Director of Development Services
Ken Parr	Executive Director of Public Works
Mark Wood	Director of Economic Development
Matt Woods	Director of Environmental Services
Matt Hotelling	Traffic Engineer
Eric Greaser	Fire Chief
Thomas Vyles	Environmental Health Manager

A. CALL REGULAR MEETING TO ORDER

Honorary Mayor for the Day Ryan Holliday and Mayor Hayden called the regular meeting to order at 6:00 p.m.

B./C. INVOCATION/PLEDGE OF ALLEGIANCE TO THE AMERICAN FLAG AND THE TEXAS FLAG

Chaplain Russ McNamer gave the invocation and Mayor Hayden and Ryan Holliday led the pledges.

D. PRESENTATIONS

1. Special Recognition - Ryan Holliday (Honorary Mayor for the Day)

Ryan, along with his family, accepted proclamation.

2. Present the Flower Mound Outstanding Citizenship Award(s) to recipients chosen by the Outstanding Citizen Committee (individual and group category)

Ms. Scott gave a presentation identifying or noting:

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 7, 2015 BOOK 43 PAGE 2

- Background information
- Purpose
- Criteria
- Committee members
- Meetings overview
- Nominations
- Committee feedback

Chairman Seastrom offered his comments regarding the committee and the selection process.

Doug Graves accepted the Outstanding Citizenship Award (individual category) and Coach Mark Larriba and Nesa Grider (Booster club president), accepted the Outstanding Citizenship Award (group category) on behalf of the Flower Mound Lady Jaguars softball team.

E. PUBLIC PARTICIPATION

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 names and address	Subject (as indicated on the speaker form)
1.	Al Picardi	STAR program
2.	Carol Kohankie	1. Passing of former Mayor Gary Pressler 2. Investigation
3.	Don McDaniel, 3801 Hideaway Ln	Stated there is a need for a pedestrian crosswalk at Heatfield and Old Settlers
4.	Warner Watkins, 2800 London Ln	1. Need for unity and togetherness in the Town 2. investigation
5.	Patsy Mizeur, 1821 Castle Court	Investigation
6.	Jean Levenick, 2716 Gentle Dr	River Walk update & questions would like answers to

F. ANNOUNCEMENTS

Deputy Mayor Pro Tem Gelbman extended well wishes for a Happy Hanukah and Merry Christmas.

Mayor Pro Tem Dixon announced having recently attended the Town's holiday parade and suggested for future parades to offset the fences from the curb to allow the children to collect the candy.

Councilmember Bryant also announced having recently attended the Town's

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 7, 2015 BOOK 43 PAGE 3

recent holiday parade and suggested that for future parades the Town can coordinate with the high schools so the bands can participate.

G. TOWN MANAGER'S REPORT**Update and discussion on:**

1. Report related to capital improvement projects

Mr. Stathatos gave an update on the following CIP projects:

- FM 1171 construction update
- FM 2499 roadway and drainage improvements update

2. Economic Development projects

Mr. Stathatos gave an update on the following ED topics or projects:

- Entrepreneur center
- Incentive report

Mr. Wood, at the request of Mayor Hayden, provided an announcement that North Texas Child magazine has once again named Flower Mound as the best place to raise a family.

3. Update on Town Council investigation.

Mr. Stathatos gave an update on the investigation and indicated a final report was received and shared with the Council last week.

4. The following comments or questions were presented by the Mayor or members of Council during the Town Manager report:

- A request that the Town do more with LISD schools for their homecoming parade, and more specifically as it relates to the route
- If Green Acres Farm is identified as a location for the tree farm, now might be a good time to start notifying the residents in that area.
- Tax Increment Reinvestment Zone (TIRZ) and interest in having that board review the current proposed projects, and to set priorities
- Interest in organizing a job fair, in coordination with the Chamber, to help Flower Mound businesses fill job vacancies
- Communication received from residents about higher utility poles on Wichita Trail, and a request for staff to verify the amount of additional poles planned for that area, along with a request to provide Council an update once the clarification is obtained. In addition, there are multiple double poles due to the transition and interest in having the duplicate poles removed prior to the contractor leaving the job site.

H. FUTURE AGENDA ITEMS

1. Councilmember Webb requested an update on the residential rehabilitation incentive program.

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 7, 2015 BOOK 43 PAGE 4**I. COORDINATION OF CALENDARS**

1. The next Town Council meeting is a scheduled for December 17th. (*work session*)

Mr. Stathatos noted the December 17th meeting will be a public meeting to look at the different options for Rippy Road, and further clarified that it is not an official meeting.

2. The next Town Council regular meeting is a scheduled for December 21st.

Councilmember Webb indicated he will not be available on the 21st. Deputy Mayor Pro Tem Gelbman indicated there is a possibility he may not be at the meeting on the 21st either.

There was Council and staff discussion relative to MPA items currently scheduled that might need to be rescheduled due to the supermajority requirement.

J. CONSENT ITEMS

1. Consider approval of the minutes from a regular meeting of the Town Council held on November 16, 2015.

RECOMMENDATION: Move to approve the minutes from a regular meeting of the Town Council held on November 16, 2015.

2. Consider approval of the minutes from a work session of the Town Council held on November 19, 2015.

RECOMMENDATION: Move to approve the minutes from a work session of the Town Council held on November 19, 2015.

3. Consider acceptance of grant funds from the Department of Justice Office of Justice Programs for the FY 2015 Bulletproof Vest Partnership.

RECOMMENDATION: Move to approve grant funds from the Department of Justice Office of Justice Programs for the FY 2015 Bulletproof Vest Partnership.

RESOLUTION NO. 21-15

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS AUTHORIZING THE ACCEPTANCE OF GRANT FUNDS FROM THE DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS FOR THE BULLETPROOF VEST PARTNERSHIP PROGRAM; APPROVING THE PURCHASE OF BULLETPROOF VESTS FOR THE TOWN USING AWARDED GRANT FUNDS; PLEDGING THAT THE TOWN OF FLOWER MOUND WILL COMPLY WITH ALL PROGRAM REQUIREMENTS OF THE BULLETPROOF VEST PARTNERSHIP PROGRAM.

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 7, 2015 BOOK 43 PAGE 5

4. *Item 4 was pulled from consent to regular items.*
5. Consider approval of a service agreement with Active Network, LLC to provide service, support, and software access for the technical management of park facilities and recreational programs, and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Move to approve a service agreement with Active Network, LLC to provide service, support, and software access for the technical management of park facilities and recreational programs, and authorization for the Mayor to execute same on behalf of the Town.

6. Consider approval of a Development Agreement with Elan Flower Mound Venture, LLC., to provide for reimbursement for the reconstruction of Northwood Drive, in the amount of \$417,553.37; and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Move to approve a Development Agreement with Elan Flower Mound Venture, LLC., to provide for reimbursement for the reconstruction of Northwood Drive, in the amount of \$417,553.37; and authorization for the Mayor to execute same on behalf of the Town.

7. *Item 7 was pulled from consent to regular items.*
8. Consider approval of Final Change Order No. 7 for the Wichita Trail Phase II project, final acceptance of the project, amending the contract with Felix Associates of Florida, Inc., DBA Lone Star Civil Construction, Inc., for a decrease in cost of \$11,231.97, authorization of final payment to the contractor, the amount of \$157,250.03; and authorization for the Mayor to execute the same on behalf of the Town.

RECOMMENDATION: Move to approve Final Change Order No. 7 for the Wichita Trail Phase II project, final acceptance of the project, amending the contract with Felix Associates of Florida, Inc., DBA Lone Star Civil Construction, Inc., for a decrease in cost of \$11,231.97, authorization of final payment to the contractor, the amount of \$157,250.03; and authorization for the Mayor to execute the same on behalf of the Town.

9. Consider approval of the Final and Change Order No. 4 for the 2013 Street Reconstruction Projects (Colony Street, Sheffield Court, and Colonial Drive) project, amending the contract with FNH Construction, LLC, for a decrease in the amount of \$676,238.20; acceptance of the project; authorization of final payment to the contractor, in the amount of \$21,366.26; and authorization for the Mayor to execute the same on behalf of the Town.

RECOMMENDATION: Move to approve the Final and Change Order No. 4 for the 2013 Street Reconstruction Projects (Colony Street, Sheffield Court, and

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 7, 2015 BOOK 43 PAGE 6

Colonial Drive) project, amending the contract with FNH Construction, LLC, for a decrease in the amount of \$676,238.20; acceptance of the project; authorization of final payment to the contractor, in the amount of \$21,366.26; and authorization for the Mayor to execute the same on behalf of the Town.

10. Consider approval of a Professional Service Agreement with Alliance Geotechnical Group, for construction materials testing associated with the Twin Coves Park Improvements project, in the amount of \$40,872.00; and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Move to approve a Professional Service Agreement with Alliance Geotechnical Group, for construction materials testing associated with the Twin Coves Park Improvements project, in the amount of \$40,872.00; and authorization for the Mayor to execute same on behalf of the Town.

11. Consider approval of a Professional Services Agreement to produce a Parks, Recreation, and Open Space Master Plan, with Pros Consulting, LLC, for a not to exceed amount of \$197,605.00; and authorization for the Mayor to execute the same on behalf of the Town.

RECOMMENDATION: Move to approve a Professional Services Agreement to produce a Parks, Recreation, and Open Space Master Plan, with Pros Consulting, LLC, for a not to exceed amount of \$197,605.00; and authorization for the Mayor to execute the same on behalf of the Town.

12. Consider approval of an ordinance amending Chapter 66, Article V, Section 66-214 of the Code of Ordinances of the Town of Flower Mound, Texas, relating to the prima facie speed limits for specific streets by lowering the prima facie speed limit on Clearpoint Drive to 25 mph, raising the prima facie speed limit on High Meadow Road to 40 mph, adding a reduced school speed zone for Argyle Independent School District in Canyon Falls and raising the prima facie speed limit on Chinn Chapel Road south of Justin Road (FM 407) to 35 mph. *(The Transportation Commission recommended approval of the exception request for Clearpoint Drive by a vote of 4 to 0 at its September 22, 2015, meeting.)*

RECOMMENDATION: Move to approve an ordinance amending Chapter 66, Article V, Section 66-214 of the Code of Ordinances of the Town of Flower Mound, Texas, relating to the prima facie speed limits for specific streets by lowering the prima facie speed limit on Clearpoint Drive to 25 mph, raising the prima facie speed limit on High Meadow Road to 40 mph, adding a reduced school speed zone for Argyle Independent School District in Canyon Falls and raising the prima facie speed limit on Chinn Chapel Road south of Justin Road (FM 407) to 35 mph. *(The Transportation Commission recommended approval of the exception request for Clearpoint Drive by a vote of 4 to 0 at its September 22, 2015, meeting.)*

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 7, 2015 BOOK 43 PAGE 7

ORDINANCE NO. 68-15

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING SECTION 66-214, "ENUMERATION FOR SPECIFIC STREETS;" PROVIDING FOR THE MAXIMUM PRIMA FACIE SPEED LIMIT FOR CERTAIN STREETS AND PORTIONS OF CERTAIN STREETS WITHIN THE TOWN AT CERTAIN TIMES; PROVIDING A PENALTY NOT TO EXCEED \$200 FOR VIOLATIONS HEREOF; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

13. Consider approval of a Professional Services Agreement for the design, construction documents, and bidding phase services for the Rheudasil and Wilkerson Park Ponds Dredging and Bank Stabilization project, with Garver, LLC, for \$206,600.00, and authorization for the Mayor to execute the same on behalf of the Town.

RECOMMENDATION: Move to approve a Professional Services Agreement for the design, construction documents, and bidding phase services for the Rheudasil and Wilkerson Park Ponds Dredging and Bank Stabilization project, with Garver, LLC, for \$206,600.00, and authorization for the Mayor to execute the same on behalf of the Town.

Councilmember Webb moved to approve by consent Items 1-3; 5, 6; 8-13. Councilmember Bryant seconded the motion. Each item, as approved by consent, is restated above along with the approved recommendation, and if applicable, the Ordinance or Resolution caption for each, for the record.

VOTE ON MOTION:*Motion passed.***AYES: WISE, WEBB, BRYANT, DIXON, GELBMAN****NAYS: NONE****K. REGULAR ITEMS**

4. Consider approval of a resolution authorizing the adoption of the Program Year 2014 Consolidated Annual Performance & Evaluation Report for the Community Development Block Grant; and authorization for the Mayor to execute same on behalf of the Town and submit to the U.S. Department of Housing and Urban Development.

Deputy Mayor Pro Tem Gelbman requested the item be pulled to inquire if this is part of a subsidized housing program from the government, and Mr. Stathatos responded to his question.

Councilmember Webb moved to approve a resolution authorizing the adoption of the Program Year 2014 Consolidated Annual Performance & Evaluation Report for the Community Development Block Grant; and authorization for the Mayor to execute same on

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 7, 2015 BOOK 43 PAGE 8

behalf of the Town and submit to the U.S. Department of Housing and Urban Development. Mayor Pro Tem Dixon seconded the motion.

RESOLUTION NO. 22-15

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, PROVIDING FOR THE ADOPTION OF FLOWER MOUND'S PROGRAM YEAR 2014 CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT UNDER THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM; PROVIDING AUTHORIZATION FOR THE MAYOR TO EXECUTE SAID REPORT; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION:*Motion passed.***AYES: GELBMAN, DIXON, BRYANT, WEBB, WISE****NAYS: NONE**

7. Consider approval of a Professional Services Agreement for monthly gas well pad site air monitoring by Modern Geosciences, LLC., in the amount of \$139,800; and authorization for the Mayor to execute same on behalf of the Town.

Staff Presentation

Mr. Wood provided background information regarding the monitoring program, and he later outlined what Town staff is doing in addition to the efforts of Dr. Tramm and his team.

Consultant Presentation

Dr. Kenneth Tramm, Principal of Modern Geosciences

Dr. Tramm provided an update relative to the work associated with the inspections in conjunction with the monitoring program. He pointed out the number of leaks that have been identified and addressed in the past year, and he also announced new testing efforts coming forward in 2016, and noted that overall the Town is good.

Mayor Pro Tem Dixon moved to approve a Professional Services Agreement for monthly gas well pad site air monitoring by Modern Geosciences, LLC., in the amount of \$139,800; and authorization for the Mayor to execute same on behalf of the Town. Councilmember Bryant seconded the motion.

VOTE ON MOTION:*Motion passed.***AYES: WISE, WEBB, BRYANT, DIXON****NAYS: NONE****ABSENT: GELBMAN**

14. Update on River Walk at Central Park.

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 7, 2015 BOOK 43 PAGE 9**Developer Presentation**

Bobby Dollak, G & A Consulting, Civil Engineer for the River Walk, 111 Hillside Drive, Lewisville, TX

Mehrdad Moayed, Centurion American, 1800 Valley View Lane, Farmers Branch, TX

Mr. Dollak provided a progress update on the River Walk development project, and more specifically on the following elements:

- Developed areas pre August 2013
- Timeline
- Concept plan
- Developers agreement enhancement area
- Amenities and enhancements
 - o Timber trail park
 - o Water wall
 - o Artwork
 - o Amphitheater
 - o Chapel
 - o Reception hall
 - o Waterfront alley
 - o Entertainment district
- Development agreement comparison (requirement versus proposed/providing)
- FM 2499 retail
- Central promenade
- Farmer's market
- Courtyard by Marriott
- The villas (97 total – single family patio homes)
- Riverside Point townhomes (72 total)
- The Pinnacle at River Walk (55 three-story town homes)
- Parkmont Place (52 luxury townhomes)
- Lakeshore Terrace townhomes (84 total)
- LOMAR (Letter of Map Revision)
- Restaurant plans

Mr. Dollak or Mr. Moayed responded to the following questions from Council:

- Clarification regarding the location of River Walk building 101
- When will the farmer's market be open
- Are things not getting done in accordance with the established time lines
- Is infrastructure going to be in place for the hotel to begin their work (since it's anticipated to open the first quarter of 2017)
- Concerns that what is being seen in past presentations is not being put in the River Walk within the anticipated time frames
- Concerns that the residential component of the project is coming along much quicker than the commercial
- When is the river going to be flowing
- How many trees will be planted
- Isn't there an independent senior living center planned

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 7, 2015 BOOK 43 PAGE 10

- Some concerns about the appearance of the reception building, noting that is resembles a prison
- When will the water wall be completed
- When will someone be able to have a wedding in the chapel
- When will the amphitheater be ready
- When will the restaurants be coming on line

Mr. Powell or Mr. Stathatos responded to questions from Council as follows:

- Who makes sure that the developer agreement is being followed
- How does the Town ensure that the architectural renderings coming forward are in line with what was envisioned
- Are there penalties associated with delays

Mr. Powell, Mr. Dollak, or Mr. Moayedhi responded to the following questions from Council:

- Is everything in the PID map being followed

Several members of Council acknowledged that weather has been a factor, as well as multiple changes; and communicated to the developer a desire to see more progress.

15. Consider waiving the Attorney/Client privilege for the Town Council investigation report.

Deputy Mayor Pro Tem Gelbman requested that any deliberation or vote on this item take place after tonight's executive session.

Mr. Meredith or Mr. Stathatos responded to questions from Council as follows:

- Explanation of the attorney-client privilege as it relates to a governing body
- Why is the item on the agenda prior to executive session
- Purpose and intent for the agenda item
- How would the items be made available to the public
- Clarification that the item presented is simply for the purpose of releasing the data, and no further action

The Town Council convened into a closed meeting at 8:23 p.m. on December 7, 2015, pursuant to Texas Government Code Chapter 551.071 for consultation with attorney, and reconvened into an open meeting at 8:40 p.m. on December 7, 2015, to take action on the items as follows:

Councilmember Webb moved to release the investigation report prepared by Ross Foster for the Town of Flower Mound, along with all documents returned to the Town supporting the report, and any communication between the Town Council, the Town Manager, and Town Attorney pertaining to the subject matter of the investigation and report, and to waive attorney-client privilege for all documents. Councilmember Bryant seconded the motion.

Council Discussion

- Interest in having not only the report be released, but all of the associated documents that have been provided to Council
- Clarification that if there is a need to get a legal question Council should convene into closed session

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 7, 2015 BOOK 43 PAGE 11

- Acceptable to releasing the actual report; however, reservations regarding putting all of the supporting documents on the Town's website; however, making them readily available to the public upon request
- Why just release the report – why not everything
- Comment relative to the content that will be coming forward in the report that is soon to be released

VOTE ON MOTION:*Motion passed.***AYES: WISE, WEBB, BRYANT, DIXON, GELBMAN****NAYS: NONE**

There was Council discussion relative to the method that would be used for making the report and supporting documents available to the public. As a result, there was a unanimous decision to put the report on the website; however, some members of Council had reservations relative to putting all of the supporting documentation on the website.

Mayor Hayden sought confirmation from each member of Council regarding their preferences relative to releasing the supporting investigation documents via the Town's website. The majority of Council members indicating a preference to use the method of the website.

16. Public Hearing to consider at least one connection from the Pecan Acres subdivision to West Windsor Drive at either one or both of the roundabout locations. *(Transportation Commission recommended to consider a connection at Mulberry Street by a vote of 3 to 1 at its September 22, 2015 meeting).*

Staff Presentation

Mr. Hotelling gave a presentation identifying or noting:

- History of West Windsor and Roundabout connections
- Vicinity map of schematics
- Petition and survey
- Survey results
- Survey feedback
- Emergency services feedback
- Pros and cons
- TRC recommendation

Mr. Hotelling, Chief Greaser, or Mr. Parr responded to questions from Council as follows:

- Clarification regarding the timing associated with emergency access and the connection options
- Any capacity issues as it relates to Central Station and Station 4 relative to responses
- What were the issues raised some time ago when the residents in that area did not want the access

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 7, 2015 BOOK 43 PAGE 12

- What was the recommendation of the traffic team at the time the West Windsor project came through
- Clarification that the streets are non-curb and gutter
- What is the cost of the project to allow the connectivity, and what does it include
- Why did the Transportation Commission select the Mulberry over Pinon connection (if only one connection is to be made)
- Clarification regarding the statement that there are less people that reside on Mulberry than Pinon
- Which is closer to 2499 (Mulberry or Pinon)
- Does the Town already own the right-of-way or is there a need to purchase land
- Would the road need to be widened, and if so, by how much
- What are the differences with the two options presented, particularly as it relates to response times for fire and emergency personnel, and would either one of those put the Town at risk relative to losing the current ISO rating
- If positive action was taken this evening, when would work start taking place, and would the improvement be made and then the connection
- What happens to the trail afterwards
- How long does this type of project take

There was Council discussion regarding:

- Survey results
- Appreciation for the opportunity to revisit the discussion in the interest of safety, including egress and ingress for the area

Mayor Hayden opened the Public Hearing at 9:16 p.m. Mayor Pro Tem Dixon noted that in the past there was opposition to having the connection for specific reasons. For that reason he requested that if there are any residents in that area who plan on speaking, to communicate with Council what has changed that they are now in favor of the connection.

The following individuals either spoke in support or opposition, or had questions / comments related to the item: *Names listed below don't necessarily reflect the order in which each person spoke and all addresses are located in Flower Mound unless otherwise indicated.*

Support: Comments/Questions	Opposition: Comments/Questions	Question(s)/Comments Only
Greg Rank, 4611 Birch St	Kelly Casey, 4621 Pinon St	
Steve Edgemon, 4617 Birch	Conrad Roach, 3106 Pecan Dr	
Louis Wittkower, 3417 Pecan Dr		Leonard Best, 4617 Pinon St

Mayor Hayden closed the Public Hearing at 9:32 p.m.

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 7, 2015 BOOK 43 PAGE 13

Councilmember Bryant moved to approve a connection from Pecan Acres subdivision to West Windsor Drive only at Mulberry Street. Councilmember Wise seconded the motion.

VOTE ON MOTION:*Motion passed.***AYES: GELBMAN, DIXON, BRYANT, WEBB, WISE****NAYS: NONE**

17. Consider Third Amendment to the Contract of Sale Agreement for a public access and utility easement from Janvier Scott; and authorize the Mayor to execute same on behalf of the Town.

Staff Presentation

Mr. Meredith noted that this item is purely legal and allows an amendment to the termination date of the contract, noting that all three fully executed agreements are expected to come forward soon.

Deputy Mayor Pro Tem Gelbman moved to authorize the Mayor to execute a Third Amendment to the Contract of Sales Agreement for a public access and utility easement from Janvier Scott for Bob White Lane to February 15, 2016. Councilmember Bryant seconded the motion.

VOTE ON MOTION:*Motion passed.***AYES: WEBB, BRYANT, DIXON, GELBMAN****NAYS: NONE****ABSTAIN: WISE**

18. Review and discuss current regulations and possible variances to Chapter 18 "Businesses", Article III "Food and Food Establishments", related to dogs on patios.

Staff Presentation

Mr. Woods gave a presentation identifying or noting:

- Background information
- Texas food establishment rules
- Variance process

Mr. Woods or Mr. Vyles responded to questions from Council as follows:

- Did any of the survey cities have additional inspections due to having a dog friendly patio
- If approved, what will be the process for someone to get a variance
- If a sign is not displayed are dogs not allowed
- Is it restrictive to just dogs
- What are the penalty elements for any violators

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 7, 2015 BOOK 43 PAGE 14

There was a consensus of Council to proceed with an ordinance amendment to establish a variance process to allow dogs on patios.

L. BOARDS/COMMISSIONS (Executive Conference Room)

Administrative note: Council opted to discuss the following items in the Council Chambers.

19. Consider approval of a resolution casting the vote of the Town of Flower Mound, Texas, for the election of the Board of Directors of the Denton Central Appraisal District (DCAD) and the Tarrant Appraisal District (TAD).

Ms. Scott provided background information about the item and pointed out the section of the packet that includes the nomination information. She also pointed out that Mr. Hassett was unable to attend this evening; however, he sent Council an email and that correspondence is included in the packet.

Ms. Smith (Board of Directors candidate) indicated she would to continue serving on the Board and asked for Council's vote for the Flower Mound allotted allocations. She also defined the role and responsibilities of the Board of Directors.

There was Council discussion as follows:

- Candidate nominations overview
- Options Council has

Councilmember Webb moved to approve a resolution casting the vote of the Town of Flower Mound, Texas, for the election of Connie Smith (62 votes) and Mike Hassett (61 votes) to the Board of Directors of the Denton Central Appraisal District (DCAD). Deputy Mayor Pro Tem Gelbman seconded the motion.

RESOLUTION NO. 23-15

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, CASTING THE TOWN OF FLOWER MOUND'S ONE HUNDRED TWENTY THREE (123) ALLOCATED VOTES FOR THE ELECTION OF THE BOARD OF DIRECTORS FOR THE DENTON CENTRAL APPRAISAL DISTRICT; AND PROVIDING FOR AN EFFECTIVE DATE.

VOTE ON MOTION:

Motion passed.

AYES: GELBMAN, DIXON, BRYANT, WEBB, WISE

NAYS: NONE

There was Council consensus to take no action regarding candidates for the Tarrant County Appraisal District Board of Directors.

20. Discuss and consider resignations, appointments, or evaluations for the following boards or commissions:

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 7, 2015 BOOK 43 PAGE 15

- a. Animal Services Board vacancy (Place 3, veterinarian position)

For the Animal Services Board, Councilmember Bryant moved to appoint Caitlin Freeny to Place 3 (veterinarian position), with a term expiration date of September 30, 2017. Deputy Mayor Pro Tem Gelbman seconded the motion.

VOTE ON MOTION:*Motion passed.***AYES: WISE, WEBB, BRYANT, DIXON, GELBMAN****NAYS: NONE**

- b. Tax Increment Reinvestment Zone Number One (TIRZ #1) and 12/31/15 term expiration dates

For the Tax Increment Reinvestment Zone, Mayor Pro Tem Dixon moved to appoint Bill Collins to Place 1; Jeff Tasker, Place 2 (Chair); and Bryan Webb, Place 3; with terms beginning January 1, 2016, and ending December 31, 2017. Deputy Mayor Pro Tem Gelbman seconded the motion.

VOTE ON MOTION:*Motion passed.***AYES: GELBMAN, DIXON, BRYANT, WEBB, WISE****NAYS: NONE**

- c. Community Development Corporation and 12/31/15 term expiration dates.

For the Community Development Corporation, Councilmember Webb moved to appoint Scott Lang, Director Place 1; Tom Hayden, Director Place 3; Jodi Seay, Director Place 5; and Mark Wise, Director Place 7. Councilmember Bryant seconded the motion.

Administrative Note: This item was posted on the agenda for closed session; however, Council opted to discuss it with the regular items.

VOTE ON MOTION:*Motion passed.***AYES: WISE, WEBB, BRYANT, GELBMAN****NAYS: NONE****ABSTAIN: DIXON****M./N. CLOSED/OPEN MEETING**

The Town Council convened into a closed meeting at 10:03 p.m. on December 7, 2015, pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.074, 551.087, 551.072, and 551.071 to discuss matters relating to personnel, economic development negotiations, real property, and consultation with attorney, and reconvened into an open meeting at 10:38 p.m. on December 7, 2015, to take action on the items as follows:

- a. Discuss and consider resignations, appointments, evaluations, reassignments, discipline, or dismissals for the following boards or

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 7, 2015 BOOK 43 PAGE 16

commissions:

- i) Board of Adjustment/Oil & Gas Board of Appeals vacancy (position of Place 6, Alternate)

For the Board of Adjustment/Oil & Gas Board of Appeals, Mayor Pro Tem Dixon moved to appoint Jason Webb to Place 6 (Alternate), with a term ending September 30, 2016. Councilmember Bryant seconded the motion.

VOTE ON MOTION:

Motion passed.

AYES: GELBMAN, DIXON, BRYANT, WEBB, WISE

NAYS: NONE

- a. Community Development Corporation and 12/31/15 term expiration dates

Council action was taken on this item in open session.

- b. Discuss and consider economic development incentives, including retail centers, corporate relocation/expansion/retention, hospitality projects, and performance related to certain incentive agreements.

No action taken.

Discuss and consider purchase, exchange, lease or value of real property for parks, public rights of way, and/or other municipal purposes and all matters incident and related thereto.

No action taken.

- d. Consultation with Attorney as follows:

- 1. Consultation with Town Attorney regarding the Town Council investigation.

No action taken.

- 2. Hillside at Flower Mound Development by Rembert Enterprises, Inc.

No action taken.

O. ADJOURN REGULAR MEETING

Mayor Hayden adjourned the meeting at 10:39 p.m. on Monday, December 7, 2015, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

THOMAS E. HAYDEN, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 2

CONSENT ITEM

DATE: January 21, 2016

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a regular meeting of the Town Council held on December 21, 2015.

BACKGROUND INFORMATION: The Town Council held a regular meeting on December 21, 2015.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

Proposed Expenditure:

Account Number(s):

Finance Review by: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Draft minutes

RECOMMENDATION: Move to approve the minutes from a regular meeting of the Town Council held on December 21, 2015.

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 21, 2015 BOOK 43 PAGE 1

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 21ST DAY OF DECEMBER 2015, IN THE FLOWER MOUND TOWN HALL, LOCATED AT 2121 CROSS TIMBERS ROAD IN THE TOWN OF FLOWER MOUND, COUNTY OF DENTON, TEXAS AT 6:00 P.M.

The Town Council met in a regular meeting with the following members present:

Tom Hayden	Mayor
Steve Dixon	Mayor Pro Tem
Itamar Gelbman(<i>left at 8:31 p.m.</i>)	Deputy Mayor Pro Tem
Mark Wise	Councilmember Place 1
Kevin Bryant	Councilmember Place 3

With the following members absent:

Bryan Webb	Councilmember Place 2
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Constituting a quorum with the following members of the Town Staff participating:

Theresa Scott	Town Secretary
Bryn Meredith	Town Attorney
Jimmy Stathatos	Town Manager
Debra Wallace	Assistant Town Manager/CFO
Gary Sims	Executive Director of Community Services
Doug Powell	Executive Director of Development Services
Ken Parr	Executive Director of Public Works

A. CALL REGULAR MEETING TO ORDER

Mayor Hayden called the regular meeting to order at 6:00 p.m.

B./C. INVOCATION/PLEDGE OF ALLEGIANCE TO THE AMERICAN FLAG AND THE TEXAS FLAG

Chaplain Russ McNamer gave the invocation and Mayor Hayden led the pledges.

D. PRESENTATIONS

1. Veterans Day Relay Run check presentation to the Denton County Veterans Coalition.

Mayor Hayden presented the Denton County Veterans Coalition with a check from funds raised during the Veterans Day relay run event.

E. PUBLIC PARTICIPATION

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.

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 21, 2015 BOOK 43 PAGE 2

	Speaker names and address	Subject <i>(as identified on speaker forms)</i>
1.	Paul Stone, 709 Lake Bluff Dr	Charter
2.	Don McDaniel, 3801 Hide A Way	Public comment
3.	Jeff Stevens, 6415 Meadowcrest Ln	Investigation
4.	Warner Watkins, 2800 London Ln	Investigation
5.	Sharon Gentry, 2750 Bob White Ln	Public participation
6.	Janvier Scott, 2829 Bob White Ln	Public participation
7.	Carol Kyer, 2616 Crepe Myrtle Dr	New Horizons thank you
8.	Carol Kohankie, 4312 Lauren Way	Investigation
9.	Eddie White, 3104 Beaver Creek Dr	Investigation findings
10.	Jean Levenick, 2716 Gentle Dr	Riverwalk
11.	Patsy Mizeur, 1821 Castle Ct	Itamar Gelbman
12.	Shyron Shenko, 5001 Rippy Rd	Public participation
13.	Jim Engel, 5110 Bayberry St	Investigation
14.	David Vaught, 2208 Lake Lugano With the following individuals donating their time: 1. Douglas Brown, 1721 Ingleside Dr 2. Name not legible, 5810 Long Prairie 3. Jill Lange, 2609 Pasadena Pl 4. Brian Lange, 2609 Padadena Pl 5. Janet Jones, 2113 Columbia Dr 6. David Paxton, 3705 Kentmere Ct 7. David Jones, 2113 Columbia Dr 8. Michelle Dishman, 2101 Roadrunner Dr 9. David Johnson, 3617 San Paula 10. Lynn Peterson, 3604 Sandhurst Dr 11. Sarah Vaught, 2208 Lake Lugano Dr 12. Denise White, 3104 Beaver Creek Dr 13. Kelly Davenport, 2608 Cape Brett Dr 14. Jeff Ramsey, 5100 Clear Creek Dr 15. Kathy O'Keefe, 3004 Oxford Ct 16. Clare Brown, 172 Ingleside	Investigation
15.	Jodie Boutilier, 2201 Jester Ln	Public hearing
16.	Michael Upchurch, 2708 Winding Path Way	Investigation

F. ANNOUNCEMENTS

Mr. Meredith, at the request of Mayor Hayden, summarized a [memo](#) recently provided to Council that explains the powers and authority of the Town Council in the event Council wanted to go forward with the investigation.

Deputy Mayor Pro Tem Gelbman expressed his appreciation for those involved in the Santa Cops program.

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 21, 2015 BOOK 43 PAGE 3

Councilmember Bryant reported on the passing of former Mayors Gary Pressler and David Witherspoon.

All members of Council extended well wishes for the Christmas and New Year holidays.

Mayor Hayden offered comments regarding the investigation.

Deputy Mayor Pro Tem Gelbman offered his comments regarding the investigation.

There was a discussion relative comments or statements previously made by Deputy Mayor Pro Tem Gelbman as it relates to the investigation.

G. TOWN MANAGER'S REPORT**Update and discussion on:**

1. Update and status report related to capital improvement projects.

Mr. Stathatos gave an update on the following CIP projects:

- Forest Vista Phase I project (Lakeshore to FM 2499)

2. Update and discussion on Economic Development projects.

Mr. Stathatos gave an update on the following economic development projects:

- Gloria's is getting closer to opening

H. FUTURE AGENDA ITEMS

No request for future agenda items.

I. COORDINATION OF CALENDARS

The next Town Council meeting is a scheduled for January 21, 2016.

J. CONSENT ITEMS

1. Consider approval of a resolution authorizing the disbanding of the Social Media Advisory Committee.

RECOMMENDATION: Move to approve a resolution of the Town Council of the Town of Flower Mound Texas, disbanding the Social Media Committee.

2. Consider approval of the 2015 Annual Report for the Flower Mound Tax Increment Reinvestment Zone (TIRZ) #1 in accordance with Chapter 311 of the Texas Tax Code.

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 21, 2015 BOOK 43 PAGE 4

RECOMMENDATION: Move to approve the 2015 Annual Report for the Flower Mound Tax Increment Reinvestment Zone #1 (TIRZ #1) in accordance with Chapter 311 of the Texas Tax Code.

RESOLUTION NO. 24-15

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, DISBANDING THE SOCIAL MEDIA POLICY ADVISORY COMMISSION; AND PROVIDING FOR AN EFFECTIVE DATE.

3. Consider approval of the sale and consumption of alcoholic beverages (beer and wine) at Bakersfield Park, during the 2016 Independence Fest.

RECOMMENDATION: Move to approve the sale and consumption of alcoholic beverages at Bakersfield Park, during the 2016 Independence Fest.

4. Consider approval of Standards of Care for Youth Recreation Programs operated by the Town, in accordance with the Texas Human Resources Code - Section 42.041 and to adopt an ordinance providing for said Standards.

RECOMMENDATION: Move to approve an ordinance amending the Town of Flower Mound's Annual Budget for the fiscal year beginning October 1, 2014, and ending on September 30, 2015, as adopted by Ordinance No. 53-14 and amended by Ordinance 62-14 and Ordinance No. 03-15, for adjustments to the General Fund, General Debt Service Fund, Utility Fund, Library Development Fund, Homeland Security Grant Program Fund, General Capital Projects Fund, Vehicle and Equipment Replacement Fund, Technology Replacement Fund and the Health Insurance/Flex Account Fund.

ORDINANCE NO. 72-15

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, TOWN OF FLOWER MOUND, TEXAS; AMENDING CHAPTER 54, "PARKS AND RECREATION," SECTION 54-202, "ADOPTION;" ADOPTING UPDATED STANDARDS OF CARE FOR YOUTH RECREATION PROGRAMS; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

5. Consider approval of an ordinance amending the Town of Flower Mound's Annual Budget for the fiscal year beginning October 1, 2014, and ending on September 30, 2015, as adopted by Ordinance No. 53-14 and amended by Ordinance 62-14 and Ordinance No. 03-15, for adjustments to the General Fund, General Debt Service Fund, Utility Fund, Library Development Fund, Homeland Security Grant Program Fund, General Capital Projects Fund, Vehicle and Equipment Replacement Fund, Technology Replacement Fund and the Health Insurance/Flex Account Fund.

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 21, 2015 BOOK 43 PAGE 5

RECOMMENDATION: Move to approve an ordinance amending the Town of Flower Mound's Annual Budget for the fiscal year beginning on October 1, 2015, and ending on September 30, 2016, as adopted by Ordinance No. 52-15 for adjustments to the General Fund, Utility Fund, Library Development Fund, Tree Preservation Fund, Parks and Recreation Special Activities Fund, and IRS Equitable Sharing Fund.

ORDINANCE NO. 69-15

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE TOWN'S BUDGET FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2014, AND ENDING ON SEPTEMBER 30, 2015, AS ADOPTED BY ORDINANCE NO. 53-14 AND AMENDED BY ORDINANCE NO. 62-14, AND ORDINANCE NO. 03-15, BY PROVIDING FOR ADJUSTMENTS TO THE GENERAL FUND, GENERAL DEBT SERVICE FUND, UTILITY FUND, LIBRARY DEVELOPMENT FUND, HOMELAND SECURITY GRANT PROGRAM FUND, GENERAL CAPITAL PROJECTS FUND, VEHICLE AND EQUIPMENT REPLACEMENT FUND, TECHNOLOGY REPLACEMENT FUND AND HEALTH INSURANCE/FLEX ACCOUNT FUND; PROVIDING THAT EXPENDITURES FOR SAID FISCAL YEAR SHALL BE MADE IN ACCORDANCE WITH SAID BUDGET, AS AMENDED; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

6. Consider approval of an ordinance amending the Town of Flower Mound's Annual Budget for the fiscal year beginning October 1, 2015, and ending on September 30, 2016, as adopted by Ordinance No. 52-15 for adjustments to the General Fund, Utility Fund, Library Development Fund, Tree Preservation Fund, Parks and Recreation Special Activities Fund, and IRS Equitable Sharing Fund.

RECOMMENDATION: Move to approve an ordinance amending the Town of Flower Mound's Annual Budget for the fiscal year beginning on October 1, 2015, and ending on September 30, 2016, as adopted by Ordinance No. 52-15 for adjustments to the General Fund, Utility Fund, Library Development Fund, Tree Preservation Fund, Parks and Recreation Special Activities Fund, and IRS Equitable Sharing Fund.

ORDINANCE NO. 70-15

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE TOWN'S BUDGET FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2015, AND ENDING ON SEPTEMBER 30, 2016, AS ADOPTED BY ORDINANCE NO. 52-15, BY PROVIDING for adjustments to the General Fund, UTILITY FUND, LIBRARY DEVELOPMENT FUND, TREE PRESERVATION FUND, PARKS AND RECREATION SPECIAL ACTIVITIES FUND, AND IRS EQUITABLE SHARING FUND; PROVIDING THAT EXPENDITURES FOR SAID FISCAL YEAR SHALL BE MADE IN ACCORDANCE WITH SAID BUDGET, AS AMENDED; PROVIDING FOR PUBLICATION; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 21, 2015 BOOK 43 PAGE 6

7. Consider acceptance of grant funds from the U.S. Department of Food and Drug Administration for the Year 3 Retail Program Standards Grant Program sponsored by the Association of Food and Drug Officials.

RECOMMENDATION: Move to approve Move to authorize the acceptance of grant funds from the U.S. Department of Food and Drug Administration for the Year 3 Program Standards Grant Program, sponsored by the Association of Food and Drug Officials, and authorize the use of funds pursuant to the standards of the grant program.

RESOLUTION NO. 25-15

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS AUTHORIZING THE ACCEPTANCE OF GRANT FUNDS FROM THE U.S. DEPARTMENT OF FOOD AND DRUG ADMINISTRATION FOR THE YEAR 3 RETAIL PROGRAM STANDARDS GRANT PROGRAM, SPONSORED BY THE ASSOCIATION OF FOOD AND DRUG OFFICIALS; APPROVING THE USE OF GRANT FUNDS TO PROVIDE TRAINING AND EQUIPMENT TO SUPPORT INSPECTION ACTIVITIES IN FLOWER MOUND; PLEDGING THAT THE TOWN OF FLOWER MOUND WILL COMPLY WITH ALL PROGRAM REQUIREMENTS OF THE RETAIL PROGRAM STANDARDS GRANT PROGRAM.

8. Consider approval of a contract with HCC Life Insurance Company in the amount of \$456,497 for reinsurance coverage for the Town's Group Health Plan.

RECOMMENDATION: Move to approve a contract with HCC Life Insurance Company in the amount of \$456,497 for reinsurance coverage for the Town's Group Health Plan.

9. Consider approval of a brokerage service agreement with McGriff, Seibels & Williams of Texas, Inc., for employee benefits consultant/broker services, in the annual amount of \$50,000, and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Move to approve a brokerage services agreement with McGriff, Seibels, & Williams of Texas, Inc., for employee benefits consultant/broker services, in the annual amount of \$50,000, and authorization for the Mayor to execute the same on behalf of the Town.

10. Consider approval of a resolution granting the Flower Mound Police Department permission to use Federal Equitable Sharing Funds to purchase a Mobile Command Vehicle, and authorizing submission of the required justification letter to the federal government; and providing an effective date.

RECOMMENDATION: Move to approve of a resolution granting the Flower Mound Police Department permission to submit the required justification letter to the federal government for the purchase of a Mobile Command Vehicle.

RESOLUTION NO. 26-15

A RESOLUTION OF THE TOWN OF FLOWER MOUND, TEXAS, APPROVING THE POLICE DEPARTMENT'S REQUEST TO USE FEDERAL EQUITABLE SHARING FUNDS TO PURCHASE A MOBILE COMMAND VEHICLE, AND AUTHORIZING SUBMISSION OF THE REQUIRED JUSTIFICATION LETTER TO THE FEDERAL GOVERNMENT; AND PROVIDING AN EFFECTIVE DATE.

11. Consider approval of an amended Development Agreement for Canyon Falls and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Move to approve an amended Development Agreement for Canyon Falls, and authorize the Mayor to execute same on behalf of the Town.

12. Consider approval of a resolution authorizing the execution of a National Highway System (NHS) Program Project Agreement for State-Contracted Traffic Signal Construction (with a Municipality Providing Limited Materials or Labor) with the Texas Department of Transportation, for the purchase of traffic signal equipment for the FM 407 at Branch Crossing intersection, at a cost of \$16,775.00; and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Move to approve to approve a resolution authorizing the execution of a Surface Transportation Program – Metropolitan Mobility Agreement for State-Contracted Traffic Signal Construction (with a Municipality Providing Limited Materials or Labor) with the Texas Department of Transportation, for the purchase of traffic signal equipment for the FM 407 at Branch Crossing intersection, at a cost of \$16,775.00; and authorize the Mayor to execute same on behalf of the Town.

RESOLUTION NO. 27-15

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, APPROVING A SURFACE TRANSPORTATION PROGRAM – METROPOLITAN MOBILITY AGREEMENT FOR STATE-CONTRACTED TRAFFIC SIGNAL CONSTRUCTION (WITH A MUNICIPALITY PROVIDING LIMITED MATERIALS OR LABOR) WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR THE PURCHASE OF TRAFFIC SIGNAL EQUIPMENT FOR THE FM 407 AT BRANCH CROSSING INTERSECTION; AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

13. Consider approval of Interlocal Agreement with the Town of Grapevine for the development of a 50 acre tract within the City of Grapevine and Town of Flower Mound limits; and authorize the Mayor to execute the same on behalf of the Town.

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 21, 2015 BOOK 43 PAGE 8

RECOMMENDATION: Move to approve an Interlocal Agreement with the City of Grapevine for the development of a 50 acre tract with the City of Grapevine and Town of Flower Mound limits; and authorize the Mayor to execute same on behalf of the Town.

Councilmember Bryant moved to approve by consent items 1 – 13. Mayor Pro Tem Dixon seconded the motion. Each item, as approved by consent, is restated above along with the approved recommendation, and if applicable, the Ordinance or Resolution caption for each, for the record.

VOTE ON MOTION:*Motion passed.***AYES: GELBMAN, DIXON, BRYANT****NAYS: NONE****ABSENT(during vote for this item): WISE****ABSENT: WEBB****K. REGULAR ITEMS**

14. Public Hearing to consider a request for a Specific Use Permit No. 438 (SUP15-0009 – Hawk Road Cell Tower) to permit a new communication tower, and to consider adopting an ordinance providing for said amendment. The property is located at 6901 Hawk Road. *(The Planning and Zoning Commission recommended approval by a vote of 5 to 0 at its December 14, 2015, meeting.)*

Staff Presentation

Mr. Powell gave a presentation identifying or noting:

- General and detailed location
- Land use and zoning
- Photographs from the subject site
- Summary of discussion from P & Z
- Conceptual site plan
- Elevations
- Update on correspondence received to date
- Clarification as to what elements are part of the application before Council for action
- Is there any mitigation for the tree removal

Mr. Meredith clarified that this is a conditional zoning case so you have the right to impose reasonable conditions on this application, but those conditions have to relate to this land and this parcel. He also pointed out the federal telecommunications act has some rigid rules on a motion to deny a telecommunications facility; and in the event there is consideration in denying the application he requested to be provided direction indicating that would be the inclination of the Council. Furthermore, in that event, he requested that Council allow him to prepare a detailed written set of findings to support the denial.

Mr. Powell responded to questions from Council as follows:

- Clarification as to who commissioned the letter Council recently received

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 21, 2015 BOOK 43 PAGE 9**Applicant Presentation**

Gary Edenburn and Mark Pennell representing Crown Castle, 1701 Directors Blvd, Austin, Texas

Mr. Edenburn gave a presentation identifying or noting:

- Purpose of proposed 300 foot multi-carrier communications tower located at 6901 Hawk Rd
- Existing and proposed tower locations
- Representation of what the new tower would look like
- Tower service area

Mr. Edenburn or Mr. Pennell responded to questions or comments from Council as follows:

- What is the reasoning for the additional height
- Will better coverage be offered as part of the additional height
- What is the timeline on decommissioning and removing the two existing towers and ensuring those tenants move to the new tower (to prevent a scenario of three towers up for an extended period of time)
- If the tower is approved, will there be an improvement of services to Flower Mound residents
- Would you be able to utilize the existing towers to make the same improvements (is it more about the height or equipment)
- Is the weight of the old equipment versus the new equipment the same
- It is not necessarily Council's concern relative to any financial disputes related to an agreement; however, Council's concern is more about aesthetics (concept of removing two towers and putting up one), and things like the capability that the new structure will bring, such as someone's phone will work better)
- For the new tower interest in seeing buffering in the way of landscaping
- Interest in postponing the item to allow for:
 - 1) the various parties involved to figure out the financial end of it, and
 - 2) the applicant to work with Town staff for the Town's side of things relative to what is best for Flower Mound such as service enhancements, potential of reducing it down from three towers to one, and landscaping around the base of the facility and at the street level
- For the new tower, are the carriers in agreement to purchase equipment to get the new tower going while they decommission the old
- Do you have commitments from the carriers
- Clarification regarding structural modifications that would be needed
- Could the tower be placed anywhere in the vicinity that is less intrusive to neighboring home owners

Mayor Hayden opened the Public Hearing at 8:17 p.m.

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 21, 2015 BOOK 43 PAGE 10

The following individuals either spoke in support or opposition, or had questions / comments related to the item: *Names listed below don't necessarily reflect the order in which each person spoke and all addresses are located in Flower Mound unless otherwise indicated.*

Support: Comments/Questions	Opposition: Comments/Questions	Question(s)/Comments Only
No speakers.	Curt Jordening, 7000 Hawk Rd	No speakers.
	Linda Jordening, 7000 Hawk Rd	
	Ken Schmidt, 8337 Oswego Rd, Baldwinsville, NY 13027 With the following individuals donating their time: 1. Susan Hibbard, 2908 Windsor Dr 2. No name provided, 6101 Kings Rd, Double Oak 3. No name provided, 6101 Kings Rd, Double Oak 4. Milton Hibbard, 2908 Windsor Dr 5. Joe Carpenter, 2620 Surrey Woods Dr 6. John Davis, 1660 Land Fall, Bartonville 7. Priscilla Davis, 1660 Land Fall Cir, Bartonville 8. Heather Juhl, 6920 Hawk Rd 9. Sten Juhl, 6920 Hawk Rd	

Members of Council had the following questions for Mr. Schmidt:

- Who commissioned him to do the study
- Clarification that wireless service providers have interest in building their own tower(s)
- What is the cost of constructing a tower
- Are there any assurances that all the current tower tenants will transfer over

Mayor Hayden closed the Public Hearing at 8:49 p.m.

The Town Council convened into a closed meeting at 8:53 p.m. on December 21, 2015, pursuant to Texas Government Code Chapter 551.071 for consultation with the Town Attorney, and reconvened into an open meeting at 9:05 p.m. on December 21, 2015, to take action on the items as follows:

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 21, 2015 BOOK 43 PAGE 11

Mayor Pro Tem Dixon moved to postpone a request for a Specific Use Permit No. 438 (SUP15-0009 – Hawk Road Cell Tower) to permit a new communication tower, and adopt an ordinance providing for said amendment, to January 21, 2016. Councilmember Bryant seconded the motion.

VOTE ON MOTION:*Motion passed.***AYES: WISE, BRYANT, DIXON****NAYS: NONE****ABSENT: WEBB, GELBMAN**

15. Public Hearing to consider a request to amend the Town's Code of Ordinances by amending the development standards for an approximately ten acre parcel of property owned by the City of Grapevine, and to consider adopting an ordinance providing for said amendment. The property is generally located on the corner of Lakeside Parkway and Enterprise Road. *(The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its December 14, 2015, meeting.)*

Staff Presentation

Mr. Powell gave a presentation identifying or noting:

- Detailed location
- Concept plan
- The site is for the Mercedes training facility

Mr. Powell responded to questions from Council as follows:

- In allowing this to happen are we waiving our development standards for this property and it fall under Grapevine's ordinances
- Clarification regarding what this item does relative to the exemptions

Mayor Hayden opened the Public Hearing at 9:30 p.m. No one spoke in support or opposition. Mayor Hayden closed the Public Hearing at 9:30 p.m.

Mayor Pro Tem Dixon moved to approve a request to amend the Town's Code of Ordinances by amending the development standards for an approximately ten acre parcel of property owned by the City of Grapevine, and adopt an ordinance providing for said amendment. Councilmember Wise seconded the motion.

ORDINANCE NO. 71-15

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE DEVELOPMENT STANDARDS FOR AN APPROXIMATELY TEN ACRE PARCEL OF PROPERTY OWNED BY THE CITY OF GRAPEVINE; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A PENALTY TO FOR VIOLATION; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION:*Motion passed.***AYES: DIXON, BRYANT, WISE****NAYS: NONE****ABSENT: GELBMAN, WEBB**

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 21, 2015 BOOK 43 PAGE 12**L. BOARDS/COMMISSIONS (Executive Conference Room)**

Discuss and consider resignations, appointments, or evaluations for the following boards or commissions: Animal Services Board, Cultural Arts Commission, Environmental Conservation Commission, Parks, Arts and Library Services Board, SMARTGrowth Commission, Tax Increment Reinvestment Zone Number One (TIRZ #1), and the Transportation Commission.

No action taken.

M./N. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 9:31 p.m. on December 21, 2015, pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.074, 551.087, 551.072, and 551.071 to discuss matters relating to personnel, economic development negotiations, real property, and consultation with attorney, and reconvened into an open meeting at 10:10 p.m. on December 21, 2015, to take action on the items as follows:

- a. 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, Planning and Zoning Commission, and Mayor/Town Council.

Mayor Hayden, on behalf of the Town Council, directed staff to have an agenda item for Council discussion prepared for the January 21, 2016 Town Council meeting, that would include a resolution for the purpose of allowing the investigation report to be sent to the district attorney's office for their consideration.

Councilmember Bryant noted that given the seriousness of the matter, it is best to not take any action until the full Council is present.

- b. Discuss and consider economic development incentives, including retail centers, corporate relocation/expansion/retention, hospitality projects, and performance related to certain incentive agreements.

No action taken.

- c. Discuss and consider purchase, exchange, lease or value of real property for parks, public rights of way, and/or other municipal purposes and all matters incident and related thereto.

No action taken.

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 21, 2015 BOOK 43 PAGE 13

d. Consultation with Attorney as follows:

1. Consultation with Town Attorney regarding the Town Council investigation.

No action taken.

O. ADJOURN REGULAR MEETING

Mayor Hayden adjourned the meeting at 10:11 p.m. on Monday, December 21, 2015, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

THOMAS E. HAYDEN, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 3

CONSENT ITEM

DATE: January 21, 2016

FROM: Rochelle Ragas, Purchasing Manager

ITEM: Consider approval of the award of Request for Proposal Number 2016-10 to Metroport Meals on Wheels, Incorporated to establish an annual fixed-price contract to provide meals for the Town's Seniors Lunch Program in the estimated amount of \$55,575; and authorization for the Mayor to execute same on behalf of the Town. The contract is for one-year with four one-year renewal options.

BACKGROUND INFORMATION: On December 11, 2015 a Request for Proposals was issued and a notice to proposers was advertised. One (1) response was received by the due date of December 2, 2015. An evaluation committee consisting of representatives from Community Services evaluated the sole response to ensure that Metroport Meals on Wheels, Incorporated (MMOW) met all requirements as specified for this service.

MMOW partners with local restaurants and caterers to provide a nutritious lunch to the Seniors in Motion (SIM) members at the contracted rate of \$5.85 per person, per meal. The SIM lunch program serves approximately 95 meals per lunch offering. Each SIM member will be asked to purchase their lunch for \$4.00 per meal. The revenue collected each week will be credited back to the expenditure line item that will be utilized to fund this lunch program. The current SIM budget is \$18,500 for the lunch program, which will be utilized in part to defray the difference of \$1.85 per meal, per person to the Town, after SIM member contributions. The balance of this account will be utilized to fund the purchase of other items that are associated with the lunch program, such as paper products.

Based on the \$.30 increase in the cost per meal per lunch offering, the estimated annual expenditure for this service prior to SIM member contributions will increase by \$2,850, for a total estimated annual amount of \$55,575. The Town's estimated annual expenditure for this service after SIM member contributions will increase \$2,850, for a total estimated annual amount of \$17,575.

FISCAL IMPACT: \$17,575

Proposed Expenditure:	Account Number(s):
\$17,575	100-630-34300-5110

Finance Review by: Debra Wallace, Assistant Town Manager/CFO *DW*

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Contract
2. Evaluation Matrix

RECOMMENDATION: Move to approve the award of Request for Proposal Number 2016-10 to Metroport Meals on Wheels, Incorporated to establish an annual fixed-price contract to provide meals for the Town's Seniors Lunch Program in the estimated amount of \$55,575; and authorization for the Mayor to execute same on behalf of the Town. The contract is for one-year with four one-year renewal options.

	CONTRACT	1. Contract No.: 2016-10
		2. Contract Title: Seniors in Motion Lunch Program
		3. Council Approval Date January 21, 2016
4. Name and Address of Town Town of Flower Mound 2121 Cross Timbers Road Flower Mound, Texas 75028	5. Name and Address of Contractor Metroport Meals on Wheels, Incorporated Post Office Box 204 Roanoke, Texas 76262 Attn: Mary King E-Mail: maryking@metroportmow.org	
6. Contract Agreed Amount: Estimated annual amount \$55,575.00		
7. The Town of Flower Mound (Town) and the Contractor agree to perform this Contract in strict accordance with the documents <u>listed below</u>, all of which are made a part of this contract: Attachment A: Proposers Response Attachment B: Specifications/Scope of Work Attachment C: Special Provisions Attachment D: General Terms and Conditions		
8. Performance Period: One (1) year with options to renew for four (4) additional one (1) year periods.	9. Approved as to Form: N/A Town's Legal Counsel	
10. Metroport Meals on Wheels, Incorporated By <u></u> (Signature of Authorized Representative) Date Signed: <u>12/28/15</u> Print Name: <u>Mary King</u>	11. Town of Flower Mound By _____ (Signature of Authorized Representative) Date Signed: _____ Tom Hayden, Mayor	

5.1.4 Cost Proposal

Metroport Meals On Wheels, Inc. proposes, as specified in Option 1 of the Request for Proposal, to provide meals and personnel to set-up, serve, and clean-up serving area after each meal for the Seniors in Motion Luncheon Program in quantities as needed and approved by the Town of Flower Mound on Tuesdays and Thursdays at a cost of \$5.85 per meal.

This bid is inclusive of

- all costs of planning, securing, and serving the meal
- providing an employee of MMOW to coordinate and plan, secure, and serve the meal and also to clean-up the serving area at the completion of the meal
- all costs associated with the designated employee
- providing insurance as specified
- all accounting and record keeping associated with the program

Metroport Meals On Wheels

Proposal to the Town of Flower Mound

Solicitation No. 2016-10

Due Date: December 2, 2015 at 11:00 a.m. CST

Attention: Rochelle M. Ragas, CPPB

Seniors in Motion Lunch Program

5.1 Proposal

Metroport Meals On Wheels, Inc. proposes, as specified in Option 1 of the Request for Proposal, to provide meals and personnel to set-up, serve, and clean-up serving area after each meal for the Seniors in Motion Luncheon Program in quantities as needed and approved by the Town of Flower Mound on Tuesdays and Thursdays at a cost of \$5.85 per meal.

5.1.1 Company

Metroport Meals On Wheels (MMOW) is a grassroots volunteer advocate for the elderly and those in need through home-delivered meals, senior center lunch programs, and other support services. MMOW is *Neighbors Helping Neighbors* to alleviate hunger, isolation, and loneliness in our communities, and to foster the independence, worth, and dignity of each individual we serve.

MMOW has continuously provided meals for senior center luncheons for thirty-five years. MMOW currently provides senior center luncheons in Colleyville, Evergreen/Keller, Flower Mound, Haslet, Highland Village, Justin, Keller, Richland Hills, Roanoke, Southlake. Luncheon frequency varies by community and is defined by community specification. Luncheon frequency ranges from one luncheon per month to three luncheons per week.

Unlike the majority of Meals On Wheels programs, MMOW is NOT federally funded, nor is it a United Way agency. MMOW has tailored its program to meet the needs of the participants and communities we serve. MMOW believes that the participants and communities benefit most with the local approach, with the partnership of local food partners and local volunteers.

MMOW has made a conscious effort to diversify sources of income. To that effect, special events, our resale shop, and individual donors have provided the greatest sources of revenue. Historically, total revenue has been derived from the following sources:

Individuals	26%	Foundation, Civic, Church	12%
Events	21%	City contracts	9%
Resale	25%	Misc. (fees, interest)	7%

What began as concerned volunteers cooking and delivering a weekly meal to elderly or sick neighbors has grown into a strong grassroots organization that provided 66,301 meals to over 1,200 participants in twenty-two communities in three counties in fiscal 2015 and over 1.2 million meals since 1980.

5.1.2 Lunch Program

MMOW's luncheon program is built on the philosophy of providing seniors with a "not-to-be-missed" special occasion. In many centers, seniors actually dress up for the luncheons. Birthdays are celebrated monthly. Attendance is encouraged regardless of whether the participants are lifelong residents or new to the community. MMOW operates most senior center luncheons on a "No Reservations Necessary" basis and whole-heartedly welcomes any senior seeking a meal or fellowship.

MMOW strives to plan menus that include foods that the seniors like and enjoy eating. Because food preferences are highly personal and involve individual tastes, MMOW incorporates a variety of food partners and a wide variety of food selections during the year. No matter how talented the chef and how varied the menus might be, a steady diet of food from a single source will become monotonous. The advantage of working with food partners rather than an institutional kitchen is the continual variety of styles, seasonings, and preparations that provide for an enhanced dining experience. The wide variety of food partners also allows maximum flexibility in planning menus that complement special program events and activities at the Senior Center.

Menus and meal plans are based on a 3 oz. serving of cooked protein and ½ cup servings of 2 vegetables, appropriate bread and margarine plus sugar free lemonade and unsweetened tea.

During fiscal 2015, MMOW served 7,726 meals for Flower Mound's Seniors in Motion program. Luncheon attendance ranged from a low of 43 to a high of 130.

Restaurant partners during 2015 included

- Mama's Daughter's Diner
- Chasin' Tail BBQ
- Boston Market
- Market Street
- Old Town Market
- Swirl Bakery
- Enzo's
- Salerno's
- Cotton Patch
- Schlotzskys
- East Ocean
- Rosa's
- Dickey's

Sample menu that were served during 2015

1. **Pecan crusted chicken**
 Pasta
 Salad
 Bread
2. **Roasted turkey**
 Macaroni & cheese
 Mixed veggies
 Roll
3. **Catfish**
 Rice
 Cole slaw
 Roll
4. **Meatball subs**
 Salad
 Chips
5. **Chopped beef sandwiches**
 Potato salad
 Baked beans
 Chips
6. **Meatloaf**
 Mashed potatoes
 Green beans
 Roll
7. **Beef and chicken soft tacos**
 Mexican rice
 Refried beans
 Chips & salsa
8. **Grilled chicken**
 Broccoli rice casserole
 Carrots
 Roll
9. **Ham**
 English peas
 Sweet potatoes
 Roll
10. **Sesame chicken**
 Beef lomein

Chinese vegetables and rice
Egg roll

MMOW provides a Luncheon Coordinator for each center. The Luncheon Coordinator is an employee of MMOW whose sole responsibility is to handle all aspects of the luncheon from planning to kitchen clean-up after the meal. All costs of this employee are borne by MMOW and included in the meal price quoted in this proposal.

5.1.3 Experience

MMOW has exclusively served the senior community in Flower Mound since the inception of the Town's formal senior program in April, 2005, when MMOW was invited by the Town of Flower Mound to provide luncheons. In 2011, the Town initiated an RFP for the Seniors in Motion luncheon program and MMOW was awarded the contract. (Note: MMOW also provides home-delivered meals to elderly, frail, chronically ill or disabled individuals of any age in Flower Mound. Home-delivered meals do not fall within the auspices of this RFP.)

In addition to Flower Mound, MMOW currently provides the following senior center luncheons:

Colleyville
1st & 3rd Fridays

Evergreen/Keller
4th Mondays
Contact: Jan Heineman 817-741-6000

Haslet
Every Thursday
Contact: Mayor Bob Golden 817-439-5931

Highland Village
1st & 3rd Thursdays

Justin
Every Wednesday

Keller
Tuesdays, Wednesdays, and Fridays
Contact: Kyle Cooper 817-743-4371

Richland Hills
4th Fridays
Contact: Jason Moore 817-616-3745

Roanoke

Every Wednesday

Contact: Susan Grandinetti 817-491-6060

Southlake

Every Tuesday

Contact: Soheila Mashat Phelps 817-748-8398

MMOW was invited by the City of Keller to provide the luncheon program at their senior center in March, 2013. Then Keller Senior Center Director Renee Garrett cited a decline in participation and participants' dissatisfaction with the food as reasons for the change. In 2013, MMOW served an average of 213 lunches per month at the Keller Senior Center. In 2015, the monthly average was 265.

MMOW believes that the seniors benefit most with a local approach. MMOW forms relationships with local food partners who provide maximum variety and value to meals within the constraints of our budget. Our food partners are usually very generous in the portions they provide thus allowing some flexibility in the ability to accommodate drop-in guests for a luncheon.

As a nonprofit charity, MMOW's mission resonates with our food partners and inspires their benevolence. This relationship enables MMOW to provide meals that far exceed the fee or donation seniors pay for the meal. MMOW's mission also resonates with donors who value the opportunity for seniors to participate in senior center luncheon programs. It is their donations as well as proceeds from special events and MMOW's resale shop that provide funds which bridge the gap between the cost \$5.85 per meal that is proposed under this RFP and the \$8.78 actual cost to MMOW in providing the meal. (per 2014 numbers; final numbers for 2015 are pending).

Two significant factors differentiate MMOW from other Meals On Wheels programs.

- Since its inception in 1980, MMOW has chosen not to accept federal funds. This enables MMOW to make decisions based on local needs, preferences, and conditions. It enables MMOW to serve anyone of any age in the home delivered meal program. It enables the formation of local partnerships which have yielded so many benefits for senior center participants.

Many Meals On Wheels programs provide only home delivered meals. MMOW believes that both programs are vitally important to seniors. A growing body of research links chronic loneliness to serious physical and mental health risks. For MMOW, isolation is as compelling a need for meals as is hunger. Because we feel that socialization is such an important combatant to isolation, MMOW often adjusts home delivery schedules to enable a senior to attend a senior center luncheon.

Because food preferences are highly personal and involve individual tastes, MMOW occasionally receives complaints about a meal based on those preferences. As a collaborative party

dedicated to the success and growth of the SIM program, MMOW strives to engage in dialogue and work to resolve concerns before a situation escalates to a formal complaint.

Organizationally, MMOW has not had a formal complaint filed about its programs. MMOW has had one Workers Comp claim during the past ten years and was the subject of a lawsuit by a disgruntled former employee in 2006.

PROPOSAL RESPONSE FORMS

TO: Purchasing Manager
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028

FROM: Metropoint Meals On Wheels
PROPOSER

1 PROPOSAL PRICING:

Please submit in accordance with instructions in Specifications/Scope of Work – Section 5.

2 INSURANCE REVIEW VERIFICATION

2.1 Does the proposer currently carry the insurance coverage as specified in the Special Provisions?

☒ Yes ☐ No

2.2 If no, has the proposer reviewed the steps necessary, including cost, with its insurance agent, broker or internal department to ensure it will obtain the specified insurance?

☐ Yes ☐ No

3 INSURANCE AFFIDAVIT

Town of Flower Mound Solicitation No. 2016-10

NAME OF PROPOSER: _____

To be completed by the Proposer:

I confirm that, if awarded the Contract, I will comply with all of the Insurance Provisions, as stated in the Insurance Requirements of Solicitation No. 2016-10, and said insurance shall be provided without change to the prices offered.

Name of Proposer: Metroport Meals On Wheels

Authorized Agent (please print): Mary King

Authorized Agent's Signature: Mary King

Date: 12/1/15

To be completed by Proposer's insurance provider:

I confirm that, if awarded the Contract, the Proposer name stated above either has insurance coverage or can obtain coverage in compliance with the requirements of Town of Flower Mound Solicitation No. 2016-10. I further confirm that this Insurance Agency can comply with the insurance provisions as stated in the Insurance Requirements.

Insurance Agency: _____

Insurance Agent's Name (please print): _____

Insurance Agent's Signature: _____

Date: _____

3 INSURANCE AFFIDAVIT

Town of Flower Mound Solicitation No. 2016-10

NAME OF PROPOSER: _____

To be completed by the Proposer:

I confirm that, if awarded the Contract, I will comply with all of the Insurance Provisions, as stated in the Insurance Requirements of Solicitation No. 2016-10, and said insurance shall be provided without change to the prices offered.

Name of Proposer: _____

Authorized Agent (please print): _____

Authorized Agent's Signature: _____

Date: _____

To be completed by Proposer's insurance provider:

I confirm that, if awarded the Contract, the Proposer name stated above either has insurance coverage or can obtain coverage in compliance with the requirements of Town of Flower Mound Solicitation No. 2016-10. I further confirm that this Insurance Agency can comply with the insurance provisions as stated in the Insurance Requirements.

Insurance Agency: Wortham Insurance

Insurance Agent's Name (please print): Henry Penner

Insurance Agent's Signature: Henry Penner / sm

Date: 12/2/15

4 PROPOSAL ENDORSEMENT FORM

The undersigned, in submitting this Proposal and endorsement of same, represents that he/she is authorized to obligate his/her firm, and that he/she has read this entire Solicitation package, is aware of the covenants contained herein and will abide by and adhere to the expressed requirements.

THE PROPOSER AGREES THAT THIS PROPOSAL, WHEN ACCEPTED BY THE TOWN, SHALL CONSTITUTE A CONTRACT EQUALLY BINDING BETWEEN THE PROPOSER AND THE TOWN. Acceptance may be acknowledged in writing by an Acceptance Letter or Purchase Order issued by the Town, or a Contract document issued by the Town and executed by both parties, followed by a Notice to Proceed issued by the Town. Each of these forms constitutes a legal contract equally binding between the Successful Proposer and the Town. After Proposal acceptance, no different or additional terms shall become part of the Contract without a properly executed change order.

PROPOSAL FOR SOLICITATION NO. 2016-10

SUBMITTED BY:

Metroport Meals On Wheels
(OFFICIAL NAME OF PROPOSING FIRM)

By: Mary King
(Original Signature of Proposing Firm's Authorized Agent)

**Must be signed for proposal
to be considered responsive**

Mary King
(Typed or Printed Name)

Executive Director
(Title)

maryking@metroportnow.org
(Email)

817-491-1141
(Telephone Number)

12/1/15
(Date Signed)

SPECIFICATIONS / SCOPE OF WORK

1 INTRODUCTION / GENERAL OVERVIEW

The Town of Flower Mound ("Town") is requesting proposals for its Seniors In Motion Lunch Program as described in this proposal document. The Town reserves the right to select one or more vendors for the lunch program as a result of this process.

The Town's Seniors in Motion (SIM) program started in 2005. The program currently operates within the Flower Mound Senior Center located at 2701 West Windsor Drive, Flower Mound, TX. The SIM program is currently averaging 80-120 members per lunch offering. Lunches will be provided on Tuesdays and Thursdays of each week.

2 SPECIFICATIONS / SCOPE OF WORK

The selected vendor(s) will be required to perform all necessary functions in order to effectively provide meals in compliance with the following requirements:

2.1 Menu

- 2.1.1. Vendor will provide a menu of at least ten (10) different meal combinations per quarter.
- 2.1.2. All meals shall be jointly reviewed and agreed upon by the Town and vendor thirty (30) days in advance. The Town anticipates approximately 200 lunches per week. The Town will notify the vendor of required number of meals each Monday by 12:00pm for Tuesday's lunch and each Wednesday by 12:00pm for Thursday's lunch.

2.2 Delivery

The Town reserves the right to select the delivery option that is in the best interest of the Town.

2.2.1 Option 1

- 2.2.1.1 Successful vendor(s) will set-up food, serve, and clean-up serving area after each meal.
- 2.2.1.2 Food must be set-up by 11:50am on each Tuesday and Thursday.
- 2.2.1.3 Lunch will be served from 12:00pm to 12:30pm, with the exception of designated Town holidays.
- 2.2.1.4 The Town will supply cups, plates, utensils, etc. for lunch patrons.

2.2.2 Option 2

- 2.2.2.1 Successful vendor(s) will deliver food by 11:45am on each Tuesday and Thursday.
- 2.2.2.2 Food must be delivered in disposable foil pans for buffet style serving.
- 2.2.3.3 The Town will supply cups, plates, utensils, etc. for lunch patrons.

2.3 Delivery location

Flower Mound Senior Center
2701 West Windsor Drive
Flower Mound, TX 75028

- 2.4. Vendor shall ensure that meals are delivered to the lunch site at the proper temperature; hot food shall be 140 degrees Fahrenheit or higher, cold food shall be 40 degrees Fahrenheit or lower. Frozen food shall be 32 degrees Fahrenheit or lower.

2.5 Food Standards and Quality

2.5.1 Standards

- 2.5.1.1 Each meal shall consist of a minimum of 3.0 oz. cooked serving of protein obtained from an entrée, two (2) ½ cup servings of vegetables and/or fruits, one (1) serving of bread, one (1) serving of margarine, one (1) ½ pint serving of sugar free lemonade, and one (1) ½ pint serving of unsweetened tea.
- 2.5.1.2 Each meal should meet or exceed 1/3 the daily recommended allowance by the American Dietetic Association (ADA) for people age 50 or older.
- 2.5.1.3. All food and raw food ingredients will be wholesome (sound condition; free from spoilage, filth, or other contamination; and safe for human consumption) and of good quality (acceptable in appearance, texture and flavor).
- 2.5.1.4 Food shall be obtained from sources that comply with all laws and regulations relating to food and food labeling.
- 2.5.1.6. The use of food in hermetically sealed containers that was not prepared in a food processing establishment is prohibited.
- 2.5.1.7. Dated products must not be used beyond the 'pull date' on fresh meats and milk, and beyond the quality assurance date on other food items.
- 2.5.1.8 The optimal storage temperature for food is required to maintain safe food practices.

2.5.2 Quality

- 2.5.2.1 Ground Beef – United States Department of Agriculture (USDA) ground with fat not to exceed 20% and a maximum textured vegetable protein content of 7%.
- 2.5.2.2 Pork – USDA Number '1' and tender with a minimum of fat.
- 2.5.2.3 Lamb – USDA choice.
- 2.5.2.4 Poultry – USDA Grade 'A' to be used for all fresh or frozen poultry or poultry products. Necks and backs may not be used. Serving portions shall include a breast, wing, or thigh. Chicken quarters shall come from a 2½ pound or larger chicken to provide a 3.0 oz. cooked meat. If chicken quarters are served the pan must contain 50% white meat and 50% dark meat.
- 2.5.2.5 Variety Meats – Grade Number '1' from USDA Government inspected plant.
- 2.5.2.6 Fish and Seafood – Fresh or frozen fish and seafood must be used. Frozen fish or seafood must be nationally distributed brand packed under continuous inspection of the U.S. Department of Interior.
- 2.5.2.7 Cheese – USDA Grade 'A', non-processed cheese.
- 2.5.2.8 Eggs and Dairy – USDA Grade 'A' or better. Low fat (2%) milk shall be used. Milk will be dated with a 'pull date' and shall not be used beyond the 'pull date'.

2.5.2.9 Fruits and Vegetables – Fresh fruits and vegetables shall be USDA Number '1' or better. Frozen fruits and vegetables shall be USDA Grade 'A' quality. Canned vegetables shall be USDA Grade 'A' quality. Canned fruits shall be USDA Grade 'A' quality.

2.5.2.10 Breads, Cereals, and Pasta – Breads will be either whole grain or enriched products. End pieces of loaf breads shall not be counted as servings. Pasta products will be enriched and made from high grade durum or semolina wheat. Rice shall be either enriched or parboiled.

2.5.2.11 Contractor shall provide condiments and 'extras' as necessary based on the meal being provided.

2.6 Vendor Requirements

2.6.1 Vendor shall maintain food preparation facilities in a sanitary condition at all times.

2.6.2 Vendor will employ and train food service employees.

2.6.3 Vendor will use standard food cost control methods, furnish supervisory personnel in setting-up and maintaining the operation at a high standard.

2.6.4 Vendor will do all buying and recordkeeping, including payrolls.

3 SAMPLINGS

During the evaluation process, the Town will request food samplings from one or more selected vendors. Food samplings shall be provided at no cost to the Town for approximately fifteen (15) seniors and Town staff, and will be representative of the type of food included in the meal for proposed lunch program. Food samplings may be requested as early as the first week following the proposal due date.

4 PERMITS

Vendor must have the proper permits from both the Texas Department of State Health Services, and the local municipality where the food is being produced, in order to legally operate as a food catering business.

5 SUBMITTALS

The following items must be submitted with your proposal response in order to be considered. All information contained must be clearly explained. Failure to provide requested information may cause your proposal to be deemed non-responsive.

5.1 Proposal (submitted in the following order)

5.1.1 Company Information

- Provide a brief history of your company, including number of years in business, hours of operation, etc.
- Include any financial information and relationships with a parent company or holding company, if applicable.

5.1.2 Lunch Program

- Provide a description of the lunch program that you are proposing.

ATTACHMENT B

- Include any establishments that you will be partnering with in order to accomplish meal preparation and delivery to the Town.
- Copies of menu(s)

5.1.3 Experience

- Provide information for same or similar services provided
- Provide names of at least five (5) current clients who may be contacted during the request for proposal process.
- Detail what you perceive to be your company's strengths. State specifically what differentiates you from your competitors.
- Disclose any complaints within the past ten (10) years that have been brought against your company and describe the outcome, including complaints to any licensing authority or agency or any lawsuits.

5.1.4 Cost Proposal – to be submitted in a separate envelope as stated in Evaluation Criteria – Section 3.4.

- Provide a detailed pricing proposal for your products and services, to include a price per person, per meal. Clearly identify proposed price per person, per meal for Option 1 and/or Option 2 as described in Section 2 – Specifications/Scope of Work.
- Include any and all fees associated with providing this service to the Town.

5.2 Additional Submittals**5.2.1 Copies of all applicable permits****5.2.2 Most recent health and sanitation inspection report(s)****5.2.3 Copy of current insurance certificate****6 BEST AND FINAL OFFER**

The Town reserves the right to request a Best and Final Offer (BAFO) from any and all proposers to this solicitation.

SPECIAL PROVISIONS

1 TOWN'S RIGHT TO INSPECT AND AUDIT

- 1.1 The Contractor (and Contractor's suppliers, vendors, subcontractors, insurance agents and other agents) shall maintain and the Town shall have the right to examine records, documents, books, accounting procedures and practice and any other supporting evidence deemed necessary by the Town to substantiate compliance with the terms of this Contract, including Change Orders. Such right of examinations shall include reasonable access to and cooperation by all Contractor personnel who have worked on or have knowledge related to the performance of this Contract. Proprietary/Trade Secret information pertaining to this Contract may not be withheld from the Town or the Town's authorized representative.
- 1.2 The Contractor's, subcontractors' and related agent and vendor organization's documents, records and other evidence shall be subject to inspection and/or reproduction by the Town, its agents and authorized representatives. The Contractor shall provide the Town with retrievals of computer-based records or transactions that the Town determines to be necessary to conduct the audit. There shall be no charge to the Town for reasonable use of the Contractor's photocopy machine while conducting the audit, nor for any cost of retrieving, downloading to diskette, and/or printing any records or transaction stored in magnetic, optical, microfilm, or other media. The Contractor shall provide all records and retrieval requested, within seven (7) calendar days.
- 1.3 The documents, etc., described above shall be made available at the office of the Contractor at all reasonable times, for inspection, audit, and reproduction, until the expiration of three (3) years from the date of the Town's final acceptance of the Work. Records, which relate to appeals or litigation or settlement or claims arising out of the performance of this Contract, shall be made available for a period of three (3) years from the date of the final disposition of such appeals, litigation, or claims. The Contractor shall provide adequate and appropriate workspace to conduct all inspections, audits, and reviews. The Town shall provide the Contractor with a reasonable advance notice of intended audit, inspections, and reviews.
- 1.4 The Contractor shall insert an item containing the Audit provisions in 1.1 through 1.5 of this section, including this paragraph, in all subcontracts hereunder except as altered as may be necessary for the proper identification of the contracting parties and the Town under this Contract. Failure to insert these Audit provisions in all subcontracts hereunder shall be reason to exclude some or all of the related costs from amounts payable to the Contractor pursuant to this Contract.
- 1.5 If an audit or review in accordance with this Section disclosed overcharges (of any nature), by Contractor, in excess of five percent (5%) of the contract value audited, the cost of the Town's audit shall be paid by the Contractor.

2 CONTRACT TERM

- 2.1 This Contract, if awarded, shall be for an initial **one-year period** commencing as of the date specified in the Notice to Proceed letter, to be issued by the Town's Purchasing Manager, unless renewed under the provisions below.
- 2.2 This Contract, as executed, shall include the **options to renew for four (4)** additional 1-year periods, under the same terms and conditions, with said options to be exercised solely at the Town's discretion.

3 INSURANCE PROVISIONS

The Proposer shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Proposer, his agents, representatives, employees or subcontractors. The cost of such insurance shall be borne by the Proposer. A certificate of insurance meeting all requirements and provisions outlined herein shall be provided to the Town prior to contract execution. Renewal certificates shall also be supplied upon expiration.

3.1 MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

- 3.1.1 ISO Form Number GL 00 01 (or similar form) covering Commercial General Liability. "Occurrence" form only, "claims made" forms are unacceptable.
- 3.1.2 Workers compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.
- 3.1.3 Automobile Liability as required by the State of Texas, covering all owned, hired, or non-owned vehicles. Automobile liability is only required if vehicle(s) will be used under this contract.

3.2 MINIMUM LIMITS OF INSURANCE

Proposer shall maintain limits throughout this Contract not less than:

- 3.2.1 Commercial General Liability: \$500,000 per occurrence / \$1,000,000 in the aggregate for third party bodily injury, personal injury and property damage. Policy will include coverage for:
 - 3.2.1.1 Premises/Operations
 - 3.2.1.2 Broad Form Contractual Liability
 - 3.2.1.3 Products and Completed Operations
 - 3.2.1.4 Personal Injury
 - 3.2.1.5 Broad Form Property Damage
- 3.2.2 Workers compensation and Employer's Liability: Workers Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability minimum limits of \$100,000 each accident, \$300,000 Disease-Policy Limit, and \$100,000 Disease-Each Employee.

Automobile Liability: \$500,000 Combined Single Limit. Limits can only be reduced if approved by the Town. Automobile liability shall apply to all owned, hired, and non-owned autos.

- 3.2.3 All policies shall waive the insurer's right of recovery or subrogation against the Town.

3.3 DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductible or self-insured retention in excess of \$10,000 must be declared to and approved by the Town.

3.4 OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain the following provisions:

3.4.1 General Liability and Automobile Liability Coverages:

- 3.4.1.1 The Town, its officers, officials, employees, boards and commissions and volunteers are to be added as "Additional Insured's" relative to liability arising out of activities performed by or on behalf of the Proposer, products and completed operations of the Proposer, premises owned, occupied or used by the Proposer. The coverage shall contain no special limitations on the scope of protection afforded to the Town, its officers, officials, employees or volunteers.
- 3.4.1.2 The Proposer's insurance coverage shall be primary insurance in respects to the Town, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Town, its officers, officials, employees or volunteers shall be in excess of the Proposer's insurance and shall not contribute with it.
- 3.4.1.3 Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Town, its officers, officials, employees, boards, commissions or volunteers.
- 3.4.1.4 The Proposer's insurance shall apply separately to each insured against whom the claim is made or suit is brought, except to the limits of the insured's limit of liability.

3.4.2 Worker's Compensation and Employer's Liability Coverage:

- 3.4.2.1 The insurer shall agree to waive all rights of subrogation against the Town, its officers, officials, employees and volunteers for losses arising from work performed by the Proposer for the Town.

3.4.3 All Coverages:

- 3.4.3.1 Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after 30 days written notice to the Town for all occurrences, except 10 days written notice to the Town for non-payment.

3.5 ACCEPTABILITY OF INSURERS

The Town prefers that insurance be placed with insurers with an A.M. Best's rating of no less than A- VI, or better.

3.6 VERIFICATION OF COVERAGE

The Proposer shall provide the Town certificates of insurance indicating the coverages required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates of Insurance similar to the ACCORD form are acceptable. Town will not accept Memorandums of Insurance or Binders as proof of insurance. The Town reserves the right to require insurance endorsements and complete, certified copies of all required insurance policies at any time.

END OF SPECIAL PROVISIONS

GENERAL TERMS AND CONDITIONS

1. **APPLICABILITY:** These standard terms and conditions apply to all goods or services procured by the Town of Flower Mound ("Town"), unless otherwise stated in the specifications. The instructions contained herein shall be incorporated into the contract as well as any subsequent purchase order(s) issued for goods or services, and shall be included as part of the specifications issued herewith.
2. **NOTIFICATION:** The Town of Flower Mound advertises procurement opportunities through www.flower-mound.com, [www.IonWave Technologies, Inc.com](http://www.IonWaveTechnologies.com) and the *Denton Record Chronicle*. The Town shall not be responsible for information distributed by sources other than those listed.
3. **ADDENDA:** Any revisions to the information contained herein will be issued in the form of addenda. The sole issuing authority shall be vested in the Town of Flower Mound Purchasing Division. If addenda contain material changes to the specifications or pricing form, the Proposer shall acknowledge receipt of addenda in the designated section on the Bid/Proposal Certification Form. It is the responsibility of the Proposer to obtain and acknowledge any and all addenda. Failure to acknowledge receipt of addenda may be cause to deem such submission non-responsive.
4. **SILENCE OF SPECIFICATION:** The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.
5. **MINOR DEFECT:** The Town of Flower Mound reserves the right to waive any minor defect, irregularity, or informality in any proposal. Minor defects, irregularities or informalities will not affect the end product/performance intended by the specifications. The Town also reserves the right to reject any or all proposals with or without cause prior to award.
6. **ELECTRONIC SUBMISSIONS:** The Town of Flower Mound utilizes IonWave Technologies, Inc. to advertise and receive proposals electronically over the Internet. Electronic submissions through IonWave Technologies, Inc. shall be electronically signed and dated by a duly designated representative or agent of the company submitting the proposal. Proposer should clearly and concisely provide all requested information as stated in the proposal document. Failure to provide the requested information may be reason to deem such submission non-responsive.

The Town of Flower Mound has elected to fund a monthly fee to IonWave Technologies, Inc. in order to eliminate all costs for proposer to utilize the system for proposals solicited by the Town. For **Cooperative Procurements and Reverse Auctions ONLY**, proposer agrees to pay to IonWave Technologies, Inc. a transaction fee of one percent (1%) of the total awarded amount of all contracts for goods or services awarded to the respondent. Cooperative procurements and Reverse Auctions will be clearly identified in the proposal documents. To assure that all respondents are treated equally, the fee will be payable whether the bid/proposal is submitted electronically, or by paper means. Refer to [www.IonWave Technologies, Inc.com](http://www.IonWaveTechnologies.com) for further information.

7. **PAPER SUBMISSIONS:** Paper submissions shall be submitted on the forms provided by the Town of Flower Mound and must be signed and dated by a duly designated representative or agent of the company submitting the proposal. Proposer shall clearly and concisely provide all requested information as stated in the proposal document. Failure to provide the requested information may be reason to deem such submission non-responsive.
8. **PRESENTATION OF PROPOSALS:** Paper submissions shall be presented to the Town of Flower Mound Purchasing Division, 2121 Cross Timbers Road, Flower Mound, Texas 75028 by

ATTACHMENT D

the stated deadline. Paper submissions shall be presented in a sealed envelope with proposer's name and the proposal number clearly identified on the outside of the envelope.

9. **LATE SUBMISSIONS:** The date/time stamp located in the Town of Flower Mound Purchasing Division serves as the official time clock. Submissions received in the Purchasing Division after the stated deadline shall be refused and returned unopened. The Town of Flower Mound is not responsible for issues encountered with methods of delivery.
10. **PRICING:** Prices offered shall be submitted for units of quantity as specified in the proposal document, extended and totaled. In the case of a discrepancy in the extended price, the unit price shall govern and control. Any alteration, strike-through or erasure made prior to proposal opening shall be initialed by the signer of the proposal, guaranteeing authenticity.

FOR BIDS ONLY: Prices offered **cannot** be altered or amended after the submission deadline. Bids may not be changed for the purpose of correcting minor errors in bid price after bid opening. However, a bidder may be able to withdraw a bid only if it contains a substantial mistake that would, in the sole opinion of the Town, cause a great hardship if enforced against the bidder.
11. **TAXES:** The Town is exempt from paying federal excise and transportation taxes and Texas State or local sales and use taxes. **Tax shall not be included in prices offered.** A Tax Exempt Form will be provided by the Town of Flower Mound upon request. A request for a Tax Exempt Form can be submitted in writing to purchasing@flower-mound.com or by contacting the Purchasing Division at 972.874.6006. In no event is it the Town's responsibility to provide a tax exempt form without a request for the same.
12. **WITHDRAWAL OF PROPOSAL:** Proposer agrees that its proposal may not be withdrawn or cancelled for a period of one hundred twenty (120) days following the date and time designated for the receipt of proposal without written approval of the Purchasing Manager.
13. **F.O.B./DAMAGE:** Prices offered shall be F.O.B. Final Destination, Town of Flower Mound, Texas, and shall be all inclusive of shipping, handling and packaging costs. The Town accepts and assumes no liability for goods delivered in damaged or unacceptable condition. The successful proposer shall be responsible for handling all claims with carriers, and in case of damaged or unacceptable goods, shall ship replacement goods immediately upon notification by the Town.
14. **PREPARATION COST:** All costs associated with the preparation of an offer shall be borne by the proposer. The Town will not be liable for any costs associated with the preparation, transmittal, or presentation of submissions, or with any materials submitted in response to the same.
15. **TESTING:** At the Town's discretion, testing may be required prior to award of proposal or prior to delivery of goods or services. Testing shall be performed without expense to the Town.
16. **SAMPLES:** At the Town's discretion, samples may be required prior to award of proposal, or prior to delivery of goods or services. Samples shall be provided at no cost to the Town. Samples should not be enclosed with submission unless specifically requested.
17. **QUALITY:** Any catalog, brand names, or manufacturer's reference in this proposal packet is descriptive and **not** restrictive, and is intended to indicate type and minimum quality level desired for comparison purposes, unless otherwise stated herein. All products and/or optional equipment offered shall be new and of current manufacture. No items of a demonstrator, leased, reconditioned, rebuilt, refurbished, repossessed or used nature shall be considered, unless otherwise specifically stated herein.
18. **PROPOSAL OPENINGS:** The names of all proposers will be read aloud at the Town's

ATTACHMENT D

scheduled opening for the designated proposal. However, the naming or reading of a proposal shall not be construed as a comment on the responsiveness of such proposal, or as any indication that the Town accepts such proposal as responsive. Pricing information will not be released until after a proposer is selected and the contract is awarded.

The Town will make a determination regarding the responsiveness of proposals submitted based upon compliance with all applicable laws and the Town's purchasing guidelines and project documents including, but not necessarily limited to, the proposal specifications and contract documents. The Town will notify the successful proposer upon award of the contract; and, if required by State law, all proposals received will be available for inspection after award.

19. **SUMMARY SHEET**: Proposal summary results are typically published within one (1) business day after the scheduled opening. Proposal summary results will be available for public viewing at www.flower-mound.com and [www.IonWave Technologies, Inc.com](http://www.IonWaveTechnologies.com). Interested parties desiring a copy of a proposal summary sheet may request the same by submitting a written request to purchasing@flower-mound.com. **RESULTS WILL NOT BE RELAYED OVER THE TELEPHONE.**
20. **ANTI-COLLUSION**: In submitting a proposal, Proposer certifies that they have not participated in nor have they been party to any collusion, price fixing or any other illegal or unethical agreements with any company, firm or person concerning the pricing offered.
21. **NO PROHIBITED INTEREST**: Proposer acknowledges awareness of the state laws including chapter 176 of the Local Government Code, the Town Charter, and the Town Code of Ethics regarding conflicts of interest and agrees to comply with each. No officer, employee or agent of the Town of Flower Mound shall participate in the negotiation, selection, discussion, award or administration of a contract or procurement supported by public funds if: 1) that individual has a substantial interest in a person or entity, as defined by the Town's Code of Ordinances and/or Chapter 171 of the Texas Local Government Code, that is the subject of the contract or procurement; or 2) a conflict of interest, either real or apparent, would be involved, as defined herein.
22. **NON-RESIDENT PROPOSERS**: Texas law may prohibit the Town from awarding contracts to a non-resident unless the amount of such proposal is lower than the amount of the lowest proposal by a Texas resident by the amount a Texas resident would be required to underbid the non-resident bidder on a proposal for goods and services in the non-resident bidder's state, or the amount by which a resident bidder/proposer would be required to underbid the non-resident bidder/proposer to obtain a comparable contract in the state in which a majority of the manufacturing related to the contract will be performed (Texas Government Code, Chapter 2252).
23. **DELINQUENT TAXES**: Any person, firm, or corporation that is in arrears to the Town for delinquent taxes or otherwise, will not be recommended for award of any proposal until the arrearage has been cleared in writing by the Town. If a proposer becomes delinquent while a contract is in force, payment for goods or services provided to the Town under said contract or purchase order may be withheld until the arrearage has been cleared in writing by the Town.
24. **MINIMUM STANDARDS FOR RESPONSIBILITY**: A proposer must affirmatively demonstrate responsibility. The Town may request representation and other information sufficient to determine proposer's ability to meet the minimum standards including but not limited to, the following:
 - A. Have adequate financial resources, or the ability to obtain such resources as required;
 - B. Ability to comply with the required or proposed delivery schedule;
 - C. Have satisfactory record of performance;
 - D. Have a satisfactory record of integrity and ethics;
 - E. Be otherwise qualified and eligible to receive an award.

25. **AWARD OF CONTRACT:** The Town reserves the right to award single or multiple contracts for the goods or services as stated herein. Furthermore, the Town reserves the right to take administration costs into consideration when awarding multiple contracts.

When applicable, the Town may award proposals to the lowest responsive responsible proposer(s), or to the proposer(s) who provides goods or services at the best value to the Town. If using these methods, the selection criteria will be clearly identified in the bid/proposal document. The best value method may take into consideration, in whole or in part, by way of illustration and not limitation, the following criteria:

- A. The purchase price;
 - B. The reputation of the proposer and of the proposer's goods or services;
 - C. The quality of the proposer's goods or services;
 - D. The extent to which the goods or services meet the Town's needs;
 - E. The proposer's past relationship with the Town;
 - F. The impact on the ability of the Town to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;
 - G. The total long-term cost to the Town to acquire the proposer's goods or services;
 - H. Any relevant criteria specifically listed herein or in the contract documents.
26. **ACCEPTANCE:** Proposer agrees that acceptance of any or all items by the Town shall be binding upon proposer. Proposer shall thereafter execute all documents necessary to enter into a contract in a form acceptable to and properly executed by the Town to provide such goods and services.
27. **CONTRACT PERIOD:** Unless otherwise stated in the specifications contained herein, the contract period for the proposal will be for one (1) year upon Town approval, with three (3) optional one (1) year renewal periods if agreeable to both parties. Renewal periods will be subject to the Town's availability of funds.
28. **FUNDING:** The Town is a home-rule municipal corporation operated and funded on a fiscal year basis from October 1 to September 30. Accordingly, the Town reserves the right to terminate at any time, without liability to the Town, any contract for which funding is not available.
29. **ASSIGNMENT:** The successful proposer shall not sell, assign, transfer or convey any contract, in whole or in part, without the prior written consent of the Town obtained through the Town's Purchasing Division.
30. **INTERLOCAL AGREEMENT:** The successful proposer agrees to extend prices for goods and services under the same terms and conditions of this proposal to all governmental entities that have entered into, or will enter into, interlocal cooperative purchasing agreements with the Town of Flower Mound.
31. **CHANGE ORDER:** The Town of Flower Mound reserves the right to modify or change plans and specifications as deemed necessary after the performance of the contract has commenced, to decrease or increase the quantity of work to be performed, materials, equipment or supplies to be furnished, or address other provisions of the contract as approved by the Town Manager or Town Council, and as appropriate under state law. No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the contract. All change orders or modifications to the contract will be documented in written form by the Town of Flower Mound and acknowledged by the contracted proposer. **All change orders and modifications to the contract shall be processed through the Purchasing Division only.**
32. **DELIVERY PROMISE – PENALTIES:** Where indicated, proposers must provide number of

ATTACHMENT D

calendar days required to deliver goods or services to the Town of Flower Mound after receipt of order (ARO). **Do not quote shipping dates.** When delivery delay can be foreseen, the proposer shall provide advance notice to the Purchasing Manager, who shall have the right to extend the delivery date if reasons for delay are acceptable. Default in promised delivery, without acceptable reason(s), or failure to meet specifications as contained herein or in the contract documents, authorizes the Purchasing Division to purchase goods or services from an alternate source. The defaulting proposer may be subject to re-procurement costs.

33. **DELIVERY TIMES:** Unless otherwise specified herein, deliveries will only be accepted during normal working hours at location(s) designated by the Town.
34. **INSPECTION:** Upon receipt of goods or services, the same will be inspected for compliance with the specifications and contract documents. If the goods or services do not pass inspection, the proposer will be required to remedy the situation at the proposer's sole expense. The proposer will be required to retrieve the rejected goods at the delivery point and provide the necessary repairs of or replacement and return of the goods in new condition to the original point of delivery; or re-perform services in accordance with the plans and specifications and terms and conditions of the contract and to the Town's satisfaction.
35. **INVOICES:** Invoices shall be submitted to the attention of Accounts Payable Department, 2121 Cross Timbers Road, Flower Mound, Texas 75028, or electronically to accountspayable@flower-mound.com.
36. **PAYMENT TERMS:** Payment terms are net 30 days, unless otherwise specified by the Town in the proposal document.
37. **AUDIT:** The Town shall have access to, and the right to examine, monitor and audit all records, documents, conditions and activities related to contracts awarded by the Town. It shall be the responsibility of the proposer to maintain records associated with this procurement for a period of three (3) years after completion of the contract, or in the event of litigation, a claim or audit, the records shall be retained until the resolution of such litigation, claim or audit. In the case of a conflict between the Special Provisions and this paragraph, the Special Provisions shall control.
38. **INSURANCE:** The Town requires proposer(s) to carry the minimum insurance as required by the greater of the requirements contained in state laws or the insurance requirements contained in the Special Provisions herein.
39. **PRICE ESCALATION:** Unless otherwise stated in the Special Provisions or specifications herein, prices must remain firm for the initial term of the contract. The contracted proposer may request an adjustment at the time of contract renewal by submitting a request in written form to the Purchasing Manager ninety (90) days prior to contract expiration. The basis for price escalation should be based on the Consumer Price Index for the most recent twelve-month period reported for the Dallas-Fort Worth area. The contracted proposer shall provide the Town with copies of the appropriate indices for verification purposes. The Town of Flower Mound reserves the right to approve or reject any and all requests for price escalations.
40. **PRICE REDUCTION:** If during the life of the contract, the contracted proposer's net prices to other customers for the same goods or services are lower than the Town's contracted prices, an equitable adjustment shall be made in the contract price in favor of the Town.
41. **INDEMNITY:** The proposer agrees to release, defend, indemnify and hold harmless the Town of Flower Mound, its officers, agents and employees from and against any and all costs, expenses, suits, demands, claims, liabilities, liens, encumbrances or damages, including attorneys' fees and costs of suit, of any character, name and description, incurred or resulting from any injuries or damages received or sustained by any person, persons or property on account of any intentional wrongful conduct whether intentional or

ATTACHMENT D

unintentional or any negligent act, omission, or fault of the successful proposer, or of any agent, employee, authorized representative, subcontractor, or supplier in the execution of, or performance under this contract or any contract which may result from the proposal and the proposer so agrees upon the submission of the proposal. The proposer must deliver, if so requested by the Town, a written release of all liens or other proper evidence of same, to the satisfaction of the Town prior to the issuance of final payment by the Town.

42. **PATENT RIGHTS:** Proposer agrees to release, defend, indemnify, and hold harmless the Town of Flower Mound from and against any claim involving patent right infringement or copyright infringement on goods or services supplied to the Town.

43. **PROTESTS:** All protests regarding the solicitation process must be submitted in written form to the Purchasing Manager within five (5) working days following the opening of proposals. This includes all protests relating to legal advertisements, deadlines, proposal openings, and all other related procedures under State law, as well as any protests relating to alleged improprieties or ambiguities in the specifications contained in the solicitation or contract documents.

Post-award protests must be submitted in written form to the Purchasing Manager within five (5) working days after award. The protest must include, at a minimum, the name of protester, proposal number or description of goods or services, and a statement of the grounds for protest. The Purchasing Manager, having authority to make the final determination, will respond within ten (10) working days to each substantive issue raised in the protest. Allowances for reconsiderations shall be made only if credible data becomes available that was not previously known, or if there has been an error of law or regulation.

44. **TERMINATION FOR DEFAULT:** The Town of Flower Mound reserves the right to enforce the performance of this contract in any manner prescribed by law or deemed to be in the best interest of the Town in the event of breach or default of this contract. The Town reserves the right to terminate the contract immediately in the event the contracted proposer fails to meet delivery schedules, or otherwise perform in accordance with the specifications contained herein or in the contract documents. Breach of contract or default authorizes the Town to award the contract to another proposer, or purchase from an alternate source, and charge the full increase in cost to the defaulting contracted proposer.

45. **TERMINATION FOR TOWN CONVENIENCE:** Whenever the Town, in its discretion, deems it to be in the Town's best interests, it may terminate this contract for the Town's convenience. Such termination shall be effective thirty (30) days after the Town delivers written notice of such termination for convenience to the contracted proposer. Upon receipt of such notice from the Town, proposer shall not thereafter incur, and the Town shall have no liability for, any costs under this contract that are not necessary for actual performance of the contract between the date of the notice of termination for convenience and the effective date of that termination for convenience. In the event of a termination for convenience hereunder, the Town shall have no liability to proposer for lost or anticipated profit resulting therefrom.

46. **REMEDIES:** The successful vendor and the Town of Flower Mound agree that each party may have rights, duties, and remedies available as stated in the Uniform Commercial Code and any other available remedy, whether in law or equity.

47. **VENUE:** The validity of the contract and of any of its terms or provisions, as well as the rights and duties hereunder or the contract documents, shall be governed by and construed in accordance with the laws of the State of Texas. Exclusive venue for any legal action shall lie in Denton County, Texas.

48. **DETERMINATION OF NON-RESPONSIBLE PROPOSER:** The Town may disqualify a proposer as non-responsible and its proposal shall not be considered for reasons including, but not limited

to, the following:

- A. Reason for believing collusion exists among proposers.
- B. Where the proposer, any subcontractor, supplier, or the Surety on any bond given, or to be given, is in litigation with the Town, or where such litigation is contemplated or imminent, in the sole opinion of the town.
- C. The proposer being in arrears on any existing contract or having defaulted on a previous contract.
- D. Lack of competency, in the judgment of the Town, as revealed by pertinent factors, including but not necessarily limited to, experience and equipment, information provided on proposer's financial statement and questionnaires.
- E. Uncompleted work or other projects that, in the judgment of the Town, will prevent or hinder the prompt completion of the work if awarded.
- F. Where the proposer, or subcontractor thereof, in the judgment of the Town, has failed to perform in a satisfactory manner on a previous contract.
- G. Where a proposer or subcontractor thereof has failed to disclose a potential conflict of interest or is discovered to have a conflict of interest under State law, the Town's Charter, or the Town's Code of Ordinances.
- H. Where a proposer, its subcontractor, or individual officer/principal of the proposer or subcontractor is under criminal indictment or been convicted of a criminal offense.

49. **DETERMINATION OF NON-RESPONSIVE PROPOSAL:** The Town may disqualify a proposal as non-responsive and it shall not be considered for reasons including, but not limited to, the following:

- A. The proposal shows any omissions, alterations of form, additions, or conditions not called for, or irregularities of any kind, in the sole determination of the Town.
- B. Proposal received after the time limit for receiving proposals.
- C. Proposal was not signed.
- D. Unbalanced value of any items.
- E. Improper or insufficient proposal guaranty, if required.
- F. Proposal did not meet specifications.
- G. Proposal did not contain all requested/required documents, submittals and/or samples.

END OF GENERAL TERMS AND CONDITIONS

RFP No. 2016-10
Senior In Motion Lunch Program

EVALUATION MATRIX		POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE
Evaluation Criteria	Weighting	MMOW - Chuck Jennings		MMOW - Jaime Jaco-Cooper		MMOW - Miriam Morales	
Experience	25%	9.00	2.25	10.00	2.50	10.00	2.50
Menu	25%	9.00	2.25	5.00	1.25	4.00	1.00
Overall Ability to Meet Needs	20%	8.00	1.60	7.00	1.40	9.00	1.80
Price	30%	4.00	1.20	5.00	1.50	2.00	0.60
TOTAL	100%		7.30		6.65		5.90

EVALUATION MATRIX		POINTS	WEIGHTED SCORE
Evaluation Criteria	Weighting	MMOW - Group	
Experience	25%	9.66	2.42
Menu	25%	6.00	1.50
Overall Ability to Meet Needs	20%	8.00	1.60
Price	30%	3.66	1.10
AVERAGE SCORE	100%		6.61



TOWN COUNCIL AGENDA ITEM NO. 4

CONSENT ITEM

DATE: January 21, 2016

FROM: Rochelle Ragas, Purchasing Manager

ITEM: Consider approval of the purchase of one (1) new Caterpillar Backhoe/Loader w/Extend-a Hoe, 2WD for the Public Works Department from Holt Caterpillar, through the Texas Local Government Purchasing Cooperative program, in the total amount of \$72,788.36.

BACKGROUND INFORMATION: The Public Works Department is requesting the purchase of one (1) new Caterpillar Backhoe/Loader w/Extend-a Hoe, 2WD, in the amount of \$72,788.36.

The Town of Flower Mound and the Texas Local Government Purchasing Cooperative entered into a cooperative agreement, effective February 17, 2003, which allows our local government to purchase certain goods or services. The agreement renews automatically each fiscal year, unless cancelled by either party.

FISCAL IMPACT: \$72,788.36

Proposed Expenditure:	Account Number(s):
\$72,788.36	100-690-92240-6130

Finance Review by: Debra Wallace, Assistant Town Manager/CFO 

ATTACHMENTS:

1. Proposal from Holt Cat
2. Bid Award Recommendation

RECOMMENDATION: Move to approve the purchase of one (1) new Caterpillar Backhoe/Loader w/Extend-a Hoe, 2WD for the Public Works Department from Holt Caterpillar, through the Texas Local Government Purchasing Cooperative program, in the total amount of \$72,788.36.



October 27, 2015

TOWN OF FLOWER MOUND
 2121 CROSS TIMBERS RD
 FLOWER MOUND, TEXAS 75028-2699

Attention: DEATS STEWART

RE: Quote 162331-01

Dear Deats Stewart,

Thank you for this opportunity to quote Caterpillar products for your business needs. We are pleased to quote the following for your purchase consideration.

One (1) New CATERPILLAR INC Model: 416F CE Backhoe Loaders with all standard equipment in addition to the additional specifications listed below:

STANDARD EQUIPMENT

BOOMS, STICKS AND LINKAGES - 14'39" Center pivot excavator style - backhoe with 2-lever control - Boom transport lock - Swing transport lock - Street type stabilizer shoes - Bucket level indicator - Lift cylinder brace - Return-to-dig - (automatic bucket positioner) - Self-leveling loader with single lever - control - Transmission neutralizer switch - Single Tilt Loader -

POWERTRAIN - Cat C4.4, 70KW (Net 87HP / 65kW) - - Direct Injection Turbo Charged Engine, - - with ACERT technology. - - US EPA Tier4 Final Emissions Compliant - - Selective Catalytic Reduction (SCR) - Water separator - Thermal starting aid system - A dry type axial seal air cleaner with - - integral precleaner - - automatic dust ejection system - - filter condition indicator - Hydraulically boosted multi-plate wet - disk brake with - - dual pedals & interlock - Differential lock - Drive-line parking brake - Torque converter - Transmission-four speed synchro mesh inc - - power shuttle - - neutral safety switch - Spin-on filters for - - fuel - - engine oil - - transmission oil - Outboard Planetary Rear Axles -

HYDRAULICS - Load sensing, variable flow system with - - 35 gpm axial piston pump - 6 micron hydraulic filter - O-ring face seal hydraulic fittings - Caterpillar XT-3 hose - Hydraulic oil cooler - Flow-Sharing Hydraulic Valves - Hydraulic suction strainer

ELECTRICAL - 12 volt electrical start - 150 ampere alternator - Horn - Backup alarm - Hazard flashers/turn signals - Halogen head lights (2) - Halogen rear flood lights (2) - Stop and tail lights - Audible system fault alarm - Key start/stop system - 880 CCA maintenance free battery - Battery disconnect switch - External Power Receptacle (12v) - Remote jump start connector

OPERATOR ENVIRONMENT - Lighted gauge group - Interior rearview mirror - Rear fenders - ROPS canopy - 2-inch retractable seat belt - Hand and foot throttle - Air suspension seat - Coat Strap

FLUIDS - Antifreeze - Extended Life Coolant - -30C (-20F)

OTHER STANDARD EQUIPMENT - Hydrostatic power steering - Standard Storage Box - Transport tie-down points - Ground line fill fuel tank with - 44 gallon capacity - Ground line fill diesel exhaust fluid - tank with 5 gallon capacity - Rubber impact strips on radiator guards - Bumper - CD-ROM Parts Manual - Backhoe Safety Manual - Operations and Maintenance Manual - Lockable hood - Tire Valve Stem Protection

2 WD
 3 mo. delivery

MACHINE SPECIFICATIONS

416F2 BHL ST, TIER 4 HRC, 70KW

STICK, EXTENDABLE, 14FT, MECH - wobble stick

CONTROLS, BACKHOE PATTERN

ENGINE, 70KW, C4.4 ACERT, T4F

BELT, SEAT, 2" SUSPENSION

COUNTERWEIGHT, 1015 LBS

STABILIZER PADS, FLIP-OVER

BUCKET-GP, 1.25 CYD

CUTTING EDGE, TWO PIECE

COUPLING,QD,THREADED WITH CAPS

FAN, STANDARD CAB/ CANOPY

BATTERY, HEAVY DUTY

PLATE GROUP - BOOM WEAR

GUARD, STABILIZER

SERVICE FILTER PACK, T4/C4.4

CAB, STANDARD

SEAT, FABRIC

AIR CONDITIONER, T4

BUCKET-HD, 24", 6.2 CFT

PT, 2WD, STD SHIFT, MECH

HYDRAULICS, GP, 5FCN/7BNK

TIRES,12 16.5/19.5L-24, FS,2WD

SERIALIZED TECHNICAL MEDIA KIT

PRODUCT LINK, CELLULAR, PL641I

TOTAL LIST PRICE**\$108,557****BUYBOARD MINIMUM 16% DISCOUNT #424-13**

Sell Price

\$72,788.36**Total****\$72,788.36****WARRANTY**

Standard Warranty:

12 Months / Unlimited Hour Total Machine

F.O.B/TERMS: Fort Worth - Machine Division

Accepted by _____ on _____

Signature

Thank you for your interest in Holt CAT and Caterpillar products for your business needs. This quotation is valid for 30 days, after which time we reserve the right to re-quote. If there are any questions, please do not hesitate to contact me.

Sincerely,

Bryan Nichols
Machine Sales Representative
Holt CAT
Bryan.Nichols@holtcat.com
817.308.6612



Bid Award Recommendation

Bid # Quote: #162331-01
Buyboard #424-13

Date: 10-26-2015

Description: **Backhoe w/Extend-a Hoe, 2WD**

Replaces: Unit # New Purchase

Bidder #1: Holt Caterpillar, Dallas, Tx (Quote dtd: 10-27-15)

Bid: New Caterpillar 416F2 BHL ST. Tier 4 HRC, 70WK Backhoe/Loader

Per: Quote specifications attached

***This quote includes delivery of unit to Town of Flower Mound Fleet Service Center.**

Bid total: \$72,788.36

Therefore, it is Fleet Services recommendation to award the bid to **Holt Caterpillar**, as the lowest responsible bidder in the amount of **\$72,788.36**.

H. Deats Stewart
Fleet Services Manager

11-30-15
Date



TOWN COUNCIL AGENDA ITEM NO. 5

CONSENT ITEM

DATE: January 21, 2016

FROM: Rochelle Ragas, Purchasing Manager

ITEM: Consider approval of the purchase of one (1) new Ditch Witch FX30A FX30 Vacuum System for the Public Works Department from EKA Government Sales Experts, through the Texas Local Government Purchasing Cooperative program, in the total amount of \$53,361.97.

BACKGROUND INFORMATION: The Public Works Department is requesting the purchase of one (1) new Ditch Witch FX30A FX30 Vacuum System, in the amount of \$53,361.97.

The Town of Flower Mound and the Texas Local Government Purchasing Cooperative entered into a cooperative agreement, effective February 17, 2003, which allows our local government to purchase certain goods or services. The agreement renews automatically each fiscal year, unless cancelled by either party.

FISCAL IMPACT: \$53,361.97

Proposed Expenditure:	Account Number(s):
\$53,361.97	200-690-92330-6110

Finance Review by: Debra Wallace, Assistant Town Manager/CFO *DW*

ATTACHMENTS:

1. Proposal from EKA Government Sales Experts
2. Bid Award Recommendation

RECOMMENDATION: Move to approve the purchase of one (1) new Ditch Witch FX30A FX30 Vacuum System for the Public Works Department from EKA Government Sales Experts, through the Texas Local Government Purchasing Cooperative program, in the total amount of \$53,361.97.

EKA

P.O. Box 932 • Grayson, GA 30017-0018

770.498.9316 • 866.498.9316 • 770.498.9318 (fax)

EKA Sales.com



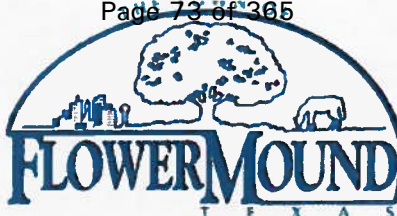
Customer Quote

Name / Address	
TOWN OF FLOWER MOUND WESLEY HUBBARD wesley.hubbard@flower-mound.com	
Solicitation number	DEALER REQUEST

EKA Quote #	Date	Quote valid until:
4288	10/1/2015	12/31/2015

Delivery Address

EKA Quote Contact	Contract Number	Payment Terms	F.O.B. terms	Dealer
	424-13	NET 30 DAYS	DEST	WITCH
Item / Description		Qty	Price Each	Total
DITCH WITCH FX30A FX30 Vac System #FX30A-1 FX30: 800gal, 200gal, no Reverse Flow #153-954 REDUCER 4 1/2 FHCM-3 1/2 FHCF #310-893 3" SUCTION TOOL #318-652 3" SUCTION HOSE-50'-M/F #401-029 TURBO SPRAY GUN NOZZLE #025-1022 T18S VAC TRAILER TEXAS BUY BOARD #424-13		1	53,361.97	53,361.97
DUNS: 07-594-9644; TIN: 58-1328598; Cage Code: 2Y851. We appreciate the opportunity to serve your government business needs.		Total		\$53,361.97



Bid Award Recommendation

**Contract: Texas Buyboard Contract
Contract # 424-13**

Date: 12-9-2015

Description: **Vacuum System**

Replaces: **New**

Bidder #1: **EKA Govt. Sales Experts PH. 866-498-9316**

bid: New ditch Witch FX30A FX30 Vac System

To include:

#FX30A-1 FX30: 800 gal, no Reverse Flow
#153-954 Reducer 4-1/2 FHCM-3 1/2 FHCF
#310-893 3" Suction Tool
#318-652 3" Suction Hose-50'-M/F
#401-029 Turbo Spray Gun Nozzle
#025-1022 T18S Vac Trailer

F.O.B. Destination

Quote total: **\$53,361.97**

Payment Terms: Net 30 days

It is Fleet Services recommendation to award the bid to **EKA Govt. Sales Experts** as the lowest responsible bidder in the amount of **\$53,361.97.00**.

****Recommendation subject to available funds.**

H. Deats Stewart

Fleet Services Manager

12-9-2015

Date



TOWN COUNCIL AGENDA ITEM NO. 6

CONSENT ITEM

DATE: January 21, 2016

FROM: Eric Greaser, Fire Chief 

ITEM: Consider approval of a resolution authorizing adoption of the Denton County Hazard Mitigation Action Plan, January, 2016, and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: FEMA has concluded review of the Denton County Hazard Mitigation Plan and has found the plan to be approvable pending adoption by our Town Council. Flower Mound is one of twenty-two Denton County jurisdictions that participated in the plan. Each jurisdiction has their own Annex to the Plan that addresses specific hazards for their community, as well as potential mitigation projects that could be done to help lessen the impacts of a disaster. Adoption of this plan will allow Flower Mound to be eligible to apply for Hazard Mitigation Grant funds after a future disaster declaration. Flower Mound has previously not participated in this project with Denton County.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: If the Denton County Hazard Mitigation Action Plan is not adopted by the Town Council, any eligibility for hazard mitigation grant funds after a disaster would be forfeited.

FISCAL IMPACT: N/A

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

ATTACHMENTS:

1. Proposed Resolution

RECOMMENDATION: Move to approve a resolution authorizing adoption of the Denton County Hazard Mitigation Action Plan, January, 2016, and authorize the Mayor to execute same on behalf of the Town

TOWN OF FLOWER MOUND, TEXAS**RESOLUTION NO. _____****A RESOLUTION OF THE TOWN OF FLOWER MOUND ADOPTING THE DENTON COUNTY HAZARD MITIGATION ACTION PLAN, JANUARY 2016**

WHEREAS, the Town Council of the Town of Flower Mound, Texas recognizes the threat that natural hazards pose to people and property within the Town of Flower Mound; and,

WHEREAS, the Town of Flower Mound has prepared a multi-hazard mitigation plan, hereby known as Denton County Hazard Mitigation Action Plan, January 2016 in accordance with the Disaster Mitigation Act of 2000; and,

WHEREAS, Denton County Hazard Mitigation Action Plan, January 2016 identifies mitigation goals and actions to reduce or eliminate long-term risk to people and property in the Town of Flower Mound from the impacts of future hazards and disasters; and,

WHEREAS, adoption by the Town Council of the Town of Flower Mound, Texas demonstrates their commitment to the hazard mitigation and achieving the goals outlined in the Denton County Hazard Mitigation Action Plan, January 2016;

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

SECTION 1

The Town Council of the Town of Flower Mound, Texas, hereby adopts the Denton County Hazard Mitigation Action Plan, January 2016.

SECTION 2

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

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS ON THIS THE 21ST DAY OF JANUARY, 2016.

RESOLUTION NO. _____

APPROVED:

Thomas E. Hayden, MAYOR

ATTEST:

Theresa Scott, **TOWN SECRETARY**

APPROVED AS TO FORM AND LEGALITY:

Bryn Meredith, **TOWN ATTORNEY**



TOWN COUNCIL AGENDA ITEM NO. 7

CONSENT ITEM

DATE: January 21, 2016

FROM: Eric V. Greaser, Fire Chief

ITEM: Consider approval of an Interlocal Cooperation Agreement with Denton County for the provision of ambulance services for the benefit of the citizens of Flower Mound and Denton County, and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: This item is to consider the approval of an Interlocal Cooperation Agreement between Denton County and the Town to provide Flower Mound fire protection services to an unincorporated area of Denton County for the benefit of the citizens of Denton County. Since 1982, the Town has received annual funding for the provision of fire protection to a small area of unincorporated Denton County. The contract area consists of mainly low-density housing and tracts of undeveloped land with an estimated service population of less than 100 residents.

FISCAL IMPACT: \$33,169.00

Proposed Revenue Source:

Payment from Denton County of \$33,169.00 which includes a fixed sum of \$32,962.00 based on population and \$206.88 based on rural mileage. In addition, a fee of \$248.96 per EMS call will be paid. There were no transports for 2015.

Account Number(s):

100-4605

Finance Review by: Debra Wallace, Assistant Town Manager/CFO

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

ATTACHMENTS:

1. Interlocal Cooperation Agreement for Ambulance Service

RECOMMENDATION: Move to approve an Interlocal Cooperation Agreement with Denton County for the provision of ambulance services for the benefit of the citizens of Flower Mound and Denton County, and authorize the Mayor to execute same on behalf of the Town.

THE COUNTY OF DENTON

§

TOWN OF FLOWER MOUND

§

AMBULANCE SERVICES

§

STATE OF TEXAS

§

**INTERLOCAL COOPERATION AGREEMENT
AMBULANCE SERVICE**

THIS AGREEMENT, which has an effective date of October 1, 2015, is made and entered into by and between Denton County a political subdivision of the State of Texas, hereinafter referred to as "the **COUNTY**," and the Town of Flower Mound, a municipal corporation, located in Denton County, Texas, hereinafter referred to as "the **AGENCY**".

WHEREAS, the **COUNTY** is a duly organized political subdivision of the State of Texas engaged in the administration of county government and related services for the benefit of the citizens of Denton County; and

WHEREAS, the **AGENCY** is a municipal corporation, duly organized and operating under the laws of the State of Texas and engaged in the provision of ambulance services and related services for the benefit of the citizens of the Town of Flower Mound; and

WHEREAS, the **AGENCY** is an owner and operator of certain ambulance vehicles and other equipment designed for the transportation of persons who are sick, infirmed or injured and has in its employ trained personnel whose duties are related to the treatment of said individuals and the use of such vehicles and equipment; and

WHEREAS, the **COUNTY** desires to obtain emergency ambulance and related services for the benefit of residents of the **COUNTY** living in unincorporated areas of the **COUNTY** which the **AGENCY** is capable of providing; and

WHEREAS, the provision of emergency ambulance and related services is a governmental function that serves the public health and welfare and is of mutual concern to both the **COUNTY** and the **AGENCY**; and

WHEREAS, the **COUNTY** desires to expend County funds to defray the expense of establishing, operating and maintaining emergency ambulance services in the County; and

WHEREAS, the **COUNTY** and the **AGENCY** mutually desire to be subject to and contract pursuant to the provisions of Texas Government Code, Chapter 791 and Texas Health and Safety Code, Section 774.003, and

NOW THEREFORE, the **COUNTY** and the **AGENCY**, in consideration of the mutual promises, covenants, and Agreements stated herein, agree as follows:

I.

TERM

The term of this Agreement shall be for the period beginning of October 1, 2015, and ending on September 30, 2016.

II.

DEFINITIONS

As used herein, the words and phrases hereinafter set forth shall have the meanings as follows:

- A. "Emergency" shall mean any circumstance that calls for immediate action and in which the element of time in transporting the sick, wounded or injured for medical treatment is essential to the health or life of a person or persons. Whether an emergency, in fact, exists is solely up to the discretion of the **AGENCY**. For dispatch purposes only, "emergency" shall include, but not be limited to:
1. The representation by the individual requesting ambulance service that an immediate need exists for the transportation of a person from any location within the agreed operating area of the **AGENCY** to a place where emergency medical treatment may be obtained; or
 2. The representation by the individual requesting ambulance service that an immediate need exists for the transportation of a person from any location within the agreed operating area of the **AGENCY** to the closest medical facility.
- B. "Rural area" means any area within the boundaries of the **COUNTY**, but outside the corporate limits of all incorporated cities, towns and villages within the **COUNTY**.
- C. "Urban area" means any area within the corporate limits of an incorporated city, town or village within the **COUNTY**.
- D. "Emergency ambulance call" means a response to a request for ambulance service by the personnel of the **AGENCY** in a situation involving an emergency, as defined above, by an ambulance vehicle. A single response to a call may involve the transportation of more than one person at a time, but shall be considered as only one call.

III.

SERVICES

The services to be rendered under this Agreement by the **AGENCY** are the ambulance services normally rendered by the **AGENCY** to citizens of Town of Flower Mound in circumstances of emergency, but which services will now be extended to all citizens of the

COUNTY residing in the unincorporated areas of the **COUNTY** within the operating territory or jurisdiction of the **AGENCY**, as agreed to by the **AGENCY** and the **COUNTY** in this Agreement and as set forth in "Exhibit A," attached hereto and incorporated herein by reference.

It is recognized that the officers and employees of the **AGENCY** have the duty and responsibility of rendering ambulance services to citizens of the **AGENCY** and the **COUNTY**. In the performance of these duties and responsibilities, it shall be within the sole responsibility and discretion of the officers and employees of the **AGENCY** to determine priorities in the dispatching and use of such equipment and personnel and the judgment of the officer or employee shall be final.

The **COUNTY** shall designate the County Judge to act on behalf of the **COUNTY** and to serve as "Liaison Officer" between the **COUNTY** and the **AGENCY**. The County Judge, or her designated substitute, shall devote sufficient time and attention to insure the performance of all duties and obligations of the **COUNTY** under this Agreement and shall provide for the immediate and direct supervision of employees, agents, contractors, sub-contractors and/or laborers of the **COUNTY** engaged in the performance of this Agreement.

IV.

PERFORMANCE OF SERVICES

The **AGENCY** shall devote sufficient time and attention to insure the performance of all duties and obligations of the **AGENCY** under this Agreement and shall provide immediate and direct supervision of the **AGENCY's** employees, agents, contractors, sub-contractors and/or laborers engaged in the performance of this Agreement for the mutual benefit of the **AGENCY** and the **COUNTY**.

V.

COMPENSATION

COUNTY agrees to pay to the **AGENCY** an estimated fee of \$33,169.00 (amount rounded to the nearest dollar) based on a funding formula as follows:

1. A fixed sum based on a population percentage .5046 per capita; said sum computes to \$32,962.00.
2. A fixed sum of \$248.9627 per ambulance transport. There were no transports made by **AGENCY** in fiscal year 2014-2015.
3. A fixed sum based on .30 rural miles in the agreed operating territory; said sum computes to \$206.88.

The first and third sums are based upon population and mileage figures obtained from the North Central Texas Council of Governments. The second sum is based upon the definition of an "ambulance call" for purposes of this Agreement. Payment shall not be allowed for any instance in which a patient is not transported. Consistent with the reporting procedures described below, the **AGENCY** shall receive payment for transporting the patient regardless of the service delivery area in which the call originated.

Requests for payment shall be submitted on the standardized ambulance transportation reporting form approved and provided by the **COUNTY**. It shall be the responsibility of the **AGENCY** to fully complete the forms and to provide complete and accurate patient information. Requests for payment shall be submitted within five (5) days of the performance of service by the **AGENCY**. Requests not timely submitted shall not be considered for payment. Requests for payment may be submitted by personal delivery, U.S. Mail, facsimile or computer telephone link to the office of the Denton County Fire Marshal. The date of submission shall be the date the fully documented request is received in said office.

VI.

FINANCIAL RECORDS

The **AGENCY** agrees to make its financial records available for audit and/or review by the **COUNTY**, upon request by the **COUNTY**.

VII.

RESPONSIBILITY OF THE COUNTY

The **COUNTY**, to the extent permitted by law, shall be responsible for the acts, omissions and negligence of all officers, employees and agents of the **COUNTY** who are engaged in the performance of this Agreement.

VIII.

RESPONSIBILITY OF THE AGENCY

The **AGENCY**, to the extent permitted by law, shall be responsible for the acts, omissions and negligence of all officers, employees and agents of the **AGENCY** who are engaged in the performance of this Agreement.

IX.

APPLICABLE LAW

The **COUNTY** and the **AGENCY** understand and agree that liability under this contract is governed by Texas Government Code, Chapter 791 and Texas Health and Safety Code, Section 774.003. This Agreement is made in contemplation of the applicability of these laws to

the Agreement. Insofar as legally possible the **COUNTY** and the **AGENCY** agree to be bound by the above mentioned statutes as they exist as of the date of this Agreement.

X.
DEFAULT

In the event of default of any of the covenants herein contained, this Agreement may be terminated at the discretion of the non-defaulting party if such default continues for a period of ten (10) days after notice to the other party in writing of such default and the intent to terminate this Agreement due to the default. Unless the default is cured, this Agreement shall terminate.

XI.
TERMINATION

This Agreement may be terminated at any time by either the **COUNTY** or the **AGENCY** by giving sixty (60) days advance written notice to the other party. In the event of termination by either party, the **AGENCY** shall be compensated pro rata for all services performed to termination date together with reimbursable expenses then due as authorized by this Agreement. In the event of such termination, should the **AGENCY** be overcompensated on a pro rata basis for all services performed to the termination date and/or be overcompensated for reimbursable expenses, the **COUNTY** shall be reimbursed pro rata for all such overcompensation. Acceptance of such reimbursement shall not constitute a waiver of any claim that may otherwise arise out of this Agreement.

XII.
GOVERNMENTAL IMMUNITY

The fact that the **COUNTY** and the **AGENCY** accept certain responsibilities relating to the rendering of ambulance services under this Agreement as a part of their responsibility for providing protection for the public health makes it imperative that the performance of these vital services be recognized as a governmental function and that the doctrine of governmental immunity shall be, and is hereby, invoked to the extent permitted under the law. Neither the **AGENCY**, nor the **COUNTY** waive, nor shall be deemed to have hereby waived any immunity or defense that would otherwise be available to it against claims arising from the exercise of governmental powers and functions.

XIII.
ENTIRE AGREEMENT

This Agreement represents the entire Agreement between the COUNTY and the AGENCY and supersedes all prior negotiations, representations and Agreements, either written or oral. This Agreement may be amended only by written instrument signed by both parties.

XIV.
LAW OF CONTRACT

This Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. The venue for any dispute, or matter, arising under this Agreement shall lie in Denton County, Texas.

XV.
SEVERABILITY

In the event that any portion of this Agreement shall be found to be contrary to law, it is the intent of the parties hereto that the remaining portions of this Agreement shall remain valid and in full force and effect to the fullest extent possible.

XVI.
AUTHORITY

The undersigned officer or agents of the parties are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties.

XVII.
SERVICE AREA

Acceptance of this Agreement constitutes approval of the service area set out in attached Exhibit "A".

EXECUTED in triplicate originals on the dates set forth below.

COUNTY:

Denton County, Texas
110 West Hickory Street, 2nd Floor
Denton, Texas 76201

AGENCY:

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

By _____
Mary Horn
Denton County Judge

By _____
Name **THOMAS E. HAYDEN**
Title **MAYOR**

Acting on behalf of and by the
authority of Denton County
Commissioners Court of
Denton County, Texas

Acting on behalf of and by the
authority of the Town of Flower Mound

DATED: _____

DATED: _____

ATTEST:

ATTEST:

BY: _____
Denton County Clerk

BY: _____
Town Secretary

APPROVED AS TO CONTENT:

BY: _____
Denton County Fire Marshal

APPROVED AS TO FORM:

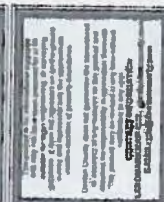
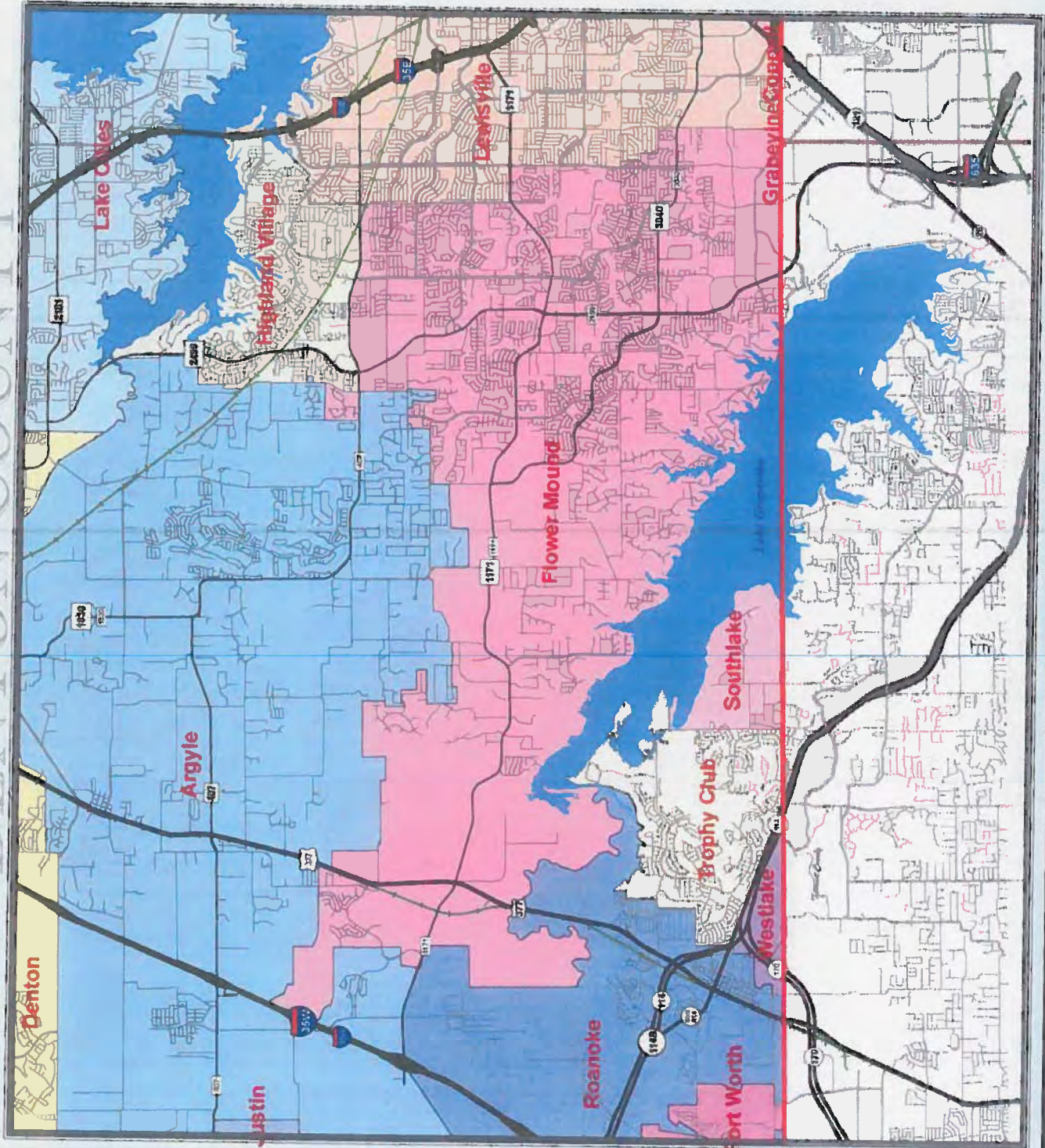
BY: _____
Assistant District Attorney

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$_____ to
accomplish and pay the obligation of Denton County under this Agreement.

James Wells, Denton County Auditor

Flower Mound EMS District





TOWN COUNCIL AGENDA ITEM NO. 8

CONSENT ITEM

DATE: January 21, 2016

FROM: Eric V. Greaser, Fire Chief

ITEM: Consider approval of an Interlocal Cooperation Agreement with Denton County for the provision of fire protection services for the benefit of the citizens of Flower Mound and Denton County, and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: This item is to consider the approval of an Interlocal Cooperation Agreement between Denton County and the Town to provide Flower Mound fire protection services to an unincorporated area of Denton County for the benefit of the citizens of Denton County. Since 1982, the Town has received annual funding for the provision of fire protection to a small area of unincorporated Denton County. The contract area consists of mainly low-density housing and tracts of undeveloped land with an estimated service population of less than 100 residents.

FISCAL IMPACT: \$10,500.00

Proposed Revenue Source:

Payment from Denton County of \$10,000.00 up front annual flat fee, plus \$500.00 per fire call. The number of calls varies, but is estimated to be one.

Account Number(s):

100-4605

Finance Review by: Debra Wallace, Assistant Town Manager/CFO

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

ATTACHMENTS:

1. Interlocal Cooperation Agreement for Fire Protection Services

RECOMMENDATION: Move to approve an Interlocal Cooperation Agreement with Denton County for the provision of fire protection services for the benefit of the citizens of Flower Mound and Denton County, and authorize the Mayor to execute same on behalf of the Town.

THE COUNTY OF DENTON

§
§
§
§TOWN OF FLOWER MOUND
FIRE DEPARTMENT

STATE OF TEXAS

**INTERLOCAL COOPERATION AGREEMENT
FIRE PROTECTION SERVICES**

THIS AGREEMENT, which has an effective date of October 1, 2015, is made and entered into by and between Denton County, a political subdivision of the State of Texas, hereinafter referred to as "the **COUNTY**," and the Town of Flower Mound Fire Department, a municipal corporation, located in Denton County, Texas, hereinafter referred to as "the **AGENCY**".

WHEREAS, the **COUNTY** is a duly organized political subdivision of the State of Texas engaged in the administration of county government and related services for the benefit of the citizens of Denton County; and

WHEREAS, the **AGENCY** is a municipal corporation, duly organized and operating under the laws of the State of Texas and engaged in the provision of fire protection services and related services for the benefit of the citizens of the Town of Flower Mound; and

WHEREAS, the **AGENCY** is the owner and operator of certain fire protection vehicles and other equipment designed for the extinguishing of fire and prevention of damage to property and injury to persons from fire and has in its employ trained personnel whose duties are related to the use of such vehicles and equipment; and

WHEREAS, the **COUNTY** and the **AGENCY** mutually desire to be subject to and contract pursuant to provisions of the Texas Government Code, Chapter 791 and the Texas Local Government Code, Chapter 352, and

NOW, THEREFORE, the **COUNTY** and the **AGENCY**, for the mutual promises, covenants, Agreements and consideration stated herein, agree as follows:

I.
TERM

The term of this Agreement shall be for the period beginning of October 1, 2015, and ending September 30, 2016.

II.
SERVICES

The services to be rendered in accordance with this Agreement by the **AGENCY** are the fire protection services normally rendered by the **AGENCY** to citizens of the Town of Flower

Mound in circumstances of emergency, but which services will now be extended to all citizens of the **COUNTY** residing in the unincorporated areas of the **COUNTY** within the operating territory or jurisdiction of the **AGENCY**, as agreed to by the **AGENCY** and the **COUNTY** in this Agreement and as set forth in "Exhibit A," attached hereto and incorporated herein by reference. These services are rendered in consideration of the basic funding and the separate per call fee set forth in this Agreement for the common good and benefit and to serve the public convenience and necessity of the citizens of the **COUNTY** who are not otherwise protected with respect to fire prevention, extinguishment, safety and rescue services. The services to be rendered are as follows:

- A. The **AGENCY** shall make available and provide emergency fire prevention, extinguishment, safety and rescue services within the agreed or specified territory or jurisdiction of the **AGENCY**.
- B. The **AGENCY** shall respond to requests for fire protection services made within the portion of the **COUNTY** designated as "*Flower Mound*" as set out in Exhibit "A".
- C. The **COUNTY** agrees that, in the event a fire in the **AGENCY**'s unincorporated designated area which the **AGENCY** considers to be of an incendiary nature and upon request by the **AGENCY**, the County Fire Marshal will dispatch investigation personnel to the fire scene within a response time sufficient to legally maintain and protect all evidence of said fire and will conduct all appropriate investigation and assist in the prosecution of any case of arson. The **AGENCY** shall not be responsible for investigations of suspected incendiary fires in the unincorporated areas, but shall cooperate with the County Fire Marshal in immediately relating all pertinent information possible to the investigator(s).
- D. The **COUNTY** agrees that the County Fire Marshal may assist in the conduct of appropriate investigations of a fire which the **AGENCY** considers to be of incendiary nature in the **AGENCY**'s incorporated area upon request of the **AGENCY**.
- E. The **AGENCY** shall submit monthly statements on the Texas Fire Incident Reporting System's standardized forms to the Denton County Fire Marshal, 9060 Teasley Lane, Denton, Texas 76210-4010. This form will serve as the billing statement to the **COUNTY** for reimbursement of calls made in the unincorporated area. The Denton County Fire Marshal shall provide the forms upon request from the **AGENCY**.
- F. The **AGENCY**, in the performance of its duties and responsibilities under this Agreement, shall have the responsibility, within the sole discretion of the officers and employees of the **AGENCY**, except as otherwise determined by the Denton County Fire Marshal, to determine priorities in the dispatching and use of the **AGENCY**'s equipment and personnel, and the judgment of any such officer or employee as to such matters shall be the final determination.

The **COUNTY** shall designate the County Judge to act on behalf of the **COUNTY** and to serve as "Liaison Officer" between the **COUNTY** and the **AGENCY**. The County Judge, or her designated substitute, shall devote sufficient time and attention to insure the performance of all duties and obligations of the **COUNTY** under this Agreement and shall provide immediate and direct supervision of employees, agents, contractors, sub-contractors and/or laborers of the **COUNTY** engaged in the performance of this Agreement for the mutual benefit of the **COUNTY** and the **AGENCY**.

III.
PERFORMANCE OF SERVICE

The **AGENCY** shall devote sufficient time and attention to insure the performance of all duties and obligations of the **AGENCY** under this Agreement and shall provide immediate and direct supervision of the **AGENCY's** employees, agents, contractors, sub-contractors and/or laborers engaged in the performance of this Agreement for the mutual benefit of the **AGENCY** and the **COUNTY**.

IV.
COMPENSATION

The **COUNTY** agrees to pay to the **AGENCY** for the full performance of services as provided in this Agreement the sum of **\$10,000.00**, payable upon execution of this Agreement, and further agrees to pay the sum of **\$500.00** per fire call in the designated unincorporated areas of the **COUNTY** from October 1, 2015, to September 30, 2016. The **COUNTY** anticipates the **AGENCY** to run approximately 1 fire calls for a total funding of **\$500.00** for fire calls. The total payments by the **COUNTY** to the **AGENCY** pursuant to this Agreement are estimated to be **\$10,500.00**. The **COUNTY** will make no payment to the **AGENCY** for service provided outside the agreed service district whether by Mutual Aid Agreement or otherwise. The **AGENCY** understands and agrees that payment by the **COUNTY** to the **AGENCY** shall be made in accordance with the normal and customary processes and business procedures of the **COUNTY** and in conformance with applicable state law.

V.
FINANCIAL RECORDS

The **AGENCY** agrees to make its financial records available for audit and/or review by the **COUNTY**, upon request by the **COUNTY**.

VI.

RESPONSIBILITY OF THE COUNTY

The **COUNTY**, to the extent permitted by law, shall be responsible for the acts, negligence and omissions of all officers, employees and agents of the **COUNTY** who are engaged in the performance of this Agreement.

VII.

RESPONSIBILITY OF THE AGENCY

The **AGENCY**, to the extent permitted by law, shall be responsible for the acts, negligence and omissions of all officers, employees and agents of the **AGENCY** who are engaged in the performance of this Agreement.

VIII.

APPLICABLE LAW

The **COUNTY** and the **AGENCY** understand and agree that liability under this contract is governed by the Texas Government Code, Chapter 791 and the Texas Local Government Code, Chapter 352. This Agreement is made in contemplation of the applicability of these laws to the Agreement. Insofar as legally possible the **COUNTY** and the **AGENCY** agree to be bound by the above mentioned statutes as they exist as of the date of this Agreement.

IX.

DEFAULT

In the event of default of any of the covenants herein contained, this Agreement may be terminated at the discretion of the non-defaulting party if such default continues for a period of ten (10) days after notice to the other party in writing of such default and the intent to terminate this Agreement due to the default. Unless the default is cured, this Agreement shall terminate.

X.

TERMINATION

This Agreement may be terminated any time, by either the **COUNTY** or the **AGENCY** by giving sixty (60) days advance written notice to the other party. In the event of termination by either party, the **AGENCY** shall be compensated pro rata for all services performed to the termination date together with reimbursable expenses then due as authorized by this Agreement. In the event of such termination, should the **AGENCY** be overcompensated on a pro rata basis for all services performed to the termination date and/or be overcompensated reimbursable expenses, the **COUNTY** shall be reimbursed pro rata for all such overcompensation.

Acceptance of such reimbursement shall not constitute a waiver of any claim that may otherwise arise out of this Agreement.

XI.
GOVERNMENTAL IMMUNITY

The fact that the **COUNTY** and the **AGENCY** accept certain responsibilities relating to the rendition of fire protection services under this Agreement as part of their responsibility for providing protection for the public health makes it imperative that the performance of these vital services be recognized as a governmental function and that the doctrine of governmental immunity shall be, and it is hereby, invoked to the extent permitted by law. Neither the **AGENCY**, nor the **COUNTY** waive, nor shall be deemed to have hereby waived, any immunity or defense that would otherwise be available to it against claims arising from the exercise of government powers and functions.

XII.
ENTIRE AGREEMENT

This Agreement represents the entire Agreement between the **COUNTY** and the **AGENCY** and supersedes all prior negotiations representations and Agreements, either written or oral. This Agreement may be amended only by written instrument signed by both parties.

XIII.
LAW OF CONTRACT

This Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. The venue for any dispute, or matter, arising under this Agreement shall lie in Denton County, Texas.

XIV.
SEVERABILITY

In the event that any portion of this Agreement shall be found to be contrary to law, it is the intent of the parties hereto that the remaining portions shall remain valid and in full force and effect to the fullest extent possible.

XV.
AUTHORITY

The undersigned officer or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties.

XVI.
SERVICE AREA

Acceptance of this Agreement constitutes approval of the service area set out in attached Exhibit "A".

EXECUTED in triplicate originals on the dates set forth below.

COUNTY

Denton County, Texas
110 West Hickory Street, 2nd Floor
Denton, Texas 76201

AGENCY

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

By _____
Mary Horn
Denton County Judge

Acting on behalf of and by the
authority of Denton County
Commissioners Court of
Denton County, Texas

By _____
Name THOMAS E. HAYDEN
Title MAYOR

Acting on behalf of and by the
authority of the Town of Flower Mound

DATED: _____

DATED: _____

ATTEST:

ATTEST:

BY: _____
Denton County Clerk

BY: _____
Town Secretary

APPROVED AS TO CONTENT:

BY: _____
Denton County Fire Marshal

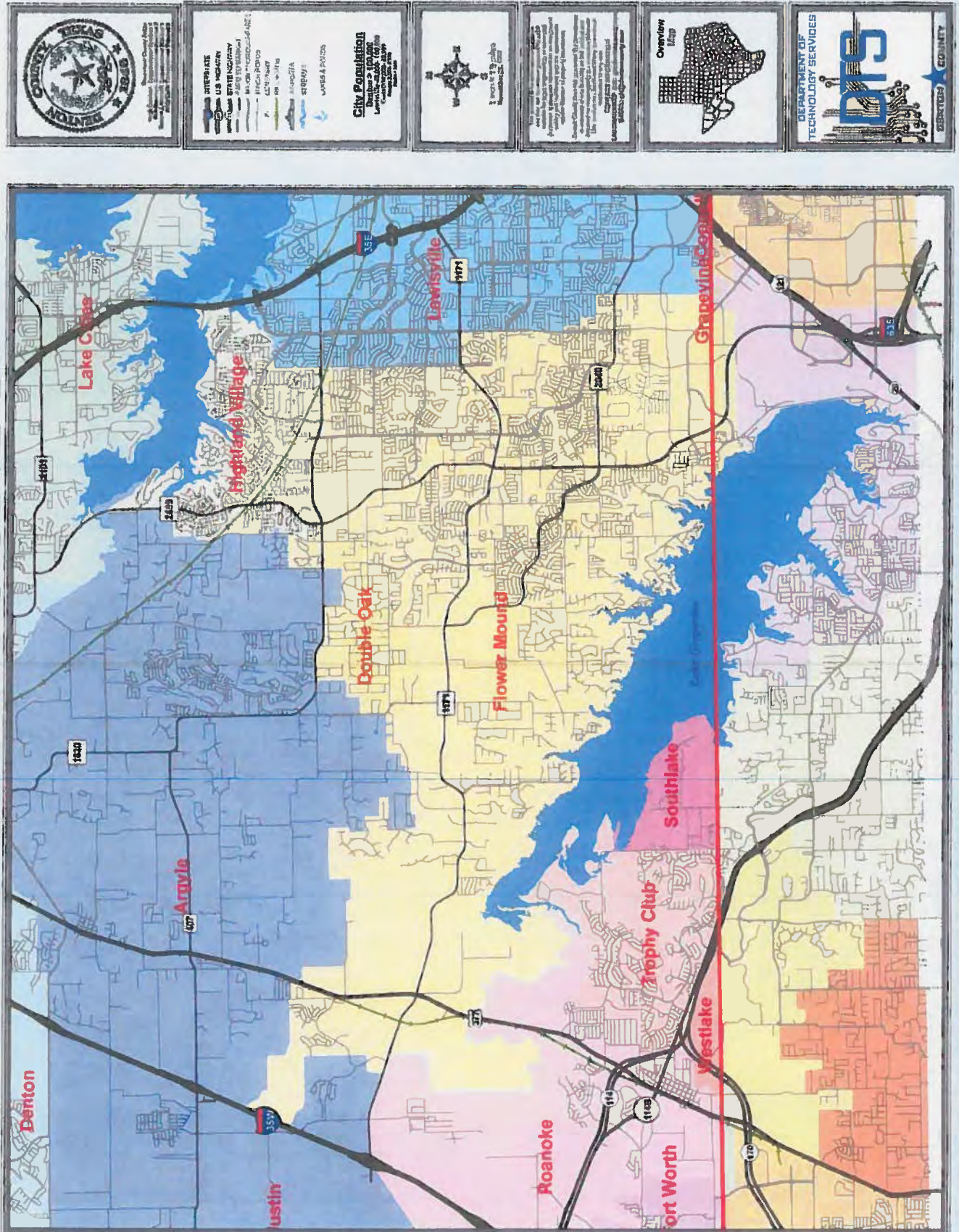
APPROVED AS TO FORM:

BY: _____
Assistant District Attorney

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$_____ to
accomplish and pay the obligation of Denton County under this Contract/Agreement.

James Wells, Denton County Auditor





TOWN COUNCIL AGENDA ITEM NO. 9

CONSENT ITEM

DATE: January 21, 2016

FROM: Rochelle Ragas, Purchasing Manager

ITEM: Consider approval of the award of Request for Bid Number 2016-12 to the lowest responsive, responsible bidders, U.S. Standard Sign (Group I) and Centerline Supply, LTD (Groups II, III, and IV) at the unit prices bid, for an estimated annual expenditure of \$140,000; and authorization for the Mayor to execute same on behalf of the Town. The contract is for one-year with four one-year renewal options.

BACKGROUND INFORMATION: On December 19, 2015 a Request for Bid was issued and a notice to bidders was advertised. Four (4) responses were received by the due date of December 22, 2015. The bids were reviewed for compliance with submission requirements and a decision was made to award to U.S. Standard Sign and Centerline Supply, LTD as this option is in the best interest of the Town. The items will be purchased on an 'as-needed' basis and funds are budgeted each fiscal year.

The Traffic Services Division maintains the Town's traffic signals, signs, and street markings. The materials were grouped into related categories such as regulatory signs, warning and school signs, sign blanks, pavement markings, and hardware.

FISCAL IMPACT: \$140,000

Proposed Expenditure:	Account Number(s):
\$140,000	100-690-95100-4080

Finance Review by: Debra Wallace, Assistant Town Manager/CFO *DW*

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Bid Tabulation
2. Traffic Services Recommendation

RECOMMENDATION: Move to approve the award of Request for Bid Number 2016-12 to the lowest responsive, responsible bidders, U.S. Standard Sign (Group I) and Centerline Supply, LTD (Groups II, III, and IV) at the unit prices bid, for an estimated annual expenditure of \$140,000; and authorization for the Mayor to execute same on behalf of the Town. The contract is for one-year with four one-year renewal options.



BID NO. 2016-12 - TRAFFIC SIGNS AND MARKING MATERIALS
BID OPENING: DECEMBER 22, 2015 AT 11:00AM

EST. QTY	UNIT	DESCRIPTION	PATHMARK TRAFFIC PRODUCTS OF TEXAS, INC.		CENTERLINE SUPPLY		VULCAN SIGNS		US STANDARD SIGN	
			UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
		GROUP I								
600	EA	OCTAGON BLANK (30X30)	\$ 12.99	\$ 7,794.00	\$ 12.41	\$ 7,446.00	\$ 11.13	\$ 6,678.00	\$ 11.04	\$ 6,624.00
10	EA	DIAMONDS BLANK (30X30X30)(YIELD BLEAKS)	\$ 9.99	\$ 99.90	\$ 12.92	\$ 129.20	\$ 6.79	\$ 67.90	\$ 6.94	\$ 69.40
20	EA	DIAMOND BLANK (36X36X36)(YIELD BLANKS)	\$ 11.99	\$ 239.80	\$ 12.67	\$ 253.40	\$ 8.64	\$ 172.80	\$ 9.81	\$ 196.20
		9X24 FLATE BLADE (STREET NAME BLADE)(PUNCHED 1/2" FROM TOP AND BOTTOM CENTER AND 1/2" FROM BOTH EDGES CENTER)								
50	EA	9X30 FLATE BLADE (STREET NAME BLADE)(PUNCHED 1/2" FROM TOP AND BOTTOM CENTER AND 1/2" FROM BOTH EDGES CENTER)	\$ 3.99	\$ 199.50	\$ 3.82	\$ 191.00	\$ 3.15	\$ 157.50	\$ 3.93	\$ 196.50
600	EA	9X36 FLATE BLADE (STREET NAME BLADE)(PUNCHED 1/2" FROM TOP AND BOTTOM CENTER AND 1/2" FROM BOTH EDGES CENTER)	\$ 4.99	\$ 2,994.00	\$ 4.40	\$ 2,640.00	\$ 3.93	\$ 2,358.00	\$ 3.80	\$ 2,280.00
600	EA	9X42 FLATE BLADE (STREET NAME BLADE)(PUNCHED 1/2" FROM TOP AND BOTTOM CENTER AND 1/2" FROM BOTH EDGES CENTER)	\$ 5.99	\$ 3,594.00	\$ 4.78	\$ 2,868.00	\$ 4.70	\$ 2,820.00	\$ 4.49	\$ 2,694.00
600	EA	9X48 FLATE BLADE (STREET NAME BLADE)(PUNCHED 1/2" FROM TOP AND BOTTOM CENTER AND 1/2" FROM BOTH EDGES CENTER)	\$ 6.99	\$ 4,194.00	\$ 6.46	\$ 3,876.00	\$ 5.43	\$ 3,258.00	\$ 5.54	\$ 3,324.00
400	EA	9X54 FLATE BLADE (STREET NAME BLADE)(PUNCHED 1/2" FROM TOP AND BOTTOM CENTER AND 1/2" FROM BOTH EDGES CENTER)	\$ 7.99	\$ 3,196.00	\$ 6.52	\$ 2,608.00	\$ 6.16	\$ 2,464.00	\$ 6.03	\$ 2,412.00
400	EA	9X60 FLATE BLADE (STREET NAME BLADE)(PUNCHED 1/2" FROM TOP AND BOTTOM CENTER AND 1/2" FROM BOTH EDGES CENTER)	\$ 8.99	\$ 3,596.00	\$ 7.55	\$ 3,020.00	\$ 7.16	\$ 2,864.00	\$ 7.13	\$ 2,852.00
200	EA	6X24 FLATE BLADE (STREET NAME BLADE)(NO PUNCHES)	\$ 9.99	\$ 1,998.00	\$ 8.33	\$ 1,666.00	\$ 7.83	\$ 1,566.00	\$ 7.79	\$ 1,558.00
200	EA	6X24 FLATE BLADE (STREET NAME BLADE)(NO PUNCHES)	\$ 2.99	\$ 598.00	\$ 2.34	\$ 468.00	\$ 2.17	\$ 434.00	\$ 2.41	\$ 482.00
50	EA	6X12 SIGN BLANK PUNCHED FOR VERTICAL/HORIZONTAL	\$ 1.79	\$ 89.50	\$ 1.34	\$ 67.00	\$ 1.27	\$ 63.50	\$ 1.76	\$ 88.00
50	EA	6X18 SIGN BLANK PUNCHED FOR VERTICAL/HORIZONTAL	\$ 2.39	\$ 119.50	\$ 1.93	\$ 96.50	\$ 1.68	\$ 84.00	\$ 2.47	\$ 123.50
10	EA	6X24 SIGN BLANK PUNCHED FOR VERTICAL/HORIZONTAL	\$ 4.00	\$ 40.00	\$ 2.56	\$ 25.60	\$ 2.17	\$ 21.70	\$ 3.52	\$ 35.20
10	EA	8X18 SIGN BLANK PUNCHED FOR VERTICAL/HORIZONTAL	\$ 5.00	\$ 50.00	\$ 2.05	\$ 20.50	\$ 2.18	\$ 21.80	\$ 4.64	\$ 46.40
10	EA	8X24 SIGN BLANK PUNCHED FOR VERTICAL/HORIZONTAL	\$ 6.00	\$ 60.00	\$ 3.01	\$ 30.10	\$ 2.82	\$ 28.20	\$ 4.68	\$ 46.80
10	EA	9X12 SIGN BLANK PUNCHED FOR VERTICAL/HORIZONTAL	\$ 4.00	\$ 40.00	\$ 1.70	\$ 17.00	\$ 1.77	\$ 17.70	\$ 3.48	\$ 34.80
10	EA	9X15 SIGN BLANK PUNCHED FOR VERTICAL/HORIZONTAL	\$ 5.00	\$ 50.00	\$ 2.18	\$ 21.80	\$ 2.17	\$ 21.70	\$ 4.35	\$ 43.50
10	EA	9X18 SIGN BLANK PUNCHED FOR VERTICAL/HORIZONTAL	\$ 4.50	\$ 45.00	\$ 2.27	\$ 22.70	\$ 2.43	\$ 24.30	\$ 4.33	\$ 43.30
200	EA	10X24 SIGN BLANK PUNCHED FOR VERTICAL/HORIZONTAL	\$ 4.20	\$ 840.00	\$ 3.78	\$ 756.00	\$ 3.49	\$ 698.00	\$ 3.37	\$ 674.00
10	EA	12X18 SIGN BLANK PUNCHED FOR VERTICAL/HORIZONTAL	\$ 6.00	\$ 60.00	\$ 3.11	\$ 31.10	\$ 3.04	\$ 30.40	\$ 3.09	\$ 30.90
200	EA	12X24 SIGN BLANK PUNCHED FOR VERTICAL/HORIZONTAL	\$ 5.00	\$ 1,000.00	\$ 4.34	\$ 868.00	\$ 4.15	\$ 830.00	\$ 3.88	\$ 776.00
10	EA	12X30 SIGN BLANK PUNCHED FOR VERTICAL/HORIZONTAL	\$ 9.00	\$ 90.00	\$ 5.36	\$ 53.60	\$ 5.17	\$ 51.70	\$ 4.85	\$ 48.50
5	EA	12X36 SIGN BLANK PUNCHED FOR VERTICAL/HORIZONTAL	\$ 12.00	\$ 60.00	\$ 6.54	\$ 32.70	\$ 6.18	\$ 30.90	\$ 5.83	\$ 29.15
10	EA	15X30 SIGN BLANK PUNCHED FOR VERTICAL/HORIZONTAL	\$ 12.00	\$ 120.00	\$ 6.90	\$ 69.00	\$ 6.21	\$ 62.10	\$ 6.18	\$ 61.80
100	EA	18X24 SIGN BLANK PUNCHED FOR VERTICAL/HORIZONTAL	\$ 7.50	\$ 750.00	\$ 6.14	\$ 614.00	\$ 6.08	\$ 608.00	\$ 5.83	\$ 583.00
5	EA	18X30 SIGN BLANK PUNCHED FOR VERTICAL/HORIZONTAL	\$ 18.00	\$ 90.00	\$ 8.03	\$ 40.15	\$ 7.68	\$ 38.40	\$ 7.29	\$ 36.45
5	EA	18X36 SIGN BLANK PUNCHED FOR VERTICAL/HORIZONTAL	\$ 20.00	\$ 100.00	\$ 9.22	\$ 46.10	\$ 9.17	\$ 45.85	\$ 8.75	\$ 43.75
5	EA	20X36 SIGN BLANK PUNCHED FOR VERTICAL/HORIZONTAL	\$ 25.00	\$ 125.00	\$ 13.23	\$ 66.15	\$ 10.17	\$ 50.85	\$ 13.08	\$ 65.40
300	EA	24X30 SIGN BLANK PUNCHED FOR VERTICAL/HORIZONTAL	\$ 11.90	\$ 3,570.00	\$ 10.25	\$ 3,075.00	\$ 9.95	\$ 2,985.00	\$ 9.67	\$ 2,901.00
5	EA	24X36 SIGN BLANK PUNCHED FOR VERTICAL/HORIZONTAL	\$ 20.00	\$ 100.00	\$ 13.23	\$ 66.15	\$ 12.18	\$ 60.90	\$ 12.80	\$ 64.00
100	EA	24X48 SIGN BLANK PUNCHED FOR VERTICAL/HORIZONTAL	\$ 19.00	\$ 1,900.00	\$ 16.55	\$ 1,655.00	\$ 16.11	\$ 1,611.00	\$ 15.56	\$ 1,556.00
25	EA	18X18 SIGN BLANK PUNCHED FOR DIAMOND/SQUARE 30X36 SIGN BLANK HOLE PUNCHED FOR VERTICAL/HORIZONTAL	\$ 7.00	\$ 175.00	\$ 5.06	\$ 126.50	\$ 4.68	\$ 117.00	\$ 4.37	\$ 109.25
25	EA	24X24 SIGN BLANK HOLE PUNCHED FOR DIAMOND/SQUARE	\$ 20.00	\$ 500.00	\$ 15.22	\$ 380.50	\$ 15.14	\$ 378.50	\$ 14.58	\$ 364.50
100	EA	24X24 SIGN BLANK HOLE PUNCHED FOR DIAMOND/SQUARE	\$ 9.60	\$ 960.00	\$ 8.17	\$ 817.00	\$ 7.99	\$ 799.00	\$ 7.64	\$ 764.00
200	EA	30X30 SIGN BLANK HOLE PUNCHED FOR DIAMOND/SQUARE	\$ 14.90	\$ 2,980.00	\$ 12.92	\$ 2,584.00	\$ 12.53	\$ 2,506.00	\$ 11.94	\$ 2,388.00
40	EA	36X36 SIGN BLANK HOLE PUNCHED FOR DIAMOND/SQUARE	\$ 22.00	\$ 880.00	\$ 17.98	\$ 719.20	\$ 18.19	\$ 727.60	\$ 17.20	\$ 688.00

200	EA	PENTAGON BLANK 30X30 (SCHOOL CROSSING BLANK)	\$	13.48	\$	2,696.00	\$	13.33	\$	2,666.00	\$	10.82	\$	2,164.00	\$	11.69	\$	2,338.00	
200	EA	PENTAGON BLANK 36X36 (SCHOOL CROSSING BLANK)	\$	19.00	\$	3,800.00	\$	19.13	\$	3,826.00	\$	15.43	\$	3,086.00	\$	16.35	\$	3,270.00	
					\$	49,793.20			\$	43,958.95			\$	40,004.30			\$	39,941.30	
		GROUP II																	
1000	EA	4" PLASTIC TWO-WAY RAISED REFLECTIVE, SQUARE, YELLOW	\$	0.98	\$	980.00	\$	0.68	\$	680.00		NO BID		NO BID		NO BID		NO BID	
		4" PLASTIC TWO-WAY RAISED REFLECTIVE, SQUARE, RED/WHITE	\$	0.98	\$	980.00	\$	0.68	\$	680.00		NO BID		NO BID		NO BID		NO BID	
1000	EA	TEMPORARY DOUBLE REFLECTIVE TAB WITHOUT COVER, YELLOW	\$	1.20	\$	240.00	\$	0.49	\$	98.00		NO BID		NO BID		NO BID		NO BID	
200	EA	TEMPORARY DOUBLE REFLECTIVE TAB WITHOUT COVER, WHITE	\$	1.20	\$	240.00	\$	0.49	\$	98.00		NO BID		NO BID		NO BID		NO BID	
200	EA	2 COMPONENT EPOXY TUBES (AEXCEL OR EQUAL) - MUST FIT RPS SERIES AIR GUN	\$	18.99	\$	1,899.00	\$	30.85	\$	3,085.00		NO BID		NO BID		NO BID		NO BID	
100	EA	EPOXY STATIC MIXER NOZZLE (MIXPAC 13-18T OR EQUAL)	\$	2.00	\$	100.00	\$	1.95	\$	97.50		NO BID		NO BID		NO BID		NO BID	
50	EA	PLASTIC RETAINING NUT FOR MIXER NOZZLE 13MM (MIXPAC UM 13-PP OR EQUAL)	\$	1.00	\$	50.00	\$	0.75	\$	37.50		NO BID		NO BID		NO BID		NO BID	
50	EA	TOLUENE	\$	80.00	\$	400.00	\$	46.75	\$	233.75		NO BID		NO BID		NO BID		NO BID	
5	5GAL																		
12-COUNT		UPSIDE DOWN MARKING PAINT, WHITE, YELLOW, OR ORANGE, RED AND BLACK	\$	38.00	\$	760.00	\$	34.50	\$	690.00		NO BID		NO BID		NO BID		NO BID	
20	CASE				\$	5,649.00			\$	5,699.75			\$	-			\$	-	
		GROUP III																	
		U-CHANNEL SIGN POST, GREEN, 6' LENGTH, 1.12 LBS/FT. WEIGHT	\$	6.99	\$	349.50	\$	5.75	\$	287.50	\$	5.20	\$	260.00		NO BID		NO BID	
50	EA		\$	17.99	\$	35,980.00	\$	18.55	\$	37,100.00	\$	19.38	\$	38,760.00		NO BID		NO BID	
2000	EA	TELSPAR POLE, 10' LENGTH, 1 3/4" SQUARE	\$	20.99	\$	4,198.00	\$	22.27	\$	4,454.00	\$	23.25	\$	4,650.00		NO BID		NO BID	
200	EA	TELSPAR POLE, 12' LENGTH, 1 3/4" SQUARE	\$	24.99	\$	4,998.00	\$	25.97	\$	5,194.00	\$	27.13	\$	5,426.00		NO BID		NO BID	
200	EA	TELSPAR POLE, 14" LENGTH, 1 3/4", SQUARE	\$	7.79	\$	11,685.00	\$	6.94	\$	10,410.00	\$	7.34	\$	11,010.00		NO BID		NO BID	
1500	EA	TELSPAR BASE, 3' LENGTH, 2" SQUARE	\$	6.39	\$	9,585.00	\$	4.35	\$	6,525.00	\$	4.79	\$	7,185.00		NO BID		NO BID	
1500	EA	TELSPAR SLEEVE, 18" LENGTH, 2 1/4", SQUARE	\$	4.99	\$	7,485.00	\$	2.75	\$	4,125.00	\$	4.65	\$	6,975.00		NO BID		NO BID	
1500	EA	TELSPAR SLEEVE, 24" LENGTH, 1 1/2", SQUARE	\$	40.00	\$	1,000.00	\$	27.25	\$	681.25	\$	23.50	\$	587.50		NO BID		NO BID	
25	EA	CHEVRON ADJUSTABLE BRACKET RPB CAB2 OR EQUAL																	
		RIVET, JUMBO HEAD DRIVE RIVET, DIAMETER 3/8" LENGTH 1/2", HEAD DIAMETER 1", ALUMINUM	\$	0.48	\$	2,400.00	\$	0.45	\$	2,250.00	\$	0.50	\$	2,500.00		NO BID		NO BID	
5000	EA	RIVET, CHERRY MATE RIVET, DIAMETER 1/4" GRIP 1 5/8"-1 7/8", DOUBLE HEADED DESIGN, ALUMINUM	\$	0.30	\$	1,500.00	\$	0.35	\$	1,750.00	\$	0.22	\$	1,100.00		NO BID		NO BID	
5000	EA	SPACER, DIAMETER.280" O/D X 500" O.D., LENGTH 1 3/4", GREY PVC FINISH, INTENDED TO BE USED WITH CHERRY MATE RIVET TO SEPARATE THE END OF TWO STREE SIGN BLANKS. FREE FROM BURRS AND UNEVEN CUTS	\$	0.20	\$	1,000.00	\$	0.21	\$	1,050.00	\$	0.18	\$	900.00		NO BID		NO BID	
5000	EA	TAMPER RESISTANT 5/16" X 2 1/4" STANDARD BACK TO BACK THREADED SYSTEM (SIMIFAST VC229-1D OR EQUAL)	\$	0.58	\$	2,900.00	\$	0.59	\$	2,950.00	\$	0.22	\$	1,100.00		NO BID		NO BID	
					\$	83,080.50			\$	76,776.75			\$	80,453.50			\$	-	
		GROUP IV																	
		28" TRIMLINE 7# TRAFFIC CONE W/2 CONE COLLARS (JBC SAFETY RS70032S OR EQUAL)	\$	11.99	\$	3,597.00	\$	12.75	\$	3,825.00		NO BID		NO BID		NO BID		NO BID	
300	EA		\$	15.00	\$	150.00	\$	11.50	\$	115.00		NO BID		NO BID		NO BID		NO BID	
10	EA	1"x8"x8" PLASTIC BARRICADE PANEL (NO SHEETING)	\$	16.00	\$	320.00	\$	12.70	\$	254.00		NO BID		NO BID		NO BID		NO BID	
20	EA	A-CAD PLASTIC BARRICADE LEG (FITS 1" PLASTIC BOARDS)																	
		TRAFFIC DRUM (ORANGE) WITH 2-6" DIAMOND GRADE REFLECTIVE SHEETING BANDS (PLASTICADE ECONOCADE II OR EQUAL)	\$	55.00	\$	1,100.00	\$	34.10	\$	682.00		NO BID		NO BID		NO BID		NO BID	
20	EA	TRAFFIC DRUM TIRE LOCKING RING	\$	8.00	\$	160.00	\$	2.75	\$	55.00		NO BID		NO BID		NO BID		NO BID	
20	EA	CHANNELIZER (ORANGE) WITH 4-4" DIAMOND GRADE REFLECTIVE BANDS (PLASTICADE WATCHTOWER STACKER CONE OR EQUAL)	\$	30.00	\$	600.00	\$	18.95	\$	379.00		NO BID		NO BID		NO BID		NO BID	
20	EA	CHANNELIZER BASES 10LB WEIGHT	\$	15.00	\$	300.00	\$	8.95	\$	179.00		NO BID		NO BID		NO BID		NO BID	
		VERTICAL PANELS (ORANGE) DIAMOND GRADE 8"x36" REFLECTIVE SHEETING BOTH SIDES (PLASTICADE GENSTONE VERTICAL PANEL OR EQUAL)	\$	50.00	\$	1,000.00	\$	42.57	\$	851.40		NO BID		NO BID		NO BID		NO BID	
20	EA	VERTICAL PANEL BASES 20LB WEIGHT	\$	22.00	\$	440.00	\$	11.98	\$	239.60		NO BID		NO BID		NO BID		NO BID	
		TYPE III COLLAPSIBLE BARRICADES WITH 3 REFLECTIVE PANELS 1"x8"x8" AND DIAMOND GRADE SHEETING (LEFT OR RIGHT)(PLASTICADE BREAK-AWAY OR EQUAL)	\$	250.00	\$	5,000.00	\$	184.95	\$	3,699.00		NO BID		NO BID		NO BID		NO BID	
20	EA	36X36 HIGH INTENSITY ROLL UP PORTABLE WARNING SIGNS (VARIOUS MESSAGES)(36"x36" SUPERBRITE MATERIAL (HIGH INTENSITY) WITH PLASTIC CORNER HARD POCKET ON BOTTOM OF SIGN	\$	63.00	\$	2,520.00	\$	69.50	\$	2,780.00		NO BID		NO BID		NO BID		NO BID	
40	EA																		

10	EA	LEFT/RIGHT LANE CLOSED HIGH INTENSITY OVERLAY FOR ROLLUP SIGNS	\$ 16.00	\$ 160.00	\$ 19.50	\$ 195.00	NO BID	NO BID	NO BID	NO BID
40	EA	PORTABLE SIGN STANDS WITH UNIVERSAL BRACKET (BONE SAFETY WITH UNIVERSAL BRACKET MODEL SZ-412S OR EQUAL)	\$ 90.00	\$ 3,600.00	\$ 99.30	\$ 3,972.00	NO BID	NO BID	NO BID	NO BID
				\$ 18,947.00		\$ 17,226.00				
		TOTAL		\$ 157,469.70		\$ 143,661.45		\$ 120,457.80		\$ 39,941.30

From: David Stallings
Sent: Monday, January 04, 2016 8:41 AM
To: Rochelle Ragas; Mika Clark
Cc: Matthew Hotelling; Kenneth Parr
Subject: RE: Bid Tabulations

Rochelle,

I think we should award Group I to U.S. Standard Sign because it is a significant savings over awarding to overall to one Bidder. I think we should award Group II, II, & IV to Centerline Supply as they are overall the lowest if you combine these 3 and there is not a significant savings to award Group II to another vendor. Thanks

David Stallings



TOWN COUNCIL AGENDA ITEM NO. 10

CONSENT ITEM

DATE: January 21, 2016

FROM: David Bauer, Construction Manager

ITEM: Consider approval of a Professional Services Agreement for the design, construction documents, and bidding phase services for the Bakersfield Bridge Bank Stabilization project, with Kimley Horn and Associates, Inc., for \$38,000.00; and authorization for the Mayor to execute the same on behalf of the Town.

BACKGROUND INFORMATION: In May, June and October of this year the Town experienced heavy rain and associated flooding that heavily eroded the east bank of the bridge connecting Bakersfield Park with Heritage Park.

This item is to consider approval of a Professional Services Agreement with Kimley Horn and Associates, Inc. to provide design services, including geotechnical investigation, design of a gabion wall system to armor the erosion of the bank around the bridge, limited contract construction administration and bid documents for the amount of \$38,000.00 for the Bakersfield Bridge Bank Stabilization Project. It is anticipated some insurance and FEMA funding will be available for the anticipated repairs of the bridge and bank stabilization.

FISCAL IMPACT: \$38,000.00

Proposed Expenditure:	Account Number(s):
\$38,000.00	359-585-97059-6070

Finance Review by: Debra Wallace, Assistant Town Manager/CFO *DW*

LEGAL REVIEW: The Town's Professional Services Agreement form documents, prepared by Taylor, Olson, Adkins, Sralla, & Elam L.L.P., were used to draft this agreement. No alteration to the legal content of this form document was made in preparation of this Construction Agreement.

ATTACHMENTS:

1. Professional Services Agreement

RECOMMENDATION: Move to approve a Professional Services Agreement for the design, construction documents, and bidding phase services for the Bakersfield Bridge Bank Stabilization project, with Kimley Horn and Associates, Inc., for \$38,000.00; and authorize the Mayor to execute the same on behalf of the Town.

THE STATE OF TEXAS §
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH
Kimley Horn and Associates, Inc.**

This contract is entered into on this _____ day of _____, 20____, 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 **Kimley Horn and Associates, Inc.**, ("hereinafter referred to as "CONSULTANT") whose address is 801 Cherry Street, Unit 11, Suite 950, Fort Worth, TX 76102

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to surveying, design and providing construction documents for design and other services for the Bakersfield Bridge Bank Stabilization Project ; and

WHEREAS, CONSULTANT (is a) is an architectural, engineering, professional planning, urban design, or landscape architecture firm qualified to provide such services qualified to provide such services and is willing to undertake the performance of such services for the TOWN in exchange for fees hereinafter specified;

TERMS OF AGREEMENT

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

I.

Employment of Consultant

CONSULTANT will perform as an independent contractor all services under this Contract to the prevailing professional standards consistent with the level of care and skill ordinarily exercised by members of the architectural, engineering and planning professions, both public and private, currently practicing in the same locality under similar conditions including but not limited to the exercise of reasonable, informed judgments and prompt, timely action. If CONSULTANT has represented or is representing that it has special expertise in one or more areas to be utilized in this Contract, then CONSULTANT agrees to perform those special expertise services to the appropriate local, regional and national professional standards.

II.

Scope of Services

CONSULTANT shall perform such services as are necessary to provide design and other services for the Bakersfield Bridge Stabilization Project specifically including, but not necessarily limited to, the tasks enumerated more fully in Attachment "A" hereto entitled "Scope of Work" (hereafter referred to as the "Project"). Attachment "A" is hereby incorporated herein by reference and made a part hereof as if written word for word. However, in case of conflict in the language of Attachment "A" and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.

III.

Payment for Services

Total payment for services described herein shall be a sum not to exceed thirty eight thousand and No/100 Dollars (\$38,000.00). This total payment for services includes CONSULTANT's ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT. If CONSULTANT retains any subcontractors to perform any of the work, CONSULTANT acknowledges that payments to such subcontractors are due and payable in accordance with the provisions of Texas Government Code Section 2251.022, and that interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.

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

Each month CONSULTANT will submit to TOWN an invoice for 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, TOWN shall make payments in the amount shown by CONSULTANT's approved monthly statements and other documentation submitted in compliance with the Texas Prompt Payment Act, Texas Government Code Chapter 2251.

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

IV.

Revisions of the Scope of Services

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

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

V.

Term

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

VI.
Contract Termination Provision

Notwithstanding any other provision of this Contract, this Contract may be terminated at any time by TOWN for any reason, with or without cause, by providing CONSULTANT thirty (30) days written notice of such termination. Upon receipt of such notice, CONSULTANT shall immediately terminate working on, placing orders or entering into contracts for supplies, assistance, facilities or materials in connection with this Contract and shall proceed to promptly cancel all existing contracts insofar as they are related to this Contract.

VII.
Ownership of Documents

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

VIII.
Insurance

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

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

Town of Flower Mound
2121 Cross Timbers Road

Flower Mound, TX 75028
Fax: 972-874-6478
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:

David Bauer, Construction Manager
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6308 Telephone
972-874- 6472 Facsimile

However, if the policy is canceled for nonpayment of premium, only ten (10) days advance written notice to TOWN is required. CONSULTANT shall also notify TOWN within twenty-four (24) hours after receipt of any notices of expiration, cancellation, nonrenewal or any material change in coverage it receives from its insurer(s);

4. The term "Owner" or "TOWN" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of TOWN and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of TOWN;
5. The policy phrase "Other Insurance" shall not apply to TOWN where TOWN is an additional insured on the policy; and
6. All provisions of the Contract concerning liability, duty and standards of care together with the indemnification provision shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

C. Concerning insurance to be furnished by CONSULTANT, it is a condition precedent to acceptability thereof that:

1. Any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by CONSULTANT. The TOWN's decision(s) thereon shall be final;
2. All policies are to be written through companies duly approved to transact that class of insurance in the State of Texas; and

3. All liability policies required herein, save and except Professional Liability Insurance, shall be written with an "occurrence" basis coverage trigger.

D. CONSULTANT agrees to the following:

1. CONSULTANT hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against TOWN, it being the intention that the insurance policies shall protect all parties to this Contract and be primary coverage for all losses covered by the policies;
2. Companies issuing the insurance policies and CONSULTANT shall have no recourse against TOWN for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of CONSULTANT;
3. Approval, disapproval or failure to act by TOWN regarding any insurance supplied by CONSULTANT (or any subcontractors) shall not relieve CONSULTANT of full responsibility or liability for damages and accidents as set forth in the Contract documents. Neither shall the insolvency or denial of liability by the insurance company exonerate CONSULTANT from liability; and
4. No special payments shall be made for any insurance that the CONSULTANT and subcontractors are required to carry; all are included in the contract price and the contract unit prices.

Any of the insurance policies required under this section may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.

IX.

Right to Inspect Records

CONSULTANT agrees that TOWN shall have access to and the right to examine any directly pertinent books, documents, papers and records of CONSULTANT involving transactions relating to this Contract. CONSULTANT agrees that TOWN shall have access during normal working hours to all necessary CONSULTANT facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. TOWN shall give CONSULTANT reasonable advance notice of intended audits.

If TOWN agrees that CONSULTANT may retain any subcontractors, CONSULTANT further agrees to include in subcontract(s), if any, a provision that any subcontractor or engineer agrees that TOWN shall have access to and the right to

examine any directly pertinent books, documents, papers and records of such engineer or 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

CONSULTANT DOES HEREBY COVENANT AND CONTRACT TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY AND HOLD HARMLESS TOWN AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS OR CAUSES OF ACTION, INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, THAT MAY ARISE BY REASON OF DEATH OR INJURY TO PERSONS OR DAMAGE TO OR LOSS OF USE OF PROPERTY OCCASIONED BY ANY WRONGFUL INTENTIONAL ACT OR OMISSION OF CONSULTANT AS WELL AS ANY NEGLIGENT OMISSION, ACT OR ERROR OF CONSULTANT, ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND

INVITEES, OR OTHER PERSONS FOR WHOM CONSULTANT IS LEGALLY LIABLE WITH REGARD TO THE PERFORMANCE OF THIS CONTRACT, REGARDLESS OF WHETHER SUCH LIABILITY, CLAIMS, SUITS, DEMANDS OR CAUSES OF ACTION IS THE RESULT IN PART OF TOWN'S NEGLIGENCE OR FAULT, AND CONSULTANT WILL, AT ITS OWN COST AND EXPENSE, DEFEND AND PROTECT TOWN AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS, INCLUDING PAYMENT OF TOWN'S REASONABLE ATTORNEYS' FEES. IN THE EVENT OF A CLAIM IS BROUGHT AGAINST TOWN, TOWN SHALL HAVE THE RIGHT TO RETAIN LEGAL COUNSEL OF ITS CHOOSING IN DEFENSE OF SUCH A CLAIM, AND SUCH ELECTION SHALL NOT RELIEVE CONTRACTOR OF ITS OBLIGATIONS UNDER THIS SECTION.

XIII.

Independent Contractor

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

XIV.

Default

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

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

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

XV. Provisions Surviving Termination

The terms of Sections XII entitled Indemnification, and XVII 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:

David Bauer, Construction Manager
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874- 6308 Telephone
972-874-6472 Facsimile

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:

Misty Christian, P.E., CFM
Project Manager
Kimley-Horn and Associates, Inc.
801 Cherry Street, Unit #11, Ste. 950
Fort Worth, TX 76102
817-335-6511 Telephone

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.

XX.
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.

XXI.
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.

XXII.
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.

XX.
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.

XXI.
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.

XXII.
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.

XXIII.
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.

XXIV.
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.

XXV.
Venue

Situs of this Contract is agreed to be Denton County, Texas, for all purposes, including performance and execution, and the parties to this Contract agree and covenant that this Contract will be enforceable in Flower Mound, Texas; and that if

legal action is necessary to enforce this Contract, exclusive venue will lie in Denton County, Texas.

XXVI.

No Third Party Beneficiary

For purposes of this Contract, including its intended operation and effect, the parties (TOWN and CONSULTANT) specifically agree and contract that: (1) the Contract only affects matters/disputes between the parties to this Contract, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship with TOWN or CONSULTANT or both; and (2) the terms of this Contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either TOWN or CONSULTANT.

[The remainder of this page is left blank intentionally]

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

**THE TOWN OF FLOWER MOUND,
TEXAS**

By: _____
The Honorable Thomas E Hayden
Mayor, Town of Flower Mound

Date Signed: _____

Attest:

Town Secretary

Approved:

Town Attorney

CONSULTANT:
Kimley Horn and Associates, Inc.

By: 
 Name: Jeff James, P.E.
 Title: Senior Vice President

Date Signed: 1/8/16

State of Texas §
 §
 County of Tarrant §

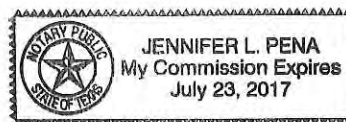
This instrument was acknowledged before me on the 8th day of January, 2016, by Jeff James in his capacity as Senior Vice President of Kimley-Horn & Associates, Inc. a Private Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of Kimley-Horn and Associates, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 8th
 DAY OF Jan, 2016.


 Notary Public, State of Texas #12536789-6

My Commission Expires:

7-23-17



ATTACHMENT A

SCOPE OF SERVICES

PROJECT NAME: Bakersfield Pedestrian Bridge-Construction Plans for the Gabion Basket Wall

PROJECT UNDERSTANDING

There is an existing pedestrian bridge located across Bakers Branch (creek) at Bakersfield Park in the Town of Flower Mound, Texas. Erosion has occurred near the bridge and at the abutments of the bridge. A feasibility analysis was performed by Kimley-Horn in October 2015 to evaluate potential design alternatives that would provide permanent erosion protection. The Town has selected the design alternative that consists of constructing a gabion basket wall along the eroded areas in the creek. The design will also consist of repairing failed railing and the concrete trail near the bridge. This project consists of the Consultant preparing construction plans and contract documents for the project. Bidding phase services are also provided in the Scope of Services.

SCOPE OF PROFESSIONAL SERVICES

TASK 1: Design

A. Design

The Consultant will design a gabion basket wall system along the eroded side slopes of the creek (approximately 50 feet long). The gabion basket wall will extend upstream and downstream to provide a connection from the gabion basket wall to the existing side slopes of the creek. The design will consider addressing transition areas from the natural channel and side slopes to the constructed improvements. In addition to these efforts, the following subtasks will be performed:

- Update the hydraulic model to reflect the final design
- Design of a concrete beam and tie back system for the gabion basket wall.
- Design permanent erosion control for the transition areas.
- Coordinate with the Town's floodplain administrator regarding the floodplain permit and construction activities in the floodplain.
- Prepare construction plans (11"x17") for the project. It is anticipated the construction plans will include the following sheets:
 - o Cover Sheet
 - o General Notes/Index Sheet
 - o Demolition Sheet if necessary

- o Dimensional Control Sheet
 - o Plan and profile Sheet including proposed grading
 - o Detail Sheets
- Prepare an Opinion of Probable Construction Cost (OPCC) for the project.
- Prepare specifications which include technical specifications for materials and installation of the proposed facilities. The contract documents shall be based upon *Flower Mound Contract Documents*. The *NCTCOG Standard Specifications for Public Works Construction* and the Town of Flower Mound's requirements for Public Works Construction will govern all other specifications
- Submit to the franchise utility companies 95% complete plans for review and comment, if needed.

The Consultant will submit to the Town 95% complete plans, specifications, contract documents, and OPCC for review and comments. Once the comments from the Town are provided to the Consultant, the Consultant will address one round of comments and submit final plans to the Town.

Deliverables

-Five (5) copies of the 95% and OPCC

-Five (5) copies of the Final Construction Specifications and Contract Documents

-One (1) copy of Reproducible Bidding Documents (Plans), including the OPCC

-One (1) copy of Reproducible Bidding Documents (Final Construction Specifications and Contract Documents)

Meetings

-Meet with the Town to review 95% plans.

TASK 2: BIDDING PHASE SERVICES

- A. Print and issue 20 sets of bidding documents. Additional sets of bidding documents shall be printed, only upon the Town's authorization, as Additional Professional Services. Bidding documents will be issued to potential bidders upon the payment of a non-refundable fee to cover the cost of printing those documents.

B. Issue addenda as required.

C. In this phase, The Consultant will provide the following deliverables:

- Notice to Bidders for Advertising by the Town
- Addenda as required
- Print and deliver to the Town up to 20 sets of bid documents

TASK 3: GEOTECHNICAL ANALYSIS

The Consultant, through its subconsultant, will provide geotechnical testing services of subsurface conditions within the project limits. The geotechnical analysis will identify the types of soils present and subsurface soil conditions. Up to two (2) bores will be performed to determine the soil conditions. The geotechnical subconsultant will recommend design parameters for the structural design and slope stability. A geotechnical study will be provided to the Town for their records.

TASK 4: CONSTRUCTION PHASE SERVICES

A. Record Drawing Preparation

Prepare record drawings from contractor's marks showing changes made during construction. Transfer contractor's marks to digital format. The Consultant will be provided the contractor's revisions and shall not be responsible for verifying their completeness or accuracy.

B. Deliverables

One (1) compact disc containing Record Drawing in digital format (PDF, TIFF, CAD)

C. Services Provided by the Town

Review of contractor's marks for completeness and accuracy

This task includes up to 25 hours of effort. Exceeding this amount of effort will be considered Additional Services.

ADDITIONAL SERVICES

Any services not specifically provided for in the above scope will be considered additional services and can be performed at our then current hourly rates.

Additional services we can provide include, but are not limited to, the following:

- Surveying Services;
- Assisting Town or contractor in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, shall be furnished by the Consultant on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
- Sampling, testing, or analysis beyond that specifically included in the Scope of Services referenced herein above.
- Preparing applications and supporting documents for government grants, loans, or planning advances, and providing data for detailed applications.
- Appearing before regulatory agencies or courts as an expert witness in any litigation with third parties or condemnation proceedings arising from the development or construction of the Project, including the preparation of Consultanting data and reports for assistance to the Town.
- Providing professional services associated with the discovery of any hazardous waste or materials in the project site.
- Providing presentations to the Town Council.
- Structural assessment of the existing pedestrian bridge
- Providing construction staking, additional platting, or other surveying services not identified in the above Scope of Services.
- Providing additional printing for bidding document distribution.
- Providing additional documentation required by the Town's legal representative during condemnation proceedings.
- Providing any easement acquisition services.
- Attending public meetings during the project.
- Preparing a CLOMR or LOMR for the project.
- Attending a Pre Bid Meeting
- Providing construction phase services
- Preparing a Bid Tabulation or Recommendation Letter
- Reviewing Contractor's References
- Any services not listed in the Scope of Services.
- Preparation or coordination with the USACE or FEMA;
- Detailed tree survey;

ATTACHMENT B**COMPENSATION**

The Consultant will provide the Scope of Services for a lump sum fee.

TASK 1 – Design	\$25,000
TASK 2 – Bidding Phase Services	\$4,000
TASK 3 – Geotechnical Analysis	\$4,000
<u>TASK 4 – Construction Phase Services</u>	<u>\$5,000</u>
TOTAL	\$38,000

Additional services will be negotiated at the time they are identified.

CERTIFICATE OF INTERESTED PARTIES**FORM 1295**

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

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

Kimley-Horn and Associates, Inc.
 Raleigh, NC, United States

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

Town of Flower Mound

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

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary
Atz, John	Raleigh, NC, United States	X	
Peed, Brooks	Raleigh, NC, United States	X	
Schiller, Mike	Raleigh, NC, United States	X	
Wilson, Mark	Raleigh, NC, United States	X	

5 Check only if there is NO Interested Party.
☐
6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



AFFIX NOTARY STAMP / SEAL ABOVE

Jeff James
 Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said Jeff James, this the 8th day of January, 20 16, to certify which, witness my hand and seal of office.

Jennifer L. Pena
 Signature of officer administering oath

Jennifer L. Pena
 Printed name of officer administering oath

Texas Notary #125367896
 Title of officer administering oath

ADD ADDITIONAL PAGES AS NECESSARY



TOWN COUNCIL AGENDA ITEM NO. 11

REGULAR ITEM

DATE: January 21, 2016

FROM: Bryn Meredith, Town Attorney

ITEM: Discuss and consider a resolution to refer the "Investigation Report, Town of Flower Mound," to the Denton County District Attorney's Office and declaring a public rebuke of Councilmember Itamar Gelbman on the basis of the report.

BACKGROUND INFORMATION: On July 20, 2015, the Town Council authorized an investigation of the Town's elected officials pursuant to Section 3.12 of the Town Charter and on September 8, 2015, the Town Council approved the continuance of the Investigation. On November 30, 2015, the third-party investigator issued the "Investigation Report Town of Flower Mound," which indicates "[p]ossible violation, prosecution recommended," in the context of allegations made by a resident against Councilmember Gelbman. During the December 21st Town Council meeting, the Town Council requested that the Town Attorney develop a resolution that would: 1) refer the investigation report to the District Attorney's Office and 2) admonish Councilmember Gelbman. The attached resolution refers the investigation report to the District Attorney's Office. In addition, the resolution contains factual findings (supporting admonishment) that were provided to the Town Attorney by individual members of the Town Council. The Council may debate, supplement or modify the factual findings set forth resolution, as it deems appropriate.

BOARD REVIEW/CITIZEN FEEDBACK: Not required for board review. Residents voiced concerns at previous town council meetings.

ALTERNATIVES/OPTIONS: Town staff to proceed as directed.

FISCAL IMPACT: N/A

Proposed Expenditure:	Account Number(s):
N/A	N/A

Finance Review by: N/A

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

ATTACHMENTS:

1. Draft resolution

RECOMMENDATION: Move to approve a resolution to refer the "Investigation Report, Town of Flower Mound," to the Denton County District Attorney's Office and declaring a public rebuke of Councilmember Itamar Gelbman on the basis of the report and the factual findings contained within the resolution.

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

A RESOLUTION OF THE TOWN OF FLOWER MOUND, TEXAS, DIRECTING THE TOWN MANAGER AND TOWN ATTORNEY TO REFER THE "INVESTIGATION REPORT TOWN OF FLOWER MOUND," ISSUED MONDAY NOVEMBER 30, 2015, TO THE DENTON COUNTY DISTRICT ATTORNEY'S OFFICE; DECLARING A PUBLIC REBUKE OF COUNCILMEMBER ITAMAR GELBMAN ON THE BASIS OF THE FINDINGS SET FORTH IN THE REPORT AND MAKING ADDITIONAL FINDINGS IN SUPPORT OF SUCH REBUKE; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, on July 20, 2015, the Town Council authorized an investigation of the Town's elected officials (the "Investigation") pursuant to Section 3.12 of the Charter and on September 8, 2015, the Town Council approved the continuance of the Investigation; and,

WHEREAS, on November 30, 2015, the third-party investigator issued the "Investigation Report Town of Flower Mound" (the "Report"), which indicates "[p]ossible violation, prosecution recommended," in the context of allegations made by resident David Vaught against Councilmember Itamar Gelbman; and,

WHEREAS, in accordance with the recommendation of the investigator, as set forth in the Report, the Town Council finds that it is in the best interest of the public health, safety, morals and general welfare to refer the Report and the findings set forth therein, to the Denton County District Attorney's Office; and,

WHEREAS, in addition to the foregoing, the Town Council desires to express its displeasure and disappointment with Councilmember Itamar Gelbman's actions, as set forth in the Report and as further detailed below, which the Town Council finds constitute a breach of the responsibilities of the office of Councilmember of the Town of Flower Mound.

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

SECTION 1

That the Town Council of the Town of Flower Mound, Texas, hereby directs the Town Manager and Town Attorney to refer the Report to the Denton County District Attorney's Office.

RESOLUTION NO. _____

PAGE 2

SECTION 2

That the Town Council finds that Councilmember Gelbman has issued threats that if the Council publicly released the Report or took action compel Councilmember Gelbman to participate in the Investigation, he would take the following actions:

- Take steps that would be detrimental to the Town Manager's profession and livelihood; and,
- Councilmember Gelbman also threatened legal action to challenge the ability of the Town Council to exercise its right to issue a subpoena or to make the findings of the Report public (including commenting to one Councilmember, "if this goes to court I will bankrupt this *expletive* town"); and,
- Councilmember Gelbman threatened reputational harm to a resident of the Town.

The Town Council finds that these comments were witnessed at various times by the entire Council body and/or individual members of Town Council, as well as Town staff members, and in supporting this Resolution the Town Council finds these statements to be credible and confirms the validity of same.

Based on the foregoing and on the findings of fact and conclusions set forth in the Report, the Town Council hereby issues a public rebuke of Councilmember Gelbman.

SECTION 3

That this Resolution shall be effective from its date of adoption.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF _____ TO _____, ON THIS 21ST DAY OF JANUARY, 2016.

APPROVED:

Thomas E. Hayden, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

RESOLUTION NO. _____

APPROVED AS TO FORM AND LEGALITY:

Bryn Meredith, TOWN ATTORNEY



TOWN COUNCIL AGENDA ITEM NO. 12

REGULAR ITEM

DATE: January 21, 2016

FROM: Bryn Meredith, Town Attorney

ITEM: Consider Fourth Amendment to the Contract of Sale for a public access and utility easement from Janvier Scott; and authorize the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On June 15, 2015, Town Council authorized a 60-day extension for the Contract of Sale between the Janvier Scott and the Town, resulting in October 19, 2015 as a closing date deadline. A component of the agreement requires a Master Plan Amendment.

On October 5, 2015, Town Council approved a second amendment to extend the closing deadline to December 18, 2015, to allow for continued discussions with the various parties and attorneys involved for the purpose of coming to a resolution.

On December 7, 2015, Town Council approved a third agreement to again extend the closing deadline, this time to February 15, 2016, to allow for continued discussions with the various parties involved for the purpose of coming to a resolution.

The discussion of the parties has resulted in an agreed upon Fourth Amendment to the Contract of Sale, which is being presented for Town Council's consideration. This Fourth Amendment does the following: (1) amends the easement area to accommodate the redesigned Spine Road; (2) provides an agreement that the Town, if necessary, can grade along one side of Bob White Lane to accommodate drainage; (3) provides that, if necessary, Seller will provide an easement for an underground storm sewer line from Spine Road to FM 2499; and (4) clarifies the issues concerning the trees affected by the construction of the Spine Road.

ATTACHMENTS:

1. Fourth Amendment to Contract of Sale

RECOMMENDATION: Move to approve Fourth Amendment to the Contract of Sale between Janvier Scott and The Town of Flower Mound, Texas, to acquire a public access and utility easement for the construction of the Spine Road across Bob White Lane.

**Fourth Amendment to Contract of Sale between
Janvier Scott and the Town of Flower Mound, Texas**

**STATE OF TEXAS §
 §
COUNTY OF DENTON §**

WHEREAS, Janvier Scott ("Seller") and the Town of Flower Mound, Texas ("Purchaser") entered into a Contract of Sale, effective April 1, 2015, for the purchase of a Public Access and Utility Easement for purpose of constructing and maintaining concrete drive and utility improvements and a Public Access Easement for the purpose of constructing and maintaining a sidewalk ("Contract"); and

WHEREAS, Seller and Purchaser previously agreed to amend the terms for closing in the Contract first by letter agreement dated June 28, 2015, which was signed on June 19, 2015, a second time by letter agreement dated September 29, 2015, which was effective October 5, 2015, and a third time by letter agreement dated November 16, 2015, which was effective December 7, 2015; and

WHEREAS, Seller and Purchaser have now agreed to additional amendments to the Contract concerning the easements to be acquired and are memorializing those amendments in this Fourth Amendment to Contract of Sale between Janvier Scott and the Town of Flower Mound, Texas ("Amendment"); and

NOW, THEREFORE, SELLER AND PURCHASER AGREE AS FOLLOWS:

I.

The parties to this Amendment are Janvier Scott ("Seller") and the Town of Flower Mound, Texas, a home rule municipal corporation located in Denton County, Texas ("Purchaser"). For convenience, Seller and Purchaser may be referred to hereinafter collectively as "parties" or individually as a "party."

This Amendment is effective as of the date the last party executes this Amendment.

II.

2.01. The Contract is hereby amended by replacing Exhibit "A" referenced in Article I of the Contract, which describes the real property that is included in the Public Access and Underground Utility Easement to be acquired by Purchaser, with Exhibit "A-1," which is attached hereto and incorporated herein for any and all purposes.

2.02. The Contract is hereby amended by amending Paragraph 5.05, Trees, of the Contract to read as follows:

"None of the four (4) large trees on Seller's property are now located within the Public Access and Underground Utility Easement to be acquired by Purchaser.

For the purposes of the relocation of utility lines and the construction of the roadway improvements in the Public Access and Underground Utility Easement, all of the trees currently located within the Public Access and Underground Utility Easement will be removed.”

2.03. The Contract is hereby amended by amending Article IV, Seller’s Rights and Obligations, by creating Paragraph 4.01 and adding a new Paragraph 4.02, a new Paragraph 4.03 and a new Paragraph 4.04, so that Article IV reads as follows:

**“ARTICLE IV
SELLER’S RIGHTS AND OBLIGATIONS**

4.01. Master Plan Amendment. The rights and obligations of Seller hereunder to consummate the transaction contemplated hereby is subject to mutually agreeable easement wording and to the Town Council for the Town of Flower Mound, Texas, approving the following changes to the SPA 2 Master Plan, any of which may be waived in whole or in part by Seller at or prior to the Closing:

A. Make the following modifications to the map on page 3.9:

- i. Add wording to the map to indicate Bob White Lane continues straight through to 2499; and
- ii. Remove the words about the Town acquiring Bob White Lane and any other words about Bob White Lane on the drawing.

B. Modify the text on page 3.7 that describes SPA 2 Master Plan by adding a second bullet that reads: “Access from the Seller’s remaining property and for all those who currently hold an ingress/egress easement over Bob White Lane will continue over Bob White Lane to FM 2499 in its current location since the spine road within SPA 2 was not designated or dedicated as a public street.”

4.02. Re-grading. Seller agrees that Purchaser may regrade the existing north bar ditch along the currently existing Bob White Lane from the spine road to FM 2499 and to provide Purchaser access to perform said regrading, on terms mutually agreeable to the parties, should the regrading become necessary in order to provide for adequate surface water drainage or runoff. Purchaser will be responsible for any relocation or repairs that might be necessary to Seller’s existing water service line that runs along the north side of Bob White Lane. Purchaser will also be responsible for any relocation cost or damage to any franchise utilities that might be located along the north side of Bob White Lane.

4.03. Underground Storm Sewer Line. Seller agrees to dedicate to Purchaser a permanent storm sewer easement for Purchaser to install an underground storm sewer line from the spine road to connect to the existing TxDOT storm sewer line that runs parallel to FM 2499 should the installation of an underground storm sewer line become necessary in order to provide for adequate surface water

drainage or runoff. If the installation of an underground storm sewer line becomes necessary, the alignment of the easement to be dedicated by Seller to allow for the installation of said line shall be determined by mutual agreement of the parties. It is anticipated that, within four weeks of the Town Council's approval of this Amendment, the Addendum to the Development Agreement with MRK Enterprises, and the Memorandum of Agreement with the owner of the Black Walnut Café, the Town will make a final decision as to whether the storm water runoff associated with the Bob White Spine Road Connection Project will require the installation of a buried storm sewer line and the dedication of a permanent storm sewer easement by Seller.

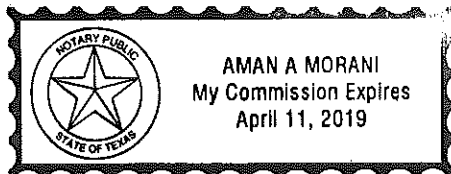
4.04. Access Along Bob White Lane. Seller agrees to allow Purchaser to utilize the existing Bob White Lane to access the Public Access and Utility Easement from FM 2499 during the construction of the spine road. Seller also agrees to allow the open area along the north side of the existing Bob White Lane to be used as a staging area during the construction of the spine road. Purchaser agrees not to use this area for the stockpiling of any materials without prior approval by Seller. Purchaser agrees to limit the use of this area for the temporary parking of vehicles and equipment during the construction of the spine road. Purchaser agrees to address any surface damages resulting from the utilization of Bob White Lane during the construction of the spine road and to restore the area back to its original condition."

III.

All other terms and conditions of the Contract not amended by this Amendment are unaffected and continue in full force and effect.

[signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed to be effective as of the effective date stated above.



SELLER:
JANVIER SCOTT

[Signature of Janvier Scott]

Date: 12/8/15

ADDRESS: 2829 Bob White Ln.
Flower Mound, Texas 75022

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF DENTON §

Before me, the undersigned authority in and for the State of Texas, on this day personally appeared JANVIER SCOTT, known to me, or proved to me through TXDL (description of identity card or other document), to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 08 day of December, 2015.

My Commission Expires:

April 11, 2019

[Signature of Aman A Morani]
Notary Public in and for the State of Texas

AMAN MORANI
Typed or Printed Name of Notary

PURCHASER:
TOWN OF FLOWER MOUND, TEXAS

By: Tom Hayden, Mayor

Date: _____

ADDRESS: 2121 Cross Timbers Road
Flower Mound, Texas 75028

ATTEST:

Town Secretary

EXHIBIT "A-1"

**LEGAL DESCRIPTION
PUBLIC ACCESS & UTILITY EASEMENT
PART OF JANVIER GENTRY SCOTT TRACT
0.096 Acres**

BEING all that certain lot, tract or parcel of land situated in the J. Wizwell Survey, Abstract Number 1346, Town of Flower Mound, Denton County, Texas, and being part of that certain called 3.0206 acre tract of land described as Tract II in deed to Janvier Gentry Scott, recorded in Document Number 2013-60264 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

COMMENCING at 1/2" capped rebar found (G&A Consultants) on the west line of F.M. 2499 (A.K.A. Long Prairie Road) at the northeast corner of said Tract II, and being the southeast corner of that certain called 0.052 acre tract of land described in Correction Deed to the State of Texas, recorded in Document Number 94-R0081669 of the Real Property Records of Denton County, Texas;

THENCE S 88°27'40" W, with the north line of said Tract II and the south line of said 0.052 acre tract passing at 15.01 feet a 1/2" rebar found at the southwest corner thereof, and being the southeast corner of Lot 1, Block A, Flooring America Addition, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Document Number 2009-123 of the Plat Records of Denton County, Texas, continuing with the south line of said Lot 1 and the north line of said Tract II a total distance of 304.85 feet to 1/2" capped rebar set (G&A) at the POINT OF BEGINNING;

THENCE with the arc of a curve to the right having a radius of 70.50 feet, a central angle of 59°43'41" and an arc length of 73.49 feet whose chord bears S 03°28'05" E, 70.21 feet to a 1/2" capped rebar set (G&A) on the south line of said Tract II, being on the north line of Lot 2, Block 1 of Firewheel Village, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Document Number 2009-2 of the Plat Records of Denton County, Texas, from which a "+" found in concrete at the northeast corner of said Lot 2 bears N 88°27'35" E, 273.58 feet;

THENCE S 88°27'35" W, with the south line of said Tract II and the north line of said Lot 2, passing at 53.63 feet the northwest corner of said Lot 2 and the northeast corner of Lot 1, Block 1 of said Firewheel Village, continuing with the north line of said Lot 1 a total distance of 67.31 feet to a 1/2" capped set (G&A);

THENCE with the arc of a curve to the right having a radius of 66.00 feet, a central angle of 13°26'57" and an arc length of 15.49 feet whose chord bears N 40°01'31" E, 15.46 feet to a 1/2" capped rebar set (G&A);

THENCE N 46°45'00" E, 10.38 feet to a 1/2" capped rebar set (G&A);

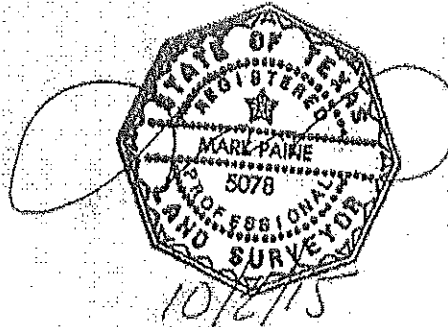
THENCE with the arc of a curve to the left having a radius of 19.50 feet, a central angle of 99°00'00" and an arc length of 33.69 feet whose chord bears N 02°45'00" W, 29.66 feet to a 1/2" capped rebar set (G&A);

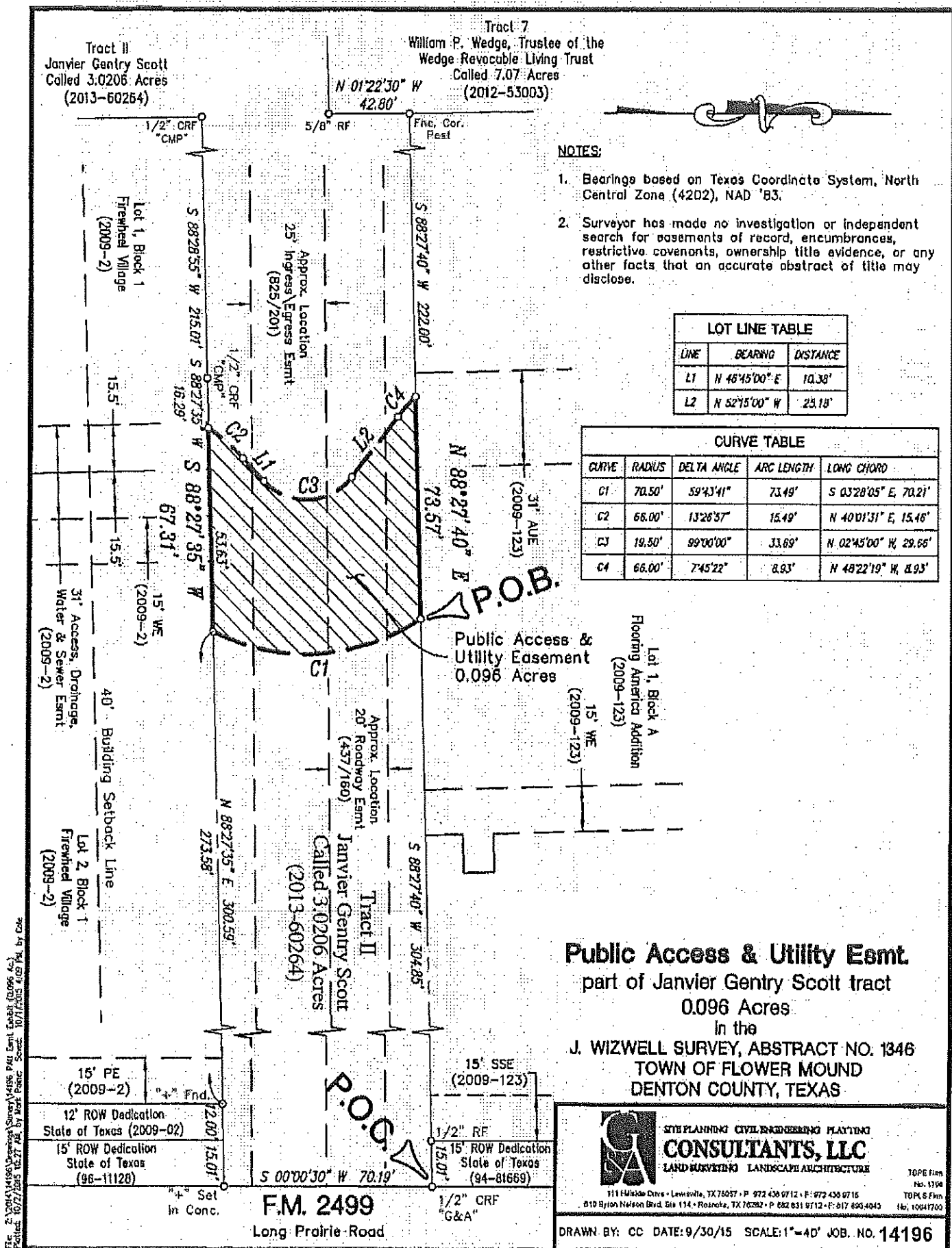
THENCE N 52°15'00" W, 25.18 feet to a 1/2" capped rebar set (G&A);

THENCE with the arc of a curve to the right having a radius of 66.00 feet, a central angle of $07^{\circ}45'22''$ and an arc length of 8.93 feet whose chord bears $N48^{\circ}22'19''$ W, 8.93 feet to a 1/2" capped rebar set (G&A) on the north line of said Tract II and the south line of the aforementioned Lot 1, Block A, Flooring America Addition;

THENCE $N88^{\circ}27'40''$ E, 73.57 feet with the north line of said Tract II and the south line of said Lot 1, Block A, Flooring America Addition to the POINT OF BEGINNING and containing approximately 4,180 square feet or 0.096 acres of land.

Bearings based on Texas Coordinate System, North Central Zone (4202), NAD 83.







TOWN COUNCIL AGENDA ITEM NO. 13 REGULAR ITEM

DATE: January 21, 2016

FROM: Chuck Russell, Town Planner

ITEM: Consider a request for a Master Plan Amendment (MPA15-0008 – Specific Plan Area 2) to amend Section 3, Specific Plans, by modifying the access standards and map for Specific Plan Area 2 (SPA 2) to address the Bob White Lane public access, utility and sidewalk easements per the terms of the approved Contract of Sales Agreement, and to consider adopting an ordinance providing for said amendment. SPA 2 is generally located on both sides of Long Prairie Road (FM 2499) between Sagebrush Drive and Chaparral Lane. *(The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its May 11, 2015, meeting.)*

BACKGROUND INFORMATION: Attached is the Planning and Zoning Commission report and backup for this item. No changes or new information has been received since that meeting.

This item was considered and subsequently postponed by the Town Council at the following meetings in order to allow the property owner more time to review the proposed amendments: June 1, 2015, June 15, 2015, July 20, 2015, August 17, 2015, September 21, 2015, and October 19, 2015. The official public hearing was held on June 1, 2015.

ATTACHMENTS:

1. Planning and Zoning Commission Staff Report
2. Draft Ordinance

DRAFT MOTION: Move to approve a request for a Master Plan Amendment (MPA15-0008 – Specific Plan Area 2) to amend Section 3, Specific Plans, by modifying the access standards and map for Specific Plan Area 2 (SPA 2) to address the Bob White Lane public access, utility and sidewalk easements per the terms of the approved Contract of Sales Agreement, and adopt an ordinance providing for said amendment.



PLANNING AND ZONING COMMISSION AGENDA ITEM NO: 7

DATE: May 11, 2015

FROM: Chuck Russell, Town Planner

ITEM: Public Hearing to consider a request for a Master Plan Amendment (MPA15-0008 – Specific Plan Area 2) to amend Section 3, Specific Plans, by modifying the access standards and map for Specific Plan Area 2 (SPA 2) to address the Bob White Lane public access, utility and sidewalk easements per the terms of the approved Contract of Sales Agreement. SPA 2 is generally located on both sides of Long Prairie Road (FM 2499) between Sagebrush Drive and Chaparral Lane.

I. ITEM SUMMARY

This application has been reviewed by DRC and has been found to be in conformance with all applicable Town regulations.

This application will require final action by the Town Council.

II. APPLICATION ANALYSIS

SPA 2 contains property on both sides of Long Prairie Road (FM 2499) between Sagebrush Drive and Stone Creek (north of Chaparral Lane). Specific sites within SPA 2 include Calloway's Nursery, DATCU, and Angel Vet. In order to reduce the number of drive entrances off of FM 2499, the SPA 2 Master Plan includes the location of a spine road on the west side of and paralleling FM 2499. This spine road is planned to provide access to the existing and future development within SPA 2 from Firewheel Drive and Sagebrush Drive.

A portion of the proposed spine road crosses an existing privately owned drive easement (Bob White Lane). At the April 20, 2015, Town Council meeting, a sales agreement was approved between the Town and the property owner to obtain an easement for the construction and maintenance of the spine road across the private drive (Attachment A(2)). The approved public access easement also provides for the installation and maintenance of a waterline that will parallel the spine road.

The sales agreement also included the acquisition of a public access easement for the purpose of constructing and maintaining a sidewalk across the existing private drive easement adjacent to FM 2499. This sidewalk installation eliminates an existing gap in the sidewalk running along FM 2499.

The SPA 2 development controls and exhibit define the land uses as well as development standards for this area. The development controls and associated exhibit for SPA 2 can be found in their entirety in Attachment A(3). Certain elements of the specific controls and exhibit for SPA 2 were specified in the approved sales agreement to be amended as follows:

Make the following modifications to the exhibit on page 3.9 of SPA 2:

- Modify the text on page 3.7 by adding a second bullet that reads: "Access from the Seller's remaining property and all those with ingress/egress easements over Bob White Lane will continue over Bob White Lane to FM 2499 in its current location since the spine road within SPA 2 was not designated or dedicated as a public street."
- Add wording to the SPA 2 exhibit to indicate Bob White Lane continues straight through to 2499.
- Remove the text about the Town acquiring Bob White Lane and any other text about Bob White Lane on the SPA 2 exhibit.

III. CORRESPONDENCE

The Town Code requires both public notice in a newspaper of general circulation (Denton Record Chronicle) and notification of the property owners within 200 feet of the subject property for all Master Plan amendment requests. At the time this report was written, staff had not received any correspondence regarding this item.

IV. ATTACHMENTS

A. Background Information

1. Vicinity Map
2. April 20, 2015, Town Council Staff Report and Sales Agreement
3. SPA 2

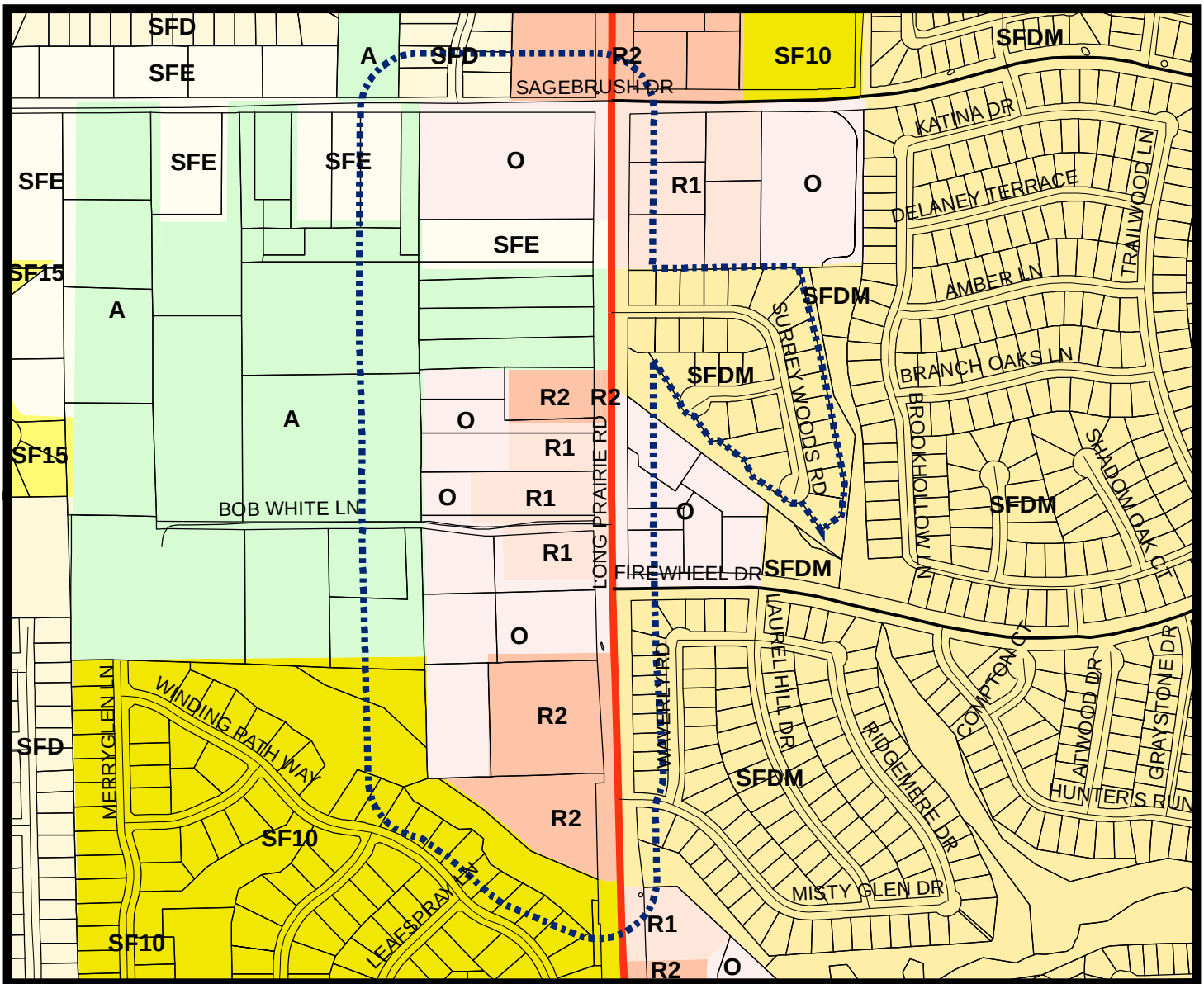
B. Application Details

1. Updated Master Plan Exhibit



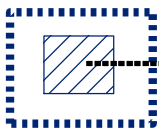
Vicinity Map

Reference Project: MPA15-0008



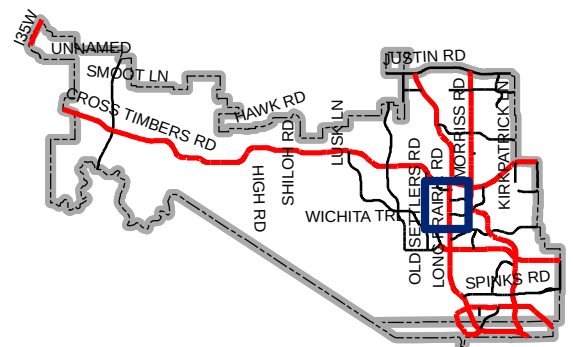
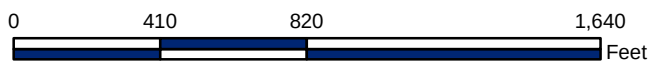
LEGEND

	Retail 2		Retail 1		Agriculture		Single Family Density		Single Family 10
	Office		Single Family Estate		Single Family 15		Single Family Density Medium		



Subject Property

200 ft Notification Buffer around Property



Map Location



TOWN COUNCIL AGENDA ITEM NO. 17

CONSENT ITEM

DATE: April 20, 2015

FROM: Ken Parr, Executive Director of Public Works

ITEM: Consider approval of the Contract of Sales Agreement for the acquisition of a 0.122 acre public access and utility easement and a 0.024 acre public access and sidewalk easement from Janvier Scott in the amount of \$100,000.00.

BACKGROUND INFORMATION: In order to reduce the number of drive entrances off of FM 2499, the SPA 2 Master Plan includes the installation of a spine road on the west side of and paralleling FM 2499. This Spine Road provides access to the existing and future development within SPA 2 from Firewheel Drive and Sagebrush Drive.

The proposed sales agreement provides for an easement for the construction and maintenance of the spine road across an existing private drive easement owned by Janvier Scott. This easement also provides for the installation and maintenance of a waterline that parallels the spine road. Staff has met with the property owner to work out the details of the easement acquisition.

The sales agreement also includes the acquisition of a public access easement for the purpose of constructing and maintaining a sidewalk across the existing private drive easement adjacent to FM 2499. This sidewalk installation eliminates an existing gap in the sidewalk running along FM 2499.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed this sales agreement as to form and legality.

ATTACHMENTS:

1. Contract of Sale

RECOMMENDATION: Move to approve the Contract of Sales Agreement for the acquisition of a 0.122 acre public access and utility easement and a 0.024 acre public access and sidewalk easement from Janvier Scott in the amount of \$100,000.00.

CONTRACT OF SALE

STATE OF TEXAS §
 §
COUNTY OF DENTON §

THIS CONTRACT OF SALE ("Contract") is made by and between Janvier Scott ("Seller") and the Town of Flower Mound, Texas, a home rule municipal corporation located in Denton County, Texas ("Purchaser") to be effective on the Effective Date as specified below. For convenience, Seller and Purchaser may be referred to hereinafter collectively as "parties" or individually as a "party."

ARTICLE I **PURCHASE AND SALE**

By this Contract, Seller sells and agrees to convey, and Purchaser purchases and agrees to pay for a public access and underground utility easement for the purpose of constructing and maintaining a concrete drive and utility improvements over, upon, through, across and along certain real property situated in Denton County, Texas, described by lot and block or metes and bounds on Exhibit "A," which is attached hereto and incorporated herein for all purposes, and a public access easement for the purpose of constructing and maintaining a sidewalk upon or over certain real property situated in Denton County, Texas, described by lot and block or metes and bounds on Exhibit "B," which is attached hereto and incorporated herein for all purposes (both easements referred to collectively herein as the "Property"), for the consideration and upon and subject to the terms, provisions, and conditions set forth below.

ARTICLE II **PURCHASE PRICE**

The purchase price for the Property shall be One Hundred Thousand and NO/100 Dollars (\$100,000.00) ("Purchase Price") to be paid by Purchaser to Seller in good and final funds at Closing.

ARTICLE III **EARNEST MONEY**

Purchaser shall within three (3) days of execution of this Contract deposit Twenty Thousand and NO/100 Dollars (\$20,000.00) as Earnest Money with a Title Company of Purchaser's choosing with said Title Company being located in Denton County, Texas. Failure to timely deposit the Earnest Money shall terminate this Contract immediately. The Earnest Money shall be credited towards the Purchase Price at Closing. The parties agree that should this Contract not close for any reason, other than a breach of this Contract by Purchaser, the Earnest Money shall be refunded to Purchaser.

ARTICLE IV **SELLER'S RIGHTS AND OBLIGATIONS**

The rights and obligations of Seller hereunder to consummate the transaction contemplated hereby is subject to mutually agreeable easement wording and to the Town Council for the Town of Flower Mound, Texas, approving the following changes to the SPA 2 Master Plan, any of which may be waived in whole or in part by Seller at or prior to the Closing:

- A. Make the following modifications to the map on page 3.9:
 - i. Add wording to the map to indicate Bob White Lane continues straight through to 2499; and
 - ii. Remove the words about the Town acquiring Bob White Lane and any other words about Bob White Lane on the drawing.
- B. Modify the text on page 3.7 that describes SPA 2 Master Plan by adding a second bullet that reads: "Access from the Seller's remaining property and all those with ingress/egress easements over Bob White Lane will continue over Bob White Lane to FM 2499 in its current location since the spine road within SPA 2 was not designated or dedicated as a public street."

ARTICLE V

PURCHASER'S RIGHTS AND OBLIGATIONS

5.01 **Title Policy.** The rights and obligations of Purchaser hereunder to consummate the transaction contemplated hereby are subject to the ability of Purchaser to obtain a satisfactory Texas Owner's Policy of Title Insurance from the Title Company under the following conditions, any of which may be waived in whole or in part by Purchaser at or prior to the Closing. Within 30 days after the Effective Date of this Contract, Purchaser, at Purchaser's sole cost and expense, shall have the Title Company issue a preliminary title commitment covering the Property ("Title Commitment") accompanied by copies of all recorded documents relating to easements, rights-of-way, liens, etc., affecting the Property. The Title Commitment shall bind the Title Company to issue a Texas Owner's Policy of Title Insurance at the Closing on the standard form of policy prescribed by the Texas Department of Insurance. Purchaser shall give Seller written notice on or before the expiration of 20 days after Purchaser receives the Title Commitment that the condition of title as set forth in the Title Commitment is or is not satisfactory, and in the event Purchaser states that any conditions or exceptions to title are not satisfactory, Seller shall promptly undertake to eliminate or modify all unacceptable matters to the reasonable satisfaction of Purchaser. In the event Seller chooses not to or is unable to comply with Purchaser's written notice within 20 days after receipt of such notice, this Contract may be terminated by Purchaser by providing written notice of termination to Seller. If Purchaser's written notice of objection to the Title Commitment is not received by Seller within the 20-day period, all conditions specified in the Title Commitment shall be deemed to be acceptable to Purchaser and any objection thereto shall be deemed to have been waived for all purposes. Notwithstanding anything herein to the contrary, any ingress/egress easements previously granted for the benefit of lands contiguous to Bob White Lane shall not be objectionable and shall be deemed Permitted Exceptions.

5.02 **Stop Signs.** Upon the completion of the construction of the spine road on the Property, the Town agrees to construct stop signs at the north/south intersection to Bob White Lane creating a two way stop intersection, which would not require Seller or any easement holder over Bob White Lane to stop when accessing Highway 2499 from Bob White Lane.

5.03 **Drive Repair.** Upon the completion of the construction of the spine road on the Property, the Purchaser agrees to repair Seller's drive to connect it to the spine road and to maintain said connection such that travel along Bob White Lane shall not be obstructed or hindered.

5.04 **Construction and Maintenance.** Purchaser shall construct and maintain the spine road, sidewalk and easement area at its sole cost and expense with Seller having no liability or responsibility for construction or maintenance. During construction and/or maintenance, Seller and any easement holders over Bob White Lane shall be guaranteed access across the spine road and sidewalk to Highway 2499. Construction and maintenance of the spine road, sidewalk and use otherwise of the easements shall not increase the volume or velocity of the storm water coming onto Seller's remaining property.

5.05 **Trees.** There are four (4) trees in the easement area. Only two (2) of the four (4) trees may be removed from the easement.

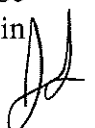
ARTICLE VI
REPRESENTATIONS AND WARRANTIES OF SELLER
AND AGREEMENT OF PURCHASER

6.01 **Seller's Representations and Warranties.** Seller hereby represents and warrants to Purchaser to the best of Seller's knowledge as follows, which representations and warranties shall be deemed made by Seller to Purchaser as of the Effective Date of this Contract and as of the date of the Closing:

- (a) There are no parties in possession of any portion of the Property as lessees, tenants at sufferance, or trespassers;
- (b) Seller is the record owner of the Property and has the right and ability to convey to Purchaser good and marketable title to the Property without the approval or participation of any other person and free and clear of any and all liens, encumbrances, conditions, assessments and restrictions other than the Permitted Exceptions described in 4.01;
- (c) There are no parties with an interest in the Property that would interfere with Purchaser's non-exclusive use of the Property; and
- (d) Seller is not aware of any Hazardous Substances buried on the Property.

ARTICLE VII
CLOSING

7.01 **Closing Date.** The closing of this Contract ("Closing") shall be held at such time and place as Seller and Purchaser may agree upon in writing (which date is herein referred to as the "Closing Date"). If the parties cannot agree as to a specific Closing Date within 30 days of the date the Master Plan is amended under Article III of this Contract, the Closing Date shall be the date selected by Purchaser upon 3 days written notice to Seller. The parties may agree in



writing to modify the Closing Date for any reason. Notwithstanding anything herein to the contrary this Contract shall close at the latest by the 17th day of August , 2015.

7.02 Conditions at Closing. The Closing and Purchaser's obligations under this Contract to purchase the Property are expressly conditioned on the following:

- (a) Seller's delivery to Purchaser at Closing of a duly executed and acknowledged Public Access and underground Utility Easement, for the purpose of constructing a concrete drive and utility improvements, and Public Access Easement, for constructing a sidewalk, in a form mutually acceptable to Purchaser and Seller, conveying the Property, free and clear of any and all liens, encumbrances, conditions, assessments, and restrictions other than as provided in this Contract;
- (b) Delivery to Purchaser of the Texas Owner's Title Policy issued by the Title Company in the full amount of the Purchase Price, insuring Purchaser's easement interest in the Property, subject only to those title exceptions listed in this Contract, if any, such other exceptions as may be approved in writing by Purchaser, and the standard printed exceptions contained in the usual form of Texas Owner's Title Policy,
- (c) Seller's execution of such documents and instruments reasonably requested by the Title Company to consummate the transactions contemplated herein; and
- (d) Seller's delivery of possession of the Property to Purchaser at Closing.

At Closing, Purchaser shall deliver to Seller the Purchase Price, less the Earnest Money, in accordance with the terms of this Contract.

7.03 Failure of Conditions. Should Seller fail to satisfy any of the conditions specified in paragraph 6.02 of this Contract, Purchaser shall have the right to terminate this Contract and to recover any amounts paid by Purchaser to Seller on account of the Purchaser's performance of this Contract. The exercise of this right by Purchaser shall not, however, constitute a waiver of any other rights Purchaser may have against Seller for breach of this Contract. The Title Company shall be and is hereby irrevocably instructed by Seller on any such failure of condition and receipt of such notice from Purchaser by it to immediately refund to Purchaser all monies and instruments deposited by Purchaser with Title Company pursuant to this Contract.

7.04 Taxes. Purchase shall not be responsible for the payment of any taxes or other assessments against the Property at the Closing. In the event there exists any roll back or other deferred taxes which are retroactive to the period of Seller's ownership of the Property or any time prior thereto pursuant to a change in zoning, use, ownership or otherwise, such retroactive taxes shall remain the obligation of Seller excepting any sums to Purchaser. In no event shall Purchaser, as a municipal corporation of the State of Texas, be liable for property taxes or other assessments of any kind which have been assessed against the Property. This provision shall survive the Closing.



7.05 Closing Costs. All costs and expenses of Closing in consummating the sale and purchase of the Property shall be borne and paid as follows:

All attorney's fee paid for by the party incurring same
All other costs to be paid by Purchaser

ARTICLE VIII REAL ESTATE COMMISSIONS

It is understood and agreed that no real estate brokers were involved in the negotiation and consummation of this Contract, and that no commission is to be payable in cash at the Closing. If this Contract is terminated for any reason prior to Closing, the parties agree that there will be no commission due or payable hereunder.

ARTICLE IX BREACH BY SELLER

In the event Seller shall fail to fully and timely perform any of its obligations hereunder or shall fail to consummate the sale of the Property for any reason, except because of Purchaser's termination of this Contract or because of Purchaser's default, Purchaser may either terminate the Contract, enforce specific performance of this Contract, or seek any other remedies available at law, in equity, or by statute. Seller's misrepresentation of any representation or warranty under article V of this Contract or failure to comply with the terms of article VI of this Contract, shall constitute a default of this Contract by Seller.

ARTICLE X BREACH BY PURCHASER

If Purchaser shall fail to consummate this Contract for any reason, except Seller's default or the termination of this Contract pursuant to a right to terminate given herein, Purchaser shall be in default and Seller may at its sole and exclusive remedy have the Earnest Money Deposit paid to Seller by the Title Company as liquidated damages for the breach. The payment of such deposit shall thereby release Purchaser from any further obligation under this Contract.

ARTICLE XI MISCELLANEOUS

11.01 Effective Date. The effective date of this Contract will be the date the last party executes the Contract.

11.02 Survival of Covenants. Any of the representations, warranties, covenants, and contracts of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the closing date of the transactions contemplated hereby shall survive the closing.

11.03 Notices. All notices required or permitted to be sent hereunder shall be delivered in person, by courier or overnight delivery service or by depositing same in the United States mail, return receipt requested. Such notices shall be deemed delivered on the date received and shall be delivered to the parties at the address listed below the parties' signature to this Contract.

11.04 Governing Law/Venue. This Contract shall be construed under and governed by and in accordance with the substantive laws of the State of Texas, notwithstanding any choice-of-law provisions thereof. All obligations of the parties created by this Contract are fully performable in Denton County, Texas. Venue in any suit or cause of action under this Contract shall lie exclusively in Denton County, Texas.

11.05 Parties Bound. This Contract shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns.

11.06 Severability. In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability of such provision shall not affect the validity or enforceability of any other provision of this Contract, and this Contract shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

11.07 Entirety. This Contract constitutes the sole and only agreement of the parties regarding the subject matter of this Contract and supersedes any prior understandings or written or oral contracts between the parties respecting the subject matter of this Contract.

11.08 Amendment. This Contract may not be modified or amended unless such modification or amendment is in writing and signed by both parties.

11.09 Time. In this Contract, time is of the essence and compliance with the times for performance is required.

11.10 Assignment. This Contract or any obligation of a party hereunder may not be assigned by any party without the express written consent of the other party to the Contract.

11.11 No Waiver. The failure of a party to enforce a right under this Contract shall not be construed to waive such party's right to enforce any other rights under this Contract. Nothing in this Contract shall be construed to waive the Purchaser's governmental immunity under Texas law.

11.12 Captions. The captions to the various provisions of this Contract are for informational purposes only and shall not alter the substance of the terms and conditions of this Contract.

11.13 Attorney's Fees/Court Costs. The prevailing party in any legal proceeding brought under or with respect to the transaction described in this Contract is entitled to recover from the non-prevailing party all costs of such proceeding and reasonable attorney's fees. The Purchaser's right to recover its attorney's fees under such circumstances is found in section 271.159 of the Texas Local Government Code.

[signature pages to follow]

EXECUTED to be effective on the Effective Date.

SELLER:

JANVIER SCOTT

Date:

4/17/2015

ADDRESS:

2829 Bob White Ln.
Flower Mound, TX
75022

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF DENTON §

Before me, the undersigned authority in and for the State of Texas, on this day personally appeared JANVIER SCOTT, known to me, or proved to me through TX DL (description of identity card or other document), to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 17 day of April, 2015.

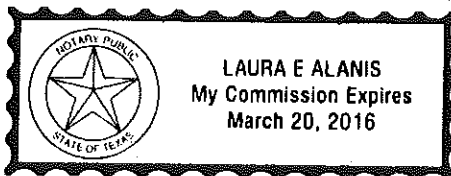
My Commission Expires:

March 20, 2016

Laura Alanis
Notary Public in and for the State of Texas

Laura Alanis

Typed or Printed Name of Notary



[Handwritten signature]

PURCHASER:

TOWN OF FLOWER MOUND, TEXAS

By: Tom Hayden, Mayor

ADDRESS: 2121 Cross Timbers Road
Flower Mound, Texas

Date: _____

ATTEST:

Town Secretary

EARNEST MONEY RECEIPT

The undersigned certifies that the Town of Flower Mound has paid to
_____ Title Company the sum of _____ Dollars and no cents
(\$_____.00) on this _____ day of _____, 2015.

By: _____
Name: _____
Title: _____
Telephone: _____
Facsimile: _____



EXHIBIT "A"

**LEGAL DESCRIPTION
PUBLIC ACCESS & UTILITY EASEMENT
0.122 Acres**

BEING all that certain lot, tract or parcel of land situated in the J. Wizwell Survey, Abstract Number 1346, Town of Flower Mound, Denton County, Texas, and being part of that certain called 3.0206 acre tract of land described as Tract II in deed to Janvier Gentry Scott, recorded in Document Number 2013-60264 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

COMMENCING at 1/2" capped rebar set (G&A Consultants) on the west line of F.M. 2499 (A.K.A. Long Prairie Road) at the northeast corner of said Tract II, and being the southeast corner of that certain called 0.052 acre tract of land described in Correction Deed to the State of Texas, recorded in Document Number 94-R0081669 of the Real Property Records of Denton County, Texas;

THENCE S 88°27'40" W, with the north line of said Tract II and the south line of said 0.052 acre tract passing at 15.01 feet the southwest corner thereof, and being the southeast corner of Lot 1, Block A, Flooring America Addition, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Document Number 2009-123 of the Plat Records of Denton County, Texas, continuing with the south line thereof a total distance of 325.61 feet to the **POINT OF BEGINNING**;

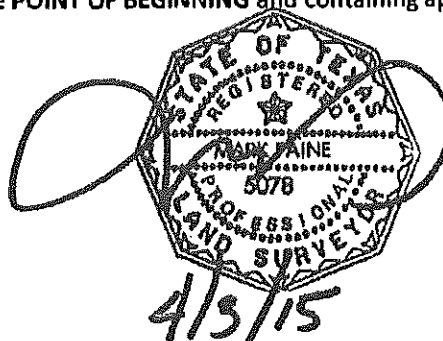
THENCE S 01°32'20" E, 70.17 feet over and across said Tract II to the south line thereof being on the north line of Lot 2, Block 1 of Firewheel Village, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Document Number 2009-2 of the Plat Records of Denton County, Texas;

THENCE S 88°27'35" W, with the south line of said Tract II and the north line of said Lot 2, passing at 30.50 feet the northwest corner of said Lot 2 and the northeast corner of Lot 1, Block 1 of said addition, continuing with the north line of said Lot 1 a total distance of 60.48 feet to a 1/2" capped rebar found (CMP);

THENCE S 88°28'55" W, 15.02 feet continuing with a south line of said Tract II and the north line of said Lot 1, Block 1;

THENCE N 01°32'20" W, 70.17 feet over and across said Tract II to the north line thereof, being in the south line of said Lot 1, Block A of Flooring America Addition;

THENCE N 88°27'40" E, 75.50 feet with the north line of said Tract II and the south line of said Lot 1, Block A, Flooring America Addition to the **POINT OF BEGINNING** and containing approximately 0.122 acres (5,298 square feet) of land.



A handwritten signature in the bottom right corner of the page.

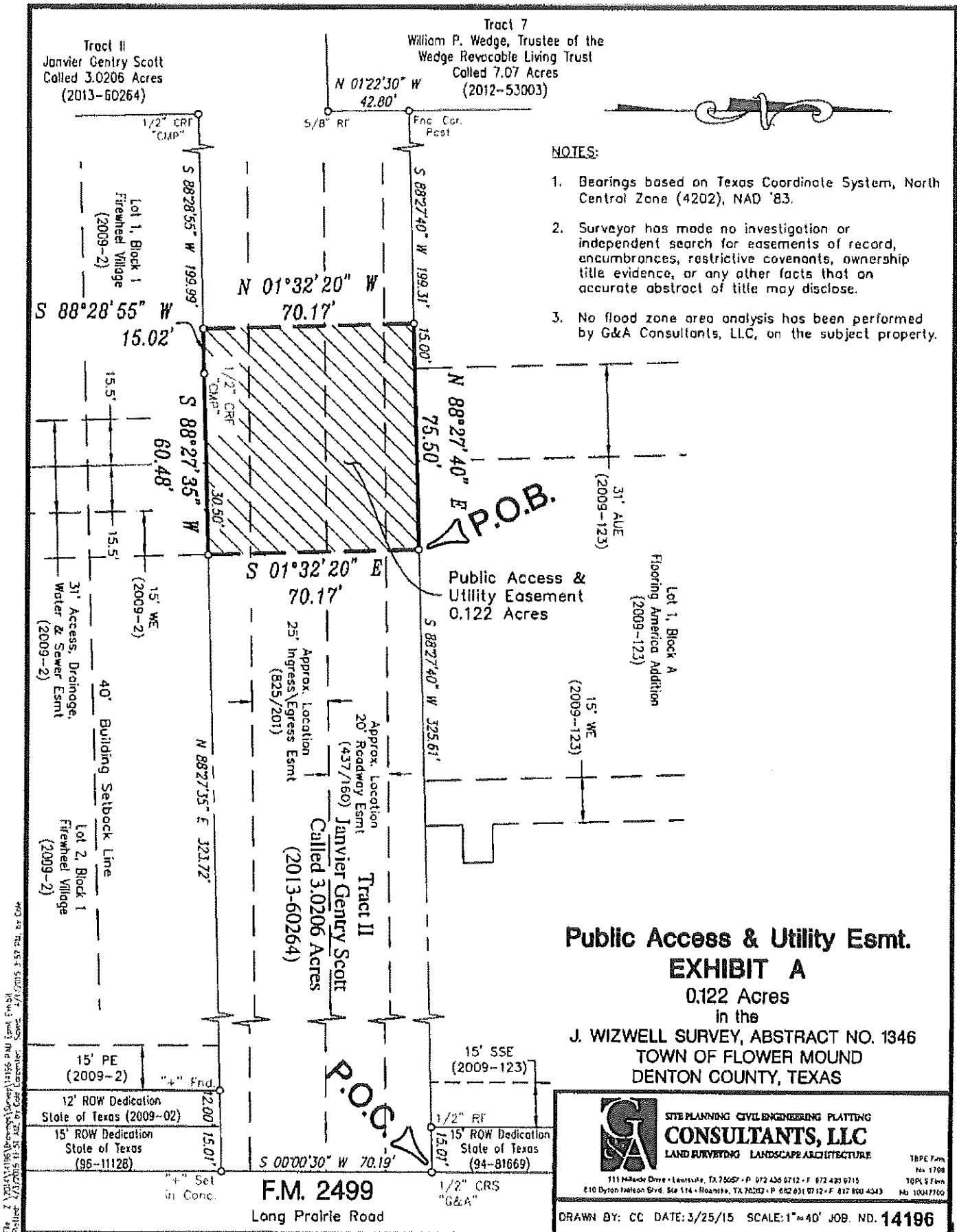


EXHIBIT "B"

LEGAL DESCRIPTION
15' Sidewalk Easement
0.024 Acres

BEING all that certain lot, tract or parcel of land situated in the J. Wizwell Survey, Abstract Number 1346, Town of Flower Mound, Denton County, Texas, and being part of that certain called 3.0206 acre tract of land described as Tract II in deed to Janvier Gentry Scott, recorded in Document Number 2013-60264 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

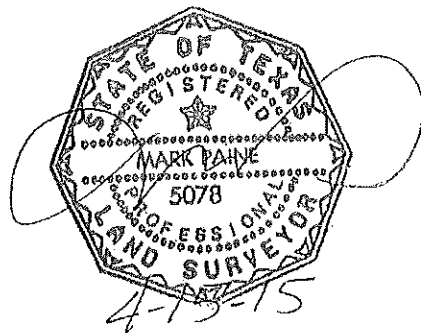
BEGINNING at 1/2" capped rebar set (G&A Consultants) on the west line of F.M. 2499 (A.K.A. Long Prairie Road) at the northeast corner of said Tract II, and being the southeast corner of that certain called 0.052 acre tract of land described in Correction Deed to the State of Texas, recorded in Document Number 1994-81669 of the Real Property Records of Denton County, Texas;

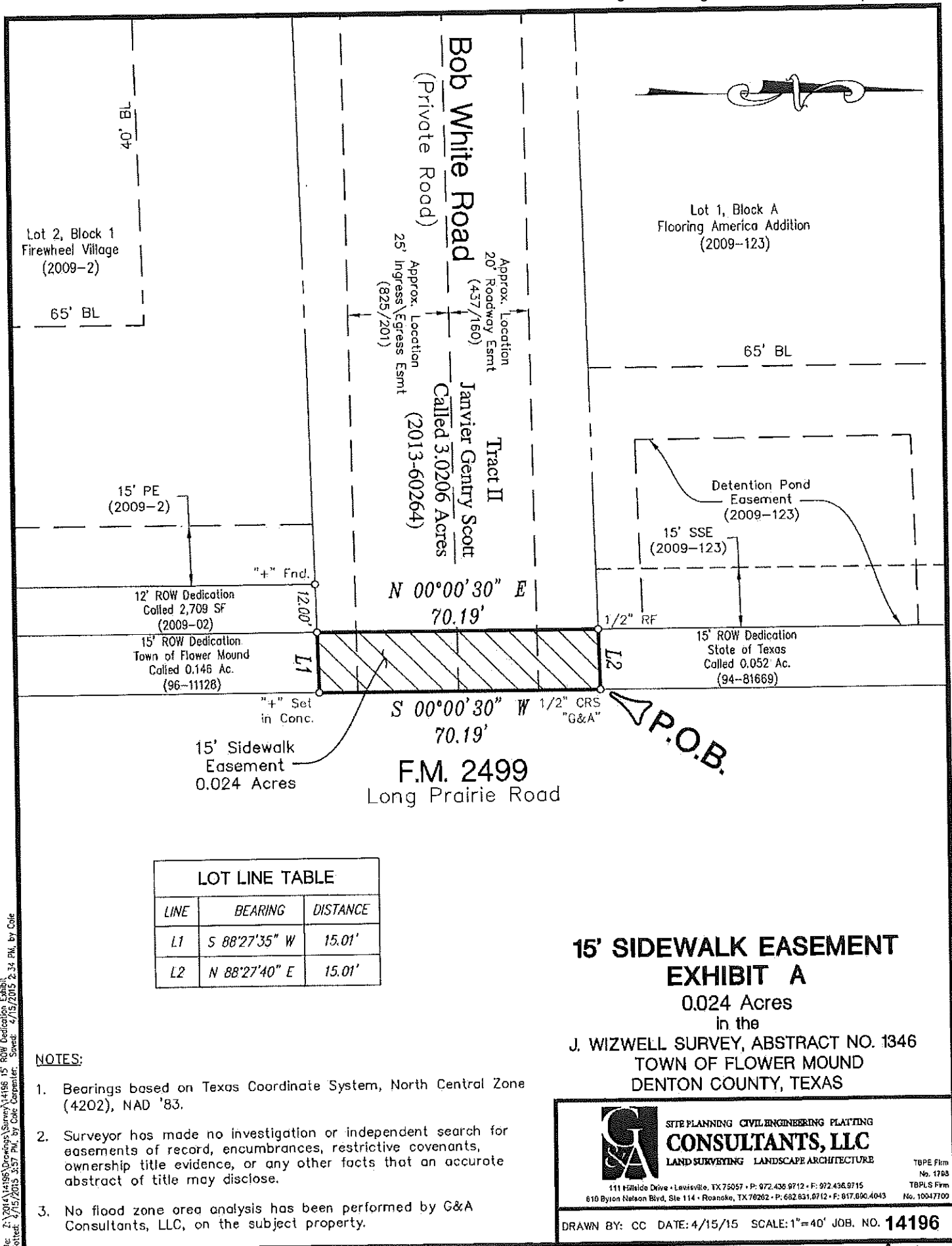
THENCE S 00°00'30" W, 70.19 feet with the west line of said F.M. 2499 and the east line of said Tract II to a "+" set in concrete on the southeast corner thereof and being the northeast corner of that certain called 0.146 acre tract of land described in deed to the Town of Flower Mound, recorded in Document Number 1994-11128 of the Real Property Records of Denton County, Texas;

THENCE S 88°27'35" E, 15.01 feet with the south line of said Tract II and the north line of said 0.146 acre tract to the northwest corner thereof and being the northeast corner of that certain called 2,709 square foot Right-of-Way dedication shown on the Record Plat of Firewheel Village, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Document Number 2009-2 of the Plat Records of Denton County, Texas from which an "+" found in concrete at the northeast corner of Lot 2, Block 1, Firewheel Village bears S 88°27'35" W, 12.00 feet;

THENCE N 00°00'30" E, 70.19 feet over and across said Tract II to a 1/2" rebar found on the north line thereof, being the southwest corner of said called 0.052 acre tract and being the southeast corner of Lot 1, Block A, of the Flooring America Addition, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Document Number 2009-123 of the Plat Records of Denton County, Texas;

THENCE N 88°27'40" E, 15.01 feet with the north line of said Tract II and the south line of said called 0.052 acre tract to the **POINT OF BEGINNING** and containing approximately 0.024 acres (1,053 square feet) of land.





3.0 SPECIFIC PLANS

Attachment 1: Planning and Zoning Commission Staff Report

Specific Plan Area #2

The Specific Plan Area #2 development controls are recommended to protect existing residential neighborhoods from negative impacts caused by new development, to minimize traffic conflicts on FM 2499 and to prevent strip development along FM 2499 through limiting driveway curb cuts.

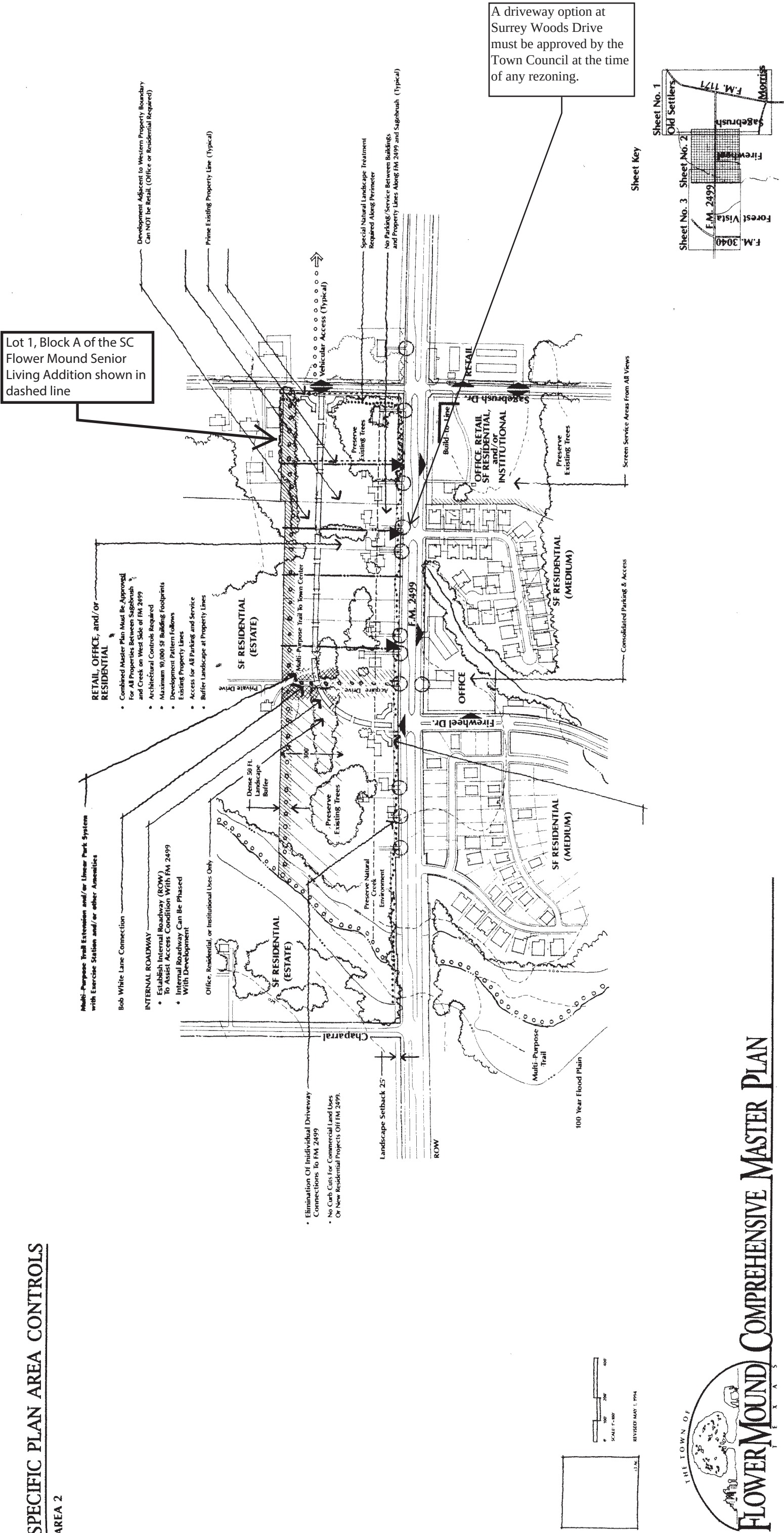
In particular, the following specific planning, design and construction restrictions will be required for the recommended Office, Retail, Institutional and/or Residential on the west side of FM 2499 between Sagebrush and the creek to protect the adjacent existing residential areas:

- No zoning to be approved for this area until a coordinated Master Plan for the overall area is approved as part of the zoning approval process. This provision is not applicable to Lot 1, Block A of the SC Flower Mound Senior Living Addition as shown on the Specific Plan Area Controls #2 map below.
- Architectural design of structures must be similar to residential designs and must comply with design and material requirements of the Land Development Regulations for residential subdivisions; facades facing FM 2499 and Sagebrush are to be "front" elevations, with no visible service elements. This provision is not applicable to Lot 1, Block A of the SC Flower Mound Senior Living Addition as shown on the Specific Plan Area Controls #2 map below.
- All service areas, dumpsters, etc., are to be screened from view from FM 2499, Sagebrush and the abutting estate residential area.
- Buildings are to be one-story with maximum 10,000 square foot footprints, and massing of the structures must be articulated into maximum 2,500 square foot footprint elements to attain a residential scale similar to attached townhouses, with 65' setbacks from property lines. This provision is not applicable to Lot 1, Block A of the SC Flower Mound Senior Living Addition as shown on the Specific Plan Area Controls #2 map below.
- Development patterns should follow the existing residential property lines when feasible, to promote the desired residential scale aesthetics for the area. This provision is not applicable to Lot 1, Block A of the SC Flower Mound Senior Living Addition as shown on the Specific Plan Area Controls #2 map below.
- Individual driveway connections to FM 2499 are to be eliminated at the time the use of the property changes from single family residential use; no curb cuts to FM 2499 or Sagebrush are allowed for new land uses except as shown on the Specific Plan Area Controls #2 map below.
- Internal access for all parking and service is to be provided by an extension of Firewheel Drive to Sagebrush, aligned with the residential street across Sagebrush. This drive should be phased concurrently with development of the property.
- No developments or uses may generate a noise level greater than 50dBA, measured at the property line of any adjacent residential property.
- To protect adjacent residential development from adverse impacts, development between the extension of Firewheel and the adjacent residential property lines south of the Firewheel extension cannot be retail or restaurant development.
- Minimum 50' landscape buffer with dense, natural plantings required adjacent to existing SF Residential (Estate) area.
- All existing trees to be preserved as required by the Tree Preservation Ordinance.
- The existing natural creek environment is to be preserved.
- Provision of a multi-purpose trail, for eventual connection to the overall Town trail system is required.
- No parking or service areas are permitted between buildings and property lines along FM 2499 and Sagebrush; maximum 150-car parking lots, with minimum 25' landscaped buffer between lots. This provision is not applicable to Lot 1, Block A of the SC Flower Mound Senior Living Addition as shown on the Specific Plan Area Controls #2 map below.
- Special landscape treatment along Sagebrush Drive west of FM 2499 required to reflect the character of the existing residences on Sagebrush.
- Entrances to internal drive for new development to have exceptional quality landscape and signage design due to their high visibility. The design should reflect the natural character of Flower Mound, and be compatible with the existing estate residences on Sagebrush.
- All signs must comply with the then applicable provisions of the Town Code.

3.0 SPECIFIC PLANS

Additionally, the following controls apply to all developments within this area:

- Minimum 25' landscape setback required along FM 2499 for new development.
- Consolidated parking and access plan required for existing and new professional offices at Firewheel and FM 2499 to minimize driveway curb cuts onto FM 2499.
- Minimum 25' landscape buffer required between development at Sagebrush/FM 2499 and adjacent existing residential neighborhood.



SPECIFIC PLAN AREA CONTROLS

AREA 2

THE TOWN OF
FLOWER MOUND
COMPREHENSIVE MASTER PLAN

HELLMUTH, OBATA & KASSABAUM, INC.
MASTER PLANNING
DALLAS, TEXAS

JAMES DUNCAN AND ASSOCIATES
LAND USE REGULATIONS
AUSTIN, TEXAS

3.0 SPECIFIC PLANS

Amendments to Specific Plan Area #2 are as follows:

Ordinance #05-07

Adopted: February 5, 2007

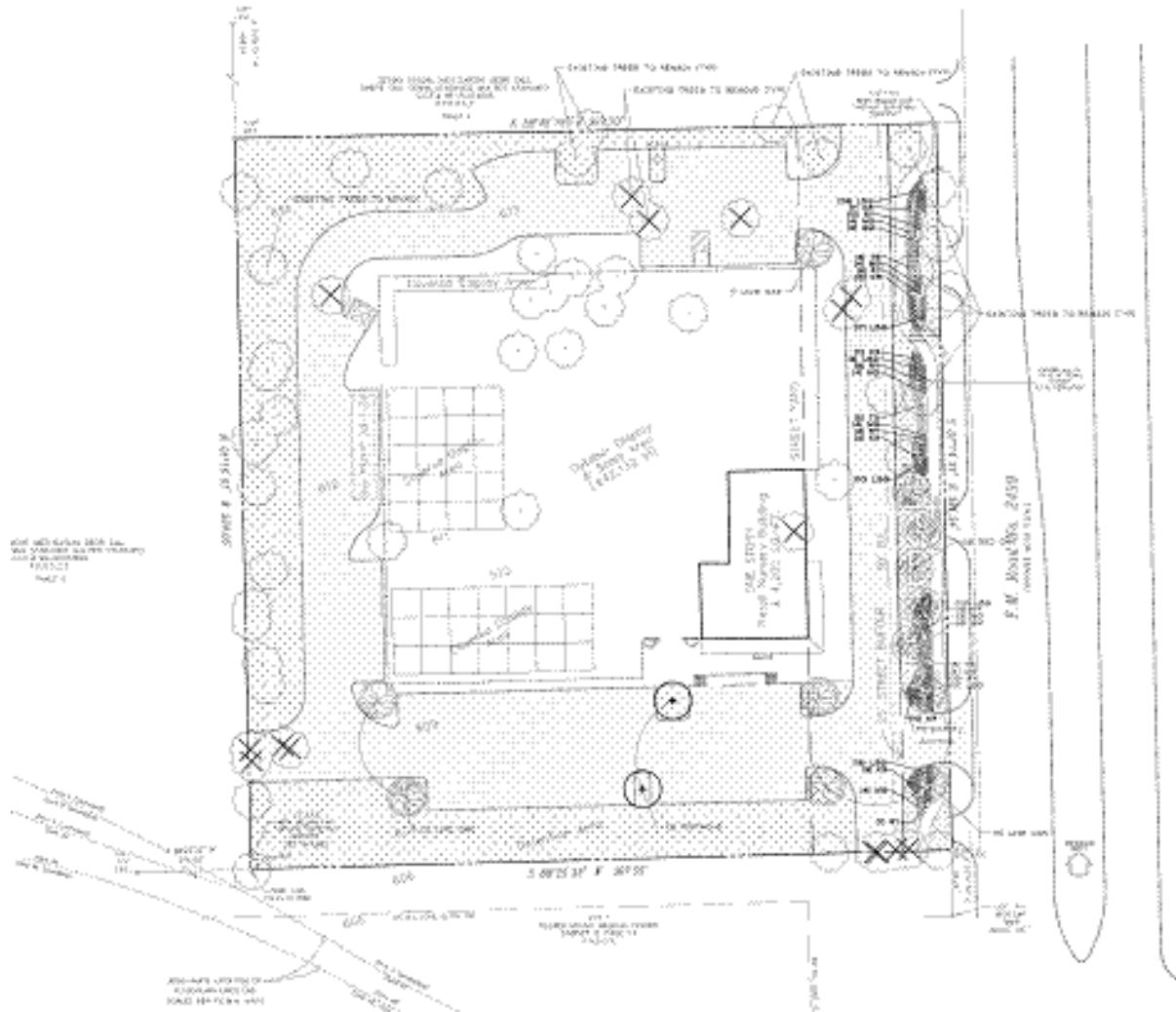
From and after the effective date of this Ordinance, the controls included in Specific Plan Area # 2 (SPA 2), beginning on page 3.11 and ending on page 3.12 of Section 3.0, the Specific Plans component of Master Plan 2001, shall apply to the subject property as they relate to the subject property and its location within SPA 2 save and except three specific controls described in detail below and which controls are hereby amended as follows:

1. The first (1st) bulleted paragraph, found on page 3.11, which currently states "No zoning to be approved for this area until a coordinated Master Plan for the overall area is approved as part of the zoning approval process" is hereby deleted in its entirety as it applies to this property;
2. The ninth (9th) bulleted paragraph, found on page 3.11, which currently states "To protect adjacent residential development from adverse impacts, development between the extension of Firewheel and the adjacent residential property lines south of the Firewheel extension cannot be retail or restaurant development" is hereby amended to read and state "To protect adjacent residential development from adverse impacts, development of the subject property may include premium retail uses, which uses shall not include restaurants"; and,
3. The fourteenth (14th) bulleted paragraph, found on page 3.12, which currently states "No parking or service areas are permitted between buildings and property lines along FM 2499 and Sagebrush; maximum 150-car parking lots, with minimum 25' landscaped buffer between lots" is hereby amended to read and state "No parking or service areas are permitted between buildings and the property line along FM 2499; parking lots are limited to maximum 150-car parking lots.

A copy of the concept plan for the Calloway's Nursery development in the John Wizwell Survey, Abstract No. 1346, showing the layout of the development as submitted by the developer and reviewed and approved by the Town Council as the concept plan for the subject property is attached hereto as Exhibit "C" and incorporated herein.

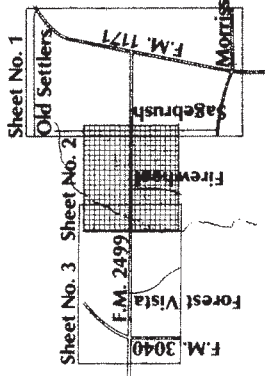
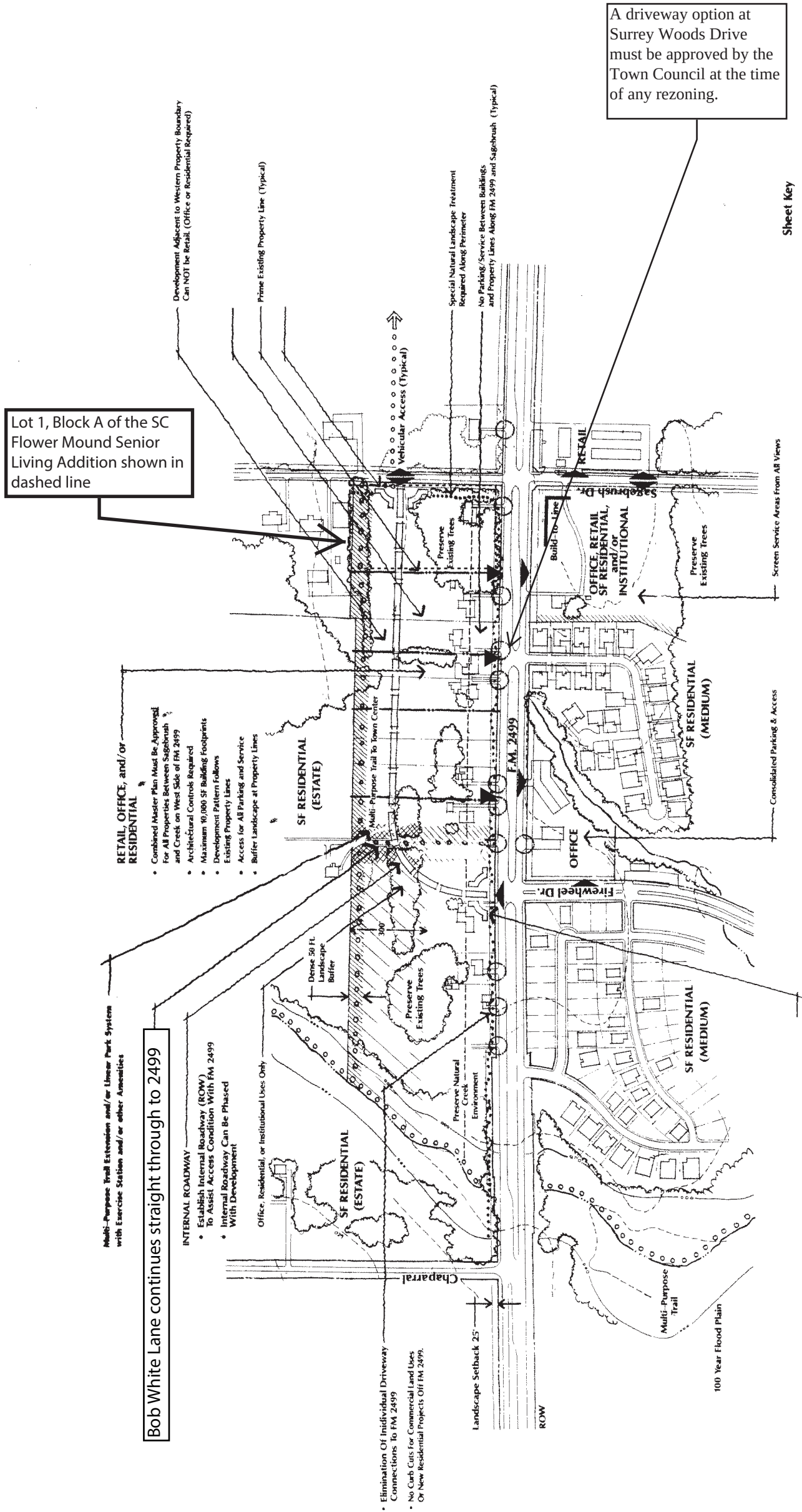
From and after the effective date of this Ordinance, the Concept Plan attached hereto as Exhibit "C" shall be included in Specific Plan Area # 2 (SPA 2), as an allowed alternative for the development of the subject property.

SPA 2



SPECIFIC PLAN AREA CONTROLS

AREA 2



THE TOWN OF
FLOWER MOUND
COMPREHENSIVE MASTER PLAN

HELLMUTH, OBATA & KASSABAUM, INC.
MASTER PLANNING
DALLAS, TEXAS

JAMES DUNCAN AND ASSOCIATES
LAND USE REGULATIONS
AUSTIN, TEXAS

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

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING SECTION 3.0, SPECIFIC PLANS, OF THE MASTER PLAN BY AMENDING ORDINANCE NO. 24-01, IN PART, WHICH ADOPTED THE MASTER PLAN, BY AMENDING SPECIFIC PLAN AREA #2 (SPA 2) BY REPLACING THE EXISTING MAP FOR THE DEVELOPMENT OF SPECIFIC PLAN AREA #2 (SPA 2) CONTAINED ON PAGE 3.9 OF THE MASTER PLAN WITH A NEW DEVELOPMENT CONTROL PLAN OF SPECIFIC PLAN AREA #2 (SPA 2) AND BY AMENDING CERTAIN PORTIONS OF THE TEXTUAL PROVISIONS CONTAINED WITHIN SPECIFIC PLAN AREA #2 (SPA 2) CONTROLLING THE DEVELOPMENT OF SAID AREA; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Flower Mound 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, on March 19, 2001, the Town Council of the Town of Flower Mound adopted all nineteen component plans, specifically including the Specific Plans, together with all amendments thereto, by Ordinance No. 24-01 as a component to the Flower Mound Master Plan; and

WHEREAS, on April 20, 2015, the Town Council of the Town of Flower Mound approved a Contract of Sales Agreement for the Town's acquisition of public access, utility and sidewalk easements from Janvier Scott, which said Contract of Sales Agreement requires the Master Plan amendment described herein as a condition of the Town's acquisition; and

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas, held a public hearing on May 11, 2015, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on June 1, 2015, with respect to the Master Plan Amendment described herein; and,

WHEREAS, the Town has complied with all requirements of Chapter 213 of the Local Government Code, Chapter 78, of the Town's Land Development Regulations, and all other laws dealing with notice, publication and procedural requirements for the approval of the Master Plan Amendment described herein;

WHEREAS, the Town Council finds that amendment of the Master Plan as outlined herein is in the best interest of the Town of Flower Mound and will promote the health, safety and general welfare of the citizens of the Town of Flower Mound and the general public;

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

Ordinance No. _____

Page 2

SECTION 1

The Master Plan of the Town of Flower Mound, Texas, as amended, is hereby amended as described below:

Section 3.0, Specific Plans, is hereby amended through the amendment of Specific Plan Area #2 (SPA 2) by replacing the existing map of SPA 2 contained on page 3.9 of the Master Plan with a new Development Control Plan that is attached hereto as Exhibit "A."

Section 3.0, Specific Plans, is hereby amended through the amendment of Specific Plan Area #2 (SPA 2) by adding a new textual provision for SPA 2 on page 3.7 of the Master Plan that reads:

"Access from the Seller's remaining property and all those with ingress/egress easements over Bob White Lane will continue over Bob White Lane to FM 2499 in its current location since the spine road within SPA 2 was not designated or dedicated as a public street.

- "Seller's remaining property" shall mean: the property described as Tract II in deed to Janvier Gentry Scott, recorded in Document Number 2013-60264 of the Real Property Records of Denton County, Texas unencumbered by easements held by the Town of Flower Mound on said described property."

SECTION 2

This Ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the 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

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

Ordinance No. _____

Page 3

SECTION 5

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

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE ____ DAY OF _____, 2016.

APPROVED:

Thomas E. Hayden, **MAYOR**

ATTEST:

Theresa Scott, **TOWN SECRETARY**

APPROVED AS TO FORM AND LEGALITY:

Bryn Meredith, **TOWN ATTORNEY**

Ordinance No._____

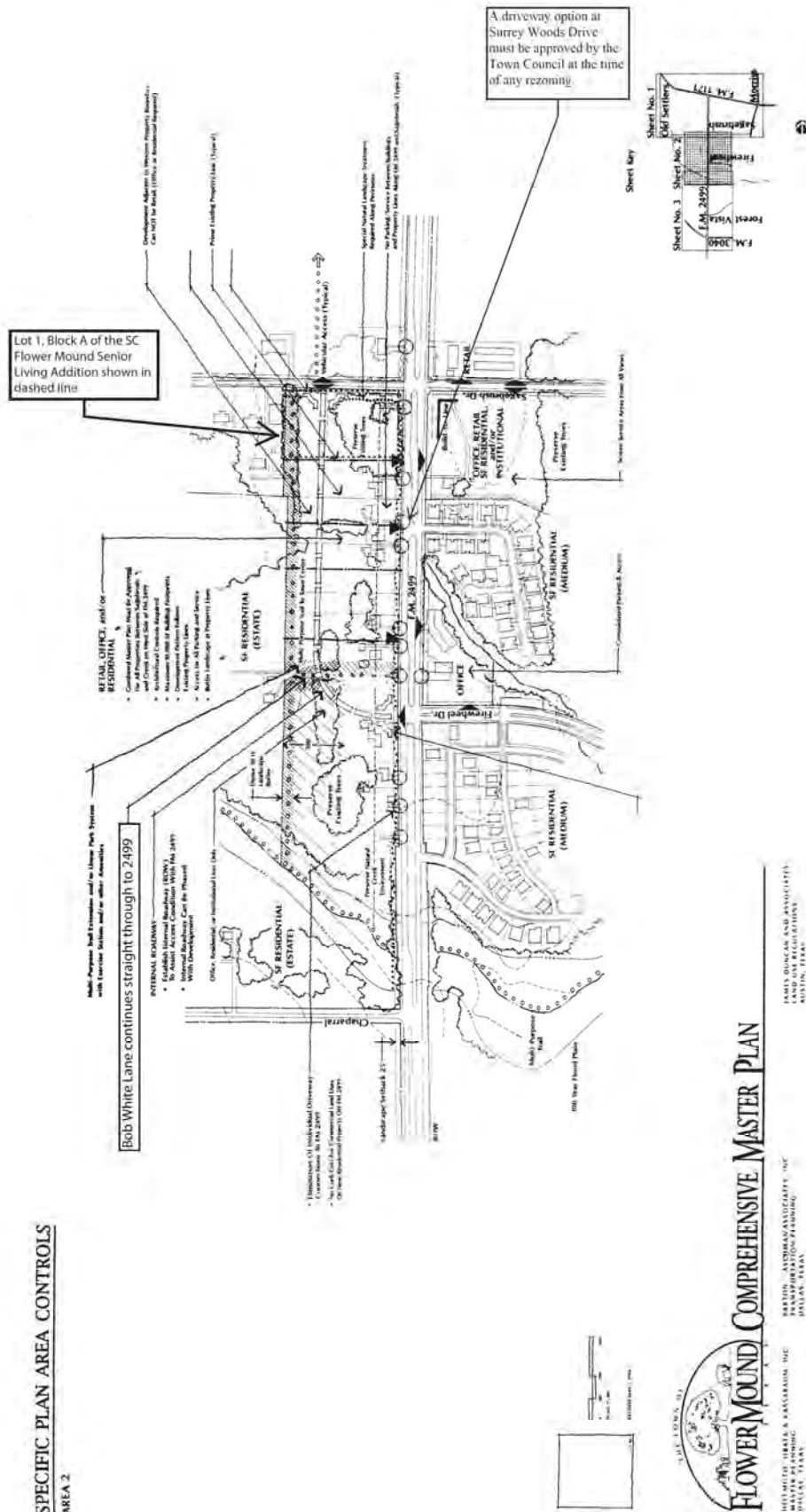
Page 4

Exhibit "A"

SPA 2 Development Control Plan

Ordinance No._____

SPECIFIC PLAN AREA CONTROLS



CONTRACT OF SALE

STATE OF TEXAS §
 §
COUNTY OF DENTON §

THIS CONTRACT OF SALE ("Contract") is made by and between Janvier Scott ("Seller") and the Town of Flower Mound, Texas, a home rule municipal corporation located in Denton County, Texas ("Purchaser") to be effective on the Effective Date as specified below. For convenience, Seller and Purchaser may be referred to hereinafter collectively as "parties" or individually as a "party."

ARTICLE I **PURCHASE AND SALE**

By this Contract, Seller sells and agrees to convey, and Purchaser purchases and agrees to pay for a public access and underground utility easement for the purpose of constructing and maintaining a concrete drive and utility improvements over, upon, through, across and along certain real property situated in Denton County, Texas, described by lot and block or metes and bounds on Exhibit "A," which is attached hereto and incorporated herein for all purposes, and a public access easement for the purpose of constructing and maintaining a sidewalk upon or over certain real property situated in Denton County, Texas, described by lot and block or metes and bounds on Exhibit "B," which is attached hereto and incorporated herein for all purposes (both easements referred to collectively herein as the "Property"), for the consideration and upon and subject to the terms, provisions, and conditions set forth below.

ARTICLE II **PURCHASE PRICE**

The purchase price for the Property shall be One Hundred Thousand and NO/100 Dollars (\$100,000.00) ("Purchase Price") to be paid by Purchaser to Seller in good and final funds at Closing.

ARTICLE III **EARNEST MONEY**

Purchaser shall within three (3) days of execution of this Contract deposit Twenty Thousand and NO/100 Dollars (\$20,000.00) as Earnest Money with a Title Company of Purchaser's choosing with said Title Company being located in Denton County, Texas. Failure to timely deposit the Earnest Money shall terminate this Contract immediately. The Earnest Money shall be credited towards the Purchase Price at Closing. The parties agree that should this Contract not close for any reason, other than a breach of this Contract by Purchaser, the Earnest Money shall be refunded to Purchaser.

ARTICLE IV **SELLER'S RIGHTS AND OBLIGATIONS**



The rights and obligations of Seller hereunder to consummate the transaction contemplated hereby is subject to mutually agreeable easement wording and to the Town Council for the Town of Flower Mound, Texas, approving the following changes to the SPA 2 Master Plan, any of which may be waived in whole or in part by Seller at or prior to the Closing:

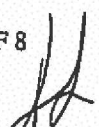
- A. Make the following modifications to the map on page 3.9:
 - i. Add wording to the map to indicate Bob White Lane continues straight through to 2499; and
 - ii. Remove the words about the Town acquiring Bob White Lane and any other words about Bob White Lane on the drawing.
- B. Modify the text on page 3.7 that describes SPA 2 Master Plan by adding a second bullet that reads: "Access from the Seller's remaining property and all those with ingress/egress easements over Bob White Lane will continue over Bob White Lane to FM 2499 in its current location since the spine road within SPA 2 was not designated or dedicated as a public street."

ARTICLE V

PURCHASER'S RIGHTS AND OBLIGATIONS

5.01 Title Policy. The rights and obligations of Purchaser hereunder to consummate the transaction contemplated hereby are subject to the ability of Purchaser to obtain a satisfactory Texas Owner's Policy of Title Insurance from the Title Company under the following conditions, any of which may be waived in whole or in part by Purchaser at or prior to the Closing. Within 30 days after the Effective Date of this Contract, Purchaser, at Purchaser's sole cost and expense, shall have the Title Company issue a preliminary title commitment covering the Property ("Title Commitment") accompanied by copies of all recorded documents relating to easements, rights-of-way, liens, etc., affecting the Property. The Title Commitment shall bind the Title Company to issue a Texas Owner's Policy of Title Insurance at the Closing on the standard form of policy prescribed by the Texas Department of Insurance. Purchaser shall give Seller written notice on or before the expiration of 20 days after Purchaser receives the Title Commitment that the condition of title as set forth in the Title Commitment is or is not satisfactory, and in the event Purchaser states that any conditions or exceptions to title are not satisfactory, Seller shall promptly undertake to eliminate or modify all unacceptable matters to the reasonable satisfaction of Purchaser. In the event Seller chooses not to or is unable to comply with Purchaser's written notice within 20 days after receipt of such notice, this Contract may be terminated by Purchaser by providing written notice of termination to Seller. If Purchaser's written notice of objection to the Title Commitment is not received by Seller within the 20-day period, all conditions specified in the Title Commitment shall be deemed to be acceptable to Purchaser and any objection thereto shall be deemed to have been waived for all purposes. Notwithstanding anything herein to the contrary, any ingress/egress easements previously granted for the benefit of lands contiguous to Bob White Lane shall not be objectionable and shall be deemed Permitted Exceptions.

5.02 Stop Signs. Upon the completion of the construction of the spine road on the Property, the Town agrees to construct stop signs at the north/south intersection to Bob White Lane creating a two way stop intersection, which would not require Seller or any easement holder over Bob White Lane to stop when accessing Highway 2499 from Bob White Lane.



5.03 Drive Repair. Upon the completion of the construction of the spine road on the Property, the Purchaser agrees to repair Seller's drive to connect it to the spine road and to maintain said connection such that travel along Bob White Lane shall not be obstructed or hindered.

5.04 Construction and Maintenance. Purchaser shall construct and maintain the spine road, sidewalk and easement area at its sole cost and expense with Seller having no liability or responsibility for construction or maintenance. During construction and/or maintenance, Seller and any easement holders over Bob White Lane shall be guaranteed access across the spine road and sidewalk to Highway 2499. Construction and maintenance of the spine road, sidewalk and use otherwise of the easements shall not increase the volume or velocity of the storm water coming onto Seller's remaining property.

5.05 Trees. There are four (4) trees in the easement area. Only two (2) of the four (4) trees may be removed from the easement.

ARTICLE VI
REPRESENTATIONS AND WARRANTIES OF SELLER
AND AGREEMENT OF PURCHASER

6.01 Seller's Representations and Warranties. Seller hereby represents and warrants to Purchaser to the best of Seller's knowledge as follows, which representations and warranties shall be deemed made by Seller to Purchaser as of the Effective Date of this Contract and as of the date of the Closing:

- (a) There are no parties in possession of any portion of the Property as lessees, tenants at sufferance, or trespassers;
- (b) Seller is the record owner of the Property and has the right and ability to convey to Purchaser good and marketable title to the Property without the approval or participation of any other person and free and clear of any and all liens, encumbrances, conditions, assessments and restrictions other than the Permitted Exceptions described in 4.01;
- (c) There are no parties with an interest in the Property that would interfere with Purchaser's non-exclusive use of the Property; and
- (d) Seller is not aware of any Hazardous Substances buried on the Property.

ARTICLE VII
CLOSING

7.01 Closing Date. The closing of this Contract ("Closing") shall be held at such time and place as Seller and Purchaser may agree upon in writing (which date is herein referred to as the "Closing Date"). If the parties cannot agree as to a specific Closing Date within 30 days of the date the Master Plan is amended under Article III of this Contract, the Closing Date shall be the date selected by Purchaser upon 3 days written notice to Seller. The parties may agree in

writing to modify the Closing Date for any reason. Notwithstanding anything herein to the contrary this Contract shall close at the latest by the 17th day of August , 2015.

7.02 Conditions at Closing. The Closing and Purchaser's obligations under this Contract to purchase the Property are expressly conditioned on the following:

- (a) Seller's delivery to Purchaser at Closing of a duly executed and acknowledged Public Access and underground Utility Easement, for the purpose of constructing a concrete drive and utility improvements, and Public Access Easement, for constructing a sidewalk, in a form mutually acceptable to Purchaser and Seller, conveying the Property, free and clear of any and all liens, encumbrances, conditions, assessments, and restrictions other than as provided in this Contract;
- (b) Delivery to Purchaser of the Texas Owner's Title Policy issued by the Title Company in the full amount of the Purchase Price, insuring Purchaser's easement interest in the Property, subject only to those title exceptions listed in this Contract, if any, such other exceptions as may be approved in writing by Purchaser, and the standard printed exceptions contained in the usual form of Texas Owner's Title Policy,
- (c) Seller's execution of such documents and instruments reasonably requested by the Title Company to consummate the transactions contemplated herein; and
- (d) Seller's delivery of possession of the Property to Purchaser at Closing.

At Closing, Purchaser shall deliver to Seller the Purchase Price, less the Earnest Money, in accordance with the terms of this Contract.

7.03 Failure of Conditions. Should Seller fail to satisfy any of the conditions specified in paragraph 6.02 of this Contract, Purchaser shall have the right to terminate this Contract and to recover any amounts paid by Purchaser to Seller on account of the Purchaser's performance of this Contract. The exercise of this right by Purchaser shall not, however, constitute a waiver of any other rights Purchaser may have against Seller for breach of this Contract. The Title Company shall be and is hereby irrevocably instructed by Seller on any such failure of condition and receipt of such notice from Purchaser by it to immediately refund to Purchaser all monies and instruments deposited by Purchaser with Title Company pursuant to this Contract.

7.04 Taxes. Purchase shall not be responsible for the payment of any taxes or other assessments against the Property at the Closing. In the event there exists any roll back or other deferred taxes which are retroactive to the period of Seller's ownership of the Property or any time prior thereto pursuant to a change in zoning, use, ownership or otherwise, such retroactive taxes shall remain the obligation of Seller excepting any sums to Purchaser. In no event shall Purchaser, as a municipal corporation of the State of Texas, be liable for property taxes or other assessments of any kind which have been assessed against the Property. This provision shall survive the Closing.



7.05 Closing Costs. All costs and expenses of Closing in consummating the sale and purchase of the Property shall be borne and paid as follows:

All attorney's fee paid for by the party incurring same
All other costs to be paid by Purchaser

ARTICLE VIII

REAL ESTATE COMMISSIONS

It is understood and agreed that no real estate brokers were involved in the negotiation and consummation of this Contract, and that no commission is to be payable in cash at the Closing. If this Contract is terminated for any reason prior to Closing, the parties agree that there will be no commission due or payable hereunder.

ARTICLE IX

BREACH BY SELLER

In the event Seller shall fail to fully and timely perform any of its obligations hereunder or shall fail to consummate the sale of the Property for any reason, except because of Purchaser's termination of this Contract or because of Purchaser's default, Purchaser may either terminate the Contract, enforce specific performance of this Contract, or seek any other remedies available at law, in equity, or by statute. Seller's misrepresentation of any representation or warranty under article V of this Contract or failure to comply with the terms of article VI of this Contract, shall constitute a default of this Contract by Seller.

ARTICLE X

BREACH BY PURCHASER

If Purchaser shall fail to consummate this Contract for any reason, except Seller's default or the termination of this Contract pursuant to a right to terminate given herein, Purchaser shall be in default and Seller may at its sole and exclusive remedy have the Earnest Money Deposit paid to Seller by the Title Company as liquidated damages for the breach. The payment of such deposit shall thereby release Purchaser from any further obligation under this Contract.

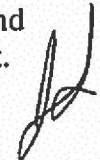
ARTICLE XI

MISCELLANEOUS

11.01 Effective Date. The effective date of this Contract will be the date the last party executes the Contract.

11.02 Survival of Covenants. Any of the representations, warranties, covenants, and contracts of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the closing date of the transactions contemplated hereby shall survive the closing.

11.03 Notices. All notices required or permitted to be sent hereunder shall be delivered in person, by courier or overnight delivery service or by depositing same in the United States mail, return receipt requested. Such notices shall be deemed delivered on the date received and shall be delivered to the parties at the address listed below the parties' signature to this Contract.



11.04 Governing Law/Venue. This Contract shall be construed under and governed by and in accordance with the substantive laws of the State of Texas, notwithstanding any choice-of-law provisions thereof. All obligations of the parties created by this Contract are fully performable in Denton County, Texas. Venue in any suit or cause of action under this Contract shall lie exclusively in Denton County, Texas.

11.05 Parties Bound. This Contract shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns.

11.06 Severability. In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability of such provision shall not affect the validity or enforceability of any other provision of this Contract, and this Contract shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

11.07 Entirety. This Contract constitutes the sole and only agreement of the parties regarding the subject matter of this Contract and supersedes any prior understandings or written or oral contracts between the parties respecting the subject matter of this Contract.

11.08 Amendment. This Contract may not be modified or amended unless such modification or amendment is in writing and signed by both parties.

11.09 Time. In this Contract, time is of the essence and compliance with the times for performance is required.

11.10 Assignment. This Contract or any obligation of a party hereunder may not be assigned by any party without the express written consent of the other party to the Contract.

11.11 No Waiver. The failure of a party to enforce a right under this Contract shall not be construed to waive such party's right to enforce any other rights under this Contract. Nothing in this Contract shall be construed to waive the Purchaser's governmental immunity under Texas law.

11.12 Captions. The captions to the various provisions of this Contract are for informational purposes only and shall not alter the substance of the terms and conditions of this Contract.

11.13 Attorney's Fees/Court Costs. The prevailing party in any legal proceeding brought under or with respect to the transaction described in this Contract is entitled to recover from the non-prevailing party all costs of such proceeding and reasonable attorney's fees. The Purchaser's right to recover its attorney's fees under such circumstances is found in section 271.159 of the Texas Local Government Code.

[signature pages to follow]



EXECUTED to be effective on the Effective Date.

SELLER:

JANVIER SCOTT

Date:

4/17/2015

ADDRESS:

2829 Bob White Ln.

Flower Mound, TX

75022

ACKNOWLEDGMENT

STATE OF TEXAS

§

§

COUNTY OF DENTON

§

Before me, the undersigned authority in and for the State of Texas, on this day personally appeared JANVIER SCOTT, known to me, or proved to me through TX DL (description of identity card or other document), to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 17 day of April, 2015.

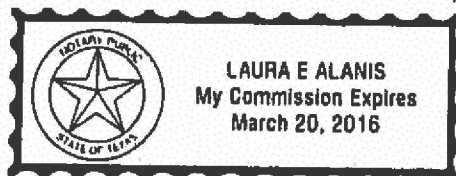
My Commission Expires:

March 20, 2016

Notary Public in and for the State of Texas

Laura Alanis

Typed or Printed Name of Notary



[Handwritten signature]

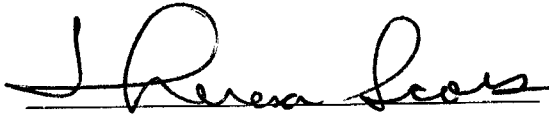
PURCHASER:

TOWN OF FLOWER MOUND, TEXAS



By: Tom Hayden, Mayor

Michael Walker, Deputy Mayor pro tem

ADDRESS: 2121 Cross Timbers Road
Flower Mound, TexasDate: 4/24/15**ATTEST:**

Town Secretary

EARNEST MONEY RECEIPT

The undersigned certifies that the Town of Flower Mound has paid to
Allegiance Title Title Company the sum of 20,000.00 Dollars and no cents
(\$20,000.00) on this 24 day of April, 2015.
Angie Cox

By: Angie CoxName: Angie CoxTitle: Escrow OfficerTelephone: 972-355-5525Facsimile: 972-355-4459

EXHIBIT "A"

**LEGAL DESCRIPTION
PUBLIC ACCESS & UTILITY EASEMENT
0.122 Acres**

BEING all that certain lot, tract or parcel of land situated in the J. Wizwell Survey, Abstract Number 1346, Town of Flower Mound, Denton County, Texas, and being part of that certain called 3.0206 acre tract of land described as Tract II in deed to Janvier Gentry Scott, recorded in Document Number 2013-60264 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

COMMENCING at 1/2" capped rebar set (G&A Consultants) on the west line of F.M. 2499 (A.K.A. Long Prairie Road) at the northeast corner of said Tract II, and being the southeast corner of that certain called 0.052 acre tract of land described in Correction Deed to the State of Texas, recorded in Document Number 94-R0081669 of the Real Property Records of Denton County, Texas;

THENCE S 88°27'40" W, with the north line of said Tract II and the south line of said 0.052 acre tract passing at 15.01 feet the southwest corner thereof, and being the southeast corner of Lot 1, Block A, Flooring America Addition, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Document Number 2009-123 of the Plat Records of Denton County, Texas, continuing with the south line thereof a total distance of 325.61 feet to the **POINT OF BEGINNING**;

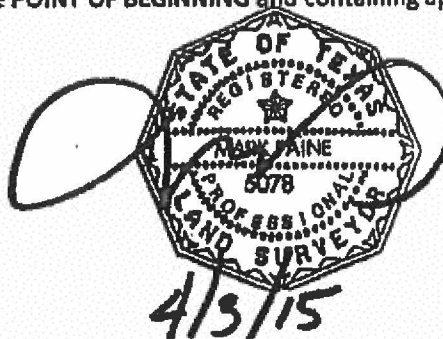
THENCE S 01°32'20" E, 70.17 feet over and across said Tract II to the south line thereof being on the north line of Lot 2, Block 1 of Firewheel Village, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Document Number 2009-2 of the Plat Records of Denton County, Texas;

THENCE S 88°27'35" W, with the south line of said Tract II and the north line of said Lot 2, passing at 30.50 feet the northwest corner of said Lot 2 and the northeast corner of Lot 1, Block 1 of said addition, continuing with the north line of said Lot 1 a total distance of 60.48 feet to a 1/2" capped rebar found (CMP);

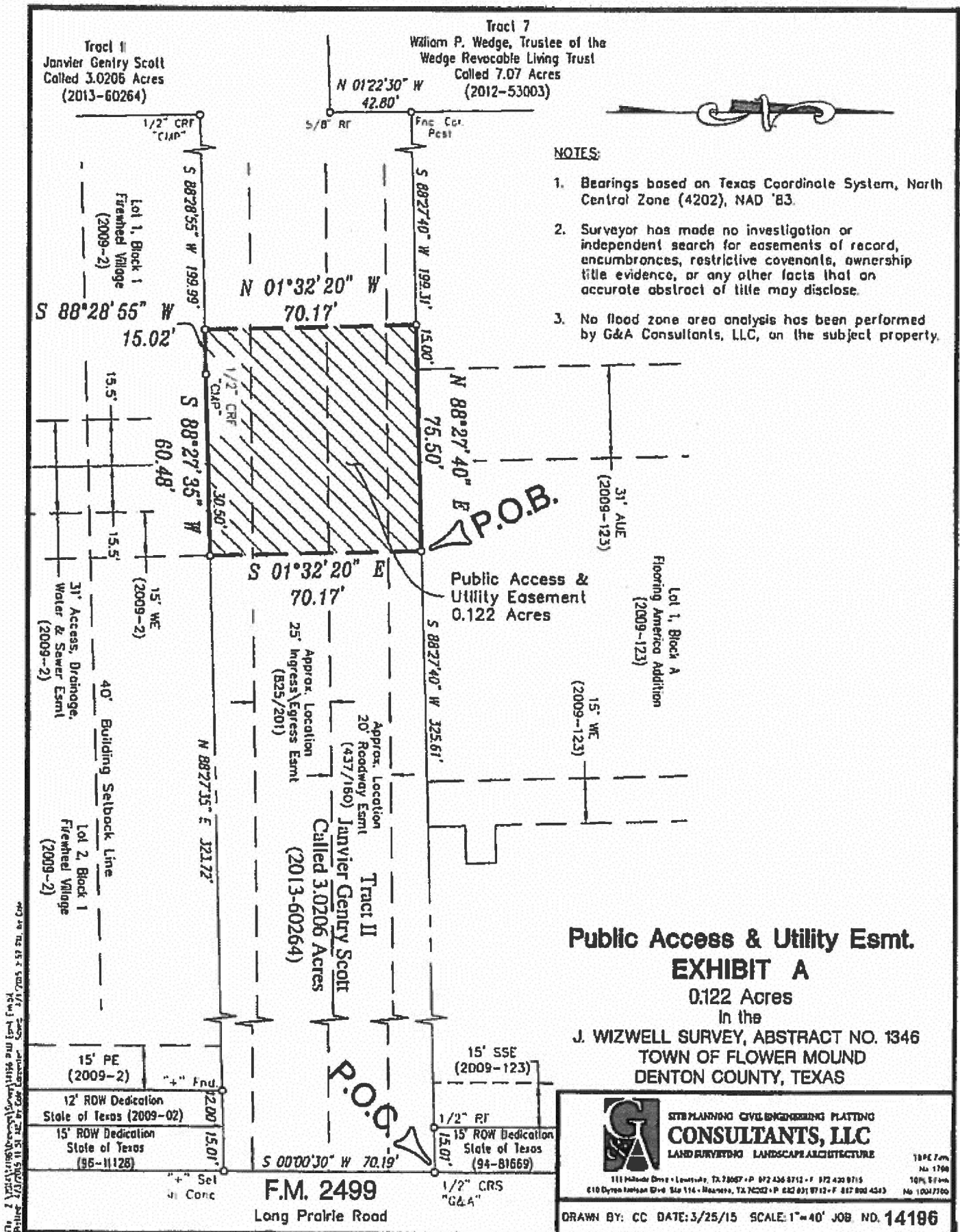
THENCE S 88°28'55" W, 15.02 feet continuing with a south line of said Tract II and the north line of said Lot 1, Block 1;

THENCE N 01°32'20" W, 70.17 feet over and across said Tract II to the north line thereof, being in the south line of said Lot 1, Block A of Flooring America Addition;

THENCE N 88°27'40" E, 75.50 feet with the north line of said Tract II and the south line of said Lot 1, Block A, Flooring America Addition to the **POINT OF BEGINNING** and containing approximately 0.122 acres (5,298 square feet) of land.



A handwritten signature, likely of the surveyor Mark Paine, located in the bottom right corner of the page.



LEGAL DESCRIPTION
15' Sidewalk Easement
0.024 Acres

BEING all that certain lot, tract or parcel of land situated in the J. Wizwell Survey, Abstract Number 1346, Town of Flower Mound, Denton County, Texas, and being part of that certain called 3.0206 acre tract of land described as Tract II in deed to Janvier Gentry Scott, recorded in Document Number 2013-60264 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

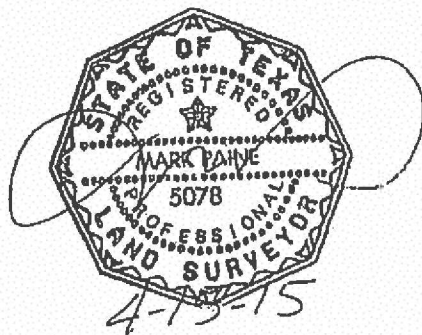
BEGINNING at 1/2" capped rebar set (G&A Consultants) on the west line of F.M. 2499 (A.K.A. Long Prairie Road) at the northeast corner of said Tract II, and being the southeast corner of that certain called 0.052 acre tract of land described in Correction Deed to the State of Texas, recorded in Document Number 1994-81669 of the Real Property Records of Denton County, Texas;

THENCE S 00°00'30" W, 70.19 feet with the west line of said F.M. 2499 and the east line of said Tract II to a "+" set in concrete on the southeast corner thereof and being the northeast corner of that certain called 0.146 acre tract of land described in deed to the Town of Flower Mound, recorded in Document Number 1994-11128 of the Real Property Records of Denton County, Texas;

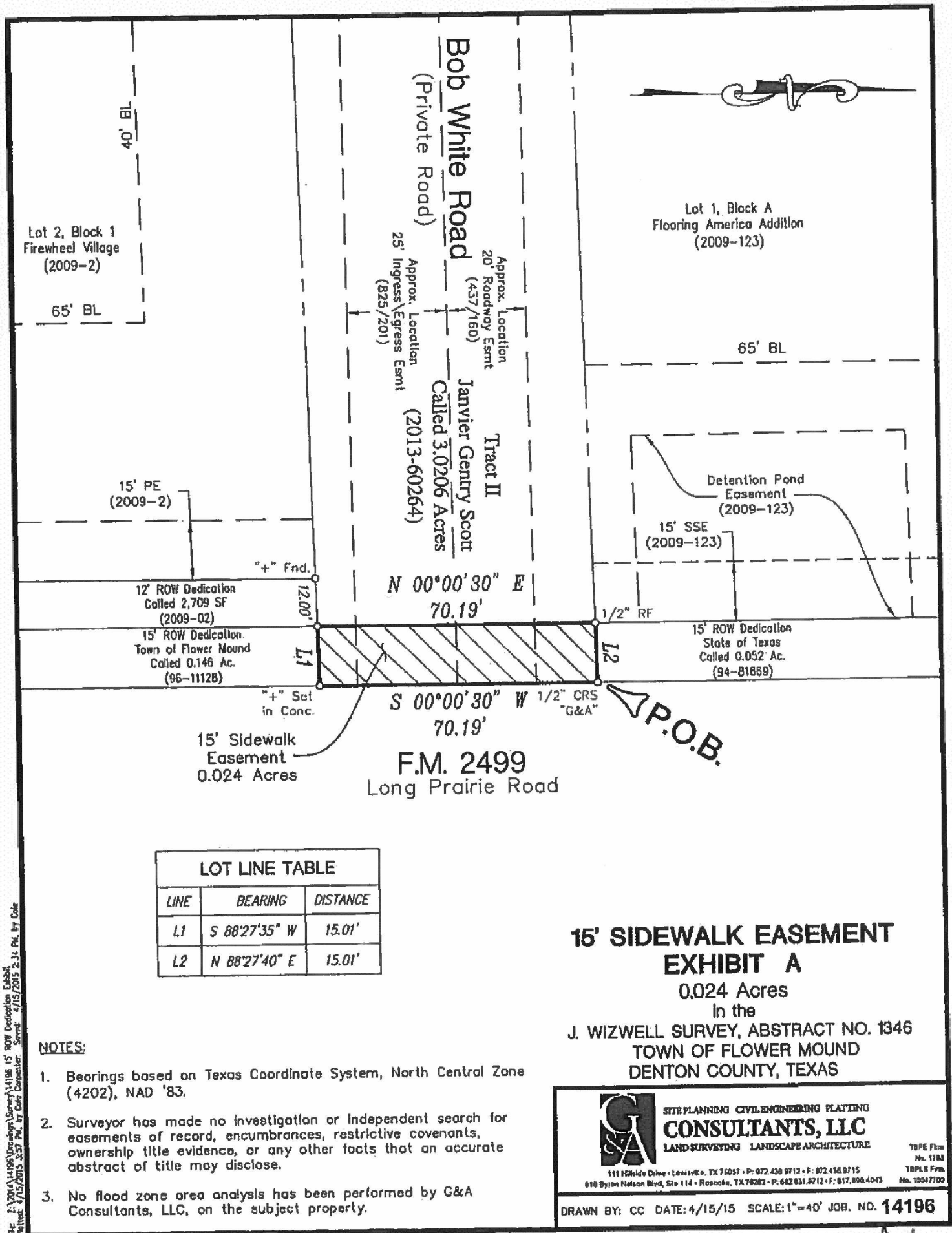
THENCE S 88°27'35" E, 15.01 feet with the south line of said Tract II and the north line of said 0.146 acre tract to the northwest corner thereof and being the northeast corner of that certain called 2,709 square foot Right-of-Way dedication shown on the Record Plat of Firewheel Village, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Document Number 2009-2 of the Plat Records of Denton County, Texas from which an "+" found in concrete at the northeast corner of Lot 2, Block 1, Firewheel Village bears S 88°27'35" W, 12.00 feet;

THENCE N 00°00'30" E, 70.19 feet over and across said Tract II to a 1/2" rebar found on the north line thereof, being the southwest corner of said called 0.052 acre tract and being the southeast corner of Lot 1, Block A, of the Flooring America Addition, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Document Number 2009-123 of the Plat Records of Denton County, Texas;

THENCE N 88°27'40" E, 15.01 feet with the north line of said Tract II and the south line of said called 0.052 acre tract to the **POINT OF BEGINNING** and containing approximately 0.024 acres (1,053 square feet) of land.



A handwritten signature or initials, possibly "JP", located in the bottom right corner of the page.





TOWN COUNCIL AGENDA ITEM NO. 14

REGULAR ITEM

DATE: January 21, 2016

FROM: Ken Parr, Executive Director of Public Works

ITEM: Consider approval of the Memorandum of Agreement with Dirk Laukein; and authorization of Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: Town Council approved a Contract of Sales Agreement on April 20, 2015 for the acquisition of an easement for the construction and maintenance of the SPA 2 Spine Road Connection across Bob White Lane, a private drive. The easement also provided for the installation and maintenance of a waterline the parallels the spine road.

In addition the sales agreement also included the acquisition of a public access easement for the purpose of constructing and maintaining a sidewalk across Bob White Lane adjacent to FM 2499. This sidewalk installation eliminates an existing gap in the sidewalk running along FM 2499.

At the August 7, 2015 Town Council Meeting the Town Council selected an alternate alignment option for the SPA 2 Spine Road Connection across Bob White Lane. Staff was directed to prepare the legal description for the new alignment of the Spine Road Connection across Bob White Lane. Staff was also directed to coordinate with the owners of the adjacent properties, My Flooring America and the Black Walnut Café, to prepare documents to acquire the easements needed from them to build and maintain the revised Spine Road Connection alignment across Bob White Lane.

The owner of the Black Walnut Café property has agreed to provide the permanent and temporary construction easements needed for the construction and maintenance of that portion of the SPA 2 Spine Road Bob White Connection located on their property. They grant these easements with the understanding that the Town will be responsible for all cost associated with the construction of the Spine Road Connection.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: The Memorandum of Agreement was prepared by Taylor, Olson, Adkins and Elam L.L.P.

ATTACHMENTS:

1. Memorandum of Agreement

RECOMMENDATION: Move to approve the Memorandum of Agreement with Dirk Laukein; and authorize the Mayor to execute same on behalf of the Town.

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (this "Agreement") is made and entered into this _____ day of _____, 2015, by and between the Town of Flower Mound, Texas (the "Town"), and Dirk Laukien ("Mr. Laukien"), as follows:

WHEREAS, Mr. Laukien is the owner of that certain real property located within the Town, more particularly described as Lot 2, Block 1, Firewheel Village, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Document Number 2009-2 of the Plat Records of Denton County, Texas (the "Property"); and

WHEREAS, the Town desires to acquire certain property interests across the Property in order to complete the construction of the spine road called for in the Town's SPA 2 Master Plan ("Spine Road"); and

NOW, THEREFORE, THE TOWN AND MR. LAUKIEN AGREE AS FOLLOWS:

1. Owner's Responsibilities. Mr. Laukien agrees to dedicate to the Town, at no cost to the Town, the permanent public access and utility easement, including two temporary construction easements, attached to this Agreement as Exhibit "A", which is incorporated herein for any and all purposes, for the construction of the Spine Road and other necessary improvements.

2. Town's Responsibilities. The Town agrees to construct, at its sole cost, the Spine Road and all other necessary improvements and modifications to existing site improvements, such as landscaping and irrigation, in the permanent public access and utility easement and the temporary construction easements that are to be dedicated under Paragraph 1 above.

3. Amendment. Any agreement hereafter made between the parties shall be ineffective to modify, release, or otherwise affect this Agreement, in whole or in part, unless such agreement is in writing and executed by both parties. Amendment by electronically signed documents shall not be permitted, provided, however, that manually executed amendments may be transmitted electronically.

4. Parties and successors. Subject to the limitations and conditions set forth elsewhere herein, this Agreement shall bind and inure to the benefit of the respective heirs, legal representatives, successors, and assigns of the parties hereto.

5. Number and gender. All genders used in this Agreement shall include the other genders, the singular shall include the plural, and the plural shall include the singular, whenever and as often as may be appropriate.

6. Governing law and venue. The validity, enforceability, interpretation, and construction of this agreement shall be governed by the substantive laws of the State of Texas (without regard to conflict of law rules) and the laws of the United States applicable to

transactions in Texas. All obligations of the parties created hereunder are to be performed, and exclusive venue shall lie, in Denton County, Texas.

7. Entire agreement. This Agreement, including all exhibits which may be attached hereto (which exhibits are hereby incorporated herein and shall constitute a portion hereof), contains the entire agreement between the parties with respect to the subject matter hereof.

8. Rules of construction. All parties to this transaction are represented by legal counsel, and have had the opportunity to discuss the terms of this Agreement with their legal counsel and to negotiate regarding the terms of this Agreement. It is the intent of the parties that the terms and provisions of this Agreement shall be construed neutrally, and not against or in favor of a party hereto regardless of whether such party is the drafter of this Agreement.

9. Attorney's Fees. In the event either party defaults in the performance of any of the terms, agreements or conditions contained in this Agreement and the enforcement of this Agreement, or any part thereof, is placed in the hands of any attorney who files suit upon the same, the non-prevailing party shall pay the reasonable attorney's fees, expenses and costs of the prevailing party.

10. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

11. No Third Party Beneficiaries. Except as expressly provided herein, nothing herein is intended to confer upon any person other than the parties hereto any rights, benefits or remedies under or because of this Agreement, provided, however, that the described beneficiaries of the indemnity provisions of this Agreement are expressly intended third-party beneficiaries of this Agreement.

12. Mutual Assistance. The parties hereto agree to take all reasonable measures which are necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

13. No Waiver of Governmental Immunity. Nothing contained in this Agreement shall be construed as a waiver of the City's governmental immunity, or of any damage caps or limitations imposed by law, or any other legal protections granted to the City by law, except to the extent expressly provided or necessarily implied herein.

[signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed to be effective as of the date first above written.

THE TOWN:

THE TOWN OF FLOWER MOUND, TEXAS

Name: Tom Hayden
Title: Mayor, Town of Flower Mound

ATTEST:

Name: Theresa Scott
Title: Town Secretary

DEVELOPER:

DIRK LAUKIEN

Name: Dirk Laukien

State of Texas §
County of Denton §

Before me, the undersigned authority in and for the State of Texas, on this appeared
_____, known to me, or proved to me through _____
(description of identity card or other document), to be the person whose name is subscribed to
the foregoing instrument, and acknowledged to me that he executed the same for the purposes
and consideration therein expressed.

Notary Public, State of Texas

My Commission Expires:

EXHIBIT "A"

PERMANENT PUBLIC ACCESS AND UTILITY EASEMENT

STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON

That ***Dirk Laukein*** (Grantor), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to Grantor in hand paid by the ***TOWN OF FLOWER MOUND, TEXAS***, a Texas municipal corporation (Grantee), the receipt and sufficiency of which are hereby acknowledged, does hereby SELL, GRANT, and CONVEY unto Grantee an exclusive, permanent, and perpetual Public Access and Utility Easement for the passage and accommodation of vehicular and pedestrian traffic and the right to construct, reconstruct, repair, relocate, operate and perpetually maintain public street and/or drainage and utility facilities, and all other facilities or purposes for which a public street is commonly used, together with all necessary appurtenances thereto (the Facilities), and with the right and privilege at any and all times, to enter said premises, or any part thereof, as is necessary for making connections therewith, or for the proper use of any other right granted herein, in, on, under, over and across the following described property:

A permanent 0.009 acre Public Access and Utility Easement, as more particularly described and depicted in Exhibits "A" and "D", attached hereto and made a part hereof,

together with the right of ingress and egress as necessary for such purposes.

Additionally, Grantor does hereby SELL, GRANT, and CONVEY unto Grantee two Temporary Construction Easements for the purpose of installing the Facilities in the above-described Public Access and Utility Easement, together with the right of ingress and egress as necessary for the installation of the Facilities, said Temporary Construction Easements to be in and over the following described property:

Temporary Construction Easement 1

A 0.027 Temporary Construction Easement located immediately adjacent to the above described permanent Public Access and Utility Easement and the existing Public Access and Utility Easement, as more particularly described and depicted in Exhibits "B" and "D", attached hereto and made a part hereof.

Temporary Construction Easement 2

A 0.029 Temporary Construction Easement located immediately adjacent to the existing permanent Public Access and Utility Easement as more particularly described and depicted in Exhibits "C" and "D", attached hereto and made a part hereof.

The Temporary Construction Easements shall terminate upon the completion of the installation of the Facilities. The Temporary Construction Easements shall include the right to excavate and fill upon said Temporary Construction Easements and to remove from said Temporary Construction Easements any fences, trees, shrubs or other obstructions or growths as may now be found upon said Temporary Construction Easements, but Grantee shall replace any fences or other fixtures upon said Temporary Construction Easements without cost to Grantor, and shall restore the property which is the subject of the Temporary Construction Easements as closely as possible to its condition prior to entry thereon.

Grantor covenants and agrees that Grantor and Grantor's heirs, representatives, successors and assigns shall at no time erect, place, or construct, or cause to be erected, placed or constructed in, into, upon, over, across or under any easement granted herein any temporary or permanent structures, and it is further agreed that Grantee shall have the right to excavate and fill upon said Public Access and Utility Easement and to remove from said Public Access and Utility Easement, any fences, buildings, trees, shrubs or other obstructions or growths as may now be found upon said permanent easement.

It is further intended that the Public Access and Utility Easement herein granted to Grantee shall run with the land and forever be a right in and to the land belonging to Grantor, and Grantor's successors and assigns, and said grant is expressly excepted from any right of reversion of said premises under any prior deeds in Grantor's chain of title. The Public Access and Utility Easement, and the rights and privileges granted herein, are exclusive, and Grantor covenants that it will not convey any other easement or conflicting rights within the area covered by the grant to any other person.

Grantee, its successors and assigns, shall have, and it is hereby granted, the right of ingress and egress over that portion of the servient estate as is reasonably necessary to and for the limited purpose of accessing the Public Access and Utility Easement herein granted. The Public Access and Utility Easement shall at all times remain open and accessible to the public for the purposes herein stated.

There are no liens, attachments, or other encumbrances which will affect the title or right of Grantor to convey this easement to Grantee for the purposes as described herein. If such condition does exist, a signature with acknowledgment shall be included and made a part of this document conveying the rights and privileges contained herein, and subordinating any such lien or encumbrance to the easement granted herein.

TO HAVE AND TO HOLD the above described permanent Public Access and Utility Easement forever, and the above described Temporary Construction Easements for the period stated above, with the right of ingress and egress thereto, together with all and singular the rights and appurtenances thereto in any wise belonging unto Grantee, its successors and assigns; and Grantor hereby binds Grantor and Grantor's successors, heirs, executors, administrators and assigns to warrant and forever defend, all and singular, the easements and rights granted herein unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS THE GRANTOR'S HAND this ____ day of _____, 20____.

Dirk Laukein

STATE OF TEXAS

COUNTY OF DENTON

BEFORE ME, the undersigned authority on this day personally appeared, Dirk Laukein, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, in the capacity expressed therein, and as the act and deed of the owner of said property.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 20____.

Notary Public in and for the State of Texas

AFTER RECORDING, RETURN TO:

Tiffany Bruce, P.E.
TOWN OF FLOWER MOUND
2121 Cross Timbers Rd.
Flower Mound, Texas 75028

EXHIBIT A

**LEGAL DESCRIPTION
PUBLIC ACCESS & UTILITY EASEMENT
PART OF LOT 2, BLOCK 1, FIREWHEEL VILLAGE
0.009 Acres**

BEING all that certain lot, tract or parcel of land situated in the J. Wizwell Survey, Abstract Number 1346, Town of Flower Mound, Denton County, Texas, and being part of Lot 2, Block 1, Firewheel Village, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Document Number 2009-2 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

COMMENCING at a "+" found in concrete on the west line of F.M. 2499 (A.K.A. Long Prairie Road) at the northeast corner of said Lot 2, being on the south line of that certain called 3.0206 acre tract of land described as Tract II in deed to Jenvier Gentry Scott, recorded in Document Number 2013-60264 of the Real Property Records of Denton County, Texas, from which the southeast corner of said 3.0206 acre tract bears N 88°27'35" E, 27.01 feet;

THENCE S 88°27'35" W, 285.17 feet with the south line of said Tract II and the north line of said Lot 2 to the **POINT OF BEGINNING**;

THENCE with the arc of a curve to the right having a radius of 60.50 feet, a central angle of 15°12'09" and an arc length of 16.05 feet whose chord bears S 39°08'55" W, 16.01 feet;

THENCE S 46°45'00" W, 10.38 feet;

THENCE with the arc of a curve to the left having a radius of 25.00 feet, a central angle of 48°16'00" and an arc length of 21.06 feet whose chord bears S 22°37'00" W, 20.44 feet to the east line of a 31 foot Access, Drainage, Water and Sewer Easement shown on said Firewheel Village plat;

THENCE N 01°31'00" E, 37.70 feet with the east line of said easement to the south line of said Tract II and the north line of said Lot 2, from which the northwest corner thereof bears S 88°27'35" W, 15.50 feet;

THENCE N 88°27'35" E, 26.53 feet with the south line of said Tract II and the north line of said Lot 2 to the **POINT OF BEGINNING** and containing approximately 397 square feet or 0.009 acres of land.

Bearings based on Texas Coordinate System, North Central Zone (4202), NAD 83.



EXHIBIT B

**LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION EASEMENT 1
PART OF LOT 2, BLOCK 1, FIREWHEEL VILLAGE
0.027 Acres**

BEING all that certain lot, tract or parcel of land situated in the J. Wizwell Survey, Abstract Number 1346, Town of Flower Mound, Denton County, Texas, and being part of Lot 2, Block 1, Firewheel Village, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Document Number 2009-2 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

COMMENCING at a "+" found in concrete on the west line of F.M. 2499 (A.K.A. Long Prairie Road) at the northeast corner of said Lot 2, being on the south line of that certain called 3.0206 acre tract of land described as Tract II in deed to Jenvier Gentry Scott, recorded in Document Number 2013-60264 of the Real Property Records of Denton County, Texas, from which the southeast corner of said 3.0206 acre tract bears N 88°27'35" E, 27.01 feet;

THENCE S 88°27'35" W, 273.58 feet with the south line of said Tract II and the north line of said Lot 2 to the **POINT OF BEGINNING**;

THENCE with the arc of a curve to the right having a radius of 70.50 feet, a central angle of 17°52'01" and an arc length of 21.98 feet whose chord bears S 35°19'46" W, 21.90 feet;

THENCE S 01°30'58" W, 40.19 feet;

THENCE S 88°29'02" W, 25.00 feet to the east line of a 31 foot Access, Drainage, Water and Sewer Easement shown on said Firewheel Village plat;

THENCE N 01°31'00" E, 20.00 feet with the east line of said;

THENCE with the arc of a curve to the right having a radius of 25.00 feet, a central angle of 48°16'00" and an arc length of 21.06 feet whose chord bears N 22°37'00" E, 20.44 feet;

THENCE N 46°45'00" E, 10.38 feet;

THENCE with the arc of a curve to the left having a radius of 60.50 feet, a central angle of 15°12'09" and an arc length of 16.05 feet whose chord bears N 39°08'55" E, 16.01 feet to the south line of said Tract II and the north line of said Lot 2;

THENCE N 88°27'35" E, 11.60 feet with the south line of said Tract II and the north line of said Lot 2 to the **POINT OF BEGINNING** and containing approximately 1173 square feet or 0.027 acres of land.

Bearings based on Texas Coordinate System, North Central Zone (1982), NAD 83.

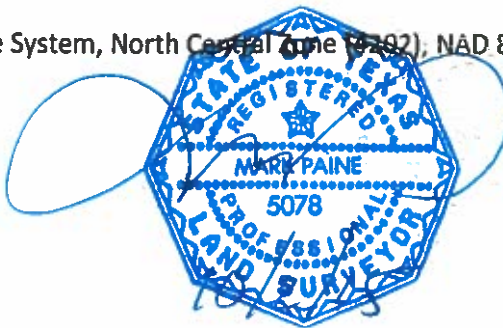


EXHIBIT C

**LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION EASEMENT 2
PART OF LOT 1, BLOCK 1, FIREWHEEL VILLAGE
0.029 Acres**

BEING all that certain lot, tract or parcel of land situated in the J. Wizwell Survey, Abstract Number 1346, Town of Flower Mound, Denton County, Texas, and being part of Lot 1, Block 1, Firewheel Village, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Document Number 2009-2 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

COMMENCING at a "+" found in concrete on the west line of F.M. 2499 (A.K.A. Long Prairie Road) at the northeast corner of Lot 2, Block 1 of said Firewheel Village Addition and being on the south line of that certain called 3.0206 acre tract of land described as Tract II in deed to Jenvier Gentry Scott, recorded in Document Number 2013-60264 of the Real Property Records of Denton County, Texas, from which the southeast corner of said 3.0206 acre tract bears N 88°27'35" E, 27.01 feet;

THENCE S 88°27'35" W, with the south line of said Tract II and the north line of said Lot 2, passing at 327.21 feet the northwest corner thereof, being the northeast corner of said Lot 1, continuing with the south line thereof a total distance of 342.71 feet to the west line of a 31 foot Access, Drainage, Water and Sewer Easement shown on said Firewheel Village plat for the **POINT OF BEGINNING**;

THENCE S 01°30'58" W, 50.00 feet with the west line of said easement;

THENCE S 88°29'02" W, 25.00;

THENCE N 01°31'00" E, 50.00 feet to the south line of said Tract II and the north line of said Lot 1;

THENCE N 88°31'02" E, 10.52 feet with the south line of said Tract II and the north line of said Lot 1 to a 1/2" capped rebar found (CMP) at an angle point;

THENCE N 88°27'35" E, 14.48 feet continuing with the south line of said Tract II and the north line of said Lot 1 to the **POINT OF BEGINNING** and containing approximately 1250 square feet or 0.029 acres of land.

Bearings based on Texas Coordinate System, North Central Zone (4602), NAD 83.







TOWN COUNCIL AGENDA ITEM NO.15

REGULAR ITEM

DATE: January 21, 2016

FROM: Ken Parr, Executive Director of Public Works

ITEM: Consider approval of the Addendum To Development Agreement with MRK Enterprises, LLC; and authorization for the Mayor to execute the same on behalf of the Town.

BACKGROUND INFORMATION: Town Council approved a Contract of Sales Agreement on April 20, 2015 for the acquisition of an easement for the construction and maintenance of the SPA 2 Spine Road across Bob White Lane, a private drive. The easement also provided for the installation and maintenance of a waterline that parallels the spine road.

In addition the sales agreement also included the acquisition of a public access easement for the purpose of constructing and maintaining a sidewalk across Bob White Lane adjacent to FM 2499. This sidewalk installation eliminates an existing gap in the sidewalk running along FM 2499.

At the August 7, 2015 Town Council Meeting the Town Council selected an alternate alignment option for the SPA 2 Spine Road Connection across Bob White Lane. Staff was directed to prepare the legal description for the new alignment across Bob White Lane. Staff was also directed to coordinate with the owners of the adjacent properties, My Flooring America and the Black Walnut Café, and prepare documents to acquire easements needed from them to build and maintain the revised Spine Road Connection alignment across Bob White Lane.

The original March 2, 2009 Development Agreement with MRK Enterprises, LLC, Attachment No. 1, required the Developer to escrow funds to cover the estimated cost associated with the elimination of the My Flowering America Temporary Access Driveway if that was required by the Town once the Spine Road connection from Sagebrush Drive to Firewheel Drive had been completed. The Development Agreement also required the Developer to escrow the estimated cost to cover the installation of a southbound right-turn lane if the Temporary Access Drive was later designed as a Permanent Access Driveway.

On June 10, 2013 the Planning and Zoning Commission recommended amending SPA 2 to allow for three additional access points to FM 2499 between Sagebrush Drive and Firewheel Drive. On June 17, 2013 the Town Council approved an amendment to SPA 2, which allowed three additional access points to FM 2499. The location of the existing My Flooring America Temporary Access Driveway matched up with one of the additional access points to FM 2499 that was approved. This previous action by the Town Council would allow for the My Flooring America access driveway to be designated as a Permanent Access Driveway.

The Town completed a Traffic Impact Analysis (TIA) on November 13, 2015, to determine whether or not the designation of the My Flooring America driveway as a Permanent Access Driveway would result in the driveway's peak hourly vehicular counts exceeding the volume threshold required by the Town's Access Management Policy for a right turn deceleration lane. The TIA determined that the permanent access driveway's peak hourly vehicular count does not exceed the volume threshold that would require a right turn deceleration lane. Based upon the determination made by the TIA, the designation of the My Flooring America Temporary Access as a Permanent Access Driveway would not require a right turn deceleration lane.

The owner of My Flooring America, MRK Enterprises, LLC, has agreed to provide the permanent and temporary construction easements needed to construct and maintain the new Spine Road Bob White Connection and the utilities that will be installed in the permanent easement. In return the owner is requesting that the Town designate their existing FM 2499 Temporary Access Driveway as a Permanent Access Driveway and the release of all escrowed funds. This request for the designation of a Permanent Access Driveway and the release of all escrowed funds is based upon the results of the previously mentioned June 17, 2013 SPA 2 Amendment and the results of the Traffic Impact Analysis that was completed on November 13, 2015.

The proposed Development Agreement Addendum allows for the gifting of the required additional Permanent Public Access and Utility Easement and Temporary Construction Easements needed to build and then maintain the public access roadway and the utilities that will be installed in the permanent easement. The proposed Addendum to the Development Agreement designates the Temporary Access Driveway as a Permanent Access Driveway and the release of all previously escrowed funds. Also, the proposed Addendum states that the Town will be responsible for all cost associated with the construction of the Spine Road.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: The Development Agreement Amendment was prepared by Taylor, Olson, Adkins, and Elam L.L.C.

ATTACHMENTS:

1. MRK Enterprises, LLC Development Agreement – March 2, 2009.
2. MRK Enterprises, LLC Development Agreement Addendum.

RECOMMENDATION: Move to approve the Addendum To Development Agreement with MRK Enterprises, LLC; and authorize the Mayor to execute same on behalf of the Town.

Return to:

Paula Paschal

Town Secretary

Town of Flower Mound

2121 Cross Timbers

Flower Mound, TX

DEVELOPMENT AGREEMENT

75028

ATTACHMENT NO. 1

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this 2nd day of March, 2009, by and between the Town of Flower Mound, Texas (the "Town") and M R K Enterprises, LLC, a Texas Limited Liability Corporation, (the "Developer"), as follows:

WITNESSETH:

WHEREAS, Developer is the owner of that certain real property located within the Town, situated in the J. R. Wizwell Survey, Abstract No. 1346, Denton County, Texas comprising approximately 2.018 acres, and as more particularly described in Exhibit A attached hereto, (the "Property") and desires to construct certain improvements thereon; and

WHEREAS, the Property is generally located west of FM 2499 (Long Prairie Road) and north of Bob White Road, a private road, in the Town of Flower Mound, Texas; and

WHEREAS, the Town's Master Plan 2001 and Special Plan Area 2 (SPA 2) call for the construction of a spine road to provide internal access to the Property and the adjoining property which is or was subject to Planned Development 64 (PD-64), and prohibit driveway connections to FM 2499; and

WHEREAS, the spine road required to provide internal access to the Property has not yet been constructed and cannot be constructed until additional development occurs on the property to the north of the Property; and

WHEREAS, Developer has requested that the Property be allowed a temporary access driveway connection to FM 2499 until the spine road providing internal access has been constructed, at which time the temporary access driveway will be removed; and

WHEREAS, Developer has requested that the Town consider making this temporary access driveway connection to the Property the permanent access point between FM 2499 and the property within SPA 2, in which event Developer will acquire or provide the necessary right-of-way for and construct a deceleration lane from FM 2499 to the Property; and

WHEREAS, the development requirements set forth herein including the payment to the Town of the monies set forth herein, if any, remain consistent with the Town's commitment to provide for the health, safety and welfare of the residents of the Town.

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

1. Developer shall be entitled to construct and shall have a temporary access driveway to FM 2499 (Long Prairie Road) (the "Temporary Access Driveway") as depicted on the attached Conceptual Site Plan (Option 1 and Option 2).

2. If the Town determines the Temporary Access Driveway should be designated as a permanent access point with FM 2499 Developer shall grant to all owners of property within SPA 2 and their respective purchasers, successors, heirs or assigns of such property, a perpetual non-exclusive mutual access easement and right-of-way for cross access, ingress and egress for all pedestrian and vehicular traffic to and from FM 2499 and the Spine Road over and across the easement areas located on the Property in a form acceptable to the Town.

(a) The location of the permanent access point with FM 2499 and the Spine Road shall conform to the Site Plan for the Property, as approved by the Town.

(b) The perpetual non-exclusive mutual access easement agreement for the permanent access point with FM 2499 and the Spine Road shall be recorded in the Real Property Records of Denton County, Texas.

(c) Developer further agrees, at Developer's sole cost, to acquire and dedicate to the Town the right-of-way necessary for the construction of and to construct a deceleration lane as reflected on the Site and Dimension Control Plan (Option 1) attached hereto and incorporated herein by reference as Exhibit B at no cost to the Town. Developer shall also acquire and dedicate to the Town at no cost to the Town a pedestrian access and utility easement for off-site work and shall at no cost to Town relocate any utilities and required public improvements as well as repair or reconstruct any sidewalks or hike and bike trails that are relocated or impacted by the construction of the deceleration lane.

(d) The Developer shall construct and stub out pavement and improvements to that portion of the Property's northern property line in the area at which the Spine Road along and across the Adjacent Tract(s) shall connect to and with the Property at no cost to the Town or the owners of the Adjacent Tract(s), as evidenced by a certificate of completion from the contractor constructing such driveway improvements and the written acceptance of such driveway improvements by the Town of Flower Mound.

3. In the alternative, if the Town does not designate the Temporary Access Driveway as the permanent access point with FM 2499, Developer shall be entitled to use the Temporary Access Driveway until such time as the permanent internal cross access drive that is required to be constructed pursuant to SPA 2 between Sagebrush

and FM 2499 across from Firewheel Drive (the "Spine Road") has been completed and accepted by the Town. Developer agrees, at Developer's sole cost, to abandon and remove the Temporary Access Driveway and obtain the necessary easements to construct and thereafter to construct a hammerhead driveway on the adjacent northern property, currently owned by Harvey L. Earles, as reflected on the Site and Dimension Control Plan (Option 2) attached hereto and incorporated herein by reference as Exhibit C upon satisfaction of the following conditions:

(a) the owners of the tract(s) of land located adjacent to, adjoining and extending beyond the northern boundary of the Property (the "Adjacent Tract(s)") shall identify upon the plat or Site Plan of the Adjacent Tract(s) and grant to the Developer and any subsequent owners, purchasers, successors or assigns of the Property, a perpetual non-exclusive mutual access easement and right-of-way for cross access, ingress and egress for all pedestrian and vehicular traffic to and from the Property and the Spine Road ("Mutual Access Easement") over and across the easement areas (the "Easement Areas") located on the Adjacent Tract(s) in a form acceptable to the Developer (the "Easement Agreement");

(b) the Developer shall identify upon the Site Plan for the Property the location at which the Mutual Access Easement will connect to and with the Easement Areas located on the Adjacent Tract(s) in a form acceptable to the Town;

(c) the Easement Agreement shall be recorded in the Real Property Records of Denton County, Texas;

(d) the Developer shall construct and stub out pavement and improvements to that portion of the Property's northern property line in the area at which the Spine Road along and across the Adjacent Tract(s) shall connect to and with the Property at no cost to the Town or the owners of the Adjacent Tract(s), as evidenced by a certificate of completion from the contractor constructing such driveway improvements and the written acceptance of such driveway improvements by the Town of Flower Mound; and

(e) the owners of the Adjacent Tract(s) shall construct the pavement and driveway improvements for the Spine Road across the Easement Areas on the Adjacent Tract(s) and connect said Easement Areas to and with the Property at the location on the Property that is constructed and stubbed out for such Spine Road at no cost to the Town or Developer, as evidenced by a certificate of completion from the contractor constructing such driveway improvements and the written acceptance of such driveway improvements by the Town of Flower Mound; and

(f) The Spine Road will ultimately be extended, by the respective property owners or developers as development occurs, to and connected with either or both Sagebrush and/or FM 2499 across from Firewheel Drive with

sufficient capacity to provide cross access, ingress and egress for all pedestrian and vehicular traffic to and from the Property as determined by the Town; and

(g) The Spine Road will ultimately be extended, by the respective property owners or developers as development occurs, to and connected with either or both Sagebrush and/or FM 2499 across from Firewheel Drive with sufficient capacity to provide fire protection and emergency services to the Property as determined by the Town; and

(h) The Spine Road or necessary and sufficient sections of the Spine Road necessary to service the Property have been accepted by the Town.

The immediately foregoing conditions are hereinafter referred to collectively as the **"Alternative Access Conditions."**

4. Developer shall escrow with the Town an amount equal to one hundred ten percent (110%) of the following projected construction costs as reasonably approved by the Town Engineer:

- a. acquisition of the necessary right-of-way and easements for the construction of the deceleration lane from FM 2499;
- b. relocation and reconstruction of utilities and sidewalks or hike and bike trails associated with the construction of the deceleration lane;
- c. construction of the deceleration lane as reflected on the Site and Dimension Control Plan (Option 1);
- d. acquisition of the necessary easements for the construction of the hammerhead on the adjacent northern property;
- e. construction of the hammerhead on the adjacent northern property as reflected on the Site and Dimension Control Plan (Option 2);
- f. removal of the Temporary Access Driveway;
- g. soil stabilization;
- h. installation of the required landscaping necessary to restore and maintain the twenty-five foot (25') landscape buffer required by SPA 2 and PD-64 and comply with any approved landscape plan for the Property.

The funds to be paid into escrow with the Town shall be deposited with the Town prior to the issuance of the first building permit for any work to be performed on the Property or any structure constructed on the Property. The amount of the projected construction costs, as reasonably approved by the Town Engineer, for Option 1 and Option 2 are

reflected in Exhibit D which is attached hereto and incorporated herein by reference for all purposes allowed by law.

5. If the Town designates the Temporary Access Driveway as the permanent access point with FM 2499, Developer shall obtain and grant or convey all necessary easements and rights-of-way, relocate any conflicting utilities, remove and reconstruct any conflicting sidewalks or hike and bike trails, construct the deceleration lane and stabilize any exposed soil, and remove and re-install any required landscaping within ninety (90) days after such designation (the "Option 1 Work"). If the Developer timely performs the Option 1 Work the Developer may request payment from the escrow funds upon completion and approval of the Option 1 Work. If, however, the Developer fails to timely perform the Option 1 Work, the Town will revoke the designation of the Temporary Access Driveway as a permanent access point with FM 2499 and Developer shall proceed with the removal of the Temporary Access Driveway upon satisfaction of the Alternative Access Conditions. **The Developer or the then owner shall release, defend, indemnify and hold the Town harmless from and against any and all damages, loss or liability of any kind, whatsoever, including the Town's attorney's fees, costs and expenses by reason of the Town's revocation of such designation.**

6. If the Town does not designate the Temporary Access Driveway as the permanent access point with FM 2499, the Temporary Access Driveway shall be removed; any exposed soil stabilized, and required landscaping installed within ninety (90) days after the Alternative Access Conditions have been satisfied. If the Developer timely removes said Temporary Access Driveway, stabilizes any exposed soil, and installs all required landscaping the Developer may request payment from the escrow funds upon completion and approval of the removal of the Temporary Access Driveway, soil stabilization, and installation of all required landscaping. If, however, the Developer fails to remove the Temporary Access Driveway, stabilize any exposed soil, and install all required landscaping within ninety (90) days after the satisfaction of the Alternative Access Conditions, the Town may, but has no corresponding obligation to, go onto the Property and remove the Temporary Access Drive, stabilize any exposed soil, and install all required landscaping. The Town may pay all associated costs for the removal of said Temporary Access Driveway, soil stabilization, and landscaping from the amount escrowed for that purpose by the Developer. The Developer or the then Owner of the Property shall be liable to the Town for any unpaid costs in excess of the escrow amount and, if unpaid, the Town may assert a priority lien on the Property for their payment. **The Developer or the then owner shall release, defend, indemnify and hold the Town harmless from and against any and all damages, loss or liability of any kind, whatsoever, including the Town's attorney's fees, costs and expenses by reason of death or injury to property or third persons which may arise out of or be related to the Town's performance of Developer's obligations in accordance with this provision.**

7. The provisions of the Easement Agreement shall include, without limitation, that (i) no barrier which would prevent the normal flow of vehicular or

pedestrian traffic over and across the Easement Areas shall be constructed, placed or maintained on the Adjacent Tract(s), except landscaping, curbing, speed bumps, and traffic control signs or signals which may be reasonably necessary or appropriate for the development and improvement thereof, as long as same do not preclude or unreasonably interfere with cross access, egress, and ingress from, over and across the Easement Areas, (ii) Developer shall be entitled to review the plans for, and assert reasonable objections to, any improvements to be constructed on the Easement Areas prior to the construction thereof, (iii) the owners of the Adjacent Tract(s) shall be required to maintain all improvements within Easement Areas located on its Adjacent Tract(s) in good condition and repair and sufficient to sustain vehicular and pedestrian traffic over and across such Easement Areas, including, without limitation, repaving, resurfacing, patching, and re-striping as needed, (iv) Developer may exercise self help and lien rights in the event of a default by the owners of the Adjacent Tract(s) under the Easement Agreement, and (v) any and all lien holders of the Adjacent Tract(s) shall execute the Easement Agreement for the purpose of confirming that the Easement Agreement will survive the foreclosure or deed-in-lieu of foreclosure of such lien(s). The covenants, conditions, and easements created under the Easement Agreement shall be appurtenant to and run with the land and shall be binding upon and shall inure to the benefit of the owners of the Property and the Adjacent Tract(s) and their respective heirs, successors, and assigns.

8. In exchange for the promises exchanged herein and the benefits provided by this Agreement Developer individually and collectively for himself and his respective successors, heirs, assigns, vendors, grantees, and trustees does hereby agree to grant unto the owner(s) of the Adjacent Tract(s) and the Town and their respective officers, officials, employees, agents, contractors, subcontractors, successors, assigns, vendors, grantees, and trustees a temporary construction easement over a portion of the Property in a location to be reasonably approved by the parties at the time of the construction of the improvements on, in, about and across the Easement Area.

9. Notwithstanding anything to the contrary set forth in this Agreement, in the event subsequent to the removal of the Temporary Access Driveway, Developer is prevented from utilizing the easement evidenced by the Easement Agreement due to a failure of title in connection with the conveyance of the Easement Agreement, then Developer shall be entitled to re-construct a curb-cut and driveway within the Temporary Access Driveway for purposes of providing direct access to and from FM 2499.

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

11. Any notices required or permitted to be given hereunder shall be given by certified or registered mail, return receipt requested, to the addresses set forth below or to such other single address as either party hereto shall notify the other:

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

If to Developer: Kelby J. Frederick
M R K Enterprises, LLC.
3008 S. I-35E
Denton, TX 76210.

12. In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

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

14. A telecopied facsimile of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms herein.

15. The Town Council shall authorize the Mayor of the Town of Flower Mound to execute this Agreement on behalf of the Town.

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

17. This Agreement shall be filed in the deed records of Denton County, Texas. Upon any sale or other transfer of ownership rights in the Property, save and except the sale of individual platted lots, Owner shall notify the Town in writing of such sale or transfer within ten (10) business days of such sale or transfer.

18. The Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The Town warrants and represents that the individual executing this Agreement on behalf of the Town has full authority to execute this Agreement and bind the Town to the same. Developer warrants and represents that the individual executing this Agreement on his/her/its behalf has full authority to execute this Agreement and bind Developer to same.

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

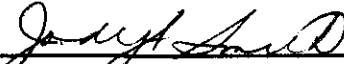
20. Developer has been represented by legal counsel in the negotiation of this Agreement and been advised, or has had the opportunity to have legal counsel review this Agreement and advise Developer, regarding Developer's rights under Texas and federal law. Developer hereby waives any requirement that the Town retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions required by the Town as a condition of approval for the development of this Property are roughly proportional or roughly proportionate to the proposed development's anticipated impact. (These exactions may include but are not limited to the making of dedications or reservations of land, the payment of fees, the construction of facilities, and the payment of construction costs for public facilities.) Developer specifically reserves its right to appeal the apportionment of municipal infrastructure costs in accordance with Tex. Loc. Gov't Code § 212.904. However, notwithstanding the foregoing, Developer hereby releases the Town from any and all liability under Tex. Loc. Gov't Code § 212.904 regarding or related to the cost of those municipal infrastructure improvements required for the development of the Property.

Developer hereby agrees that the escrowing of funds and the obligation to construct and/or remove the roadway improvements and turn lanes identified in this Agreement, are roughly proportional to the benefits to be derived by Developer under this Agreement, and Developer hereby waives any claim therefor that it may have. Developer further acknowledges and agrees that all prerequisites to such a determination of rough proportionality have been met, and that any costs incurred relative to said roadway improvements are related both in nature and extent to the impact of the development of the property. Developer hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution and Chapter 395 of the Tex. Loc. Gov't. Code. Both Developer and the Town further agree to waive and release all claims one may have against the other related to any and all rough proportionality and individual determination requirements mandated by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny, as well as any other requirements of a nexus between development conditions and the projected impact of the terms of this Agreement. Developer further acknowledges that the benefits of zoning and platting have been accepted with full knowledge of potential claims and causes of action which may be raised now and in the future, and Developer acknowledges the receipt of good and valuable consideration for the release and waiver of such claims. **Developer shall indemnify and hold harmless Town from any claims and suits of third parties, including but not limited to Developer's successors, assigns, grantees, vendors, trustees or representatives, brought pursuant to this Agreement or the claims or types of claims described in this paragraph.**

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

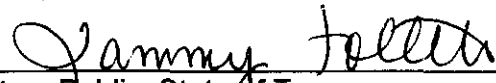
THE TOWN:

THE TOWN OF FLOWER MOUND, TEXAS

By: 
 Name: Jody A. Smith
 Title: Mayor, Town of Flower Mound

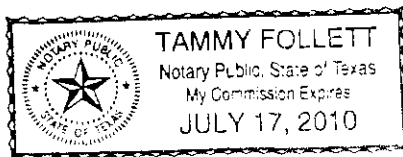
State of Texas §
 County of Denton §

This instrument was acknowledged before me on the 2nd day of MARCH, 2009, by Jody A. Smith, Mayor of the Town of Flower Mound, Texas, on behalf of the Town of Flower Mound, Texas.


 Notary Public, State of Texas

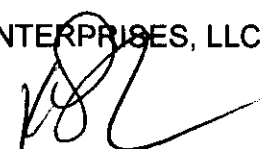
My Commission Expires:

7.17.2010



DEVELOPER:

M R K ENTERPRISES, LLC.

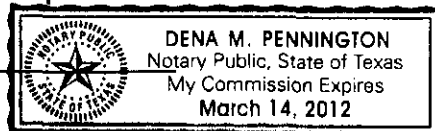
By: 
 Name: Kelby J. Frederick
 Title: Director

State of Texas §
 County of Denton §

This instrument was acknowledged before me on the 2ND day of MARCH, 2009, by KELBY J. FREDERICK known to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he is the Director of M R K ENTERPRISES, LLC. and that he executed the same for and on behalf of M R K ENTERPRISES, LLC.


 Notary Public, State of Texas

My Commission Expires:



DEVELOPMENT AGREEMENT -
 Flooring America

Town of Flower Mound
 Planning & Development
 10000 Highway 121
 Flower Mound, TX 75022

Exhibit A**METES AND BOUNDS DESCRIPTION**

BEING A 2.018 ACRE TRACT OF LAND SITUATED IN THE J. R. WZWEILL SURVEY, ABSTRACT NO. 1346, IN THE TOWN OF FLOWER MOUND, DENTON COUNTY, TEXAS, AND BEING A PART OF THAT CERTAIN TRACT OF LAND DESCRIBED BY DEED TO EUGENE E. TOLLESON AND WIFE, MARY JANE TOLLESON, AS RECORDED IN VOLUME 466, PAGE 156, OF THE DEED RECORDS OF DENTON COUNTY, TEXAS (D.R.D.C.T.), AND BEING A PART OF THAT CERTAIN TRACT OF LAND DESCRIBED BY DEED TO EUGENE E. TOLLESON AND OLETA M. TOLLESON, TRUSTEES OF THE TOLLESON FAMILY TRUST, AS RECORDED IN VOLUME 4507, PAGE 1146, OF THE REAL PROPERTY RECORDS OF DENTON COUNTY, TEXAS (R.P.R.D.C.T.), AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

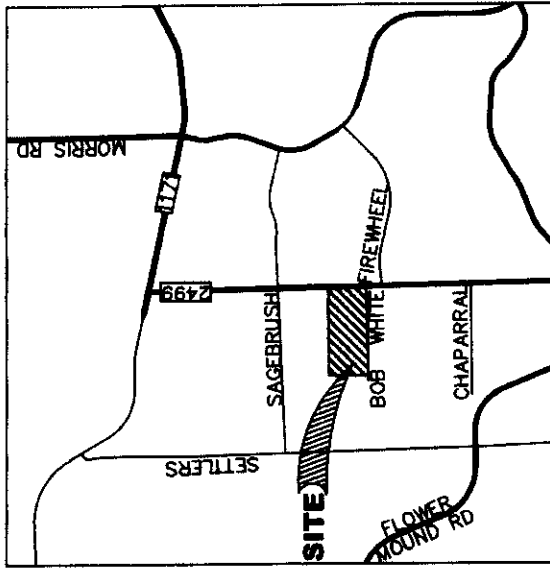
BEGINNING AT A ½ INCH IRON ROD FOUND FOR THE NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT, SAME POINT BEING THE SOUTHWEST CORNER OF THAT CERTAIN TRACT OF LAND DESCRIBED BY DEED TO HARVEY L. EARLES, AS RECORDED IN VOLUME 5264, PAGE 400, R.P.R.D.C.T., SAME POINT BEING IN THE EAST LINE OF A TRACT OF LAND DESCRIBED BY DEED TO BILLY W. WORKMAN AND WIFE, MARIE DESIREE WORKMAN, AS RECORDED IN VOLUME 5280, PAGE 250, D.R.D.C.T.;

THENCE NORTH 89 DEGREES 00 MINUTES 38 SECONDS EAST, WITH THE SOUTH LINE OF SAID EARLES TRACT, A DISTANCE OF 586.43 FEET TO A ½ INCH IRON ROD WITH CAP MARKED "S J & F" FOUND FOR THE NORTHWEST CORNER OF A 15 FOOT WIDE STRIP OF LAND DEDICATED TO THE STATE OF TEXAS FOR RIGHT-OF-WAY EXPANSION OF F. M. ROAD NO. 2499 (ALSO KNOWN AS "LONG PRAIRIE ROAD") AS RECORDED UNDER COUNTY CLERK FILE NO. 94-R0081669, R.P.R.D.C.T.;

THENCE SOUTH 00 DEGREES 34 MINUTES 19 SECONDS WEST, WITH THE WEST LINE OF SAID LONG PRAIRIE ROAD, A DISTANCE OF 150.05 FEET TO A ½ INCH IRON ROD WITH YELLOW CAP MARKED "ARTHUR SURVEYING COMPANY" SET FOR CORNER IN THE NORTH LINE OF A TRACT OF LAND DESCRIBED BY DEED TO JAY NEALE GENTRY AND WIFE, SHARON L. GENTRY, AS RECORDED IN VOLUME 2451, PAGE 946, R.P.R.D.C.T.;

THENCE SOUTH 89 DEGREES 00 MINUTES 44 SECONDS WEST, WITH THE NORTH LINE OF SAID GENTRY TRACT, A DISTANCE OF 585.50 FEET TO A FENCE CORNER POST FOUND FOR CORNER IN THE EAST LINE OF SAID WORKMAN TRACT;

THENCE NORTH 00 DEGREES 12 MINUTES 57 SECONDS EAST, WITH THE EAST LINE OF SAID WORKMAN TRACT, A DISTANCE OF 150.00 FEET TO THE POINT OF BEGINNING AND CONTAINING A TOTAL OF 2.018 ACRES OF LAND MORE OR LESS, AND BEING SUBJECT TO ANY AND ALL EASEMENTS THAT MAY AFFECT.

**LOCATION MAP
NOT TO SCALE****METES AND BOUNDS DESCRIPTION
FLOORING AMERICA**

2.018 Acre Tract Situated in the
City of Flower Mound, Denton County, Texas

Owner:

Eugene & Mary Tollenson
Family Trust
2901 Corporate Circle, Flower Mound TX, 75028
469-446-5497

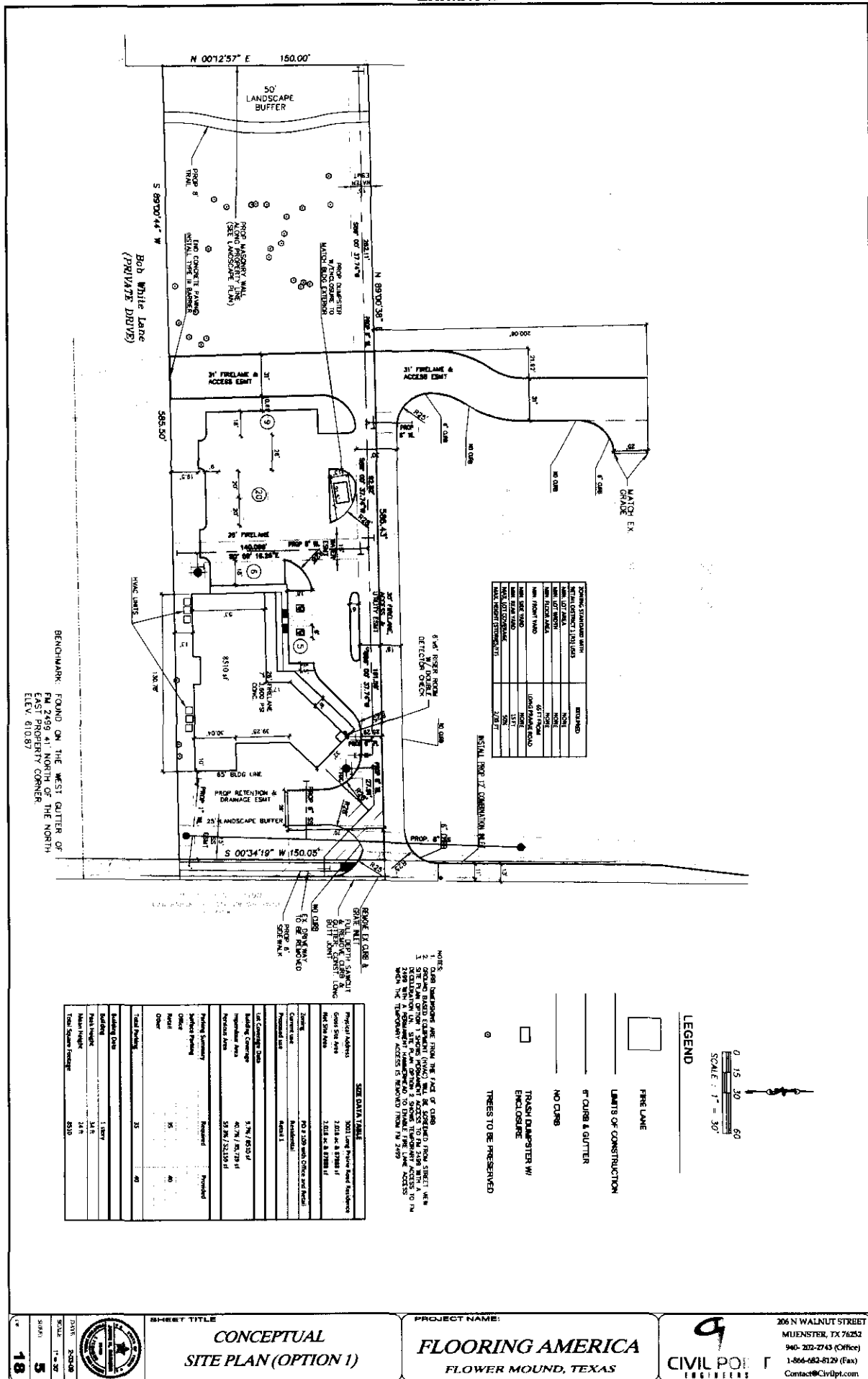
Engineer:

g

CIVIL ENGINEER

206 N Walnut Street Muenster, TX 76252
940-202-2743

July 29, 2008



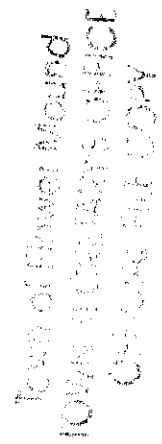
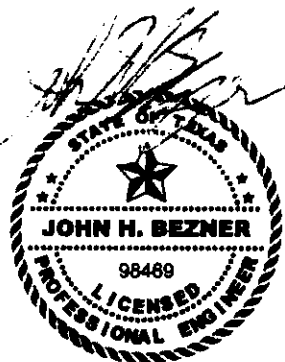


Exhibit D

Forrest Francis Construction
3505 Yucca Drive
Flower Mound, TX 75028
469-635-2847

Cost for Escrow Agreement**Option 1 Permanent Access**

1) 429 Sy of concrete for Decel Lane	\$17,589
2) Repair sidewalk at Angel Vet	\$ 850
3) Relocate 6 Inlets and Pipe	<u>\$ 24,000</u>
Total	\$ 42,439



2-23-2009

Exhibit D

Forrest Francis Construction
3505 Yucca Drive
Flower Mound, TX 75028
469-635-2847

Cost for Escrow Agreement

Option 2 Temporary Access

1) Remove Temporary Access Pour Curb	\$3500
2) 70 x 24 Hammerhead on Adjacent Property	<u>\$5797</u>
Total	\$9297



2-23-2009

Town of Flower Mound
TOWN SECRETARY'S OFFICE
OFFICIAL USE ONLY

Feb 02 09 04:52p

Alliance Processors, Inc.

Exhibit D

8174313284

p.3

February 2, 2009

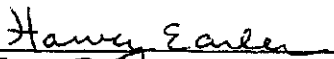
P&Z & Town Council & Staff

RE: The Flooring America Site Plan, Zoning & Platting approvals.

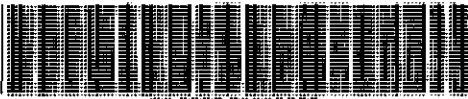
I own the land contiguous or north of this 2 acre tract and I want to speak in favor of the Zoning, Platting and Site Plan approvals for the Flooring America development as they have worked with me and my representatives together with staff to construct a great looking building.

I also would like to go on the record to allow the developer access to my site for the construction of both the access roads and the decal lane.

Thank You


Harvey Earles

Denton County
Cynthia Mitchell
County Clerk
Denton, Tx 76202



2009-32862

Instrument Number: 2009-32862

As

Recorded On: March 18, 2009

Agreement

Parties: THE TOWN OF FLOWER MOUND

To

Billable Pages: 16

Number of Pages: 16

Comment: Development Agreement -
MRK ENTERPRISES

(Parties listed above are for Clerks reference only)

**** Examined and Charged as Follows: ****

Agreement	71.00
Total Recording:	71.00

***** DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT *****

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY
because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 2009-32862

Receipt Number: 567183

Recorded Date/Time: March 18, 2009 03:18:30P

User / Station: H Dunn - Cash Station 4

Record and Return To:

PAULA PASCHAL

TOWN OF FLOWER MOUND

2121 CROSS TIMBERS RD

FLOWER MOUND TX 75028



THE STATE OF TEXAS }
COUNTY OF DENTON }

I hereby certify that this instrument was FILED in the File Number sequence on the date/time
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

Cynthia Mitchell

County Clerk
Denton County, Texas

ADDENDUM TO DEVELOPMENT AGREEMENT

This Addendum to Development Agreement (the "Addendum") is made and entered into this _____ day of _____, 2015, by and between the Town of Flower Mound, Texas (the "Town"), and M R K Enterprises, LLC, a Texas Limited Liability Company (the "Developer"), as follows:

WITNESSETH:

WHEREAS, the Town and the Developer entered into a Development Agreement, effective March 2, 2009, for the purpose of creating a Temporary Access Driveway to FM 2499 (the "Development Agreement"), because the Spine Road required to provide internal access to the Developer's property had not yet been constructed; and

WHEREAS, the Developer is the owner of that certain real property located within the Town, situated in the J.R. Wizwell Survey, Abstract No. 1346, Denton County, Texas comprising approximately 2.018 acres, and as more particularly described in Exhibit A to the Development Agreement (the "Property"); and

WHEREAS, the Development Agreement required certain actions from the Developer should the Temporary Access Driveway be made permanent or should the Temporary Access Driveway be removed; and

WHEREAS, the Town desires to acquire certain property interests from the Developer in order to complete the construction of the Spine Road to provide internal access to the Property; and

WHEREAS, the Developer desires that the Temporary Access Driveway be made permanent by the Town; and

WHEREAS, the Developer is willing to perform the actions required in the Development Agreement should the Temporary Access Driveway be made permanent by the Town; and

WHEREAS, the Town has determined that making the Temporary Access Driveway permanent is in the best interest of the public health, safety, and welfare of the Town.

NOW, THEREFORE, THE TOWN AND DEVELOPER AGREE AS FOLLOWS:

1. This Addendum shall be and is hereby incorporated into and made a part of the Development Agreement as if originally a part thereof. The terms used in this Addendum shall have the same meaning as in the Development Agreement. If any provision of this Addendum is in conflict with a provision of the Development Agreement, this Addendum shall control. All terms and conditions of the Development Agreement not inconsistent with this Addendum are not affected and continue in full force and effect.

2. The Town hereby designates the Temporary Access Driveway as a permanent access point with FM 2499.

3. The Town will complete a Traffic Impact Analysis (TIA) to determine whether or not the permanent access driveway's peak hourly vehicular counts exceeds the volume threshold required by the Town's Access Management Policy for a right turn deceleration lane. If the TIA determines that the permanent access driveway's peak hourly vehicular count does not meet or exceed the volume threshold that would require a right deceleration lane, the installation lane will not be required.

4. If the Traffic Impact Analysis requires the installation of a right turn deceleration lane, the Developer agrees to perform all of its obligations under the Development Agreement that arise due to the designation of the Temporary Access Driveway as a permanent access point with FM 2499, including but not limited to the following:

- (a) The Developer shall, at Developer's sole cost, acquire and dedicate to the Town the right-of-way necessary for the construction of a deceleration lane as reflected on the Site and Dimension Control Plan (Option 1) attached as Exhibit B to the Development Agreement;
- (b) The Developer shall, at Developer's sole cost, construct a deceleration lane as reflected on the Site and dimension Control Plan (Option 1) attached as Exhibit B to the Development Agreement;
- (c) The Developer shall, at Developer's sole cost, acquire and dedicate to the Town, at no cost to the Town, a pedestrian access and utility easement for off-site work;
- (d) The Developer shall, at Developer's sole cost, relocate any utilities and required public improvements and repair or reconstruct any sidewalks or hike and bike trails that are relocated or impacted by the construction of the deceleration lane; and
- (e) The Developer shall stabilize any exposed soil and remove and re-install any required landscaping as a part of the construction of the deceleration lane.

5. The location of the Permanent Access Driveway shall conform to the Site Plan for the Property, as approved by the Town.

6. The Developer shall complete all of its obligations under this Addendum and the Development Agreement arising due to the designation of the Temporary Access Driveway as a permanent access point with FM 2499 within 180 days from the effective date of this Addendum. If the Developer timely performs all of its obligations, the Developer may request payment from the escrow funds provided for in the Development Agreement upon completion and approval of the work. If the Developer fails to timely perform all of its obligations, the Town will revoke the permanent access point, and the Developer shall immediately perform all obligations specified

under Sections 3 and 6 of the Development Agreement regarding abandonment and removal of the access point and related requirements.

7. The Developer agrees to dedicate to the Town, at no cost to the Town, the permanent public access and utility easement, including two temporary construction easements, attached to this Addendum as Exhibit “E”, which is incorporated herein for any and all purposes, for the construction of the Spine Road and other necessary improvements.

8. The Town agrees to construct, at its sole cost, the Spine Road and all other necessary improvements in the permanent public access and utility easement that is to be dedicated under Paragraph 7 above.

[signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed to be effective as of the date first above written.

THE TOWN:

THE TOWN OF FLOWER MOUND, TEXAS

Name: Tom Hayden
Title: Mayor, Town of Flower Mound

ATTEST:

Name: Theresa Scott
Title: Town Secretary

DEVELOPER:

M R K ENTERPRISES, LLC

Name: Kirby J. Frederick
Title: Director

State of Texas §
County of Denton §

This instrument was acknowledged before me on the _____ day of _____, 2015, by _____ known to be the person whose name is subscribed to the foregoing instrument, and acknowledge to me that he is the Director of M R K ENTERPRISES, LLC, and that he executed the same for and on behalf of M R K ENTERPRISES, LLC.

Notary Public, State of Texas

My Commission Expires:

EXHIBIT "E"

PERMANENT PUBLIC ACCESS AND UTILITY EASEMENT

STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON

That ***MRK Enterprises, LLC, a Texas Limited Liability Company*** (Grantor), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to Grantor in hand paid by the ***TOWN OF FLOWER MOUND, TEXAS***, a Texas municipal corporation (Grantee), the receipt and sufficiency of which are hereby acknowledged, does hereby SELL, GRANT, and CONVEY unto Grantee an exclusive, permanent, and perpetual Public Access and Utility Easement for the passage and accommodation of vehicular and pedestrian traffic and the right to construct, reconstruct, repair, relocate, operate and perpetually maintain public street and/or drainage and utility facilities, and all other facilities or purposes for which a public street is commonly used, together with all necessary appurtenances thereto (the Facilities), and with the right and privilege at any and all times, to enter said premises, or any part thereof, as is necessary for making connections therewith, or for the proper use of any other right granted herein, in, on, under, over and across the following described property:

A permanent 0.016 acre Public Access and Utility Easement, as more particularly described and depicted in Exhibits "A" and "D", attached hereto and made a part hereof,

together with the right of ingress and egress as necessary for such purposes.

Additionally, Grantor does hereby SELL, GRANT, and CONVEY unto Grantee two Temporary Construction Easements for the purpose of installing the Facilities in the above-described Pubic Access and Utility Easement, together with the right of ingress and egress as necessary for the installation of the Facilities, said Temporary Construction Easements to be in and over the following described property:

Temporary Construction Easement 1

A 0.027 acre Temporary Construction Easement located immediately adjacent to the above described permanent Public Access and Utility Easement and the existing Public Access and Utility Easement, as more particularly described and depicted in Exhibits "B" and "D", attached hereto and made a part hereof.

Temporary Construction Easement 2

A 0.023 acre Temporary Construction Easement located immediately adjacent to the existing Public Access and Utility Easement, as more particularly described and depicted in Exhibits "C" and "D", attached hereto and made part hereof.

The Temporary Construction Easements shall terminate upon the completion of the installation of the Facilities. The Temporary Construction Easements shall include the right to excavate and fill upon said Temporary Construction Easements and to remove from said Temporary Construction Easements any fences, trees, shrubs or other obstructions or growths as may now be found upon said Temporary Construction Easements, but Grantee shall replace any fences or other fixtures upon said Temporary Construction Easements without cost to Grantor, and shall restore the property which is the subject of the Temporary Construction Easements as closely as possible to its condition prior to entry thereon.

Grantor covenants and agrees that Grantor and Grantor's heirs, representatives, successors and assigns shall at no time erect, place, or construct, or cause to be erected, placed or constructed in, into, upon, over, across or under any easement granted herein any temporary or permanent structures, and it is further agreed that Grantee shall have the right to excavate and fill upon said Public Access and Utility Easement and to remove from said Public Access and Utility Easement, any fences, buildings, trees, shrubs or other obstructions or growths as may now be found upon said permanent easement.

It is further intended that the Public Access and Utility Easement herein granted to Grantee shall run with the land and forever be a right in and to the land belonging to Grantor, and Grantor's successors and assigns, and said grant is expressly excepted from any right of reversion of said premises under any prior deeds in Grantor's chain of title. The Public Access and Utility Easement, and the rights and privileges granted herein, are exclusive, and Grantor covenants that it will not convey any other easement or conflicting rights within the area covered by the grant to any other person.

Grantee, its successors and assigns, shall have, and it is hereby granted, the right of ingress and egress over that portion of the servient estate as is reasonably necessary to and for the limited purpose of accessing the Public Access and Utility Easement herein granted. The Public Access and Utility Easement shall at all times remain open and accessible to the public for the purposes herein stated.

There are no liens, attachments, or other encumbrances which will affect the title or right of Grantor to convey this easement to Grantee for the purposes as described herein. If such condition does exist, a signature with acknowledgment shall be included and made a part of this document conveying the rights and privileges contained herein, and subordinating any such lien or encumbrance to the easement granted herein.

TO HAVE AND TO HOLD the above described permanent Public Access and Utility Easement forever, and the above described Temporary Construction Easements for the period stated above, with the right of ingress and egress thereto, together with all and singular the rights and appurtenances thereto in any wise belonging unto Grantee, its successors and assigns; and Grantor hereby binds Grantor and Grantor's successors, heirs, executors, administrators and assigns to warrant and forever defend, all and singular, the easements and rights granted herein unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS THE GRANTOR'S HAND this ____ day of ____, 20____.

MRK Enterprises, LLC

By_____
Name: Kelby J. Frederick
Title: Director

STATE OF TEXAS

COUNTY OF DENTON

BEFORE ME, the undersigned authority on this day personally appeared, Kelby J. Frederick, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, in the capacity expressed therein, and as the act and deed of the owner of said property.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 20____.

Notary Public in and for the State of Texas

AFTER RECORDING, RETURN TO:

Tiffany Bruce, P.E.
TOWN OF FLOWER MOUND
2121 Cross Timbers Rd.
Flower Mound, Texas 75028

EXHIBIT A

**LEGAL DESCRIPTION
PUBLIC ACCESS & UTILITY EASEMENT
PART OF LOT 1, BLOCK A, FLOORING AMERICA ADDITION
0.016 Acres**

BEING all that certain lot, tract or parcel of land situated in the J. Wizwell Survey, Abstract Number 1346, Town of Flower Mound, Denton County, Texas, and being part of Lot 1, Block A, Flooring America Addition, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Document Number 2009-123 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

COMMENCING at 1/2" capped rebar set (G&A Consultants) on the west line of F.M. 2499 (A.K.A. Long Prairie Road) at the northeast corner of that certain called 3.0206 acre tract of land described as Tract II in deed to Janvier Gentry Scott, recorded in Document Number 2013-60264 of the Real Property Records of Denton County, Texas, and being the southeast corner of that certain called 0.052 acre tract of land described in Correction Deed to the State of Texas, recorded in Document Number 94-R0081669 of the Real Property Records of Denton County, Texas;

THENCE S 88°27'40" W, with the north line of said Tract II and the south line of said 0.052 acre tract passing at 15.01 feet a 1/2" rebar found at the southwest corner thereof, and being the southeast corner of said Lot 1, Block A, continuing with the south line thereof and the north line of said Tract II a total distance of 317.01 feet to 1/2" capped rebar set (G&A) at the **POINT OF BEGINNING**;

THENCE S 88°27'40" W, 38.10 feet with the south line of said Lot 1 and the north line of said Tract II to the east line of an existing 31 foot Access and Utility Easement shown on said Flooring America plat;

THENCE N 01°32'20" W, 44.97 feet with the east line of said 31 foot Access and Utility Easement;

THENCE with the arc of a curve to the left having a radius of 25.00 feet, a central angle of 50°42'40" and an arc length of 22.13 feet whose chord bears S 26°53'40" E, 21.41;

THENCE S 52°15'00" E, 25.18 feet;

THENCE with the arc of a curve to the right having a radius of 60.50 feet, a central angle of 12°50'11" and an arc length of 13.55 feet whose chord bears S 45°49'55" E, 13.53 feet to the **POINT OF BEGINNING** and containing approximately 682 square feet or 0.016 acres of land.

Bearings based on Texas Coordinate System, North Central Zone (4202), NAD 83.

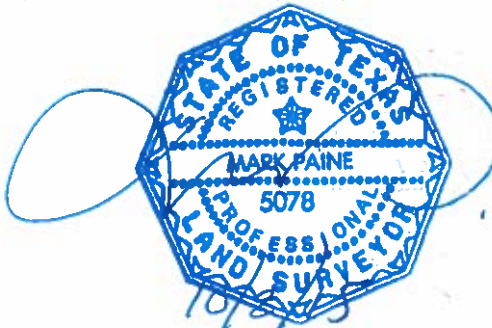


EXHIBIT B

**LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION EASEMENT 1
PART OF LOT 1, BLOCK A, FLOORING AMERICA ADDITION
0.027 Acres**

BEING all that certain lot, tract or parcel of land situated in the J. Wizwell Survey, Abstract Number 1346, Town of Flower Mound, Denton County, Texas, and being part of Lot 1, Block A, Flooring America Addition, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Document Number 2009-123 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

COMMENCING at 1/2" capped rebar set (G&A Consultants) on the west line of F.M. 2499 (A.K.A. Long Prairie Road) at the northeast corner of that certain called 3.0206 acre tract of land described as Tract II in deed to Janvier Gentry Scott, recorded in Document Number 2013-60264 of the Real Property Records of Denton County, Texas, and being the southeast corner of that certain called 0.052 acre tract of land described in Correction Deed to the State of Texas, recorded in Document Number 94-R0081669 of the Real Property Records of Denton County, Texas;

THENCE S 88°27'40" W, with the north line of said Tract II and the south line of said 0.052 acre tract passing at 15.01 feet a 1/2" rebar found at the southwest corner thereof, and being the southeast corner of said Lot 1, Block A, continuing with the south line thereof and the north line of said Tract II a total distance of 304.85 feet to 1/2" capped rebar set (G&A) at the **POINT OF BEGINNING**;

THENCE S 88°27'40" W, 12.17 feet with the south line of said Lot 1 and the north line of said Tract II;

THENCE with the arc of a curve to the left having a radius of 60.50 feet, a central angle of 12°50'11" and an arc length of 13.55 feet whose chord bears N 45°49'55" W, 13.53 feet;

THENCE N 52°15'00" W, 25.18 feet;

THENCE with the arc of a curve to the right having a radius of 25.00 feet, a central angle of 50°42'40" and an arc length of 22.13 feet whose chord bears N 26°53'40" W, 21.41 to the east line of a 31 foot Access and Utility Easement as shown on said Flooring America plat;

THENCE N 01°32'20" W, 55.03 feet with the east line of said 31 foot Access and Utility Easement;

THENCE S 88°27'40" E, 10.00 feet;

THENCE S 01°32'20" E, 55.03 feet;

THENCE with the arc of a curve to the left having a radius of 15.00 feet, a central angle of 50°42'40" and an arc length of 13.28 feet whose chord bears S 26°53'40" E, 12.85;

THENCE S 52°15'00" E, 25.18 feet;

THENCE with the arc of a curve to the right having a radius of 70.00 feet, a central angle of 18°55'05" and an arc length of 23.28 feet whose chord bears S 42°47'38" E, 23.23 feet to the **POINT OF BEGINNING** and containing approximately 1164 square feet or 0.027 acres of land.



EXHIBIT C

**LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION EASEMENT 2
PART OF LOT 1, BLOCK A, FLOORING AMERICA ADDITION
0.023 Acres**

BEING all that certain lot, tract or parcel of land situated in the J. Wizwell Survey, Abstract Number 1346, Town of Flower Mound, Denton County, Texas, and being part of Lot 1, Block A, Flooring America Addition, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Document Number 2009-123 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

COMMENCING at 1/2" capped rebar set (G&A Consultants) on the west line of F.M. 2499 (A.K.A. Long Prairie Road) at the northeast corner of that certain called 3.0206 acre tract of land described as Tract II in deed to Janvier Gentry Scott, recorded in Document Number 2013-60264 of the Real Property Records of Denton County, Texas, and being the southeast corner of that certain called 0.052 acre tract of land described in Correction Deed to the State of Texas, recorded in Document Number 94-R0081669 of the Real Property Records of Denton County, Texas;

THENCE S 88°27'40" W, with the north line of said Tract II and the south line of said 0.052 acre tract passing at 15.01 feet a 1/2" rebar found at the southwest corner thereof, and being the southeast corner of said Lot 1, Block A, continuing with the south line thereof and the north line of said Tract II a total distance of 386.11 feet to the west line of an existing 31 foot Access and Utility Easement shown on said Flooring America plat for the **POINT OF BEGINNING**;

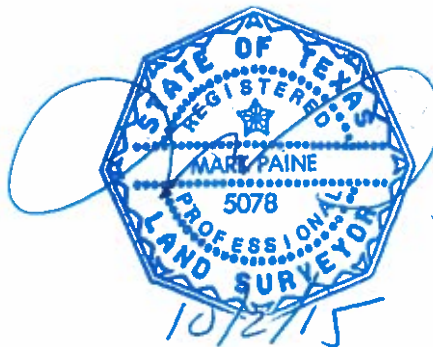
THENCE S 88°27'40" W, 10.00 feet with the south line of said Lot 1 and the north line of said Tract II;

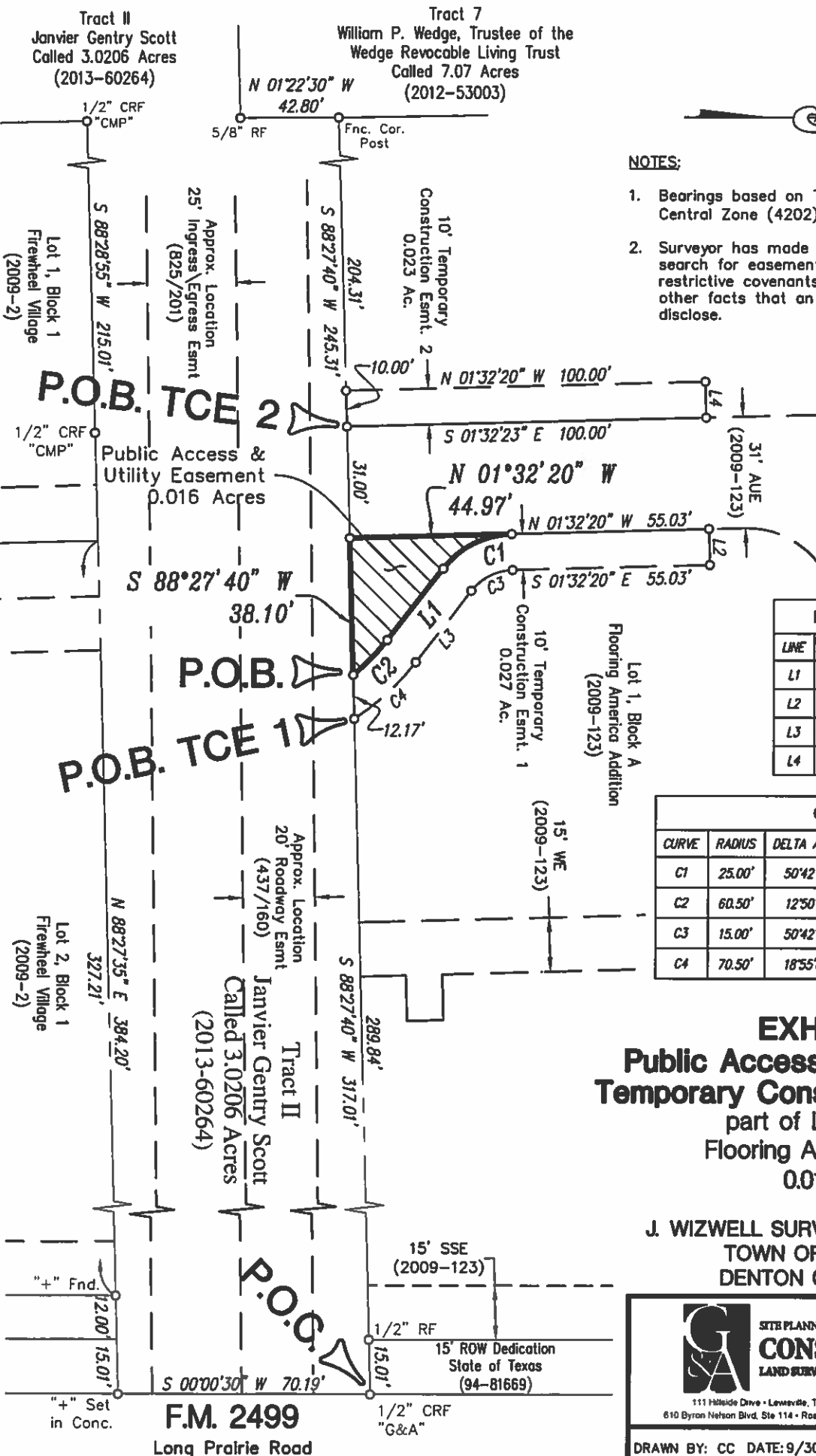
THENCE N 01°32'20" W, 100.00 feet;

THENCE S 88°27'40" E, 10.00 feet to the west line of said 31 foot Access and Utility Easement;

THENCE S 01°32'20" E, 100.00 feet with the west line of said 31 feet Access and Utility Easement to the **POINT OF BEGINNING** and containing approximately 1000 square feet or 0.023 acres of land.

Bearings based on Texas Coordinate System, North Central Zone (4202), NAD 83.





NOTES:

1. Bearings based on Texas Coordinate System, North Central Zone (4202), NAD '83.
2. Surveyor has made no investigation or independent search for easements of record, encumbrances, restrictive covenants, ownership title evidence, or any other facts that an accurate abstract of title may disclose.

LOT LINE TABLE

LINE	BEARING	DISTANCE
L1	S 52°15'00" E	25.18'
L2	N 88°27'40" E	10.00'
L3	S 52°15'00" E	25.18'
L4	N 88°27'40" E	10.00'

CURVE TABLE

CURVE	RADIUS	DELTA ANGLE	ARC LENGTH	LONG CHORD
C1	25.00'	50°42'40"	22.13'	S 26°53'40" E, 21.41'
C2	60.50'	12°50'11"	13.55'	S 45°49'55" E, 13.53'
C3	15.00'	50°42'42"	13.28'	S 26°53'39" E, 12.85'
C4	70.50'	18°55'05"	23.28'	S 42°47'28" E, 23.17'

EXHIBIT D

Public Access & Utility Esmt. & Temporary Construction Easements

part of Lot 1, Block A
Flooring America Addition

0.016 Acres

In the

J. WIZWELL SURVEY, ABSTRACT NO. 1346
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS



SITE PLANNING CIVIL ENGINEERING PLATTING
CONSULTANTS, LLC
LAND SURVEYING LANDSCAPE ARCHITECTURE

111 Hillside Drive • Lewisville, TX 75057 • P. 972.436.9712 • F. 972.436.9715
610 Byron Nelson Blvd, Ste 114 • Roanoke, TX 76262 • P. 882.831.9712 • F. 817.890.4043

TBPE Firm
No. 1798
TBPLS Firm
No. 10047700

DRAWN BY: CC DATE: 9/30/15 SCALE: 1"=40' JOB. NO. 14196



TOWN COUNCIL AGENDA ITEM NO.16 REGULAR ITEM

DATE: January 21, 2016

FROM: Chuck Russell, Town Planner

ITEM: Public Hearing to consider a request for a Master Plan Amendment (MPA15-0010 – Silveron Industrial Warehouse) to amend Section 1.0, Land Use Plan, and Section 2.0, Area Plans, of the Master Plan to change the current land use designation from Campus Commercial uses to Campus Industrial uses on approximately 41.24 acres of land within the Lakeside Business District Area Plan, and to consider adopting an ordinance providing for said amendment. The property is generally located south of Lakeside Parkway and east of Lake Forest Boulevard. *(The Planning and Zoning Commission recommended denial by a vote of 4 to 2 at its January 11, 2016, meeting.)*

BACKGROUND INFORMATION: Attached is the Planning and Zoning Commission report and backup for this item. No changes or new information has been received since that meeting.

ATTACHMENTS:

1. Planning and Zoning Commission Staff Report
2. Draft Ordinance

DRAFT MOTION: Move to approve a request for a Master Plan Amendment (MPA15-0010 – Silveron Industrial Warehouse) to amend Section 1.0, Land Use Plan, and Section 2.0, Area Plans, of the Master Plan to change the current land use designation from Campus Commercial uses to Campus Industrial uses on approximately 41.24 acres of land within the Lakeside Business District Area Plan, and adopt an ordinance providing for said amendment.



PLANNING AND ZONING COMMISSION AGENDA ITEM NO: 5

DATE: January 11, 2016

FROM: Chuck Russell, Town Planner

ITEM: **Public Hearing to consider a request for a Master Plan Amendment (MPA15-0010 – Silveron Industrial Warehouse) to amend Section 1.0, Land Use Plan, and Section 2.0, Area Plans, of the Master Plan to change the current land use designation from Campus Commercial uses to Campus Industrial uses on approximately 41.24 acres of land within the Lakeside Business District Area Plan. The property is generally located south of Lakeside Parkway and east of Lake Forest Boulevard.**

I. ITEM SUMMARY

This application has been reviewed by DRC and has been found to be in conformance with all applicable Town regulations. Specifically, this application has been reviewed under the SMARTGrowth program and has met all applicable criteria.

The project has a companion application, Zoning Planned Development (ZPD15-0013), for consideration on the same agenda.

This application will require final action by the Town Council.

II. APPLICATION ANALYSIS

The purpose of this request is to change the Land Use designation of the project area from Campus Commercial to Campus Industrial uses on approximately 41.24 acres of land located within the Lakeside Business District Area Plan. Town Council approval of the proposed Master Plan Amendment would allow the applicant to proceed with the companion zoning application to develop two large scale industrial warehouse/ distribution buildings with office components which are not allowed within the existing Campus Commercial land use category. The Lakeside Business District Area Plan is described in the Master Plan as follows:

Lakeside Business District

Large scale commercial and/or light industrial developments such as corporate offices, office parks, industrial parks, clean manufacturing, hotels, commercial, similar uses, and may include limited residential development. The intent is to create a vibrant area that encourages dynamic economic development focused

around live, work, and play opportunities. A mixture of uses is important as well as its design details, amenity quality, and the use of natural areas and open spaces to provide a unique quality of life and sense of place.

Within this overall description of the Lakeside Business District, there are two major land use areas as shown in the graphic below:



The pink areas represent the Campus Commercial land uses and the purple areas represent the Campus Industrial areas. The definitions of these districts are described as follows:

Campus Commercial

Campus Commercial means a mixture of uses which includes corporate offices, office parks, hotels, commercial, similar uses, and may include limited residential development. The intent is to create a vibrant area that encourages dynamic economic development focused around live, work, and play opportunities. A mixture of uses is important as well as its design details, amenity quality, and the use of natural areas and open spaces to provide a unique quality of life and sense of place.

Development in the district must demonstrate the following:

1. Compliance with the three elements of the District's Vision:
 - a. Create high quality, regional commercial development;
 - b. Competes in the economic development arena; and
 - c. Develops a balanced tax base to reduce the residential tax burden;

2. Exemplary and enduring quality and design shall be achieved by establishing a high level of development standards;
3. Market factors should ensure a robust mix of uses that are economically viable, support a high quality of life, and provide sustainable fiscal health for the Town;
4. No one single use should be allowed to predominate in the District at build-out;
5. Uses and design shall be in context with the existing environment and adjacent developments; and
6. Residential development should provide a range of residential options that reflect changing lifestyles and demographics, and should be facilitated through the balancing of market demand and community preferences.

Campus Industrial

Large scale developments such as corporate offices, office parks, service/repair, light industry, clean assembly and similar uses, in a planned campus setting. Retail and restaurant uses serving the campus industrial uses could be included, if they are planned as integral elements of the developments.

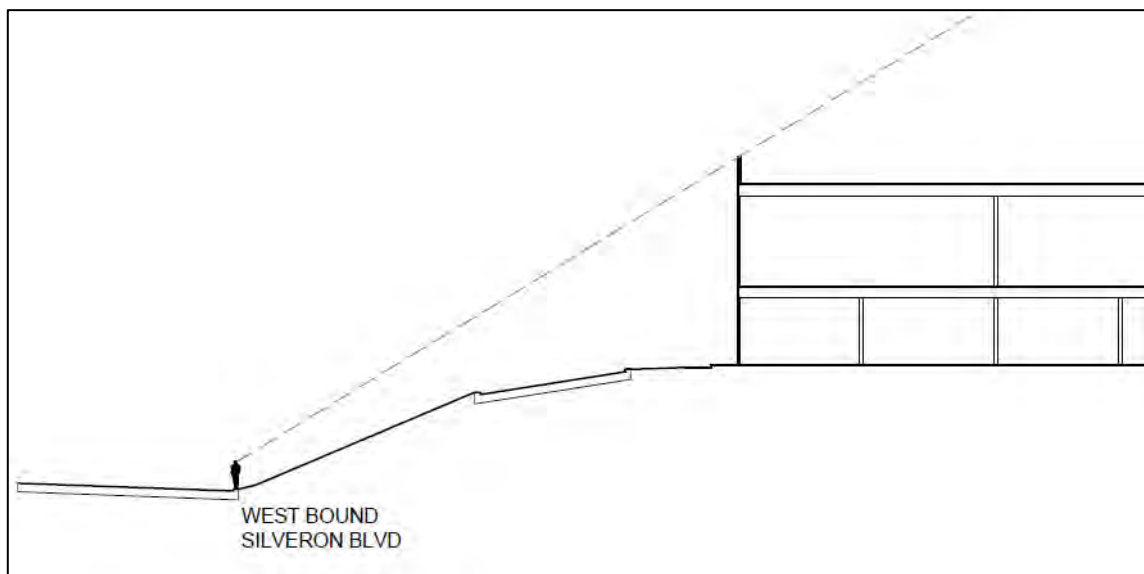
The land designated as Campus Industrial in the Lakeside Business District has almost been developed out as large warehouse/distribution centers. This site is bounded on the north by industrial developments. The land to the east, south and west of the subject site is designated for Campus Commercial uses and primarily undeveloped with the exception of the Ivie office building to the east and the Home Depot development and additional offices to the west across Lake Forest Boulevard.

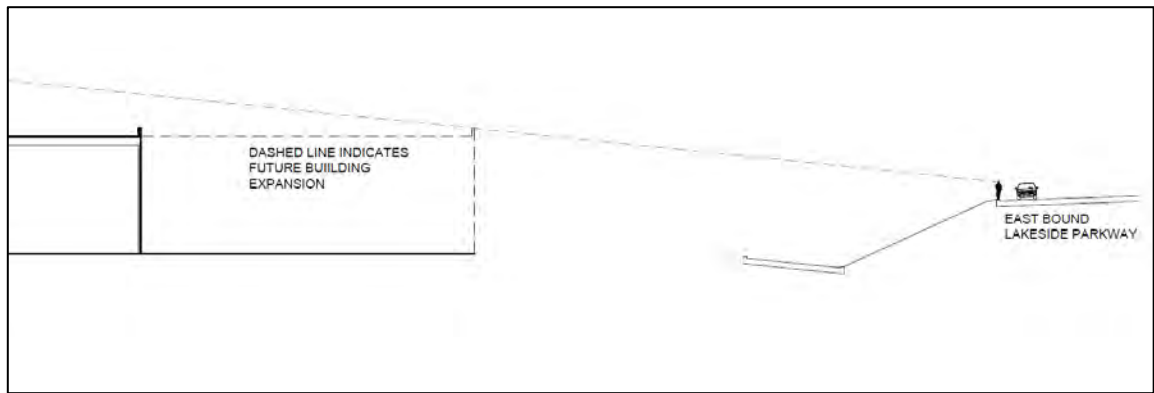
The Campus Commercial category is intended in part to attract development of corporate offices, office parks, hotels and similar commercial uses. It is an ideal land use category in which to locate a campus style environment for a corporate headquarters and all the ancillary and related uses that would accompany them. A site plan for office development was previously approved for the site immediately south of the Ivie office building. By further reducing the amount of Campus Commercial property, the Town could limit the ability to attract such a user in the future. While it may be beneficial to accommodate the proposed use in the short term, the long term goals of the Town could be impacted.

Regarding the issue of separation and reasonable transition of land uses, Lakeside Parkway serves as a logical boundary for the division of Campus Industrial from Campus Commercial uses. Crossing that boundary and extending Campus Industrial further to the south results in an encroachment of industrial and warehouse type uses into a large and contiguous area that is currently intended for Campus Commercial uses.

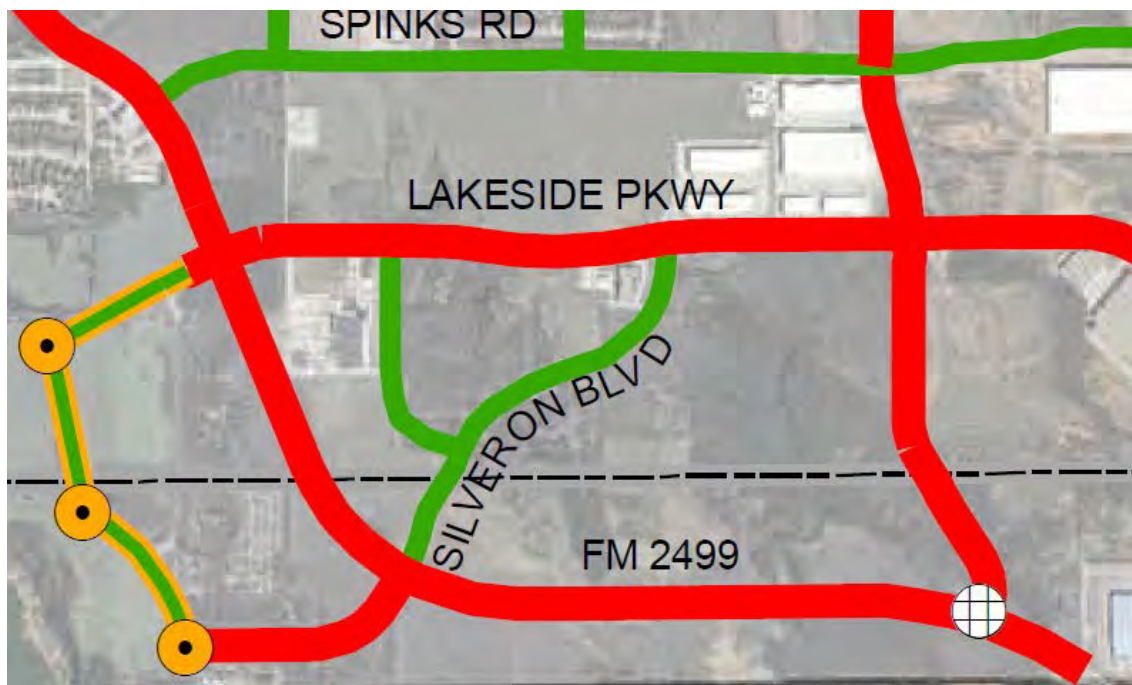
According to the Environmental Protection Plan (EPP) submitted by the applicant the subject property contains a variety of environmental features including Upland Habitat, a stream with tributaries, and three wetland areas. The subject property has a creek that runs south to north and bisects the property. The creek lies within a very low area and the topographical difference in areas ranges over 40 feet. In addition to the issue of reducing the area available for Campus Commercial land uses, the topography creates a challenge for a large building footprint of a constant elevation that is needed for the proposed use.

The site will need to have a significant amount of excavation and extensive use of retaining walls to accommodate the proposed buildings. The applicant has indicated that the retaining walls on the west side of Building 1 on the east side of the site will have an approximate maximum height ranging from 20-feet at the northwest corner to 18-feet at the southwest corner of the building. The finished floor area for Building 1 will be approximately 10 to 14 feet below the paving surface of Lakeside Parkway and approximately 16 feet above the paving surface of Silveron Boulevard (please note that both roadways are on a slope and paving surface grades change on the roadways from east to west). The grading for Building 1 creates a similar condition to the MI Windows and Doors building on Spinks Road where the landscaping at the time of planting will provide minimal visual screening both north and south of Building 1. The grade change is graphically depicted as follows (complete diagram is provided in Attachment B(1) of the companion zoning case):





It should also be noted that Silveron Boulevard is designated as an Urban Minor Arterial in the Town's Master Plan (4-lanes within 90-feet of right-of-way) while Lakeside Parkway is designated as a Major Arterial (6-lanes within 120-feet of right-of-way), see exhibit below. Silveron Boulevard is a curvilinear road with pedestrian amenities that support the current intent of the land adjacent to Silveron Boulevard developing as corporate office uses as opposed to large warehouses with truck distribution traffic which is what Lakeside Parkway was designed to carry. It is also important to note that the applicant has designed the site so that the most logical entrance for truck traffic will be from Lakeside Parkway.



Staff has expressed their concerns to the applicant and has worked with them regarding the design of the larger proposed building on the east side of the site. The front of the building facing Silveron Boulevard has been revised to resemble a corporate office building and now resembles the Ivie office building to the north and east. More details regarding the proposed development are provided in the accompanying zoning amendment (ZPD15-0013).

III. CORRESPONDENCE

The Town Code requires both public notice in a newspaper of general circulation (Denton Record Chronicle) and notification of the property owners within 200 feet of the subject property for all Master Plan amendment requests. At the time this report was written, staff had received no response regarding the project.

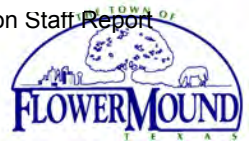
IV. ATTACHMENTS

A. Background Information

1. Vicinity Map
2. Letter of Intent
3. Lakeside Business District Area Plan

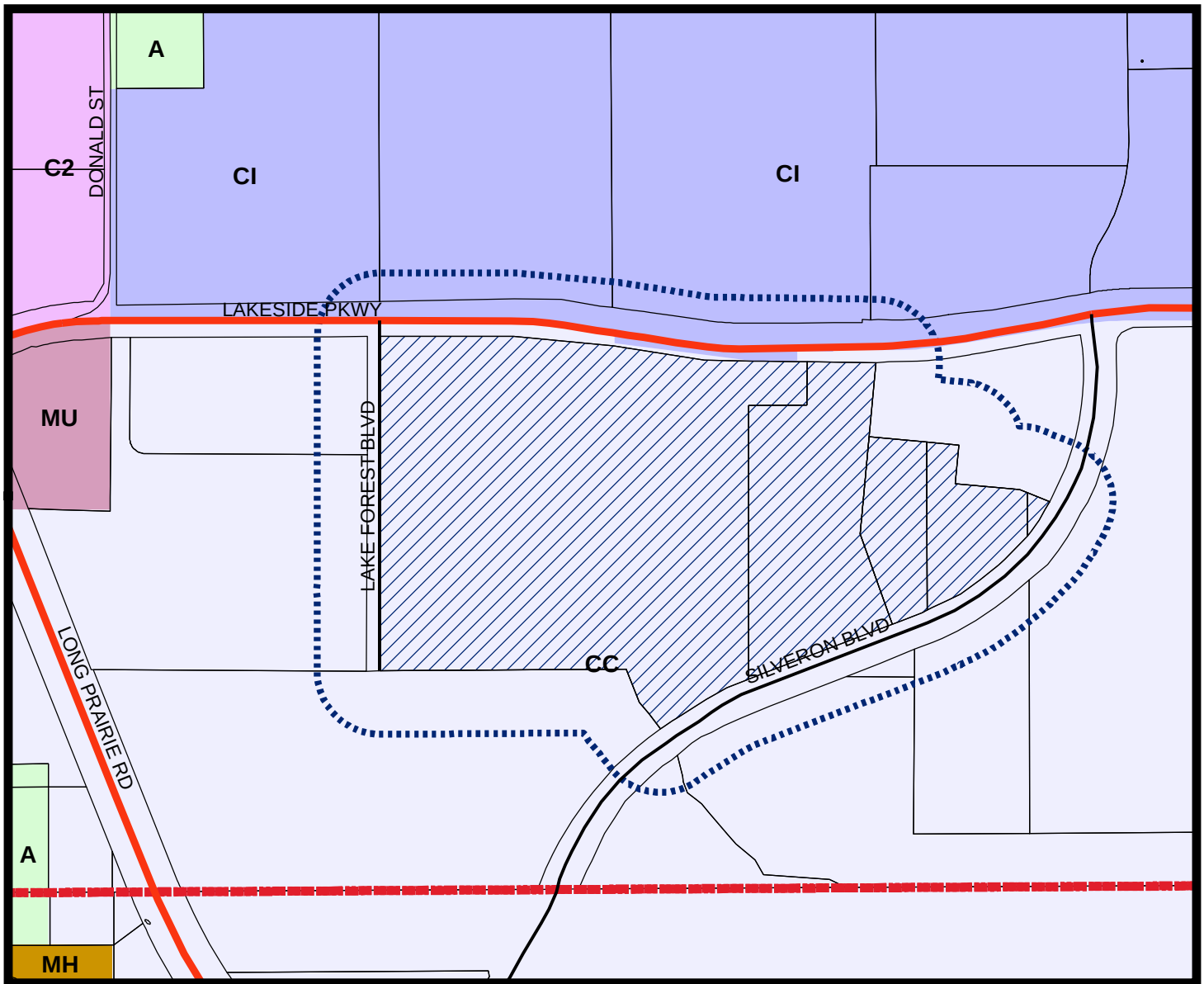
B. Application Details

1. Master Plan Exhibit



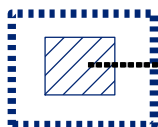
Vicinity Map

Reference Project: MPA15-0010 & ZPD15-0013



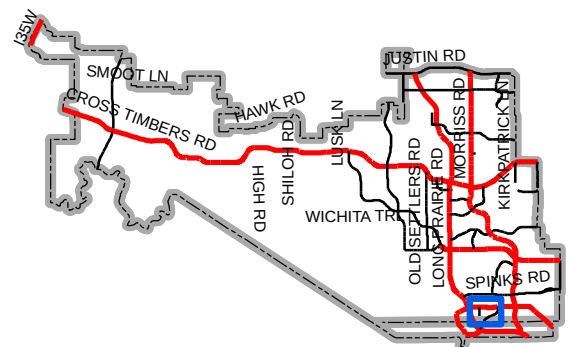
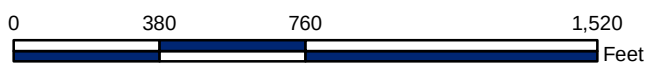
LEGEND

 Agriculture	 Campus Commercial	 Campus Industrial	 Commercial 2
 Mixed Use	 Mobile Home		



Subject Property

200 ft Notification Buffer around Property



Map Location

CIT Acquisition Corp.

3819 Maple Avenue
Dallas, Texas 75219

214-661-8000
Fax 214-661-8035

January 6, 2016
PK No.: 2283-15.162

Mr. Chuck Russell, AICP
Planning Manager/Planning Services
Town of Flower Mound
1001 Cross Timbers Road, Suite 2330
Flower Mound, Texas 75028

Re: LETTER OF INTENT: MASTER PLAN AMENDMENT (CASE # MPA15-0010) AND ZONING AMENDMENT (CASE # ZPD15-0013) FOR THE SILVERON RIDGE BUSINESS PARK DEVELOPMENT.

Dear Mr. Russell:

CIT Acquisition Corp requests that the Town of Flower Mound consider an amendment to the Town of Flower Mound Master Plan and zoning ordinance to allow for Campus Industrial uses instead of Campus Commercial uses currently allowed on the subject property. The case numbers are as follows: Master Plan Amendment - MPA15-0010 and zoning amendment - ZPD15-0013. The subject property is comprised of 41 acres generally located south of Lakeside Pkwy, north of Silveron Blvd, and east of Lake Forest Blvd. The applicant is considering the construction of two warehouses totaling approximately 400,000 square feet on the subject property. The development is anticipated to occur in a single phase, however, a multi-phased development is also possible.

In addition to the Master Plan and zoning amendments, the applicant is requesting a variance to the Town of Flower Mound Code of Ordinances. The applicant requests that the required driveway spacing of 360 feet between the two proposed driveways along Lakeside Parkway be reduced to 283 feet. The variance is requested to allow the development to maximize parking availability and vehicular access, both of which are important to companies considering the subject property for their location.

We feel the master plan changes are beneficial to the site and the Town of Flower Mound for the following reasons: First, the subject property is located in an industrial area where most of the neighboring uses are either industrial in nature, or other uses which are heavily buffered by landscaping and topography changes eliminating conflict between uses. Second, the site is not adjacent to any residential uses, so the use will not conflict with existing homes. Third, as evidenced by the success of Lakeside Ridge, warehouse users are clamoring to move or expand in Flower Mound, but there are very few available options for them to locate as the majority of warehouse buildings in the Town are leased. Without additional development, recent projects like Signature Systems Group and MI Windows would have located outside the Town.

CIT Acquisition Corp.

3819 Maple Avenue
Dallas, Texas 75219

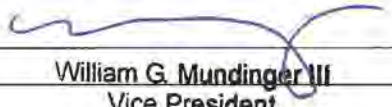
214-661-8000
Fax 214-661-8035

Finally, there are numerous benefits to the Town which come from warehouse development, including lessening the property tax burden on single family homeowners, sales tax, and job creation.

Thank you for your consideration.

Sincerely,

CIT Acquisition Corp.
a Texas corporation

By: 
Name: William G. Munding III
Title: Vice President

2.0 AREA PLANS

Lakeside Business District

Lakeside Business District Land Use Categories:

Campus Commercial – Campus Commercial means a mixture of uses which includes corporate offices, office parks, hotels, commercial, similar uses, and may include limited residential development. The intent is to create a vibrant area that encourages dynamic economic development focused around live, work, and play opportunities. A mixture of uses is important as well as its design details, amenity quality, and the use of natural areas and open spaces to provide a unique quality of life and sense of place.

Development in the district must demonstrate the following:

1. Compliance with the three elements of the District’s Vision:
 - a. Create high quality, regional commercial development;
 - b. Competes in the economic development arena; and
 - c. Develops a balanced tax base to reduce the residential tax burden;
2. Exemplary and enduring quality and design shall be achieved by establishing a high level of development standards;
3. Market factors should ensure a robust mix of uses that are economically viable, support a high quality of life, and provide sustainable fiscal health for the Town;
4. No one single use should be allowed to predominate in the District at build-out;
5. Uses and design shall be in context with the existing environment and adjacent developments; and
6. Residential development should provide a range of residential options that reflect changing lifestyles and demographics, and should be facilitated through the balancing of market demand and community preferences.

Campus Industrial - Large scale developments such as corporate offices, office parks, service/repair, light industry, clean assembly and similar uses, in a planned campus setting. Retail and restaurant uses serving the campus industrial uses could be included, if they are planned as integral elements of the developments.

Office - Office and services uses ranging from garden office developments for small professional practices to larger, multi-story facilities for large tenants. This category would not typically include retail uses, except for incidental service or convenience retail for the office building tenants. In larger office districts, restaurants are encouraged within walking distance of the office buildings.

Lakeside Business District Elements:

Roadways – There are various roadways within the Lakeside Business District. Please refer to the “Town of Flower Mound Thoroughfare Plan” for more specific information on roadways in the Lakeside Business District.

Town Entrance Landscape - International Parkway, Lakeside Parkway and Gerault Road are all major roads into Flower Mound. Landscape for developments along these roads should be of an exemplary quality that reflects their importance as entrances into the Town. The “Town of Flower Mound Urban Design Plan” indicates suggested standards for private and public landscape development along these roads along with the Town’s “Median and Right-of-way Design Guidelines.” It will be appropriate for the private landscapes to reflect the individuality of the

2.0 AREA PLANS

various developments within the Lakeside Business District, while the public landscape should provide an element of continuity through the District.

Architectural facades along the Town Entrance streets will be a significant contributor to the image of the Lakeside Business District, and should be designed to an exemplary standard for their use. Parking between the building line and the street should be kept to a minimum to enhance the landscape image of the District.

District Arterial Landscape - Spinks Road, Garden Ridge Road and the new north-south urban minor arterial between International Parkway (FM 2499) and Spinks Road are all significant routes within and through the Lakeside Business District. The “Town of Flower Mound Urban Design Plan” along with the Town’s “Median and Right-of-way Design Guidelines” also indicates suggested standards for private and public landscape development along these roads. The landscape is particularly important along Spinks, as there are single family residential neighborhoods north of Spinks. It is desirable, though not essential for the landscape treatment to be continued on the edges of the Town parks along Spinks and Garden Ridge Road.

Parks and Flood Plain - There are two parks in the Lakeside Business District: Gerault Park and Bakersfield Park. These are community parks. Refer to the “Town of Flower Mound Parks and Trails Plan” for more specific information on these parks.

There is a significant flood plain along the eastern and southeastern edge of the Lakeside Business District. Since the Town of Flower Mound discourages construction in flood plains, and alteration of flood plains, these areas should be preserved. They should be incorporated into the landscape planning for adjoining development. Since they are anticipated to include segments of the Town’s multi-purpose trail in the future, site development in the adjoining Commercial/Industrial areas should be planned for compatible adjacent uses and site features, and avoid exterior storage, utility and similar uses in direct view of the potential trail areas.

Landscape Setback Buffer - Landscape and setback buffers are necessary to provide suitable separations between commercial and/or industrial uses in the Lakeside Business District from residential neighborhoods and developments which abut the District. These are required between the Campus Commercial and Office/Retail land uses west of International Parkway and the existing neighborhoods to their west.

Buffers will also be necessary between the Office/Retail area at the northeast corner of the International Parkway/Spinks Road intersection and the adjacent Estate Density Residential District to its east and north. Since neither of these developments has yet been planned, the buffer between the uses needs to be incorporated into the land development planning for this area.

A landscape/setback buffer is also indicated along the southern edge of Spinks Road. Because of the existing and planned single family residential neighborhoods and the school on the north side of Spinks, the northern boundaries of the Campus Commercial area between International Parkway and Gerault Road should include a landscape buffer at least that screens service and utility areas from view from the neighborhoods and from Spinks Road.

The “Town of Flower Mound Urban Design Plan” along with the Town’s “Median and Right-of-way Design Guidelines” indicates standards for landscape and setback buffers between non-residential and residential land uses.

Trail System - There are existing segments of the Town’s multi-purpose trail system in this area along with other trail opportunities. Please refer to the “Town of Flower Mound Parks and Trails Plan” for more specific information on the trail system.

2.0 AREA PLANS

Internalized Service Areas - In the areas of the Lakeside Business District designated as suitable for Commercial/Industrial land uses, service areas such as truck docks, layout or storage yards, utility components, trash handling and similar unsightly elements that are essential to appropriate commercial and industrial uses should be planned for locations internal to the major surrounding streets: International Parkway, Gerault Road, Lakeside Parkway, and Garden Ridge Road. Such uses should not be visible from these streets.

Architectural Impact Zone - The land at the southern edge of the Commercial/Industrial area east of Gerault Road and north of International Parkway is highly visible from northbound traffic on International Parkway as it enters Flower Mound. Because of the prominence of this site, and its significance to the Town's entry, buildings in this zone should be designed with particular attention to architectural quality and features as seen from International Parkway. This does not preclude industrial buildings from being built in this zone, but it does require that facades and elevations seen from International Parkway be of significantly higher architectural quality than is generally associated with industrial buildings.

Trees and Natural Features - Several large areas of trees, drainage courses and other natural features exist within the Lakeside Business District. These natural features are representative of the distinctive natural atmosphere of Flower Mound, and can have high amenity value for development. Existing trees fall within the purview of the Town's Tree Preservation Ordinance. Trees and other natural amenities should be incorporated into the planning and landscape design of developments within the Lakeside Business District.

Flower Mound Gateways - Distinctive entry demarcation to the Town of Flower Mound will help distinguish it as a unique community. Flower Mound Gateways are planned at or near the Town limits on International Parkway, Lakeside Parkway and Spinks Road.

Refer to the "Town of Flower Mound Urban Design Plan" along with the Town's "Median and right-of-way Design Guidelines" for more specific information on the Flower Mound Gateways.

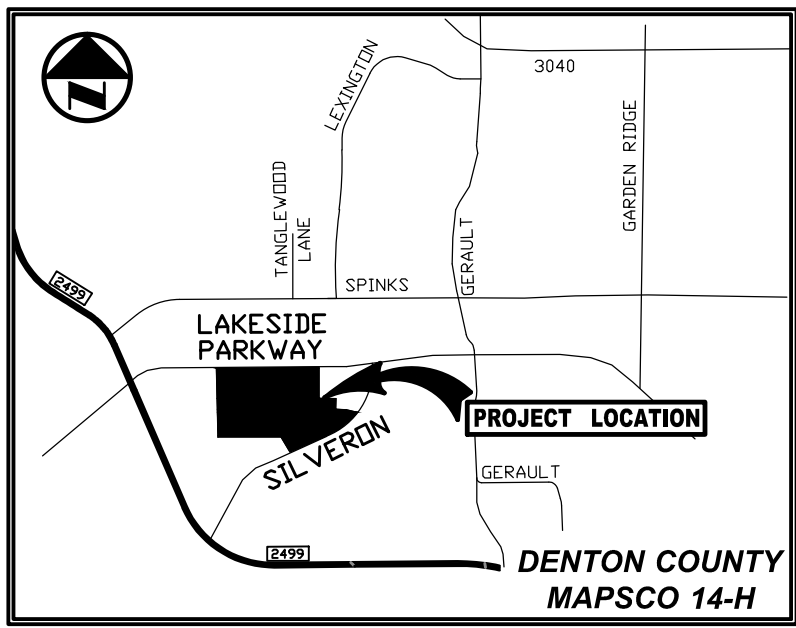
Town Landmark Intersections - The three major arterials in the Lakeside Business District, International Parkway, Lakeside Parkway, and Gerault Road, are all principal entrances into the Town for both residents and visitors. The intersections with other arterials and collectors on these three streets will be significant orientation locations, particularly for visitors not familiar with Flower Mound. Consequently, these intersections will be major landmarks in the Town, and should be landscaped to provide an exemplary quality of entrance and orientation experience for residents and visitors to Flower Mound.

Refer to the "Town of Flower Mound Urban Design Plan" along with the Town's "Median and Right-of-way Design Guidelines" for more specific information on Town Landmark Intersections.

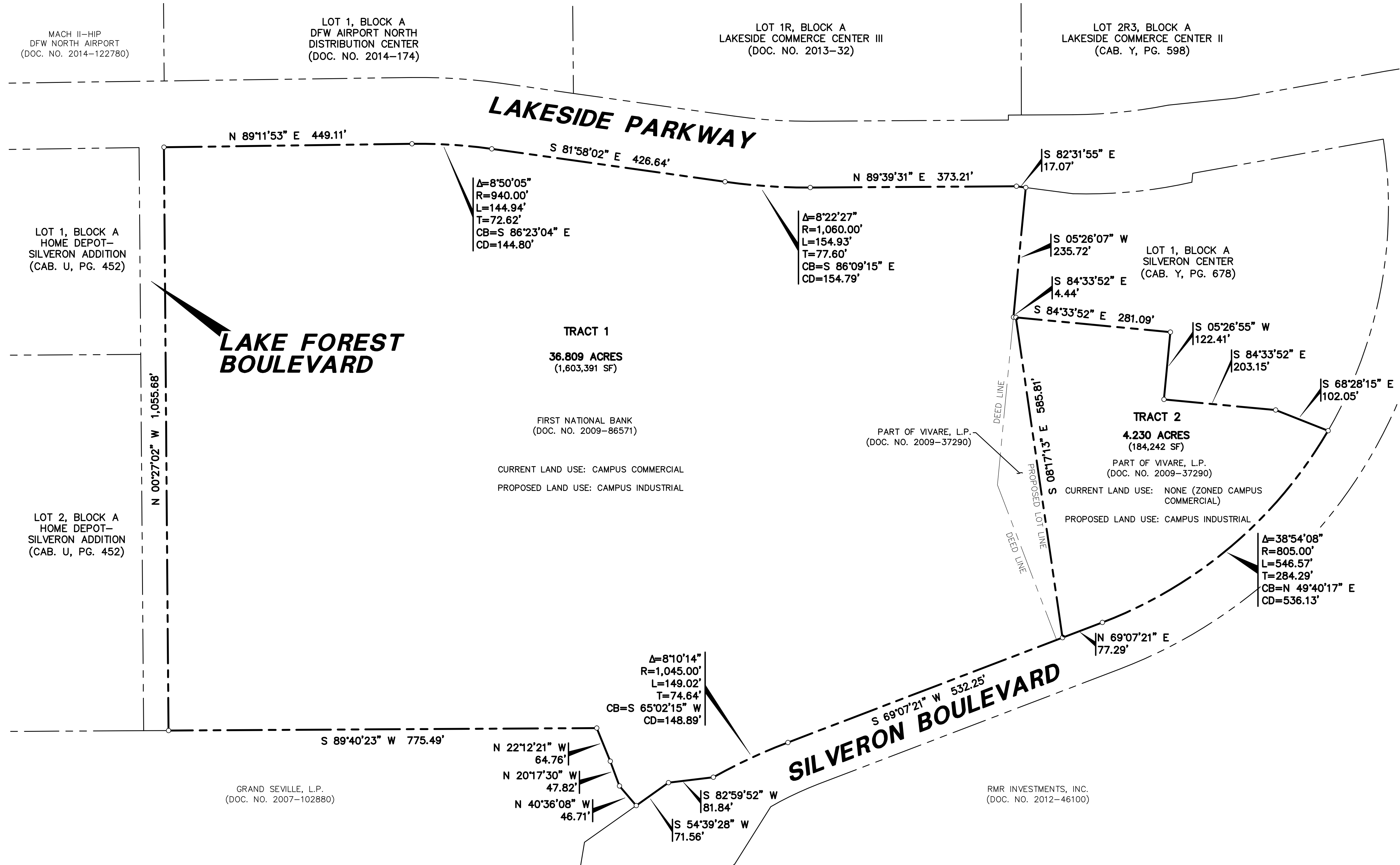
2.0 AREA PLANS



Attachment B(1): Master Plan Exhibit



VICINITY MAP
(NOT TO SCALE)



DESCRIPTION OF PROPERTY

TRACT 1:

DESCRIPTION, of a 36.809 acre tract of land situated in the J. Knight Survey, Abstract No. 692, Denton County, Texas; said tract being all of that tract of land described in Substituted Trustee's Foreclosure Sale Deed to First National Bank recorded in Document Number 2009-86571 and part of that tract of land described in Correction Trustee's Deed to Vivare, L.P. recorded in Document Number 2009-37290, both of the Official Records of Denton County, Texas; said 36.809 acre tract being more particularly described as follows:

BEGINNING, at a point for corner at the intersection of the south right-of-way line of Lakeside Parkway (a variable width right-of-way, 120 feet wide at this point) and the east right-of-way line of Lake Forest Boulevard (a 45-foot wide right-of-way); said point being the northwest corner of said Bank tract;

THENCE, in an easterly direction, along the said south line of Lakeside Parkway and the north line of said Bank tract, the following five (5) calls:

North 89 degrees, 11 minutes, 53 seconds East, a distance of 449.11 feet to a point at the beginning of a tangent curve to the right;

Along said curve to the right, having a central angle of 08 degrees, 50 minutes, 05 seconds, a radius of 940.00 feet, a chord bearing and distance of South 86 degrees, 23 minutes, 04 seconds East, 144.80 feet, an arc distance of 144.94 feet to a point at the end of said curve;

South 81 degrees, 58 minutes, 02 seconds East, a distance of 426.64 feet to a point at the beginning of a tangent curve to the left;

Along said curve to the left, having a central angle of 08 degrees, 22 minutes, 27 seconds, a radius of 1060.00 feet, a chord bearing and distance of South 86 degrees, 09 minutes, 15 seconds East, 154.79 feet, an arc distance of 154.93 feet to a point at the end of said curve;

North 89 degrees, 39 minutes, 31 seconds East, a distance of 373.21 feet to an angle point;

South 82 degrees, 31 minutes, 55 seconds East, a distance of 17.07 feet to a point for corner; said point being the northeast corner of said Bank tract and the northwest corner of Lot 1, Block A Silveron Center, an addition to the Town of Flower Mound according to the plot recorded in Cabinet Y, Page 678 of the Plat Records of Denton County, Texas;

THENCE, South 05 degrees, 26 minutes, 07 seconds West, departing the said south line of Lakeside Parkway and along the east line of said Bank tract and the westernmost west line of said Lot 1, a distance of 235.72 feet to a point for corner; said point being the westernmost southwest corner of said Lot 1 and the northwest corner of said Vivare tract;

THENCE, South 84 degrees, 33 minutes, 52 seconds East, departing the said east line of the Bank tract and along the northernmost south line of said Lot 1 and the northernmost north line of said Vivare tract, a distance of 4.44 feet to a point for corner;

THENCE, South 08 degrees, 17 minutes, 13 seconds East, departing the said south line of Lot 1 and the said north line of the Vivare tract and into and across said Vivare tract, a distance of 585.81 feet to a point for corner in the northwest right-of-way line of Silveron Boulevard (a variable width right-of-way, 90 feet wide at this point) and the southeast line of said Vivare tract;

THENCE, in a southwesterly direction, along the said northwest line of Silveron Boulevard, the said southeast line of the Vivare tract and the southeast line of said Bank tract, the following four (4) calls:

South 69 degrees, 07 minutes, 21 seconds West, at a distance of 11.44 feet passing the south corner of said Vivare tract and the southeast corner of said Bank tract, then continuing along the said southeast line of the Bank tract in all a total distance of 532.25 feet to a point at the beginning of a tangent curve to the left;

Along said curve to the left, having a central angle of 08 degrees, 10 minutes, 14 seconds, a radius of 1045.00 feet, a chord bearing and distance of South 65 degrees, 02 minutes, 15 seconds West, 148.89 feet, an arc distance of 149.02 feet to a point at the end of said curve;

South 82 degrees, 59 minutes, 52 seconds West, a distance of 81.84 feet to a point for corner;

South 54 degrees, 39 minutes, 28 seconds West, a distance of 71.56 feet to a point for corner; said point being the southernmost corner of said Bank tract and the easternmost corner of that tract of land described in Special Warranty Deed to Grand Seville, L.P. recorded in Document Number 2007-102880 of said Official Records;

THENCE, departing the said northwest line of Silveron Boulevard and along the south line of said Bank tract and the north line of said Seville tract, the following four (4) calls:

North 40 degrees, 36 minutes, 08 seconds West, a distance of 46.71 feet to a point for corner;

North 20 degrees, 17 minutes, 30 seconds West, a distance of 47.82 feet to a point for corner;

North 22 degrees, 12 minutes, 21 seconds East, a distance of 64.76 feet to a point for corner;

South 89 degrees, 40 minutes, 23 seconds West, a distance of 775.49 feet to a point for corner; said point being the westernmost southwest corner of said Bank tract and the east end of the south terminus of said Lake Forest Boulevard;

THENCE, North 00 degrees, 27 minutes, 02 seconds West, departing the said north line of the Seville tract and along the said east line of Lake Forest Boulevard and the west line of said Bank tract, a distance of 1055.68 feet to the POINT OF BEGINNING;

CONTAINING: 1,603,391 square feet or 36.809 acres of land, more or less.

TRACT 2:

DESCRIPTION, of a 4.230 acre tract of land situated in the J. Knight Survey, Abstract No. 692, Denton County, Texas; said tract being part of that tract of land described in Correction Trustee's Deed to Vivare, L.P. recorded in Document Number 2009-37290 of the Official Records of Denton County, Texas; said 4.230 acre tract being more particularly described as follows:

BEGINNING, at a point for corner in the northernmost north line of said Vivare tract and the northernmost south line of Lot 1, Block A, Silveron Center, an addition to the Town of Flower Mound according to the plat recorded in Cabinet Y, Page 678 of the Plat Records of Denton County, Texas; from said point the westernmost southwest corner of said Lot 1 bears North 84 degrees, 33 minutes, 52 seconds West, a distance of 4.44 feet;

THENCE, in an easterly direction, along the said north line of the Vivare tract and the said south line of Lot 1, the following four (4) calls:

South 84 degrees, 33 minutes, 52 seconds East, a distance of 281.09 feet to a point for corner;

South 05 degrees, 26 minutes, 55 seconds West, a distance of 122.41 feet to a point for corner;

South 84 degrees, 33 minutes, 52 seconds East, a distance of 203.15 feet to a point for corner;

South 68 degrees, 28 minutes, 15 seconds East, a distance of 102.05 feet to a point for corner in the northwest right-of-way line of Silveron Boulevard (a variable width right-of-way, 90 feet wide at this point); said point being the easternmost northeast corner of said Vivare tract and the southeast corner of said Lot 1; said point also being in a non-tangent curve to the right;

THENCE, in a southwesterly direction, along the said northwest line of Silveron Boulevard, the southeast line of said Vivare tract and said curve to the right, having a central angle of 38 degrees, 54 minutes, 08 seconds, a radius of 805.00 feet, a chord bearing and distance of South 49 degrees, 40 minutes, 17 seconds West, 536.13 feet, an arc distance of 546.57 feet to a point at the end of said curve;

THENCE, South 69 degrees, 07 minutes, 21 seconds West, continuing along the said northwest line of Silveron Boulevard and the said southeast line of the Vivare tract, a distance of 77.29 feet to a point for corner;

THENCE, North 08 degrees, 17 minutes, 13 seconds West, departing the said northwest line of Silveron Boulevard and the said southeast line of the Vivare tract and into and across said Vivare tract, a distance of 585.81 feet to the POINT OF BEGINNING;

CONTAINING: 184,242 square feet or 4.230 acres of land, more or less.

MASTER PLAN AMENDMENT

PROPERTY EXHIBIT

36.809 ACRE TRACT & 4.230 ACRE TRACT

LOCATED IN THE TOWN OF FLOWER MOUND, TEXAS
AND BEING OUT OF THE
J. KNIGHT SURVEY, ABSTRACT NO. 692,
DENTON COUNTY, TEXAS

		7557 RAMBLER ROAD, SUITE 1400 DALLAS, TX 75231 972.235.3031 TX REG. ENGINEERING FIRM F-14439 TX REG. SURVEYING FIRM LS-10193805	
DRAWN BY JSA	CHECKED BY JSA	SCALE 1"=60'	DATE OCTOBER 2015
		JOB NUMBER 2283-15.162	

NOTES

- Bearing system for this survey is based on the Texas State Plane Coordinate System - NAD 83, North Central Zone 4202.
- It is not the intent of this exhibit to render a professional opinion as to the location or condition of the boundary of the real property shown herein. This survey was not prepared for use in any real estate transaction, conveyance or title insurance proceedings. This exhibit shall not represent warranty of title or guarantee of ownership. No research has been done to determine the nature, location or existence of easements on the subject property.

ARCHITECT:
AZIMUTH ARCHITECTURE, INC.
9660 AUDELIA ROAD , SUITE 123-66
DALLAS, TEXAS 75238
CONTACT: JOHN R. TAYLOR
PHONE: (214) 261-9060

DEVELOPER:
CROW HOLDINGS
3819 MAPLE AVENUE
DALLAS, TEXAS 75219
CONTACT: WILL MUNDINGER
PHONE: (713) 661-8341

OWNER:
FIRST NATIONAL BANK
C/O PLAINSCAPITAL BANK
PO BOX 660
EDINBURG, TEXAS 78540
CONTACT: LARRY NIXON
PHONE: (972) 588-3475

ENGINEER/SURVEYOR:
PACHECO KOCH CONSULTING ENGINEERS
7557 RAMBLER ROAD, SUITE 1400
DALLAS, TEXAS 75231
CONTACT: C. JACK EVANS, P.E.
PHONE: (972) 235-3031

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

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING SECTION 1.0, LAND USE PLAN, AND SECTION 2.0, AREA PLANS, OF THE MASTER PLAN BY AMENDING ORDINANCE NO. 24-01, IN PART, WHICH ADOPTED THE MASTER PLAN, SPECIFICALLY TO CHANGE THE CURRENT LAND USE REFLECTED ON THE LAKESIDE BUSINESS DISTRICT AREA PLAN MAP FROM CAMPUS COMMERCIAL USES TO CAMPUS INDUSTRIAL USES ON APPROXIMATELY 41.24 ACRES OF LAND SITUATED IN THE J. KNIGHT SURVEY, ABSTRACT NUMBER 692; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Flower Mound 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 Land Use Plan Map contained in the Land Use Plan of the Town Master Plan depicts, by distinct colors, the various land uses in the Town; and,

WHEREAS, in accordance with Chapter 78 of the Land Development Regulations, the owner of the property described as 41.24 acres of land in the J. Knight Survey, Abstract Number 692, has filed an application for a Master Plan Amendment to change the current land use reflected on the Lakeside Business District Area Plan Map from Campus Commercial uses to Campus Industrial uses; and,

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas, held a public hearing on January 11, 2016, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on January 21, 2016, with respect to the Master Plan Amendment described herein; and,

WHEREAS, the Town has complied with all requirements of Chapter 213 of the Local Government Code, Chapter 78, of the Land Development Regulations, and all other laws dealing with notice, publication and procedural requirements for the approval of a Master Plan Amendment;

WHEREAS, the Town Council finds that amendment of the Master Plan as outlined herein is in the best interest of the Town of Flower Mound and will promote the health, safety and general welfare of the citizens of the Town of Flower Mound and the general public;

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

SECTION 1

The Master Plan of the Town of Flower Mound, Texas, as amended, is hereby amended to change the land use designation on the hereinafter described property and area as shown below:

Ordinance No. _____

Page 2

41.24 acres of land in the J. Knight Survey, Abstract Number 692, Denton County, Texas, and more fully described in Exhibit "A" hereto.

Section 1.0, Land Use Plan, and Section 2.0, Area Plans, of the Master Plan are hereby amended to change the current land use reflected on the Lakeside Business District Area Plan Map from Campus Commercial uses to Campus Industrial uses on approximately 41.24 acres of land as depicted on Exhibit "B," attached hereto and incorporated for all purposes.

SECTION 2

This Ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the 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

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

SECTION 5

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

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE ____ DAY OF _____, 2016.

APPROVED:

Thomas E. Hayden, MAYOR

Ordinance No._____

Page 3

ATTEST:

Theresa Scott, TOWN SECRETARY

APPROVED AS TO FORM AND LEGALITY:

Bryn Meredith, TOWN ATTORNEY

Exhibit "A"

Description of Property

TRACT 1:

DESCRIPTION, of a 36.809 acre tract of land situated in the J. Knight Survey, Abstract No. 692, Denton County, Texas; said tract being all of that tract of land described in Substitute Trustee's Foreclosure Sale Deed to First Nation Bank recorded in Document Number 2009-86571 and part of that tract of land described in Correction Trustee's Deed to Vivare, L.P. recorded in Document Number 2009-37290, both of the Official Records of Denton County, Texas; said 36.809 acre tract being more particularly described as follows:

BEGINNING, at a point for corner at the intersection of the south right-of-way line of Lakeside Parkway (a variable width right-of-way, 120 feet wide at this point) and the east right-of-way line of Lake Forest Boulevard (a 45-foot wide right-of-way); said point being the northwest corner of said Bank tract;

THENCE, in an easterly direction, along the said south line of Lakeside Parkway and the north line of said Bank tract, the following five (5) calls:

North 89 degrees, 11 minutes, 53 seconds East, a distance of 449.11 feet to a point at the beginning of a tangent curve to the right;

Along said curve to the right, having a central angle of 08 degrees, 50 minutes, 05 seconds, a radius of 940.00 feet, a chord bearing and distance of South 86 degrees, 23 minutes, 04 seconds East, 144.80 feet, an arc distance of 144.94 feet to a point at the end of said curve;

South 81 degrees, 58 minutes, 02 seconds East, a distance of 426.64 feet to a point at the beginning of a tangent curve to the left;

Along said curve to the left, having a central angle of 08 degrees, 22 minutes, 27 seconds, a radius of 1060.00 feet, a chord bearing and distance of South 86 degrees, 09 minutes, 15 seconds East, 154.79 feet, an arc distance of 154.93 feet to a point at the end of said curve;

North 89 degrees, 39 minutes, 31 seconds East, a distance of 373.21 feet to an angle point;

South 82 degrees, 31 minutes, 55 seconds East, a distance of 17.07 feet to a point for corner; said point being the northeast corner of said Bank tract and the northwest corner of Lot 1, Block A, Silveron Center, an addition to the Town of Flower Mound according to the plat recorded in Cabinet Y, Page 678 of the Plat Records of Denton County, Texas;

THENCE, South 05 degrees, 26 minutes, 07 seconds West, departing the said south line of Lakeside Parkway and along the east line of said Bank tract and the westernmost west line of said Lot 1, a distance of 235.72 feet to a point for corner; said point being the westernmost southwest corner of said Lot 1 and the northwest corner of said Vivare tract;

THENCE, South 84 degrees, 33 minutes, 52 seconds East, departing the said east line of the Bank tract and along the northernmost south line of said Lot 1 and the northernmost north line of said Vivare tract, a distance of 4.44 feet to a point for corner;

THENCE, South 08 degrees, 17 minutes, 13 seconds East, departing the said south line of Lot 1 and the said north line of the Vivare tract and into and across said Vivare tract, a distance of 585.81 feet to a point for corner in the northwest right-of-way line of Silveron Boulevard (a variable width right-of-way, 90 feet wide at this point) and the southeast line of said Vivare tract;

THENCE, in a southwesterly direction, along the said northwest line of Silveron Boulevard, the said southeast line of the Vivare tract and the southeast line of said Bank tract, the following four (4) calls:

South 69 degrees, 07 minutes, 21 seconds West, at a distance of 11.44 feet passing the south corner of said Vivare tract and the southeast corner of said Bank tract, then continuing along the said southeast line of the Bank tract in all a total distance of 532.25 feet to a point at the beginning of a tangent curve to the left;

Along said curve to the left, having a central angle of 08 degrees, 10 minutes, 14 seconds, a radius of 1045.00 feet, a chord bearing and distance of South 65 degrees, 02 minutes, 15 seconds West, 148.89 feet, an arc distance of 149.02 feet to a point at the end of said curve;

South 82 degrees, 59 minutes, 52 seconds West, a distance of 81.84 feet to a point for corner;

South 54 degrees, 39 minutes, 28 seconds West, a distance of 71.56 feet to a point for corner; said point being the southernmost corner of said Bank tract and the easternmost corner of that tract of land described in Special Warranty Deed to Grand Seville, L.P. recorded in Document Number 2007-102880 of said Official Records;

Ordinance No. _____

Page 5

THENCE, departing the said northwest line of Silveron Boulevard and along the south line of said Bank tract and the north line of said Seville tract, the following four (4) calls:

North 40 degrees, 36 minutes, 08 seconds West, a distance of 46.71 feet to a point for corner;

North 20 degrees, 17 minutes, 30 seconds West, a distance of 47.82 feet to a point for corner;

North 22 degrees, 12 minutes, 21 seconds West, a distance of 64.76 feet to a point for corner;

South 89 degrees, 40 minutes, 23 seconds West, a distance of 775.49 feet to a point for corner; said point being the westernmost southwest corner of said Bank tract and the east end of the south terminus of said Lake Forest Boulevard;

THENCE, North 00 degrees, 27 minutes, 02 seconds West, departing the said north line of the Seville tract and along the said east line of Lake Forest Boulevard and the west line of said Bank tract, a distance of 1055.68 feet to the POINT OF BEGINNING;

CONTAINING: 1,603,391 square feet or 36.809 acres of land, more or less.

TRACT 2:

DESCRIPTION, of a 4.230 acre tract of land situated in the J. Knight Survey, Abstract No. 692, Denton County, Texas; said tract being part of that tract of land described in Correction Trustee's Deed to Vivare, L.P. recorded in Document Number 2009-37290 of the Official Records of Denton County, Texas; said 4.230 acre tract being more particularly described as follows:

BEGINNING, at a point for corner in the northernmost north line of said Vivare tract and the northernmost south line of Lot 1, Block A, Silveron Center, an addition to the Town of Flower Mound according to the plat recorded in Cabinet Y, Page 678 of the Plat Records of Denton County, Texas; from said point the westernmost southwest corner of said Lot 1 bears North 84 degrees, 33 minutes, 52 seconds West, a distance of 4.44 feet;

THENCE, in an easterly direction, along the said north line of the Vivare tract and the said south line of Lot 1, the following four (4) calls:

South 84 degrees, 33 minutes, 52 seconds East, a distance of 281.09 feet to a point for corner;

South 05 degrees, 26 minutes, 55 seconds West, a distance of 122.41 feet to a point for corner;

South 84 degrees, 33 minutes, 52 seconds East, a distance of 203.15 feet to a point for corner;

South 68 degrees, 28 minutes, 15 seconds East, a distance of 102.05 feet to a point for corner in the northwest right-of-way line of Silveron Boulevard (a variable width right-of-way, 90 feet wide at this point); said point being the easternmost northeast corner of said Vivare tract and the southeast corner of said Lot 1; said point also being in a non-tangent curve to the right;

THENCE, in a southwesterly direction, along the said northwest line of Silveron Boulevard, the southeast line of said Vivare tract and said curve to the right, having a central angle of 38 degrees, 54 minutes, 08 seconds, a radius of 805.00 feet, a chord bearing and distance of South 49 degrees, 40 minutes, 17 seconds West, 536.13 feet, an arc distance of 546.57 feet to a point at the end of said curve;

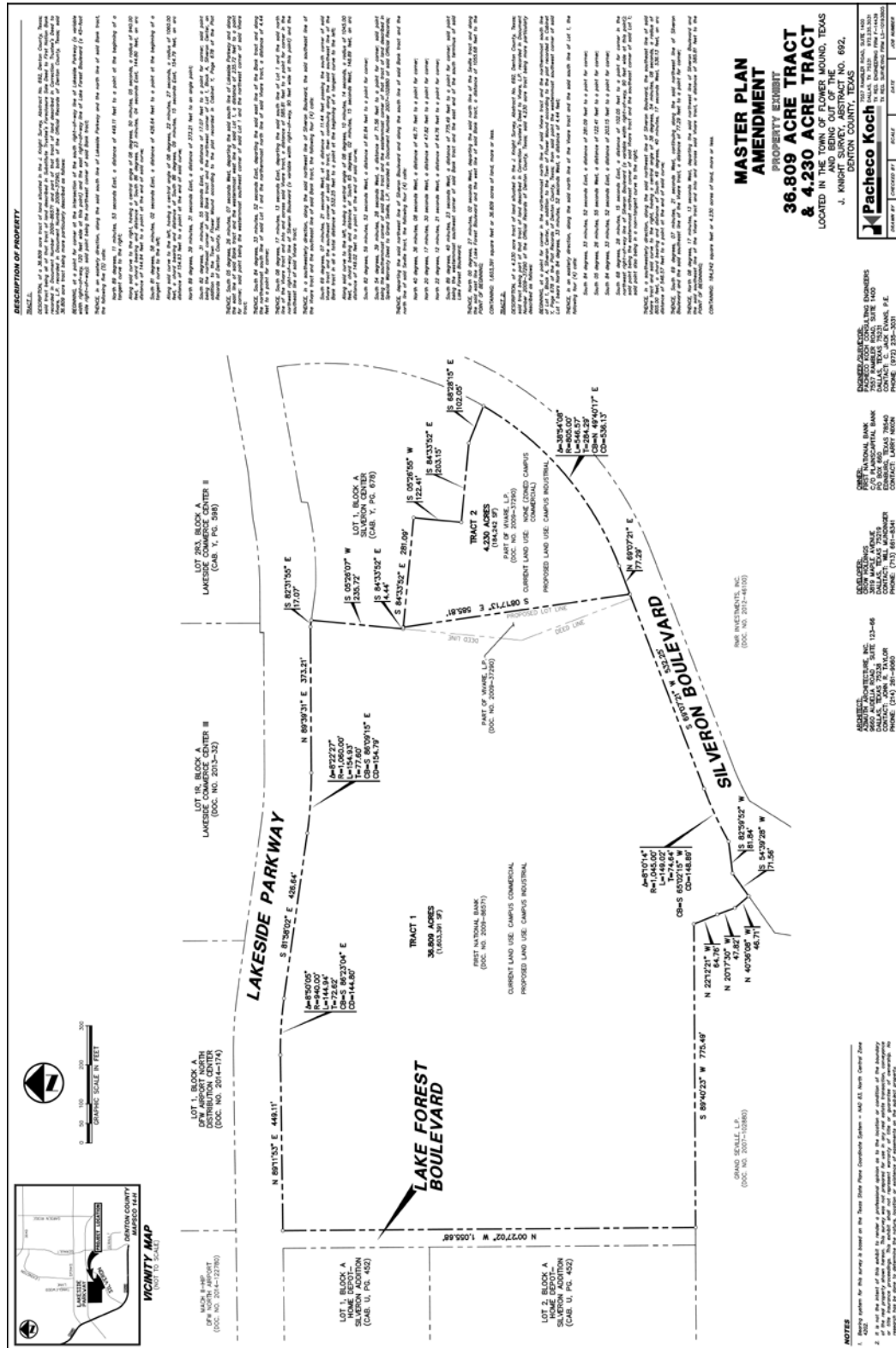
THENCE, South 69 degrees, 07 minutes, 21 seconds West, continuing along the said northwest line of Silveron Boulevard and the said southeast line of the Vivare tract, a distance of 77.29 feet to a point for corner;

THENCE, North 08 degrees, 17 minutes, 13 seconds West, departing the said northwest line of Silveron Boulevard and the said southeast line of the Vivare tract and into and across said Vivare tract, a distance of 585.81 feet to the POINT OF BEGINNING;

CONTAINING: 184,242 square feet or 4.230 acres of land, more or less.

Exhibit “B”
Master Plan Exhibit

Ordinance No._____





TOWN COUNCIL AGENDA ITEM NO.17

REGULAR ITEM

DATE: January 21, 2016

FROM: Chuck Russell, Town Planner

ITEM: Public Hearing to consider a request for rezoning (ZPD15-0013 – Silveron Industrial Warehouse) from Planned Development District No. 31 (PD 31) for Campus Commercial District (CC) uses to Planned Development District No. 145 (PD-145) for Campus Industrial District (CI) uses with certain exceptions to the Code of Ordinances, and to consider adopting an ordinance providing for said amendment. The property is generally located south of Lakeside Parkway and east of Lake Forest Boulevard. *(The Planning and Zoning Commission recommended denial of the accompanying Master Plan amendment (MPA15-0010) by a vote of 4 to 2 at its January 11, 2016, meeting. Therefore, the Planning and Zoning Commission's recommendation for the subject zoning amendment was also denial, since the zoning amendment was contingent upon approval of the Master Plan amendment.)*

BACKGROUND INFORMATION: Attached is the Planning and Zoning Commission report and backup for this item. Since the packet for the January 11, 2016, was distributed, a revised Environmental Protection Plan (EPP) was submitted by the applicant reflecting minor changes to Environmentally Sensitive Areas being impacted by the proposed development. The revised EPP is attached as Attachment 3.

According to the Town's Director of Economic Development, this project is eligible to qualify for economic incentives which allows the applicant to request waivers from the environmental quality criteria contained in Section 98-31 of the SMARTGrowth program and the town's economic development incentives policy. The draft ordinance (Attachment 2) has been updated to reflect the revised EPP and now includes all environmental exceptions being requested by the applicant as follows:

1. Approximately 6.76 acres of 18.96 total acres of upland habitat is proposed to be impacted by the proposed development. An exception is being requested for any additional compensation required for impacts to upland habitat on site.
2. Approximately 4.70 acres of the 14.31 total acres of land with topographic slopes between 5% and 12% that are not within 5 feet of structures are proposed to be impacted by the development. Approximately 0.74 acres of the 5.63 total acres of land on the site that have topographic slopes greater than 12% are proposed to be impacted. An exception to the topographical slope protection is being requested for both areas proposed to be impacted.

ATTACHMENTS:

1. Planning and Zoning Commission Staff Report
2. Draft Ordinance
3. Revised Environmental Protection Plan (EPP)

DRAFT MOTION: Move to approve a request for rezoning (ZPD15-0013 – Silveron Industrial Warehouse) from Planned Development District No. 31 (PD 31) for Campus Commercial District (CC) uses to Planned Development District No. 145 (PD-145) for Campus Industrial District (CI) uses with certain exceptions to the Code of Ordinances, and adopt an ordinance providing for said amendment.



PLANNING AND ZONING COMMISSION AGENDA ITEM NO: 6

DATE: January 11, 2016

FROM: Chuck Russell, Town Planner

ITEM: **Public Hearing to consider a request for rezoning (ZPD15-0013 – Silveron Industrial Warehouse) from Planned Development District No. 31 (PD-31) for Campus Commercial District (CC) uses to Planned Development District No. 145 (PD-145) for Campus Industrial District (CI) uses with certain exceptions to the Code of Ordinances. The property is generally located south of Lakeside Parkway and east of Lake Forest Boulevard.**

I. ITEM SUMMARY

This application has been reviewed by DRC and, aside from the requested exceptions, has been found to be in conformance with all applicable Town regulations. Specifically, this application has been reviewed under the SMARTGrowth program and has been found to meet all applicable criteria.

The project has a companion application, a Master Plan Amendment (MPA15-0010), for consideration on the same agenda. Approval of this zoning request is contingent upon approval of the Master Plan Amendment.

This application will require final action by the Town Council.

II. APPLICATION ANALYSIS

The purpose of this request is to rezone approximately 41.24 acres of land in order to develop large scale industrial warehouse/distribution buildings with office components, which is not allowed under the existing Planned Development District No. 31 (PD-31) zoning. The property is currently undeveloped. The proposed development will have access from Lakeside Parkway, Lake Forest Boulevard and Silveron Boulevard.

The proposed development is bordered to the north, across Lakeside Parkway, by Campus Industrial zoned property developed with the DFW North Distribution Center and Lakeside Commerce Center; to the west by Campus Commercial zoned property developed with an office complex and The Home Depot; to the south, across Silveron Boulevard, by undeveloped land master-planned for Campus Commercial uses and zoned PD-31 with Campus Commercial (CC)

uses; and to the east by Campus Commercial zoned property developed with the Ivie & Associates corporate office complex.

The Town's Master Plan contains specific Area Plans for the Town. This section of the Master Plan depicts appropriate land uses and relationships between land uses in these areas. The subject property is located within the Lakeside Business District Area Plan. For more details regarding the applicant's request to amend the Master Plan, please refer to the accompanying project (MPA15-0010).

The proposed Zoning Amendment will allow the applicant to develop roughly 457,950 square feet of industrial warehouse/distribution buildings with office components on the site. The existing Campus Commercial land use category does not allow for the larger scale industrial developments, such as the one being proposed, which is the reason the applicant is requesting Campus Industrial land use and zoning.

The accompanying concept plan (Attachment B(1)) depicts the proposed development layout. Tract 1 is proposed to include two buildings totaling approximately 457,950 square feet. The appropriate setbacks for the building, parking, and landscaping have been provided. Building 1 is located on the east side of Tract 1 and will contain 131,200 square feet of warehouse/distribution space and 78,100 square feet of office space in the initial phase of development. The plan also allows for the expansion of Building 1 to contain an additional 41,600 square feet of warehouse/distribution space and another 78,100 square feet of office space. Building 2 on the west side of Tract 1 will be constructed at a future time and contains 109,608 square feet of warehouse/distribution space and 19,342 square feet of office space.

Tract 2 indicates a proposed soccer field and basketball court that will serve as a private recreation area for employees as well as an access drive and additional employee parking. The applicant is proposing to be consistent with developments north of the site, which includes both the DFW North Distribution Center (Phase One) and the Lakeside Commerce Center. These standards include a 65-foot building setback, a 45-foot parking setback, as well as similar architecture and landscaping along Lakeside Parkway.

The total parking required by the Town's regulations for the proposed uses is 728 spaces which includes both office and warehouse floor area. The Town's regulations also allow up to a 20 percent reduction in the required parking which would be 582 spaces. The applicant is providing 604 parking spaces for all phases of the development which is within the 20 percent allowance. A parking study has also been provided that supports this number of spaces (see Attachment B(3)). Access to Building 1 will be provided from both Lakeside Parkway and Silveron Boulevard with the primary truck access being from Lakeside Parkway. Building 2 will have access from both Lakeside Parkway and Lake Forest Boulevard.

The Lakeside Business District Area Plan has enhanced requirements for landscaping and sidewalk treatments along Lakeside Parkway. The conceptual site and landscape plans indicate compliance with the provision of a 25-foot landscape buffer, groving of required trees, curvilinear sidewalks integrated into the landscape, no parking within 45 feet of the property line along Lakeside Parkway, and the required 15-foot landscape buffer along Lake Forest Boulevard and Silveron Boulevard. The Lakeside Business District Area Plan also requires that service areas for truck docks be internalized and not visible from district arterials such as Lakeside Parkway. The requirements further stipulate the use of planting, landforms and screening walls to be used to buffer and screen said areas.

The Town's Urban Design Guidelines for the Lakeside Business District require that design elements be used on large scale warehouse and industrial buildings to add interest and variety while also breaking up the monotony of large stretches of tilt wall materials. The conceptual elevations indicate small variations on the wall planes and the use of stone veneer accents to mitigate the expanses of tilt wall. Small roofline offsets have also been provided to add interest to the roofline. The proposed buildings are similar in nature to the existing and proposed DFW North Distribution Center and Lakeside Commerce Center developments to the north.

a. Exception to Driveway Spacing

The applicant is requesting a waiver to the driveway spacing requirements of a major arterial. This waiver is for the easternmost driveway opening along Lakeside Parkway. The distance of this driveway from the one to the west of it will be 283 feet, which is 77 feet short of the required 360 feet dictated by the access management criteria in the design standards. Staff does not have an objection to this request.

b. Exception to Topographical Slope Protection

The subject property has a creek that runs south to north and bisects the property. The creek lies within a very low area and the topographical difference in areas ranges to over 40 feet. In addition to the issue of reducing the area available for Campus Commercial land uses, the topography creates a challenge for a large rectangular building footprint that is needed for the proposed use. The site will likely need to have a significant amount of excavation and extensive use of retaining walls to accommodate the proposed buildings. The applicant has indicated that the retaining walls on the west side of Building 1 will have an approximate maximum height ranging from 20 feet at the northwest corner to 18 feet at the southwest corner of the building.

Section 98-147 of the Town Code of Ordinances, "Topographical slope protection", states:

No development application or project shall be approved that proposes development on any existing topographical slopes of 12 percent or greater, or that proposes to alter any existing topographical slopes that are less than 12 percent but equal to or greater than five percent then available (other than within five feet of the footprint of the proposed structure or structures). The purpose of this criterion is to ensure that development is respectful of and appropriately integrated with the natural physical geography of the land in Flower Mound by requiring environmentally sensitive development techniques to eliminate "scrape and build."

According to the Town's Director of Economic Development, this project is eligible to qualify for economic incentives. Section 98-151 of the Town Code of Ordinances, "Waiver of environmental quality criteria", states:

It is recognized that certain projects that qualify for economic development incentives, pursuant to the town's economic development incentives policy, due to their size, location, amenities and design, may necessitate waivers from the environmental quality criteria contained in this subdivision. Any requested waiver shall be evaluated during the development process and action taken thereon by the planning and zoning commission and the town council in accordance with the purposes and objectives contained in section 98-31 of the SMARTGrowth program and the town's economic development incentives policy.

According to the applicant's Environmental Protection Plan (see Attachment B(4)), the applicant is requesting an exception to this SMARTGrowth Criterion for approximately 3.86 acres of land with slopes between 5% and 12%. An exception is also being requested for the impacts to approximately 0.56 acres of land with slopes greater than 12%.

The draft development standards include a provision that requires the applicant to identify Best Management Practices ("BMPs") that will be used to maintain and responsibly integrate the development into the natural topography together with an explanation regarding their use within the plans for such development. The BMPs to be used shall include, but are not limited to, those BMPs found within the Town's Engineering Design and Construction Standards.

On October 6, 2015, the Environmental Conservation Commission (ECC) reviewed a tree removal permit for 8 specimen trees. The ECC recommended approval of the requested permits by a vote of 6 to 1. The item will be forwarded to the Town Council for consideration at the same time as the subject project.

The link to the October 6, 2015, ECC meeting is:

<http://flowermoundtx.swagit.com/play/10062015-1044/#7>

III. CORRESPONDENCE

The Town Code requires both public notice in a newspaper of general circulation (Denton Record Chronicle) and notification of the property owners within 200 feet of the subject property for all Zoning amendment requests. At the time this report was written, staff had received no response regarding the project.

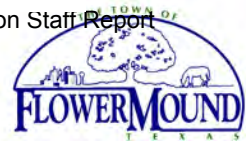
IV. ATTACHMENTS

A. Background Information

1. Vicinity Map
2. Letter of Intent

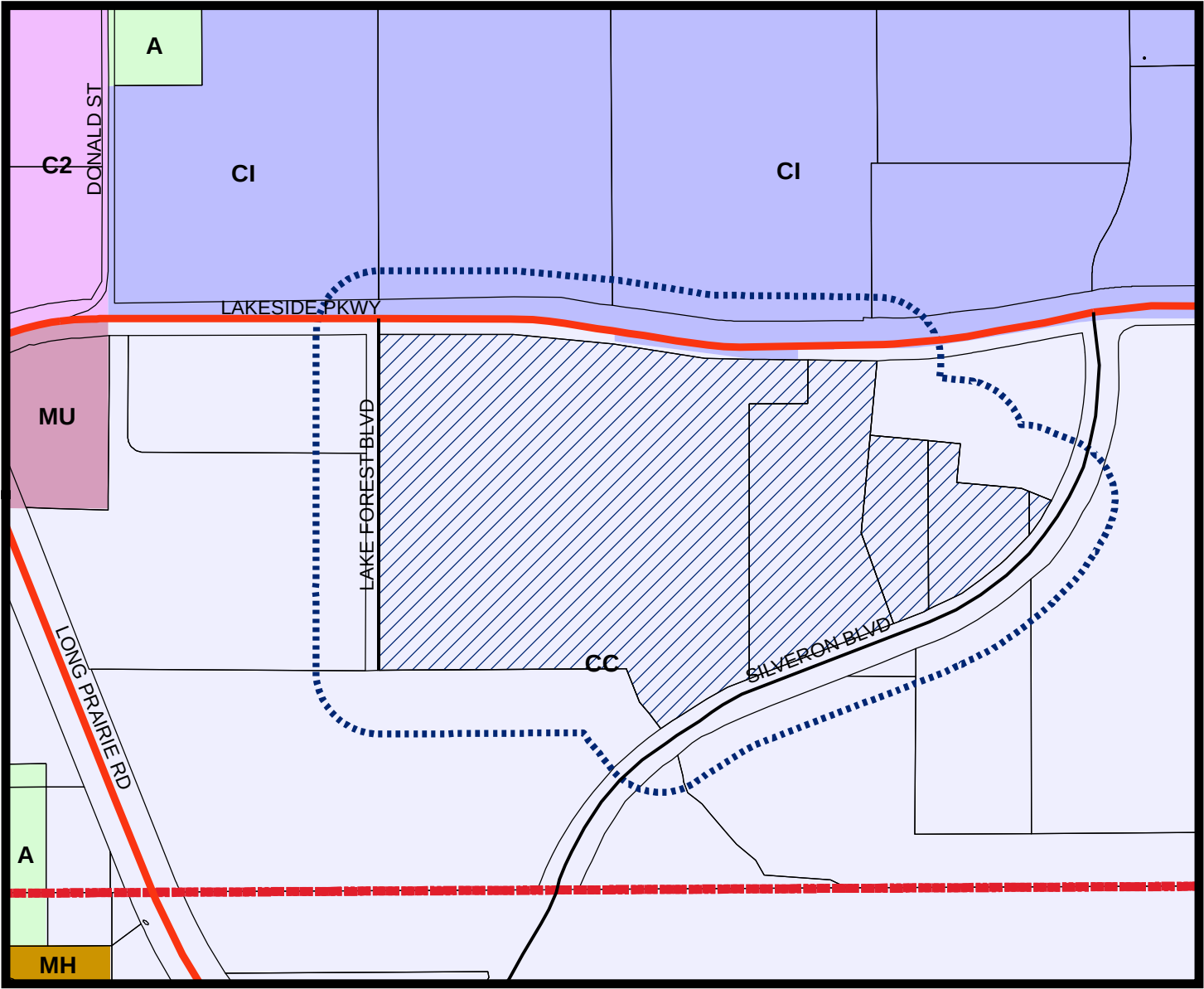
B. Application Details

1. Zoning Package
2. Draft Development Standards
3. Parking Study
4. Environmental Protection Plan



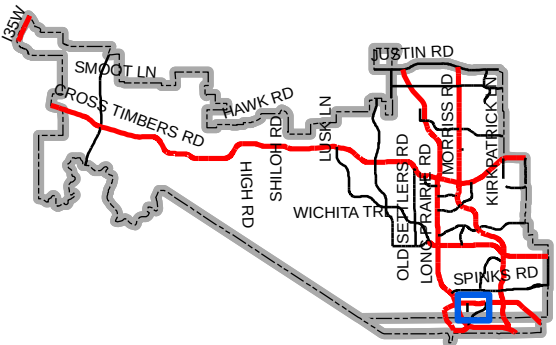
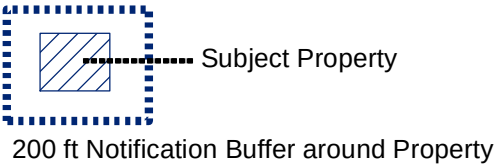
Vicinity Map

Reference Project: MPA15-0010 & ZPD15-0013



LEGEND

- | | | | |
|-------------|-------------------|-------------------|--------------|
| Agriculture | Campus Commercial | Campus Industrial | Commercial 2 |
| Mixed Use | Mobile Home | | |



Map Location

CIT Acquisition Corp.

3819 Maple Avenue
Dallas, Texas 75219

214-661-8000
Fax 214-661-8035

January 6, 2016
PK No.: 2283-15.162

Mr. Chuck Russell, AICP
Planning Manager/Planning Services
Town of Flower Mound
1001 Cross Timbers Road, Suite 2330
Flower Mound, Texas 75028

Re: LETTER OF INTENT: MASTER PLAN AMENDMENT (CASE # MPA15-0010) AND ZONING AMENDMENT (CASE # ZPD15-0013) FOR THE SILVERON RIDGE BUSINESS PARK DEVELOPMENT.

Dear Mr. Russell:

CIT Acquisition Corp requests that the Town of Flower Mound consider an amendment to the Town of Flower Mound Master Plan and zoning ordinance to allow for Campus Industrial uses instead of Campus Commercial uses currently allowed on the subject property. The case numbers are as follows: Master Plan Amendment - MPA15-0010 and zoning amendment - ZPD15-0013. The subject property is comprised of 41 acres generally located south of Lakeside Pkwy, north of Silveron Blvd, and east of Lake Forest Blvd. The applicant is considering the construction of two warehouses totaling approximately 400,000 square feet on the subject property. The development is anticipated to occur in a single phase, however, a multi-phased development is also possible.

In addition to the Master Plan and zoning amendments, the applicant is requesting a variance to the Town of Flower Mound Code of Ordinances. The applicant requests that the required driveway spacing of 360 feet between the two proposed driveways along Lakeside Parkway be reduced to 283 feet. The variance is requested to allow the development to maximize parking availability and vehicular access, both of which are important to companies considering the subject property for their location.

We feel the master plan changes are beneficial to the site and the Town of Flower Mound for the following reasons: First, the subject property is located in an industrial area where most of the neighboring uses are either industrial in nature, or other uses which are heavily buffered by landscaping and topography changes eliminating conflict between uses. Second, the site is not adjacent to any residential uses, so the use will not conflict with existing homes. Third, as evidenced by the success of Lakeside Ridge, warehouse users are clamoring to move or expand in Flower Mound, but there are very few available options for them to locate as the majority of warehouse buildings in the Town are leased. Without additional development, recent projects like Signature Systems Group and MI Windows would have located outside the Town.

CIT Acquisition Corp.

3819 Maple Avenue
Dallas, Texas 75219

214-661-8000
Fax 214-661-8035

Finally, there are numerous benefits to the Town which come from warehouse development, including lessening the property tax burden on single family homeowners, sales tax, and job creation.

Thank you for your consideration.

Sincerely,

CIT Acquisition Corp.
a Texas corporation

By: 
Name: William G. Munding III
Title: Vice President

Attachment B(1): Zoning Package

SITE DATA

SITE AREA PROPOSED LOT 1 =	1,603,400 S.F. / 36.809 AC.
SITE AREA PROPOSED LOT 2 =	184,221 S.F. / 4.229 AC.
BUILDING 1 AREA =	209,300 S.F.
BUILDING 1 AREA FUTURE OFFICE =	78,100
BUILDING 1 AREA WAREHOUSE EXPANSION =	41,600
BUILDING 1 AREA TOTAL =	329,000
BUILDING 2 AREA =	128,950 S.F.
TOTAL BUILDING AREA =	457,950 S.F.
COVERAGE =	25.62%

TOTAL PARKING REQUIRED W/OUT 20% REDUCTION =	728
TOTAL PARKING REQUIRED WITH 20% REDUCTION =	582
TOTAL PARKING PROVIDED =	604

BUILDING FEATURES

BUILDING 1:

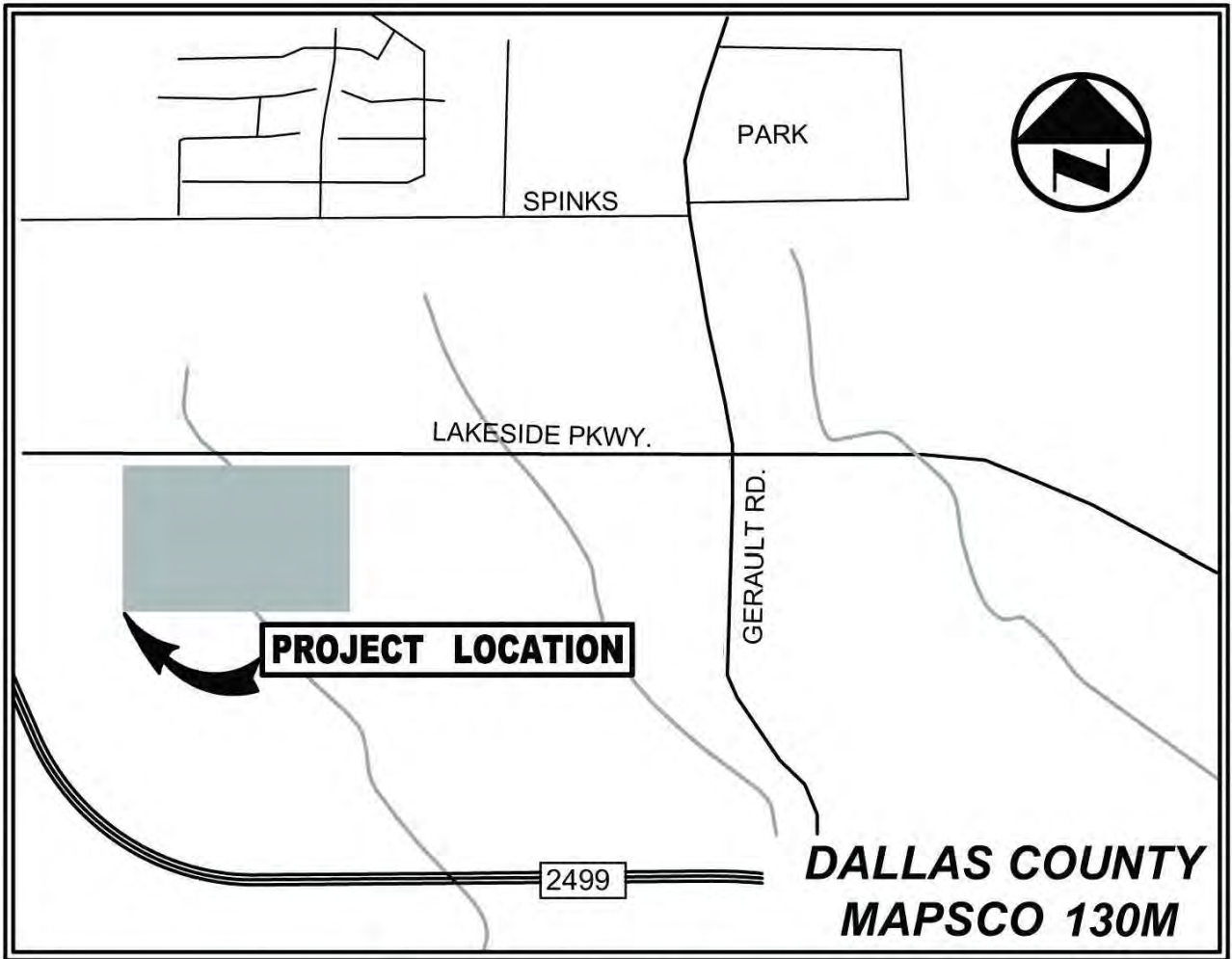
- PAINT FINISH CONCRETE TILTWALL BUILDING WITH STONE FEATURES
- PAINTED STEEL CANOPIES AT OFFICE ENTRIES
- 50' X 50' TYPICAL BAY
- (19) 10' X 10' O.H. DOCK DOORS
- 32' CLEAR HEIGHT - TOTAL BUILDING HEIGHT 42'-6"
- E.S.F.R. FIRE PROTECTION SYSTEM

BUILDING 2:

- PAINT FINISH CONCRETE TILTWALL BUILDING WITH STONE FEATURES
- PAINTED STEEL CANOPIES AND TRELLIS AT OFFICE ENTRIES
- 50' X 50' TYPICAL BAY, 60' X 50' STAGING BAY
- (32) 9' X 10' O.H. DOCK DOORS
- 32' CLEAR HEIGHT - TOTAL BUILDING HEIGHT 40'
- E.S.F.R. FIRE PROTECTION SYSTEM

GENERAL NOTES

1. ALL RETAINING / DETAINING WALL, TURN-DOWN CURBS, TREE RETAINING WALLS SHALL BE CLAD IN A MATERIAL TO MATCH THE MATERIALS ON THE BUILDING.
2. ALL GROUND BASED MECHANICAL UNITS AND/OR EQUIPMENT SHALL BE SCREENED WITH LIVE SCREENING OR MASONRY ENCLOSURE. MASONRY ENCLOSURE SHALL BE CLAD IN A MATERIAL TO MATCH THE MATERIALS ON THE BUILDING.
3. ALL ROOF-MOUNTED MECHANICAL UNITS AND/OR EQUIPMENT SHALL BE SCREENED FROM VIEW.
4. DUMPSTER SCREENING WALL SHALL BE CLAD IN A MATERIAL TO MATCH THE MATERIALS ON THE BUILDING.
5. DUMPSTER SCREENING WALL REQUIRES A SEPARATE BUILDING PERMIT.



VICINITY MAP
(NOT TO SCALE)

PARKING TABULATIONS

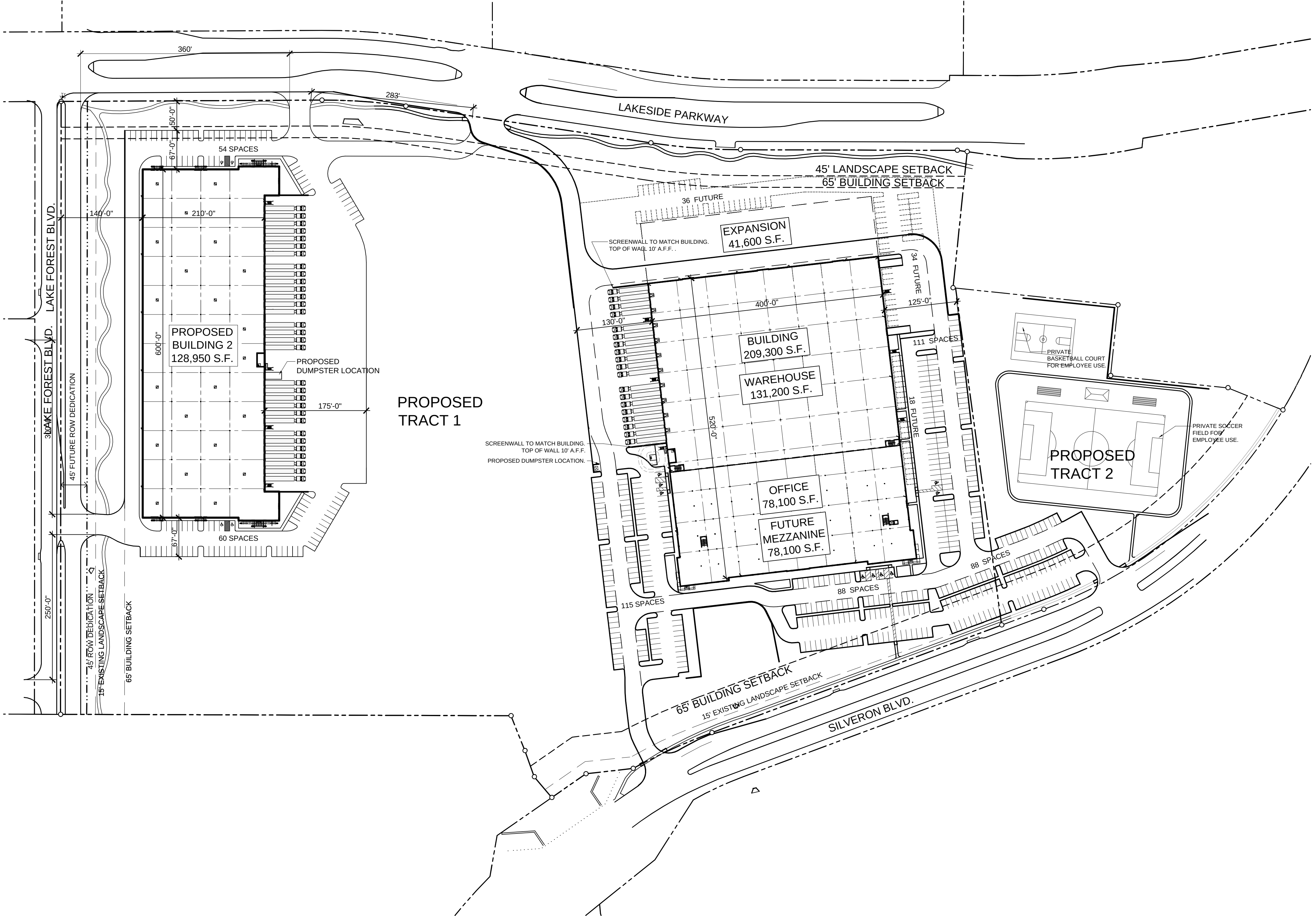
BUILDING 1:

OFFICE = 78,100 SF	78,100 S.F.
OFFICE FUTURE = 78,100 SF	78,100 S.F.
WAREHOUSE = 131,200 SF	131,200 S.F.
WAREHOUSE EXPANSION = 41,600	41,600 S.F.

OFFICE PARKING 1:300 (78,100 / 300) = 260	260 SPACES
OFFICE PARKING FUTURE 1:300 (78,100 / 300) = 260	260 SPACES
WH PARKING 1:2000 (131,200 / 2000) = 65.6	66 SPACES
WH PARKING EXPAN. 1:2000 (41,600 / 2000) = 20.8	21 SPACES
TOTAL PARKING	607 SPACES
20% REDUCTION	121 SPACES
TOTAL PARKING REQUIRED	486 SPACES
TOTAL PARKING PROVIDED INCLUDING FUTURE	490 SPACES

BUILDING 2:

128,950 SF X 15% OFFICE = 19,342 SF	19,342 S.F.
128,950 SF X 90% WAREHOUSE = 109,608 SF	109,608 S.F.
OFFICE PARKING 1:300 (19,342 / 300) = 64.5	65 SPACES
WH PARKING 1:2000 (109,608 / 2000) = 54.8	55 SPACES
TOTAL PARKING	120 SPACES
20% REDUCTION	24 SPACES
TOTAL PARKING REQUIRED	96 SPACES
TOTAL PARKING PROVIDED	114 SPACES



01 CONCEPTUAL SITE PLAN

Scale: 1" = 100'-0"

MASTER PLAN FEATURE

LAND USE PLAN	LAKESIDE BUSINESS DISTRICT
SPECIFIC PLAN	CAMPUS INDUSTRIAL
URBAN DESIGN PLAN	LAKESIDE BUSINESS DISTRICT
PARKS AND TRAILS	N/A
OPEN SPACE PLAN	N/A
THOROUGHFARE PLAN	LAKESIDE PARKWAY (MAJOR ARTERIAL) SILVERON BLVD. (URBAN MINOR ARTERIAL) LAKE FOREST BLVD. (URBAN MINOR ARTERIAL)
WATER PLAN	LAKESIDE BUSINESS DISTRICT
WASTEWATER PLAN	LAKESIDE BUSINESS DISTRICT
ECONOMIC IMPACT	N/A

AZIMUTH:

architecture

9660 Audelia Road
Suite 123-66
Dallas, Texas 75238
214.261.9060

www.azimutharc.com

SILVERON DC 1 & 2

Lakeside Parkway
Flower Mound, Texas 75028

21009

JOB # : CLIENT:

1	07.17.15	City Submittal
2	08.28.15	City Submittal
3	09.08.15	Pricing Set
4	09.18.15	City Comments
5	10.06.15	City Comments
6	10.27.15	City Comments
7	11.16.15	City Comments
8	12.01.15	City Comments
9	12.28.15	City Comments

REVISIONS:



THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY MICHAEL L. WILLIAMS, ARCHITECT #18915, DECEMBER 28, 2015 City Sealmark. ALTERATIONS OF SEALED DOCUMENTS WITHOUT PROPER NOTIFICATION TO THE RESPONSIBLE ARCHITECT IS AN OFFENSE UNDER THE TEXAS BOARD OF ARCHITECTURAL EXAMINERS.

SHEET CONTENTS:
**CONCEPTUAL
SITE PLAN**

DATE: December 28, 2015

SHEET:

A1.00



LOT 3: LANDSCAPE TABULATIONS

Street Yard Landscaping			
Standard	Total Street Yard (Square Feet)	Required	Provided
Min. 20% of street yard	366,880	73,376	216,943
Street Yard Trees			
Standard	Total Street Yard (Square Feet)	Required	Provided
110,000 plus 50 tree for first 110,000 plus (1) per 5,000 in excess of 110,000 s.f.	Lakeside Parkway 197,841 s.f.	68	68
10,000 to 110,000 plus (1) per 2,500 in excess of 10,000 s.f.	Lake Forest Blvd. 83,768 s.f.	42	42
110,000 plus 50 tree for first 110,000 plus (1) per 5,000 in excess of 110,000 s.f.	Silveron Blvd. 146,903 s.f.	59	59

Trees required to satisfy other provisions of landscaping requirements and lying within the street yard may be used to satisfy the requirements of other sections.

Street Buffer Trees			
Standard	Street Frontage (Linear Feet)	Required	Provided
1 per 30 L.F.	Lakeside Parkway 1,520 L.F.	51	52
1 per 30 L.F.	Lake Forest Blvd. 1,068 L.F.	36	36
1 per 30 L.F.	Silveron Blvd. 1,458 L.F.	49	49

Parking Area Landscaping			
Standard	No. of Parking Spaces	Required	Provided
80 s.f. per 12 spaces	338	2,536 s.f.	7,317 s.f.

Parking Area Trees			
Standard	No. of Parking Spaces	Required	Provided
1 per 10 spaces	338	34	47

PLANT KEY

- Cedar Elm QTY: 65
- Red Oak QTY: 50
- Live Oak QTY: 87
- Crepe Myrtle QTY: 42
- Vitex QTY: 34
- Nellie R. Stevens Holly
- Texas Sage
- Loropetalum
- Dwarf Wax Myrtle
- Compact Texas Sage
- Dwarf Yaupon Holly / Indian Hawthorn
- Mexican Feather Grass
- Dwarf Hamlin Grass
- Needlepoint Holly
- Muhly Grass
- Salvia Greggii
- Purple Wintercreeper

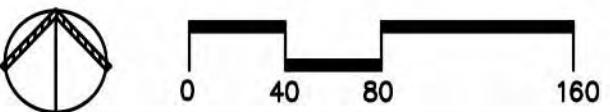
NOTE 1:
Contact John Habern, Parks, Trails, and Landscape specialist, at (972) 874-6346 prior to beginning any work in the town's R.O.W.

Contractor is responsible for repairing any damage to existing town irrigation systems.

Any new irrigation in the public R.O.W. shall be purple pipe and shall have purple valve box lids, purple bubblers, purple drip tubing, and purple caps on all irrigation heads. R.O.W. irrigation shall be on separate valves from the remainder of the system.

Irrigation plans are not approved at this time. A licensed irrigator must apply for a permit through the building department. The plans will be approved at the time the permit is pulled.

01 CONCEPTUAL LANDSCAPE SITE PLAN
SCALE: 1" = 80'-0"



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9660 Audelia Road
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SILVERON DC 1 & 2

Lakeside Parkway
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21009

- 1 07.17.15 City Submittal
- 2 10.06.15 City Comments
- 3 10.28.15 City Comments
- 4 12.28.15 City Submittal

- 5
- 6
- 7
- 8
- 9

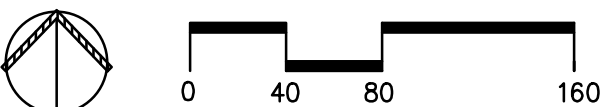


SHEET CONTENTS:

CONCEPTUAL LANDSCAPE PLAN

DATE: August 28, 2015

SHEET: L1.01



Irrigation plans are not approved at this time. A licensed irrigator must apply for a permit through the building department. The plans will be approved at the time the permit is pulled.

Muhly Grass

Salvia Greggii

Purple Wintercreeper

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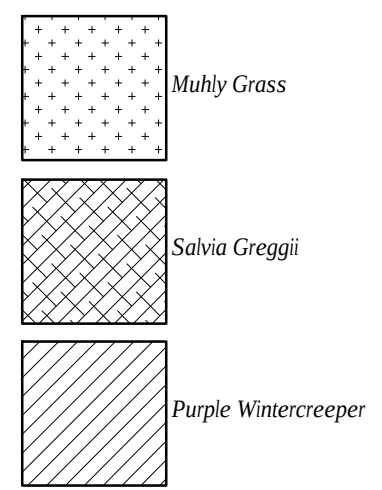
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CONCEPTUAL LANDSCAPE PLAN

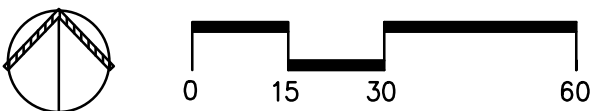
SHEET: L1.01



PROPOSED TRACT 1

MATCH LINE A
REFER TO SHEET L1.05

01 CONCEPTUAL LANDSCAPE SITE PLAN

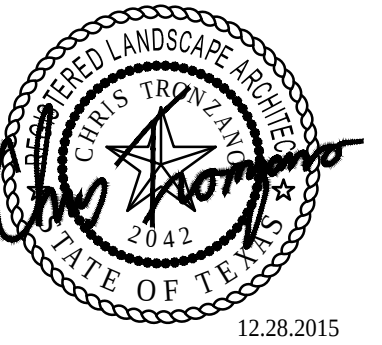


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**Lakeside Parkway
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1	07.17.15	City Submittal
2	10.06.15	City Comments
3	10.28.15	City Comments
4	12.28.15	City Submittal

REVISIONS:

SHEET CONTENTS:

CONCEPTUAL LANDSCAPE PLAN

DATE: August 28, 2015

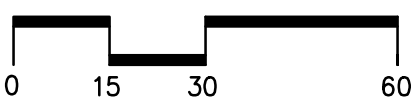
SHEET: L1.02



NI 22°12'21" W/I

PLANT KEY

The figure consists of three vertically stacked square plots, each representing a different seed distribution pattern. The top plot, labeled 'Muhly Grass', shows a random distribution of small '+' symbols. The middle plot, labeled 'Salvia Greggii', shows a clumped distribution with many '+' symbols grouped together and some empty space. The bottom plot, labeled 'Purple Wintercreeper', shows a uniform distribution with '+' symbols arranged in a regular grid pattern.



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Flower Mound, Texas 75028**

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3	<u>10.28.15</u>	City Comments
4	<u>12.28.15</u>	City Submittal

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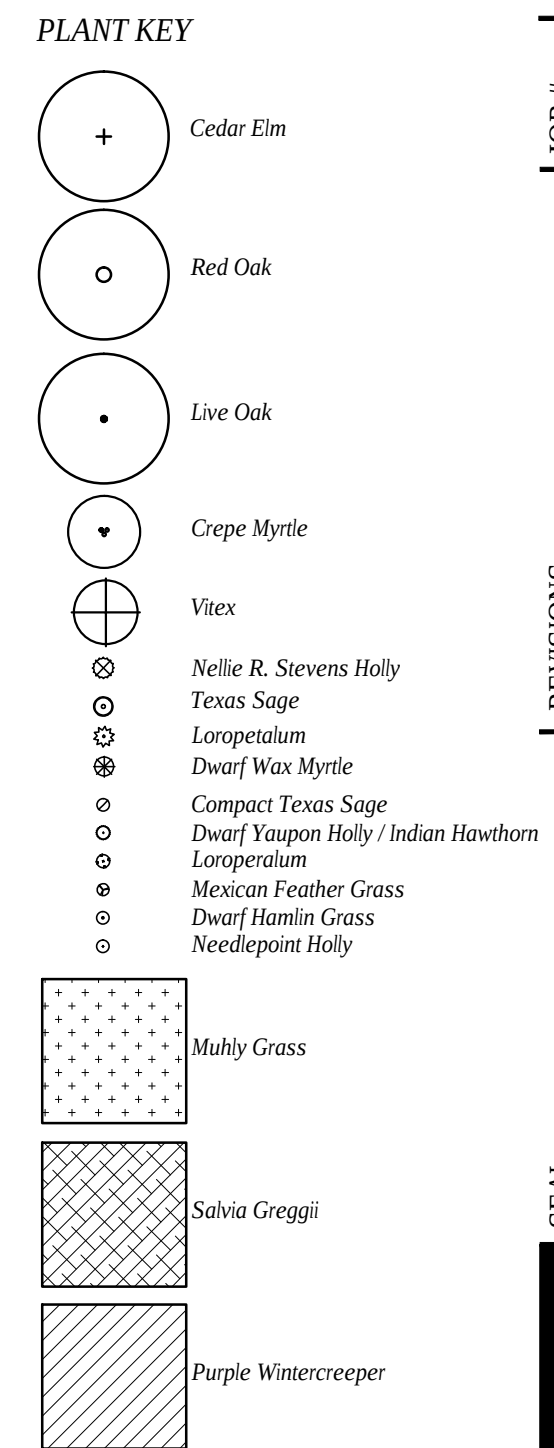
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CONCEPTUAL LANDSCAPE PLAN

SHEET: L1.03



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3	<u>10.28.15</u>	City Comments
4	<u>12.28.15</u>	City Submittal

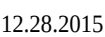
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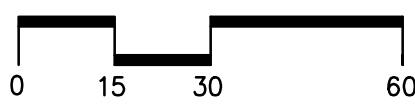


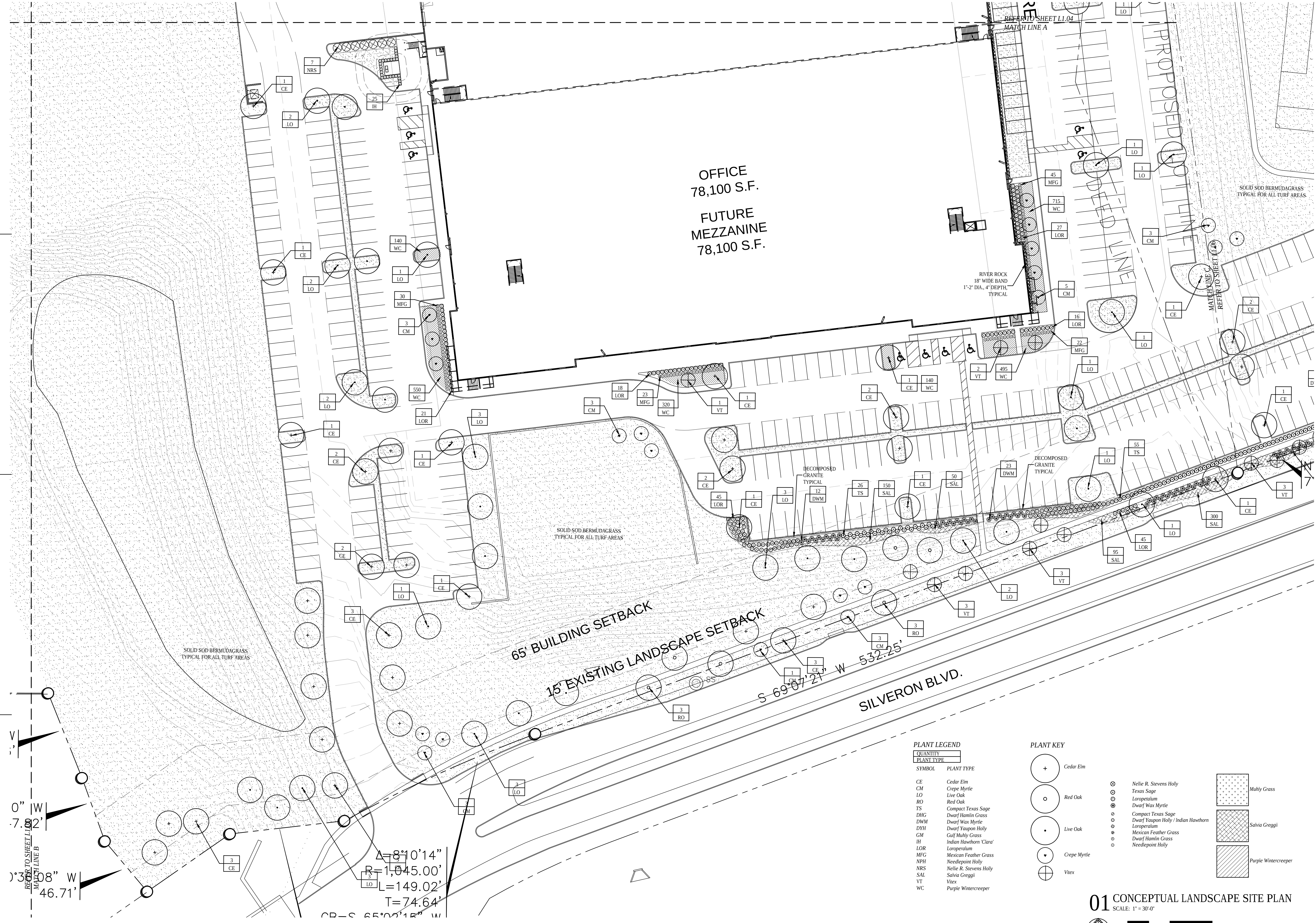
CONCEPTUAL LANDSCAPE PLAN

SHEET: L1.04

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U I SCALE: 1" = 30'-0'





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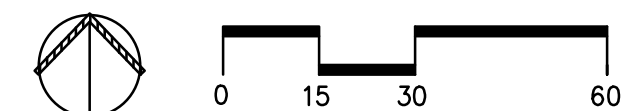


SHEET CONTENTS:
CONCEPTUAL LANDSCAPE PLAN

DATE: August 28, 2015
SHEET: L1.05



SCALE: 1" = 30'-0"



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SECTION 02800 - LANDSCAPE

PART 1 - GENERAL

1.1 REFERENCED DOCUMENTS

Refer to bidding requirements, special provisions, and schedules for additional requirements.

1.2 DESCRIPTION OF WORK

Work included: Furnish all supervision, labor, materials, services, equipment and appliances required to complete the work covered in conjunction with the landscaping covered in these specifications and landscaping plans, including:

1. Planting (trees, shrubs, and grass)
2. Bed preparation and fertilization
3. Notification of sources
4. Water and Maintenance until final acceptance
5. Guarantee

1.3 REFERENCE STANDARDS

- A. American Standard for Nursery Stock published by American Association of Nurserymen 27 October 1980, Edition; by American National Standards Institute, Inc. (Z60.1) – plant material.
- B. American Joint Committee on Horticultural Nomenclature: 1942 Edition of Standardized Plant Names.
- C. Texas Association of Nurserymen, Grades and Standards.
- D. Hortis Third, 1976 – Cornell University

1.4 NOTIFICATION OF SOURCES AND SUBMITTALS

- A. The Contractor shall, within ten (10) days following acceptance of bid, notify the Architect/Owner of the sources of plant materials and bed preparation required for the project.
- B. Samples: Provide representative quantities of sandy loam soil, mulch, bed mix, material, gravel, and crushed stone. (Samples shall be approved by Architect before use on project.
- C. Product Data: Submit complete product data and specifications on all other specified materials.
- D. Submit three representative samples of each variety of ornamental trees, shrubs, and groundcover plants for Architect's approval. When approved, tag, install, and maintain as representative samples for final installed plant materials.
- E. File Certificates of inspection of plant material by state, county, and federal authorities with Architect, if required.
- F. Soil Analysis: Provide sandy loam soil analysis if requested by the Architect.

PART 3 - EXECUTION

3.1 BED PREPARATION & FERTILIZATION

- A. Landscape Contractor to inspect all existing conditions and report any deficiencies to the Owner.
- B. All planting areas shall be conditioned as follows:
 1. Prepare new planting beds by scraping away existing grass and weeds as necessary. Till existing soil to a depth of six (6") inches prior to placing compost and fertilizer. Apply fertilizer as per manufacturers recommendations. Add six (6") inches of compost and till into a depth of six (6") inches of the topsoil. Apply organic fertilizer such as Sustane or Green Sense at the rate of twenty (20) pounds per one thousand (1,000) square feet.
 2. All planting areas shall receive a two (2") inch layer of specified mulch.
 3. Backfill for tree pits shall be as follows: Use existing top soil on site (use imported topsoil as needed) free from large clumps, rocks, debris, caliche, subsoils, etc., placed in nine (9") inch layers and watered in thoroughly.
- C. Grass Areas:
 1. Areas to be Solid Sod Bermudagrass: Blocks of sod should be laid joint to joint, (staggered joints) after fertilizing the ground first. Roll grass areas to achieve a smooth, even surface. The joints between the blocks of sod should be filled with topsoil where they are evidently gaped open, then watered thoroughly.
 2. Areas to be Hydromulch Common Bermudagrass: Hydromulch with bermudagrass seed at a rate of two (2) pounds per one thousand (1,000) square feet. Use a 4' x 8' batter board against the bed areas.

3.2 INSTALLATION

- A. Maintenance of plant materials shall begin immediately after each plant is delivered to the site and shall continue until all construction has been satisfactorily accomplished.
- B. Plant materials shall be delivered to the site only after the beds are prepared and area ready for planting. All shipments of nursery materials shall be thoroughly protected from the drying winds during transit. All plants which cannot be planted at once, after delivery to the site, shall be well protected against the possibility of drying by wind and sun. Balls of earth of B & B plants shall be kept covered with soil or other acceptable material. All plants remain the property of the Contractor until final acceptance.
- C. Position the trees and shrubs in their intended location as per plan.
- D. Notify the Landscape Architect for inspection and approval of all positioning of plant materials.
- E. Excavate pits with vertical sides and horizontal bottom. Tree pits shall be large enough to permit handling and planting without injury to balls of earth or roots and shall be of such depth that, when planted and settled, the crown of the plant shall bear the same relationship to the finish grade as it did to soil surface in original place of growth.

JOB CONDITIONS

- A. General Contractor to complete the following punch list: Prior to Landscape Contractor installing any portion of landscape installation, General Contractor shall leave planting bed areas three (3") inches below finish grade of sidewalks, drives and curbs as shown on the drawings. All lawn areas to receive solid sod shall be left one (1") inch below the finish grade of sidewalks, drives, and curbs. All construction debris shall be removed prior to Landscape Contractor beginning any work.
- B. General Contractor shall provide topsoil as described in Section 02200 - Earthwork.
- C. Storage of materials and equipment at the job site will be at the risk of the Landscape Contractor. The Owner cannot be held responsible for theft or damage.

1.6 MAINTENANCE AND GUARANTEE

- A. Maintenance:
 1. The Landscape Contractor will be held responsible for the maintenance of all work from the time of planting until final acceptance by the Owner. No trees, shrubs, groundcover or grass will be accepted unless they show a healthy growth and satisfactory foliage conditions.
 2. Maintenance shall include watering of trees and plants, cultivation, weeding spraying, edging, pruning of trees, mowing of grass, cleaning up and all other work necessary of maintenance.
 3. A written notice requesting final inspection and acceptance should be submitted to the Owner at least seven (7) days prior to completion. An on-site inspection by Owner and Landscape Contractor will be completed prior to written acceptance.
 4. After final acceptance of installation, the Landscape Contractor will not be required to do any of the above listed work.
- B. Guarantee:
 1. Trees shall be guaranteed for a twelve (12) month period after acceptance. Shrubs and groundcover shall be guaranteed for twelve (12) months. The Contractor shall replace all dead materials as soon as weather permits and upon notification of the Owner. Plants, including trees, which have partially died so that shape, size, or symmetry has been damaged, shall be considered subject to replacement. In such cases, the opinion of the Owner shall be final.
 - a. Plants used for replacement shall be of the same size and kind as those originally planted and shall be planted as originally specified. All work, including materials, labor and equipment used in replacements, shall carry a twelve (12) month guarantee. Any damage, including cuts in lawn or bed areas, incurred as a result of making replacements shall be immediately repaired.
 - b. At the direction of the Owner, plants may be replaced at the start of the next year's planting season. In such cases, dead plants shall be removed from the premises immediately.
 - c. When plant replacements are made: plants, soil mix, fertilizer and mulch are to be utilized as originally specified and inspected for full compliance with Contract requirements. All replacements are to be included under "Work" of this section.

2. The Owner agrees that for the guarantee to be effective, he will water plants at least twice a week during dry periods and cultivate beds once a month after final acceptance.
3. The above guarantee shall not apply where plants die after acceptance because of injury from storms, hail, freeze, insects, diseases, injury by humans, machines or theft.
4. Acceptance for all landscape work shall be given after final inspection by the Owner provided the job is in a completed, undamaged condition, and there is a stand of grass in all lawn areas. At this time, the Owner will assume maintenance on the accepted work.
- C. Repairs: Any necessary repairs under the Guarantee must be made within ten (10) days after receiving notice, weather permitting, and in the event the Landscape Contractor does not make repairs accordingly, the Owner, without further notice to Contractor, may provide materials and men to make such repairs at the expense of the Landscape Contractor.

1.7 QUALITY ASSURANCE

- A. General: Comply with applicable Federal, State, County and Local regulations governing landscape materials and work.
- B. Personnel: Employ only experienced personnel who are familiar with the required work. Provide full time supervision by a qualified foreman acceptable to Landscape Architect.
- C. Selection of Plant Material:
 1. Make contact with suppliers immediately upon obtaining notice of contract acceptance to select and book materials. Develop a program of maintenance (pruning and fertilization) which will insure the purchased materials will meet and/or exceed project specifications.
 2. Landscape Architect will provide a key identifying each tree location on site. Written verification will be required to document material selection, source and delivery schedules to site.
 3. Owner and/or Architect shall inspect all plant materials when reasonable at place of growth for compliance with requirements for genus, species, cultivar/variety, size and quality.
 4. Owner and/or Architect retains the right to further inspect all plant material upon arrival at the site and during installation for size and condition of root balls, limbs, branching habit, insects, injuries, and latent defects.
 5. Owner and/or Architect may reject unsatisfactory or defective material at any time during the process of work. Remove rejected materials from the site immediately. Plants damaged in transit or at job site shall be rejected.

1.8 PRODUCT DELIVERY, STORAGE AND HANDLING

- A. Preparation:
 1. Balled and Burlapped (B&B) Plants: Dig and prepare shipment in a manner that will not damage roots, branches, shape, and future development.
 2. Container Grown Plants: Deliver plants in rigid container to hold ball shape and protect root mass.

A. Delivery:

1. Deliver packaged materials in sealed containers showing weight, analysis and name of manufacturer. Protect materials from deterioration during delivery and while stored at site.
2. Deliver only plant materials that can be planted in one day unless adequate storage and watering facilities are available on job site.
3. Protect root balls by heeling in with sawdust or other approved moisture retaining material if not planted within 24 hours of delivery.
4. Protect plants during delivery to prevent damage to root balls or desiccation of leaves. Keep plants moist at all times. Cover all materials during transport.
5. Notify Architect of delivery schedule 72 hours in advance so plant material may be observed upon arrival at job site.
6. Remove rejected plant material immediately from site.
7. To avoid damage or stress, do not lift, move, adjust to plumb, or otherwise manipulate plants by trunk or stems.

PART 2 - PRODUCTS

2.1 PLANTS

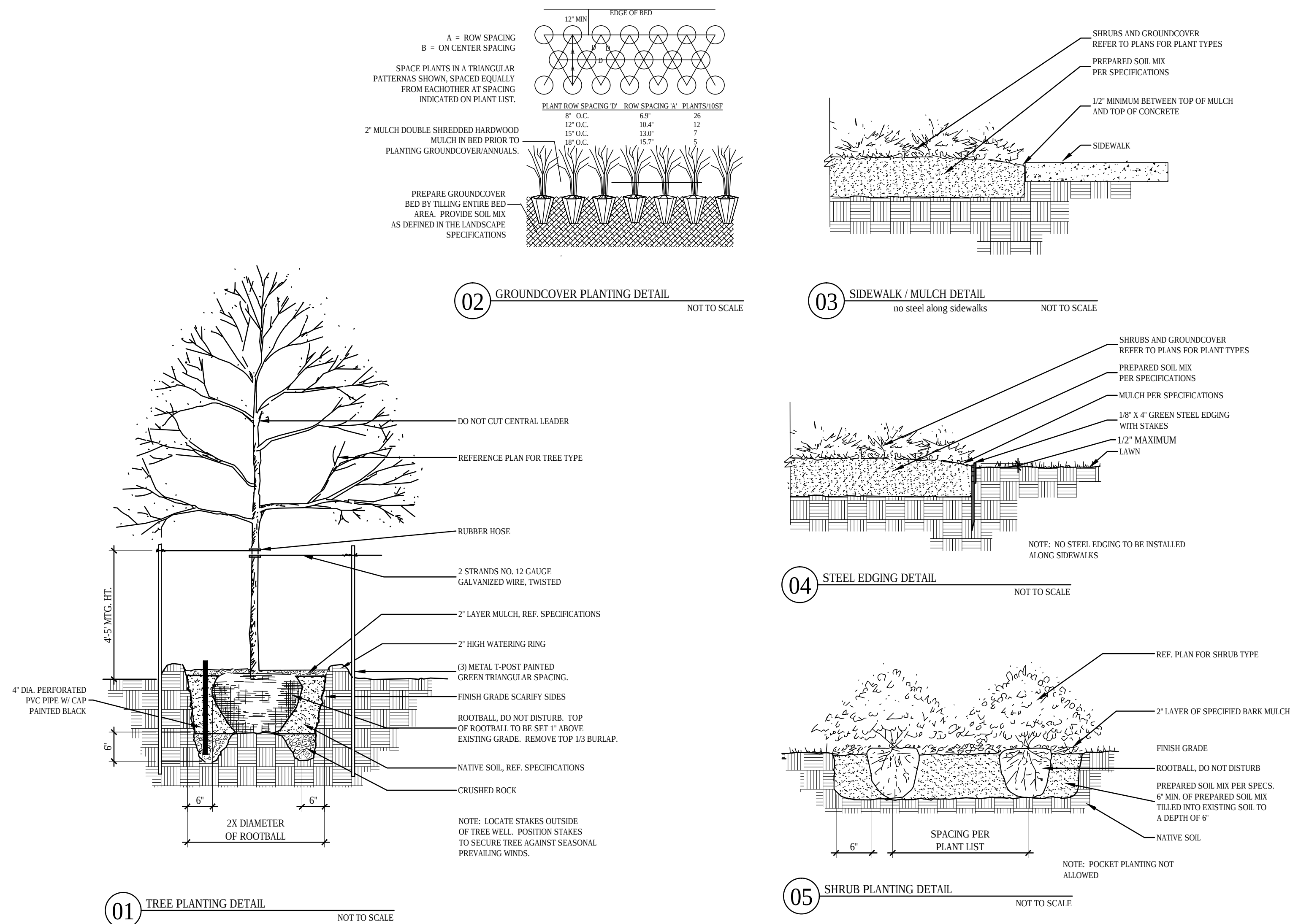
- A. General: Well-formed No. 1 grade or better nursery grown stock. Listed plant heights are from tops of root balls to nominal tops of plants. Plant spread refers to nominal outer width of the plant, not to the outer leaf tips. Plants will be individually approved by the Architect and his decision as to their acceptability shall be final.
- B. Quantities: The drawings and specifications are complementary. Anything called for on one and not the other is as binding as if shown and called for on both. The plant schedule is an aid to bidders only. Confirm all quantities on plan.
- C. Quality and size: Plant materials shall conform to the size given on the plan, and shall be healthy, symmetrical, well-shaped, full branched, and well rooted. The plants shall be free from injurious insects, diseases, injuries to the bark or roots, broken branches, objectionable disfigurements, insect eggs and larvae and are to be of specimen quality.
- D. Approval: All plant materials shall be subject to the approval of the Owner. All plants which are found unsuitable in growth, or in any unhealthy, badly shaped, or undersized condition, will be rejected by the Landscape Architect, either before or after planting, and shall be removed at the expense of the Landscape Contractor and replaced with acceptable plants as specified.
- E. Trees shall be healthy, full-branched, well-shaped and shall meet the trunk diameter and height requirements of the plant schedule. Balls shall be firm, neat, slightly tapered, and well wrapped in burlap. Any tree loose in the ball or with broken ball at time of planting will be rejected. Balls shall be ten (10) inches in diameter for each one (1") inch of trunk diameter. Measured six (6") inches above ball. Nomenclature conforms to the customary nursery usage: for clarification, the term "trunk-trunk" defines a plant having three (3) or more trunks of nearly equal diameter.
- F. Pruning: All pruning of trees and shrubs, as directed by the Landscape Architect, shall be executed by the Landscape Contractor at no additional cost to the Owner.

2.2 SOIL PREPARATION MATERIALS

- A. Sandy Loam:
 1. Friable, fertile, dark, loamy soil, free of clay lumps, subsoil, stones and other extraneous material and reasonably free of weeds and foreign grasses. Loam containing Dallasgrass or Nutgrass shall be rejected.
 2. Physical properties as follows:
 - Clay – between 7-27 percent
 - Silt – between 15-25 percent
 - Sand – less than 52 percent
 3. Organic matter shall be 3%-10% of total dry weight.
 4. If requested, provide a certified soil analysis conducted by an approved soil testing laboratory verifying that sandy loam meets the above requirements.
- B. Organic Material: Compost with a mixture of 80% vegetative matter and 20% animal waste. Ingredients should be a mix of course and fine textured material.
- C. Premixed Bedding Soil as supplied by Vital Earth Resources, Gladewater, Texas; Professional Bedding Soil as supplied by Living Earth Technology, Dallas, Texas or Acid Gro Municipal Mix as supplied by Soil Building Systems, Dallas, Texas or approved equal.
- D. Sharp Sand: Sharp sand must be free of seeds, soil particles and weeds.
- E. Mulch: Double Shredded Hardwood Mulch, partially decomposed, dark brown. Living Earth Technologies or approved equal.
- F. Organic Fertilizer: Fertalid, Sustane, or Green Sense or equal as recommended for required applications. Fertilizer shall be delivered to the site in original unopened containers, each bearing the manufacturer's guaranteed statement of analysis.
- A. Commercial Fertilizer: 10-20-10 or similar analysis. Nitrogen source to be a minimum 50% slow release organic Nitrogen (SCU or UF) with a minimum 8% sulphur and 4% iron, plus micronutrients.
- B. Peat: Commercial sphagnum peat moss or partially decomposed shredded pine bark or other approved organic material.

2.3 MISCELLANEOUS MATERIALS

- A. Steel Edging: Shall be Ryerson "Estate Curbing", 1/8" x 4" with stakes 4' on center.
- B. Staking Material for Shade Trees:
 1. Post: Studded T-Post, #1 Armco with anchor plate, 6'-0" length; paint green.
 2. Wire: 12 gauge, single strand, galvanized wire.
 3. Rubber hose: 2 ply, fiber reinforced hose, minimum 3/4 inch inside diameter. Color: Black.
- C. Gravel: Washed native pea gravel, graded 1 in. to 1-1/2 in.
- D. Filter Fabric: Mirafi 140N by Celanese Fibers Marketing Company, available at Lottland Co., (214) 631-5250 or approved equal.



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7

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9



SHEET CONTENTS:

LANDSCAPE SPECIFICATIONS

DATE: August 28, 2015

SHEET: L1.07

ELEVATION NOTES AND PAINT COLOR

A. ALL EXTERNAL ELECTRICAL PANELS AND CONDUIT SHALL BE PAINTED/TEXTURED TO MATCH BUILDING MATERIAL AND COLOR.

- COLOR PT-1: SHERWIN WILLIAMS - SW 7036 Accessible Beige
- COLOR PT-2: SHERWIN WILLIAMS - SW 7038 Tony Taupe
- COLOR PT-3: SHERWIN WILLIAMS - SW 7039 Virtual Taupe
- COLOR PT-4: SHERWIN WILLIAMS - SW 7040 Smokehouse
- STONE ST-1: AUSTIN STONE VENEER

MATERIAL SCHEDULE

MARK	NAME	DESCRIPTION	COMMENTS
AL-1	ALUMINUM STOREFRONT	CLEAR ANODIZED ALUMINUM	
GL-1	GLASS	1" INSULATED GRAYLITE II GLASS	
MC-1	PAINTED METAL CANOPY	PAINT FINISH BONDPLEX SILVER	
PT-1	CONCRETE TILTWALL PANEL	SW 7009 PEARLY WHITE	MEDIUM TEXTURED
PT-2	CONCRETE TILTWALL PANEL	SW 7038 TONY TAUPE	MEDIUM TEXTURED

MATERIALS TABLE - BUILDING 1

		NORTH	SOUTH	EAST	WEST
1.	TOTAL FACADE S.F.	16,785 SF	17,393 SF	21,889 SF	25,277 SF
2.	FACADE S.F. (MINUS DOORS AND WINDOWS)	16,689 SF	12,669 SF	19,071 SF	21,061 SF
3.	DOORS AND WINDOWS S.F.	96 SF	4,724 SF	2,818 SF	4,216 SF
4.	PRIMARY MASONRY TOTALS (MIN. 80%)	16,689 SF / 100%	12,669 SF / 100%	19,071 SF / 100%	21,061 SF / 100%
	- BRICK S.F. (AS APPLICABLE)	0 SF / 100%	0 SF / 100%	0 SF / 100%	0 SF / 100%
	- STONE S.F. (AS APPLICABLE)	2,145 SF / 12.9%	2,433 SF / 19.2%	0 SF / 100%	0 SF / 100%
	- TILTWALL S.F. (AS APPLICABLE)	14,544 SF / 87.1%	10,236 SF / 80.8%	19,071 SF / 100%	21,061 SF / 100%
5.	SECONDARY MASONRY TOTALS (MAX. 20%)	0 SF / 0%	0 SF / 0%	0 SF / 0%	0 SF / 0%
	- STUCCO S.F. (AS APPLICABLE)	0 SF / 0%	0 SF / 0%	0 SF / 0%	0 SF / 0%
	- EIFS S.F. (AS APPLICABLE)	0 SF / 0%	0 SF / 0%	0 SF / 0%	0 SF / 0%
	- HARDPLANK S.F. (AS APPLICABLE)	0 SF / 0%	0 SF / 0%	0 SF / 0%	0 SF / 0%
	- DETAIL ANY ADDITIONAL S.F. (AS APPLICABLE)	0 SF / 0%	0 SF / 0%	0 SF / 0%	0 SF / 0%



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INDUSTRIAL

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P: 214.661.8341 | C: 214.766.1024
www.crowholdingsindustrial.com

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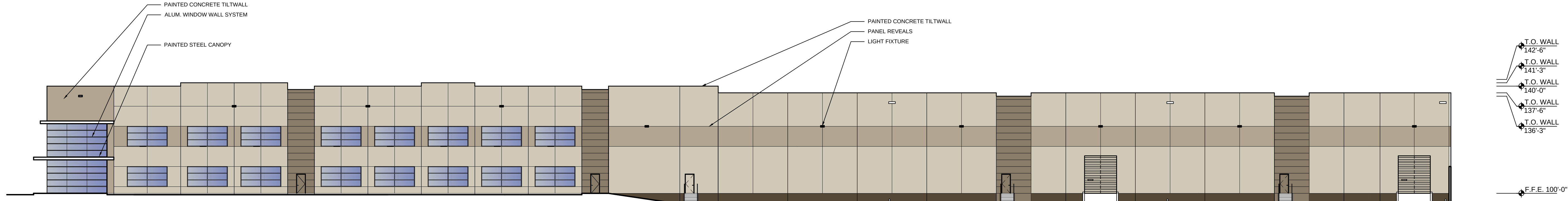
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www.azimutharc.com

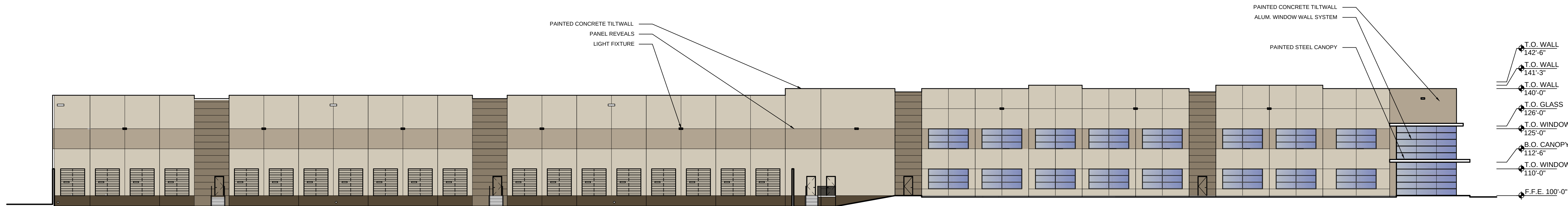
16 CONCEPTUAL EAST ELEVATION

Scale: 1" = 20'-0"



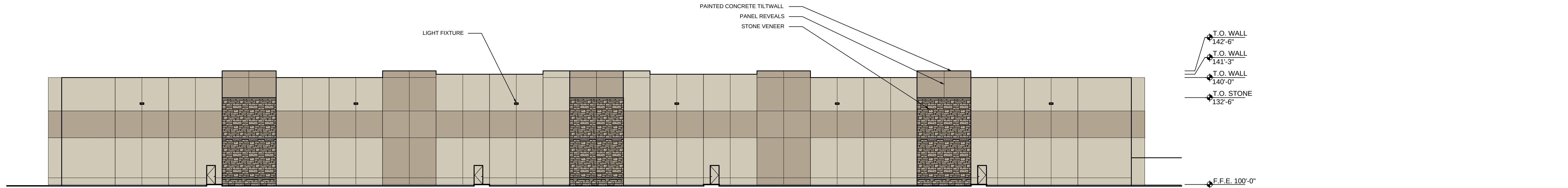
12 CONCEPTUAL WEST ELEVATION

Scale: 1" = 20'-0"



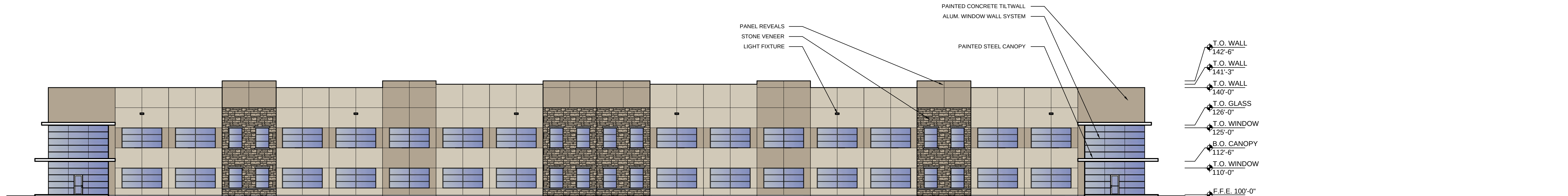
08 CONCEPTUAL NORTH ELEVATION

Scale: 1" = 20'-0"



04 CONCEPTUAL SOUTH ELEVATION

Scale: 1" = 20'-0"



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JOB # :

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7	11.16.15	City Comments
8	12.01.15	City Comments
9	01.04.16	City Comments



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SHEET CONTENTS:

CONCEPTUAL
ELEV. BLDG. 1

DATE: January 4, 2016

SHEET:

A7.01

ELEVATION NOTES AND PAINT COLOR

A. ALL EXTERNAL ELECTRICAL PANELS AND CONDUIT SHALL BE PAINTED/TEXTURED TO MATCH BUILDING MATERIAL AND COLOR.

- COLOR PT-1: SHERWIN WILLIAMS - SW 7009 Pearly White
- COLOR PT-2: SHERWIN WILLIAMS - SW 7038 Tony Taupe
- STONE ST-1: AUSTIN STONE VENEER

MATERIAL SCHEDULE				MATERIALS TABLE - BUILDING 2					
MARK	NAME	DESCRIPTION	COMMENTS			NORTH	SOUTH	EAST	WEST
AL-1	ALUMINUM STOREFRONT	CLEAR ANODIZED ALUMINUM		1.	TOTAL FACADE S.F.	9,550 SF	9,550 SF	25,080 SF	24,390 SF
GL-1	GLASS	1" INSULATED GRAYLITE II GLASS		2.	FACADE S.F. (MINUS DOORS AND WINDOWS)	8,580 SF	8,580 SF	21,453 SF	23,464 SF
MC-1	PAINTED METAL CANOPY	PAINT FINISH BONDPLEX SILVER		3.	DOORS AND WINDOWS S.F.	970 SF	970 SF	3,627 SF	926 SF
PT-1	CONCRETE TILT WALL PANEL	SW 7009 PEARLY WHITE	MEDIUM TEXTURED	4.	PRIMARY MASONRY TOTALS (MIN. 80%)	8,580 SF / 100%	8,580 SF / 100%	21,453 SF / 100%	23,464 SF / 100%
PT-2	CONCRETE TILT WALL PANEL	SW 7038 TONY TAUPE	MEDIUM TEXTURED		- BRICK S.F. (AS APPLICABLE)	0 SF / 0%	0 SF / 0%	0 SF / 0%	0 SF / 0%
ST-1	STONE VENEER	AUSTIN STONE			- STONE S.F. (AS APPLICABLE)	970 SF / 11.3%	970 SF / 11.3%	0 SF / 0%	1,488 SF / 6.3%
					- TILT WALL S.F. (AS APPLICABLE)	7,610 SF / 88.7%	7,610 SF / 88.7%	21,453 SF / 100%	21,976 SF / 93.7%
				5.	SECONDARY MASONRY TOTALS (MAX. 20%)	0 SF / 0%	0 SF / 0%	0 SF / 0%	0 SF / 0%
					- STUCCO S.F. (AS APPLICABLE)	0 SF / 0%	0 SF / 0%	0 SF / 0%	0 SF / 0%
					- EIFS S.F. (AS APPLICABLE)	0 SF / 0%	0 SF / 0%	0 SF / 0%	0 SF / 0%
					- HARDIPLANK S.F. (AS APPLICABLE)	0 SF / 0%	0 SF / 0%	0 SF / 0%	0 SF / 0%
					- DETAIL ANY ADDITIONAL S.F. (AS APPLICABLE)	0 SF / 0%	0 SF / 0%	0 SF / 0%	0 SF / 0%



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11 BUILDING 2 EAST CONCEPTUAL ELEVATION

Scale: 1" = 20'-0"

PAINTED CONCRETE TILTWALL PT-2
PAINTED CONCRETE TILTWALL PT-1
ALUM. STOREFRONT AL-1

07 BUILDING 2 WEST CONCEPTUAL ELEVATION

Scale: 1" = 20'-0"

AUSTIN STONE VENEER ST-1
PAINTED CONCRETE TILTWALL PT-1
PAINTED CONCRETE TILTWALL PT-2
ALUM. STOREFRONT AL-1

NOTE: OVERALL BUILDING HEIGHT IS 40'

02 BUILDING 2 NORTH CONCEPTUAL ELEVATION (SOUTH O.H.)

Scale: 1" = 20'-0"

PAINTED CONCRETE TILTWALL PT-1
PAINTED CONCRETE TILTWALL PT-2
ALUM. STOREFRONT AL-1
AUSTIN STONE VENEER ST-1
PAINTED STEEL TRELISS
PANEL REVEALS
PANEL FORM LINER
WALL SCONCE LIGHT FIXTURE

T.O. WALL 140'-0"
T.O. WALL 138'-9"
T.O. GLASS 130'-0"
T.O. GLASS 122'-6"
T.O. WALL 120'-0"
T.O. TRELESS 112'-6"
T.O. GLASS 110'-0"
F.F.E. 100'-0"

SILVERON DC 1 & 2

Lakeside Parkway
Flower Mound, Texas 75028

21009

1	07.17.15	City Submittal
2	08.28.15	City Submittal
3	09.08.15	Pricing Set
4	09.18.15	City Comments
5	10.06.15	City Comments
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8	12.01.15	City Comments
9	12.28.15	City Comments



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A7.02

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SILVERON DC 1 & 2

Lakeside Parkway
Flower Mound, Texas 75028

21009

CLIENT:

JOB # :

REVISIONS:

SEAL:

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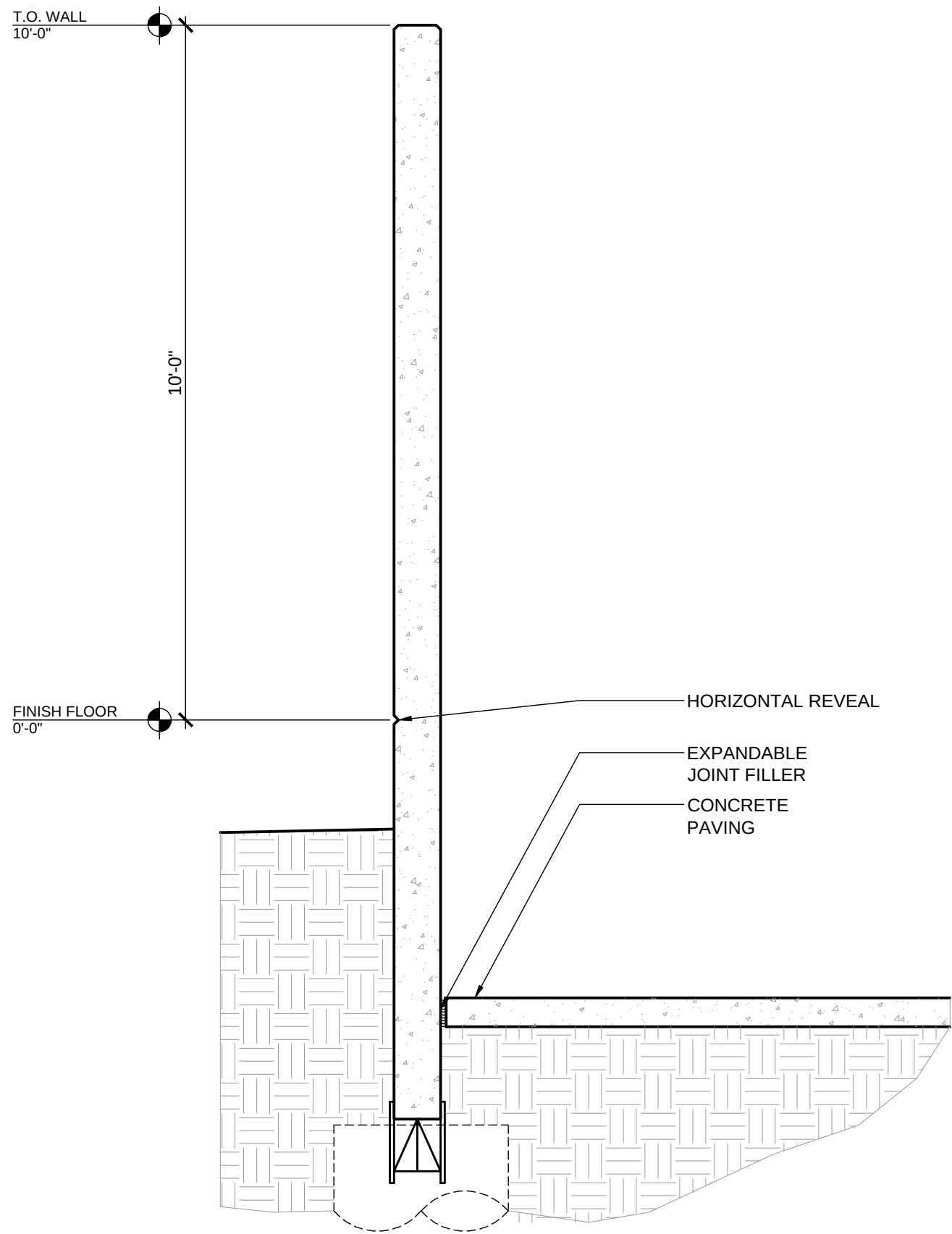
CONCEPTUAL
BLDG. SECT.

DATE: December 28, 2015

SHEET:

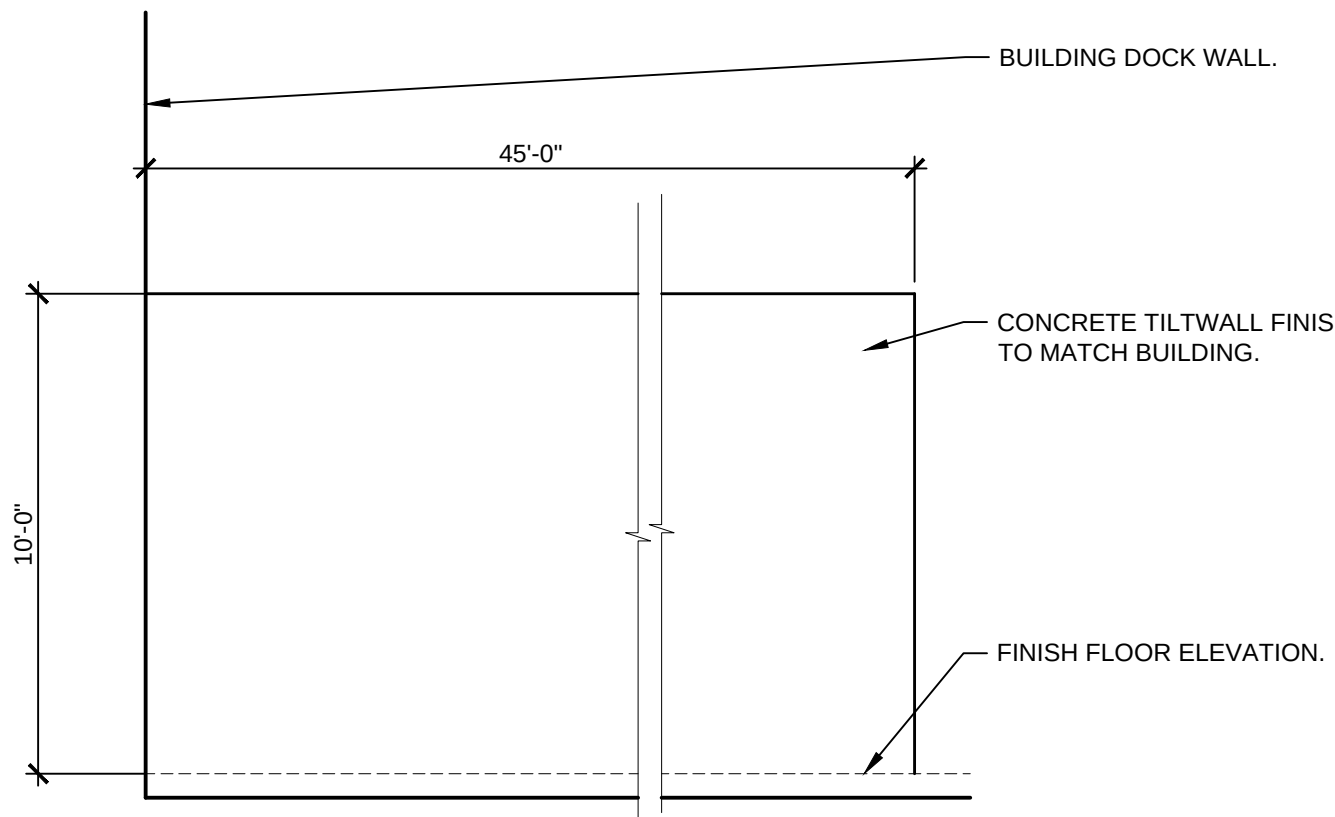
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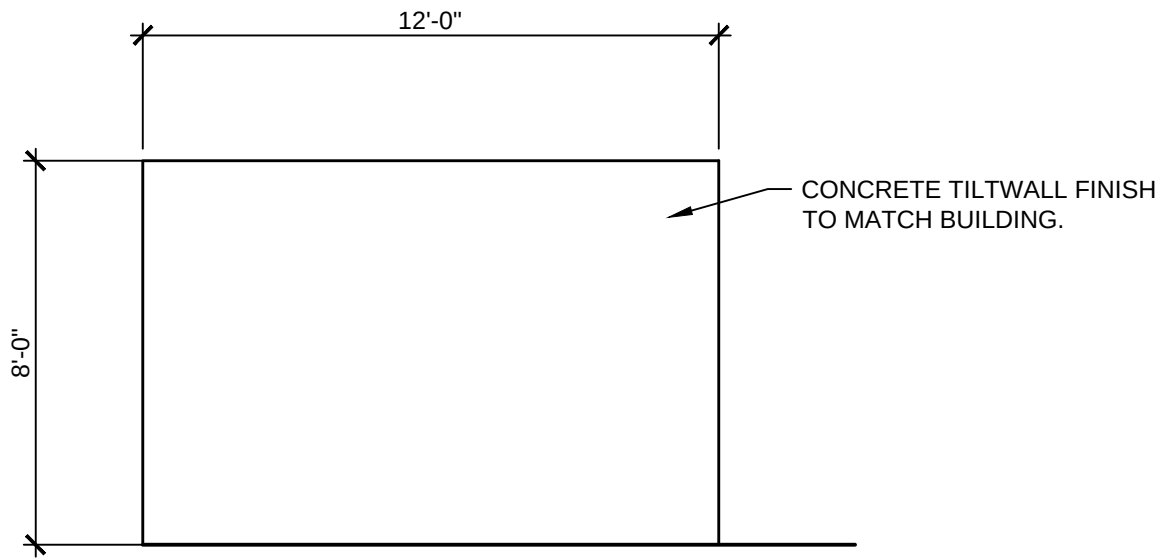
08 SCREEN WALL SECTION

Scale: 1/2" = 1'-0"



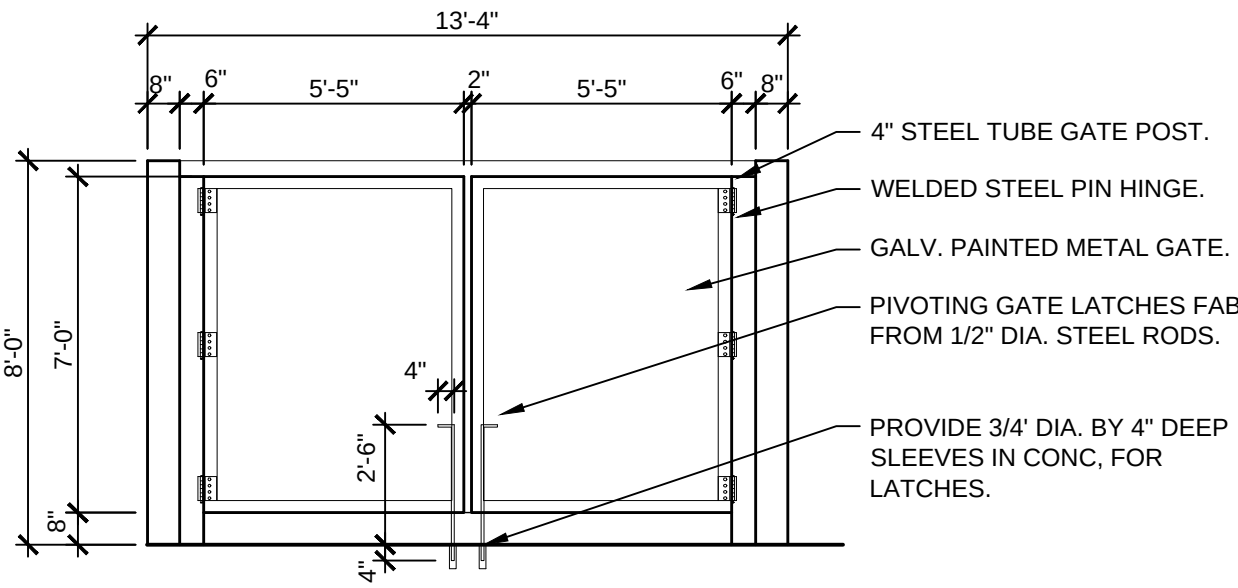
06 TRASH ENCLOSURE SIDE ELEV.

Scale: 1/4" = 1'-0"



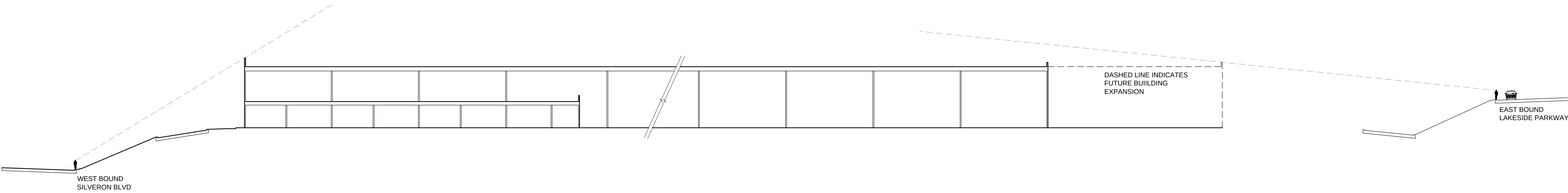
06 TRASH ENCLOSURE SIDE ELEV.

Scale: 1/4" = 1'-0"



05 TRASH ENCLOSURE GATE ELEV.

Scale: 1/4" = 1'-0"



04 CONCEPTUAL BUILDING SECTION WITH SIGHT LINES

Scale: 1" = 30'-0"

DEVELOPMENT STANDARDS
Planned Development District No. 145
for Campus Industrial Uses

Silveron Industrial

The development as described in Exhibit “XX” shall be developed in accordance with the Town’s Master Plan and Land Development Regulations, as amended, and shall be subject to the following conditions and requirements:

A. PERMITTED USES

Campus Industrial District (CI) uses. Development of Silveron Industrial comprising approximately 41.04 acres land, shall comply with all regulations applicable to the Campus Industrial District (CI) uses in the Land Development Regulations, as amended, except as otherwise provided in this ordinance.

B. DIMENSIONAL REGULATIONS

The dimensional regulations for this Planned Development shall comply with Campus Industrial District (CI) uses and/or as depicted in Exhibit XX.

C. ARCHITECTURAL STANDARDS

1. Roof pitches shall conform to the Town's Master Plan. Sloped roofing shall be required for structures 15,000 square feet in area and less. Buildings of one or two stories over 15,000 square feet in area may have a flat or low-slope roof, but shall use a parapet wall or mansard roof along the building perimeter, so that the flat or low-slope roof and any roof top mounted mechanical equipment is not visible from the public right-of-way or from neighboring residential buildings.
2. Contrasting wall planes, architectural elements, and rooflines shall be used to create exemplary and enduring elevations. Building entries will be identified by various architectural features including arches,

canopies, and portals.

3. All building elevations will be articulated to meet or exceed the Town of Flower Mound Urban Design Plan. Buildings will reflect an architectural prominence, with particular attention being paid to architectural quality on the facades, rooflines, and elevations visible from adjacent roadways.
4. Franchise utility panels and connection points shall be painted to match the color and texture of the building and located so that they are not visible from public roadways, except that Franchise utility panels and connection points facing Arterial Roadways will be kept at a minimum and adequately screened, with additional landscaping or other approved material during the Site Plan approval process, to obstruct visibility from adjacent roadways.
5. Specific Building Material Standards shall include:
 - a. A minimum of eighty percent (80%) of the building wall area (not including doors and windows) shall be of a primary masonry identified within the Town's Urban Design Plan. Up to twenty percent (20%) of any wall surface material may be stucco, fiber cement board, cementitious plaster, E.I.F.S., CMU, or a combination of all.
 - b. The use of exposed standard concrete shall not be utilized for any elevation.
 - c. Unpainted metal, galvanized metal, or metal subject to rusting shall not be used. All exposed metals shall have a factory-applied finish if available.
 - d. Outward facing mirrored glass shall not be used.
 - e. Not more than fifteen percent (15%) of any elevation shall be comprised of a color that is not considered an earth or wood tone. White or shades of white shall be considered an earth tone color.

D. LANDSCAPE BUFFER AND SCREENING REQUIREMENTS

1. Landscaping and buffering shall be provided in a consistent manner as shown on Exhibit XX.
2. All loading areas shall be completely screened from public right-of-ways by a screen wall, which is of adequate length and height to completely enclose a delivery vehicle parked in a loading area. Additionally, berms and landscaping may be used to enhance screening and soften screen walls.

E. MISCELLANEOUS STANDARDS

1. Storm water storage facilities may include detention and/or retention ponds provided that retention ponds shall include aeration. Detention or retention ponds may include either sloped edges or hard edges comprised of stacked stone, stone veneer, cut stone or faux stone that complement the development. No exposed concrete is permitted.
2. All site retaining walls shall utilize stacked stone, stone veneer, cut stone, or faux stone that complements the material standards and colors for the development.
3. If the development of PD-145 includes phasing of any nature, such phasing shall be detailed in the subsequent development application, be it a Development Plan, Record Plat, or a Site Plan.
4. Open Space Amenity and Pedestrian connectivity requirements within Planned Development District 145 shall incorporate the standards for such space as described by the Town's Urban Design Plan.

F. EXCEPTIONS

The following exceptions shall be granted with the approval of the Planned Development District:

1. Exceptions 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 as shown in Exhibit XX.
2. Exceptions to Topographic Slope Protection: An exception to Section 98-147, Topographical Slope Protection is granted for approximately 3.86 acres of land that have topographic slopes of between 5% and 12% and are not within 5 feet of the structure and for approximately 0.56 acres of land that have topographic slopes greater than 12% that will be impacted by the proposed development. These numbers may be adjusted with minor changes prior to record plat approval for each phase of the development. The developer shall provide detailed drawings that illustrate the impact of the proposed development on the natural topography and the manner by which the development is integrated into, reflects and maintains the overall integrity of the natural topography with subsequent record plat applications. In addition, the developer shall conform with the following requirements with subsequent record plat applications:
 - a. The identification of those specific Best Management Practices ("BMPs") that will be used to maintain and responsibly integrate the development into the natural topography together with an explanation regarding their use within the plans for such development. The BMPs to be used shall include, but are not limited to, those BMPs found within the Town's Engineering Design and Construction Standards.
 - b. While recognized as a potential BMP, the use of retaining walls should be kept to a minimum. Any retaining wall four foot (4') or greater in height shall be designed by a professional engineer licensed by the State of Texas.



TECHNICAL MEMORANDUM

To: Mr. Will Mundinger – Crow Holdings Industrial

From: Steve E. Stoner, P.E., PTOE – Pacheco Koch

Date: January 4, 2016

RE: Parking Study for Silveron Development (Eastern Building)

INTRODUCTION

The services of Pacheco Koch, LLC were retained by Crow Holdings Industrial to assess the parking needs for a portion of the Silveron DC 1&2 development on Lakeside Parkway in Flower Mound, Texas. Rezoning the property to Planned Development District No. 31 with Campus Industrial Uses is proposed. This parking analysis is being prepared pursuant to the requirements of the Town of Flower Mound Code of Ordinances, Section 82-73 (3,4).

Pacheco Koch is a consulting firm based in Dallas, Texas, providing licensed professional engineers skilled in traffic/transportation engineering and parking analyses.

PROJECT DESCRIPTION

The eastern building of the Silveron DC 1 & 2 warehouse/office development is depicted on the attached Conceptual Site Plan prepared by Azimuth Architecture. The initial construction will consist of 78,100 SF of office space and 131,200 SF of warehouse. A future, 41,600-SF expansion of the warehouse space is planned. For this scenario, the tenant anticipates a parking need for 403 parking spaces as depicted in the attached Conceptual Site Plan prepared by Azimuth Architecture.

The opportunity also exists to increase (double) the office space on a mezzanine level inside the building. Though this scenario is not currently proposed, this “potential maximum” scenario is also depicted in the Conceptual Site Plan with 490 potential parking spaces.

CODE PARKING REQUIREMENT

The parking criteria defined in Section 82-74 of the Development Code calls for one parking space per 300 square feet of office use and one parking space per 2,000 square feet of warehouse use. Application of the default parking requirements (i.e., base code) for each scenario is summarized in **Table 1**.

Table 1. Base Code Parking Requirement
(Data provided by Azimuth Architecture)

Land Use	Rate	Initial Construction		Expanded Building		Potential Maximum	
		Amount	Spaces Required	Amount	Spaces Required	Amount	Spaces Required
Office	1 spaces per 300 GSF	78,100 SF	260	78,100 SF	260	156,200 SF	520
Warehouse	1 space per 2,000 SF	131,200 SF	66	172,800 SF	86	172,800 SF	86
SUBTOTAL	--	209,200 SF	326	205,900 SF	346	329,000 SF	606
Allowable Range	-20%	--	261 [-65]	--	277 [-69]	--	485 [-121]
	+20%	--	391 [+65]	--	415 [+69]	--	727 [+121]

NOTE: Truck loading docks are in addition to the vehicular parking supply.

PUBLISHED PARKING DATA

The Institute of Transportation Engineers *Parking Generation* manual (4th Edition) provides published data summarizing the projected peak parking demand for various land uses based upon data collected around the country over several years. Although not all land uses are listed in the Manual, and some of the listed uses only contain very limited data sets, *Parking Generation* may provide a reference point for estimating peak parking demand.

The following table summarizes the potentially applicable data for the subject land use.

Table 2. ITE Parking Generation Data (for reference)

Land Use	ITE Description	ITE Peak Parking Rate (Study Sample Size)	Projected Peak Parking Demand for Subject Use Using ITE Rate (at Full Buildout)
Warehousing	Warehouses are primarily devoted to the storage of material but may also include office and maintenance areas.	0.51 vehicles per 1,000 GSF (14)	168
Manufacturing	Manufacturing facilities are areas where the primary activity is the conversion of raw material or parts into finished projects. Size and type of facility may vary substantially. In addition, facilities also have office, warehouse, research and associated functions.	1.02 vehicles per 1,000 GSF (3)	336

SUMMARY

The eastern building of the proposed Silveron DC 1 & 2 warehouse/office development will initially provide 403 parking spaces, which will accommodate the tenants parking needs through the planned warehouse expansion phase. Based upon the Town of Flower Mound code requirements, the facility is required to provide between 277 and 415 parking spaces.

At (potential) maximum buildout, the development is required to provide between 485 and 727 parking spaces. Under this scenario the site can accommodate a minimum of 490 parking spaces, which is within the Town's parking requirement.

Table 3. Proposed Parking Supply
(Data provided by Azimuth Architecture)

Scenario	Initial Construction	Expanded Building	Potential Maximum
Parking Spaces Required (+/- 20% Range)	261 - 391	277 - 415	485 - 727
Proposed Parking Spaces	403	403	490
Within Range?	NO*	YES	YES

* Parking supply in the initial construction phase exceeds standard range by twelve (12) spaces since parking for the planned building expansion is included per the request of the building's tenant.

No adjustments to the proposed parking supply are required.

NOTE: Both the proposed parking supply and the Town's parking requirement are higher than the projected parking peak demand based upon ITE *Parking Generation* data; although, ITE acknowledges that each facility has unique parking needs.

END

SES/smm
2283-15.162_Technical Memo

SITE DATA

SITE AREA PROPOSED LOT 1 =	1,603,400 S.F. / 36.809 AC.
SITE AREA PROPOSED LOT 2 =	184,221 S.F. / 4.229 AC.
BUILDING 1 AREA =	209,300 S.F.
BUILDING 1 AREA FUTURE OFFICE =	78,100
BUILDING 1 AREA WAREHOUSE EXPANSION =	41,600
BUILDING 1 AREA TOTAL =	329,000
BUILDING 2 AREA =	128,950 S.F.
TOTAL BUILDING AREA =	457,950 S.F.
COVERAGE =	25.62%

TOTAL PARKING REQUIRED W/OUT 20% REDUCTION =	728
TOTAL PARKING REQUIRED WITH 20% REDUCTION =	582
TOTAL PARKING PROVIDED =	604

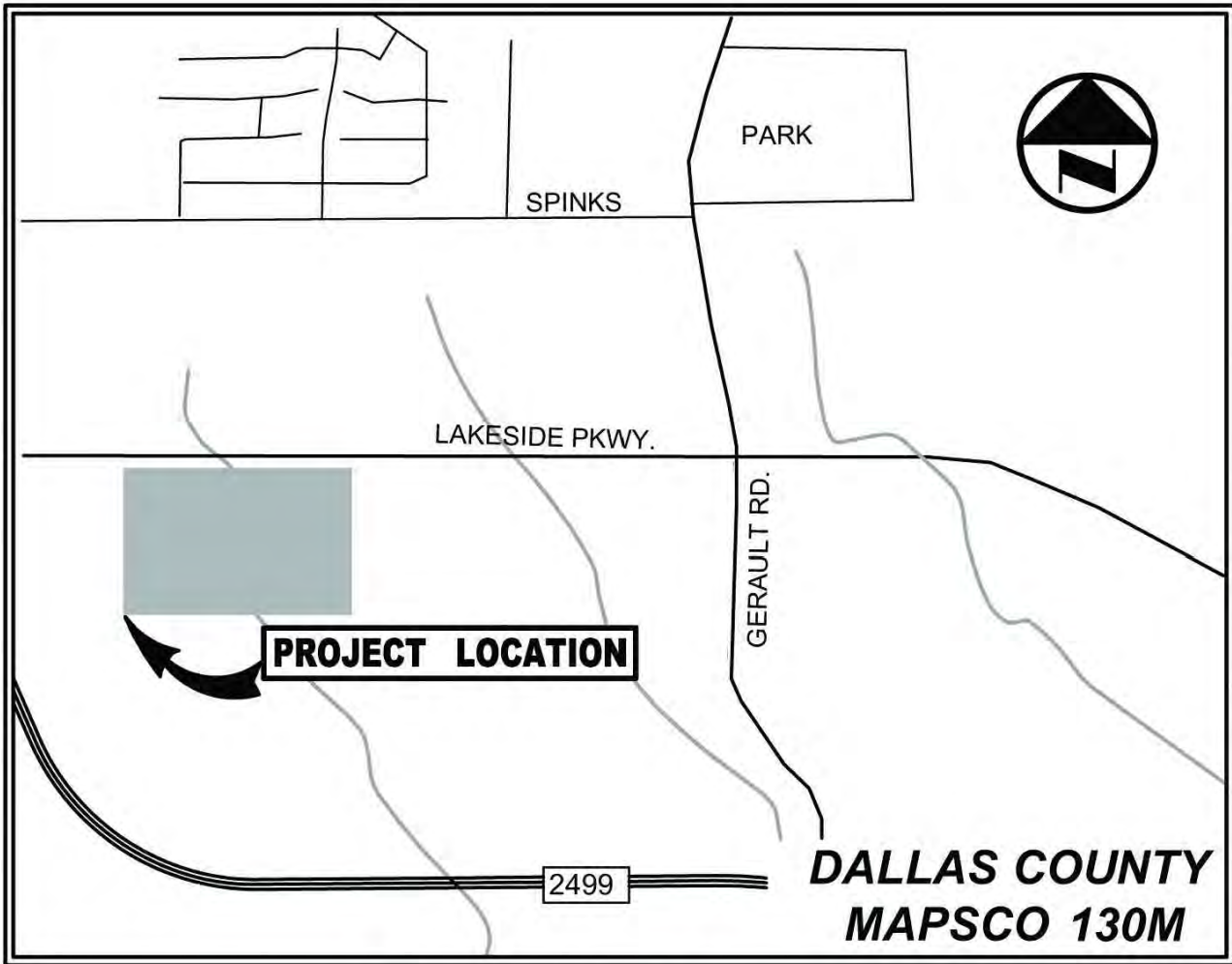
BUILDING FEATURES

- BUILDING 1:
- PAINT FINISH CONCRETE TILTWALL BUILDING WITH STONE FEATURES
 - PAINTED STEEL CANOPIES AT OFFICE ENTRIES
 - 50' X 50' TYPICAL BAY
 - (19) 10' X 10' O.H. DOCK DOORS
 - 32' CLEAR HEIGHT - TOTAL BUILDING HEIGHT 42'-6"
 - E.S.F.R. FIRE PROTECTION SYSTEM

- BUILDING 2:
- PAINT FINISH CONCRETE TILTWALL BUILDING WITH STONE FEATURES
 - PAINTED STEEL CANOPIES AND TRELLIS AT OFFICE ENTRIES
 - 50' X 50' TYPICAL BAY, 60' X 50' STAGING BAY
 - (32) 9' X 10' O.H. DOCK DOORS
 - 32' CLEAR HEIGHT - TOTAL BUILDING HEIGHT 40'
 - E.S.F.R. FIRE PROTECTION SYSTEM

GENERAL NOTES

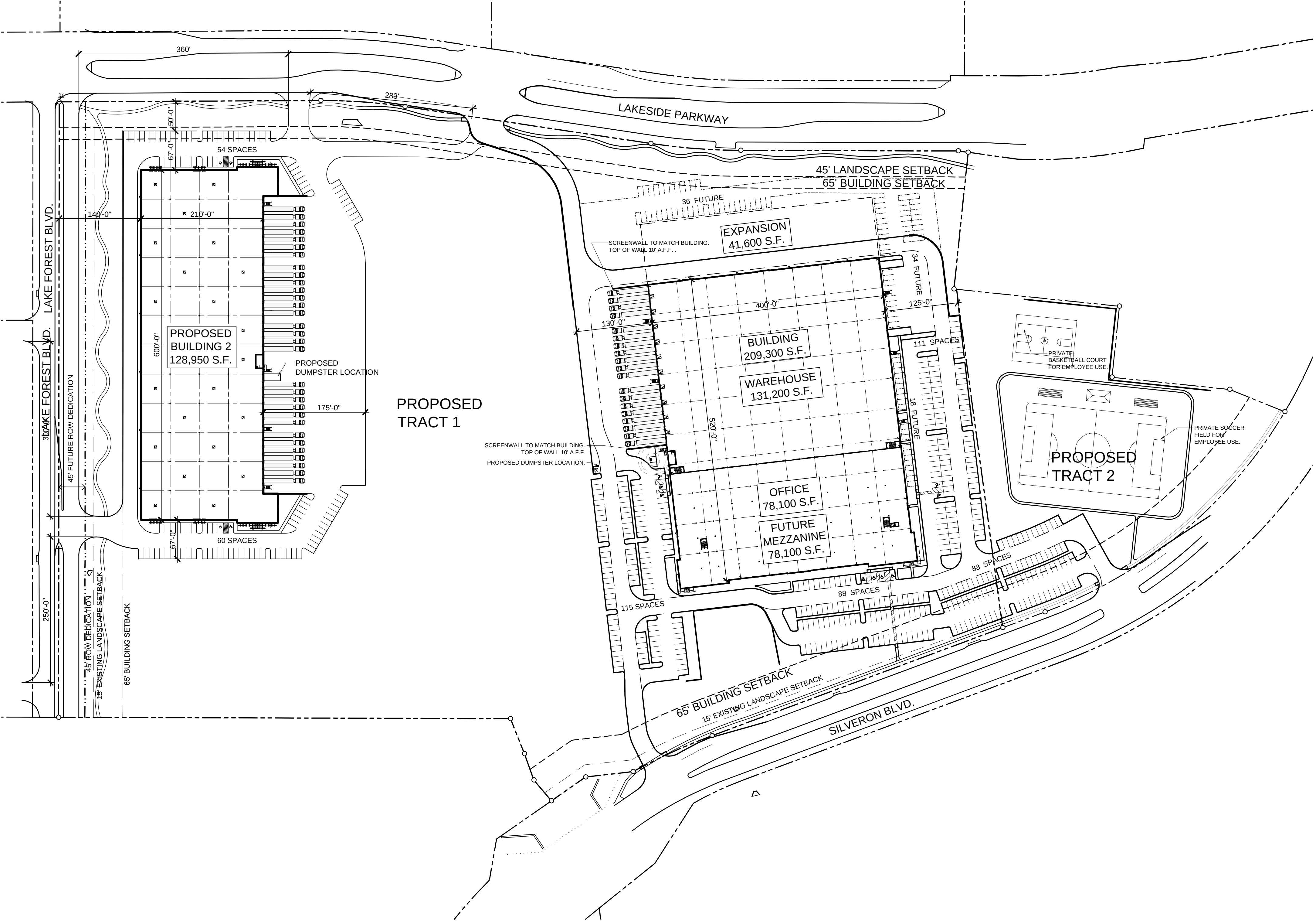
1. ALL RETAINING / DETAINING WALL, TURN-DOWN CURBS, TREE RETAINING WALLS SHALL BE CLAD IN A MATERIAL TO MATCH THE MATERIALS ON THE BUILDING.
2. ALL GROUND BASED MECHANICAL UNITS AND/OR EQUIPMENT SHALL BE SCREENED WITH LIVE SCREENING OR MASONRY ENCLOSURE. MASONRY ENCLOSURE SHALL BE CLAD IN A MATERIAL TO MATCH THE MATERIALS ON THE BUILDING.
3. ALL ROOF-MOUNTED MECHANICAL UNITS AND/OR EQUIPMENT SHALL BE SCREENED FROM VIEW.
4. DUMPSTER SCREENING WALL SHALL BE CLAD IN A MATERIAL TO MATCH THE MATERIALS ON THE BUILDING.
5. DUMPSTER SCREENING WALL REQUIRES A SEPARATE BUILDING PERMIT.



VICINITY MAP
(NOT TO SCALE)

PARKING TABULATIONS

BUILDING 1:		BUILDING 2:	
OFFICE = 78,100 SF	78,100 S.F.	128,950 SF X 15% OFFICE = 19,342 SF	19,342 S.F.
OFFICE FUTURE = 78,100 SF	78,100 S.F.	128,950 SF X 90% WAREHOUSE = 109,608 SF	109,608 S.F.
WAREHOUSE = 131,200 SF	131,200 S.F.	OFFICE PARKING 1:300 (19,342 / 300) = 64.5	65 SPACES
WAREHOUSE EXPANSION = 41,600	41,600 S.F.	WH PARKING 1:2000 (109,608 / 2000) = 54.8	55 SPACES
		TOTAL PARKING	120 SPACES
		20% REDUCTION	24 SPACES
		TOTAL PARKING REQUIRED	96 SPACES
		TOTAL PARKING PROVIDED	114 SPACES
OFFICE PARKING 1:300 (78,100 / 300) = 260	260 SPACES		
OFFICE PARKING FUTURE 1:300 (78,100 / 300) = 260	260 SPACES		
WH PARKING 1:2000 (131,200 / 2000) = 65.6	66 SPACES		
WH PARKING EXPAN. 1:2000 (41,600 / 2000) = 20.8	22 SPACES		
TOTAL PARKING	608 SPACES		
20% REDUCTION	122 SPACES		
TOTAL PARKING REQUIRED	486 SPACES		
TOTAL PARKING PROVIDED INCLUDING FUTURE	490 SPACES		



01 CONCEPTUAL SITE PLAN

Scale: 1" = 100'-0"

MASTER PLAN FEATURE

LAND USE PLAN	LAKESIDE BUSINESS DISTRICT
SPECIFIC PLAN	CAMPUS INDUSTRIAL
URBAN DESIGN PLAN	LAKESIDE BUSINESS DISTRICT
PARKS AND TRAILS	N/A
OPEN SPACE PLAN	N/A
THOROUGHFARE PLAN	LAKESIDE PARKWAY (MAJOR ARTERIAL) SILVERON BLVD. (URBAN MINOR ARTERIAL) LAKE FOREST BLVD. (URBAN MINOR ARTERIAL)
WATER PLAN	LAKESIDE BUSINESS DISTRICT
WASTEWATER PLAN	LAKESIDE BUSINESS DISTRICT
ECONOMIC IMPACT	N/A

AZIMUTH:

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SILVERON DC 1 & 2

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SHEET CONTENTS:
CONCEPTUAL
SITE PLAN

DATE: December 28, 2015

SHEET:

A1.00

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FAX: (972) 436-9667

October 19, 2015

Will Munding
Crow Holdings Industrial
3819 Maple Avenue
Dallas, TX 75219

Subject: Environmental Protection Plan for the Proposed Silveron DC 1 and 2 Development,
Flower Mound, Denton County, Texas.

Dear Mr. Munding:

This Environmental Protection Plan (EPP) was prepared to satisfy the Town of Flower Mound (Town) development requirements for the proposed commercial development in Flower Mound (Proposed Silveron DC 1 and 2 Development). The project site is an approximately 36.8-acre tract of vacant property located within a developing area of Flower Mound. The property is located southwest of the intersection of Lakeside Parkway and Silveron Boulevard in Flower Mound, Denton County, Texas (**Figure 1**). The EPP summarizes a survey performed to identify Environmentally Sensitive Areas (ESAs) potentially present on the property. This EPP was developed in accordance with the Town of Flower Mound SMARTGrowth Program, Category E (6) Environmental Quality.

Site Description

On October 9, 2015 Jose Alvarez and John Kemmey, of KBA EnviroScience, Ltd. (KBA), performed a site investigation of the proposed development property to assess property condition and environmental features, and to determine whether there are any ESAs, as described in the SMARTGrowth Program, located on site. The proposed development design is provided as **Figure 2**.

The site consists of forest in the central and western portion of the site and mixed scrub-shrub and grasslands in the eastern portion of the site. Most of the site is dominated by upland trees, grasses, and forbs including Bermuda grass (*Cynodon dactylon*), cedar elm (*Ulmus crassifolia*), dallisgrass (*Paspalum dilatatum*), downy brome (*Bromus tectorum*), eastern red cedar (*Juniperus virginiana*), green ash (*Fraxinus pennsylvanica*), greenbriar (*Smilax bona-nox*), perennial rye (*Lolium perenne*), post oak (*Quercus stellata*), and mesquite (*Prosopis glandulosa*).

One ephemeral stream, three tributaries, three wetlands and a pond are located on site. Stream A enters the site through a culvert in the northern portion of the site and flows southeast into a pond and accompanying fringe wetland. A fringe wetland extends along Stream A as it enters the site through a culvert. Stream A flows southeast into a pond in the

Mr. Mundinger
Page 2 of 10

central portion of the site. The stream then continues south out of the pond and exits in the southern portion of the site. A fringe wetland is also located around Stream A before it exits the site. A tributary, Tributary 1 originates onsite in the central portion of the site and flows southeast into Stream A. Tributary 2 enters the site through a culvert located in the southwestern portion of the site and flows east until it joins Stream A. Tributary 3 flows into the site in the southwestern portion of the site. Tributary 3 flows northeast until it flows into Tributary 2 (**Figure 3**).

Soils onsite consist of clay-loam and clay. Elevation of the project area ranges from 520 to 600 feet above mean sea level (msl) as indicated on the USGS topographic map (USGS 2014) (**Figure 4**).

A review of the US Fish and Wildlife Service National Wetland Inventory (NWI) Map (**Figure 5**), shows one Palustrine, Unconsolidated Bottom, Permanently Flooded, Diked/Impounded (PUBHh) feature present on property. No wetlands are indicated on the NWI map. During the site visit, the pond was observed on the site as indicated by the NWI map.

Habitat Evaluation

A habitat evaluation was conducted to assess the presence, or likely presence, of federal and state-listed threatened or endangered species potentially occurring at the site. A protected species list for Denton County was obtained from the United States Fish and Wildlife Service (USFWS) and Texas Parks and Wildlife Department (TPWD) prior to the site visits. The evaluation considered the habitat provided by the site compared to the location of critical habitat and habitat preferences of the listed species.

There are thirteen species designated by the USFWS and/or the TPWD as threatened or endangered species in Denton County, as shown in **Table 1**.

Mr. Mundinger

Page 3 of 10

Table 1: Federal and State-Listed Threatened and Endangered Species Potentially Present in Denton County, Texas

Species (Scientific Name) Federal, State Status	Species Habitat Description	Habitat Present	Effect	Pertinent Information
Bald Eagle (<i>Haliaeetus leucocephalus</i>) --, T	Found primarily near rivers and large lakes; nests in tall trees or on cliffs near water; communally roosts, especially in winter; hunts live prey, scavenges, and pirates food from other birds	No	No	Project site located in an industrial area and is too close to human habitation for Bald Eagles to utilize. In addition, no bald eagle nest were seen during the site visit.
Least Terns (<i>Sterna antillarum</i>) E, --	Migratory and breed along the river systems of Texas, especially the Red and Rio Grande River systems. Most often seen on sandbars in rivers and lakes or on pond edges free of vegetation, but may also breed on man-made structures such as water treatment plants. The birds nest in Texas during May through August, and winter in Central and South America.	No	No	No sandbars on lakes or rivers are present on site.
Peregrine Falcon (<i>Falco peregrinus</i>) --, T	Both subspecies migrate across the state from more northern breeding areas in US and Canada to winter along coast and farther south; subspecies (<i>F. p. anatum</i>) is also a resident breeder in west Texas; the two subspecies' listing statuses differ, <i>F.p. tundrius</i> is no longer listed in Texas; but because the subspecies are not easily distinguishable at a distance, reference is generally made only to the species level.	Yes	No	Species could potentially utilize the site temporarily during migration but is unlikely to be affected by the proposed project.
Piping Plover (<i>Charadrius melodus</i>) T, --	Breeding area extends along the eastern coast of the United States south to southern Texas and includes the Great Lakes region, the northern Midwestern states, and south central Canada. The Piping Plover winters along the eastern Mexico coast. Piping Plovers nest on sandy beaches along the ocean or inland lakes; bare to sparsely vegetated areas on dredge-created and natural alluvial islands in rivers; gravel pits along rivers; and salt-encrusted bare areas of sand, gravel, or pebbly mud on alkaline interior lakes and ponds.	No	No	Conditional species, adversely affected with conditions or activities related to wind energy projects. No sandy beaches are located on site.

Mr. Mundinger

Page 4 of 10

Species (Scientific Name) Federal, State Status	Species Habitat Description	Habitat Present	Effect	Pertinent Information
Red Knot (<i>Calidris canutus rufa</i>) Threatened, --	Migratory and may stopover in gulf coast. Breeding habitat consist of slightly vegetated land in tundra. Wintering habitats consist of large sandy tidal flats and coastlines.	No	No	Conditional species, adversely affected with conditions or activities related to wind energy projects. No sandy tidal flats or coastlines are located on site.
White-faced Ibis (<i>Plegadis chihi</i>) --, T	Prefers freshwater marshes, sloughs, and irrigated rice fields, but will attend brackish and saltwater habitats; nests in marshes, in low trees, on the ground in bulrushes or reeds, or on floating mats.	Yes	No	Habitat for this species found on site. However, the species was not seen during the site visit and the proposed project does not impact any potential habitat.
Whooping Crane (<i>Grus americana</i>) E-EXPN, E	Potential migrant via plains throughout most of the state to coast; winters in coastal marshes of Aransas, Calhoun, and Refugio counties.	No	No	The wetlands onsite are isolated, small, and not likely to provide adequate habitat.
Wood Stork (<i>Mycteria americana</i>) --, T	Forages in prairie ponds, flooded pastures or fields, ditches, and other shallow standing water, including salt-water; usually roosts communally in tall snags, sometimes in association with other wading birds (i.e. active heronries); breeds in Mexico and birds move into Gulf States in search of mud flats and other wetlands, even those associated with forested areas; formerly nested in Texas, but no breeding records since 1960.	No	No	The wetlands onsite are isolated, small, and not likely to provide adequate habitat.
Red wolf (<i>Canis rufus</i>) --, E	Extirpated; formerly known throughout eastern half of the state in brushy and forested areas, as well as coastal prairies	No	No	Extirpated in Texas.
Louisiana pigtoe (<i>Pleurobema riddellii</i>) --, T	Streams and moderate-size rivers, usually flowing water on substrates of mud, sand, and gravel; not generally known from impoundments; Sabine, Neches, and Trinity (historic) River basins	No	No	Ephemeral channels on site not conducive to bivalves. Extirpated in Trinity Basin.
Texas heelsplitter (<i>Potamilus amphichaenus</i>) --, T	Quiet waters in mud or sand and also in reservoirs. Sabine, Neches, and Trinity River basins	Yes	No	Ephemeral channel on site not conducive to bivalves. Some channels on site likely to contain adequate habitat; however, the main channel will remain unimpacted by proposed development.

Mr. Mundinger
Page 5 of 10

Species (Scientific Name) Federal, State Status	Species Habitat Description	Habitat Present	Effect	Pertinent Information
Texas Horned Lizard (<i>Phrynosoma cornutum</i>) --, T	Open, arid and semi-arid regions with sparse vegetation, including grass, cactus, scattered brush or scrubby trees; soil may vary in texture from sandy to rocky. Feeds on harvester ants.	No	No	The site did contain sparsely vegetated areas, however no harvester ant colonies were located on-site. In addition, no evidence of horned lizard use (e.g., scat) was identified.
Timber/Canebrake rattlesnake (<i>Crotalus horridus</i>) --, T	Swamps, floodplains, upland pine and deciduous woodlands, riparian zones, abandoned farmland; limestone bluffs, sandy soil or black clay, prefers dense ground cover, i.e. grapevines or palmetto	Yes	No	Potential habitat for this species exists on site; however, habitat on project site not unique. Surrounding, undeveloped properties will provide adequate habitat.

E = Endangered; EXPN = Experimental Population; T = Threatened

Based on the site visit, it is KBA's opinion that the site offers potential habitat for the following threatened or endangered species:

- Peregrine falcon (TPWD "threatened"), potential migrant
- Texas Heelsplitter (TPWD "threatened"), potential resident;
- Timber/canebrake rattlesnake (TPWD "threatened"), potential resident;
- White-faced Ibis (TPWD "threatened"), potential resident;

Although the site offers potential habitat for the above-noted species, habitat on the project site is not unique in the area and surrounding, undeveloped land will provide adequate habitat. Additionally, the stream and wetland habitat potentially available to the Texas Heelsplitter and White-faced Ibis will not be impacted.

None of these species identified as potentially inhabiting or feeding on the site were observed on the site and no field observations indicate their presence.

Environmentally Sensitive Areas

KBA conducted a desk-top analysis and field verification of the site and identified the following ESAs on the site:

Upland Habitat

The Town defines upland habitat as:

"Areas, a minimum of ten (10) acres in size, equal to or exceeding 50 trees per acre, which contain a predominate matrix of tree species identified in the Town's Protected Tree List. Any tree species that makes up over thirty percent (30%) of the population within a complex is considered to be the predominate species."

Mr. Mundinger
Page 6 of 10

KBA identified upland habitat in the western portion of the property. The upland habitat consisted of over 10 contiguous acres of forested land that contained greater than 50 trees per acre that was dominated by trees on the Town's Protected Species List. The site contains approximately 18.96 acres of upland habitat and was estimated based on changes in elevation, stands of trees, and location of the floodplain (Figure 6).

The upland habitat included cedar elm, eastern red cedar, green ash, hackberry, and post oak. The vegetation observed appeared to be in good health.

Based on the vegetation present, this area is considered an ESA by the Town's definition of upland habitat. Although there is approximately 18.96 acres of upland habitat on site, only 7.38 acres will be impacted by the development, leaving 11.58 acres of upland habitat undisturbed (Figure 7). The sections on the property considered upland habitat are located mostly in the central and southern portion of the site.

Waters of the State

The Town defines waters of the State as:

"Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state."

KBA performed a jurisdictional delineation of wetlands and other "waters of the United States" (as defined by the Clean Water Act) for the site. The Town's site survey depicts a stream (Stream A) and pond located on the property. The stream enters the site in the north-central portion of the property and flows southeast into a pond in the central portion of the site. The stream then flows south out of the pond and exits the site via a culvert under Silveron Boulevard.

KBA delineated three tributaries and three wetlands in addition to the stream and pond noted by the town. A fringe wetland (0.012 acres) surrounds Stream A as it enters the site near the culvert in the northern portion of the site. Stream A then flows southeast into a pond (0.129 acres). The stream then continues south out of the pond and exits in the southern portion of the site. Stream A flows for 1,524 feet. A fringe wetland (0.109 acres) is also located along Stream A before it exits the site. A tributary, Tributary 1 (228 ft), originates onsite in the central portion of the site and flows southeast into Stream A. Tributary 2 (766 ft) enters the site through a culvert located in the southwestern portion of the site and flows east until it joins Stream A. Tributary 3 flows 237 ft into the site in the southwestern portion of the site and flows northeast until it flows into Tributary 2. The ephemeral stream, the three ephemeral tributaries, three wetlands and the pond are considered ESAs by the Town's definition of waters of the State.

Mr. Mundinger

Page 7 of 10

Topographical Slope Protection

The Town of Flower Mound's SmartGrowth Implementation manual states:

"No development application or project shall be approved that proposes development on any existing topographical slopes of twelve percent (12.0%) or greater, or that proposes to alter any existing topographical slopes that are less than twelve percent (12.0%) but equal to or greater than five percent (5.0%) (other than within five feet of the footprint of the proposed structure or structures)."

Several locations on the Proposed Silveron DC 1 and 2 Development have been mapped by the Town as areas having between 5% and 12% topographic slope (**Figure 8**). These areas total approximately 14.31 acres and, in general, parallel Stream A and are in central portion of the site. There are also a few smaller areas that have topographic slopes equal to or greater than 12% scattered across various locations of the site and total 5.63 acres. The locations of these steep slopes are considered an ESA by the Town and meet the criterion for topographic slope protection.

Approximately 7.92 acres of the 14.31 acres of land with topographic slopes between 5% and 12% are proposed to be impacted by the development (**Figure 9**). A variance of the topographic slope protection is being requested for the 3.86 acres of land that have topographic slopes of between 5% and 12% and are not within 5 ft of the structure. In addition, 0.56 acres of the 5.63 acres of land on the site that have topographic slopes greater than 12% are proposed to be impacted. Therefore, a variance is also being requested for the 0.56 acres of land that have topographic slopes greater than 12% that will be impacted by the proposed development.

Proposed Development Plan

The proposed site plan calls for the property to be developed as a commercial development. Goals to preserve the natural habitat on the Proposed Silveron DC 1 and 2 Development will include the removal of only those trees and natural vegetation that would be affected by the proposed construction of the onsite roads, utilities, and structures. Several mitigation strategies are proposed to compensate for any permanent impacts to environmentally sensitive areas. Best Management Practices (BMPs) will also be employed to retain sediments and other pollutants onsite during construction activities. A figure showing the overall development plan and impacts to Town-defined ESAs is shown as Figure 7 and 9.

Mitigation Measures During Project Planning and Construction

The following mitigation measures will be employed throughout the planning and construction of the project:

- The development plan has been designed to preserve as many trees and natural vegetation as possible while still allowing an economically viable development.
- Approximately 18.96 acres of Town-defined Upland Habitat exists on the site and the development plan has been designed to preserve over half of this habitat.

Mr. Mundinger

Page 8 of 10

Approximately 7.38 acres of upland habitat is proposed to be impacted by the commercial developments. Approximately 11.58 acres of upland habitat will be completely unimpacted by the proposed project. Mitigation for the 7.38 acres of upland habitat impacted by buildings will be partially accomplished by the preservation of 11.58 acres of upland habitat on site. A variance is being requested for any additional compensation required for impacts to upland habitat on site.

- Although every attempt has been made to minimize the number of trees damaged or removed during development, some impacts to trees will occur. The removal of trees will be limited to stressed or dead trees, trees within the footprint of proposed structures and roads, and trees needed to be removed to level the building lots. To reduce impacts, roads will be constructed so as to minimize the number of trees needing to be removed. Mitigation for the impact to trees that must be removed will include tree preservation (where possible), additional tree and other native vegetation plantings, habitat improvement projects, and green space preservation.
- Tributary 2 and Tributary 3 will remain unaltered. A small portion of Stream A and Tributary 1 will be filled for the development. Any fill in jurisdictional waters will be authorized under a US Army Corps of Engineers Section 404 permit. Specifically, Nationwide Permit 39 will be obtained for the commercial developments.
- No areas with topographic slopes between 5% and 12% will be altered unless they are within five feet of a proposed structure or a variance of this requirement is issued by the Town. A variance of this requirement is being requested for approximately 3.86 acres of land with slopes between 5% and 12%. A variance is also being requested for the impacts to 0.56 acres of land with slopes greater than 12%.
- Silt fencing will be installed and maintained in compliance with TCEQ Construction General Permit requirements. This structural feature will minimize sediments from entering the Town's storm sewer system during construction.
- Silt fencing will be installed perpendicular to the direction of flow, especially along roadways and drainage/low elevation areas.
- Stabilized construction entrances will be installed at appropriate locations onsite during construction. These structural features will reduce the risk of transporting mud or sediment onto the adjacent roads and other nearby roadways.
- Major soil disturbing activities will be sequenced to preserve existing vegetation.
- Storm water control devices will be installed to promote sedimentation onsite, limit runoff, and reduce the velocity of concentrated flows to reduce erosion and scouring to onsite and adjacent drainages.
- Storm water control devices will be maintained until stabilized disturbed areas have achieved final stabilization.

Mr. Mundinger
Page 9 of 10

- Active migratory bird nesting areas will not be disturbed during site development. Although not anticipated, if a threatened or endangered species is encountered during site development, the USFWS and/or TPWD authorities will be contacted immediately.

Conclusions

Based on the site visit, ESA Survey performed by KBA, and proposed zoning for the site, KBA concludes the following:

- The project site contains potentially suitable habitat for the following resident or migrating species: Peregrine falcon, Texas Heelsplitter, timber/canebrake rattlesnake and the White-faced Ibis. None of these listed species were observed onsite. Potential habitat for these species does exist on site, however, the habitat on the project site is not unique to the area and surrounding, undeveloped properties will provide adequate habitat to prevent negative impacts to these species. In addition, potential habitat on site for the Texas Heelsplitter and White-faced Ibis will not be impacted by the proposed development.
- Town-defined Environmentally Sensitive Areas exist on the project site. Waters of the state, Upland Habitat, and Topographical Slope Protection areas have been identified on site. Although some impacts to these areas are anticipated, mitigation measures that compensate for these impacts will be conducted.
- The Town's tree ordinance and other environmental mandates will be strictly adhered to.

The Proposed Silveron DC 1 and 2 Development will be designed to allow for the partial preservation of existing natural habitat. The preserved trees will provide an aesthetic value to the site and continue to provide habitat for a variety of biota including songbirds, mammals, reptiles, and insects.

Please let either of us know if additional information would be helpful.

Sincerely,

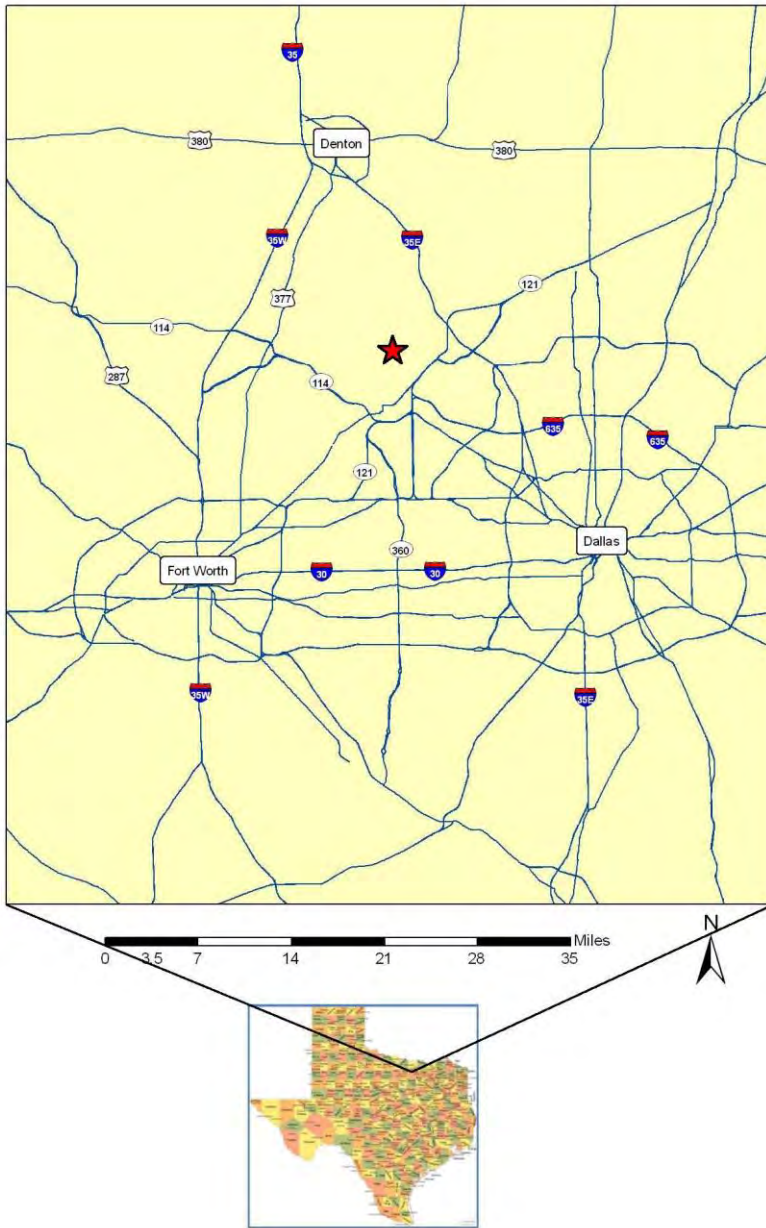


Joseph Schwartz, Project Manager
KBA EnviroScience, Ltd.



C. Keith Bradley, REP, CWB
KBA EnviroScience, Ltd.

FIGURES

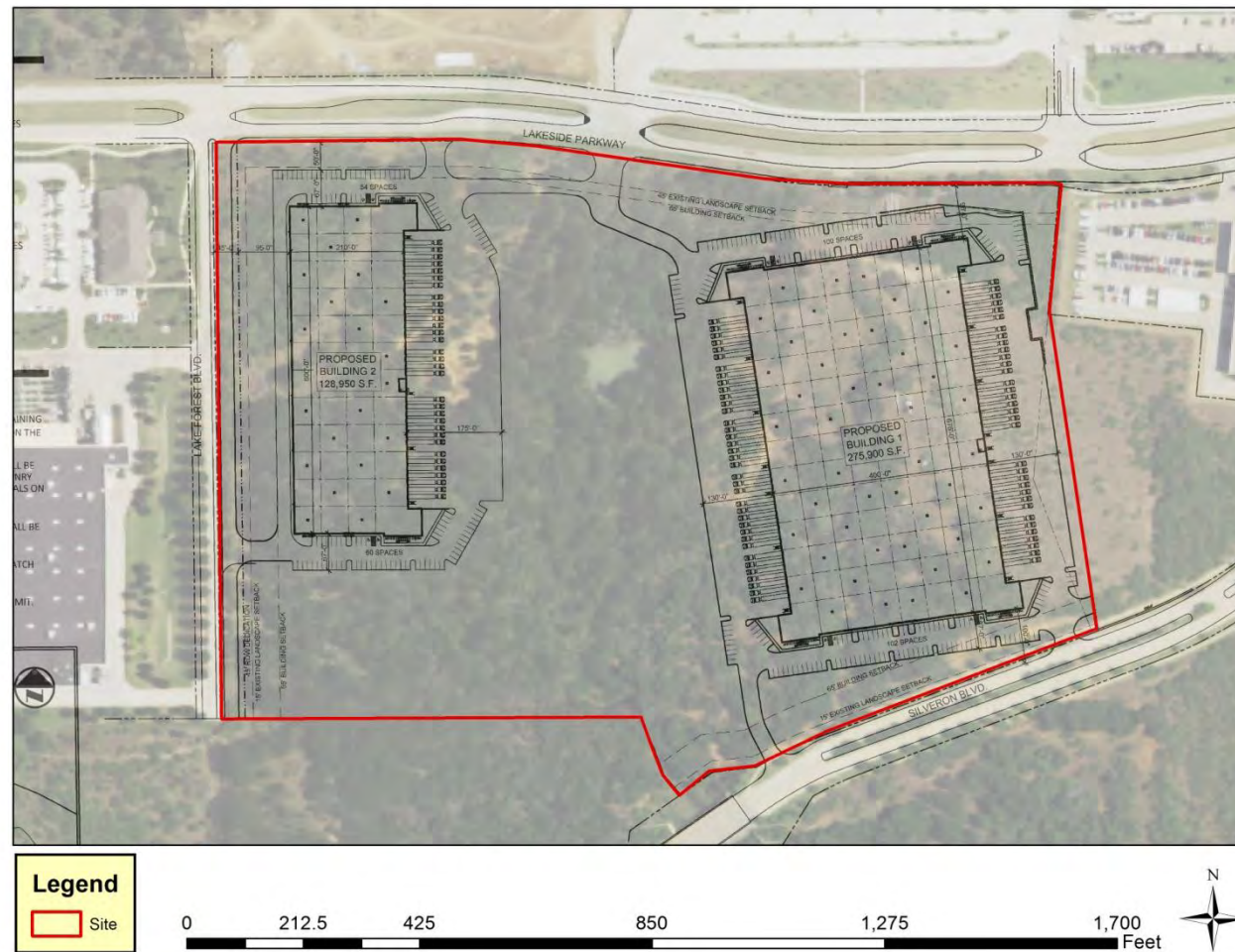


Crow Holdings Industrial
Project 15.085.01.F

Prepared by J. Alvarez
9/11/15



Figure 1. Site Location Map for the Proposed Silveron DC 1 and 2 Development, Flower Mound, Denton County, Texas.

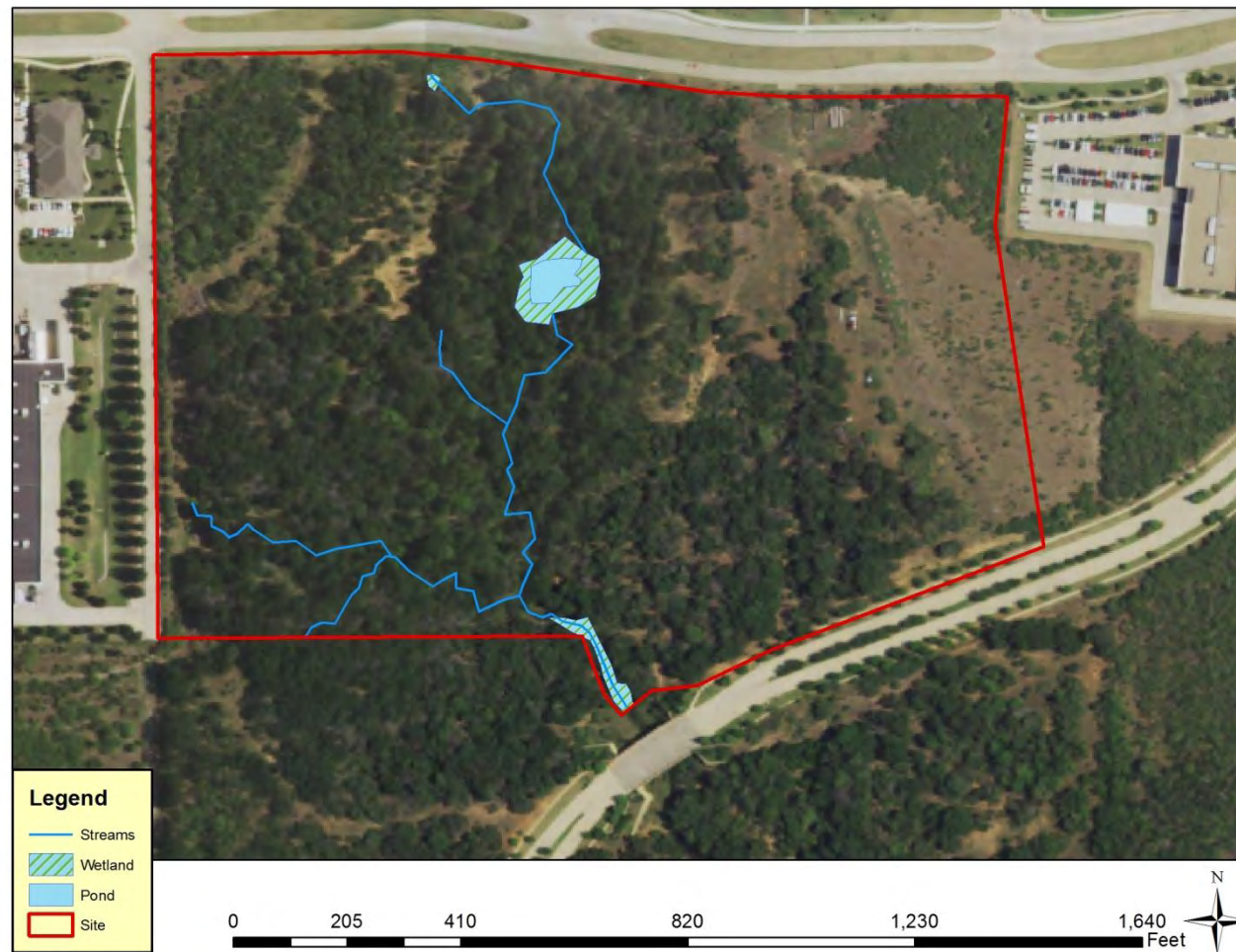


Crow Holdings Industrial
Project 15.085.01.F

Prepared by J. Alvarez
9/11/15

KBA EnviroScience, Ltd.

Figure 2. Development Plan for the Proposed Silveron DC 1 and 2 Development, Flower Mound, Denton County, Texas.

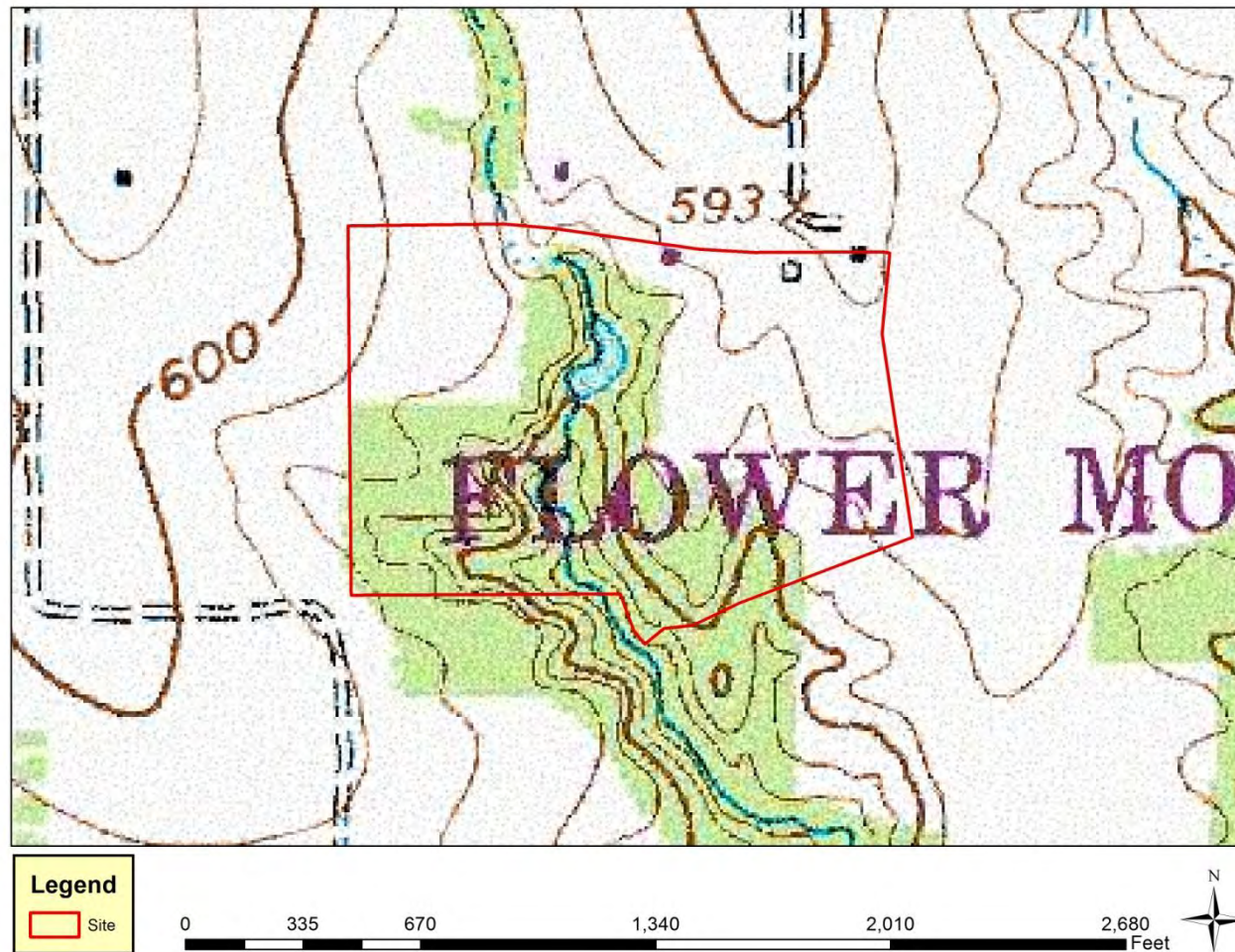


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Figure 3. Streams Located on the Proposed Silveron DC 1 and 2 Development, Flower Mound, Denton County, Texas.



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Figure 4. Topographic Map for the Proposed Silveron DC 1 and 2 Development, Flower Mound, Denton County, Texas.

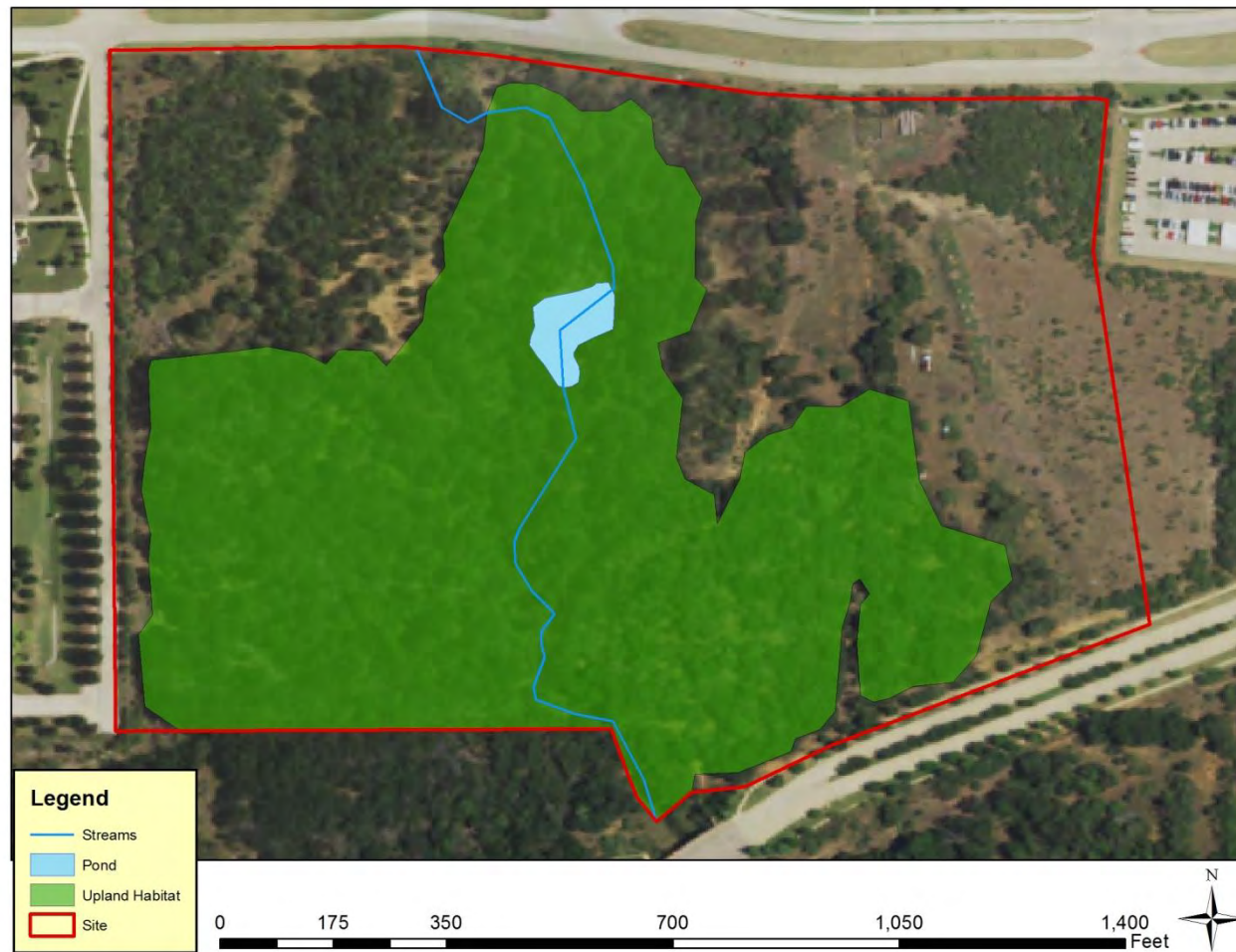


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Figure 5. USFWS NWI Map for the Proposed Silveron DC 1 and 2 Development, Flower Mound, Denton County, Texas.



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Figure 6. Environmentally Sensitive Areas Map for the Proposed Silveron DC 1 and 2 Development, Flower Mound, Denton County, Texas.

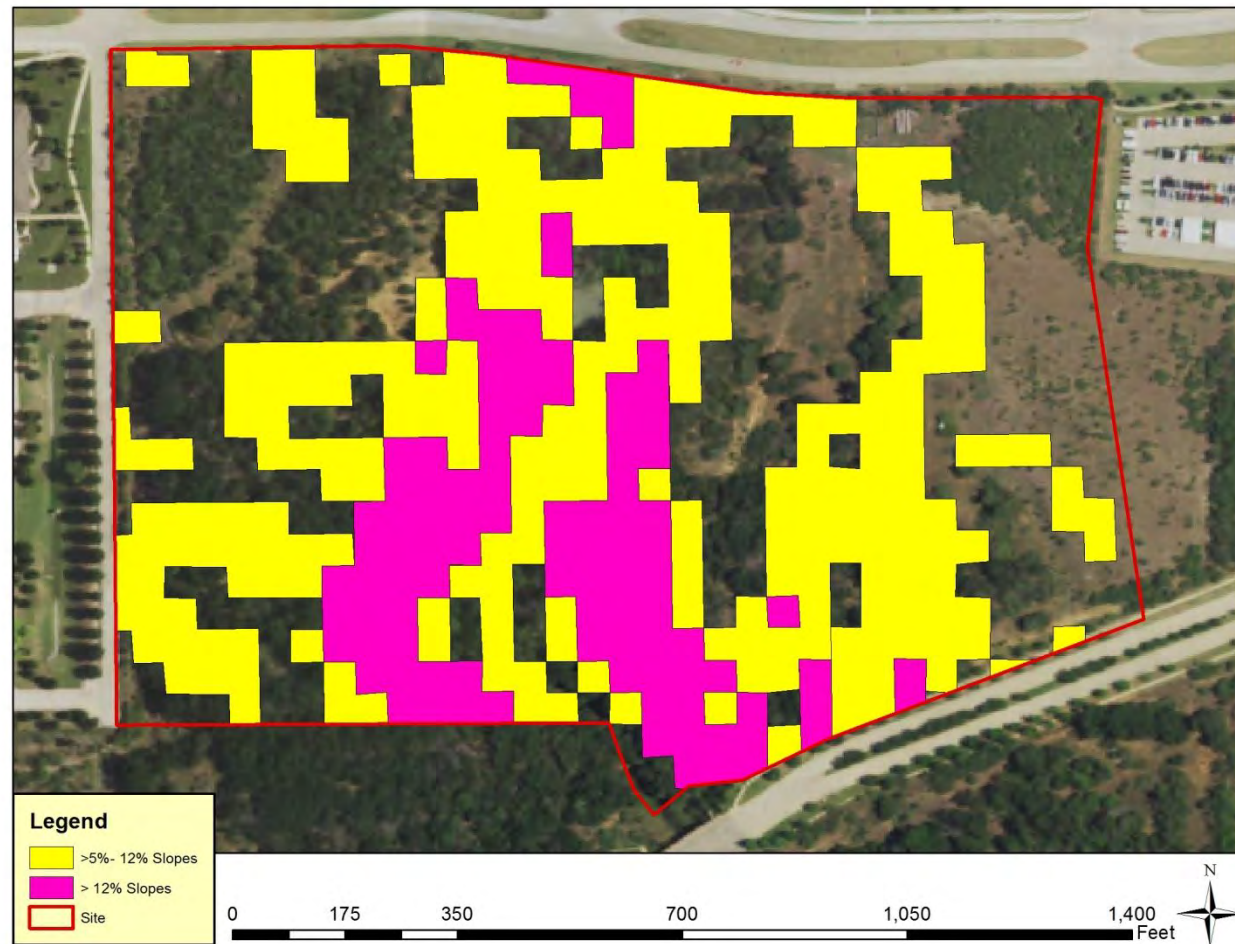


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Prepared by J. Alvarez
9/11/15

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Figure 7. Proposed Impacts to Environmentally Sensitive Areas for the Silveron DC 1 and 2 Development, Flower Mound, Denton County, Texas.

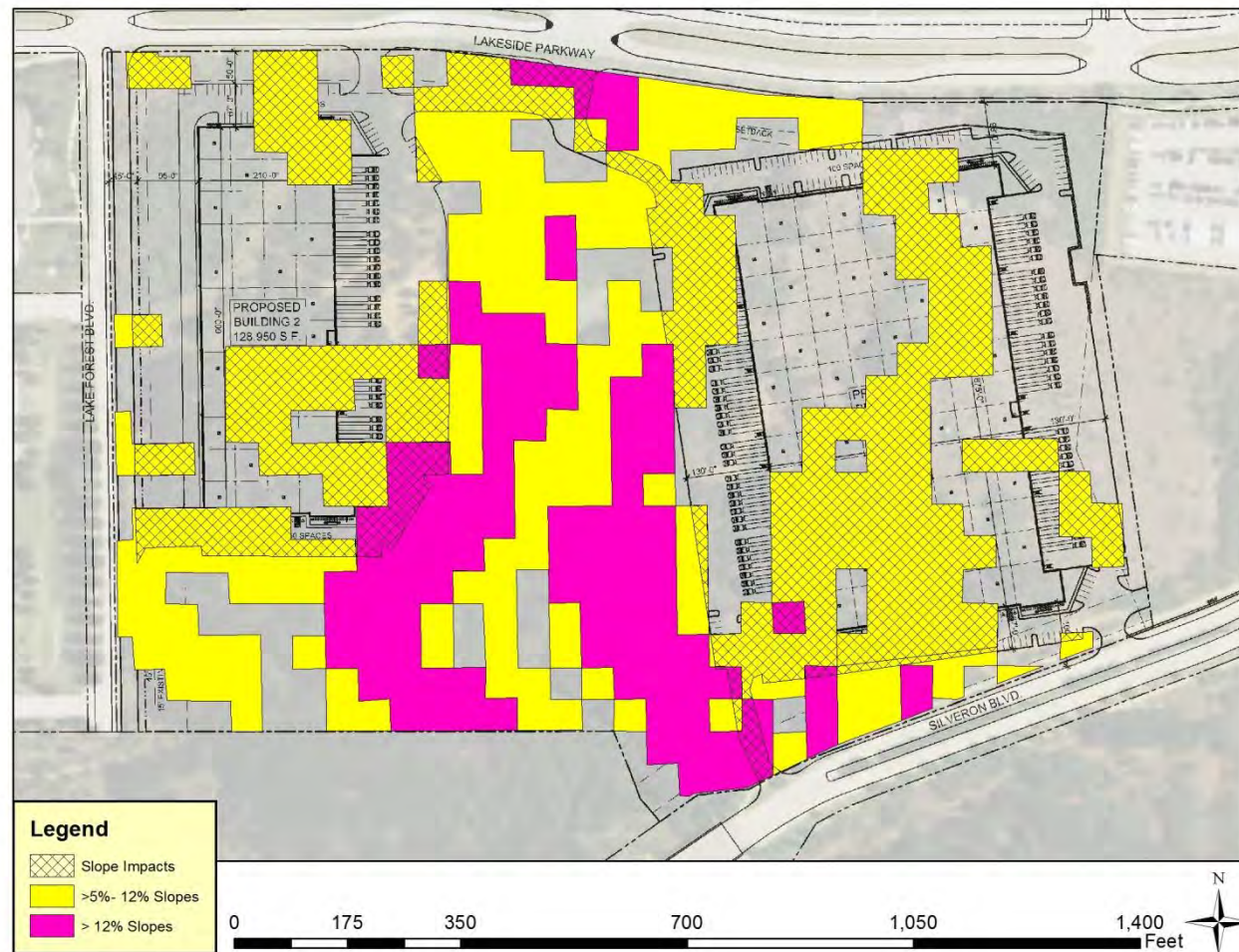


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Figure 8. Map of Protected Slope Areas for the Proposed Silveron DC 1 and 2 Development, Flower Mound, Denton County, Texas.



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Prepared by J. Alvarez
9/11/15

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Figure 9. Proposed Impacts to Protected Slope Areas for the Proposed Silveron DC 1 and 2 Development, Flower Mound, Denton County, Texas.

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

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, LAND DEVELOPMENT REGULATIONS, OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY CHANGING THE ZONING ON APPROXIMATELY 41.24 ACRES OF LAND SITUATED IN THE J. KNIGHT SURVEY, ABSTRACT NUMBER 692, FROM PLANNED DEVELOPMENT DISTRICT NO. 31 (PD-31) FOR CAMPUS COMMERCIAL DISTRICT (CC) USES TO PLANNED DEVELOPMENT DISTRICT NO. 145 (PD-145) FOR CAMPUS INDUSTRIAL DISTRICT (CI) USES IN ACCORDANCE WITH THE TOWN'S MASTER PLAN AND SPECIFIC REQUIREMENTS AND EXHIBITS INCORPORATED HEREIN; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF IN ACCORDANCE WITH SECTION 1-13 OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, in accordance with Chapter 78 of the Land Development Regulations, the owners of the property described as 41.24 acres of land situated in the J. Knight Survey, Abstract Number 692, have filed an application to change the zoning from Planned Development District No. 31 (PD-31) for Campus Commercial District (CC) uses to Planned Development District No. 145 (PD-145) for Campus Industrial District (CI) uses; and,

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on January 11, 2016, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on January 21, 2016, with respect to the proposed planned development district as described herein; and,

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

WHEREAS, the Town Council finds that amendment of the Zoning map as outlined herein is in the best interest of the Town of Flower Mound and will promote the health, safety and general welfare of the citizens of the Town of Flower Mound and the general public.

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

ORDINANCE NO. _____

Page 2**SECTION 1**

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

41.24 acres of land situated in the J. Knight Survey, Abstract Number 692, Denton County, Texas, and more fully described in Exhibit "A" hereto.

Planned Development District No. 145 (PD-145) with Campus Industrial District (CI) uses.

SECTION 2

The development standards, conceptual site plan, conceptual landscape plan, and conceptual elevations of the proposed Planned Development District No. 145 (PD-145), attached hereto as Exhibits "B," "C," "D" and "E," each incorporated herein for all purposes, are hereby approved as the development standards, conceptual site plan, conceptual landscape plan, and conceptual elevations for this Planned Development District No. 145 (PD-145).

SECTION 3

The official map of the Town of Flower Mound is amended and the Executive Director of Development Services is directed to revise the official zoning map to reflect the approved Planned Development District No. 145 (PD-145), as set forth above.

SECTION 4

The use of the property described above shall be subject to all restrictions, terms and conditions contained in Exhibits "B," "C," "D" and "E," attached hereto, as well as the applicable regulations contained in the Land Development Regulations and all other applicable and pertinent ordinances of the Town of Flower Mound.

SECTION 5

This Ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the 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 6

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.

ORDINANCE NO. _____

Page 3**SECTION 7**

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

SECTION 8

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

SECTION 9

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

SECTION 10

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

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE _____ DAY OF _____, 2016.

APPROVED:_____
Thomas E. Hayden, **MAYOR****ATTEST:**_____
Theresa Scott, **TOWN SECRETARY****APPROVED AS TO FORM AND LEGALITY:**_____
Bryn Meredith, **TOWN ATTORNEY**

ORDINANCE NO. _____

Page 4

Exhibit "A"

Legal Description

TRACT 1:

DESCRIPTION, of a 36.809 acre tract of land situated in the J. Knight Survey, Abstract No. 692, Denton County, Texas; said tract being all of that tract of land described in Substitute Trustee's Foreclosure Sale Deed to First Nation Bank recorded in Document Number 2009-86571 and part of that tract of land described in Correction Trustee's Deed to Vivare, L.P. recorded in Document Number 2009-37290, both of the Official Records of Denton County, Texas; said 36.809 acre tract being more particularly described as follows:

BEGINNING, at a point for corner at the intersection of the south right-of-way line of Lakeside Parkway (a variable width right-of-way, 120 feet wide at this point) and the east right-of-way line of Lake Forest Boulevard (a 45-foot wide right-of-way); said point being the northwest corner of said Bank tract;

THENCE, in an easterly direction, along the said south line of Lakeside Parkway and the north line of said Bank tract, the following five (5) calls:

North 89 degrees, 11 minutes, 53 seconds East, a distance of 449.11 feet to a point at the beginning of a tangent curve to the right;

Along said curve to the right, having a central angle of 08 degrees, 50 minutes, 05 seconds, a radius of 940.00 feet, a chord bearing and distance of South 86 degrees, 23 minutes, 04 seconds East, 144.80 feet, an arc distance of 144.94 feet to a point at the end of said curve;

South 81 degrees, 58 minutes, 02 seconds East, a distance of 426.64 feet to a point at the beginning of a tangent curve to the left;

Along said curve to the left, having a central angle of 08 degrees, 22 minutes, 27 seconds, a radius of 1060.00 feet, a chord bearing and distance of South 86 degrees, 09 minutes, 15 seconds East, 154.79 feet, an arc distance of 154.93 feet to a point at the end of said curve;

North 89 degrees, 39 minutes, 31 seconds East, a distance of 373.21 feet to an angle point;

South 82 degrees, 31 minutes, 55 seconds East, a distance of 17.07 feet to a point for corner; said point being the northeast corner of said Bank tract and the northwest corner of Lot 1, Block A, Silveron Center, an addition to the Town of Flower Mound according to the plat recorded in Cabinet Y, Page 678 of the Plat Records of Denton County, Texas;

THENCE, South 05 degrees, 26 minutes, 07 seconds West, departing the said south line of Lakeside Parkway and along the east line of said Bank tract and the westernmost west line of said Lot 1, a distance of 235.72 feet to a point for corner; said point being the westernmost southwest corner of said Lot 1 and the northwest corner of said Vivare tract;

THENCE, South 84 degrees, 33 minutes, 52 seconds East, departing the said east line of the Bank tract and along the northernmost south line of said Lot 1 and the northernmost north line of said Vivare tract, a distance of 4.44 feet to a point for corner;

THENCE, South 08 degrees, 17 minutes, 13 seconds East, departing the said south line of Lot 1 and the said north line of the Vivare tract and into and across said Vivare tract, a distance of 585.81 feet to a point for corner in the northwest right-of-way line of Silveron Boulevard (a variable width right-of-way, 90 feet wide at this point) and the southeast line of said Vivare tract;

THENCE, in a southwesterly direction, along the said northwest line of Silveron Boulevard, the said southeast line of the Vivare tract and the southeast line of said Bank tract, the following four (4) calls:

South 69 degrees, 07 minutes, 21 seconds West, at a distance of 11.44 feet passing the south corner of said Vivare tract and the southeast corner of said Bank tract, then continuing along the said southeast line of the Bank tract in all a total distance of 532.25 feet to a point at the beginning of a tangent curve to the left;

Along said curve to the left, having a central angle of 08 degrees, 10 minutes, 14 seconds, a radius of 1045.00 feet, a chord bearing and distance of South 65 degrees, 02 minutes, 15 seconds West, 148.89 feet, an arc distance of 149.02 feet to a point at the end of said curve;

South 82 degrees, 59 minutes, 52 seconds West, a distance of 81.84 feet to a point for corner;

South 54 degrees, 39 minutes, 28 seconds West, a distance of 71.56 feet to a point for corner; said point being the southernmost corner of said Bank tract and the easternmost corner of that tract of land described in Special Warranty Deed to Grand Seville, L.P. recorded in Document Number 2007-102880 of said Official Records;

ORDINANCE NO. _____

THENCE, departing the said northwest line of Silveron Boulevard and along the south line of said Bank tract and the north line of said Seville tract, the following four (4) calls:

North 40 degrees, 36 minutes, 08 seconds West, a distance of 46.71 feet to a point for corner;

North 20 degrees, 17 minutes, 30 seconds West, a distance of 47.82 feet to a point for corner;

North 22 degrees, 12 minutes, 21 seconds West, a distance of 64.76 feet to a point for corner;

South 89 degrees, 40 minutes, 23 seconds West, a distance of 775.49 feet to a point for corner; said point being the westernmost southwest corner of said Bank tract and the east end of the south terminus of said Lake Forest Boulevard;

THENCE, North 00 degrees, 27 minutes, 02 seconds West, departing the said north line of the Seville tract and along the said east line of Lake Forest Boulevard and the west line of said Bank tract, a distance of 1055.68 feet to the POINT OF BEGINNING;

CONTAINING: 1,603,391 square feet or 36.809 acres of land, more or less.

TRACT 2:

DESCRIPTION, of a 4.230 acre tract of land situated in the J. Knight Survey, Abstract No. 692, Denton County, Texas; said tract being part of that tract of land described in Correction Trustee's Deed to Vivare, L.P. recorded in Document Number 2009-37290 of the Official Records of Denton County, Texas; said 4.230 acre tract being more particularly described as follows:

BEGINNING, at a point for corner in the northernmost north line of said Vivare tract and the northernmost south line of Lot 1, Block A, Silveron Center, an addition to the Town of Flower Mound according to the plat recorded in Cabinet Y, Page 678 of the Plat Records of Denton County, Texas; from said point the westernmost southwest corner of said Lot 1 bears North 84 degrees, 33 minutes, 52 seconds West, a distance of 4.44 feet;

THENCE, in an easterly direction, along the said north line of the Vivare tract and the said south line of Lot 1, the following four (4) calls:

South 84 degrees, 33 minutes, 52 seconds East, a distance of 281.09 feet to a point for corner;

South 05 degrees, 26 minutes, 55 seconds West, a distance of 122.41 feet to a point for corner;

South 84 degrees, 33 minutes, 52 seconds East, a distance of 203.15 feet to a point for corner;

South 68 degrees, 28 minutes, 15 seconds East, a distance of 102.05 feet to a point for corner in the northwest right-of-way line of Silveron Boulevard (a variable width right-of-way, 90 feet wide at this point); said point being the easternmost northeast corner of said Vivare tract and the southeast corner of said Lot 1; said point also being in a non-tangent curve to the right;

THENCE, in a southwesterly direction, along the said northwest line of Silveron Boulevard, the southeast line of said Vivare tract and said curve to the right, having a central angle of 38 degrees, 54 minutes, 08 seconds, a radius of 805.00 feet, a chord bearing and distance of South 49 degrees, 40 minutes, 17 seconds West, 536.13 feet, an arc distance of 546.57 feet to a point at the end of said curve;

THENCE, South 69 degrees, 07 minutes, 21 seconds West, continuing along the said northwest line of Silveron Boulevard and the said southeast line of the Vivare tract, a distance of 77.29 feet to a point for corner;

THENCE, North 08 degrees, 17 minutes, 13 seconds West, departing the said northwest line of Silveron Boulevard and the said southeast line of the Vivare tract and into and across said Vivare tract, a distance of 585.81 feet to the POINT OF BEGINNING;

CONTAINING: 184,242 square feet or 4.230 acres of land, more or less.

Exhibit “B”
DEVELOPMENT STANDARDS
Planned Development District No. 145
for Campus Industrial Uses

Silveron Industrial

The development as described in Exhibit “XX” shall be developed in accordance with the Town’s Master Plan and Land Development Regulations, as amended, and shall be subject to the following conditions and requirements:

PERMITTED USES

Campus Industrial District (CI) uses. Development of Silveron Industrial comprising approximately 41.04 acres land, shall comply with all regulations applicable to the Campus Industrial District (CI) uses in the Land Development Regulations, as amended, except as otherwise provided in this ordinance.

DIMENSIONAL REGULATIONS

The dimensional regulations for this Planned Development shall comply with Campus Industrial District (CI) uses and/or as depicted in Exhibit XX.

ARCHITECTURAL STANDARDS

1. Roof pitches shall conform to the Town's Master Plan. Sloped roofing shall be required for structures 15,000 square feet in area and less. Buildings of one or two stories over 15,000 square feet in area may have a flat or low-slope roof, but shall use a parapet wall or mansard roof along the building perimeter, so that the flat or low-slope roof and any roof top mounted mechanical equipment is not visible from the public right-of-way or from neighboring residential buildings.
2. Contrasting wall planes, architectural elements, and rooflines shall be used to create exemplary and enduring elevations. Building entries will be identified by various architectural features including arches, canopies, and portals.

3. All building elevations will be articulated to meet or exceed the Town of Flower Mound Urban Design Plan. Buildings will reflect an architectural prominence, with particular attention being paid to architectural quality on the facades, rooflines, and elevations visible from adjacent roadways.
4. Franchise utility panels and connection points shall be painted to match the color and texture of the building and located so that they are not visible from public roadways, except that Franchise utility panels and connection points facing Arterial Roadways will be kept at a minimum and adequately screened, with additional landscaping or other approved material during the Site Plan approval process, to obstruct visibility from adjacent roadways.
5. Specific Building Material Standards shall include:
 - a. A minimum of eighty percent (80%) of the building wall area (not including doors and windows) shall be of a primary masonry identified within the Town's Urban Design Plan. Up to twenty percent (20%) of any wall surface material may be stucco, fiber cement board, cementitious plaster, E.I.F.S., CMU, or a combination of all.
 - b. The use of exposed standard concrete shall not be utilized for any elevation.
 - c. Unpainted metal, galvanized metal, or metal subject to rusting shall not be used. All exposed metals shall have a factory-applied finish if available.
 - d. Outward facing mirrored glass shall not be used.
 - e. Not more than fifteen percent (15%) of any elevation shall be comprised of a color that is not considered an earth or wood tone. White or shades of white shall be considered an earth tone color.

LANDSCAPE BUFFER AND SCREENING REQUIREMENTS

1. Landscaping and buffering shall be provided in a consistent manner as shown on Exhibit "D".
2. All loading areas shall be completely screened from public right-of-ways by a screen wall, which is of adequate length and height to completely enclose a

delivery vehicle parked in a loading area. Additionally, berms and landscaping may be used to enhance screening and soften screen walls.

MISCELLANEOUS STANDARDS

1. Storm water storage facilities may include detention and/or retention ponds provided that retention ponds shall include aeration. Detention or retention ponds may include either sloped edges or hard edges comprised of stacked stone, stone veneer, cut stone or faux stone that complement the development. No exposed concrete is permitted.
2. All site retaining walls shall utilize stacked stone, stone veneer, cut stone, or faux stone that complements the material standards and colors for the development.
3. If the development of PD-145 includes phasing of any nature, such phasing shall be detailed in the subsequent development application, be it a Development Plan, Record Plat, or a Site Plan.
4. Open Space Amenity and Pedestrian connectivity requirements within Planned Development District 145 shall incorporate the standards for such space as described by the Town's Urban Design Plan.

EXCEPTIONS

The following exceptions shall be granted with the approval of the Planned Development District:

1. Exceptions 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 as shown in Exhibit "C".
2. Exceptions to Topographic Slope Protection: An exception to Section 98-147, Topographical Slope Protection is granted for approximately 4.70 acres of land that have topographic slopes of between 5% and 12% and are not within

5 feet of the structure and for approximately 0.74 acres of land that have topographic slopes greater than 12% that will be impacted by the proposed development. These numbers are approximate and minor changes may be approved by Town staff prior to record plat approval for each phase of the development. The developer shall provide detailed drawings that illustrate the impact of the proposed development on the natural topography and the manner by which the development is integrated into, reflects and maintains the overall integrity of the natural topography with subsequent record plat applications. In addition, the developer shall conform with the following requirements with subsequent record plat applications:

- a. The identification of those specific Best Management Practices (“BMPs”) that will be used to maintain and responsibly integrate the development into the natural topography together with an explanation regarding their use within the plans for such development. The BMPs to be used shall include, but are not limited to, those BMPs found within the Town’s Engineering Design and Construction Standards.
 - b. While recognized as a potential BMP, the use of retaining walls should be kept to a minimum. Any retaining wall four foot (4’) or greater in height shall be designed by a professional engineer licensed by the State of Texas.
3. Waiver to Upland Habitat Mitigation Fees: Developer shall not be required to pay Upland Habitat Fees.

Exhibit “C” Conceptual Site Plan

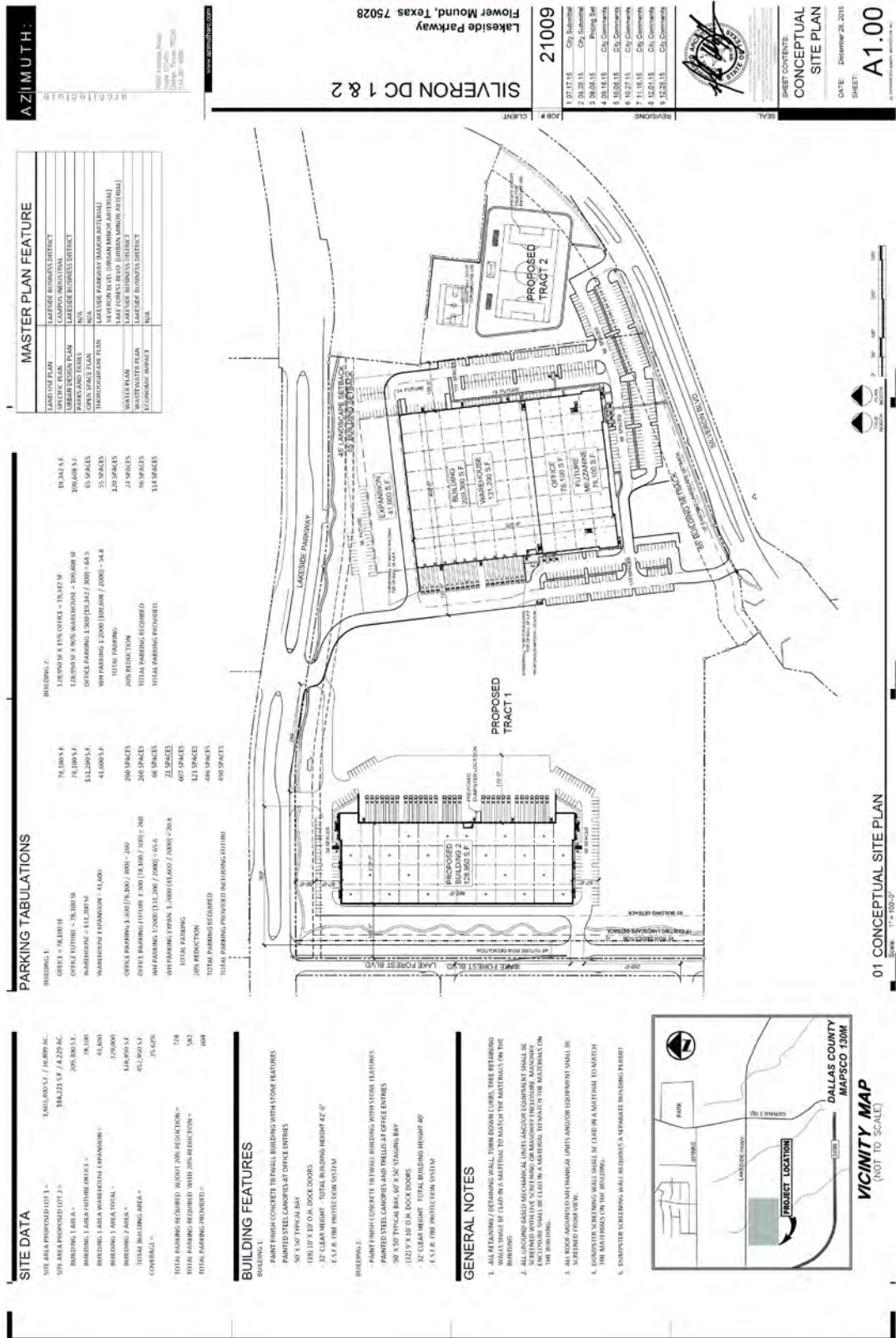


Exhibit "D"
Conceptual Landscape Plan

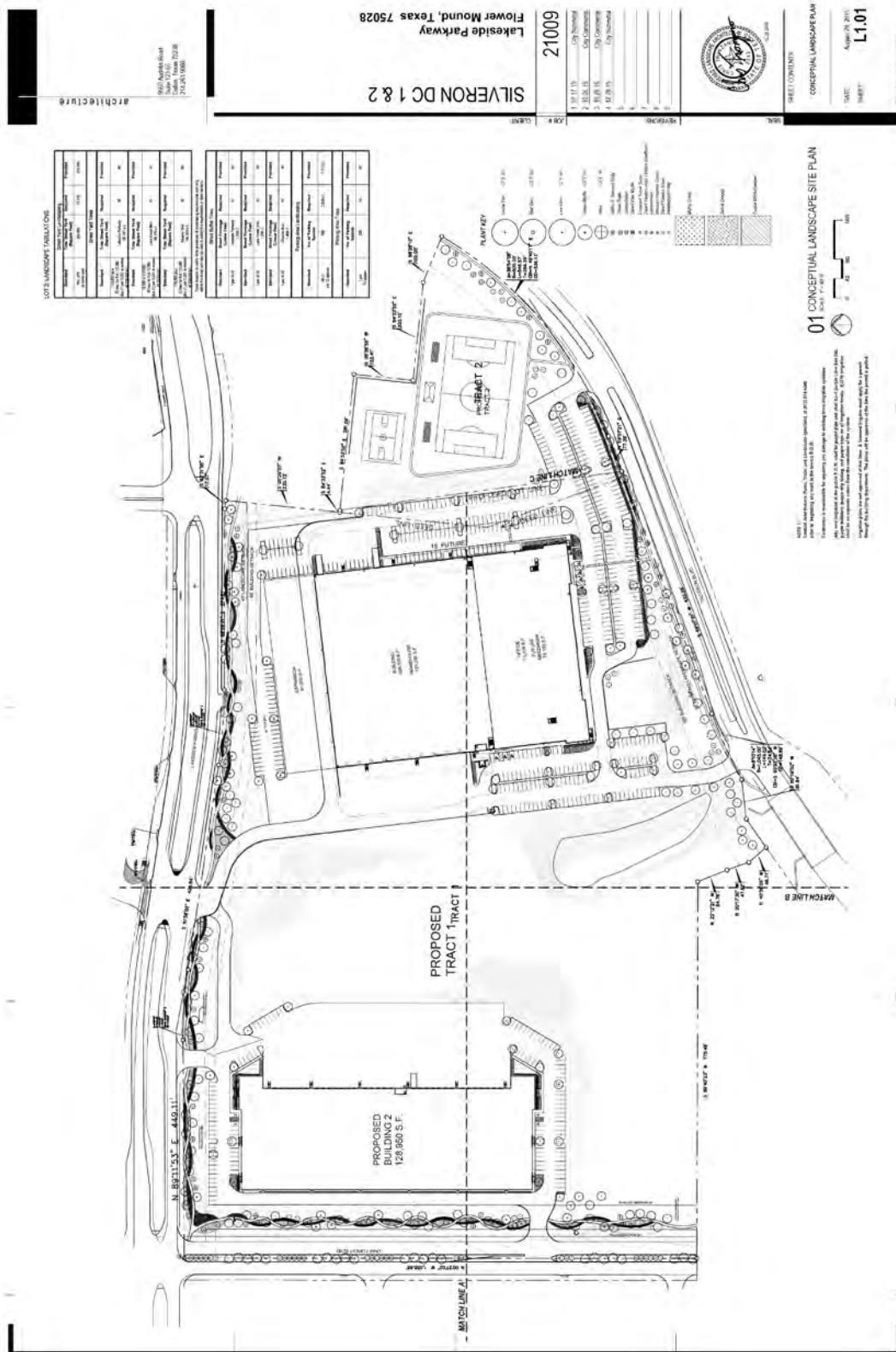
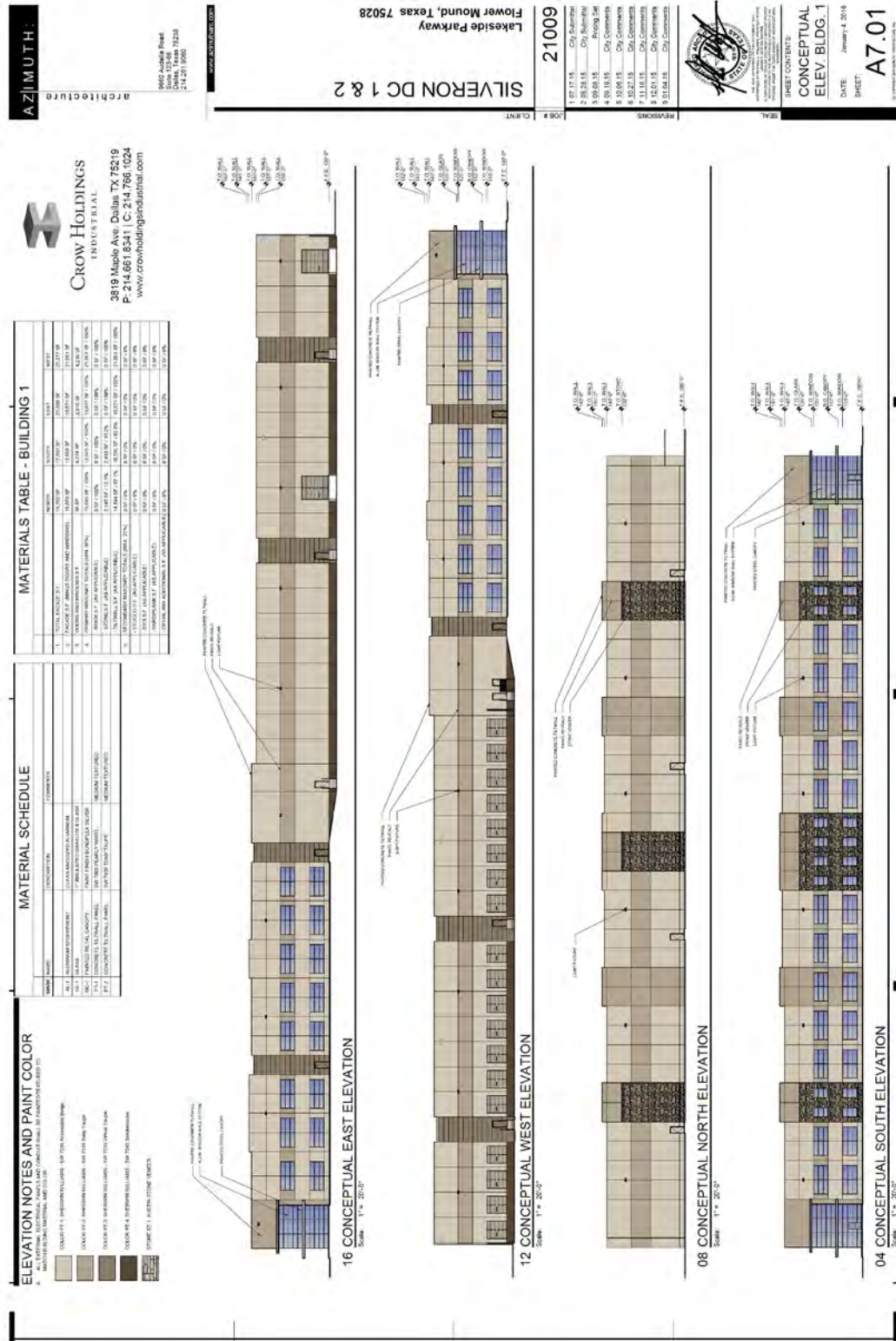


Exhibit “E” Conceptual Elevations



[illegible]



**101 E. Southwest Pkwy, Ste. 114
Lewisville, TX 75067
(972) 436-9669
FAX: (972) 436-9667**

January 11, 2016

Will Munding
Crow Holdings Industrial
3819 Maple Avenue
Dallas, TX 75219

Subject: Environmental Protection Plan for the Proposed Silveron DC 1 and 2 Development,
Flower Mound, Denton County, Texas.

Dear Mr. Munding:

This Environmental Protection Plan (EPP) was prepared to satisfy the Town of Flower Mound (Town) development requirements for the proposed commercial development in Flower Mound (Proposed Silveron DC 1 and 2 Development). The project site is an approximately 36.8-acre tract of vacant property located within a developing area of Flower Mound. The property is located southwest of the intersection of Lakeside Parkway and Silveron Boulevard in Flower Mound, Denton County, Texas (**Figure 1**). The EPP summarizes a survey performed to identify Environmentally Sensitive Areas (ESAs) potentially present on the property. This EPP was developed in accordance with the Town of Flower Mound SMARTGrowth Program, Category E (6) Environmental Quality.

Site Description

On October 9, 2015 Jose Alvarez and John Kemmey, of KBA EnviroScience, Ltd. (KBA), performed a site investigation of the proposed development property to assess property condition and environmental features, and to determine whether there are any ESAs, as described in the SMARTGrowth Program, located on site. The proposed development design is provided as **Figure 2**.

The site consists of forest in the central and western portion of the site and mixed scrub-shrub and grasslands in the eastern portion of the site. Most of the site is dominated by upland trees, grasses, and forbs including Bermuda grass (*Cynodon dactylon*), cedar elm (*Ulmus crassifolia*), dallisgrass (*Paspalum dilatatum*), downy brome (*Bromus tectorum*), eastern red cedar (*Juniperus virginiana*), green ash (*Fraxinus pennsylvanica*), greenbriar (*Smilax bona-nox*), perennial rye (*Lolium perenne*), post oak (*Quercus stellata*), and mesquite (*Prosopis glandulosa*).

One ephemeral stream, three tributaries, three wetlands and a pond are located on site. Stream A enters the site through a culvert in the northern portion of the site and flows southeast into a pond and accompanying fringe wetland. A fringe wetland extends along Stream A as it enters the site through a culvert. Stream A flows southeast into a pond in the

Mr. Mundinger

Page 2 of 10

central portion of the site. The stream then continues south out of the pond and exits in the southern portion of the site. A fringe wetland is also located around Stream A before it exits the site. A tributary, Tributary 1 originates onsite in the central portion of the site and flows southeast into Stream A. Tributary 2 enters the site through a culvert located in the southwestern portion of the site and flows east until it joins Stream A. Tributary 3 flows into the site in the southwestern portion of the site. Tributary 3 flows northeast until it flows into Tributary 2 (**Figure 3**).

Soils onsite consist of clay-loam and clay. Elevation of the project area ranges from 520 to 600 feet above mean sea level (msl) as indicated on the USGS topographic map (USGS 2014) (**Figure 4**).

A review of the US Fish and Wildlife Service National Wetland Inventory (NWI) Map (**Figure 5**), shows one Palustrine, Unconsolidated Bottom, Permanently Flooded, Diked/Impounded (PUBHh) feature present on property. No wetlands are indicated on the NWI map. During the site visit, the pond was observed on the site as indicated by the NWI map.

Habitat Evaluation

A habitat evaluation was conducted to assess the presence, or likely presence, of federal and state-listed threatened or endangered species potentially occurring at the site. A protected species list for Denton County was obtained from the United States Fish and Wildlife Service (USFWS) and Texas Parks and Wildlife Department (TPWD) prior to the site visits. The evaluation considered the habitat provided by the site compared to the location of critical habitat and habitat preferences of the listed species.

There are thirteen species designated by the USFWS and/or the TPWD as threatened or endangered species in Denton County, as shown in **Table 1**.

Mr. Mundinger

Page 3 of 10

Table 1: Federal and State-Listed Threatened and Endangered Species Potentially Present in Denton County, Texas

Species (Scientific Name) Federal, State Status	Species Habitat Description	Habitat Present	Effect	Pertinent Information
Bald Eagle (<i>Haliaeetus leucocephalus</i>) --, T	Found primarily near rivers and large lakes; nests in tall trees or on cliffs near water; communally roosts, especially in winter; hunts live prey, scavenges, and pirates food from other birds	No	No	Project site located in an industrial area and is too close to human habitation for Bald Eagles to utilize. In addition, no bald eagle nest were seen during the site visit.
Least Terns (<i>Sterna antillarum</i>) E, --	Migratory and breed along the river systems of Texas, especially the Red and Rio Grande River systems. Most often seen on sandbars in rivers and lakes or on pond edges free of vegetation, but may also breed on man-made structures such as water treatment plants. The birds nest in Texas during May through August, and winter in Central and South America.	No	No	No sandbars on lakes or rivers are present on site.
Peregrine Falcon (<i>Falco peregrinus</i>) --, T	Both subspecies migrate across the state from more northern breeding areas in US and Canada to winter along coast and farther south; subspecies (<i>F. p. anatum</i>) is also a resident breeder in west Texas; the two subspecies' listing statuses differ, <i>F.p. tundrius</i> is no longer listed in Texas; but because the subspecies are not easily distinguishable at a distance, reference is generally made only to the species level.	Yes	No	Species could potentially utilize the site temporarily during migration but is unlikely to be affected by the proposed project.
Piping Plover (<i>Charadrius melodus</i>) T, --	Breeding area extends along the eastern coast of the United States south to southern Texas and includes the Great Lakes region, the northern Midwestern states, and south central Canada. The Piping Plover winters along the eastern Mexico coast. Piping Plovers nest on sandy beaches along the ocean or inland lakes; bare to sparsely vegetated areas on dredge-created and natural alluvial islands in rivers; gravel pits along rivers; and salt-encrusted bare areas of sand, gravel, or pebbly mud on alkaline interior lakes and ponds.	No	No	Conditional species, adversely affected with conditions or activities related to wind energy projects. No sandy beaches are located on site.

Mr. Mundinger

Page 4 of 10

Species (Scientific Name) Federal, State Status	Species Habitat Description	Habitat Present	Effect	Pertinent Information
Red Knot (<i>Calidris canutus rufa</i>) Threatened, --	Migratory and may stopover in gulf coast. Breeding habitat consist of slightly vegetated land in tundra. Wintering habitats consist of large sandy tidal flats and coastlines.	No	No	Conditional species, adversely affected with conditions or activities related to wind energy projects. No sandy tidal flats or coastlines are located on site.
White-faced Ibis (<i>Plegadis chihi</i>) --, T	Prefers freshwater marshes, sloughs, and irrigated rice fields, but will attend brackish and saltwater habitats; nests in marshes, in low trees, on the ground in bulrushes or reeds, or on floating mats.	Yes	No	Habitat for this species found on site. However, the species was not seen during the site visit and the proposed project does not impact any potential habitat.
Whooping Crane (<i>Grus americana</i>) E-EXP, E	Potential migrant via plains throughout most of the state to coast; winters in coastal marshes of Aransas, Calhoun, and Refugio counties.	No	No	The wetlands onsite are isolated, small, and not likely to provide adequate habitat.
Wood Stork (<i>Mycteria americana</i>) --, T	Forages in prairie ponds, flooded pastures or fields, ditches, and other shallow standing water, including salt-water; usually roosts communally in tall snags, sometimes in association with other wading birds (i.e. active heronries); breeds in Mexico and birds move into Gulf States in search of mud flats and other wetlands, even those associated with forested areas; formerly nested in Texas, but no breeding records since 1960.	No	No	The wetlands onsite are isolated, small, and not likely to provide adequate habitat.
Red wolf (<i>Canis rufus</i>) --, E	Extirpated; formerly known throughout eastern half of the state in brushy and forested areas, as well as coastal prairies	No	No	Extirpated in Texas.
Louisiana pigtoe (<i>Pleurobema riddellii</i>) --, T	Streams and moderate-size rivers, usually flowing water on substrates of mud, sand, and gravel; not generally known from impoundments; Sabine, Neches, and Trinity (historic) River basins	No	No	Ephemeral channels on site not conducive to bivalves. Extirpated in Trinity Basin.
Texas heelsplitter (<i>Potamilus amphichaenus</i>) --, T	Quiet waters in mud or sand and also in reservoirs. Sabine, Neches, and Trinity River basins	Yes	No	Ephemeral channel on site not conducive to bivalves. Some channels on site likely to contain adequate habitat; however, the main channel will remain unimpacted by proposed development.

Mr. Mundinger

Page 5 of 10

Species (Scientific Name) Federal, State Status	Species Habitat Description	Habitat Present	Effect	Pertinent Information
Texas Horned Lizard (<i>Phrynosoma cornutum</i>) --, T	Open, arid and semi-arid regions with sparse vegetation, including grass, cactus, scattered brush or scrubby trees; soil may vary in texture from sandy to rocky. Feeds on harvester ants.	No	No	The site did contain sparsely vegetated areas, however no harvester ant colonies were located on-site. In addition, no evidence of horned lizard use (e.g., scat) was identified.
Timber/Canebrake rattlesnake (<i>Crotalus horridus</i>) --, T	Swamps, floodplains, upland pine and deciduous woodlands, riparian zones, abandoned farmland; limestone bluffs, sandy soil or black clay, prefers dense ground cover, i.e. grapevines or palmetto	Yes	No	Potential habitat for this species exists on site; however, habitat on project site not unique. Surrounding, undeveloped properties will provide adequate habitat.

E = Endangered; EXPN = Experimental Population; T = Threatened

Based on the site visit, it is KBA's opinion that the site offers potential habitat for the following threatened or endangered species:

- Peregrine falcon (TPWD "threatened"), potential migrant
- Texas Heelsplitter (TPWD "threatened"), potential resident;
- Timber/canebrake rattlesnake (TPWD "threatened"), potential resident;
- White-faced Ibis (TPWD "threatened"), potential resident;

Although the site offers potential habitat for the above-noted species, habitat on the project site is not unique in the area and surrounding, undeveloped land will provide adequate habitat. Additionally, the stream and wetland habitat potentially available to the Texas Heelsplitter and White-faced Ibis will not be impacted.

None of these species identified as potentially inhabiting or feeding on the site were observed on the site and no field observations indicate their presence.

Environmentally Sensitive Areas

KBA conducted a desk-top analysis and field verification of the site and identified the following ESAs on the site:

Upland Habitat

The Town defines upland habitat as:

"Areas, a minimum of ten (10) acres in size, equal to or exceeding 50 trees per acre, which contain a predominate matrix of tree species identified in the Town's Protected Tree List. Any tree species that makes up over thirty percent (30%) of the population within a complex is considered to be the predominate species."

Mr. Mundinger

Page 6 of 10

KBA identified upland habitat in the western portion of the property. The upland habitat consisted of over 10 contiguous acres of forested land that contained greater than 50 trees per acre that was dominated by trees on the Town's Protected Species List. The site contains approximately 18.96 acres of upland habitat and was estimated based on changes in elevation, stands of trees, and location of the floodplain (Figure 6).

The upland habitat included cedar elm, eastern red cedar, green ash, hackberry, and post oak. The vegetation observed appeared to be in good health.

Based on the vegetation present, this area is considered an ESA by the Town's definition of upland habitat. Although there is approximately 18.96 acres of upland habitat on site, only 6.76 acres will be impacted by the development, leaving 12.2 acres of upland habitat undisturbed (Figure 7). The sections on the property considered upland habitat are located mostly in the central and southern portion of the site.

Waters of the State

The Town defines waters of the State as:

"Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state."

KBA performed a jurisdictional delineation of wetlands and other "waters of the United States" (as defined by the Clean Water Act) for the site. The Town's site survey depicts a stream (Stream A) and pond located on the property. The stream enters the site in the north-central portion of the property and flows southeast into a pond in the central portion of the site. The stream then flows south out of the pond and exits the site via a culvert under Silveron Boulevard.

KBA delineated three tributaries and three wetlands in addition to the stream and pond noted by the town. A fringe wetland (0.012 acres) surrounds Stream A as it enters the site near the culvert in the northern portion of the site. Stream A then flows southeast into a pond (0.129 acres). The stream then continues south out of the pond and exits in the southern portion of the site. Stream A flows for 1,524 feet. A fringe wetland (0.109 acres) is also located along Stream A before it exits the site. A tributary, Tributary 1 (228 ft), originates onsite in the central portion of the site and flows southeast into Stream A. Tributary 2 (766 ft) enters the site through a culvert located in the southwestern portion of the site and flows east until it joins Stream A. Tributary 3 flows 237 ft into the site in the southwestern portion of the site and flows northeast until it flows into Tributary 2. The ephemeral stream, the three ephemeral tributaries, three wetlands and the pond are considered ESAs by the Town's definition of waters of the State.

Mr. Mundinger

Page 7 of 10

Topographical Slope Protection

The Town of Flower Mound's SmartGrowth Implementation manual states:

"No development application or project shall be approved that proposes development on any existing topographical slopes of twelve percent (12.0%) or greater, or that proposes to alter any existing topographical slopes that are less than twelve percent (12.0%) but equal to or greater than five percent (5.0%) (other than within five feet of the footprint of the proposed structure or structures)."

Several locations on the Proposed Silveron DC 1 and 2 Development have been mapped by the Town as areas having between 5% and 12% topographic slope (**Figure 8**). These areas total approximately 14.31 acres and, in general, parallel Stream A and are in central portion of the site. There are also a few smaller areas that have topographic slopes equal to or greater than 12% scattered across various locations of the site and total 5.63 acres. The locations of these steep slopes are considered an ESA by the Town and meet the criterion for topographic slope protection.

Approximately 8.09 acres of the 14.31 acres of land with topographic slopes between 5% and 12% are proposed to be impacted by the development (**Figure 9**). An exception of the topographic slope protection is being requested for the 4.70 acres of land that have topographic slopes of between 5% and 12% and are not within 5 ft of the structure. In addition, 0.74 acres of the 5.63 acres of land on the site that have topographic slopes greater than 12% are proposed to be impacted. Therefore, an exception is also being requested for the 0.74 acres of land that have topographic slopes greater than 12% that will be impacted by the proposed development.

Proposed Development Plan

The proposed site plan calls for the property to be developed as a commercial development. Goals to preserve the natural habitat on the Proposed Silveron DC 1 and 2 Development will include the removal of only those trees and natural vegetation that would be affected by the proposed construction of the onsite roads, utilities, and structures. Several mitigation strategies are proposed to compensate for any permanent impacts to environmentally sensitive areas. Best Management Practices (BMPs) will also be employed to retain sediments and other pollutants onsite during construction activities. A figure showing the overall development plan and impacts to Town-defined ESAs is shown as Figure 7 and 9.

Mitigation Measures During Project Planning and Construction

The following mitigation measures will be employed throughout the planning and construction of the project:

- The development plan has been designed to preserve as many trees and natural vegetation as possible while still allowing an economically viable development.
- Approximately 18.96 acres of Town-defined Upland Habitat exists on the site and the development plan has been designed to preserve over half of this habitat.

Mr. Mundinger

Page 8 of 10

Approximately 6.76 acres of upland habitat is proposed to be impacted by the commercial developments. Approximately 12.2 acres of upland habitat will be completely unimpacted by the proposed project. Mitigation for the 6.76 acres of upland habitat impacted by buildings will be partially accomplished by the preservation of 12.2 acres of upland habitat on site. An exception is being requested for any additional compensation required for impacts to upland habitat on site.

- Although every attempt has been made to minimize the number of trees damaged or removed during development, some impacts to trees will occur. The removal of trees will be limited to stressed or dead trees, trees within the footprint of proposed structures and roads, and trees needed to be removed to level the building lots. To reduce impacts, roads will be constructed so as to minimize the number of trees needing to be removed. Mitigation for the impact to trees that must be removed will include tree preservation (where possible), additional tree and other native vegetation plantings, habitat improvement projects, and green space preservation.
- Tributary 2 and Tributary 3 will remain unaltered. A small portion of Stream A and Tributary 1 will be filled for the development. Any fill in jurisdictional waters will be authorized under a US Army Corps of Engineers Section 404 permit. Specifically, Nationwide Permit 39 will be obtained for the commercial developments.
- No areas with topographic slopes between 5% and 12% will be altered unless they are within five feet of a proposed structure or an exception of this requirement is issued by the Town. A, exception of this requirement is being requested for approximately 4.70 acres of land with slopes between 5% and 12%. An exception is also being requested for the impacts to 0.74 acres of land with slopes greater than 12%.
- Silt fencing will be installed and maintained in compliance with TCEQ Construction General Permit requirements. This structural feature will minimize sediments from entering the Town's storm sewer system during construction.
- Silt fencing will be installed perpendicular to the direction of flow, especially along roadways and drainage/low elevation areas.
- Stabilized construction entrances will be installed at appropriate locations onsite during construction. These structural features will reduce the risk of transporting mud or sediment onto the adjacent roads and other nearby roadways.
- Major soil disturbing activities will be sequenced to preserve existing vegetation.
- Storm water control devices will be installed to promote sedimentation onsite, limit runoff, and reduce the velocity of concentrated flows to reduce erosion and scouring to onsite and adjacent drainages.
- Storm water control devices will be maintained until stabilized disturbed areas have achieved final stabilization.

Mr. Mundinger

Page 9 of 10

- Active migratory bird nesting areas will not be disturbed during site development. Although not anticipated, if a threatened or endangered species is encountered during site development, the USFWS and/or TPWD authorities will be contacted immediately.

Conclusions

Based on the site visit, ESA Survey performed by KBA, and proposed zoning for the site, KBA concludes the following:

- The project site contains potentially suitable habitat for the following resident or migrating species: Peregrine falcon, Texas Heelsplitter, timber/canebrake rattlesnake and the White-faced Ibis. None of these listed species were observed onsite. Potential habitat for these species does exist on site, however, the habitat on the project site is not unique to the area and surrounding, undeveloped properties will provide adequate habitat to prevent negative impacts to these species. In addition, potential habitat on site for the Texas Heelsplitter and White-faced Ibis will not be impacted by the proposed development.
- Town-defined Environmentally Sensitive Areas exist on the project site. Waters of the state, Upland Habitat, and Topographical Slope Protection areas have been identified on site. Although some impacts to these areas are anticipated, mitigation measures that compensate for these impacts will be conducted.
- The Town's tree ordinance and other environmental mandates will be strictly adhered to.

The Proposed Silveron DC 1 and 2 Development will be designed to allow for the partial preservation of existing natural habitat. The preserved trees will provide an aesthetic value to the site and continue to provide habitat for a variety of biota including songbirds, mammals, reptiles, and insects.

Please let either of us know if additional information would be helpful.

Sincerely,



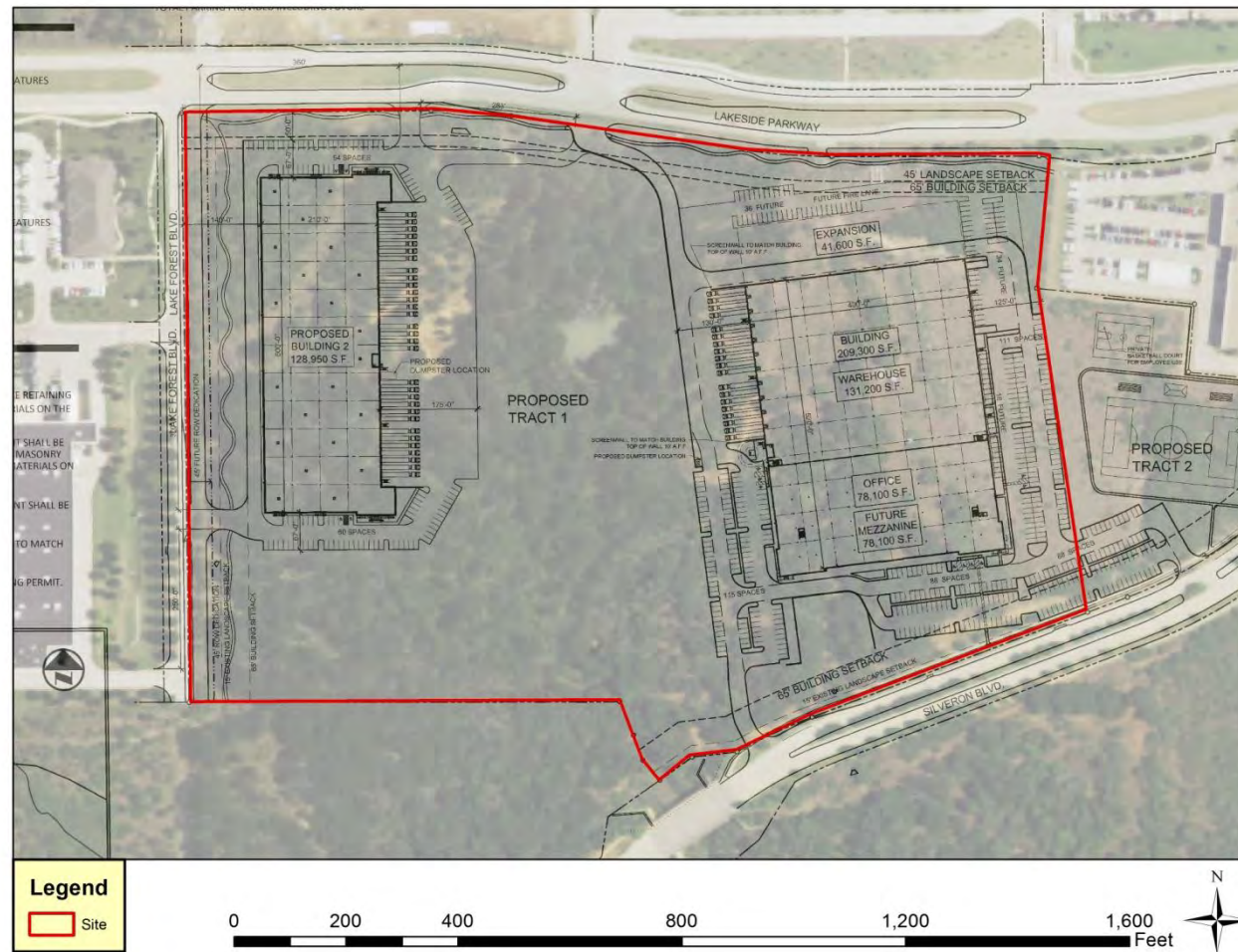
Joseph Schwartz, Project Manager
KBA EnviroScience, Ltd.



C. Keith Bradley, REP, CWB
KBA EnviroScience, Ltd.

FIGURES

Figure 1. Site Location Map for the Proposed Silveron DC 1 and 2 Development, Flower Mound, Denton County, Texas.



Crow Holdings Industrial
Project 15.085.01.F

Prepared by J. Alvarez
9/11/15

KBA EnviroScience, Ltd.

Figure 2. Development Plan for the Proposed Silveron DC 1 and 2 Development, Flower Mound, Denton County, Texas.

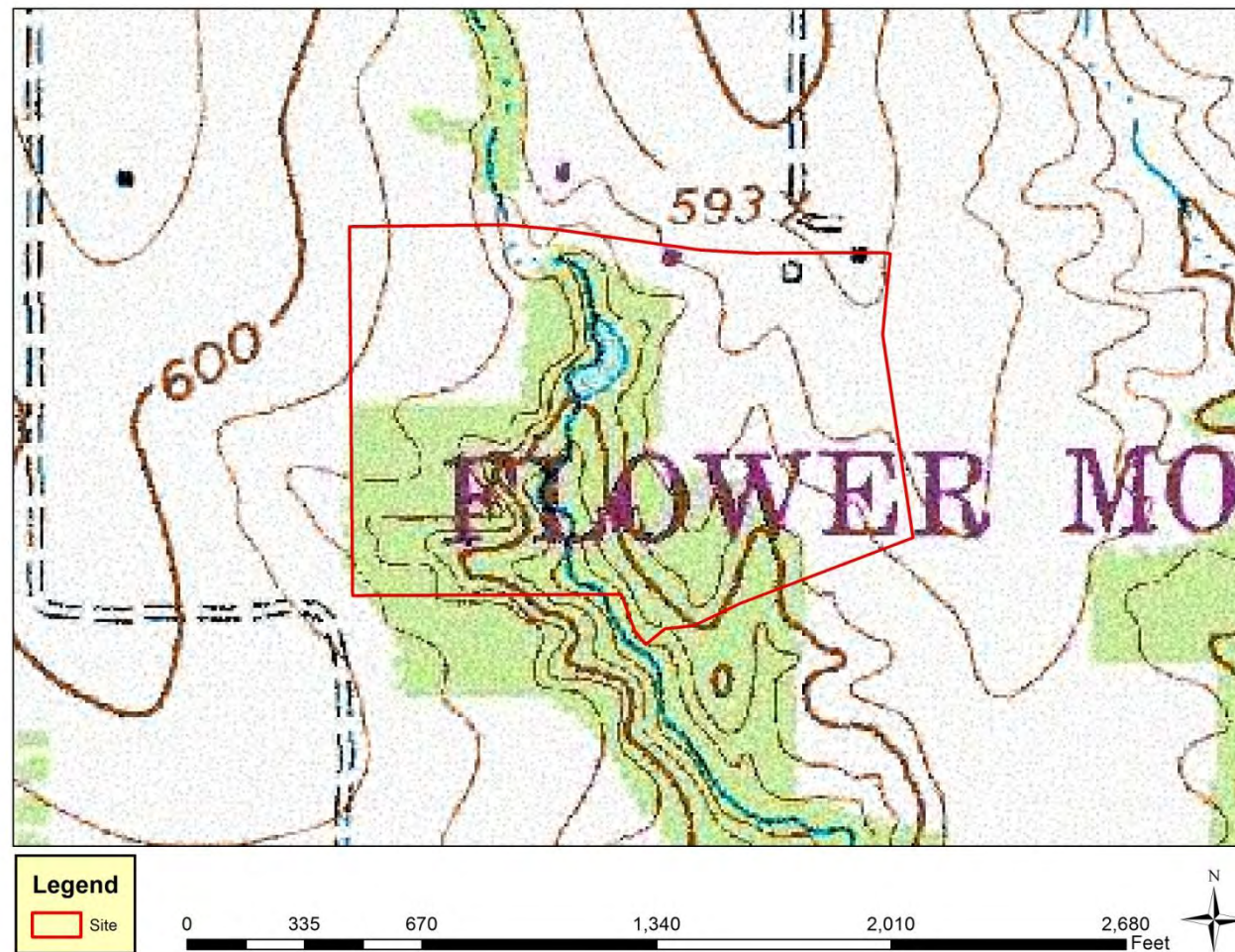


Crow Holdings Industrial
Project 15.085.01.F

Prepared by J. Alvarez
9/11/15

KBA EnviroScience, Ltd.

Figure 3. Streams Located on the Proposed Silveron DC 1 and 2 Development, Flower Mound, Denton County, Texas.



Crow Holdings Industrial
Project 15.085.01.F

Prepared by J. Alvarez
9/11/15

KBA EnviroScience, Ltd.

Figure 4. Topographic Map for the Proposed Silveron DC 1 and 2 Development, Flower Mound, Denton County, Texas.

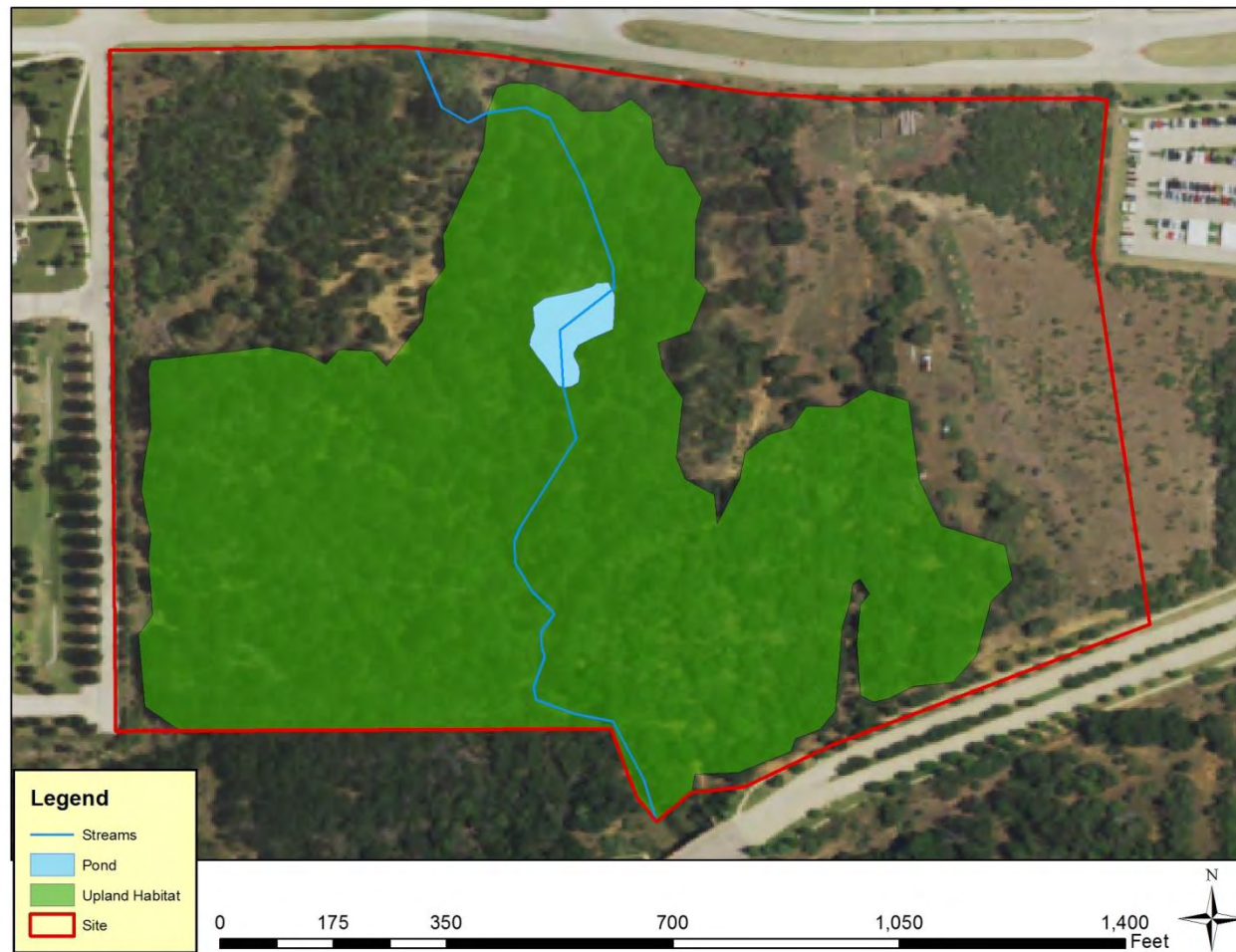


Crow Holdings Industrial
Project 15.085.01.F

Prepared by J. Alvarez
9/11/15

KBA EnviroScience, Ltd.

Figure 5. USFWS NWI Map for the Proposed Silveron DC 1 and 2 Development, Flower Mound, Denton County, Texas.

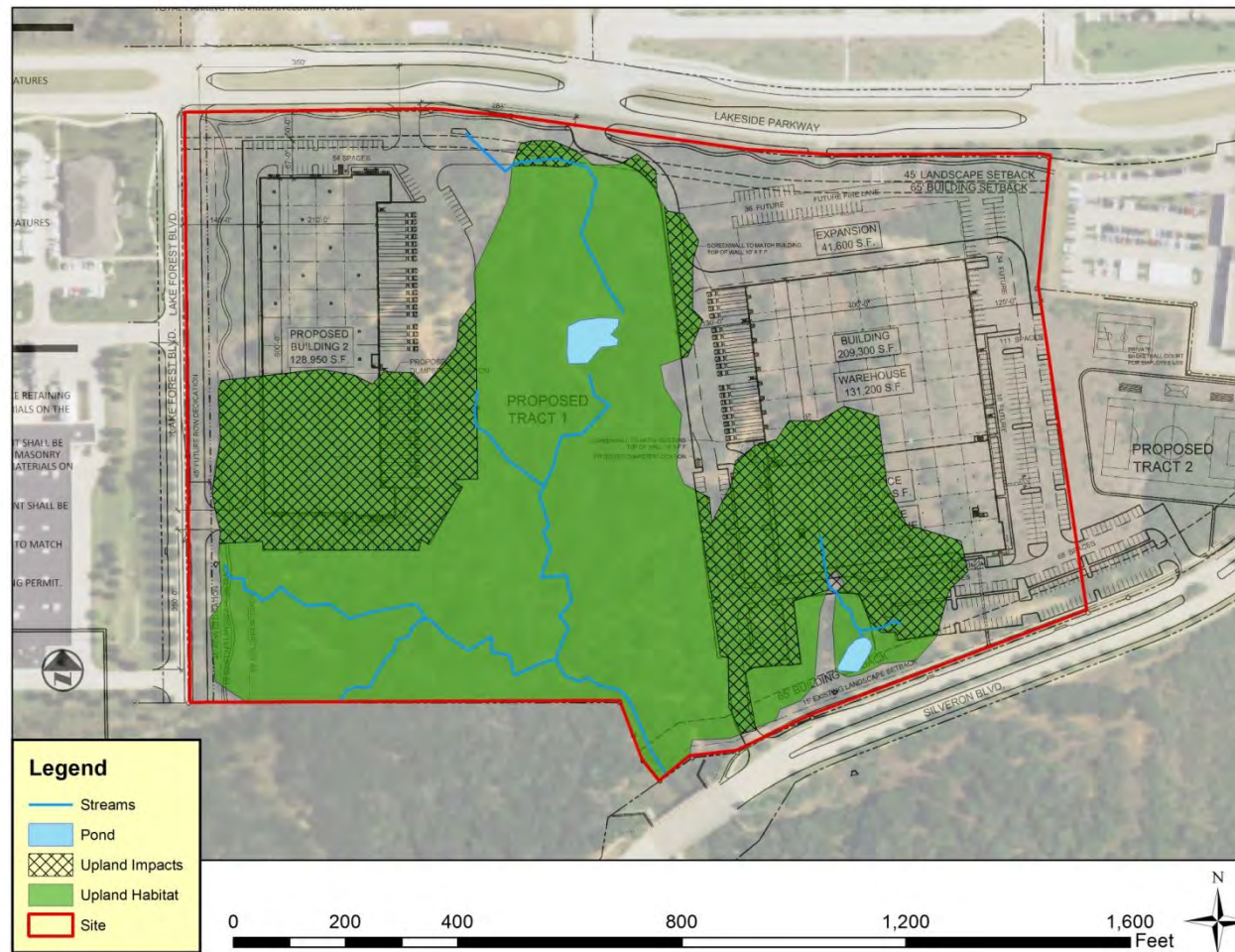


Crow Holdings Industrial
Project 15.085.01.F

Prepared by J. Alvarez
9/11/15

KBA EnviroScience, Ltd.

Figure 6. Environmentally Sensitive Areas Map for the Proposed Silveron DC 1 and 2 Development, Flower Mound, Denton County, Texas.

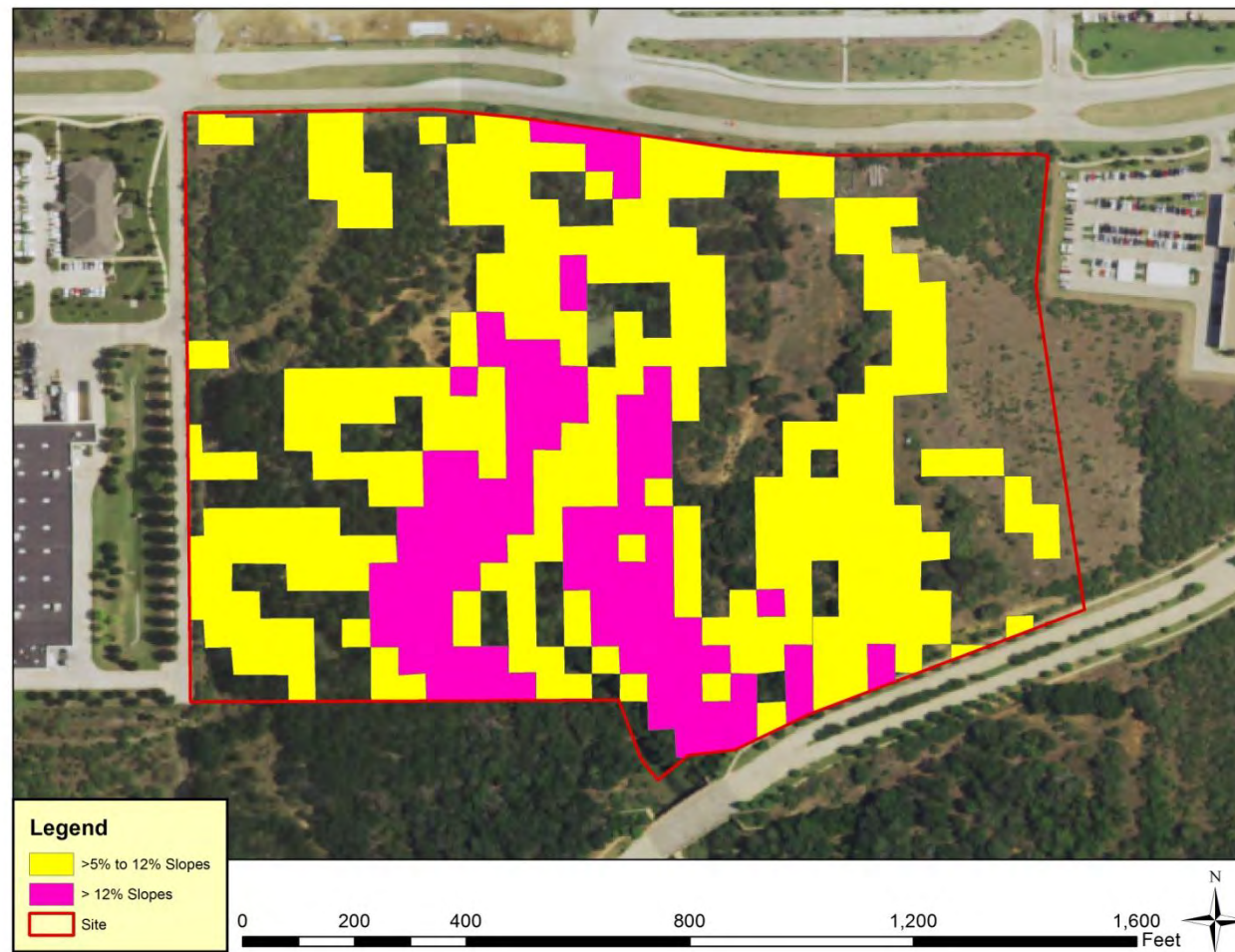


Crow Holdings Industrial
Project 15.085.01.F

Prepared by J. Alvarez
9/11/15

KBA EnviroScience, Ltd.

Figure 7. Proposed Impacts to Environmentally Sensitive Areas for the Silveron DC 1 and 2 Development, Flower Mound, Denton County, Texas.

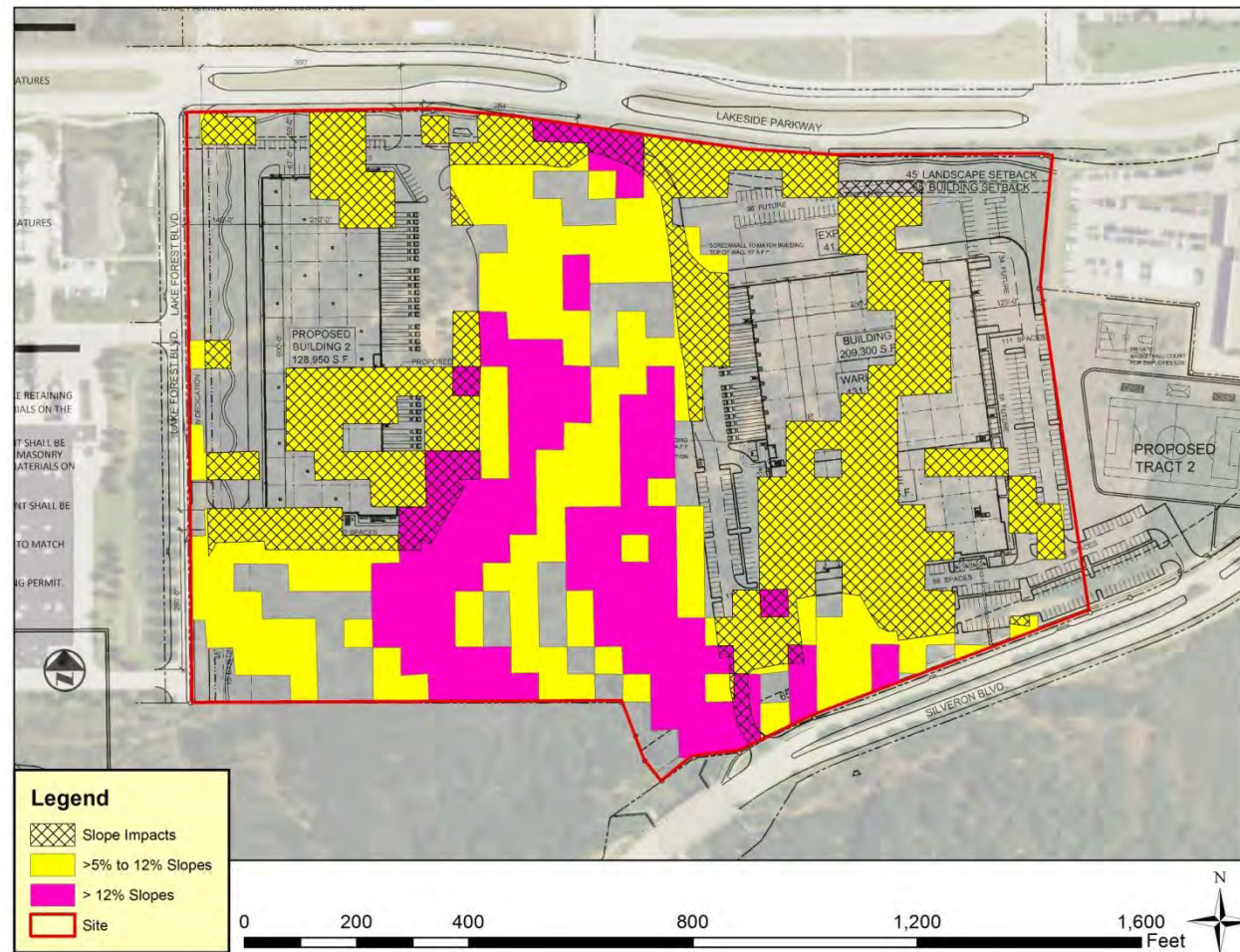


Crow Holdings Industrial
Project 15.085.01.F

Prepared by J. Alvarez
9/11/15

KBA EnviroScience, Ltd.

Figure 8. Map of Protected Slope Areas for the Proposed Silveron DC 1 and 2 Development, Flower Mound, Denton County, Texas.



Crow Holdings Industrial
Project 15.085.01.F

Prepared by J. Alvarez
9/11/15

KBA EnviroScience, Ltd.

Figure 9. Proposed Impacts to Protected Slope Areas for the Proposed Silveron DC 1 and 2 Development, Flower Mound, Denton County, Texas.



TOWN COUNCIL AGENDA ITEM NO. 18

REGULAR ITEM

DATE: January 21, 2016

FROM: Matthew Woods, Director of Environmental Services

ITEM: Public Hearing to consider an application for a tree removal permit for eight (8) specimen trees on property proposed for development as Silveron Industrial Warehouse. The property is generally located north of Silveron Boulevard, south of Lakeside Parkway, and east of Lake Forest Boulevard. *(The Environmental Conservation Commission recommended approval by a vote of 6-0-0 at its October 6, 2015, meeting).*

BACKGROUND INFORMATION: The Silveron Industrial Warehouse development is generally located north of Silveron Boulevard, south of Lakeside Parkway, and east of Lake Forest Boulevard, within the Lakeside Business District. The site is approximately 41.039 acres in size and is currently zoned for Campus Commercial (CC) uses within Planned Development District No. 31 (PD-31) and is master planned for Campus Commercial uses. The applicant is requesting a master plan amendment to change the landuse designation to Campus Industrial. In addition, the applicant is requesting to amend the zoning designation to Campus Industrial District (CI) uses. According to the tree survey for the project, the site contains a total of eight (8) specimen trees. The applicant is requesting to remove all eight (8) of the specimen trees from the site in order to build two (2) industrial warehouses. All of the specimen trees proposed for removal are located within the Buildable Area and are in good condition.

The following specimen trees are being requested for removal: Tree #2207 – 26.5" Post oak; Tree #2211 – 20" Cedar elm; Tree #2221 – 30" Post oak; Tree #2292 – 26" Post oak; Tree #2296 – 30" Cedar elm (multi-trunk); Tree #2301 – 25.5" Post oak; Tree #2335 – 27" Post oak; and Tree #2336 – 32" Post oak.

Although the Town's tree preservation ordinance, Chapter 94 – Trees, was amended in July of 2015 to remove the mitigation exception for non-residential uses within the Lakeside Business District, the development application for Silveron DC 1 & 2 was submitted prior to the ordinance adoption and is therefore not subject to the mitigation requirements.

BOARD REVIEW/CITIZEN FEEDBACK: This application was considered by the Environmental Conservation Commission (ECC) at its October 6, 2015, meeting. The ECC recommended approval of the requested permit to remove the specimen trees. A link to the ECC meetings can be found at: <https://tx-flowermound.civicplus.com/index.aspx?NID=969>

CITIZEN FEEDBACK: As of December 9, 2015, staff has not received feedback related to this item.

ALTERNATIVES/OPTIONS: The Town Council may approve the requested tree removal permit as recommended by the ECC, may choose to deny the requested tree removal permit, or may choose to approve the permit with conditions or changes.

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Letter of intent.
2. Specimen tree removal permit application.
3. Photographs of the specimen trees proposed for removal.

4. Project tree survey.

RECOMMENDATION: Move to approve the requested permit for eight (8) specimen trees on property proposed for development as Silveron Industrial Warehouse. The property is generally located north of Silveron Boulevard, south of Lakeside Parkway, and east of Lake Forest Boulevard.

CIT Acquisition Corp
3819 Maple Avenue
Dallas, TX 75219

September 18, 2015

Mr. Matthew Woods
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028

Re: Specimen Tree Removal Permit
Silveron Site
Flower Mound, Texas

Dear Mr. Woods,

This letter is in response to Item F of the submittal checklist from the Town of Flower Mound specimen tree removal permit.

CIT Acquisition Corp is pursuing a permit to remove up to eight specimen trees from a forty-one acre site south of Lakeside Pkwy, east of Lake Forest Blvd, and North of Silveron Blvd in Flower Mound, Texas. Please see the attached site plan for further information.

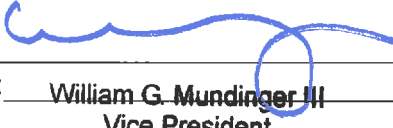
CIT is proposing the development of two warehouse buildings totaling 400,000 square feet. The warehouse buildings, their parking areas, and driveways must be uniformly paved to allow car and truck access. Unfortunately, as a result, all trees must be removed as part of construction.

This said, there are large areas of the site being preserved, and the development will add more than 180 new trees.

Thank you for your consideration on this matter.

Sincerely,

CIT Acquisition Corp.
a Texas corporation

By: 
Name: William G. Munding III
Title: Vice President

Town of Flower Mound
Application for:
TREE REMOVAL PERMIT

(Effective for Developments submitted 10/6/08 - present)

Check one: ☐ Protected Tree ☒ Specimen Tree ☐ Historic Tree

1. Applicant- Note: Must be a licensed Landscape Architect or Registered Arborist

Name:

SMR Landscape Architects

Address:

1708 N. Griffin St.
Dallas, TX 75202

Phone:

(214) 871-0083

Applicant's Legal Interest in the Property:

SMR is a consultant for CIT Acquisition Corp., who is purchasing the subject property.

2. Property Owner(s)

Name(s): Plainscapital Bank

Address: P.O. Box 660
Edinburg, TX 78540

3. Location and Legal Description of Property:

The property is generally located south of Lakeside Pkwy, east of Lake Forest Blvd. and north of Silveron Blvd. Please see the legal description for more detail.

EXHIBIT A**LEGAL DESCRIPTION OF REAL PROPERTY**

Being a tract of land located in the J. Knight Survey, Abstract No. 692, Town of Flower Mound, Denton County, Texas and being more particularly described as follows:

Beginning at an "X" in concrete found in the West right-of-way line of Silveron Boulevard, a variable width right-of-way, at the Southeast corner of Silveron Center, an Addition to the Town of Flower Mound, Denton County, Texas according to the Plat Records, Denton County, Texas, said point being at the beginning of a curve to the right having a central angle of 38 degrees 54 minutes 10 seconds, a radius of 805.00 feet and a chord bearing and distance of South 49 degrees 40 minutes 17 seconds West, 536.14 feet;

Thence Southwesterly, along said West right-of-way line and along said curve to the right, an arc distance of 546.58 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

Thence South 69 degrees 07 minutes 22 seconds West, continuing along said West right-of-way line, a distance of 88.73 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

Thence North 20 degrees 52 minutes 38 seconds West, leaving said West right-of-way line, a distance of 300.38 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

Thence North 05 degrees 26 minutes 08 seconds East, a distance of 304.90 feet to a 5/8 inch iron rod with a yellow plastic cap stamped "5574" found at the Southwest corner of said Addition;

Thence Easterly, along the South line of said Addition the following four (4) courses and distances:

South 84 degrees 33 minutes 52 seconds East, a distance of 285.53 feet to an "X" in concrete found for corner;

South 05 degrees 26 minutes 55 seconds West, a distance of 122.41 feet to an "X" in concrete found for corner;

South 84 degrees 33 minutes 52 seconds East, a distance of 203.15 feet to an "X" in concrete found for corner;

South 68 degrees 28 minutes 15 seconds East, a distance of 102.05 feet to an "X" in concrete found for corner;

South 68 degrees 28 minutes 15 seconds East, a distance of 102.05 feet to the Point of Beginning and containing 4.800 acres of land, more or less.

An approximately 19.62 acre tract, as depicted in this Exhibit A, out of that certain 36.238 acre tract of real property described as follows:

BEING a tract of land located in the J. Knight Survey, Abstract No. 692, Town of Flower Mound, Denton County, Texas and being a part of a tract of land described as Tract 1 in Deed to Daldav Associates, LP., recorded in Document Number 99-111390, Deed Records, Denton County, Texas and being more particularly described as follows:

BEGINNING at a 5/8 inch iron rod with a yellow plastic cap stamped "5574" found at the intersection of Lake Forest Boulevard, a 45 foot wide right-of-way, with Lakeside Parkway, a 120 foot wide right-of-way;

THENCE Easterly, along the South right-of-way line of said Lakeside Parkway, the following six (6) courses and distances:

North 89 degrees 11 minutes 54 seconds East, a distance of 449.11 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a curve to the right having a central angle of 08 degrees 50 minutes 05 seconds, a radius of 940.00 feet and a chord bearing and distance of South 86 degrees 23 minutes 03 seconds East, 144.80 feet;

Easterly, along said curve to the right, an arc distance of 144.94 feet to a 1/2 inch iron rod found for corner;

South 81 degrees 58 minutes 01 seconds East, a distance of 426.64 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "BRITTAIN&CRAWFORD" found for corner at the beginning of a curve to the left having a central angle of 08 degrees 22 minutes 28 seconds, a radius of 1,059.96 feet and a chord bearing and distance of South 86 degrees 09 minutes 15 seconds East, 154.79 feet;

Easterly, along said curve to the left, an arc distance of 154.93 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

North 89 degrees 39 minutes 32 seconds East, a distance of 373.21 feet to a 5/8 inch iron rod with a yellow plastic cap stamped "5574" found for corner;

South 82 degrees 31 minutes 54 seconds East, a distance of 17.07 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set at the Northwest corner of Lot 1, Block A of Silveron Center, an Addition to the Town of Flower Mound, Denton County, Texas according to the Plat thereof recorded in Cabinet X, Page 7, Plat Records, Denton County, Texas;

THENCE South 05 degrees 26 minutes 08 seconds West, leaving said South right-of-way line, passing a 5/8 inch iron rod with a yellow plastic cap stamped "5574" found at the Southwest corner of said Addition at a distance of 235.72 feet and continuing for a total distance of 540.62 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE South 20 degrees 52 minutes 38 seconds East, a distance of 300.38 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner in the North right-of-way line of Silveron Boulevard, a variable width right-of-way;

THENCE South 69 degrees 07 minutes 22 seconds West, along said North right-of-way line, a distance of 520.81 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a non-tangent curve to the left having a central angle of 08 degrees 10 minutes 13 seconds, a radius of 1,045.00 feet and a chord bearing and distance of South 65 degrees 02 minutes 16 seconds West, 148.89 feet;

THENCE Southwesterly, along said North right-of-way line and along said curve to the left, an arc distance of 149.01 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE South 82 degrees 59 minutes 53 seconds West, leaving said North right-of-way line, a distance of 81.84 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE South 54 degrees 39 minutes 29 seconds West, a distance of 71.56 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 40 degrees 36 minutes 07 seconds West, a distance of 46.71 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 20 degrees 17 minutes 29 seconds West, a distance of 47.82 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 22 degrees 12 minutes 20 seconds West, a distance of 64.76 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE South 89 degrees 40 minutes 24 seconds West, a distance of 775.49 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner in the East right-of-way line of said Lake Forest Boulevard;

THENCE North 00 degrees 27 minutes 01 seconds West, along said East right-of-way line, a distance of 1,055.68 feet to the POINT OF BEGINNING and containing 36.238 acres of land, more or less.

An approximately 15.50 acre tract, as depicted in this Exhibit A, out of that certain 36.238 acre tract of real property described as follows:

BEING a tract of land located in the J. Knight Survey, Abstract No. 692, Town of Flower Mound, Denton County, Texas and being a part of a tract of land described as Tract 1 in Deed to Daldav Associates, LP., recorded in Document Number 99-111390, Deed Records, Denton County, Texas and being more particularly described as follows:

BEGINNING at a 5/8 inch iron rod with a yellow plastic cap stamped "5574" found at the intersection of Lake Forest Boulevard, a 45 foot wide right-of-way, with Lakeside Parkway, a 120 foot wide right-of-way;

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Easterly, along said curve to the left, an arc distance of 154.93 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

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THENCE South 05 degrees 26 minutes 08 seconds West, leaving said South right-of-way line, passing a 5/8 inch iron rod with a yellow plastic cap stamped "5574" found at the Southwest corner of said Addition at a distance of 235.72 feet and continuing for a total distance of 540.62 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

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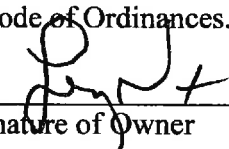
THENCE South 89 degrees 40 minutes 24 seconds West, a distance of 775.49 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner in the East right-of-way line of said Lake Forest Boulevard;

THENCE North 00 degrees 27 minutes 01 seconds West, along said East right-of-way line, a distance of 1,055.68 feet to the POINT OF BEGINNING and containing 36.238 acres of land, more or less.

Page 2 of 3.

4. Owner's Authorization of Representation

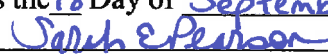
I, Larry Nixon, the owner of the above described real property, do hereby authorize CIT Acquisition Corp. to represent my interests and to file an Application for Tree Removal Permit for said real property, pursuant to the terms and provisions of Chapter 94 (Trees), of the Land Development Regulations of the Town of Flower Mound, Texas Code of Ordinances.


Signature of Owner



Given Under My Hand and Seal of Office

This the 18 Day of September, 20 15


Notary Public

In and For Dallas County, Texas.

5. Applicants Affidavit- Note: Applicant must be a licensed Landscape Architect or Registered Arborist.

Subject to criminal penalties contained in Subpart B, the Land Development Regulations of the Town of Flower Mound, Texas Code of Ordinances, I Chris Tronzano, do hereby swear or affirm that all of the Information contained herein and submitted herein is, to the best of my knowledge, true, correct and complete and that no false, misleading or incomplete information has been intentionally provided or submitted with this Application for a Tree Removal Permit.


Signature of Applicant

Landscape Architect License No. 2042

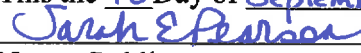
State of Licensure TX

Or ISA Certified Arborist No. _____



Given Under My Hand and Seal of Office

This the 18 Day of September, 20 15


Notary Public

In and For Dallas County, Texas

6. Received by Town of Flower Mound on (Date) 9/25/2015 by (initials) JRH.

Specimen Trees Proposed For Removal

ATTACHMENT 3

Tree # 2207- 26.5" Post Oak



Tree # 2211- 20" Cedar Elm



Tree # 2221- 30" Post Oak



Tree # 2292- 26" Post Oak



Tree # 2296- 30" Cedar Elm (Multi Trunk)



Tree # 2301- 25.5" Post Oak



Tree # 2335- 27" Post Oak



Tree # 2336- 32" Post Oak





SILVERON DC 1 & 2

**Lakeside Parkway
Flower Mound, Texas 75028**

21009

1	<u>07.17.15</u>	City Submittal
2	<u>09.28.15</u>	City Comments
3	<u>10.06.15</u>	City Comments
4	<u>10.28.15</u>	City Comments

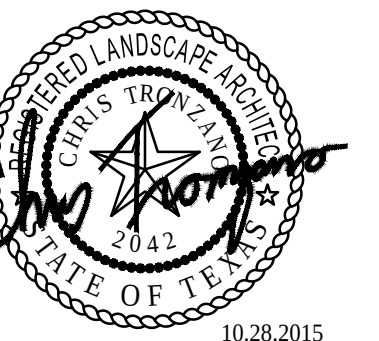
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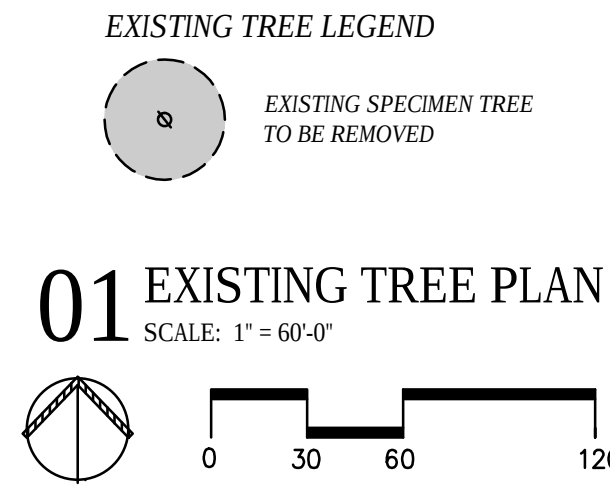
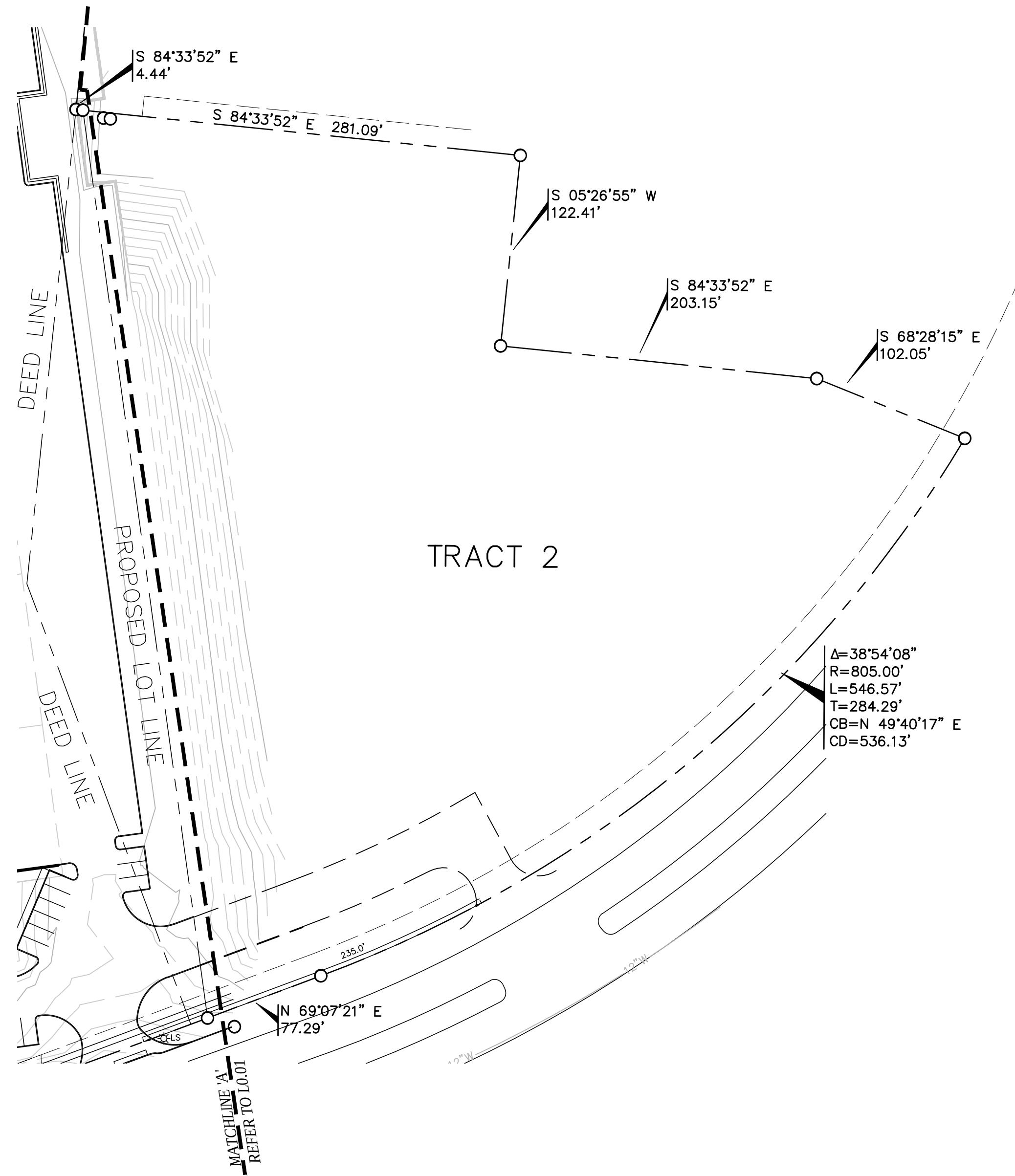
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EXISTING TREE PLAN

SHEET: L0.01

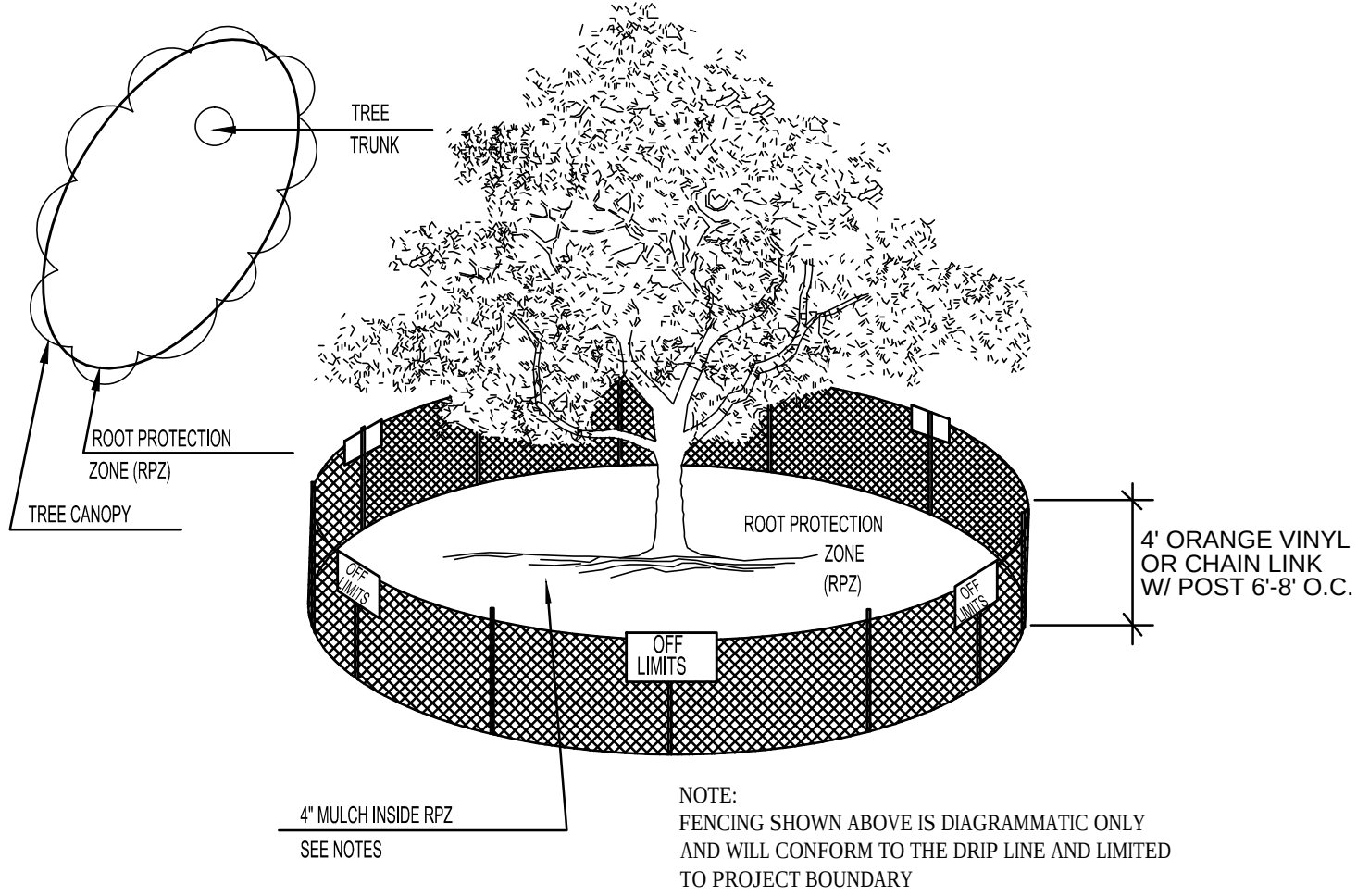


EXISTING TREE NOTES

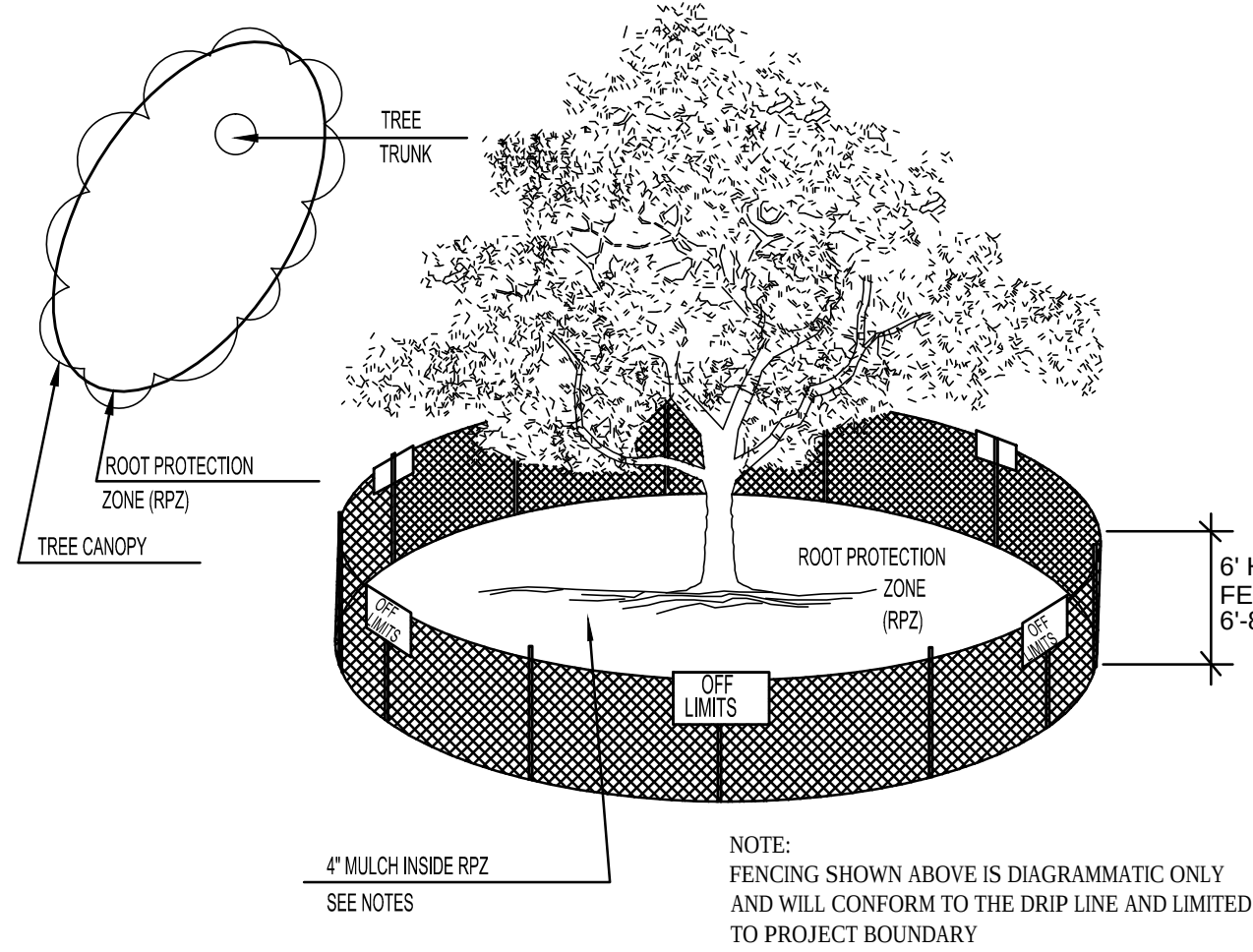
- Existing trees to remain shall be protected during construction from tree structure damage and compaction of soil under and around dripline (canopy) of tree.
- If any root structure is damaged during adjacent excavation/construction, notify the Architect immediately. It is recommended that a licensed Arborist be secured for the treatment of any possible tree wounds.
- Any fine grading done within the critical root zones of the protected trees must be done with light machinery such as a bobcat or light tractor. No earth moving equipment with tracks is allowed within the critical root zone of the trees.
- Material Storage: No materials intended for use in construction or waste materials accumulated due to excavation or demolition shall be placed within the limits of the dripline of any tree.
- Equipment Cleaning/Liquid Disposal: No equipment may be cleaned, toxic solutions, or other liquid chemicals shall be deposited within the limits of the dripline of a tree. This would include but not be limited to paint, oil, solvents, asphalt, concrete, mortar, primers, etc.
- Tree Attachments: No signs, wires or other attachments, other than those of a protective nature shall be attached to any tree.
- Vehicular Traffic: No vehicular and construction equipment traffic or parking is allowed within the limits of the dripline of trees.
- Boring of Utilities: May be permitted under protected trees in certain circumstances. The minimum length of the bore shall be the width of the tree's canopy and shall be a minimum depth of forty-eight (48") inches.
- Trenching: Any irrigation trenching which must be done within the critical root zone of a tree shall be dug by hand and enter the area in a radial manner.
- Tree Flagging: All trees to be removed from the site shall be flagged by the Contractor with bright red vinyl tape (3" width) wrapped around the main trunk at a height of four (4') feet above grade. Flagging shall be approved by Landscape Architect prior to any tree removal. Contractor shall contact Landscape Architect with 72 hour notice to schedule on-site meeting.
- Protective Fencing: All trees to remain, as noted on drawings, shall have protective fencing located at the tree's drip line. Orange vinyl construction fencing is acceptable for all protected trees, 6' in. chain link fence is required for all specimen trees that are to remain. The protective fencing will be located as indicated on the Tree Protection Detail(s).
- Construction Pruning: In a case where a low hanging limb is broken during the course of construction, the Contractor shall notify the Landscape Architect immediately. In no instance shall the Contractor prune any portion of the damaged tree without the prior approval by the Landscape Architect.

EXISTING TREE CHART					
POINT NO.	CALIPER	COMMON NAME	SCIENTIFIC NAME	NOTE	NOTE
2207	26.5"	POST OAK	<i>Quercus stellata</i>	SPECIMEN	TO BE REMOVED
2211	20"	CEDAR ELM	<i>Ulmus crassifolia</i>	SPECIMEN	TO BE REMOVED
2221	30"	POST OAK	<i>Quercus stellata</i>	SPECIMEN	TO BE REMOVED
2292	26"	POST OAK	<i>Quercus stellata</i>	SPECIMEN	TO BE REMOVED
2296	30"	CEDAR ELM (MULTI TRUNK)	<i>Ulmus crassifolia</i>	SPECIMEN	TO BE REMOVED
2301	25.5"	POST OAK	<i>Quercus stellata</i>	SPECIMEN	TO BE REMOVED
2335	27"	POST OAK	<i>Quercus stellata</i>	SPECIMEN	TO BE REMOVED
2336	32"	POST OAK	<i>Quercus stellata</i>	SPECIMEN	TO BE REMOVED

* REFER TO EXISTING TREE PLAN SHEET L0.01
FOR TREE LOCATIONS



01 TREE PROTECTION FENCE FOR PROTECTED TREES
NOT TO SCALE



02 TREE PROTECTION FENCE FOR SPECIMEN TREES
NOT TO SCALE

architecture

9660 Audelia Road
Suite 123-66
Dallas, Texas 75238
214.261.9060

SILVERON DC 1 & 2

Lakeside Parkway
Flower Mound, Texas 75028

21009

1	07.17.15	City Submittal
2	09.28.15	City Comments
3	10.06.15	City Comments
4	10.28.15	City Comments
5		
6		
7		
8		
9		



SHEET CONTENTS:

EXISTING TREE CHART

DATE: July 17, 2015

SHEET: L0.02



TOWN COUNCIL AGENDA ITEM NO. 19

REGULAR ITEM

DATE: January 21, 2016

FROM: Mark Wood, Director of Economic Development

ITEM: Public Hearing to consider approval of a Chapter 380 Agreement between the Town of Flower Mound and Stryker Corporation, and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: This item is for approval of a Chapter 380 Agreement with Stryker Corporation. Stryker is currently located in approximately 113,000-square-feet in the Lakeside Business District and has been a major corporate presence in Flower Mound since the mid-2000s. Stryker has plans to expand into a new-build facility of approximately 200,000-square-feet. Staff began meeting with Stryker about its expansion in 2014. Stryker began a property and building search at that time, which included locations all throughout North Texas. Flower Mound did not have a building available that met the company's requirements, so a build-to-suit option was proposed. This option required that Stryker's current landlord grant a temporary lease extension. Stryker considered a couple of build-to-suit sites and landed on a site currently under contract by Crow Holdings. Crow Holdings will construct a 200,000-square-foot facility to Stryker's specifications, including an outdoor employee amenity. Stryker will be the single tenant in the building, and the Town will retain the existing Stryker employees. Additionally, Stryker will consolidate operations from Charleston, South Carolina, and Coppell to the new facility. The proposed incentive has been negotiated to allow Stryker to remain in Flower Mound.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: Employee amenity reimbursement of \$62,500.

Proposed Expenditure:	Account Number(s):
\$62,500 reimbursement	100-600-57000-5320

Finance Review by: Debra Wallace, Assistance Town Manager/CFO 

LEGAL REVIEW: Andrea Russell with Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the Chapter 380 Agreement as to form and legality.

ATTACHMENTS:

1. Chapter 380 Agreement
2. Cost-Benefit

RECOMMENDATION: Move to approve a Chapter 380 Agreement between the Town of Flower Mound and Stryker Corporation, and authorize the Mayor to execute same on behalf of the Town.

**TOWN OF FLOWER MOUND, TEXAS
AND
STRYKER CORPORATION**

**CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AGREEMENT**

This CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT is made and entered into by and between the TOWN OF FLOWER MOUND, TEXAS, a Texas home rule municipality ("Town") and Stryker Corporation ("Stryker") each of which may be singularly referred to as "Party" and jointly referred to as "Parties," for the purposes and considerations stated below:

WHEREAS, the Town desires to provide, pursuant to Chapter 380 of the Texas Local Government Code ("Chapter 380"), an incentive to Stryker to continue its business operations already ongoing in the Town and to bring additional business operations from other locations to the Town; and

WHEREAS, the Town has the authority under Article 52-a of the Texas Constitution and Chapter 380 to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the Town; and

WHEREAS, the Town has determined that a grant of funds to Stryker will serve the public purpose of promoting local economic development, and stimulating business and commercial activity within the Town; and

NOW THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**SECTION 1.
FINDINGS INCORPORATED**

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the Parties.

**SECTION 2.
PROGRAM APPROVED**

A program authorized under Chapter 380 of the Texas Local Government Code is hereby established to keep Stryker in the Town. The terms of this Agreement shall implement the program.

SECTION 3. TERM

This Agreement shall be effective as of the Effective Date and shall terminate ten (10) years after the Commencement Date unless terminated earlier pursuant to the terms of this Agreement.

SECTION 4. DEFINITIONS

The following words shall have the following meanings when used in this Agreement:

“Ad Valorem Tax” means all ad valorem taxes paid to the Town attributable to the Facility and Business Personal Property at the Facility, which are actually received by the Town, excluding the Base Value.

“Agreement” means this Chapter 380 Economic Development Program Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.

“Base Value” means the real estate value of the Property as established by the Denton County Appraisal District as of January 1, 2015, excluding any value from any mineral estate.

“Business Personal Property” means tangible personal property, equipment, and fixtures subject to ad valorem taxation, other than inventory or supplies, owned or leased by Stryker and located at the Facility.

“Commencement Date” means the date a certificate of occupancy is issued for the Facility.

“Developer” means a developer with whom Stryker contracts for the construction and lease of the Facility.

“Effective Date” means the date this Agreement is signed by both Parties.

“Employee Amenity” means a recreational facility and/or field(s) on the Property for the use of Stryker employees.

“Event of Default” means and includes any of the Events of Default set forth below in the section entitled “Events of Default.”

“Facility” means a building with no less than 200,000 square feet to be constructed by Developer on the Property with an Employee Amenity and to be used by Stryker for its business operations.

“Full-time Employee” or “FTE” means any employee on a forty (40) hour or more per week schedule or the combination of two (2) or more employees on part-time schedules equaling at least forty (40) hours.

“Local Sales Tax” means the Town’s municipal sales and use tax, actually received by the Town, at the rate of one percent (1.0%), pursuant to section 321.103(a) of the Texas Tax Code, as amended; provided, should the Texas Legislature amend the applicable tax code provision to increase or decrease the amount of allowed municipal sales and use tax, then in the event of a decrease, Local Sales Tax shall mean the actual amount of sales and use tax received by the Town, and in the event of an increase, the Local Sales Tax shall mean one percent (1.0%)

“Property” means the site generally located south of Lakeside Parkway and between Silveron Boulevard and Lake Forest Boulevard, which is developed by Crow Holdings; said property being more particularly described on the attached Exhibit A.

“Program Grant” or “Program Grant Payment” means the economic development grants paid by the Town to Stryker in accordance with this Agreement.

“Tax Revenue Period” means the period of ten (10) calendar years, beginning on January 1 of the year following the date on which the Facility first opens for business. For purposes of clarity, if the Facility is completed in December, 2016, the Tax Revenue Period will begin on January 1, 2017.

“Term” means the term of this Agreement as specified in Section 3 of this Agreement.

“Town” means the Town of Flower Mound, Texas, a Texas home rule municipality, whose address for purposes of this Agreement is 2121 Cross Timbers Road, Flower Mound, Texas, 75028.

“Stryker” means Stryker Corporation, a Michigan corporation, whose address for the purpose of this Agreement is 1410 Lakeside Parkway, Ste. 100, Flower Mound, TX 75028.

SECTION 5. OBLIGATIONS OF STRYKER

Stryker covenants and agrees that while this Agreement is in effect it shall comply with the following terms and conditions:

- (a) Construction of the Facility. Stryker agrees to take the following actions to cause the construction of the Facility.
 - (1) Stryker agrees to enter into a separate agreement with the Developer for the construction of the Facility, including the Employee Amenity, which will require construction of the Facility, subject to customary delays and unforeseen events as described in this Agreement, to be completed by May 31, 2017.

- (2) Stryker further agrees to enter into a lease agreement with the Developer that requires the Developer to lease the Facility to Stryker to occupy and operate its business in the Facility for no less than ten (10) years after the Commencement Date.
- (3) The agreement(s) between Stryker and Developer must be in full compliance with this Agreement, including any deadlines contained herein.
- (4) Stryker agrees to provide the Town with supporting documentation that is satisfactory to the Town of the actual cost of construction of the Employee Amenity no later than May 31, 2017. The Town will provide funds equal to half the cost of construction of the Employee Amenity, up to \$62,500.00, as described in Section 6.
- (b) Full-time Employees. Stryker must employ and maintain 200 Full-time Employees at the end of each calendar year of the Agreement. At the end of each calendar year, Stryker must certify the number of Full-time Employees employed in the Town.
- (c) Consolidation of Operations. Stryker agrees to consolidate a portion of its manufacturing operations from its location in Charleston, South Carolina (a 52,000 square foot facility) and all of its operations from Coppell, Texas (a 40,000 square foot facility) to the Town by December 31, 2017.
- (d) Continuous Operation. Stryker shall not allow the occupancy and operation of the Facility to cease for more than thirty (30) days except in connection with, and to the extent of, an event of Force Majeure.
- (e) Performance. Stryker agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between Stryker and Town, and any related agreements between Stryker and Town.
- (f) Access to Information. Stryker agrees to provide the Town, upon reasonable notice, access to information related to the Facility or Stryker necessary to confirm Stryker's compliance with the terms of this Agreement, throughout the Term of this Agreement.
- (g) Undocumented Workers. Stryker certifies that Stryker does not and will not knowingly employ an undocumented worker at the Facility in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Stryker is convicted of a violation under 8 U.S.C. § 1324a(f), Stryker shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of the prime rate plus eight percent (8%) per annum, not later than the 120th day after the date the Town notifies Stryker of the violation.

SECTION 6. OBLIGATIONS OF TOWN

Town covenants and agrees with Stryker that, while this Agreement is in effect, it shall comply with the following terms and conditions, provided that Stryker is in full compliance with the terms and conditions of this Agreement:

- (a) Ad Valorem Tax Rebate. The Town will rebate to Stryker an amount equal to 75% of the Ad Valorem Taxes for the Tax Revenue Period. Such rebate shall be payable by the Town on an annual basis within sixty (60) days after Stryker delivers to the Town proof of payment of all Ad Valorem Taxes, whichever is later.
- (b) Local Sales Tax Rebate. The Town will rebate to Stryker 100% of the Local Sales Tax for the Tax Revenue Period which shall be payable by the Town on a quarterly basis. Stryker shall provide confirmation of the Local Sales Tax each quarter of each year of the Tax Revenue Period to the Town. Upon receipt of such confirmation, the Town will use reasonable efforts to verify the amount to be rebated to Stryker for each calendar quarter of the Tax Revenue Period. The Local Sales Tax rebate shall be payable by the Town within sixty (60) days after receipt of such confirmation from Stryker.
- (c) Reimbursement of Certain Fees. The Town agrees to waive all building permit fees for the initial construction of the Facility and waive Town impact fees attributable to the Facility under the Town's Impact Fee Ordinance.
- (d) Reimbursement for Employee Amenity. Town agrees to provide reimbursement funds to Stryker equal to half the cost of construction of the Employee Amenity for the Stryker employees, up to an amount of \$62,500.00, upon submission of documentation satisfactory to the Town proving the actual expense of construction no later than May 31, 2017. Stryker will disburse these funds to the Developer.

SECTION 7. EVENTS OF DEFAULT

Each of the following shall constitute an Event of Default under this Agreement:

- (a) Default. Failure of any Party to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any related documents.
- (b) False Statements. Any written warranty, representation or statement made or furnished to the receiving Party under this Agreement or any document(s) related hereto furnished to the receiving Party is/are false or misleading in any material respect, either now or at the time made or furnished, and the furnishing Party fails to cure same within thirty (30) days after written notice from the receiving Party describing the violation, or if such violation cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if the furnishing Party fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such violation, or if the furnishing

Party obtains actual knowledge that any such warranty, representation or statement has become false or misleading after the time that it was made, and the furnishing Party fails to provide written notice to the receiving Party of the false or misleading nature of such warranty, representation or statement within ten (10) days after the furnishing Party learns of its false or misleading nature.

- (e) Insolvency. The dissolution or termination of the existence of Stryker as a going business or concern, Stryker's insolvency, appointment of receiver for any part of Stryker's property, any assignment of all or substantially all of the assets of Stryker for the benefit of creditors of Stryker, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Stryker unless, in the case of involuntary proceedings, such proceedings are discharged within sixty (60) days after filing.

SECTION 8. EFFECT OF AN EVENT OF DEFAULT

In the event of default under this Agreement, including without limitation, Section 7 above, the non-defaulting Party shall give written notice to the defaulting Party of any default, and the defaulting Party shall have thirty (30) days to cure said default. Should said default remain uncured as of the last day of the applicable cure period and the non-defaulting Party is not otherwise in default, the non-defaulting Party shall have the right to immediately terminate this Agreement. In the event that this Agreement is terminated under this section, the terminating Party shall provide written notice of such termination to all other Parties.

In the event the Town terminates this Agreement as a result of the foregoing, it will have no further obligation to make any remaining Program Grant Payment to the defaulting Party. Additionally, if the Town terminates this Agreement as a result of the foregoing, Stryker will owe Town repayment of the previous Program Grant Payments made to Stryker, plus interest at the rate of the prime rate per annum, in the amounts and according to schedule set forth below, and Stryker shall pay such funds to Town within sixty (60) days of termination. The amount of repayment by Stryker under this section will depend on the timing of the breach. If Stryker defaults during the first year of this Agreement, Stryker will be required to repay 100% of the previous Program Grant Payments received plus interest, and further as follows:

- First Year – 100%
- Second Year – 80%
- Third Year – 60%
- Fourth Year – 40%
- Fifth Year – 20%

However, if Stryker breaches this Agreement in years six through ten, Stryker will be responsible for paying 100% of the taxes going forward but would not be required to repay any payments it had already received.

SECTION 9.
MISCELLANEOUS PROVISIONS

The following miscellaneous provisions are a part of this Agreement:

- (a) Revenue Sharing Agreement. The Town hereby designates this Agreement as a “revenue sharing agreement”, thereby entitling the Town to request sales tax information from the State Comptroller pursuant to section 321.3022, Texas Tax Code, as amended. Accordingly, unless determined otherwise by the Texas Attorney General in writing, any information received relating to the Local Sales Tax shall be considered confidential proprietary financial information to the fullest extent permitted by the Texas Attorney General’s opinion or otherwise by law not subject to immediate release to the public. The Town shall seek a written opinion from the Texas Attorney General raising any and all applicable exceptions to the release of such information, prior to any release to a third party under the Texas Public Information Act.
- (b) Amendments. Any amendments to this Agreement must be in writing and signed by the appropriate authorities of all Parties.
- (c) Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton County, Texas. Exclusive venue for any action arising under this Agreement shall lie in the state district courts of Denton County, Texas.
- (d) Assignment. This Agreement may not be assigned without the express written consent of all of the other Parties. Notwithstanding the above, Stryker reserves the right to delegate any rights or obligations under this Agreement to an Affiliate. For purposes of this Agreement, “Affiliate” shall mean: (i) any corporation or business entity fifty percent (50%) or more of the voting stock of which is, and continues to be, owned directly or indirectly by a Party; (ii) any corporation or business entity that directly or indirectly owns fifty percent (50%) or more of the voting stock of a Party; (iii) any corporation or business entity under the direct or indirect control of a corporation or business entity as described in (i) or (ii).
- (e) Binding Obligation. This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Town warrants and represents that the individual executing this Agreement on behalf of Town has full authority to execute this Agreement and bind Town to the same. Stryker warrants and represents that the individual executing this Agreement on Stryker’s behalf has full authority to execute this Agreement and bind it to the same.
- (f) Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.

- (g) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (h) Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties as to the matters set forth in this Agreement. No other understanding, oral or otherwise, in direct conflict with this Agreement shall be deemed to exist or to bind any of the Parties hereto. All prior written or oral offers, counteroffers, memoranda of understanding, proposals and the like are superseded by this Agreement. No alteration or amendment to this Agreement shall be effective unless given in writing and signed by the Party or Parties sought to be charged or bound by the alteration or amendment. Neither Party is relying on any statement, representation, nor warranty of the other Party not expressly set out in this Agreement. Each of the undersigned authorized representatives of the Parties warrants and represents and does hereby state and represent that no promise or agreement which is not herein expressed has been made to him or her in executing this Agreement, and that none of us is relying upon any statement or representation of any agent of the Parties. Each Party is relying on his or her own judgment and each Party has been represented by independent counsel of its choosing.
- (i) Force Majeure. It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, terrorism, civil commotion, acts of God, inclement weather, fire, flood, tornado, other casualty, or court injunction, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such Party was delayed.
- (j) Further Acts and Releases. The Parties agree to take such additional acts and execute such other documents as may be reasonable and necessary in the performance of their obligations hereunder.
- (k) Governmental Powers; Waiver of Immunity. By execution of this Agreement, the Town does not waive or surrender any of its governmental powers, immunities or rights.
- (l) No Third Party Beneficiaries. The performance of the respective obligations of the Parties under this Agreement are not intended to benefit any party other than the Town or Stryker except as expressly provided otherwise herein. No person or entity not a signatory to this Agreement shall have any rights or causes of action against any Party to this Agreement as a result of that Party's performance or non-performance under this Agreement, except as expressly provided otherwise herein.
- (m) Notices. Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to Stryker: Stryker Corporation
 2825 Airview Boulevard
 Kalamazoo, MI 49002_____

ATTN: Senior Director, Global Real Estate

With Copy to: General Counsel, at same address

if to Town: Town of Flower Mound
 2121 Cross Timbers Road,
 Flower Mound, TX 75028
 ATTN: Town Manager

- (n) Right of Offset. The Town may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due and owing to the Town from Stryker or Developer, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt has been reduced to judgment by a court.
- (o) Relationship of Parties. The Parties shall not be deemed in a relationship of partners or joint ventures by virtue of this Agreement, nor shall any Party be an agent, representative, trustee or fiduciary of the other. No Party shall have any authority to bind any other Party to any agreement.
- (p) Severability. The Parties declare that the provisions of this Agreement are severable. If it is determined by a court of competent jurisdiction that any term, condition or provision hereof is void, voidable, or unenforceable for any reason whatsoever, then such term, condition or provision shall be severed from this Agreement and the remainder of the Agreement enforced in accordance with its terms. The parties explicitly agree that this Clause 9(p) does not apply if the unenforceability relieves one Party from substantially all of its duties and obligations under this Agreement.
- (q) Time is of the Essence. Subject to the terms contained herein, time is of the essence in the performance of this Agreement.

TOWN OF FLOWER MOUND, TEXAS:

By: _____
Thomas E. Hayden, Mayor

Date: _____

ATTEST:

By: _____
Theresa Scott, Town Secretary

Stryker Corporation

By: _____

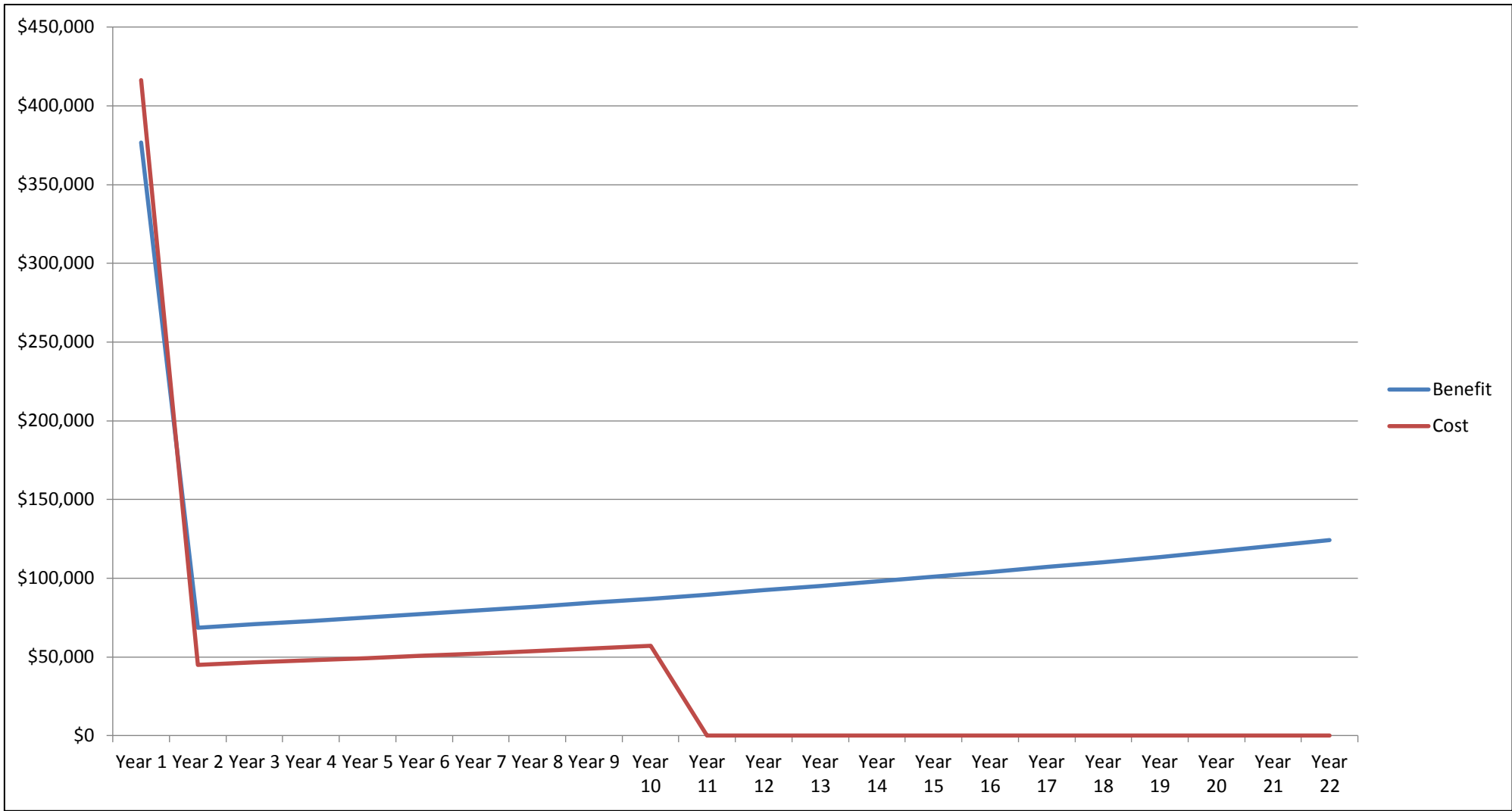
Name: _____

Title: _____

Date: _____

Stryker Cost-Benefit

Benefit	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20	Year 21	Year 22	Totals
Real Property Value	\$6,000,000	\$6,180,000	\$6,365,400	\$6,556,362	\$6,753,053	\$6,955,644	\$7,164,314	\$7,379,243	\$7,600,620	\$7,828,639	\$8,063,498	\$8,305,403	\$8,554,565	\$8,811,202	\$9,075,538	\$9,347,804	\$9,628,239	\$9,917,086	\$10,214,598	\$10,521,036	\$10,836,667	\$11,161,767	
Real Property Tax Revenue	\$26,340	\$27,130	\$27,944	\$28,782	\$29,646	\$30,535	\$31,451	\$32,395	\$33,367	\$34,368	\$35,399	\$36,461	\$37,555	\$38,681	\$39,842	\$41,037	\$42,268	\$43,536	\$44,842	\$46,187	\$47,573	\$49,000	\$804,339
Business Personal Property Value	3,500,000	3,605,000	3,713,150	3,824,545	3,939,281	4,057,459	4,179,183	4,304,559	4,433,695	4,566,706	4,703,707	4,844,819	4,990,163	5,139,868	5,294,064	5,452,886	5,616,473	5,784,967	5,958,516	6,137,271	6,321,389	6,511,031	
Business Personal Property Tax Revenue	\$15,365	\$15,826	\$16,301	\$16,790	\$17,293	\$17,812	\$18,347	\$18,897	\$19,464	\$20,048	\$20,649	\$21,269	\$21,907	\$22,564	\$23,241	\$23,938	\$24,656	\$25,396	\$26,158	\$26,943	\$27,751	\$28,583	\$469,198
Annual Sales	\$1,250,000	\$1,287,500	\$1,326,125	\$1,365,909	\$1,406,886	\$1,449,093	\$1,492,565	\$1,537,342	\$1,583,463	\$1,630,966	\$1,679,895	\$1,730,292	\$1,782,201	\$1,835,667	\$1,890,737	\$1,947,459	\$2,005,883	\$2,066,060	\$2,128,041	\$2,191,883	\$2,257,639	\$2,325,368	
Annual Sales Tax Revenue	\$25,000	\$25,750	\$26,523	\$27,318	\$28,138	\$28,982	\$29,851	\$30,747	\$31,669	\$32,619	\$33,598	\$34,606	\$35,644	\$36,713	\$37,815	\$38,949	\$40,118	\$41,321	\$42,561	\$43,838	\$45,153	\$46,507	\$763,420
Impact and Building Permit Fees	\$310,000																						\$310,000
Cost	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20	Year 21	Year 22	
Real Property Rebate	\$19,755	\$20,348	\$20,958	\$21,587	\$22,234	\$22,901	\$23,589	\$24,296	\$25,025	\$25,776	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 \$226,469
Business Personal Property Rebate	\$11,524	\$11,869	\$12,226	\$12,592	\$12,970	\$13,359	\$13,760	\$14,173	\$14,598	\$15,036	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 \$132,107
Sales Tax Rebate	\$12,500	\$12,875	\$13,261	\$13,659	\$14,069	\$14,491	\$14,926	\$15,373	\$15,835	\$16,310	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 \$143,298
Impact and Bulding Permit Fees	\$310,000																						\$310,000
Employee Amenity Grant	\$62,500																						\$62,500
Analysis	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20	Year 21	Year 22	Total
Benefit	\$376,705	\$68,706	\$70,767	\$72,890	\$75,077	\$77,329	\$79,649	\$82,039	\$84,500	\$87,035	\$89,646	\$92,335	\$95,105	\$97,959	\$100,897	\$103,924	\$107,042	\$110,253	\$113,561	\$116,968	\$120,477	\$124,091	\$2,346,956
Cost	\$416,279	\$45,092	\$46,445	\$47,838	\$49,273	\$50,752	\$52,274	\$53,842	\$55,458	\$57,121	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$874,374
Net Benefit	-\$39,574	\$23,614	\$24,322	\$25,052	\$25,804	\$26,578	\$27,375	\$28,196	\$29,042	\$29,914	\$89,646	\$92,335	\$95,105	\$97,959	\$100,897	\$103,924	\$107,042	\$110,253	\$113,561	\$116,968	\$120,477	\$124,091	\$1,472,582





TOWN COUNCIL AGENDA ITEM NO. 20

REGULAR ITEM

DATE: January 21, 2016

FROM: Tiffany Bruce, P.E., CIP Engineering Manager

ITEM: Consider approval of the award of Bid No. 2016-9 to A&M Construction and Utilities, Inc., for the Oak Drive Water Main Replacement project, in the amount of \$1,083,877.50; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On December 9, 2015, bids were received and opened for the Oak Drive Water Main Replacement project. Rey-Mar Construction submitted the lowest qualified bid of the five responding bidders at a base bid of \$973,841.00. However, a letter was received from Rey-Mar on December 10, 2015 requesting that their bid be withdrawn due to a mathematical error in their bid pricing. A&M Construction and Utilities, Inc. submitted the next lowest qualified bid at a base bid of \$1,083,877.50.

The project includes construction of approximately 11,500 linear feet of 8-inch water line to replace the existing 6-inch line due to numerous water line breaks on an aging water line. The replacement begins at FM 1171 and Fireside Drive and extends south to Oak Drive, then east to Acorn Trail, and stops at the end of Oak Drive.

FISCAL IMPACT: \$1,083,877.50

Proposed Expenditure:	Account Number(s):
\$1,083,877.50	630-960-96002

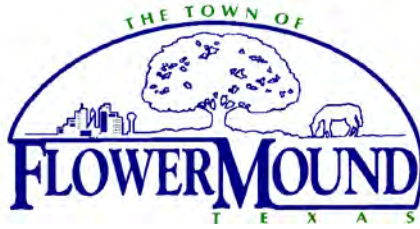
Finance Review by: Debra Wallace, Assistant Town Manager/CFO *DW*

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

ATTACHMENTS:

1. Bid Tabulation
2. Construction Agreement

RECOMMENDATION: Move to approve the award of Bid No. 2016-9 to A&M Construction and Utilities, Inc., for the Oak Drive Water Main Replacement project, in the amount of \$1,083,877.50; and authorize the Mayor to execute same on behalf of the Town.



Town of Flower Mound Bid Tabulation

Bid No: 2016-9 Oak Drive Water Main Replacement

Bid Opening: 12/9/2015 at 11:00am

Company	Total Base Bid
Rey-Mar Construction	\$ 973,841.00
A&M Construction and Utilities, Inc.	\$ 1,083,877.50
Dickerson Construction Company, Incorporated	\$ 1,496,334.00
Atkins Brothers Equipment Company, Incorporated	\$ 1,620,174.00
Saber Development Corporation	\$ 1,679,466.05

******All bids/proposals submitted for the designated project are reflected on this tabulation sheet. However, the listing of the bid/proposal on this tabulation sheet shall not be construed as a comment on the responsiveness of such bid/proposal or as any indication that the agency accepts such bid/proposal as being responsive. The agency will make a determination as to the responsiveness of the vendor responses submitted based upon compliance with all applicable laws, purchasing guidelines and project documents, including but not limited to the project specifications and contract documents. The agency will notify the successful vendor upon award of the contract and, as according to the law, all bid/proposal responses received will be available for inspection at that time.

Certified By:	Rochelle M. Ragas, CPPB	12/9/2015
	Purchasing Manager	
	Town of Flower Mound, Texas	

TOWN OF FLOWER MOUND**Oak Drive Water Main Replacement****Bid # 2016-9****CONSTRUCTION AGREEMENT**

THIS CONSTRUCTION AGREEMENT (the "Agreement"), made and entered into this 21st day of January, 2016, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the "Town," and A & M Construction and Utilities, Inc., a _____, hereinafter referred to as the "Contractor." For and in consideration of the payment, agreements, and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

Oak Drive Water Main Replacement,
Bid # 2016-9

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

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

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

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

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

ARTICLE 2. For performance of the Work in accordance with the Contract Documents, the Town shall pay the Contractor in current funds an amount not to exceed **One Million Eighty Three Thousand Eight Hundred Seventy Seven Dollars and Fifty Cents (\$1,083,877.50)** taking into consideration additions to or deductions from the Total Bid through properly executed change orders by reason of alterations or modifications of the original quantities or by reason of “Extra Work” authorized under this Agreement in accordance with the provisions of the Contract Documents. It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the Contractor by the Town, the said Contractor shall furnish all labor, equipment, and material (except as otherwise specified above) and shall perform all work necessary to complete the improvements in a good and workmanlike manner, ready for use, within the specified time for substantial completion of _____ (____) calendar days, and final completion of _____ (____) calendar days ready for final payment, as measured from the Effective Start Date shown in the Notice to Proceed. The work shall be in strict accordance with this Agreement, a copy of which is filed pursuant to law in the office of the legal representative of the Town.

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

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

The performance, payment, and maintenance bonds shall be issued by a corporate surety, acceptable to and approved by the Town, authorized to do business in the State of Texas, pursuant to Chapter 2253 of the Texas Government Code. Further, the Contractor shall supply capital and surplus information concerning the surety and reinsurance information concerning the performance, payment, and maintenance bonds upon Town request. In addition to the foregoing requirements if the amount of the bond exceeds One Hundred

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

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

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

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

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

by the Town within thirty (30) calendar days after it receives written demand from the Town.

The fact that the Town makes a progress payment shall not be deemed to be an admission by the Town concerning the quantity, quality, or sufficiency of the Contractor's work. Progress payments shall not be deemed to be acceptance of the Work nor shall a progress payment release the Contractor from any of its responsibilities under the Contract Documents.

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

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

Retainage shall be withheld and may be paid to:

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

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

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

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

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

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

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

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

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

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

Final payment to the Contractor shall not be due until the Contractor provides original full releases of liens, or other evidence satisfactory to the Town to show that all sums due for labor, services, and materials furnished for or used in connection with the Work have been paid or shall be paid with the final payment. To ensure this result, Contractor consents to the issuance of the final payment in the form of joint checks made payable to Contractor and others. The Town may, but is not obligated to, issue final payment using joint checks.

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

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

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

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

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

In its sole discretion, the Town shall have the right to approve counsel to be retained by Contractor in fulfilling its obligation to defend and indemnify the Town. Contractor shall retain approved counsel for the Town within seven business days after receiving written notice from the Town that it is invoking its right to indemnification under this

Agreement. If Contractor does not retain counsel for the Town within the required time, then the Town shall have the right to retain counsel and the Contractor shall pay the attorneys' fees and expenses.

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

ARTICLE 11. The Contractor understands and agrees that time is of the essence in performing and completing the Work. The Town and Contractor acknowledge that the actual damages the Town may sustain if the Contractor fails to complete the Work on time are uncertain and will be difficult to ascertain. The Contractor agrees that the sum of _____ and Zero/One Hundredths Dollars (\$000.00) per day or portion of a day in Liquidated Damages will be deducted from the Contract price by the Town for each calendar day or portion thereof that the work is not substantially complete beyond the Substantially Complete Contract time, or within such extra time as may have been allowed by an extension approved by the Town. The Contractor also agrees that the sum of _____ and Zero/One Hundredths Dollars (\$000.00) per day or portion of a day in Liquidated Damages for each calendar day or portion thereof the work has not been finally completed by the Contractor beyond the Contract time for final completion, or within such extra time as may have been allowed by an extension approved by the Town. The Town and the Contractor agree that this amount is payable as reasonable and just compensation for failure to complete the Work on time. This amount is payable as liquidated damages and not as a penalty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialmen, artisan, laborer, or subcontractor, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the project of whatever nature or kind

so erected or to be erected by virtue of this Contract, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas.

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

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

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

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

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

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

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

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

TOWN OF FLOWER MOUND

CONTRACTOR

Thomas E. Hayden, MAYOR

_____ (Signature)

_____ (Printed Name)

_____ (Position)

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST: _____
Theresa Scott, TOWN SECRETARY

ATTEST: _____ (Signature)

_____ (Position)

APPROVED AS TO FORM AND
LEGALITY:

TOWN ATTORNEY



TOWN COUNCIL AGENDA ITEM NO. 21

REGULAR ITEM

DATE: January 21, 2016

FROM: Doug Powell, Executive Director of Development Services

ITEM: **Public Hearing to consider a request for a variance (MISC15-0006 - Manchale Alcohol Variance) to permit the sale of alcoholic beverages by a restaurant within 300 feet of a public school. The property is located at 420 Parker Square.**

BACKGROUND INFORMATION: On March 2, 2015, the Town Council amended Section 18-527 of Article IX of the Town's Code of Ordinances to clarify that a variance to the setback requirement for alcohol sales to certain uses can be granted by the Town Council in accordance with the TABC regulations. The provision allows the Town Council to hold a public hearing to determine if a variance is warranted for a particular use. Because this variance does not involve zoning, it does not require a recommendation by the Planning and Zoning Commission. This is the first such variance request to be considered by the Town Council. The location map and setback distances are shown in Attachment 1.

The text in Section 18-527, which addresses the setback requirements and variance procedure, reads as follows:

Section 18-527. Development Standards.

- (e) The sale of alcoholic beverages within 300 feet of a church, public school or public hospital is hereby prohibited. No permit for the sale, serving and/or consumption of alcoholic beverages shall be granted by the town council within 300 feet of any church, public school or public hospital. The measurement of the distance between the place of business where alcoholic beverages are sold and the church or public hospital shall be along the property lines of the street fronts and from front door to front door and in a direct line across intersections. The measurement of distance between the place of business where alcoholic beverages are sold and the public school shall be:
 - 1. in a direct line from the property line of the public school to the property line of the place of business, and in a direct line across intersections; or
 - 2. if the permit or license holder is located on or above the fifth story of a multistory building, in a direct line from the property line of the public school to the property line of the place of business, in a direct line across intersections, and vertically up the building at the property line to the base of the floor on which the permit or license holder is located.
- (f) As authorized by Section 109.33 of the Texas Alcoholic Beverage Code, the town council may allow a variance to the provisions of subsection 18-527(h) if it determines that the enforcement of the regulations in a particular instance is not in the best interest of the public, constitutes waste or inefficient use of land and resources, creates an undue hardship on the applicant for a license or permit, does not serve its intended purpose, is not effective or necessary, or for any other reason the town council determines, after consideration of the health, safety and welfare of the public and the equities of the situation, that the variance is in the best interest of the community.

1. No variance may be granted hereunder except after a public hearing for which notice has been given to any church, public school or public hospital within three hundred feet (300') of the location of the place of business seeking a variance. The notice must be provided, not less than ten (10) days before the date set for hearing.

As anticipated with the adoption of the variance regulations, the Parker Square development is well suited for such consideration. It is a mixed-use development, envisioned to have multiple types of uses within close proximity to each other. The letter of intent from the application (Attachment 2) provides a description of the restaurant being proposed. The space has been designed and used as a restaurant in the past.

As required by the regulations, notice was given to the adjacent school and published in the newspaper. At the time of this report being drafted, staff had received no correspondence regarding this request.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENT:

1. Location Map
2. Letter of Intent

RECOMMENDATION: Move to approve a request for a variance (MISC15-0006 - Manchale Alcohol Variance) to permit the sale of alcoholic beverages by a restaurant within 300 feet of a public school.



R229577 Parker Square

Please note buffers are based on the approximate location of the front door of each facility.

Buffers

- Schools
- Hospitals
- Religious Facilities

February 2015



PARKER SQUARE RD



CROSS TIMBERS RD

0 75 150 300 Feet

Parker Square

Parker Square

Manchale, LLC
3776 Cathedral Lake Drive
Frisco, TX 75034

January 7, 2016

City of Flower Mound

ATTN: Development Services

RE: 420 Parker Square

This letter shall serve as notice of our intent to file an Alcohol Sales Variance Application pursuant to Ordinance No. 13-15 amending Section 18 -527 of Article IX of Chapter 18 of the Code of Ordinances of the Town of Flower Mound prohibiting the sale of alcohol within 300 feet of schools, churches and hospitals.

Property Address: 420 Parker Square

Proposed Use: Manchale Indian Restaurant, a full service restaurant.

Request: Waiver of the restriction against alcohol sales within 300 feet of a private school (daycare center and charter school).

The property is located in the Parker Square Shopping Center in the space previously occupied by Decanter Restaurant and Wine Bar. The space is located within 300 feet of Adventure Kids Play Care, a private daycare center, and Founder's Academy, a private charter school.

Although the space was previously occupied by a restaurant and bar as recently as 2014, a charter school has since opened for business within 300 feet of the restaurant. We feel our proposed use of the space as a restaurant and bar will not conflict with the mission of the school as there was already a restaurant and bar operating in this space when the charter school center chose to open within 300 feet of it. Likewise, another restaurant and bar has been operating within 300 feet of the day care center since its inception without adverse effect. Additionally, the bulk of alcohol consumption at our proposed restaurant takes place in the evening when the charter school and day care center is closed.

Manchale Indian Restaurant:

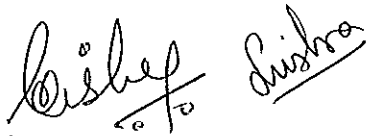
The full service, fine dining restaurant will feature a scratch kitchen lead by a top Indian cuisine chef preparing homemade Indian dishes made fresh every day. Pricing will be in the mid-range and service

will cater to families. We would like to serve alcohol including beer, wine and spirits. We project 10% to 25% of sales will be generated from alcohol. There will be no changes to the existing floor plan which features a bar in the dining area.

The restaurant will fill a need for more fine dining options in the neighborhood, as well as provide an Indian cuisine option which is lacking. The menu will be a full service menu for lunch and dinner and include catering as well as brunch on the weekends. Guests may also experience live music on certain nights, further adding to the cultural amenities of the neighborhood.

Thank you for your consideration of our application.

Very truly yours,



Signed By: Manchale, LLC

By: Food and Wine Exchange, LLC, Manager of Manchale, LLC

By: M3 Concept, LLC, Manager of Food and Wine Exchange, LLC

By: Gaurav Mishra and Shilpa Mishra, Member of M3 Concept , LLC

Town Council Future Agenda Items



SCHEDULED	2/1/2016	Consent	Consider approval of the minutes from a regular meeting of the Town Council held on January 21, 2016.
		Consent	Consider approval of naming the park property located on the 22-acre tract adjacent to Dunham Road as Dunham Ranch Athletic Complex.
		Consent	Consider approval of a Professional Services Agreement with ByWater Solutions to support Integrated Library System software
		Consent	Transition Existing Town Buildings to SmartStruxture Building Management System
		Consent	Consider approval for the construction of a Temporary Fire Station that will transition into the Western Operations and Maintenance Facility to cover the Canyon Falls Development area to Basic IDIQ, through an Interlocal agreement with the Texas Cooperative Purchasing Network, in the amount of \$680,000.00.
		Consent	Consider approval of 14 Decorative Street Lights and an agreement with Oncor to provide the fixtures and provide for maintenance service of same in the amount of \$25,528.57 and authorize the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of a Professional Services Agreement with Alliance Geotechnical Group, for the construction materials testing associated with the Oak Drive Water Main Replacement project, in the amount of \$40,125.00; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	2015-16 CIP Amendment No 2.
		Consent	Consider approval of the purchase of Phase II of the Public Safety portable and mobile radios, the update and upgrade of the radio system in the Police Department Communications Center, and the upgrade and remodel of the Communications Center.
		Consent	Consider approval of the purchase of mobile command vehicle by the Flower Mound Police and Fire Department.
		Regular	Public Hearing to consider a request for rezoning (ZPD15-0006 – The Conservatory Estates) from Agricultural District (A) to Planned Development District No. 140 (PD-140) for a cluster development, and to consider adopting an ordinance providing for said amendment. The property is generally located west of Freeman Road and north of Cross Timbers Road. (The Planning and Zoning Commission recommended by a vote of to at its January 25, 2016, meeting.)

SCHEDULED	2/1/2016	Regular	Consider a request for a Development Plan (DP15-0001 – The Conservatory Estates) to develop a residential subdivision, and acceptance of cash in lieu of land in the amount of \$70,425.60 in place of the otherwise required Park Land dedication and Park Development Fees in the amount of \$88,832.00, subject to the terms and conditions in the attached Development Agreement and authorization for Mayor to execute same on behalf of the Town. The property is generally located west of Freeman Road and north of Cross Timbers Road. (The Planning and Zoning Commission recommended by a vote of to at its January 25, 2016, meeting.)
		Regular	Consider approval of an ordinance for the Home Improvement Incentive program
	2/15/2016	Consent	Consider approval of the minutes from a regular meeting of the Town Council held on February 1, 2016.
		Consent	Consider approval of a resolution of the Town of Flower Mound, Texas calling for a general election to be held on May 7, 2016, for the offices of Mayor, Town Council Place 1, Town Council Place 2, and Town Council Place 4; establishing procedures for those elections; and providing an effective date.
		Consent	Consider approval of an ordinance amending the Code of Ordinances of the Town of Flower Mound by amending Subpart A of the Code of Ordinances through the amendment Section 54-2, "Fees", by amending Section 54-2(d), entitled "Seniors in Motion", regarding membership fees and day pass fees; and, by amending Appendix A "Fee Schedule" by amending Section 54-2(d) relative to the charges for Seniors in Motion memberships and day passes.
		Consent	FM 1171 at FM 2499 East Bound Turn Lane Design Award.
		Consent	Individual Park Improvements (Cortadera, Culwell, Leonard Johns) Final Acceptance.
		Consent	Consider approval of the consumption of alcoholic beverages at the Flower Mound Senior Center during the SIM Auxiliary's Casino Night.
		Consent	FM 1171 @ Forums Signal Change Order & Final Acceptance.
		Regular	Public Hearing to consider a request for a Specific Use Permit No. 438 (SUP15-0009 -Hawk Road Cell Tower) to permit a new communication tower and to consider adopting an ordinance providing for said amendment. The property is located at 6901 Hawk Road. (Item tabled to February 15, 2016, meeting)
		Regular	The first of two Public Hearings to review Chapter 50, Article III, "Offenses regarding Minors," Division 2, "Curfew."
	2/18/2016	Work Session	PLACEHOLDER: Joint work session with Town Council and Environmental Conservation Commission (ECC)/Discuss the current process for calculating fees in lieu of parkland donation ordinance and possibly changes to the process.

SCHEDULED	3/7/2016	Consent	Consider approval of the minutes from a regular meeting of the Town Council held on February 15, 2016.
		Consent	ADA Transition Plan 2016 Update.
		Consent	Regency Park Booster Pump Station Change Order 3 and Final Acceptance.
		Consent	Heritage Park Dog Park Final Acceptance.
		Consent	Twin Coves Park Improvements - TPWD Grant Agreement.
		Consent	Forest Vista Reconstruction Phase I Construction Award.
		Consent	Pintail Ground Storage Tank Final Acceptance.
		Consent	FM 2499 @ Lakeside Intersection Improvements Final Acceptance.
		Consent	Auburn Drive at 1171 and Flower Mound Rd at Native Oaks Turn Lanes Change Order 1 and Final Acceptance.
		Consent	Upper Timber Creek Interceptor Phase III (FM 1171 to Hidden Forest Drive) Design Award.
		Consent	Consider approval of emergency agreement for the construction of Bakers Branch Creek Bank Stabilization @ 1601 Twilight Dr. and the construction of the scheduled project for the McKamy Branch Creek Bank Stabilization @ 3400 Pheasant Ct.
		Consent	Consider approval of a resolution extending the bank depository agreement with JPMorgan Chase Bank, NA, for a two-year renewal period, declaring an effective date; and authorization for the Mayor to execute same on behalf of the Town.
		Regular	The second of two Public Hearings to review Chapter 50, Article III, "Offenses Regarding Minors," Division 2, "Curfew and to consider adopting a resolution continuing the current Juvenile Curfew Ordinance in effect."
3/21/2016		Consent	Long Prairie 12-Inch Water Line Section 2 Construction Award.
		Consent	Forest Vista Reconstruction Phase I Testing Award.
		Consent	FM 2499 / Gerault Drainage and Intersection Construction Award.
		Consent	Pintail Pump Station Capacity Improvements Construction Award.
		Consent	Consider approval of the Comprehensive Annual Financial Report for the fiscal year ended September 30, 2015.

SCHEDULED	3/21/2016	Consent	Western Pump Station Change Order 9 and Final Acceptance.
		Consent	Raintree 12-Inch Water Line Change Order 1 and Final Acceptance.
		Regular	Consider approval of an ordinance authorizing the issuance of the Town of Flower Mound, Texas, General Obligation Refunding Bonds, Series 2016, establishing parameters for the sale and issuance of such bonds, delegating certain matters to an authorized official of the Town and resolving all matters incident and related thereto.
	4/4/2016	Consent	Long Prairie 12-Inch Water Line Section 2 Testing Award.
		Consent	2015 Street Reconstruction Construction Award.
		Consent	Oak Street Lift Station & Force Main Change Order 2.
	4/18/2016	Consent	2015 Street Reconstruction Testing Award.
	5/2/2016	Consent	Oak Street Lift Station and Force Main Final Acceptance.
	5/16/2016	Consent	Consider approval of an ordinance canvassing and declaring the results of a general election held May 7, 2016, for the purpose of electing the offices of Mayor, Town Council Place 1, Town Council Place 2, and Town Council Place 4.
FUTURE		Consent	FM 2499 12-Inch Water Line Phase III Testing Award.
		Consent	FM 2499 12-Inch Water Line Phase III Construction Award.
		Regular	Farmers Market Ordinance
		Regular	Tree Removal Permit- The Conservatory