

AGENDA

FLOWER MOUND TOWN COUNCIL REGULAR MEETING

MARCH 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 and discussion on Denton County Transportation Authority.
4. Discussion on Town events and programs for veterans.

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).

H. **COORDINATION OF CALENDARS**

1. The next Town Council meeting is scheduled for April 4th.

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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 2/15** - Consider approval of the minutes from a regular meeting of the Town Council held on February 15, 2016.
2. **Minutes 2/18** - Consider approval of the minutes from a joint work session of the Town Council and Environmental Conservation Commission held on February 18, 2016.
3. **Bank depository agreement** - 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.
4. **CAFR report** - Consider approval of the Comprehensive Annual Financial Report for the fiscal year ended September 30, 2015.
5. **Log cabin MOU** - Consider approval of a Memorandum of Understanding (MOU) between Denton County and the Town of Flower Mound regarding the Gibson-Grant Long Prairie Log Cabin Site.
6. **Budget amendment** - 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 and amended by Ordinance No. 70-15, No. 04-16 and No. 09-16 for an adjustment to the General Fund and the Library Development Fund.
7. **Police vehicle purchase** - Consider approval of the purchase of a six (6) new 9C1 Pursuit 2-Wheel Drive Tahoes for the Police Department from Reliable Chevrolet through an interlocal agreement with Tarrant County, in the amount of \$288,600.00.
8. **Police radio upgrades** - Consider approval of an agreement with Motorola for the upgrades to radios and communications equipment that were approved during the 2015-2016 budget process; and authorization for the Mayor to execute the same on behalf of the Town.
9. **Deployment vehicle purchase** - Consider approval of the purchase of a rapid deployment vehicle by the Flower Mound Police Department.
10. **Park improvements** - Consider approval of final acceptance of the Individual Parks Improvement (Cortadera, Culwell, and Leonard Johns Parks) project; authorization for final payment to 2L Construction, LLC, in the amount of \$11,816.50.

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11. **Staton Oak Park project** - Consider approval of the purchase and installation of play equipment for the Staton Oak Park Playground project, from Child's Play, Inc., through the Texas Local Government Purchasing Cooperative, in the amount of \$170,466.00.
12. **Bakers Branch stabilization** - Consider approval of emergency agreement for the construction of Bakers Branch Stabilization at 1601 Twilight Drive project in the amount of \$126,618.00, and the construction of McKamy Creek Bank Stabilization at 3400 Pheasant Court project, in the amount of \$32,190.00.
13. **PSA water line replacement** - Consider approval of a Professional Services Agreement for the design phase services of the FM2499 at FM3040 24-Inch Water Line Crossing Replacement project, with Kimley-Horn and Associates, Inc., for \$20,900.00; and authorization for the Mayor to execute same on behalf of the Town.
14. **ADA transition plan** - Consider approval of a Professional Services Agreement with Kimley-Horn and Associates, Inc., to provide professional engineering services associated with the ADA Transition Plan & Implementation project - 2016 Update, in the amount of \$100,000.00; and authorization for the Mayor to execute the same on behalf of the Town.
15. **Temporary fire station #6** - Consider approval of a Supplement to the Harris County Department of Education Choice Partners Cooperative Contract Between the Town of Flower Mound and Basic IDIQ, through an Interlocal Agreement provided through the Harris County Department of Education with Basic IDIQ, for the construction award of a Temporary Fire Station to cover the Canyon Falls Development area, which will transition into the Western Operations and Maintenance Facility, in the amount of \$771,398.40; and authorization for the Mayor to execute same on behalf of the Town.
16. **School zone extensions** - 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 extending the reduced school speed zone for Bridlewood Boulevard, Garden Road, and Peters Colony Road.
17. **Traffic signal operation & maintenance** - Consider approval of a resolution to enter into a Volunteer Cooperation Agreement for Operation and Maintenance of Traffic Signals with the Texas Department of Transportation, with proposed revenue of \$66,080.08; and authorization for the Mayor to execute the same on behalf of the Town.
18. **FM1171/Forums Traffic Signal** - Consider approval of Change Order No. 1 and final acceptance of the FM 1171 at Forums Drive Traffic Signal project amending the contract with Durable Specialties Inc., for a decrease of \$8,176.00; authorization for final payment to Durable Specialties Inc., in the amount of \$20,150.90; and authorization for the Mayor to execute same on behalf of the Town.

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19. **Pintail Storage Tank** - Consider approval for the final acceptance of the Pintail Ground Storage Tank Rehabilitation project and authorization of final payment to the contractor, NG Painting L.P., in the amount of \$62,155.00.
20. **Pintail Pump Station** - Consider approval of the award of Bid No. 2016-33 to Felix Construction Company, for the Pintail Pump Station Capacity Improvements project, in the amount of \$1,009,380.00; and authorization for the Mayor to execute same on behalf of the Town.
21. **CAC pool** - Consider approval of replastering the outdoor pool at the Community Activities Center.

J. REGULAR ITEMS

22. **General Obligation Refunding Bonds** - 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.
23. **Animal Services Board** - Discuss and consider the scope and role of the Animal Services Board.
24. **Hawk Road Cell Tower** **Public Hearing**
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.) (The Town Council postponed the item at its December 21, 2015, meeting.)*
25. **Home Depot/Silveron Addition (ZPD16-0002)** **Public Hearing**
Public Hearing to consider a request for rezoning (ZPD16-0002 – Home Depot/Silveron Addition) to amend Specific Use Permit No. 245 (SUP-245) within Planned Development District No. 31 (PD-31) to allow for temporary or seasonal sales, and to consider adopting an ordinance providing for said amendment. The property is generally located south of Lakeside Parkway and east of Long Prairie Road. *(The Planning and Zoning Commission recommended approval by a vote of 4 to 0 at its March 14, 2016, meeting.)*

Town Council Meeting Agenda**March 21, 2016****Page 5****26. Hillside of Flower Mound (ZPD16-0003)****Public Hearing**

Public Hearing to consider a request for rezoning (ZPD16-0003 – Hillside of Flower Mound) to amend Planned Development District No. 143 (PD-143) for a cluster development to modify the exception to Section 98-147, "Topographical Slope Protection," and to consider adopting an ordinance providing for said amendment, 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 south of Cross Timbers Road and west of Shiloh Road. *(The Planning and Zoning Commission recommended denial by a vote of 6 to 0 at its February 22, 2016, meeting.)*

27. Red Hawk (ZPD15-0014)**Public Hearing**

Public Hearing to consider a request for rezoning (ZPD15-0014 – Red Hawk) from Agricultural District (A) uses to Planned Development District No. 144 (PD-144) with Single-Family Estate (SF-E) uses, with certain modifications, exceptions and waivers to the Code of Ordinances, and to consider adopting an ordinance providing for said amendment. The property is generally located west of Simmons Road and south of Wichita Trail. *(The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its February 22, 2016, meeting.)*

28. Lakeside Ranch Business Park (ZPD15-0018)**Public Hearing**

Public Hearing to consider a request for rezoning (ZPD15-0018 – Lakeside Ranch Business Park) to amend Planned Development District No. 83 (PD-83) with Campus Industrial District (CI) uses, by amending the Development Standard(s) to add "Miniwarehouse" as a use that may be permitted upon approval of a Specific Use Permit on certain tract of land, and to consider a request for a Specific Use Permit No. 446 (SUP-446) to permit a Miniwarehouse with certain modifications, exceptions and waivers to the Code of Ordinances, and to consider adopting an ordinance providing for said amendment. The property is generally located north of Lakeside Parkway and east of Gerault Road. *(The Planning and Zoning Commission recommended approval by a vote of 4 to 0 at its March 14, 2016, meeting.)*

29. Definitions (LDR16-0001) – Farmer's Market**Public Hearing**

Public Hearing to consider a request to amend the Land Development Regulations (LDR16-0001) by amending Section 98-2, entitled "Definitions," and Section 98-980, entitled "Farmer's Market," of the Town's Code of Ordinances to allow a farmer's market to operate on any Town-owned property and to provide that all farmer's markets must abide by Town regulations and applicable provisions of state law, and to consider adopting an ordinance providing for said amendment. *(The Planning and Zoning Commission recommended approval by a vote of 6-0 at its February 22, 2016, meeting.)*

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30. **Charter Review Commission creation** - A Resolution of the Town Council of the Town of Flower Mound Texas, creating a Charter Review Commission approving a charge for the Charter Review Commission, providing that the Town Council shall appoint members to the Charter Review Commission; making findings relative thereto; and providing for an effective date.

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, and **Planning and Zoning Commission**.
- 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.

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: March 18, 2016, at 11:25 a.m., at least 72 hours prior to the scheduled time of said meeting.

Theresa Scott, Town Secretary



TOWN COUNCIL AGENDA ITEM NO. 1

CONSENT ITEM

DATE: March 21, 2016

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a regular meeting of the Town Council held on February 15, 2016.

BACKGROUND INFORMATION: The Town Council held a regular meeting on February 15, 2016.

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 February 15, 2016.

FLOWER MOUND TOWN COUNCIL MEETING OF FEBRUARY 15, 2016 BOOK 44 PAGE 1

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 15TH DAY OF FEBRUARY 2016, 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
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
Eric Greaser	Fire Chief
Andy Kancel	Police Chief
Tommy Dalton	Director of Strategic Services
Matthew Woods	Director of Environmental Services
Wendell Mitchell	Assistant Chief of Police
James Hoefert	Environmental Review Analysis
Tom Vyles	Environmental Health Manager

A. CALL REGULAR MEETING TO ORDER

Mayor Hayden called the regular meeting to order at 6:02 p.m.

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

Chaplain Little gave the invocation and Mayor Hayden led the pledges.

D. PRESENTATIONS

1. Presentation and update by Keep Flower Mound Beautiful (KFMB).

Marilyn Lawson, representing KFMB, gave a report on the work being done by KFMB.

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.

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	Speaker names and address	Subject (<i>as written on the form</i>)
1.	Landon Plunkett, 3112 Winston Dr, Highland Village Parker Mitchell, Student Body President at Marcus High School	Marcus High School Student Council Fundraiser
2.	Jody Smith, 3705 Sarah Springs	Children's Advocacy Center
3.	Ellen Hakala, 808 Tree Haven Ct, Highland Village	Item 14 (Bureau of Land Management)
4.	Jamella Omeger, 4010 Bomey Dr, Highland Village	Bureau of Land Management
5.	Jim Engel, 5110 Bayberry St	Suggestion for agenda packet
6.	Rustan Tarafdar, 3404 Dorchester Ct	Bureau of Land Management

F. ANNOUNCEMENTS

Councilmember Bryant had the following announcements:

- Welcomed the participants of the Flower Mound Citizens Academy who were present
- Reported on the recent Fire Department banquet and offered appreciation for the work they do, along with the Town staff who supports their efforts

Councilmember Webb had the following announcements:

- Reported on his experience at the Fire Department banquet
- Summit Club Western Saloon Night scheduled for March 5th

G. TOWN MANAGER'S REPORT

Update and discussion on:

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

Mr. Stathatos reported on the following CIP projects:

- Long Prairie 12 inch water project
- Pintail pump station upgrades

Mayor Hayden indicated that once the budget discussions begin, he would like for Council to have the opportunity to consider a CIP item to expand the public library.

2. Update and discussion on Economic Development projects.

Mr. Stathatos reported on the following ED projects:

- Leadercast event on Friday, May 6th, in conjunction with the Flower Mound Chamber
- Announced the resignation and future plans for a member of Town staff (Alora Wachholz, Economic Development Specialist)
- Chief Greaser, Chief Kancel, Mayor Hayden, and Councilmember Webb offered statements of fact in response to recent social media posts as it relates to Fire and Police Department response times

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3. Update and discussion on Density Gap.

Mr. Stathatos gave an update on the issue of the density gap.

There was Council discussion as follows:

- History of why the discussion is coming forward
- There is a need for a discussion so there could be a definition for the gap between 7,500 and 10,000
- High density single family district is a good option
- Breaking out multi-family from high density makes sense, resulting in a better understanding of future applications, and can be discussed at an upcoming council meeting
- Filling the gap makes sense but will take more discussion
- Worthy of review and that can happen either at a work session or the strategic planning session
- Better to proceed sooner than later to allow for clear wording in the Town's ordinances and development plans to avoid confusion as it relates to high density zoning

Mayor Hayden summarized that the consensus of Council is to proceed forward with a process that allows for a step somewhere between 0 and 10,000 as it relates to a density gap, and that there should be some break points within that.

4. Update and discussion on using the Town's video copter (drone) to monitor development impacts on tree canopy.

Mr. Stathatos and Mr. Dalton gave an update on the proposed suggestion of using the Town's video copter (drone) to monitor development impacts on tree canopy, pointing out or noting:

- Examples of drones
- Purpose
- Method of deployment
- Tree growth examples
- Observations from the program
- Regulations
- Environmental challenges
- Resources
- Current monitoring
- Recommendation
- Alternatives

Mr. Dalton or Mr. Matthew Woods responded to questions from Council related to:

- Background information that led to the topic coming up for discussion
- Availability of private sector businesses to provide the data that the Town could use and fit in our current software
- Frequency of National Agriculture Imagery Program (NAIP) data
- Other sources for historical aerial photography
- If staff has the appropriate tools for canopy analysis on a go forward basis

FLOWER MOUND TOWN COUNCIL MEETING OF FEBRUARY 15, 2016 BOOK 44 PAGE 4**H. FUTURE AGENDA ITEMS**

1. No proposed future agenda items were presented.

I. COORDINATION OF CALENDARS

Mayor Hayden announced that the next Town Council meeting is scheduled for February 18th, and that it is a joint work session with the Environmental Conservation Commission (ECC), and confirmed that all members of Council would be in attendance.

J. CONSENT ITEMS

1. Consider approval of the minutes from a regular meeting of the Town Council held on February 1, 2016.

RECOMMENDATION: Move to approve the minutes from a regular meeting of the Town Council held on February 1, 2016.

2. 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 2, and Town Council Place 4; and a Special Election for the office of Town Council Place 1, on this same date.

RECOMMENDATION: Move to approve 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 2, and Town Council Place 4; and a Special Election for the office of Town Council Place 1, on this same date.

RESOLUTION NO. 03-16

A RESOLUTION OF THE TOWN OF FLOWER MOUND, TEXAS CALLING FOR A GENERAL ELECTION TO BE HELD ON MAY 7, 2016, FOR THE PURPOSE OF ELECTING A MAYOR AND COUNCIL MEMBERS FOR COUNCIL PLACES 2 AND 4; CALLING A SPECIAL ELECTION TO BE HELD ON MAY 7, 2016, FOR THE PURPOSE OF ELECTING A COUNCIL MEMBER FOR TOWN COUNCIL PLACE 1 FOR THE REMAINDER OF THE UNEXPIRED TERM, ESTABLISHING PROCEDURES FOR THOSE ELECTIONS; AND PROVIDING AN EFFECTIVE DATE.

3. 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 and amended by Ordinance No. 70-15 and Ordinance No. 04-16 for an adjustment to the Utility Fund.

RECOMMENDATION: Move to approve 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 and amended by Ordinance No. 70-15 and Ordinance No. 04-16 for an adjustment to the Utility Fund.

ORDINANCE NO. 09-16

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 AND AMENDED BY ORDINANCE NO. 70-15 AND ORDINANCE NO. 04-16, BY PROVIDING FOR ADJUSTMENTS TO THE UTILITY 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.

4. Consider approval of a resolution of the Town Council of the Town of Flower Mound, Texas, authorizing the Texas Coalition for Affordable Power (TCAP) to negotiate an electric supply agreement for five years for deliveries of electricity effective January 1, 2018.

RECOMMENDATION: Move to approve a resolution of the Town Council of the Town of Flower Mound, Texas, authorizing the Texas Coalition for Affordable Power (TCAP) to negotiate an electric supply agreement for five years for deliveries of electricity effective January 1, 2018.

RESOLUTION NO. 05-16

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AUTHORIZING THE TEXAS COALITION FOR AFFORDABLE POWER, INC. (TCAP) TO NEGOTIATE AN ELECTRIC SUPPLY AGREEMENT FOR FIVE YEARS FOR DELIVERIES OF ELECTRICITY EFFECTIVE JANUARY 1, 2018; AUTHORIZING TCAP TO ACT AS AN AGENT ON BEHALF OF THE TOWN NEGOTIATE A CONTRACT FOR ELECTRICITY; AUTHORIZING MAYOR THOMAS E. HAYDEN OR TOWN MANAGER JIMMY STATHATOS TO EXECUTE AN ELECTRIC SUPPLY AGREEMENT FOR DELIVERIES OF ELECTRICITY EFFECTIVE JANUARY 1, 2018 AND COMMITTING TO BUDGET FOR ENERGY PURCHASES IN 2018 THROUGH 2022 AND TO HONOR THE TOWN'S COMMITMENTS TO PURCHASE POWER FOR ITS ELECTRICAL NEEDS IN 2018 THROUGH 2022 THROUGH TCAP.

5. Consider approval of the purchase of a new Super Duty, Regular Cab, 4x4, Cab/Chassis w/Brush-Chip Tree Care Body for the Parks Department from Sam Pack's Five-Star Ford through the Texas Local Government Purchasing Cooperative program, in the total amount of \$62,182.00.

RECOMMENDATION: Move to approve the purchase of a new Super Duty, Regular Cab, 4x4, Cab/Chassis w/Brush-Chip Tree Care Body for the Parks Department from Sam Pack's Five-Star Ford through the Texas Local Government Purchasing Cooperative program, in the total amount of \$62,182.00.

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6. Consider approval of the purchase of two (2) new 2016 Ford Interceptor Sedans for the Police Department from Sam Pack's Five-Star Ford through the Texas Local Government Purchasing Cooperative program, in the total amount of \$98,456.34.

RECOMMENDATION: Move to approve the purchase of two (2) new 2016 Ford Interceptor Sedans for the Police Department from Sam Pack's Five-Star Ford through the Texas Local Government Purchasing Cooperative program, in the total amount of \$98,456.34.

7. Consider approval of an ordinance amending the Code of Ordinances of the Town of Flower Mound by amending Article I, "In General" of Chapter 54 "Parks and Recreation" of the Code of by amending Sections 54-2(d)(1-3) and adding Section 54-2(d)(4), entitled "Seniors in Motion", and by amending Appendix A "Fee Schedule" Section 54-2(d) "Seniors in Motion Membership Fee" to change the calendar year annual fee to a twelve month pass and add a day pass for the Seniors in Motion program.

RECOMMENDATION: Move to approve an ordinance amending the Code of Ordinances of the Town of Flower Mound by amending Article I, "In General" of Chapter 54 "Parks and Recreation" of the Code of by amending Sections 54-2(d)(1-3) and adding Section 54-2(d)(4), entitled "Seniors in Motion", and by amending Appendix A "Fee Schedule" Section 54-2(d) "Seniors in Motion Membership Fee" to change the calendar year annual fee to a twelve month pass and add a day pass for the Seniors in Motion program.

ORDINANCE NO. 10-16

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING ARTICLE I, "IN GENERAL" OF CHAPTER 54, "PARKS AND RECREATION" OF THE CODE OF ORDINANCES BY AMENDING SECTIONS 54-2(d)(1-3) AND ADDING SECTION 54-2(d)(4) "SENIORS IN MOTION", AND AMENDING APPENDIX A "FEE SCHEDULE" SECTION 54-2(d) "SENIORS IN MOTION MEMBERSHIP FEE" TO CHANGE THE CALENDAR YEAR ANNUAL FEE TO A TWELVE MONTH PASS AND TO ADD A DAY PASS FOR THE SENIORS IN MOTION PROGRAM; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

8. Consider approval of the consumption of alcoholic beverages at the Flower Mound Senior Center during the SIM Auxiliary's Casino Night.

RECOMMENDATION: Move to approve the consumption of alcoholic beverages at the Flower Mound Senior Center during the SIM Auxiliary's Casino Night

9. Consider approval of Amendment No. 3 to the Fiscal Year 2015-2016 Capital Improvement Program.

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RECOMMENDATION: Move to approve Amendment No. 3 to the Fiscal Year 2015-2016 Capital Improvement Program.

10. 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.

RECOMMENDATION: Move to approve 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.

11. Consider approval of the Final and Change Order No. 1 for the construction of the Flower Mound Road Turn Lanes at Native Oak Drive and Auburn Turn Lane at FM 1171 project, amending the contract with 3D Paving and Contracting, LLC., for a decrease in the contract amount of \$29,032.40; acceptance of the project; and authorization of final payment to the contractor, 3D Paving and Contracting, LLC., in the amount of \$20,287.57; and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Move to approve the Final and Change Order No. 1 for the construction of the Flower Mound Road Turn Lanes at Native Oak Drive and Auburn Turn Lane at FM 1171 project, amending the contract with 3D Paving and Contracting, LLC., for a decrease in the contract amount of \$29,032.40; acceptance of the project; and authorization of final payment to the contractor, 3D Paving and Contracting, LLC., in the amount of \$20,287.57; and authorization for the Mayor to execute same on behalf of the Town.

12. Consider approval of an Ordinance for the release and abandonment of three easements located on a 50 acre tract located within the City of Grapevine and Town of Flower Mound limits that is owned by Grapevine; and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Move to approve an Ordinance for the release and abandonment of three easements located on a 50 acre tract located within the City of Grapevine and Town of Flower Mound limits that is owned by Grapevine; and authorization for the Mayor to execute same on behalf of the Town.

ORDINANCE NO. 08-16

AN ORDINANCE VACATING AND ABANDONING EASEMENTS LOCATED IN THE TOWN OF FLOWER MOUND AND CITY OF GRAPEVINE; DECLARING THAT SUCH PROPERTY IS UNNECESSARY FOR USE BY THE PUBLIC; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

13. Consider approval of the Professional Services Agreement with Kimley-Horn and Associates, Inc., to provide professional engineering services, for the FM 1171 at FM 2499 East Bound Right Turn Lane project in the amount of \$52,000.00; and authorization for the Mayor to execute same on behalf of the Town.

FLOWER MOUND TOWN COUNCIL MEETING OF FEBRUARY 15, 2016 BOOK 44 PAGE 8

RECOMMENDATION: Move to approve the Professional Services Agreement with Kimley-Horn and Associates, Inc., to provide professional engineering services, for the FM 1171 at FM 2499 East Bound Right Turn Lane project in the amount of \$52,000.00; and authorization for the Mayor to execute same on behalf of the Town.

Councilmember Webb moved to approve by consent Items 1 – 13, and 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**

14. Consider approval of a Resolution protesting the proposed sale by the United States Department of the Interior, Bureau of Land Management of minerals encompassing the Lake Lewisville area for oil and gas development and directing the Town Attorney to submit the protest on behalf of the Town.

Administrative Note: There were unknown audio/video technical difficulties for approximately 4 minutes at the beginning of the discussion for this item. For that reason Town Council recessed at 7:20 p.m. and reconvened at 7:45 p.m.

An audio only recording of these 4 minutes is available by clicking on the following icon:

There was Council discussion as follows:

- Lake Lewisville is not the place and now is not the time for gas development near a critical water supply, but today is the time and place for Council to be a voice for the residents who have clearly stated what their positions are on this over the years
- How it's about protecting our drinking water resource
- How there is a lot to lose and very little to gain
- Timing and whether gas commodity pricing should be a factor or not
- Benefit versus potential negatives
- Everything needs to be done to discourage this part of the property at this time
- Interest in striking the reference to timing of the proposed sale (Whereas Section 10)
- Reasoning associated with Whereas Section 10

Administrative Note: There were minor modifications to the Resolution after the agenda packet was posted, and for that reason the final Resolution, as approved by Council, is included in its entirety below, and is as recited by Mayor Hayden:

FLOWER MOUND TOWN COUNCIL MEETING OF FEBRUARY 15, 2016 BOOK 44 PAGE 9

Councilmember Bryant moved to approve a Resolution protesting the proposed sale by the United States Department of the Interior, Bureau of Land Management of minerals encompassing the Lake Lewisville area for oil and gas development and directing the Town Attorney to submit the protest, as mentioned in the amendment, on behalf of the Town. Deputy Mayor Pro Tem Gelbman seconded the motion.

RESOLUTION NO. 04-16

RESOLUTION OF THE TOWN OF FLOWER MOUND, TEXAS, PROTESTING THE INCLUSION OF PARCEL NUMBER NM-201604-043, LOCATED IN DENTON COUNTY, TEXAS AS AVAILABLE FOR COMPETITIVE SALE TO BE USED FOR OIL AND GAS LEASING; DIRECTING THE TOWN ATTORNEY TO SUBMIT THIS PROTEST ON BEHALF OF THE TOWN OF FLOWER MOUND TO THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT; 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 Texas Local Government Code; and,

WHEREAS, the US Bureau of Land Management intends to conduct a competitive sale, to be held on April 20, 2016, to auction certain Federal lands located in Denton County, Texas to be used for oil and gas development; and,

WHEREAS, pursuant to Title 43 CFR 3120.1-3, the Town of Flower Mound hereby protests the inclusion of parcel number NM-201604-043, composed of 258.90 acres and known as the Lake Lewisville Project, that is listed in the sale notice published by the United States Department of the Interior, Bureau of Land Management; and,

WHEREAS, the Town Council of the Town of Flower Mound is an elected body that represents the citizens of the Town whose property rights are greatly affected by the sale of parcel number NM-201604-043 to be used for oil and gas development; and,

WHEREAS, Lewisville Lake is located within the 258.90 acres of parcel number NM-201604-043; and,

WHEREAS, Lewisville Lake serves as the primary source of the Town's public water supply; and,

WHEREAS, the Town Council finds that permitting oil and gas operations on parcel number NM-201604-043 may negatively affect Lewisville Lake and as a result threaten the Town's largest source of water; and,

WHEREAS, the Lewisville Dam, which is located within parcel number NM-201604-043, is currently undergoing repairs from devastating May 2015 storms and the Corps of Engineers has identified numerous elements that must be addressed as the repairs are carried out, including certain structural hazards related to the integrity of the Dam; and,

FLOWER MOUND TOWN COUNCIL MEETING OF FEBRUARY 15, 2016 BOOK 44 PAGE 10

WHEREAS, the Town Council finds that oil and gas development may further harm the Lewisville Dam and exacerbate the structural hazards identified by the Corps of Engineers and threaten the health, safety, and general welfare of Town citizens; and,

WHEREAS, for the foregoing reasons, the Town Council of the Town of Flower Mound hereby protests the inclusion of parcel number NM-201604-043 as available for competitive sale to be used for oil and gas development.

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

SECTION 1.

That the Town of Flower Mound, Texas hereby respectfully requests that the Bureau of Land Management withdraw parcel number NM-201604-043, located in Denton County, Texas from the available parcels for competitive lease sale at the April 20, 2016 Oil & Gas Competitive Lease Sale.

SECTION 2.

That the Town Attorney is hereby directed to file this protest with the Bureau of Land Management on or before February 18, 2016.

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 5 TO 0, ON THIS 15TH DAY OF FEBRUARY, 2016.

VOTE ON MOTION:

Motion passed.

AYES: GELBMAN, DIXON, BRYANT, WEBB, WISE

NAYS: NONE

15. The first of two Public Hearings to review Chapter 50, Article III, "Offenses regarding Minors," Division 2, "Curfew."

Staff Presentation

Assistant Chief Mitchell gave a presentation identifying or noting:

- Tonight is one of two public hearings
- Statute requirement for juvenile curfew ordinance
- Background information
- Options that Council can take
- Total Class C citations issued to juveniles after curfew by year (last 6 years review)
- Other neighboring cities also have curfew ordinances

FLOWER MOUND TOWN COUNCIL MEETING OF FEBRUARY 15, 2016 BOOK 44 PAGE 11

- Class C citations issued in 2010 after curfew by violation, and subsequent years through 2015
- The effectiveness of the curfew ordinance
- Allowances for certain circumstances

Mr. Mitchell responded to questions from Council as follows:

- Clarification regarding the reference to Saturday and Sunday in the statute
- Clarification regarding the age involved
- What is the penalty for violations
- What happens when someone violates the curfew

Mayor Hayden opened the Public Hearing at 8:00 p.m. No one spoke in support or opposition. Mayor Hayden closed the Public Hearing at 8:00 p.m.

16. Public Hearing to consider approval of an ordinance of the Town of Flower Mound, Texas calling for a special election to be held on May 7, 2016, for the purpose of submitting Charter amendments to the voters.

Staff Presentation

Ms. Scott indicated she didn't have a formal presentation for this item given it was discussed previously on two occasions and the packet information summarizes the item.

Mayor Hayden opened the Public Hearing at 8:08 p.m.

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
None.	None.	Paul Stone, 709 Lake Bluff Dr, requested Council delay taking any action, along with consideration for a November election for a variety of reasons.

Mayor Hayden closed the Public Hearing at 8:09 p.m.

There was Council discussion related to:

- Goal of having Council move forward in taking up the Charter discussion
- Appointment process
- Timing and deadlines
- Whether the items slated to go forward on the ballot warrant having an election
- Interest in gathering public input
- Voter turnout in November versus a May election
- Let the newly elected Council make the decision of putting together a CRC

FLOWER MOUND TOWN COUNCIL MEETING OF FEBRUARY 15, 2016 BOOK 44 PAGE 12

- How the Commission brings forward recommendations and Council decides which items go forward on the ballot
- Council elected in May should be the one to call the items
- The current Council can make the commission member appointments now

Ms. Scott responded to questions from Council regarding:

- Timing
- Deadlines
- Past promotional efforts

There was Council consensus to move forward with selecting a Charter Review Commission at the next Council meeting on March 21, 2016; with the understanding the new Council will have the option as to whether or not they wish to accept any recommendations that come forward.

Mayor Hayden asked each member of Council to come up with a representative for the purpose of serving on the Charter Review Commission.

Council took no action on this item.

17. Public Hearing to consider an application for a tree removal permit for one (1) specimen tree on property proposed for development as Mi Dia. The property is generally located west of Long Prairie Road and south of West Windsor Drive. *(The Environmental Conservation Commission recommended approval by a vote of 6-0-0 at its February 2, 2016, meeting).*

Staff Presentation

Mr. Hoefert gave a presentation identifying or noting:

- Aerial of site location
- Project information
- Tree survey
- Photo of tree

There was Council discussion as follows:

- How the tree ordinance works
- How the site is engineered where there aren't many options

Mr. Hoefert responded to questions from Council as follows:

- Was there not any way to move the road
- How many feet do you need to move the road
- Are other trees going to be planted for the removal

Mayor Hayden opened the Public Hearing at 8:30 p.m. No one spoke in support or opposition. Mayor Hayden closed the public hearing at 8:30 p.m.

Councilmember Wise moved to approve the requested permit to remove one (1) specimen tree on property proposed for development as Mi Dia. The property is generally located west of Long Prairie Road and south of West Windsor Drive. Councilmember Webb seconded the motion.

FLOWER MOUND TOWN COUNCIL MEETING OF FEBRUARY 15, 2016 BOOK 44 PAGE 13**VOTE ON MOTION:***Motion passed.***AYES: WISE, WEBB, BRYANT, DIXON, GELBMAN****NAYS: NONE**

18. Consider a request for a Development Plan (DP14-0009 – Hawks Hill) to develop a non-residential subdivision. The property is generally located south of Waketon Road and west of Long Prairie Road. *(The Planning and Zoning Commission recommended approval by a vote of 5 to 0 at its February 8, 2016, meeting.)*

Staff Presentation

Mr. Powell gave a presentation identifying or noting:

- General location
- Photos of site
- Concept plan
- Development plan
- Concept landscape plan
- Conceptual elevations

Councilmember Webb moved to approve a Development Plan (DP14-0009 – Hawks Hill) to develop a non-residential subdivision. Councilmember Bryant seconded the motion.

VOTE ON MOTION:*Motion passed.***AYES: DIXON, BRYANT, WEBB, WISE****NAYS: GELBMAN**

19. Consider approval of an ordinance amending the Code of Ordinances of the Town of Flower Mound by amending Chapter 18, "Businesses", Article III "Food and Food Establishments", by amending Section 18-92 to adopt the updated Texas Food Establishment Rules from the Texas Department of State Health Services, and adopting a new Section 18-127 to establish a variance process to allow dogs on patios of permitted food establishments, and by amending Appendix A "Fee Schedule", relative to adding a permit fee for the variance application.

Staff Presentation

Mr. Woods gave a presentation identifying or noting:

- Background information
- Texas food establishment rules
- Variance process for dogs on patios
- Permit conditions
- Permit application process for business owners

There was Council discussion related to:

- How San Antonio was used as an example for some of the proposed standards
- Standards associated with cleaning the patio

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Mr. Woods or Mr. Vyles responded to questions or comments from Council related to:

- Permit cost for the business owner
- Sanitation requirements such as cleaning the patio at the end of each shift
- Has there been a lot of residents asking for this
- Are the standards basically consistent with what other places have done
- Clarification that the dog owners and dogs must have direct access to the patios
- What is the cost of the application fee
- What other cost are there for the restaurant owner
- How would it be enforced

ORDINANCE NO. 11-16

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY ADOPTING THE TEXAS FOOD ESTABLISHMENT RULES; PROVIDING FOR A PERMIT TO ALLOW DOGS ON OUTDOOR PATIOS AT FOOD ESTABLISHMENTS; PROVIDING FOR THE SUSPENSION OR REVOCATION OF THE PERMIT; ADOPTING AN APPLICATION FEE FOR THE PERMIT; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL 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.

Deputy Mayor Pro Tem Gelbman moved to approve an ordinance amending the Code of Ordinances of the Town of Flower Mound by amending Chapter 18, "Businesses", Article III "Food and Food Establishments", by amending Section 18-92 to adopt the updated Texas Food Establishment Rules from the Texas Department of State Health Services, and adopting a new Section 18-127 to establish a variance process to allow dogs on patios of permitted food establishments, and by amending Appendix A "Fee Schedule", relative to adding a permit fee for the variance application, and as amended to include a cleaning frequency provision of at least every 24 hours. Councilmember Bryant seconded the motion.

VOTE ON MOTION:

Motion passed.

AYES: WISE, WEBB, BRYANT, DIXON, GELBMAN

NAYS: NONE

20. Consider Town participation options for proposed Emerson Lane Screening Fence/Guardrail Installation.

Staff Presentation

Mr. Parr gave a presentation identifying or noting:

- Background and history information
- Site plan – Emerson Lane
- Guardrail cost credited toward fence cost option

FLOWER MOUND TOWN COUNCIL MEETING OF FEBRUARY 15, 2016 BOOK 44 PAGE 15

- Photographs of site and placement restrictions
- Right-of-way access

There was Council discussion as follows:

- How the realignment of FM 1171 put the residents in this position
- The 10 foot height makes sense
- not using a guardrail to offset the cost associated with the higher fence option
- Cost sharing options with the impacted homeowners for the difference between 8 and 10 feet
- the liability of public safety for the residents
- Grade levels of the improved roadway
- Background information as to what was approved on November 17, 2014

Mr. Parr responded to questions from Council as follows:

- Safety factors
- The possibility of use of a guardrail for some of the lots instead of all five of them
- Resident interest level for a guardrail

Mayor Hayden summarized that the direction of the majority of Council is to eliminate the guard rail and increase the fence height at the two locations identified.

L. BOARDS/COMMISSIONS (Executive Conference Room)

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

No action taken.

M./N. CLOSED/OPEN MEETING

The Town Council did not convene into closed meeting and therefore no action was taken.

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O. ADJOURN REGULAR MEETING

Mayor Hayden adjourned the meeting at 9:28 p.m. on Monday, February 15, 2016, 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: March 21, 2016

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a joint work session of the Town Council and Environmental Conservation Commission held on February 18, 2016.

BACKGROUND INFORMATION: The Town Council held a joint work session on February 18, 2016.

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 joint work session of the Town Council and Environmental Conservation Commission held on February 18, 2016.

FLOWER MOUND TOWN COUNCIL MEETING OF FEBRUARY 18, 2016 BOOK 44 PAGE 1**THE JOINT FLOWER MOUND TOWN COUNCIL AND ENVIRONMENTAL CONSERVATION COMMISSION WORK SESSION HELD ON THE 18th DAY OF FEBRUARY, 2016, 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 work session with the following members present:

Tom Hayden	Mayor (arrived at 6:10 p.m.)
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 Environmental Conservation Commission(ECC) present:

Craig Bromley	Chair
Russell McNamer	Vice Chair
Marilyn Lawson	Place 4
Alton Bowman	Place 5
Elaine Takacs	Place 6
James Gerber	Place 7
Karen Kroesen	Place 9
Jim Cumbest	Place 10

constituting a quorum with the following members absent:

Ellen Stallcup	Place 2
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and the Town Staff participating:

Theresa Scott	Town Secretary
Jimmy Stathatos	Town Manager
Debra Wallace	Assistant Town Manager/CFO
Ken Parr	Executive Director of Public Works
Matthew Woods	Director of Environmental Services
James Hoefert	Environmental Review Analysis
Tommy Dalton	Director of Strategic Services

A. CALL WORK SESSION TO ORDER

Mayor Pro Tem Dixon called the work session to order at 6:01 p.m.

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

Mayor Pro Tem Dixon gave the invocation led the pledges.

D. WORK SESSION ITEM

1. Joint work session with Town Council and Environmental Conservation Commission (ECC) to discuss the Town's tree ordinance, urban forestry programs, and receive an update on the sustainability initiatives.

Staff Presentation

Mr. Woods, Mr. Hoefert, or Mr. Dalton gave a presentation identifying or noting:

- Tree preservation regulations
- Urban forestry program components
- Tree planting
- Tree farm
- Memorial/commemorative tree program
- Sustainability initiatives
- Proposed amendments
- Post Oak review
- Post Oak preservation credits
- Current buildable area definition
- Preservation incentives
- Example that demonstrates how long it takes for an installed landscaping tree to grow

Mr. Woods, Mr. Hoefert, Mr. Stathatos, Ms. Wallace, or Mr. Parr responded to questions from Council or members of the ECC as follows:

- Feasibility of lot to lot drainage
- The possibility of having flexibility in the engineering to allow lot-to-lot drainage in portions of a development
- Option of empowering staff to make a decision on waivers in situations where it makes sense on a piece of property
- Whether there should be a final appeal option to go to Town Council if necessary
- Mitigation requirements
- Concerns regarding past situations where trees were planted under power lines
- Is a business currently prohibited from topping a tree; and if so, what are the penalties
- What benefit does the Town have in allowing a variety of species of trees
- What would be the mechanism to not allow trees to be topped
- How many tree spades does the Town have and what are its capabilities
- Procedures and timing associated with the amended landscape plan
- The possibility of offering an incentive to business owners when they opt to transplant viable trees within a site, or move it to the tree farm, versus complete removal
- Interest in knowing the survival rate of the spaded trees that came in about 10 years ago with LNR in Lakeside

FLOWER MOUND TOWN COUNCIL MEETING OF FEBRUARY 18, 2016 BOOK 44 PAGE 3

- Proposed amendments
- What is the mitigation for protected trees
- What is the analysis on 19 inches (post oak tree caliper size-diameter) as it relates to the number of additional trees
- Ratios for protected trees
- If 22 inches is too low
- Reference to Fort Worth's tree farm and their program structure
- What would be the impact if it was lowered to 19 inches
- Clarification regarding incentives for the builder in saving a tree(s), and more specifically as it relates to specimen trees
- If the threshold is going to be lowered to 19 inches, should we relook at the incentive side or does it balance out
- Growth differences between live oaks and post oaks
- Interest in knowing why ECC had discussions about 19 inches; and later recommended 22
- What is the definition of historic trees
- What are the current Town tree initiatives
- Arboretum option adjacent to the tree farm
- What happened to the tree farm and learning center behind Forest Vista
- Mitigation fund balance
- The option of using Green Acres park for a passive tree farm at this time
- The option of using Heritage Park for educational tree programs
- Future developments on the horizon that might offer opportunities
- LEED (Leadership in Energy and Environmental Design) guided designs being a priority for Town buildings, which could later result in offering incentives to private developers who implement those attributes
- Possibility of focusing on a few sustainability initiatives instead of having 12-13 items being worked on a little at a time
- Interest in seeing a concerted effort to recover as much of the tree canopy as possible
- Recycling and green waste to be considered with the upcoming contract renewal for waste services
- Interest in having three trees per residential lot
- Upcoming educational series at the Library
- ECC feedback regarding the list of recommended trees
- Emphasis on saving post oaks in particular, including offering developers some type of incentive to do so.

There was direction from the majority of Council, in collaboration with ECC members, to proceed or gain additional information in the following areas:

- Allow flexibility in the landscaping requirements as it relates to circumstances when it comes to planting trees under power lines
- Interest in knowing the survival rate of the spaded trees that came in about 10 years ago with LNR in Lakeside
- Interest in having a comparison between 18, 19, and 22 tree caliper inches as it relates to specimen trees, and to address the tree credits

FLOWER MOUND TOWN COUNCIL MEETING OF FEBRUARY 18, 2016 BOOK 44 PAGE 4

- Interest in inviting developers to participate when ECC hears the discussion so they can hear the impact, as well as what the incentives do for the developer – it was noted that it might give plausibility to the argument of making the change (caliper inch, mitigation, and the credits)
- Acceptance of empowering staff to make a decision in common sense situations as it relates to lot to lot drainage (half acre or more lot sizes), and to allow the Town Manager to authorize exceptions
- Interest in seeing a pro forma for the tree farm if there is a future expansion proposal
- The type of programs to take place at the tree farm should initially come from ECC; and subsequently the Parks Board

E. ADJOURN WORK SESSION

Mayor Hayden adjourned the work session at 8:13 p.m. on Thursday, February 18, 2016, 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: March 21, 2016

FROM: Julie Taylor, Director of Treasury Operations

ITEM: 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.

BACKGROUND INFORMATION: The initial three-year term of the Town's depository agreement with JPMorgan Chase Bank, NA ("Chase") will expire on March 31, 2016. If approved, this resolution will extend the depository agreement for a two-year renewal period effective April 1, 2016 through March 31, 2018.

On March 4, 2013, the Town Council approved a resolution confirming a relationship with Chase along with a depository agreement for an initial three-year period effective April 1, 2013 through March 31, 2016. The depository agreement included an option for a two-year renewal period upon approval of the Town Council. Chase has offered to extend the contract for a two-year renewal with no price increases.

Prior to the end of the renewal period, staff will solicit bids for a new depository services agreement as Local Government Code Section 105.017 states a depository services agreement cannot exceed five years.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$30,000

Proposed Expenditure:	Account Number(s):
\$30,000	100-650-50000-5110 \$11,000
	200-650-52100-5110 \$19,000

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

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

ATTACHMENTS:

1. Proposed Resolution

RECOMMENDATION: Move to approve 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.

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

A RESOLUTION BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, EXTENDING THE BANK DEPOSITORY AGREEMENT WITH JPMORGAN CHASE BANK, NA, FOR A TWO-YEAR RENEWAL PERIOD AND DECLARING AN EFFECTIVE DATE.

WHEREAS, during the March 4, 2013, Regular Council Meeting, the Town Council of the Town of Flower Mound, Texas ("Town"), pursuant to, Local Government Code Sections 105.011-105.014, selected JPMorgan Chase Bank, NA ("Bank") as the depository for the Town's funds for the period beginning April 1, 2013, and ending March 31, 2016, with the right to extend the banking services agreement for two additional years; and

WHEREAS, the Bank has qualified as a depository for the Town's funds in accordance with, Local Government Code Section 105.031, by providing sufficient security for the Town funds to be deposited with Bank; and

WHEREAS, the Town desires to extend the banking services agreement with Bank ("Depository Agreement") for an additional two-year period beginning on April 1, 2016 and ending on March 31, 2018 ("Renewal Period"); and

WHEREAS, the Town and Bank have agreed that for the term of the Renewal Period, the requirements set forth in the Depository Agreement have been complied with by the presence of the FDIC insurance coverage and no additional collateralization is required.

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

SECTION 1

That the Depository Agreement between the Town of Flower Mound and the Bank with a term concluding March 31, 2016, is hereby extended for a two-year renewal term. All provisions of the Depository Agreement shall remain in full force and effect with this two-year renewal period beginning on April 1, 2016 and running through March 31, 2018.

Resolution No. _____

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SECTION 3

All provisions of Resolution #07-13 of March 4, 2013, shall remain in full force and effect, save as amended by this Resolution as to the length of the term.

SECTION 4

That this Resolution shall take effect upon and from the date of passage and shall continue in full force and effect unless and until certified notice of its amendment or repeal has been received and recorded by Bank.

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE
TOWN OF FLOWER MOUND, TEXAS, ON THE 21st DAY OF MARCH 2016.**

Thomas E. Hayden, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

APPROVED AS TO FORM AND LEGALITY:

Bryn Meredith, TOWN ATTORNEY



TOWN COUNCIL AGENDA ITEM NO. 4

CONSENT ITEM

DATE: March 21, 2016

FROM: Tammy Wilson, Executive Director of Financial Services

ITEM: Consider approval of the Comprehensive Annual Financial Report for the fiscal year ended September 30, 2015.

BACKGROUND INFORMATION: Article III, Section 3.13 of the Town Charter requires that an annual independent audit be performed of “the books and accounts of each and every department of the Town.” The Town has complied with this requirement, and in the opinion of the auditing firm of Pattillo, Brown & Hill, L.L.P., the basic financial statements contained within the CAFR present fairly, in all material respects, the financial position of the Town as of September 30, 2015.

Copies of the Town of Flower Mound’s Comprehensive Annual Financial Report (CAFR) for the fiscal year ended September 30, 2015, were distributed prior to this meeting, and copies of the reports were placed in the Library for review by the public. There were no significant deficiencies or material weaknesses found during the audit.

The Town Council has adopted financial policies to guide and set goals for the financial administration of the Town. The following table displays the Town’s financial policy results for fiscal year 2010-2011 through fiscal year 2014-2015.

Financial Goals	Goal		09/30/2011	09/30/2012	09/30/2013	09/30/2014	09/30/2015
General Fund unassigned fund balance	At/Above	15.00%	24.46%	26.96%	32.67%	34.95%	32.69%
Water & Wastewater capital reserve at 60 days maintained	At/Above	16.70%	22.57%	28.50%	29.54%	22.98%	24.45%
Debt Service fund balance	At/Above	4.00%	6.96%	5.30%	5.82%	8.04%	6.21%
Ratio of net debt to AV	At/Below	1.75%	1.15%	1.06%	1.04%	0.92%	0.86%
Ratio of debt service fund expenditures to total general & debt service funds	At/Below	20.00%	17.69%	17.42%	16.92%	16.74%	18.38%
VERF funding maintained at 85% funding level or higher	At/Above	85.00%	80.36%	92.98%	93.99%	91.40%	92.87%

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS: N/A

RECOMMENDATION: Move to approve the Comprehensive Annual Financial Report for the fiscal year ended September 30, 2015.



TOWN COUNCIL AGENDA ITEM NO. 5

CONSENT ITEM

DATE: March 21, 2016

FROM: Debra Wallace, Assistant Town Manager/CFO *DW*

ITEM: Consider approval of a Memorandum of Understanding (MOU) between Denton County and the Town of Flower Mound regarding the Gibson-Grant Long Prairie Log Cabin Site.

BACKGROUND INFORMATION: The Town purchased and received a property of historical significance on January 4, 2016, described as the Gibson-Grant Long Prairie Log Cabin Site. This agreement with Denton County, through the staff of the Office of History and Culture, will provide the Town with assistance from Denton County professional staff with the restoration phase of the cabin and the interpretative phase of the project, including but not limited to educational programs, volunteer programs and identification of grants and sponsors. Additionally, the County or the Town may acquire additional historical collections and displays in the future to be displayed at the site.

All expenditures related to the restoration, maintenance, or repair of the cabin site and/or exhibits and the interpretative programs will be jointly agreed upon in advance by both parties.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

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

LEGAL REVIEW: Bradley Anderle of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the MOU as to form and legality.

ATTACHMENTS:

1. Memorandum of Understanding

RECOMMENDATION: Move to approve a Memorandum of Understanding (MOU) between Denton County and the Town of Flower Mound regarding the Gibson-Grant Long Prairie Log Cabin Site.

THE STATE OF TEXAS**THE COUNTY OF DENTON****MEMORANDUM OF UNDERSTANDING BETWEEN DENTON COUNTY, TEXAS,
AND THE TOWN OF FLOWER MOUND, TEXAS**

This Memorandum of Understanding ("MOU") is entered into and executed by and between Denton County, Texas, a duly organized political subdivision of the State of Texas, hereinafter the "County," and the Town of Flower Mound, Texas, a Texas municipal corporation, existing under the laws of the State of Texas, hereinafter the "Town." The County and the Town are collectively referred to herein as "the Parties." The purpose of this MOU is to set forth the terms and understanding between the County and the Town regarding the Gibson-Grant Long Prairie Log Cabin Site.

WHEREAS, the purpose of the Denton County Historical Commission is to preserve, protect, and promote the history of Denton County, Texas; and

WHEREAS, the Town purchased and received a property of historical significance from Curtis Grant of Vaquero Development on January 4, 2016, described as the Gibson-Grant Long Prairie Log Cabin Site; and

WHEREAS, the Town desires to enter into an agreement with the County to assist with the restoration and programming of the Gibson-Grant Long Prairie Log Cabin Site; and

WHEREAS, under Section 318.009 of the Texas Local Government Code, the Commissioners Court has statutory authority to make agreements with governmental agencies or private organizations and appropriate funds from the general fund of the County for the purpose of: (1) erecting historical markers and monuments; (2) purchasing objects and collections of objects that are historically significant to Denton County; (3) preparing, publishing, and disseminating, by sale or otherwise, a history of the County; (4) hiring professional staff and consultants; (5) providing matching funds for grants; and (5) funding other programs or activities as suggested by the Texas Historical Commission and the Commissioners Court; and

WHEREAS, the County, through the staff of the Office of History and Culture, agrees to provide professional staff to the restoration phase of the cabin and to the interpretative phase of the project, including but not limited to educational programs, volunteer programs and identification of grants and sponsors for the project; and

WHEREAS, the County or the Town may acquire additional historical collections and displays in the future to display at the Gibson-Grant Long Prairie Log Cabin Site; and

WHEREAS, the County and the Town are authorized to enter into this MOU by their respective governing bodies; and

WHEREAS, all expenditures related to the restoration, maintenance, or repair of the Gibson-Grant Long Prairie Log Cabin Site or exhibits and the interpretative programs to be made hereunder shall be jointly agreed upon in advance by both Parties.

NOW, THEREFORE, in consideration of the following promises, covenants, conditions, and the mutual benefits to accrue to the Parties to this MOU, the Parties, desiring to cooperate in function, agree as follows:

I.

Premises

All matters stated hereinabove are found to be true and correct and are incorporated herein by reference as if copied in their entirety at this point. The Parties agree that each shall act in good faith to effect the terms of this MOU.

II.

County's Responsibilities

The County agrees to:

1. Prepare and provide advice on the proper restoration of the Gibson-Grant Long Prairie Log Cabin Site to the Town;
2. Provide assistance to the Town by identifying government grants for the restoration of and the programs for the Gibson-Grant Long Prairie Log Cabin Site;
3. Prepare and provide an interpretative plan for the Gibson-Grant Long Prairie Log Cabin Site, including educational outreach programs and exhibits, to the Town;
4. At the County's sole discretion, procure and produce other historical exhibits or artifacts for display at the Gibson-Grant Long Prairie Log Cabin Site, as jointly agreed upon by the Parties; and
5. Take possession of and store, at the County's facilities and under the County's care and control, all artifacts that are from time-to-time not on exhibit at the Gibson-Grant Long Prairie Log Cabin Site.

III.

Town's Responsibilities

The Town agrees to:

1. Only as jointly agreed to by the Parties in advance, incur expenses authorized by the Town Council to accomplish the restoration of the Gibson-Grant Long Prairie Log Cabin Site, including security, exhibit fixtures, and furniture;
2. Only as jointly agreed to by the Parties in advance, provide maintenance and repairs of the Gibson-Grant Long Prairie Log Cabin Site after the restoration is complete;
3. Only as jointly agreed to by the Parties in advance, maintain the Gibson-Grant Long Prairie Log Cabin Site exhibit;
4. Notify the County if the exhibit or artifacts are damaged or if the exhibit or artifacts on display need attention; and
5. Neither add nor remove artifacts to or from the exhibit without first consulting with the Denton County Office of History and Culture.

IV.

General Conditions

1. Term. The Term of this MOU shall be from the effective date until termination of this MOU, as hereinafter provided.
2. Termination. Any party may terminate this MOU for any reason upon a 30-day written notice to the other party.
3. Amendment. Only upon written concurrence of both Parties can this MOU be amended.
4. Cooperation of Parties. It is the intention of the Parties that any detail of providing the services anticipated by this MOU that are not addressed by the terms of this MOU shall be worked out, in good faith, by both Parties.
5. Notices. Any notices required by this MOU to be in writing shall be addressed to the respective Parties as follows:

For Town: Honorable Tom Hayden, Mayor
 Town of Flower Mound, Texas
 2121 Cross Timbers Road
 Flower Mound, Texas 75028

Copy To: Theresa Scott, Town Secretary
 2121 Cross Timbers Road
 Flower Mound, Texas 75028

For County: Honorable Mary Horn
Denton County Judge
110 West Hickory Street, 2nd Floor
Denton, Texas 76201

Copy To: Denton County Historical Commission
110 West Hickory Street, 1st Floor
Denton, Texas 76201

6. Effective Date. This MOU is effective upon execution by both Parties. By signing this MOU, the signatories acknowledge that they are acting under proper authority from their governing bodies.

Executed in triplicate originals this _____ day of _____, 2016.

DENTON COUNTY, TEXAS
110 West Hickory Street, 2nd Floor
Denton, Texas 76201

TOWN OF FLOWER MOUND, TEXAS
2121 Cross Timbers Road
Flower Mound, Texas 75028

By: _____
Honorable Mary Horn
Denton County Judge
Acting by and on behalf of the authority
the Denton County Commissioners Court

By: _____
Honorable Tom Hayden, Mayor
Mayor of the Town of Flower Mound, Texas
Acting by and on behalf of the authority
of the Town of Flower Mound, Texas

ATTEST:
By: _____
Denton County Clerk

ATTEST:
By: _____
Theresa Scott, Town Secretary



TOWN COUNCIL AGENDA ITEM NO. 6

CONSENT ITEM

DATE: March 21, 2016

FROM: Kay Wilkinson, Budget & Grants Manager

ITEM: 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 and amended by Ordinance No. 70-15, No. 04-16 and No. 09-16 for an adjustment to the General Fund and the Library Development Fund.

BACKGROUND INFORMATION: The attached budget amendment represents the fourth proposed adjustment of the FY 2015-2016 Annual Budget. According to Section 9.14 of the Town Charter, "During the fiscal year, the Town Council shall have the power to transfer funds allocated by the budget from one department to another department, and to re-estimate revenues and expenditures." Transfers such as these are presented to the Town Council throughout the fiscal year in an effort to resolve variances from the Annual Budget and reallocate resources to cover unanticipated expenditures.

This budget amendment increases revenues and expenditures by \$21,230 in the General Fund for amenities at the Hound Mound at Heritage Dog Park. Hollywood Feed donated the resources to fund dog agility equipment, leash posts and an informational kiosk for the park. The budget amendment also appropriates \$18,000 in the Library Development Fund to purchase additional electronic books and to fund supplies and performers for the Summer Reading Program.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$39,230

Proposed Expenditure:	Account Number(s):
21,230.00	100-630-33000-5110 Park Services
2,000.00	300-310-00000-2250 Library Development
3,000.00	300-310-00000-5110 Library Development
<u>13,000.00</u>	300-310-00000-5240 Library Development
\$39,230.00	

Proposed Revenue:	Account Number(s):
<u>21,230.00</u>	100-4735 Miscellaneous Revenue
\$21,230.00	

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

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

ATTACHMENTS:

1. Proposed Ordinance

RECOMMENDATION: Move to approve 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 and amended by Ordinance No. 70-15, No. 04-16 and No. 09-16 for an adjustment to the General Fund and the Library Development Fund.

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

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE TOWN'S BUDGET FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2015, AND ENDING ON SEPTEMBER 30, 2016, AS ADOPTED BY ORDINANCE NO. 52-15 AND AMENDED BY ORDINANCE NO. 70-15, 04-16 and 09-16, BY PROVIDING FOR ADJUSTMENTS TO THE GENERAL FUND AND LIBRARY DEVELOPMENT 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.

WHEREAS, the Town Council of the Town of Flower Mound, Texas ("Town Council") has heretofore adopted its Annual Budget for the fiscal year beginning on October 1, 2015, and ending on September 30, 2016; and,

WHEREAS, said Annual Budget was adopted by Ordinance No. 52-15 on September 21, 2015; and,

WHEREAS, said Annual Budget was amended by Ordinance No. 70-15 on December 21, 2015, Ordinance No. 04-16 on February 1, 2016 and Ordinance No. 09-16 on February 15, 2016; and,

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

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

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

SECTION 1

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

SECTION 2

The Annual Budget of the Town of Flower Mound, Texas, for the fiscal year beginning on October 1, 2015, and ending on September 30, 2016, as heretofore adopted by Ordinance No. 52-15 and amended by Ordinance No. 70-15, No. 04-16 and No. 09-16, is hereby amended to provide for adjustments to the General Fund and Library Development Fund, as shown in Exhibit "A," attached hereto and incorporated herein, and expenditures for said fiscal year shall be made in accordance with said Annual Budget, as amended.

ORDINANCE NO. _____

PAGE 2

SECTION 3

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

SECTION 4

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

SECTION 5

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

SECTION 6

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

SECTION 7

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

ORDINANCE NO. _____

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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 MARCH, 2016.

APPROVED:

Thomas E. Hayden, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

APPROVED AS TO FORM AND LEGALITY:

Bryn Meredith, TOWN ATTORNEY

ORDINANCE NO. _____

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EXHIBIT "A"

**Town of Flower Mound
Amended Budget
Fiscal Year 2015-2016**

REASON FOR ADJUSTING THE GENERAL FUND APPROPRIATION:

In the General Fund, revenues will increase by \$21,230.00 from \$53,847,591.00 to \$53,868,821.00 and expenditures will increase by \$21,230.00, from \$58,418,529.13 to \$58,439,759.13. Funds will be used by the Community Services Department to purchase agility equipment, leash posts and an informational kiosk for the Hound Mound dog park at Heritage Park.

<u>General Fund</u>	<u>Original Budget</u>	<u>Current Budget</u>	<u>Amended Budget</u>	<u>Increase / (Decrease)</u>
Revenues:				
Taxes	\$ 44,002,899	\$ 44,002,899	\$ 44,002,899	\$ -
Charges for services	2,575,250	2,575,250	2,575,250	-
Licenses and permits	2,494,955	2,494,955	2,494,955	-
Fines and forfeits	918,180	918,180	918,180	-
Investment earnings	341,365	341,365	341,365	-
Intergovernmental Revenue	482,692	482,692	482,692	-
Other revenue	3,032,250	3,032,250	3,053,480	21,230
Total	\$ 53,847,591	\$ 53,847,591	\$ 53,868,821	\$ 21,230

<u>General Fund</u>	<u>Original Budget</u>	<u>Current Budget</u>	<u>Amended Budget</u>	<u>Increase / (Decrease)</u>
Expenditures:				
Town Manager's Office	\$ 1,255,710	\$ 1,952,210.00	\$ 1,952,210.00	\$ -
Legislative Services	455,085	455,085.00	455,085.00	-
Development Services	2,083,806	2,083,806.00	2,083,806.00	-
Community Services	8,670,620	8,688,620.00	8,709,850.00	21,230
Police Services	12,864,270	12,866,770.20	12,866,770.20	-
Financial Services	3,387,266	3,387,266.00	3,387,266.00	-
Administrative Services	5,452,736	5,769,602.03	5,769,602.03	-
Fire and Emergency Services	12,175,447	12,414,527.90	12,414,527.90	-
Community Relations	765,992	765,992.00	765,992.00	-
Non-Departmental Services	3,268,797	3,723,797.00	3,723,797.00	-
Public Works	4,668,701	4,895,848.00	4,895,848.00	-
Environmental Services	1,415,005	1,415,005.00	1,415,005.00	-
Total	\$56,463,435	\$ 58,418,529.13	\$ 58,439,759.13	\$ 21,230

ORDINANCE NO. _____

PAGE 5

REASON FOR ADJUSTING THE LIBRARY DEVELOPMENT FUND APPROPRIATION:

In the Library Development Fund, expenditures will increase by \$18,000, from \$17,000 to \$35,000. Funds will be used to purchase additional electronic books and supplies and performers for the Summer Reading Program.

<u>Library Development Fund</u>	<u>Original Budget</u>	<u>Current Budget</u>	<u>Amended Budget</u>	<u>Increase / (Decrease)</u>
Expenditures:				
Community Services	\$ 15,000	\$ 17,000	\$ 35,000	\$ 18,000
Total	\$ 15,000	\$ 17,000	\$ 35,000	\$ 18,000



TOWN COUNCIL AGENDA ITEM NO. 7

CONSENT ITEM

DATE: March 21, 2016

FROM: Rochelle Ragas, Purchasing Manager

ITEM: Consider approval of the purchase of a six (6) new 9C1 Pursuit 2-Wheel Drive Tahoes for the Police Department from Reliable Chevrolet through an interlocal agreement with Tarrant County, in the amount of \$288,600.00.

BACKGROUND INFORMATION: The Police Department is requesting the purchase of a six new 9C1 Pursuit 2-Wheel Drive Tahoes, in the amount of \$288,600.00.

The Town of Flower Mound entered into an interlocal agreement with Tarrant County effective July 26, 2000, which allows purchase of certain goods or services. The agreement renews automatically each fiscal year, unless cancelled by either party.

The purchase of these vehicles was approved in the 2015-2016 VERF budget. The Police Department provided the remaining funds from their budget to cover the shortage. These units replace Units #43500-03 through 43500-08.

FISCAL IMPACT: \$288,600.00

Proposed Expenditure:	Account Number(s):
\$280,756.00	565-450-84500-6130
\$ 7,844.00	318-560-43500-2300

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

ATTACHMENTS:

1. Quote from Reliable Chevrolet
2. Bid Award Recommendation

RECOMMENDATION: Move to approve the purchase of a six (6) new 9C1 Pursuit 2-Wheel Drive Tahoes for the Police Department from Reliable Chevrolet through an interlocal agreement with Tarrant County, in the amount of \$288,600.00.

RELIABLE CHEVROLET

ATTACHMENT 1

Quote

HOME OF THE ENFORCER POLICE PACKAGE



Date	January 28, 2016
Valid Until	30 DAYS AFTER QUOTE DATE
Quote #	FOR DEATS STEWART
Customer ID	TOWN OF FLOWER MOUND

Customer:

TOWN OF FLOWER MOUND

DEATS STEWART

ALLOW 85-115 DAYS ARO FOR DELIVERY W/UPFIT

BLACK EXTERIOR - 6 UNITS

Quote/Project Notes

THIS QUOTE USES TARRANT COUNTY 2016-006

TARRANT COUNTY CONTRACTS DO NOT INCLUDE ANY
SUBSCRIPTION SERVICES SUCH AS ONSTAR OR XM RADIO
AND DO NOT INCLUDE FREE DEALER SCHEDULED
MAINTENANCE

Description	Line Total
ITEM 5, 2016 TAHOE 9C1 PURSUIT 2WHDR, BASE BID - 32764.00 PLUS TX6 - LH SPOTLAMP - 331.00 PLUS PROGARD CENTER MOUNT PUSHBAR - 110.00 = 33205.00	33,205.00
LESS PROGARD CENTER MOUNT P/B (FLOWER MOUND HAS CHOSEN GO RHINO IN UPFIT)	- 110.00
9U3 - DELETE 20% CENTER SECTION FROM 40/20/40 FRONT SPLIT BENCH SEAT - 0.00	-
5T5 - VINYL OR CLOTH REAR SEAT (PLEASE CHOOSE) - 0.00, 5HP - 6 EXTRA KEYS - 40.00	40.00
6J7 - HEADLAMP/TAILLAMP FLASHER SYSTEM - 495.00	495.00
6N5 - REAR WINDOW SWITCHES INOPERABLE - 57.00	57.00
6E2 - KEYED ALIKE - 25.00	25.00
6N6 - INSIDE REAR DOOR HANDLES/LOCKS INOPERABLE - 59.00	59.00
UE1 - ONSTAR WITH BLUETOOTH CAPABILITY - 85.00 (MUST ADD ON TARRANT CO CONTRACTS)	85.00
PLUS VENDOR ADD PEERLESS SNOW CABLES - 1 PAIR = 2 CABLES FOR 2 TIRES	150.00
PLUS VENDOR ADD 55% MADICO OYNX WINDOW TINT TO FRONT DRIVER & PASSENGER WINDOWS	200.00
PLUS VENDOR ADD LED SPOTBULB TO DRIVERS SIDE SPOTLAMP	250.00
PLUS THE FOLLOWING INSTALLED OPTIONS BY PROFESSIONAL SAFETY SYSTEMS:	
INTERIOR EQUIPMENT OPTIONS AS OUTLINED IN QUOTE - 2947 PARTS + 450 INSTALLATION	3,397.00
LIGHTING EQUIPMENT OPTIONS AS OUTLINED IN QUOTE - 5638 PARTS + 450 INSTALLATION	6,088.00
OTHER EQUIPMENT OPTIONS AS OUTLINED IN QUOTE - 2834 PARTS + 400 INSTALLATION	3,234.00
TRANSFERRED ITEMS AS OUTLINED IN QUOTE - 925 (FLOWER MOUND TO GET UNITS TO PSS)	925.00
RELIABLE TO DELIVER TAHOES TO FLOWER MOUND @ N/C WHEN PURCHASING OFF TARRANT CO.	-

Special Notes and Instructions

Once signed, please Fax, mail or e-mail it to the provided address.

THIS QUOTE DOES INCLUDE ONSTAR AND NO DEALER SCHEDULED MAINTENANCE

COPY OF INTERLOCAL WITH TARRANT CO REQUIRED FOR AUDIT PURPOSES

PURCHASE ORDER IS REQUIRED TO SUBMIT WITH ORDER NUMBERS TO GM

Subtotal	\$	48,100.00
Discount		-
Sales Tax Rate	%	0.00
Sales Tax		-
Total	\$	48,100.00

TOTAL FOR (6) UNITS \$ 288,600.00

Above information is not an invoice and only an estimate of services/goods described above.

Payment will be collected in prior to provision of services/goods described in this quote.

Please confirm your acceptance of this quote by signing this document

Signature

Print Name

Date

Thank you for your business!

Should you have any enquiries concerning this quote, please contact Doug Adams on 972-952-1561

800 NORTH CENTRAL EXPRESSWAY, RICHARDSON, DALLAS, TEXAS, 75080

Tel: 972-952-1561 Fax: 972-952-8172 E-mail: dadams@reliablechevrolet.com Web: www.reliablechevrolet.com



Bid Award Recommendation
Contract: Tarrant County Contract #2016-006
Quote dtd: 1-28-2016

Date: 02-08-2016

Description: Qty: 6, New 2016 Tahoe 9C1 Pursuit 2WHDR turnkey

Replaces: Unit # 43500-03, 43500-04, 43500-05, 43500-06, 43500-07, 43500-08
Desc: 2013 Dodge Charger Police Pkg.

Bidder #1: Reliable Chevrolet Doug Adams
Tarrant County Contract #2016-006
Bid: New 2016 Tahoe 9C1 Pursuit
Per TOFM bid specifications
See TOFM specs for list of equipment included.

Quote per unit: **\$48,100.00**

Quote total – 6 units: \$288,600.00

Bidder #2: Holiday Chevrolet Mike Hewitt
State of Texas Cooperative Contract #MY16 071-A1
Per TOFM bid specifications

Quote per unit: \$51,017.00

Quote total — 6 units: \$306,102.00

It is Fleet Services recommendation to award the bid to **Reliable Chevrolet** as the lowest responsible bidder in the amount of **\$288,600.00**.

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

H. Deats Stewart
Fleet Services Manager

02-08-2016
Date



TOWN COUNCIL AGENDA ITEM NO. 8

CONSENT ITEM

DATE: March 21, 2016

FROM: Andy Kancel, Chief of Police

ITEM: Consider approval of an agreement with Motorola for the upgrades to radios and communications equipment that were approved during the 2015-2016 budget process; and authorization for the Mayor to execute the same on behalf of the Town.

BACKGROUND INFORMATION: The execution of this contract will allow for the Police Department to purchase equipment that was approved during the 2015-2016 budget process and is purchased through the Houston-Galveston Area Council. The contract represents the initial purchase and extended warranty agreement.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$575,248.66

Proposed Expenditure:	Account Number(s):
\$575,248.66	100-640-43500-6210

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

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

ATTACHMENTS:

1. Agreement

RECOMMENDATION:

Recommend approval of an agreement with Motorola for the upgrades to radios and communications equipment that were approved during the 2015-2016 budget process; and authorization for the Mayor to execute the same on behalf of the Town.

Communications System Agreement

Motorola Solutions, Inc. ("Motorola") and THE TOWN OF FLOWER MOUND TEXAS ("Customer") enter into this "Agreement," pursuant to which Customer will purchase and Motorola will sell the System, as described below. Motorola and Customer may be referred to individually as a "Party" and collectively as the "Parties." For good and valuable consideration, the Parties agree as follows:

Section 1 EXHIBITS

The exhibits listed below are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement takes precedence over the exhibits and any inconsistency between Exhibits A through E will be resolved in their listed order.

Exhibit A	Motorola "Software License Agreement"
Exhibit B	"Payment Schedule"
Exhibit C	"Technical and Implementation Documents"
C-1	"System Description" dated November 19, 2015
C-2	"Equipment List" dated November 19, 2015
C-3	"Statement of Work" dated November 19, 2015
C-4	"Acceptance Test Plan" or "ATP" dated November 19, 2015
Exhibit D	Service Statement(s) of Work and "Service Terms and Conditions" (if applicable)
Exhibit E	"System Acceptance Certificate"

Section 2 DEFINITIONS

Capitalized terms used in this Agreement have the following meanings:

- 2.1. "Acceptance Tests" means those tests described in the Acceptance Test Plan.
- 2.2. "Administrative User Credentials" means an account that has total access over the operating system, files, end user accounts and passwords at either the System level or box level. Customer's personnel with access to the Administrative User Credentials may be referred to as the Administrative User.
- 2.3. "Beneficial Use" means when Customer first uses the System or a Subsystem for operational purposes (excluding training or testing).
- 2.4. "Confidential Information" means all information consistent with the fulfillment of this agreement that is (i) disclosed under this agreement in oral, written, graphic, machine recognizable, and/or sample form, being clearly designated, labeled or marked as confidential or its equivalent or (ii) obtained by examination, testing or analysis of any hardware, software or any component part thereof provided by discloser to recipient. The nature and existence of this agreement are considered Confidential Information. Confidential information that is disclosed orally must be identified as confidential at the time of disclosure and confirmed by the discloser by submitting a written document to the recipient within thirty (30) days after such disclosure. The written document must contain a summary of the Confidential Information disclosed with enough specificity for identification purpose and must be labeled or marked as confidential or its equivalent.
- 2.5. "Contract Price" means the price for the System, excluding applicable sales or similar taxes and freight charges.
- 2.6. "Effective Date" means that date upon which the last Party executes this Agreement.
- 2.7. "Equipment" means the equipment that Customer purchases from Motorola under this Agreement. Equipment that is part of the System is described in the Equipment List.

2.8. "Force Majeure" means an event, circumstance, or act of a third party that is beyond a Party's reasonable control (e.g., an act of God, an act of the public enemy, an act of a government entity, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, and riots).

2.9. "Infringement Claim" means a third party claim alleging that the Equipment manufactured by Motorola or the Motorola Software directly infringes a United States patent or copyright.

2.10. "Motorola Software" means Software that Motorola or its affiliated company owns.

2.11. "Non-Motorola Software" means Software that another party owns.

2.12. "Open Source Software" (also called "freeware" or "shareware") means software with either freely obtainable source code, license for modification, or permission for free distribution.

2.13. "Proprietary Rights" means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to the Equipment and Software, including those created or produced by Motorola under this Agreement and any corrections, bug fixes, enhancements, updates or modifications to or derivative works from the Software whether made by Motorola or another party.

2.14. "Software" means the Motorola Software and Non-Motorola Software, in object code format that is furnished with the System or Equipment.

2.15. "Specifications" means the functionality and performance requirements that are described in the Technical and Implementation Documents.

2.16. "Subsystem" means a major part of the System that performs specific functions or operations. Subsystems are described in the Technical and Implementation Documents.

2.17. "System" means the Equipment, Software, and incidental hardware and materials that are combined together into an integrated system; the System is described in the Technical and Implementation Documents.

2.18. "System Acceptance" means the Acceptance Tests have been successfully completed.

2.19. "Warranty Period" means one (1) year from the date of System Acceptance or Beneficial Use, whichever occurs first.

Section 3 SCOPE OF AGREEMENT AND TERM

3.1. **SCOPE OF WORK.** Motorola will provide, install and test the System, and perform its other contractual responsibilities, all in accordance with this Agreement. Customer will perform its contractual responsibilities in accordance with this Agreement.

3.2. **CHANGE ORDERS.** Either Party may request changes within the general scope of this Agreement. If a requested change causes an increase or decrease in the cost or time required to perform this Agreement, the Parties will agree to an equitable adjustment of the Contract Price, Performance Schedule, or both, and will reflect the adjustment in a change order. Neither Party is obligated to perform requested changes unless both Parties execute a written change order.

3.3. **TERM.** Unless terminated in accordance with other provisions of this Agreement or extended by mutual agreement of the Parties, the term of this Agreement begins on the Effective Date and continues until the date of Final Project Acceptance or expiration of the Warranty Period, whichever occurs last.

3.4. **ADDITIONAL EQUIPMENT OR SOFTWARE.** For three (3) years after the Effective Date, Customer may order additional Equipment or Software if it is then available. Each order must refer to this Agreement and must specify the pricing and delivery terms. Notwithstanding any additional or contrary

terms in the order, the applicable provisions of this Agreement (except for pricing, delivery, passage of title and risk of loss to Equipment, warranty commencement, and payment terms) will govern the purchase and sale of the additional Equipment or Software. Title and risk of loss to additional Equipment will pass at shipment, warranty will commence upon delivery, and payment is due within twenty (20) days after the invoice date. Motorola will send Customer an invoice as the additional Equipment is shipped or Software is licensed. Alternatively, Customer may register with and place orders through Motorola Online ("MOL"), and this Agreement will be the "Underlying Agreement" for those MOL transactions rather than the MOL On-Line Terms and Conditions of Sale. MOL registration and other information may be found at <https://businessonline.motorola.com> and the MOL telephone number is (800) 814-0601.

3.5. **MAINTENANCE SERVICE.** During the Warranty Period, in addition to warranty services, Motorola will provide maintenance services for the Equipment and support for the Motorola Software pursuant to the Statement of Work set forth in Exhibit D. Those services and support are included in the Contract Price. If Customer wishes to purchase additional maintenance and support services for the Equipment during the Warranty Period, or any maintenance and support services for the Equipment either during the Warranty Period or after the Warranty Period, the description of and pricing for the services will be set forth in a separate document. If Customer wishes to purchase extended support for the Motorola Software after the Warranty Period, it may do so by ordering software subscription services. Unless otherwise agreed by the parties in writing, the terms and conditions applicable to those maintenance, support or software subscription services will be Motorola's standard Service Terms and Conditions, together with the appropriate statements of work.

3.6. **MOTOROLA SOFTWARE.** Any Motorola Software, including subsequent releases, is licensed to Customer solely in accordance with the Software License Agreement. Customer hereby accepts and agrees to abide by all of the terms and restrictions of the Software License Agreement.

3.7. **NON-MOTOROLA SOFTWARE.** Any Non-Motorola Software is licensed to Customer in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to Motorola the right to sublicense the Non-Motorola Software pursuant to the Software License Agreement, in which case it applies and the copyright owner will have all of Licensor's rights and protections under the Software License Agreement. Motorola makes no representations or warranties of any kind regarding Non-Motorola Software. Non-Motorola Software may include Open Source Software. All Open Source Software is licensed to Customer in accordance with, and Customer agrees to abide by, the provisions of the standard license of the copyright owner and not the Software License Agreement. Upon request by Customer, Motorola will use commercially reasonable efforts to determine whether any Open Source Software will be provided under this Agreement; and if so, identify the Open Source Software and provide to Customer a copy of the applicable standard license (or specify where that license may be found); and provide to Customer a copy of the Open Source Software source code if it is publicly available without charge (although a distribution fee or a charge for related services may be applicable).

3.8. **SUBSTITUTIONS.** At no additional cost to Customer, Motorola may substitute any Equipment, Software, or services to be provided by Motorola, if the substitute meets or exceeds the Specifications and is of equivalent or better quality to the Customer. Any substitution will be reflected in a change order.

3.9. **OPTIONAL EQUIPMENT OR SOFTWARE.** This paragraph applies only if a "Priced Options" exhibit is shown in Section 1, or if the parties amend this Agreement to add a Priced Options exhibit. During the term of the option as stated in the Priced Options exhibit (or if no term is stated, then for one (1) year after the Effective Date), Customer has the right and option to purchase the equipment, software, and related services that are described in the Priced Options exhibit. Customer may exercise this option by giving written notice to Seller which must designate what equipment, software, and related services Customer is selecting (including quantities, if applicable). To the extent they apply, the terms and conditions of this Agreement will govern the transaction; however, the parties acknowledge that certain provisions must be agreed upon, and they agree to negotiate those in good faith promptly after Customer delivers the option exercise notice. Examples of provisions that may need to be negotiated are: specific lists of deliverables, statements of work, acceptance test plans, delivery and implementation schedules,

payment terms, maintenance and support provisions, additions to or modifications of the Software License Agreement, hosting terms, and modifications to the acceptance and warranty provisions.

Section 4 PERFORMANCE SCHEDULE

4.1 Upon contract award and Detailed Design Review, a mutually agreed to Project Schedule will be developed. Both parties will be responsible for their individual responsibilities associated with this schedule.

Section 5 CONTRACT PRICE, PAYMENT AND INVOICING

5.1. CONTRACT PRICE. **The Contract Price in U.S. dollars is \$ 575,248.66.** If applicable, a pricing summary is included with the Payment Schedule. Motorola has priced the services, Software, and Equipment as an integrated system. A reduction in Software or Equipment quantities, or services, may affect the overall Contract Price, including discounts if applicable.

5.2. INVOICING AND PAYMENT. Motorola will submit invoices to Customer according to the Payment Schedule. Except for a payment that is due on the Effective Date, Customer will make payments to Motorola within twenty (20) days after the date of each invoice. Customer will make payments when due in the form of a wire transfer, check, or cashier's check from a U.S. financial institution. Overdue invoices will bear simple interest at the maximum allowable rate. For reference, the Federal Tax Identification Number for Motorola Solutions, Inc. is 36-1115800.

Customer, a political subdivision of the State of Texas, operates on a fiscal year October 1 through September 30. In the event sufficient funds shall not be appropriated for the payments required to be paid in the next occurring fiscal year, then Customer shall not be obligated to make payment of the payments provided for in the Agreement beyond the then current fiscal year. Customer agrees to deliver proof of non-appropriation and notice to Motorola of such termination at least thirty (30) days prior to the end of the then current fiscal year. However, failure to deliver such proof of non-appropriation and notice to Motorola shall not extend the term of this Agreement beyond the end of the then current fiscal year.

5.3. FREIGHT, TITLE, AND RISK OF LOSS. Motorola will pre-pay and add all freight charges to the invoices. Title to the Equipment will pass to Customer upon shipment. Title to Software will not pass to Customer at any time. Risk of loss will pass to Customer upon delivery of the Equipment to the Customer. Motorola will pack and ship all Equipment in accordance with good commercial practices.

5.4. INVOICING AND SHIPPING ADDRESSES. Invoices will be sent to the Customer at the following address: The Town of Flower Mound, Texas Attn: Accounts Payable 4150 Kirkpatrick Lane, Flower Mound, Texas 75028

5.5 The address which is the ultimate destination where the Equipment will be delivered to Customer is: The Town of Flower Mound, Texas, 4150 Kirkpatrick Lane, Flower Mound, Texas 75028

The Equipment will be shipped for the Customer at the following address (insert if this information is known): DFW Communications, c/o Town of Flower Mound, 501 Duncan Perry Road, Arlington, Tx 7601

Customer may change this information by giving written notice to Motorola.

Section 6 SITES AND SITE CONDITIONS

6.1. ACCESS TO SITES. In addition to its responsibilities described elsewhere in this Agreement, Customer will provide a designated project manager; all necessary construction and building permits, zoning variances, licenses, and any other approvals that are necessary to develop or use the sites and mounting locations; and access to the work sites or vehicles identified in the Technical and Implementation Documents as reasonably requested by Motorola so that it may perform its duties in

accordance with the Performance Schedule and Statement of Work. If the Statement of Work so indicates, Motorola may assist Customer in the local building permit process.

6.2. **SITE CONDITIONS.** Customer will ensure that all work sites it provides will be safe, secure, and in compliance with all applicable industry and OSHA standards. To the extent applicable and unless the Statement of Work states to the contrary, Customer will ensure that these work sites have adequate: physical space; air conditioning and other environmental conditions; adequate and appropriate electrical power outlets, distribution, equipment and connections; and adequate telephone or other communication lines (including modem access and adequate interfacing networking capabilities), all for the installation, use and maintenance of the System. Before installing the Equipment or Software at a work site, Motorola may inspect the work site and advise Customer of any apparent deficiencies or non-conformities with the requirements of this Section. This Agreement is predicated upon normal soil conditions as defined by the version of E.I.A. standard RS-222 in effect on the Effective Date.

6.3. **SITE ISSUES.** If a Party determines that the sites identified in the Technical and Implementation Documents are no longer available or desired, or if subsurface, structural, adverse environmental or latent conditions at any site differ from those indicated in the Technical and Implementation Documents, the Parties will promptly investigate the conditions and will select replacement sites or adjust the installation plans and specifications as necessary. If change in sites or adjustment to the installation plans and specifications causes a change in the cost or time to perform, the Parties will equitably amend the Contract Price, Performance Schedule, or both, by a change order.

Section 7 TRAINING

Any training to be provided by Motorola to Customer will be described in the Statement of Work. Customer will notify Motorola immediately if a date change for a scheduled training program is required. If Motorola incurs additional costs because Customer reschedules a training program less than thirty (30) days before its scheduled start date, Motorola may recover these additional costs.

Section 8 SYSTEM ACCEPTANCE

8.1. **COMMENCEMENT OF ACCEPTANCE TESTING.** Motorola will provide to Customer at least ten (10) days notice before the Acceptance Tests commence. System testing will occur only in accordance with the Acceptance Test Plan.

8.2. **SYSTEM ACCEPTANCE.** System Acceptance will occur upon successful completion of the Acceptance Tests. Upon System Acceptance, the Parties will memorialize this event by promptly executing a System Acceptance Certificate. If the Acceptance Test Plan includes separate tests for individual Subsystems or phases of the System, acceptance of the individual Subsystem or phase will occur upon the successful completion of the Acceptance Tests for the Subsystem or phase, and the Parties will promptly execute an acceptance certificate for the Subsystem or phase. If Customer believes the System has failed the completed Acceptance Tests, Customer will provide to Motorola a written notice that includes the specific details of the failure. If Customer does not provide to Motorola a failure notice within thirty (30) days after completion of the Acceptance Tests, System Acceptance will be deemed to have occurred as of the completion of the Acceptance Tests. Minor omissions or variances in the System that do not materially impair the operation of the System as a whole will not postpone System Acceptance or Subsystem acceptance, but will be corrected according to a mutually agreed schedule.

8.3. **BENEFICIAL USE.** Customer acknowledges that Motorola's ability to perform its implementation and testing responsibilities may be impeded if Customer begins using the System before System Acceptance. Therefore, Customer will not commence Beneficial Use before System Acceptance without Motorola's prior written authorization, which will not be unreasonably withheld. Motorola is not responsible for System performance deficiencies that occur during unauthorized Beneficial Use. Upon commencement of Beneficial Use, Customer assumes responsibility for the use and operation of the System.

8.4 FINAL PROJECT ACCEPTANCE. Final Project Acceptance will occur after System Acceptance when all deliverables and other work have been completed. When Final Project Acceptance occurs, the parties will promptly memorialize this final event by so indicating on the System Acceptance Certificate.

Section 9 REPRESENTATIONS AND WARRANTIES

9.1. SYSTEM FUNCTIONALITY. Motorola represents that the System will perform in accordance with the Specifications in all material respects. Upon System Acceptance or Beneficial Use, whichever occurs first, this System functionality representation is fulfilled. Motorola is not responsible for System performance deficiencies that are caused by ancillary equipment not furnished by Motorola which is attached to or used in connection with the System or for reasons or parties beyond Motorola's control, such as natural causes; the construction of a building that adversely affects the microwave path reliability or radio frequency (RF) coverage; the addition of frequencies at System sites that cause RF interference or intermodulation; or Customer changes to load usage or configuration outside the Specifications.

9.2. EQUIPMENT WARRANTY. During the Warranty Period, Motorola warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship. If System Acceptance is delayed beyond six (6) months after shipment of the Equipment by events or causes within Customer's control, this warranty expires eighteen (18) months after the shipment of the Equipment.

9.3. MOTOROLA SOFTWARE WARRANTY. Unless otherwise stated in the Software License Agreement, during the Warranty Period, Motorola warrants the Motorola Software in accordance with the terms of the Software License Agreement and the provisions of this Section 9 that are applicable to the Motorola Software. If System Acceptance is delayed beyond six (6) months after shipment of the Motorola Software by events or causes within Customer's control, this warranty expires eighteen (18) months after the shipment of the Motorola Software. TO THE EXTENT, IF ANY, THAT THERE IS A SEPARATE LICENSE AGREEMENT PACKAGED WITH, OR PROVIDED ELECTRONICALLY WITH, A PARTICULAR PRODUCT THAT BECOMES EFFECTIVE ON AN ACT OF ACCEPTANCE BY THE END USER, THEN THAT AGREEMENT SUPERCEDES THIS SOFTWARE LICENSE AGREEMENT AS TO THE END USER OF EACH SUCH PRODUCT.

9.4. EXCLUSIONS TO EQUIPMENT AND MOTOROLA SOFTWARE WARRANTIES. These warranties do not apply to: (i) defects or damage resulting from: use of the Equipment or Motorola Software in other than its normal, customary, and authorized manner; accident, liquids, neglect, or acts of God; testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Motorola; Customer's failure to comply with all applicable industry and OSHA standards; (ii) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (iii) Equipment that has had the serial number removed or made illegible; (iv) batteries (because they carry their own separate limited warranty) or consumables; (v) freight costs to ship Equipment to the repair depot; (vi) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (vii) normal or customary wear and tear.

9.5. WARRANTY CLAIMS. To assert a warranty claim, Customer must notify Motorola in writing of the claim before the expiration of the Warranty Period. Upon receipt of this notice, Motorola will investigate the warranty claim. If this investigation confirms a valid warranty claim, Motorola will (at its option and at no additional charge to Customer) repair the defective Equipment or Motorola Software, replace it with the same or equivalent product, or refund the price of the defective Equipment or Motorola Software. That action will be the full extent of Motorola's liability for the warranty claim. If this investigation indicates the warranty claim is not valid, then Motorola may invoice Customer for responding to the claim on a time and materials basis using Motorola's then current labor rates. Repaired or replaced product is warranted for the balance of the original applicable warranty period. All replaced products or parts will become the property of Motorola.

9.6. ORIGINAL END USER IS COVERED. These express limited warranties are extended by Motorola to the original user purchasing the System for commercial, industrial, or governmental use only, and are not assignable or transferable.

9.7. **DISCLAIMER OF OTHER WARRANTIES.** THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND MOTOROLA SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 10 DELAYS

10.1. **FORCE MAJEURE.** Neither Party will be liable for its non-performance or delayed performance if caused by a Force Majeure. A Party that becomes aware of a Force Majeure that will significantly delay performance will notify the other Party promptly (but in no event later than fifteen days) after it discovers the Force Majeure. If a Force Majeure occurs, the Parties will execute a change order to extend the Performance Schedule for a time period that is reasonable under the circumstances.

10.2. **PERFORMANCE SCHEDULE DELAYS CAUSED BY CUSTOMER.** If Customer (including its other contractors) delays the Performance Schedule, it will make the promised payments according to the Payment Schedule as if no delay occurred; and the Parties will execute a change order to extend the Performance Schedule and, if requested, compensate Motorola for all reasonable charges incurred because of the delay. Delay charges may include costs incurred by Motorola or its subcontractors for additional freight, warehousing and handling of Equipment; extension of the warranties; travel; suspending and re-mobilizing the work; additional engineering, project management, and standby time calculated at then current rates; and preparing and implementing an alternative implementation plan.

Section 11 DISPUTES

The Parties will use the following procedure to address any dispute arising under this Agreement (a "Dispute").

11.1. **GOVERNING LAW.** This Agreement will be governed by and construed in accordance with the laws of the State in which the System is installed.

11.2. **NEGOTIATION.** Either Party may initiate the Dispute resolution procedures by sending a notice of Dispute ("Notice of Dispute"). The Parties will attempt to resolve the Dispute promptly through good faith negotiations including 1) timely escalation of the Dispute to executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for the matter and 2) direct communication between the executives. If the Dispute has not been resolved within ten (10) days from the Notice of Dispute, the Parties will proceed to mediation.

11.3. **MEDIATION.** The Parties will choose an independent mediator within thirty (30) days of a notice to mediate from either Party ("Notice of Mediation"). Neither Party may unreasonably withhold consent to the selection of a mediator. If the Parties are unable to agree upon a mediator, either Party may request that American Arbitration Association nominate a mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Each Party will participate in the mediation in good faith and will be represented at the mediation by a business executive with authority to settle the Dispute.

11.4. **LITIGATION, VENUE and JURISDICTION.** If a Dispute remains unresolved for sixty (60) days after receipt of the Notice of Mediation, either Party may then submit the Dispute to a court of competent jurisdiction in the state in which the System is installed. Each Party irrevocably agrees to submit to the exclusive jurisdiction of the courts in such state over any claim or matter arising under or in connection with this Agreement.

11.5. **CONFIDENTIALITY.** All communications pursuant to subsections 11.2 and 11.3 will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality protections provided by applicable law. The use of these Dispute resolution procedures will not be construed under the doctrines of laches, waiver or estoppel to affect adversely the rights of either Party.

Section 12 DEFAULT AND TERMINATION

12.1 **DEFAULT BY A PARTY.** If either Party fails to perform a material obligation under this Agreement, the other Party may consider the non-performing Party to be in default (unless a Force Majeure causes the failure) and may assert a default claim by giving the non-performing Party a written and detailed notice of default. Except for a default by Customer for failing to pay any amount when due under this Agreement which must be cured immediately, the defaulting Party will have thirty (30) days after receipt of the notice of default to either cure the default or, if the default is not curable within thirty (30) days, provide a written cure plan. The defaulting Party will begin implementing the cure plan immediately after receipt of notice by the other Party that it approves the plan. If Customer is the defaulting Party, Motorola may stop work on the project until it approves the Customer's cure plan.

12.2. **FAILURE TO CURE.** If a defaulting Party fails to cure the default as provided above in Section 12.1, unless otherwise agreed in writing, the non-defaulting Party may terminate any unfulfilled portion of this Agreement. In the event of termination for default, the defaulting Party will promptly return to the non-defaulting Party any of its Confidential Information. If Customer is the non-defaulting Party, terminates this Agreement as permitted by this Section, and completes the System through a third Party, Customer may as its exclusive remedy recover from Motorola reasonable costs incurred to complete the System to a capability not exceeding that specified in this Agreement less the unpaid portion of the Contract Price. Customer will mitigate damages and provide Motorola with detailed invoices substantiating the charges.

Section 13 INDEMNIFICATION

13.1. **GENERAL INDEMNITY BY MOTOROLA.** Motorola will indemnify and hold Customer harmless from any and all liability, expense, judgment, suit, cause of action, or demand for personal injury, death, or direct damage to tangible property which may accrue against Customer to the extent it is caused by the negligence of Motorola, its subcontractors, or their employees or agents, while performing their duties under this Agreement, if Customer gives Motorola prompt, written notice of any claim or suit. Customer will cooperate with Motorola in its defense or settlement of the claim or suit. This section sets forth the full extent of Motorola's general indemnification of Customer from liabilities that are in any way related to Motorola's performance under this Agreement.

13.2. **GENERAL INDEMNITY BY CUSTOMER.** To the extent permitted by law, the Customer will indemnify and hold Motorola harmless from any and all liability, expense, judgment, suit, cause of action, or demand for personal injury, death, or direct damage to tangible property which may accrue against Motorola to the extent it is caused by the negligence of Customer, its other contractors, or their employees or agents, while performing their duties under this Agreement, if Motorola gives Customer prompt, written notice of any the claim or suit. Motorola will cooperate with Customer in its defense or settlement of the claim or suit. This section sets forth the full extent of Customer's general indemnification of Motorola from liabilities that are in any way related to Customer's performance under this Agreement.

13.3. PATENT AND COPYRIGHT INFRINGEMENT.

13.3.1. Motorola will defend at its expense any suit brought against Customer to the extent it is based on a third-party claim alleging that the Equipment manufactured by Motorola or the Motorola Software ("Motorola Product") directly infringes a United States patent or copyright ("Infringement Claim"). Motorola's duties to defend and indemnify are conditioned upon: Customer promptly notifying Motorola in writing of the Infringement Claim; Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and Customer providing to Motorola cooperation and, if requested by Motorola, reasonable assistance in the defense of the Infringement Claim. In addition to Motorola's obligation to defend, and subject to the same conditions, Motorola will pay all damages finally awarded against Customer by a court of competent jurisdiction for an Infringement Claim or agreed to, in writing, by Motorola in settlement of an Infringement Claim.

13.3.2. If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense: (a) procure for Customer the right to continue using the Motorola Product; (b)

replace or modify the Motorola Product so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the Motorola Product and grant Customer a credit for the Motorola Product, less a reasonable charge for depreciation. The depreciation amount will be calculated based upon generally accepted accounting standards.

13.3.3. Motorola will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the combination of the Motorola Product with any software, apparatus or device not furnished by Motorola; (b) the use of ancillary equipment or software not furnished by Motorola and that is attached to or used in connection with the Motorola Product; (c) Motorola Product designed or manufactured in accordance with Customer's designs, specifications, guidelines or instructions, if the alleged infringement would not have occurred without such designs, specifications, guidelines or instructions; (d) a modification of the Motorola Product by a party other than Motorola; (e) use of the Motorola Product in a manner for which the Motorola Product was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by Customer to install an enhancement release to the Motorola Software that is intended to correct the claimed infringement. In no event will Motorola's liability resulting from its indemnity obligation to Customer extend in any way to royalties payable on a per use basis or the Customer's revenues, or any royalty basis other than a reasonable royalty based upon revenue derived by Motorola from Customer from sales or license of the infringing Motorola Product.

13.3.4. This Section 13 provides Customer's sole and exclusive remedies and Motorola's entire liability in the event of an Infringement Claim. Customer has no right to recover and Motorola has no obligation to provide any other or further remedies, whether under another provision of this Agreement or any other legal theory or principle, in connection with an Infringement Claim. In addition, the rights and remedies provided in this Section 13 are subject to and limited by the restrictions set forth in Section 14.

Section 14 LIMITATION OF LIABILITY

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of the Equipment, Software, or services with respect to which losses or damages are claimed. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT.** This limitation of liability provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account.

Section 15 CONFIDENTIALITY AND PROPRIETARY RIGHTS

15.1. CONFIDENTIAL INFORMATION.

15.1.1. Each party is a disclosing party ("Discloser") and a receiving party ("Recipient") under this agreement. All Deliverables will be deemed to be Motorola's Confidential Information. During the term of this agreement and for a period of three (3) years from the expiration or termination of this agreement, Recipient will (i) not disclose Confidential Information to any third party; (ii) restrict disclosure of Confidential Information to only those employees (including, but not limited to, employees of any wholly owned subsidiary, a parent company, any other wholly owned subsidiaries of the same parent company), agents or consultants who must be directly involved with the Confidential Information for the purpose and who are bound by confidentiality terms substantially similar to those in this agreement; (iii) not copy, reproduce, reverse engineer, de-compile or disassemble any Confidential Information; (iv) use the same degree of care as for its own information of like importance, but at least use reasonable care, in safeguarding against disclosure of Confidential Information; (v) promptly notify Discloser upon discovery of any unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain

possession of the Confidential Information and prevent further unauthorized actions or other breach of this agreement; and (vi) only use the Confidential Information as needed to fulfill this agreement.

Parties acknowledge that the Customer is subject to the Texas Public Information Act, codified in Chapter 552 of the Texas Government Code. Subject to the requirements of the Texas Public Information Act, should the Customer receive a request for information subject to the Texas Public Information Act, deemed confidential by this section, Customer will notify Motorola and submit a letter to the Texas Attorney General in accordance with the requirements of the Texas Public Information Act, provided Motorola submits arguments to the Texas Attorney General to substantiate any claim of confidentiality.

15.1.2. Recipient is not obligated to maintain as confidential, Confidential Information that Recipient can demonstrate by documentation (i) is now available or becomes available to the public without breach of this agreement; (ii) is explicitly approved for release by written authorization of Discloser; (iii) is lawfully obtained from a third party or parties without a duty of confidentiality; (iv) is known to the Recipient prior to such disclosure; or (v) is independently developed by Recipient without the use of any of Discloser's Confidential Information or any breach of this agreement.

15.1.3. All Confidential Information remains the property of the discloser and will not be copied or reproduced without the express written permission of the Discloser, except for copies that are absolutely necessary in order to fulfill this Agreement. Within ten (10) days of receipt of Discloser's written request, Recipient will return all Confidential Information to Discloser along with all copies and portions thereof, or certify in writing that all such Confidential Information has been destroyed. However, Recipient may retain one (1) archival copy of the Confidential Information that it may use only in case of a dispute concerning this Agreement. No license, express or implied, in the Confidential Information is granted other than to use the Confidential Information in the manner and to the extent authorized by this Agreement. The Discloser warrants that it is authorized to disclose any Confidential Information it discloses pursuant to this Agreement.

15.2. **PRESERVATION OF MOTOROLA'S PROPRIETARY RIGHTS.** Motorola, the third party manufacturer of any Equipment, and the copyright owner of any Non-Motorola Software own and retain all of their respective Proprietary Rights in the Equipment and Software, and nothing in this Agreement is intended to restrict their Proprietary Rights. All intellectual property developed, originated, or prepared by Motorola in connection with providing to Customer the Equipment, Software, or related services remain vested exclusively in Motorola, and this Agreement does not grant to Customer any shared development rights of intellectual property. Except as explicitly provided in the Software License Agreement, Motorola does not grant to Customer, either directly or by implication, estoppel, or otherwise, any right, title or interest in Motorola's Proprietary Rights. Customer will not modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, distribute, sublicense, sell or export the Software, or permit or encourage any third party to do so. The preceding sentence does not apply to Open Source Software which is governed by the standard license of the copyright owner.

Section 16 GENERAL

16.1. **TAXES.** The Contract Price does not include any excise, sales, lease, use, property, or other taxes, assessments or duties, all of which will be paid by Customer except as exempt by law. If Motorola is required to pay any of these taxes, Motorola will send an invoice to Customer and Customer will pay to Motorola the amount of the taxes (including any interest and penalties) within twenty (20) days after the date of the invoice. Customer will be solely responsible for reporting the Equipment for personal property tax purposes, and Motorola will be solely responsible for reporting taxes on its income or net worth.

16.2. **ASSIGNABILITY AND SUBCONTRACTING.** Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer.

In addition, in the event Motorola separates one or more of its businesses (each a "Separated Business"), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a "Separation Event"), Motorola may, without the prior written consent of the other Party and at no additional cost to Motorola, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Motorola and its affiliates, to the extent applicable) following the Separation Event. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

16.3. **WAIVER.** Failure or delay by either Party to exercise a right or power under this Agreement will not be a waiver of the right or power. For a waiver of a right or power to be effective, it must be in a writing signed by the waiving Party. An effective waiver of a right or power will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

16.4. **SEVERABILITY.** If a court of competent jurisdiction renders any part of this Agreement invalid or unenforceable, that part will be severed and the remainder of this Agreement will continue in full force and effect.

16.5. **INDEPENDENT CONTRACTORS.** Each Party will perform its duties under this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership or formal business organization of any kind.

16.6. **HEADINGS AND SECTION REFERENCES.** The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.

16.7. **ENTIRE AGREEMENT.** This Agreement, including all Exhibits, constitutes the entire agreement of the Parties regarding the subject matter of the Agreement and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be executed in multiple counterparts, and shall have the same legal force and effect as if the Parties had executed it as a single document. The Parties may sign in writing, or by electronic signature, including by email. An electronic signature, or a facsimile copy or computer image, such as a PDF or tiff image, of a signature, shall be treated as and shall have the same effect as an original signature. In addition, an electronic signature, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any Customer purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each Party signs that document.

16.8. **NOTICES.** Notices required under this Agreement to be given by one Party to the other must be in writing and either personally delivered or sent to the address shown below by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as Federal Express, UPS, or DHL), or by facsimile with correct answerback received, and will be effective upon receipt:

Motorola Solutions, Inc.
Attn: Becky Smartt
1507 LBJ Freeway, Suite 700
Farmers Branch, Tx. 75234

Customer: Town of Flower Mound, Texas
Attn: DeDe Garrett
4150 Kirkpatrick Ln
Flower Mound, TX 75028

16.9. **COMPLIANCE WITH APPLICABLE LAWS.** Each Party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement or use of the System. Customer will obtain and comply with all Federal Communications Commission ("FCC") licenses and authorizations required for the installation, operation and use of the System before the scheduled

installation of the Equipment. Although Motorola might assist Customer in the preparation of its FCC license applications, neither Motorola nor any of its employees is an agent or representative of Customer in FCC or other matters.

16.10. **AUTHORITY TO EXECUTE AGREEMENT.** Each Party represents that it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; the person executing this Agreement on its behalf has the authority to do so; upon execution and delivery of this Agreement by the Parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the Party.

16.11. **ADMINISTRATOR LEVEL ACCOUNT ACCESS.** Motorola will provide Customer with Administrative User Credentials. Customer agrees to only grant Administrative User Credentials to those personnel with the training or experience to correctly use the access. Customer is responsible for protecting Administrative User Credentials from disclosure and maintaining Credential validity by, among other things, updating passwords when required. Customer may be asked to provide valid Administrative User Credentials when in contact with Motorola System support. Customer understands that changes made as the Administrative User can significantly impact the performance of the System. Customer agrees that it will be solely responsible for any negative impact on the System or its users by any such changes. System issues occurring as a result of changes made by an Administrative User may impact Motorola's ability to perform its obligations under the Agreement or its Maintenance and Support Agreement. In such cases, a revision to the appropriate provisions of the Agreement, including the Statement of Work, may be necessary. To the extent Motorola provides assistance to correct any issues caused by or arising out of the use of or failure to maintain Administrative User Credentials, Motorola will be entitled to bill Customer and Customer will pay Motorola on a time and materials basis for resolving the issue.

16.12. **SURVIVAL OF TERMS.** The following provisions will survive the expiration or termination of this Agreement for any reason: Section 3.6 (Motorola Software); Section 3.7 (Non-Motorola Software); if any payment obligations exist, Sections 5.1 and 5.2 (Contract Price and Invoicing and Payment); Subsection 9.7 (Disclaimer of Implied Warranties); Section 11 (Disputes); Section 14 (Limitation of Liability); and Section 15 (Confidentiality and Proprietary Rights); and all of the General provisions in Section 16.

The Parties hereby enter into this Agreement as of the Effective Date.

Motorola Solutions, Inc.

Customer

By: Jessica Pourciau
 Name: Jessica Pourciau
 Title: Area Sales Manager
 Date: 3/10/16

By: _____
 Name: _____
 Title: _____
 Date: _____

Exhibit A**SOFTWARE LICENSE AGREEMENT**

This Exhibit A Software License Agreement ("Agreement") is between Motorola Solutions, Inc., ("Motorola"), and The Town of Flower Mound Texas ("Licensee").

For good and valuable consideration, the parties agree as follows:

Section 1 DEFINITIONS

1.1 "Designated Products" means products provided by Motorola to Licensee with which or for which the Software and Documentation is licensed for use.

1.2 "Documentation" means product and software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which such information is provided).

1.3 "Open Source Software" means software with either freely obtainable source code, license for modification, or permission for free distribution.

1.4 "Open Source Software License" means the terms or conditions under which the Open Source Software is licensed.

1.5 "Primary Agreement" means the agreement to which this exhibit is attached.

1.6 "Security Vulnerability" means a flaw or weakness in system security procedures, design, implementation, or internal controls that could be exercised (accidentally triggered or intentionally exploited) and result in a security breach such that data is compromised, manipulated or stolen or the system damaged.

1.7 "Software" (i) means proprietary software in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such software; (ii) means any modifications, enhancements, new versions and new releases of the software provided by Motorola; and (iii) may contain one or more items of software owned by a third party supplier. The term "Software" does not include any third party software provided under separate license or third party software not licensable under the terms of this Agreement.

Section 2 SCOPE

Motorola and Licensee enter into this Agreement in connection with Motorola's delivery of certain proprietary Software or products containing embedded or pre-loaded proprietary Software, or both. This Agreement contains the terms and conditions of the license Motorola is providing to Licensee, and Licensee's use of the Software and Documentation.

Section 3 GRANT OF LICENSE

3.1. Subject to the provisions of this Agreement and the payment of applicable license fees, Motorola grants to Licensee a personal, limited, non-transferable (except as permitted in Section 7) and non-exclusive license under Motorola's copyrights and Confidential Information (as defined in the Primary Agreement) embodied in the Software to use the Software, in object code form, and the Documentation solely in connection with Licensee's use of the Designated Products. This Agreement does not grant any rights to source code.

3.2. If the Software licensed under this Agreement contains or is derived from Open Source Software, the terms and conditions governing the use of such Open Source Software are in the Open Source

Software Licenses of the copyright owner and not this Agreement. If there is a conflict between the terms and conditions of this Agreement and the terms and conditions of the Open Source Software Licenses governing Licensee's use of the Open Source Software, the terms and conditions of the license grant of the applicable Open Source Software Licenses will take precedence over the license grants in this Agreement. If requested by Licensee, Motorola will use commercially reasonable efforts to: (i) determine whether any Open Source Software is provided under this Agreement; (ii) identify the Open Source Software and provide Licensee a copy of the applicable Open Source Software License (or specify where that license may be found); and, (iii) provide Licensee a copy of the Open Source Software source code, without charge, if it is publicly available (although distribution fees may be applicable).

Section 4 LIMITATIONS ON USE

4.1. Licensee may use the Software only for Licensee's internal business purposes and only in accordance with the Documentation. Any other use of the Software is strictly prohibited. Without limiting the general nature of these restrictions, Licensee will not make the Software available for use by third parties on a "time sharing," "application service provider," or "service bureau" basis or for any other similar commercial rental or sharing arrangement.

4.2. Licensee will not, and will not allow or enable any third party to: (i) reverse engineer, disassemble, peel components, decompile, reprogram or otherwise reduce the Software or any portion to a human perceptible form or otherwise attempt to recreate the source code; (ii) modify, adapt, create derivative works of, or merge the Software; (iii) copy, reproduce, distribute, lend, or lease the Software or Documentation to any third party, grant any sublicense or other rights in the Software or Documentation to any third party, or take any action that would cause the Software or Documentation to be placed in the public domain; (iv) remove, or in any way alter or obscure, any copyright notice or other notice of Motorola's proprietary rights; (v) provide, copy, transmit, disclose, divulge or make the Software or Documentation available to, or permit the use of the Software by any third party or on any machine except as expressly authorized by this Agreement; or (vi) use, or permit the use of, the Software in a manner that would result in the production of a copy of the Software solely by activating a machine containing the Software. Licensee may make one copy of Software to be used solely for archival, back-up, or disaster recovery purposes; *provided* that Licensee may not operate that copy of the Software at the same time as the original Software is being operated. Licensee may make as many copies of the Documentation as it may reasonably require for the internal use of the Software.

4.3. Unless otherwise authorized by Motorola in writing, Licensee will not, and will not enable or allow any third party to: (i) install a licensed copy of the Software on more than one unit of a Designated Product; or (ii) copy onto or transfer Software installed in one unit of a Designated Product onto one other device. Licensee may temporarily transfer Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Licensee provides written notice to Motorola of the temporary transfer and identifies the device on which the Software is transferred. Temporary transfer of the Software to another device must be discontinued when the original Designated Product is returned to operation and the Software must be removed from the other device. Licensee must provide prompt written notice to Motorola at the time temporary transfer is discontinued.

4.4. When using Motorola's Radio Service Software ("RSS"), Licensee must purchase a separate license for each location at which Licensee uses RSS. Licensee's use of RSS at a licensed location does not entitle Licensee to use or access RSS remotely. Licensee may make one copy of RSS for each licensed location. Licensee shall provide Motorola with a list of all locations at which Licensee uses or intends to use RSS upon Motorola's request.

4.5. Licensee will maintain, during the term of this Agreement and for a period of two years thereafter, accurate records relating to this license grant to verify compliance with this Agreement. Motorola or an independent third party ("Auditor") may inspect Licensee's premises, books and records, upon reasonable prior notice to Licensee, during Licensee's normal business hours and subject to Licensee's facility and security regulations. Motorola is responsible for the payment of all expenses and costs of the Auditor. Any information obtained by Motorola and the Auditor will be kept in strict confidence by Motorola and the

Auditor and used solely for the purpose of verifying Licensee's compliance with the terms of this Agreement.

Section 5 OWNERSHIP AND TITLE

Motorola, its licensors, and its suppliers retain all of their proprietary rights in any form in and to the Software and Documentation, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the Software and Documentation (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, emulations to or derivative works from the Software or Documentation, whether made by Motorola or another party, or any improvements that result from Motorola's processes or, provision of information services). No rights are granted to Licensee under this Agreement by implication, estoppel or otherwise, except for those rights which are expressly granted to Licensee in this Agreement. All intellectual property developed, originated, or prepared by Motorola in connection with providing the Software, Designated Products, Documentation or related services, remains vested exclusively in Motorola, and Licensee will not have any shared development or other intellectual property rights.

Section 6 LIMITED WARRANTY; DISCLAIMER OF WARRANTY

6.1. The commencement date and the term of the Software warranty will be a period of ninety (90) days from Motorola's shipment of the Software (the "Warranty Period"). If Licensee is not in breach of any of its obligations under this Agreement, Motorola warrants that the unmodified Software, when used properly and in accordance with the Documentation and this Agreement, will be free from a reproducible defect that eliminates the functionality or successful operation of a feature critical to the primary functionality or successful operation of the Software. Whether a defect occurs will be determined by Motorola solely with reference to the Documentation. Motorola does not warrant that Licensee's use of the Software or the Designated Products will be uninterrupted, error-free, completely free of Security Vulnerabilities, or that the Software or the Designated Products will meet Licensee's particular requirements. Motorola makes no representations or warranties with respect to any third party software included in the Software.

6.2 Motorola's sole obligation to Licensee and Licensee's exclusive remedy under this warranty is to use reasonable efforts to remedy any material Software defect covered by this warranty. These efforts will involve either replacing the media or attempting to correct significant, demonstrable program or documentation errors or Security Vulnerabilities. If Motorola cannot correct the defect within a reasonable time, then at Motorola's option, Motorola will replace the defective Software with functionally-equivalent Software, license to Licensee substitute Software which will accomplish the same objective, or terminate the license and refund the Licensee's paid license fee.

6.3. Warranty claims are described in the Primary Agreement.

6.4. The express warranties set forth in this Section 6 are in lieu of, and Motorola disclaims, any and all other warranties (express or implied, oral or written) with respect to the Software or Documentation, including, without limitation, any and all implied warranties of condition, title, non-infringement, merchantability, or fitness for a particular purpose or use by Licensee (whether or not Motorola knows, has reason to know, has been advised, or is otherwise aware of any such purpose or use), whether arising by law, by reason of custom or usage of trade, or by course of dealing. In addition, Motorola disclaims any warranty to any person other than Licensee with respect to the Software or Documentation.

Section 7 TRANSFERS

Licensee will not transfer the Software or Documentation to any third party without Motorola's prior written consent. Motorola's consent may be withheld at its discretion and may be conditioned upon transferee paying all applicable license fees and agreeing to be bound by this Agreement. If the Designated Products are Motorola's radio products and Licensee transfers ownership of the Motorola radio products to a third party, Licensee may assign its right to use the Software (other than RSS and Motorola's

FLASHport® software) which is embedded in or furnished for use with the radio products and the related Documentation; *provided* that Licensee transfers all copies of the Software and Documentation to the transferee, and Licensee and the transferee sign a transfer form to be provided by Motorola upon request, obligating the transferee to be bound by this Agreement.

Section 8 TERM AND TERMINATION

8.1 Licensee's right to use the Software and Documentation will begin when the Primary Agreement is signed by both parties and will continue for the life of the Designated Products with which or for which the Software and Documentation have been provided by Motorola, unless Licensee breaches this Agreement, in which case this Agreement and Licensee's right to use the Software and Documentation may be terminated immediately upon notice by Motorola.

8.2 Within thirty (30) days after termination of this Agreement, Licensee must certify in writing to Motorola that all copies of the Software have been removed or deleted from the Designated Products and that all copies of the Software and Documentation have been returned to Motorola or destroyed by Licensee and are no longer in use by Licensee.

8.3 Licensee acknowledges that Motorola made a considerable investment of resources in the development, marketing, and distribution of the Software and Documentation and that Licensee's breach of this Agreement will result in irreparable harm to Motorola for which monetary damages would be inadequate. If Licensee breaches this Agreement, Motorola may terminate this Agreement and be entitled to all available remedies at law or in equity (including immediate injunctive relief and repossession of all non-embedded Software and associated Documentation unless Licensee is a Federal agency of the United States Government).

Section 9 UNITED STATES GOVERNMENT LICENSING PROVISIONS

This Section applies if Licensee is the United States Government or a United States Government agency. Licensee's use, duplication or disclosure of the Software and Documentation under Motorola's copyrights or trade secret rights is subject to the restrictions set forth in subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights clause at FAR 52.227-19 (JUNE 1987), if applicable, unless they are being provided to the Department of Defense. If the Software and Documentation are being provided to the Department of Defense, Licensee's use, duplication, or disclosure of the Software and Documentation is subject to the restricted rights set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 (OCT 1988), if applicable. The Software and Documentation may or may not include a Restricted Rights notice, or other notice referring to this Agreement. The provisions of this Agreement will continue to apply, but only to the extent that they are consistent with the rights provided to the Licensee under the provisions of the FAR or DFARS mentioned above, as applicable to the particular procuring agency and procurement transaction.

Section 10 CONFIDENTIALITY

Licensee acknowledges that the Software and Documentation contain Motorola's valuable proprietary and Confidential Information and are Motorola's trade secrets, and that the provisions in the Primary Agreement concerning Confidential Information apply.

Section 11 LIMITATION OF LIABILITY

The Limitation of Liability provision is described in the Primary Agreement.

Section 12 NOTICES

Notices are described in the Primary Agreement.

Section 13 GENERAL

13.1. COPYRIGHT NOTICES. The existence of a copyright notice on the Software will not be construed as an admission or presumption of publication of the Software or public disclosure of any trade secrets associated with the Software.

13.2. COMPLIANCE WITH LAWS. Licensee acknowledges that the Software is subject to the laws and regulations of the United States and Licensee will comply with all applicable laws and regulations, including export laws and regulations of the United States. Licensee will not, without the prior authorization of Motorola and the appropriate governmental authority of the United States, in any form export or re-export, sell or resell, ship or reship, or divert, through direct or indirect means, any item or technical data or direct or indirect products sold or otherwise furnished to any person within any territory for which the United States Government or any of its agencies at the time of the action, requires an export license or other governmental approval. Violation of this provision is a material breach of this Agreement.

13.3. ASSIGNMENTS AND SUBCONTRACTING. Motorola may assign its rights or subcontract its obligations under this Agreement, or encumber or sell its rights in any Software, without prior notice to or consent of Licensee.

13.4. GOVERNING LAW. This Agreement is governed by the laws of the United States to the extent that they apply and otherwise by the internal substantive laws of the State to which the Software is shipped if Licensee is a sovereign government entity, or the internal substantive laws of the State of Illinois if Licensee is not a sovereign government entity. The terms of the U.N. Convention on Contracts for the International Sale of Goods do not apply. In the event that the Uniform Computer Information Transaction Act, any version of this Act, or a substantially similar law (collectively "UCITA") becomes applicable to a party's performance under this Agreement, UCITA does not govern any aspect of this Agreement or any license granted under this Agreement, or any of the parties' rights or obligations under this Agreement. The governing law will be that in effect prior to the applicability of UCITA.

13.5. THIRD PARTY BENEFICIARIES. This Agreement is entered into solely for the benefit of Motorola and Licensee. No third party has the right to make any claim or assert any right under this Agreement, and no third party is deemed a beneficiary of this Agreement. Notwithstanding the foregoing, any licensor or supplier of third party software included in the Software will be a direct and intended third party beneficiary of this Agreement.

13.6. SURVIVAL. Sections 4, 5, 6.3, 7, 8, 9, 10, 11 and 13 survive the termination of this Agreement.

13.7. ORDER OF PRECEDENCE. In the event of inconsistencies between this Exhibit and the Primary Agreement, the parties agree that this Exhibit prevails, only with respect to the specific subject matter of this Exhibit, and not the Primary Agreement or any other exhibit as it applies to any other subject matter.

13.8 SECURITY. Motorola uses reasonable means in the design and writing of its own Software and the acquisition of third party Software to limit Security Vulnerabilities. While no software can be guaranteed to be free from Security Vulnerabilities, if a Security Vulnerability is discovered, Motorola will take the steps set forth in Section 6 of this Agreement.

Exhibit E
System Acceptance Certificate

Customer Name: _____

Project Name: _____

This System Acceptance Certificate memorializes the occurrence of System Acceptance. Motorola and Customer acknowledge that:

1. The Acceptance Tests set forth in the Acceptance Test Plan have been successfully completed.
2. The System is accepted.

Customer Representative:

Motorola Representative:

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

FINAL PROJECT ACCEPTANCE:

Motorola has provided and Customer has received all deliverables, and Motorola has performed all other work required for Final Project Acceptance.

Customer Representative:

Motorola Representative:

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



TOWN COUNCIL AGENDA ITEM NO. 9

CONSENT ITEM

DATE: March 21, 2016

FROM: Andy Kancel, Chief of Police

ITEM: Consider approval of the purchase of a rapid deployment vehicle by the Flower Mound Police Department.

BACKGROUND INFORMATION: The Flower Mound Police Department is requesting approval to purchase a rapid deployment vehicle (RDV) in the amount of \$79,800. The police department intends to use equitable sharing funds that have already been awarded to the Town for purchase price. The vendor quote is from Chastang Ford and is provided as a best price through Houston-Galveston Area Council (HGAC) Buy contract pricing. The 16 foot box fitted to the chassis will be manufactured by Supreme Corporation.

The vehicle is what would be considered a small officer deployment vehicle normally utilized during Special Weapon and Tactic (SWAT) operations. It is built on a one and a quarter ton truck chassis, operates on a V10 gasoline drivetrain, and is outfitted with the bench seating and storage for SWAT operations. This vehicle would provide for covert deployment of personnel engaged in emergency police operations. This vehicle could be a shared resource for neighboring jurisdictions that may call upon the department to assist them in emergency operations. The RDV will also be used to store equipment for these operations which will improve emergency response to these types of situations.

In the past, the Flower Mound Police Department has been called upon numerous times annually for emergency police operations within the limits of Flower Mound. The Flower Mound Police Department has also been called upon to assist other agencies within Denton and Tarrant Counties. When time is of the essence, this vehicle would allow for the prompt transportation of all necessary personnel and equipment to these emergency police operations. On incidents that are prolonged, this vehicle would allow members of this unit or any other officer to rehabilitate in a comfortable environment and allow officers to maintain situational awareness. Since this vehicle is unmarked, it could also be used for intelligence gathering or other department needed reconnaissance such as during the July 4th festival. .

Additional incidents where a RDV would have been utilized during the past year in Flower Mound include felony arrest warrants, search warrants, a barricaded person, bomb threats, a drowning at Lake Grapevine and the flooding experienced by the Town in 2015. This RDV would improve the Departments preparedness for any of these types of events which would increase the probability of a positive outcome.

The Flower Mound Police Department has identified this equipment as an excellent resource and using these funds as an outstanding opportunity to provide unequalled service to our community. We will continue to engage the community and develop relationships with our citizens and provide unmatched service. The implementation of this equipment will only enhance our ability to provide this service to the Town of Flower Mound. This asset will allow for Flower Mound to provide the highest level of service to our citizens while being less dependent on shared area resources.

Fleet Services has been involved in the purchasing process and has provided input into the specifications of this vehicle. The manufacturer's life expectancy of this asset, excluding technology updates is twenty years. Please see attached quote for a more detailed description.

BOARD REVIEW/CITIZEN FEEDBACK: NA

ALTERNATIVES/OPTIONS: NA

FISCAL IMPACT: Yes

Proposed Expenditure:	Account Number(s):
\$79,800.00	331-360-000006130

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

LEGAL REVIEW:

N/A

ATTACHMENTS:

1. Quote from Chastang Ford
2. Preliminary Schematic Drawings

RECOMMENDATION:

Recommend approval of the purchase of rapid deployment vehicle by the Flower Mound Police Department.


CONTRACT PRICING WORKSHEET
 For MOTOR VEHICLES Only

 Contract
 No.:

AM10-14

 Date
 Prepared:

12/1/2015

This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents MUST be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.

Buying Agency:	FLOWER MOUND PD	Contractor:	CHASTANG FORD
Contact Person:	DEATS STEWART	Prepared By:	ED MILLER
Phone:	817-229-6725	Phone:	713-678-5007
Fax:		Fax:	713-678-5001
Email:	deats.stewart@flower-mound.com	Email:	emiller@chastangford.com

Product Code:	FFC02	Description:	SUPREME RAPID DEPLOYMENT VEHICLE
---------------	-------	--------------	----------------------------------

A. Product Item Base Unit Price Per Contractor's H-GAC Contract: 62,686

B. Published Options - Itemize below - Attach additional sheet(s) if necessary - Include Option Code in description if applicable.
 (Note: Published Options are options which were submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
RDV7 - 120V DUPLEX OUTLETS	245	99S - 6.8L V-10 ENGINE [5.4L DISCONTINUED]	995
RDV2 - 16' BODY	2775	176WBA - 176" WB / 14,500 LOB GVWR	750
RDV29- 3' ATTIC	595		
RDV15- RV STYLE AWNING	1585		
RDV24 - COLOR BACK UP CAMERA	975		
RDV12 - [8] WHELEN TIR-3 LED EMERG LIGHTS	2445		
RDV13 - 12" X 12" X 90" UPPER CABINETS	1995		
RDV16 - DELETE SIDE DOOR	-750		
RDV18 - 15" X 15" EXTERIOR DOORS	1185		
RDV19- INSULATED COOLER	1075	Subtotal From Additional Sheet(s):	
RDV20 - 2' X 4' TABLE	545	Subtotal B:	14415

C. Unpublished Options - Itemize below / attach additional sheet(s) if necessary.
 (Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
		Subtotal From Additional Sheet(s):	1908
		Subtotal C:	1908

Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B).

For this transaction the percentage is:

2%

D. Total Cost Before Any Applicable Trade-In / Other Allowances / Discounts (A+B+C)

Quantity Ordered:	1	X Subtotal of A + B + C:	79009	=	Subtotal D:	79009
-------------------	---	--------------------------	-------	---	-------------	-------

E. H-GAC Order Processing Charge (Amount Per Current Policy)

Subtotal E: 1000

F. Trade-Ins / Other Allowances / Special Discounts / Freight / Installation

Description	Cost	Description	Cost
		DISCOUNT	-209
		Subtotal F:	-209

Delivery Date: TBD

G. Total Purchase Price (D+E+F):

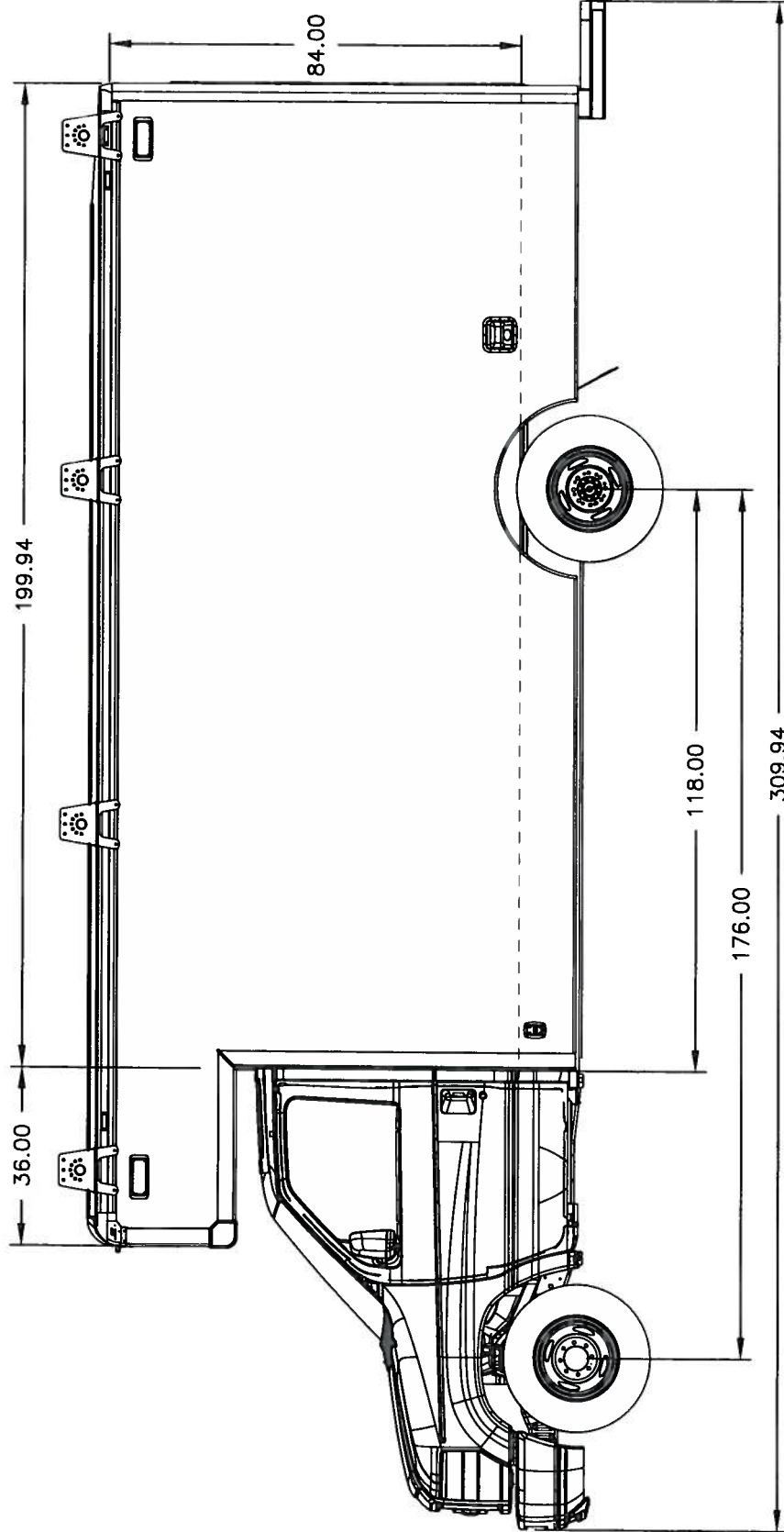
79800

REV.	ECN	ECD	DESCRIPTION	DATE	BY
			CHG LIGHTS TO WHELEN 700 SERIES	12/28/15	

REVISED
12/29/15

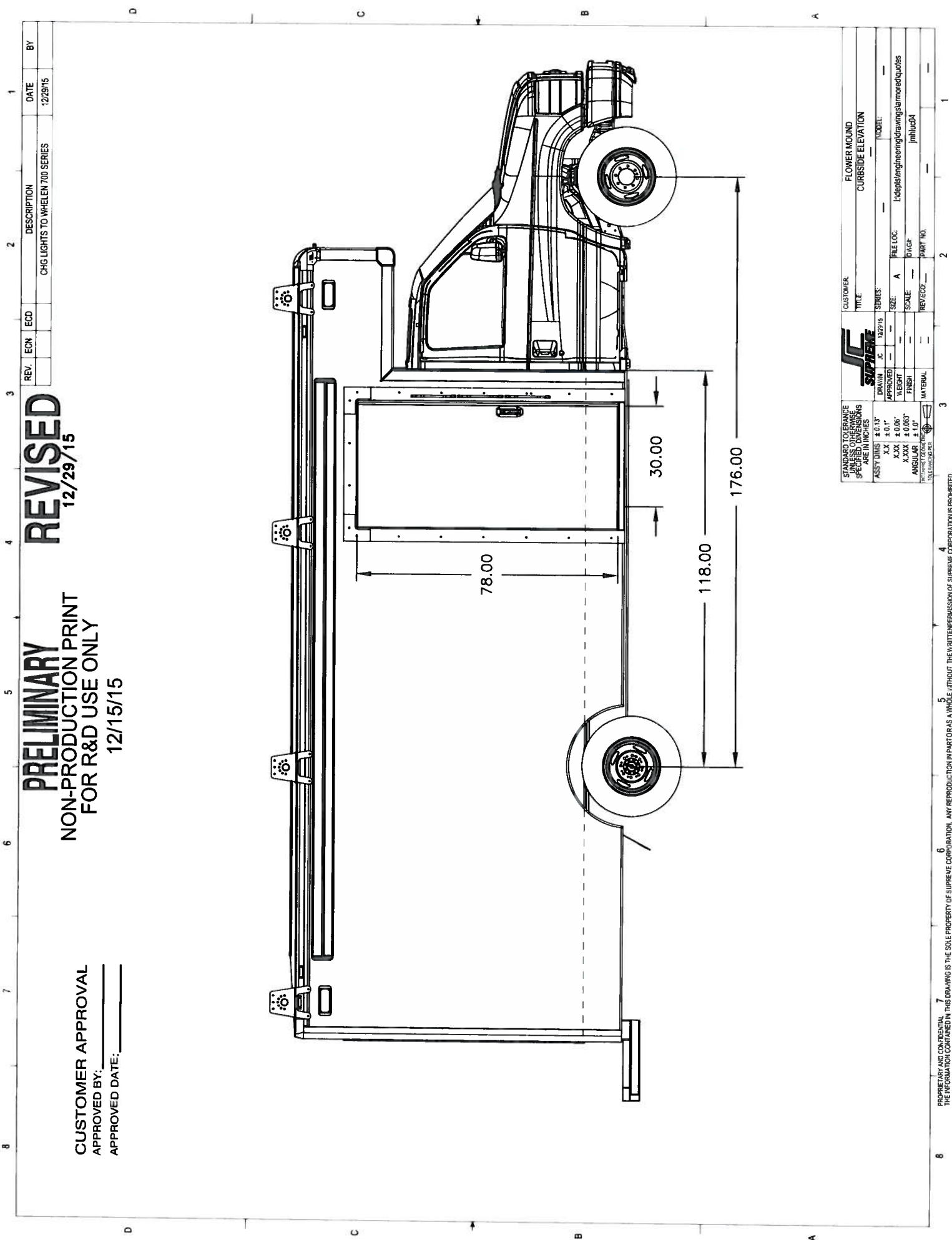
PRELIMINARY
NON-PRODUCTION PRINT
FOR R&D USE ONLY
12/15/15

CUSTOMER APPROVAL
APPROVED BY: _____
APPROVED DATE: _____



STANDARD TOLERANCE UNLESS OTHERWISE SPECIFIED DIMENSIONS ARE IN INCHES		CUSTOMER		FLOWER MOUND ROADSIDE ELEVATION	
ASST DIMS	± 0.12	DRAWN	JC	SERIES	12/29/15
XX	± 0.12	APPROVED		SIZE	A
XX	± 0.0625	WEIGHT		PRE LOC	CHGR
XX	± 0.0625	FINISH		SCALE	1/4"=1'-0"
ANGULAR	± 1.0°	MATERIAL		REVISED	
INTERFERENCE FIT		PART NO.			

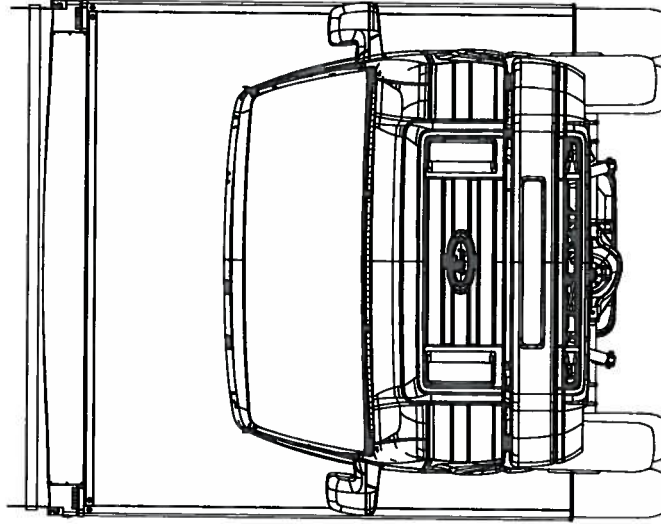
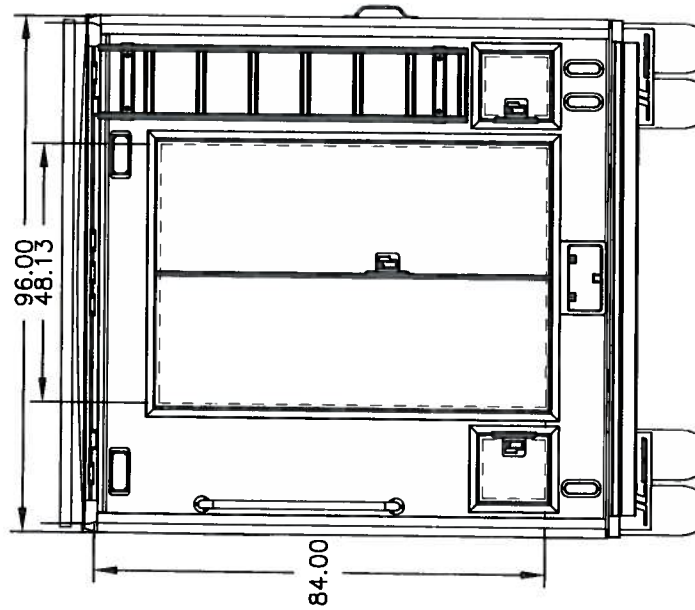
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THE INFORMATION CONTAINED IN THIS DRAWING IS THE SOLE PROPERTY OF SUPREME CORPORATION. ANY REPRODUCTION IN PART OR AS A WHOLE WITHOUT THE WRITTEN PERMISSION OF SUPREME CORPORATION IS PROHIBITED.



REVISED
12/29/15

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CUSTOMER APPROVAL
APPROVED BY: _____
APPROVED DATE: _____

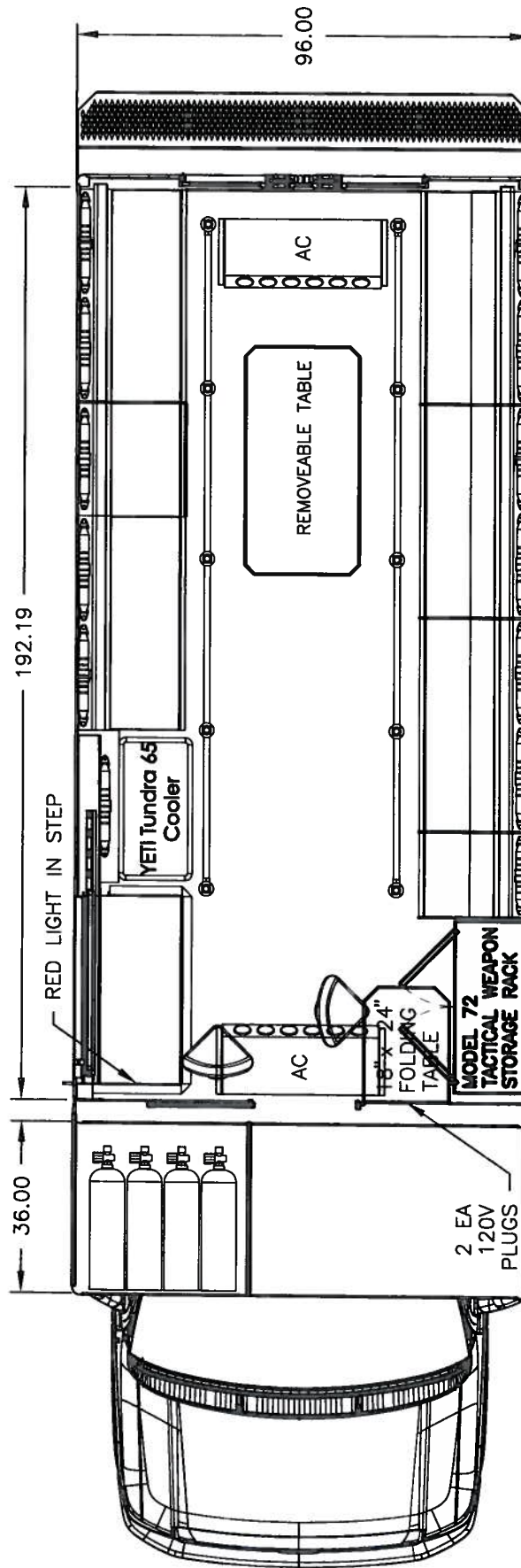


STANDARD TOLERANCE UNLESS OTHERWISE SPECIFIED DIMENSIONS ARE IN INCHES		CUSTOMER		FLOWER MOUND	
TITLE		FRONT/ REAR ELEVATION			
SERIES		MODEL			
DRAWN	JC	12/15/15			
APPROVED					
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FOR R&D USE ONLY
12/15/15

CUSTOMER APPROVAL
APPROVED BY: _____
APPROVED DATE: _____

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			CHG SEATING/ ADD STEP LIGHT/ 110V PLUGS	DATE	
			MOVE WEAPONS RACK/ SHOW SCBA TANKS	1/5/16	
			MOVE FOLDING TABLE/ EXTEND BENCH SEAT	1/8/16	

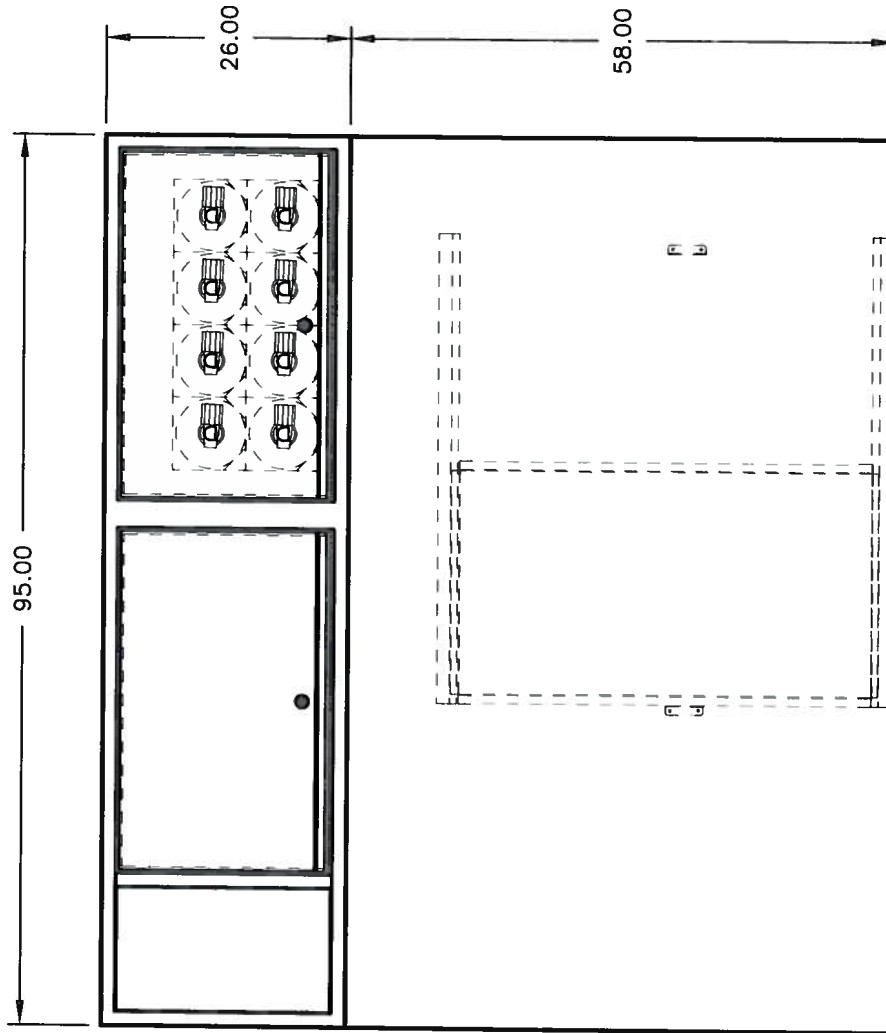
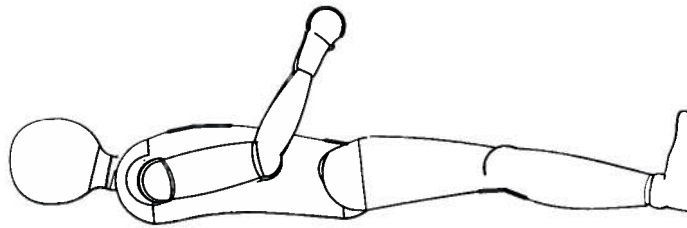


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PROPERTY AND CONFIDENTIAL INFORMATION CONTAINED IN THIS DRAWING IS THE SOLE PROPERTY OF SUPREME CORPORATION. ANY REPRODUCTION IN PART OR AS A WHOLE WITHOUT THE WRITTEN PERMISSION OF SUPREME CORPORATION IS PROHIBITED.

PRELIMINARY
 NON-PRODUCTION PRINT
 FOR R&D USE ONLY
 1/5/16

CUSTOMER APPROVAL
 APPROVED BY: _____
 APPROVED DATE: _____



STANDARD TOLERANCE UNLESS OTHERWISE SPECIFIED, DIMENSIONS ARE IN INCHES		CUSTOMER	
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TOWN COUNCIL AGENDA ITEM NO. 10

CONSENT ITEM

DATE: March 21, 2016

FROM: Kari Biddix, Park Development Manager

ITEM: Consider approval of final acceptance of the Individual Parks Improvement (Cortadera, Culwell, and Leonard Johns Parks) project; authorization for final payment to 2L Construction, LLC, in the amount of \$11,816.50.

BACKGROUND INFORMATION: This project is complete. This item provides for a final retainage payment of \$11,816.50, for a final contract amount of \$118,165.00.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$11,816.50

Proposed Expenditure:	Account Number(s):
\$11,816.50	317-110-90761

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

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Contract Estimate for Payment
2. Affidavit of All Bills Paid
3. Consent of Surety

RECOMMENDATION: Move to approve the final acceptance of the Individual Parks Improvement (Cortadera, Culwell, and Leonard Johns Parks) project; authorization for final payment to 2L Construction, LLC, in the amount of \$11,816.50.

CONTRACT ESTIMATE FOR PAYMENT

Project: Individual Park Improvements (Cortadera, Culwell, Leonard Johns) Estimate No.: 8 & Final

Item No.	Description of Item	Unit of Measure	Contract Quantities	Unit Price	Contract Amount	Quantities Completed Previous	Quantities Completed This Month	Quantities Completed To Date	Dollar Amount Previous	Dollar Amount This Month	Amount Completed To date	% of Quantity Complete
CORTADERA PARK												
1A	DEMOLITION, existing concrete, sidewalk, bench and trash receptacle, (see Sheet L0.01, material to be removed cleanly and disposed of off-site at Contractor's expense, complete in place	LS	1.00	\$ 2,000.00	\$ 2,000.00	1.00	0.00	1.00	\$ 2,000.00	\$ -	\$ 2,000.00	100.00%
2A	GRADE MAINTENANCE FOR SITE, to include fine grading, backfilling, and topsoil as indicated on drawings, etc. to perform site work, complete in place	LS	1.00	\$ 4,000.00	\$ 4,000.00	1.00	0.00	1.00	4,000.00	-	4,000.00	100.00%
3A	CONCRETE SITE PAVING, to include all sidewalks, paving areas, picnic table pades, etc. that are not listed individually in bid tab, as shown and detailed on drawings complete in place	LS	1.00	\$ 4,500.00	\$ 4,500.00	1.00	0.00	1.00	4,500.00	-	4,500.00	100.00%
4A	PAVILION FOUNDATION, as shown on drawings and in specifications, complete in place	LS	1.00	\$ 11,500.00	\$ 11,500.00	1.00	0.00	1.00	11,500.00	-	11,500.00	100.00%
5A	COMMON BERMUDA SOD, to include fine grading, raking, fertilization, and temporary irrigation as necessary, as shown on Sheet L1.01, complete in place	SF	845.00	\$ 1.00	\$ 845.00	845.00	0.00	845.00	845.00	-	845.00	100.00%
CULWELL PARK												
1B	DEMOLITION, existing concrete, sidewalk, bench and trash receptacle, (see Sheet L0.01, material to be removed cleanly and disposed of off-site at Contractor's expense, complete in place	LS	1.00	\$ 3,000.00	\$ 3,000.00	1.00	0.00	1.00	3,000.00	-	3,000.00	100.00%
2B	GRADE MAINTENANCE FOR SITE, to include fine grading, backfilling, and topsoil as indicated on drawings, etc. to perform site work, complete in place	LS	1.00	\$ 4,000.00	\$ 4,000.00	1.00	0.00	1.00	4,000.00	-	4,000.00	100.00%
3B	CONCRETE SITE PAVING, to include all sidewalks, paving areas, picnic table pades, etc. that are not listed individually in bid tab, as shown and detailed on drawings complete in place	LS	1.00	\$ 9,000.00	\$ 9,000.00	1.00	0.00	1.00	9,000.00	-	9,000.00	100.00%
4B	PAVILION FOUNDATION, as shown on drawings and in specifications, complete in place	LS	1.00	\$ 11,500.00	\$ 11,500.00	1.00	0.00	1.00	11,500.00	-	11,500.00	100.00%
5B	COMMON BERMUDA SOD, to include fine grading, raking, fertilization, and temporary irrigation as necessary, as shown on Sheet L1.01, complete in place	SF	2,250.00	\$ 1.00	\$ 2,250.00	2250.00	0.00	2250.00	2,250.00	-	2,250.00	100.00%
LEONARD JOHNS PARK												
1C	TREE PROTECTION, to include fencing, as shown and detailed on Sheets L1.01 and L2.02, complete in place	LS	1.00	\$ 1,000.00	\$ 1,000.00	1.00	0.00	1.00	1,000.00	-	1,000.00	100.00%
2C	GRADE MAINTENANCE FOR SITE, to include fine grading, backfilling, and topsoil as indicated on drawings, etc. to perform site work, complete in place	LS	1.00	\$ 5,000.00	\$ 5,000.00	1.00	0.00	1.00	5,000.00	-	5,000.00	100.00%
3C	CONCRETE SITE PAVING, to include all sidewalks, paving areas, picnic table pades, etc. that are not listed individually in bid tab, as shown and detailed on drawings complete in place	LS	1.00	\$ 2,000.00	\$ 2,000.00	1.00	0.00	1.00	2,000.00	-	2,000.00	100.00%
4C	PAVILION FOUNDATION, as shown on drawings and in specifications, complete in place	LS	1.00	\$ 32,500.00	\$ 32,500.00	1.00	0.00	1.00	32,500.00	-	32,500.00	100.00%
5C	COMMON BERMUDA SOD, to include fine grading, raking, fertilization, and temporary irrigation as necessary, as shown on Sheet L1.01, complete in place	SF	720.00	\$ 1.00	\$ 720.00	720.00	0.00	720.00	720.00	-	720.00	100.00%
6C	GRILL, as shown on Sheet L1.01 and detailed on Sheet L2.02 and as listed in specifications, complete in place	EA	1.00	\$ 1,500.00	\$ 1,500.00	1.00	0.00	1.00	1,500.00	-	1,500.00	100.00%
7C	NEW ELECTRICAL SERVICE FEEDER, to include circuit breakers in existing panel, and all conduit/wiring, etc. as shown on the electrical drawings, complete in place	LS	1.00	\$ 1,500.00	\$ 1,500.00	1.00	0.00	1.00	1,500.00	-	1,500.00	100.00%
8C-CO1	SITE ELECTRICAL LIGHTING AND POWER, to include light fixtures, receptacles, conduit/wiring, energy and lighting control panet (timer) in weatherproof enclosure, including mounting, etc. as shown on electrical drawings, complete in place	LS	0.80	\$ 18,500.00	\$ 14,750.00	0.80	0.00	0.80	14,750.00	-	14,750.00	100.00%
CO 1A	Add custom made Amphibian NEMA 6P Enclosure	LS	1.00	\$ 6,600.00	\$ 6,600.00	1.00	0.00	1.00	6,600.00	-	6,600.00	100.00%
TOTAL					118,165.00				118,165.00	-	118,165.00	100.00%

AIA® Document G706™ – 1994
Contractor's Affidavit of Payment of Debts and Claims

PROJECT: <i>(Name and address)</i>	ARCHITECT'S PROJECT NUMBER:	OWNER ☒
Individual Park Improvements		
Flower Mound, TX	CONTRACT FOR: Cortadera, Culwell & Leonard Johns	ARCHITECT ☐
		CONTRACTOR ☐
TO OWNER: <i>(Name and address)</i>	CONTRACT DATED: February 2, 2015	SURETY ☐
Town of Flower Mound		OTHER ☐
2121 Cross Timbers Rd.		
Flower Mound, TX 75028		

STATE OF: Texas

COUNTY OF: Wise

The undersigned hereby certifies that, except as listed below, payment has been made in full and all obligations have otherwise been satisfied for all materials and equipment furnished, for all work, labor, and services performed, and for all known indebtedness and claims against the Contractor for damages arising in any manner in connection with the performance of the Contract referenced above for which the Owner or Owner's property might in any way be held responsible or encumbered.

EXCEPTIONS:

N/A

SUPPORTING DOCUMENTS ATTACHED HERETO:

- Consent of Surety to Final Payment. Whenever Surety is involved, Consent of Surety is required. AIA Document G707™, Consent of Surety, may be used for this purpose.

Indicate Attachment ☐ Yes ☐ No

The following supporting documents should be attached hereto if required by the Owner:

- Contractor's Release or Waiver of Liens, conditional upon receipt of final payment.
- Separate Releases or Waivers of Liens from Subcontractors and material and equipment suppliers, to the extent required by the Owner, accompanied by a list thereof.
- Contractor's Affidavit of Release of Liens (AIA Document G706A™).

CONTRACTOR: *(Name and address)*

2L Construction LLC

PO Box 397

Rhome, TX 76078

BY:

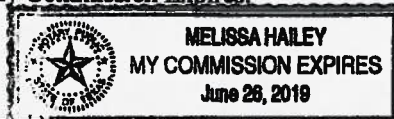

 (Signature of authorized representative)

 Dominick Leonardo, President
 (Printed name and title)

 Subscribed and sworn to before me
 on this date: 13th Day of January 2016

Notary Public:

My Commission Expires:



AIA Document G706A™ – 1994

Contractor's Affidavit of Release of Liens

PROJECT: <i>(Name and address)</i>	ARCHITECT'S PROJECT NUMBER:	OWNER ☒
Individual Park Improvements		
Flower Mound, TX	CONTRACT FOR: Cortadera, Culwell & Leonard Johns	ARCHITECT ☐
		CONTRACTOR ☐
TO OWNER: <i>(Name and address)</i>	CONTRACT DATED: February 2, 2015	SURETY ☐
Town of Flower Mound		OTHER ☐
2121 Cross Timbers Rd.		
Flower Mound, TX 75028		

STATE OF: Texas

COUNTY OF: Wise

The undersigned hereby certifies that to the best of the undersigned's knowledge, information and belief, except as listed below, the Releases or Waivers of Lien attached hereto include the Contractor, all Subcontractors, all suppliers of materials and equipment, and all performers of Work, labor or services who have or may have liens or encumbrances or the right to assert liens or encumbrances against any property of the Owner arising in any manner out of the performance of the Contract referenced above.

EXCEPTIONS:

N/A

SUPPORTING DOCUMENTS ATTACHED HERETO:

1. Contractor's Release or Waiver of Liens, conditional upon receipt of final payment.
2. Separate Releases or Waivers of Liens from Subcontractors and material and equipment suppliers, to the extent required by the Owner, accompanied by a list thereof.

CONTRACTOR: *(Name and address)*

2L Construction LLC

PO Box 397

Rhome, TX 76078

BY:


(Signature of authorized representative)

Dominick Leonardo, President

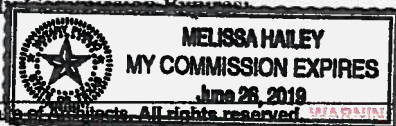
(Printed name and title)

Subscribed and sworn to before me
on this date: 13th Day of January 2016

Notary Public:

Melissa Hailey

My Commission Expires



**CONSENT OF
SURETY COMPANY
TO FINAL PAYMENT**

OWNER ☒
ARCHITECT ☐
CONTRACTOR ☐
SURETY ☐
OTHER

Bond No: PB-02253100358

PROJECT: Individual Park Improvements
(Cortadera, Culwell and Leonard Johns Parks)
Flower Mound, TX

TO: (Owner) Town of Flower Mound
2121 Cross Timbers Rd.
Flower Mound, TX 75028

PROJECT NO. 2015-30

CONTRACT FOR: Park Improvements

CONTRACTOR: 2L Construction, LLC
P.O. Box 397
Rhome, TX 76078

CONTRACT DATE: February 2, 2015

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above,
the

Philadelphia Indemnity Insurance Company

, SURETY,

on Bond of

2L Construction, LLC

, CONTRACTOR,

hereby approves of the final payment to the Contractor, and agrees that final payment to the Contractor shall
not relieve the Surety Company of any of its obligations to

Town of Flower Mound

, OWNER,

as set forth in the said Surety Company's bond.

IN WITNESS WHEREOF,

the Surety has hereunto set its hand this 4th day of January, 2016

Philadelphia Indemnity Insurance Company

Surety Company

Charles K. Miller

Signature of Authorized Representative

Charles K. Miller, Attorney-in-Fact

Title

Attest:
(Seal)Shannon Lewis

PHILADELPHIA INDEMNITY INSURANCE COMPANY

One Bala Plaza, Suite 100

Bala Cynwyd, PA 19004

Power of Attorney

KNOW ALL PERSONS BY THESE PRESENTS: that PHILADELPHIA INDEMNITY INSURANCE COMPANY (the Company), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, does hereby constitute and appoint: Steve Rickenbacher, Sherrel Breazeale, Clint Norris, David C. Oxford, Steven Lott, Sheri Renee Allen, Tommy Bret Tomlinson, Steven J. Zinecker, Jessica Luna Montgomery, Charles K. Miller, Shannon Lewis, Peggy Gradel Hogan of Southwest Assurance Group, Inc.

Its true and lawful Attorney(s) in fact with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business and to bind the Company thereby, in an amount not to exceed \$25,000,000

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of PHILADELPHIA INDEMNITY INSURANCE COMPANY at a meeting duly called the 1st day of July, 2011.

RESOLVED:

That the Board of Directors hereby authorizes the President or any Vice President of the Company to: (1) Appoint Attorney(s) in Fact and authorize the Attorney(s) in Fact to execute on behalf of the Company bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof and to attach the seal of the Company thereto; and (2) to remove, at any time, any such Attorney-in-Fact and revoke the authority given. And, be it

**FURTHER
RESOLVED:**

That the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or certificate relating thereto by facsimile, and any such Power of Attorney so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with the respect to any bond or undertaking to which it is attached.

IN TESTIMONY WHEREOF, PHILADELPHIA INDEMNITY INSURANCE COMPANY HAS CAUSED THIS INSTRUMENT TO BE SIGNED AND ITS CORPORATE SEAL TO BE AFFIXED BY ITS AUTHORIZED OFFICE THIS 7TH DAY OF FEBRUARY 2013.



(Seal)

Robert D. O'Leary Jr., President & CEO
Philadelphia Indemnity Insurance Company

On this 7th day of February 2013, before me came the individual who executed the preceding instrument, to me personally known, and being by me duly sworn said that he is the therein described and authorized officer of the PHILADELPHIA INDEMNITY INSURANCE COMPANY; that the seal affixed to said instrument is the Corporate seal of said Company; that the said Corporate Seal and his signature were duly affixed.



Notary Public:

residing at:

Bala Cynwyd, PA

(Notary Seal)

My commission expires:

March 22, 2016

I, Craig P. Keller, Executive Vice President, Chief Financial Officer and Secretary of PHILADELPHIA INDEMNITY INSURANCE COMPANY, do hereby certify that the foregoing resolution of the Board of Directors and this Power of Attorney issued pursuant thereto are true and correct and are still in full force and effect. I do further certify that Robert D. O'Leary Jr., who executed the Power of Attorney as President, was on the date of execution of the attached Power of Attorney the duly elected President of PHILADELPHIA INDEMNITY INSURANCE COMPANY,

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 4th day of January, 2016.



Craig P. Keller, Executive Vice President, Chief Financial Officer & Secretary
PHILADELPHIA INDEMNITY INSURANCE COMPANY



TOWN COUNCIL AGENDA ITEM NO. 11

CONSENT ITEM

DATE: March 21, 2016

FROM: Kari Biddix, Park Development Manager

ITEM: Consider approval of the purchase and installation of play equipment for the Staton Oak Park Playground project, from Child's Play, Inc., through the Texas Local Government Purchasing Cooperative, in the amount of \$170,466.00.

BACKGROUND INFORMATION: The Community Development Corporation and Town Council approved various playground upgrades in the Fiscal Year 2014-2015 after recommendation from the Parks, Arts and Library Services Board for Park and Recreation needs for the Capital Improvement Program projects. Staton Oak Park playground is one of the playgrounds funded.

BOARD REVIEW/CITIZEN FEEDBACK: The PALS Board supports the purchase of this play equipment.

FISCAL IMPACT: \$170,466.00

Proposed Expenditure:	Account Number(s):
\$170,466.00	317-110-90815

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

DW

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Buyboard Proposal
2. Play Equipment picture

RECOMMENDATION: Move to approve purchase and installation of play equipment for the Staton Oak Park Playground project, from Child's Play, Inc., through the Texas Local Government Purchasing Cooperative, in the amount of \$170,466.00.

**ADDRESS**

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

SHIP TO

Staton Oak Park
 3100 Staton Drive
 Flower Mound, TX 75028

QUOTE #	DATE	EXPIRATION DATE
2016-162	02/09/2016	04/01/2016

PROJECT SALES REP
 Staton Oak Park KR

DESCRIPTION	QTY	PRICE EACH	AMOUNT
BCISNUIN Custom Nucleus/Intensity Series Playground Structure - Ages 5-12, Kid Force Spinner & Age Sign - #36-91174-1 & Freight	1	95,825.00	95,825.00
Misc Small Sculpted Acorn (4'L x 3'W x 3'T)	2	4,645.50	9,291.00
DYNMisc NP-CCB122 - 4' Log Bench	3	2,525.00	7,575.00
FHP-Misc Imbarimba - In Ground Mount	1	3,990.00	3,990.00
Site Work Removal of Existing Play Structure, Wood Fiber, Dumpster, Haul Off & New Log Bench Pads	1	3,350.00	3,350.00
Installation Professional Turn-Key Installation of All Playground Equipment, Acorns, Log Benches & Imbarimba	1	23,730.00	23,730.00
PIP Rubber Poured-In-Place Rubber Surfacing - 3.5" Thickness with 50/50 Black & Color - (5) Oak Leaf Patterns ***BUYBOARD CONTRACT # 423-13***	1	26,705.00	26,705.00

TOTAL

\$170,466.00

Proposal # Staton Oak Park-1

ATTACHMENT 2



Staton Oak Park Child's Play, Inc.





TOWN COUNCIL AGENDA ITEM NO. 12

CONSENT ITEM

DATE: March 21, 2016

FROM: Doug Stevens, Assistant Director of Public Works

ITEM: Consider approval of an emergency agreement for the construction of Bakers Branch Stabilization at 1601 Twilight Drive project in the amount of \$126,618.00, and the construction of McKamy Creek Bank Stabilization at 3400 Pheasant Court project, in the amount of \$32,190.00.

BACKGROUND INFORMATION: This item includes the emergency purchase of creek bank stabilization and erosion control services from Knight Erosion Control, Inc., using their proprietary bag-wall product. The emergency construction of a 153 linear foot, 16-foot high bag-wall, in the amount of \$126,618.00 is necessary to prevent further erosion along Bakers Branch at 1601 Twilight Drive, where past rainfalls have fallen two large diameter trees and is threatening an existing sanitary sewer main and private property.

This item also includes the scheduled installation of a bag-wall to provide creek bank stabilization along McKamy Creek, in the amount of \$32,190, where erosion is threatening to expose an existing sanitary sewer main located east of 3400 Pheasant Court, within the Sanctuary Addition. The McKamy Creek Bank Stabilization project is an approved FY2015-16 Capital Improvement Program project, and is funded by Stormwater Fees.

The Town has previously issued bids for this service. As a result, it was determined that the bag-wall product was a proprietary product offered solely by Knight Erosion Control, Inc. The purchase falls within the definition of a procurement that is available from only one source (Chapter 252 of the local Government Code) and is exempt from competitive bidding requirements. This proprietary product is sold exclusively to Knight Erosion Control, Inc., by the manufacturer, Quikrete-Dallas.

FISCAL IMPACT: \$158,808.00

Proposed Expenditure:	Account Number(s):
\$126,618.00	610-590-98906 Bakers Branch
\$32,190.00	610-590-98907 McKamy Creek

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

LEGAL REVIEW: N/A.

ATTACHMENTS:

1. Proposal from Knight Erosion Control, Inc. (Bakers Branch at 1601 Twilight Dr)
2. Proposal from Knight Erosion Control, Inc. (McKamy Creek at 3400 Pheasant Ct)
3. Sole Source Letter

RECOMMENDATION: Move to approve an emergency agreement for the construction of Bakers Branch Stabilization at 1601 Twilight Drive in the amount of \$126,618.00, and the construction of McKamy Creek Bank Stabilization at 3400 Pheasant Court project, in the amount of \$32,190.00.

Proposal


KNIGHT EROSION CONTROL, INC.

P.O. Box 202541

Arlington, Texas 76006

Metro: 817/640-4442 Fax: 817/649-7782

www.knighterosioncontrol.com

Date: January 20, 2016

Proposal No. 1

Proposal Submitted To

Town of Flower Mound
 Attn: Doug Stevens
 2120 Cross Timbers Rd.
 Flower Mound, TX 75028
 972/874-6411 Fax: 972/874-6480
 Doug.stevens@flower-mound.com

Work Performed At

Armor failing creek embankment and protect Town of Flower Mound's sewer line with an **R-Rap** wall. Site located in The Oaks of Shadow Ridge, 1601 Twilight Drive, Flower Mound.

We hereby propose to furnish all the materials and perform the labor necessary for the completion of approximately 153 L.F. of **R-Rap** wall 10 to 16 feet high. Bags will be biodegradable. A continuous gravel drain with fabric wrapped to soil side with a continuous drain pipe will be installed at base of wall to relieve hydraulic pressures and trap the soil. Necessary steel will be installed to ensure proper strength along with a heavy duty footing. Proposal includes clearing and haul off, excavation, gravel backfill, geo-grid, and Manta Ray earth anchors.

R-Rap Wall	\$ 120,118.00
TOPO survey & hydrology study	<u>\$ 6,500.00</u>
Total	\$ 126,618.00

All material is guaranteed to be as specified and the above work to be performed in accordance with any drawings and/or specifications submitted for above work and completed in a workmanlike manner for the amount listed above with payments to be made as follows: Mobilization/draw at 50% complete/balance upon completion

Any alteration or deviation from the above specifications involving extra costs will be executed only upon written orders and will become an extra charge over and above the estimate. All agreements are contingent upon strikes, accidents or delays beyond our control. Workers' Compensation and Public Liability Insurance on above work will be supplied by **KNIGHT EROSION CONTROL, INC.**

Respectfully submitted by **KNIGHT EROSION CONTROL, INC.**

Per


 Russell Hergesell

Note: This proposal may be withdrawn by us if not accepted within 30 days.

Proposal

**KNIGHT EROSION CONTROL, INC.**

P.O. Box 202541

Arlington, Texas 76006

Metro: 817/640-4442 Fax: 817/649-7782

www.knighterosioncontrol.com

Date: January 20, 2016

Proposal No. 1

Proposal Submitted To

Work Performed At

Town of Flower Mound
Attn: Doug Stevens
2120 Cross Timbers Rd.
Flower Mound, TX 75028
972/874-6411 Fax: 972/874-6480
Doug.stevens@flower-mound.com

Armor Creek embankment with **R-Rap** wall,
2 - **R-Rap** drop structures with **R-Rap** splash pad,
at 3400 Pheasant Ct, Flower Mound, TX

We hereby propose to furnish all the materials and perform the labor necessary for the completion of **R-Rap** as noted below. Bags will be biodegradable. A continuous gravel drain with fabric wrapped to soil side with a continuous drain pipe will be installed at base of wall to relieve hydraulic pressures and trap the soil. Necessary steel will be installed to ensure proper strength.

- 48 L.F of **R-Rap** wall, 7-9 ½ feet high
- 2 - **R-Rap** drop structures, 10' x 2 ½' x 5'
10' x 2 ½' x 3'
- 1 - **R-Rap** splash pad, 10' x 5' with toe wall

R-Rap Wall & Splash Pad \$ 32,190.00

All material is guaranteed to be as specified and the above work to be performed in accordance with any drawings and/or specifications submitted for above work and completed in a workmanlike manner for the amount listed above with payments to be made as follows: Upon completion

Any alteration or deviation from the above specifications involving extra costs will be executed only upon written orders and will become an extra charge over and above the estimate. All agreements are contingent upon strikes, accidents or delays beyond our control. Workers' Compensation and Public Liability Insurance on above work will be supplied by **KNIGHT EROSION CONTROL, INC.**

Respectfully submitted by **KNIGHT EROSION CONTROL, INC.**

Per

Russell Hergesell

Note: This proposal may be withdrawn by us if not accepted within 30 days.



QUIKRETE- DALLAS
1008 East Highway 67
Alvarado, Tx 76009-3302
(817) 783-3010
(817) 783-3089 Fax

February 2, 2016

Mr. Doug Stevens
Town of Flower Mound
2120 Cross Timbers Road
Flower Mound, TX 75028

Dear Mr. Stevens,

This letter is to serve as documentation that Knight Erosion Control (KEC) purchases their Rip Rap product exclusively from the Quikrete Companies. We supply them with a proprietary bag sold exclusively to KEC. Carl Hergesell and KEC have been doing business with Quikrete, formerly Rich Mix Products since the mid 1980's.

Sincerely,

A handwritten signature in black ink that reads "Andy Morton". The signature is written in a cursive, flowing style.

Andy Morton
Vice President Sales – SW Regional
The Quikrete Companies
1008 E. HWY 67
Alvarado, TX 76009





TOWN COUNCIL AGENDA ITEM NO. 13

CONSENT ITEM

DATE: March 21, 2016

FROM: Brian Waltenburg, P.E., Senior Project Engineer

ITEM: Consider approval of a Professional Services Agreement for the design phase services for the FM2499 at FM3040 24-Inch Water Line Crossing Replacement project, with Kimley-Horn and Associates, Inc., for \$20,900.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The FM2499 at FM3040 24-Inch Water Line Crossing Replacement project includes the preparation of design plans and cost estimate data for construction of approximately 325 linear feet of 24-inch water line. This project is necessary to replace the leaking water line under FM 2499.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$20,900.00

Proposed Expenditure:	Account Number(s):
\$20,900.00	630-960-98841

Finance Review by: Debra Wallace, Assistant Town Manager/CF (DW)

LEGAL REVIEW: The Town's standard 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 Professional Services Agreement.

ATTACHMENTS:

1. Professional Services Agreement

RECOMMENDATION: Move to approve the Professional Services Agreement for the design phase services for the FM2499 at FM3040 24-Inch Water Line Crossing Replacement project, with Kimley-Horn and Associates, Inc., for \$20,900.00; and authorize the Mayor to execute 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 12750 Merit Drive, Suite 1000, Dallas, Texas 75251.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to surveying, design and providing construction documents for the FM 2499 @ FM 3040 Water Line Replacement project; and

WHEREAS, CONSULTANT is an engineering firm qualified to provide such services and is willing to undertake the performance of such services for the TOWN in exchange for fees hereinafter specified;

TERMS OF AGREEMENT

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

I.

Employment of Consultant

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

II.

Scope of Services

CONSULTANT shall perform such services as are necessary to provide services for the FM 2499 @ FM 3040 Water Line Replacement 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 Twenty Thousand Nine Hundred and No/100 Dollars (\$20,900.00). This total payment for services includes CONSULTANT's ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT. If CONSULTANT retains any subcontractors to perform any of the work, CONSULTANT acknowledges that payments to such subcontractors are due and payable in accordance with the provisions of Texas Government Code Section 2251.022, and that interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.

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

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

Assuming that TOWN agrees with the invoice, that TOWN has not determined any of the work to be unsatisfactory, or that TOWN otherwise does not dispute any of the amounts billed, TOWN shall make payments in the amount shown by CONSULTANT's approved monthly statements and other documentation submitted in compliance with the Texas Prompt Payment Act, Texas Government Code Chapter 2251.

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

IV.

Revisions of the Scope of Services

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

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

V.

Term

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

VI.

Contract Termination Provision

Notwithstanding any other provision of this Contract, this Contract may be terminated at any time by TOWN for any reason, with or without cause, by providing

CONSULTANT thirty (30) days written notice of such termination. Upon receipt of such notice, CONSULTANT shall immediately terminate working on, placing orders or entering into contracts for supplies, assistance, facilities or materials in connection with this Contract and shall proceed to promptly cancel all existing contracts insofar as they are related to this Contract.

VII.

Ownership of Documents

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

VIII.

Insurance

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

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

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

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

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

Anthony Samarripas, P.E.
Project Manager
Kimley-Horn and Associates, Inc.
12750 Merit Drive
Suite 1000
Dallas, Texas 75251
972-770-1314 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.

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:

Title:

Date Signed: _____

State of Texas §

§

County of _____ §

This instrument was acknowledged before me on the _____ day of _____, 20____, by _____ in his capacity as _____ of _____, a _____ 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 _____.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____ DAY OF ____, 20____.

 Notary Public, State of Texas

My Commission Expires:

ATTACHMENT A

SCOPE OF SERVICES

PROJECT NAME: FM 3040 Water Line Relocation

PROJECT UNDERSTANDING

An existing 24" water line which runs along FM 3040 has been found to be leaking at the intersection of FM 2499. Town staff as determined that the line is leaking within the casing pipe underneath FM 2499. The Town has requested that Kimley-Horn provide design plans for the replacement of the damaged pipeline. The project will involve constructing another water line across FM 2499 via a bore. Also required will be miscellaneous piping, isolation valves, connections to the existing water lines and traffic control plan. The Town will prepare the contract book for the project which will include front end documents as well as required technical specifications. Total approximate linear footage of water line is 325 feet.

SCOPE OF PROFESSIONAL SERVICES

TASK 1: SURVEY

Perform field survey to identify and locate existing topographic elements within the alignment corridor including, but not limited to, the following:

- Property pins
- Existing pavement, curbs, sidewalks, barrier free ramps, etc.
- Lane striping
- Driveways
- Existing storm sewer inlets, manholes, junction boxes, outfalls, and erosion control
- Culverts and bridges
- Guardrail
- Utility manholes, vaults, water valves, water meters, sprinkler heads, telephone poles, power poles, utility markers, other public utilities, and franchise utilities
- Traffic signal poles, cabinets, and other signal equipment
- Signs (excluding temporary signs)
- Buildings
- Retaining walls
- Fence limits and material types
- Other applicable physical features that could impact design
- Survey utilities located by Town staff

- Adjacent easements which may impact design

Review the final topographic drawing in digital format (including one foot contours and breaklines) showing the features located in the field as well as right-of-way strip map information. Document and incorporate minor changes into the base map. Minor changes are anticipated not to require additional survey ties. If field work by a survey crew is required it shall be considered additional services.

TASK 2: DESIGN

A. Design

Conduct kick-off meeting with the Town during monthly progress meetings

Prepare plan and profile sheet as necessary based on existing surface features and current design standards. Plan sheet will consist of an 11"x17" sheet at a scale of 1"=40' horizontal and 1"=4' vertical.

Perform data collection and record research to identify existing public and franchise utilities within proposed water line alignment. Coordinate with Town staff regarding any existing utilities which will be required to be uncovered.

Prepare water line connection details for proposed connections to existing bar-wrapped concrete cylinder pipe.

Prepare construction details as required.

Submit to the Town 90% plans and opinion of probable construction cost for review and comments.

Submit to the franchise utility companies 90% complete plans for review and comment.

Perform a cursory review of technical specifications prepared by the Town. Provide comments and recommendations regarding specifications.

Conduct meeting with Town to review 90% plans during monthly progress meetings.

Make revisions based on the Town's review of the 90% submittal.

B. Design Deliverables

Three (3) copies of the 90% Construction Plans.

Three (3) copies of the Opinion of Probable Construction Cost.

C. Final Design

Prepare 100% Plans.

D. Final Design Deliverables

Five (5) copies of the Final Construction Plans.

One (1) copy of Reproducible Bidding Documents (Plans).

Print and issue 20 sets of plans for Town Use for Bidding

E. Meetings

Kick-off meeting with the Town.

Meet with Town to review 90% plans.

F. Services provided by the Town

Review and comment on 90% complete plans and opinion of probable construction cost.

TASK 3: TRAFFIC CONTROL

Prepare two traffic control plans for anticipated work within FM 2499 and FM 3040. Prepare traffic control details and general notes.

Coordinate with TxDOT regarding traffic control along FM 2499. Address TxDOT comments.

TASK 4: RECORD DRAWINGS

This task assumes a maximum of eight (8) total staff hours will be required to address contractor changes and making plan copies, CD and other required deliverables.

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

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:

- 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 engineering data and reports for assistance to the Town.
- Providing professional services associated with the discovery of any hazardous waste or materials in the project route.
- Providing additional presentations to the Town Council.
- 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 additional public meetings during the project.
- Providing professional services associated with the construction phase of the project.
- Attending a Pre Bid Meeting
- Preparing a Bid Tabulation or Recommendation Letter
- Reviewing Contractor's References
- Cathodic Protection Design
- Preparing contract documents including front end documents and technical specifications.
- Provide any bidding phase services.
- Providing construction phase services.
- Any services not listed in the Scope of Services.

ATTACHMENT B
COMPENSATION

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

TASK 1 – Survey	\$3,000
TASK 2 – Design	\$13,800
TASK 3 – Traffic Control	\$3,100
TASK 4 – Record Drawings	\$1,000
<u>TOTAL</u>	<u>\$20,900</u>

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



TOWN COUNCIL AGENDA ITEM NO. 14

CONSENT ITEM

DATE: March 21, 2016

FROM: Matthew J. Hotelling, P.E., PTOE, Traffic Engineer

ITEM: Consider approval of a Professional Services Agreement with Kimley-Horn and Associates, Inc., to provide professional engineering services associated with the ADA Transition Plan & Implementation project – 2016 Update, in the amount of \$100,000.00; and authorization for the Mayor to execute the same on behalf of the Town.

BACKGROUND INFORMATION: Under Title II of the Americans with Disabilities Act (ADA), municipalities with more than 50 employees are required to have an ADA Transition Plan. The ADA Transition Plan has the following basic requirements:

- Designate an ADA Coordinator
- Develop and post an ADA Policy Statement
- Grievance Procedures
- Self-Evaluation (Public Right of Way, Buildings, Parks, Programs, Design Criteria, Website etc.)
- Develop a Transition Plan

This project will continue the work done as part of the initial ADA Transition Plan that was adopted in November of 2015. One of the major aspects of the ADA Transition Plan is to complete the self-evaluation. The self-evaluation portion of the ADA Transition Plan will take several years to complete. This update will inventory several Facilities, Parks and Sidewalk segments as well as provide a Standard Operating Procedure for Parks and Recreation Programs. It will also update the Town's Construction Standards and additional training. The ADA Transition Plan is a living document that lays out priorities for implementation of corrective actions with a yearly schedule that brings all aspects of the Town into compliance with the ADA. The Town will continue to use summer interns to catalog residential streets. Approximately 41.5 miles of residential streets sidewalks have already been cataloged.

FISCAL IMPACT \$100,000.00

Proposed Expenditure:	Account Number(s):
\$100,000.00	531-220-70050

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

LEGAL REVIEW: The Town's standard 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 Professional Services Agreement.

ATTACHMENTS:

1. Professional Services Agreement

RECOMMENDATION: Move to approve a Professional Services Agreement with Kimley-Horn and Associates, Inc., to provide professional engineering services associated with the ADA Transition Plan & Implementation project – 2016 Update, in the amount of \$100,000.00; 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, Suite 950, Fort Worth, Texas 76102

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to the update of the Town's ADA Self Evaluation as part of the Town's ADA Transition Plan; and

WHEREAS, CONSULTANT is a professional civil engineering and planning firm qualified to provide such services and is willing to undertake the performance of such services for the TOWN in exchange for fees hereinafter specified;

TERMS OF AGREEMENT

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

I.

Employment of Consultant

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

II.

Scope of Services

CONSULTANT shall perform such services as are necessary to provide civil engineering services for ADA evaluation and design services, 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 One Hundred Thousand and No/100 Dollars (\$100,000.00). 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 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 show support for the percentage complete for which payment is sought. Each invoice shall also state the percentage of work completed on the Project, the total of the current invoice amount and a running total balance for the Project to date.

Assuming that TOWN agrees with the invoice, that TOWN has not determined any of the work to be unsatisfactory, or that TOWN otherwise does not dispute any of the amounts billed, TOWN shall make payments in the amount shown by CONSULTANT's approved monthly statements and other documentation submitted in compliance with the Texas Prompt Payment Act, Texas Government Code Chapter 2251.

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

IV.

Revisions of the Scope of Services

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

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

V.

Term

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

VI.

Contract Termination Provision

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

VII.

Ownership of Documents

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

VIII.

Insurance

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

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

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

Matthew J. Hotelling, P.E., PTOE, Traffic Engineer
 Town of Flower Mound
 2121 Cross Timbers Road
 Flower Mound, Texas 75028
 972-874-6303 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:

Matthew J. Hotelling, P.E., PTOE, Traffic Engineer
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874- 6303 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:

C. Brian Shamburger, P.E., PTOE
Kimley-Horn and Associates, Inc.
801 Cherry Street
Suite 950
Fort Worth, Texas 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: *Scott R. Arnold*
 Name: Scott R. Arnold
 Title: Assistant Secretary

Date Signed: March 2, 2016

State of Texas §

County of Tarrant §

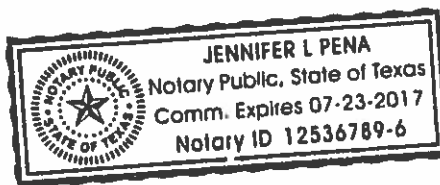
This instrument was acknowledged before me on the 2nd day of March, 2016, by Scott R. Arnold in his capacity as Assistant Secretary of Kimley-Horn and Associates, Inc. a Private Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed 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 2nd DAY OF March, 2016.

Jennifer L. Pena
 Notary Public, State of Texas

My Commission Expires:

7-23-17



ATTACHMENT A

SCOPE OF SERVICES

PROJECT NAME: ADA Transition Plan Update

PROJECT UNDERSTANDING

The Consultant will prepare an update to the Town of Flower Mound's 2015 Americans with Disabilities Act (ADA) Self-Evaluation and Transition Plan, including a review of facilities, programs, activities, and other related services provided by the Town. The project will include a review of Town facilities, parking lots, existing sidewalk inventory, parks and an update of Town construction standards and ordinances.

SCOPE OF PROFESSIONAL SERVICES

Task 1 – Project Management

- 1.1 The Consultant will maintain project records, budgets, and communications for the duration of the project. The project is assumed to be 6 months.
- 1.2 The Consultant will prepare monthly progress reports.
- 1.3 The Consultant anticipates up to 6 monthly calls between the Consultant's Project Manager and the designated Client staff to review the status of tasks and to keep the schedule current.

Task 2 – Self-Evaluation

- 2.1 Facilities Review. Establish field teams which will conduct inventories based on forms developed by the Consultant in consultation with the Client. All inventory data will be compatible with the Client's existing Geographic Information System (GIS).

2.1.1 Facilities Listing

- 2.1.1.1 Buildings and Parking Lots – The following buildings owned or leased by the Client will be included in this project:

- Fire Station 2 (4401 Shiloh Road)
- Fire Station 3 (2020 Woodhill Lane)
- Fleet Building (1101 Duncan Lane)

- 2.1.1.2 Parks and Parking Lots – The following parks and associated trails will be included in this project:

- Bluebonnet Park
- Leonard Johns Park
- Westchester Park
- Glenwick Park
- Stanton Oak Park
- Bakersfield Park Addition (Cricket Pitch area only)

- 2.1.1.3 Sidewalks – Up to six (6) linear miles of arterial sidewalk. The Consultant will inventory and assess condition per ADA criteria the existing sidewalk, curb ramps, and path of travel along the Client's existing arterial sidewalk network.

- Morriss Road (FM 3040 to FM 1171)
- Garden Ridge Boulevard (Kirkpatrick Lane to Stewart Lane)

2.2 Survey Data Report. The Consultant will create a separate inventory and cost report for each facility type. Each survey report will identify compliance status of each facility with regards to both federal and state standards and include the following:

- Listing of facilities that are in compliance with current standards.
- Listing of facilities that are not in compliance with current ADA requirements.
- Recommended actions to resolve non-compliance issues for each facility.
- Prioritized list of improvements using criteria developed by the Consultant and Client staff.
- “Cost report” that assigns conceptual budget estimates to each recommended action.
- Photolog summary for each facility.
- Catalog of sidewalk, curb ramp, and signalized intersection data compatible with the Client’s existing GIS databases (including mapping of the various facility types).

Task 3 – Transition Plan Update

3.1 Update Town Construction Standards. The Consultant will update the 2010 Town of Flower Mound Engineering Services Construction Standards (Volume II of II) for compliance with the ADA. Additional standard details sheets will be created if updating an existing sheet is not sufficient to communicate the information below. All standards details will be in AutoCAD format. All existing Construction Standard CADD files will be provided by the Town to the Consultant.

- Incorporate all recommendation in Section 3.1.8 of the November 2015 ADA Self-Evaluation and Transition Plan;
- Directional curb ramps at a typical 3-leg residential/thoroughfare intersection;
- Directional curb ramps at a typical 4-leg residential/thoroughfare intersection;
- Installation of root barriers for any trees planted within a specified offset from the sidewalk;
- Specific requirements for marked accessible on-street parking spaces (number and location of required spaces); Do not simply incorporate Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way (PROWAG) by reference; and
- Other Consultant recommended additions found in PROWAG (e.g. common issues found during construction, sidewalk leading up to building entrances, construction elements required for a certificate of occupancy).

3.2 Update Town Ordinances. The Consultant will update the current Town of Flower Mound Ordinances for compliance with the ADA.

- Incorporate all recommendation in Section 3.1.7 of the November 2015 ADA Self-Evaluation and Transition Plan; and
- Add references to the “latest edition” of PROWAG as needed.

3.3 Develop a Standard Operating Procedure for Town Community Services/Parks and Recreation Programs. The Consultant will work directly with an assigned Parks and Recreation Department

representative to develop a Standard Operating Procedure (SOP) for Town Community Services/Parks and Recreation Programs to use as a general guide. The SOP will include:

- Incorporate findings from participation policy report completed in Phase I
 - Make recommendations for revisions to current participation policies;
 - Add language specific to participation of citizens with disabilities; and
 - Provide guidance on turn away options or requests for attendants.
- 3.4 Prioritize the accessibility improvements by facility type and severity, providing cost estimates for the recommended modifications.
- 3.5 Evaluate and make recommendations on exceptions or exemptions that may apply under the terms of the ADA. This may include exemptions related to structures of historic significance, alterations affecting the fundamental nature of a service, activity or program under financial and administrative burden, or structural changes.
- 3.6 Define an ongoing budget needed for ADA modifications. Potential funding sources will be researched and recommended to most effectively achieve compliance.
- 3.7 Update the Town ADA Action Log developed by the Consultant in the initial phase of the ADA Self-Evaluation and Transition Plan project to include all facilities in Task 2.
- 3.8 Develop a formal process for requesting modifications regarding employment, programs, or activities, including record keeping, for both Title I and Title II requests.

Task 4 – Documentation

- 4.1 Draft Self-Evaluation and Transition Plan Update. Based on the self-evaluation and facility compliance assessment, the Consultant will prepare a draft Self-Evaluation and Transition Plan Update for the Client. The plan will include:
- An executive summary which will describe the project purpose, process, and most significant findings;
 - A review of policies and summary of recommendations for improvement will be provided as described in Task 2;
 - A phased schedule with cost estimates for the removal of facility barriers that cannot be resolved through relocation of services, the provision of auxiliary aids, or equivalent facilitation; and
 - The Consultant will provide an electronic copy in Adobe PDF format to the Client.
- 4.2 Final Self-Evaluation and Transition Plan Update. Following review by the Client and relevant community review of Draft Plan, the Consultant will incorporate comments and prepare the Final Plan for presentation.

Task 5 – Staff Training

- 5.1 Conduct staff training session(s), up to eight (8) hours, in providing accessible programs, activities, and services. The training will include disabilities etiquette, technologies, and procedures that can assist Client staff in providing services to people with disabilities as well as the technical information necessary to know where the risk factors are in terms of litigation. Any

request to record, videotape, or reproduce any of the training materials with the intent to train outside consultants and contractors will be considered additional services.

Task 6 – Meetings

- 6.1 **Progress Meetings.** Up to two (2) progress meetings with Client staff and the ADA Liaison Committee.
- 6.2 **Town Planning and Zoning Commission Meeting.** Up to one (1) Town Planning and Zoning Commission meeting to present updated Construction Standards and Town Ordinances.
- 6.3 **Town Council Meeting.** Up to one (1) Town Council meeting to present the Draft Self-Evaluation and Transition Plan Update.

Schedule: The Consultant will provide its services as expeditiously as practicable and work with the Client to develop a mutually agreeable schedule.

Deliverables: The Consultant will deliver the following materials to the Client:

- 1. Electronic copy in Adobe PDF format of the Draft ADA Self-Evaluation and Transition Plan and planning level map of proposed improvements.
- 2. Three (3) paper copies and electronic copy in Adobe PDF format of the Final ADA Transition Plan, including appendices, and planning level map of proposed improvements.
- 3. Field work in GIS format, compatible with the Client's GIS system.

Terms of compensation: The Consultant will perform the services in Tasks 1 – 6 for lump sum fee of \$100,000.

All permitting, application, and similar project fees will be paid directly by the Client.

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:

- 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.
- Any services not listed in the Scope of Services.
- Meetings in addition to those listed in the scope of services.

ATTACHMENT B
COMPENSATION

The Consultant will provide the Scope of Services for a lump sum fee of \$100,000.

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



TOWN COUNCIL AGENDA ITEM NO. 15

CONSENT ITEM

DATE: March 21, 2016

FROM: David Bauer, Construction Manager

ITEM: Consider approval of a Supplement to the Harris County Department of Education Choice Partners Cooperative Contract Between the Town of Flower Mound and Basic IDIQ, through an Interlocal Agreement provided through the Harris County Department of Education with Basic IDIQ, for the construction award of a Temporary Fire Station to cover the Canyon Falls Development area, which will transition into the Western Operations and Maintenance Facility, in the amount of \$771,398.40; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: A Fire Fighting Facility in western Flower Mound is paramount to serving the rapidly developing Canyon Falls Development, including the new school that is anticipated to be open this fall. This facility will provide faster response times to emergency related matters that arise in this area. Once funding is identified for a permanent facility, this facility will be converted into the Western Operations and Maintenance Facility.

Pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code and Chapter 271, Subchapter F of the Texas Local Government Code, this Interlocal and Cooperative Purchasing Program Contract was made and entered into by and between the HCDE, located in Houston, Texas, and Town of Flower Mound on May 21, 2015 for the purpose of providing the materials and services required for public projects. Basic IDIQ is a member of this Interlocal Cooperative Agreement and through the competitive bidding process utilized by HCDE, the Town of Flower Mound is able to take advantage of the contract between HCDE and Basic IDIQ, Inc. The Supplement to the Cooperative Contract provides for additional terms and conditions to the agreement, as well as project specific scope and pricing.

FISCAL IMPACT: \$771,398.40

Proposed Expenditure:	Account Number(s):
\$600,000.00	505-111-98130
\$171,398.40	630-960-98130

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

LEGAL REVIEW: The Interlocal Contract between HCDE and the Town, the HCDE and Basic IDIQ agreement and the Supplement to the HCDE Cooperative Contract have all been reviewed as to form and legality by Ashley D. Dierker of Taylor, Olson, Adkins, Sralla, Elam, LLP on February 9, 2016.

ATTACHMENTS:

1. HCDE and Choice Partners Cooperative Terms and Conditions
2. Interlocal Contract Between HCDE and the Town of Flower Mound
3. Supplement to the Harris County Dept. of Education Choice Partners Cooperative Contract

RECOMMENDATION: Move to approve a Supplement to the Harris County Department of Education Choice Partners Cooperative Contract Between the Town of Flower Mound and Basic IDIQ, through an Interlocal Agreement provided through the Harris County Department of Education with Basic IDIQ, for the construction award of a Temporary Fire Station to cover the Canyon Falls Development area, which will transition into the Western Operations and Maintenance Facility, in the amount of \$771,398.40; and authorize the Mayor to execute same on behalf of the Town.



HARRIS COUNTY DEPARTMENT OF EDUCATION
CHOICE PARTNERS COOPERATIVE

10.0 Attachments

Issued by:
Choice Partners
6005 Westview Drive
Houston, TX 77055
Phone: 713-696-2122 | Fax: 713-696-0732
www.choicepartners.org

Name of Company Submitting Proposal: Basic IDIQ, Inc.

TABLE OF CONTENTS

Items below are components which comprise this bid/proposal package. Respondents are asked to review the proposal document and attachments package to be sure that all applicable parts are included. If any portion of the package is missing, please notify buyer immediately.

This attachment package must be completed, executed, and dated by the authorized bidder and must be scanned and uploaded in the Response Attachments section of your proposal in the HCDE eBid System

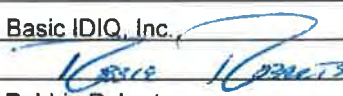
Attachments:

A) Execution of Offer	3
B) IRS Form W-9.....	4
C) Vendor Questionnaire.....	8
D) Proposer Certification Forms.....	9
E) Antitrust Certification.....	16
F) Conflict of Interest Questionnaire	17
G) Felony Conviction Form.....	19
H) SB9 Contractor Certification Form: Contractor Employees.....	20
I) SB9 Contractor Certification Form: Subcontractor	21
J) Cooperative Listing	22

EXECUTION OF OFFER

The undersigned Proposer has carefully examined all instructions, requirements, specifications, terms and conditions of this RFP and the Agreement and certifies:

1. It is a reputable company regularly engaged in providing goods and/or services necessary to meet the requirements, specifications, terms and conditions of the RFP and the Agreement.
2. It has the necessary experience, knowledge, abilities, skills, and resources to satisfactorily perform the requirements, specifications, terms and conditions of the RFP and the Agreement. Further, if awarded, the Proposer agrees to perform the requirements, specifications, terms and conditions of the RFP and the Agreement.
3. All statements, information, and representations prepared and submitted in response to this RFP are current, complete, true, and accurate. Proposer acknowledges that HCDE will rely on such statements, information, and representations in selecting the successful Proposer(s).
4. It is not currently barred or suspended from doing business with the Federal government, any of the members represented, or any of their respective agencies.
5. It shall be bound by all statements, representations, warranties, and guarantees made in its proposal.
6. Submission of a proposal indicates the Proposer's acceptance of the evaluation technique and the Proposer's recognition that some subjective judgments may be made by HCDE and its membership as part of the evaluation.
7. That all of the requirements of this RFP and the Agreement have been read and understood. In addition, compliance with all requirements, terms and conditions will be assumed by HCDE if not otherwise noted in the proposal.
8. The individual signing below has authority to enter into this on behalf of Proposer.
9. Proposer acknowledges that the Agreement may be canceled if any conflict of interest or appearance of a conflict of interest is discovered by HCDE.
10. This Agreement is subject to purchase orders duly authorized and executed by HCDE.

CORPORATE NAME:	Basic IDIQ, Inc.		
AUTHORIZED SIGNATURE:			
PRINT NAME:	Robbie Roberts		
TITLE:	Vice President/COO		
DATE:	July 10, 2015		
ADDRESS:	10713 RR 620N, Suite F622		
CITY, STATE, ZIP CODE:	Austin, Texas 78726		
PHONE:	(888) 402-4347	FAX:	(800) 711-6628
EMAIL ADDRESS:	rroberts@basicidiq.com		
WEBSITE URL	www.basicidiq.com		

This Section to be Completed by HCDE

Contract Number: 15/041JN-03 Term of contract: 8/18/2015 to 8/17/2017

Vendor shall honor all CPC Administrative Fees for any sales resulting from this Contract whether Vendor is awarded a renewal or not.

Approved by Harris County Department of Education:


 Jesus J. Amezcua, CPA
 Assistant Superintendent for Business Services


 Board Approval Date

5.0 CONTRACT TERMS AND CONDITIONS

These Contract Terms and Conditions are part of the final contract in each product and/or service contract awarded as a result of this CSP and are part of the terms and conditions of each Purchase Order and/or Job Order or proposal forms issued in connection with this CSP. Vendors are responsible for identifying any exceptions to these terms and conditions. **ANY EXCEPTIONS MUST BE NOTED DIRECTLY BELOW EACH OF THE RESPECTIVE TERMS AND CONDITIONS.** Proposals that are qualified with conditional clauses, items not called for, or other irregularities may be considered non-responsive by HCDE/CP and eliminated from further consideration.

CONTRACT BETWEEN HARRIS COUNTY DEPARTMENT OF EDUCATION AND

Basic IDIQ Inc. (“Vendor”)

For IDIQ Construction and Maintenance (Job Order Contracting)

This Contract is entered into between HCDE/CP and Vendor, having submitted a proposal in response to CSP # **15/041JN** issued by HCDE/CP and whose proposal has been accepted and awarded by HCDE/CP. In consideration of the mutual covenants and conditions contained in this Contract and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, HCDE/CP and Vendor, intending to be legally bound, and subject to the terms, conditions, and provisions of this Contract, agree as follows:

5.1. Definitions

The terms used in this Contract shall have the meanings assigned to them in **Section 1.0 Notice of Intent** of the CSP.

5.2. Use of Contract by CP members

Vendor agrees and understands that this CSP and Contract may be used to accomplish work for HCDE/CP, a local governmental entity. Vendor further agrees and understands that this CSP and Contract may also be utilized by CP members pursuant to the piggyback method, as contemplated in the U.S. Department of Agriculture Memorandum SP 35-2012, *Procuring Services of Purchasing Cooperatives, Group Purchasing Organizations, Group Buying Organizations, etc.* (“SP 35-2012”). Vendor agrees and understands that CP members include “school food authorities,” as that term is used in SP 35-2012. See TEX. GOV’T. CODE § 2269.407.

5.3. Contract Terms; Amendment

The terms and conditions of this Contract shall govern all procurements conducted hereunder. No pre-published terms on Vendor’s Purchase Order, acknowledgments, invoices, or other forms shall have any force or effect unless expressly agreed to by the CP member and Vendor. No amendment of this Contract shall be permitted unless and until first approved in writing by HCDE/CP and, if necessary, the CP member(s), and no such amendment shall have any effect unless and until a written amendment to this Contract is executed by the HCDE Superintendent or his designee after any necessary approvals have been obtained from the HCDE Board of Trustees.

5.4. Term of Contract; Renewal of Contract

The initial term of this Contract is for a period of two (2) years, with HCDE/CP having the option to renew the Contract for three (3) additional one-year terms, at HCDE/CP’s sole discretion, unless otherwise specified in **Section 6.0 Scope of Proposal**. See TEX. GOV’T. CODE § 2269.409. Consequently, the total term of the Contract may be for a period of **five (5) years**. The phrase “Term” in this Contract shall mean the then-current Term of the Contract, whether an initial term or a renewal term.

5.5. Termination of Contract; Survival

This Contract shall remain in effect until (1) the Contract expires by its terms or (2) the Contract is terminated by mutual consent of HCDE/CP and Vendor. All Supplemental Contracts, purchase orders, and/or orders for

goods or services issued by HCDE and/or CP members and accepted by Vendor shall survive the expiration or termination of this Contract. During the term of any Supplemental Contract entered into between Vendor and a CP member, all terms of this Contract shall continue to apply to the Supplemental Contract.

In the event of a breach or default of the Contract and/or the CSP by Vendor, HCDE/CP reserves the right to enforce the performance of the Contract in any manner prescribed by law or deemed to be in the best interest of HCDE/CP and/or CP members. HCDE/CP further reserves the right to terminate the Contract immediately in the event Vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the CSP, this Contract, and/or a Purchase Order; (2) make any payments owed; or (3) otherwise perform in accordance with this Contract and/or the CSP. HCDE/CP also reserves the right to terminate the Contract immediately, with written notice to Vendor, if HCDE/CP believes, in its sole discretion that it is in the best interest of HCDE/CP and/or CP members to do so.

In the event that a material change to the terms of the Contract occurs, then the Contract shall be allowed to expire and shall not be renewed upon the conclusion of the Contract's term. The phrase "material change" in this paragraph shall mean a modification that substantially exceeds the terms of the original contract between HCDE/CP and Vendor. Upon the expiration of the Contract's term, HCDE/CP may issue a new RFP for the goods or services procured under the previous contract.

Vendor agrees that HCDE/CP shall not be liable for damages in the event that HCDE/CP declares Vendor to be in default or breach of this Contract and/or the CSP. Vendor further agrees that upon termination of the Contract for any reason, Vendor shall, in good faith and with reasonable cooperation, aid in the transition to any new arrangement and/or Vendor.

5.6. Buy America Act; Prevailing Wage Rates

HCDE/CP and CP members have a preference for domestic end products for supplies acquired for use in the United States when spending federal funds. Purchases that are made with non-federal funds or grants are excluded from the Buy America Act.

Vendor and all subcontractors of Vendor shall comply with all laws regarding prevailing wage rates, including, but not limited to, TEX. GOV'T. CODE Chapter 2258, applicable to the construction of a public work, and any related federal requirements, including the DAVIS-BACON ACT. In the event TEX. GOV'T. CODE Chapter 2258 applies to a product or service provided by Vendor to HCDE/CP or a CP member, Vendor and any subcontractor(s) shall comply with the prevailing wage rates set by HCDE/CP or the CP member.

5.7. Change Orders

Pursuant to TEX. EDUC. CODE § 44.0411(a), for HCDE/CP and CP members that are Texas school districts, if a change in plans or specifications is necessary after the performance of a Job Order and/or Purchase Order has begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the CP member may approve change orders making the changes. The total Job Order and/or Purchase Order price may not be increased because of the changes unless additional money for increased costs is approved for that purpose from available money or is provided for by the authorization of the issuance of time warrants. The CP member may grant general authority to an administrative official to approve the change orders. A Job Order and/or Purchase Order with an original contract price of \$1 million or more may not be increased under TEX. EDUC. CODE § 44.0411(a) by more than 25 percent. If a change order for a Job Order and/or Purchase Order with an original contract price of less than \$1 million increases the contract amount to \$1 million or more, the total of the subsequent change orders may not increase the revised contract amount by more than 25 percent of the original contract price.

5.8. Compliance with Laws

Vendor shall comply with all applicable federal, state, and local laws, statutes, ordinances, standards, orders, rules, and regulations, including, as applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations, the DAVIS-BACON ACT (40 U.S.C. § 276a / 29 CFR Part 5), the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 / 29 CFR Part 5), the Equal Opportunity Employment requirements (Executive Orders 11246 and 11375 / 41 CFR Chapter 60), Contract Work Hours and Safety Standards Act (40 U.S.C. § 327-330 / 29 CFR Part 5), the McNamara-

O'Hara Service Contract Act (41 U.S.C. 351), Section 306 of the Clean Air Act (42 U.S.C. § 1857h, Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, Environmental Protection Agency regulations (40 CFR Part 15), Administrative Requirements for Grants and Cooperative Contracts to state, local, and federally recognized Indian tribal governments (24 CFR Part 85), mandatory standards and policies contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871), and all applicable requirements and regulations, including those related to reporting, patent rights, copyrights, data rights and those mandated by federal agencies making awards of federal funds to HCDE/CP and/or CP members. For the entire duration of this Contract, Vendor and all subcontractors shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this Contract. All permits will be acquired by Vendor and invoiced to the CP member at cost as part of the Purchase Order, unless the permits are provided by the CP member. Vendor must comply with all state and local building code requirements unless otherwise specifically provided in the CP member's Purchase Order or Job Order, and Vendor must pay all fees and charges for connections to outside services and for use of property outside the project site. The states of individual CP members may have regulations and laws that govern payment retention and progress payments for public projects. Vendor is responsible for being acquainted with and complying with each state's requirements. When required or requested by HCDE/CP or a CP member, Vendor shall furnish HCDE/CP and/or the CP member with satisfactory proof of Vendor's compliance with this provision.

5.9. **Confidentiality**

Vendor and HCDE/CP agree to secure the confidentiality of all information and records in accordance with applicable federal and state laws, rules, and regulations. Vendor and HCDE/CP understand that the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, governs the privacy and security of educational records and information and agree to abide by FERPA rules and regulations, as applicable. Vendor also acknowledges that HCDE/CP and numerous CP members are subject to the Texas Public Information Act, and Vendor waives any claim against and releases from liability HCDE/CP and CP members, their respective officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by Vendor, HCDE/CP, or a CP member and determined by HCDE/CP or the CP member, the Attorney General of Texas, or a court of law to be subject to disclosure under the Texas Public Information Act.

5.10. **Performance and Payment Bonds**

Vendor agrees to provide performance bonds and/or payment bonds as required by law, based on the amount or estimated amount of any Purchase Order or Job Order, as applicable, for a public work contract, which is defined as a contract for constructing, altering, or repairing a public building or carrying out or completing any public work, or Job Order, as applicable. TEX. GOV'T. CODE §§ 2253.001(4); 2269.411. Pursuant to TEX. GOV'T. CODE § 2253.021, a performance bond is required if a Job Order or Purchase Order is in excess of \$100,000 for CP members that are governmental entities subject to Chapter 2253; a payment bond is required if a Job Order or Purchase Order is in excess of \$25,000 for CP members that are governmental entities subject to Chapter 2253 and are not municipalities or a joint board created under Subchapter D, Chapter 22 of the Tex. Transp. Code, and a payment bond is required if a Job Order or Purchase Order is in excess of \$50,000 for CP members that are governmental entities subject to Chapter 2253 and are municipalities or a joint board created under Subchapter D, Chapter 22 of the TEX. TRANSP. CODE.

5.11. **Title and Risk of Loss**

Whenever HCDE/CP or a CP member is purchasing (and not leasing) a product under this Contract, title and risk of loss shall pass upon the later of HCDE/CP or the CP member's acceptance of the product or payment of the applicable invoice.

5.12. **Warranty Conditions**

All product(s) and/or service(s) provided by the Vendor under this Contract must be warranted to be free from defects in material, workmanship, and free from such defects in design for a period of one (1) year upon the later of HCDE/CP's or the CP member's acceptance of the product and/or service or payment of the applicable invoice. Vendor warrants that all products and/or services furnished under this Contract shall conform in all respects to the terms of this Contract, including any drawings, specifications, and/or standards incorporated herein, including, without limitation, those detailed in the CSP, Purchase Order, and Job Order. In addition,

Vendor warrants that products and/or services are suitable for and will perform in accordance with the purposes for which they are intended. Vendor shall assume all liabilities incurred within the scope of consequential damages and incidental expenses, as set forth in the Vendor or manufacturer's warranty, which result from either delivery or use of product, which does not meet the specifications within this Contract, the CSP, Purchase Order, or Job Order.

5.13. **Criminal History Review**

Section 11.0 Attachment #6–SB 9 Contractor Certification: Contractor Employees and Attachment #7–SB 9 Contractor Certification: Subcontractor Form must be submitted with packet, if applicable.

Prior to commencing any work under the Contract, if Vendor contracts with HCDE/CP to provide services, Vendor must certify, on the form provided herein, that for each covered employee of Vendor who will have direct contact with students, Vendor has obtained, as required by TEX. EDUC. CODE Section 22.0834: (a) state criminal history record information from a law enforcement or criminal justice agency or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.) for each covered employee of Vendor employed before January 1, 2008; and (b) national criminal history record information for each employee of Vendor employed on or after January 1, 2008. Vendor must also obtain similar certifications of compliance with TEX. EDUC. CODE, Chapter 22 requirements from any subcontractors on the form provided herein. Covered employees with disqualifying criminal history are prohibited from serving at HCDE/CP or at CP school district members' locations; Vendor and any subcontracting entity may not permit a covered employee to provide services at a school if the employee has been convicted of a felony or misdemeanor offense that would prevent a person from being employed under TEX. EDUC. CODE § 22.085(a) (i.e., Title 5 felony or an offense requiring registration as a sex offender and victim was under 18 years of age or was enrolled in a public school at the time the offense occurred). The criminal history record information review obligation applies only if Vendor contracts with HCDE/CP to provide services; it does not apply to a contract for the purchase of goods, products or real estate.

5.14. **Customer Support**

Vendor shall provide timely and accurate technical advice and sales support to HCDE/CP staff and CP members. Vendor shall respond to requests for customer support within one (1) business day after receipt of the request. Vendor shall provide training to HCDE/CP staff and/or CP members regarding products and/or services supplied by Vendor, at no additional charge, if requested by HCDE/CP or a CP member.

5.15. **HCDE/CP and/or CP members' Property**

In the event of loss, damage, or destruction of any property owned by or loaned by HCDE/CP or a CP member that is caused by Vendor or Vendor's representative, agent, employee, or contractor, Vendor shall indemnify HCDE/CP or the CP member and pay to HCDE/CP or the CP member the full value of or the full cost of repair or replacement of such property, whichever is greater, within thirty (30) days of Vendor's receipt of written notice of HCDE/CP's or the CP member's determination of the amount due. If Vendor fails to make timely payment, HCDE/CP or the CP member may obtain such money from Vendor by any means permitted by law, including, without limitation, offset or counterclaim against any money otherwise due to Vendor by HCDE/CP or the CP member.

5.16. **Tax Exempt Status**

HCDE/CP and all CP members that are Texas governmental entities or agencies are exempt from payment of Texas State Sales Taxes under TEXAS TAX CODE § 151.310 for the purchase of tangible personal property. Laws of other states govern the tax status of CP members in states other than Texas. Vendor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, without limitation, any federal, state, or local income, sales or excise taxes of Vendor or its employees. HCDE/CP and CP members shall not be liable for any taxes resulting from this Contract, except where otherwise required by law.

5.17. **Other State Tax Requirements**

5.17.1. Payment of Taxes by CP members Outside of Texas – CP members outside of Texas will pay only the rate and/or amount of taxes identified in Vendor's proposal submitted in response to the CSP as appropriate to the specific CP member.

5.17.2. State and Local Transaction Privilege Taxes – The CP member is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sales of products and are the sole responsibility of Vendor, as the seller, to remit. Failure to remit taxes from HCDE/CP and/or the CP member, as the buyer, does not relieve Vendor, as the seller, from its obligation to remit taxes.

5.18. **State of Texas Franchise Tax**

By submitting a proposal in response to the CSP, Vendor certifies that Vendor is not currently delinquent in Vendor's payment of any franchise taxes or other taxes owed to the State of Texas.

5.19. **Tax Responsibilities of Vendor and Indemnification for Taxes**

Vendor is responsible for complying with the tax laws of states and the federal government. Vendor and all subcontractor(s) of Vendor shall pay all federal, state, and local taxes applicable to Vendor's operation, any persons employed by Vendor, and all subcontractors of Vendor. Vendor shall require all subcontractors to hold HCDE/CP and the CP member harmless from any responsibility for taxes, damages, and interest. If applicable, contributions required under federal, state, and/or local laws and regulations and any other costs, including, but not limited to, transaction privilege taxes, unemployment compensation insurance, Social Security, and Worker's Compensation, shall be the sole responsibility of Vendor.

5.20. **IRS W-9**

To receive payment under this Contract, Vendor shall have a current I.R.S. W-9 Form on file with the CP member.

5.21. **Assignment of Contract**

Vendor may not assign this Contract or any of its rights, duties or obligations hereunder without the prior written approval of HCDE/CP. Any attempted assignment of this Contract by Vendor shall be null and void. Any Purchase Order or Job Order made as a result of this Contract may not be transferred, assigned, subcontracted, mortgaged, pledged, or otherwise disposed of or encumbered in any way by Vendor without the prior written approval of HCDE/CP and, if applicable, the CP member.

5.22. **Notification of Material Change**

Vendor is required to notify HCDE/CP when any material change in operations occurs, including changes in distribution rights for awarded products, bankruptcy, material changes in financial condition, change of ownership, and the like, within three (3) business days of such change.

5.23. **Performance**

Vendor agrees to use commercially reasonable best efforts to provide the product(s) and/or service(s) subject to this Contract. Vendor shall furnish all supervision, labor, tools, equipment, permits, licenses, transportation, insurance, material, and supplies necessary to complete any scope of work, Purchase Order, or Job Order under this Contract. Vendor shall use skilled, trained personnel, who shall be supervised by Vendor.

5.24. **Subcontractors**

If Vendor uses subcontractors in the performance of any part of this Contract, Vendor shall be fully responsible to HCDE/CP and CP members for all acts and omissions of the subcontractors. Nothing in this Contract shall create for the benefit of any such subcontractor any contractual relationship between HCDE/CP and any such subcontractor, nor shall it create any obligation on the part of HCDE/CP or CP members to pay or to see to the payment of any monies due any such subcontractor except as may otherwise be required by law. Vendor represents and warrants that it is willing, able, and capable of obtaining, supervising, and being responsible for any subcontractors who perform and/or provide products and services related to this Contract.

5.25. **Non-Appropriation**

Renewal of this Contract, if any, will be in accordance with TEX. LOCAL GOV'T. CODE § 271.903 concerning non-appropriation of funds for multi-year contracts. Notwithstanding any other provision of this Contract or obligation imposed on HCDE/CP or any CP member by this Contract, HCDE/CP and CP members shall have the right to terminate this Contract, any Supplemental Contract, Purchase Order, or Job Order without default or liability to Vendor resulting from such termination, effective as of the expiration of each

budget period of HCDE/CP or any CP member if it is determined by HCDE/CP or any CP member, at their sole discretion, that there are insufficient funds to extend this Contract, any Supplemental Contract, any Purchase Order, or Job Order. The parties agree that this Contract, any Supplemental Contract, any Purchase Order, and Job Order are commitments of the current revenue of HCDE/CP and CP members only.

5.26. **Ordering Procedures**

Purchase Orders are issued by HCDE/CP and/or CP members to the Vendor according to this Contract and any Supplemental Contract between HCDE/CP and the CP member. CP members must send Purchase Orders to HCDE/CP, unless otherwise stipulated by HCDE/CP. HCDE/CP may request confirmation of receipt of the Purchase Order from Vendor.

HCDE/CP also may elect to require e-commerce functionality, in which Purchase Orders are sent directly to Vendor and reported by the CP member to HCDE/CP on a specified basis. The e-commerce approach must be approved by HCDE/CP prior to the start date of any Term of the Contract.

5.27. **Invoices; Payments**

5.27.1. Vendor shall submit invoices, in duplicate, directly to HCDE/CP or the CP member at the appropriate location(s) specified by HCDE/CP or the CP member. Each invoice shall include HCDE/CP's or the CP member's Purchase Order number and HCDE/CP Contract Number. All invoices shall be itemized to include the type of product(s) and/or service(s) rendered. Vendor shall submit invoices within a timely manner during HCDE/CP's or the CP member's fiscal year in which the product(s) and/or service(s) are purchased. The shipment tracking number or pertinent information for verification of HCDE/CP's or the CP member's receipt shall be made available upon request by HCDE/CP or the CP member.

5.27.2. HCDE/CP or the CP member will make payments directly to Vendor. HCDE/CP or the CP member placing the Purchase Order or Job Order with Vendor shall alone be liable and/or responsible for payment for product(s) and/or service(s) ordered and must be invoiced directly by Vendor. Neither HCDE/CP nor any CP member shall be liable for the indebtedness of any one CP member.

5.27.3. TEX. GOV'T. CODE § 2251.021 shall govern when payments are due to the Vendor. Payments are due to Vendor by HCDE/CP and any CP member whose governing body meets only once a month or less frequently, **within forty-five (45) days** after the later of the following: (1) the date HCDE/CP or the CP member receives the products and services under the Contract; (2) the date the performance of the service under the Contract is completed; or (3) the date HCDE/CP or the CP member receives an invoice for the products or service. For CP members whose governing bodies meet more than once a month or more often, payments are due by those CP members **within thirty (30) days** after the later of the following: (1) the date the CP member receives product(s) under the Contract; (2) the date the performance of the service under the Contract is completed; or (3) the date the CP member receives an invoice for product(s) or service(s). Vendor agrees to pay any subcontractors the appropriate share of the payment received from HCDE/CP or the CP member not later than the **tenth (10th) day** after the date the Vendor receives the payment from HCDE/CP or the CP member.

The exceptions to payments made by HCDE/CP, a CP member, and/or Vendor listed in TEX. GOV'T. CODE § 2251.002 shall apply to this Contract.

5.28. **Reporting**

The Vendor shall provide HCDE/CP with a detailed monthly report showing the total dollar volume of all sales under this Contract for the previous month in Microsoft Excel format, in the format and with the information specified by HCDE/CP. Reports are due on the **fifteenth (15) day of the month**, after the close of the previous month and shall provide information regarding Purchase Orders and Job Orders during the previous month. Vendor is responsible for collecting and compiling all sales under this Contract from all CP members and submitting **one (1)** consolidated monthly report. The monthly report shall include, at a minimum, the date of each Purchase Order or Job Order, Purchase Order or Job Order number, CP member name, city/town, and Purchase Order or Job Order total dollar amount. Reports shall be submitted in an electronic format to

HCDE/CP at 6005 Westview, Houston, Texas 77055, or electronically mailed to facilityreporting@choicepartners.org

5.29. **Pricing Changes**

All prices and discount percentages in Vendor's proposal shall be firm for the Term of this Contract. Pricing may be negotiated during the Contract renewal period. Vendor agrees to promptly lower the proportionate price of any product purchased through this Contract following a reduction in the price the Vendor is paying suppliers. All pricing submitted to HCDE/CP in Vendor's proposal shall include the administrative fee to be remitted to HCDE/CP by Vendor. It is Vendor's responsibility to keep all pricing up-to-date and on file with HCDE/CP. All price changes shall be presented to HCDE/CP for acceptance or rejection by HCDE/CP, in its sole discretion, using the same format as was accepted in Vendor's original proposal; all price changes for products and/or services provided under this Contract must be approved, in writing, by HCDE/CP prior to taking effect.

The following documentation shall be provided to support a request for a price change:

- justification for change/increase
- terms and conditions
- market conditions
- manufacturers'/distributors' impact, if any

All price decreases shall be allowed for all products and/or services.

5.30. **CP Administrative Fee**

HCDE/CP will invoice Vendor for the CP Administrative Fee of **4.0 percent (Administrative Incentive Clause below)**. The invoice will be based on total sales made through this Contract. Vendor shall remit payment of the CP Fee to HCDE/CP no later than **thirty (30) days** following the end of the month. Failure to pay the CP Administrative Fee in a timely manner may result in Vendor breaching this Contract and may result in HCDE/CP suspending or terminating this Contract. Vendor shall honor and pay HCDE/CP the CP Administrative Fee for any sales resulting from this Contract that occurred within **thirty (30) days** of the expiration or termination of this Contract. All rebates, discounts, and other applicable credits granted by Vendor as a result of any Supplemental Contracts entered into between Vendor and CP members shall accrue exclusively to CP member(s).

Administrative Fee Incentive Clause

Aggregate Year

- Gross sales above \$5M = 3% for remainder of the (12) month contract period
- subsequent renewal year = 3.75% Vendor's must maintain production of \$5M to keep 3.75% for the next year's renewal.

Task Orders/Job Orders

- \$2M or above - 3.5% only in the year they are invoiced
- \$1M or above - 3.75% only in the year they are invoiced
- If Vendor's report \$5M but only bills \$4M Admin Fee = 3.75%

NOTE: FAILURE TO REPORT WILL VOID THIS ADMINISTRATIVE FEE INCENTIVE

5.31. **Records Retention**

Vendor shall maintain its records and accounts in a manner that shall assure a full accounting for all product(s) and/or service(s) provided by the Vendor to HCDE/CP and/or CP members under this Contract. These records and accounts shall be retained by Vendor and made available for review and copying by HCDE/CP and CP members for a period of **not less than three (3) years** from the date of completion of the service(s), receipt of product(s), the date of the receipt by HCDE/CP or the CP member of Vendor's final invoice or claim for payment in connection with this Contract, or the date HCDE/CP or the CP member makes final payments and closes pending matters in connection with a federal grant, whichever is later. If an audit or a compliance review has been announced, the Vendor shall retain its records and accounts until such audit or compliance review has been completed.

5.32. Right to Review, Audit and Inspect

HCDE/CP, CP members, any federal agency that has awarded federal funds/grant(s) to HCDE/CP or a CP member, and the Comptroller General of the United States, and/or any of their authorized representatives, shall, upon written notice, have the right to audit and examine all of Vendor's records and accounts relating to this Contract and inspect any project performed by the Vendor relating to this Contract. Records subject to audit/review shall include, but are not limited to, all Purchase Orders or Job Orders resulting from this Contract and records which may have a bearing on matters in connection with the Vendor's work for HCDE/CP and/or CP members, and shall be open to inspection and subject to audit/review and/or reproduction by HCDE/CP, CP member, and/or their authorized representative(s) to the extent necessary to adequately permit evaluation and verification of:

5.32.1. Vendor's compliance with this Contract and the requirements of the CSP.

5.32.2. Compliance with procurement laws, policies, and procedures, including, without limitation, reviewing/comparing pricing on invoices and the appropriate unit price book for IDIQ work performed for HCDE/CP and/or CP members.

5.32.3. Compliance with provisions for computing billings to HCDE/CP and/or to CP members.

5.32.4. Any other matter related to this Contract.

5.33. Indemnification

VENDOR SHALL INDEMNIFY AND HOLD HARMLESS HCDE/CP AND EACH CP MEMBER, INCLUDING HCDE/CP'S AND CP MEMBERS' TRUSTEES, OFFICERS, ADMINISTRATORS, EMPLOYEES, AND AGENTS, FROM ALL CLAIMS, LIABILITIES, COSTS, SUITS OF LAW OR IN EQUITY, EXPENSES, ATTORNEYS' FEES, FINES, PENALTIES OR DAMAGES ARISING FROM ACTS OR OMISSIONS OF VENDOR, VENDOR'S EMPLOYEES, AGENTS, OR SUBCONTRACTORS, IN CONNECTION WITH THIS CONTRACT, INCLUDING WITHOUT LIMITATION, THOSE ARISING FROM CLAIMED INFRINGEMENT OF ANY PATENTS, TRADEMARKS, COPYRIGHT OR OTHER CORRESPONDING RIGHT(S) WHICH IS RELATED TO ANY ITEM VENDOR IS REQUIRED TO DELIVER. VENDOR'S OBLIGATIONS UNDER THIS CLAUSE SHALL SURVIVE ACCEPTANCE AND PAYMENT BY HCDE/CP OR THE CP MEMBER.

5.34. Governing Law and Exclusive Venue

The laws of the State of Texas, without regard to its provisions on conflicts of laws, govern this Contract. Any dispute under this Contract involving HCDE/CP must be brought exclusively in the state and federal courts located in Houston, Harris County, Texas, and the parties hereby submit to the exclusive jurisdiction of said courts. Any dispute not involving HCDE/CP but involving a CP member and Vendor shall be governed by the laws of the state of the CP member, without regard to its provisions on conflicts of laws, and exclusive jurisdiction and venue shall lie in the city, county, and state of the CP member.

5.35. Multiple Contract Awards; Non-Exclusivity

In accordance with TEX. GOV'T. CODE § 2269.406, HCDE/CP reserves the right to award multiple contracts under the CSP, including multiple contracts for each product/service category. Product/Service categories are established at the sole discretion of HCDE/CP. Nothing in this Contract may be construed to imply that Vendor has the exclusive right to provide products and/or services to HCDE/CP and/or CP members. During the Term of this Contract, HCDE/CP and CP members reserve the right to use all available resources to procure other products and/or services as needed and doing so will not violate any rights of Vendor.

5.36. New Products

New products that meet the specifications detailed in the CSP may be added to this Contract, with prior written approval from HCDE/CP. Pricing of any new products shall be equivalent to the percentage discount or proposed prices for other similar products. Vendor may replace or add products to the contract if: the replacing products are equal to or superior to the original products offered or discounted in a similar degree or to a greater degree and the products meet the requirements of the CSP. No products may be added to avoid

competitive procurement procedures. HCDE/CP may reject any proposed additions, without cause, in its sole discretion.

5.37. **No Substitution**

Any Purchase Order or Job Order issued pursuant to this Contract shall conform to the specifications and descriptions identified in this Contract and the CSP. Vendor shall not deliver substitutes without prior written authorization from HCDE/CP or the CP member.

5.38. **Penalties**

If the Vendor is unable to provide the product(s) or services at the prices quoted in Vendor's proposal or if Vendor fails to fulfill or abide by the terms and conditions of the Contract, the CSP, or a Supplemental Contract, HCDE/CP or the CP member may take the following action(s), in the sole discretion of HCDE/CP or the CP member, and Vendor agrees to comply with the chosen action(s):

5.38.1. Insist that the Vendor honor the quoted price(s) specified in Vendor's proposal or the Supplemental Contract, as applicable;

5.38.2. Have the Vendor pay the difference between the Vendor's price and the price of the next acceptable proposal, as determined by HCDE/CP or the CP member;

5.38.3. Have the Vendor pay the difference between Vendor's price and the actual purchase price of the product or service on the open market; and/or

5.38.4. Recommend to HCDE Board of Trustees that the Vendor no longer be given the opportunity to submit a proposal to HCDE/CP and/or that this Contract be terminated.

5.39. **Promotion of Contract Marketing Plan**

The marketing of Vendor's company, product, and/or services shall be the sole responsibility of Vendor. HCDE/CP may only supply Vendor with CP members' contact lists that contain name, address, phone numbers, and/or email addresses. Other items geared toward the joint-marketing of HCDE/CP and Vendor's company, product, and/or services shall be at HCDE/CP's sole discretion. Encouraging CP members to circumvent this Contract by purchasing directly from Vendor may result in suspension or termination of this Contract. For so long as this Contract is valid and enforceable between the parties, Vendor agrees to display the CP seal in its marketing collateral materials, such as Vendor's website and related marketing materials. Vendor shall submit all promotional materials to HCDE/CP and obtain written approval before Vendor finalizes or publishes promotional material bearing the HCDE/CP or CP name or seal. Vendor may not release any press release or other publication regarding this Contract or HCDE/CP unless and until HCDE/CP first approves the press release or publication in writing.

5.40. **Website Support**

Vendor agrees to cooperate with HCDE/CP in publicizing contract particulars on the CP website. Vendor also agrees to work with HCDE/CP in updating and maintaining current information on Vendor activities related to the Contract on the CP website. Vendor agrees to provide an electronic version of its logo for use on the CP website upon request and provide other information as reasonably requested by HCDE/CP to help ensure that the CP website is current and consistently updated.

5.41. **Safety**

Vendor, its subcontractor(s), and their respective employees shall comply fully with all applicable federal, state, and local safety and health laws, ordinances, rules, and regulations in the performance of services under this Contract, including, without limitation, those promulgated by HCDE/CP, CP members, and by the Occupational Safety and Health Administration ("OSHA"). In case of conflict, the most stringent safety requirements shall govern. Vendor shall comply with all other safety guidelines and standards as required by HCDE/CP or CP members. Vendor shall indemnify and hold HCDE/CP and/or the CP member harmless from and against all claims, demands, suits, actions, judgments, fines, penalties, and liability of every kind arising from the breach of Vendor's obligations under this provision.

5.42. Workforce

Vendor shall employ only orderly and competent workers, skilled in the performance of the services, if any, which shall be performed under this Contract. Vendor, its employees, subcontractors, and subcontractor's employees may not use or possess any firearms, alcoholic or other intoxicating beverages, illegal drugs or controlled substances while on the job or on HCDE/CP and CP members' property, nor may such workers be intoxicated or under the influence of alcohol or drugs on HCDE/CP and CP members' property.

5.43. Supplemental Contracts

A CP member and Vendor may enter into a separate, Supplemental Contract. Any Supplemental Contract developed as a result of this Contract and/or the CSP is exclusively between the CP member and Vendor and shall have no effect or impact on HCDE/CP, any other CP member, or this Contract. Any Supplemental Contract between Vendor and a CP member is exclusively between that specific CP member and Vendor and will be subject to immediate cancellation by the CP member (without penalty to the CP member) if, in the opinion of the CP member, the quality, service, and specification requirements, and/or the terms and conditions are not maintained as stated in the Supplemental Contract. Vendor shall promptly notify HCDE/CP of any Supplemental Contract executed between Vendor and a CP member. Supplemental Contracts are entered into pursuant to the piggyback method delineated in the U.S. Department of Agriculture directive SP 35-2012

5.44. Insurance

Vendor is required to provide HCDE/CP and/or the CP member with copies of certificates of insurance, naming HCDE/CP and/or the CP member as additional insured's for Texas Workers Compensation and General Liability Insurance. Certificates of Insurance, name and address of Vendor, the limits of liability, the effective dates of each policy, and policy number shall be delivered to HCDE/CP and/or the CP member prior to commencement of any work under this Contract. The insurance company insuring Vendor shall be licensed in the State of Texas or the state in which the CP member is located, and shall be acceptable to HCDE/CP and/or the CP member. Vendor shall give HCDE/CP or the CP member a **minimum of ten (10) days'** notice prior to any modifications or cancellation of said policies of insurance. Vendor shall require all subcontractors performing any work under or relating to this Contract to maintain coverage as specified below. Vendor shall, at all times during the Term of this Contract, maintain insurance coverage with not less than the type and requirements shown below. If the CP member has higher insurance requirements than those listed below, such may be added to the Purchase Order or Job Order. Such insurance is to be provided at the sole cost of the Vendor. These requirements do not establish limits of Vendor's liability.

All policies of insurance shall waive all rights of subrogation against HCDE/CP, CP members, and HCDE/CP and CP members' officers, employees and agents.

Upon request, certified copies of original insurance policies shall be furnished to HCDE/CP and/or to CP members.

HCDE/CP and the CP member, as requested, shall be named as an "additional insured" on insurance policies.

HCDE/CP and the CP member reserve the right to require additional insurance should HCDE/CP or the CP member deem additional insurance necessary, in their sole discretion.

- Workers Compensation (with waiver of subrogation to HCDE/CP and the CP member) Employer's Liability, including all states, U.S. Longshoremen, Harbor Workers and other endorsements.
- Statutory, and Bodily Injury by Accident: \$100,000 each employee. Bodily Injury by Disease: \$500,000, policy limit \$100,000 each employee.
- Commercial General Liability Occurrence Form including, but not limited to, Premises and Operations, Products Liability Broad Form Property Damage, Contractual Liability, Personal and Advertising Injury Liability and where the exposure exists, coverage for watercraft, blasting collapse, and explosions, blowout, cratering and underground damage. \$300,000 each occurrence Limit Bodily Injury and Property Damage combined. \$300,000 Products-Completed Operations Aggregate Limit \$500,000 per Job Aggregate. \$300,000 Personal and Advertising Injury Limit.
- Automobile Liability Coverage: \$300,000 Combined Liability Limits Bodily Injury and Property Damage Combined.

5.45. **Participation in HCDE/CP**

Vendor acknowledges and agrees that continued participation in the HCDE/CP cooperative purchasing program is subject to HCDE/CP's sole discretion and that Vendor may be removed from the HCDE/CP program at any time, with or without cause, in HCDE/CP's sole discretion. All work resulting from this Contract must cease immediately after completion of the final accepted Purchase Order or Job Order. Nothing in this Contract or in any other communication between HCDE/CP and Vendor may be construed as a guarantee that HCDE/CP or CP members will submit any Purchase Order or Job Orders to Vendor at any time.

5.46. **No Agency or Endorsements**

It is the intention of the parties to this Contract that Vendor is independent of HCDE/CP and CP members, is an independent contractor, and is not an employee, agent, joint venturer, or partner of HCDE/CP or any CP member. Nothing in this Contract shall be interpreted or construed as creating or establishing the relationship of employer and employee, agent, joint venturer or partner, between HCDE/CP and Vendor, any CP member and Vendor, HCDE/CP and any of Vendor's agents, or any CP member and any of Vendor's agents. Vendor has no power or authority to assume or create any obligation or responsibility on behalf of HCDE/CP or any CP member, and HCDE/CP and CP members have no power or authority to assume or create any obligation or responsibility on behalf of Vendor. This Contract shall not be construed to create or imply any partnership, agency, or joint venture, nor shall it be construed or deemed an endorsement of a specific company or product. Vendor agrees that HCDE/CP and CP members have no responsibility for any conduct of any of Vendor's employees, agents, representatives, contractors, or subcontractors.

5.47. **Equal Opportunity**

It is the policy of HCDE/CP not to discriminate on the basis of race, color, national origin, gender, limited English proficiency or handicapping conditions in its programs. Vendor agrees not to discriminate against any employee or applicant for employment to be employed in the performance of this Contract, with respect to hire, tenure, terms, conditions and privileges of employment, or a matter directly or indirectly related to employment, because of age (except where based on a bona fide occupational qualification), sex (except where based on a bona fide occupational qualification) or race, color, religion, national origin, or ancestry. Vendor further agrees that every subcontract entered into for the performance of this Contract shall contain a provision requiring non-discrimination in employment herein specified, binding upon each subcontractor. Breach of this covenant may be regarded as a material breach of the Contract.

5.48. **Force Majeure**

Neither HCDE/CP, any CP member, or Vendor shall be deemed to have breached any provision of this Contract as a result of any delay, failure in performance, or interruption of service resulting directly or indirectly from acts of God, network failures, acts of civil or military authorities, civil disturbances, wars, energy crises, fires, transportation contingencies, interruptions in third-party telecommunications or Internet equipment or service, other catastrophes, or any other occurrences which are reasonably beyond HCDE/CP, any CP member, or Vendor's control.

HCDE/CP, CP members, and Vendor are required to use due caution and preventive measures to protect against the effects of force majeure, and the burden of proving that a force majeure event has occurred shall rest on the party seeking relief under this provision. The party seeking relief due to force majeure is required to promptly notify the other parties in writing, citing the details of the force majeure event and relief sought, and shall resume performance immediately after the obstacles to performance caused by a force majeure event have been removed, provided the Contract has not been terminated. Delay or failure of performance, by either party to this Contract, caused solely by a force majeure event, shall be excused for the period of delay caused solely by the force majeure event. HCDE/CP, CP members, and Vendor shall not have any claim for damages against any other party resulting from delays caused solely by force majeure. Notwithstanding any other provision of this Contract, in the event the Vendor's performance of its obligations under this Contract is delayed or stopped by a force majeure event, HCDE/CP shall have the option to terminate this Contract. This section shall not be interpreted as to limit or otherwise modify any of HCDE/CP's or CP members' contractual, legal, or equitable rights.

5.49. Severability

In the event 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, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

5.50. Waiver

No failure on the part of either party at any time to require the performance by the other party of any term hereof shall be taken or held to be a waiver of such term or in any way affect such party's right to enforce such term, and no waiver on the part of either party of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof. No waiver, alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by duly authorized representatives of the parties hereto.

5.51. Entire Agreement

The Contract, the CSP, Vendor's proposal submitted in response to the CSP, the attached and incorporated attachments, addendum, and/or exhibits, if any, and the Supplemental Contract, if any, contain the entire agreement of the parties relative to the purpose(s) of the Contract and supersede any other representations, agreements, arrangements, negotiations, or understandings, oral or written, between the parties to this Contract. In the event of a conflict between this Contract and the CSP or Vendor's proposal submitted in response to the CSP, this Contract shall control. In the event of a conflict between the CSP and Vendor's proposal submitted in response to the CSP, the CSP shall control. This Contract supersedes any conflicting terms and conditions on any Purchase Order and/ Job Orders, invoices, checks, order acknowledgements, forms, purchase orders, or similar commercial documents relating hereto and which may be issued by Vendor after the Effective Date of this Contract.

In addition to this Contract, a Supplemental Contract between Vendor and the CP member may be established to further detail the terms and conditions of the CP member's specific project. In the event of a conflict between this Contract and the Supplemental Contract, as to HCDE/CP, this Contract shall prevail. In the event of a conflict between this Contract and the Supplemental Contract, as to the CP member, the Supplemental Contract shall prevail unless the Supplemental Contract states otherwise.

5.52. Interpretation

Vendor agrees that the normal rules of construction that requires that any ambiguities in this Contract are to be construed against the drafter shall not be employed in the interpretation of this Contract.

5.53. Notice

Any notice provided under the terms of this Contract by the parties to any other shall be in writing and shall be given by hand-delivery or by certified or registered mail, return receipt requested. Notice shall be sufficient if made or addressed to the party at the address listed in the signature line of this Contract. Notice shall be deemed effective upon receipt. Each party may change the address at which notice may be sent to that party by giving notice of such change to the other party by certified mail, return receipt requested.

5.54. Captions

The captions herein are for convenience and identification purposes only, are not an integral part hereof, and are not to be considered in the interpretation of any part hereof.

HARRIS COUNTY DEPARTMENT OF EDUCATION VENDOR QUESTIONNAIRE

(Please check ALL appropriate boxes below)

CERTIFICATION OF RESIDENCY

The State of Texas has a law concerning non-resident vendors. This law can be found in Texas Education Code under Chapter 2252, Subchapter A. This law makes it necessary for HCDE to determine the residency of its Vendors. In part, this law reads as follows:

Section: 2252.001: "Non-resident bidder" refers to a person who is not a resident. "Resident bidder" refers to a person whose principal place of business is in this state, including a vendor whose ultimate parent company or majority owner has its principal place of business in this state.

Section: 2252.002: "A governmental entity may not award a governmental contract to a non resident bidder unless the nonresident underbids the lowest bid submitted by a resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located."

Company submitting bid is a resident bidder: ☒ Yes ☐ No

City and state of vendor's principal place of business: Austin, Texas

MINORITY/WOMEN BUSINESS ENTERPRISE (MWBE) AND HISTORICALLY UNDERUTILIZED BUSINESSES (HUB)

Bidding companies that have been certified by the State of Texas as Historically Underutilized Business (HUB) or Minority/Women Business Enterprise (MWBE) entities are encouraged to indicate their HUB and MWBE status when responding to this Bid Invitation.

Vendor certifies that this firm is a MWBE (Required by some participating agencies) ☐ Yes ☒ No

Vendor certifies that this firm is a HUB (Required by some participating agencies) ☐ Yes ☒ No

Please scan a copy of MWBE and/or HUB certification letter and the percentage of your business with MWBE and/or HUB suppliers, if applicable, in your proposal response in the Response Attachments section of the HCDE eBid System.

I, the authorized representative for the company named below, certify that the information concerning residency certification, and MWBE and HUB certifications have been reviewed by me and the information furnished is true to the best of my knowledge.

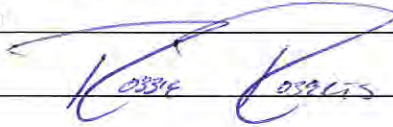
Contractor's Name/Company Name: Basic IDIQ, Inc.

Address, City, State, and Zip Code: 10713 RR 620 North, Suite F622, Austin, Texas 78726

Phone Number: (888) 402-4347 Fax Number: (800) 711-6628

Printed Name and Title of Authorized Representative: Robbie Roberts, Vice President/Chief Operating Officer

Email Address: rroberts@basicidiq.com

Signature of Authorized Representative: 

Date: July 10, 2015

**HARRIS COUNTY DEPARTMENT OF EDUCATION
PROPOSER/VENDOR CERTIFICATION FORMS**

CERTIFICATION OF COMPLIANCE WITH TEXAS FAMILY CODE PROVISION

As per Section 14.52 of the Texas Family Code, added by S.B. 84, Acts, 73rd Legislature, R.S. (1993), all bidders must complete and submit with the bid the following affidavit:

I, the undersigned vendor, do hereby acknowledge that NO sole proprietor, partner, majority shareholder of a corporation, or an owner of 10% or more of another business entity is 30 days or more delinquent in paying child support under a court order or a written repayment agreement. I understand that under this provision, a sole proprietorship, partnership, corporation or other entity in which a sole proprietor, partner, majority shareholder or a corporation, or an owner of 10% or more of another entity is 30 days or more delinquent in paying child support under a court order or a written repayment agreement is NOT eligible to bid or receive a state contract.

Does vendor agree? YES  Initials of Authorized Representative of vendor

**REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS
UNDER FEDERAL AWARDS – APPENDIX II TO 2 CFR PART 200**

The following provisions are required and apply when federal funds are expended by HCDE or any Choice Partner member for any contract resulting from this procurement process.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Pursuant to Federal Rule (A) above, when federal funds are expended by HCDE or any Choice Partner member, HCDE/Choice Partner member reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

In Texas, state requirements are more restrictive than the federal guide, thus HCDE and Choice Partners follow state law in awarding contracts.

Does vendor agree? YES  Initials of Authorized Representative of vendor

(B) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

Pursuant to Federal Rule (B) above, when federal funds are expended by HCDE or any CP member, HCDE/Choice Partner member reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Vendor, in the event vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. HCDE/Choice Partner

member also reserve the right to terminate the contract immediately, with written notice to vendor, for convenience, if HCDE/Choice Partner member believes, in its sole discretion that it is in the best interest of HCDE/Choice Partner member to do so. The vendor will be compensated for work performed and accepted and goods accepted by HCDE/Choice Partner member as of the termination date if the contract is terminated for convenience of HCDE/Choice Partner member. Any award under this procurement process is not exclusive and HCDE/Choice Partner member reserves the right to purchase goods and services from other vendors when it is in the best interest of HCDE/Choice Partner member.

Does vendor agree? YES Initials of Authorized Representative of vendor

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Pursuant to Federal Rule (C) above, when federal funds are expended by HCDE/Choice Partner member on any federally assisted construction contract, the following clause shall apply:

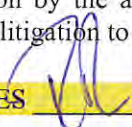
During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Does vendor agree? YES  Initials of Authorized Representative of vendor

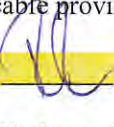
(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Pursuant to Federal Rule (D) above, when federal funds are expended by HCDE or any Choice Partner member, during the term of an award for all contracts and subgrants for construction or repair, the vendor will be in compliance with all applicable Davis-Bacon Act provisions.

Does vendor agree? YES  Initials of Authorized Representative of vendor

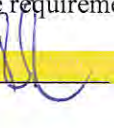
(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Pursuant to Federal Rule (E) above, when federal funds are expended by HCDE or any Choice Partner member, the vendor certifies that during the term of an award for all contracts by HCDE/Choice Partner member resulting from this procurement process, the vendor will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act.

Does vendor agree? YES  Initials of Authorized Representative of vendor

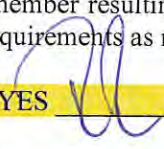
(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Pursuant to Federal Rule (F) above, when federal funds are expended by HCDE or any Choice Partner member, the vendor certifies that during the term of an award for all contracts by HCDE/Choice Partner member resulting from this procurement process, the vendor agrees to comply with all applicable requirements as referenced in Federal Rule (F) above.

Does vendor agree? YES  Initials of Authorized Representative of vendor

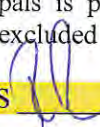
(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to Federal Rule (G) above, when federal funds are expended by HCDE or any Choice Partner member, the vendor certifies that during the term of an award for all contracts by HCDE or any Choice Partner member resulting from this procurement process, the vendor agrees to comply with all applicable requirements as referenced in Federal Rule (G) above.

Does vendor agree? YES  Initials of Authorized Representative of vendor

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Federal Rule (H) above, when federal funds are expended by HCDE or any Choice Partner member, the vendor certifies that during the term of an award for all contracts by HCDE/Choice Partner member resulting from this procurement process, the vendor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

Does vendor agree? YES  Initials of Authorized Representative of vendor

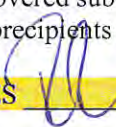
(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to Federal Rule (I) above, when federal funds are expended by HCDE or any Choice Partner member, the vendor certifies that during the term and after the awarded term of an award for all contracts by HCDE/Choice Partner member resulting from this procurement process, the vendor certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The undersigned further certifies that:

- (1) No Federal appropriated funds have been paid or will be paid or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in

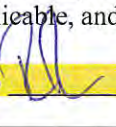
connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "disclosure Form to Report Lobbying", in accordance with its instructions.

- (3) The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Does vendor agree? YES  Initials of Authorized Representative of vendor

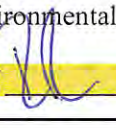
**RECORD RETENTION REQUIREMENTS FOR CONTRACTS PAID FOR WITH FEDERAL FUNDS –
2 CFR § 200.333**

When federal funds are expended by HCDE or any CP member for any contract resulting from this procurement process, the vendor certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. The vendor further certifies that vendor will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

Does vendor agree? YES  Initials of Authorized Representative of vendor

**CERTIFICATION OF COMPLIANCE WITH EPA REGULATIONS
APPLICABLE TO GRANTS, SUBGRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS
IN EXCESS OF \$100,000 OF FEDERAL FUNDS**

When federal funds are expended by HCDE or any Choice Partner member for any contract resulting from this procurement process in excess of \$100,000, the vendor certifies that the vendor is in compliance with all applicable standards, orders, regulations, and/or requirements issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act, as amended (33 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR Part 15.

Does vendor agree? YES  Initials of Authorized Representative of vendor

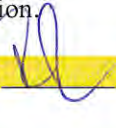
CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT

When federal funds are expended by HCDE or any Choice Partner member for any contract resulting from this procurement process, the vendor certifies that the vendor will be in compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

Does vendor agree? YES  Initials of Authorized Representative of vendor

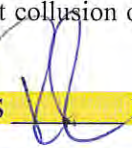
CERTIFICATION OF COMPLIANCE WITH BUY AMERICA PROVISIONS

Vendor certifies that vendor is in compliance with all applicable provisions of the Buy America Act. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

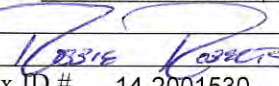
Does vendor agree? YES  Initials of Authorized Representative of vendor

CERTIFICATION OF NON-COLLUSION STATEMENT

Vendor certifies under penalty of perjury that its response to this procurement solicitation is in all respects bona fide, fair, and made without collusion or fraud with any person, joint venture, partnership, corporation or other business or legal entity.

Does vendor agree? YES  Initials of Authorized Representative of vendor

Vendor agrees to comply with all federal, state, and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that vendor certifies compliance with all provisions, laws, acts, regulations, etc. as specifically noted above.

Vendor's Name/Company Name: Basic IDIQ, Inc.
Address, City, State, and Zip Code: 10713 RR 620 North, Suite F622, Austin, Texas 78726
Phone Number: (888) 402-4347 Fax Number: (800) 711-6628
Printed Name and Title of Authorized Representative: Robbie Roberts, Vice President/COO
Email Address: rroberts@basicidiq.com
Signature of Authorized Representative: 
Date: July 10, 2015 Federal Tax ID # 14-2001530

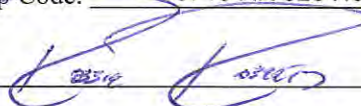
HARRIS COUNTY DEPARTMENT OF EDUCATION**ANTITRUST CERTIFICATION STATEMENT****(Tex. Government Code § 2155.005)**

I affirm under penalty of perjury of the laws of the State of Texas that:

1. I am duly authorized to execute this contract on my own behalf or on behalf of the company, corporation, firm, partnership or individual (Company) listed below;
2. In connection with this bid, neither I nor any representatives of the Company have violated any provision of the Texas Antitrust laws codified in Tex. Bus. & Comm. Code Chapter 15;
3. In connection with this bid, neither I nor any representative of the Company have violated any federal antitrust law; and
4. Neither I nor any representatives of the Company have directly or indirectly communicated any of the contents of this bid to a competitor of the Company or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Company.

Contractor's Name/Company Name: Basic IDIQ, Inc.

Address, City, State, and Zip Code: 10713 RR 620 North, Suite F622, Austin, Texas 78726

Bidder Signature: 

Printed Name: Robbie Roberts

Title: Vice President/COO Date Signed: July 10, 2015

Signature of Company Official Authorizing RFP: 

Printed Name of Company Official: Robbie Roberts

Official Position: Vice President/COO Date Signed: July 10, 2015

HARRIS COUNTY DEPARTMENT OF EDUCATION
CONFLICT OF INTEREST DISCLOSURE STATEMENT

Harris County Department of Education (HCDE) is required to comply with Texas Local Government Code Chapter 176, Disclosure of Certain Relationships with Local Government Officers. Any company that does business with HCDE must fill out a Conflict of Interest Questionnaire (CIQ) whether or not a conflict of interest exists. A conflict of interest exists in the following situations:

- (1) The person has employment or other business relationship with the local government officer or a family member resulting in the officer or family member receiving taxable income, and/or
- (2) Your company has given one of HCDE's local government officers or family member one or more gifts (excluding food, lodging, transportation, and entertainment) that has an aggregate value of more than \$250 in the twelve-month period preceding the date the officer becomes aware of an executed contract or consideration of the person for a contract to do business with the Department.

If no conflict of interest exists, you must fill out Box 1 and type N/A on Box 3 of the CIQ form, sign and date it.

Statements must be filed within seven (7) business days after the officer becomes aware a conflict of interest exists.

- HCDE Board of Trustees include:

Ms. Angie Chesnut, President
Ms. Kay Smith, Vice-President
Mr. Don Sumners
Ms. Erica Lee Carter

Mr. Marvin Morris
Mr. Michael Wolfe
Dr. Diane Trautman
Mr. James Colbert, Jr., Superintendent

- Current local government officers include:

Jesus J. Amezcua
Celes Harris
Les Hooper
Tammy Lanier
Linda Pitre

Jim Schul
Natasha Truitt
Jimmy Wynn

CONFLICT OF INTEREST QUESTIONNAIRE For vendor or other person doing business with local governmental entity		FORM CIQ
This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code. A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.	OFFICE USE ONLY	
1 Name of person who has a business relationship with local governmental entity. Basic IDIQ, Inc.	Date Received	
2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)		
3 Name of local government officer with whom filer has employment or business relationship. N/A _____ Name of Officer This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary. A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire? ☐ Yes ☒ No B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity? ☐ Yes ☒ No C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more? ☐ Yes ☒ No D. Describe each employment or business relationship with the local government officer named in this section.		
4  _____ Signature of person doing business with the governmental entity July 10, 2015 _____ Date		

HARRIS COUNTY DEPARTMENT OF EDUCATION FELONY CONVICTION NOTICE FORM

FELONY CONVICTION NOTIFICATION

State of Texas Legislative Senate Bill No. 1 Section 44.034, Notification of Criminal History, Subsection (a), states "a person or business entity that enters into an agreement with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony".

Subsection (b) states "a school district may terminate the agreement with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a), or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract".

Subsection (c) states "this section does not apply to a publicly held corporation".

I, the undersigned agent for the firm named below, certify that the information concerning notification of felony convictions has been reviewed by me and the information furnished is true to the best of my knowledge.

Contractor's Name/Company Name: _____

Authorized Official's Name (Printed or Typed): _____

You must select one and sign below:

- ☐ Firm is a publicly held corporation; therefore the above reporting requirement does not apply per Section 44.034, Texas Education Code, Subsection (c).
- ☒ Contractor/Firm **is not** owned nor operated by anyone who has been convicted of a felony.
- ☐ Contractor/Firm **is** operated or owned by the following individual(s) who has/have been convicted of a felony:

Name of Individual(s): _____

Detail of Conviction(s): _____

(Attach additional pages if necessary.)

Signature of Company Official: _____

Date: July 10, 2015

SB 9 Contractor Certification: Contractor Employees
(As applicable)

Background: Texas Education Code Chapter 22 requires entities that contract with school districts to obtain criminal history records on covered employees. Covered employees with disqualifying criminal histories are prohibited from serving at a school district. Contractors must certify to HCDE that they have complied and must obtain similar certifications from their subcontractors. *See SB 9 Contractor Certification: Subcontractor attachment.* The law requires each contractor to obtain the criminal histories of its covered employees. For more information or to set up an account, a contractor should contact the Texas Department of Public Safety's Crime Records Service at 512.424.2474.

Definitions:

Covered employees: Employees of a contractor who have or will have continuing duties related to the service to be performed at a school district and have or will have direct contact with students. HCDE will be the final arbiter of what constitutes *continuing duties* and *direct contact* with students.

Disqualifying criminal history: (1) a conviction or other criminal history information designated by HCDE; (2) a felony or misdemeanor offense that would prevent a person from being employed under Texas Education Code § 22.085(a), that is: if at the time of the offense, the victim was under 18 or was enrolled in a public school: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense on conviction for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an offense under federal law or the laws of another state that is equivalent to (a) or (b).

On behalf of Basic IDIQ, Inc. ("Contractor"), I, the undersigned authorized signatory for Contractor, certify to Harris County Department of Education ("HCDE") that [check one]:

[] None of Contractor's employees are *covered employees*, as defined above. If this box is checked, I further certify that Contractor has taken precautions or imposed conditions to ensure that its employees will not become *covered employees*. Contractor will maintain these precautions or conditions throughout the time the contracted services are provided.

Or

- [X] Some or all of Contractor's employees are *covered employees*. If this box is checked, I further certify that:
- (1) Contractor has obtained all required criminal history record information regarding its covered employees. None of the covered employees has a disqualifying criminal history.
 - (2) If Contractor receives information that a covered employee subsequently has a reported criminal history, Contractor will immediately remove the covered employee from contract duties and notify HCDE in writing within 3 business days.
 - (3) Upon request, Contractor will provide HCDE with the name and any other requested information of covered employees so that HCDE may obtain criminal history record information on the covered employees.

If HCDE objects to the assignment of a covered employee on the basis of the covered employee's criminal history record information, Contractor agrees to discontinue using that covered employee to provide services at HCDE.

I also certify to HCDE on behalf of Contractor that Contractor has obtained certifications from its subcontractors of compliance with Texas Education Code, Chapter 22.

Noncompliance or misrepresentation regarding this certification may be grounds for contract termination.

Signature

Vice President/COO
Title

July 10, 2015
Date

SB 9 Contractor Certification: Subcontractor
(As applicable)

Background: Texas Education Code Chapter 22 requires entities that contract with school district contractors to obtain criminal history records regarding covered employees. Covered employees with disqualifying criminal histories are prohibited from serving at a school district. Subcontractors must certify to HCDE and to the contractor that they have complied. The law requires each subcontractor to obtain the criminal histories of its covered employees. For more information or to set up an account, a contractor should contact the Texas Department of Public Safety's Crime Records Service at 512.424.2474.

Definitions:

Covered employees: Employees of a subcontractor who have or will have continuing duties related to the service to be performed at a school district and have or will have direct contact with students. HCDE will be the final arbiter of what constitutes *continuing duties* and *direct contact* with students.

Disqualifying criminal history: (1) a conviction or other criminal history information designated by HCDE; (2) a felony or misdemeanor offense that would prevent a person from being employed under Texas Education Code § 22.085(a), that is: if at the time of the offense, the victim was under 18 or was enrolled in a public school: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense on conviction for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an offense under federal law or the laws of another state that is equivalent to (a) or (b).

Subcontractor has entered into a contract with Basic IDIQ, Inc. ("Contractor"), to provide services in connection with the contract between Harris County Department of Education ("HCDE") and Contractor. I, the authorized signatory for Subcontractor, certify to HCDE and Contractor that [check one]:

[] None of Subcontractor's employees are *covered employees*, as defined above. If this box is checked, I further certify that Subcontractor has taken precautions or imposed conditions to ensure that its employees will not become *covered employees*. Subcontractor will maintain these precautions or conditions throughout the time the contracted services are provided.

Or

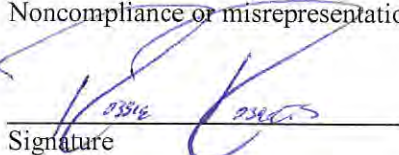
[x] Some or all of Subcontractor's employees are *covered employees*. If this box is checked, I further certify that:

- (1) Subcontractor has obtained all required criminal history record information regarding its covered employees. None of the covered employees has a disqualifying criminal history.
- (2) If Subcontractor receives information that a covered employee subsequently has a reported criminal history, Subcontractor will immediately remove the covered employee from contract duties and notify HCDE in writing within 3 business days.
- (3) Upon request, Subcontractor will provide HCDE with the name and any other requested information of covered employees so that HCDE may obtain criminal history record information on the covered employees.

If HCDE objects to the assignment of a covered employee on the basis of the covered employee's criminal history record information, Subcontractor agrees to discontinue using that covered employee to provide services at HCDE.

I also certify to HCDE and Contractor on behalf of Subcontractor that Subcontractor has obtained certifications from its subcontractors of compliance with Texas Education Code, Chapter 22.

Noncompliance or misrepresentation regarding this certification may be grounds for contract termination.


Signature

Vice President/COO
Title

July 10, 2015
Date

Cooperatives

List any other cooperative contracts currently held by Vendor.

COOPERATIVE NAME	DISCOUNT OFFERED	CONTRACT EXPIRATION DATE
☒ Choice Partners	.87	6-16
☒ Buy Board – Texas Local GOV'T. Purchasing Cooperative	.88	5-18
☒ The Cooperative Purchasing Network (TCPN)	.85	5-18
☐ Houston Galveston Council of Governments Cooperative (H-GAC)		
☒ National Joint Powers Alliance (NJPA)	.87	11-16
☒ Cooperative Educational Services (CES) – New Mexico	.88	8-18
☐ Educational & Institutional Cooperative Services, Inc. (E&I)		
☐ GSA		
☐ ESC Region 20 Cooperative (PACE)		
☒ ESC Region 19 Cooperative (Allied States Cooperative)	.85	12-16
☒ ESC Region 8 Cooperative (TIPS/TAPS)	.88	1-16
☐ ESC Region 7 Cooperative		
☐ ESC Region 5 Cooperative		
☐ U.S. Communities		
☐ TXMAS		
☒ Other (Specify): <i>NCPA Reg 14</i>	.87	4-18
☐ None		

**Interlocal Contract
Between Harris County Department of Education
& Town of Flower Mound**

Pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code and Chapter 271, Subchapter F of the Texas Local Government Code, this Interlocal and Cooperative Purchasing Program Contract ("Contract") is made and entered into by and between the Harris County Department of Education ("HCDE"), located in Houston, Texas, and Town of Flower Mound ("TOWN"), located in Denton County, for the purpose of providing services.

Preamble

HCDE is a local governmental entity established to promote education in Harris County, Texas and is also duly authorized to provide programs and services in the State of Texas. Both HCDE and TOWN desire to set forth, in writing, the terms and conditions of their agreement.

General Terms and Conditions

In consideration of the mutual covenants and conditions contained in this Contract and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties intending to be legally bound agree as follows:

1. Term. This Contract is effective from the date of the first signature and shall automatically renew unless either party gives thirty (30) days prior written notice of non-renewal. This Contract may be terminated by either party with or without cause with thirty (30) days written notice. See other means of terminating the contract in Article 11, below. Any such notice shall be sent according to Article 8.
2. Agreement. The terms of this Contract shall apply and will be considered a part of any Addendum for programs and services delivered by HCDE. This Contract and the attached and incorporated Addendum, purchase orders, or exhibits, if any, contain the entire agreement of the parties and there are no representations, agreements, arrangements, or undertakings, oral or written, between the parties to this Contract other than those set forth in this Contract and duly executed in writing.
3. Purpose and Scope of Work.
 - A. HCDE agrees to:**
 - Provide TOWN with subsequent independent contracts and/or descriptive offerings of each of the programs and services that HCDE provides through its respective divisions.
 - Provide services upon the submission of independent contracts or purchase orders within the HCDE divisions.
 - Conduct, as a minimum, an annual audit or survey, as appropriate, for each of the programs.
 - B. TOWN agrees to:**
 - Participate in any or all of the services that HCDE has to offer.
 - Submit purchase order(s) or independent contract(s) for each of the programs it wishes to purchase and/or collaborate.
 - Follow the terms and conditions of each independent contract or purchase orders for each of the programs.
 - Assign the appropriate person to act as representative to each respective program delivered.

4. As is. HCDE makes this Contract available to HCDE participating entities “as is” and are under no obligation to revise the terms, conditions, scope, prices, and/or any requirements of the Contract for the benefit of TOWN.
5. Assignment. Neither this Contract nor any duties or obligations entered in subsequent contracts because of this agreement shall be assignable by either party without the prior written acknowledgment and authorization of both parties.
6. Conflict of Interest. During the Term of HCDE’s service to TOWN, TOWN, its personnel and agents, shall not, directly or indirectly, whether for TOWN’s own account or with any other person or entity whatsoever, employ, solicit or endeavor to entice away any person who is employed by HCDE.
7. Contract Amendment. This Contract may be amended only by the mutual agreement of all parties in writing to be attached to and incorporated into this Contract.
8. Notice. Any notice provided under the terms of this Contract by either party to the other shall be in writing and shall be sent by **certified mail, return receipt requested**. Notice shall be sufficient if made or addressed as follows:

Harris County Department of Education
 Attn: James Colbert, Jr.
 County School Superintendent
 6300 Irvington Blvd.
 Houston, Texas 77022
 713-694-6300

Town of Flower Mound
 Attn: Sabrina Zadow
 Title: Buyer
 Address: 2121 Cross Timbers Rd.
 City, State, Zip: Flower Mound, TX 75028
 Phone: (972) 874-6007
 Email: sabrina.zadow@flower-mound.com

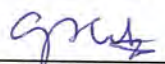
9. Relation of Parties. It is the intention of the parties that TOWN is independent of HCDE and not an employee, agent, joint venturer, or partner of HCDE and nothing in this Contract shall be interpreted or construed as creating or establishing the relationship of employer and employee, agent, joint venturer or partner, between HCDE and TOWN or HCDE and any of TOWN’s agents.
10. Non-Exclusivity of Services. Nothing in this Contract may be construed to imply that HCDE has exclusive right to provide TOWN these services. During the Term of Contract, TOWN reserves the right to use all available resources to procure other professional services as needed and, in doing so, will not violate any rights of HCDE.
11. Termination. This Contract may be terminated prior to the expiration of the Term hereof as follows:
 - By TOWN upon 30 days’ notice if the work/service is not provided in a satisfactory and proper manner after a remedy has been reported and discussed;
 - By mutual written agreement of the parties, upon thirty (30) days prior notice; or
 - By either party immediately if the other party commits a material breach any of the terms of this Contract and no remedial action can be agreed upon by the parties.
12. Master Contract. This Contract can be utilized as the Master Contract. The general terms and conditions in this Contract will serve to outline the working relationship between HCDE and the TOWN. Both parties agree to allow the TOWN to use any or all of the services with no charge from HCDE, including Choice Partners.

The TOWN agrees to adhere to the terms and conditions set forth for the programs and/or services as contracted under these programs. All other programs and/or services provided by HCDE requiring a fee will need an addendum to the approved Master Interlocal Contract. The specific terms and conditions of the addendum will govern that individual contract. In the case of a conflict between the Master Contract and any addendum, the provisions of the addendum will govern.

13. Severability. In the event that 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, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Contract shall be construed as if such invalid, illegality, or unenforceable provision had never been contained in it.
14. Governing Law and Venue. This Contract shall be governed by and construed in accordance with the laws of the State of Texas. The mandatory and exclusive venue for the adjudication or resolution of any dispute arising out of this Contract shall be in Harris County, Texas.
15. Authorization. Each party acknowledges that the governing body of each party to the Contract has authorized this Contract.
16. Benefit for Signatory Parties Only. Neither this Contract, nor any term or provisions hereof, not any inclusion by reference, shall be construed as being for the benefit of any party not in signatory hereto.
17. Each party paying for the performance of governmental functions or services related to this Contract must make those payments from current revenues available to the paying party.
18. This Contract may not be used to purchase engineering or architectural services as prohibited by Chapter 791 of the Texas Government Code.
19. The TOWN may not enter into a contract to purchase construction-related goods or services through this Contract in an amount greater than \$50,000.00 unless a person designated by the TOWN certifies in writing that: (1) the project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications under Chapter 1001 or 1051, Occupations Code; or (2) the plans and specifications required under Chapters 1001 and 1051, Occupations Code, have been prepared.

In witness whereof, HCDE and TOWN have executed this Contract to be effective on the date specified in Article 1. Term above:

Town of Flower Mound

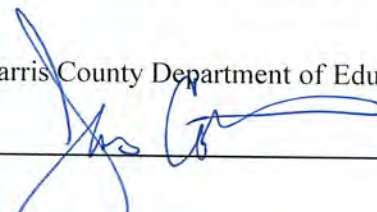

Authorized Signature

JIMMY STATHATOS
Printed Name

TOWN MANAGER
Title

04/09/2015
Date

Harris County Department of Education


James Colbert, Jr.

County School Superintendent

5/21/15
Date

THE STATE OF TEXAS §
COUNTY OF DENTON §

**SUPPLEMENT TO THE HARRIS COUNTY DEPARTMENT OF EDUCATION
CHOICE PARTNERS COOPERATIVE CONTRACT CSP#15/04/1JN
BETWEEN THE TOWN OF FLOWER MOUND, TEXAS AND BASIC IDIQ**

This Supplement to the Harris County Department of Education Choice Partners Cooperative Contract CSP#15/04/1JN (the "Supplement") is entered into on this _____ day of _____, 2016, by and between the **TOWN OF FLOWER MOUND, TEXAS**, a municipal corporation located in Denton County, Texas, (the "Town"), acting by and through its Mayor or authorized representative, and **BASIC IDIQ**, (the "Contractor") regarding the following project to be located in the Town:

WESTERN O&M FACILITY

I. RECITALS

WHEREAS, the Town entered into an Interlocal Contract Agreement with the Harris County Department of Education ("Department") on or about May 21, 2015 to allow the Town to participate in the services that the Department offers, including participation in a cooperative purchasing program pursuant to Texas Local Government Code, Section 271.102; and

WHEREAS, pursuant to the Interlocal Contract Agreement between the Town and the Department, the Town desires to utilize the Department's agreement with Contractor (the "Contract") for the services provided in said Contract to complete the Western O&M Facility (the "Project"); and

WHEREAS, the Town finds that the Contract was competitively bid by the Department in satisfaction of the requirements of Texas law; and

WHEREAS, pursuant to section 5.43 of the Contract, the Town and the Contractor desire to enter into a supplemental contract to provide a more specific project scope and cost for services to be provided by Contractor as set out herein; and

WHEREAS, the Town and Contractor agree that all provisions in the Contract that are not specifically supplemented or amended by this Supplement shall remain in full force and effect; and

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

II. TERMS

A. Recitals Incorporated

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

B. Scope

The Scope of Services for the delivery of the Town's Western O&M Facility shall be as described in Attachment 1.

The Contractor shall provide all services as are necessary to complete the Project, including, but not limited to, the tasks enumerated in Attachment 1. Attachment 1 is incorporated by reference and made a part hereof as if written word for word.

C. Fee

Payment to Contractor shall be as follows:

Total payment for services described herein for the Services for the Project shall be a sum not to exceed Seven Hundred Seventy One Thousand, Three Hundred Ninety Eight Dollars and 40/100 (\$771,398.40) as specified in Attachment 1.

D. Builders' Risk Insurance

Contractor must provide a completed value form insurance carried be equal to the completed value of the structure. Town shall be listed as Loss Payee on all insurance forms provided by Contractor.

E. Warranty Period

All products and services provided by the Contractor under the Contract and Supplement must be warranted to be free from defects in material, workmanship, and free from such defects in design for a period of two (2) years upon the later of the Town's acceptance of the product or service or payment of the applicable invoice. All other provisions in Section 5.12 of the Contract shall continue to be applicable.

F. Project Completion

Contractor shall furnish all labor, equipment, and material pursuant to the Contract and Supplement and shall perform all work necessary to complete the improvements in a good and workmanlike manner, ready for use, within the specified time for substantial completion of one hundred and sixty (160) calendar days (the "Substantial Completion Date"), and final completion of one hundred and ninety (190) calendar days (the "Final Completion Date"), as measured from the Effective Start Date shown in the Notice to Proceed. The notice to proceed is expected to be issued on or about March 28, 2016 at which time the paving and utilities to within five feet of the building will be in place.

Contractor understands and agrees that time is of the essence in performing and completing the Project. The Town and Contractor acknowledge that the actual damages the

Town may sustain if the Contractor fails to complete the Project on time are uncertain and will be difficult to ascertain. Contractor agrees that the sum of one thousand dollars and 00/100 (\$1,000.00) per day or portion of day in Liquidated Damages will be deducted from the total payment made by the Town to Contractor for each calendar day or portion thereof, that the work is not substantially complete beyond the Substantially Complete Date, or within such extra time as may have been allowed by an extension approved by the Town. Contractor also agrees that the sum of five hundred dollars and 00/100 (\$500.00) per day or portion of day in liquidated damages will be deducted from the total payment by the Town for each calendar day or portion thereof, that the work is incomplete, beyond the Final Completion Date, or within such extra time as may have been allowed by an extension approved by the Town.

Substantial Completion shall be defined as the date that the Town occupies the building.

Calendar days shall be defined as any successive days of the week or month, no days being excepted.

G. Holidays

The following holidays are to be observed and construction is not to be undertaken unless Contractor submits a written request and receives prior written approval from the Town:

New Year's Day
Martin Luther King Day
Good Friday
Memorial Day
Independence Day
Labor Day
Thanksgiving Day and the following Friday
Christmas Eve Day and Christmas Day

H. Retainage

The Town shall withhold 5% retainage.

I. Water for Construction

The Contractor is responsible for obtaining a fire hydrant meter from the Town and paying for all charges assessed to the meter.

J. Testing

It is the Contractor's responsibility to notify all testing firms and the Town Inspector when tests are required to be made at least 48 hours in advance of each required test. The Town Inspector may direct additional tests to be performed and where the tests will be performed.

The Town will pay for four concrete cylinders: two for 7 day breaks and two for 28 day breaks. When high early strength concrete is identified in the plans and specifications, the Town will pay for four concrete cylinders: two for 3 day breaks and two for 28 day breaks. The

Contractor shall be responsible for tests related to additional cylinders made for early break.

K. Extensions of Time

Should special conditions arise from war, strikes, fires, floods, epidemics, quarantine restrictions, freight embargos, unusually severe weather conditions, or other national emergencies wherein restrictions may prevent or delay the acquirement, delivery, or use of materials and be the direct cause of specific delays, extensions of time will be granted. In such event, the Contractor shall file with the Town Engineer, copies of documentary evidence to substantiate the causes and extent of resultant delays at the time they are occurred. This evidence together with the original orders and written delivery dates will be used by the Town Engineer to determine the amount of any extension of time to be made on account of such delays. In determining extensions of time, revised delivery dates will be computed by extending the original due date by the actual number of days, which elapses during any emergency.

Contractor is requested to bring to the attention of the Town Engineer, by letter, during the progress of the Project, the occurrence of events, which Contractor considers, may warrant extensions of time under the conditions of the Contract and Supplement. If the Project is not completed by the Substantial Completion Date or Final Completion Date, the Contractor shall, at the conclusion of the Project, at his option, present to the Town Engineer a written statement presenting his view upon all matters of time extensions.

The amount of all extensions of time, for whatever reason granted, shall be determined by the Town Engineer with due consideration given to working seasons and working conditions. In general, only actual and not constructive or hypothetical days of delay will be considered. The Town shall have the authority to grant additional extensions of time as the Town may deem advisable and justifiable.

No extension of time shall be recognized by the Town unless it is specifically identified in and approved through a properly executed change order.

L. Town Right to Cancel

This Supplement is exclusively between the Town and Contractor and will be subject to immediate cancellation by the Town (without penalty to the Town) if, in the opinion of the Town, the quality, service, and specification requirements, or the terms and conditions are not maintained as stated in this Supplement.

M. Governing Law and Exclusive Venue

Section 5.34 of the Contract is amended to read as follows:

The Contract and Supplement between the Town and Contractor are fully performable in Denton County, Texas. Exclusive venue for disputes arising between the Town and Contractor concerning any matter therein shall be in Denton County, Texas.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day

and year first written above.

**THE TOWN OF FLOWER MOUND,
TEXAS**

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

Date Signed: _____

BASIC IDIQ

By: _____
Name _____
Title _____

Date Signed: _____

State of Texas §
 §
County of Denton §

This instrument was acknowledged before me on the _____ day of _____, 2016, by _____, in his capacity as _____ of **BASIC IDIQ**, 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 **BASIC IDIQ**

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____ DAY OF _____, 2016.

Notary Public, State of Texas

My Commission Expires:



ATTACHMENT 1



February 22, 2016

Mr. David Bauer
Construction Manager
Town of Flower Mound
CIP Engineering/Public Works
2121 Cross Timbers Rd
Flower Mound, TX 75028

Subject: **Construction Services Proposal
Town of Flower Mound
Western O&M Facility**

Dear Sir:

Basic IDIQ, Inc. (BI) is pleased to provide this proposal for the subject project. This proposal encompasses the work required to build the Western O&M Facility as per the drawings created by MPI Architects and the value engineering explicitly described in the scope of work. All work will be completed in accordance with the information provided by the Town of Flower Mound and the requirements of Choice Facility Partners. This proposal is comprised of the following:

- Scope of Work
- Cost Summary
- Unit Costs

We thank you for the opportunity to offer this proposal on this project, and we look forward to working with you for its successful execution and completion. Should you have any questions, or need further information, please feel free to contact us.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Eddie Linss', is written over a light blue horizontal line.

Eddie Linss
Vice President/Senior Project Manager

**SCOPE OF WORK
Town of Flower Mound
Western O&M Facility
6566 Stonecrest Road
Flower Mound, Texas 76226**

GENERAL:

This project provides for the construction of the Western O&M Facility in Flower Mound, Texas.

1.0 SCOPE OF WORK:

In accordance with this scope of work, site inspections and specifications, all labor, materials, supervision, equipment, insurance, taxes, overhead, and all other things or services necessary to furnish and install components and systems to provide for the construction as indicated herein.

Work includes but is not limited to the following:

1.1 Western O&M Facility

1.1.1 Foundation:

Work includes but is not limited to the following:

- 1) Site and pad prep, including installation of utilities within five feet of the new building to be completed by the Town of Flower Mound. This is not a part of the Basic IDIQ contract.
- 2) Provide labor, equipment and materials to install all underground utilities within the five foot perimeter surrounding the building pad site and within the pad site to include water, electrical and gas.
- 3) Provide labor, equipment and materials to dig out and pour the concrete grade beams.
- 4) Provide labor, equipment and materials to form and pour the concrete slab with the two separate depths: four inches beneath the living quarters and eight inches beneath the apparatus bay as per the plans.

1.1.2 Framing

Work includes but is not limited to the following:

- 1) Provide labor, equipment and materials to install 100% split faced CMU for the construction of the building. The final design, pattern and color selection will be determined by a joint effort between the Town of Flower Mound, Basic IDIQ and MPI Architects.
- 2) Provide labor, equipment and materials to furnish and install the wood structural framing for the roof system.
- 3) Provide labor, equipment and materials to furnish and install NLB metal studs for the interior walls.

1.1.2 Roof System

Work includes but is not limited to the following:

- 1) Provide labor, equipment and materials to install plywood decking as an underlayment for the roof system.
- 2) Provide labor, equipment and materials to furnish and install the felt on the plywood.
- 3) Provide labor, equipment and materials to furnish and install roof shingles as per the plans.
- 4) Provide labor, equipment and material to furnish and install all vent penetrations, as required per the plans.
- 5) Provide labor, equipment and material to furnish and install the soffit as per the plans.

1.1.4 Interior Finishes

Work includes but is not limited to the following:

- 1) Provide labor, equipment and materials to furnish and install a 2' x 4' suspended ceiling system with lay-in ceiling tiles in the living quarters.
- 2) Provide labor, equipment and materials to furnish and install drywall, including taping, bedding, texture and paint as called for in the plans.
- 3) Provide labor equipment and materials to furnish and install frames, doors and hardware as per plans.
- 4) Provide labor, equipment and materials to furnish FRP in the apparatus bay to a height of eight feet AFF.
- 5) Provide labor, equipment and materials to seal the concrete floor in the living quarters.
- 6) Provide labor, equipment and materials to furnish and install cabinets and countertops in the kitchen area of the living quarters.
- 7) The LP ceiling in the apparatus bay has been eliminated from the scope of work.

1.1.5 Exterior Finishes

Work includes but is not limited to the following:

- 1) Provide labor, equipment and materials to furnish and install a Vestis closed shade canopy, which is an alternate to the canopy called for on the plans.
- 2) Provide labor equipment and materials to furnish and install frames, doors and hardware as per plans.
- 3) Provide labor, equipment and materials to furnish and install storefront and windows as per the plans.
- 4) Provide labor, equipment and material to furnish and install the lettering depicting the facility name and address.
- 5) The precast stone panels, brick and stone veneers have been eliminated from the scope of work.

1.1.6 Special Systems

Work includes but is not limited to the following:

- 1) Provide labor, equipment and materials to furnish and install an Air Cleaning Specialists vehicular exhaust system in the apparatus bay.
- 2) Provide labor equipment and materials to furnish and install two (2) Avonite ADA shower stalls.
- 3) Provide design, labor, equipment and materials to furnish and install a fire alarm and suppression system that will be NFPA and NEC code compliant.
- 4) Provide labor, equipment and material to furnish and install four (4) overhead doors for the apparatus bay.

1.1.7 Furnishings

Work includes but is not limited to the following:

- 1) Provide labor, equipment and materials to furnish and install a residential type range and hood in the kitchen of the living area.
- 2) Provide labor, equipment and materials to furnish and install toilet paper dispensers, mirrors, paper towel dispensers and ADA grab bars as per plans.
- 3) Additional furnishings for kitchen, sleeping quarters, apparatus bay and locker systems to be provided and installed by others.

1.1.8 Plumbing

Work includes but is not limited to the following:

- 1) Provide labor, equipment and materials to furnish and install all pipes, , pipe vents, traps, trap primers, valves, lavatories, toilets, floor sink and floor drains for the plumbing system.
- 2) Provide labor equipment and materials to furnish and install the backflow preventer.
- 3) Provide labor, equipment and materials to furnish and install a water heater as per plans.
- 4) Provide labor, equipment and materials to bring in a gas line to the building and leave it capped for future use.
- 5) Provide labor, equipment and material to furnish and install a smaller oil/sand interceptor than what is called for on the plans.
- 6) The thermostatic valve has been eliminated from the scope of work.

1.1.8 Mechanical

Work includes but is not limited to the following:

- 1) Provide labor, equipment and materials to furnish and install all ductwork, diffusers and return grilles as per plans.
- 2) Provide labor equipment and materials to furnish and install all seven (7) exhaust fans as per plans.
- 3) Provide labor, equipment and materials to furnish and install two (2) Trane split systems as requested by the Town of Flower Mound. There is still a possibility of value-engineering the brand of the units per the direction from the Owner.

1.1.8 Electrical

Work includes but is not limited to the following:

- 1) Provide labor, equipment and materials to furnish and install all conduit, wire, panels and outlets as per plans for the electrical service throughout the building.
- 2) Provide labor equipment and materials to furnish and install empty conduit with pull-string for future installation of IT by the Owner.
- 3) Provide labor, equipment and materials to furnish and install all the interior and exterior LED light fixtures.

2.0 SPECIFICATIONS:

Work shall be performed per the requirements of the latest edition of the applicable local, state and federal codes and standards.

3.0 SUBMITTALS:

Subcontractor shall submit the indicated number of copies of each required submittal. Submittals shall be submitted and approved prior to incorporating that material or activity into the project. Submittals required by specification and/or drawings shall be made regardless of whether or not they are listed on this schedule.

3.1 SUBMITTAL TYPE AND DESCRIPTION OUTLINE:

Type	Description	Type	Description
A	Shop Drawings	G	Application Instructions
B	Manufacturer's Catalog Cuts/Data	H	Operations & Maintenance (O&M) Manuals
C	Certificate/Certification	I	Color Samples
D	Performance Test Reports	J	Red Line Drawings
E	Sample of Testing		
F	Notification of Sample Availability		

3.2 PROJECT SUBMITTAL REQUIREMENTS:

Required Submittal	Quantity	Due Date	Type
Store Front, Glass, Door Closers, etc.	1 (Electronic)		A + B
Split Faced CMU	1 (Electronic)		B
Paint & Finishes	1 (Electronic)		B + I
Light Fixtures	1 (Electronic)		B
HVAC Equipment	1 (Electronic)		B
Plumbing Fixtures	1 (Electronic)		B

4.0 SPECIAL CONSIDERATIONS:

Special considerations are applicable to this project as outlined in the following:

- 4.1 BASIC IDIQ Inc will contact the client project manager for equipment outages as required. Basic will provide a minimum of two (2) working day(s) notice for proper outage coordination. .
- 4.2 Normal working hours for this project is 0700 to 1700. Working outside of standard hours or on weekends and holidays will be coordinated and approved by the owner/client. Proposed numbers do include some premium time hours.
- 4.3 All work performed shall be in accordance with the applicable requirements of the latest edition of the Occupational Safety and Health Act (OSHA), Basic IDIQ Safety Manual and Client procedures as applicable.
- 4.4 Work areas will be maintained in a clean and orderly manner with materials, tools, and equipment properly stored and utilized to prevent hazards for worker and incidental personnel in the area. Provide barricades, signs, and other devices as necessary to ensure facility occupants are notified and shielded from dangers that work areas may pose
- 4.5 Work activities and installations are subject to in process inspections and completion inspections by the Client personnel. No "hold points" are imposed on this project; however items/materials installed which are not accessible after installation may be subject to rework if verification of acceptable installation is not possible
- 4.6 Owner property will be properly protected from damage by construction activities.
- 4.7 Basic IDIQ will provide a Project Manager to supervise this project.
- 4.8 Please note that this proposal is good for **30 days** unless extension is agreed by Basic IDIQ Inc.

5.0 Exclusions:

All exclusions are applicable to this project as outlined in the following:

- 1) Asbestos Abatement
- 2) Lead Abatement
- 3) Any Items Explicitly Described or Agreed Upon in the Future

Means Based Pricing (Modified by City Cost Index)	\$ 856,680.99
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Bid Coefficient (Means Based Pricing Only)	87.0%	\$ (111,368.53)
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Subtotal	\$ 745,312.46
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Non Pre-Priced Items (Below-Listed Items Not Addressed W/ RS Means)	
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\$	-
\$	-
<u>\$</u>	<u>-</u>

Overhead	\$	-
Profit	\$	-

Subtotal	\$ -
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Total	\$ 745,312.46
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Choice Facility Partners Contract Factors	
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Project Size	0.0%	\$	-
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Distance	0.0%	\$	-
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Time of Performance	0.0%	\$	-
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Annual Volume	0.0%	\$	-
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Utilization of Prevailing Wage Scales	0.0%	\$	-
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Permitting Fees (Allowance/Pass Through)	<u>\$</u>	<u>-</u>
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Subtotal	\$ -
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Adjusted Total	\$ 745,312.46
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Payment and Performance Bonds	2.50%	\$	18,632.81
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Builder's Risk Insurance	1.00%	\$	<u>7,453.12</u>
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Final Total	<u><u>\$ 771,398.40</u></u>
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CostWorks 2016 Quarter 1 - Town of Flower Mound - Western O&M Facility

Qty	CSI Number	Description	Unit	Bare Mat.	Bare Labor	Bare Equip.	Total	Total Incl. O&P
0	01 250 400 0500	Cost adjustment factors, cut & patch to match existing construction, add to construction costs for particular job requirements, minimum	Costs	2.0%	3.0%			
0	01 250 400 0800	Cost adjustment factors, dust protection, add to construction costs for particular job requirements, minimum	Costs	1.0%	2.0%			
0	01 250 400 1700	Cost adjustment factors, protection of existing work, add to construction costs for particular job requirements, minimum	Costs	2.0%	2.0%			
116	01 540 750 0906	Scaffolding, steel tubular, regular, rent/month only for complete system for face of walls, 6' -4" x 5' frames, excludes planks	C.S.F.	4,303.60	0.00	0.00	4,303.60	4,733.96
8	01 590 200 0450	Rent backhoe-loader 45 to 60 HP 3/4 CY capacity	Week+	0.00	0.00	15,473.20	15,473.20	17,020.52
6	01 590 200 3050	Rent roller, vibratory, tandem, smooth drum, 35 H.P.	Week+	0.00	0.00	7,587.12	7,587.12	8,345.83
12	01 590 200 4890	Rent loader, skid steer, wheeled, 1 CY 78 HP, diesel	Week+	0.00	0.00	19,937.40	19,937.40	21,931.14
4	01 590 200 4899	Rent skid steer attachment, trencher	Week+	0.00	0.00	1,352.59	1,352.59	1,487.85
6	01 590 200 4910	Rent trencher chain boom gas oper riding 40 HP	Week+	0.00	0.00	10,605.00	10,605.00	11,665.50
8	01 590 400 6900	Rent water tank trailer w/pumped discharge, 5000 gallon capacity	Week+	0.00	0.00	5,979.20	5,979.20	6,577.12
5	01 590 600 2400	Rent crane truck mounted, hydraulic, 12 ton capacity	Day+	0.00	0.00	4,635.90	4,635.90	5,099.49
12	02 220 350 0725	Selective demolition, rubbish handling, dumpster, 20 C.Y., 5 ton capacity, weekly rental, includes one dump per week, cost to be added to demolition cost	Week	7,759.20	0.00	0.00	7,759.20	8,535.12
60	02 550 466 4040	Natural gas piping, steel pipe, tar coated and wrapped, plain end natural gas distribution, 1" diameter, schedule 40, excludes excavation or backfill	L.F.	248.04	228.10	12.12	488.26	641.93
2	02 630 400 4210	Storm drainage manholes, rubber boots, 6", dia. or smaller	Ea.	151.58	11.99	0.00	163.57	185.85
182	03 110 445 3000	C.I.P. concrete forms, slab on grade, edge, wood, to 6" high, 4 use, includes erecting, bracing, stripping and cleaning	L.F.	69.54	307.04	0.00	376.58	581.14
142	03 110 445 3050	C.I.P. concrete forms, slab on grade, edge, wood, 7" to 12" high, 4 use, includes erecting, bracing, stripping and cleaning	SFCA	137.09	330.00	0.00	467.09	689.38

CostWorks 2016 Quarter 1 - Town of Flower Mound - Western O&M Facility

Qty	CSI Number	Description	Unit	Bare Mat.	Bare Labor	Bare Equip.	Total	Total Incl. O&P
2,740	03 210 600 0602	Reinforcing steel, in place, slab on grade, #3 to #7, A615, grade 60, incl labor for accessories, excl material for accessories	Lb.	1,336.07	621.45	0.00	1,957.53	2,487.68
2	03 310 240 3560	Structural concrete, in place, equipment pad (3000 psi), 5' x 5' x 8", includes forms(4 uses), Grade 60 rebar, concrete (Portland cement Type I), placing and finishing	Ea.	224.72	178.20	3.72	406.64	541.53
48	03 310 240 3940	Structural concrete, in place, continuous strip footing (3000 psi), 24" wide x 12" deep, reinforced, includes forms(4 uses), Grade 60 rebar, concrete (Portland cement Type I), placing and finishing	C.Y.	6,258.24	3,628.80	32.97	9,920.01	12,879.44
2,048	03 310 240 5001	Structural concrete, in place, slab on grade (3000 psi), 4" thick, includes concrete (Portland cement Type I), placing and broom finish, excludes forms and reinforcing	S.F.	2,583.76	1,194.59	20.69	3,799.04	4,789.51
2,834	03 310 240 5020	Structural concrete, in place, slab on grade (3000 psi), 8" thick, includes concrete (Portland cement Type I), placing and broom finish, excludes forms and reinforcing	S.F.	7,299.86	2,050.69	28.62	9,379.18	11,385.29
1,062	04 810 175 2100	Concrete block, bond beam, normal weight, 2000 psi, 8" x 8" x 16", includes mortar, grout and 2-#5 horizontal reinforcing bars, excludes scaffolding and vertical reinforcing	L.F.	8,161.47	3,727.62	0.00	11,889.09	14,913.14
6,178	04 810 182 7200	Concrete block, decorative, scored ground face, 2000 psi, 2 to 5 scores, 8" x 16" x 8" thick, includes mortar and horizontal joint reinforcing every other course, excludes scaffolding, grout and vertical reinforcing	S.F.	94,300.99	22,285.28	0.00	116,586.27	141,495.97
42	04 810 190 0450	Concrete block, lintel, 2000 psi, 8" x 8" x 16", includes mortar, grout and 2-#4 horizontal reinforcing bars, excludes scaffolding and vertical reinforcing	L.F.	269.35	131.09	22.06	422.49	530.24
2	05 090 150 0300	Bolt, hex head, plain steel, 1/4" dia x 2" L, A307, incl nut & washer	Ea.	0.21	6.37	0.00	6.58	11.55
44	05 090 380 2800	Hollow wall anchor, 1/4" dia long, in gypsum wall board, plaster or tile, excl layout & drilling	Ea.	32.18	127.83	0.00	160.01	244.06
80	05 090 380 7000	Plastic screw anchor, #8 & #10 x 7/8" L, in concrete, brick or stone, excl layout & drilling	Ea.	3.39	125.28	0.00	128.67	209.02
12	05 090 380 7100	Plastic screw anchor, #10 & #12 x 1" L, in concrete, brick or stone, excl layout & drilling	Ea.	0.64	20.61	0.00	21.24	34.46
10	05 090 380 8150	Wedge anchor, carbon steel, 3/8" dia x 2-1/4" L, in concrete, brick or stone, excl layout & drilling	Ea.	5.41	26.03	0.00	31.43	48.49

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Qty	CSI Number	Description	Unit	Bare Mat.	Bare Labor	Bare Equip.	Total	Total Incl. O&P
6	05 090 460 0100	Lag screw, steel, 3/8" dia x 3" L	Ea.	1.97	15.10	0.00	17.07	26.85
1	05 090 500 0110	Machine screw, steel, round head, #8 x 2" L	C	6.94	157.68	0.00	164.62	264.46
1	05 090 500 0200	Machine screw, steel, round head, #10 x 1" L	C	5.62	94.50	0.00	100.12	160.80
5,120	06 160 800 0307	Sheathing, plywood on roof, CDX, 3/4" thick, pneumatic nailed	S.F.	6,404.10	1,935.36	0.00	8,339.46	10,262.73
4,896	06 170 600 1400	Wood I-Joists, fabricated "I" joists with wood flanges, plywood webs, 24" O.C., 24' to 30' span, 45 psf live load, includes bridging & blocking	SF Flr.	16,192.05	2,115.07	0.00	18,307.12	21,237.67
4,896	06 170 980 0400	Roof trusses, fink (W) or King post type, metal plate connected, 4 in 12 slope, 2'-0" O.C., 44' to 60' span	SF Flr.	15,206.00	2,326.58	1,137.34	18,669.92	21,594.44
1,894	06 250 200 4040	Recycled plastic, sheeting, black or white, 4' x 8' x 1/2"	S.F.	10,640.49	1,165.95	0.00	11,806.44	13,688.70
50	06 410 100 9560	Custom cabinets, rule of thumb: kitchen cabinets, excl. counters & appliances, minimum	L.F.	11,395.00	931.50	0.00	12,326.50	14,073.50
25	06 415 300 1540	Countertops, plastic laminate, 24" wide, 1-1/2" thick edging, plastic laminate edging, maximum	L.F.	344.50	315.90	0.00	660.40	897.35
25	06 415 300 2640	Countertops, plastic laminate, backsplash, add to above, maximum	L.F.	135.15	203.85	0.00	339.00	481.85
1	06 415 300 3900	Countertops, plastic laminate, cutouts for sinks, lavatories	Ea.	0.00	23.22	0.00	23.22	37.80
7,521	07 210 950 0160	Blanket insulation, for walls or ceilings, kraft faced fiberglass, 6" thick, R19, 15" wide	S.F.	3,268.63	1,543.31	0.00	4,811.94	5,942.94
5,120	07 210 950 0220	Blanket insulation, for walls or ceilings, kraft faced fiberglass, 9" thick, R30, 23" wide	S.F.	3,636.22	1,050.62	0.00	4,686.85	5,675.32
63	07 310 100 0505	Asphalt shingles, premium, laminated multi-layered shingles, class A, 300-385 lb/sq, pneumatic nailed	Sq.	15,159.06	3,980.34	0.00	19,139.40	23,839.58
63	07 310 100 0825	Asphalt shingles, #30 felt underlayment	Sq.	647.77	258.55	0.00	906.32	1,180.66
6	08 110 200 1120	Doors, commercial, steel, flush, full panel, hollow core, hollow metal, 18 ga., 3'-0" x 7'-0" x 1-3/4" thick	Ea.	3,275.40	178.20	0.00	3,453.60	3,917.22
4	08 110 200 1214	Hollow metal, for narrow lite add	Ea.	440.96	0.00	0.00	440.96	485.06
2	08 110 200 2540	Doors, commercial, steel, hollow core, hollow metal, STC 40, for soundproofing, add	Ea.	3,710.00	0.00	0.00	3,710.00	4,081.00
14	08 110 820 0100	Frames, steel, knock down, hollow metal, single, 16 ga., up to 5-3/4" deep, 3'-0" x 7'-0"	Ea.	2,300.20	438.48	0.00	2,738.68	3,263.54

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Qty	CSI Number	Description	Unit	Bare Mat.	Bare Labor	Bare Equip.	Total	Total Incl. O&P
2	08 110 840 0460	Frames, steel, wrap around, 16 ga., 6-1/4" x 7'-0" x 3'-0" wide	Ea.	358.28	66.96	0.00	425.24	504.48
10	08 210 900 3780	Door, wood, architectural, flush, interior, H.P. plastic laminate, 1-3/8', 3'-0" x 7'-0"	Ea.	2,014.00	459.00	0.00	2,473.00	2,960.60
10	08 210 900 3860	Door, wood, architectural, flush, interior, H.P. plastic laminate, for solid wood core, add	Ea.	445.20	0.00	0.00	445.20	489.72
4	08 330 720 2500	Doors, rolling service, steel, manual, fire, class A, 20 gauge, 14' x 14' high, incl. hardware	Ea.	16,218.00	3,693.60	0.00	19,911.60	24,395.40
56	08 330 720 3700	Doors, rolling service, steel, manual, for safety edge bottom bar, electric, add	L.F.	2,611.84	0.00	0.00	2,611.84	2,873.02
56	08 330 720 4000	Doors, rolling service, steel, manual, for weatherstripping, extruded rubber, jambs, add	L.F.	902.27	0.00	0.00	902.27	992.50
56	08 330 720 4200	Doors, rolling service, steel, manual, for weatherstripping, sill, extruded rubber, add	L.F.	347.26	0.00	0.00	347.26	381.98
4	08 330 720 4500	Doors, rolling service, steel, manual, motor operators for, to 14' x 14' opening	Ea.	4,982.00	440.64	0.00	5,422.64	6,268.60
60	08 410 140 0600	Storefront systems, aluminum frame, institutional grade, clear 3/8" plate glass, 3' x 7' door with hardware, 400 SF max wall, wall height to 12' high	S.F.	2,162.40	229.39	0.00	2,391.79	2,773.92
16	08 710 150 1000	Door hardware, apartment, interior	Door	9,412.80	1,036.80	0.00	10,449.60	12,073.44
6	08 710 300 0040	Door hardware, door closer, rack and pinion, adjustable backcheck, 3 way mount, hold open arm	Ea.	1,513.68	255.96	0.00	1,769.64	2,106.98
264	08 910 900 0050	Window wall, aluminum, stock, including glazing, average	S.F.	19,588.80	1,331.51	0.00	20,920.31	23,686.08
2,170	09 130 100 0900	Carrier channels, for ceilings with recessed lighting fixtures, add	S.F.	414.04	1,242.11	0.00	1,656.14	2,475.62
440	09 130 100 3420	Ceiling suspension system s, seismic wire support for light fixtures, 10 lb. to 56 lb.	L.F.	214.54	484.70	0.00	699.25	1,026.73
1,954	09 250 700 3050	Gypsum wallboard, on ceilings, standard, taped & finished (level 4 finish), 5/8" thick	S.F.	745.65	1,392.81	0.00	2,138.46	3,107.80
7,521	09 260 100 3800	Partition wall, interior, standard, taped both sides, installed on & incl. 25 ga, NLB metal studs, 3-5/8" wide, 16" O.C., 8' to 12' high, 5/8" gypsum drywall	S.F.	8,291.15	12,184.02	0.00	20,475.17	28,988.34
2,654	09 510 760 0810	Complete suspended ceilings, mineral fiber, lay-in board, 2' x 4' x 5/8", on 15/16" T bar suspension, include standard suspension system, excl. 1-1/2" carrier channels	S.F.	5,599.11	1,920.70	0.00	7,519.81	9,286.61
647	09 651 200 0700	Wall base, vinyl, straight or cove, standard colors, 4" high, 1/8" thick	L.F.	672.10	496.12	0.00	1,168.22	1,523.32
68	09 651 200 0730	Wall base, vinyl corners, standard colors, 4" high, 1/8" thick	Ea.	137.67	52.14	0.00	189.82	234.35

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Qty	CSI Number	Description	Unit	Bare Mat.	Bare Labor	Bare Equip.	Total	Total Incl. O&P
658	09 770 400 0110	Fiberglass reinforced plastic panel, on drywall, nylon rivet & adhesive mounted, embossed surface, .090" thick	S.F.	913.70	1,286.26	0.00	2,199.96	3,114.96
816	09 770 400 0140	Fiberglass reinforced plastic panel, on masonry, nylon rivet & adhesive mounted, embossed surface, .090" thick	S.F.	1,133.10	2,018.13	0.00	3,151.23	4,515.07
3,247	09 910 500 0310	Concrete stain, floors, interior, acid stain, one coat	S.F.	413.02	981.89	0.00	1,394.91	2,095.48
3,247	09 910 500 0330	Paints & coatings, floors, interior, acrylic sealer, one coat	S.F.	826.04	245.47	0.00	1,071.51	1,315.42
848	09 910 910 0540	Paints & coatings, walls, concrete masonry units (CMU), porous, first coat, latex, roller	S.F.	98.88	109.90	0.00	208.78	291.02
848	09 910 910 0550	Paints & coatings, walls, concrete masonry units (CMU), porous, second coat, latex, roller	S.F.	62.92	91.58	0.00	154.51	218.50
7,657	09 910 920 1670	Painting walls, complete, on drywall or plaster, primer and 2 finish coats, with roller, including surface preparation	S.F.	1,785.61	4,630.95	0.00	6,416.57	9,390.24
3,260	09 910 920 3210	Paints & coatings, walls & ceilings, interior, masonry or concrete block, latex paint, primer plus 2 finish coats, smooth, roller	S.F.	967.57	1,549.15	0.00	2,516.72	3,535.93
16	10 265 200 0300	Corner guards, stainless steel angle w/anchors, 8.2 lbs/LF, 4" x 4" x 5/16"	L.F.	583.39	90.72	0.00	674.11	797.77
0	10 265 200 0450	Corner guards, stainless steel, for stainless steel angles, add	L.F.	100.0%				
35	10 430 200 0900	Signs, letters, cast aluminum, 10"h x 1" deep	Ea.	1,892.10	661.50	0.00	2,553.60	3,135.93
21	10 440 200 1200	Signs, flexible door sign, adhesive back, w/Braille, 5/8" letters, 8" x 8"	Ea.	1,135.26	175.77	0.00	1,311.03	1,530.02
4	10 535 200 3500	Canopies, aluminum entrance type, flat soffit, bronze anodized, 4' 6" x 10', .032"	Ea.	13,356.00	1,360.80	0.00	14,716.80	17,002.80
2	10 810 100 0900	Toilet accessories, grab bars, straight, stainless steel, 24" long	Ea.	61.48	29.59	0.00	91.07	116.44
4	10 810 100 1100	Toilet accessories, grab bars, straight, stainless steel, 36" long	Ea.	150.52	68.26	0.00	218.78	275.52
2	10 810 100 1310	Toilet accessories, grab bars, straight, satin finish, 2-1/2" diameter x 42" long	Ea.	79.50	37.80	0.00	117.30	147.39
2	10 810 100 3100	Toilet accessories, mirror, 36" x 24", with stainless steel 3/4" square frame	Ea.	222.60	45.36	0.00	267.96	319.38
2	10 810 100 6200	Toilet accessories, toilet tissue dispenser, stainless steel, surface mounted, double roll	Ea.	49.82	28.40	0.00	78.22	101.57
3	10 810 100 6700	Toilet accessories, towel dispenser, stainless steel, surface mounted	Ea.	144.69	63.34	0.00	208.03	262.68
1	11 454 500 0050	Cooking range, residential appliances, free standing, 1 oven, 30" wide, maximum	Ea.	1,934.50	133.92	0.00	2,068.42	2,335.85
1	11 454 500 4200	Range hood, residential appliances, vented, 2 speed, 30" wide, maximum	Ea.	869.20	245.16	0.00	1,114.36	1,331.96

CostWorks 2016 Quarter 1 - Town of Flower Mound - Western O&M Facility

Qty	CSI Number	Description	Unit	Bare Mat.	Bare Labor	Bare Equip.	Total	Total Incl. O&P
1	13 720 065 4160	Detection system, fire alarm control panel, addressable without voice, up to 200 points, excluding wires & conduits	Ea.	4,531.50	675.00	0.00	5,206.50	6,061.95
24	13 720 065 5240	Detection system, smoke detector, addressable type, excl. wires & conduit	Ea.	5,393.28	1,555.20	0.00	6,948.48	8,312.06
26	13 720 065 5610	Detection system, strobe & horn, ADA type, excluding wires & conduits	Ea.	4,023.76	1,895.40	0.00	5,919.16	7,357.69
1	13 720 065 7800	Detection system, remote annunciator, 8 zone lamp, excluding wires & conduits	Ea.	212.00	214.92	0.00	426.92	568.00
2	13 838 200 5100	Control component, thermostats, locking cover	Ea.	39.75	43.09	0.00	82.84	110.42
2	13 838 200 5200	Control component, thermostats, automatic, clock, 24 hour	Ea.	334.96	101.52	0.00	436.48	528.73
2	13 910 800 7000	Fire valve, sprinkler line tester, cast brass	Ea.	68.90	0.00	0.00	68.90	75.79
42	13 930 400 2440	Sprinkler system components, sprinkler head escutcheons, recessed type, chrome or white enamel	Ea.	154.04	331.13	0.00	485.17	688.54
42	13 930 400 2660	Sprinkler system component, sprinkler heads, dry, pendent, 1/2" orifice, 3/4" or 1" NPT, 1/2" to 6" length, excludes supply piping	Ea.	5,787.60	952.56	0.00	6,740.16	7,817.88
42	13 930 400 3840	Sprinkler system components, sprinkler heads, 3/4" NPT, 17/32" orifice, excludes supply piping, for chrome, add	Ea.	158.49	0.00	0.00	158.49	174.34
84	15 060 300 2680	Pipe hanger / support, rods, carbon steel, continuous thread, 3/8" thread size	L.F.	161.16	176.00	0.00	337.16	454.79
180	15 107 320 2120	Pipe, cast iron soil, one hub, service weight, 2" diameter, lead and oakum joints 10' O.C., includes clevis hanger assemblies 5' O.C.	L.F.	2,127.42	1,555.20	0.00	3,682.62	4,718.65
30	15 107 320 2140	Pipe, cast iron soil, one hub, service weight, 3" diameter, lead and oakum joints 10' O.C., includes clevis hanger assemblies 5' O.C.	L.F.	467.46	272.16	0.00	739.62	929.90
240	15 107 320 2160	Pipe, cast iron soil, one hub, service weight, 4" diameter, lead and oakum joints 10' OC, includes clevis hanger assemblies 5' OC	L.F.	4,757.28	2,371.68	0.00	7,128.96	8,843.66
55	15 107 320 2200	Pipe, cast iron soil, one hub, service weight, 6" diameter, lead and oakum joints 10' O.C., includes clevis hanger assemblies 5' O.C.	L.F.	1,807.30	638.55	0.00	2,445.85	2,991.89
1	15 107 360 0500	Tee, cast iron soil, hub and spigot, sanitary, service weight, 2", includes lead & oakum joints	Ea.	28.62	54.54	0.00	83.16	117.13
6	15 107 360 0620	Tee, cast iron soil, hub and spigot, sanitary, service weight, 4", includes lead & oakum joints	Ea.	343.44	408.24	0.00	751.68	1,016.71
4	15 107 360 1520	Combination Y and 1/8 bend, cast iron soil, hub and spigot, service weight, 4", includes lead & oakum joints	Ea.	305.28	272.16	0.00	577.44	758.30

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Qty	CSI Number	Description	Unit	Bare Mat.	Bare Labor	Bare Equip.	Total	Total Incl. O&P
2	15 107 360 1560	Combination Y and 1/8 bend, cast iron soil, hub and spigot, service weight, 6", includes lead & oakum joints	Ea.	364.64	154.44	0.00	519.08	640.43
2	15 107 360 1620	Double Y, cast iron soil, hub and spigot, service weight, 4", includes lead & oakum joints	Ea.	209.88	167.40	0.00	377.28	492.44
5	15 107 360 1980	Increaser, cast iron soil, hub and spigot, service weight, 2" x 4", includes lead & oakum joints	Ea.	241.15	194.40	0.00	435.55	572.80
1	15 107 360 2080	Increaser, cast iron soil, hub and spigot, service weight, 4" x 6", includes lead & oakum joints	Ea.	72.61	45.36	0.00	117.97	150.77
40	15 107 420 1260	Pipe, copper, tubing, solder, 2" diameter, type K, includes coupling & clevis hanger assembly 10' O.C.	L.F.	996.40	302.40	0.00	1,298.80	1,556.12
150	15 107 420 2120	Pipe, copper, tubing, solder, 3/8" diameter, type L, includes coupling & clevis hanger assembly 10' O.C.	L.F.	529.47	541.08	0.00	1,070.55	1,422.71
100	15 107 420 2140	Pipe, copper, tubing, solder, 1/2" diameter, type L, includes coupling & clevis hanger assembly 10' O.C.	L.F.	371.00	373.68	0.00	744.68	991.30
140	15 107 420 2180	Pipe, copper, tubing, solder, 3/4" diameter, type L, includes coupling & clevis hanger assembly 10' O.C.	L.F.	740.52	557.93	0.00	1,298.44	1,678.07
60	15 107 420 2200	Pipe, copper, tubing, solder, 1" diameter, type L, includes coupling & clevis hanger assembly 10' O.C.	L.F.	448.38	266.33	0.00	714.71	907.61
60	15 107 420 2220	Pipe, copper, tubing, solder, 1-1/4" diameter, type L, includes coupling & clevis hanger assembly 10' O.C.	L.F.	607.38	312.34	0.00	919.72	1,157.03
80	15 107 420 2240	Pipe, copper, tubing, solder, 1-1/2" diameter, type L, includes coupling & clevis hanger assembly 10' O.C.	L.F.	1,017.60	466.56	0.00	1,484.16	1,836.48
80	15 107 420 2260	Pipe, copper, tubing, solder, 2" diameter, type L, includes coupling & clevis hanger assembly 10' O.C.	L.F.	1,484.00	578.88	0.00	2,062.88	2,518.00
14	15 107 460 0120	Elbow, 90 Deg., copper, wrought, copper x copper, 3/4"	Ea.	35.76	223.02	0.00	258.78	384.82
10	15 107 460 0130	Elbow, 90 Deg., copper, wrought, copper x copper, 1"	Ea.	62.54	188.46	0.00	251.00	360.50
6	15 107 460 0160	Elbow, 90 Deg., copper, wrought, copper x copper, 2"	Ea.	155.82	165.24	0.00	321.06	430.93
2	15 107 640 0180	Elbow, 90 Deg., steel, cast iron, black, straight, threaded, standard weight, 4"	Ea.	356.16	181.44	0.00	537.60	673.01

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Qty	CSI Number	Description	Unit	Bare Mat.	Bare Labor	Bare Equip.	Total	Total Incl. O&P
1	15 107 640 0400	Elbow, 45 Deg., steel, cast iron, black, straight, threaded, standard weight, 4"	Ea.	257.58	90.72	0.00	348.30	426.65
130	15 108 520 5306	Pipe, plastic, CPVC, socket joint, 1" diameter, schedule 40, includes couplings 10' OC, and hangers 3 per 10'	L.F.	1,095.51	856.44	0.00	1,951.95	2,539.56
45	15 108 520 5309	Pipe, plastic, CPVC, socket joint, 2" diameter, schedule 40, includes couplings 10' OC, and hangers 3 per 10'	L.F.	603.41	415.53	0.00	1,018.94	1,323.98
35	15 108 520 5311	Pipe, plastic, CPVC, socket joint, 3" diameter, schedule 40, includes couplings 10' OC, and hangers 3 per 10'	L.F.	871.85	359.10	0.00	1,230.95	1,512.81
26	15 108 522 0130	Elbow, 90 Deg., plastic pipe fitting, CPVC fire suppression, C-UL-S, FM, NFPA 13, 13R & 13D, 1", socket joint	Ea.	102.52	348.19	0.00	450.72	657.75
4	15 108 522 0161	Elbow, 90 Deg., plastic pipe fitting, CPVC fire suppression, C-UL-S, FM, NFPA 13, 13R & 13D, 2", socket joint	Ea.	34.98	66.31	0.00	101.29	139.67
4	15 108 522 0180	Elbow, 90 Deg., plastic pipe fitting, CPVC fire suppression, C-UL-S, FM, NFPA 13, 13R & 13D, 3", socket joint	Ea.	93.28	103.68	0.00	196.96	265.90
22	15 108 522 0320	Tee, plastic pipe fitting, CPVC fire suppression, C-UL-S, FM, NFPA 13, 13R & 13D, 1", socket joint	Ea.	106.81	434.81	0.00	541.61	793.74
1	15 110 100 0550	Valves, brass, gas cocks, threaded, 1"	Ea.	31.27	15.93	0.00	47.20	59.29
1	15 110 160 5650	Valves, bronze, relief, pressure & temperature, self-closing, threaded, 1", ASME	Ea.	333.90	12.58	0.00	346.48	387.27
1	15 120 320 2000	Expansion tanks, steel, liquid expansion, painted, 15 gallon capacity, ASME	Ea.	667.80	32.94	0.00	700.74	790.74
1	15 120 520 0140	Hydronic heat control valve, hot water, non-electric, thermostatic, radiator supply, 1" diameter	Ea.	88.51	16.25	0.00	104.76	123.44
1	15 140 100 5080	Backflow preventer, reduced pressure principle, bronze, automatic operation, OS&Y valves, flanged, 3" pipe size, includes valves and four test cocks	Ea.	5,671.00	120.96	0.00	5,791.96	6,443.30
7	15 150 200 2100	Cleanout, floor type, round scoriated nickel bronze top, extra heavy duty, 4" pipe size	Ea.	2,597.00	525.42	0.00	3,122.42	3,688.30
1	15 150 200 2140	Cleanout, floor type, round scoriated nickel bronze top, extra heavy duty, 6" pipe size	Ea.	450.50	109.08	0.00	559.58	660.25
1	15 150 200 4080	Cleanout, wall type, square smooth cover, over wall frame, 3" pipe size	Ea.	318.00	25.38	0.00	343.38	387.60
1	15 150 250 0220	Cleanout tee, cast iron, B. & S., 3" pipe size, includes countersunk plug	Ea.	298.92	84.24	0.00	383.16	458.20
7	15 150 250 0240	Cleanout tee, cast iron, B. & S., 4" pipe size, includes countersunk plug	Ea.	2,597.00	642.60	0.00	3,239.60	3,839.50

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Qty	CSI Number	Description	Unit	Bare Mat.	Bare Labor	Bare Equip.	Total	Total Incl. O&P
3	15 150 300 2040	Drain, floor, medium duty, cast iron, deep flange, 7" diameter top, 2" and 3" pipe size	Ea.	702.78	136.08	0.00	838.86	989.81
1	15 150 350 0200	Drain, floor receptor, 12-1/2" square top, 25 square inches open area, 2", 3" & 4" diameter pipe	Ea.	980.50	54.54	0.00	1,035.04	1,167.65
1	15 150 350 1200	Drain, floor receptor, 12-1/2" square top, 25 square inches open area, for trap primer connection, add	Ea.	88.51	0.00	0.00	88.51	97.36
1	15 150 400 5020	Interceptor, sand, fabricated steel, 20 GPM, 4" pipe size	Ea.	7,870.50	181.44	0.00	8,051.94	8,935.65
2	15 150 600 2800	Drain, shower, with strainer, uniform diameter trap, bronze top, 2" and 3" pipe size	Ea.	678.40	136.08	0.00	814.48	947.12
6	15 150 800 3000	Traps, cast iron, service weight, P trap, B&S, 2" pipe size	Ea.	213.06	204.12	0.00	417.18	549.62
1	15 150 800 3040	Traps, cast iron, service weight, P trap, B&S, 3" pipe size	Ea.	53.00	38.88	0.00	91.88	118.78
12	15 150 800 3060	Traps, cast iron, service weight, P trap, B&S, 4" pipe size	Ea.	915.84	498.96	0.00	1,414.80	1,795.39
100	15 180 700 4450	Refrigeration specialties, refrigerant, R-410A, 25 lb. disposable cylinder	Lb.	959.30	0.00	0.00	959.30	1,055.23
1	15 410 300 1000	Faucets/fittings, kitchen sink faucets, top mount, cast spout	Ea.	77.91	30.24	0.00	108.15	133.38
1	15 410 300 2000	Faucets/fittings, laundry faucets, shelf type, I.P.S. or copper unions	Ea.	62.01	25.38	0.00	87.39	107.79
2	15 410 300 2220	Faucets/fittings, lavatory faucet, center set with porcelain cross handles, polished chrome, with pop-up drain	Ea.	398.56	90.72	0.00	489.28	581.41
1	15 410 300 3000	Faucets/fittings, service sink faucet, cast spout, pail hook, hose end	Ea.	76.85	21.60	0.00	98.45	118.29
2	15 410 300 4200	Faucets/fittings, shower thermostatic mixing valve, concealed, with shower head trim kit	Ea.	699.60	75.60	0.00	775.20	881.88
16	15 410 300 6100	Faucets/fittings, stop and waste valves, bronze, angle, soldered, 1/2"	Ea.	204.37	201.31	0.00	405.68	540.08
2	15 410 300 6430	Faucets/fittings, stop and waste valves, bronze, straightway, threaded, 1"	Ea.	54.06	31.86	0.00	85.92	110.12
3	15 411 500 2100	Hydrant, wall type, non-freeze, bronze, encased, anti-syphon type, 3/4" I.P.S connection, 5" to 9" thick wall	Ea.	3,577.50	64.80	0.00	3,642.30	3,975.75
1	15 418 400 2020	Laundry sink, molded stone, on wall hanger or legs, single compartment, 22" x 23", includes trim	Ea.	180.20	90.72	0.00	270.92	341.86
1	15 418 400 9600	Laundry sink, rough-in supply, waste and vent for all laundry sinks	Ea.	249.10	254.88	0.00	503.98	669.83

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Qty	CSI Number	Description	Unit	Bare Mat.	Bare Labor	Bare Equip.	Total	Total Incl. O&P
2	15 418 450 6060	Lavatory, wall hung, vitreous china, white, with backsplash, single bowl, 19" x 17", includes trim	Ea.	298.92	155.52	0.00	454.44	568.36
2	15 418 450 6960	Lavatory, wall hung, rough-in, supply, waste and vent	Ea.	879.80	658.80	0.00	1,538.60	1,990.54
2	15 418 500 3220	Shower, stall, fiberglass, one piece with three walls, handicap, 1-1/2" OD grab bars, nonskid floor, corner seat, 60" x 34-1/2" x 72", includes drain only, excludes valve control and door/curtain	Ea.	1,473.40	272.16	0.00	1,745.56	2,043.02
2	15 418 500 4200	Shower, stall, rough-in, supply, waste and vent for above shower	Ea.	699.60	529.20	0.00	1,228.80	1,594.68
1	15 418 600 3100	Sink, kitchen, counter top style, stainless steel, self rimming, single bowl, 25" x 22", includes faucet and drain	Ea.	678.40	97.20	0.00	775.60	898.52
1	15 418 600 4980	Sink, kitchen, counter top style, rough-in, supply, waste and vent	Ea.	249.10	254.88	0.00	503.98	669.83
1	15 418 600 6770	Sink, service, mop, molded stone, with rim, 3 sides, 24" x 36", includes faucet and drain	Ea.	279.84	90.72	0.00	370.56	447.79
1	15 418 600 6790	Sink, service, floor, rough-in, supply, waste and vent	Ea.	720.80	329.40	0.00	1,050.20	1,308.04
2	15 418 900 3156	Water closet, healthcare, bowl only, wall hung, hospital type, slotted rim for bed pan, elongated bowl, top spud, includes flush valve and seat	Ea.	1,229.60	187.92	0.00	1,417.52	1,637.68
2	15 418 900 3200	Water closet, bowl only, wall hung, rough-in, supply, waste and vent	Ea.	1,971.60	427.68	0.00	2,399.28	2,821.08
1	15 480 200 4160	Water heater, commercial, electric, 100 Deg. rise, 36 kW, 148 GPH, 208 V, 50 gallon, note: for each size tank a range of heaters between the ones shown are available	Ea.	10,176.00	167.40	0.00	10,343.40	11,452.80
7	15 550 200 5050	Draft control, vent damper, bi-metal, gas, 8" diameter	Ea.	400.68	185.22	0.00	585.90	732.56
1	15 670 300 0100	Condensing unit, air cooled, compressor, 2 ton, includes standard controls	Ea.	1,378.00	265.68	0.00	1,643.68	1,915.40
1	15 670 300 0300	Condensing unit, air cooled, compressor, 3 ton, includes standard controls	Ea.	1,563.50	426.60	0.00	1,990.10	2,397.55
2	15 670 300 9000	Condensing unit, minimum labor/equipment charge	Job	0.00	745.20	0.00	745.20	1,166.40
1	15 760 300 0950	Fan coil A.C., direct expansion for use w/air cooled condensing unit, 2 ton cooling, includes filters and controls	Ea.	598.90	116.64	0.00	715.54	840.77
1	15 760 300 0970	Fan coil A.C., direct expansion for use w/air cooled condensing unit, 3 ton cooling, includes filters and controls	Ea.	773.80	146.88	0.00	920.68	1,090.94

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Qty	CSI Number	Description	Unit	Bare Mat.	Bare Labor	Bare Equip.	Total	Total Incl. O&P
2	15 760 300 9000	Fan coil unit, minimum labor/equipment charge	Job	0.00	298.08	0.00	298.08	466.56
0	15 810 100 0053	Metal ductwork, fabricated rectangular, 15' to 20' high, incl fittings, joints, supports & allow for a flexible connections field sketches, excl as-built drawings & insulation, add to labor for elevated installation of fabricated ductwork			12.0%			
2,850	15 810 100 0570	Metal ductwork, fabricated rectangular, galvanized steel, 2000 to 5000 lb., incl fittings, joints, supports & allow for a flexible connections field sketches, excludes as-built drawings and insulation	Lb.	1,601.13	15,653.34	0.00	17,254.47	26,471.97
0	15 810 100 1232	Metal ductwork, fabricated rectangular, for 60% fittings, add	Lb.		79.0%			
48	15 810 100 5440	Metal ductwork, spiral preformed, steel, galvanized, straight lengths, max. 10" SPWG, 10" diameter, 26 ga.	L.F.	157.73	175.68	0.00	333.41	452.28
18	15 810 100 5450	Metal ductwork, spiral preformed, steel, galvanized, straight lengths, max. 10" SPWG, 12" diameter, 26 ga.	L.F.	70.98	87.70	0.00	158.67	217.57
40	15 810 100 9830	Metal ductwork, spiral preformed, stainless steel, straight lengths, 5" diameter, 26 ga.	L.F.	752.60	66.10	0.00	818.70	934.78
2	15 820 300 7504	Duct accessories, variable volume modulating motorized damper, 8" x 6", includes electric motor	Ea.	250.16	39.10	0.00	289.26	338.25
1	15 830 100 7100	Fans, roof exhauster, centrifugal, aluminum housing, bird screen, back draft damper, direct drive, 1/4" S.P., 320 CFM, 12" galvanized curb, 11" sq. damper	Ea.	768.50	95.58	0.00	864.08	993.85
5	15 830 100 7520	Fans, utility set, steel construction, pedestal, direct drive, 1/4" S.P., 150 CFM, 1/8 H.P.	Ea.	4,717.00	521.10	0.00	5,238.10	5,977.10
1	15 830 100 8520	Fans, wall exhauster, centrifugal, auto damper, direct drive, 1/8" S.P., 610 CFM, 1/20 H.P.	Ea.	466.40	47.52	0.00	513.92	589.72
8	15 850 300 0560	Diffuser, aluminum, ceiling, perforated, 24" x 24" lay-in panel size, 12" x 12", includes opposed blade damper	Ea.	1,484.00	194.40	0.00	1,678.40	1,939.12
10	15 850 300 0620	Diffuser, aluminum, ceiling, perforated, 24" x 24" lay-in panel size, 24" x 24", includes opposed blade damper	Ea.	2,628.80	324.00	0.00	2,952.80	3,401.44
4	15 850 500 1260	Grille, steel, air return, 24" x 24"	Ea.	224.72	78.19	0.00	302.91	369.02
16	15 850 600 3200	Louver, aluminum, extruded, with screen, mill finish, fixed blade, continuous line, stormproof	S.F.	720.80	167.62	0.00	888.42	1,065.04

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Qty	CSI Number	Description	Unit	Bare Mat.	Bare Labor	Bare Equip.	Total	Total Incl. O&P
2	15 850 700 4340	Register, air supply, spiral pipe, steel, B15 aluminum finish, 6" x 12" for 14" thru 21" duct, includes air scoop	Ea.	166.42	30.78	0.00	197.20	231.99
48	15 860 500 1280	Exhaust system, engine exhaust, garage, in-floor system, (overhead systems also), tubing, stainless steel, flexible, 5" ID	L.F.	1,780.80	0.00	0.00	1,780.80	1,958.88
2	15 860 500 1590	Exhaust system, engine exhaust, garage, overhead components, for neoprene tubing, adapter for neoprene tubing end, heavy wall neoprene, 5" tail pipe	Ea.	198.22	0.00	0.00	198.22	218.04
2	15 860 500 1710	Exhaust system, engine exhaust, garage, overhead components, for neoprene tubing, adapter for neoprene tubing end, tubing connector, neoprene, 5" interior	Ea.	115.54	0.00	0.00	115.54	127.09
2	15 860 500 1900	Exhaust system, engine exhaust, garage, overhead components, for neoprene tubing, flange assembly, connect tubing to overhead duct	Ea.	137.80	0.00	0.00	137.80	151.58
2	15 860 500 2180	Exhaust system, engine exhaust, garage, overhead components, for neoprene tubing, lifting strap, mounts on neoprene, 5" tubing size	Ea.	50.88	0.00	0.00	50.88	55.97
2	15 860 500 7630	Exhaust system, welding fume elimination accessories for garage exhaust systems, cut off (blast gate), 5" tubing size, 5" x 10" opening	Ea.	59.36	24.52	0.00	83.88	104.61
2	15 860 500 7730	Exhaust system, welding fume elimination accessories for garage exhaust systems, hood, magnetic, 5" tubing size, 5" x 10" opening, includes handle & screen	Ea.	183.38	24.52	0.00	207.90	240.27
1	16 060 800 9000	Grounding, minimum labor/equipment charge	Job	0.00	78.84	0.00	78.84	122.04
82	16 070 320 6650	Strap, steel channel, EMT, 3/4" diameter	Ea.	64.32	58.45	0.00	122.77	161.62
17	16 120 120 9040	Metal clad cable, copper, steel clad, 600 volt, 2 wire, #12	C.L.F.	792.88	1,340.28	0.00	2,133.16	2,939.50
1	16 120 120 9050	Metal clad cable, copper, steel clad, 600 volt, 3 wire, #12	C.L.F.	78.97	85.32	0.00	164.29	218.68
1	16 120 120 9270	Metal clad cable, copper, aluminum clad, 600 volt, 3 wire, #10	C.L.F.	140.98	100.44	0.00	241.42	311.35
41	16 120 230 0020	Wire connector, screw type, #18 to #12	Ea.	3.04	54.02	0.00	57.06	86.73
33	16 120 230 0035	Wire connector, screw type, insulated, #16 to #10	Ea.	9.09	45.26	0.00	54.36	79.64
159	16 120 230 0040	Wire connector, screw type, insulated, #14 to #8	Ea.	47.19	238.69	0.00	285.88	421.45
46	16 120 230 0045	Wire connector, screw type, insulated, #12 to #6	Ea.	28.77	80.48	0.00	109.25	155.89

CostWorks 2016 Quarter 1 - Town of Flower Mound - Western O&M Facility

Qty	CSI Number	Description	Unit	Bare Mat.	Bare Labor	Bare Equip.	Total	Total Incl. O&P
2	16 120 230 0650	Split bolt connectors, tapped, #4	Ea.	7.76	45.36	0.00	53.12	77.60
4	16 120 750 0500	Thermostat cable, jacket non-plenum, twisted, #18-2 conductor	C.L.F.	62.54	157.68	0.00	220.22	314.06
5	16 120 750 0800	Thermostat cable, jacket non-plenum, twisted, #18-8 conductor	C.L.F.	278.25	329.40	0.00	607.65	815.03
42	16 120 750 3400	Cable ties, standard, 4" length	Ea.	7.12	69.85	0.00	76.98	115.97
8	16 120 750 3410	Cable ties, standard, 7" length	Ea.	1.53	15.81	0.00	17.34	26.06
1	16 120 900 1200	Wire, copper, stranded, 600 volt, #12, type THWN-THHN, in raceway	C.L.F.	11.34	28.62	0.00	39.96	57.00
2	16 120 900 1450	Wire, copper, stranded, 600 volt, #3, type THWN-THHN, in raceway	C.L.F.	202.46	126.36	0.00	328.82	417.00
9	16 120 900 1700	Wire, copper, stranded, 600 volt, 3/0, type THWN-THHN, in raceway	C.L.F.	2,757.06	1,137.24	0.00	3,894.30	4,754.18
10	16 132 205 5000	Electric metallic tubing (EMT), 1/2" diameter, to 15' high, incl 2 terminations, 2 field bend elbows, 11 beam clamps, and 11 couplings per 100 LF	L.F.	7.00	18.58	0.00	25.57	36.47
405	16 132 205 5020	Electric metallic tubing (EMT), 3/4" diameter, to 15' high, incl 2 terminations, 2 field bend elbows, 11 beam clamps, and 11 couplings per 100 LF	L.F.	407.84	984.15	0.00	1,391.99	1,968.58
82	16 132 205 8320	EMT 1 hole clips, 3/4" diameter, to 15' H	Ea.	34.77	54.91	0.00	89.68	123.26
40	16 132 205 8810	EMT boxes connectors, compression, steel, 3/4" diameter, to 15' H	Ea.	122.54	114.91	0.00	237.45	312.82
20	16 132 205 8900	EMT boxes connectors, insulated compression, steel, 1/2" diameter, to 15' H	Ea.	43.25	52.49	0.00	95.74	129.78
16	16 132 205 8910	EMT boxes connectors, insulated compression, steel, 3/4" diameter, to 15' H	Ea.	46.47	45.96	0.00	92.44	122.59
200	16 132 205 9160	PVC conduit, schedule 40, 2-1/2" diameter, to 15' H, incl terminations, fittings, & support	L.F.	920.08	974.16	0.00	1,894.24	2,518.90
4	16 132 205 9250	PVC conduit elbows, 2-1/2" diameter, to 15' H	Ea.	22.05	114.48	0.00	136.53	200.42
8	16 132 205 9324	PVC conduit couplings, 2-1/2" diameter, to 15' H	Ea.	14.42	228.96	0.00	243.38	371.22
4	16 132 205 9520	PVC adapters, 2-1/2" diameter, to 15' H	Ea.	7.29	54.86	0.00	62.16	92.73
1	16 136 600 0020	Outlet boxes, pressed steel, 4" octagon	Ea.	2.23	15.77	0.00	17.99	26.95
1	16 136 600 0050	Outlet boxes, pressed steel, for Romex or BX, with bracket, 4" octagon	Ea.	5.27	15.77	0.00	21.04	30.13
1	16 136 600 0060	Outlet boxes, pressed steel, covers, blank, 4" octagon	Ea.	0.93	4.94	0.00	5.87	8.62
1	16 136 600 0100	Outlet boxes, pressed steel, extension rings, 4" octagon	Ea.	3.69	7.88	0.00	11.57	16.29
1	16 136 600 0150	Outlet boxes, pressed steel, 4" square	Ea.	2.88	15.77	0.00	18.65	27.48
15	16 136 600 0160	Outlet boxes, pressed steel, for Romex or BX, 4" square	Ea.	89.84	236.52	0.00	326.36	459.84

CostWorks 2016 Quarter 1 - Town of Flower Mound - Western O&M Facility

Qty	CSI Number	Description	Unit	Bare Mat.	Bare Labor	Bare Equip.	Total	Total Incl. O&P
41	16 136 600 0170	Outlet boxes, pressed steel, for Romex or BX, with bracket, 4" square	Ea.	312.91	646.49	0.00	959.40	1,344.05
7	16 136 600 0250	Outlet boxes, pressed steel, covers, blank, 4" square	Ea.	7.05	34.55	0.00	41.60	61.09
49	16 136 600 0300	Outlet boxes, pressed steel, plaster rings, 4" square, concealed	Ea.	100.24	241.84	0.00	342.09	482.14
1	16 136 600 1530	Outlet boxes, cast, duplex receptacle cover, 1 gang, FS	Ea.	4.94	4.94	0.00	9.88	13.02
1	16 136 700 2600	Pull boxes, steel, type SC, raintight & weatherproof, 36" L x 36" W x 12" D, NEMA 3R	Ea.	429.30	210.60	0.00	639.90	801.09
1	16 140 910 2460	Duplex receptacle, grounded, 120 volt, 15 amp	Ea.	1.26	7.88	0.00	9.15	13.58
36	16 140 910 2470	Duplex receptacle, grounded, 120 volt, 20 amp	Ea.	286.20	421.85	0.00	708.05	966.06
5	16 140 910 2482	Duplex receptacle, ground fault interrupting, 20 amp	Ea.	201.40	58.59	0.00	259.99	309.02
41	16 140 910 4900	Receptacle, phenolic plastic cover plate, NEMA 5 & 6	Ea.	25.21	161.62	0.00	186.83	278.44
1	16 410 840 0100	Time switches, single pole single throw, 24 hour dial	Ea.	145.22	78.84	0.00	224.06	282.11
42	16 440 700 0400	Circuit breakers, bolt-on, 10 k A I.C., 2 pole, 240 volt, 15 to 50 amp	Ea.	3,450.30	1,655.64	0.00	5,105.94	6,369.51
1	16 440 700 1000	Circuit breakers, bolt-on, 22 k A I.C., 2 pole, 240 volt, 70 - 225 amp	Ea.	604.20	116.64	0.00	720.84	840.66
1	16 440 720 2300	Panelboards, 3 phase 4 wire, main circuit breaker, 120/208 V, 400 amp, 42 circuits, NQOD, incl 20 A 1 pole plug-in breakers	Ea.	3,524.50	1,296.00	0.00	4,820.50	5,947.85
1	16 440 720 3130	Panelboards, 3 pole 4 wire, main lugs, 240 V, 400 amp, no main breaker	Ea.	1,113.00	351.00	0.00	1,464.00	1,758.90
2	16 510 440 7690	Emergency ballast, material only, interior, factory installed in fixture	Ea.	315.88	0.00	0.00	315.88	347.47
8	16 510 455 0100	Interior LED fixtures, downlight, recess mounted, 25 watt, 7.5" diameter, incl lamps, mounting hardware and connections	Ea.	2,671.20	315.36	0.00	2,986.56	3,400.56
24	16 510 455 0220	Interior LED fixtures, troffer, recess mounted, 4800 Lumens, 2' x 4', replaces three T8 lamp, incl lamps, mounting hardware and connections	Ea.	4,299.36	1,516.32	0.00	5,815.68	7,038.77
21	16 510 455 2040	Interior LED fixtures, linear, suspended mounted, 74 watt, two light bar 4' long, incl lamps, mounting hardware and connections	Ea.	6,433.14	1,168.02	0.00	7,601.16	8,938.48
11	16 520 300 1278	LED fixture, exterior, wall pack, poly lens, 26 watt, incl lamps	Ea.	2,355.32	867.24	0.00	3,222.56	3,930.92
10	16 530 320 0240	Exit lighting, LED w/ battery unit, single face, ceiling or wall mount	Ea.	1,844.40	718.20	0.00	2,562.60	3,136.92

CostWorks 2016 Quarter 1 - Town of Flower Mound - Western O&M Facility

Qty	CSI Number	Description	Unit	Bare Mat.	Bare Labor	Bare Equip.	Total	Total Incl. O&P
10	16 530 320 0700	Emergency lighting units, nickel cadmium battery operated, twin sealed beam light, 25 W, 6 V each	Ea.	4,770.00	788.40	0.00	5,558.40	6,435.00
10	16 580 200 0100	Lighting devices, occupancy sensors, passive infrared, ceiling mounted	Ea.	789.70	453.60	0.00	1,243.30	1,571.21
15	16 580 200 0150	Lighting devices, automatic wall switches	Ea.	1,128.90	196.83	0.00	1,325.73	1,547.97
1	16 580 200 0350	Lighting devices, photoelectric control, D.P.S.T., 120 V	Ea.	217.30	52.38	0.00	269.68	319.49
45	16 580 300 0350	Fixture whips, 3/8" greenfield, 2 connectors, THHN wire, four #14, 6' long	Ea.	372.06	507.87	0.00	879.93	1,207.28
3	16 710 750 1020	Voice/Data wall plate, plastic, 1 gang, 2-port, excl voice/data devices	Ea.	7.41	13.09	0.00	20.50	28.36
9	16 710 750 5500	Unshielded twisted pair (UTP) cable, solid, plenum, #24, 4 pair, category 3	C.L.F.	127.84	408.24	0.00	536.08	765.23
6	16 710 750 7310	Unshielded twisted pair (UTP) jack, RJ-45, category 3	Ea.	2.42	26.18	0.00	28.60	43.04
6	16 710 755 3100	Patch panel, punch down termination per port	Ea.	0.00	17.69	0.00	17.69	27.28
Totals				\$483,555.16	\$155,662.71	\$66,827.93	\$706,045.80	\$856,680.99



TOWN COUNCIL AGENDA ITEM NO. 16

CONSENT ITEM

DATE: March 21, 2016

FROM: Matthew J. Hotelling, P.E., PTOE, Traffic Engineer

ITEM: 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 extending the reduced school speed zone for Bridlewood Boulevard, Garden Road, and Peters Colony Road.

BACKGROUND INFORMATION:

Bridlewood Boulevard north of West Windsor Drive:

During after the school release, children coming from Bridlewood Elementary School are exiting from the neighborhood just north of West Windsor Drive and crossing Bridlewood Boulevard. The school crossing guard for this area is at West Windsor. Confirmation that this is happening has come from both the residents and Police Department staff. Therefore, to slow traffic on Bridlewood Boulevard at this location, the school zone on Bridlewood Boulevard is being proposed to be extended approximately 180 feet north of the existing location or approximately 460 feet north of West Windsor Drive.

Garden Road northwest of Morriss Road:

On Garden Road north of Forestwood Middle School and Wilkerson Park, there is currently a trail crossing. This trail crossing is approximately 50 feet north of the end of the existing school zone for Forestwood Middle School. Based on observation by the Police Department and concerned citizens, this location is used during both morning and afternoon times for Forestwood Middle School. Therefore, this location should be included within the Forestwood Middle School Zone. It is unclear at this time whether or not the location meets the School Crossing Guard Index necessary for a crossing guard. This will be determined at a later date. The new school zone will extend the existing school zone by approximately 240 feet north. The distance is required to allow for sign installation to occur off of the bridge structure just north of Wilkerson Park.

Peters Colony Road east of Old Settlers Road:

The existing school zone on Peters Colony Road east of Old Settlers Road is for Flower Mound High School. This location is currently marked with a static school zone sign marking the beginning of the school zone and school zone times. The intent is to upgrade this location to a school zone flasher location to bring better awareness of both the location and the times of this school zone. The existing end of the school zone is very shaded by trees. Therefore for the solar panel powered school zone flasher to best serve this location, the school zone should be relocated approximately 130 feet east of the existing location to provide optimal solar power. This relocation will also place the flasher on the straightaway of Peters Colony Road and have better visibility of the traveling public.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: Leave the locations as they currently exist.

FISCAL IMPACT: The cost of relocating the school zone signs will be covered by operations money.

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

ATTACHMENTS:

1. Ordinance
2. Vicinity Maps

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 extending the reduced school speed zone for Bridlewood Boulevard, Garden Road, and Peters Colony Road.

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

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.

WHEREAS, Section 545.356 of the Texas Transportation Code authorizes a municipality to establish prima facie maximum reasonable and prudent speeds for vehicles on streets and highways within its corporate boundaries; and,

WHEREAS, the Town Council recognizes that it is necessary to regulate traffic near schools to provide a reduced speed limit for a period of time that is of sufficient length to protect children going to and from school; and,

WHEREAS, the Town of Flower Mound has conducted an engineering and traffic investigation and study to determine a prima facie maximum speed limit which is reasonable and safe during certain times on the portions of certain roadways that are the subject of this ordinance; and,

WHEREAS, the Town Council hereby finds and determines based upon said engineering and traffic investigation and study that the existing speed limits on portions of Bridlewood Boulevard, Garden Road and Peters Colony Road are unreasonable and unsafe and the Town Council hereby declares that the speed limits in those areas should be changed as set forth in this Ordinance; and,

WHEREAS, the Town Council finds that an amendment to the speed limits on Bridlewood Boulevard, Garden Road and Peters Colony Road as set out 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

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

ORDINANCE NO.**PAGE 2****SECTION 2**

That Chapter 66, "Traffic and Vehicles," Article V, "Speed Limits," Section 66-214 "Enumeration for Specific Streets" of the Code of Ordinances, Town of Flower Mound, Texas is hereby amended by adopting the following maximum prima facie speed limit on the following additional streets in alphabetical order:

Location	Speed (mph)
Bridlewood Boulevard from approximately 460 feet north of West Windsor Drive to approximately 30 feet north of Mustang Drive from 7:00 a.m. to 8:00 a.m. and 2:30 p.m. to 3:30 p.m. while school is in session.	20
All other times it shall be:	35
Garden Road from approximately 50 feet south of Springwood Road to Morriss Road from 7:45 a.m. to 9:00 a.m. and 3:45 p.m. to 4:45 p.m. while school is in session.	20
All other times it shall be:	30
Peters Colony Road from approximately 110 feet east of Kolenby Drive to approximately 530 feet east of Old Settlers Road from 7:30 a.m. to 8:30 a.m. and 3:15 p.m. to 4:15 p.m. while school is in session.	20
All other times it shall be:	30

SECTION 3

The speed limits set forth in Section 2 above, are effective when the Town Manager, or his designee, erects signs giving notice of the new speed limits. The Town Manager is directed to take such action necessary to ensure that such new speed limit signs are erected and installed.

SECTION 4

Any person, firm or corporation violating any term or provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed \$200.

SECTION 5

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

SECTION 6

It is hereby declared to be the intention of the Town Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this

ORDINANCE NO.**PAGE 3**

Ordinance, since same would have been enacted by the Town Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section, and said remaining portions shall remain in full force and effect.

SECTION 7

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 8

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

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

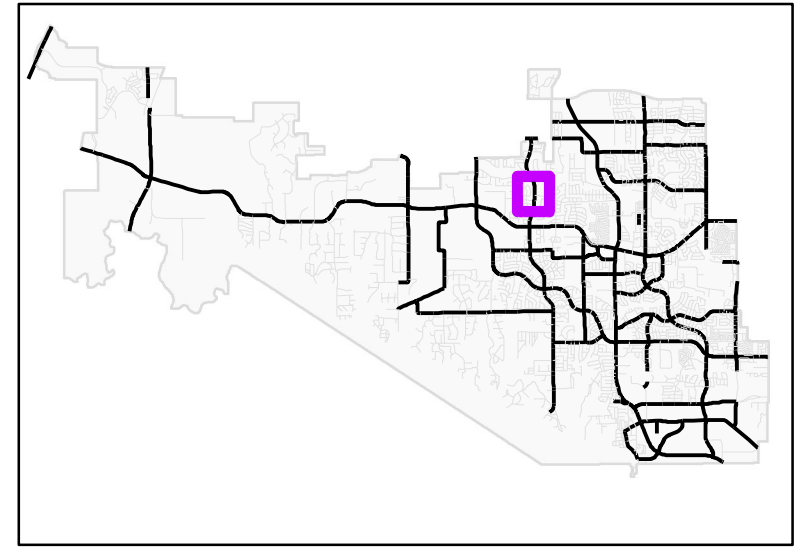
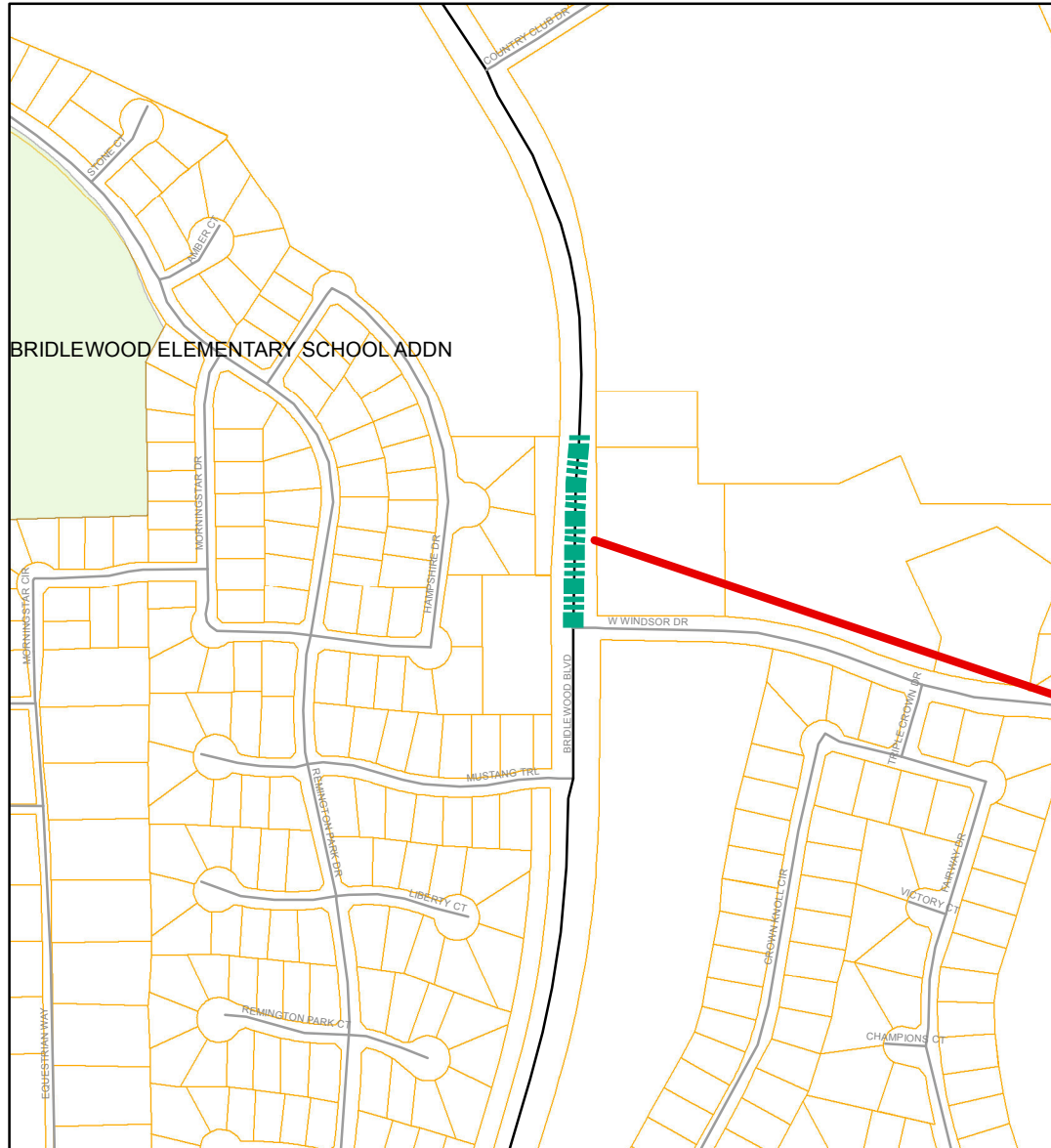
APPROVED:

Thomas E. Hayden, MAYOR**ATTEST:**

Theresa Scott, TOWN SECRETARY**APPROVED AS TO FORM AND LEGALITY:**

Bryn Meredith, TOWN ATTORNEY

Vicinity Map - Bridlewood Boulevard School Zone



Vicinity Map

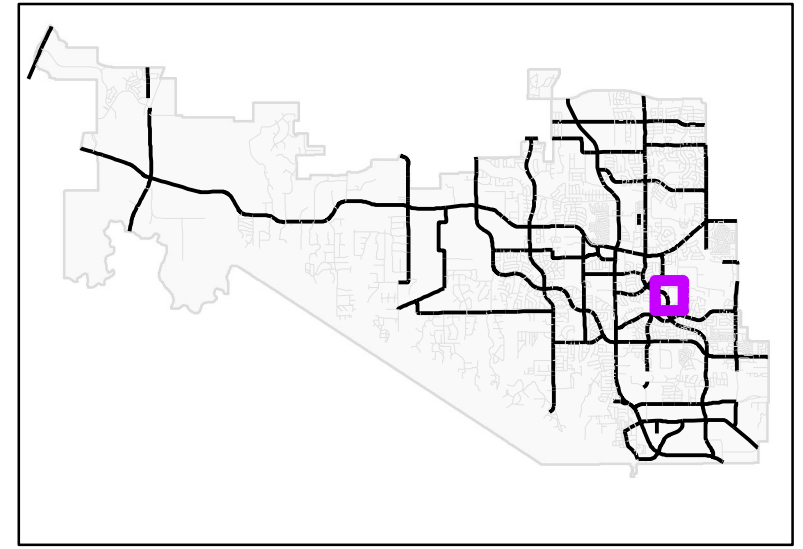
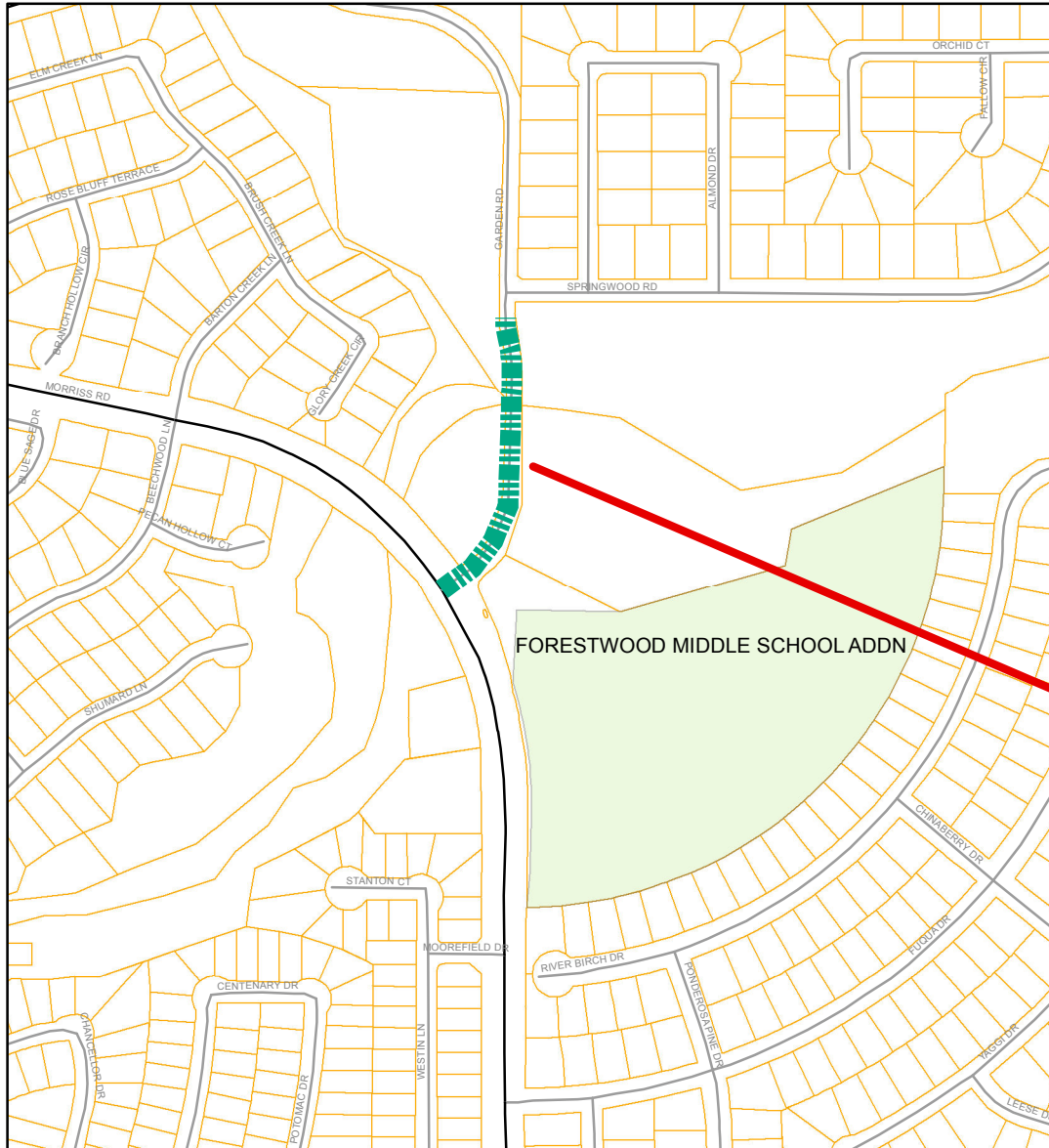
Project
Location(s)

Legend

Adjusted School Zone Location

 Bridlewood Boulevard

Vicinity Map - Garden Road School Zone



Vicinity Map

Project
Location(s)

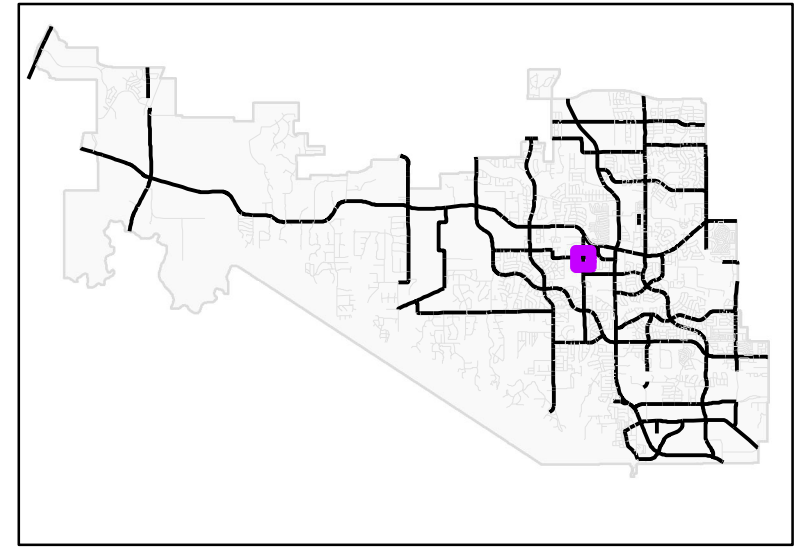
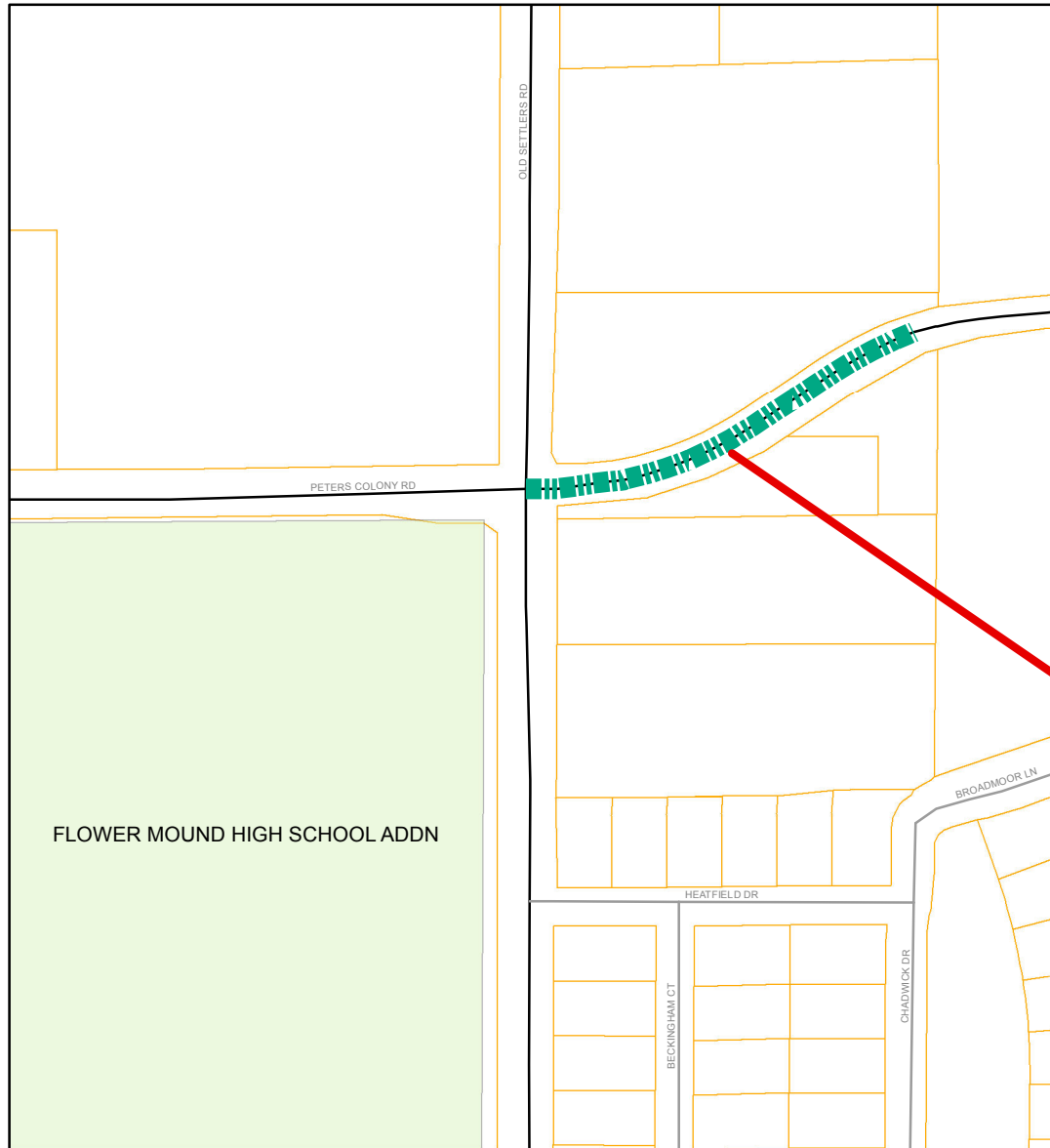
Legend

Adjusted School Zone Location

 Garden Road

Vicinity Map -Peters Colony Road School Zone

Attachment 2



Vicinity Map

Project
Location(s)

Legend

Adjusted School Zone Location

■■■■ Peters Colony Road



TOWN COUNCIL AGENDA ITEM NO. 17

CONSENT ITEM

DATE: March 21, 2016

FROM: Matthew J. Hotelling, P.E., PTOE, Traffic Engineer

ITEM: Consider approval of a resolution to enter into a Volunteer Cooperation Agreement for Operation and Maintenance of Traffic Signals with the Texas Department of Transportation, with proposed revenue of \$66,080.08; and authorization for the Mayor to execute the same on behalf of the Town.

BACKGROUND INFORMATION: Due to the proximity of the four signalized locations to the Town of Flower Mound and the distance from the Dallas District to these locations, TxDOT has requested that the Town of Flower Mound voluntarily take over maintenance and operation of these specific signals. The specific items that will be required as listed in Exhibit 3 of the Voluntary Cooperation Agreement for Operation and Maintenance of Traffic Signals. This is the minimum required however; the Town's typical maintenance of our traffic signals goes above and beyond these minimums. In return, the Dallas District of TxDOT will compensate the Town of Flower Mound up to \$8,260.08 per intersection per year. The agreement is set up to automatically renew until either party decides to terminate the agreement.

If the Town does not desire to provide maintenance and operations of these signals, this function will remain with TxDOT.

FISCAL IMPACT \$66,080.64

Proposed Revenue:	Revenue Account:
\$66,080.64	100-690-95200-4080

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

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

ATTACHMENTS:

1. Resolution
2. Volunteer Cooperation Agreement

RECOMMENDATION: Move to approve a resolution to enter into a Volunteer Cooperation Agreement for Operation and Maintenance of Traffic Signals with the Texas Department of Transportation, with proposed revenue of \$66,080.08; and authorization for the Mayor to execute the same on behalf of the Town.

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

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, APPROVING A VOLUNTARY COOPERATION AGREEMENT FOR THE OPERATION AND MAINTENANCE OF CERTAIN TRAFFIC SIGNALS LOCATED ALONG THE STATE HIGHWAY SYSTEM WITH THE TEXAS DEPARTMENT OF TRANSPORTATION AND OTHER LOCAL GOVERNMENTAL AGENCIES; AUTHORIZING THE TOWN MANAGER TO EXECUTE SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Flower Mound has agreed to maintain and operate certain traffic signals along the State Highway System in exchange for payment from the Texas Department of Transportation; and,

WHEREAS, the Town Council desires to enter into an agreement with the Texas Department of Transportation and other governmental agencies to provide for said maintenance and operation of certain traffic signals ("Agreement"); and,

WHEREAS, the Town Council finds that the Agreement is in the best interest of the health, safety, and general welfare of the Town; and,

WHEREAS, the Texas Department of Transportation requires a resolution evidencing the Town Council's approval of the Agreement.

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

SECTION 1

The Town of Flower Mound hereby approves entering into the Voluntary Cooperation Agreement for the Operation and Maintenance of Traffic Signals with the Texas Department of Transportation whereby the Town agrees to maintain and operate certain traffic signals in accordance with the Agreement. The Voluntary Cooperation Agreement for the Operation and Maintenance of Traffic Signals is attached hereto as Exhibit "A" and incorporated herein for all purposes.

SECTION 2

The Town Manager is hereby authorized to sign the Agreement attached as Exhibit "A."

RESOLUTION NO. _____

PAGE 2

SECTION 3

This Resolution shall take effect immediately upon its passage by the Town Council of the Town of Flower Mound, Texas.

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

APPROVED:

Thomas E. Hayden, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

APPROVED AS TO FORM AND LEGALITY:

Bryn Meredith, TOWN ATTORNEY

RESOLUTION NO. _____

PAGE 2

EXHIBIT "A"

**Voluntary Cooperation Agreement
for the Operation and Maintenance of Traffic Signals**

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

**VOLUNTARY COOPERATION AGREEMENT
FOR THE OPERATION AND MAINTENANCE OF TRAFFIC SIGNALS**

THIS AGREEMENT (the “Agreement”) is made by and through the State of Texas, acting by and through the Texas Department of Transportation hereinafter called the “State” and the City of Highland Village, Town of Argyle, Town of Double Oak, Denton County and Town of Bartonville, hereinafter called the “Local Agencies” and the Town of Flower Mound, hereinafter called the “Performing Agency”, acting by and through their respective duly authorized officials.

W I T N E S S E T H

WHEREAS, the State and the Local Agencies desire to cooperate to maintain and efficiently operate certain traffic signals located along the State Highway System within their respective jurisdictions, hereinafter the “Project”; and,

WHEREAS, under 43TAC§25.5, the State is responsible for maintaining and operating traffic signals on FM 407, FM 1830, and FM 2499 within the Local Agency limits of the Local Agencies; and,

WHEREAS, the State is responsible for maintaining and operating adjacent traffic signals on the Project outside the Local Agency’s limits, but within the County’s law enforcement jurisdiction; and,

WHEREAS, the State, the Local Agencies, and the Performing Agency wish to cooperate and coordinate their efforts to operate an efficient traffic signal system with optimum progression of traffic light synchronization across each jurisdiction,; and,

WHEREAS, the Executive Director, acting for and in behalf of the Texas Transportation Commission, has made it known to the Local Agencies that the State will participate in the construction, maintenance, and operation of said lighting system, subject to the conditions and provisions stated herein, as provided for in 43 Texas Administrative Code, Section 25.11 and Transportation Code, §221.002.

WHEREAS, the State, the Local Agencies, and the Performing Agency agree that, in order to improve response time, to repair malfunctioning traffic signals and to improve traffic signal progression at the Project sites, the Performing Agency shall be authorized to supervise and be responsible for the operating performance, administration and maintenance of the State’s traffic signals on the subject highway within the Local Agencies’ jurisdiction but outside the Performing Agency’s limits and within the Local Agencies’ law enforcement jurisdiction but outside the Performing Agency’s law enforcement jurisdiction as listed on Exhibit 1, which is attached and made a part of this agreement; and

WHEREAS, the Performing Agency agrees to maintain and operate the designated signalized intersections with the State reimbursing the Performing Agency for all maintenance and operations costs as more fully described in Exhibits 2 and 3, attached hereto and made a part of this Agreement, and,

WHEREAS; the Performing Agency and the Local Agencies have adopted a resolution or ordinance by their respective governing bodies that authorize the Performing Agency and the Local Agencies to enter into this Agreement, which are attached as Exhibit 4, attached hereto and made a part of this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto and to be by them respectively kept and performed, as hereinafter set forth, it is agreed as follows:

AGREEMENT

Article 1. Contract Period

This Agreement becomes effective when fully executed by the last party whose signing makes this Agreement fully executed and shall renew annually, subject to the availability of funding. This Agreement shall remain in full force and effect unless modified by mutual agreement and or amendment by all parties or terminated in accordance with Article 8, Termination.

Article 2. Performing Agency's Responsibilities

State, Local Agencies and Performing Agency agree that Performing Agency shall have the following responsibilities, obligations and duties pursuant to this Agreement:

- (a) Performing Agency shall provide trained staff to maintain and operate the traffic signals at locations as shown on Exhibit 1 on the state highway system within the jurisdictional limits of the Local Agencies.
- (b) Performing Agency agrees that it shall maintain and operate the traffic signals in accordance with the minimum requirements as shown on Exhibit 3
- (c) Performing Agency shall maintain, in a log or diary, all emergency calls and routine maintenance. At a minimum, the log(s) shall indicate the date and time of the call, the repair performed, if any, and the name of the person or entity reporting said call. The log(s) shall be maintained by Performing Agency for the duration of this Agreement.
- (d) Performing Agency shall perform administrative activities and provide administrative service necessary to perform this Interlocal Agreement.
- (e) Performing Agency shall prioritize the repairs based upon the public's safety, taking into account such criteria but not limited thereto, the order in which Performing Agency received the complaint or notice and the amount of traffic at said intersections.
- (f) The time of response to the traffic signal and the repairs, if any, shall be made as soon as possible. Delays in or lack of response to repairs may be grounds for termination of this Agreement.

Article 3. State's Responsibilities

The State, Local Agencies and Performing Agency agree that State shall have the following responsibilities, obligations and duties pursuant to this Agreement:

- (a) State shall pay Performing Agency for maintenance, operation and labor costs for the services and functions Performing Agency incurs as provided in Article 4, Compensation.
- (b) State shall prepare or cause to be prepared the plans and specifications, advertise for bids, let the construction contract or otherwise provide for the construction of new traffic signals and/or reconstruction of existing traffic signals (including, at State's option, any special auxiliary equipment, interconnect and/or communication material and equipment), and will supervise construction, reconstruction or betterment work as required by said plans and specifications.

As a project is developed to the construction stage, State will submit plans and specifications of the proposed work to the Local Agencies, wherein in the traffic signals lie, to secure its approval of the plans and specifications, and State will secure Local Agencies' and Performing Agency's consent for Performing Agency to maintain and operate the traffic signal prior to awarding the contract; said Local Agencies' and Performing Agency's consent to be signified by amendment of this agreement including Exhibit 1:

- (c) All costs of construction and/or reconstruction of new and existing traffic signals will be borne by State, and traffic signal system will remain the property of State.
- (d) It is understood and agreed that it is the responsibility of State to assume equipment upgrade of State's traffic signal system, as shown on Exhibit 1.

Article 4. Compensation

- (a) The maximum amount payable under this Agreement is \$ 66,080.64 per year.
- (b) Payment for operation and maintenance of the traffic signals will be at a flat rate per traffic signal, as shown in Exhibit 2.
- (c) The State will be responsible for all electrical power costs for the operation of the traffic signals covered by this Agreement and shown on Exhibit 1. Power costs shall be billed directly to the State.
- (d) The Performing Agency shall submit an invoice acceptable to the State on a (monthly/quarterly/annual) basis. An acceptable invoice shall be submitted to the following address:

Texas Department of Transportation
Attention: Director of Operations
4777 E. Highway 80
Mesquite, TX 75150

- (e) The Performing Agency shall maintain a system of records necessary to support and establish the eligibility of all claims for payment under this Agreement.

These records may be reviewed at any reasonable time to substantiate the payment by the State and/or determine the need for an adjustment in the amount paid by the State.

- (f) Knockdowns or damage resulting from an accident or an act of God and which require emergency replacement of major equipment shall not be included in the (monthly/quarterly/annual) payments. For eligibility of payment for emergency replacement of major equipment, actual costs shall be submitted to the State for review and reimbursement.
- (g) The State shall make payment to the Performing Agency within 30 days from receipt of the Performing Agency's request for payment, provided that the request is properly prepared.
- (h) Payment for the addition or deletion of a traffic signal installation shall be made by written amendment(s) and shall be based upon the calculations as shown in Exhibit 2.
- (i) Payment under this contract beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this contract shall be terminated immediately with no liability to any party.

Article 5. Local Agencies' Responsibilities

The State, Local Agencies and Performing Agency agree that Local Agencies shall have the following responsibilities, obligations and duties pursuant to this Agreement:

- (a) Local Agencies agree that they will cooperate with State and Performing Agency in Performing Agency's responsibilities of the services and functions performed pursuant to this Agreement.
- (b) Local Agencies will, if any additional traffic signals are installed by the State by Amendment, fulfill their respective obligations under Article 3 (b),
- (c) Local Agencies may request to the State that additional traffic signal(s) are needed in their respective jurisdictions and specify the location thereof. If, after completing a traffic signal study, a traffic signal is authorized by State, then the obligations, duties and responsibilities as shown in Article 3 shall become effective.
- (d) Local Agencies agree that if they wish to withdraw from this Agreement, that the Agreement will not terminate the duties, obligations and responsibilities of the remaining parties to this Agreement.
- (e) Local Agencies shall maintain, in a log or diary, all emergency calls and routine maintenance submitted to Performing Agency. At a minimum, the log(s) shall indicate the date and time of the call, the repair to be performed, if any, and the name of the person taking said call. The log(s) shall be maintained by Local Agencies for the duration of this Agreement and required to be reviewed by the State annually.

Article 6. Additional Work

- A. If the Performing Agency is of the opinion that any assigned work is beyond the scope of this contract and constitutes additional work, it shall promptly notify the

State in writing. The written notice shall present the relevant facts and show how the work constitutes additional work.

- B. If the State in its sole discretion finds that the work does constitute additional work, that State shall so advise the Performing Agency and a written amendment will be executed by all parties to this agreement. The Performing Agency shall not perform any proposed additional work or incur any additional costs before the execution of an amendment.
- C. The State shall not be responsible for actions by the Performing Agency or for any costs incurred by the Performing Agency relating to additional work that is performed before an amendment is executed or that is outside the scope of the contract, as amended.

Article 7. Indemnification

The Local Agencies, the Performing Agency and the State acknowledge that they are not agents, servants, or employees of the other parties and each party is responsible for its own acts and deeds, errors, and omissions during the performance of this Agreement. The Local Agencies, the Performing Agency and the State further acknowledge that nothing in this Agreement creates, grants, or assigns rights or responsibilities to act as a joint venture or partnership with the other parties to this Agreement.

Article 8. Termination

This Agreement may be terminated by any of the following conditions:

- (a) By mutual written agreement and consent of all parties.
- (b) By State upon thirty (30) days written notice to Local Agencies and Performing Agency for failure of Performing Agency to provide adequate maintenance and operation services for those traffic signal installations which Performing Agency has agreed to maintain and operate.
- (c) By State upon sixty (60) days written notice to Local Agencies and Performing Agency that State will assume operation and maintenance at the end of the one (1) year period of this contract.
- (d) By Local Agencies or Performing Agency upon 120 days written notice to State.
- (e) At that time that any specific signal falls within the limits of a Local Agency possessing a population greater than 50,000 (based upon the Official U.S. Census), such signal shall be removed from the list shown under Exhibit 1, with all maintenance responsibilities of said signal to be reassigned under separate Agreement based upon the classification of the State roadway at that time, i.e. freeway vs. non-freeway.
- (f) As provided hereinbefore in this Agreement.

In the event this Agreement is terminated by any of the above conditions, the maintenance and operation of the traffic signal systems shall become the responsibility of the State. Any state-owned equipment being held by the Local Agencies or Performing Agency shall be promptly returned within thirty (30) calendar days to the State upon termination of this Agreement.

Article 9. Transfer of Responsibilities

The Performing Agency shall not transfer its responsibilities for the work under this Agreement unless specifically approved in writing by State.

Article 10. Amendments

Changes in the character, costs, provisions, attached Exhibits, responsibilities or obligations authorized herein shall be enacted by written amendment. Any amendment to this Agreement must be executed by all parties.

Article 11. Legal Construction

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

Article 12. State Auditor

The State Auditor may conduct an audit or investigation of any entity receiving funds from the State directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

Article 13. Sole Agreement

This Agreement constitutes the sole and only Agreement of the parties hereto and supersedes any prior understanding, written or oral agreements between the parties respecting the within subject matter.

Article 14. Reference to Costs Principles and Circulars

Reimbursement with state or federal funds will be limited to costs determined to be reasonable and allowable under cost principles establish in OMB Circular A-21, "Cost Principles for Educational Institutions," or OMB Circular A-87, "Cost Principles for State and Local Agencies." The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.

Article 15. Records and Ownership

- A. The Performing Agency agrees to maintain all books, documents, papers, accounting records, and other evidence pertaining to costs at its office during the contract period and for four years from the date of final payment under the contract. These materials shall be made available for inspection and copying by the State, by the State Auditor's Office, and by their authorized representatives. If the contract is federally funded, these materials shall also be made available for inspection and copying by the U.S. Department of Transportation and by the Office of the Inspector General.

- B. After completion or termination of this contract, all documents prepared by the Performing Agency or furnished to the Performing Agency by the State shall be delivered to and become the property of the State. All sketches, photographs, calculations, and other data prepared under this contract shall be made available, on request, to the State without restriction or limitation of further use.
- C. State shall own all title to, all interests in, all rights to, and all intellectual property (including copyrights, trade and service marks, trade secrets, and patentable devices or methods) arising from or developed under this contract.
- D. Except to the extent that a specific provision of this contract states to the contrary, all equipment purchased by the Performing Agency or its subcontractors under this contract shall be owned by the State and will be delivered to the State at the time the contract is completed or terminated.

Article 16. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations and with the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. After receiving a written request from the State, the Performing Agency shall furnish the State with satisfactory proof of its compliance with this Article.

Article 17. Procurement and Property Management Standards

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

Article 18. Civil Rights Compliance

The parties shall comply with the regulations of the Department of Transportation as they relate to nondiscrimination (49 CFR Chapter 21 and 23 CFR §710.405(B)), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

Article 19. Disadvantage Business Enterprise Program Requirements

The parties shall comply with the Disadvantaged/Minority Business Enterprise Program requirements established in 49 CFR Part 26.

Article 20. Debarment Certifications

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the [Contractor, Local Agencies, Engineer, or whatever] certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of the certification.

Article 21. Lobbying Certification

In executing this Agreement, the signatories certify to the best of his or her knowledge and belief, that:

- a. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Agencies shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The parties shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

By executing this Agreement, the parties affirm this lobbying certification with respect to the individual projects and affirm this certification of the material representation of facts upon which reliance will be made. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352.

Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Article 22. Insurance

If this agreement authorizes the Performing Agency or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

Article 23. Remedies

This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

Article 24. Gratuities

Any person who is doing business with or who reasonably speaking may do business with the State under this contract may not make any offer of benefits, gifts, or favors to employees of the State. The only exceptions allowed are ordinary business lunches and items that have received the advanced written approval of the Executive Director of the Texas Department of Transportation.

Article 25. Signature Warranty

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party they represent.

IN WITNESS WHEREOF, the parties have executed multiple counterparts to effectuate this Agreement. This Agreement becomes effective when last signed.

**PERFORMING AGENCY
TOWN OF FLOWER MOUND**

Name

Title

Date

**LOCAL AGENCY
TOWN OF ARGYLE**

Name

Title

Date

**LOCAL AGENCY
TOWN OF DOUBLE OAK**

Name

Title

Date

**LOCAL AGENCY
DENTON COUNTY**

Name

Title

Date

**LOCAL AGENCY
CITY OF HIGHLAND VILLAGE**

Name

Title

Date

**LOCAL AGENCY
TOWN OF BARTONVILLE**

Name

Title

Date

STATE OF TEXAS

James K. Selman, P.E.
Dallas District Engineer

Date

EXHIBIT 1**Signalized intersection on State Highways located within Denton County:**

FM 407 at Lantana

Signalized intersection on State Highways located within the Town of Argyle:

FM 407 at FM 1830

Signalized intersection on State Highways located within the Town of Double Oak:

FM 407 at Copper Canyon

FM 407 at Simmons

Signalized intersection on State Highways located within the City of Highland Village:

FM 2499 at Highland Shores

FM 2499 at Live Oak

Signalized intersection on State Highways located within the Town of Bartonville:

FM 407 at McMakin

FM 407 at Branch Crossing

EXHIBIT 2
REIMBURSEMENT CALCULATION WORKSHEET

Signals shall be reimbursed at \$8,260.08 per intersection per year

Calculations: Locations X 8 = \$66,080.64

The total amount payable per year is \$66,080.64

Exact amount paid to the Performing Agency will be based upon whether a monthly, quarterly, or yearly payment schedule is selected. The actual payment to be made per billing cycle will be calculated by means of dividing the total amount paid per year by the number of payments to be made per year.

EXHIBIT 3**TRAFFIC SIGNAL MAINTENANCE AND OPERATION PROVISIONS**

The Performing Agency agrees to:

1. Unless specifically noted elsewhere in this agreement, the signal timing and operational phasing shall be the responsibility of the Performing Agency.
2. Inspect the highway traffic signal system a minimum of once every 12 months and replace burned out lamps or damaged sockets as may be required. Police, citizen, or other reports of burned out lamps or other damage, which could jeopardize safety, shall be repaired or replaced as soon as possible after the report, depending on the nature of the report. Otherwise, appropriate steps shall be taken to protect the public. The reflector and lens should be cleaned each time a lamp is replaced. All replacement lamps shall equal the wattage and type of the existing lamp.
3. Keep signal poles, controller pedestals, and foundations in alignment.
4. Keep signal poles and controller cabinets tight on their foundation(s) or pedestal(s).
5. Keep traffic and pedestrian signal heads aligned and properly adjusted. Repair back plates where needed.
6. Check the controllers, conflict monitors, detector units, relays, pedestrian push buttons, and detectors a minimum of once every 12 months to ascertain that they are functioning properly and make all necessary repairs and replacements.
7. Keep interior of controller cabinets in a neat and clean condition at all times.
8. Clean reflectors, lenses, and lamps a minimum of once every twelve months.
9. Repaint all corrosive susceptible highway traffic signal components exposed to weather with a non-lead based paint as needed in order to maintain a well kept appearance in the opinion of the State's representative. Plastic signal heads and galvanized and aluminum components are excluded.
10. Either replace the lamps of all highway traffic signal heads as a group upon expiration of the average rated lamp life or replace the lamps on a burn out basis
11. Repair or replace any and all equipment that malfunctions or is damaged.
12. Provide alternate traffic control during a period of failure or when the controller must be repaired. This may be accomplished through installation of a spare

controller, placing the intersection on flash, manually operating the controller, or manually directing traffic through the use of proper authorities. In addition, barricades and warning signs shall be provided in accordance with the requirements of the latest edition of the *Texas Manual on Uniform Traffic Control Devices*.

13. Provide maintenance personnel trained in the maintenance of traffic signal equipment who will be available to respond to emergency calls from authorized parties 24 hours a day, including Saturdays, Sundays, and holidays.
14. Provide the State and local law enforcement agencies the location and respective names and telephone numbers of individuals responsible for emergency maintenance.
15. Document routine observations during the year by trained Performing Agency personnel of the traffic signal operation at each traffic signal during various times of the day to assure fair distribution of time and for all traffic movements (phases) during varying traffic conditions.
16. Check cabinet filter a minimum of once every six months and clean if necessary cabinet filter shall be replaced every two years.
17. Document all checks and corrective actions in a separate logbook for each intersection.
18. In metropolitan Local Agencies where Intelligent Transportation Systems and/or incident management systems are being implemented the signal timing will be the responsibility of the Performing Agency in cooperation with the State.

Traffic accidents, inclement weather, special events, maintenance, and construction activities are a few of the causes of nonrecurring congestion. Nonrecurring congestion often changes the normal traffic demand patterns. Effective and efficient movement of traffic through the transportation network during periods on nonrecurring congestion must be considered in the design and operation of all traffic management systems, including traffic signal systems. Priority should be given to freeway or expressway frontage roads when nonrecurring congestion occurs on freeway or expressway mainlanes.

Exhibit 4

Resolutions of the Local Agencies and the Performing Agency



TOWN COUNCIL AGENDA ITEM NO.18

CONSENT ITEM

DATE: March 21, 2016

FROM: Matthew J. Hotelling, P.E., PTOE, Traffic Engineer

ITEM: Consider approval of Change Order No. 1 and final acceptance of the FM 1171 at Forums Drive Traffic Signal project amending the contract with Durable Specialties Inc., for a decrease of \$8,176.00; authorization for final payment to Durable Specialties Inc., in the amount of \$20,150.90; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The project is complete. This item provides for a final payment of \$20,150.90, which consists of \$6,065.00 of work completed, and \$14,085.90 of retainage, for a final contract amount of \$146,924.00.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$20,150.90

Proposed Expenditure:	Account Number(s):
\$20,150.90	536-220-77061

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

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Change Order No. 1
2. Contract Estimate for Payment
3. Consent of Surety to Final Payment
4. Final Bills Paid Affidavit

RECOMMENDATION: Move to approve Change Order No. 1 and final acceptance of the FM 1171 at Forums Drive Traffic Signal project, amending the contract with Durable Specialties Inc., for a decrease of \$8,176.00, authorize for final payment to Durable Specialties Inc., in the amount of \$20,150.90; and authorize the Mayor to execute same on behalf of the Town.

CHANGE ORDER No. 1 and Final

Effective Date: Effective on the date of execution by the Mayor following approval of Town Council

Owner: Town of Flower Mound
 Contractor: Durable Specialties, Inc.
 2302 Paddock Way (PO Box 535969)
 Grand Prairie, TX 75050

Project: **FM 1171 @ Forums Traffic Signal****CHANGE ORDER NO. 1 and Final**

The compensation agreed upon in this Change Order is a full, complete, and final payment for all costs the Contractor incurs as a result of or relating to the change, whether said costs are known, unknown, foreseen, or unforeseen at this time, including without limitation, any costs for delay, extended overhead, ripple or impact costs, or any other effect on changed or unchanged work as a result of this change.

You are directed to make the following changes in the Contract Documents:

Item No.	Description	Unit	Add/ Deduct	Quan	Unit Price	Extended Amount
						\$ -
6 CO1	FL BS (CMP IN PLC)(TY D GR 2)(FNAL POS)	CY	Deduct	16.5	\$250.00	\$ (4,125.00)
7 CO1	D-GR HMA (METH) TY-B SAC-B PG70-22	TON	Deduct	16	\$300.00	\$ (4,800.00)
14 CO1	CURB RAMPS (TY 7)	EA	Add	2	\$1,600.00	\$ 3,200.00
16 CO1	CURB RAMPS (TY-5)	EA	Deduct	1	\$1,800.00	\$ (1,800.00)
18 CO1	CONDT (PVC) (SCHD 40) (3")	LF	Add	10	\$9.00	\$ 90.00
52 CO1	TRF SIG CBL (TY A) (14 AWG)(7 CONDR)	LF	Add	158	\$1.00	\$ 158.00
56 CO1	BIOGRD EROSN CONT LOGS (18" DIA) INSTAL	LF	Deduct	100	\$5.00	\$ (500.00)
57 CO1	BIODEGRADBLE EROSION CONTROL LOGS REMO	LF	Deduct	100	\$1.00	\$ (100.00)
59 CO1	CONC SIDEWALKS (5.5")	SY	Deduct	6.5	\$120.00	\$ (780.00)
61 CO1	SOLID WHITE)	LF	Deduct	178	\$12.00	\$ (2,136.00)
CO1A	REFL PAV MRK TYP I (W)(24")(SLD)	LF	Add	178	\$7.00	\$ 1,246.00
CO1B	REFL PAV MRK TYP II (W)(24")(SLD)	LF	Add	178	\$2.00	\$ 356.00
CO1C	DRILL SHAFT (TRF SIG POLE)(24")	LF	Add	6	\$135.00	\$ 810.00
CO1D	(INSTALL ONLY) PEDESTRIAN POLE ASSEMBLY	EA	Add	1	\$205.00	\$ 205.00
						\$ -
						\$ -
						\$ -
						\$ -
Change Order #1						\$ (8,176.00)
Revised Contract Price						\$ 146,924.00

Change Order #4

Change Order #5

Change Order #6

Change Order #7

Revised Substantial Contract Days

165

Original Final Contract Days

150

Additional Final Contract Days With CO#1

75

Revised Final Contract Days

225

JUSTIFICATION

Bid items 6 - 61 provide for in place quantities, CO1A, CO1B, CO1C and CO1D provide for in place quantities and contract adjustments needed to complete the work. Additional days are for unusual amount of rain during the beginning of the project

Recommended

for Approval Matthew J. Hotelling, P.E., PTOE
 Traffic Engineer

Date

Contractor

Date

Approved

Thomas E Hayden
 Mayor

Date

A.L. K - 2-16-16

CONTRACT ESTIMATE FOR PAYMENT

Project: FM 1171 @ Forums Traffic Signal Estimate No.: 3

Item No.	Description of Item	Unit of Measure	Contract Quantities	Unit Price	Contract Amount	Quantities Completed Previous	Quantities Completed This Month	Quantities Completed To Date	Dollar Amount Previous	Dollar Amount This Month	Amount Completed To date	% of Quantity Complete
1	REMOVING CONC (PAV)	SY	46.00	\$ 75.00	\$ 3,450.00	46.00	0.00	46.00	\$ 3,450.00	\$ -	\$ 3,450.00	100.00%
2	REMOVING CONC (MEDIANS)	SY	4.00	\$ 150.00	\$ 600.00	4.00	0.00	4.00	\$ 600.00	\$ -	\$ 600.00	100.00%
3	REMOVING CONC (CURB AND GUTTER)	LF	135.00	\$ 10.00	\$ 1,350.00	135.00	0.00	135.00	\$ 1,350.00	\$ -	\$ 1,350.00	100.00%
4	REMOVING CONC (SIDEWALK OR RAMP)	SY	82	\$ 30.00	\$ 2,460.00	82.00	0.00	82.00	\$ 2,460.00	\$ -	\$ 2,460.00	100.00%
5	BLOCK SODDING	SY	43.50	\$ 20.00	\$ 870.00	43.50	0.00	43.50	\$ 870.00	\$ -	\$ 870.00	100.00%
6 CO1	FL BS (CMP IN PLC)(TY D GR 2)(FNAL POS)	CY	0.00	\$ 250.00	\$ -	0.00	0.00	0.00	\$ -	\$ -	\$ -	#DIV/0!
7 CO1	D-GR HMA (METH) TY-B SAC-B PG70-22	TON	0.00	\$ 300.00	\$ -	0.00	0.00	0.00	\$ -	\$ -	\$ -	#DIV/0!
8	CONC PVMT (CONT REINF-CRCP)(8")	SY	72.5	\$ 130.00	\$ 9,425.00	72.50	0.00	72.50	\$ 9,425.00	\$ -	\$ 9,425.00	100.00%
9	DRILL SHAFT (TRF SIG POLE) (36 IN)	LF	26	\$ 200.00	\$ 5,200.00	26.00	0.00	26.00	\$ 5,200.00	\$ -	\$ 5,200.00	100.00%
10	DRILL SHAFT (TRAFFIC SIGNAL POLE) (48")	LF	44	\$ 240.00	\$ 10,560.00	44.00	0.00	44.00	\$ 10,560.00	\$ -	\$ 10,560.00	100.00%
11	MOBILIZATION	LS	1	\$ 14,000.00	\$ 14,000.00	1.00	0.00	1.00	\$ 14,000.00	\$ -	\$ 14,000.00	100.00%
12	BARRICADES, SIGNS & TRAFFIC HANDLING	MO	3	\$ 1,600.00	\$ 4,800.00	3.00	0.00	3.00	\$ 4,800.00	\$ -	\$ 4,800.00	100.00%
13	CONC CURB (TY-II)	LF	60	\$ 40.00	\$ 2,400.00	60.00	0.00	60.00	\$ 2,400.00	\$ -	\$ 2,400.00	100.00%
14 CO1	CURB RAMPS (TY 7)	EA	6.00	\$ 1,600.00	\$ 9,600.00	4.00	2.00	6.00	\$ 6,400.00	\$ 3,200.00	\$ 9,600.00	100.00%
15	CURB RAMPS (TY 20)	EA	1	\$ 3,500.00	\$ 3,500.00	1.00	0.00	1.00	\$ 3,500.00	\$ -	\$ 3,500.00	100.00%
16 CO1	CURB RAMPS (TY-5)	EA	1.00	\$ 1,800.00	\$ 1,800.00	1.00	0.00	1.00	\$ 1,800.00	\$ -	\$ 1,800.00	100.00%
17	CONDT (PVC) (SCHD 40) (2")	LF	35	\$ 8.00	\$ 280.00	35.00	0.00	35.00	\$ 280.00	\$ -	\$ 280.00	100.00%
18 CO1	CONDT (PVC) (SCHD 40) (3")	LF	120.00	\$ 9.00	\$ 1,080.00	110.00	10.00	120.00	\$ 990.00	\$ 90.00	\$ 1,080.00	100.00%
19	CONDT (PVC) (SCHD 40) (4")	LF	30	\$ 10.00	\$ 300.00	30.00	0.00	30.00	\$ 300.00	\$ -	\$ 300.00	100.00%
20	CONDT (PVC) (SCHD 40) (4") (BORE)	LF	500	\$ 20.00	\$ 10,000.00	500.00	0.00	500.00	\$ 10,000.00	\$ -	\$ 10,000.00	100.00%
21	CONDT (PVC) (SCHD 80) (2")	LF	25	\$ 9.00	\$ 225.00	25.00	0.00	25.00	\$ 225.00	\$ -	\$ 225.00	100.00%
22	ELEC CONDR (NO. 6) BARE	LF	675	\$ 1.00	\$ 675.00	675.00	0.00	675.00	\$ 675.00	\$ -	\$ 675.00	100.00%
23	ELEC CONDR (NO 6) INSULATED	LF	30	\$ 1.00	\$ 30.00	30.00	0.00	30.00	\$ 30.00	\$ -	\$ 30.00	100.00%
24	ELEC CONDR (NO. 8) INSULATED	LF	670	\$ 1.00	\$ 670.00	670.00	0.00	670.00	\$ 670.00	\$ -	\$ 670.00	100.00%
25	ELEC CONDR (NO. 12) INSULATED	LF	240	\$ 1.00	\$ 240.00	240.00	0.00	240.00	\$ 240.00	\$ -	\$ 240.00	100.00%
26	GROUND BOX TY D (162922) W/APRON	EA	4	\$ 760.00	\$ 3,040.00	4.00	0.00	4.00	\$ 3,040.00	\$ -	\$ 3,040.00	100.00%
27	ELC SRV TY D 120/240 070 (NS)SS(E)PS(U)	EA	1	\$ 5,200.00	\$ 5,200.00	1.00	0.00	1.00	\$ 5,200.00	\$ -	\$ 5,200.00	100.00%
28	RELOCATE SM RD SN SUP & AM TY 10BWG	EA	1	\$ 350.00	\$ 350.00	1.00	0.00	1.00	\$ 350.00	\$ -	\$ 350.00	100.00%
29	REMOVE SM RD SN SUP & AM	EA	3	\$ 100.00	\$ 300.00	3.00	0.00	3.00	\$ 300.00	\$ -	\$ 300.00	100.00%
30	REFL PAV MRK TY I (W) 8" (SLD)(100MIL)	LF	195	\$ 2.00	\$ 390.00	195.00	0.00	195.00	\$ 390.00	\$ -	\$ 390.00	100.00%
31	REFL PAV MRK TY I (W) (ARROW)(100MIL)	EA	7	\$ 150.00	\$ 1,050.00	7.00	0.00	7.00	\$ 1,050.00	\$ -	\$ 1,050.00	100.00%
32	REFL PAV MRK TY I (W)(DBL ARROW)(100MIL)	EA	2	\$ 250.00	\$ 500.00	2.00	0.00	2.00	\$ 500.00	\$ -	\$ 500.00	100.00%
33	REFL PAV MRK TY I (W) (WORD)(100MIL)	EA	5	\$ 160.00	\$ 800.00	5.00	0.00	5.00	\$ 800.00	\$ -	\$ 800.00	100.00%
34	REFL PAVE MRK TY I (Y) 4" (SLD)(100MIL)	LF	100	\$ 1.00	\$ 100.00	100.00	0.00	100.00	\$ 100.00	\$ -	\$ 100.00	100.00%
35	REF PAV MRK TY II (W) 8" (SLD)	LF	195	\$ 1.00	\$ 195.00	195.00	0.00	195.00	\$ 195.00	\$ -	\$ 195.00	100.00%
36	REF PAV MRK TY II (W)(ARROW)	EA	7	\$ 16.00	\$ 112.00	7.00	0.00	7.00	\$ 112.00	\$ -	\$ 112.00	100.00%
37	REF PAV MRK TY II (W)(DBL ARROW)	EA	2	\$ 33.00	\$ 66.00	2.00	0.00	2.00	\$ 66.00	\$ -	\$ 66.00	100.00%
38	REF PAV MRK TY II (W)(WORD)	EA	5	\$ 28.00	\$ 140.00	5.00	0.00	5.00	\$ 140.00	\$ -	\$ 140.00	100.00%
39	REF PAV MRK TY II (Y) 4" (SLD)	LF	100	\$ 1.00	\$ 100.00	100.00	0.00	100.00	\$ 100.00	\$ -	\$ 100.00	100.00%
40	REFL PAV MRKR TY II-A-A	EA	49	\$ 4.00	\$ 196.00	49.00	0.00	49.00	\$ 196.00	\$ -	\$ 196.00	100.00%
41	REFL PAV MRKR TY II-C-R	EA	7	\$ 4.00	\$ 28.00	7.00	0.00	7.00	\$ 28.00	\$ -	\$ 28.00	100.00%
42	PAV SURF PREP FOR MRK (4")	LF	100	\$ 0.10	\$ 10.00	100.00	0.00	100.00	\$ 10.00	\$ -	\$ 10.00	100.00%
43	PAV SURF PREP FOR MRK (8")	LF	195	\$ 0.10	\$ 19.50	195.00	0.00	195.00	\$ 19.50	\$ -	\$ 19.50	100.00%
44	PAV SURF PREP FOR MRK (12")	LF	740	\$ 0.40	\$ 296.00	740.00	0.00	740.00	\$ 296.00	\$ -	\$ 296.00	100.00%
45	PAV SURF PREP FOR MRK (24")	LF	178	\$ 0.75	\$ 133.50	178.00	0.00	178.00	\$ 133.50	\$ -	\$ 133.50	100.00%
46	PAV SURF PREP FOR MRK (ARROW)	EA	7.00	\$ 5.00	\$ 35.00	7.00	0.00	7.00	\$ 35.00	\$ -	\$ 35.00	100.00%
47	PAV SURF PREP FOR MRK (DBL ARROW)	EA	2.00	\$ 11.00	\$ 22.00	2.00	0.00	2.00	\$ 22.00	\$ -	\$ 22.00	100.00%
48	PAV SURF PREP FOR MRK (RPM)	EA	56.00	\$ 0.25	\$ 14.00	56.00	0.00	56.00	\$ 14.00	\$ -	\$ 14.00	100.00%
49	PAV SURF PREP FOR MRK (WORD)	EA	5.00	\$ 5.00	\$ 25.00	5.00	0.00	5.00	\$ 25.00	\$ -	\$ 25.00	100.00%
50	INSTALL HWY TRF SIG (ISOLATED)	EA	1.00	\$ 32,002.00	\$ 32,002.00	1.00	0.00	1.00	\$ 32,002.00	\$ -	\$ 32,002.00	100.00%
51	TRF SIG CBL (TY A) (14 AWG)(5 CONDR)	LF	630.00	\$ 1.00	\$ 630.00	630.00	0.00	630.00	\$ 630.00	\$ -	\$ 630.00	100.00%
52 CO1	TRF SIG CBL (TY A) (14 AWG)(7 CONDR)	LF	323.00	\$ 1.00	\$ 323.00	165.00	158.00	323.00	\$ 165.00	\$ 158.00	\$ 323.00	100.00%
53	TRF SIG CBL (TY A) (14 AWG) (10 CONDR)	LF	635.00	\$ 2.00	\$ 1,270.00	635.00	0.00	635.00	\$ 1,270.00	\$ -	\$ 1,270.00	100.00%
54	TRF SIG CBL (TY A) (14 AWG) (20 CONDR)	LF	645.00	\$ 3.00	\$ 1,935.00	645.00	0.00	645.00	\$ 1,935.00	\$ -	\$ 1,935.00	100.00%
55	TRF SIG CBL (TY C) (12 AWG) (2 CONDR)	LF	1,310.00	\$ 1.00	\$ 1,310.00	1310.00	0.00	1310.00	\$ 1,310.00	\$ -	\$ 1,310.00	100.00%
56 CO1	BIOGRD EROSN CONT LOGS (18" DIA) INSTAL	LF	0.00	\$ 5.00	\$ -	0.00	0.00	0.00	\$ -	\$ -	\$ -	#DIV/0!
57 CO1	BIODEGRADBLE EROSION CONTROL LOGS REMO	LF	0.00	\$ 1.00	\$ -	0.00	0.00	0.00	\$ -	\$ -	\$ -	#DIV/0!
58	ETHERNET CABLE CAT 5	LF	400.00	\$ 3.00	\$ 1,200.00	400.00	0.00	400.00	\$ 1,200.00	\$ -	\$ 1,200.00	100.00%
59 CO1	CONC SIDEWALKS (5.5")	SY	38.00	\$ 120.00	\$ 4,560.00	38.00	0.00	38.00	\$ 4,560.00	\$ -	\$ 4,560.00	100.00%
60	3M STAMARK 270 PAVEMENT MARKING TAPE (12" SOLID WHITE)	LF	740	\$ 6.00	\$ 4,440.00	740.00	0.00	740.00	\$ 4,440.00	\$ -	\$ 4,440.00	100.00%
61 CO1	3M STAMARK 270 PAVEMENT MARKING TAPE (24" SOLID WHITE)	LF	0.00	\$ 12.00	\$ -	0.00	0.00	0.00	\$ -	\$ -	\$ -	#DIV/0!
CO1 A	REFL PAV MRK TYP I (W)(24")(SLD)	LF	178.00	\$ 7.00	\$ 1,246.00	0.00	178.00	178.00	\$ -	\$ 1,246.00	\$ 1,246.00	100.00%
CO1 B	REFL PAV MRK TYP II (W)(24")(SLD)	LF	178.00	\$ 2.00	\$ 356.00	0.00	178.00	178.00	\$ -	\$ 356.00	\$ 356.00	100.00%
CO1 C	DRILL SHAFT (TRF SIG POLE) (24")	LF	6.00	\$ 135.00	\$ 810.00	0.00	6.00	6.00	\$ -	\$ 810.00	\$ 810.00	100.00%
CO1 D	PEDESTRIAN POLE ASSEMBLY (INSTALL ONLY)	EA	1.00	\$ 205.00	\$ 205.00	0.00	1.00	1.00	\$ -	\$ 205.00	\$ 205.00	100.00%
TOTAL					146,924.00				140,859.00	6,065.00	146,924.00	100.00%

**CONSENT OF SURETY
TO FINAL PAYMENT***AIA Document G707*

Bond No. 3954438

OWNER	☐
ARCHITECT	☐
CONTRACTOR	☐
SURETY	☒
OTHER	☐

TO OWNER:*(Name and address)*

Town of Flower Mound, TX

ARCHITECT'S PROJECT NO.:

CONTRACT FOR: Traffic Signals

PROJECT:*(Name and address)*

FM 1171 at Forums Drive/Traffic Signal

CONTRACT DATED: April 6, 2015

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the
(Insert name and address of Surety)

Great American Insurance Company of New York
 301 E. Fourth Street
 Cincinnati OH 45202

on bond of

(Insert name and address of Contractor)

, SURETY,

Durable Specialties, Inc.
 P.O. Box 535969
 Grand Prairie TX 75050

hereby approves of the final payment to the Contractor, and agrees that final payment to the Contractor shall not relieve the Surety of
 any of its obligations to
(Insert name and address of Owner)

Town of Flower Mound, TX

, CONTRACTOR,

as set forth in said Surety's bond.

, OWNER,

IN WITNESS WHEREOF, the Surety has hereunto set its hand on this date: January 11, 2016
(Insert in writing the month followed by the numeric date and year.)

Great American Insurance Company of New York

*(Surety)**(Signature of authorized representative)*

Jack M. Crowley Attorney-in-Fact

(Printed name and title)

Surety Phone No. 513-369-5000

Attest:

(Seal):

Kylie Bonds

GREAT AMERICAN INSURANCE COMPANY OF NEW YORK

New York

Administrative Office: 301 E 4TH STREET • CINCINNATI, OHIO 45202 • 513-369-5000 • FAX 513-723-2740

The number of persons authorized by
this power of attorney is not more than **FOUR**

No. 0 19950

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the GREAT AMERICAN INSURANCE COMPANY OF NEW YORK, a corporation organized and existing under and by virtue of the laws of the State of New York, does hereby nominate, constitute and appoint the person or persons named below its true and lawful attorney-in-fact, for it and in its name, place and stead to execute on behalf of the said Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; provided that the liability of the said Company on any such bond, undertaking or contract of suretyship executed under this authority shall not exceed the limit stated below.

Name	Address	Limit of Power
JACK M. CROWLEY	ALL OF	ALL
STEVEN R. FOSTER	ADDISON, TEXAS	\$75,000,000.00

This Power of Attorney revokes all previous powers issued on behalf of the attorney(s)-in-fact named above.

IN WITNESS WHEREOF, the GREAT AMERICAN INSURANCE COMPANY OF NEW YORK has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 29TH day of NOVEMBER, 2012.

Attest

GREAT AMERICAN INSURANCE COMPANY OF NEW YORK



Assistant Secretary

Divisional Senior Vice President

DAVID C. KITCHIN (877-377-2405)

STATE OF OHIO, COUNTY OF HAMILTON-ss:

On this 29TH day of NOVEMBER, 2012, before me personally appeared DAVID C. KITCHIN, to me known, being duly sworn, deposes and says that he resides in Cincinnati, Ohio, that he is a Divisional Senior Vice President of the Bond Division of Great American Insurance Company of New York, the Company described in and which executed the above instrument; that he knows the seal; that it was so affixed by authority of his office under the By-Laws of said Company, and that he signed his name thereto by like authority.



KAREN L. GROSHEIM
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 02-20-16

This Power of Attorney is granted by authority of the following resolutions adopted by the Board of Directors of Great American Insurance Company of New York by unanimous written consent dated May 14, 2009.

RESOLVED: That the Divisional President, the several Divisional Senior Vice Presidents, Divisional Vice Presidents and Divisional Assistant Vice Presidents, or any one of them, be and hereby is authorized, from time to time, to appoint one or more Attorneys-in-Fact to execute on behalf of the Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; to prescribe their respective duties and the respective limits of their authority; and to revoke any such appointment at any time.

RESOLVED FURTHER: That the Company seal and the signature of any of the aforesaid officers and any Secretary or Assistant Secretary of the Company may be affixed by facsimile to any power of attorney or certificate of either given for the execution of any bond, undertaking, contract of suretyship, or other written obligation in the nature thereof, such signature and seal when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

CERTIFICATION

I, STEPHEN C. BERAHA, Assistant Secretary of Great American Insurance Company of New York, do hereby certify that the foregoing Power of Attorney and the Resolutions of the Board of Directors of May 14, 2009 have not been revoked and are now in full force and effect.

Signed and sealed this 11th day of January, 2016.



Assistant Secretary

SUB-CONTRACTOR'S AFFIDAVIT OF BILLS PAID**STATE OF TEXAS****COUNTY OF TARRANT**

Personally, before me the undersigned authority, on this day appeared, Jennifer Warnack
who, being duly sworn on oath, says that he is a legal representative of DURABLE SPECIALTIES, INC.
and that the contract for the construction of the project, designated as

FM 1171 @ FORUMS DRIVE

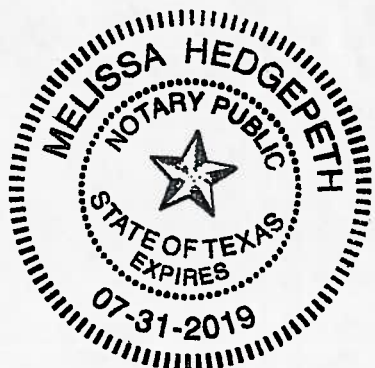
has been satisfactorily completed and that all bills for materials, apparatus, fixtures, machinery
and labor used in connection with the construction of this project have, to the best of my
knowledge and belief, been fully paid.

[Signature]
Signature

VP of Finance
Title

Sworn to and subscribed before me this 19th day of January 2016.

Melissa Hedgepeth
Notary Public in and for Dallas County,
Texas





TOWN COUNCIL AGENDA ITEM NO. 19

CONSENT ITEM

DATE: March 21, 2016

FROM: Tiffany Bruce, P.E., CIP Engineering Manager

ITEM: Consider approval for the final acceptance of the Pintail Ground Storage Tank Rehabilitation project and authorization of final payment to the contractor, NG Painting L.P., in the amount of \$62,155.00.

BACKGROUND INFORMATION: The Pintail 1MG, 2MG and 3MG Ground Storage Tanks Rehabilitation is now complete. The project included rehabilitation of the one million and two million gallon steel ground storage tanks, and cleaning of the exterior of the three million gallon ground storage tank, all at the Town's Pintail Pump Station. Final payment of \$62,155.00 is the release of the retainage, for a final contract amount of \$1,243,100.00.

FISCAL IMPACT: \$62,155.00

Proposed Expenditure:	Account Number(s):
\$62,155.00	630-960-98341

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

DW

ATTACHMENTS:

1. Contract Estimate for Payment
2. Bills Paid Affidavit
3. Consent of Surety Company

RECOMMENDATION: Move to approve the final acceptance of the Pintail Ground Storage Tank Rehabilitation project and authorize final payment to the contractor, NG Painting L.P., in the amount of \$62,155.00.

CONTRACT ESTIMATE FOR PAYMENT

Project: Pintail Ground Storage Tank Estimate No.: Final

Item No.	Description of Item	Unit of Measure	Contract Quantities	Unit Price	Contract Amount	Quantities Completed Previous	Quantities Completed This Month	Quantities Completed To Date	Dollar Amount Previous	Dollar Amount This Month	Amount Completed To date	% of Quantity Complete
	1 MG GST REHAB											
1-1	Mobilization	LS	1	\$5,000.00	\$5,000.00	1.00	0.00	1.00	\$ 5,000.00	\$ -	\$ 5,000.00	100.00%
1-2	Exterior Abrasive Blast/ Prime	LS	1	\$100,000.00	\$100,000.00	1.00	0.00	1.00	\$ 100,000.00	\$ -	\$ 100,000.00	100.00%
1-3	Exterior Coating	LS	1	\$30,000.00	\$30,000.00	1.00	0.00	1.00	\$ 30,000.00	\$ -	\$ 30,000.00	100.00%
1-4	Interior Abrasive Blast/ Prime	LS	1	\$120,000.00	\$120,000.00	1.00	0.00	1.00	\$ 120,000.00	\$ -	\$ 120,000.00	100.00%
1-5	Interior Coating	LS	1	\$40,000.00	\$40,000.00	1.00	0.00	1.00	\$ 40,000.00	\$ -	\$ 40,000.00	100.00%
1-6	Welding and Improvements	LS	1	\$25,000.00	\$25,000.00	1.00	0.00	1.00	\$ 25,000.00	\$ -	\$ 25,000.00	100.00%
1-7	Electrical Work	LS	1	\$10,000.00	\$10,000.00	1.00	0.00	1.00	\$ 10,000.00	\$ -	\$ 10,000.00	100.00%
1-8	Concrete Foundation Coating	LS	1	\$2,500.00	\$2,500.00	1.00	0.00	1.00	\$ 2,500.00	\$ -	\$ 2,500.00	100.00%
1-9	SCADA Work	LS	1	\$44,200.00	\$44,200.00	1.00	0.00	1.00	\$ 44,200.00	\$ -	\$ 44,200.00	100.00%
	2 MG GST REHAB											
2-1	Mobilization	LS	1	\$5,000.00	\$5,000.00	1.00	0.00	1.00	\$ 5,000.00	\$ -	\$ 5,000.00	100.00%
2-2	Exterior Abrasive Blast/ Prime	LS	1	\$165,000.00	\$165,000.00	1.00	0.00	1.00	\$ 165,000.00	\$ -	\$ 165,000.00	100.00%
2-3	Exterior Coating	LS	1	\$50,000.00	\$50,000.00	1.00	0.00	1.00	\$ 50,000.00	\$ -	\$ 50,000.00	100.00%
2-4	Interior Abrasive Blast/ Prime	LS	1	\$190,000.00	\$190,000.00	1.00	0.00	1.00	\$ 190,000.00	\$ -	\$ 190,000.00	100.00%
2-5	Interior Coating	LS	1	\$60,000.00	\$60,000.00	1.00	0.00	1.00	\$ 60,000.00	\$ -	\$ 60,000.00	100.00%
2-6	Welding and Improvements	LS	1	\$25,000.00	\$25,000.00	1.00	0.00	1.00	\$ 25,000.00	\$ -	\$ 25,000.00	100.00%
2-7	Electrical Work	LS	1	\$10,000.00	\$10,000.00	1.00	0.00	1.00	\$ 10,000.00	\$ -	\$ 10,000.00	100.00%
2-8	Concrete Foundation Coating	LS	1	\$2,500.00	\$2,500.00	1.00	0.00	1.00	\$ 2,500.00	\$ -	\$ 2,500.00	100.00%
2-9	SCADA Work	LS	1	\$44,000.00	\$44,000.00	1.00	0.00	1.00	\$ 44,000.00	\$ -	\$ 44,000.00	100.00%
	3 MG GST REHAB											
3-1	Pressure Wash Exterior	LS	1	\$30,000.00	\$30,000.00	1.00	0.00	1.00	\$ 30,000.00	\$ -	\$ 30,000.00	100.00%
3-2	Apply Clear Coat to Exterior	LS	1	\$50,000.00	\$50,000.00	1.00	0.00	1.00	\$ 50,000.00	\$ -	\$ 50,000.00	100.00%
3-3	Scrape Window Frames	LS	1	\$10,000.00	\$10,000.00	1.00	0.00	1.00	\$ 10,000.00	\$ -	\$ 10,000.00	100.00%
3-4	Paint Window Frames	LS	1	\$10,000.00	\$10,000.00	1.00	0.00	1.00	\$ 10,000.00	\$ -	\$ 10,000.00	100.00%
3-5	SCADA Work	LS	1	\$44,000.00	\$44,000.00	1.00	0.00	1.00	\$ 44,000.00	\$ -	\$ 44,000.00	100.00%
	SITE IMPROVEMENTS											
S-1	Vegetation	LS	1	\$5,000.00	\$5,000.00	1.00	0.00	1.00	\$ 5,000.00	\$ -	\$ 5,000.00	100.00%
S-2	Signage	LS	1	\$5,000.00	\$5,000.00	1.00	0.00	1.00	\$ 5,000.00	\$ -	\$ 5,000.00	100.00%
S-3	Sample Station Work	LS	1	\$40,000.00	\$40,000.00	1.00	0.00	1.00	\$ 40,000.00	\$ -	\$ 40,000.00	100.00%
S-4	Electrical Work	LS	1	\$80,000.00	\$80,000.00	1.00	0.00	1.00	\$ 80,000.00	\$ -	\$ 80,000.00	100.00%
S-5	Lock Box	LS	1	\$5,000.00	\$5,000.00	1.00	0.00	1.00	\$ 5,000.00	\$ -	\$ 5,000.00	100.00%
S-6	Insulation	LS	1	\$10,000.00	\$10,000.00	1.00	0.00	1.00	\$ 10,000.00	\$ -	\$ 10,000.00	100.00%
S-7	Additional Site Work	LS	1	\$10,000.00	\$10,000.00	1.00	0.00	1.00	\$ 10,000.00	\$ -	\$ 10,000.00	100.00%
	ALLOWANCES											
A-1 CO1	Exterior & Interior Grinding	MH	0	\$50.00	\$0.00	0.00	0.00	0.00	\$ -	\$ -	\$ -	#DIV/0!
A-2 CO1	Seam Welding	LF	0	\$30.00	\$0.00	0.00	0.00	0.00	\$ -	\$ -	\$ -	#DIV/0!
A-3 CO1	Pit Welding	SQ IN	0	\$10.00	\$0.00	0.00	0.00	0.00	\$ -	\$ -	\$ -	#DIV/0!
A-4 CO1	Pit Filling	GAL	0	\$100.00	\$0.00	0.00	0.00	0.00	\$ -	\$ -	\$ -	#DIV/0!
CO1A	2 MG Tank - Furnish and seal weld in place 4 - 4"x4"x1/4" steel plates over holes and deep pits in the floor of the tank	LS	1	\$2,500.00	\$2,500.00	1.00	0.00	1.00	\$ 2,500.00	\$ -	\$ 2,500.00	100.00%
CO1B	2 MG Tank - Furnish and seal weld in place 4 - 4"x4"x1/4" steel plates around center support column in floor of tank to cover holes	LS	1	\$6,900.00	\$6,900.00	1.00	0.00	1.00	\$ 6,900.00	\$ -	\$ 6,900.00	100.00%
CO1C	2 MG Tank - Seal holes in foor using steel seam FT910	LS	1	\$3,000.00	\$3,000.00	1.00	0.00	1.00	\$ 3,000.00	\$ -	\$ 3,000.00	100.00%
CO1D	3 MG Tank - Light abrasive blast of efflorescence	LS	1	\$3,500.00	\$3,500.00	1.00	0.00	1.00	\$ 3,500.00	\$ -	\$ 3,500.00	100.00%
TOTAL					\$1,243,100.00				1,243,100.00	-	1,243,100.00	100.00%

AFFIDAVIT OF BILLS PAID

STATE OF TEXAS
COUNTY OF KERR

Nick Gramatikakis of N. G. Painting, L.P., being duly sworn, says that he is the President of N. G. Painting, L.P.. (the "Contractor") and is familiar with the facts herein stated.

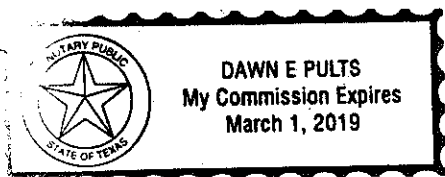
That said contractor performed work and labor and/or furnished material for the use in the **Town of Flower Mound** (Pintail Ground Storage Tank).

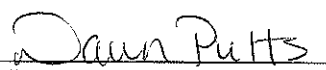
That said Contractor hereby certified that he paid or had other-wise satisfied all obligations for all materials and equipment furnished for all work, labor and services performed and for all indebtedness and claims against the Contractor for damages arising in any matter in connection with the performance of the Contractor referenced above.

CONTRACTOR: N. G. Painting, L.P.

By: 
Nick Gramatikakis
President

SWORN TO BEFORE ME and subscribed in my presence this the 22nd day of
February, 2016.




Notary Public for Kerr County

My Commission expires: 3-1-19

SURETEC INSURANCE COMPANY

9737 Great Hills Trail, Suite 320, Austin, Tx 78759

**CONSENT OF SURETY
TO FINAL PAYMENT**

OWNER	☐
ARCHITECT	☐
CONTRACTOR	☐
SURETY	☐
OTHER	☐

BOND NO.: 5194502

TO OBLIGEE:

Town of Flower Mound

CONTRACT FOR:

PROJECT:

Pintail Ground Storage Tank Rehabilitation

CONTRACT DATED:

PRINCIPAL: N.G. Painting, LP

At the request of the Obligee and the Principal indicated above, *City of Andrews*

SureTec Insurance Company, 9737 Great Hills Trail, Suite 320, Austin, TX 78759

on bond of

NG Painting, LP, 1225 Bandera Highway, Kerrville, TX 78028

, SURETY,

, CONTRACTOR,
and conditioned on the representation by Obligee that all Contract provisions relating to the payment of final payment under the Contract have been satisfied by Principal as of the date of final payment, and that no claims by Obligee or any third party are known or believed by Obligee or its representatives to exist as of the date of final payment, representations as to the truth and accuracy of the foregoing conditions being deemed to have been made by Obligee in connection with this request for Consent of Surety, hereby approves of the final payment to the Principal, and agrees that final payment in accordance with the terms hereof shall not relieve the Surety of its obligations to

(Insert name and address of Obligee)

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

, OBLIGEE,

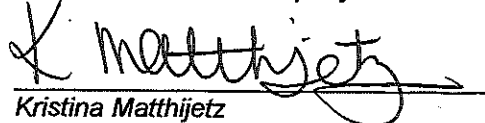
as set forth in said Surety's bond.

IN WITNESS WHEREOF, the Surety has hereunto set its hand on this date:

February 22, 2016

(Insert in writing the month followed by the numeric date and year.)

Suretec Insurance Company



Kristina Matthijetz

Attest:
(Seal):

, Attorney-in-Fact
Kristina Matthijetz

POA #: 4221008

SureTec Insurance Company

LIMITED POWER OF ATTORNEY

Know All Men by These Presents, That SURETEC INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Texas, and having its principal office in Houston, Harris County, Texas, does by these presents make, constitute and appoint

Michael T. Siegeler, Teresa S. Muniz, Kristina Matthijetz

its true and lawful Attorney-in-fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include waivers to the conditions of contracts and consents of surety for:

Ten Million and 00/100 Dollars (\$10,000,000.00)

and to bind the Company thereby as fully and to the same extent as if such bond were signed by the President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney-in-Fact may do in the premises. Said appointment shall continue in force until 12/31/2016 and is made under and by authority of the following resolutions of the Board of Directors of the SureTec Insurance Company:

Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and of behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached. (*Adopted at a meeting held on 20th of April, 1999.*)

In Witness Whereof, SURETEC INSURANCE COMPANY has caused these presents to be signed by its President, and its corporate seal to be hereto affixed this 21st day of March, A.D. 2013.

SURETEC INSURANCE COMPANY

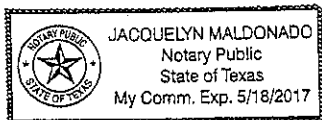
By: John Knox Jr., President

State of Texas
County of Harris

ss:



On this 21st day of March, A.D. 2013 before me personally came John Knox Jr., to me known, who, being by me duly sworn, did depose and say, that he resides in Houston, Texas, that he is President of SURETEC INSURANCE COMPANY, the company described in and which executed the above instrument; that he knows the seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto by like order.



Jacquelyn Maldonado

Jacquelyn Maldonado, Notary Public
My commission expires May 18, 2017

I, M. Brent Beaty, Assistant Secretary of SURETEC INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Company, which is still in full force and effect; and furthermore, the resolutions of the Board of Directors, set out in the Power of Attorney are in full force and effect.

Given under my hand and the seal of said Company at Houston, Texas this _____ day of _____, A.D.

M. Brent Beaty

M. Brent Beaty, Assistant Secretary

Any instrument issued in excess of the penalty stated above is totally void and without any validity.
For verification of the authority of this power you may call (713) 812-0800 any business day between 8:00 am and 5:00 pm CST.



TOWN COUNCIL AGENDA ITEM NO. 20

CONSENT ITEM

DATE: March 21, 2016

FROM: Tiffany Bruce, P.E., CIP Engineering Manager

ITEM: Consider approval of the award of Bid No. 2016-33 to Felix Construction Company, Corp., for the Pintail Pump Station Capacity Improvements project, in the amount of \$1,009,380.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On February 24, 2016 bids were received and opened for the Pintail Pump Station Capacity Improvements project. Felix Construction Company submitted the lowest qualified bid of the six responding bidders, for a total base bid plus optional bid item, of \$1,009,380.00.

The project provides for increased capacity of the Pintail Pump Station by replacing one of the existing small pumps with a larger pump. The project is required to meet residential demands in the Lakeside Business District. The project includes developer funding in accordance with a development agreement.

FISCAL IMPACT: \$1,009,380.00

Proposed Expenditure:	Account Number(s):
\$177,500.00	610-980-98342
\$831,880.00	630-960-98342

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. 2016-33 to Felix Construction Company, Corp., for the Pintail Pump Station Capacity Improvements project, in the amount of \$1,009,380.00; and authorize the Mayor to execute same on behalf of the Town.

**Town of Flower
Mound
Bid Tabulation**



**Bid No: 2016-33 Pintail Pump Station Capacity
Improvements**

Bid Opening: 2/24/2016 at 11:00am

Company	Base Bid	Option Bid Item	Total Bid
Felix Construction	\$ 984,000.00	\$ 25,380.00	\$ 1,009,380.00
Rey-Mar Construction	\$ 997,600.00	\$ 24,840.00	\$ 1,022,440.00
J.S. Haren Company	\$ 1,047,000.00	\$ 31,050.00	\$ 1,078,050.00
Gacon Construction, Inc.	\$ 1,079,200.00	\$ 20,250.00	\$ 1,099,450.00
Bar Constructors, Inc.	\$ 1,122,200.00	\$ 28,350.00	\$ 1,150,550.00
Fryer Construction Company	\$ 1,142,000.00	\$ 70,200.00	\$ 1,212,200.00

****All bids/proposals submitted for the designated project are reflected on this tabulation sheet. However, the listing of the bid/proposal on this tabulation sheet shall not be construed as a comment on the responsiveness of such bid/proposal or as any indication that the agency accepts such bid/proposal as being responsive. The agency will make a determination as to the responsiveness of the vendor responses submitted based upon compliance with all applicable laws, purchasing guidelines and project documents, including but not limited to the project specifications and contract documents. The agency will notify the successful vendor upon award of the contract and, as according to the law, all bid/proposal responses received will be available for inspection at that time.**

Certified By: Rochelle M. Ragas, CPPB
Purchasing Manager
Town of Flower Mound, Texas

2/24/2016

TOWN OF FLOWER MOUND
Pintail Pump Station Capacity Improvements

Bid # 2016-33

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the "Agreement"), made and entered into this 21st day of March, 2016, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the "Town," and Felix Construction Company, a Corporation, hereinafter referred to as the "Contractor." For and in consideration of the payment, agreements, and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

Pintail Pump Station Capacity Improvements
Bid # 2016-33

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**

Nine Thousand Three Hundred Eighty Dollars and No Cents (\$1,009,380.00) taking into consideration additions to or deductions from the Total Bid through properly executed change orders by reason of alterations or modifications of the original quantities or by reason of “Extra Work” authorized under this Agreement in accordance with the provisions of the Contract Documents. It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the Contractor by the Town, the said Contractor shall furnish all labor, equipment, and material (except as otherwise specified above) and shall perform all work necessary to complete the improvements in a good and workmanlike manner, ready for use, within the specified time for substantial completion of Two Hundred Seventy (270) calendar days, and final completion of Three Hundred (300) calendar days ready for final payment, as measured from the Effective Start Date shown in the Notice to Proceed. The work shall be in strict accordance with this Agreement, a copy of which is filed pursuant to law in the office of the legal representative of the Town.

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

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

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

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

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

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

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

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

The fact that the Town makes a progress payment shall not be deemed to be an admission by the Town concerning the quantity, quality, or sufficiency of the Contractor's work. Progress payments shall not be deemed to be acceptance of the Work nor shall a progress payment release the Contractor from any of its responsibilities under the Contract Documents.

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

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

Retainage shall be withheld and may be paid to:

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

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

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

The Town may withhold payment of some or all of any progress or final payment that would otherwise be due if the Town determines, in its discretion, that it is necessary and proper to provide an additional source of funds to pay claims for which the Town is

entitled to indemnification from Contractor under the Contract Documents. Amounts withheld under this section shall be in addition to any retainage.

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

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

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

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

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

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

Final payment to the Contractor shall not be due until the Contractor provides original full releases of liens, or other evidence satisfactory to the Town to show that all sums due

for labor, services, and materials furnished for or used in connection with the Work have been paid or shall be paid with the final payment. To ensure this result, Contractor consents to the issuance of the final payment in the form of joint checks made payable to Contractor and others. The Town may, but is not obligated to, issue final payment using joint checks.

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

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

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

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

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

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

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

ARTICLE 11. The Contractor understands and agrees that time is of the essence in performing and completing the Work. The Town and Contractor acknowledge that the actual damages the Town may sustain if the Contractor fails to complete the Work on time are uncertain and will be difficult to ascertain. The Contractor agrees that the sum of Two Hundred Fifty and Zero/One Hundredths Dollars (\$250.00) per day or portion of a day in Liquidated Damages will be deducted from the Contract price by the Town for each calendar day or portion thereof that the work is not substantially complete beyond the Substantially Complete Contract time, or within such extra time as may have been allowed by an extension approved by the Town. The Contractor also agrees that the sum of Two Hundred Fifty and Zero/One Hundredths Dollars (\$250.00) per day or portion of a day in Liquidated Damages for each calendar day or portion thereof the work has not been finally completed by the Contractor beyond the Contract time for final completion, or within such extra time as may have been allowed by an extension approved by the Town. The Town and the Contractor agree that this amount is payable as reasonable and just compensation for failure to complete the Work on time. This amount is payable as liquidated damages and not as a penalty.

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

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

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

CONSENT ITEM

DATE: March 21, 2016

FROM: Jeff Garner, Director Of Facilities Management

ITEM: Consider approval of replastering the outdoor pool at the Community Activities Center.

BACKGROUND INFORMATION: The Community Activity Center's outdoor pool has become worn due to age and requires replastering in order to maintain its integrity and use. The quote is for \$79,885.80, however there is potentially additional repairs that may need to be made once the project begins. The estimated cost for any additional repairs is \$5,000.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$85,000

Proposed Expenditure:	Account Number(s):
\$85,000	100-655-59200-5110

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

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Quote

RECOMMENDATION: Move to approve the replastering of the outdoor pool at the Community Activities Center.

QUOTE - SERVICE & PARTS & SUPPLIES

Page 248 of 535

MAIL INVOICES

Attachment 1

D C C. Inc.
2929 Storey Lane
Dallas, TX 75220
Office 972-224-1669
Fax 214-352-1049



Quote # 3594
Order Date 02/12/16
Requested Date 02/12/16
Promised Date 02/12/16
Delivery Date 02/12/16

TOWN OF FLOWER MOUND-ACTIVITY CE
1200 GERAULT ROAD

OUTDOOR POOL RENOVATIONS
DOUG DEAN BID# 51752

FLOWER MOUND, TX 75028
972-874-6300

Fax: 972-874-6471

972-874-6283

QUOTE

COMMENTS:

SCOPE OF WORK:
-RE-PLASTER OF OUTDOOR POOL/QUARTZ BASED
COLORED PLASTER FINISH
-PROJECT ESTIMATED 12-15 DAYS FOR
COMPLETION
-PROJECT AVAILABLE THROUGH TEXAS
BUYBOARD/CONTRACT 451-14/DCC VENDOR
ID# 1753
PROJECT TOTAL: \$79,885.80

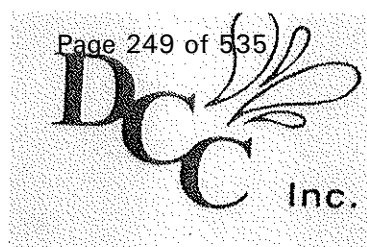
Qty	Unit \$	Total Item \$
1		0.00

REMODEL - POOL/SPA L.P.S.

LABOR, PARTS, SUPPLIES	1	\$72,637.80	72,637.80
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-CUSTOMER TO DRAIN POOL AND SHUT OFF ALL
EQUIPMENT PRIOR TO START OF PROJECT
-REMOVE LADDERS AND HAND RAILS
-SOUND POOL FOR EXISTING HOLLOW AND
REMOVE ANY THAT ARE FOUND
-SAW CUT TILE TINE, FITTINGS, RACE LANES
& TARGETS
-VERIFY SURFACE TO BE CLEAN OF DIRT, OR
ANY FOREIGN MATTER THAT MAY AFFECT THE
BONDING PROCESS
-APPLICATION OF BOND COAT- MULTI COAT
SCRATCH COAT TO BE APPLIED
-APPLICATION OF PLASTER SURFACE
-TROWEL TO A SMOOTH FINISH
-INSTALL VGB DRAIN COVERS- **TO BE
PROVIDED BY CUSTOMER**
-START WATER TO BEGIN FILLING POOL
(1) RE-PLASTER CLI QUARTZ FINISH @
\$70,521.00
(1) SAW CUT RACE LANES/TARGETS-REUSE
TILES @ \$2,116.80
RE-PLASTER PARTS TOTAL: \$72,637.80

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972-874-6283

QUOTE

REMODEL - POOL/SPA L.P.S.	LABOR, PARTS, SUPPLIES	1	\$2,328.00	2,328.00
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TILE OPTIONS

-REPLACE STEP TRIM TILE (2X2) TILE/BENCH

@ \$660.00

-REPLACE STEP TRIM TILE (2X2) TILE/STEPS

@ \$1,428.00

-REPLACE BREAK LINE TILE (4") TILE @

\$240.00

TILE OPTIONS TOTAL: \$2,328.00

REMODEL - POOL/SPA L.P.S.	LABOR, PARTS, SUPPLIES	1	\$1,260.00	1,260.00
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OTHER PROJECTS-CONTROL JOINTS AND CRACK
REPAIRS

-REMOVE & REPLACE CONTROL JOINTS FILL
WITH SI SEALANT @ \$1,260.00

-CONTROL JOINT ALLOWANCE INCLUDES UP TO
150 LINEAR FT. (ADDITIONAL AT \$8.75 PER
LINEAR FT)

-SUPERFICIAL CRACKS WILL BE SAW CUT AND
FILLED, TO BE COVERED IN SCOPE OF
PLASTER PREPARATION

-EPOXY INJECTION FOR ANY STRUCTURAL
CRACKS MAY BE COMPLETED UPON CUSTOMER
REQUEST AND SIGNED CHANGE ORDER

-EPOXY INJECTION CRACK REPAIRS @ \$27.65
PER LINEAR FT

OTHER PROJECTS TOTAL: \$1,260.00

REMODEL - POOL/SPA	SUPPORT	1	\$3,660.00	3,660.00
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-PROJECT MOBILIZATION

-TECHNICIAN SUPPORT

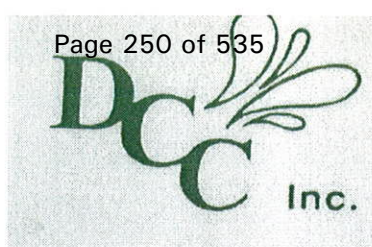
SUPPORT TOTAL: \$3,660.00

COMMENTS:		1		0.00
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PROJECT COMMENTS:

-IF MORE THAN 20% OF POOL IS FOUND TO BE
HOLLOW AN ADDITIONAL CHARGE WILL BE
REQUIRED TO REMOVE THE EXTRA MATERIAL.
DCC WILL PROVIDE A QUOTE PRIOR TO

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QUOTE

COMPLETING ANY ADDITIONAL WORK.
-ANY UNFORESEEN REPAIRS OR ADDITIONAL
WORK THAT IS IDENTIFIED DURING PROJECT,
THE CUSTOMER WILL BE NOTIFIED
IMMEDIATELY OF SUCH, AND IF REQUIRED DCC
WILL PROVIDE ADDITIONAL PRICING FOR
APPROVAL BEFORE SUCH REPAIRS ARE
PERFORMED.
-DCC WILL INSTALL NEW DRAIN COVERS IF
CUSTOMER PROVIDES COVERS AT TIME OF THE
PROJECT, PRIOR TO FILLING THE POOL.
-CUSTOMER IS RESPONSIBLE FOR 'CHEMICAL
START UP' AND BALANCING OF WATER
CHEMISTRY- DCC WILL PROVIDE MANUFACTURER
SPECIFICATIONS AND RECOMMENDATIONS FOR
'START UP'

COMMENTS:

1

0.00

MAINTENANCE COMMENTS:
-CUSTOMER MUST PROVIDE CITY WATER TO
REFILL THE POOL
-CUSTOMER MUST IMMEDIATELY UPON
COMPLETION OF THE PLASTER BE REQUIRED TO
FILL THE POOL AND SHUT OFF WATER ONLY
AFTER POOL IS COMPLETELY FULL.
-IN ADDITION THE CUSTOEMR IS ALSO
RESPONSIBLE FOR BRUSHING ALL NEW PLASTER
SURFACES FOR 7 CONSECUTIVE DAYS AFTER
POOL HAS BEEN FILLED, THIS WILL PREVENT
A BUILDUP OF PLASTER DUST AND RESULT IN
A SMOOTHER AND CLEANER SURFACE.

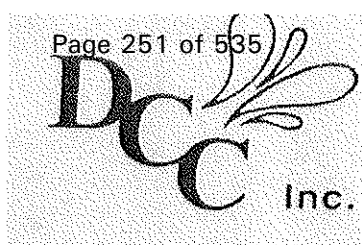
COMMENTS:

1

0.00

WARRANTY COMMENTS:
-PLASTER INCLUDES A ONE YEAR WORKMANSHIP
WARRANTY HOWEVER THE CUSTOMER MUST
MAINTAIN WATER IN THE POOL, REGULARLY
BRUSH THE POOL PLASTER AREA AND MAINTAIN
THE WATER CHEMISTRY BALANCE IN

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QUOTE

ACCORDANCE WITH STATE, CITY POOL, AND
PLASTER STANDARDS.

-FAILURE FOR THE CUSTOMER TO ADHERE TO
PLASTER STANDARDS AND GUIDELINES,
INCLUDING PROPER CHEMICAL STARTUP AND
BRUSHING, MAINTAINING POOL WATER
CHEMISTRY OR BY DRAINING THE POOL WILL
RESULT IN THE WARRANTY BEING VOIDED.

-THEREFORE, THE CUSTOMER IS REQUIRED TO
NOTIFY DCC IN WRITING AT LEAST 10
BUSINESS DAYS PRIOR TO DRAINING THE
RE-PLASTERED POOL.

-NO WARRANTY IS EXPRESSED OR IMPLIED
AGAINST CRACKS IN DECKING, PLASTER OR
MASTIC

-CLI QUARTZ PLASTER CARRIES 5 YEAR
MANUFACTURERS WARRANTY

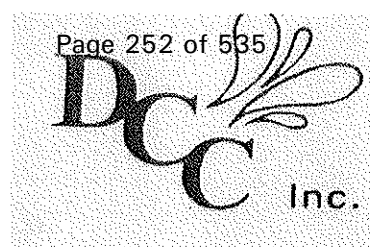
QUOTE TOTAL

\$79,885.80

Note: Changes to Scope of Work: DCC Inc. will notify the customer and submit a proposal if there is a required labor or material change not included in the scope of work highlighted in page one of the quote that will require DCC Inc to expend more monies than budgeted. The customer agrees to pay DCC Inc. for such expenses plus reasonable profit and overhead (10%) if the customer desires to continue under the changed scope of work. Material pricing is for normal, stock delivery. Expediting charges, if necessary, are to be added to the proposal amount.

The following price is good for **30** days. All of the above work to be completed in a substantial and workmanlike manner according to standard and code practices for the sum of : \$ 79,885.80 **plus applicable sales tax.**

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Fax 214-352-1049



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1200 GERAULT ROAD

OUTDOOR POOL RENOVATIONS
DOUG DEAN BID# 51752

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QUOTE

DCC recommends that all pool and spa owners or operators contact (1) the pool and spa health inspector or similar code enforcement officer or their local regulatory authority (e.g. city or county government), or (2) a certified-registered professional inspector to verify pool and spa requirements and compliance.

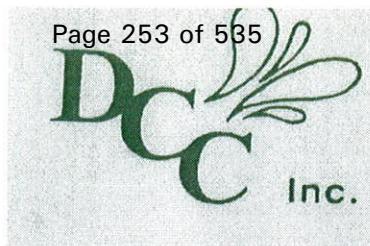
Therefore DCC. Inc., is acting solely as an installer, and makes no representation that the services and materials specified herein will insure that customer's pool or spa complies with local (municipal and/or county) ordinances, state regulations or federal regulations.

Customers is solely responsible to insure that customer's pool or spa complies with such regulations and releases DCC, Inc. from any claim related to the compliance with such regulations.

The customer agrees to defend and indemnify DCC Inc. and its employees, agents, representatives, officers, directors, parents and subsidiaries from and against any and all claims, actions, causes of action, lawsuits, losses, damages, expenses, fees (including but not limited to attorney fees, expert fees and costs), judgments and awards (collectively the "Indemnified Claims") arising from or relating to DCC work and products under this Agreement or the Scope of Work under this Agreement or under any Proposal, to the proportionate extent such Indemnified Claims are caused, in whole or in part, by fault, negligence, or wrongdoing of the customer (including its agents, employees, and/or subcontractors) or any third party.

DCC Inc. will warrant labor for thirty (30) days. Also, installed equipment and parts are based on each manufactures warranty however labor will be charged for their warranty replacement requirements. Therefore DCC does not warrant labor, equipment or any items directly or indirectly that is not included in the scope of work.

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972-874-6283

QUOTE

TERMS

The attached DCC Inc. standard terms and conditions on page four (4) of this proposal apply and are incorporated by reference. The parties agree that all disputes in anyway related to, arising out of, or connected with the sale of goods and /or services provided by DCC Inc. shall be litigated if at all, exclusively in Dallas County, Texas. Furthermore, the parties agree that Texas law shall govern all such disputes.

The customer agrees to pay: 0% down, and balance at completion of our work. Service charges listed below become effective on all accounts 30 days after invoice date. Charges are computed at the lower of 1.5% per month or the maximum allowed by law.

Notice to Buyer: - do not sign the agreement before you read it, or if it contains blank spaces. You are entitled to a copy of the agreement you sign. Keep this agreement to protect your legal rights.

Submitted By: _____

Date: _____

Accepted By: _____

PO#: _____

Authorized Signature: _____

Date: _____

Printed Name: _____

DCC INC. STANDARD TERMS AND CONDITIONS Attachment 1**1. Engagement of Services:**

Once work is authorized by the customer, DCC Inc. is committed to certain "ramp up" expenses, both direct and indirect (travel, parts, materials, supplies, etc.) which are generally priced into the entire scope of the project. If the project is canceled, delayed, terminated or significantly changed through no fault of DCC Inc. these expenses will be due and payable to DCC Inc. on a pro-rata basis. Any requests for reimbursement of these expenses will be itemized and defined.

2. Changes to Scope of Work:

DCC Inc. will notify the customer and submit a proposal if there is a required labor or material change not included in the scope of work highlighted on page one of the quote that will require DCC Inc. to expend more monies than budgeted. The customer agrees to pay DCC Inc. for such expenses plus reasonable profit and overhead (10%) if the customer desires to continue under the changed scope of work.

3. Permits and Taxes:

Permits are not included unless specifically noted otherwise. Permits, inspection fees, drawings, etc. will be provided by DCC Inc. at the cost of obtaining them. Taxes are not included in the proposal price unless specifically noted otherwise.

4. DCC Inc. Employees:

The customer agrees that they shall not hire or sub contract any DCC employee currently working on a project for the customer, or any employee of DCC Inc. who has worked on a service call or project for the customer within the last twelve (12) months.

5. Payment Terms:

Standard payment terms are net due in ten days from invoice date unless stated differently on the front of this proposal. A service charge may be charged on all past due amounts. Amounts will be considered past due 30 days after date of invoice. You may avoid a service charge or additional service charges upon payment at any time of the unpaid balance.

6. Warranty:

DCC Inc. will warranty labor for thirty (30) days. Also, installed equipment and parts are based on each manufacturer's warranty, however, labor will be charged for their warranty replacement requirements. However, DCC does not warranty labor, equipment or any items directly or indirectly that is not included in the original scope of work.

7. Indemnity:

The customer agrees to defend and indemnify DCC Inc. and its employees, agents, representatives, officers, directors, parents and subsidiaries from and against any and all claims, actions, causes of action, lawsuits, losses, damages, expenses, fees (including but not limited to attorney fees, expert fees and costs), judgements and awards (collectively the "Indemnified Claims") arising from or relating to DCC work under this Agreement or the Scope of Work under this Agreement or under any Proposal, to the proportionate extent such Indemnified Claims are caused, in whole or in part, by fault, negligence, or wrongdoing of the customer (including its agents, employees, and/or subcontractors) or any third party.

8. Limitation of DCC Liability:

With respect to any of its work performed under this Agreement or the Scope of Work or any Proposal, DCC's liability shall be limited to repairing and replacing any defective work, regardless of whether it arises from a breach of warranty, a breach of contract or DCC's negligence. This "repair and replace" remedy shall be the customer's exclusive remedy for any claims or damages arising from or relating to any defective work performed by DCC, regardless of the reason, and the customer shall not be entitled to pursue or recover any other claim, remedy or damages arising from or relating to DCC's work, including but not limited to consequential damages. Customer agrees that this limitation of liability provision is commercially responsible in light of the risks involved in DCC performing the work.

9. Force Majeure:

No party shall be liable for any failure to perform its obligations in connection with any action described in the Agreement, if such failure results from any act of God, riot, war, civil unrest, flood, earthquake, fire or other cause beyond such party's reasonable control (including any mechanical, electronic, or communication failure, but excluding failure caused by a party's financial condition or negligence).

10. Attorney Fees:

If DCC Inc. is required to hire attorneys to collect amounts owed under this agreement, the customer agrees to reimburse DCC Inc. for all attorney fees, expert fees and other legal expenses that may incur to collect such amount.

11. Incorporation by Reference:

Unless expressly agreed in writing otherwise, these standard terms and conditions are part of, and hereby incorporated by reference, all proposals submitted by DCC Inc. to the customer or credit agreement signed by the customer, and all terms and conditions of any such proposal or credit agreements.

12. Fully Integrated Contract:

The party's hereby agree that this Agreement is an integrated contract that fully sets forth each and every term and condition to which the parties have agreed regarding the subject matter of the Agreement. The parties agree that they fully set forth all of the terms and conditions of the Agreement within the four corners of the Agreement, and that no other prior or contemporaneous writings or oral promises or representations shall be admissible to prove the terms of this Agreement for any reason. This Agreement may be modified or amended only by a writing signed by both parties.

By signing the proposal the signatures of the agreement warrant that they have the authority to enter into this contract or agreement and have read the standard terms and conditions and agree to abide by them:

DATE: _____

ACCEPTED BY: _____



TOWN COUNCIL AGENDA ITEM NO. 22

REGULAR ITEM

DATE: March 21, 2016

FROM: Debra Wallace, Assistant Town Manager/CFO

ITEM: 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.

BACKGROUND INFORMATION: The Financial Services staff and Southwest Securities, the Town's financial advisor, request the Town Council's approval of an ordinance authorizing the potential issuance of General Obligation Refunding Bonds, Series 2016, ("the Bonds").

A refunding opportunity has been identified which would prepay or refund a portion of the Town's outstanding tax-supported issues, lowering the overall debt service requirements of the Town. In accordance with the Town's Financial Policies, "an advance refunding of outstanding debt shall only be considered when present value savings of at least 3.5% of the principal amount of the refunded bonds is produced." Please note that all debt refunded with the Bonds will be structured to maintain the existing maturity pattern to ensure no debt will be extended as a result of the refunding. Based on volatility in the municipal bond market and the interest rate levels at the time of pricing, the amount of bonds refunded may be decreased.

Refunded Issue	Refunded Bonds	Current Interest Rates	Refunded Years
Waterworks and Sewer System Revenue Refunding Bonds, Series 2005	\$3,725,000	4.000% - 4.625%	2017-2020
Certificates of Obligations, Series 2007	\$6,680,000	4.200% - 4.625%	2018-2027
General Obligation Bonds, Series 2007	\$5,895,000	4.125% - 5.000%	2018-2027
Certificates of Obligations, Series 2008	\$5,635,000	4.000% - 4.500%	2019-2028

In order to efficiently complete the refunding, the attached ordinance establishes the following parameters, giving the Town Manager and Assistant Town Manager/CFO the authority to approve all necessary documents and finalize the sale.

Maximum Principal Amount	\$23,900,000
Minimum Present Value Savings	3.50%
Maximum True Interest Cost	2.75%
Final Maturity Date	March 1, 2028

The Town Manager and Assistant Town Manager/CFO's authorization to complete the sale of the Bonds will expire 180 days after passage of the ordinance. The parameters state the issuance can be conducted as either a competitive or negotiated sale or by private placement.

FISCAL IMPACT: Approximate amount of \$23,900,000

Proposed Expenditure:

Account Number(s):

A maximum of \$23,900,000 in refunding bonds.

Secured by a pledge of ad valorem taxes.

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

DW

LEGAL REVIEW: The Town's Bond Counsel, Norton Fulbright, prepared the attached ordinance and Dean Roggia, of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed as to form.

ATTACHMENTS:

1. Ordinance authorizing the issuance of General Obligation Refunding Bonds, Series 2016
2. Paying Agent/Registrar Agreement

RECOMMENDATION: Move to approve 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.

TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO. ____-16

AN ORDINANCE authorizing the issuance of "TOWN OF FLOWER MOUND, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2016"; levying a continuing direct annual ad valorem tax for the payment of said Bonds; resolving other matters incident and related to the issuance, sale, payment and delivery of said Bonds; establishing procedures for the sale and delivery of said Bonds; and delegating matters relating to the sale and issuance of said Bonds to an authorized Town official.

WHEREAS, the Town of Flower Mound, Texas (the "Town") currently has outstanding obligations of the Town of the following issues or series (hereinafter collectively called the "Refunded Obligations"), to wit:

- (1) Town of Flower Mound, Texas, Waterworks and Sewer System Revenue Refunding Bonds, Series 2005, dated March 1, 2005 (the "Series 2005 Refunded Bonds");
- (2) Town of Flower Mound, Texas, General Obligation Bonds, Series 2007, dated August 1, 2007 (the "Series 2007 Refunded Bonds");
- (3) Town of Flower Mound, Texas, Certificates of Obligation, Series 2007, dated August 1, 2007 (the "Series 2007 Refunded Certificates"); and
- (4) Town of Flower Mound, Texas, Certificates of Obligation, Series 2008, dated July 15, 2008 (the "Series 2008 Refunded Certificates"); and

WHEREAS, pursuant to the provisions of Texas Government Code, Chapter 1207, as amended ("Chapter 1207"), the Town Council of the Town (the "Council") is authorized to issue refunding bonds and deposit the proceeds of sale directly with any place of payment for the Refunded Obligations, or other authorized depository, and such deposit, when made in accordance with Chapter 1207 and the ordinances authorizing the issuance of the Refunded Obligations, shall constitute the making of firm banking and financial arrangements for the discharge and final payment of the Refunded Obligations; and

WHEREAS, the Town shall by this Ordinance, in accordance with the provisions of Section 1207.007, Texas Government Code, as amended, delegate to a Pricing Officer (hereinafter designated) the authority to determine the principal amount and certain other specified terms of the Bonds to be issued, negotiate the terms of sale thereof and select the specific maturities, in whole or in part, of the Refunded Obligations to be refunded; and

WHEREAS, the Council hereby finds and determines that it is a public purpose and in the best interests of the Town to refund the Refunded Obligations in order to achieve a present value debt service savings, with such savings, among other information and terms, to be included in a pricing certificate (the "Pricing Certificate") to be executed by the Pricing Officer, all in accordance with the provisions of Texas Government Code, Section 1207.007, as amended; now, therefore

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

SECTION 1. Authorization - Series Designation - Principal Amount - Purpose - Bond Date. General obligation refunding bonds of the Town shall be and are hereby authorized to be issued in the maximum aggregate principal amount hereinafter set forth to be designated and bear the title "TOWN OF FLOWER MOUND, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2016", or such other designation as specified in the Pricing Certificate (herein referred to as the "Bonds"), for the purpose of providing funds for the discharge and final payment of certain obligations of the Town (described in the preamble hereof and finally identified in the Pricing Certificate and referred to herein as the "Refunded Obligations") and to pay the costs and expenses of issuance, in accordance with the authority conferred by and in conformity with the Constitution and laws of the State of Texas, including Chapter 1207. The Bonds shall be dated (the "Bond Date") as provided in the Pricing Certificate.

SECTION 2. Fully Registered Obligations - Terms. The Bonds shall be issued as fully registered obligations, without coupons, and (other than the Initial Bonds referenced in Section 8 hereof) shall be in denominations of \$5,000 or any integral multiple (within a Stated Maturity) thereof, shall be lettered "R" and numbered consecutively from one (1) upward and principal shall become due and payable on a date certain in each of the years (the "Stated Maturities") and in amounts and bear interest at the rate(s) per annum in accordance with the details of the Bonds as set forth in the Pricing Certificate.

The Bonds shall bear interest on the unpaid principal amounts from the date specified in the Pricing Certificate at the rate(s) per annum shown in the Pricing Certificate (calculated on the basis of a 360-day year consisting of twelve 30-day months). Interest on the Bonds shall be payable in each year, on the dates, and commencing on the date, set forth in the Pricing Certificate.

SECTION 3. Delegation of Authority to Pricing Officer. (a) As authorized by Texas Government Code, Section 1207.007, as amended, the Town Manager or the Assistant Town Manager/CFO of the Town (either, the "Pricing Officer") is hereby authorized to act on behalf of the Town in selling and delivering the Bonds and carrying out the other procedures specified in this Ordinance, including selection of the specific maturities or series, in whole or in part, of the Refunded Obligations to be refunded, determining the aggregate principal amount of the Bonds, the date of the Bonds, any additional or different designation or title by which the Bonds shall be known, the price at which the Bonds will be sold, the manner of sale (negotiated, privately placed or competitively bid), the years in which the Bonds will mature, the principal amount to mature in each of such years, the rate of interest to be borne by each such maturity, the date from which interest on the Bonds will accrue, the interest payment dates, the record date, the compounding dates, the price and terms upon and at which the Bonds shall be subject to redemption prior to maturity at the option of the Town, as well as any mandatory sinking fund redemption provisions, determination of the use of a book-entry-only securities clearance, settlement and transfer system, the designation of an escrow agent satisfying the requirements of Chapter 1207, the terms of any bond insurance applicable to the Bonds, including any modification of the continuing disclosure undertaking contained in Section 31 hereof as may be required by the purchasers of the Bonds in connection with any amendments to Rule 15c2-12, and all other matters relating to the issuance, sale and delivery of the Bonds, all of which shall be specified in the Pricing Certificate, provided that:

(i) the aggregate original principal amount of the Bonds shall not exceed \$23,900,000;

(ii) the refunding must produce a net present value debt service savings of at least 3.5%, net of any Town contribution;

(iii) the maximum true interest cost for the Bonds shall not exceed 2.75%;

(iv) the maximum maturity date of the Bonds shall not exceed March 1, 2028.

The execution of the Pricing Certificate shall evidence the sale date of the Bonds by the Town to the Purchasers (hereinafter defined).

If the Pricing Officer determines that bond insurance results in a net reduction of the Town's interest costs associated with the Bonds, then the Pricing Officer is authorized, in connection with effecting the sale of the Bonds, to make the selection of the municipal bond insurance company for the Bonds (the "Insurer") and to obtain from the Insurer a municipal bond insurance policy in support of the Bonds. The Pricing Officer shall have the authority to determine the provisions of the commitment for any such policy and to execute any documents to effect the issuance of said policy by the Insurer.

(b) In establishing the aggregate principal amount of the Bonds, the Pricing Officer shall establish an amount for the Bonds not exceeding the amount authorized in subsection (a)(i) above, which shall be sufficient in amount to provide for the purposes for which the Bonds are authorized and to pay costs of issuing the Bonds. The delegation made hereby shall expire if not exercised by the Pricing Officer within 180 days of the date hereof. The Bonds shall be sold to the purchaser(s)/underwriter(s) named in the Pricing Certificate (the "Purchasers"), at such price and with and subject to such terms as set forth in the Pricing Certificate and the Purchase Contract (hereinafter defined), and may be sold by negotiated or competitive sale or by private placement. The Pricing Officer is hereby delegated the authority to designate the Purchasers, which delegation shall be evidenced by the execution of the Pricing Certificate.

SECTION 4. Terms of Payment - Paying Agent/Registrar. The principal of, premium, if any, and the interest on the Bonds, due and payable by reason of maturity, redemption or otherwise, shall be payable only to the registered owners or holders of the Bonds (hereinafter called the "Holders") appearing on the registration and transfer books maintained by the Paying Agent/Registrar (as defined below), and the payment thereof shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

The selection by Town staff of The Bank of New York Mellon Trust Company, N.A., Dallas, Texas, to serve as Paying Agent/Registrar for the Bonds is hereby confirmed and any prior action taken by the Assistant Town Manager/CFO or other Town staff in connection with such selection is hereby ratified. Books and records relating to the registration, payment, exchange and transfer of the Bonds (the "Security Register") shall at all times be kept and maintained on behalf of the Town by the Paying Agent/Registrar, all as provided herein, in accordance with the terms and provisions of a "Paying Agent/Registrar Agreement," substantially in the form attached hereto as **Exhibit A** and such reasonable rules and regulations as the Paying Agent/Registrar and the Town may prescribe. The Assistant Town

Manager/CFO or other authorized representative of the Town is hereby authorized to execute and deliver such Paying Agent/Registrar Agreement in connection with the delivery of the Bonds. The Town covenants to maintain and provide a Paying Agent/Registrar at all times until the Bonds are paid and discharged, and any successor Paying Agent/Registrar shall be a commercial bank, trust company, financial institution, or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Bonds, the Town agrees to promptly cause a written notice thereof to be sent to each Holder by United States Mail, first class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

The Bonds shall be payable at their Stated Maturities or upon their earlier redemption, only upon the presentation and surrender of the Bonds to the Paying Agent/Registrar at its designated offices, initially in East Syracuse, New York, or, with respect to a successor Paying Agent/Registrar, at the designated offices of such successor (the "Designated Payment/Transfer Office"); provided, however, while a Bond is registered to Cede & Co., the payment thereof upon a partial redemption of the principal amount thereof may be accomplished without presentation and surrender of such Bond. Interest on a Bond shall be paid by the Paying Agent/Registrar to the Holders whose names appears in the Security Register at the close of business on the Record Date (which shall be set forth in the Pricing Certificate) and such interest payments shall be made (i) by check sent United States Mail, first class postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder. If the date for the payment of the principal or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to be closed; and payment on such date shall have the same force and effect as if made on the original date payment was due.

In the event of a non-payment of interest on one or more maturities of the Bonds on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such past due interest have been received from the Town. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder of the Bonds appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

SECTION 5. Registration - Transfer - Exchange of Bonds - Predecessor Bonds. The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each and every Holder of the Bonds issued under and pursuant to the provisions of this Ordinance, or if appropriate, the nominee thereof. Any Bond may be transferred or exchanged for Bonds of like maturity and amount and in authorized denominations upon the Security Register by the Holder, in person or by his duly authorized agent, upon surrender of such Bond to the Paying Agent/Registrar at its Designated Payment/Transfer Office for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender for assignment or transfer of any Bond (other than the Initial Bonds authorized in Section 8 hereof) for transfer at the Designated Payment/Transfer Office of the Paying Agent/Registrar, one or more new Bonds, executed on behalf of and furnished by the Town, shall be registered and issued to the assignee or transferee of the previous Holder; such Bonds to be of authorized denominations, of like Stated Maturity, and of a like aggregate principal amount as the Bond or Bonds surrendered for transfer.

At the option of the Holder, Bonds (other than the Initial Bonds authorized in Section 8 hereof) may be exchanged for other Bonds of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Bonds surrendered for exchange, upon surrender of the Bonds to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Bonds are surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Bonds, executed on behalf of and furnished by the Town, to the Holder requesting the exchange.

All Bonds issued upon any such transfer or exchange of Bonds shall be delivered to the Holders at the Designated Payment/Transfer Office of the Paying Agent/Registrar or sent by United States Mail, first class postage prepaid, to the Holders, and, upon the registration and delivery thereof, the same shall be the valid obligations of the Town, evidencing the same obligation to pay and entitled to the same benefits under this Ordinance, as the Bonds surrendered in such transfer or exchange.

All transfers or exchanges of Bonds pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Bonds canceled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Bonds," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the new Bond or Bonds registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Bonds" shall include any mutilated, lost, destroyed, or stolen Bond for which a replacement Bond has been issued, registered, and delivered in lieu thereof pursuant to the provisions of Section 11 hereof, and such new replacement Bond shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Bond.

Neither the Town nor the Paying Agent/Registrar shall be required to transfer or exchange any Bond called for redemption, in whole or in part, within forty-five (45) days of the date fixed for the redemption of such Bond; provided, however, such limitation on transferability shall not be applicable to an exchange by the Holder of the unredeemed balance of a Bond called for redemption in part.

SECTION 6. Book-Entry-Only Transfers and Transactions. Notwithstanding the provisions contained in Sections 4 and 5 hereof relating to the payment and transfer/exchange of the Bonds, the Town hereby approves and authorizes the use of "Book-Entry-Only" securities clearance, settlement, and transfer system provided by The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York ("DTC"), in accordance with the requirements and procedures identified in the current DTC Operational Arrangements memorandum, as amended, the Blanket Issuer Letter of Representations, by and

between the Town and DTC, and the Letter of Representations from the Paying Agent/Registrar to DTC (collectively, the "Depository Agreement") relating to the Bonds.

In the event the Pricing Officer elects to utilize DTC's "Book-Entry-Only" System, which election shall be made by the Pricing Officer in the Pricing Certificate, pursuant to the Depository Agreement and the rules of DTC, the Bonds shall be deposited with DTC and who shall hold said Bonds for its participants (the "DTC Participants"). While the Bonds are held by DTC under the Depository Agreement, the Holder of the Bonds on the Security Register for all purposes, including payment and notices, shall be Cede & Co., as nominee of DTC, notwithstanding the ownership of each actual purchaser or owner of each Bond (the "Beneficial Owners") being recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Bonds or otherwise ceases to provide book-entry clearance and settlement of securities transactions in general or the Town determines that DTC is incapable of properly discharging its duties as securities depository for the Bonds, the Town covenants and agrees with the Holders of the Bonds to cause Bonds to be printed in definitive form and provide for the Bond certificates to be issued and delivered to DTC Participants and Beneficial Owners, as the case may be. Thereafter, the Bonds in definitive form shall be assigned, transferred and exchanged on the Security Register maintained by the Paying Agent/Registrar and payment of such Bonds shall be made in accordance with the provisions of Sections 4 and 5 hereof.

SECTION 7. Execution - Registration. The Bonds shall be executed on behalf of the Town by the Mayor or Mayor Pro Tem under the Town's seal reproduced or impressed thereon and attested by the Town Secretary. The signature of said officials on the Bonds may be manual or facsimile. Bonds bearing the manual or facsimile signatures of individuals who are or were the proper officials of the Town on the date of the adoption of this Ordinance shall be deemed to be duly executed on behalf of the Town, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Bonds to the initial purchaser(s) and with respect to Bonds delivered in subsequent exchanges and transfers, all as authorized and provided in Texas Government Code, Chapter 1201, as amended.

No Bond shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Bond either a certificate of registration substantially in the form provided in Section 9(c), manually executed by the Comptroller of Public Accounts of the State of Texas, or his or her duly authorized agent, or a certificate of registration substantially in the form provided in Section 9(d), manually executed by an authorized officer, employee or representative of the Paying Agent/Registrar, and either such certificate duly signed upon any Bond shall be conclusive evidence, and the only evidence, that such Bond has been duly certified, registered, and delivered.

SECTION 8. Initial Bonds. The Bonds herein authorized shall be initially issued as fully registered Bonds as specified in the Pricing Certificate, being a single, fully registered Bond in the aggregate principal amount noted and principal installments to become due and payable as provided in the Pricing Certificate and numbered T-1, (hereinafter called the "Initial Bond") and the Initial Bond shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Bond shall be the Bond submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s). Any time after the delivery of the Initial Bond, the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Bond delivered hereunder

and exchange therefor definitive Bonds and of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 9. Forms.

(a) Forms Generally. The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of Paying Agent/Registrar, and the form of Assignment to be printed on each of the Bonds, shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and, with the Bonds to be completed and modified with the information set forth in the Pricing Certificate, may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including insurance legends on insured Bonds and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the Town or determined by the Pricing Officer. The Pricing Certificate shall set forth the final and controlling forms and terms of the Bonds. Any portion of the text of any Bonds may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond.

The definitive Bonds and the Initial Bond shall be printed, lithographed, engraved, typewritten, photocopied or otherwise reproduced in any other similar manner, all as determined by the officers executing such Bonds as evidenced by their execution thereof.

(b) Form of Definitive Bonds.

REGISTERED
NO. R-_____

PRINCIPAL AMOUNT
\$_____

UNITED STATES OF AMERICA
STATE OF TEXAS
TOWN OF FLOWER MOUND
GENERAL OBLIGATION REFUNDING BOND
SERIES 2016

Bond Date:
_____, 20__

Interest Rate:
_____%

Stated Maturity:
_____, 20__

CUSIP No.:

Registered Owner:

Principal Amount:

DOLLARS

The Town of Flower Mound (hereinafter referred to as the "Town"), a body corporate and political subdivision in the Counties of Denton and Tarrant, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, on the Stated Maturity date specified above the Principal Amount hereinabove stated (or so much thereof as shall not have been paid upon prior redemption), and to pay interest on the unpaid principal amount hereof from the interest payment date next preceding the "Registration Date" of this Bond appearing below (unless this

Bond bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of this Bond is prior to the initial interest payment date in which case it shall bear interest from the _____) at the per annum rate of interest specified above computed on the basis of a 360 day year of twelve 30 day months; such interest being payable on _____ and _____ in each year, commencing _____, 20__, until maturity or prior redemption. Principal of this Bond is payable at its Stated Maturity or upon its prior redemption to the registered owner hereof, upon presentation and surrender, at the designated offices of the Paying Agent/Registrar executing the registration certificate appearing hereon, initially in East Syracuse, New York, or, with respect to a successor Paying Agent/Registrar, at the designated offices of such successor (the "Designated Payment/Transfer Office"); provided, however, while this Bond is registered to Cede & Co., the payment of principal upon a partial redemption of the principal amount hereof may be accomplished without presentation and surrender of this Bond. Interest is payable to the registered owner of this Bond (or one or more Predecessor Bonds, as defined in the Ordinance hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the _____ day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Bond is one of the series specified in its title issued in the aggregate principal amount of \$_____ (herein referred to as the "Bonds") for the purpose of providing funds for the discharge and final payment of certain outstanding obligations of the Town and to pay the costs and expenses of issuance, under and in strict conformity with the Constitution and laws of the State of Texas, including Texas Government Code, Chapter 1207, as amended, and pursuant to an Ordinance adopted by the Town Council of the Town (herein referred to as the "Ordinance").

[The Bonds maturing on the dates hereinafter identified (the "Term Bonds") are subject to mandatory redemption prior to maturity with funds on deposit in the Interest and Sinking Fund established and maintained for the payment thereof in the Ordinance, and shall be redeemed in part prior to maturity at the price of par and accrued interest thereon to the date of redemption, and without premium, on the dates and in the principal amounts as follows:

Term Bonds due _____, 20__	
<u>Redemption Date</u>	<u>Principal Amount</u>
_____, 20__	
_____, 20__*	

Term Bonds due _____, 20__	
<u>Redemption Date</u>	<u>Principal Amount</u>
_____, 20__	
_____, 20__*	

* Stated maturity.

The particular Term Bonds of a Stated Maturity to be redeemed on each redemption date shall be chosen by lot by the Paying Agent/Registrar; provided, however, that the principal amount of Term Bonds for a Stated Maturity required to be redeemed on a mandatory redemption date may be reduced, at the option of the Town, by the principal amount of Term Bonds of like Stated Maturity which, at least fifty (50) days prior to a mandatory redemption date, (1) shall have been acquired by the Town at a price not exceeding the principal amount of such Term Bonds plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation or (2) shall have been redeemed pursuant to the optional redemption provisions appearing below and not theretofore credited against a mandatory redemption requirement.]

The Bonds maturing on and after _____, 20__, may be redeemed prior to their Stated Maturities, at the option of the Town, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on _____, 20__, or on any date thereafter, at the redemption price of par, together with accrued interest to the date of redemption.

At least thirty (30) days prior to the date fixed for any redemption of Bonds, the Town shall cause a written notice of such redemption to be sent by United States Mail, first class postage prepaid, to the registered owners of each Bond to be redeemed, in whole or in part, at the address shown on the Security Register and subject to the terms and provisions relating thereto contained in the Ordinance. If a Bond (or any portion of its principal sum) shall have been duly called for redemption and notice of such redemption duly given, then upon such redemption date such Bond (or the portion of its principal sum to be redeemed) shall become due and payable, and interest thereon shall cease to accrue from and after the redemption date therefor; provided moneys for the payment of the redemption price and the interest on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar.

In the event a portion of the principal amount of a Bond is to be redeemed and the registered owner is someone other than Cede & Co., payment of the redemption price of such principal amount shall be made to the registered owner only upon presentation and surrender of such Bond to the Designated Payment/Transfer Office of the Paying Agent/Registrar, and a new Bond or Bonds of like maturity and interest rate in any authorized denominations provided by the Ordinance for the then unredeemed balance of the principal sum thereof will be issued to the registered owner, without charge. If a Bond is selected for redemption, in whole or in part, the Town and the Paying Agent/Registrar shall not be required to transfer such Bond to an assignee of the registered owner within forty-five (45) days of the redemption date therefor; provided, however, such limitation on transferability shall not be applicable to an exchange by the registered owner of the unredeemed balance of a Bond redeemed in part.

With respect to any optional redemption of the Bonds, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption is conditional upon the receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon the satisfaction of any prerequisites set forth in such notice of redemption; and, if sufficient moneys are not received, such notice shall be of no force and effect, the Town shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

The Bonds are payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the Town. Reference is hereby made to the Ordinance, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all of the provisions of which the owner or holder of this Bond by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of the Bonds; the terms and conditions relating to the transfer or exchange of this Bond; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the Town and the Paying Agent/Registrar; the terms and provisions upon which this Bond may be discharged at or prior to its maturity or redemption, and deemed to be no longer Outstanding thereunder; and for other terms and provisions contained therein. Capitalized terms used herein and not otherwise defined have the meanings assigned in the Ordinance.

This Bond, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the registered owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Bonds of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The Town and the Paying Agent/Registrar, and any agent of either, shall treat the registered owner whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Bond as the owner entitled to payment of principal at the Stated Maturity, or its redemption, in whole or in part, and (iii) on any other date as the owner for all other purposes, and neither the Town nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of nonpayment of interest on a Bond on a scheduled payment date and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the Town. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each registered owner of a Bond appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented, and declared that the Town is a body corporate and political subdivision duly organized and legally existing under and by virtue of the Constitution and laws of the State of Texas; that the issuance of the Bonds is duly authorized by law; that all acts, conditions, and things required to exist and be done precedent to and in the issuance of the Bonds to render the same lawful and valid obligations of the Town have been properly done, have happened, and have been performed in regular and due time, form, and manner as required by the Constitution and laws of the State of Texas, and the Ordinance; that the Bonds do not exceed any Constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Bonds by the levy of a tax as aforesaid. In case any provision in this Bond shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected

ORDINANCE NO. __-16

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or impaired thereby. The terms and provisions of this Bond and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the Town Council of the Town has caused this Bond to be duly executed under the official seal of the Town.

TOWN OF FLOWER MOUND, TEXAS

ATTEST:

[Mayor][Mayor Pro Tem]_____
Town Secretary

(Town Seal)

(c) Form of Registration Certificate of Comptroller of Public Accounts to appear on Initial Bond only.

REGISTRATION CERTIFICATE OF COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER (
OF PUBLIC ACCOUNTS (REGISTER NO. _____
THE STATE OF TEXAS (

I HEREBY CERTIFY that this Bond has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this _____.

Comptroller of Public Accounts
of the State of Texas

(Seal)

(d) Form of Certificate of Paying Agent/Registrar to appear on Definitive Bonds only.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Bond has been duly issued and registered in the name of the Registered Owner shown above under the provisions of the within-mentioned Ordinance; the bond or bonds of the above entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas, as shown by the records of the Paying Agent/Registrar.

The designated office of the Paying Agent/Registrar in East Syracuse, New York, is the Designated Payment/Transfer Office for this Bond.

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THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., Dallas, Texas

as Paying Agent/Registrar

Registration Date:

By: _____
Authorized Signature

(e) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto
(Print or typewrite name, address, and zip code of transferee): _____

(Social Security or other identifying number: _____)
_____) the within Bond and all rights thereunder, and hereby
irrevocably constitutes and appoints _____
attorney to transfer the within Bond on the books kept for registration thereof, with full power of
substitution in the premises.

DATED: _____

Signature guaranteed:

NOTICE: The signature on this assignment
must correspond with the name of the
registered owner as it appears on the face
of the within Bond in every particular.

(f) The Initial Bond shall be in the form set forth therefor in subsection (b) of this
Section, except the heading and paragraph one shall be amended to read as follows:

NO. T-1

\$ _____

UNITED STATES OF AMERICA
STATE OF TEXAS
TOWN OF FLOWER MOUND
GENERAL OBLIGATION REFUNDING BOND
SERIES 2016

Bond Date: _____, 20__

Registered Owner:

Principal Amount:

DOLLARS

The Town of Flower Mound (hereinafter referred to as the "Town"), a body corporate and
political subdivision in the Counties of Denton and Tarrant, State of Texas, for value received,

acknowledges itself indebted to and hereby promises to pay to the registered owner named above, or the registered assigns thereof, the Principal Amount hereinabove stated on _____ in the years and in principal installments in accordance with the following schedule:

STATED
MATURITY

PRINCIPAL
AMOUNT

INTEREST
RATE(S)

(Information to be inserted from Pricing Certificate)

(or so much principal thereof as shall not have been redeemed prior to maturity) and to pay interest on the unpaid principal installments hereof from the _____ at the per annum rates of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on _____, 20__, and each _____ and _____ thereafter, until maturity or prior redemption. Principal installments of this Bond are payable in the year of maturity or on a redemption date to the registered owner hereof by The Bank of New York Mellon Trust Company, N.A., Dallas, Texas (the "Paying Agent/Registrar"), upon presentation and surrender at its designated offices, initially in East Syracuse, New York, or, with respect to a successor paying agent/registrar, at the designated office of such successor (the "Designated Payment/Transfer Office"). Interest is payable to the registered owner of this Bond whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date," which is the _____ day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the registered owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to be closed; and payment on such date shall have the same force and effect as if made on the original date payment was due.

SECTION 10. Levy of Taxes. To provide for the payment of the "Debt Service Requirements" of the Bonds, being (i) the interest on the Bonds and (ii) a sinking fund for their redemption at maturity or a sinking fund of 2% (whichever amount is the greater) there is hereby levied, and there shall be annually assessed and collected in due time, form, and manner, a tax on all taxable property in the Town, within the limitations by law prescribed, sufficient to pay the Debt Service Requirements on the Bonds as the same becomes due and payable; and such tax hereby levied on each one hundred dollars' valuation of taxable property in the Town for the payment of the Debt Service Requirements of the Bonds shall be at a rate from year to year as will be ample and sufficient to provide funds each year to pay the principal of and interest on said Bonds while Outstanding; full allowance being made for delinquencies and costs of collection; the taxes levied, assessed, and collected for and on account of the Bonds shall be accounted for separate and apart from all other funds of the Town and shall be deposited in the "SPECIAL SERIES 2016 GENERAL OBLIGATION REFUNDING BOND FUND", or such other fund designation as specified in the Pricing Certificate (the "Interest and Sinking Fund") to be

maintained at an official depository of the Town's funds; and such tax hereby levied, and to be assessed and collected annually, is hereby pledged to the payment of the Bonds.

PROVIDED, however, with regard to any payment to become due on the Bonds prior to the tax delinquency date next following the annual assessment of taxes levied which next follows the Bond Date, if any, sufficient current funds will be available and are hereby appropriated to make such payments; and the Mayor, Mayor Pro Tem, Town Manager, Assistant Town Manager/CFO and Town Secretary of the Town, individually or jointly, are hereby authorized and directed to transfer and deposit in the Interest and Sinking Fund such current funds which, together with the accrued interest received from the initial purchasers, will be sufficient to pay the payments due on the Bonds prior to the tax delinquency date next following the annual assessment of taxes levied which next follows the Bond Date.

The Mayor, Mayor Pro Tem, Town Manager, Assistant Town Manager/CFO and Town Secretary of the Town, individually or jointly, are hereby authorized and directed to cause to be transferred to the Paying Agent/Registrar for the Bonds, from funds on deposit in the Interest and Sinking Fund, amounts sufficient to fully pay and discharge promptly each installment of interest and principal of the Bonds as the same accrues or matures or comes due by reason of redemption prior to maturity; such transfers of funds to be made in such manner as will cause collected funds to be deposited with the Paying Agent/Registrar on or before each principal and interest payment date for the Bonds.

SECTION 11. Mutilated - Destroyed - Lost and Stolen Bonds. In case any Bond shall be mutilated, or destroyed, lost, or stolen, the Paying Agent/Registrar may execute and deliver a replacement Bond of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Bond; and with respect to a lost, destroyed, or stolen Bond, a replacement Bond may be issued only upon the approval of the Town and after (i) the filing by the Holder with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss, or theft of such Bond, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying Agent/Registrar of indemnification in an amount satisfactory to hold the Town and the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Bond shall be borne by the Holder of the Bond mutilated, or destroyed, lost, or stolen.

Every replacement Bond issued pursuant to this Section shall be a valid and binding obligation of the Town, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Bonds; notwithstanding the enforceability of payment by anyone of the destroyed, lost, or stolen Bonds.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost, or stolen Bonds.

SECTION 12. Satisfaction of Obligation of Town. If the Town shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Bonds, at the times and in the manner stipulated in this Ordinance and the Pricing Certificate, then the pledge of taxes levied under this Ordinance and all covenants, agreements, and other obligations of the Town to the Holders shall thereupon cease, terminate, and be discharged and satisfied.

Bonds or any principal amount(s) thereof shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Bonds or the principal amount(s) thereof at maturity or to the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (ii) Government Securities shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Securities have been certified by an independent accounting firm to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any moneys deposited therewith, if any, to pay when due the principal of and interest on such Bonds, or the principal amount(s) thereof, on and prior to the Stated Maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/Registrar have been made) the redemption date thereof. The Town covenants that no deposit of moneys or Government Securities will be made under this Section and no use made of any such deposit which would cause the Bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, or regulations adopted pursuant thereto.

Any moneys so deposited with the Paying Agent/Registrar, or an authorized escrow agent, and all income from Government Securities held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Bonds, or any principal amount(s) thereof, or interest thereon with respect to which such moneys have been so deposited shall be remitted to the Town or deposited as directed by the Town. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Bonds and remaining unclaimed for a period of three (3) years after the Stated Maturity, or applicable redemption date, of the Bonds such moneys were deposited and are held in trust to pay shall upon the request of the Town be remitted to the Town against a written receipt therefor. Notwithstanding the above and foregoing, any remittance of funds from the Paying Agent/Registrar to the Town shall be subject to any applicable unclaimed property laws of the State of Texas, including the provisions of Title 6 of the Texas Property Code, as amended.

The term "Government Securities" shall mean (i) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States of America, including obligations unconditionally guaranteed or insured by the agency or instrumentality and, on the date of their acquisition or purchase by the Town, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date of their acquisition or purchase by the Town, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent and (iv) any other then authorized securities or obligations that may be used to defease obligations such as the Bonds under the then applicable laws of the State of Texas.

The Town reserves the right, subject to satisfying the requirements of (i) and (ii) above, to substitute other Government Securities for the Government Securities originally deposited, to reinvest the uninvested moneys on deposit for such defeasance and to withdraw for the benefit of the Town moneys in excess of the amount required for such defeasance.

Upon such deposit as described above, such Bonds shall no longer be regarded to be outstanding or unpaid. Provided, however, the Town has reserved the option, to be exercised at the time of the defeasance of the Bonds, to call for redemption, at an earlier date, those Bonds which have been defeased to their maturity date, if the Town: (i) in the proceedings providing for the firm banking and financial arrangements, expressly reserves the right to call the Bonds for redemption; (ii) gives notice of the reservation of that right to the Holders of the Bonds immediately following the making of the firm banking and financial arrangements; and (iii) directs that notice of the reservation be included in any redemption notices that it authorizes.

SECTION 13. Ordinance a Contract - Amendments - Outstanding Bonds. This Ordinance, together with the Pricing Certificate, shall constitute a contract with the Holders from time to time, be binding on the Town, and shall not be amended or repealed by the Town so long as any Bond remains Outstanding except as permitted in this Section and in Section 31 hereof. The Town may, without the consent of or notice to any Holders, from time to time and at any time, amend this Ordinance or any provision in the Pricing Certificate in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the Town may, with the consent of Holders who own a majority of the aggregate of the principal amount of the Bonds then Outstanding, amend, add to, or rescind any of the provisions of this Ordinance or any provision in the Pricing Certificate; provided that, without the consent of all Holders of Outstanding Bonds, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of and interest on the Bonds, reduce the principal amount thereof, the redemption price, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of or interest on the Bonds, (2) give any preference to any Bond over any other Bond, or (3) reduce the aggregate principal amount of Bonds required to be held by Holders for consent to any such amendment, addition, or rescission.

The term "Outstanding" when used in this Ordinance with respect to Bonds means, as of the date of determination, all Bonds theretofore issued and delivered under this Ordinance, except:

- (1) those Bonds cancelled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;
- (2) those Bonds deemed to be duly paid by the Town in accordance with the provisions of Section 12 hereof; and
- (3) those mutilated, destroyed, lost, or stolen Bonds which have been replaced with Bonds registered and delivered in lieu thereof as provided in Section 11 hereof.

SECTION 14. Covenants to Maintain Tax-Exempt Status.

(a) Definitions. When used in this Section, the following terms have the following meanings:

"*Closing Date*" means the date on which the Bonds are first authenticated and delivered to the initial purchasers against payment therefor.

"*Code*" means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

"Computation Date" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Gross Proceeds" means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Bonds.

"Investment" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Nonpurpose Investment" means any investment property, as defined in Section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and which is not acquired to carry out the governmental purposes of the Bonds.

"Rebate Amount" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Regulations" means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

"Yield" of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The Town shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction, or improvement of which is to be financed (or refinanced) directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in Section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the Town receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the Town shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, the Town shall at all times prior to the last Stated Maturity of Bonds:

(i) exclusively own, operate, and possess all property the acquisition, construction, or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Bonds (including property financed with Gross Proceeds of the Refunded Obligations), and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed, or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department, and

instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(ii) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Bonds or any property the acquisition, construction, or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds (including property financed with Gross Proceeds of the Refunded Obligations), other than taxes of general application within the Town or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by Section 141 of the Code and the Regulations and rulings thereunder, the Town shall not use Gross Proceeds of the Bonds to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (1) property acquired, constructed, or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output, or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed, or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the Town shall not at any time prior to the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Bonds.

(f) Not Federally Guaranteed. Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the Town shall not take or omit to take any action which would cause the Bonds to be federally guaranteed within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The Town shall timely file the information required by Section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in Section 148(f) of the Code and the Regulations and rulings thereunder:

(i) The Town shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six (6) years after the day on which the last outstanding Bond is discharged. However, to the extent permitted by law, the Town may commingle Gross Proceeds of the Bonds with other money of the Town, provided that the Town separately

accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(ii) Not less frequently than each Computation Date, the Town shall calculate the Rebate Amount in accordance with rules set forth in Section 148(f) of the Code and the Regulations and rulings thereunder. The Town shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(iii) As additional consideration for the purchase of the Bonds by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the Holders thereof for federal income tax purposes, the Town shall pay to the United States out of the general fund, other appropriate fund, or, if permitted by applicable Texas statute, regulation, or opinion of the Attorney General of the State of Texas, the Interest and Sinking Fund, the amount that when added to the future value of previous rebate payments made for the Bonds equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place, and in the manner as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(iv) The Town shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the Town shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Bonds not been relevant to either party.

(j) Elections. The Town hereby directs and authorizes the Mayor, Mayor Pro Tem, Town Manager and Assistant Town Manager/CFO of the Town, individually or jointly, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as one or more of such persons deems necessary or appropriate in connection with the Bonds, in the Certificate as to Tax Exemption, or similar or other appropriate certificate, form, or document.

(k) Bonds Not Hedge Bonds. At the time the original obligations refunded by the Bonds were issued, the Town reasonably expected to spend at least 85% of the spendable proceeds of such obligations within three years after such obligations were issued and (2) not more than 50% of the proceeds of the original obligations refunded by the Bonds were invested in Nonpurpose Investments having a substantially guaranteed Yield for a period of 4 years or more.

(l) Qualified Advance Refunding. The Bonds are issued in part to refund the Series 2007 Refunded Bonds, the Series 2007 Refunded Certificates and the Series 2008 Refunded Certificates (collectively, the "Advance Refunded Obligations") and the Bonds will be issued more than 90 days before the redemption of the Advance Refunded Obligations. The City represents as follows:

(i) The Bonds are the first advance refunding of the Advance Refunded Obligations within the meaning of Section 149(d)(3) of the Code.

(ii) The Advance Refunded Obligations are being called for redemption, and will be redeemed not later than the earliest date on which such obligations may be redeemed and on which the City will realize present value debt service savings (determined without regard to administrative expenses) on the issue.

(iii) The initial temporary period under Section 148(c) of the Code will end: (i) with respect to the proceeds of the Bonds not later than 30 days after the date of issue of such Bonds; and (ii) with respect to proceeds of the Advance Refunded Obligations on the Closing Date if not ended prior thereto.

(iv) On and after the date of issue of the Bonds, no proceeds of the Advance Refunded Obligations will be invested in Nonpurpose Investments having a Yield in excess of the Yield on such Advance Refunded Obligations.

(v) The Bonds are being issued for the purposes stated in the preamble of this Ordinance. There is a present value savings associated with the refunding. In the issuance of the Bonds the City has neither: (i) overburdened the tax-exempt bond market by issuing more bonds, issuing bonds earlier or allowing bonds to remain outstanding longer than reasonably necessary to accomplish the governmental purposes for which the Bonds were issued; (ii) employed on "abusive arbitrage device" within the meaning of Section 1.148-10(a) of the Regulations; nor (iii) employed a "device" to obtain a material financial advantage based on arbitrage, within the meaning of Section 149(d)(4) of the Code, apart from savings attributable to lower interest rates and reduced debt service payments in early years.

(m) Current Refunding. The Bonds are being issued in part to pay and discharge in full the Series 2005 Refunded Bonds and such payment of the Series 2005 Refunded Bonds will occur within ninety (90) days after the issuance of the Bonds.

(n) Qualified Tax-Exempt Obligations. The Pricing Officer is hereby authorized to designate in the Pricing Certificate the designation of the Bonds as "qualified tax-exempt obligations" in accordance with the provisions of the paragraph (3) of subsection (b) of Section 265 of the Code in the event the Bonds qualify for such designation and confirm that the Bonds

are not “private activity bonds” as defined in the Code and confirm the amount of “tax-exempt obligations” to be issued by the Town (including all subordinate entities of the Town) for the calendar year in which the Bonds are issued will not exceed the applicable limitation.

SECTION 15. Sale of Bonds - Official Statement. The Bonds authorized by this Ordinance are to be sold by the Town to the Purchasers in accordance with a bond purchase agreement in the event of a negotiated sale, letter agreement to purchase in the event of a private placement, or the successful bid form in the event of a competitive sale, as applicable (the “Purchase Contract”), the terms and provisions of which Purchase Contract are to be determined by the Pricing Officer in accordance with Section 3 hereof. The Pricing Officer is hereby authorized and directed to execute the Purchase Contract for and on behalf of the Town, as the act and deed of this Council, and to make a determination as to whether the terms are in the Town’s best interests, which determination shall be final.

With regard to such terms and provisions of the Purchase Contract, the Pricing Officer is hereby authorized to come to an agreement with the Purchasers on the following, among other matters:

1. The details of the purchase and sale of the Bonds;
2. The details of any public offering of the Bonds by the Purchasers, if any;
3. The details of any Official Statement or similar disclosure document (and, if appropriate, any Preliminary Official Statement) relating to the Bonds and the Town’s Rule 15c2-12 compliance, if applicable;
4. A security deposit for the Bonds, if any;
5. The representations and warranties of the Town to the Purchasers;
6. The details of the delivery of, and payment for, the Bonds;
7. The Purchasers’ obligations under the Purchase Contract;
8. The certain conditions to the obligations of the Town under the Purchase Contract;
9. Termination of the Purchase Contract;
10. Particular covenants of the Town;
11. The survival of representations made in the Purchase Contract;
12. The payment of any expenses relating to the Purchase Contract;
13. Notices; and
14. Any and all such other details that are found by the Pricing Officer to be necessary and advisable for the purchase and sale of the Bonds.

The Mayor or Mayor Pro Tem and Town Secretary of the Town are further authorized and directed to deliver for and on behalf of the Town copies of a Preliminary Official Statement and Official Statement prepared in connection with the offering of the Bonds by the Purchasers, in final form as may be required by the Purchasers, and such final Official Statement as delivered by said officials shall constitute the Official Statement authorized for distribution and use by the Purchasers.

SECTION 16. Escrow Agreement. An "Escrow Agreement" or "Special Escrow Agreement" (either, the "Escrow Agreement") by and between the Town and an authorized escrow agent (the "Escrow Agent"), if any such agreement is required in connection with the issuance of the Bonds, shall be attached to and approved in the Pricing Certificate. Such Escrow Agreement is hereby authorized to be finalized and executed by the Pricing Officer for and on behalf of the Town and as the act and deed of this Council; and such Escrow Agreement as executed by said Pricing Officer shall be deemed approved by this Council and constitute the Escrow Agreement herein approved. With regard to the finalization of certain terms and provisions of any Escrow Agreement, a Pricing Officer is hereby authorized to come to an agreement with the Escrow Agent on the following details, among other matters:

1. The identification of the Refunded Obligations;
2. The creation and funding of the Escrow Fund or Funds; and
3. The Escrow Agent's compensation, administration of the Escrow Fund or Funds, and the settlement of any paying agents' charges relating to the Refunded Obligations.

Furthermore, appropriate officials of the Town in cooperation with the Escrow Agent are hereby authorized and directed to make the necessary arrangements for the purchase of the escrowed securities referenced in the Escrow Agreement, if any, and the delivery thereof to the Escrow Agent on the day of delivery of the Bonds to the Purchasers for deposit to the credit of the "TOWN OF FLOWER MOUND, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2016 ESCROW FUND" (referred to herein as the "Escrow Fund"), or such other designation as specified in the Pricing Certificate; all as contemplated and provided in Chapter 1207, the Ordinance, the Pricing Certificate and the Escrow Agreement.

On or immediately prior to the date of the delivery of the Bonds to the Purchasers, the Pricing Officer, or other authorized Town official listed in Section 33 hereof, shall also cause to be deposited (and is hereby authorized to cause to be deposited) with the Escrow Agent from moneys on deposit in the debt service fund(s) maintained for the payment of the Refunded Obligations an amount which, together with the proceeds of sale of the Bonds, and the investment earnings thereon, will be sufficient to pay in full the Refunded Obligations (or the amount of accrued interest due thereon) scheduled to mature and authorized to be redeemed on the earliest date established in the Pricing Certificate for the redemption of any of the Refunded Obligations (or the earliest date of payment, to be made from moneys in the Escrow Fund(s), as established in the Pricing Certificate, of the amount of accrued interest due thereon).

SECTION 17. Refunded Obligations. (a) In order to provide for the refunding, discharge, and retirement of the Refunded Obligations as selected by the Pricing Officer, the Refunded Obligations, identified, described, and in the amounts set forth in the Pricing Certificate, are called for redemption on the first date such Refunded Obligations are subject to redemption or such other date specified by the Pricing Officer in the Pricing Certificate at the price of par plus accrued interest to the redemption dates, and notices of such redemption shall be given in accordance with the applicable provisions of the ordinances adopted by this Council, which authorized the issuance of the Refunded Obligations. The Pricing Officer is hereby authorized and directed to issue or cause to be issued Notices of Redemption for the Refunded Obligations, in substantially the forms set forth as exhibits to the Pricing Certificate, to the paying agent/registrar for the Refunded Obligations, in accordance with the redemption provisions applicable to the Refunded Obligations.

(b) The paying agent/registrar for Refunded Obligations is hereby directed to provide the appropriate notices of redemption as required by the ordinances authorizing the issuance of the Refunded Obligations and is hereby directed to make appropriate arrangements so that the Refunded Obligations may be redeemed on the redemption dates specified in the Pricing Certificate.

(c) The source of funds for payment of the principal of and interest on the Refunded Obligations on their respective maturity or redemption dates shall be from the funds deposited with the Escrow Agent, pursuant to the Escrow Agreement, if any, or with the paying agent/registrar for the Refunded Obligations pursuant the provisions of Chapter 1207, this Ordinance and the Pricing Certificate finalized by the Pricing Officer.

SECTION 18. Control and Custody of Bonds. The Mayor or Mayor Pro Tem of the Town shall be and is hereby authorized to take and have charge of all necessary ordinances, resolutions, orders and records, including the definitive Bonds and the Initial Bonds, pending the investigation and approval of the Initial Bonds by the Attorney General of the State of Texas, and the registration of the Initial Bonds to the Comptroller of Public Accounts and the delivery thereof to the Purchasers.

SECTION 19. Proceeds of Sale. Immediately following the delivery of the Bonds, the proceeds of sale (less those proceeds of sale designated to pay costs of issuance and any accrued interest received from the Purchasers of the Bonds or additional proceeds being deposited to the Interest and Sinking Fund) shall be deposited with the Escrow Agent for application and disbursement in accordance with the provisions of the Escrow Agreement or deposited with the paying agent/registrar for the Refunded Obligations for the payment and redemption of the Refunded Obligations. The proceeds of sale of the Bonds not so deposited with the Escrow Agent (or the paying agent/registrar for the Refunded Obligations) for the refunding of the Refunded Obligations shall be disbursed for payment of costs of issuance, or deposited in the Interest and Sinking Fund for the Bonds, all in accordance with written instructions from the Town or its financial advisor. Such proceeds of sale may be invested in authorized investments and any investment earnings realized may be (with respect to the accrued interest received from the Purchasers) deposited in the Interest and Sinking Fund as shall be determined by this Council.

Additionally, the Pricing Officer shall determine the amount of any Town contribution to the refunding from moneys on deposit in the interest and sinking funds maintained for the payment of the Refunded Obligations.

SECTION 20. Notices to Holders - Waiver. Wherever this Ordinance or the Pricing Certificate provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States Mail, first class postage prepaid, to the address of each Holder appearing in the Security Register at the close of business on the business day next preceding the mailing of such notice.

In any case in which notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Bonds. Where this Ordinance or the Pricing Certificate provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by

Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 21. Cancellation. All Bonds surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly cancelled by it and, if surrendered to the Town, shall be delivered to the Paying Agent/Registrar and, if not already cancelled, shall be promptly cancelled by the Paying Agent/Registrar. The Town may at any time deliver to the Paying Agent/Registrar for cancellation any Bonds previously certified or registered and delivered which the Town may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly cancelled by the Paying Agent/Registrar. All cancelled Bonds held by the Paying Agent/Registrar shall be returned to the Town.

SECTION 22. Bond Counsel Opinion. The obligation of the Purchasers to accept delivery of the Bonds is subject to being furnished a final opinion of Norton Rose Fulbright US LLP, Attorneys, Dallas, Texas, approving the Bonds as to their validity, said opinion to be dated and delivered as of the date of delivery and payment for the Bonds. A true and correct reproduction of said opinion is hereby authorized to be printed on the Bonds, or an executed counterpart thereof is hereby authorized to be either printed on definitive printed obligations or deposited with DTC along with the global certificates for the implementation and use of the Book-Entry-Only System used in the settlement and transfer of the Bonds.

SECTION 23. CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Bonds shall be of no significance or effect as regards the legality thereof, and neither the Town nor attorneys approving the Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Bonds.

SECTION 24. Benefits of Ordinance. Nothing in this Ordinance or the Pricing Certificate, expressed or implied, is intended or shall be construed to confer upon any person other than the Town, the Paying Agent/Registrar and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof or the Pricing Certificate, this Ordinance and all of its provisions and the Pricing Certificate being intended to be and being for the sole and exclusive benefit of the Town, the Paying Agent/Registrar, and the Holders.

SECTION 25. Inconsistent Provisions. All ordinances or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance or the Pricing Certificate are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters contained herein.

SECTION 26. Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 27. Effect of Headings. The Section headings herein are for convenience of reference only and shall not affect the construction hereof.

SECTION 28. Construction of Terms. If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine, or neuter gender shall be considered to include the other genders.

SECTION 29. Severability. If any provision of this Ordinance or the Pricing Certificate or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the Pricing Certificate and the application thereof to other circumstances shall nevertheless be valid, and this Council hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 30. Incorporation of Findings and Determinations. The findings and determinations of this Council contained in the preamble hereof are hereby incorporated by reference and made a part of this Ordinance for all purposes as if the same were restated in full in this Section.

SECTION 31. Continuing Disclosure Undertaking. This Section shall apply unless the Pricing Officer determines in the Pricing Certificate that an undertaking is not required pursuant to the Rule (defined below).

(a) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

“MSRB” means the Municipal Securities Rulemaking Board.

“Rule” means SEC Rule 15c2-12, as amended from time to time or officially interpreted by the SEC.

“SEC” means the United States Securities and Exchange Commission.

(b) Annual Reports. The Town shall provide annually to the MSRB (1) within six months after the end of each fiscal year, beginning with the year stated in the Pricing Certificate, financial information and operating data with respect to the Town of the general type included in the final Official Statement approved by the Pricing Officer and described in the Pricing Certificate and (2) if not provided as part of such financial information and operating data, audited financial statements of the Town, when and if available. Any financial statements so provided shall be prepared in accordance with the accounting principles described in the Pricing Certificate, or such other accounting principles as the Town may be required to employ from time to time pursuant to state law or regulation, and audited, if the Town commissions an audit of such statements and the audit is completed within the period during which they must be provided.

If the Town changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the Town otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document available to the public on the MSRB's Internet Web site or filed with the SEC.

(c) Notice of Certain Events. The Town shall provide notice of any of the following events with respect to the Bonds to the MSRB in a timely manner and not more than 10 business days after occurrence of the event:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;

3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
7. Modifications to rights of holders of the Bonds, if material;
8. Bond calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Bonds, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership, or similar event of the Town, which shall occur as described below;
13. The consummation of a merger, consolidation, or acquisition involving the Town or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

For these purposes, any event described in the immediately preceding subsection (c)12 is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the Town in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Town, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Town.

The Town shall notify the MSRB, in a timely manner, of any failure by the Town to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such Section.

(d) Filings with the MSRB. All financial information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Section shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

(e) Limitations, Disclaimers and Amendments. The Town shall be obligated to observe and perform the covenants specified in this Section while, but only while, the Town remains an "obligated person" with respect to the Bonds within the meaning of the Rule, except

that the Town in any event will give the notice required by subsection (c) hereof of any Bond calls and defeasance that cause the Town to be no longer such an "obligated person."

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The Town undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the Town's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The Town does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE TOWN BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE TOWN, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the Town in observing or performing its obligations under this Section shall constitute a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the Town under federal and state securities laws.

Notwithstanding anything to the contrary in this Ordinance, the provisions of this Section may be amended by the Town from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Town, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Bonds consent to such amendment or (b) a person that is unaffiliated with the Town (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Bonds. The provisions of this Section may also be amended from time to time or repealed by the Town if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the Town's right to do so would not prevent an underwriter of the initial public offering of the Bonds from lawfully purchasing or selling Bonds in such offering. If the Town so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided pursuant to subsection (b) of this Section an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

SECTION 32. Municipal Bond Insurance. The Bonds may be sold with the principal of and interest thereon being insured by a municipal bond insurance provider authorized to transact business in the State of Texas. The Pricing Officer is hereby authorized to make the selection of municipal bond insurance (if any) for the Bonds and make the determination of the provisions of any commitment therefor.

SECTION 33. Further Procedures. Any one or more of the Mayor, Mayor Pro Tem, Town Manager, Assistant Town Manager/CFO and Town Secretary are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of the Town all agreements, instruments, certificates or other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the issuance of the Bonds. In addition, prior to the initial delivery of the Bonds, the Mayor, Mayor Pro Tem, Town Manager, Assistant Town Manager/CFO or Bond Counsel to the Town are each hereby authorized and directed to approve any changes or corrections to this Ordinance or to any of the documents authorized and approved by this Ordinance, including the Pricing Certificate: (i) in order to cure any ambiguity, formal defect or omission in this Ordinance or such other document; or (ii) as requested by the Attorney General of the State of Texas or his representative to obtain the approval of the Bonds by the Attorney General and if such officer or counsel determines that such changes are consistent with the intent and purpose of this Ordinance, which determination shall be final. In the event that any officer of the Town whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 34. Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 35. Effective Date. In accordance with the provisions of Texas Government Code, Section 1201.028, as amended, this Ordinance shall be in force and effect from and after its passage on the date shown below and it is so ordained.

[Remainder of page left blank intentionally]

ORDINANCE NO. ____-16

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

APPROVED:

Thomas E. Hayden, MAYOR

(Town Seal)

ATTEST:

Theresa Scott, TOWN SECRETARY

APPROVED AS TO FORM:

Bryn Meredith, TOWN ATTORNEY

ORDINANCE NO. __-16

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EXHIBIT A

PAYING AGENT/REGISTRAR AGREEMENT

PAYING AGENT/REGISTRAR AGREEMENT

THIS AGREEMENT is entered into as of _____, 2016 (this "Agreement"), by and between The Bank of New York Mellon Trust Company, N.A., a banking association duly organized and existing under the laws of the United States of America (the "Bank") and the Town of Flower Mound, Texas (the "Issuer"),

RECITALS

WHEREAS, the Issuer has duly authorized and provided for the issuance of its "Town of Flower Mound, Texas, General Obligation Refunding Bonds, Series 2016 (the "Securities"), dated _____, 2016, such Securities scheduled to be delivered to the initial purchasers thereof on or about _____, 2016; and

WHEREAS, the Issuer has selected the Bank to serve as Paying Agent/Registrar in connection with the payment of the principal of, premium, if any, and interest on said Securities and with respect to the registration, transfer and exchange thereof by the registered owners thereof; and

WHEREAS, the Bank has agreed to serve in such capacities for and on behalf of the Issuer and has full power and authority to perform and serve as Paying Agent/Registrar for the Securities;

NOW, THEREFORE, it is mutually agreed as follows:

ARTICLE ONE**APPOINTMENT OF BANK AS PAYING AGENT AND REGISTRAR**

Section 1.01 Appointment. The Issuer hereby appoints the Bank to serve as Paying Agent with respect to the Securities, and, as Paying Agent for the Securities, the Bank shall be responsible for paying on behalf of the Issuer the principal, premium (if any), and interest on the Securities as the same become due and payable to the registered owners thereof; all in accordance with this Agreement and the "Authorizing Document" (hereinafter defined). The Issuer hereby appoints the Bank as Registrar with respect to the Securities and, as Registrar for the Securities, the Bank shall keep and maintain for and on behalf of the Issuer books and records as to the ownership of said Securities and with respect to the transfer and exchange thereof as provided herein and in the Authorizing Document.

The Bank hereby accepts its appointment, and agrees to serve as the Paying Agent and Registrar for the Securities.

Section 1.02 Compensation. As compensation for the Bank's services as Paying Agent/Registrar, the Issuer hereby agrees to pay the Bank the fees and amounts set forth in **Annex A** attached hereto.

In addition, the Issuer agrees to reimburse the Bank upon its request for all reasonable expenses, disbursements and advances incurred or made by the Bank in accordance with any of the provisions hereof (including the reasonable compensation and the expenses and disbursements of its agents and counsel).

ARTICLE TWO DEFINITIONS

Section 2.01 Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

“Acceleration Date” on any Security means the date, if any, on and after which the principal or any or all installments of interest, or both, are due and payable on any Security which has become accelerated pursuant to the terms of the Security.

“Authorizing Document” means the resolution, order, or ordinance of the governing body of the Issuer pursuant to which the Securities are issued, as the same may be amended or modified, including any pricing certificate related thereto, certified by the secretary or any other officer of the Issuer and delivered to the Bank.

“Bank Office” means the designated office of the Bank at the address shown in Section 3.01 hereof. The Bank will notify the Issuer in writing of any change in location of the Bank Office.

“Financial Advisor” means Hilltop Securities Inc.

“Holder” and “Security Holder” each means the Person in whose name a Security is registered in the Security Register.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision of a government.

“Predecessor Securities” of any particular Security means every previous Security evidencing all or a portion of the same obligation as that evidenced by such particular Security (and, for the purposes of this definition, any mutilated, lost, destroyed, or stolen Security for which a replacement Security has been registered and delivered in lieu thereof pursuant to Section 4.06 hereof and the Authorizing Document).

“Redemption Date”, when used with respect to any Security to be redeemed, means the date fixed for such redemption pursuant to the terms of the Authorizing Document.

“Responsible Officer”, when used with respect to the Bank, means the Chairman or Vice-Chairman of the Board of Directors, the Chairman or Vice-Chairman of the Executive Committee of the Board of Directors, the President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer, any Assistant Treasurer, the Cashier, any Assistant Cashier, any Trust Officer or Assistant Trust Officer, or any other officer of the Bank customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

“Security Register” means a register maintained by the Bank on behalf of the Issuer providing for the registration and transfers of Securities.

“Stated Maturity” means the date specified in the Authorizing Document the principal of a Security is scheduled to be due and payable.

Section 2.02 Other Definitions. The terms “Bank,” “Issuer,” and “Securities (Security)” have the meanings assigned to them in the recital paragraphs of this Agreement.

The term “Paying Agent/Registrar” refers to the Bank in the performance of the duties and functions of this Agreement.

ARTICLE THREE PAYING AGENT

Section 3.01 Duties of Paying Agent. As Paying Agent, the Bank shall pay, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, on behalf of the Issuer the principal of each Security at its Stated Maturity, Redemption Date or Acceleration Date, to the Holder upon surrender of the Security to the Bank at the following address:

<u>First Class/Registered/Certified</u>	<u>Express Delivery/Courier</u>	<u>By Hand Only</u>
The Bank of New York Mellon Trust Company, N.A. Global Corporate Trust P.O. Box 396 East Syracuse, NY 13057	The Bank of New York Mellon Trust Company, N.A. Global Corporate Trust 111 Sanders Creek Pkwy. East Syracuse, NY 13057	The Bank of New York Mellon Trust Company, N.A. Global Corporate Trust Corporate Trust Window 101 Barclay Street, 1st Floor East New York, NY 10286

As Paying Agent, the Bank shall, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, pay on behalf of the Issuer the interest on each Security when due, by computing the amount of interest to be paid each Holder and making payment thereof to the Holders of the Securities (or their Predecessor Securities) on the Record Date (as defined in the Authorizing Document). All payments of principal and/or interest on the Securities to the registered owners shall be accomplished (1) by the issuance of checks, payable to the registered owners, drawn on the paying agent account provided in Section 5.05 hereof, sent by United States mail, first class postage prepaid, to the address appearing on the Security Register or (2) by such other method, acceptable to the Bank, requested in writing by the Holder at the Holder's risk and expense.

Section 3.02 Payment Dates. The Issuer hereby instructs the Bank to pay the principal of and interest on the Securities on the dates specified in the Authorizing Document.

ARTICLE FOUR REGISTRAR

Section 4.01 Security Register - Transfers and Exchanges. The Bank agrees to keep and maintain for and on behalf of the Issuer at the Bank Office books and records (herein sometimes referred to as the “Security Register”) for recording the names and addresses of the Holders of the Securities, the transfer, exchange and replacement of the Securities and the payment of the principal of and interest on the Securities to the Holders and containing such

other information as may be reasonably required by the Issuer and subject to such reasonable regulations as the Issuer and the Bank may prescribe. All transfers, exchanges and replacements of Securities shall be noted in the Security Register.

Every Security surrendered for transfer or exchange shall be duly endorsed or be accompanied by a written instrument of transfer, the signature on which has been guaranteed by an officer of a federal or state bank or a member of the National Association of Securities Dealers, such written instrument to be in a form satisfactory to the Bank and duly executed by the Holder thereof or his agent duly authorized in writing.

The Bank may request any supporting documentation it feels necessary to effect a re-registration, transfer or exchange of the Securities.

To the extent possible and under reasonable circumstances, the Bank agrees that, in relation to an exchange or transfer of Securities, the exchange or transfer by the Holders thereof will be completed and new Securities delivered to the Holder or the assignee of the Holder in not more than three (3) business days after the receipt of the Securities to be cancelled in an exchange or transfer and the written instrument of transfer or request for exchange duly executed by the Holder, or his duly authorized agent, in form and manner satisfactory to the Paying Agent/Registrar.

Section 4.02 Securities. The Issuer shall provide additional Securities when needed to facilitate transfers or exchanges thereof. The Bank covenants that such additional Securities, if and when provided, will be kept in safekeeping pending their use and reasonable care will be exercised by the Bank in maintaining such Securities in safekeeping, which shall be not less than the care maintained by the Bank for debt securities of other governments or corporations for which it serves as registrar, or that is maintained for its own securities.

Section 4.03 Form of Security Register. The Bank, as Registrar, will maintain the Security Register relating to the registration, payment, transfer and exchange of the Securities in accordance with the Bank's general practices and procedures in effect from time to time. The Bank shall not be obligated to maintain such Security Register in any form other than those which the Bank has currently available and currently utilizes at the time.

The Security Register may be maintained in written form or in any other form capable of being converted into written form within a reasonable time.

Section 4.04 List of Security Holders. The Bank will provide the Issuer at any time requested by the Issuer, upon payment of the required fee, a copy of the information contained in the Security Register. The Issuer may also inspect the information contained in the Security Register at any time the Bank is customarily open for business, provided that reasonable time is allowed the Bank to provide an up-to-date listing or to convert the information into written form.

The Bank will not release or disclose the contents of the Security Register to any person other than to, or at the written request of, an authorized officer or employee of the Issuer, except upon receipt of a court order or as otherwise required by law. Upon receipt of a court order and prior to the release or disclosure of the contents of the Security Register, the Bank will notify the Issuer so that the Issuer may contest the court order or such release or disclosure of the contents of the Security Register.

Section 4.05 Return of Cancelled Securities. The Bank will, at such reasonable intervals as it determines, surrender to the Issuer, all Securities in lieu of which or in exchange for which other Securities have been issued, or which have been paid.

Section 4.06 Mutilated, Destroyed, Lost or Stolen Securities. The Issuer hereby instructs the Bank, subject to the provisions of the Authorizing Document, to deliver and issue Securities in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities as long as the same does not result in an overissuance.

In case any Security shall be mutilated, destroyed, lost or stolen, the Bank may execute and deliver a replacement Security of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Security, or in lieu of and in substitution for such mutilated, destroyed, lost or stolen Security, only upon the approval of the Issuer and after (i) the filing by the Holder thereof with the Bank of evidence satisfactory to the Bank of the destruction, loss or theft of such Security, and of the authenticity of the ownership thereof and (ii) the furnishing to the Bank of indemnification in an amount satisfactory to hold the Issuer and the Bank harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Security shall be borne by the Holder of the Security mutilated, destroyed, lost or stolen.

Section 4.07 Transaction Information to Issuer. The Bank will, within a reasonable time after receipt of written request from the Issuer, furnish the Issuer information as to the Securities it has paid pursuant to Section 3.01, Securities it has delivered upon the transfer or exchange of any Securities pursuant to Section 4.01, and Securities it has delivered in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities pursuant to Section 4.06.

ARTICLE FIVE THE BANK

Section 5.01 Duties of Bank. The Bank undertakes to perform the duties set forth herein and agrees to use reasonable care in the performance thereof.

Section 5.02 Reliance on Documents, Etc.

(a) The Bank may conclusively rely, as to the truth of the statements and correctness of the opinions expressed therein, on certificates or opinions furnished to the Bank.

(b) The Bank shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Bank was negligent in ascertaining the pertinent facts.

(c) No provisions of this Agreement shall require the Bank to expend or risk its own funds or otherwise incur any financial liability for performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity satisfactory to it against such risks or liability is not assured to it.

(d) The Bank may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction,

consent, order, bond, note, security or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. Without limiting the generality of the foregoing statement, the Bank need not examine the ownership of any Securities, but is protected in acting upon receipt of Securities containing an endorsement or instruction of transfer or power of transfer which appears on its face to be signed by the Holder or an agent of the Holder. The Bank shall not be bound to make any investigation into the facts or matters stated in a resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document supplied by the Issuer.

(e) The Bank may consult with counsel, and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection with respect to any action taken, suffered, or omitted by it hereunder in good faith and in reliance thereon.

(f) The Bank may exercise any of the powers hereunder and perform any duties hereunder either directly or by or through agents or attorneys of the Bank.

(g) The Bank is also authorized to transfer funds relating to the closing and initial delivery of the Securities in the manner disclosed in the closing memorandum or letter as prepared by the Issuer, the Financial Advisor or other agent. The Bank may act on a facsimile or e-mail transmission of the closing memorandum or letter acknowledged by the Issuer, the Issuer's financial advisor or other agent as the final closing memorandum or letter. The Bank shall not be liable for any losses, costs or expenses arising directly or indirectly from the Bank's reliance upon and compliance with such instructions.

Section 5.03 Recitals of Issuer. The recitals contained herein with respect to the Issuer and in the Securities shall be taken as the statements of the Issuer, and the Bank assumes no responsibility for their correctness.

The Bank shall in no event be liable to the Issuer, any Holder or Holders of any Security, or any other Person for any amount due on any Security from its own funds.

Section 5.04 May Hold Securities. The Bank, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Issuer with the same rights it would have if it were not the Paying Agent/Registrar, or any other agent.

Section 5.05 Moneys Held by Bank - Paying Agent Account/Collateralization. A paying agent account shall at all times be kept and maintained by the Bank for the receipt, safekeeping, and disbursement of moneys received from the Issuer under this Agreement for the payment of the Securities, and money deposited to the credit of such account until paid to the Holders of the Securities shall be continuously collateralized by securities or obligations which qualify and are eligible under both the laws of the State of Texas and the laws of the United States of America to secure and be pledged as collateral for paying agent accounts to the extent such money is not insured by the Federal Deposit Insurance Corporation. Payments made from such paying agent account shall be made by check drawn on such account unless the owner of the Securities shall, at its own expense and risk, request an alternative method of payment.

Subject to the applicable unclaimed property laws of the State of Texas, any money deposited with the Bank for the payment of the principal of, premium (if any), or interest on any Security and remaining unclaimed for three years after final maturity of the Security has become

due and payable will be held by the Bank and disposed of only in accordance with Title 6 of the Texas Property Code, as amended. The Bank shall have no liability by virtue of actions taken in compliance with this provision.

The Bank is not obligated to pay interest on any money received by it under this Agreement.

This Agreement relates solely to money deposited for the purposes described herein, and the parties agree that the Bank may serve as depository for other funds of the Issuer, act as trustee under indentures authorizing other bond transactions of the Issuer, or act in any other capacity not in conflict with its duties hereunder.

Section 5.06 Indemnification. To the extent permitted by law, the Issuer agrees to indemnify the Bank for, and hold it harmless against, any loss, liability, or expense incurred without negligence or bad faith on its part, arising out of or in connection with its acceptance or administration of its duties hereunder, including the cost and expense against any claim or liability in connection with the exercise or performance of any of its powers or duties under this Agreement.

Section 5.07 Interpleader. The Issuer and the Bank agree that the Bank may seek adjudication of any adverse claim, demand, or controversy over its person as well as funds on deposit, in either a Federal or State District Court located in the state and county where the administrative office of the Issuer is located, and agree that service of process by certified or registered mail, return receipt requested, to the address referred to in Section 6.03 of this Agreement shall constitute adequate service. The Issuer and the Bank further agree that the Bank has the right to file a Bill of Interpleader in any court of competent jurisdiction in the State of Texas to determine the rights of any Person claiming any interest herein.

In the event the Bank becomes involved in litigation in connection with this Section, the Issuer, to the extent permitted by law, agrees to indemnify and save the Bank harmless from all loss, cost, damages, expenses, and attorney fees suffered or incurred by the Bank as a result. The obligations of the Bank under this Agreement shall be performable at the principal corporate office of the Bank in the City of Dallas, Texas.

Section 5.08 DTC Services. It is hereby represented and warranted that, in the event the Securities are otherwise qualified and accepted for "Depository Trust Company" services or equivalent depository trust services by other organizations, the Bank has the capability and, to the extent within its control, will comply with the "Operational Arrangements", which establishes requirements for securities to be eligible for such type depository trust services, including, but not limited to, requirements for the timeliness of payments and funds availability, transfer turnaround time, and notification of redemptions and calls.

ARTICLE SIX MISCELLANEOUS PROVISIONS

Section 6.01 Amendment. This Agreement may be amended only by an agreement in writing signed by both of the parties hereto.

Section 6.02 Assignment. This Agreement may not be assigned by either party without the prior written consent of the other.

Section 6.03 Notices. Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted hereby to be given or furnished to the Issuer or the Bank shall be mailed or delivered to the Issuer or the Bank, respectively, at the addresses shown on the signature page(s) hereof.

Section 6.04 Effect of Headings. The Article and Section headings herein are for convenience of reference only and shall not affect the construction hereof.

Section 6.05 Successors and Assigns. All covenants and agreements herein by the Issuer shall bind its successors and assigns, whether so expressed or not.

Section 6.06 Severability. In case any provision herein shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 6.07 Merger, Conversion, Consolidation, or Succession. Any corporation or association into which the Bank may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion, or consolidation to which the Bank shall be a party, or any corporation or association succeeding to all or substantially all of the corporate trust business of the Bank shall be the successor of the Bank as Paying Agent under this Agreement without the execution or filing of any paper or any further act on the part of either parties hereto.

Section 6.08 Benefits of Agreement. Nothing herein, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any benefit or any legal or equitable right, remedy, or claim hereunder.

Section 6.09 Entire Agreement. This Agreement and the Authorizing Document constitute the entire agreement between the parties hereto relative to the Bank acting as Paying Agent/Registrar and if any conflict exists between this Agreement and the Authorizing Document, the Authorizing Document shall govern.

Section 6.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

Section 6.11 Termination. This Agreement will terminate (i) on the date of final payment of the principal of and interest on the Securities to the Holders thereof or (ii) may be earlier terminated by either party upon sixty (60) days written notice; provided, however, an early termination of this Agreement by either party shall not be effective until (a) a successor Paying Agent/Registrar has been appointed by the Issuer and such appointment accepted and (b) notice has been given to the Holders of the Securities of the appointment of a successor Paying Agent/Registrar. However, if the Issuer fails to appoint a successor Paying Agent/Registrar within a reasonable time, the Bank may petition a court of competent jurisdiction within the State of Texas to appoint a successor. Furthermore, the Bank and the Issuer mutually agree that the effective date of an early termination of this Agreement shall not occur at any time which would disrupt, delay or otherwise adversely affect the payment of the Securities.

Upon an early termination of this Agreement, the Bank agrees to promptly transfer and deliver the Security Register (or a copy thereof), together with the other pertinent books and records relating to the Securities, to the successor Paying Agent/Registrar designated and appointed by the Issuer.

The provisions of Section 1.02 and of Article Five shall survive and remain in full force and effect following the termination of this Agreement.

Section 6.12 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas.

[Remainder of page left blank intentionally.]

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

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A.

By:_____

Title:_____

Attest:

Address: 2001 Bryan Street, 11th Floor
Dallas, Texas 75201

Title: _____

[signature page to Paying Agent/Registrar Agreement – signatures continue on next page]

TOWN OF FLOWER MOUND, TEXAS

By: _____
Assistant Town Manager/CFO

Address: 2121 Cross Timbers Road
Flower Mound, Texas 75028

[signature page to Paying Agent/Registrar Agreement]

ANNEX A



TOWN COUNCIL AGENDA ITEM NO. 23

REGULAR ITEM

DATE: March 21, 2016

FROM: Andy Kancel, Chief of Police

ITEM: Discuss and consider the scope and role of the Animal Services Board.

BACKGROUND INFORMATION: At the March 24, 2015 Animal Services Board work session, the board discussed areas of interest they would like to be involved in. Per Town Ordinance, Sec. 2-205 (c) –“Powers and Duties”, “The Board shall perform such other duties as prescribed by the town council by ordinance or resolution.” Several ideas were developed to be forwarded to the Town Council for consideration.

The purpose of this item is to allow the Mayor and Town Council to provide staff with direction relative to the scope and responsibilities of the Animal Services Board going forward.

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. Memo

RECOMMENDATION: This item is for discussion purposes; therefore, no formal action is required. Town Council may provide staff with direction.

MEMORANDUM

To: Wess Griffin, Police Captain

From: Christine Hastings, Animal Services Manager

Date: April 13, 2015

Re: Animal Services Board Proposed Involvement Topics to Town Council

On March 24, 2015 the Animal Services Board held a work session meeting to discuss areas of interest they would like to be involved in. Per Town Ordinance, Sec. 2-205. – Powers and Duties. (c) The Board shall perform such other duties as prescribed by the town council by ordinance or resolution. Several ideas were developed to be forwarded to the Town Council for consideration during their May 2015 Strategic Planning meeting. The Flower Mound Animal Services board would like to propose three areas of concentration to the Flower Mound Town Council for input and approval. These topics are:

- I. **Education Program:** the ASB views one of its primary roles as educating the community on issues related to animals, both wild and domestic. In order to accomplish these goals, the ASB proposes the following educational content and processes on which to present it to the community.
 - a. Education Content:
 - i. Wildlife Issues
 1. Snakes
 2. Skunks
 3. Rabies
 4. Seasonal animal issues
 - ii. Domestic Animal Issues
 1. Vaccinations
 2. FM ordinances
 3. Seasonal issues

- b. Educational Processes: The mechanisms for educating the public are listed below. We have purposely listed these education processes in order based on the amount of resources required from the Animal Services Department staff with the first item requiring the least amount of staff resource.
 - i. Town Website
 - ii. Social Media/Facebook
 - iii. Utility Bill Insert
 - iv. FM TV
 - v. Personal Appearances
 - 1. Schools
 - 2. Library
 - 3. Public events
 - 4. CAC events
- II. **Volunteer Program Upgrade Project:** Volunteers are an important resource for the efficient functioning of the Animal Services Department. Volunteers assist the Animal Services staff with a range of duties as well as provide a unique connection between Animal Services Department and the Flower Mound community. In order to assure the safety of our volunteers it is essential that they receive the proper training and orientation. The Animal Services Board proposes a redevelopment of the volunteer training and orientation program. This will include:
- a. Development of Volunteer Training and Orientation Program
 - b. Development of Volunteer Training Manual
 - c. Development of Animal Services volunteer policies and procedures
- III. **Flower Mound Dog Park:** The Animal Services Board maintains a specialized knowledge base with regard to the behavior of animals (dogs) as well as the interaction between animals and humans. Clearly, this knowledge would be a necessary component during the development of the Flower Mound Dog Park. The ASB proposes that it assists in development by providing:
- a. Education regarding animal and animal/human behavior
 - b. Assistance in developing the policies and procedures for the dog park
 - c. Marketing at local events



TOWN COUNCIL AGENDA ITEM NO. 24 REGULAR ITEM

DATE: March 21, 2016

FROM: Chuck Russell, Town Planner

ITEM: 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.*)

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

At its December 21, 2015, meeting, the Town Council moved to postpone the item to January 21, 2016, in order to allow time for the applicant to address concerns of the adjacent property owners. The item was subsequently re-noticed for the March 21, 2016 meeting.

ATTACHMENTS:

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

DRAFT MOTION: Move to approve 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.



PLANNING AND ZONING COMMISSION AGENDA ITEM NO: 4

DATE: December 14, 2015

FROM: Gina Costanza-Grant, Planner

ITEM: **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. The property is located at 6901 Hawk Road.**

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.

This application will require final action by the Town Council.

II. APPLICATION ANALYSIS

The purpose of this application is to request approval of a Specific Use Permit (SUP-438) to construct a 300-foot-tall communication tower on a 4.38-acre tract of land currently zoned Interim Holding District (IH). Section 98-252 of the Land Development Regulations requires Town Council approval of an SUP to construct a Commercial Communication Tower within the IH district.

The concept plan depicts the 300-foot-tall self-support tower, associated equipment cabinet, and an 8-foot masonry enclosure to be constructed on a 0.129-acre portion of the 4.38-acre tract. The tract is currently developed with a single family structure and two related accessory buildings. Access to the lot will be from Hawk Road. A permanent access easement will be provided from Hawk Road to the tower enclosure. No parking spaces are required. Three trees are proposed to be removed to allow construction for the masonry enclosure. A tree permit is not required since the tract is a lot of record and is not required to go through the platting process. Overall, the proposed site plan meets the minimum requirements of the existing zoning district.

There is an existing 245-foot-tall self-support communication tower, as well as a 144.5-foot-tall monopole communication tower on the property directly to the east of the subject tract. The applicant has operated these towers for many years and they provide service to multiple providers. According to the applicant,

if the SUP for the new tower is approved, the two towers on the adjacent tract will be decommissioned and removed.

Section 98-977 of the Code of Ordinances contains additional provisions for the construction of commercial communication towers (see below). All 13 requirements either have been met or will be met through the permitting processes of the Town, the Federal Communications Commission (FCC), the Federal Aviation Administration (FAA), and any other governing agencies.

Sec. 98-977. - Communication tower, commercial.

A commercial communication tower shall comply with the following standards:

- (1) Height. The height of commercial communication towers shall be measured from the average grade of the ground adjacent to the base to the highest point on the structure. If located on a building, the height of the tower shall include the height of the building. Commercial communication towers shall not be subject to the height regulations of the district in which they are located, provided that they shall not encroach into or through any established public or private airport approach path as established by the Federal Aviation Administration.
- (2) Setbacks. The principal support structure of all commercial communication towers shall conform to the minimum setback standards of the district in which the use is located. In addition, the following setback standards shall apply to all commercial communication towers:
 - a. Commercial communication towers shall be located so as to provide a minimum distance from the tower to all property lines equal to 20 percent of the height of the tower.
 - b. Commercial communication towers shall be set back a minimum of 50 feet from any existing or planned street right-of-way line.
 - c. Commercial communication towers shall be set back a minimum of 50 feet from any property line adjacent to a residential district.
- (3) Residential districts. When a commercial communication tower is proposed in or adjacent to a residential district, it shall be demonstrated that existing or approved commercial communication towers within the proposed service area cannot accommodate the equipment planned to be located on the proposed commercial communications tower. Factors to be considered in evaluating the practicality of sitting a tower would include structural capacity, RF interference, geographic service area requirements, and cost (if fees and costs for sharing would exceed the cost of the new tower).
- (4) Anchor location. Commercial communication tower peripheral supports and guy anchors may be located within required yard setbacks, provided that they shall be located entirely within the boundaries of the property on which the tower is located and shall be located no closer than five feet from any property line and no closer than 20 feet from a property line if the tower is adjacent to a single-family residential district or residential uses. All commercial communication tower supports and peripheral anchors shall be set back a minimum of 50 feet from any existing or planned street right-of-way line.

- (5) Location of accessory structures. All structures accessory to a commercial communication tower, other than peripheral guy anchors, shall conform to the setback standards for the district in which the use is located.
- (6) Fencing. A solid fence or wall of brick, stone or approved masonry construction not less than eight feet in height from finished grade shall be constructed around each commercial communication tower and around each guy anchor, if used. Access to the tower shall be through a locked gate. Barbed wire shall be used along the top of the fence or wall if it is necessary to preclude unauthorized access to the tower.
- (7) High voltage signs. If high voltage is necessary for the operation of the commercial communication tower and, it is present in a ground grid or in the tower, signs located every 20 feet and attached to the fence or wall shall display in large bold letters the following: "HIGH VOLTAGE - DANGER."
- (8) Landscaping and screening. Commercial communication towers shall comply with the screening requirements of section 82-301 of this Code, residential compatibility standards, subject to the following provisions:
 - a. The landscape screen or wall shall be placed around the perimeter of the tower and any accessory structures, including guy anchors, provided that the screening requirement shall be waived when the base of the tower is not visible from adjacent lots or rights-of-way. Landscaping shall be placed on the outside of fences.
 - b. The requirements of section 82-303 of this Code, compatibility setback, shall not apply to commercial communication towers.
- (9) Additional uses permitted on lot. Commercial communication towers may be located on lots containing another principal use, and may occupy a leased parcel on a lot meeting the minimum lot size requirement of the district in which it is located. Towers and their associated equipment shall be separated from other structures on the lot by a minimum distance of 50 feet.
- (10) Aircraft hazard. Commercial communication towers shall not encroach into or through any established public or private airport approach path as established by the Federal Aviation Administration.
- (11) Shared use. To encourage shared use, all applicants for commercial communication towers shall issue and advertise for a two-week period a request for information (RFI) to obtain information from potential lessors.
- (12) Removal of obsolete facilities. All obsolete or unused commercial communication towers shall be removed within 12 months of cessation of use.
- (13) Radiation standards. A commercial communication tower shall comply with current Federal Communications Commission standards for nonionizing electromagnetic radiation (NIER).

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 Specific Use Permit requests. At the time this

report was written, staff had received two letters in opposition, one letter in support, and one letter of consent with several signatures in reference to this project.

IV. ATTACHMENTS

A. Background Information

1. Vicinity Map
2. Letter of Intent

B. Application Details

1. SUP Package

C. Correspondence

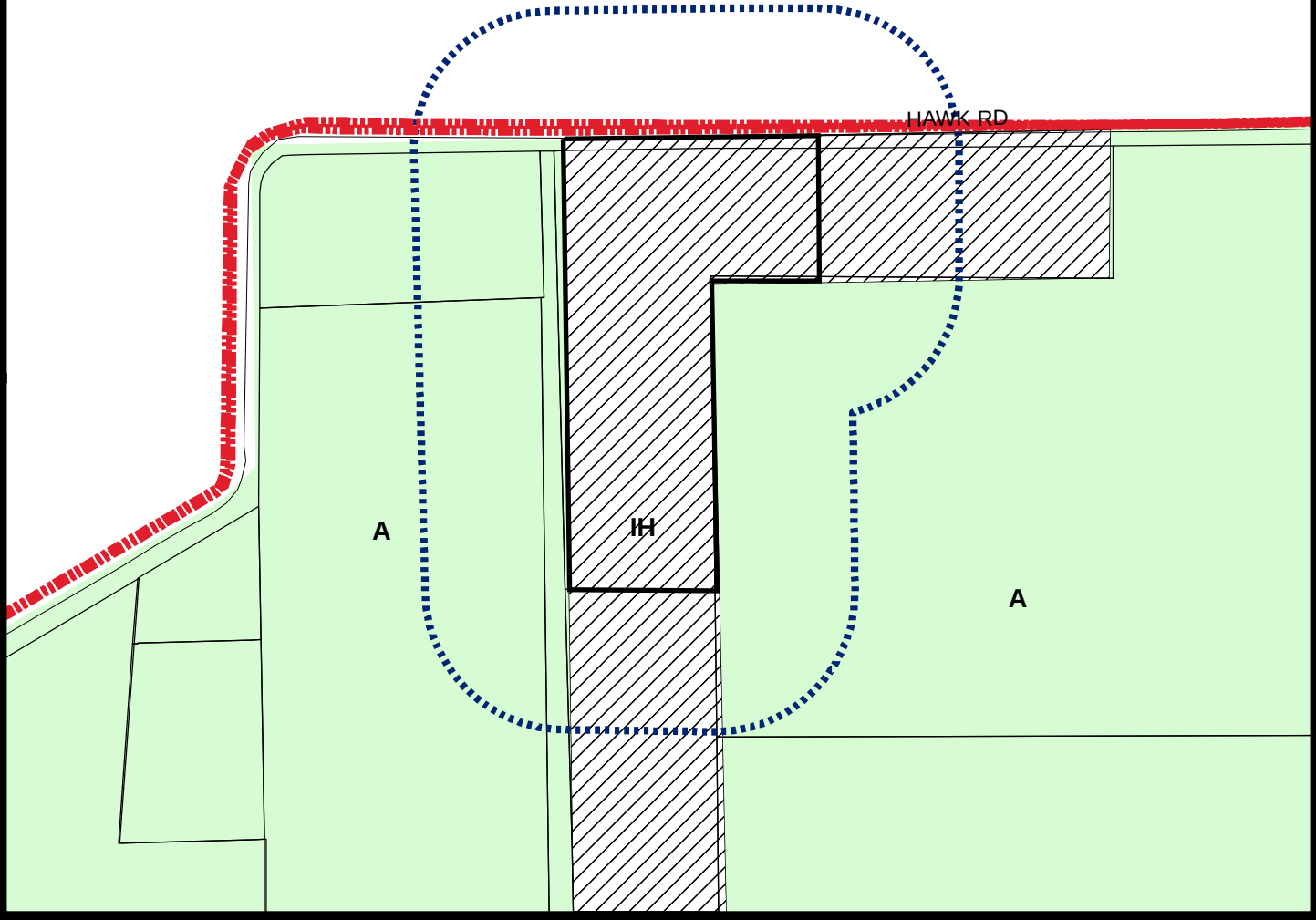
1. Correspondence in Support
2. Correspondence in Opposition

Vicinity Map

Reference Project: SUP15-0009

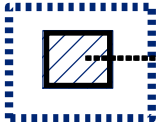


Bartonville ETJ



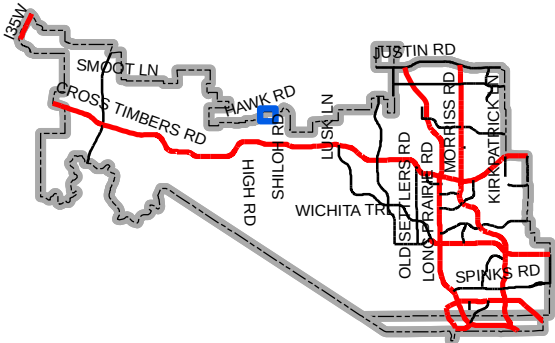
LEGEND

- Agriculture
- Interim Holding



Subject Property

200 ft Notification Buffer around Property



Map Location

Crown Castle

5350 North 48th Street, Suite 305

Chandler, AZ 85226



OCTOBER 9, 2015

TOWN OF FLOWER MOUND - PLANNING SERVICES
1001 CROSS TIMBERS RD, STE 2330
FLOWER MOUND, TX 75028

RE: SUP 15-0009/SUP-438

DEAR PLANNING SERVICES COMMITTEE,

CROWN CASTLE APPRECIATES YOUR TIME AND EFFORT. THIS LETTER SERVES TO PROVIDE A GENERAL OVERVIEW OF THE PROJECT, AND A BRIEF EXPLANATION OF WHY CROWN CASTLE IS PROPOSING THIS PROJECT.

LETTER OF INTENT

PENDING CONTRACTUAL OBLIGATIONS, THE PROJECT CONSISTS OF BUILDING A NEW COMMUNICATIONS TOWER AT 6901 HAWK ROAD AND CONSOLIDATING THE COMMUNICATIONS EQUIPMENT FROM THE TWO CURRENT COMMUNICATIONS TOWERS LOCATED AT 6920 HAWK ROAD ONTO THE NEW TOWER, AS WELL AS, REMOVING AND DECOMMISSIONING THE EXISTING EQUIPMENT. THE PROPOSED HEIGHT OF THE NEW TOWER IS 300 FEET. THE GROUND SPACE USED WILL INCLUDE A 75 FOOT BY 75 FOOT FENCED IN AREA. THE FACILITY WILL BE FENCED ACCORDING TO §98-977(6) WITH AN EIGHT (8) FOOT SOLID WALL.

THE EXISTING COMMUNICATION TOWERS AND FACILITY WILL BE REMOVED COMPLETELY WITHIN ONE (1) YEAR AFTER CESSATION OF USE ACCORDING TO § 98-977(12).

REASON FOR MOVING TOWER

CROWN CASTLE, AND ITS 6 TENANTS/CUSTOMERS HAVE BEEN UNABLE TO PERFORM BUSINESS AS USUAL DUE TO CHALLENGES WITH THE CURRENT LAND OWNER, DESPITE YEARS OF NEGOTIATIONS AND ATTEMPTS TO PARTNER TOGETHER. AS A RESULT, NONE OF THE EQUIPMENT HAS BEEN UPDATED, REPLACED, OR EVEN MAINTAINED FOR OVER 2 YEARS. CUSTOMERS NEED TO UPGRADE THEIR EQUIPMENT IN ORDER TO SUPPORT THEIR NETWORK, THIS COMMUNITY, AND AREA APPROPRIATELY.

CROWN CASTLE LOOKS FORWARD TO WORKING WITH THE TOWN OF FLOWER MOUND AND APPRECIATES YOUR TIME,

GARY EDENBURN
SERVICES REAL ESTATE SPECIALIST
GARY.EDENBURN@CROWNCastle.COM

The Foundation for a Wireless World.

CrownCastle.com

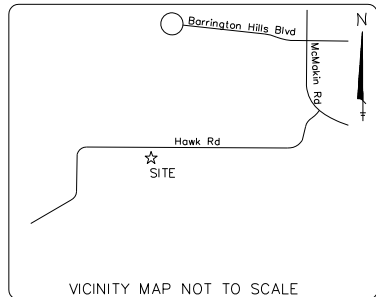


NOTES:

Page 309 of 535

1. THE PURPOSE OF THIS CONCEPTUAL SITEPLAN IS TO SHOW THE OLD CROWN CASTLE SITE BU# 876493 TO BE REPLACED WITH THE PROPOSED CROWN CASTLE SITE BU# 820782 WITH A PROPOSED 300' HIGH SELF SUPPORT TOWER TO REPLACE EXISTING TOWER. THE TOWER WILL BE USED FOR CARRIER RELOCATION AT DESIGNATED RAD CENTERS.

2. THE PROPOSED 75'x75' COMPOUND CELL SITE MAY BE BUILT-UP BY MIN. 12" ABOVE EXISTING GRADE FOR DRAINAGE DIVERSION AROUND THE PERIMETER OF THE COMPOUND. THE INSIDE OF THE COMPOUND AND ACCESS DRIVEWAY FINISHED GRADE MAY BE A PERVIOUS CRUSHED ROCK BASE.



AREA TABLE	SQUARE FEET	ACREAGE
TOWER EASEMENT	5,625.00	0.129
A/U EASEMENT	1,692.35	0.039

LEGEND

- : SET 1/2" IRON ROD.
- : FOUND 1/2" IRON ROD.
- (---) : RECORD DESCRIPTION DATA.
- P.O.B. : POINT OF BEGINNING.
- P.O.C. : POINT OF COMMENCEMENT.
- - - : FENCE AS NOTED.
- : OVER HEAD UTILITY LINES.
- : WOOD UTILITY POLE.
- : TELCO PEDESTAL.
- R.O.W. : RIGHT-OF-WAY.
- B/W : BARBED WIRE.
- A/U : ACCESS & UTILITY
- (E) : EXISTING.
- D.R.D.C.T. : DEED RECORDS DENTON COUNTY TEXAS

TOWER EASEMENT		
Line #	Direction	Length
L1	N 42°20'00" E	30.59'
L2	N 88°52'29" W	75.00'
L3	N 01°07'31" E	75.00'
L4	S 88°52'29" E	75.00'
L5	S 01°07'31" W	75.00'

C/U EASEMENT		
Line #	Direction	Length
L1	N 42°20'00" E	30.59'
L2	N 88°52'29" W	75.00'
L3	N 01°07'31" E	75.00'
L6	S 88°52'29" E	32.90'
L7	N 06°58'01" E	84.59'
L8	S 89°00'26" E	20.11'
L9	S 06°58'01" W	84.64'
L10	N 88°52'29" W	20.10'

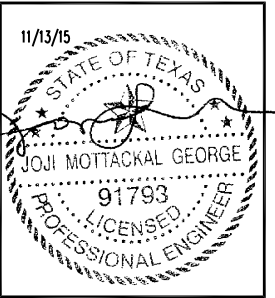
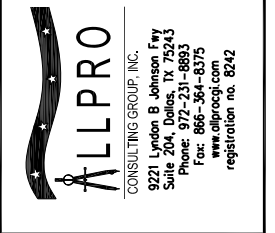
ACGI NO: 15-5291

DRAWN BY: CG

CHECKED BY: JG

C 10/06/15	FOR REVIEW
D 10/09/15	FOR REVIEW
E 10/29/15	REV. ZONING EXHIBIT
F 11/13/15	REV. ZONING EXHIBIT

PERM. ACCESS EASEMENT		
Line #	Direction	Length
L1	N 42°20'00" E	30.59'
L11	N 88°52'29" W	55.00'
L12	S 01°07'31" W	61.14'
L13	S 69°17'26" W	69.91'
L14	N 75°19'41" W	77.94'
L15	N 39°01'26" W	51.90'
L16	N 09°05'42" W	62.13'
L17	N 01°07'31" E	126.79'
L18	S 88°52'29" E	20.00'
L19	S 01°07'31" W	125.00'
L20	S 09°05'42" E	55.00'
L21	S 39°01'26" E	40.00'
L22	S 75°19'41" E	65.00'
L23	N 69°17'26" E	50.00'
L24	N 01°07'31" E	47.61'
L25	S 88°52'29" E	20.00'



CROWN BU# 820782
WYNEWOOD
PARK/MUSTANG STADIUM
CONCEPTUAL SITE PLAN
6901 HAWK ROAD
FLOWER MOUND, TX 75022
DENTON COUNTY

SHEET NUMBER

1 of 4

PROJECT INFORMATION

LAND OWNER

OWNER: LEE D. HARRIS
6901 HAWK RD.
FLOWER MOUND, TX 75022
PHONE: 469-371-6487

SITE INFORMATION

JURISDICTION: FLOWER MOUND
OCCUPANCY: UNMANNED
ZONING: AGRICULTURAL

TOWER OWNER

CROWN CASTLE
600 E. JOHN CARPENTER FWY
IRVING, TX 75062
CONTACT: MARK PENNELL
PHONE: 512-383-0325

CONSULTANT ENGINEERING

ALLPRO CONSULTING GROUP, INC.
9221 LYNDON B. JOHNSON FREEWAY
SUITE 204
DALLAS, TX 75243
OFFICE: 972-231-8893
FAX: 866-364-8375
CONTACT: JOJI M. GEORGE P.E.

SURVEY

WIMBERLEY SURVEYING
PROFESSIONALS
CONTACT: RON WIMBERLEY, R.P.L.S.
PHONE: 903-450-8100

CITY APPROVAL STAMPS

ZONING CASE NUMBER:

SUP15-0009

CONCEPTUAL SITEPLAN

Crown BU# 820782
Wynewood Park - Mustang Stadium
TOWER DROP & SWAP

LEGAL DESCRIPTION

PARENT TRACT

owner: Lee D. Harris
called 4.38 acres
John West Survey, Abstract No. 1414
Denton Cad APN: 37941
deed ref.: vol. 4365, pg. 701
D.R.D.C.T.

FOR 24" X 36" PLOT - 1" = 20' 0"
FOR 11" X 17" PLOT - 1" = 40'

SITE PLAN



Hawk Rd – looking East
BEFORE

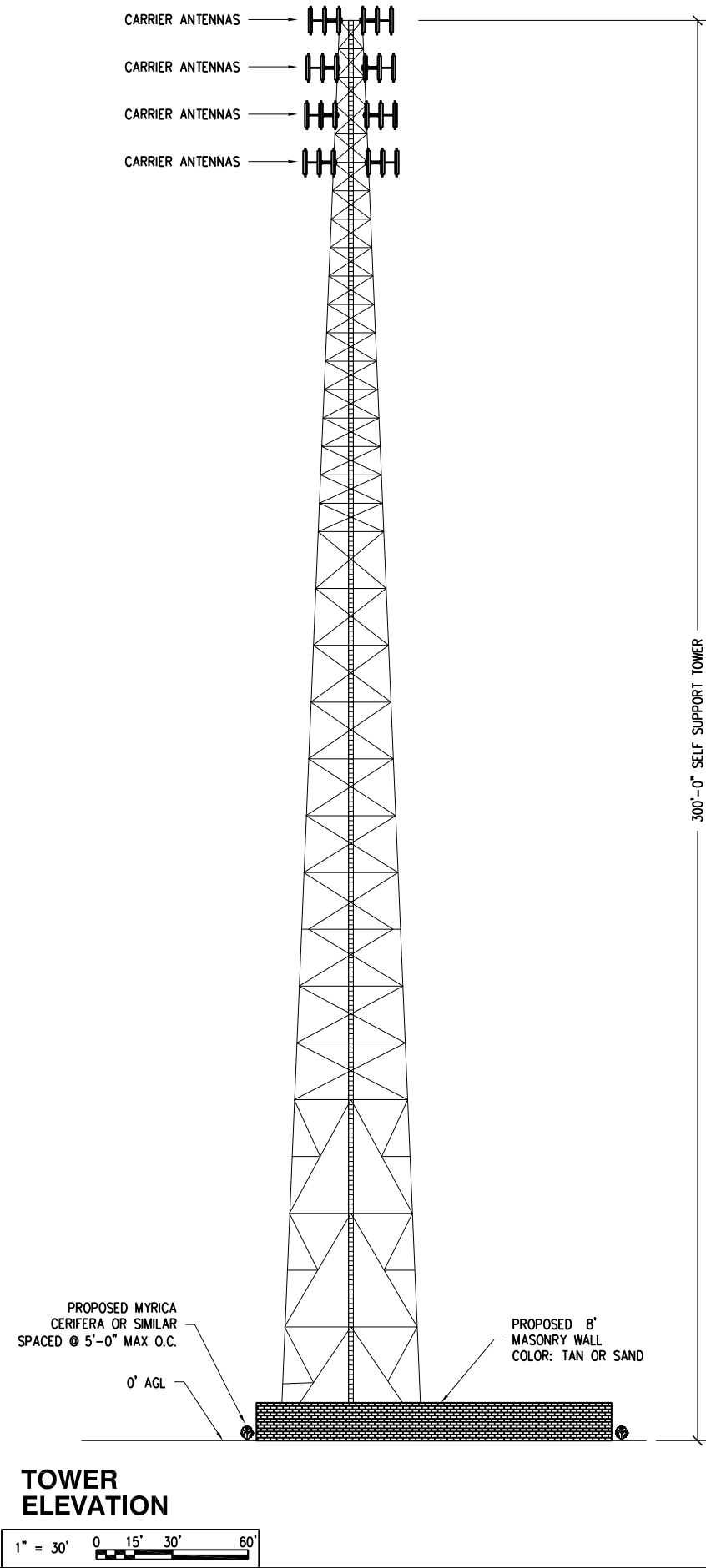
Wynewood Park/Mustang Stadium
Crown Castle BU# 820782
6901 Hawk Rd, Flower Mound
Attachment B(1): Site Plan Package

EXISTING 245' SELF SUPPORT TOWER
CROWN SITE BU# 876493
TO BE REMOVED AND REPLACED
WITH NEW 300' SELF SUPPORT TOWER
NEW CROWN SITE BU# 820782

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CONSULTING GROUP, INC.
CIVIL & STRUCTURAL CONSULTANTS
972-231-8893
www.allprocgi.com
ACGI JOB# 15-2572



CITY APPROVAL STAMPS

ZONING CASE NUMBER:
SUP15-0009

CONCEPTUAL SITEPLAN
Crown BU# 820782
Wynewood Park - Mustang Stadium
TOWER DROP & SWAP

LEGAL DESCRIPTION
PARENT TRACT
owner: Lee D. Harris
called 4.38 acres
John West Survey, Abstract No. 1414
Denton Cad APN: 37941
deed ref.: vol. 4365, pg. 701
D.R.D.C.T.



ACGI NO: 15-5291

DRAWN BY: CG

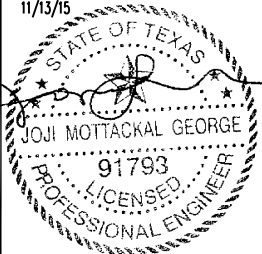
CHECKED BY: JG

C 10/06/15	FOR REVIEW
D 10/09/15	FOR REVIEW
E 10/29/15	REV. ZONING EXHIBIT
F 11/13/15	REV. ZONING EXHIBIT



ALLPRO
CONSULTING GROUP, INC.
9221 Lyndon B. Johnson Fwy
Suite 204 Dallas, TX 75243
Phone: 972-231-8893
Fax: 866-364-8375
www.allprocg.com
registration no. 8242

11/13/15

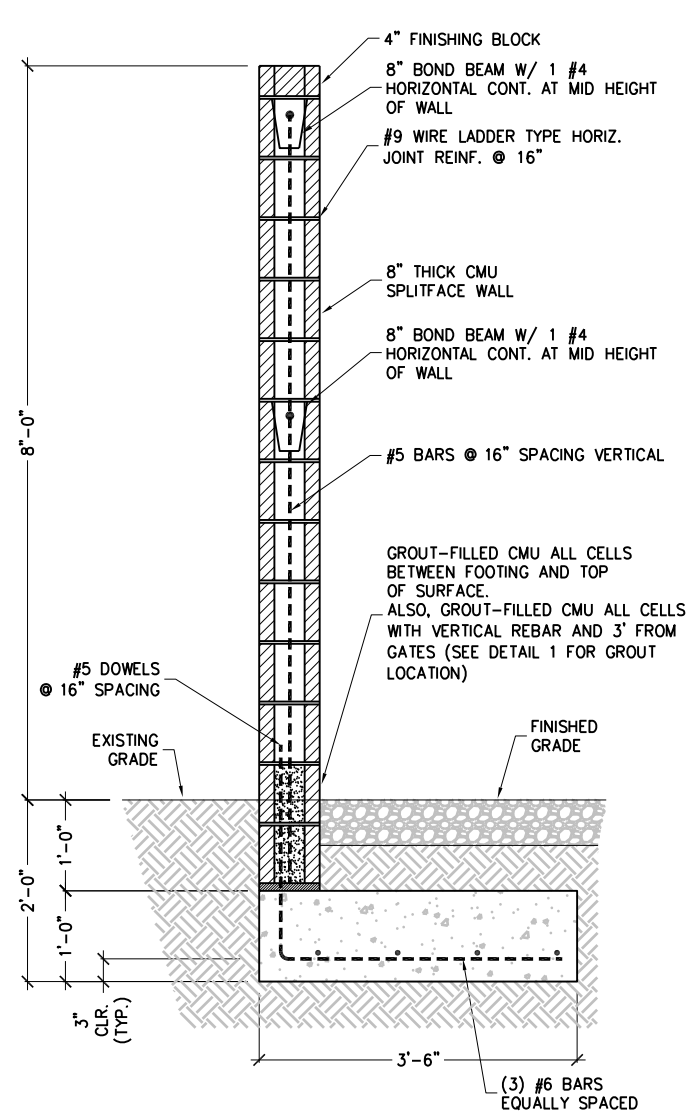


CROWN BU# 820782
WYNEWOOD
PARK/MUSTANG STADIUM
CONCEPTUAL SITE PLAN

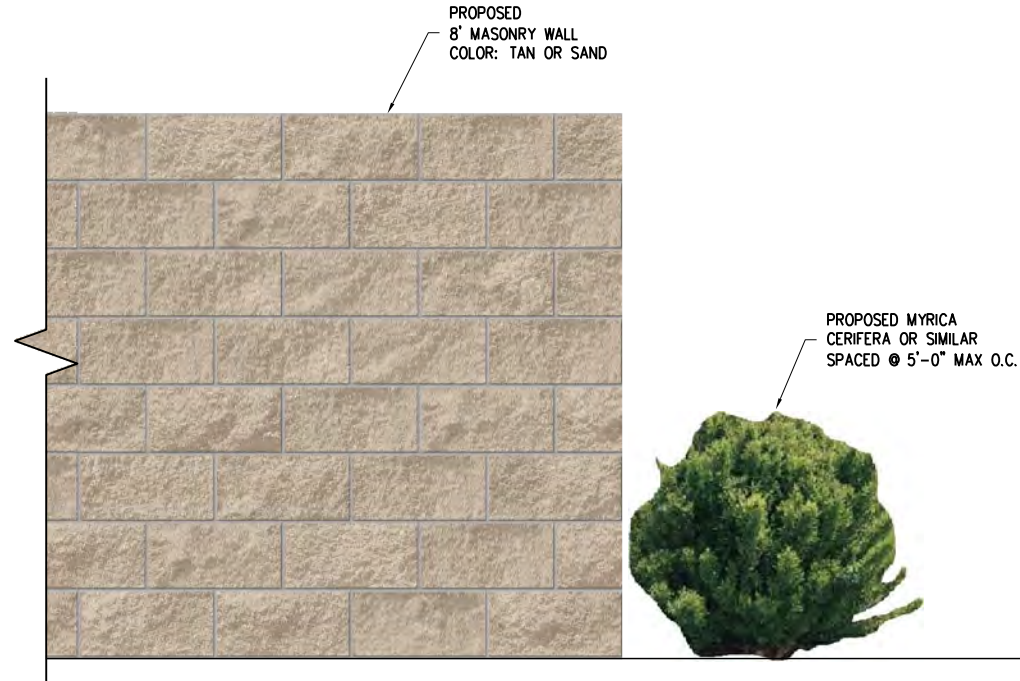
6901 HAWK ROAD
FLOWER MOUND, TX 75022
DENTON COUNTY

SHEET NUMBER

2 of 4

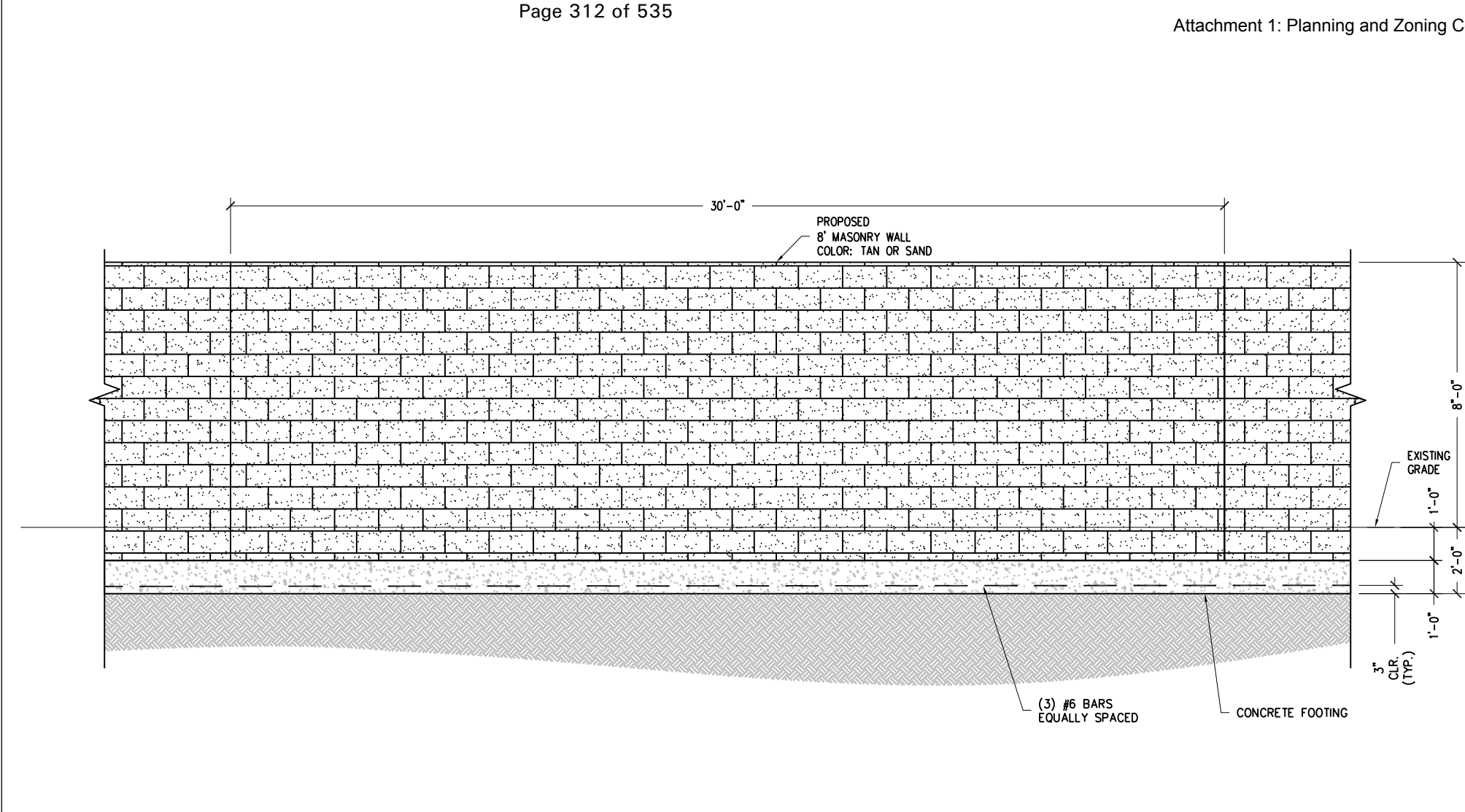


1" = 1' 0" 6" 1' MASONRY WALL SECTION

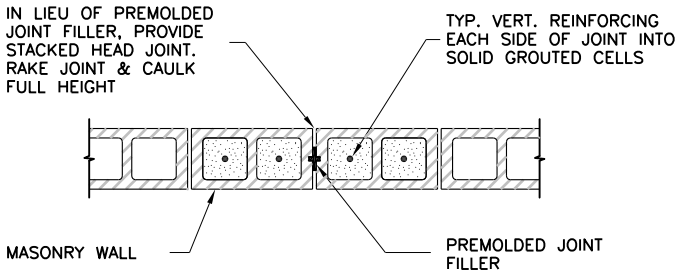


MASONRY WALL PHOTOSTIMULATION

3/4" = 1' 0" 6" 1' 2'



1/2" = 1' 0" 1' 2' 4' ELEVATION - MASONRY WALL



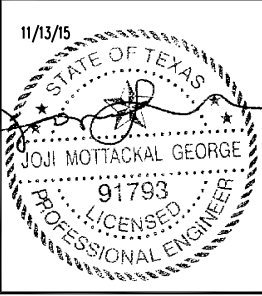
- NOTES:
- ALL HORIZONTAL JOINT REINFORCING DISCONTINUES AT JOINT. ALL BOND BEAM REINFORCING CONTINUES THRU JOINT.
 - SEE ARCHITECTURAL DRAWINGS FOR DRAWINGS JOINTS. LOCATE AT 30'-0" MAXIMUM BUT NOT LESS THAN 2'-0" FROM BEARING PLATE OR JAMB OF AN OPENING. SUBMIT FOR REVIEW PRIOR TO CONSTRUCTION.

1" = 1' 0" 6" 1' MASONRY CONTROL JOINT DETAIL



ACGI NO:	15-5291
DRAWN BY:	CG
CHECKED BY:	JG
C 10/06/15 FOR REVIEW	
D 10/09/15 FOR REVIEW	
E 10/29/15 REV. ZONING EXHIBIT	
F 11/13/15 REV. ZONING EXHIBIT	

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CITY APPROVAL STAMPS

ZONING CASE NUMBER:
SUP15-0009

CONCEPTUAL SITEPLAN
Crown BU# 820782
Wynewood Park - Mustang Stadium
TOWER DROP & SWAP

LEGAL DESCRIPTION
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CROWN BU# 820782
WYNEWOOD
PARK/MUSTANG STADIUM
CONCEPTUAL SITE PLAN
6901 HAWK ROAD
FLOWER MOUND, TX 75022
DENTON COUNTY

SHEET NUMBER
3 of 4

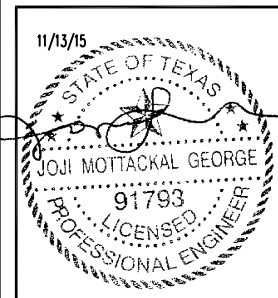
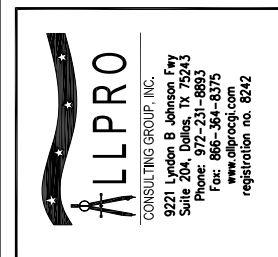


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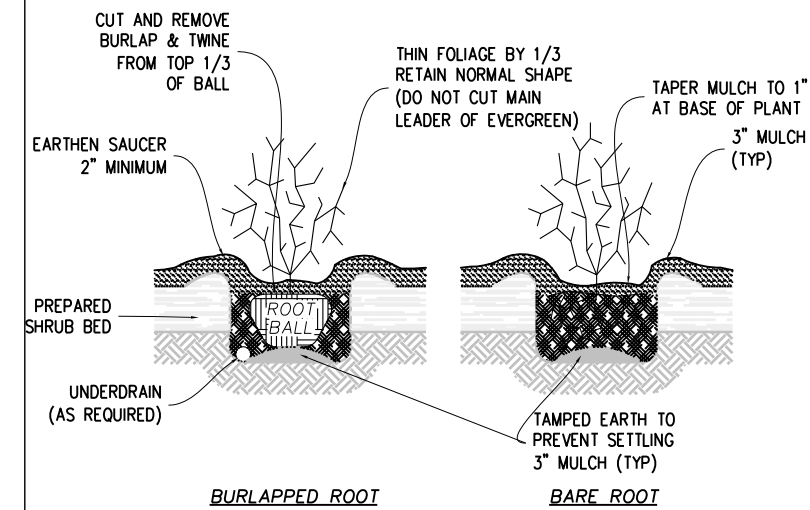
C 10/06/15	FOR REVIEW
D 10/09/15	FOR REVIEW
E 10/29/15	REV. ZONING EXHIBIT
F 11/13/15	REV. ZONING EXHIBIT



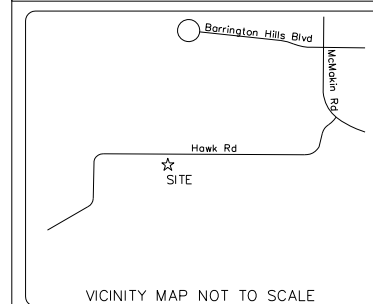
CROWN BU# 820782
WYNEWOOD
PARK/MUSTANG STADIUM
CONCEPTUAL SITE PLAN
6901 HAWK ROAD
FLOWER MOUND, TX 75022
DENTON COUNTY

SHEET NUMBER

4 of 4



LANDSCAPE DETAIL



PROJECT INFORMATION

LAND OWNER

OWNER: LEE D. HARRIS
6901 HAWK RD.
FLOWER MOUND, TX 75022
PHONE: 469-371-6487

SITE INFORMATION

JURISDICTION: FLOWER MOUND
OCCUPANCY: UNMANNED
ZONING: AGRICULTURAL

TOWER OWNER

CROWN CASTLE
600 E. JOHN CARPENTER FWY
IRVING, TX 75062
CONTACT: MARK PENNELL
PHONE: 512-383-0325

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SURVEY

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PROFESSIONALS
CONTACT: RON WIMBERLEY, R.P.L.S.
PHONE: 903-450-8100

CITY APPROVAL STAMPS

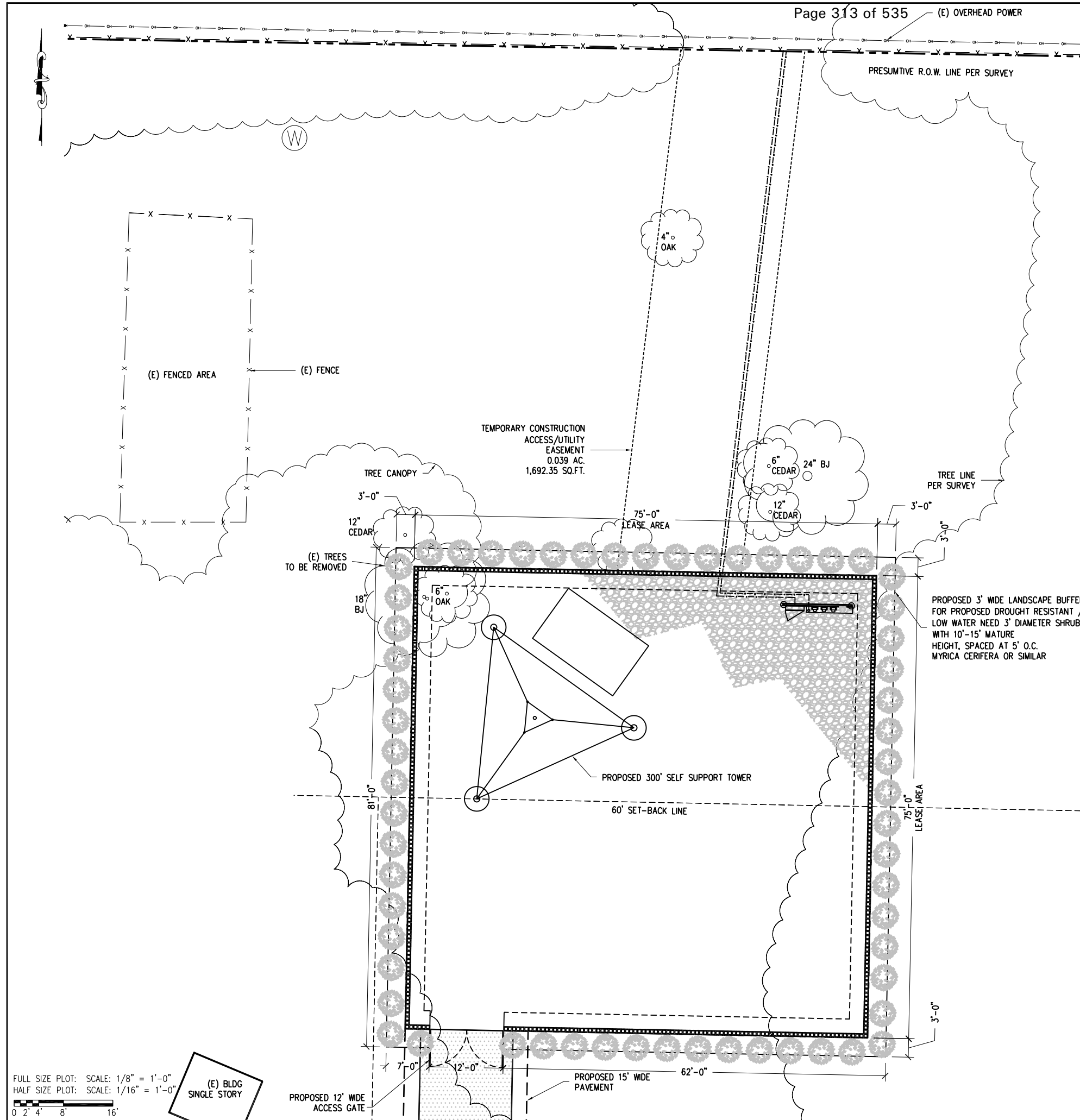
ZONING CASE NUMBER:
SUP15-0009

LANDSCAPE PLAN

Crown BU# 820782
Wynewood Park - Mustang Stadium
TOWER DROP & SWAP

LEGAL DESCRIPTION PARENT TRACT

owner: Lee D. Harris
called 4.38 acres
John West Survey, Abstract No. 1414
Denton Cad APN: 37941
deed ref.: vol. 4365, pg. 701
D.R.D.C.T.



FULL SIZE PLOT: SCALE: 1/8" = 1'-0"
HALF SIZE PLOT: SCALE: 1/16" = 1'-0"
0 2' 4' 8' 16'

(E) BLDG
SINGLE STORY

Hawk Rd – looking East
AFTER

Page 314 of 535

Wynewood Park/Mustang Stadium
New Crown Planning and Consulting Group, Inc. Review

Crown Castle BU# 820782

6901 Hawk Rd, Flower Mound

Attachment B(1): Site Plan Package



NEW 300' SELF SUPPORT TOWER
NEW CROWN SITE BU# 820782



Hawk Rd – looking West
BEFORE

Crown Castle BU# 820782

6901 Hawk Rd, Flower Mound

Attachment B(1): Site Plan Package



Hawk Rd – looking West
AFTER

Page 316 of 535

Wynewood Park/Mustang Stadium
Approved: Planning and Zoning Commission Staff Report

Crown Castle BU# 820782

6901 Hawk Rd, Flower Mound

Attachment B(1): Site Plan Package

Hawk Rd – looking towards the New lease area BEFORE

Page 317 of 535

7162 Hawk Road

Attachment 1: Planning and Zoning Commission Staff Report

Exit Street View

Attachment B(1): Site Plan Package

Hawk Rd – looking towards the New lease area
AFTER

Attachment B(1): Site Plan Package

NEW 300' HIGH
SELF SUPPORT TOWER

NEW 75'x75' COMPOUND
WITH A CMU BLOCK WALL

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ACGI JOB# 15-2572

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Google earth

Town of Flower Mound Texas
1001 Cross Timbers Rd, Ste 2330
Flower Mound, TX 75028

Crown Castle
5350 N 48th St, Ste 305
Chandler, AZ 85226

LETTER OF SUPPORT

RE: Specific Use Permit for cellular communications tower at 6901 Hawk Rd

This letter serves to show my/our support for the construction of a new wireless / cellular communication tower at 6091 Hawk Road.

Printed Name(s):

Charlie Cummings

Signed Name(s):

Charlie Cummings

Address:

7007 Hawk Rd

Date:

5/28/15

*RE: this letter of support is for sale to
Benefit of Lee Harris only.*

*Charlie Cummings
Managing member
Bottle*

To: Flower Mound Planning Department
and Flower Mound Town Council

Signed Letter of Consent

RE: SUP 15-0009. New construction of cell
tower located at 6901 Hawk Road Flower
Mound, Texas

This letter is a document stating that the undersigned residents residing on Hawk Road Flower Mound, Texas are in agreement with the new cell tower construction taking place at 6901 Hawk Road Flower Mound, Texas. The new cell tower, once construction is completed, and is fully operational, will take the place of the existing tower.

Name

Address

Date

1. C. M. Cummings 7007 Hawk Rd. 12/3/15

2. Leetie Cummings Beley 7057 Hawk Rd. 12/4/15

3. Maria N Wallace 6955 HAWK Rd 12/4/15

4. Ind Hyls 7080 Hawk Rd 12/5/15

5.

Angela J. 7080 Hawk Rd 12/05/15

6.

Jonah L. Doney 6990 Hawk Rd.
Flower Mound TX 12-6-15

7.

Julie Doney 6990 Hawk Rd
Flower Mound, TX 75022 12-6-15

8.

Paul W. 6986 Hawk Rd
Flower Mound TX 75022 12-10-15

9.

10.

11.

THE LAW OFFICE OF RUTH BROCK

May 14, 2015

RUTH E. BROCK

*Board Certified Residential
& Commercial Real Estate*

*Member of the College
of the State Bar of Texas*

**VIA CERTIFIED MAIL #7009-0080-0001-6219-2410
RETURN RECEIPT REQUESTED**

Town of Flower Mound
1001 Cross Timbers Rd., Suite 2330
Flower Mound, TX 75028

RE: LETTER IN OPPOSITION

Specific Use Permit for cellular communications tower at 6901 Hawk Rd

Dear Sir/Madam:

My husband and I live at 6921 Hawk Road, Flower Mound Texas, adjacent to the property for which a Specific Use Permit has apparently been filed for a cellular communications tower. Please consider this letter formal objection to the application for a specific use permit at this location. We have lived at our property for over 35 years. At the time the present cell tower (near the 6901 Hawk Rd) was constructed, our property and neighboring properties were not in an incorporated area, and we were not provided with the opportunity to have a voice in whether that tower was constructed.

However, our property and the subject property (6901 Hawk Rd.) are now under the authority of the Town of Flower Mound, and we look to the Town to protect our property against further reduction in both monetary and aesthetic value.

By way of background, there are at least 10 beautiful homes on Hawk Road near the proposed location, in addition to our home which is behind the property in question. While some of these homes are not within the boundaries of the Town, they evidence the residential character of the Hawk Road neighborhood, and indicate that the area has changed since the construction of the existing cell tower. It is my request that the Town recognize the residential character of the neighborhood and not force this neighborhood to bear an additional cell tower.

4880 LONG PRAIRIE ROAD
SUITE 110
FLOWER MOUND, TEXAS 75028
817.352.2400



Town of Flower Mound

May 13, 2015

Page | 2

Please advise me of all hearings so I can voice our opposition personally.

Sincerely,



Ruth E. Brock

REB/ct

cc: (via certified mail #7009-0080-0001-6219-2427)

Lisa Berneking, Crown Castle

(via regular mail)

Robert G. Rockett

6980 Hawk Road

Flower Mound, TX 75022

Ted and Angie Lyles

7080 Hawk Road

Flower Mound, TX 75022

Curtis and Linda Jordening

7000 Hawk Road

Flower Mound, TX 75022

Robert H. McMillan

6970 Hawk Road

Flower Mound, TX 75022

Mark Suter and Marisa Suter

6970 Hawk Road

Flower Mound, TX 75022

Jonathan and Julie Kae Torrey

6990 Hawk Road

Flower Mound, TX 75022

Richard and Roxanne Mazurkiewicz

1102 N. Bell Ave., Apt. 108

Denton, TX 76029

Town of Flower Mound

May 13, 2015

Page | 3

Terry and Maria Wallace
6955 Hawk Road
Flower Mound, TX 75022

Nancy and Larry Perry
7510 Hawk Road
Double Oak, TX 75022-6262

Graham and Amanda Gochneaur
8560 Canyon Crossing
Argyle, TX 76226-5531

JUN 30 2015

Planning and Zoning Commission
Town of Flower Mound
1001 Cross Timbers Rd. Suite 2330
Flower Mound, TX 75028

June 9, 2015

RE: Specific Use permit contemplated by Crown Castle at 6901 Hawk Road, Flower Mound, TX

Dear Commission Members,

I respectfully request that you deny issuing the Specific Use Permit to Crown Castle if and when they petition your committee for such permit.

Their May 7, 2015 letter to me said they would be seeking this permit from you to relocate an existing cell tower and to consolidate equipment from their current towers located at 6920 Hawk Road just a few hundred feet from the proposed location at 6901 Hawk Road.

During discussions with Crown Castle I did not hear that there is any strategic advantage to the proposed location over the existing location. Indeed it may be a less favorable geographic location because it is downhill of the current location and the new tower may need to be made taller than the current one because it sits on a lower grade. And I feel the new location is very much less appealing in aesthetics than the current tower, and will have a negative impact of some of the property values in the small neighborhood.

It is obvious they only want to relocate because they are either unable or unwilling to work under the contract they currently have in place for the existing tower and location. Instead they are using their large pocket book to try to manage a situation that they should be using management skills to control instead. And in the process they are creating a divide between members of our small community which is a very sad commentary in regard to this large company.

While our neighborhood is not enthralled with the current tower either, it is there and there is nothing we can do about that now. But we are used to it in its current location, and its location is more favorable aesthetically for more members of the community than is the proposed location.

Again I request that you deny Crown Castle the Specific Use Permit for 6901 Hawk Road and let them work within the environment they helped create at the current location at 6920 Hawk Road.

Respectfully,

Curtis D. Jordening
7000 Hawk Road,
Flower Mound, TX 75022

CC: Town Council of the Town of Flower Mound, TX
CC: Ruth Brock, 6921 Hawk Road, Flower Mound, TX 75022

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 APPROVING SPECIFIC USE PERMIT NO. 438 (SUP-438) ALLOWING FOR A COMMUNICATION TOWER TO BE PLACED ON A CERTAIN 0.129 ACRES OF PROPERTY LOCATED IN THE TOWN AND ZONED FOR INTERIM HOLDING DISTRICT (IH) USES; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL 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 owner of the property described as 0.129 acres of land in the John West Survey, Abstract No. 1414, Denton County, Texas, has filed an application for a Specific Use Permit for a communication tower; and

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on December 14, 2015, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on March 21, 2016, with respect to the requested Specific Use Permit 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 Specific Use Permit on the property; and

WHEREAS, the Town Council finds that the Specific Use Permit should be granted as outlined herein as it 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 to permit the following specific use on the hereinafter described property and area as shown below:

0.129 acres of land in the John West Survey, Abstract No. 1414, Denton County, Texas, and more fully described in Exhibit "A" hereto.

Specific Use Permit No. 438 for a Communication Tower, as more fully described in the conceptual site plan attached as Exhibit "B" hereto and incorporated herein.

SECTION 2

The conceptual site plan, conceptual landscape plan, and conceptual elevations of the proposed communication tower, attached hereto as Exhibits "B," "C" and "D," each incorporated herein for all purposes allowed by law, are hereby approved as the conceptual site plan, conceptual landscape plan, and conceptual elevations for this Specific Use Permit.

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 Specific Use Permit, as set forth above.

SECTION 4

The use of the property described above shall comply with and be subject to all restrictions, terms and conditions contained in Exhibits "B," "C" and "D" 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

Ordinance No. _____

Page 3

Council without the incorporation in this Ordinance of any such unconstitutional section, paragraph, sentence, clause or phrase.

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 21st DAY OF MARCH, 2016.

APPROVED:

Thomas E. Hayden, MAYOR

Ordinance No._____

ATTEST:

Theresa Scott, TOWN SECRETARY

APPROVED AS TO FORM AND LEGALITY:

Bryn Meredith, TOWN ATTORNEY

Ordinance No. _____

Page 5

EXHIBIT "A"
LEGAL DESCRIPTION

Being 0.129 acres of land in the Jon West Survey, Abstract No. 1414, Denton County,
Texas

TOWER EASEMENT (created by this office)

BEING a 0.129 acre (5,625.00 square feet) tract of land situated in the John West Survey, Abstract No. 1414, out of a called 4.38 acre tract of land, described in deed to Lee D. Harris, recorded in Volume 4365, 701, Deed Records, Denton County, Texas, and being more particularly described by metes and bounds as follows;

COMMENCING at a found 1/2" iron rod at the southern interior corner of said 4.38 acre tract;

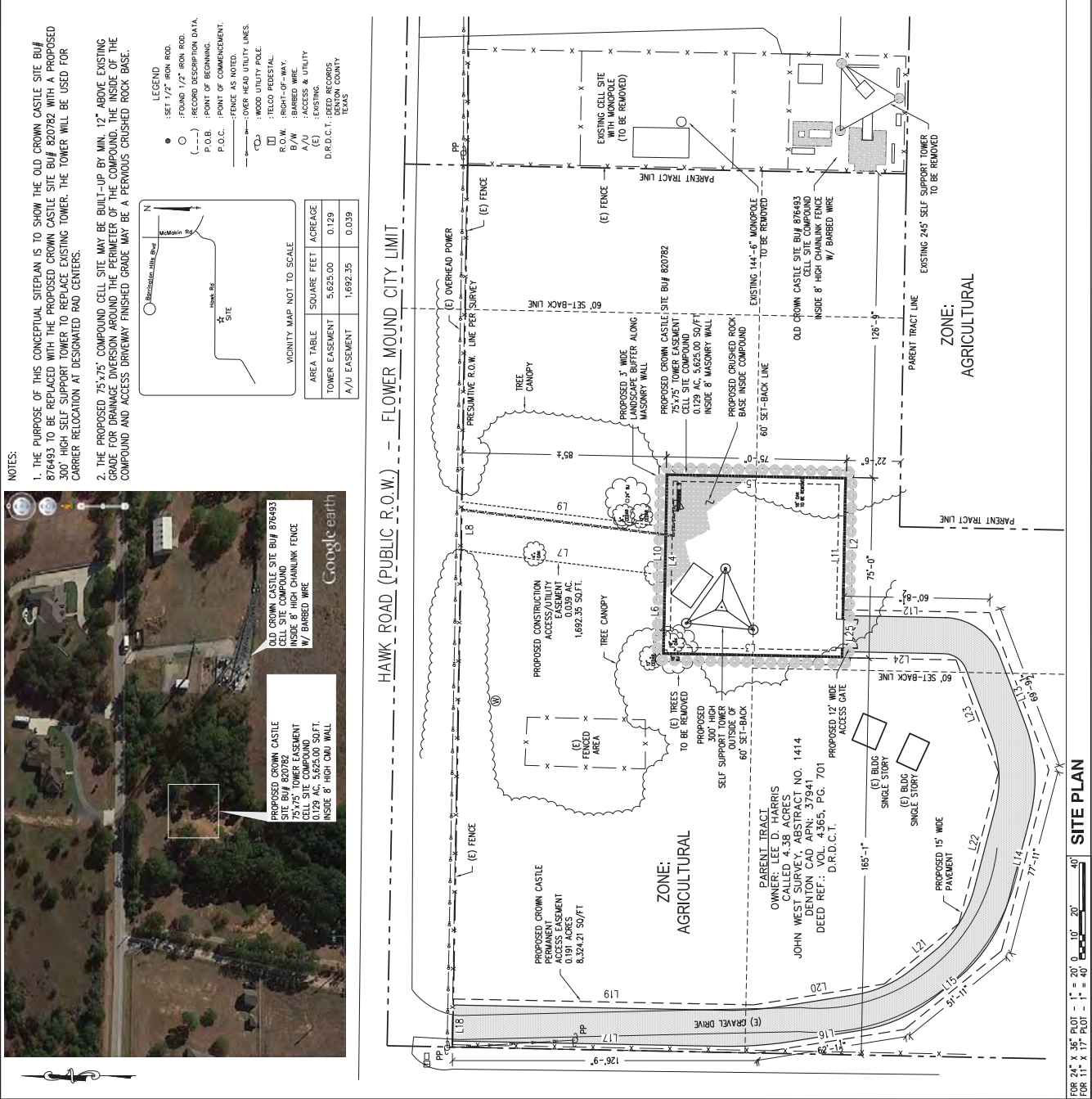
THENCE North 42° 20' 00" East for a distance of 30.59 feet to a set 1/2" iron rod for the POINT OF BEGINNING;

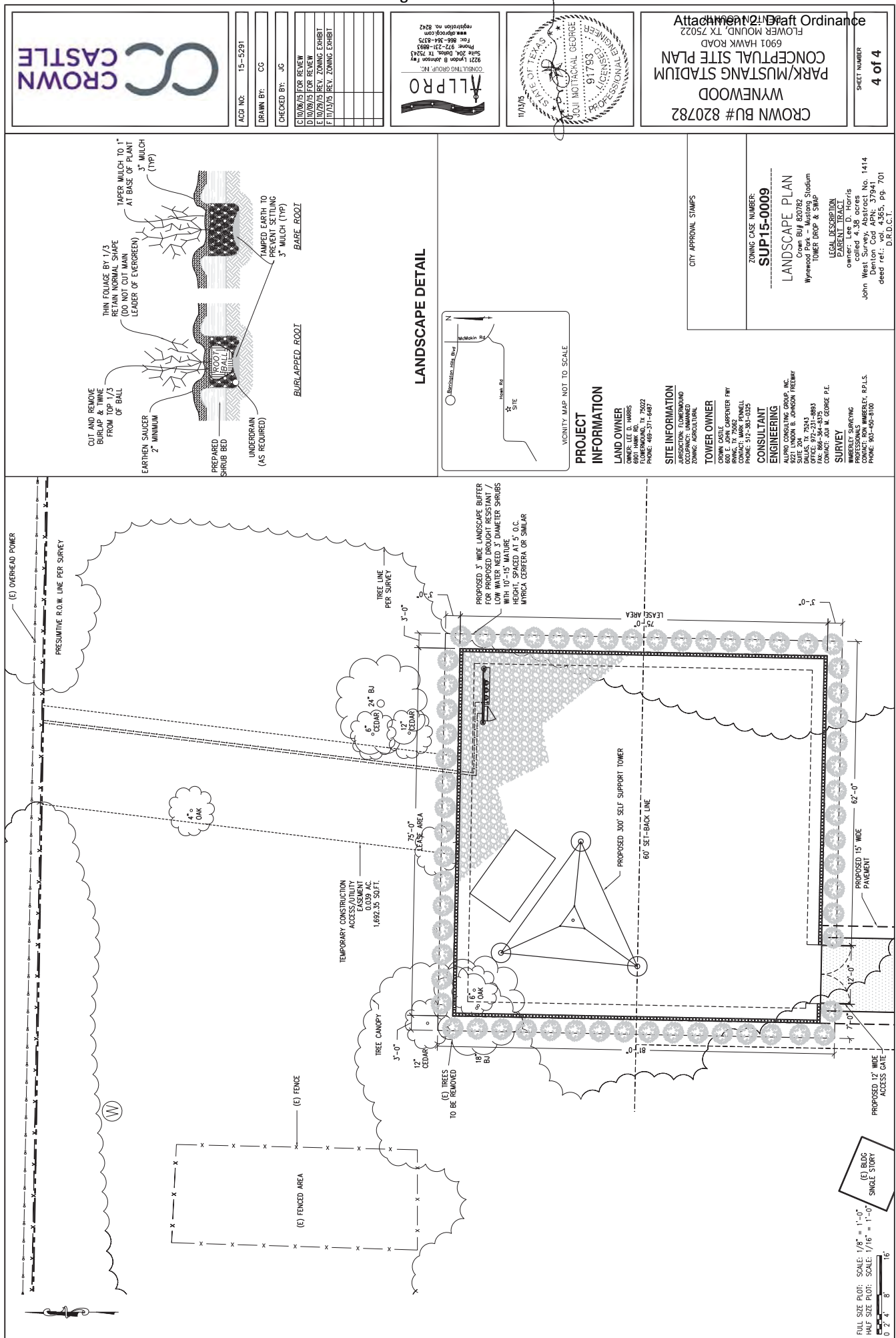
THENCE North 88° 52' 29" West for a distance of 75.00 feet to a set 1/2" iron rod for corner;

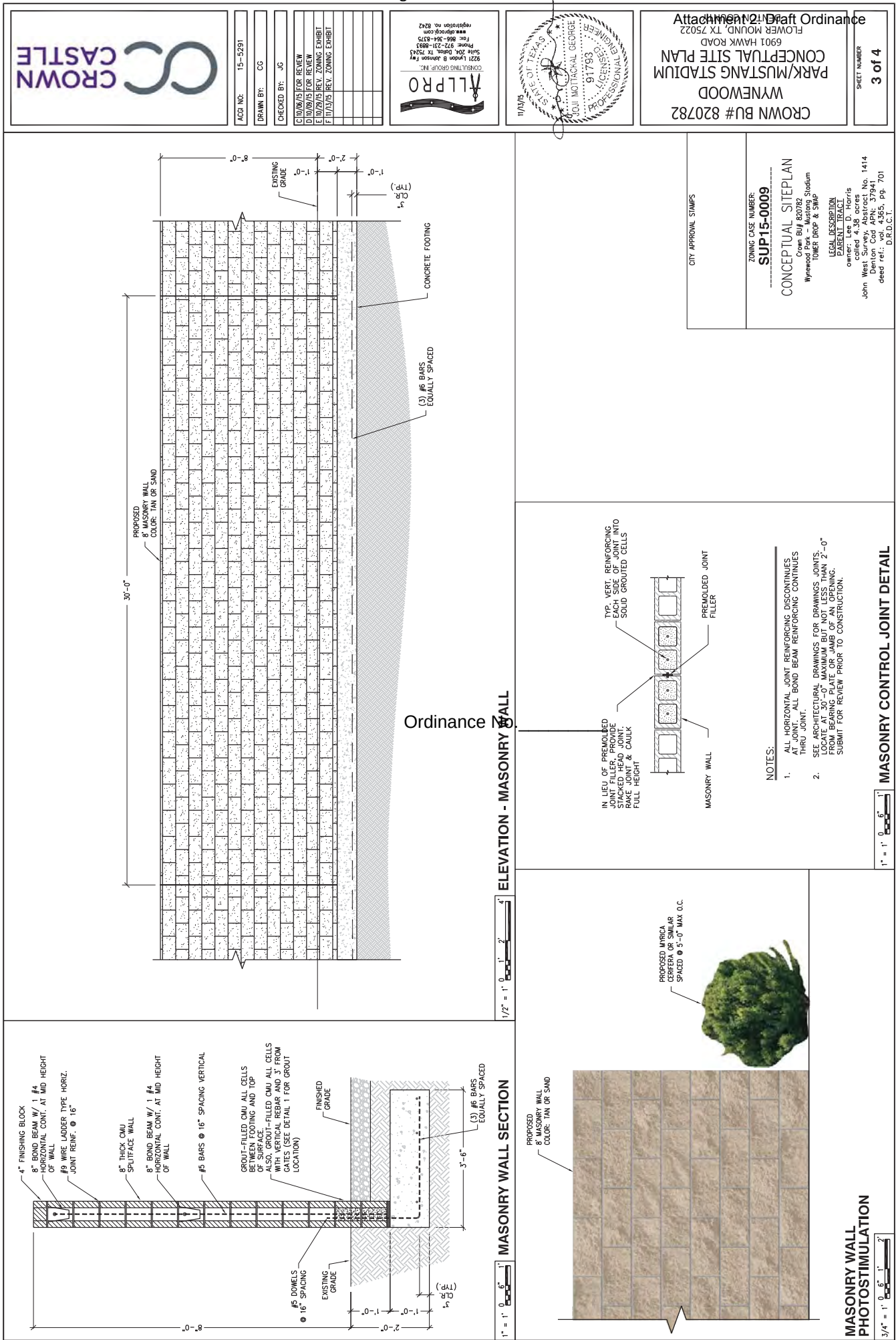
THENCE North 01° 07' 31" East for a distance of 75.00 feet to a set 1/2" iron rod for corner;

THENCE South 88° 52' 29" East for a distance of 75.00 feet to a set 1/2" iron rod for corner;

THENCE South 01° 07' 31" West a distance of 75.00 feet to the POINT OF BEGINNING, and containing 0.129 acre (5,625.00 square feet) of land, more or less.









TOWN COUNCIL AGENDA ITEM NO. 25 REGULAR ITEM

DATE: March 21, 2016

FROM: Gina Costanza-Grant, Senior Planner

ITEM: Public Hearing to consider a request for rezoning (ZPD16-0002 – Home Depot/Silveron Addition) to amend Specific Use Permit No. 245 (SUP-245) within Planned Development District No. 31 (PD-31) to allow for temporary or seasonal sales, and to consider adopting an ordinance providing for said amendment. The property is generally located south of Lakeside Parkway and east of Long Prairie Road. *(The Planning and Zoning Commission recommended approval by a vote of 4 to 0 at its March 14, 2016, meeting.)*

BACKGROUND INFORMATION: Attached is the Planning and Zoning Commission (P&Z) 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 rezoning (ZPD16-0002 – Home Depot/Silveron Addition) to amend Specific Use Permit No. 245 (SUP-245) within Planned Development District No. 31 (PD-31) to allow for temporary or seasonal sales, and adopt an ordinance providing for said amendment.



PLANNING AND ZONING COMMISSION AGENDA ITEM NO: 4

DATE: March 14, 2016

FROM: Gina Costanza-Grant, Senior Planner

ITEM: Public Hearing to consider a request for rezoning (ZPD16-0002 – Home Depot/Silveron Addition) to amend Specific Use Permit No. 245 (SUP-245) within Planned Development District No. 31 (PD-31) to allow for temporary or seasonal sales. The property is generally located south of Lakeside Parkway and east of Long Prairie Road.

I. ITEM SUMMARY

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

This application will require final action by the Town Council.

II. APPLICATION ANALYSIS

The purpose of this request is to amend Specific Use Permit No. 245 (SUP-245) within Planned Development District No. 31 (PD-31) to add the use “temporary or seasonal sales.” The site is located within the Lakeside Business District Area Plan of the Town’s Master Plan, with the designation for Campus Commercial development. The subject site is currently developed with a Home Depot store.

The proposed amendment will allow the applicant to place a seasonal Christmas tree sales tent within the Home Depot parking lot during the holiday season. The tent will be on the site starting the day after Thanksgiving Day until the day after Christmas Day.

On April 14, 2004, the Town Council approved Ordinance No. 33-04 (see attached) which amended Planned Development No. 31 (PD-31) and Specific Use Permit No. 245 (SUP-245) to allow for an Outside Display Area. However, this did not include for temporary or seasonal sales.

The proposed tent dimensions are 30-feet by 40-feet with a height of 27 feet. The tent covering will be white. The tent will be temporarily constructed over 8 parking spaces located across from the Garden Center. Since the site already provides 28 additional parking spaces than what is required by Town Code, the

temporary reallocation of the 8 spaces will still leave 20 additional parking spaces.

The Fire Department has the following 3 requirements which will need to be met at the time of permitting:

1. A tent permit issued by the Fire Marshal's office will be required prior to the installation of any tent.
2. Vehicles are not to be loaded from the fire lane. Loading will take place on the south or west sides of the tent if installed in the location shown.
3. A fire department inspection will be required for all tent installations prior to stocking the tent.

Since the proposed tent is only a temporary seasonal use, the design standards outlined in PD-31, as well as those of the Lakeside Business District and the Town's Urban Design Guidelines, do not apply.

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 rezoning requests. At the time this report was written, staff had received no correspondence regarding the project.

IV. ATTACHMENTS

A. Background Information

1. Vicinity Map
2. Letter of Intent
3. Ordinance 33-04

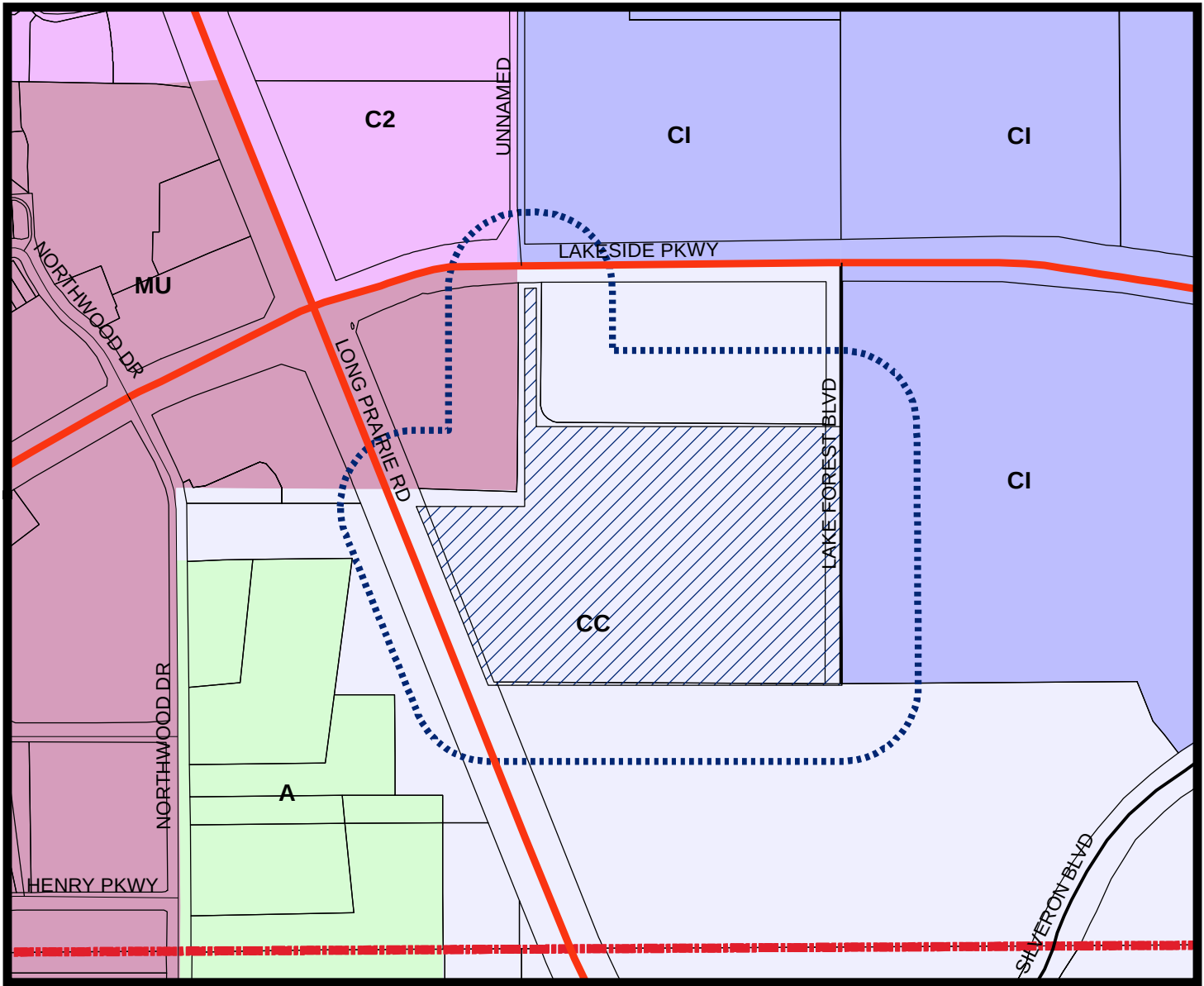
B. Application Details

1. Conceptual Site Plan

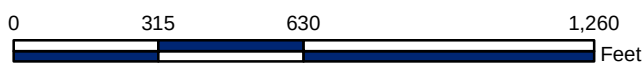
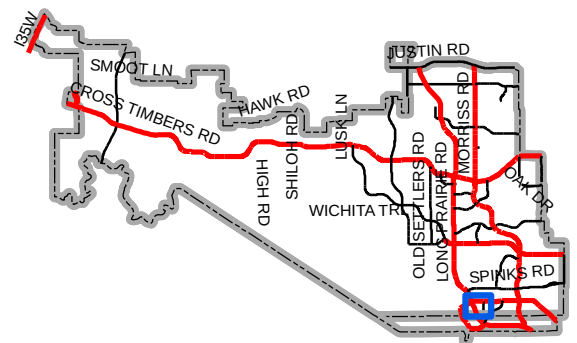
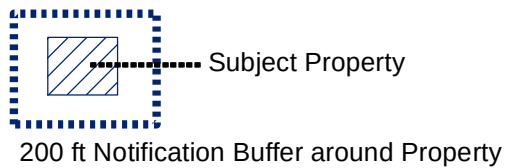


Vicinity Map

Reference Project: ZPD16-0002



LEGEND



Map Location

February 19, 2016

Gina Costanza-Grant
Senior Planner
Planning Services Division
Town of Flower Mound
1001 Cross Timbers Road
Flower Mound, TX 75028

Re: Home Depot Flower Mound, TX #6572 Letter of Intent – ZPD16-0002/Home Depot-Silveron

Dear Mrs. Costanza-Grant,

The Home Depot is requesting to amend Specific Use Permit No. 245 to allow for a seasonal Christmas tree tent as designated on the attached Site Plan. The seasonal Christmas tree tent will be used starting the day after Thanksgiving Day up until the day after Christmas Day. The site is presently zoned Planned Development 31 (PD-31) with Campus Commercial uses that is subject to Specific Use Permit 245 (SUP 245). The Home Depot site area is 15.845 acres. The proposed tent dimensions are 30'L x 40'W and 27'H.

The Home Depot looks forward in working with the Town of Flower Mound on an approval for the proposed seasonal Christmas tree tent.

Sincerely,
SCOTT A. MOMMER CONSULTING

Amy Siliznoff

Executive Assistant

TOWN OF FLOWER MOUND, TEXAS**ORDINANCE NO. 33-04**

AN ORDINANCE OF THE TOWN COUNCIL 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, AMENDING ORDINANCE NO. 22-02 WHICH GRANTED SPECIFIC USE PERMIT NO. 245 ON APPROXIMATELY 15.011 ACRES OF LAND ON LOT 2, BLOCK A, OF THE HOME DEPOT – SILVERON ADDITION, FROM PLANNED DEVELOPMENT 31 (PD-31) WITH CAMPUS COMMERCIAL USES SUBJECT TO SPECIFIC USE PERMIT 245 (SUP 245), TO PLANNED DEVELOPMENT 31 (PD-31) WITH CAMPUS COMMERCIAL AND CAMPUS INDUSTRIAL USES WITH AN AMENDED SPECIFIC USE PERMIT 245 (SUP 245) TO ALLOW FOR LIMITED OUTSIDE DISPLAY BY AMENDING ATTACHMENT "B," ENTITLED "DEVELOPMENT STANDARDS," BY AMENDING SECTION D, ENTITLED "MISCELLANEOUS STANDARDS," IN ACCORDANCE WITH SPECIFIC REQUIREMENTS STATED HEREIN AND EXHIBITS ATTACHED HERETO; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, after public notice and public hearing as required by law, the Planning and Zoning Commission of the Town of Flower Mound, Texas, has recommended amending the official zoning map, Exhibit "A" of Subpart B, the Land Development Regulations of the Code of Ordinances of the Town of Flower Mound, Texas; and

WHEREAS, all legal requirements, conditions, and prerequisites have been complied with prior to this case coming before the Town Council of the Town of Flower Mound; and

WHEREAS, the Town Council of the Town of Flower Mound, after public notice and public hearing as required by law and upon due deliberation and consideration of the recommendation of the Planning and Zoning Commission of the Town of Flower Mound and of all testimony and information submitted during said public hearings, has determined that it is in the public's best interest and in support of the health, safety, morals, and general welfare of the citizens of the Town that the official zoning map, Exhibit "A" of Subpart B, the Land Development Regulations of the Code of Ordinances of the Town of Flower Mound, Texas, be amended.

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

SECTION 1

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

ORDINANCE NO. 33-04

PAGE 2

SECTION 2

From and after the effective date of this Ordinance, the official zoning map, Exhibit "A" of Subpart B, the Land Development Regulations of the Code of Ordinances of the Town of Flower Mound, Texas, is hereby amended and changed in the following particulars to reflect the action taken herein, and all other existing sections, subsections, paragraphs, sentences, definitions, phrases, and words of said Land Development Regulations are not amended, but shall remain intact and are hereby ratified, verified, and affirmed as follows:

The uses allowed on that certain tract of land being approximately 15.011 acres of land on Lot 2, Block A of the Home Depot – Silveron Addition and more fully described in Exhibit "A" attached hereto and incorporated herein for all purposes, presently zoned Planned Development 31 (PD-31) with Campus Commercial uses subject to Specific Use Permit 245, is subject to an amendment to Specific Use Permit No. 245 by amending Attachment "B," entitled "Development Standards," section D, entitled "Miscellaneous Standards," and adding a display area exhibit for outside display, in accordance with the requirements stated herein and the exhibits attached hereto.

SECTION 3

A display area exhibit for limited outside display, a copy of which is attached hereto as Exhibit "B-1" and incorporated herein, showing the designated outside display areas, was submitted by the developer and reviewed and approved by the Town Council as the approved display area exhibit.

SECTION 4

The change in the zoning classification established and described in Section 2 herein shall be and is hereby made subject to the following conditions and requirements and Specific Use Permit 245, Attachment "B," entitled "Development Standards," is hereby amended in part to read, at subsection 10, as follows:

* * *

D. MISCELLANEOUS STANDARDS

* * *

10. Seasonal planting at Home Depot shall be contained in the planter boxes directly adjacent to the northwest corner of the nursery or within landscape areas. Outdoor display of storage buildings, plants, exterior shelves or tables displaying goods for sale, goods

ORDINANCE NO. 33-04

PAGE 3

for sale (such as building materials, plumbing materials, gardening materials, etc.), hot tubs/spas, and lawn furniture for sale is allowed only within the areas designated for such use as indicated in Exhibit "B-1." The display areas shall be defined by a railing constructed of 3'4" split-face limestone columns with split cedar rails as depicted in Exhibit "C." No other materials are allowed outside for sale, lease, or display. These prohibited outdoor materials include, but are not limited to:

1. propane/natural gas cylinders,
2. separate fenced areas,
3. trailers,
4. demonstration examples or projects,
5. vending machines or food vendors, or
6. vehicles

* * *

SECTION 5

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

SECTION 6

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

SECTION 7

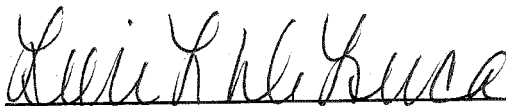
This Ordinance shall take effect and be in full force from and after its passage.

ORDINANCE NO. 33-04

PAGE 4

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF
FLOWER MOUND, TEXAS, BY A VOTE OF 5 TO 0, ON THIS THE 19th DAY
OF APRIL, 2004.

APPROVED:


LORI L. DELUCA, MAYOR

ATTEST:


Paula J. Lawrence, TRMC, CMC, TOWN SECRETARY

APPROVED AS TO FORM AND LEGALITY:


Terrence S. Welch, TOWN ATTORNEY

ORDINANCE NO. 33-04

EXHIBIT "A"

OWNER'S CERTIFICATE

STATE OF TEXAS
COUNTY OF DENTON

WHEREAS, HOME DEPOT U.S.A., INC. is the owner of a tract of land situated in the JOSEPH KNIGHT SURVEY, Abstract No. 692 and the J.W. TANNEHILL SURVEY, Abstract No. 1252, Denton County, Texas, and being a portion of a tract of land conveyed to ELMER C. POWELL, by deed, as recorded in Volume 2716, Page 0721, of the Deed Records of Denton County, Texas, and being a portion of a tract of land conveyed to DALDAV ASSOCIATES, L.P., by deed, as recorded in Volume 1360, Page 433, of the Deed Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod set for corner in the south right-of-way line of LAKESIDE PARKWAY, (120 feet, right-of-way), said iron rod being at the intersection of said south right-of-way line of LAKESIDE PARKWAY and the west line of said POWELL tract.

THENCE, along said south right-of-way line of LAKESIDE PARKWAY, (120 feet, right-of-way), North 89°44'39" East, a distance of 853.14 feet, to a 1/2 inch iron rod set for corner;

THENCE, departing said south right-of-way line of LAKESIDE PARKWAY, (120 feet, right-of-way), South 00°05'46" West, a distance of 1055.69 feet, to a 1/2 inch iron rod found for corner;

THENCE, North 89°46'49" West, a distance of 914.42' feet, to a 1/2 inch iron rod set for corner in the easterly right-of-way line of F.M. HIGHWAY NO. 2499, (variable width right-of-way);

THENCE, along said northeast right-of-way line of F.M. HIGHWAY NO. 2499, (variable width right-of-way), North 21°19'00" West, a distance of 544.58 feet, to a point for corner from which a 1/2 inch iron rod found bears South 64°34'24" West, a distance of 0.72 feet;

THENCE, departing said northeast right-of-way line of F.M. HIGHWAY NO. 2499, (variable width right-of-way), South 88°18'36" East, a distance of 257.73 feet, to a point for corner from which a 1/2 inch iron rod found bears South 40°46'10" West, a distance of 1.00 feet;

THENCE, North 00°21'19" East, a distance of 548.66 feet, to the POINT OF BEGINNING;

CONTAINING within these metes and bounds, 22.471 acres or 978,834 square feet of land, more or less. Bearings shown hereon are based upon the recorded bearings found in a deed from PENTECO, INC. to THE STATE OF TEXAS, for right-of-way dedication of F.M. HIGHWAY NO. 2499, as recorded in Volume 2284, Page 682, of the Deed Records of Denton County, Texas.

ORDINANCE NO. 33-04

ATTACHMENT "B"**DEVELOPMENT STANDARDS****Planned Development****Home Depot-Silveron Addition**

The development as described in Exhibit "A" shall be in accordance with Master Plan – 2001; the Land Development Code, as amended; and the Silveron standards as contained within "Silveron Design Guidelines," or its amendments and shall be subject to the following conditions and requirements:

A. PERMITTED USES

1. **Campus Commercial (CC) uses.** Development of Campus Commercial (CC) uses designated as Lot 1 and Lot 2 on Exhibit "F", Record Plat, comprised of approximately 22.5 acres, shall be in compliance with all regulations applicable to Campus Commercial (CC) contained in the Land Development Code, as amended, except as otherwise provided in said Ordinance.

B. PROHIBITED USES

The following uses shall not be permitted in this portion of the Planned Development District:

1. Amusement and recreation (indoors)
2. Bakery or confectionery store
3. Cleaning/laundry pick-up station only
4. Cleaning/laundry with pick-up station
5. College or university
6. Custom personal service
7. Dancing, drama, or music school or studio
8. Florist
9. Heliport
10. Helistop
11. Lithographic or print shop
12. Museum, library or art gallery, public
13. Optical sales
14. Parking lot, commercial
15. Parking structure, commercial
16. Personal improvement services
17. Public building, shop or yard
18. Railroad track
19. Recreation center, public
20. Swimming pool, commercial

The following uses, normally allowed with a Specific Use Permit, shall not be permitted in this portion of the Planned Development District:

1. Amusement and recreation (outdoors)
2. Car wash, automatic
3. Car wash, full-service
4. Communication tower, commercial
5. Convenience store
6. Convenience store with beer/wine sales
7. Convenience store with gasoline sales
8. Drug store or pharmacy
9. Electrical energy generating plant
10. Office showroom/warehouse
11. Recycling drop-off center
12. Restaurant, fast food
13. School, commercial trade
14. Transmission pipeline
15. Water well, storage or pump station

C. TRANSPORTATION STANDARDS

Prior to the issuance of a Certificate of Occupancy for any use or structure on the property, the developer shall construct roadway improvements on International Parkway/FM 2499, Lakeside Parkway, and Lake Forest Boulevard generally described as follows:

1. A median opening and left- and right-turn deceleration lanes will be required at the main entrance along International Parkway/FM 2499. The left- and right-turn deceleration lanes should be constructed to provide approximately 250 feet of taper and 450 feet of storage/deceleration length.
2. A right-turn deceleration lane is required at the site entrance at the project's northwest corner on Lakeside Parkway. The right-turn lane should be constructed to provide approximately 150 length of taper and 350 feet of storage/deceleration length.
3. The developer shall construct that portion of Lake Forest Boulevard with a median opening at the southern end of the project, directly adjacent to the land as described in Exhibit "A", as the western half of a four-lane divided Urban Minor Arterial from Lakeside Parkway to the south property line of proposed Lot 2. Prior to the issuance of a Certificate of Occupancy for any use or structure on any lot, said Urban Minor Arterial shall be completed and accepted in accordance with the required standards of the Town of Flower Mound.

4. The proposed intersection improvements of left- and right-turning lanes at Lakeside Parkway and Lake Forest Boulevard will be constructed as part of this portion of Planned Development 31. A westbound left-turn lane must be constructed on Lakeside Parkway at the Lake Forest Boulevard intersection with the Home Depot project. Design of the westbound left-turn lane should be consistent with the existing median left-turn lanes along Lakeside Parkway. The eastbound right-turn deceleration lane right-of-way on Lakeside Parkway onto Lake Forest Boulevard may be obtained and constructed with the development of Lot 1. The right-turn lane should be constructed to provide approximately 150 feet of taper and 350 feet of storage/deceleration length.

D. MISCELLANEOUS STANDARDS

1. A minimum 65-foot front building setback shall be provided on all major streets. The first 25 feet shall be landscaped and irrigated with an automatic sprinkler system installed in accordance with the Land Development Code. No parking shall be allowed in the first 45 feet, measured from the property line.
2. Developer and owner agree that all ingress and egress from any major street or thoroughfare shall be limited in a manner, approved by the Planning and Zoning Commission, to allow and maintain such streets as free-flowing arterials.
3. The development will be subject to an overall reciprocal easement agreement granting cross-access. An executed copy of said agreement will be provided to the Town of Flower Mound prior to recordation of the Record Plat for the development.
4. Specific Use Permit SUP/SP-245-02 shall meet the following conditions:
 - a. Specific Use Permit SUP/SP-245-02 for Home Depot USA, Inc., with a retail store over 100,000 square feet, is specific to the location stated herein and shall not be transferred to any other location or entity without the approval of the Town of Flower Mound.
 - b. If a building permit application has not been submitted to the Building Inspection Division within one year of approval of the ordinance for the Specific Use Permit, such Specific Use Permit shall be null and void.
 - c. The Specific Use Permit shall be developed according to the ordinance and its attachments (Attachment B - Development Standards and Attachment D - Site Plan Package) or be in violation of the ordinance if developed differently.
5. Building Elevation Profiles and Roof Form shall have the following components:
 - a. Harmonious architecture of each structure is required.
 - b. Contrasting wall planes, architectural elements, and rooflines shall be used to create interesting and pleasing elevations. Decorative pilasters, cornices and/or moldings shall be incorporated into all elevations exposed

to public view.

- c. Any exposed roof slopes shall be composition shingle, clay tile and/or standing seam metal. Colors shall be earth tones, copper color, or elements of the brown scale. Use of natural copper roofing is permissible.
- d. Roof pitches shall conform to Master Plan - 2001. Pitched roofs shall be required for structures under 15,000 square feet. Larger structures shall have no visible flat roof around the entire perimeter.

6. Building Materials shall have the following characteristics:

- a. Not less than 60% and not more than 90% of any elevation facing a public street or platted access easement shall be constructed of unpainted/unstained material that meets the definition of masonry, as defined by the Land Development Code and Master Plan - 2001. Masonry shall be earth and wood tone in color.
- b. The use of exposed standard concrete shall not be utilized for any façade facing a public street or platted access easement.
- c. Concrete surfaces shall be colored, textured, sculpted or patterned.
- d. Unpainted metal, galvanized metal, or metal subject to rusting shall not be used. All exposed metals shall have a factory applied finish. Metal that develops an oxidized finish (copper) are appropriate.
- e. Windows and glass shall be incorporated into the design of the building but will not comprise more than 50% of the elevation. Maximum reflectance shall not be exceed 15%.
- f. E.F.I.S can be used for accents, not to exceed 10% of an individual tenant's exterior wall surface area.
- g. Earth and wood tone colors are to be used (reddish brown, brown, tan, umber, gold, sand, green), as well as other colors that may be acceptable, if the applicant can demonstrate that they are appropriate for the design of the development and are harmonious within the site.
- h. The primary exterior color shall be comprised of earth or wood tones for at least 60%, but not greater than 90%, of the façade. A secondary earth or wood tone accent color can be used on at least 10% of the façade.
- i. The building materials and architecture utilized within Lots 1 and 2 shall be harmonious and create a unified theme.
- j. Home Depot USA, Inc. or its developer shall construct the structure presented in Specific Use Permit/Site Plan 245-02 utilizing the materials indicated on the site plan, building elevations, landscape plan, and as required within these development standards.

7. If shopping carts are not stored indoors, a 4-foot screening wall, consistent with the building's architecture and design, will be added near the building's entrance

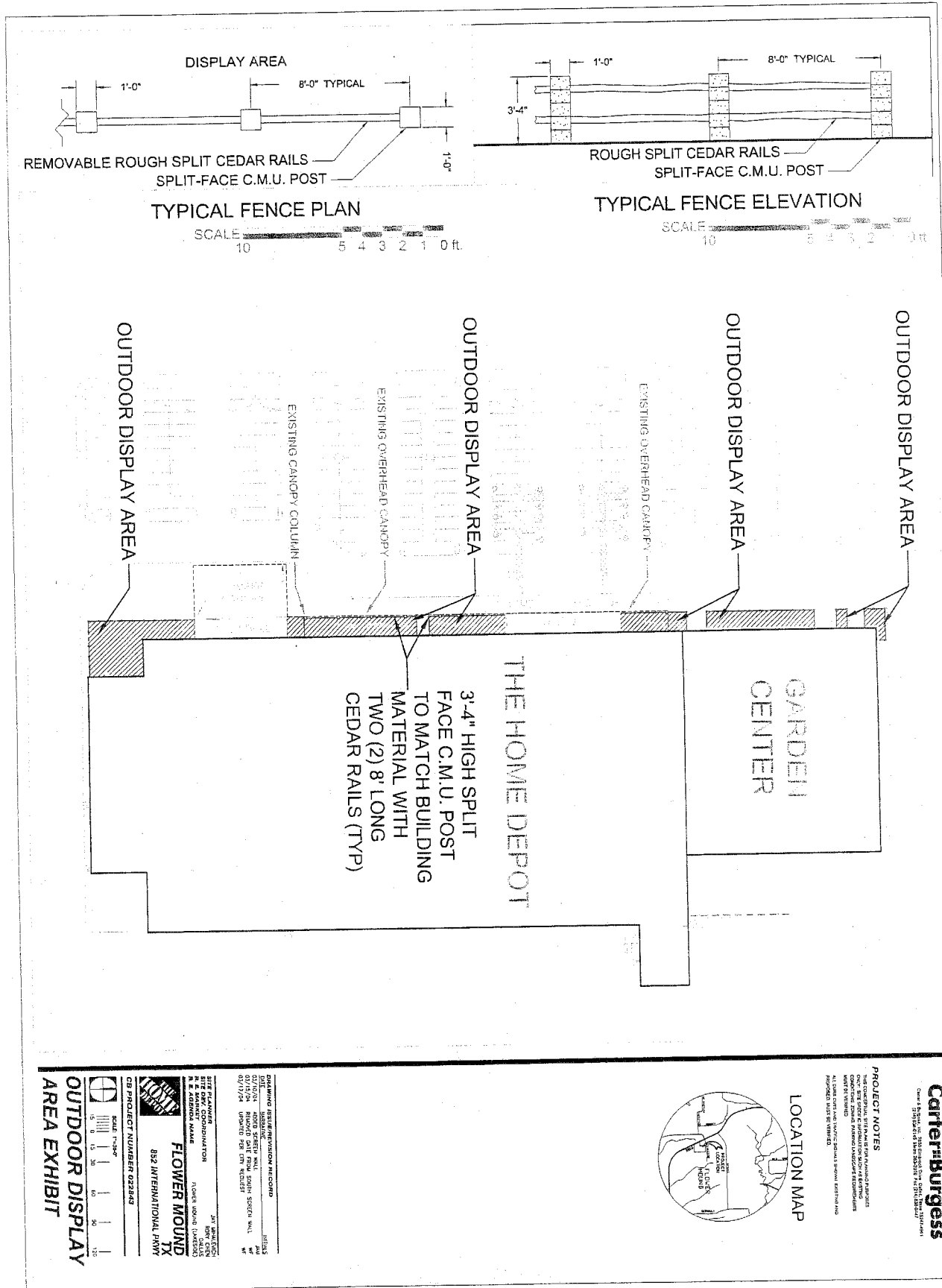
ORDINANCE NO. 33-04

to conceal over-night storage of the carts.

8. Outside storage is not allowed on proposed Lot 2, other than that designated on the approved Site Plan for Home Depot on the north central side and in the southeast corner. These outside storage areas shall be enclosed on three sides with an 8-foot masonry screening wall to match the building. The remaining side shall contain an opaque metal gate. The gate shall remain closed when loading and unloading operations are completed. No materials shall be stacked above the height of the screening wall.
9. Trees within large pots/planters shall be required along the walkway of the west elevation as a requirement of the landscape plan of Lot 2.
10. Seasonal planting at Home Depot shall be contained in the planter boxes directly adjacent to the northwest corner of the nursery or within landscape areas. Outdoor display of storage buildings, plants, exterior shelves or tables displaying goods for sale, goods for sale (such as building materials, plumbing materials, gardening materials, etc.), hot tubs/spas, and lawn furniture for sale is allowed only within the areas designated for such use as indicated in Exhibit "B-1." The display areas shall be defined by a railing constructed of 3'4" split-face limestone columns with split cedar rails as depicted in Exhibit "C." No other materials are allowed outside for sale, lease, or display. These prohibited outdoor materials include, but are not limited to:
 1. propane/natural gas cylinders,
 2. separate fenced areas,
 3. trailers,
 4. demonstration examples or projects,
 5. vending machines or food vendors, or
 6. vehicles.
11. All trees scheduled for preservation with the landscape plan of Lot 2 shall use every method available to protect and preserve the trees from destruction, root damage and compaction, and branch and trunk damage. Proper pruning of both the roots and limbs by a professional arborist must be performed early in the construction process to reduce loss of trees and any subsequent damage.
12. The parking spaces adjacent to preserved trees shall be paved with a paving system highly pervious to water infiltration.
13. Irrigation of the preserved trees shall use an irrigation method approved by the Town's Urban Forester, which waters the tree roots and causes the least amount of tree root disturbance.
14. A 4-foot screening wall will be added to conceal the night storage for carts at the front entrance, consistent with the architectural design of the building.

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EXHIBIT "B-1"

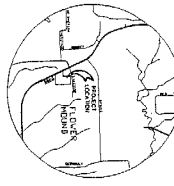


Carter Burgess
 1000 E. 10th Street, Suite 100, Lincoln, NE 68502
 402.441.1234

PROJECT NOTES

1. ALL DIMENSIONS ARE IN FEET AND INCHES.
 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
 3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
 4. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.

LOCATION MAP



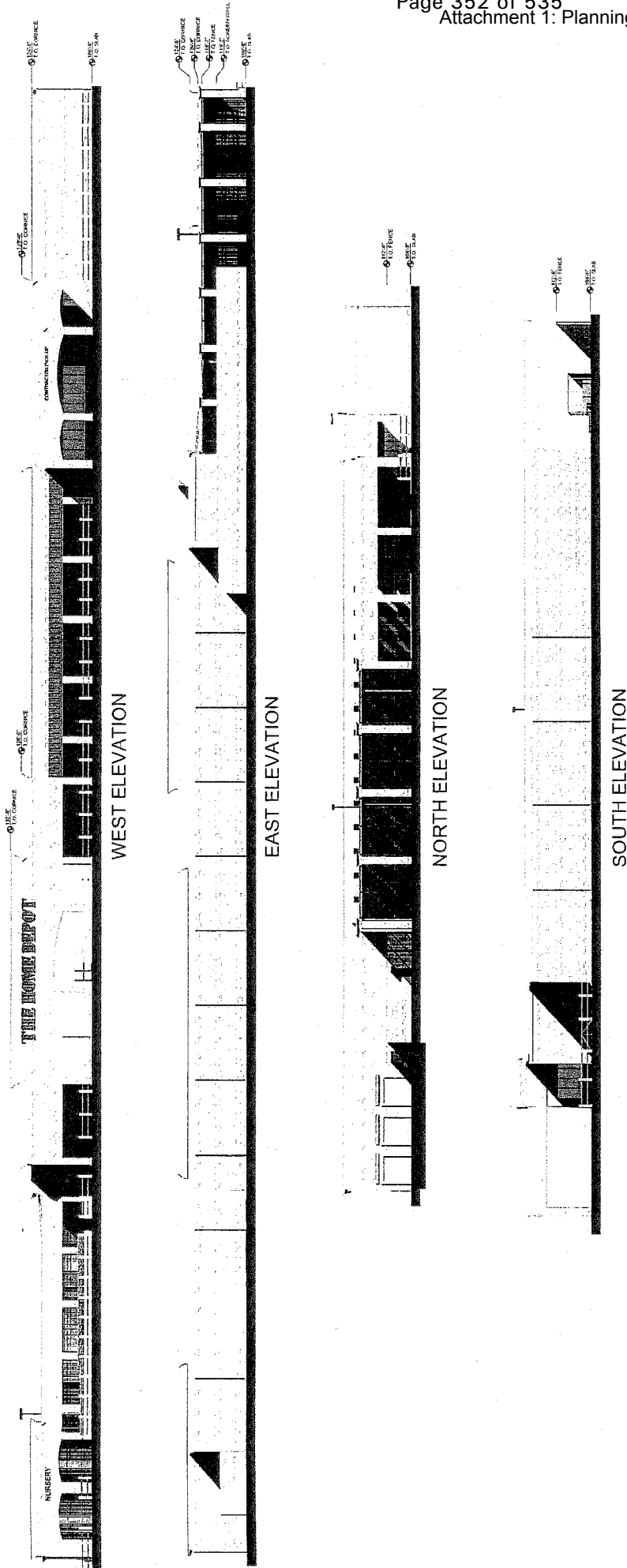
DATE	DESCRIPTION	BY	CHKD
08/17/24	UPDATES FOR CITY RECORD	WJ	WJ
08/17/24	REVISIONS	WJ	WJ
08/17/24	DESIGN	WJ	WJ

PROJECT INFORMATION
 PROJECT NAME: FLOWER MOUND TX
 PROJECT NUMBER: 022843
 CLIENT: 852 INTERNATIONAL PVTY
 SITE PLANNER: JAY BUEHLER
 SITE DESIGN COORDINATOR: JAY BUEHLER
 DATE: 08/17/24
 SCALE: 1/8" = 1'-0"

OUTDOOR DISPLAY AREA EXHIBIT



EXHIBIT "C"



THE HOME DEPOT
 852 International Pkwy
 Flower Mound, TX 75028

Carter-Burgess
 Carter-Burgess, Inc. 7500 E. Highway 200, Suite 100, P.O. Box 1001
 Fort Worth, Texas 76116-1001

Drawing Name: P:\Proj-2016\SM258.16\DWG\Civil Exhibit\SM258.16 HP FlowerMound Christmas Tree Sales Exhibit.dwg Last Modified: Feb 16, 2016 - 3:28pm Plotted on: Feb 16, 2016 - 3:28pm by Lindat

LAND USE: LAKESIDE BUSINESS DISTRICT
EXISTING ZONING: CC

PNL PROPERTIES NO 1 LTD
5708 PINE VALLEY DR
FLOWER MOUND, TX 75022-6504

CHRISTMAS TREE TENT
1,200 S.F.

TRACT 1
20.663 ACRES
(900,091 Sq. Ft.)

GARDEN
CENTER
24,240
COVERED AREA
124,420 S.F.

HOME DEPOT

95,064 SF

FFE = 595.00

ONE STORY

DALDAV ASSOCIATES, L.P.
VOL. 4459, PG. 398
(ORDCT)

LAND USE: LAKESIDE BUSINESS DISTRICT
EXISTING ZONING: CC

GRAND SEVILLE LP
5701 SEVILLE CT
PLANO, TX 75093-4230

LEGEND



TREE

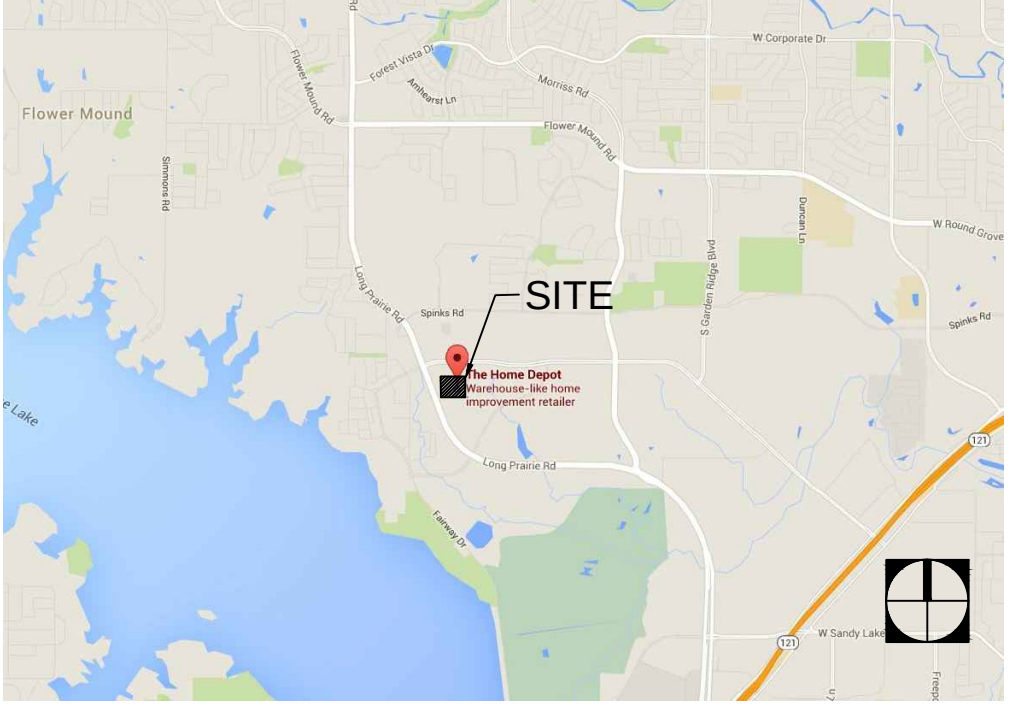
SCOTT A. MOMMER CONSULTING

LAND DEVELOPMENT SERVICES

4694 WEST JACQUELYN AVENUE - FRESNO, CA 93722
TEL: 559 978-7000 FAX: 559 276-0850 SMOMMER@SCOTTMOMMER.COM

LOCATION MAP

NOT TO SCALE



PROJECT INFORMATION

SITE AREA

THE HOME DEPOT SITE AREA	15.845 ACRES.
COUNTY	DENTON COUNTY, TX
PRESENT USE	PD 31 WITH CC USES (CAMPUS COMMERCIAL)

SUP (SPECIAL USE PERMIT) #245

CONTACTS

OWNER

HOME DEPOT U.S.A., INC
ATTN: JEFFREY HARDMAN
3800 W. CHAPMAN AVENUE
ORANGE, CA 92868
(714) 940-3662

CONSULTANT

SCOTT MOMMER CONSULTING
4694 W. JACQUELYN AVENUE
FRESNO, CA 93722
(559) 978-7000

HOME DEPOT BUILDING AREA

THE HOME DEPOT	94,977 S.F.
GARDEN CENTER	24,420 S.F.
TOTAL	131,914 S.F.

PARKING SUMMARY

TOTAL REQUIRED @ 1/250 S.F.	477 SPACES
-----------------------------	------------

TOTAL PROVIDED	505 SPACES
TENT COVER	(8 SPACES)
TOTAL REMAINING	497 SPACES

SITE REVISION SUMMARY

-CHRISTMAS TREE TENT AREA OF 30.0' X 40.0'

PROJECT NOTES

- THIS CONCEPTUAL SITE PLAN IS FOR PLANNING PURPOSES ONLY. SITE SPECIFIC INFORMATION SUCH AS EXISTING CONDITIONS, ZONING, PARKING, LANDSCAPE REQUIREMENTS MUST BE VERIFIED.

SITE PLAN
CHRISTMAS TREE SALES

DRAWING ISSUE/REVISION RECORD

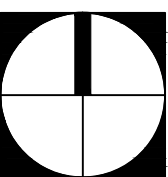
DATE: 02/16/2016

SITE PLANNER	LT
SITE DEVELOPMENT COORDINATOR	SCOTT MOMMER
REAL ESTATE MARKET	JEFFREY HARDMAN
REAL ESTATE AGENA NAME	

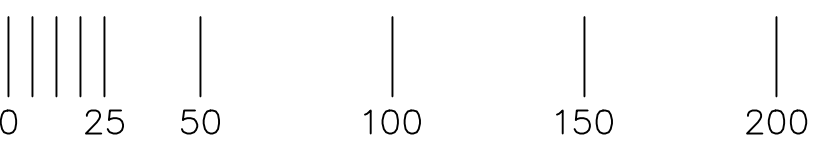
THE HOME DEPOT
FLOWER MOUND, TX

852 LONG PRAIRIE ROAD

THE HOME DEPOT SITE ID NUMBER	6572
SMC PROJECT NUMBER	SM258.16



SCALE: 1"=50'-0"



SAM-A



CHRISTMAS TREE TENT ELEVATION
NOT TO SCALE

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

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING ORDINANCE NO. 22-02, WHICH ESTABLISHED PLANNED DEVELOPMENT DISTRICT NO. 31 (PD-31) WITH CAMPUS COMMERCIAL (CC) USES AND GRANTED SPECIFIC USE PERMIT NO. 245 (SUP-245) FOR A RETAIL SINGLE TENANT OVER 100,000 SQUARE FEET ON CERTAIN PROPERTY DESCRIBED AS LOT 2, BLOCK A, OF THE HOME DEPOT SILVERON ADDITION, AS AMENDED BY ORDINANCE NO. 33-04, BY AMENDING THE MISCELLANEOUS STANDARDS FOR SUP-245 TO ALLOW FOR TEMPORARY OR SEASONAL SALES; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL 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 owner of the property described as Lot 2, Block A, of the Home Depot Silveron Addition has filed an application for a Zoning Planned Development amendment to amend Ordinance No. 33-04 for Planned Development District No. 31 (PD-31) and Specific Use Permit No. 245 (SUP-245); and

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on March 14, 2016, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on March 21, 2016, with respect to the Zoning Planned Development amendment described herein; and

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

WHEREAS, the Town Council finds that the amendment 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 as shown below:

Lot 2, Block A, of the Home Depot Silveron Addition, Denton County, Texas.

Exhibit "B," entitled "Development Standards," of Ordinance No. 22-02, as amended by Ordinance No. 33-04 is hereby amended in part by amending the "Miscellaneous Standards" for Specific Use Permit No. 245 within Planned Development District No. 31 to allow for Temporary or seasonal sales, as more fully described in the conceptual site plan attached as Exhibit "A" hereto and incorporated herein.

SECTION 2

The use of the property described above shall be subject to all applicable regulations contained in PD-31, the Land Development Regulations and all other applicable and pertinent ordinances of the Town of Flower Mound.

SECTION 3

The amendment of Specific Use Permit No. 245 as granted in Section 1 herein is conditioned upon adherence to the conceptual site plan attached hereto as Exhibit "A."

SECTION 4

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 5

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 6

Any person, firm or corporation who violates any provision of this Ordinance or of the concept plan 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

ORDINANCE NO. _____

Page 3

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 7

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 8

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 9

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**

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TOWN COUNCIL AGENDA ITEM NO. 26 REGULAR ITEM

DATE: March 21, 2016

FROM: Chuck Russell, Town Planner

ITEM: Public Hearing to consider a request for rezoning (ZPD16-0003 – Hillside of Flower Mound) to amend Planned Development District No. 143 (PD-143) for a cluster development to modify the exception to Section 98-147, "Topographical Slope Protection," and to consider adopting an ordinance providing for said amendment, 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 south of Cross Timbers Road and west of Shiloh Road. *(The Planning and Zoning Commission recommended denial by a vote of 6 to 0 at its February 22, 2016, meeting.)*

BACKGROUND INFORMATION: Attached is the Planning and Zoning Commission (P&Z) report and backup for this item. After the February 22, 2016, P&Z meeting, the applicant submitted an amended Development Plan to staff for review. The amended Development Plan has been administratively approved by staff (see Attachment 5). The plan depicts the same number of lots approved by Town Council previously (Attachment 4), but they have been reconfigured in part to remove a cul-de-sac on the southwest portion of the site and align the residential lots along Ridgecrest Drive.

The approved amended Development Plan reduces the total amount of impacted topographic slopes that are between 5% and 12% from approximately 10.23 acres to approximately 9.91 acres. The amended plan also reduces the total amount of impacted topographic slopes that are greater than 12% from approximately 2.96 acres to approximately 1.48 acres.

In addition to modifying the exception to the Topographical Slope Protection, the applicant is requesting Town Council to approve a Development Agreement which is attached and summarized as follows:

1. On October 19, 2015, the Town Council approved a Development Plan for the Project and accepted cash in the amount of \$31,298.40 in lieu of Park Land dedication that would otherwise be required for the Project. The applicant is requesting that the entire Park Land dedication cash amount be waived.
2. On October 19, 2015, the Town Council also accepted Park Development Fees in the amount of \$37,476.00 for the Project. The applicant is requesting that the entire Park Development Fee cash amount be waived.
3. In accordance with the approved Environmental Protection Plan, 20.68 acres of Upland Habitat were delineated within the Project boundaries. Approximately 11.94 acres of this Upland Habitat will be impacted by the Project, leaving approximately 8.74 acres of Upland Habitat intact. The

applicant is requesting that Upland Habitat mitigation fees for the 11.94 acres being impacted be waived in the amount of approximately \$179,100.00 (the fee is calculated at \$15,000 per acre).

ATTACHMENTS:

1. Planning and Zoning Commission Staff Report
2. Draft Ordinance
3. Draft Development Agreement
4. Previously Approved Development Plan
5. Amended Development Plan

DRAFT MOTION: Move to approve a request for rezoning (ZPD16-0003 – Hillside of Flower Mound) to amend Planned Development District No. 143 (PD-143) for a cluster development to modify the exception to Section 98-147, "Topographical Slope Protection," and adopt an ordinance providing for said amendment, subject to the terms and conditions in the attached Development Agreement, and authorize the Mayor to execute same on behalf of the Town.

PLANNING AND ZONING COMMISSION AGENDA ITEM NO: 4

DATE: February 22, 2016

FROM: Chuck Russell, Town Planner

ITEM: Public Hearing to consider a request for rezoning (ZPD16-0003 – Hillside of Flower Mound) to amend Planned Development District No. 143 (PD-143) for a cluster development to modify the exception to Section 98-147, "Topographical Slope Protection." The property is generally located south of Cross Timbers Road and west of Shiloh Road.

I. ITEM SUMMARY

This application has been reviewed by DRC and, aside from the requested exception, 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

On September 14, 2015, the Planning and Zoning Commission (P&Z) considered a request for rezoning (ZPD15-0011) on the subject property from Agricultural District (A) to Planned Development District No. 143 (PD-143) for a cluster development with certain modifications, exceptions and waivers to the Code of Ordinances and recommended approval by a vote of 5 to 1. P&Z's recommendation included the applicant's request for the following exception:

A. Exception to Topographical Slope Protection

An exception to Section 98-147 of the Town Code was requested for approximately 8.58 acres of land with slopes between 5% and 12%. An exception was also requested for the impacts to 2.44 acres of land with slopes greater than 12%. According to the Town Code, 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."

Section 98-147 "Topographical slope protection" allows for an applicant to request an exception to these standards as follows:

*Exception. An exception to this requirement may be approved by the town council by the affirmative vote of **at least three-fourths super majority vote** of all members of the town council, for any development that keeps the character of the natural topography, and integrates the development into and maintains the overall integrity of the natural topography.*

- 1. 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.*
- 2. 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.*
- 3. While recognized as a potential BMP, the use of retaining walls should be kept to a minimum. Any retaining wall four-foot or greater in height shall be designed by a professional engineer licensed by the State of Texas. Retaining walls exceeding eight feet in height are discouraged.*

In considering an exception to this criterion, the town shall, in addition to the foregoing, consider the effects of granting an exception on other environmental features such as trees, habitats, floodplains, scenic vistas, ridgelines, and other environmental features as well as adjacency to established developments and neighborhoods.

On September 21, 2015, the Town Council considered the rezoning request and approved Planned Development District No. 143 (PD-143) for a cluster development; however, since the vote was 3 to 1, the requirement of a supermajority vote of approval for the slope exception was not achieved.

On October 12, 2015, the Planning and Zoning Commission (P&Z) considered a request to amend PD-143 (ZPD15-0016) to include the same topographic slope exception listed above. No other amendments were proposed to PD-143. P&Z recommended approval by a vote of 6 to 0.

On October 19, 2015, the Town Council approved the request to amend PD-143 to add an exception to Section 98-147, "Topographical Slope Protection," **provided however that such exception is limited to those areas intersected by public roads and that no exception is granted for any lot within the development.**

The applicant is now requesting to amend PD-143 again to include the same topographic slope exception listed above in order to delete the limitation approved

by Council previously (Attachment A(5)). Again, no other amendments are being proposed to PD-143.

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 change requests. At the time this report was written, staff had not received correspondence regarding the project.

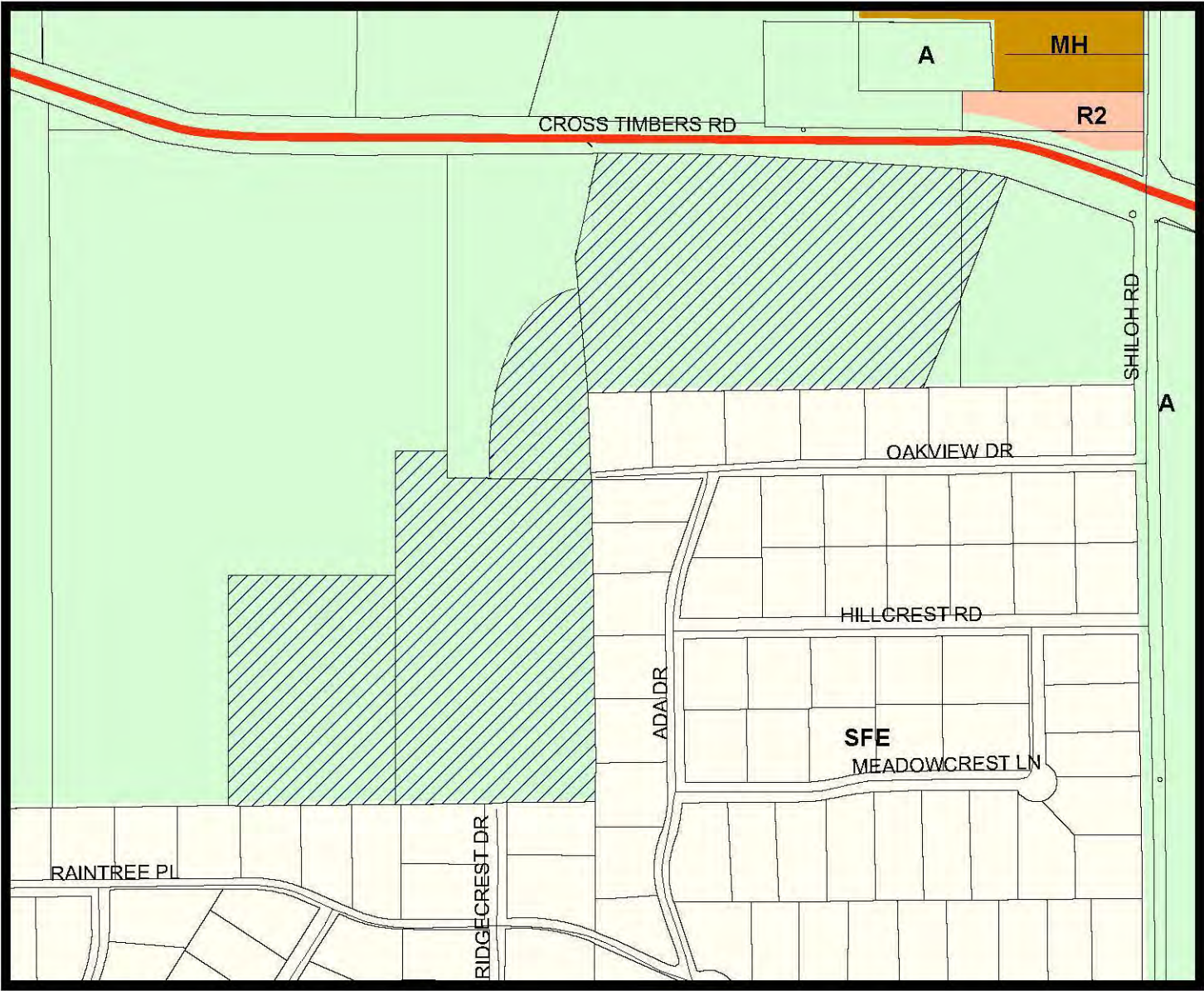
IV. ATTACHMENTS

A. Background Information

1. Vicinity Map
2. Letter of Intent
3. October 19, 2015, Town Council Packet (ZPD15-0016)
4. PD-143 Ordinance (No. 56-15)
5. PD-143 Amendment Ordinance (No. 64-15)

Vicinity Map

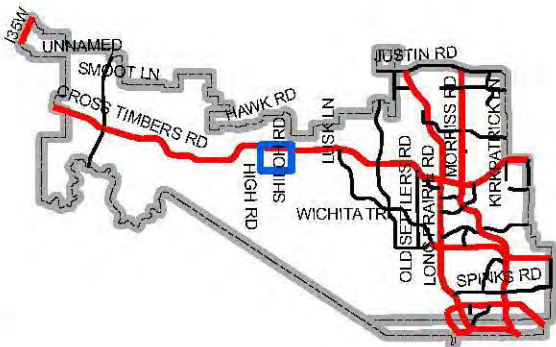
Reference Project: **ZP016-0003**



LEGEND

 Retail 2	 Agriculture	 Mobile Home	 Single Family Estate
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 Subject Property



Map Location



Rembert Enterprises, Inc.

3625 Bonanza Lane Flower Mound, TX 75022

February 8, 2016

Executive Director of Development Services
Planning Division
1001 Cross Timbers Road #2330
Flower Mound, TX 75028

RE: Hillside at Flower Mound (Community)
Flower Mound, Texas

Dear Mr. Powell,

Please accept this as our formal Letter of Intent, to request an exception to Topographical Slope Protection, Upland Habitat Mitigation, Park fees and Park Land dedication related to the above mentioned project.

We are slightly modifying our lot layout to preserve more of the FM1171 view corridor and to mitigate the impact of the 12% slopes as well as preserving 12 post oak trees ranging in size from 8-24".

The Hillside at Flower Mound development has no intentions to "scape and build." Our plan is to preserve as many trees as possible by not benching heavily treed lots. We are preserving over 70+ percent of the existing tree canopy.

We are preserving over 50% open space which will be accessible to the Flower Mound residents.

We feel that the amount of preservation as well as an exceptional community design merits an exception of the above mentioned requests.

Should you have any questions, please feel free to contact us.

Sincerely,

Reginald Rembert



TOWN COUNCIL AGENDA ITEM NO. 16

REGULAR ITEM

DATE: October 19, 2015

FROM: Chuck Russell, Town Planner

ITEM: Public Hearing to consider a request for rezoning (ZPD15-0016 – Hillside of Flower Mound) to amend Planned Development District No. 143 (PD-143) for a cluster development to add an exception to Section 98-147, "Topographical Slope Protection," and to include other possible modifications to PD-143, and to consider adopting an ordinance providing for said amendment. The property is generally located south of Cross Timbers Road and west of Shiloh Road. (*The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its October 12, 2015, meeting.*)

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

The applicant is requesting an exception to Section 98-147 of the Town Code entitled "Topographical slope protection." Details of this request can be found in Attachments 1 and 2. An exception to this requirement may be approved by the Town Council by the affirmative vote of at least three-fourths super majority vote of all members of the Town Council.

ATTACHMENTS:

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

DRAFT MOTION: Move to approve a request for rezoning (ZPD15-0016 – Hillside of Flower Mound) to amend Planned Development District No. 143 (PD-143) for a cluster development to add an exception to Section 98-147, "Topographical Slope Protection," and to include other possible modifications to PD-143, and adopt an ordinance providing for said amendment.



PLANNING AND ZONING COMMISSION AGENDA ITEM NO: 2

DATE: October 12, 2015

FROM: Chuck Russell, Town Planner

ITEM: Public Hearing to consider a request for rezoning (ZPD15-0016 – Hillside of Flower Mound) to amend Planned Development District No. 143 (PD-143) for a cluster development to add an exception to Section 98-147, "Topographical Slope Protection," and to include other possible modifications to PD-143. The property is generally located south of Cross Timbers Road and west of Shiloh Road.

I. ITEM SUMMARY

This application has been reviewed by DRC and, aside from the requested exception, has been found to be in conformance with all applicable Town regulations.

This project has a companion Development Plan application (DP15-0012) for consideration on the same agenda.

This application will require final action by the Town Council.

II. APPLICATION ANALYSIS

The Planning and Zoning Commission (P&Z) considered a request for rezoning (ZPD15-0011) on the subject property from Agricultural District (A) to Planned Development District No. 143 (PD-143) for a cluster development with certain modifications, exceptions and waivers to the Code of Ordinances on September 14, 2015, and recommended approval by a vote of 5 to 1. P&Z's recommendation included the applicant's request for the following exception:

A. Exception to Topographical Slope Protection

An exception to Section 98-147 of the Town Code was requested for approximately 8.58 acres of land with slopes between 5% and 12%. An exception was also requested for the impacts to 2.44 acres of land with slopes greater than 12%. According to the Town Code, 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."

Section 98-147 "Topographical slope protection" allows for an applicant to request an exception to these standards as follows:

*Exception. An exception to this requirement may be approved by the town council by the affirmative vote of **at least three-fourths super majority vote** of all members of the town council, for any development that keeps the character of the natural topography, and integrates the development into and maintains the overall integrity of the natural topography.*

- 1. 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.*
- 2. 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.*
- 3. While recognized as a potential BMP, the use of retaining walls should be kept to a minimum. Any retaining wall four-foot or greater in height shall be designed by a professional engineer licensed by the State of Texas. Retaining walls exceeding eight feet in height are discouraged.*

In considering an exception to this criterion, the town shall, in addition to the foregoing, consider the effects of granting an exception on other environmental features such as trees, habitats, floodplains, scenic vistas, ridgelines, and other environmental features as well as adjacency to established developments and neighborhoods.

The Town Council considered the rezoning request on September 21, 2015, and approved Planned Development District No. 143 (PD-143) for a cluster development; however, since the vote was 3 to 1, the requirement of a supermajority vote of approval for the slope exception was not achieved.

The applicant is now requesting to amend PD-143 to include the same topographic slope exception listed above (Attachment A(2)). No other amendments are being proposed to PD-143.

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 change requests. At the time this report was

written, staff received correspondence both in favor and in opposition to the project (Attachment B(1)).

IV. ATTACHMENTS

A. Background Information

1. September 14, 2015, P&Z Packet (ZPD15-0011)
2. Letter of Intent
3. Draft PD-143 Ordinance

B. Correspondence

1. Correspondence



PLANNING AND ZONING COMMISSION AGENDA ITEM NO: 5

DATE: September 14, 2015

FROM: Chuck Russell, Town Planner

ITEM: Public Hearing to consider a request for rezoning (ZPD15-0011 – Hillside of Flower Mound) from Agricultural District (A) to Planned Development District No. 143 (PD-143) for a cluster development with certain modifications, exceptions and waivers to the Code of Ordinances. The property is generally located south of Cross Timbers Road and west of Shiloh Road.

I. ITEM SUMMARY

This application has been reviewed by DRC and, aside from the requested exceptions and waivers, 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.

This project has a companion Development Plan application (DP15-0007) 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 rezone approximately 43.20 acres of land in order to develop residential lots under the Town's 'cluster development' regulations outlined in the Master Plan. The cluster development standards allow for lots that are smaller than the minimum two acres required by the existing Agricultural District (A) zoning. The applicant is proposing to rezone the site in accordance with the cluster development option outlined in the Cross Timbers Conservation Development District (CTCDD) Area Plan (see below).

The northern side of the subject property has frontage along Cross Timbers Road and is mostly undeveloped except for an existing single family dwelling and accessory agricultural structures. The property located on all four sides of the site is designated as CTCDD in the Town's Master Plan and is zoned a combination of Agricultural District (A) and Single-Family Estate (SFE), with an area northeast of the site zoned Retail District-2 (R-2). The property to the north of the site across Cross Timbers Road contains agricultural uses, a church with a cemetery, and a retail center at the northwest corner of Cross Timbers Road and Shiloh Road. The property west of the site is either undeveloped or contains agricultural uses. The property east and south of the site is developed with single family subdivisions

(Hidden Valley Country Estates) with minimum lot sizes of one acre. The Town's Fire Station No. 2 is also located east of the site on Shiloh Road.

The accompanying concept plan (Attachment B(1)) depicts the proposed lot layout, which includes designated open space areas. The applicant is proposing a maximum of 27 developable single-family lots with a minimum lot size of 30,000 square feet. The proposed development will have primary access points from Cross Timbers Road, Oakview Drive and Ridgecrest Drive. Since the property is located outside the Town's wastewater service area, all proposed residential lots will contain individual septic systems.

On December 16, 2013, the Town Council approved Ordinance No. 64-13 which amended the CTCDD. The CTCDD is described in the Master Plan as:

"Predominantly residential development, typically being single family residential development at net densities no greater than one unit per two acres. Moderate increases in densities may be appropriate in combination with cluster developments, conservation easements and/or other conservation techniques that preserve the Cross Timbers ecosystem, other natural systems, and Scenic Corridors and Vistas. Commercial recreation uses, such as equestrian facilities, golf courses and other uses compatible with the conservation goals of the district are also suitable.

The Cross Timbers Conservation Development District Area Plan preserves the integrity of the largely intact Cross Timbers ecological area in central Flower Mound, which provides the Town with its unique country atmosphere and natural environment, while allowing environmentally sensitive development to occur. The area plan establishes development options within the district and identifies specific elements needing consideration."

The area plan contains established development options within the district, one of which is the cluster development option:

- "8. Develop the property as a cluster development. The intent of the clustering option is to maximize open space conservation, including preserving Scenic Corridors and Vistas, on a site by site basis to realize a community benefit that provides the Town with its unique country atmosphere and natural environment. The continuation and/or connection of open space areas between adjacent developments are important in protecting the ecological value in the District. Cluster developments may be allowed in the District and must demonstrate the following:
 - a. Density shall be commensurate with the quality and character of the open or natural lands conserved and the extent to which the conserved land contributes to the preservation of the Cross Timbers Conservation Development District's country character, including its open, natural, scenic and ecological values. Density will be evaluated on a project-by-project basis. The maximum density that can be granted for a cluster development can be no more than 1 unit per 1.6 acres ($100/1.6 = 62$ units or a 24% increase above the base density). For example, on a 100

acre development, the 100 acres is divided by 1.6 to produce 62 units or a 24% (12 unit) increase in density above the base density of 1:2 or 50 units.

- b. Minimum lot size is one-half acre or 21,780 square feet; however, any development shall contain a mixture of lot sizes and any development shall be cognizant of external adjacent lot sizes.
- c. Open space may be managed by a land trust, Homeowners Association, and/or the Town. Any development proposal must detail the perpetual maintenance and funding for the open space areas, which must be feasible and appropriate for the areas preserved. Recreational uses may be allowed which may be appropriate given the type, location, intensity, and adjacency. Any recreational use should be characteristic of the District, compatible with adjacent land uses and should be open to the public. Floodplain may be counted as open space.
- d. Cluster development shall demonstrate how the development provides an appropriate transition to existing land uses. Factors to be considered include lot sizes, intervening roadways, and use of open space, among other factors."

The gross land area for the proposed development is 43.20 acres. The applicant is proposing a density of 1 unit per 1.6 acres which is the maximum allowed under the cluster development option. Approximately 21.784 acres of land is being dedicated as open space (50.43%) to be either maintained by the Homeowner's Association or a non-profit entity. Although the applicant has indicated they have been in discussions with a third party non-profit entity, at this point they have not made a commitment on who will be managing the open space.

The open space areas include two large tracts north and west of the site. The northern open space area is encumbered by a 75-foot-wide Atmos gas easement and will contain a meadow with a multi-use trail. The western open space area contains land encumbered by flood plain and steep topography. An open space management plan has been reviewed by the Environmental Conservation Commission (ECC), and the final document including open space easements must be approved and recorded prior to approval of a record plat for the property.

The applicant has provided landscaping, a Town trail, and split rail fence along Cross Timbers Road in accordance with the Town's Urban Design standards. The width of the buffer along Cross Timbers Road exceeds the Town's requirement of 50 feet. The applicant has also arranged lots and open space within the development to provide view corridors so the open space areas are visible at the perimeter of the development.

A. Exception to Topographic Slope Protection

According to Section 98-147 of the Town Code, 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 applicant's Environmental Protection Plan (see Attachment B(4)), an exception to this requirement is being requested for approximately 8.58 acres of land with slopes between 5% and 12%. An exception is also being requested for the impacts to 2.44 acres of land with slopes greater than 12%.

B. Waiver to Upland Habitat Impact Payment

The current design and layout of the development proposes to preserve the Environmentally Sensitive Areas (ESAs) defined in the Town's SMARTGrowth Program on the site, except for 9.68 acres of upland habitat. According to both the Environmental Protection Plan and the Development Standards, the applicant is seeking a waiver for the per-acre payment (\$15,000/acre) to the tree mitigation fund for the upland habitat impacts (total of \$145,200).

As a part of the cluster development process, an enhanced public notification process is required that mandates a minimum of two neighborhood meetings be held to discuss the project prior to the application being considered by the Planning and Zoning Commission. Anyone who has signed up online is invited to these meetings as well as adjacent property owners and HOA's. The first informational meeting was held on January 29, 2015, and the second informational meeting was held on August 13, 2015.

On September 1, 2015, the Environmental Conservation Commission (ECC) reviewed an application for a tree removal permit for 9 specimen trees (total of 26 specimen trees on the site). The ECC recommended approval of the requested permit. At the same meeting, the ECC recommended approval of a proposed concept plan depicting open space areas. The items will be forwarded to the Town Council for consideration at the same time as the subject project.

The link to the September 1, 2015, ECC meeting is:

<http://flowermoundtx.swagit.com/play/09012015-1095/#7>

On September 3, 2015, the Parks, Arts and Library Services (PALS) Board recommended approval to Town Council that cash, in the amount of \$31,298.40, be accepted in lieu of the otherwise required Park Land Dedication, and Park Development Fees in the amount of \$37,476.00 for the Hillside at Flower Mound project. The items will be forwarded to the Town Council for consideration at the same time as the subject project.

The link to the September 3, 2015, PALS meeting is:

<http://flowermoundtx.swagit.com/play/09032015-939/#6>

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 change requests. At the time this report was written, staff had not received any correspondence regarding the project.

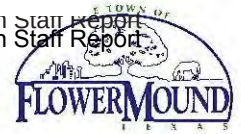
IV. ATTACHMENTS

A. Background Information

1. Vicinity Map
2. Letter of Intent
3. Cross Timbers Conservation Development District Area Plan

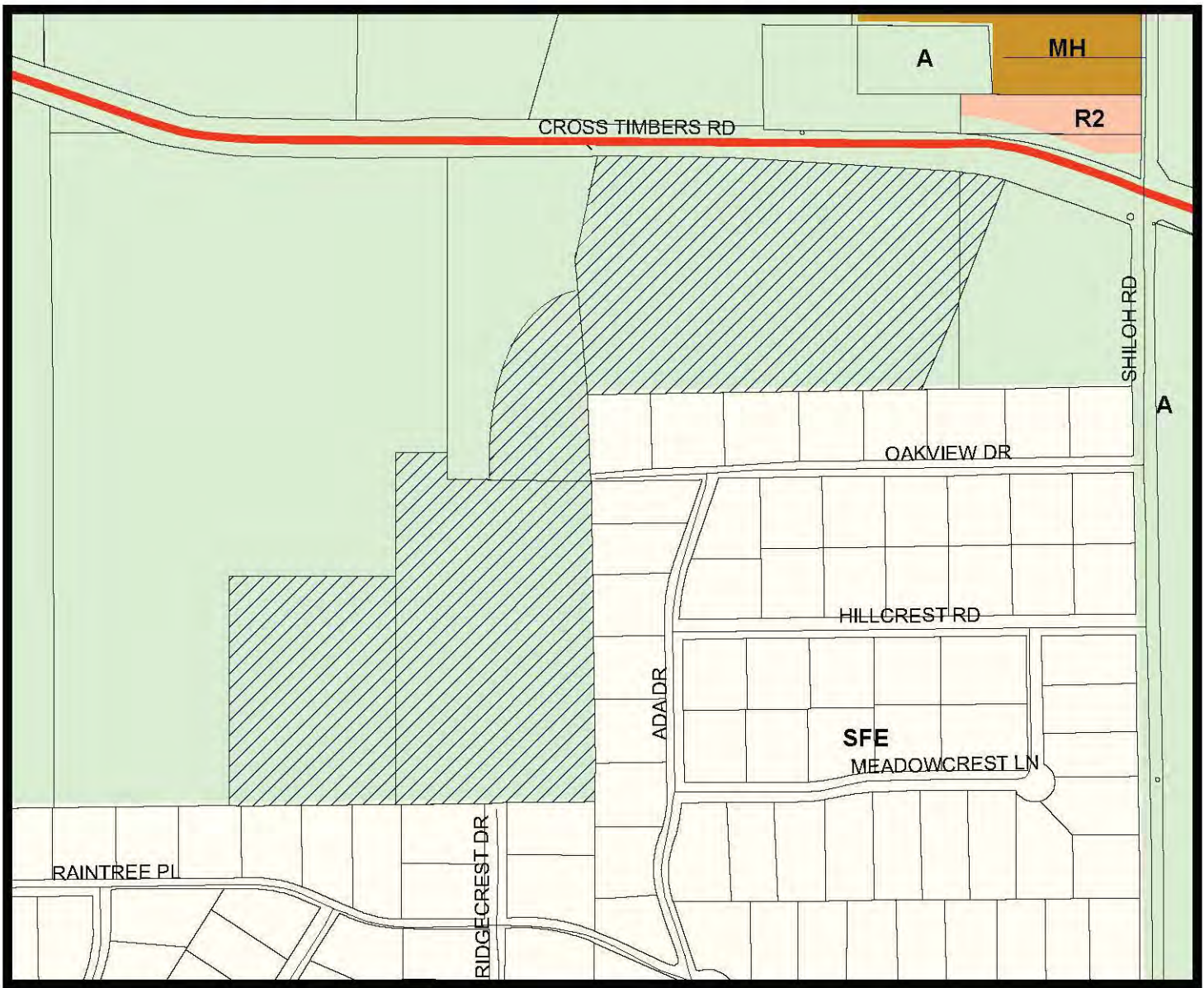
B. Application Details

1. Zoning Package
2. Draft Development Standards
3. Draft Open Space Management Plan
4. Environmental Protection Plan



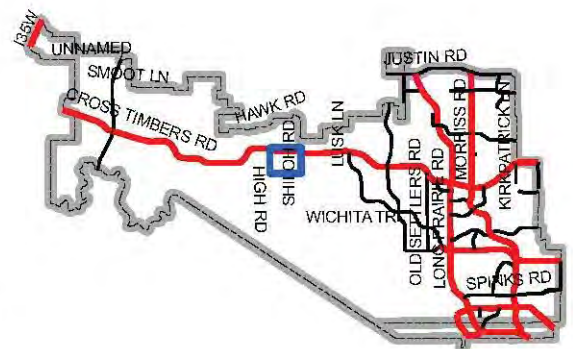
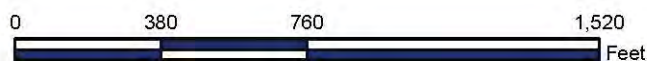
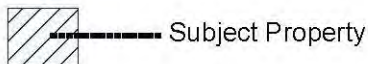
Vicinity Map

Reference Project: ZPD15-0011 & DP15-0007



LEGEND

	Retail 2		Agriculture		Mobile Home		Single Family Estate
--	----------	--	-------------	--	-------------	--	----------------------



Map Location



Rembert Enterprises, Inc.

3625 Bonanza Lane Flower Mound, TX 75022

July 17, 2015

Executive Director of Development Services
Planning Division
1001 Cross Timbers Road #2330
Flower Mound, TX 75028

RE: Hillside Flower Mound (Community)
Flower Mound, Texas

Dear Mr. Powell,

Please accept this as our formal Letter of Intent to describe the requested Zoning Planned Development and Development Plan.

The Hillside community will be a high-quality, beautiful open-space community, consisting of a +/- 43.20 acre tract of land near the Intersection of Shiloh Road , along Cross Timbers Road (also known as FM 1171, a public roadway). The proposed community is consistent with the stated goals of the Town's Master Plan. We are utilizing site features such as topography, size, and shape to develop this community. We have taken the input received from the community meetings and prepared a Zoning Planned Development Exhibit, proposed development regulations, Concept Plan, Tree Survey, and Development Plan Package. We are preserving the natural topography, a portion of large canopy trees, rambling brooks, large tree stands, scenic vistas, large parcels of open space which includes the equivalent of 6 ½ football fields of majestic beauty along Cross Timbers Road.

The above-mentioned tracts are currently identified on the Town's Master Land Use Plan as Cross Timbers Conservation Development District (CTCDD). The existing zoning is agricultural. The proposed zoning is for a single-family cluster residential development, which is consistent with the updated 2013 Master Plan. The Hillside community will consist of 27 lots, with six (6) X-lots. We are proposing to change the Zoning to accommodate a uniquely developed community that is compatible with the existing adjoining land uses and character of the neighborhood (Hidden Valley Country Estates) in which the project is located. Adequate public facilities are already in place to support the proposed development. Although we are asking for a cluster development, we are not using the minimum lot sizes. We are using a base zoning of Single Family-30 which has a minimum lot size of 30,000 s.f. (not 21,780 s.f. which is the minimum for a cluster development in CTCDD). Proposed uses and development standards exceed and are consistent with the purposes of the base zoning district.

The proposed Planned Development District is consistent with the Town's vision, goals, objectives, and policies adopted in the Master Plan. Density of the proposed community shall not exceed the codes allowable of 1.6 Ac. per unit. The development will be completed in a single phase. Our plans conform to the Town's land development regulations.

We are providing approximately 21.792 acres or (50.44%) of open space along with preserving large specimen trees with large canopies that is majestically placed along FM 1171.

This site has 2000+ protected and specimen trees, as indicated in the tree survey included in our application. In an effort to maintain the natural beauty of our Town, we have made every effort to preserve trees when and where possible.

We have had one meeting with the adjacent homeowners and we are planning a second meeting prior to the scheduling of the Planning and Zoning meeting, per the Enhance Notification Requirement.

We respectfully request an exception to the upland habitat mitigation requirement. We are exceeding the tree preservation requirement by saving a large portion of the existing tree canopy. We feel that the amount of large parcels of open space continued to adjacent properties, the 6 ½ football field-equivalent open space along FM 1171, extensive views into the district, ecological value of the large existing creek, as well as the exceptional community design, merits an exception from the mitigation requirement.

We also respectfully request an exception to the wrought iron fencing requirement surrounding the open space, due to the fact that our western property line is already fenced, and split rail fencing is already required along FM 1171.

We are currently discussing how to manage our open space. We understand that it must be managed by a Land Trust, HOA or the Town. We are looking at a combination of Land Trust and HOA. The HOA will maintain the property along FM 1171 and a Land Trust will possibly manage the undisturbed open space.

Should you have any questions, please feel free to contact us.

Sincerely,



Reginald Rembert

2.0 AREA PLANS

Cross Timbers Conservation Development District Area Plan

The Cross Timbers Conservation Development District Area Plan preserves the integrity of the largely intact Cross Timbers ecological area in central Flower Mound, which provides the Town with its unique country atmosphere and natural environment, while allowing environmentally sensitive development to occur. The area plan establishes development options within the district and identifies specific elements needing consideration.

There are several development options within the District:

1. Retain all or part of the property for personal use. This option would include (but not require) the potential of donating a conservation easement on all or part of the property in order to realize some economic benefit.
2. Develop all or part of the property, or sell all or part of the property to others for development, on two acre lots as permitted under the existing Agricultural zoning.
3. Develop all or part of the property, or sell all or part of the property to others for development, as a conservation development, with the number of lots as permitted under the existing Agricultural zoning, but with smaller lots and eligibility for incentive benefits as established by the Town's SMARTGrowth Program. This option would include the potential donation of a conservation easement on all or part of the property in order to realize some additional economic benefit.
4. Develop all or part of the property at lot sizes larger than two acres, as permitted under the existing Agricultural zoning.
5. Develop all or part of the property in Rural Development (lot sizes five acres or larger) that reflects the country atmosphere and natural environment of Flower Mound, as permitted under the existing Agricultural zoning. This could include coordinated development for specialized types of development, such as equestrian oriented developments.
6. Coordinate development planning with adjoining land owners as a combined conservation development, with the number of lots as permitted under the existing Agricultural zoning, but with smaller lots and eligibility for incentive benefits as established by the Town's SMARTGrowth Program, as a coordinated Planned Development. This option would include (but not require) the potential of donating a conservation easement on all or part of the property in order to realize some additional economic benefit.
7. Develop all or part of the property as appropriate non-residential development. Appropriate non-residential development might include active equestrian commercial activities (similar to the existing Flower Mound Equestrian Center), active use "country" commercial uses (similar to the Circle R Ranch, or roadside farm product stands), or other commercial uses that reinforce the "country atmosphere and natural environment"

2.0 AREA PLANS

that is characteristic of the Cross Timbers Conservation Development District, and are fully compatible with and acceptable to neighbors and landowners in the Zone.

8. Develop the property as a cluster development. The intent of the clustering option is to maximize open space conservation, including preserving Scenic Corridors and Vistas, on a site-by-site basis to realize a community benefit that provides the Town with its unique country atmosphere and natural environment. The continuation and/or connection of open space areas between adjacent developments are important in protecting the ecological value in the District. Cluster developments may be allowed in the District and must demonstrate the following:

- a. Density shall be commensurate with the quality and character of the open or natural lands conserved and the extent to which the conserved land contributes to the preservation of the Cross Timbers Conservation Development District's country character, including its open, natural, scenic and ecological values. Density will be evaluated on a project-by-project basis. The maximum density that can be granted for a cluster development can be no more than 1 unit per 1.6 acres ($100/1.6 = 62$ units or a 24% increase above the base density). For example, on a 100 acre development, the 100 acres is divided by 1.6 to produce 62 units or a 24% (12 unit) increase in density above the base density of 1:2 or 50 units.
- b. Minimum lot size is one-half acre or 21,780 square feet; however, any development shall contain a mixture of lot sizes and any development shall be cognizant of external adjacent lot sizes.
- c. Open space may be managed by a land trust, Homeowners Association, and/or the Town. Any development proposal must detail the perpetual maintenance and funding for the open space areas, which must be feasible and appropriate for the areas preserved. Recreational uses may be allowed which may be appropriate given the type, location, intensity, and adjacency. Any recreational use should be characteristic of the District, compatible with adjacent land uses and should be open to the public. Floodplain may be counted as open space.
- d. Cluster development shall demonstrate how the development provides an appropriate transition to existing land uses. Factors to be considered include lot sizes, intervening roadways, and use of open space, among other factors.
- e. The approval of a development application for a cluster development shall require an enhanced public notification process. This process is to increase notice and encourage participation of the adjacent property owners and includes the following:
 1. Any developer using the cluster option must present plans to adjacent property owners and Homeowner Associations for comment and input on the proposed application.

2.0 AREA PLANS

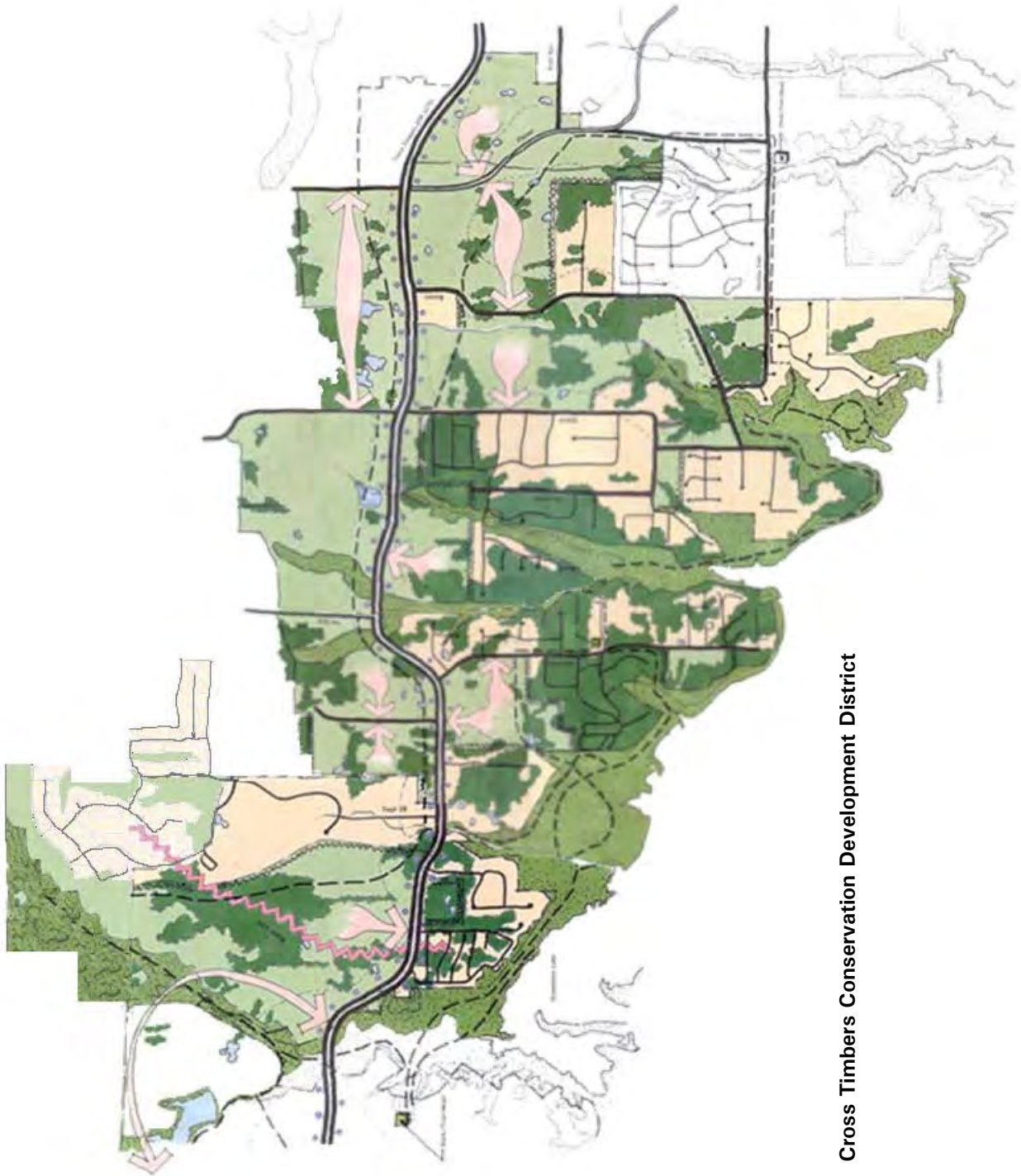
2. At the time of pre-application, Town staff will notify the affected property owners of the potential development.
3. A meeting will be coordinated with the Developer and interested parties prior to the submittal of a development application.
4. A second meeting will be held prior to the Planning and Zoning Commission meeting to update the interested parties prior to the public hearing. The agenda item for the proposal will reflect any consensus reached by the group as well as individual comments.

Elements needing consideration within the district include:

1. Scenic Corridors and Vistas - The scenic corridor along FM 1171 has extensive views into the District. These viewsheds need to be incorporated into any development proposal, if development is contemplated, and would require compliance with the "Town of Flower Mound SMARTGrowth Program" SMARTGrowth Analysis. Compliance with the SMARTGrowth Analysis could be achieved by conservation or cluster development, placing new houses outside of the view area, or by siting any new lots so the houses face toward FM 1171 across conserved open space, with access from a street internal to the development, rather than providing a view from FM 1171 into back yards or rear alleys.
2. Scenic corridors are present along the following roadways in addition to the roads identified in the Town's Urban Design Plan within the Cross Timbers Conservation Development District:
 - a. Skillern Road
 - b. Scenic Road
 - c. Shiloh Road
 - d. Rocky Point Road
 - e. Red Rock Road
 - f. High Road
 - g. FM 1171 at the Cross Timbers Escarpment

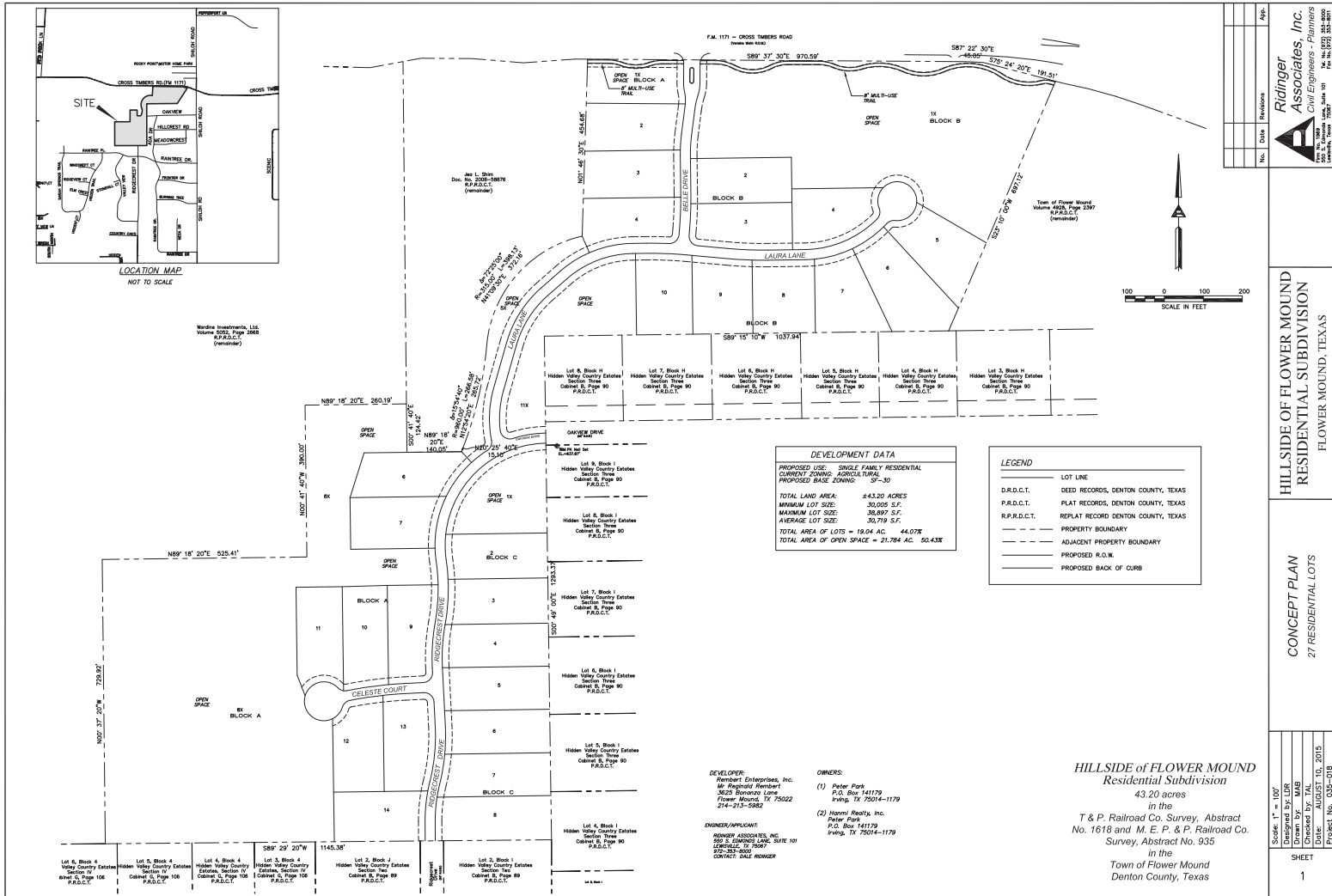
Properties adjacent to these roads provide extensive views into the District. Compliance with the SMARTGrowth Analysis could be achieved by conservation or cluster development, placing new houses outside of the view area, or by siting any new lots so the houses face the roadways across conserved open space, with access from a street internal to the development, rather than providing a view from the roadways into back yards or rear alleys.

2.0 AREA PLANS



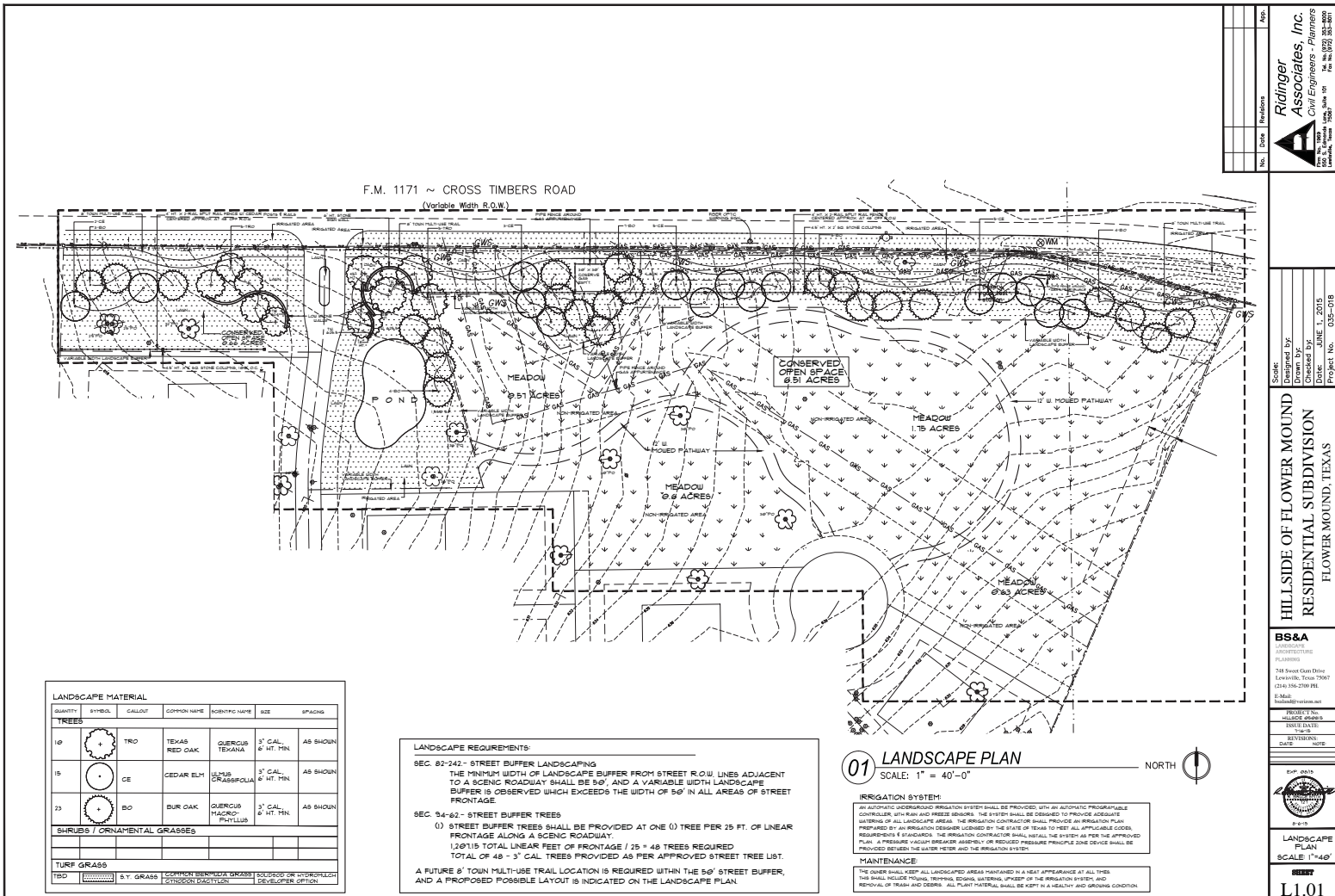
Page 212 of 298

Attachment 1: Planning and Zoning Commission Staff Report



Page 213 of 298

Attachment 1: Planning and Zoning Commission Staff Report



Ridinger Associates, Inc.
Civil Engineers - Planners
1000 N. State St., Suite 200
Lewisville, Texas 75057
Tel. No. (972) 333-8000
Fax No. (972) 333-8001

Scale: 1" = 40'-0"
Drawn By: [Name]
Checked By: [Name]
Date: JUNE 1, 2015
Project No. 035-018

**HILLSIDE OF FLOWER MOUND
RESIDENTIAL SUBDIVISION**
FLOWER MOUND, TEXAS

BS&A
ARCHITECTS
PLANNERS
708 South Glen Drive
Lewisville, Texas 75057
(214) 396-2700 (R)
E-Mail: bsand@att.net

REVISIONS
DATE: 11/15/15
BY: [Name]
DATE: [Date]
BY: [Name]

LANDSCAPE PLAN
SCALE 1"=40'
01.01

DEVELOPMENT STANDARDS

Planned Development District No. 143 (PD-143) Hillside at Flower Mound

The development on the property comprising approximately 43.20 acres of land within the corporate limits of the Town of Flower Mound ("Town") and as described on Exhibit "xx" to this Zoning Ordinance adopting PD-143 shall be in accordance with the Town of Flower Mound *Master Plan* and the Land Development Regulations of the Town of Flower Mound, Texas, as amended, and shall be subject to the following conditions and requirements:

A. PD-143 with Single-Family District-30 (SF-30) uses. Development of PD-143 as designated on Exhibit "xx," the Concept Plan for Hillside at Flower Mound shall be in compliance with all regulations applicable to Single-Family District-30 (SF-30) uses contained in the Town's Land Development Regulations as amended, except as otherwise provided in this Ordinance.

1. Minimum floor area per unit. The minimum floor area per dwelling unit shall be 2,800 square feet, subject to Section 98-1025.
2. Maximum lot coverage. The maximum lot coverage shall be 40% for all uses, subject to Section 98-1029.

B. Residential Lot Requirements. The following requirements shall apply to the residential lots within Hillside at Flower Mound.

1. The maximum density shall be no more than 1 dwelling unit per 1.6 acres ($100/1.6 = 62$ units or a 24% increase above the base density).
2. There shall be a maximum of 27 residential lots as depicted on the attached Zoning Conceptual Plan.

C. Miscellaneous Standards.

1. As a Cluster Development, PD-143 shall have a minimum of fifty percent (50%) of the gross land area preserved as open space for the development as depicted in Exhibit "xx" below. In meeting requirements for open space, the developer must demonstrate how open space designated in Exhibit "xx" as shall be managed. Open Space shall be managed by a qualified nonprofit entity or organization that manages open space, such as a land trust, HOA or other qualified entity, pursuant to section 170(h) of the Internal Revenue Code, as amended, and as may be approved and accepted by the Town. All designated open space areas shall be conserved in a recorded conservation easement as applicable prior to Planning and Zoning Commission approval of the first record plat within the development.
2. All landscaping, trails and open space shall be in conformance with Exhibit "xx", the Conceptual Landscape Plan.
3. The development of PD-143 is subject to the approved Environmental Protection Plan.

D. Exceptions and Waivers.**1. Exception to Topographic Slope Protection**

Exception to this requirement is being requested for approximately 8.58 acres of land with slopes between 5% and 12%. An exception is also being requested for the impacts to 2.44 acres of land with slopes greater than 12%.

2. Waiver to Upland Habitat Impact Payment

Waiver for the per acre payment of to the tree mitigation fund for the upland habitat impacts.

OPEN SPACE MANAGEMENT PLAN

Planned Development District 143 (PD-143)

Hillside at Flower Mound

Property Description

All X-lots (“Property”) in Exhibits A, B, and C are defined as Open Space.

As set forth in the Development Plan (Exhibit “A”) hereto, which is hereby incorporated herein by reference for all purposes.

As set forth in the Open Space Management Plan (Exhibit “B”) hereto, which is hereby incorporated herein by reference for all purposes.

As set forth in the Landscape Plan (Exhibit “C”) hereto, which is hereby incorporated herein by reference for all purposes.

Present Condition of the Property

The natural characteristics of the Hillside Development is outlined in a report (Exhibit “D”) completed on July 17, 2015 (the “EPP”), by KBA EnviroScience, Ltd.

Introduction

It is our plans for the Home Owners Association (HOA) Board of Directors, in conjunction with a Certified Arborist, manage the Open Space related to the Hillside at Flower Mound project. There are six open space lots consisting of 21.7 acres with approximately 14 acres remaining in its natural state. Land Trust Conservation Easements are typically larger in size. However, we are speaking with a Land Trust Company about their willingness to partner with us relating to the donation of a Conservation Easement over the subject tracts of land.

Purpose

The purpose of the preservation of open space includes but is not limited to one or more of the following:

- Retaining or protecting the relatively natural habitat of wildlife, plants, and similar ecosystems on the Property;
- Protecting natural resources, maintaining or enhancing air and water quality;

- Preserving the historical, architectural, archaeological, or cultural aspects of the Property;
- Preserving the open space characteristic of Property pursuant to The Town of Flower Mound's Master Plan 2001 (including, but not limited to, the Land Use Plan for the "Cross Timbers Conservation Development District"), Open Space Plan, SMARTGrowth Management Plan, Land Development Regulations governing the Cross Timbers Conservation Developments, and Planned Development District No. 143;
- Permitting the Property (as suitable) for non-intensive outdoor recreation by the public, including hiking, horseback riding, nature observation, and enjoyment of open space, all in accordance with applicable laws and regulations.
- Land in its natural state require little to no maintenance and carry minimal costs for maintenance.

Prohibited Activities

Any activity on, or use of, the Property inconsistent with the purpose of the open space is prohibited. The Property shall be preserved, to the extent practicable, in its natural condition and restricted from any development that would impair or interfere with the values of the Property. Without limiting the following activities and uses are expressly prohibited, restricted, or reserved as indicated hereunder:

Vegetation: There shall be no large-scale removing, destroying, cutting, trimming, burning, harming, or altering of any vegetation, or disturbing or changing in any way the natural habitat existing on the Property after the Final Acceptance Date by the Town. The use of pesticides, biocides, insecticides, fungicides, rodenticides, and herbicides on the Property shall be limited so as to preserve the natural characteristics of the Property. The use of such products and/or mowing of the Property, as necessary to control pests or vermin, may be allowed. Mowing and/or trimming may be conducted along boundary lines to allow access for maintenance. If any trails are constructed on the Property, trail boundaries may be maintained through trimming or mowing. In the event that vegetation must be altered in order to or remedy a condition which presents a danger to persons, such alterations must conform to the Town's Code of Ordinances.

Uses: No commercial, agricultural, residential or industrial activity shall be conducted upon the Property. There shall be no storing or dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery, hazardous or toxic substances or waste, or any placement of underground or above ground storage tanks or other materials on the Property that may negatively impact or be

detrimental to the Property or to the surface or subsurface waters of the Property. Livestock animals shall not be allowed on the Property.

Topography: After the Final Acceptance Date by the Town, there shall be no change in the topography of the Property. There shall be no filling, excavating, grading, dredging, mining or drilling upon the Property. There shall be no removing of topsoil, peat, sand, gravel, rock, minerals or other materials from the Property.

Soil or Water Degradation: After the Final Acceptance Date by the Town, there shall be no use of or the conducting of any activity on the Property that is likely to cause soil degradation, erosion, depletion or pollution of, or siltation on, any surface or subsurface waters of the Property, and there shall be no change to the surface or subsurface hydrology of the Property.

Construction: There shall be no constructing or placing of any building, mobile home, asphalt or concrete pavement, permanent billboard or other advertising display, antenna, utility pole, tower, conduit, line, pier, landing, dock, or any other temporary or permanent structure or facility or any other man-made structures on the Property.

Roads: There shall be no construction of new roads on the Property or any enlargement, widening, or modification to any existing roads on the Property.

Waters: There shall be no polluting, altering, manipulating, depleting or extracting of surface or subsurface water (including, but not limited to, ponds, creeks or other water courses) or any other water bodies on the Property. There shall be no conducting or allowing any entity or person to conduct activities on the Property that would be detrimental to water purity or that alter the natural water level or flow in or over the Property (including, but not limited to, damming, dredging or construction in any free flowing water body, nor any manipulation or alteration of natural water courses, fresh water lake and pond shores, marshes or other water bodies).

Vehicles: After the Final Acceptance Date by the Town, and subject to compliance with the Americans with Disabilities Act, there shall be no operating or allowing the operation of any motorized vehicles on the Property.

Easements: All easements are listed on Exhibit “A”. There shall be no new easements on, over, under, across, along or through the Property. However, a Conservation Easement over the property will be allowed.

Signage: No permanent signage shall be permitted on or over the Property, except the posting of no trespassing signs, signs giving directions or proscribing rules and regulations for use of the Property and/or signs identifying the purpose of the preserved property. Until the sale of the last of the lots owned by developer in the Hillside at Flower Mound subdivision, the developer or his designee may place “For Sale” signs on the Property, provided that the total number of such signs does not exceed the total number of such lots owned by the developer.

Duration

Perpetual.

General Provisions

(l) Amendment.

1. Maintenance of Common Areas:

- a. All Common Areas (X-Lots) are to be conveyed to the Homeowners Association (HOA) by the Developer. The HOA will be established by the Developer as a Nonprofit Corporation. The members will be the Hillside of Flower Mound lot owners with one (1) vote for each Lot Owner in all matters. The initial Board of Directors will be appointed by the Developer. Once the Hillside at Flower Mound community is 80% complete (22 homes occupied), a Board of Directors will be elected by the Homeowners to manage and oversee the business and all other matters of the HOA, including the conservation (Open Space) requirements of the Town.
- b. The structure and guidelines for the HOA will be defined by the Dedications and Restrictions (Deed Restrictions), which will be recorded by the Developer after the Final Plat is approved, as required by the Town. The Covenants, Conditions and Restrictions shall set forth all enforcement guidelines.
- c. The maintenance and management of the Common Areas (X-Lots) will be the responsibility of the HOA Board of Directors. The Common Areas (X-Lots) and their care will be as follows:
- d. Woodland/Open Space (X-Lots)
 1. Lot 1X, Block A, 50’ Landscape Buffer to be maintained by the HOA during regular maintenance.

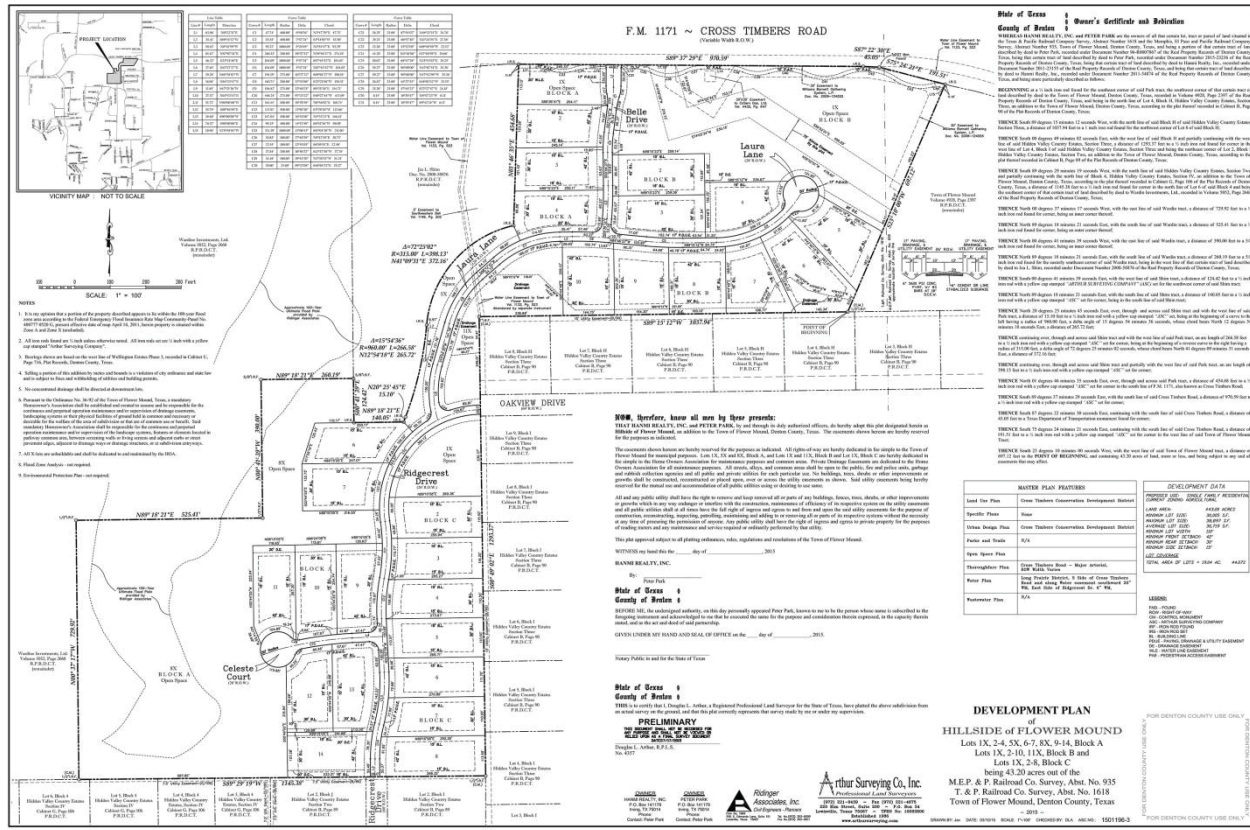
2. Lot 1X, Block A, excluding 50' Landscape Buffer to remain in its natural state and mowed approximately 2 to 3 times per year as determined by the HOA.
 3. Lot 1X, Block B, 50' Landscape Buffer to be maintained by the HOA during regular maintenance.
 4. Lot 1X, Block B, excluding 50' Landscape Buffer to remain in its natural state and mowed approximately 2 to 3 times per year as determined by the HOA. A walking path will be mowed 4 times per year or as determined by the HOA.
 5. Lot 5X, Block A, to remain in its natural state.
 6. Lot 8X, Block A, to remain in its natural state.
 7. Lot 11X, Block B, to remain in its natural state.
 8. Lot 1X, Block C, to remain in its natural state.
- e. Bar Ditches in Open Space
1. Bar ditches in Lot 1X, Block A, to be maintained by the HOA during regular maintenance.
 2. Bar ditches in Lot 5X, Block A, to be maintained by the HOA during regular maintenance.
 3. Bar ditches in Lot 1X, Block B, to be maintained by the HOA during regular maintenance.
 4. Bar ditches in Lot 11X, Block B, to be maintained by the HOA during regular maintenance.
 5. Bar ditches in Lot 1, X Block C, to be maintained by the HOA during regular maintenance.
 6. All other bar ditches, not included in open space, will be maintained by the property owners.
- f. Drainage Culverts in Open Space
1. All Drainage culverts in open space to be maintained by the HOA during regular maintenance.
- g. Fencing in Open Space
1. Lot 1X, Block A, 50' Landscape Buffer fencing to be maintained by the HOA during regular maintenance.
 2. Lot 1X, Block B, 50' Landscape Buffer fencing to be maintained by the HOA during regular maintenance.
- h. Masonry Entry Feature in Open Space
1. All masonry features in open space to be maintained by the HOA during regular maintenance.
- i. Pond in Open Space
1. One located on Lot 1X, Block B.

2. Pond water level will be maintained by a water-well installed by the Developer.
 3. Pond will have a re-circulating fountain to aerate the water and create continuous movement.
 4. The ponds will be initially maintained by the Developer.
 5. Pond will be maintained by the HOA during regular landscape maintenance.
- j. Multi Use Trail in 50' Landscape Buffer
1. 8' multi-purpose trail to be maintained by the HOA during regular maintenance.

All open space areas may be either; Placed under a Conservation Easement to be supervised by a Licensed or Certified Conservator, or managed by the HOA Board of Directors. The HOA Board of Directors must be under the direction of a licensed Arborist. The Board of Directors and their responsibilities are defined in the Declaration of Covenant, Conditions and Restrictions for the Hillside Development.

The HOA will fulfill the conservation covenants as provided in the deed restrictions.

DEVELOPMENT PLAN



[illegible]

201015-0011 DEVELOPMENT DATA

TOTAL TRACT AREA	43.20 ACRES
TOTAL AREA OF PROPOSED LOTS - 13.24 AC	48.07 AC
TOTAL AREA OF OPEN SPACE - 29.96 AC	35.48 AC
TOTAL NUMBER OF BUILDABLE LOTS - 27	
TOTAL NUMBER OF OPEN SPACE LOTS - 6	

OPEN SPACE LOT TABLE

LOT	LOT BLOCK	ACRES
LOT 10, BLOCK A	0.646 ACRES	
LOT 11, BLOCK A	1.707 ACRES	
LOT 16, BLOCK A	11.238 ACRES	
LOT 17, BLOCK B	0.647 ACRES	
LOT 18, BLOCK B	1.600 ACRES	
LOT 19, BLOCK C	1.600 ACRES	
TOTAL OPEN SPACE AREA	29.96 ACRES (68.42%)	

LEGEND

- LOT LINE
- S.A.G.C.S. DEED RECORD, DENTON COUNTY, TEXAS
- P.A.B.C.S. DEED RECORD, DENTON COUNTY, TEXAS
- R.P.A.B.C.S. DEED RECORD, DENTON COUNTY, TEXAS
- PROPERTY BOUNDARY
- ADJACENT PROPERTY BOUNDARY
- PROPOSED EASE
- PROPOSED BACK OF CURB
- SPECIES TREE
- SPECIES TREE TO BE REMOVED

HILLSIDE OF FLOWER MOUND
RESIDENTIAL SUBDIVISION
FLOWER MOUND, TEXAS

OPEN SPACE / LANDSCAPE PLAN

201015-0011 DEVELOPMENT DATA

TOTAL TRACT AREA	43.20 ACRES
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OPEN SPACE LOT TABLE

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LOT 19, BLOCK C	1.600 ACRES	
TOTAL OPEN SPACE AREA	29.96 ACRES (68.42%)	

LEGEND

- LOT LINE
- S.A.G.C.S. DEED RECORD, DENTON COUNTY, TEXAS
- P.A.B.C.S. DEED RECORD, DENTON COUNTY, TEXAS
- R.P.A.B.C.S. DEED RECORD, DENTON COUNTY, TEXAS
- PROPERTY BOUNDARY
- ADJACENT PROPERTY BOUNDARY
- PROPOSED EASE
- PROPOSED BACK OF CURB
- SPECIES TREE
- SPECIES TREE TO BE REMOVED

HILLSIDE OF FLOWER MOUND
Residential Subdivision
43.20 acres
in the
T & P Railroad Co. Survey, Abstract
No. 1618 and M. E. & P. Railroad Co.
Survey, Abstract No. 935
in the
Town of Flower Mound
Denton County, Texas

DEVELOPER:
 Hillside of Flower Mound, Inc.
 10000 Highway 121, Suite 100
 Flower Mound, TX 75028
 (940) 265-1171

OWNER:
 T & P Railroad Co.
 P.O. Box 14177
 Dallas, TX 75214-1177

DESIGNER:
 Hillside of Flower Mound, Inc.
 10000 Highway 121, Suite 100
 Flower Mound, TX 75028
 (940) 265-1171

DATE:
 10/15/2015

SCALE:
 1" = 100'

DATE:
 10/15/2015

BY:
 [Signature]

F.M. 1171 ~ CROSS TIMBERS ROAD
(Village, West S.W. 1/4)

NORTH

SCALE: 1" = 40'-0"

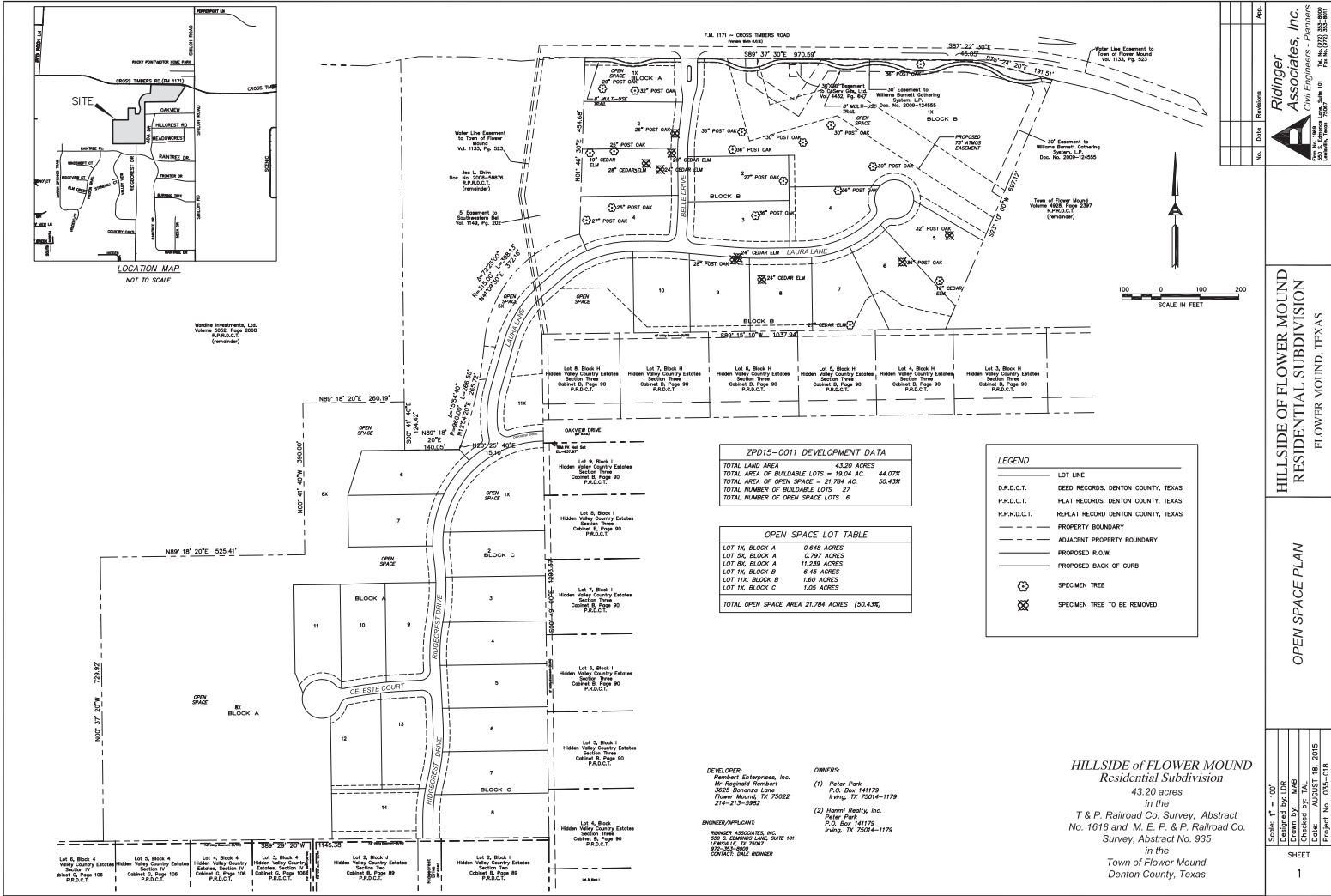
01 LANDSCAPE PLAN

IRRIGATION SYSTEM

THE OWNER SHALL KEEP ALL LANDSCAPED AREAS MAINTAINED IN A NEAT APPEARANCE AT ALL TIMES. THE OWNER SHALL MAINTAIN, REPLACE, REPAIR, AND/OR REPLACE ANY AND ALL PLANTING MATERIAL AND REMOVAL OF TREES AND SHRUBS. ALL PLANT MATERIAL SHALL BE KEPT IN A HEALTHY AND GROWING CONDITION.

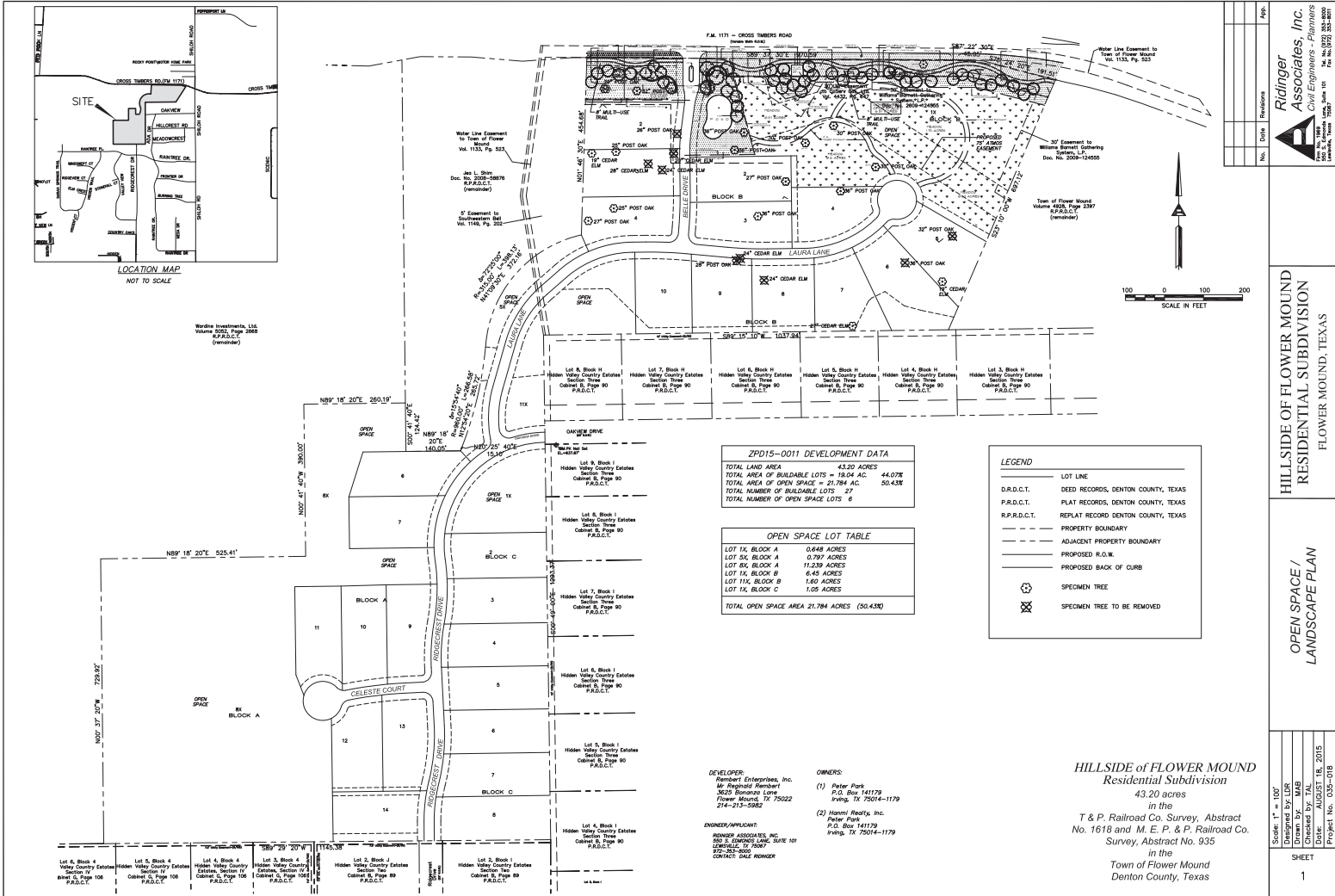
SCALE: 1" = 40'-0"

L1.01



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Attachment 1: Planning and Zoning Commission Staff Report





101 E. Southwest Pkwy, Ste. 114
Lewisville, TX 75067
(972) 436-9669
FAX: (972) 436-9667

July 17, 2015

Revised August 17, 2015

Dale Ridinger, President.
Ridinger Associates
550 S. Edmonds Lane, Suite 101
Lewisville, TX 75067

Subject: Environmental Protection Plan for the Proposed Hillside Development, Flower Mound, Texas.

Dear Mr. Ridinger:

This Environmental Protection Plan (EPP) was prepared to satisfy the Town of Flower Mound (Town) development requirements for the proposed residential development in Flower Mound (Proposed Hillside Development). The project site is an approximately 43-acre tract of mostly vacant property located within a developing area of Flower Mound. The property is located southwest of the intersection of Shiloh Road and FM 1171 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 June 5, 2015 Joseph Schwartz and Jose Alvarez, 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 two distinct areas; a grazed pasture and associated buildings and fencing in the northeastern section, and a mostly forested, undeveloped portion in the southwestern section of the site. The northeastern section of the site contains a gravel road leading to a mobile home and barn. This area is dominated by upland grasses and forbs dominated by annual ragweed (*Ambrosia artemisiifolia*), perennial rye (*Lolium perenne*), little barley (*Hordeum pusillum*), silver-leaf nightshade (*Solanum elaeagnifolium*), Japanese brome (*Bromus japonicus*), Texas vervain (*Verbena halei*), open-flower dichanthelium (*Dicanthelium laxiflorum*), yarrow (*Achillea millefolium*), bitterweed (*Helenium amarum*), broomweed (*Gutierrezia sarothrae*) and thin paspalum (*Paspalum setaceum*). Trees scattered through the landscape in this area consists mainly of post oak (*Quercus stellata*).

Mr. Dale Ridinger

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The southwestern section of the site consist of mostly riparian and upland forest. Dominant species in the forest areas include American elm (*Ulmus americana*), green ash (*Fraxinus pennsylvanica*), cedar elm (*Ulmus crassifolia*), eastern red cedar (*Juniperus virginiana*), green briar (*Smilax bona-nox*), honey locust (*Gleditsia triacanthos*), inland sea oats (*Chasmanthium latifolium*), muscadine (*Vitis rotundifolia*), mulberry (*Morus microphylla*), post oak (*Quercus stellata*), Virginia creeper (*Parthenocissus quinquefolia*), and Virginia wild rye (*Elymus virginicus*). Additionally, there are small openings in the forest dominated by annual ragweed (*Ambrosia artemisiifolia*), bitterweed (*Helenium amarum*), broomweed (*Gutierrezia sarothrae*), perennial rye (*Lolium perenne*), Japanese brome (*Bromus japonicus*), little barley (*Hordeum pusillum*), open-flower dichanthelium (*Dichanthelium laxiflorum*), silver-leaf nightshade (*Solanum elaeagnifolium*), Texas vervain (*Verbena halei*), thin paspalum (*Paspalum setaceum*), and yarrow (*Achillea millefolium*).

Two intermittent streams and two ephemeral tributaries are located on site. Stream A enters the southwestern section of the site, across the northern property boundary, and meanders south approximately 1,157 feet before exiting the site in the southwest corner of the property (**Figure 3**). An intermittent tributary to Stream A, Stream B, enters the property across the eastern property boundary of the northeast section of the site and meanders in and out along the southern property boundary of the northeastern section of the site. Stream B then exits the site across the western property boundary and eventually flows into Stream A off site. An ephemeral tributary to Stream A, Tributary 1, originates near the center of the southwestern section of the site and flows west for approximately 346 feet and joins Stream A just south of where Stream A enters the site. A second ephemeral tributary to Stream A, Tributary 2, enters the site in the southern portion of the southwestern section of the site and flows west approximately 544 feet and flows into Stream A just north of the southern property boundary.

Soils onsite consist of fine sandy loam, clay loam, and clay. Elevation of the project area ranges from 590 to 680 feet above mean sea level (msl) as indicated on the USGS topographic map (USGS 2008) (**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 feature present on property. No wetlands are indicated on the NWI map. During the site visit, no 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. Dale Ridinger

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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 too far from large body of water and too close to human habitation for Bald Eagles to utilize.
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.
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.
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.	No	No	No wetland located on site to provide adequate 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	No wetland located on site to provide adequate habitat.

Mr. Dale Ridinger

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Species (Scientific Name) Federal, State Status	Species Habitat Description	Habitat Present	Effect	Pertinent Information
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	No preferred habitat for this species is located on site.
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. Main channel will remain unimpacted by proposed development. Extirpated in Trinity Basin.
Texas heelpitter (<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. Main channel on site likely to contain adequate habitat; however, the main channel will remain unimpacted by proposed development.
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.	Yes	No	Harvester ant colonies and sparsely vegetated areas were located on-site. However, the two habitat requirements rarely overlapped. 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

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Based on the site visit, it is KBA's opinion that the site offers potential habitat for the following threatened or endangered species:

- Texas Heelsplitter (TPWD "threatened"), potential resident;
- Texas Horned Lizard (TPWD "threatened"), potential resident;
- Timber/canebrake rattlesnake (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 habitat potentially available to the Texas Heelsplitter 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:

Riparian Habitat

The Town defines riparian habitat as:

"Areas designated within the FEMA 100-year floodplain or interconnected and adjacent to wetland, tree and understory vegetation and including significant stands of predominately native water related habitat. These areas include wetlands."

KBA identified riparian habitat in the southwestern portion of the property along Stream A and its tributaries. The site contains approximately 3.42 acres of riparian habitat, which was estimated based on changes in elevation, stands of trees, location of the floodplain, and location along and near surface water features (**Figure 6**).

The riparian habitat included American elm (*Ulmus americana*), green ash (*Fraxinus pennsylvanica*), cedar elm (*Ulmus crassifolia*), eastern red cedar (*Juniperus virginiana*), green briar (*Smilax bona-nox*), honey locust (*Gleditsia triacanthos*), inland sea oats (*Chasmanthium latifolium*), muscadine (*Vitis rotundifolia*), mulberry (*Morus microphylla*), post oak (*Quercus stellata*), Virginia creeper (*Parthenocissus quinquefolia*), and Virginia wild rye (*Elymus virginicus*). The vegetation observed within the riparian corridor appeared to be in good health.

Based on the vegetation present and its location, this area is considered an ESA by the Town's definition of riparian habitat. Although there is approximately 3.42 acres of riparian habitat on site, all of this habitat will be preserved (**Figure 7**). The sections on the property considered riparian habitat are located in the southwestern section of the property and extend along both sides of Stream A.

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Prairie Habitat

The Town defines prairie habitat as:

“Areas designated as containing onsite predominate distributions of climax or mid-successional native grass species underlain by intact (non-eroded) prairie and savannah soil types.”

KBA identified prairie habitat in the southwestern portion of the property, west of the riparian habitat. The site contains approximately 0.53 acres of prairie habitat and was estimated based on vegetation communities and prairie and savannah soil types (Figure 6).

The prairie habitat included brown eyed Susan (*Rudbeckia hirta*), bull nettle (*Cnidoscolus stimulosus*), Indian blanket (*Gaillardia pulchella*), little bluestem (*Schizachyrium scoparium*), open-flower dichanthelium (*Dicanthelium laxiflorum*), Queen Anne's lace (*Daucus carota*) and spotted bee balm (*Monarda punctata*). The vegetation observed appeared to be in good health.

Based on the vegetation present, the prairie and savannah soil types, and its location, this area is considered an ESA by the Town's definition of prairie habitat. None of the prairie habitat on site will be impacted, leaving all of the prairie habitat undisturbed by the development (Figure 7).

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.”

KBA identified upland habitat in the southwestern portion of the property, east of the riparian habitat. 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 20.86 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 green ash (*Fraxinus pennsylvanica*), blackjack oak (*Quercus marilandica*), eastern red cedar (*Juniperus virginiana*), hackberry (*Celtis laevigata*), and post oak (*Quercus stellata*). 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 20.86 acres of upland habitat on site, only 9.68 acres will be impacted by the development, leaving 11.18 acres of upland habitat undisturbed (Figure 7). The sections on the property considered upland habitat are located mostly in the southwestern portion of the site near the eastern property boundary.

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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 determination of wetlands and other "waters of the United States" (as defined by the Clean Water Act) near the proposed road crossing for the project. An intermittent stream (Stream B) is located in the area where the road crossing is proposed to be located. No wetlands are located in this area.

In addition, KBA noted other waters of the State located on site. Another intermittent stream (Stream A) and two ephemeral tributaries are located on site (Figure 3). The two intermittent streams and the two ephemeral tributaries are considered ESAs by the Town's definition of waters of the State.

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 Hillside Development have been mapped by the Town as areas having between 5% and 12% topographic slope (**Figure 8**). These areas total approximately 13.69 acres and, in general, parallel Stream A and are in the southwest section of the site. There are also few smaller areas that have topographic slopes equal to or greater than 12% scattered across various locations of the site and total 7.06 acres. The locations of these steep slopes are considered an ESA by the Town and meet the criterion for topographic slope protection.

Approximately 10.23 acres with topographic slopes between 5% and 12% are proposed to be impacted by the development (**Figure 9**). Of these 10.23 acres proposed to be impacted, 1.65 acres will be impacted for the required roadways. A variance of the topographic slope protection is being requested for the remaining 8.58 acres of land that have topographic slopes of between 5% and 12%. In addition, 2.96 acres of the 7.06 acres of land on the site that have topographic slopes greater than 12% are proposed to be impacted. Of these 2.96 acres, 0.52 acres will be required to be impacted for the required roads (Figure 9). Therefore, a variance is also being requested for the 2.44 acres of land that have topographic slopes greater than 12% that will be impacted by the proposed development.

Mr. Dale Ridinger

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Undeveloped Floodplain

The Town defines undeveloped floodplain as:

“Areas within the FEMA 100-year floodplain, or other floodplain that is undeveloped and in their natural state.”

The majority of the project site is located within “Zone X,” an area determined to be outside the 500-year floodplain, as mapped by the Federal Emergency Management Agency (FEMA) (Flood Insurance Rate Map Q3 Digital Data). A small area in the southwestern portion of the site near the western property boundary associated with Stream A is in Zone A, an area determined to be within the 100-year floodplain. A map showing the limits of Zone A and Zone X is included as Figure 6. The FEMA-mapped 100-year floodplain area located within the property totals approximately 3.42 acres. This area is considered Undeveloped Floodplain by the town and will not be impacted by the proposed development (Figure 7).

Proposed Development Plan

The proposed site plan calls for the property to be developed as a residential development. Goals to preserve the natural habitat on the Proposed Hillside 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 3.42 acres of Town-defined Riparian Habitat exists on site and the development plan has been designed to preserve all of this habitat.
- Approximately 20.86 acres of Town-defined Upland Habitat exists on the site and the development plan has been designed to preserve nearly half of this habitat. Approximately 9.68 acres of upland habitat is proposed to be impacted by houses and another 2.74 acres of upland habitat is proposed to be impacted by town roads. Approximately 8.44 acres of upland habitat will be completely unimpacted by the proposed project. Mitigation for the 9.68 acres of upland habitat impacted by houses will be partially accomplished by the preservation of 8.44 acres of upland habitat on site. Additional mitigation for these impacts will be accomplished by the preservation of all the riparian habitat on site (3.42 acres) and all of the on-site prairie habitat (0.53

Mr. Dale Ridinger

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acres). 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 A will remain unaltered. A small portion of Tributary B will be filled to allow for a road crossing within the development. Any fill in jurisdictional waters will be authorized under a US Army Corps of Engineers Section 404 permit. Specifically, Nationwide Permit 14 will be obtained for the aforementioned road crossing. Tributaries 1 and 2 will remain unaltered.
- 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 8.58 acres of land with slopes between 5% and 12%. A variance is also being requested for the impacts to 2.44 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.
- 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. 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. Dale Ridinger

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- 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: Texas Heelsplitter (*Potamilus amphichaenus*), Texas Horned Lizard (*Phrynosoma cornutum*), and the timber/canebrake rattlesnake (*Crotalus horridus*). None of these listed species were observed onsite. Potential habitat for these species does exist on site, however, the habitat on 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 will not be impacted by the proposed development.
- Town-defined Environmentally Sensitive Areas exist on the project site. Waters of the state, Riparian Habitat, Prairie Habitat, Upland Habitat, Undeveloped Floodplain, 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 Hillside 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,

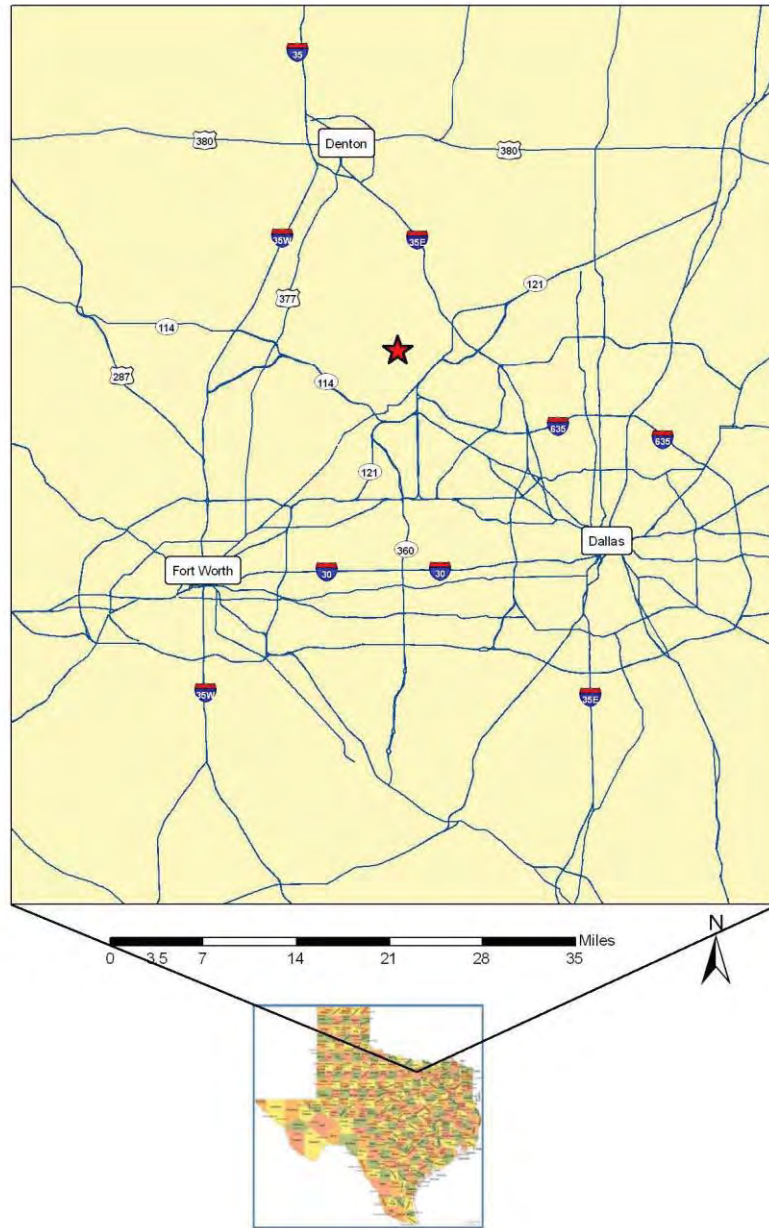


Joseph Schwartz, Project Manager
KBA EnviroScience, Ltd.



C. Keith Bradley, REP, CWB
KBA EnviroScience, Ltd.

FIGURES

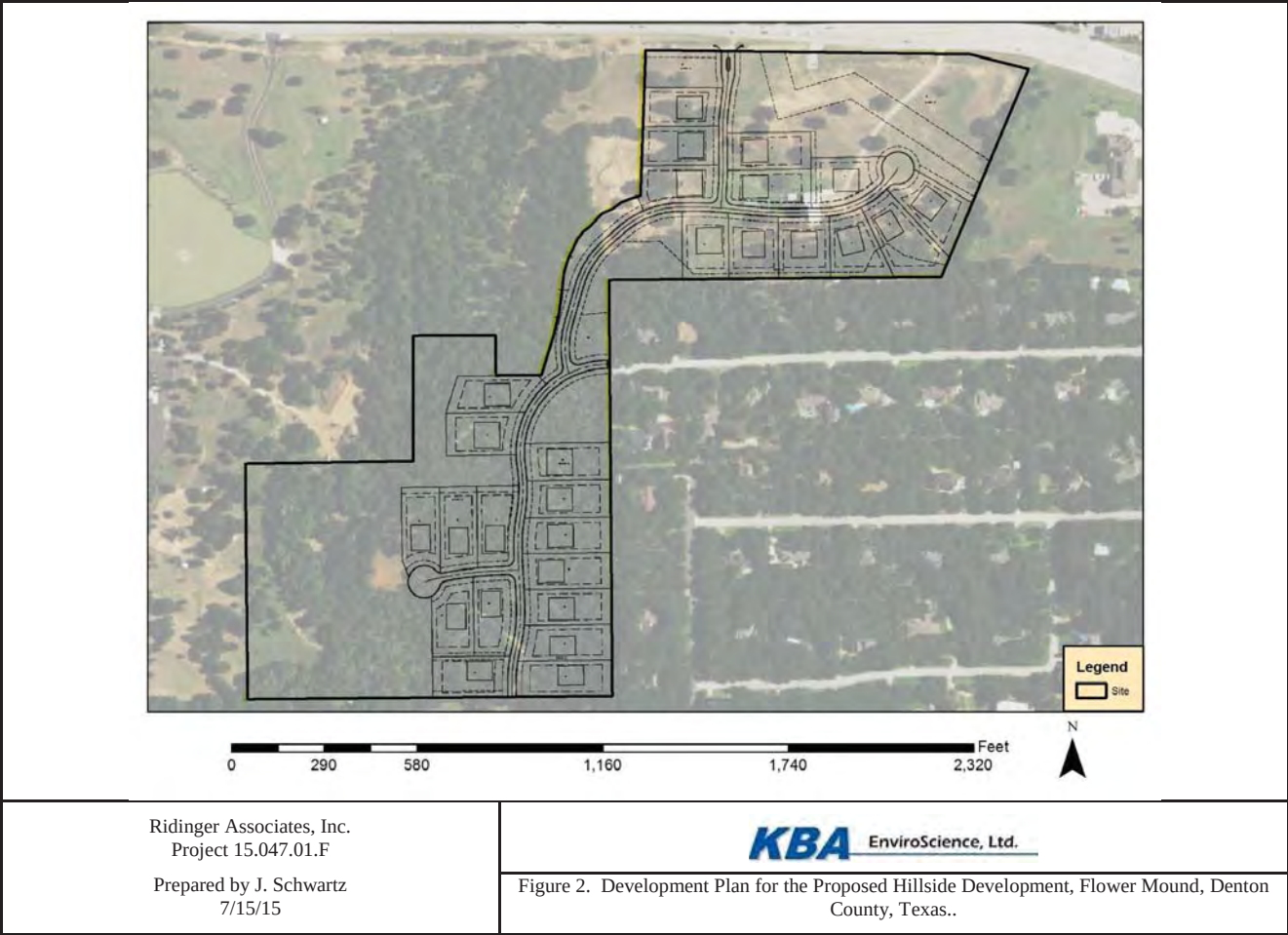


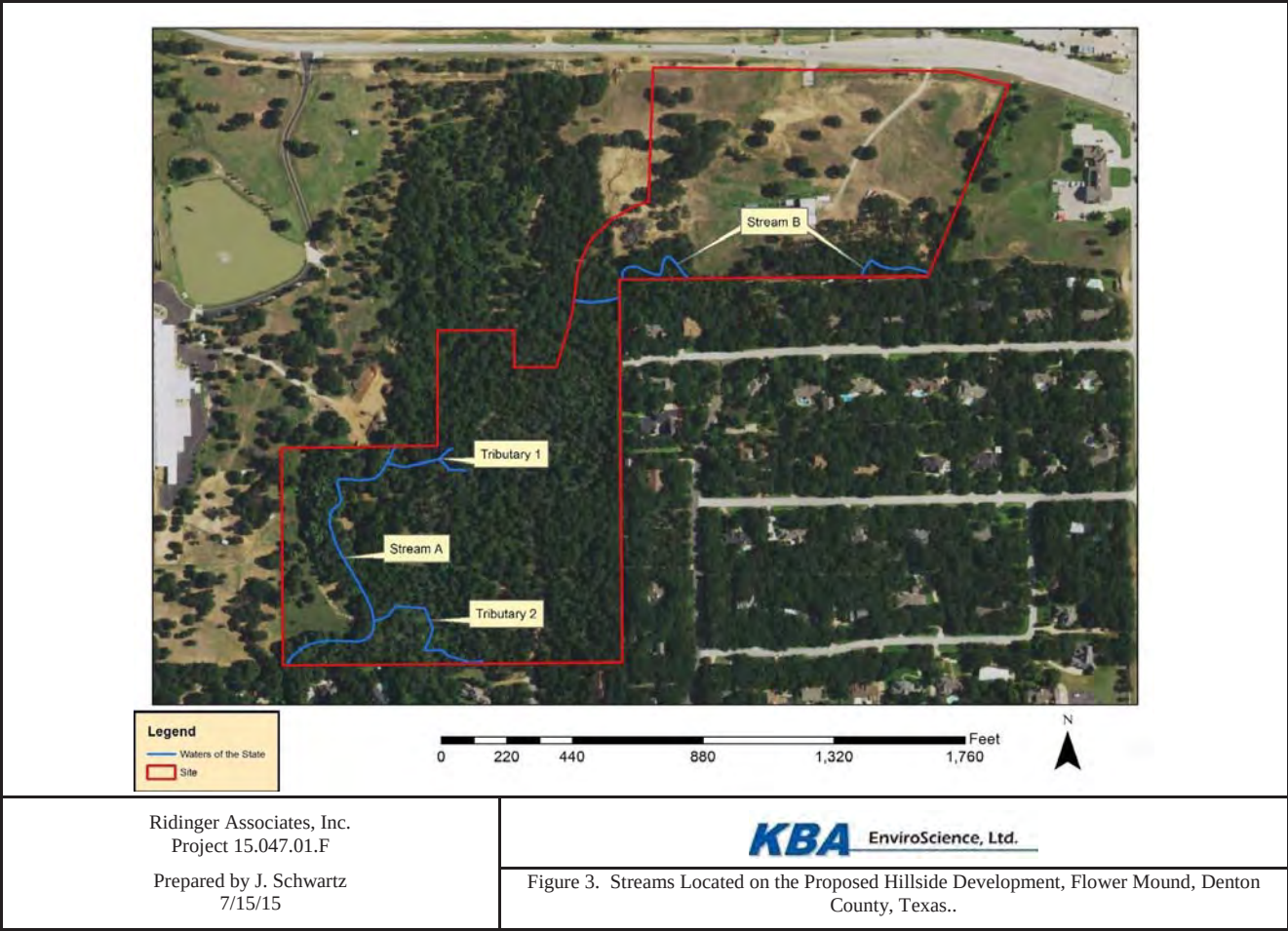
Ridinger Associates, Inc.
Project 15.047.01.F

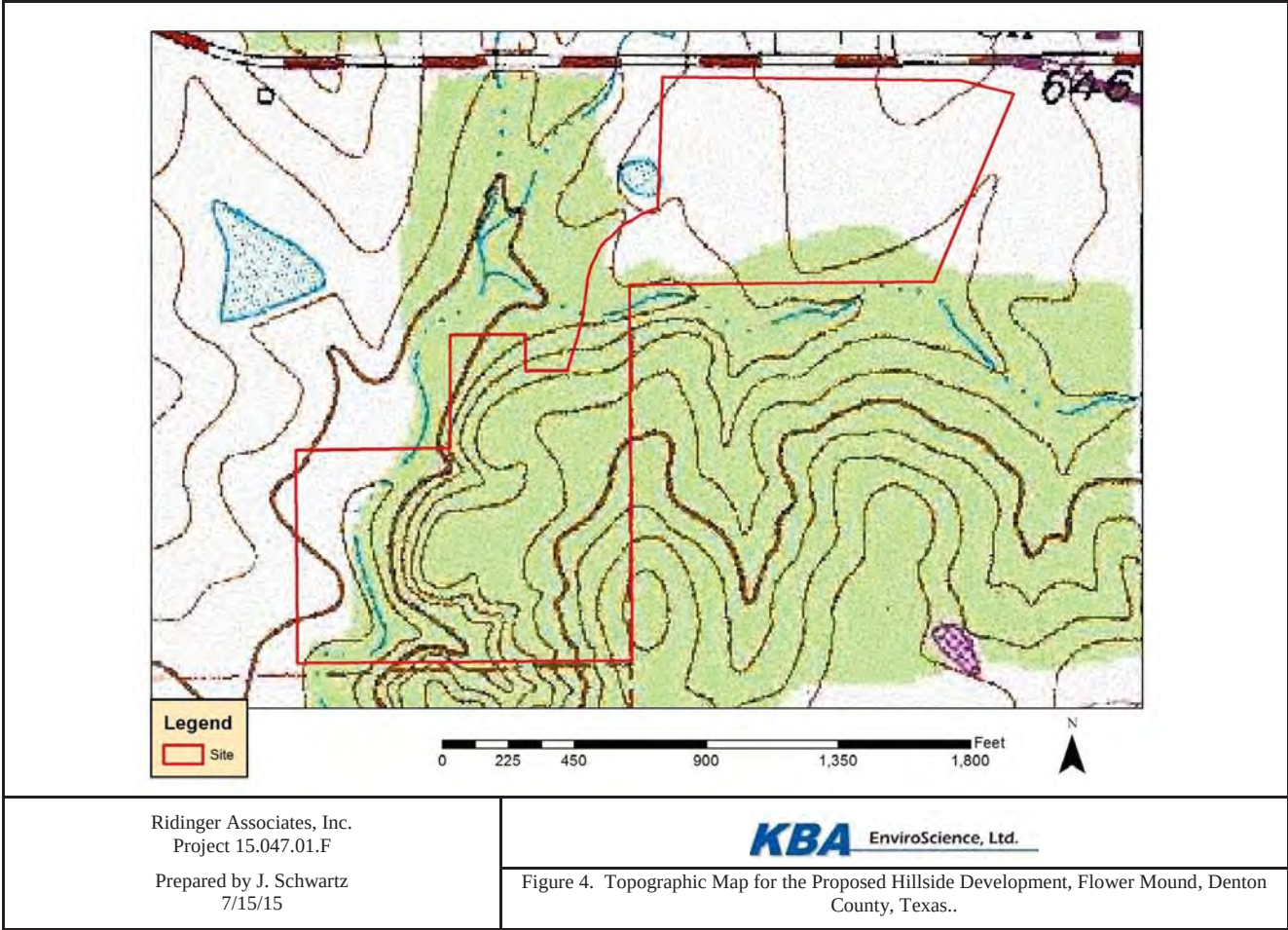
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7/15/15

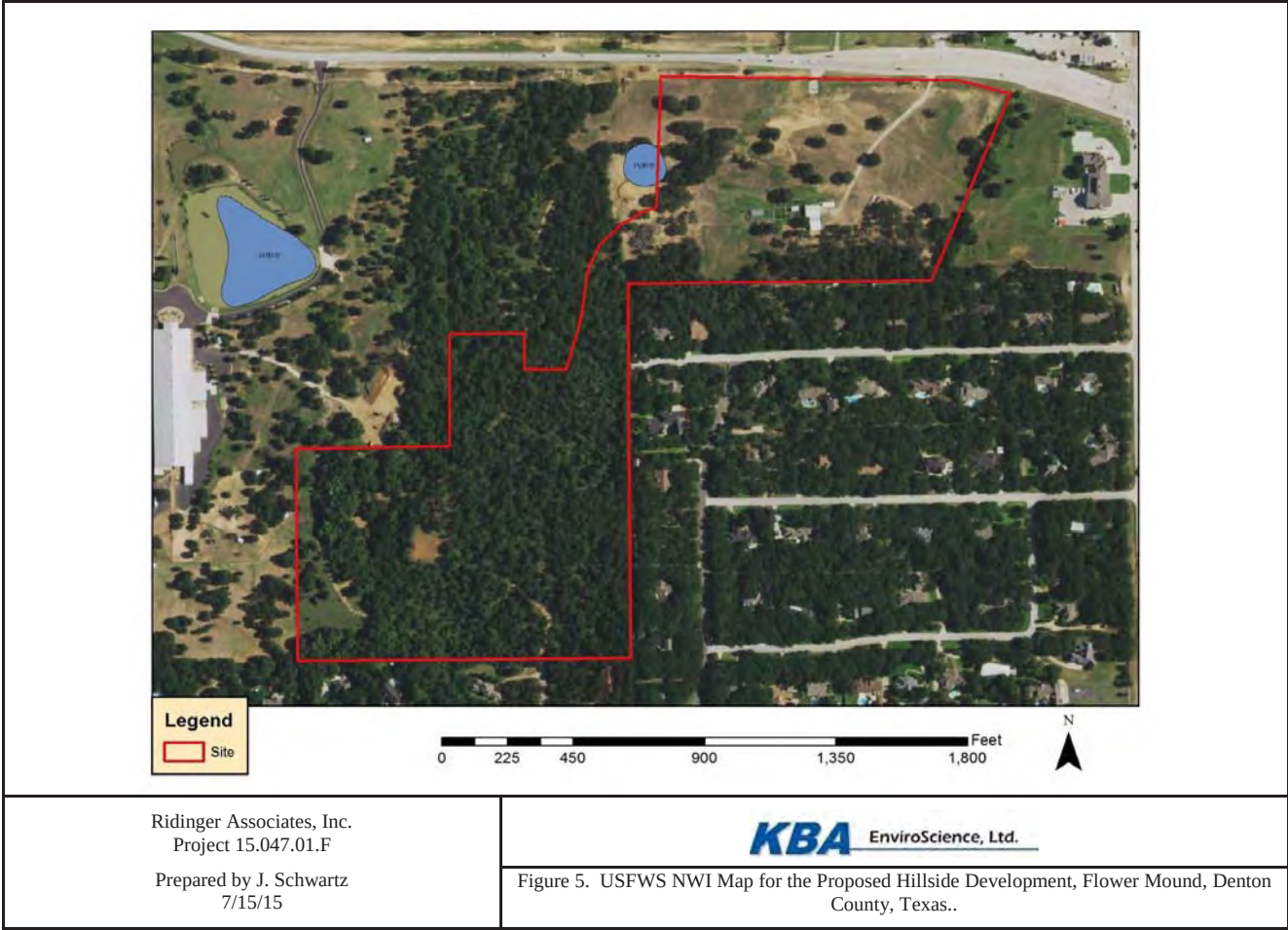
KBA EnviroScience, Ltd.

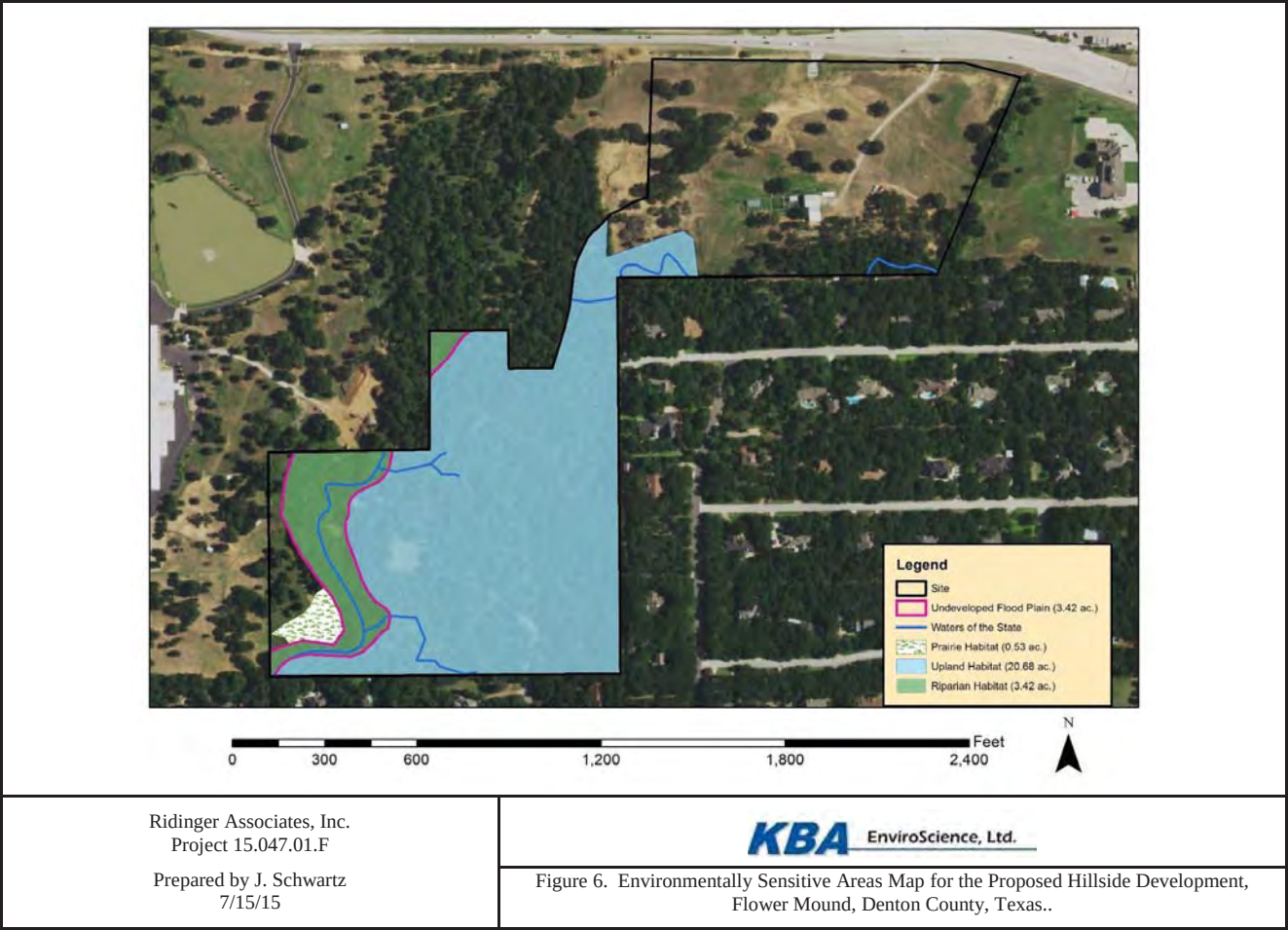
Figure 1. Site Location Map for the Proposed Hillside Development, Flower Mound, Denton County, Texas.

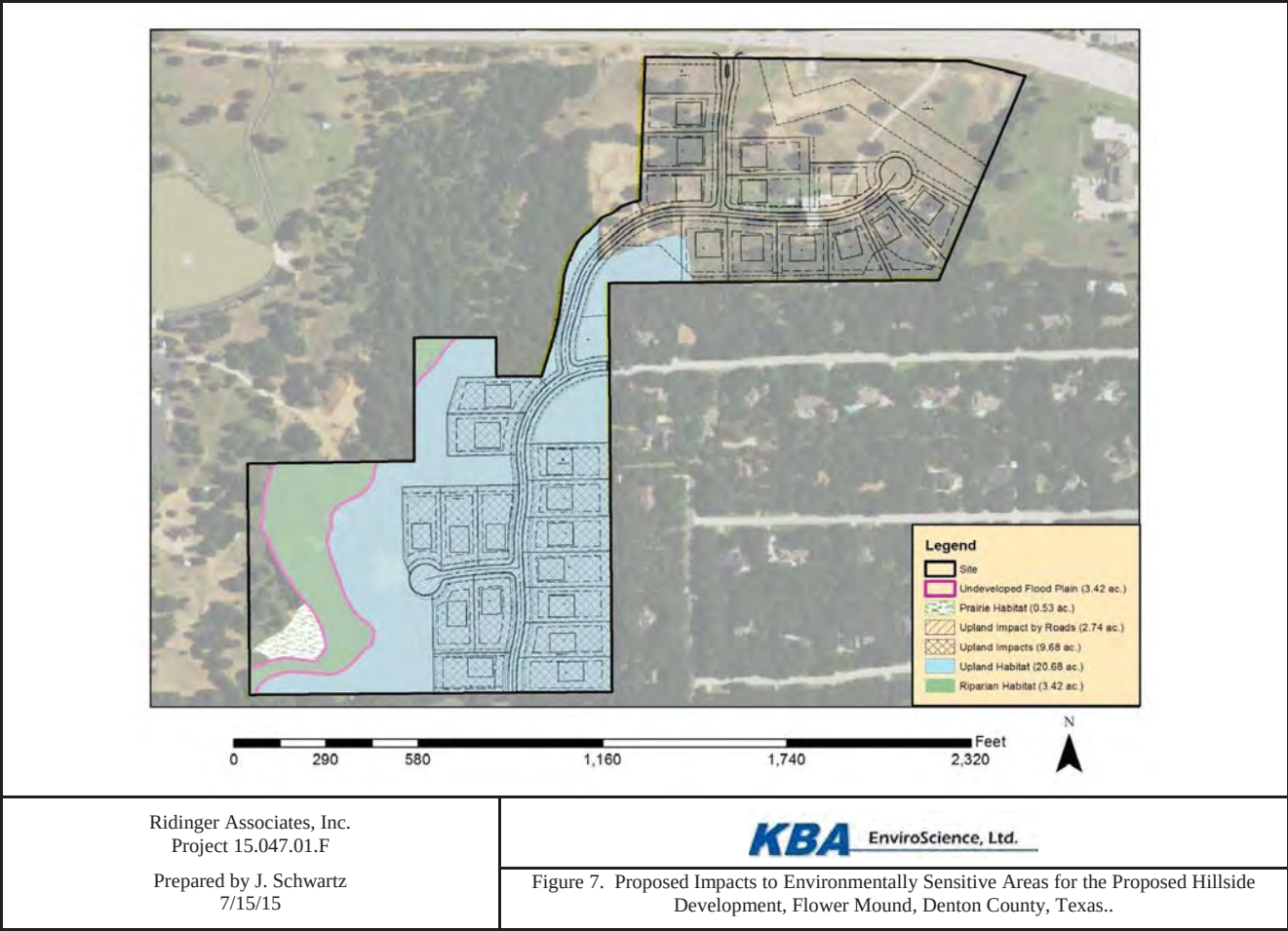


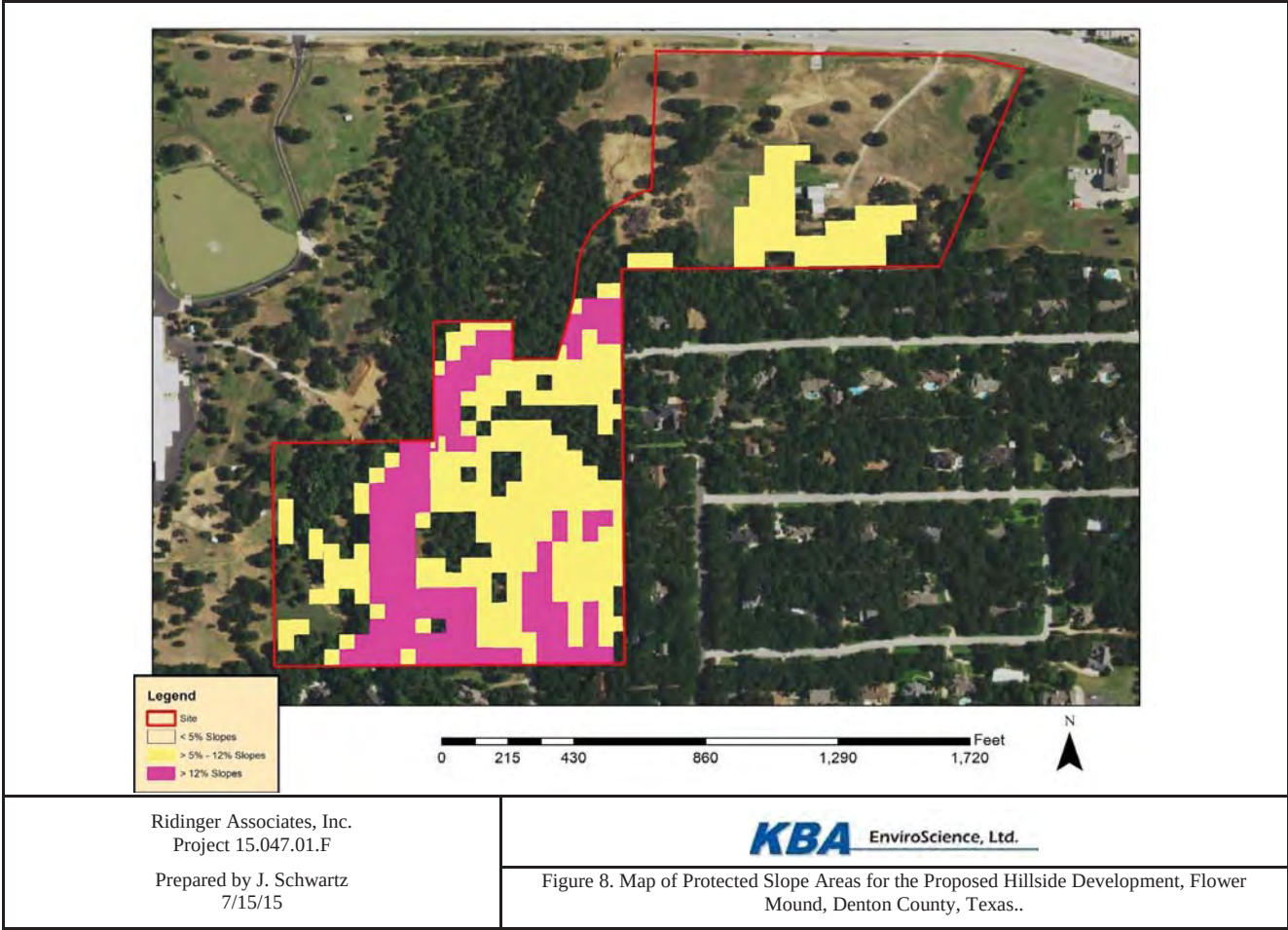


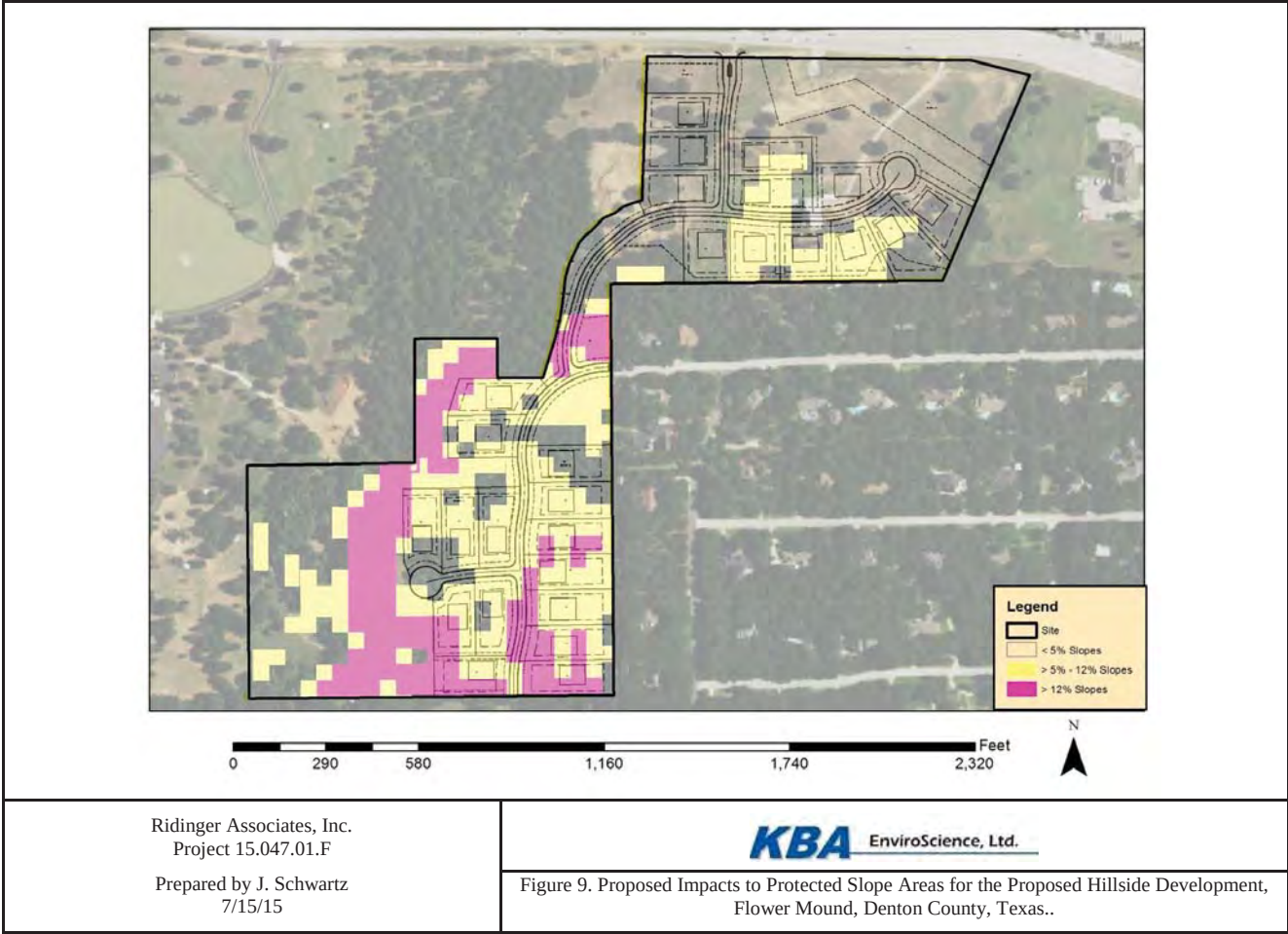














Rembert Enterprises, Inc.

3625 Bonanza Lane Flower Mound, TX 75022

September 28, 2015

Executive Director of Development Services
Planning Division
1001 Cross Timbers Road #2330
Flower Mound, TX 75028

RE: Hillside at Flower Mound (Community)
Flower Mound, Texas

Dear Mr. Powell,

Please accept this as our formal Letter of Intent, to request an exception to Sec. 98-147, Topographical Slope Protection of the Town's ordinance. Section (b) of the above mentioned ordinance allows a request for this exception.

The intent of the above mentioned ordinance is to ensure that a 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." The Hillside at Flower Mound development has no intentions to "scrape and build." Our plan is to preserve as many trees as possible by not benching heavily treed lots.

At the Town Council meeting on September 21, 2015, the exception to the Topographical Slope Protection was denied. There was a vote of three in favor and one in opposition to grant the exception. Only four council members were present. This exception requires a super majority vote of all council members. Therefore, I am resubmitting this application for reconsideration.

I am resubmitting the Zoning Planned Development and Development Plan as presented at Planning and Zoning on September 14, 2015, with no changes. It was recommended for approval by a vote of five to one.

Should you have any questions, please feel free to contact us.

Sincerely,

Reginald Rembert

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 43.20 ACRES OF LAND SITUATED IN THE TEXAS & PACIFIC RAILROAD COMPANY SURVEY, ABSTRACT NUMBER 1618, AND MEMPHIS, EL PASO & PACIFIC RAILROAD COMPANY SURVEY, ABSTRACT NUMBER 935, DENTON COUNTY, TEXAS, FROM AGRICULTURAL DISTRICT (A) TO PLANNED DEVELOPMENT DISTRICT NO. 143 (PD-143) FOR SINGLE FAMILY RESIDENTIAL USES WITH CLUSTER DEVELOPMENT STANDARDS 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 43.20 acres of land situated in the Texas & Pacific Railroad Company Survey, Abstract Number 1618, and Memphis, El Paso & Pacific Railroad Company Survey, Abstract Number 935, Denton County, Texas, have filed an application to change the zoning from Agricultural District (A) to Planned Development District No. 143 (PD-143) for Single Family Residential uses with Cluster Development Standards; and,

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on September 14, 2015, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on September 21, 2015, 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.

ORDINANCE NO. _____

Page 2

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

SECTION 1

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

43.20 acres of land situated in the Texas & Pacific Railroad Company Survey, Abstract Number 1618, and Memphis, El Paso & Pacific Railroad Company Survey, Abstract Number 935, Denton County, Texas, and more fully described in Exhibit "A" hereto.

Planned Development District No. 143 (PD-143) for Single Family Residential uses with Cluster Development Standards.

SECTION 2

The development standards, concept plan, concept landscape plan and concept open space plan of the proposed Planned Development District No. 143 (PD-143), attached hereto as Exhibits "B," "C," "D," and "E," each incorporated herein for all purposes, are hereby approved as the development standards, concept plan, concept landscape plan and concept open space plan for this Planned Development District No. 143 (PD-143).

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. 143 (PD-143), 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

ORDINANCE NO. _____

Page 3

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 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 _____, 2015.

APPROVED:

Thomas E. Hayden, **MAYOR**

ORDINANCE NO. _____

Page 4

ATTEST:

Theresa Scott, TOWN SECRETARY

APPROVED AS TO FORM AND LEGALITY:

Bryn Meredith, TOWN ATTORNEY

ORDINANCE NO. _____

Page 5

Exhibit "A"
Legal Description

BEING all that certain lot, tract or parcel of land situated in the Texas & Pacific Railroad Company Survey, Abstract Number 1618 and the Memphis, El Paso and Pacific Railroad Company Survey, Abstract Number 935, Town of Flower Mound, Denton County, Texas, and being a portion of that certain tract of land described by deed to Peter Park, recorded under Document Number 96-R0007867 of the Real Property Records of Denton County, Texas, being that certain tract of land described by deed to Peter Park, recorded under Document Number 2015-23236 of the Real Property Records of Denton County, Texas, being that certain tract of land described by deed to Timothy S. Choe, recorded under Document Number 2011-23155 of the Real Property Records of Denton County, Texas, and being that certain tract of land described by deed to Hanmi Realty, Inc., recorded under Document Number 2011-54874 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a ½ inch iron rod found for the southeast corner of said Park tract, the southwest corner of that certain tract of land described by deed to the Town of Flower Mound, Denton County, Texas, recorded in Volume 4928, Page 2397 of the Real Property Records of Denton County, Texas, and being in the north line of Lot 4, Block H, Hidden Valley Country Estates, Section Three, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Cabinet B, Page 90 of the Plat Records of Denton County, Texas;

THENCE South 89 degrees 15 minutes 12 seconds West, with the north line of said Block H of said Hidden Valley Country Estates, Section Three, a distance of 1037.94 feet to a 1 inch iron rod found for the northwest corner of Lot 8 of said Block H;

THENCE South 00 degrees 49 minutes 02 seconds East, with the west line of said Block H and partially continuing with the west line of said Hidden Valley Country Estates, Section Three, a distance of 1293.37 feet to a ½ inch iron rod found for corner in the west line of Lot 4, Block I of said Hidden Valley Country Estates, Section Three and being the northeast corner of Lot 2, Block I, Hidden Valley Country Estates, Section Two, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Cabinet B, Page 89 of the Plat Records of Denton County, Texas;

THENCE South 89 degrees 29 minutes 19 seconds West, with the north line of said Hidden Valley Country Estates, Section Two and partially continuing with the north line of Block 4, Hidden Valley Country Estates, Section IV, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Cabinet G, Page 106 of the Plat Records of Denton County, Texas, a distance of 1145.38 feet to a ½ inch iron rod found for corner in the north line of Lot 6 of said Block 4 and being the southeast corner of that certain tract of land described by deed to Wardin Investments, Ltd., recorded in Volume 5052, Page 2668 of the Real Property Records of Denton County, Texas;

THENCE North 00 degrees 37 minutes 17 seconds West, with the east line of said Wardin tract, a distance of 729.92 feet to a ½ inch iron rod found for corner, being an inner corner thereof;

THENCE North 89 degrees 18 minutes 21 seconds East, with the south line of said Wardin tract, a distance of 525.41 feet to a ½ inch iron rod found for corner, being an outer corner thereof;

THENCE North 00 degrees 41 minutes 39 seconds West, with the east line of said Wardin tract, a distance of 390.00 feet to a 5/8 inch iron rod found for corner, being an inner corner thereof;

ORDINANCE NO. _____

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THENCE North 89 degrees 18 minutes 21 seconds East, with the south line of said Wardin tract, a distance of 260.19 feet to a 5/8 inch iron rod found for the easterly southeast corner of said Wardin tract, being in the west line of that certain tract of land described by deed to Jea L. Shim, recorded under Document Number 2008-58876 of the Real Property Records of Denton County, Texas;

THENCE South 00 degrees 41 minutes 39 seconds East, with the west line of said Shim tract, a distance of 124.42 feet to a 1/2 inch iron rod with a yellow cap stamped "ARTHUR SURVEYING COMPANY" (ASC) set for the southwest corner of said Shim tract;

THENCE North 89 degrees 18 minutes 21 seconds East, with the south line of said Shim tract, a distance of 140.05 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set for corner, being in the south line of said Shim tract;

THENCE North 20 degrees 25 minutes 45 seconds East, over, through and across said Shim tract and with the west line of said Park tract, a distance of 140.05 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set, being at the beginning of a curve to the left having a radius of 960.00 feet, a delta angle of 15 degrees 54 minutes 36 seconds, whose chord bears North 12 degrees 54 minutes 18 seconds East, a distance of 265.72 feet;

THENCE continuing over, through and across said Shim tract and with the west line of said Park tract, an arc length of 266.58 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set for corner, being at the beginning of a reverse curve to the right having a radius of 315.00 feet, a delta angle of 72 degrees 25 minutes 02 seconds, whose chord bears North 41 degrees 09 minutes 31 seconds East, a distance of 372.16 feet;

THENCE continuing over, through and across said Shim tract and partially with the west line of said Park tract, an arc length of 398.13 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set for corner;

THENCE North 01 degrees 46 minutes 35 seconds East, over, through and across said Park tract, a distance of 454.68 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set for corner in the south line of F.M. 1171, also known as Cross Timbers Road;

THENCE South 89 degrees 37 minutes 29 seconds East, with the south line of said Cross Timbers Road, a distance of 970.59 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set for corner;

THENCE South 87 degrees 22 minutes 30 seconds East, continuing with the south line of said Cross Timbers Road, a distance of 45.05 feet to a Texas Department of Transportation monument found for corner;

THENCE South 75 degrees 24 minutes 21 seconds East, continuing with the south line of said Cross Timbers Road, a distance of 191.51 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set for corner in the west line of said Town of Flower Mound Tract;

THENCE South 23 degrees 10 minutes 00 seconds West, with the west line of said Town of Flower Mound tract, a distance of 697.12 feet to the **POINT OF BEGINNING**, and containing 43.20 acres of land, more or less, and being subject to any and all easements that may affect.

Exhibit "B"**DEVELOPMENT STANDARDS****Planned Development District No. 143 (PD-143)
Hillside at Flower Mound**

The development on the property comprising approximately 43.20 acres of land within the corporate limits of the Town of Flower Mound ("Town") and as described on Exhibit "A" to this Zoning Ordinance adopting PD-143 shall be in accordance with the Town of Flower Mound *Master Plan* and the Land Development Regulations of the Town of Flower Mound, Texas, as amended, and shall be subject to the following conditions and requirements:

A. PD-143 with Single-Family District-30 (SF-30) uses.

Development of PD-143 as designated on Exhibit "C," the Concept Plan for Hillside at Flower Mound shall be in compliance with all regulations applicable to Single-Family District-30 (SF-30) uses contained in the Town's Land Development Regulations as amended, except as otherwise provided and/or limited herein.

1. Minimum floor area per unit. The minimum floor area per dwelling unit shall be 2,800 square feet, subject to Section 98-1025.
2. Maximum lot coverage. The maximum lot coverage shall be 40% for all uses, subject to Section 98-1029.
3. The dimensional and area regulations contained in this section shall not apply to common areas or lots owned by the homeowner's association for Hillside at Flower Mound ("HOA"). Any common areas or lots owned by the HOA and any structure(s) thereon shall conform to all relevant provisions of the Town's code of ordinances and land development regulations.

B. Residential Lot Requirements. The following requirements shall apply to the residential lots within Hillside at Flower Mound.

1. The maximum density shall be no more than 1 dwelling unit per 1.6 acres ($100/1.6 = 62$ units or a 24% increase above the base density).
2. There shall be a maximum of 27 residential lots as depicted on the attached Zoning Conceptual Plan.

C. Supplemental Standards.

1. As a Cluster Development, PD-143 shall have a minimum of fifty percent (50%) of the gross land area preserved as open space for the development as depicted in Exhibit "E" below. In meeting requirements for open space, the developer must demonstrate how open space designated in Exhibit "E" shall be managed. Open

Space shall be managed by a qualified nonprofit entity or organization that manages open space, such as a land trust, HOA or other qualified entity, pursuant to section 170(h) of the Internal Revenue Code, as amended, and as may be approved and accepted by the Town. All designated open space areas shall be conserved in a recorded conservation easement as applicable prior to Planning and Zoning Commission approval of the first record plat within the development. The final Open Space Management Plan (OSMP) shall conform with the following:

- a. Be submitted and approved by the Town prior to the submittal of the first record plat within the development.
 - b. Be recorded in the deed records of Denton County Texas as a restriction running with the land prior to the submittal of the first record plat within the development.
 - c. Substantially conform to the draft OSMP submitted to the Planning and Zoning Commission for consideration of the Zoning application (ZPD 15-0011) and identified as Attachment B3 of the agenda item.
2. All landscaping, trails and open space shall be in conformance with Exhibit "D", the Conceptual Landscape Plan.
 3. The development of PD-143 is subject to the approved Environmental Protection Plan.
- D. House Pad Benching. Developer shall prepare and submit a complete subdivision design including general grading, drainage and pad elevation plans in accordance with the Engineering Design Criteria and Construction Standards. The grading and drainage within Hillside at Flower Mound and along the perimeter of all lots within each phase of the development shall be complete prior to final acceptance of that phase of the development by the Town. The general pad elevations for the lots within the development shall be included in the subdivision design plans but are not required to be "benched" prior to the Town's final acceptance of each phase of the development.
1. Developer agrees that for each pad site that is not being benched, as identified herein-above, prior to final acceptance of that particular phase the following will occur:
 - a. Developer shall retain a professional licensed engineer to design plans for the review and approval of any modification in the benching data for each and every pad site identified herein as well as any design modifications required to address changes in drainage flows, velocities and direction that deviate from the original approved plans and prepare and submit any proposed revisions to the Town for approval and acceptance before each such pad site or group of pad sites within a particular phase is benched;

ORDINANCE NO. _____

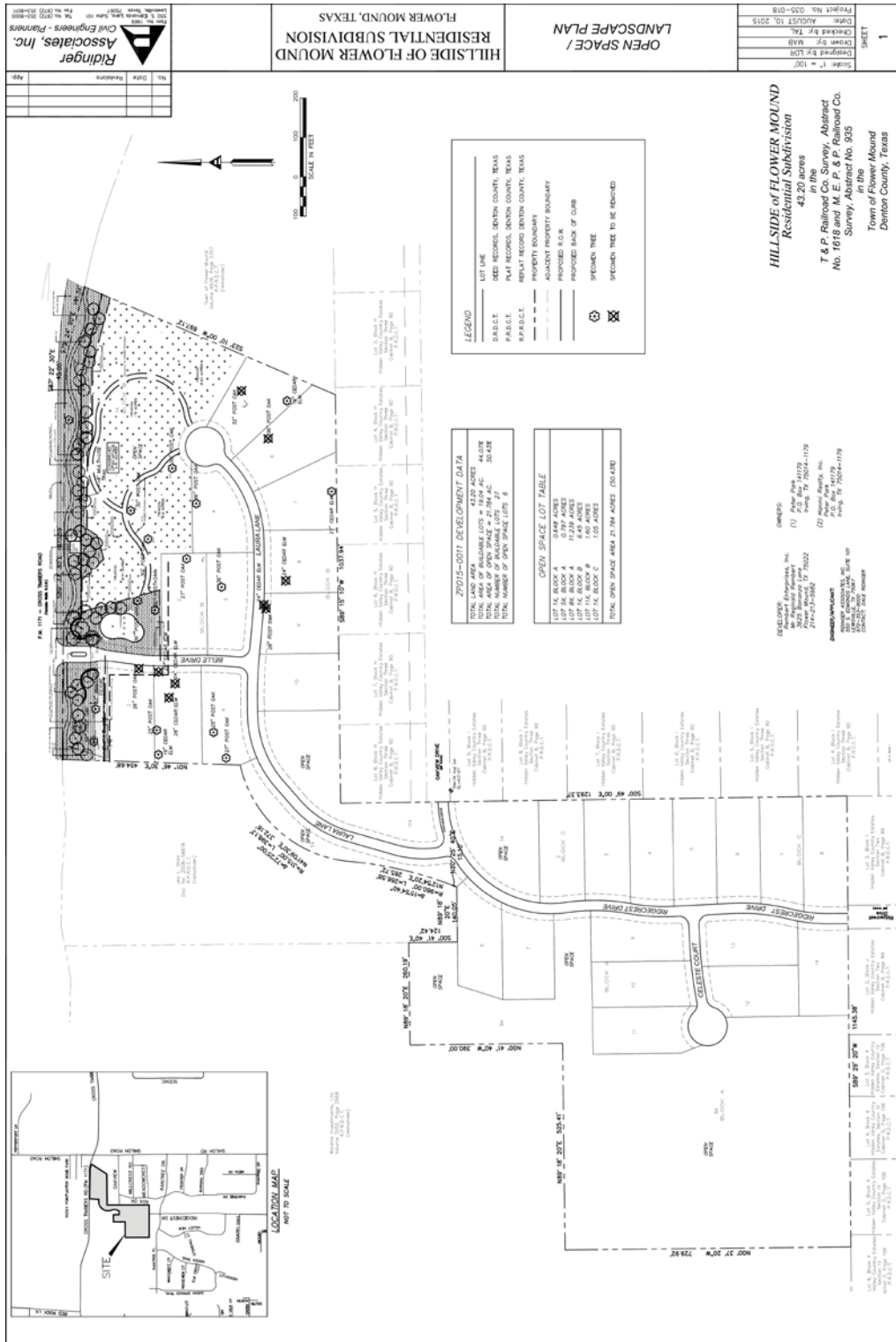
Page 9

- b. Erosion control measures including silt fencing, check dam, bar ditch and storm water pipe system cleaning shall be performed on a routine basis as needed and no less frequently than at least one time every six months or more frequently as may be required and directed by the Town Manager or his designee;
- c. Developer shall be responsible for weekly monitoring, clean-up and removal of construction debris, waste and litter that is dumped, accumulates or is otherwise stockpiled within the development;
- d. Developer shall remove check dams and silt fencing as appropriate and in accordance with best management practices after all pad sites within the phase have been benched and stabilized and a final phase inspection of the newly benched pad sites has been performed and approved by the Town.

[illegible]

Exhibit “D”

CONCEPTUAL LANDSCAPE PLAN



ORDINANCE NO. _____

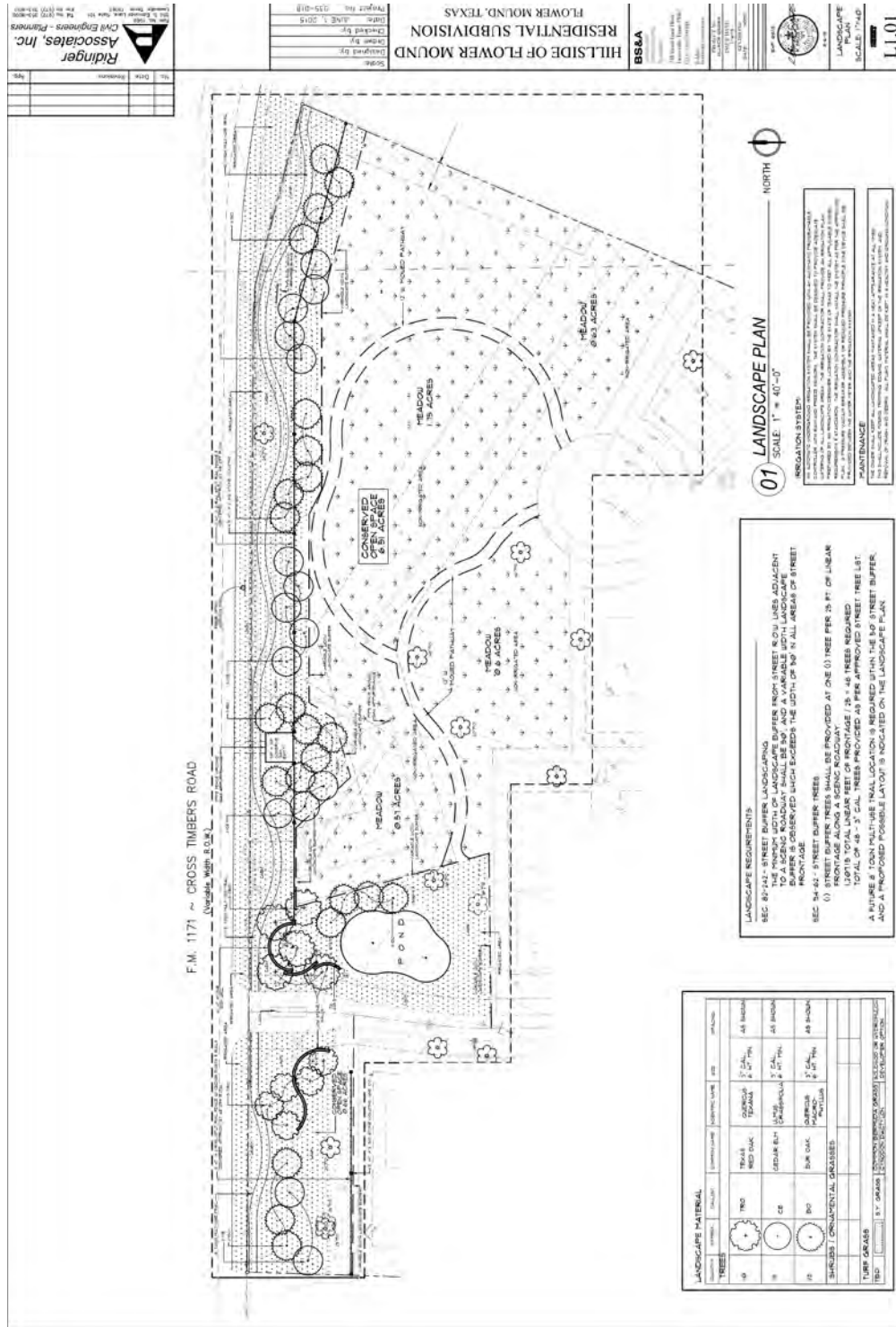
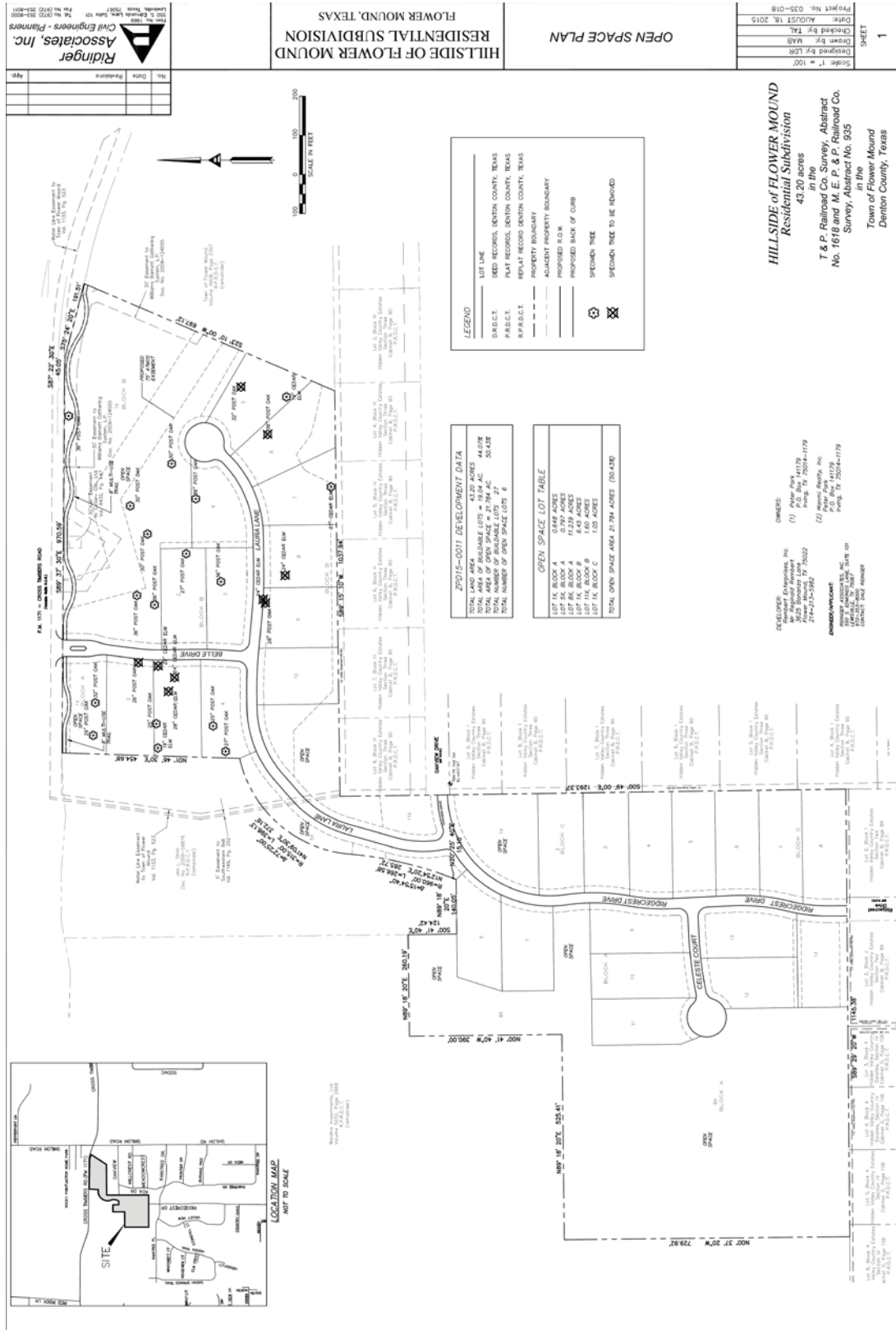


Exhibit "E" CONCEPTUAL OPEN SPACE PLAN



From: Randy & Selina Hostettler
Sent: Sunday, October 04, 2015 6:48 PM
To: Chuck Russell
Subject: Hillside Development Feedback

Dear Mr. Russell, my name is Randy Hostettler and I live at 6605 Oakview Dr with my wife and three children. I watched the recent town council meeting on-line, as I work at a local hospital and could not attend. I want to communicate my support for the Hillside development proposal as submitted to the Flower Mound city council. I moved my family from Coppell to Flower Mound in June of 2014. I support the development even though the project has a large impact to our family as we are located at the end of Oakview Dr, currently a cul-de-sac.

I attended all of the required neighborhood planning meetings and in my opinion the feeling was one of overall acceptance. We communicated objections and concerns related to traffic and drainage (existing issue) but nothing that should have prevented the project from being approved.

I have talked with Mr. Rembert personally and I find him very transparent and honest with his communication and intentions. I trust he will work to mitigate any additional impact to the existing drainage issues and if possible will improve drainage as a part of the project. I do have concerns with the speed of traffic coming around the curve by my driveway and my neighbors, but I feel that it can be addressed at a later time if it truly becomes an issue.

In conclusion, I fully support the project as presented to the Flower Mound town council on 9/21/15. I am concerned that if the plan is not approved as proposed it creates the possibility we end up with a less desirable solution for the surrounding neighborhoods in the future. I am not sure why we are treating Mr Rembert, who resides in our community, different than the other developers who work in Flower Mound. The exemptions Mr Rembert asked for were not out of line and I feel he should be allowed to move forward with the project. I have communicated my support to the mayor and town council members as well.

If you have any questions, I can be reached at.

Sincerely,
Randy Hostettler & Family
6605 Oakview Dr
Flower Mound TX 75022

-----Original Message-----

From: Cal Lacasse

Sent: Wednesday, September 30, 2015 8:53 PM

To: planning

Subject: Hillside of Flower Mound

I see no reason why this development should have access to 1171. The community looks very nice and would be even nicer if there was not direct access from 1171. FM 1171 is a major thorough fare and we need to limit access to it when ever possible. From the presentation, it does not seem that extending the road to 1171 from the last/first house through the agricultural land is needed or warranted. Unless there is a overwhelming first responder reason, I would approve the plan, but without approving access directly to 1171 for daily use.

Cal Lacasse

3420 Shady Oaks Dr

Tol Gine Constanze

Sr. Planner

Town of Flower Mound

This is to inform you that I am highly opposed to
ZPP 16-001 Hillside of Flower Mound PD 143

This will destroy our way of life

I have two acres at stake here

- 1) Too many houses on too few acres
- 2 Too much Noise
- 3 Too many added cars

Worst of all destruction of all the trees

Just think you hold the power to make
us look as bad as the Riverwalk
Everyone should know that trees keep
us cool

I don't need any more sewage thrown
around me I already get it from the
North and South properties Now you
Want to give me a double helping from the
West Shame -

Ann P Miller
4101 Ada Dr.

Flower Mound TX 75022

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

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING ORDINANCE NO. 56-15, WHICH ESTABLISHED PLANNED DEVELOPMENT DISTRICT NO. 143 (PD-143) FOR SINGLE FAMILY RESIDENTIAL USES WITH CLUSTER DEVELOPMENT STANDARDS, TO INCLUDE ADDITIONAL DEVELOPMENT STANDARDS REGARDING TOPOGRAPHIC SLOPE EXCEPTIONS IN ACCORDANCE WITH SPECIFIC REQUIREMENTS STATED HEREIN AND EXHIBITS ATTACHED HERETO; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS 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 43.20 acres of land situated in the Texas & Pacific Railroad Company Survey, Abstract Number 1618, and Memphis, El Paso & Pacific Railroad Company Survey, Abstract Number 935, Denton County, Texas, have filed an application for a Zoning Planned Development amendment to amend Ordinance No. 56-15 for Planned Development District No. 143 (PD-143) for Single Family Residential uses with Cluster Development Standards; and,

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on October 12, 2015, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on October 19, 2015, 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 the requested amendment 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.

ORDINANCE NO. _____

Page 2

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

SECTION 1

The Land Development Regulations of the Town of Flower Mound, Texas, as amended, are hereby amended on the hereinafter described property and area of Planned Development District No. 143 (PD-143) as shown below:

43.20 acres of land situated in the Texas & Pacific Railroad Company Survey, Abstract Number 1618, and Memphis, El Paso & Pacific Railroad Company Survey, Abstract Number 935, Denton County, Texas, and more fully described in Exhibit "A" hereto.

Exhibit "B" to Ordinance No. 56-15 is hereby amended by the addition of a new Section E. "Exceptions to Topographic Slope Protection" such that Exhibit "B" to Ordinance No. 56-15 shall be replaced with Exhibit "B" attached to this Ordinance and incorporated herein.

SECTION 2

The use of the property described above shall be subject to all restrictions, terms and conditions contained in Exhibit "B," attached hereto, as well as the applicable regulations contained in PD-143, the Land Development Regulations and all other applicable and pertinent ordinances of the Town of Flower Mound.

SECTION 3

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 4

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

SECTION 5

Any person, firm, or corporation who violates any provision of this Ordinance as adopted by the Town Council of the Town 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

ORDINANCE NO. _____

Page 3

exist shall constitute a separate offense and shall be punishable as such.

SECTION 6

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 _____, 2015.

APPROVED:

Thomas E. Hayden, **MAYOR**

ATTEST:

Theresa Scott, **TOWN SECRETARY**

APPROVED AS TO FORM AND LEGALITY:

Bryn Meredith, **TOWN ATTORNEY**

Exhibit "A"
Legal Description

BEING all that certain lot, tract or parcel of land situated in the Texas & Pacific Railroad Company Survey, Abstract Number 1618 and the Memphis, El Paso and Pacific Railroad Company Survey, Abstract Number 935, Town of Flower Mound, Denton County, Texas, and being a portion of that certain tract of land described by deed to Peter Park, recorded under Document Number 96-R0007867 of the Real Property Records of Denton County, Texas, being that certain tract of land described by deed to Peter Park, recorded under Document Number 2015-23236 of the Real Property Records of Denton County, Texas, being that certain tract of land described by deed to Timothy S. Choe, recorded under Document Number 2011-23155 of the Real Property Records of Denton County, Texas, and being that certain tract of land described by deed to Hanmi Realty, Inc., recorded under Document Number 2011-54874 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

BEGINNNING at a ½ inch iron rod found for the southeast corner of said Park tract, the southwest corner of that certain tract of land described by deed to the Town of Flower Mound, Denton County, Texas, recorded in Volume 4928, Page 2397 of the Real Property Records of Denton County, Texas, and being in the north line of Lot 4, Block H, Hidden Valley Country Estates, Section Three, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Cabinet B, Page 90 of the Plat Records of Denton County, Texas;

THENCE South 89 degrees 15 minutes 12 seconds West, with the north line of said Block H of said Hidden Valley Country Estates, Section Three, a distance of 1037.94 feet to a 1 inch iron rod found for the northwest corner of Lot 8 of said Block H;

THENCE South 00 degrees 49 minutes 02 seconds East, with the west line of said Block H and partially continuing with the west line of said Hidden Valley Country Estates, Section Three, a distance of 1293.37 feet to a ½ inch iron rod found for corner in the west line of Lot 4, Block I of said Hidden Valley Country Estates, Section Three and being the northeast corner of Lot 2, Block I, Hidden Valley Country Estates, Section Two, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Cabinet B, Page 89 of the Plat Records of Denton County, Texas;

THENCE South 89 degrees 29 minutes 19 seconds West, with the north line of said Hidden Valley Country Estates, Section Two and partially continuing with the north line of Block 4, Hidden Valley Country Estates, Section IV, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Cabinet G, Page 106 of the Plat Records of Denton County, Texas, a distance of 1145.38 feet to a ½ inch iron rod found for corner in the north line of Lot 6 of said Block 4 and being the southeast corner of that certain tract of land described by deed to Wardin Investments, Ltd., recorded in Volume 5052, Page 2668 of the Real Property Records of Denton County, Texas;

THENCE North 00 degrees 37 minutes 17 seconds West, with the east line of said Wardin tract, a distance of 729.92 feet to a ½ inch iron rod found for corner, being an inner corner thereof;

THENCE North 89 degrees 18 minutes 21 seconds East, with the south line of said Wardin tract, a distance of 525.41 feet to a ½ inch iron rod found for corner, being an outer corner thereof;

THENCE North 00 degrees 41 minutes 39 seconds West, with the east line of said Wardin tract, a distance of 390.00 feet to a 5/8 inch iron rod found for corner, being an inner corner thereof;

ORDINANCE NO. _____

Page 5

THENCE North 89 degrees 18 minutes 21 seconds East, with the south line of said Wardin tract, a distance of 260.19 feet to a 5/8 inch iron rod found for the easterly southeast corner of said Wardin tract, being in the west line of that certain tract of land described by deed to Jea L. Shim, recorded under Document Number 2008-58876 of the Real Property Records of Denton County, Texas;

THENCE South 00 degrees 41 minutes 39 seconds East, with the west line of said Shim tract, a distance of 124.42 feet to a 1/2 inch iron rod with a yellow cap stamped "ARTHUR SURVEYING COMPANY" (ASC) set for the southwest corner of said Shim tract;

THENCE North 89 degrees 18 minutes 21 seconds East, with the south line of said Shim tract, a distance of 140.05 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set for corner, being in the south line of said Shim tract;

THENCE North 20 degrees 25 minutes 45 seconds East, over, through and across said Shim tract and with the west line of said Park tract, a distance of 140.05 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set, being at the beginning of a curve to the left having a radius of 960.00 feet, a delta angle of 15 degrees 54 minutes 36 seconds, whose chord bears North 12 degrees 54 minutes 18 seconds East, a distance of 265.72 feet;

THENCE continuing over, through and across said Shim tract and with the west line of said Park tract, an arc length of 266.58 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set for corner, being at the beginning of a reverse curve to the right having a radius of 315.00 feet, a delta angle of 72 degrees 25 minutes 02 seconds, whose chord bears North 41 degrees 09 minutes 31 seconds East, a distance of 372.16 feet;

THENCE continuing over, through and across said Shim tract and partially with the west line of said Park tract, an arc length of 398.13 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set for corner;

THENCE North 01 degrees 46 minutes 35 seconds East, over, through and across said Park tract, a distance of 454.68 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set for corner in the south line of F.M. 1171, also known as Cross Timbers Road;

THENCE South 89 degrees 37 minutes 29 seconds East, with the south line of said Cross Timbers Road, a distance of 970.59 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set for corner;

THENCE South 87 degrees 22 minutes 30 seconds East, continuing with the south line of said Cross Timbers Road, a distance of 45.05 feet to a Texas Department of Transportation monument found for corner;

THENCE South 75 degrees 24 minutes 21 seconds East, continuing with the south line of said Cross Timbers Road, a distance of 191.51 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set for corner in the west line of said Town of Flower Mound Tract;

THENCE South 23 degrees 10 minutes 00 seconds West, with the west line of said Town of Flower Mound tract, a distance of 697.12 feet to the **POINT OF BEGINNING**, and containing 43.20 acres of land, more or less, and being subject to any and all easements that may affect.

Exhibit "B"**DEVELOPMENT STANDARDS****Planned Development District No. 143 (PD-143)
Hillside at Flower Mound**

The development on the property comprising approximately 43.20 acres of land within the corporate limits of the Town of Flower Mound ("Town") and as described on Exhibit "A" to this Zoning Ordinance adopting PD-143 shall be in accordance with the Town of Flower Mound *Master Plan* and the Land Development Regulations of the Town of Flower Mound, Texas, as amended, and shall be subject to the following conditions and requirements:

A. PD-143 with Single-Family District-30 (SF-30) uses.

Development of PD-143 as designated on Exhibit "C," the Concept Plan for Hillside at Flower Mound shall be in compliance with all regulations applicable to Single-Family District-30 (SF-30) uses contained in the Town's Land Development Regulations as amended, except as otherwise provided and/or limited herein.

1. Minimum floor area per unit. The minimum floor area per dwelling unit shall be 2,800 square feet, subject to Section 98-1025.
2. Maximum lot coverage. The maximum lot coverage shall be 40% for all uses, subject to Section 98-1029.
3. The dimensional and area regulations contained in this section shall not apply to common areas or lots owned by the homeowner's association for Hillside at Flower Mound ("HOA"). Any common areas or lots owned by the HOA and any structure(s) thereon shall conform to all relevant provisions of the Town's code of ordinances and land development regulations.

B. Residential Lot Requirements. The following requirements shall apply to the residential lots within Hillside at Flower Mound.

1. The maximum density shall be no more than 1 dwelling unit per 1.6 acres ($100/1.6 = 62$ units or a 24% increase above the base density).
2. There shall be a maximum of 27 residential lots as depicted on the attached Zoning Conceptual Plan.

C. Supplemental Standards.

1. As a Cluster Development, PD-143 shall have a minimum of fifty percent (50%) of the gross land area preserved as open space for the development as depicted in Exhibit "E" below. In meeting requirements for open space, the developer must demonstrate how open space designated in Exhibit "E" shall be managed. Open

Space shall be managed by a qualified nonprofit entity or organization that manages open space, such as a land trust, HOA or other qualified entity, pursuant to section 170(h) of the Internal Revenue Code, as amended, and as may be approved and accepted by the Town. All designated open space areas shall be conserved in a recorded conservation easement as applicable prior to Planning and Zoning Commission approval of the first record plat within the development. The final Open Space Management Plan (OSMP) shall conform with the following:

- a. Be submitted and approved by the Town prior to the submittal of the first record plat within the development.
 - b. Be recorded in the deed records of Denton County Texas as a restriction running with the land prior to the submittal of the first record plat within the development.
 - c. Substantially conform to the draft OSMP submitted to the Planning and Zoning Commission for consideration of the Zoning application (ZPD 15-0011) and identified as Attachment B3 of the agenda item.
 2. All landscaping, trails and open space shall be in conformance with Exhibit "D", the Conceptual Landscape Plan.
 3. The development of PD-143 is subject to the approved Environmental Protection Plan.
- D. House Pad Benching. Developer shall prepare and submit a complete subdivision design including general grading, drainage and pad elevation plans in accordance with the Engineering Design Criteria and Construction Standards. The grading and drainage within Hillside at Flower Mound and along the perimeter of all lots within each phase of the development shall be complete prior to final acceptance of that phase of the development by the Town. The general pad elevations for the lots within the development shall be included in the subdivision design plans but are not required to be "benched" prior to the Town's final acceptance of each phase of the development.
1. Developer agrees that for each pad site that is not being benched, as identified herein-above, prior to final acceptance of that particular phase the following will occur:
 - a. Developer shall retain a professional licensed engineer to design plans for the review and approval of any modification in the benching data for each and every pad site identified herein as well as any design modifications required to address changes in drainage flows, velocities and direction that deviate from the original approved plans and prepare and submit any proposed revisions to the Town for approval and acceptance before each such pad site or group of pad sites within a particular phase is benched;

- b. Erosion control measures including silt fencing, check dam, bar ditch and storm water pipe system cleaning shall be performed on a routine basis as needed and no less frequently than at least one time every six months or more frequently as may be required and directed by the Town Manager or his designee;
 - c. Developer shall be responsible for weekly monitoring, clean-up and removal of construction debris, waste and litter that is dumped, accumulates or is otherwise stockpiled within the development;
 - d. Developer shall remove check dams and silt fencing as appropriate and in accordance with best management practices after all pad sites within the phase have been benched and stabilized and a final phase inspection of the newly benched pad sites has been performed and approved by the Town.
- E. Exceptions to Topographic Slope Protection: An exception to Section 98-147, Topographical Slope Protection is granted; however, 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:
- 1. 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.
 - 2. 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. Retaining walls exceeding eight feet (8') in height are prohibited except on a showing that the property owner will suffer undue hardship in the development of an individual lot in the absence of such an eight foot (8') tall retaining wall.

TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO. 5615

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 43.20 ACRES OF LAND SITUATED IN THE TEXAS & PACIFIC RAILROAD COMPANY SURVEY, ABSTRACT NUMBER 1618, AND MEMPHIS, EL PASO & PACIFIC RAILROAD COMPANY SURVEY, ABSTRACT NUMBER 935, DENTON COUNTY, TEXAS, FROM AGRICULTURAL DISTRICT (A) TO PLANNED DEVELOPMENT DISTRICT NO. 143 (PD-143) FOR SINGLE FAMILY RESIDENTIAL USES WITH CLUSTER DEVELOPMENT STANDARDS 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 43.20 acres of land situated in the Texas & Pacific Railroad Company Survey, Abstract Number 1618, and Memphis, El Paso & Pacific Railroad Company Survey, Abstract Number 935, Denton County, Texas, have filed an application to change the zoning from Agricultural District (A) to Planned Development District No. 143 (PD-143) for Single Family Residential uses with Cluster Development Standards; and,

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on September 14, 2015, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on September 21, 2015, 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

ORDINANCE NO. 5615

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:

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:

43.20 acres of land situated in the Texas & Pacific Railroad Company Survey, Abstract Number 1618, and Memphis, El Paso & Pacific Railroad Company Survey, Abstract Number 935, Denton County, Texas, and more fully described in Exhibit "A" hereto.

Planned Development District No. 143 (PD-143) for Single Family Residential uses with Cluster Development Standards.

SECTION 2

The development standards, concept plan, concept landscape plan and concept open space plan of the proposed Planned Development District No. 143 (PD-143), attached hereto as Exhibits "B," "C," "D," and "E," each incorporated herein for all purposes, are hereby approved as the development standards, concept plan, concept landscape plan and concept open space plan for this Planned Development District No. 143 (PD-143).

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. 143 (PD-143), 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.

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 3 TO 1, ON THIS THE 21 DAY OF

ORDINANCE NO. 56-15

Attachment 1: Planning and Zoning Commission Staff Report
Page 4

September, 2015.

APPROVED:



~~Thomas E. Hayden, MAYOR~~

Steve Dixon, Mayor Pro Tem

ATTEST:



Theresa Scott, TOWN SECRETARY

APPROVED AS TO FORM AND LEGALITY:



Bryn Meredith, TOWN ATTORNEY

ORDINANCE NO. 5615**Exhibit "A"**
Legal Description

BEING all that certain lot, tract or parcel of land situated in the Texas & Pacific Railroad Company Survey, Abstract Number 1618 and the Memphis, El Paso and Pacific Railroad Company Survey, Abstract Number 935, Town of Flower Mound, Denton County, Texas, and being a portion of that certain tract of land described by deed to Peter Park, recorded under Document Number 96-R0007867 of the Real Property Records of Denton County, Texas, being that certain tract of land described by deed to Peter Park, recorded under Document Number 2015-23236 of the Real Property Records of Denton County, Texas, being that certain tract of land described by deed to Timothy S. Choe, recorded under Document Number 2011-23155 of the Real Property Records of Denton County, Texas, and being that certain tract of land described by deed to Hanmi Realty, Inc., recorded under Document Number 2011-54874 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a ½ inch iron rod found for the southeast corner of said Park tract, the southwest corner of that certain tract of land described by deed to the Town of Flower Mound, Denton County, Texas, recorded in Volume 4928, Page 2397 of the Real Property Records of Denton County, Texas, and being in the north line of Lot 4, Block H, Hidden Valley Country Estates, Section Three, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Cabinet B, Page 90 of the Plat Records of Denton County, Texas;

THENCE South 89 degrees 15 minutes 12 seconds West, with the north line of said Block H of said Hidden Valley Country Estates, Section Three, a distance of 1037.94 feet to a 1 inch iron rod found for the northwest corner of Lot 8 of said Block H;

THENCE South 00 degrees 49 minutes 02 seconds East, with the west line of said Block H and partially continuing with the west line of said Hidden Valley Country Estates, Section Three, a distance of 1293.37 feet to a ½ inch iron rod found for corner in the west line of Lot 4, Block I of said Hidden Valley Country Estates, Section Three and being the northeast corner of Lot 2, Block I, Hidden Valley Country Estates, Section Two, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Cabinet B, Page 89 of the Plat Records of Denton County, Texas;

THENCE South 89 degrees 29 minutes 19 seconds West, with the north line of said Hidden Valley Country Estates, Section Two and partially continuing with the north line of Block 4, Hidden Valley Country Estates, Section IV, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Cabinet G, Page 106 of the Plat Records of Denton County, Texas, a distance of 1145.38 feet to a ½ inch iron rod found for corner in the north line of Lot 6 of said Block 4 and being the southeast corner of that certain tract of land described by deed to Wardin Investments, Ltd., recorded in Volume 5052, Page 2668 of the Real Property Records of Denton County, Texas;

THENCE North 00 degrees 37 minutes 17 seconds West, with the east line of said Wardin tract, a distance of 729.92 feet to a ½ inch iron rod found for corner, being an inner corner thereof;

THENCE North 89 degrees 18 minutes 21 seconds East, with the south line of said Wardin tract, a distance of 525.41 feet to a ½ inch iron rod found for corner, being an outer corner thereof;

THENCE North 00 degrees 41 minutes 39 seconds West, with the east line of said Wardin tract, a distance of 390.00 feet to a 5/8 inch iron rod found for corner, being an inner corner thereof;

ORDINANCE NO. 5615

THENCE North 89 degrees 18 minutes 21 seconds East, with the south line of said Wardin tract, a distance of 260.19 feet to a 5/8 inch iron rod found for the easterly southeast corner of said Wardin tract, being in the west line of that certain tract of land described by deed to Jea L. Shim, recorded under Document Number 2008-58876 of the Real Property Records of Denton County, Texas;

THENCE South 00 degrees 41 minutes 39 seconds East, with the west line of said Shim tract, a distance of 124.42 feet to a 1/2 inch iron rod with a yellow cap stamped "ARTHUR SURVEYING COMPANY" (ASC) set for the southwest corner of said Shim tract;

THENCE North 89 degrees 18 minutes 21 seconds East, with the south line of said Shim tract, a distance of 140.05 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set for corner, being in the south line of said Shim tract;

THENCE North 20 degrees 25 minutes 45 seconds East, over, through and across said Shim tract and with the west line of said Park tract, a distance of 140.05 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set, being at the beginning of a curve to the left having a radius of 960.00 feet, a delta angle of 15 degrees 54 minutes 36 seconds, whose chord bears North 12 degrees 54 minutes 18 seconds East, a distance of 265.72 feet;

THENCE continuing over, through and across said Shim tract and with the west line of said Park tract, an arc length of 266.58 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set for corner, being at the beginning of a reverse curve to the right having a radius of 315.00 feet, a delta angle of 72 degrees 25 minutes 02 seconds, whose chord bears North 41 degrees 09 minutes 31 seconds East, a distance of 372.16 feet;

THENCE continuing over, through and across said Shim tract and partially with the west line of said Park tract, an arc length of 398.13 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set for corner;

THENCE North 01 degrees 46 minutes 35 seconds East, over, through and across said Park tract, a distance of 454.68 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set for corner in the south line of F.M. 1171, also known as Cross Timbers Road;

THENCE South 89 degrees 37 minutes 29 seconds East, with the south line of said Cross Timbers Road, a distance of 970.59 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set for corner;

THENCE South 87 degrees 22 minutes 30 seconds East, continuing with the south line of said Cross Timbers Road, a distance of 45.05 feet to a Texas Department of Transportation monument found for corner;

THENCE South 75 degrees 24 minutes 21 seconds East, continuing with the south line of said Cross Timbers Road, a distance of 191.51 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set for corner in the west line of said Town of Flower Mound Tract;

THENCE South 23 degrees 10 minutes 00 seconds West, with the west line of said Town of Flower Mound tract, a distance of 697.12 feet to the **POINT OF BEGINNING**, and containing 43.20 acres of land, more or less, and being subject to any and all easements that may affect.

Exhibit "B"**DEVELOPMENT STANDARDS****Planned Development District No. 143 (PD-143)
Hillside at Flower Mound**

The development on the property comprising approximately 43.20 acres of land within the corporate limits of the Town of Flower Mound ("Town") and as described on Exhibit "A" to this Zoning Ordinance adopting PD-143 shall be in accordance with the Town of Flower Mound *Master Plan* and the Land Development Regulations of the Town of Flower Mound, Texas, as amended, and shall be subject to the following conditions and requirements:

A. PD-143 with Single-Family District-30 (SF-30) uses.

Development of PD-143 as designated on Exhibit "C," the Concept Plan for Hillside at Flower Mound shall be in compliance with all regulations applicable to Single-Family District-30 (SF-30) uses contained in the Town's Land Development Regulations as amended, except as otherwise provided and/or limited herein.

1. Minimum floor area per unit. The minimum floor area per dwelling unit shall be 2,800 square feet, subject to Section 98-1025.
2. Maximum lot coverage. The maximum lot coverage shall be 40% for all uses, subject to Section 98-1029.
3. The dimensional and area regulations contained in this section shall not apply to common areas or lots owned by the homeowner's association for Hillside at Flower Mound ("HOA"). Any common areas or lots owned by the HOA and any structure(s) thereon shall conform to all relevant provisions of the Town's code of ordinances and land development regulations.

B. Residential Lot Requirements. The following requirements shall apply to the residential lots within Hillside at Flower Mound.

1. The maximum density shall be no more than 1 dwelling unit per 1.6 acres ($100/1.6 = 62$ units or a 24% increase above the base density).
2. There shall be a maximum of 27 residential lots as depicted on the attached Zoning Conceptual Plan.

C. Supplemental Standards.

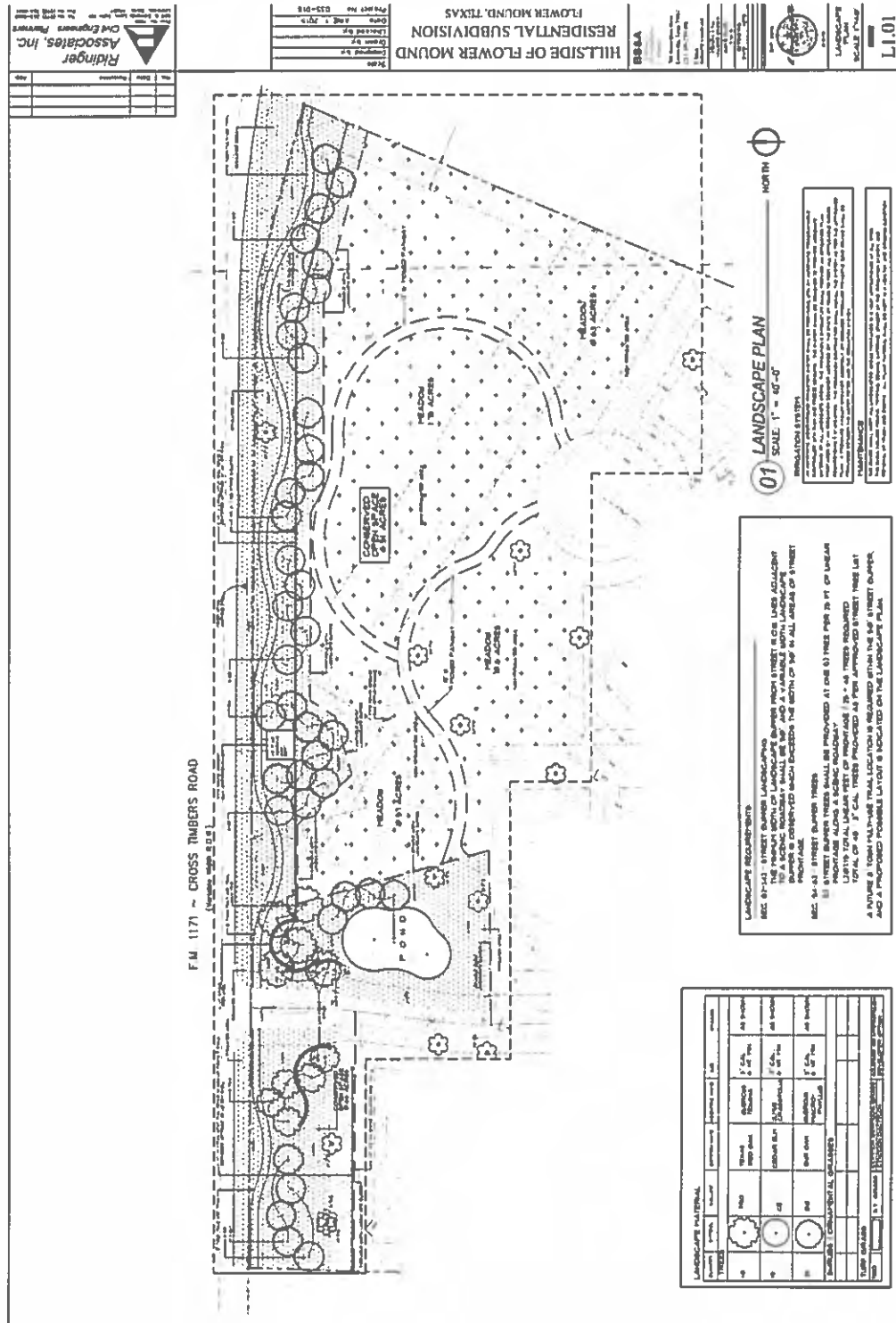
1. As a Cluster Development, PD-143 shall have a minimum of fifty percent (50%) of the gross land area preserved as open space for the development as depicted in Exhibit "E" below. In meeting requirements for open space, the developer must demonstrate how open space designated in Exhibit "E" shall be managed. Open

Space shall be managed by a qualified nonprofit entity or organization that manages open space, such as a land trust, HOA or other qualified entity, pursuant to section 170(h) of the Internal Revenue Code, as amended, and as may be approved and accepted by the Town. All designated open space areas shall be conserved in a recorded conservation easement as applicable prior to Planning and Zoning Commission approval of the first record plat within the development. The final Open Space Management Plan (OSMP) shall conform with the following:

- a. Be submitted and approved by the Town prior to the submittal of the first record plat within the development.
 - b. Be recorded in the deed records of Denton County Texas as a restriction running with the land prior to the submittal of the first record plat within the development.
 - c. Substantially conform to the draft OSMP submitted to the Planning and Zoning Commission for consideration of the Zoning application (ZPD 15-0011) and identified as Attachment B3 of the agenda item.
2. All landscaping, trails and open space shall be in conformance with Exhibit "D", the Conceptual Landscape Plan.
3. The development of PD-143 is subject to the approved Environmental Protection Plan.
- D. House Pad Benching. Developer shall prepare and submit a complete subdivision design including general grading, drainage and pad elevation plans in accordance with the Engineering Design Criteria and Construction Standards. The grading and drainage within Hillside at Flower Mound and along the perimeter of all lots within each phase of the development shall be complete prior to final acceptance of that phase of the development by the Town. The general pad elevations for the lots within the development shall be included in the subdivision design plans but are not required to be "benched" prior to the Town's final acceptance of each phase of the development.
 1. Developer agrees that for each pad site that is not being benched, as identified herein-above, prior to final acceptance of that particular phase the following will occur:
 - a. Developer shall retain a professional licensed engineer to design plans for the review and approval of any modification in the benching data for each and every pad site identified herein as well as any design modifications required to address changes in drainage flows, velocities and direction that deviate from the original approved plans and prepare and submit any proposed revisions to the Town for approval and acceptance before each such pad site or group of pad sites within a particular phase is benched;

- b. Erosion control measures including silt fencing, check dam, bar ditch and storm water pipe system cleaning shall be performed on a routine basis as needed and no less frequently than at least one time every six months or more frequently as may be required and directed by the Town Manager or his designee;
- c. Developer shall be responsible for weekly monitoring, clean-up and removal of construction debris, waste and litter that is dumped, accumulates or is otherwise stockpiled within the development;
- d. Developer shall remove check dams and silt fencing as appropriate and in accordance with best management practices after all pad sites within the phase have been benched and stabilized and a final phase inspection of the newly benched pad sites has been performed and approved by the Town.

[illegible]



PROPOSED DEVELOPMENT DATA

LOT TOTAL	17
ACRES TOTAL	17.00
ACRES OF BUILDABLE LOTS	14.00
ACRES OF OPEN SPACE	1.00
TOTAL NUMBER OF BUILDABLE LOTS	17
TOTAL NUMBER OF OPEN SPACE LOTS	0

PROPOSED LOT TABLE

LOT	ACRES	FEET
LOT 1	0.10	10.00
LOT 2	0.10	10.00
LOT 3	0.10	10.00
LOT 4	0.10	10.00
LOT 5	0.10	10.00
LOT 6	0.10	10.00
LOT 7	0.10	10.00
LOT 8	0.10	10.00
LOT 9	0.10	10.00
LOT 10	0.10	10.00
LOT 11	0.10	10.00
LOT 12	0.10	10.00
LOT 13	0.10	10.00
LOT 14	0.10	10.00
LOT 15	0.10	10.00
LOT 16	0.10	10.00
LOT 17	0.10	10.00

TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO. 64-15

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING ORDINANCE NO. 56-15, WHICH ESTABLISHED PLANNED DEVELOPMENT DISTRICT NO. 143 (PD-143) FOR SINGLE FAMILY RESIDENTIAL USES WITH CLUSTER DEVELOPMENT STANDARDS, TO INCLUDE ADDITIONAL DEVELOPMENT STANDARDS REGARDING TOPOGRAPHIC SLOPE EXCEPTIONS IN ACCORDANCE WITH SPECIFIC REQUIREMENTS STATED HEREIN AND EXHIBITS ATTACHED HERETO; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS 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 43.20 acres of land situated in the Texas & Pacific Railroad Company Survey, Abstract Number 1618, and Memphis, El Paso & Pacific Railroad Company Survey, Abstract Number 935, Denton County, Texas, have filed an application for a Zoning Planned Development amendment to amend Ordinance No. 56-15 for Planned Development District No. 143 (PD-143) for Single Family Residential uses with Cluster Development Standards; and,

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on October 12, 2015, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on October 19, 2015, 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 the requested amendment 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.

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

SECTION 1

The Land Development Regulations of the Town of Flower Mound, Texas, as amended, are hereby amended on the hereinafter described property and area of Planned Development District No. 143 (PD-143) as shown below:

43.20 acres of land situated in the Texas & Pacific Railroad Company Survey, Abstract Number 1618, and Memphis, El Paso & Pacific Railroad Company Survey, Abstract Number 935, Denton County, Texas, and more fully described in Exhibit "A" hereto.

Exhibit "B" to Ordinance No. 56-15 is hereby amended by the addition of a new Section E. "Exceptions to Topographic Slope Protection" such that Exhibit "B" to Ordinance No. 56-15 shall be replaced with Exhibit "B" attached to this Ordinance and incorporated herein.

SECTION 2

The use of the property described above shall be subject to all restrictions, terms and conditions contained in Exhibit "B," attached hereto, as well as the applicable regulations contained in PD-143, the Land Development Regulations and all other applicable and pertinent ordinances of the Town of Flower Mound.

SECTION 3

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 4

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

SECTION 5

Any person, firm, or corporation who violates any provision of this Ordinance as adopted by the Town Council of the Town 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

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exist shall constitute a separate offense and shall be punishable as such.

SECTION 6

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

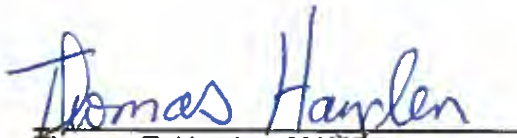
The Town Secretary of the Town of Flower Mound is hereby directed to publish the caption in the official newspaper of the Town of Flower Mound as required by Section 3.07 of the Charter of the Town of Flower Mound.

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 4 TO 0, ON THIS THE 19 DAY OF
OCT, 2015. (1 ABSENT)

APPROVED:


Thomas E. Hayden, MAYOR

ATTEST:


Theresa Scott, TOWN SECRETARY

APPROVED AS TO FORM AND LEGALITY:


Bryn Meredith, TOWN ATTORNEY

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Exhibit "A"
Legal Description

BEING all that certain lot, tract or parcel of land situated in the Texas & Pacific Railroad Company Survey, Abstract Number 1618 and the Memphis, El Paso and Pacific Railroad Company Survey, Abstract Number 935, Town of Flower Mound, Denton County, Texas, and being a portion of that certain tract of land described by deed to Peter Park, recorded under Document Number 96-R0007867 of the Real Property Records of Denton County, Texas, being that certain tract of land described by deed to Peter Park, recorded under Document Number 2015-23236 of the Real Property Records of Denton County, Texas, being that certain tract of land described by deed to Timothy S. Choe, recorded under Document Number 2011-23155 of the Real Property Records of Denton County, Texas, and being that certain tract of land described by deed to Hammi Realty, Inc., recorded under Document Number 2011-54874 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a ½ inch iron rod found for the southeast corner of said Park tract, the southwest corner of that certain tract of land described by deed to the Town of Flower Mound, Denton County, Texas, recorded in Volume 4928, Page 2397 of the Real Property Records of Denton County, Texas, and being in the north line of Lot 4, Block H, Hidden Valley Country Estates, Section Three, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Cabinet B, Page 90 of the Plat Records of Denton County, Texas;

THENCE South 89 degrees 15 minutes 12 seconds West, with the north line of said Block H of said Hidden Valley Country Estates, Section Three, a distance of 1037.94 feet to a 1 inch iron rod found for the northwest corner of I or 8 of said Block H;

THENCE South 00 degrees 49 minutes 02 seconds East, with the west line of said Block H and partially continuing with the west line of said Hidden Valley Country Estates, Section Three, a distance of 1293.37 feet to a ½ inch iron rod found for corner in the west line of Lot 4, Block I of said Hidden Valley Country Estates, Section Three and being the northeast corner of Lot 2, Block I, Hidden Valley Country Estates, Section Two, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Cabinet B, Page 89 of the Plat Records of Denton County, Texas;

THENCE South 89 degrees 29 minutes 19 seconds West, with the north line of said Hidden Valley Country Estates, Section Two and partially continuing with the north line of Block 4, Hidden Valley Country Estates, Section IV, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Cabinet G, Page 106 of the Plat Records of Denton County, Texas, a distance of 1145.38 feet to a ½ inch iron rod found for corner in the north line of Lot 6 of said Block 4 and being the southeast corner of that certain tract of land described by deed to Wardin Investments, Ltd., recorded in Volume 5052, Page 2668 of the Real Property Records of Denton County, Texas;

THENCE North 00 degrees 37 minutes 17 seconds West, with the east line of said Wardin tract, a distance of 729.92 feet to a ½ inch iron rod found for corner, being an inner corner thereof;

THENCE North 89 degrees 18 minutes 21 seconds East, with the south line of said Wardin tract, a distance of 525.41 feet to a ½ inch iron rod found for corner, being an outer corner thereof;

THENCE North 00 degrees 41 minutes 39 seconds West, with the east line of said Wardin tract, a distance of 390.00 feet to a 5/8 inch iron rod found for corner, being an inner corner thereof;

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THENCE North 89 degrees 18 minutes 21 seconds East, with the south line of said Wardin tract, a distance of 260.19 feet to a 5/8 inch iron rod found for the easterly southeast corner of said Wardin tract, being in the west line of that certain tract of land described by deed to Jea L. Shim, recorded under Document Number 2008-58876 of the Real Property Records of Denton County, Texas;

THENCE South 00 degrees 41 minutes 39 seconds East, with the west line of said Shim tract, a distance of 124.42 feet to a 1/2 inch iron rod with a yellow cap stamped "ARTHUR SURVEYING COMPANY" (ASC) set for the southwest corner of said Shim tract;

THENCE North 89 degrees 18 minutes 21 seconds East, with the south line of said Shim tract, a distance of 140.05 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set for corner, being in the south line of said Shim tract;

THENCE North 20 degrees 25 minutes 45 seconds East, over, through and across said Shim tract and with the west line of said Park tract, a distance of 140.05 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set, being at the beginning of a curve to the left having a radius of 960.00 feet, a delta angle of 15 degrees 54 minutes 36 seconds, whose chord bears North 12 degrees 54 minutes 18 seconds East, a distance of 265.72 feet;

THENCE continuing over, through and across said Shim tract and with the west line of said Park tract, an arc length of 266.58 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set for corner, being at the beginning of a reverse curve to the right having a radius of 315.00 feet, a delta angle of 72 degrees 25 minutes 02 seconds, whose chord bears North 41 degrees 09 minutes 31 seconds East, a distance of 372.16 feet;

THENCE continuing over, through and across said Shim tract and partially with the west line of said Park tract, an arc length of 398.13 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set for corner;

THENCE North 01 degrees 46 minutes 35 seconds East, over, through and across said Park tract, a distance of 454.68 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set for corner in the south line of F.M. 1171, also known as Cross Timbers Road;

THENCE South 89 degrees 37 minutes 29 seconds East, with the south line of said Cross Timbers Road, a distance of 970.59 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set for corner;

THENCE South 87 degrees 22 minutes 30 seconds East, continuing with the south line of said Cross Timbers Road, a distance of 45.05 feet to a Texas Department of Transportation monument found for corner;

THENCE South 75 degrees 24 minutes 21 seconds East, continuing with the south line of said Cross Timbers Road, a distance of 191.51 feet to a 1/2 inch iron rod with a yellow cap stamped "ASC" set for corner in the west line of said Town of Flower Mound Tract;

THENCE South 23 degrees 10 minutes 00 seconds West, with the west line of said Town of Flower Mound tract, a distance of 697.12 feet to the POINT OF BEGINNING, and containing 43.20 acres of land, more or less, and being subject to any and all easements that may affect.

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Exhibit "B"**DEVELOPMENT STANDARDS****Planned Development District No. 143 (PD-143)
Hillside at Flower Mound**

The development on the property comprising approximately 43.20 acres of land within the corporate limits of the Town of Flower Mound ("Town") and as described on Exhibit "A" to this Zoning Ordinance adopting PD-143 shall be in accordance with the Town of Flower Mound *Master Plan* and the Land Development Regulations of the Town of Flower Mound, Texas, as amended, and shall be subject to the following conditions and requirements:

A. PD-143 with Single-Family District-30 (SF-30) uses.

Development of PD-143 as designated on Exhibit "C," the Concept Plan for Hillside at Flower Mound shall be in compliance with all regulations applicable to Single-Family District-30 (SF-30) uses contained in the Town's Land Development Regulations as amended, except as otherwise provided and/or limited herein.

1. Minimum floor area per unit. The minimum floor area per dwelling unit shall be 2,800 square feet, subject to Section 98-1025.
2. Maximum lot coverage. The maximum lot coverage shall be 40% for all uses, subject to Section 98-1029.
3. The dimensional and area regulations contained in this section shall not apply to common areas or lots owned by the homeowner's association for Hillside at Flower Mound ("HOA"). Any common areas or lots owned by the HOA and any structure(s) thereon shall conform to all relevant provisions of the Town's code of ordinances and land development regulations.

B. Residential Lot Requirements. The following requirements shall apply to the residential lots within Hillside at Flower Mound.

1. The maximum density shall be no more than 1 dwelling unit per 1.6 acres ($100/1.6 = 62$ units or a 24% increase above the base density).
2. There shall be a maximum of 27 residential lots as depicted on the attached Zoning Conceptual Plan.

C. Supplemental Standards.

1. As a Cluster Development, PD-143 shall have a minimum of fifty percent (50%) of the gross land area preserved as open space for the development as depicted in Exhibit "E" below. In meeting requirements for open space, the developer must demonstrate how open space designated in Exhibit "E" shall be managed. Open

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Space shall be managed by a qualified nonprofit entity or organization that manages open space, such as a land trust, HOA or other qualified entity, pursuant to section 170(h) of the Internal Revenue Code, as amended, and as may be approved and accepted by the Town. All designated open space areas shall be conserved in a recorded conservation easement as applicable prior to Planning and Zoning Commission approval of the first record plat within the development. The final Open Space Management Plan (OSMP) shall conform with the following:

- a. Be submitted and approved by the Town prior to the submittal of the first record plat within the development.
 - b. Be recorded in the deed records of Denton County Texas as a restriction running with the land prior to the submittal of the first record plat within the development.
 - c. Substantially conform to the draft OSMP submitted to the Planning and Zoning Commission for consideration of the Zoning application (ZPD 15-0011) and identified as Attachment B3 of the agenda item.
2. All landscaping, trails and open space shall be in conformance with Exhibit "D", the Conceptual Landscape Plan.
3. The development of PD-143 is subject to the approved Environmental Protection Plan.
- D. House Pad Benching. Developer shall prepare and submit a complete subdivision design including general grading, drainage and pad elevation plans in accordance with the Engineering Design Criteria and Construction Standards. The grading and drainage within Hillside at Flower Mound and along the perimeter of all lots within each phase of the development shall be complete prior to final acceptance of that phase of the development by the Town. The general pad elevations for the lots within the development shall be included in the subdivision design plans but are not required to be "benched" prior to the Town's final acceptance of each phase of the development.
 1. Developer agrees that for each pad site that is not being benched, as identified herein-above, prior to final acceptance of that particular phase the following will occur:
 - a. Developer shall retain a professional licensed engineer to design plans for the review and approval of any modification in the benching data for each and every pad site identified herein as well as any design modifications required to address changes in drainage flows, velocities and direction that deviate from the original approved plans and prepare and submit any proposed revisions to the Town for approval and acceptance before each such pad site or group of pad sites within a particular phase is benched;

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- b. Erosion control measures including silt fencing, check dam, bar ditch and storm water pipe system cleaning shall be performed on a routine basis as needed and no less frequently than at least one time every six months or more frequently as may be required and directed by the Town Manager or his designee;
 - c. Developer shall be responsible for weekly monitoring, clean-up and removal of construction debris, waste and litter that is dumped, accumulates or is otherwise stockpiled within the development;
 - d. Developer shall remove check dams and silt fencing as appropriate and in accordance with best management practices after all pad sites within the phase have been benched and stabilized and a final phase inspection of the newly benched pad sites has been performed and approved by the Town.
- E. Exceptions to Topographic Slope Protection: An exception to Section 98-147, Topographical Slope Protection is granted; provided however that this exception is limited to those areas intersected by public roads and that no exception is granted for any lot within 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:
- 1. 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.
 - 2. 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. Retaining walls exceeding eight feet (8') in height are prohibited except on a showing that the property owner will suffer undue hardship in the development of an individual lot in the absence of such an eight foot (8') tall retaining wall.

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

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING ORDINANCE NO. 64-15, WHICH AMENDED ORDINANCE NO. 56-15 ESTABLISHING PLANNED DEVELOPMENT DISTRICT NO. 143 (PD-143) FOR SINGLE FAMILY RESIDENTIAL USES WITH CLUSTER DEVELOPMENT STANDARDS, TO INCLUDE ADDITIONAL DEVELOPMENT STANDARDS REGARDING TOPOGRAPHIC SLOPE EXCEPTIONS IN ACCORDANCE WITH SPECIFIC REQUIREMENTS STATED HEREIN AND EXHIBITS ATTACHED HERETO; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS 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 43.20 acres of land situated in the Texas & Pacific Railroad Company Survey, Abstract Number 1618, and Memphis, El Paso & Pacific Railroad Company Survey, Abstract Number 935, Denton County, Texas, have filed an application for a Zoning Planned Development amendment to amend Ordinance No. 64-15 for Planned Development District No. 143 (PD-143) for Single Family Residential uses with Cluster Development Standards; and,

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on February 22, 2016, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on March 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 the requested amendment 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.

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

SECTION 1

The Land Development Regulations of the Town of Flower Mound, Texas, as amended, are hereby amended on the hereinafter described property and area of Planned Development District No. 143 (PD-143) as shown below:

43.20 acres of land situated in the Texas & Pacific Railroad Company Survey, Abstract Number 1618, and Memphis, El Paso & Pacific Railroad Company Survey, Abstract Number 935, Denton County, Texas, and more fully described in Exhibit "A" hereto.

Exhibit "B" to Ordinance No. 64-15 is hereby amended by the addition of a new Section E. "Exceptions to Topographic Slope Protection" such that Exhibit "B" to Ordinance No. 64-15 shall be replaced with Exhibit "B" attached to this Ordinance and incorporated herein.

SECTION 2

The use of the property described above shall be subject to all restrictions, terms and conditions contained in Exhibit "B," attached hereto, as well as the applicable regulations contained in PD-143, the Land Development Regulations and all other applicable and pertinent ordinances of the Town of Flower Mound.

SECTION 3

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 4

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

SECTION 5

Any person, firm, or corporation who violates any provision of this Ordinance as adopted by the Town Council of the Town 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

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exist shall constitute a separate offense and shall be punishable as such.

SECTION 6

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. _____

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Exhibit "A"
Legal Description

BEING all that certain lot, tract or parcel of land situated in the Texas & Pacific Railroad Company Survey, Abstract Number 1618 and the Memphis, El Paso and Pacific Railroad Company Survey, Abstract Number 935, Town of Flower Mound, Denton County, Texas, and being a portion of that certain tract of land described by deed to Peter Park, recorded under Document Number 96-R0007867 of the Real Property Records of Denton County, Texas, being that certain tract of land described by deed to Peter Park, recorded under Document Number 2015-23236 of the Real Property Records of Denton County, Texas, being that certain tract of land described by deed to Timothy S. Choe, recorded under Document Number 2011-23155 of the Real Property Records of Denton County, Texas, and being that certain tract of land described by deed to Hanmi Realty, Inc., recorded under Document Number 2011-54874 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

BEGINNNING at a ½ inch iron rod found for the southeast corner of said Park tract, the southwest corner of that certain tract of land described by deed to the Town of Flower Mound, Denton County, Texas, recorded in Volume 4928, Page 2397 of the Real Property Records of Denton County, Texas, and being in the north line of Lot 4, Block H, Hidden Valley Country Estates, Section Three, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Cabinet B, Page 90 of the Plat Records of Denton County, Texas;

THENCE South 89 degrees 15 minutes 12 seconds West, with the north line of said Block H of said Hidden Valley Country Estates, Section Three, a distance of 1037.94 feet to a 1 inch iron rod found for the northwest corner of Lot 8 of said Block H;

THENCE South 00 degrees 49 minutes 02 seconds East, with the west line of said Block H and partially continuing with the west line of said Hidden Valley Country Estates, Section Three, a distance of 1293.37 feet to a ½ inch iron rod found for corner in the west line of Lot 4, Block I of said Hidden Valley Country Estates, Section Three and being the northeast corner of Lot 2, Block I, Hidden Valley Country Estates, Section Two, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Cabinet B, Page 89 of the Plat Records of Denton County, Texas;

THENCE South 89 degrees 29 minutes 19 seconds West, with the north line of said Hidden Valley Country Estates, Section Two and partially continuing with the north line of Block 4, Hidden Valley Country Estates, Section IV, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Cabinet G, Page 106 of the Plat Records of Denton County, Texas, a distance of 1145.38 feet to a ½ inch iron rod found for corner in the north line of Lot 6 of said Block 4 and being the southeast corner of that certain tract of land described by deed to Wardin Investments, Ltd., recorded in Volume 5052, Page 2668 of the Real Property Records of Denton County, Texas;

THENCE North 00 degrees 37 minutes 17 seconds West, with the east line of said Wardin tract, a distance of 729.92 feet to a ½ inch iron rod found for corner, being an inner corner thereof;

THENCE North 89 degrees 18 minutes 21 seconds East, with the south line of said Wardin tract, a distance of 525.41 feet to a ½ inch iron rod found for corner, being an outer corner thereof;

THENCE North 00 degrees 41 minutes 39 seconds West, with the east line of said Wardin tract, a distance of 390.00 feet to a 5/8 inch iron rod found for corner, being an inner corner thereof;

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THENCE North 89 degrees 18 minutes 21 seconds East, with the south line of said Wardin tract, a distance of 260.19 feet to a 5/8 inch iron rod found for the easterly southeast corner of said Wardin tract, being in the west line of that certain tract of land described by deed to Jea L. Shim, recorded under Document Number 2008-58876 of the Real Property Records of Denton County, Texas;

THENCE South 00 degrees 41 minutes 39 seconds East, with the west line of said Shim tract, a distance of 124.42 feet to a ½ inch iron rod with a yellow cap stamped “ARTHUR SURVEYING COMPANY” (ASC) set for the southwest corner of said Shim tract;

THENCE North 89 degrees 18 minutes 21 seconds East, with the south line of said Shim tract, a distance of 140.05 feet to a ½ inch iron rod with a yellow cap stamped “ASC” set for corner, being in the south line of said Shim tract;

THENCE North 20 degrees 25 minutes 45 seconds East, over, through and across said Shim tract and with the west line of said Park tract, a distance of 140.05 feet to a ½ inch iron rod with a yellow cap stamped “ASC” set, being at the beginning of a curve to the left having a radius of 960.00 feet, a delta angle of 15 degrees 54 minutes 36 seconds, whose chord bears North 12 degrees 54 minutes 18 seconds East, a distance of 265.72 feet;

THENCE continuing over, through and across said Shim tract and with the west line of said Park tract, an arc length of 266.58 feet to a ½ inch iron rod with a yellow cap stamped “ASC” set for corner, being at the beginning of a reverse curve to the right having a radius of 315.00 feet, a delta angle of 72 degrees 25 minutes 02 seconds, whose chord bears North 41 degrees 09 minutes 31 seconds East, a distance of 372.16 feet;

THENCE continuing over, through and across said Shim tract and partially with the west line of said Park tract, an arc length of 398.13 feet to a ½ inch iron rod with a yellow cap stamped “ASC” set for corner;

THENCE North 01 degrees 46 minutes 35 seconds East, over, through and across said Park tract, a distance of 454.68 feet to a ½ inch iron rod with a yellow cap stamped “ASC” set for corner in the south line of F.M. 1171, also known as Cross Timbers Road;

THENCE South 89 degrees 37 minutes 29 seconds East, with the south line of said Cross Timbers Road, a distance of 970.59 feet to a ½ inch iron rod with a yellow cap stamped “ASC” set for corner;

THENCE South 87 degrees 22 minutes 30 seconds East, continuing with the south line of said Cross Timbers Road, a distance of 45.05 feet to a Texas Department of Transportation monument found for corner;

THENCE South 75 degrees 24 minutes 21 seconds East, continuing with the south line of said Cross Timbers Road, a distance of 191.51 feet to a ½ inch iron rod with a yellow cap stamped “ASC” set for corner in the west line of said Town of Flower Mound Tract;

THENCE South 23 degrees 10 minutes 00 seconds West, with the west line of said Town of Flower Mound tract, a distance of 697.12 feet to the **POINT OF BEGINNING**, and containing 43.20 acres of land, more or less, and being subject to any and all easements that may affect.

ORDINANCE NO. _____

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Exhibit "B"**DEVELOPMENT STANDARDS****Planned Development District No. 143 (PD-143)
Hillside at Flower Mound**

The development on the property comprising approximately 43.20 acres of land within the corporate limits of the Town of Flower Mound ("Town") and as described on Exhibit "A" to this Zoning Ordinance adopting PD-143 shall be in accordance with the Town of Flower Mound *Master Plan* and the Land Development Regulations of the Town of Flower Mound, Texas, as amended, and shall be subject to the following conditions and requirements:

A. PD-143 with Single-Family District-30 (SF-30) uses.

Development of PD-143 as designated on Exhibit "C," the Concept Plan for Hillside at Flower Mound shall be in compliance with all regulations applicable to Single-Family District-30 (SF-30) uses contained in the Town's Land Development Regulations as amended, except as otherwise provided and/or limited herein.

1. Minimum floor area per unit. The minimum floor area per dwelling unit shall be 2,800 square feet, subject to Section 98-1025.
2. Maximum lot coverage. The maximum lot coverage shall be 40% for all uses, subject to Section 98-1029.
3. The dimensional and area regulations contained in this section shall not apply to common areas or lots owned by the homeowner's association for Hillside at Flower Mound ("HOA"). Any common areas or lots owned by the HOA and any structure(s) thereon shall conform to all relevant provisions of the Town's code of ordinances and land development regulations.

B. Residential Lot Requirements. The following requirements shall apply to the residential lots within Hillside at Flower Mound.

1. The maximum density shall be no more than 1 dwelling unit per 1.6 acres ($100/1.6 = 62$ units or a 24% increase above the base density).
2. There shall be a maximum of 27 residential lots as depicted on the attached Zoning Conceptual Plan.

C. Supplemental Standards.

1. As a Cluster Development, PD-143 shall have a minimum of fifty percent (50%) of the gross land area preserved as open space for the development as depicted in Exhibit "E" below. In meeting requirements for open space, the developer must demonstrate how open space designated in Exhibit "E" shall be managed. Open

ORDINANCE NO. _____

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Space shall be managed by a qualified nonprofit entity or organization that manages open space, such as a land trust, HOA or other qualified entity, pursuant to section 170(h) of the Internal Revenue Code, as amended, and as may be approved and accepted by the Town. All designated open space areas shall be conserved in a recorded conservation easement as applicable prior to Planning and Zoning Commission approval of the first record plat within the development. The final Open Space Management Plan (OSMP) shall conform with the following:

- a. Be submitted and approved by the Town prior to the submittal of the first record plat within the development.
 - b. Be recorded in the deed records of Denton County Texas as a restriction running with the land prior to the submittal of the first record plat within the development.
 - c. Substantially conform to the draft OSMP submitted to the Planning and Zoning Commission for consideration of the Zoning application (ZPD 15-0011) and identified as Attachment B3 of the agenda item.
2. All landscaping, trails and open space shall be in conformance with Exhibit "D", the Conceptual Landscape Plan.
3. The development of PD-143 is subject to the approved Environmental Protection Plan.
- D. House Pad Benching. Developer shall prepare and submit a complete subdivision design including general grading, drainage and pad elevation plans in accordance with the Engineering Design Criteria and Construction Standards. The grading and drainage within Hillside at Flower Mound and along the perimeter of all lots within each phase of the development shall be complete prior to final acceptance of that phase of the development by the Town. The general pad elevations for the lots within the development shall be included in the subdivision design plans but are not required to be "benched" prior to the Town's final acceptance of each phase of the development.
 1. Developer agrees that for each pad site that is not being benched, as identified herein-above, prior to final acceptance of that particular phase the following will occur:
 - a. Developer shall retain a professional licensed engineer to design plans for the review and approval of any modification in the benching data for each and every pad site identified herein as well as any design modifications required to address changes in drainage flows, velocities and direction that deviate from the original approved plans and prepare and submit any proposed revisions to the Town for approval and acceptance before each such pad site or group of pad sites within a particular phase is benched;

ORDINANCE NO. _____

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- b. Erosion control measures including silt fencing, check dam, bar ditch and storm water pipe system cleaning shall be performed on a routine basis as needed and no less frequently than at least one time every six months or more frequently as may be required and directed by the Town Manager or his designee;
 - c. Developer shall be responsible for weekly monitoring, clean-up and removal of construction debris, waste and litter that is dumped, accumulates or is otherwise stockpiled within the development;
 - d. Developer shall remove check dams and silt fencing as appropriate and in accordance with best management practices after all pad sites within the phase have been benched and stabilized and a final phase inspection of the newly benched pad sites has been performed and approved by the Town.
- E. Exceptions to Topographic Slope Protection: An exception to Section 98-147, Topographical Slope Protection is granted; however, 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:
- 1. 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.
 - 2. 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. Retaining walls exceeding eight feet (8’) in height are prohibited except on a showing that the property owner will suffer undue hardship in the development of an individual lot in the absence of such an eight foot (8’) tall retaining wall.

DEVELOPMENT AGREEMENT FOR HILLSIDE OF FLOWER MOUND

THIS DEVELOPMENT AGREEMENT FOR Hillside of Flower Mound ("Agreement") is made and entered into this 21st day of March, 2016, by and between the Town of Flower Mound, Texas (the "Town"), and Rembert Enterprises, Inc., a Texas Corporation ("Developer").

WITNESSETH:

WHEREAS, the Hillside of Flower Mound ("Project") is a unique cluster development encompassing approximately 43.20 acres in Flower Mound and described by metes and bounds on Exhibit "1"; and

WHEREAS, the Town and Developer wish to provide for the payment of certain fees related to the Project, among other matters; and

WHEREAS, the Town's SMARTGrowth Program requires that certain levels of key public services and infrastructure necessary to serve a new development project be in place before construction begins; and

WHEREAS, the Town and Developer acknowledge that the foregoing issues should be addressed through development agreement.

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

1. **Upland Habitat Fees.** In accordance with the approved Environmental Protection Plan, 20.68 acres of Upland Habitat were delineated within the Project boundaries. Approximately 11.94 acres of this Upland Habitat will be impacted by the Project, including 2.17 acres impacted by roadways, leaving approximately 8.74 acres of Upland Habitat intact. The Town agrees that the Upland Habitat fees for the 11.94 acres being impacted in the amount of approximately \$179,100.00 dollars for this Project shall be waived.
2. **Fees in lieu of Park Land Dedication.** On October 19, 2015, the Town Council approved a Development Plan for the Project and accepted cash in the amount of \$31,298.40 in lieu of Park Land dedication that would otherwise be required for the Project. The Town agrees that the previously approved cash in lieu of land in the amount of \$31,298.40 for the Project shall be waived. All other items approved or accepted by the Town via approval of the Development Plan for the Project on October 19, 2015 shall remain in effect as approved on that date.
3. **Park Development Fees.** On October 19, 2015, the Town Council approved a Development Plan for the Project and accepted Park Development Fees in the amount of \$37,476.00 for the Project. The Town agrees that the previously approved Park

Development Fees in the amount of \$37,476.00 for the Project shall be waived. All other items approved or accepted by approval of the Development Plan for the Project on October 19, 2015 shall remain in effect as approved on that date.

4. **Environmental Protection Plan.** Developer shall conform to the Environmental Protection Plan for the Project that is approved by the Town.

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

6. **Covenant Running with the Land.** This Agreement shall be deemed a covenant that runs with the land and is binding on all heirs, successors, assigns, grantees, vendors, trustees, representatives of Developer and all others holding any interest now or in the future, and it is the intent of this Agreement, and the parties so acknowledge, that all phases of the Project shall be subject to this section of this Agreement.

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

8. **Notices.** 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: Rembert Enterprises, Inc.
 3625 Bonanza Lane
 Flower Mound, Texas 75022

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

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

11. Severability. 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.

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

13. Binding Obligation. 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 its behalf has full authority to execute this Agreement and bind Developer to same. Further, this Agreement is and shall be binding upon Developer, its successors, heirs, assigns, grantees, vendors, trustees, representatives, and all others holding any interest in the Property now or in the future with the exception of the purchaser of a Fully Improved Lot.

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

15. Default. No party shall be in default of provisions under this Agreement until notice of the alleged failure of such party to perform has been given as provided herein (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such party has been given ten (10) days after the written notice in the case of the default of a payment obligation, and in all other cases a reasonable time, to cure the alleged failure (such reasonable time determined based upon the nature of the alleged failure, but in no event less than ten (10) days after written notice of the alleged failure has been given).

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

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

17. Release: Estoppel Certificates. From time to time upon written request of Developer to the Town Manager, the Town Manager may execute, in recordable form, a release of any provision of this Agreement if the Town Manager and Town Attorney determine Developer has fully satisfied the provision to be released. From time to time upon written request of Developer to the Town Manager, the Town Manager may execute a written estoppel certificate identifying any obligations of Developer under this Agreement that are in default or, with the giving of notice or passage of time, would be in default; and stating, to the extent true, that to the best knowledge and belief of the Town, Developer is in compliance with its duties and obligations under such agreements.

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

Exhibit 1 Metes and Bounds Description of the Project in the Town of Flower Mound;

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: _____

Name: Thomas E. Hayden

Mayor, Town of Flower Mound

STATE OF TEXAS §
 §
 COUNTY OF DENTON §

This instrument was acknowledged before me on this the ____ day of _____, 2016 by Thomas E. Hayden, Mayor of the Town of Flower Mound, Texas, on behalf of the Town of Flower Mound, Texas.

 Notary Public, State of Texas

DEVELOPER:

Rembert Enterprises, Inc.
 a Texas Corporation

By: _____
 Name: _____
 Authorized Signatory

STATE OF TEXAS §
 §
 COUNTY OF _____ §

This instrument was acknowledged before me on this the ____ day of _____, 2016 by _____, Authorized Signatory of Rembert Enterprises, Inc., a Texas Company, on behalf of said company.

 Notary Public, State of Texas

Exhibit "1"
Metes and Bounds Description of the Project in the Town of Flower Mound

BEING all that certain lot, tract or parcel of land situated in the Texas & Pacific Railroad Company Survey, Abstract Number 1618 and the Memphis, El Paso and Pacific Railroad Company Survey, Abstract Number 935, Town of Flower Mound, Denton County, Texas, and being a portion of that certain tract of land described by deed to Peter Park, recorded under Document Number 96-R0007867 of the Real Property Records of Denton County, Texas, being that certain tract of land described by deed to Peter Park, recorded under Document Number 2015-23236 of the Real Property Records of Denton County, Texas, being that certain tract of land described by deed to Timothy S. Choe, recorded under Document Number 2011-23155 of the Real Property Records of Denton County, Texas, and being that certain tract of land described by deed to Hanmi Realty, Inc., recorded under Document Number 2011-54874 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a ½ inch iron rod found for the southeast corner of said Park tract, the southwest corner of that certain tract of land described by deed to the Town of Flower Mound, Denton County, Texas, recorded in Volume 4928, Page 2397 of the Real Property Records of Denton County, Texas, and being in the north line of Lot 4, Block H, Hidden Valley Country Estates, Section Three, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Cabinet B, Page 90 of the Plat Records of Denton County, Texas;

THENCE South 89 degrees 15 minutes 12 seconds West, with the north line of said Block H of said Hidden Valley Country Estates, Section Three, a distance of 1037.94 feet to a 1 inch iron rod found for the northwest corner of Lot 8 of said Block H;

THENCE South 00 degrees 49 minutes 02 seconds East, with the west line of said Block H and partially continuing with the west line of said Hidden Valley Country Estates, Section Three, a distance of 1293.37 feet to a ½ inch iron rod found for corner in the west line of Lot 4, Block I of said Hidden Valley Country Estates, Section Three and being the northeast corner of Lot 2, Block I, Hidden Valley Country Estates, Section Two, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Cabinet B, Page 89 of the Plat Records of Denton County, Texas;

THENCE South 89 degrees 29 minutes 19 seconds West, with the north line of said Hidden Valley Country Estates, Section Two and partially continuing with the north line of Block 4, Hidden Valley Country Estates, Section IV, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Cabinet G, Page 106 of the Plat Records of Denton County, Texas, a distance of 1145.38 feet to a ½ inch iron rod found for corner in the north line of Lot 6 of said Block 4 and being the southeast corner of that certain tract of land described by deed to Wardin Investments, Ltd., recorded in Volume 5052, Page 2668 of the Real Property Records of Denton County, Texas;

THENCE North 00 degrees 37 minutes 17 seconds West, with the east line of said Wardin tract, a distance of 729.92 feet to a ½ inch iron rod found for corner, being an inner corner thereof;

THENCE North 89 degrees 18 minutes 21 seconds East, with the south line of said Wardin tract, a distance of 525.41 feet to a ½ inch iron rod found for corner, being an outer corner thereof;

THENCE North 00 degrees 41 minutes 39 seconds West, with the east line of said Wardin tract, a distance of 390.00 feet to a 5/8 inch iron rod found for corner, being an inner corner thereof;

THENCE North 89 degrees 18 minutes 21 seconds East, with the south line of said Wardin tract, a distance of 260.19 feet to a 5/8 inch iron rod found for the easterly southeast corner of said Wardin tract, being in the west line of that certain tract of land described by deed to Jea L. Shim, recorded under Document Number 2008-58876 of the Real Property Records of Denton County, Texas;

THENCE South 00 degrees 41 minutes 39 seconds East, with the west line of said Shim tract, a distance of 124.42 feet to a ½ inch iron rod with a yellow cap stamped "ARTHUR SURVEYING COMPANY" (ASC) set for the southwest corner of said Shim tract;

THENCE North 89 degrees 18 minutes 21 seconds East, with the south line of said Shim tract, a distance of 140.05 feet to a ½ inch iron rod with a yellow cap stamped "ASC" set for corner, being in the south line of said Shim tract;

THENCE North 20 degrees 25 minutes 45 seconds East, over, through and across said Shim tract and with the west line of said Park tract, a distance of 140.05 feet to a ½ inch iron rod with a yellow cap stamped "ASC" set, being at the beginning of a curve to the left having a radius of 960.00 feet, a delta angle of 15 degrees 54 minutes 36 seconds, whose chord bears North 12 degrees 54 minutes 18 seconds East, a distance of 265.72 feet;

THENCE continuing over, through and across said Shim tract and with the west line of said Park tract, an arc length of 266.58 feet to a ½ inch iron rod with a yellow cap stamped "ASC" set for corner, being at the beginning of a reverse curve to the right having a radius of 315.00 feet, a delta angle of 72 degrees 25 minutes 02 seconds, whose chord bears North 41 degrees 09 minutes 31 seconds East, a distance of 372.16 feet;

THENCE continuing over, through and across said Shim tract and partially with the west line of said Park tract, an arc length of 398.13 feet to a ½ inch iron rod with a yellow cap stamped "ASC" set for corner;

THENCE North 01 degrees 46 minutes 35 seconds East, over, through and across said Park tract, a distance of 454.68 feet to a ½ inch iron rod with a yellow cap stamped "ASC" set for corner in the south line of F.M. 1171, also known as Cross Timbers Road;

THENCE South 89 degrees 37 minutes 29 seconds East, with the south line of said Cross Timbers Road, a distance of 970.59 feet to a ½ inch iron rod with a yellow cap stamped "ASC" set for corner;

THENCE South 87 degrees 22 minutes 30 seconds East, continuing with the south line of said Cross Timbers Road, a distance of 45.05 feet to a Texas Department of Transportation monument found for corner;

THENCE South 75 degrees 24 minutes 21 seconds East, continuing with the south line of said Cross Timbers Road, a distance of 191.51 feet to a ½ inch iron rod with a yellow cap stamped "ASC" set for corner in the west line of said Town of Flower Mound Tract;

THENCE South 23 degrees 10 minutes 00 seconds West, with the west line of said Town of Flower Mound tract, a distance of 697.12 feet to the **POINT OF BEGINNING**, and containing 43.20 acres of land, more or less, and being subject to any and all easements that may affect.

"



TOWN COUNCIL AGENDA ITEM NO. 27 REGULAR ITEM

DATE: March 21, 2016

FROM: Poornima Srinarasi, Senior Planner

ITEM: Public Hearing to consider a request for rezoning (ZPD15-0014 – Red Hawk) from Agricultural District (A) uses to Planned Development District No. 144 (PD-144) with Single-Family Estate (SF-E) uses, with certain modifications, exceptions and waivers to the Code of Ordinances, and to consider adopting an ordinance providing for said amendment. The property is generally located west of Simmons Road and south of Wichita Trail. *(The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its February 22, 2016, meeting.)*

BACKGROUND INFORMATION: Attached is the Planning and Zoning Commission (P&Z) 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 rezoning (ZPD15-0014 – Red Hawk) from Agricultural District (A) uses to Planned Development District No. 144 (PD-144) with Single-Family Estate (SF-E) uses, with certain modifications, exceptions and waivers to the Code of Ordinances, and adopt an ordinance providing for said amendment.



PLANNING AND ZONING COMMISSION AGENDA ITEM NO: 3

DATE: February 22, 2016

FROM: Poornima Srinarasi, Senior Planner

ITEM: **Public Hearing to consider a request for rezoning (ZPD15-0014 – Red Hawk) from Agricultural District (A) uses to Planned Development District No. 144 (PD-144) with Single-Family Estate (SF-E) uses, with certain modifications, exceptions and waivers to the Code of Ordinances. The property is generally located west of Simmons Road and south of Wichita Trail.**

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.

This application will require final action by the Town Council.

II. APPLICATION ANALYSIS

The purpose of this request is to rezone approximately 4.16 acres to allow the development of four single-family homes under the requirements of the Single-Family Estate (SF-E) zoning district which requires a minimum one-acre lot size. The existing Agricultural (A) zoning requires a minimum single-family lot size of two acres. The requested SF-E zoning is in conformance with the property's Master Plan land use designation of Estate Residential.

A. Exception to Underground Utilities

The applicant is requesting an exception to Section 90-423, Underground utilities, of the Code of Ordinances to allow approximately 152 linear feet of the overhead electric lines located within the property near the intersection of Wichita Trail and Simmons Road.

At the Town's request, the applicant has provided email correspondence from Oncor Electric stating the estimated cost to relocate 152 feet of overhead power line underground would be approximately \$150,000 (Attachment A(3)).

B. Exception to Access Management Policy and Criteria

1. The driveway spacing requirement along Minor Arterials & Collectors is a minimum of 250 feet. Simmons Road is classified as an Urban Minor

Arterial and Wichita Trail is classified as a Rural Collector. The proposed residential driveway for Lot 2 on Simmons Road will be located not less than 150 feet from the curb line of the Wichita Trail right turn lane and will, therefore, require an exception to the Engineering Design Criteria and Construction Standards adopted through Chapter 32 of the Code of Ordinances. Driveways for Lots 1, 3, and 4 will be required to meet the minimum 250 feet driveway spacing requirement.

2. Driveway cuts or entrances to a residential lot with four or fewer dwelling units or less than one acre are not permitted on arterial or collector streets. All ingress and egress to such residential lots are required to be from an alley or local street. The applicant is requesting an exception to allow access to three of the proposed lots to have driveway access from Simmons Road and for one of the lots to have driveway access from Wichita Trail.

C. Requested Modifications

1. Modification to Section 98-272 to allow lot depth to exceed two and a half times the lot width for all lots.
2. Modifications to Minimum Lot Dimensions
As a part of the proposed PD standards, the applicant is requesting the following modifications to the maximum and minimum dimensional regulations of the SF-E zoning district:
 - a. To decrease the minimum side setback from 12 feet to 10 feet.
 - b. To decrease the minimum lot width from 150 feet to 100 feet.

Development Standard	Required SF-E standards	Proposed (PD-139)
Min. Lot Size	43,560 sq. ft.	43,560 sq. ft. (no change)
Min. Lot Width	150 ft.	100 ft.
Min. Floor Area/unit	2,400 sq. ft.	2,400 sq. ft. (no change)
Min. Front Yard	40 ft.	40 ft. (no change)
Min. Side Yard	20 ft.	10 ft.
Min. Rear Yard	20 ft.	30 ft.

On April 27, 2015, Planning and Zoning Commission recommended denial of a Master Plan Amendment (MPA14-0009) to change the current land use designation from Estate Residential uses to Low Density and a companion rezoning request (Z14-0012) to allow the development of approximately eight single-family homes under the requirements of the Single-Family District-15 (SF-15) zoning district. The applicant later withdrew both applications.

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 change requests. At the time this report was written, staff had received no correspondence regarding the project.

IV. ATTACHMENTS

A. Background Information

1. Vicinity Map
2. Letter of Intent
3. Correspondence from Oncor Electric

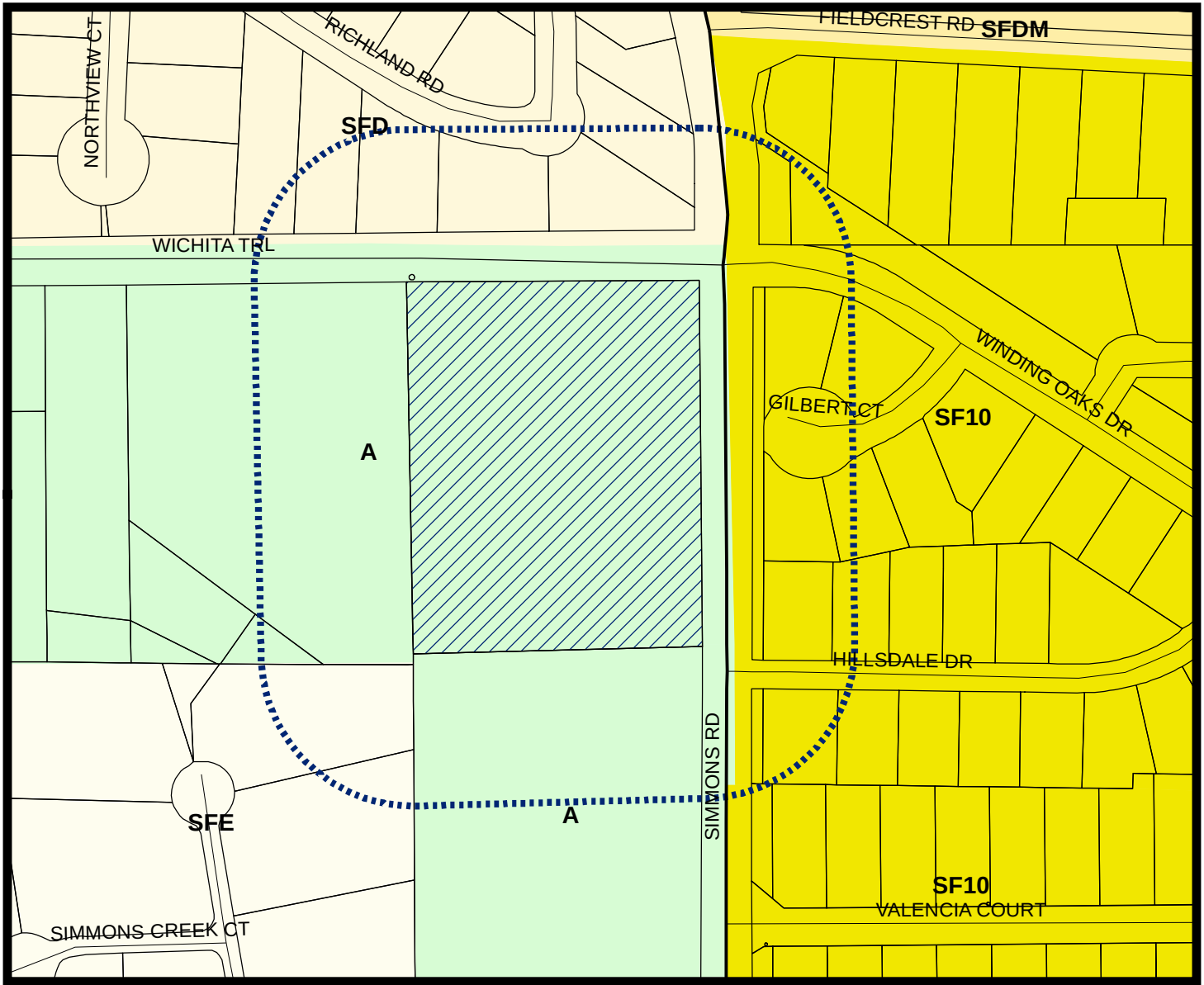
B. Application Details

1. Planned Development Zoning Package
2. Draft Planned Development (PD) Standards

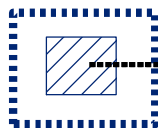
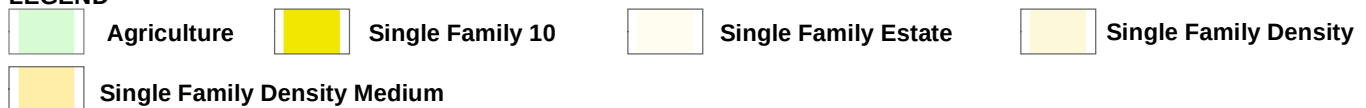


Vicinity Map

Reference Project: ZPD15-0014

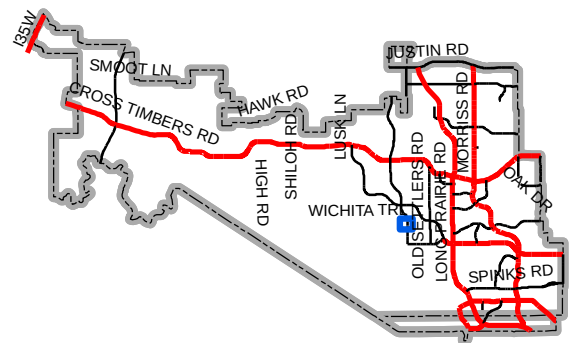


LEGEND

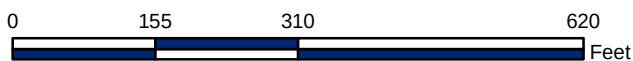


Subject Property

200 ft Notification Buffer around Property



Map Location





HOMEYER
ENGINEERING, INC.
CIVIL ENGINEERING • PLATTING
SITE & LAND PLANNING

January 22, 2016

Town of Flower Mound
Mayor and Town Council
2121 Cross Timbers Road
Flower Mound, Texas 75028

RE: Red Hawk Application for a Planned Development

Dear Mayor and Council Members:

Homeyer Engineering, Inc., on behalf of Vaquero Development, is submitting this planned development request for Red Hawk 4.16 acres, located on the southwest corner of Wichita Trail and Simmons Road. This application is seeking a zoning for a Planned Development 144 with SF-E uses. Exceptions are listed below. All other standards meet or exceed current criteria. Also included with this amendment is a proposed detention pond. The pond is designed to reduce runoff from the whole area (all four lots) to near or below current flow rates at the historic discharge point, for 2.46 acres, thereby decreasing the existing flows by approximately thirty five percent (35%).

Exceptions include the following:

- Driveway access from collector and/or arterial roadways.
- Driveway spacing exception for Lot 2 to be located less than 250 feet from the intersection of Simmons Road and Wichita Trail.
- Overhead power lines to remain as-is.
- Modifications to minimum and maximum lot dimensions in terms of lot width and side setback.
- An exception for lot depth to exceed 2½ times the lot width.

I would like to thank you in advance for your consideration of this request and would respectfully ask that you support our application for this zoning request.

Sincerely,

HOMEYER ENGINEERING, INC.
TBPE Firm Registration No. F-8440

Steven R. Homeyer, P.E.
President

xc: Project File

Matthew Haskin

From: Alford, Michael <Michael.Alford@oncor.com>
Sent: Wednesday, January 27, 2016 3:22 PM
To: Matthew Haskin
Subject: RE: Bury electric line for Redhawk Development.

Matthew, it look as though you would be in the \$150,000 ballpark to bury the lines in question. That is an estiamted ballpark number only.

Thanks,

Michael Alford
Oncor Electric Delivery
4600 State Hwy 121
McKinney, TX 75070
972-569-1295

From: Matthew Haskin [<mailto:mhaskin@hei.us.com>]
Sent: Friday, January 22, 2016 11:49 AM
To: Alford, Michael
Subject: Bury electric line for Redhawk Development.

Michael

We were asked by the Town of Flower Mound to provide a cost estimate and statement for burying the lines along our site. I have attached our concept plan which also has an example of the statement. The statement shows COSERV, but apparently the line belongs to ONCOR. Also attached is an exhibit showing the different lines. Would you please provide me with a cost estimate to bury the overhead utility lines along our project? Also, please let me know if you would like me to change the statement in any way. Please feel free to contact me with any questions. Should I need to contact anyone else please let me know. Thank you for your help.

Sincerely,
Matt Haskin, P.E.



TX FIRM REGISTRATION NO. F-8440
OK FIRM LICENSE NO. CA-6112
PHONE: 972-906-9985
FAX: 972-906-9987
WWW.HEI.US.COM

**HOMEYER
ENGINEERING, INC.**
TYPE FIRM REGISTRATION NO. F-8440
P.O. BOX 294527 ♦ LEWISVILLE ♦ TEXAS ♦ 750
972-906-9985 PHONE ♦ 972-906-9987 FAX
WWW.HEI.US.COM



CONCEPT PLAN

DATE: 01/11/2016

SHEET NO:
D.P.

FIELD NOTES to all that certain lot, tract or parcel of land situated in the B. Waters Survey, Abstract Number 1378, Denton County, Texas, and being the remainder of Tract 5 of Northlake Estates, an addition to the Town of Flower Mound, according to the plat thereof recorded in Cabinet B, Page 154, Plat Records, Denton County, Texas, the subject tract being more particularly described as follows;

COMMENCING from a 1/2" iron rod found in the south line of Wichita Trail being the northwest corner of a 1.422 acre tract of land described in a deed to Jeffrey J. Jutte and Melanie C. Jutte, as recorded in County Clerk File Number 2006-75879, Real Property Records, Denton County, Texas and being the northeast corner of a tract of land described in a deed to Clyde B. Carter III, as recorded in County Clerk File Number 2005-15810 of said Real Property Records;

THENCE North 89 degrees 32 minutes 19 seconds East with the south line of said Wichita Trail, the north line of said 1.422 acre tract and the north line of Tracts 3 and 4 of Northlake Estates, an addition to the Town of Flower Mound, according to the plat thereof recorded in Cabinet B, Page 154, Plat Records, Denton County, Texas, at a distance of 109.18 feet passing a 1/2" iron rod found for the northeast corner of said 1.422 acre tract and the northwest corner of said Tract 3, continuing along said course and the north line of said Tract 4, at a distance of 375.90 feet for a total distance of 485.08 feet to a point, said point being the POINT OF BEGINNING.

THENCE North 89 degrees 32 minutes 19 seconds East a distance of 204.83' along the south line of Wichita Trail to a capped iron rod found stamped "Half" on the north line of said Tract 5 and being the beginning of a curve to the right having a radius of 164.00 feet and a chord bearing and distance of South 82 degrees 16 minutes 02 seconds East, 45.14 feet;

THENCE southeasterly, departing the North line of said Tract 5, with the arc of said curve and the south line of Wichita Trail, an arc distance of 45.29 feet to a capped iron rod found stamped "Half" at the beginning of a curve to the left having a radius of 221.00 feet and a chord bearing and distance of South 82 degrees 12 minutes 55 seconds East, 61.62 feet;

THENCE southeasterly with the arc of said curve and the south line of Wichita Trail, an arc distance of 61.82 feet to a capped iron rod found stamped "Half" for a corner on the north line of the herein described tract;

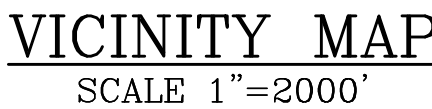
THENCE North 89 degrees 43 minutes 13 seconds East with the south line of Wichita Trail, a distance of 45.00 feet to a capped iron rod set for the most northerly northeast corner of the herein described tract;

THENCE South 44 degrees 57 minutes 55 seconds East with a southwest line of Wichita Trail, a distance of 34.92 feet to a capped iron rod set in the east line of said Tract 5 and the west line of Simmons Road for the most easterly northeast corner of the herein described tract;

THENCE South 00 degrees 00 minutes 22 seconds West with the west line of Simmons Road and the east line of said Tract 5, a distance of 439.64 feet to a capped iron rod set for the southeast corner thereof, the southeast corner of the herein described tract and the northeast corner of Lot 1 of Rockbrook Montessori Academy, an addition to the Town of Flower Mound, according to the plat thereof recorded in Document Number 2011-86 of said Plat Records;

THENCE South 88 degrees 22 minutes 36 seconds West with the north line thereof and the south line of said Tract 5, a distance of 378.39 feet to a 1/2" iron rod found for the southwest corner thereof, the northwest corner of said Lot 1, in the east line of said Tract 4 and being a corner on the south line of the herein described tract;

THENCE North 00 degrees 14 minutes 07 seconds West with the east line of Tract 4, a distance of 487.62 feet to the PLACE OF BEGINNING and being 4.16 acres of land more or less.



SCALE 1"=2000'



PRELIMINARY PLANS

THIS DOCUMENT IS FOR INTERIM
REVIEW AND IS NOT INTENDED FOR
CONSTRUCTION, BIDDING OR PERMIT
PURPOSES.
STEVEN R. HOMEYER, PE # 86942
DATE: 01/22/2016

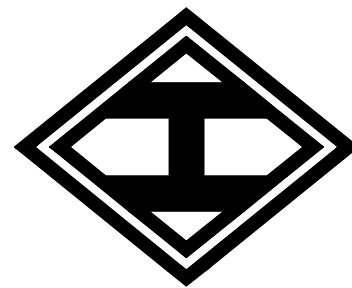
PROPOSED ZONING STANDARDS

PD 144 WITH SF-E USES	
MINIMUM LOT SIZE:	43,560 SF
MINIMUM LOT WIDTH:	100'
MINIMUM FRONT YARD:	40'
MINIMUM SIDE YARD:	10'
MINIMUM REAR YARD:	30'
MINIMUM FLOOR AREA:	2,400 SF
MAXIMUM HEIGHT:	35'
MAXIMUM LOT COVERAGE:	25%

NOTE: ONLY ONE DRIVEWAY PER LOT IS ALLOWED.

MASTER PLAN FEATURES	
LAND USE PLAN	CROSS TIMBERS PROTECTION AREA
SPECIFIC PLANS	THIS DEVELOPMENT IS NOT LOCATED WITHIN SPECIFIC AREA PLAN
URBAN DESIGN PLAN	LONG PRAIRIE DISTRICT
PARKS AND TRAILS	EXISTING TRAIL ON EAST SIDE OF SIMMONS ROAD
OPEN SPACE PLAN	NOT A CONSERVATION DEVELOPMENT
THOROUGHFARE PLAN	SIMMONS ROAD – URBAN MINOR ARTERIAL UNDIVIDED WITH 70 FOOT OF ROW WICHITA TRAIL –RURAL COLLECTOR WITH 80 FOOT ROW
WATER PLAN	SIMMONS ROAD – 12 INCH WATER LINE WEST SIDE OF ROAD WICHITA TRAIL – 12 INCH WATER LINE SOUTH SIDE OF ROAD
WASTEWATER PLAN	SIMMONS ROAD – 8 INCH SANITARY SEWER NORTH OF HILLSDALE DRIVE
ECONOMIC IMPACT	

HOMER
ENGINEERING, INC.
TYPE FIRM REGISTRATION NO. F-8440
C. BOX 294527 • LEWISVILLE • TEXAS • 750
972-906-9985 PHONE • 972-906-9987 FAX
WWW.HEI.US.COM



**RED HAWK
4.16 ACRES
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS**

ZONING EXHIBIT

HEI #: 14-134

SHEET NO:
Z.E.

THENCE North 00 degrees 14 minutes 07 seconds West with the east line of Tract 4, a distance of 487.62 feet to the PLACE OF BEGINNING and being 4.16 acres of land more or less.

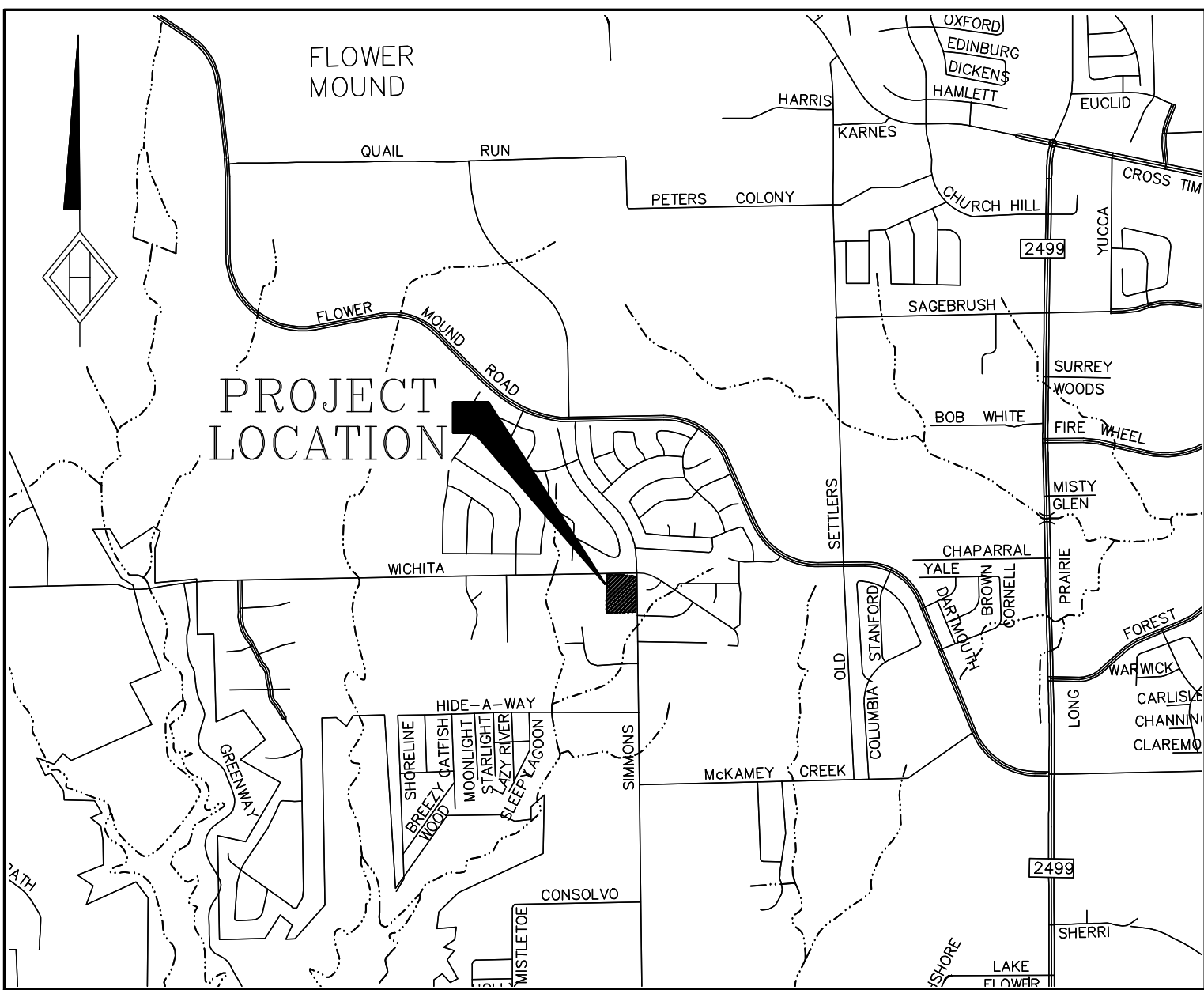
PD 144 WITH SF-E USES	
MINIMUM LOT SIZE:	43,560 SF
MINIMUM LOT WIDTH:	100'
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MINIMUM FLOOR AREA:	2,400 SF
MAXIMUM HEIGHT:	35'
MAXIMUM LOT COVERAGE:	25%

MASTER PLAN FEATURES

LAND USE PLAN	CROSS TIMBERS PROTECTION AREA
SPECIFIC PLANS	THIS DEVELOPMENT IS NOT LOCATED WITHIN SPECIFIC AREA PLAN
URBAN DESIGN PLAN	LONG PRAIRIE DISTRICT
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WASTEWATER PLAN	SIMMONS ROAD – 8 INCH SANITARY SEWER NORTH OF HILLSDALE DRIVE
ECONOMIC IMPACT	

 EXTENTS OF PROPOSED ZONING CHANGE
 EXTENTS OF EXISTING ZONING
 EXISTING LOT LINES

ANY OVERHEAD UTILITIES THAT ARE
LOCATED ON SITE THAT ARE NOT WITHIN
DEDICATED ROW SHALL BE RELOCATED
UNDERGROUND.



VICINITY MAP
SCALE 1"=2000'

THIS DOCUMENT IS FOR INTERIM
REVIEW AND IS NOT INTENDED FOR
CONSTRUCTION, BIDDING OR PERMIT
PURPOSES.
STEVEN R. HOMEYER, PE # 86942
DATE: 01/22/2016

Exhibit “B”
Development Standards
Planned Development District (PD 144)
Single Family Estate (SF-E)

RED HAWK

The Development depicted in Exhibit “C” shall be in accordance with the Town of Flower Mound’s Master Plan and Land Development Regulations as amended, and shall be subject to the following requirements and conditions.

A. Single Family Estate (SF-E) uses. Development of PD-144 designated on Exhibit “C,” the Concept Plan for Red Hawk, comprising approximately 4.16 acres, shall be in compliance with all regulations applicable to Single Family Estate (SF-E) uses contained in the Town’s Land Development Regulations as amended, except as otherwise provided in this Ordinance.

1. Permitted Uses: The following uses may be permitted in areas designated on the Concept Plan.

- a. Dwelling, single-family detached
- b. Garage Sale, subject to section 98-982
- c. Swimming pool, private subject to section 98-996
- d. Home occupation, subject to section 98-984
- e. Accessory use, general, subject to section 98-972

2. Specific Uses: No uses requiring a specific use permit shall be permitted within PD-144.

3. Temporary Uses: No temporary uses shall be permitted within PD-144.

B. Minimum and Maximum Dimensions

1. Minimum lot width: The minimum lot width for all residential uses in PD -144 shall be one hundred feet (100') at the 40-foot front building line, subject to Section 98-1024.

2. Minimum side yard: The minimum side yard for all residential uses in PD -144 shall be ten feet (10'), subject to section 98-1027.

C. Exceptions

The following exceptions shall be granted with the approval of Planned Development District-144 (PD-144).

1. An exception to the requirements of Section 90-423, Underground Utilities, of the Code of Ordinances.
2. An exception to allow driveway access to residential lots from arterial and/or collector streets.
3. An exception to the Town's 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 it may be amended, specifically to allow the construction of driveway for Lots 1 and 2 along Simmons Road at a distance less than 250 feet from the intersection of Simmons Road and Wichita Trail.
4. An exception to Section 90-272, to allow the lot depth to exceed 2 1/2 times the lot width.

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 4.16 ACRES OF LAND FROM AGRICULTURAL DISTRICT (A) TO PLANNED DEVELOPMENT DISTRICT NO. 144 (PD-144) WITH SINGLE-FAMILY ESTATE (SF-E) 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 4.16 acres of land situated in the B. Waters Survey, Abstract Number 1378, and a remainder of Tract 5, Northlake Estates, have filed an application to change the zoning from Agricultural District (A) to Planned Development District No. 144 (PD-144) with Single-Family Estate (SF-E) uses; and,

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on February 22, 2016, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on March 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:

4.16 acres of land situated in the B. Waters Survey, Abstract Number 1378, and a remainder of Tract 5, Northlake Estates, Denton County, Texas, and more fully described in Exhibit "A" hereto.

Planned Development District No. 144 (PD-144) with Single-Family Estate (SF-E) uses.

SECTION 2

The development standards and concept plan of the proposed Planned Development District No. 144 (PD-144), attached hereto as Exhibits "B," and "C," each incorporated herein for all purposes, are hereby approved as the development standards and concept plan for this Planned Development District No. 144 (PD-144).

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. 144 (PD-144), 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," and "C," 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

ORDINANCE NO. _____

Page 3

Council without the incorporation in this Ordinance of any such unconstitutional section, paragraph, sentence, clause or phrase.

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**

ORDINANCE NO. _____

ATTEST:

Theresa Scott, **TOWN SECRETARY**

APPROVED AS TO FORM AND LEGALITY:

Bryn Meredith, **TOWN ATTORNEY**

ORDINANCE NO. _____

Page 5

Exhibit "A"
Legal Description

FIELD NOTES to all that certain lot, tract or parcel of land situated in the B. Waters Survey, Abstract Number 1378, Denton County, Texas, and being the remainder of Tract 5 of Northlake Estates, an addition to the Town of Flower Mound, according to the plat thereof recorded in Cabinet B, Page 154, Plat Records, Denton County, Texas, the subject tract being more particularly described as follows;

COMMENCING from a 1/2" iron rod found in the south line of Wichita Trail being the northwest corner of a 1.422 acre tract of land described in a deed to Jeffrey J. Jutte and Melanie C. Jutte, as recorded in County Clerk File Number 2006-75879, Real Property Records, Denton County, Texas and being the northeast corner of a tract of land described in a deed to Clyde B. Carter III, as recorded in County Clerk File Number 2005-15810 of said Real Property Records;

THENCE North 89 degrees 32 minutes 19 seconds East with the south line of said Wichita Trail, the north line of said 1.422 acre tract and the north line of Tracts 3 and 4 of Northlake Estates, an addition to the Town of Flower Mound, according to the plat thereof recorded in Cabinet B, Page 154, Plat Records, Denton County, Texas, at a distance of 109.18 feet passing a 1/2" iron rod found for the northeast corner of said 1.422 acre tract and the northwest corner of said Tract 3, continuing along said course and the north line of said Tract 4, at a distance of 375.90 feet for a total distance of 485.08 feet to a point, said point being the POINT OF BEGINNING.

THENCE North 89 degrees 32 minutes 19 seconds East a distance of 204.83' along the south line of Wichita Trail to a capped iron rod found stamped "Half" on the north line of said Tract 5 and being the beginning of a curve to the right having a radius of 164.00 feet and a chord bearing and distance of South 82 degrees 16 minutes 02 seconds East, 45.14 feet;

THENCE southeasterly, departing the North line of said Tract 5, with the arc of said curve and the south line of Wichita Trail, an arc distance of 45.29 feet to a capped iron rod found stamped "Half" at the beginning of a curve to the left having a radius of 221.00 feet and a chord bearing and distance of South 82 degrees 12 minutes 55 seconds East, 61.62 feet;

THENCE southeasterly with the arc of said curve and the south line of Wichita Trail, an arc distance of 61.82 feet to a capped iron rod found stamped "Half" for a corner on the north line of the herein described tract;

THENCE North 89 degrees 43 minutes 13 seconds East with the south line of Wichita Trail, a distance of 45.00 feet to a capped iron rod set for the most northerly northeast corner of the herein described tract;

THENCE South 44 degrees 57 minutes 55 seconds East with a southwest line of Wichita Trail, a distance of 34.92 feet to a capped iron rod set in the east line of said Tract 5 and the west line of Simmons Road for the most easterly northeast corner of the herein described tract;

THENCE South 00 degrees 00 minutes 22 seconds West with the west line of Simmons Road and the east line of said Tract 5, a distance of 439.64 feet to a capped iron rod set for the southeast corner thereof, the southeast corner of the herein described tract and the northeast corner of Lot 1 of Rockbrook Montessori Academy, an addition to the Town of Flower Mound, according to the plat thereof recorded in Document Number 2011-66 of said Plat Records;

THENCE South 88 degrees 22 minutes 36 seconds West with the north line thereof and the south line of said Tract 5, a distance of 378.39 feet to a 1/2" iron rod found for the southwest corner thereof, the northwest corner of said Lot 1, in the east line of said Tract 4 and being a corner on the south line of the herein described tract;

THENCE North 00 degrees 14 minutes 07 seconds West with the east line of Tract 4, a distance of 487.62 feet to the PLACE OF BEGINNING and being 4.16 acres of land more or less.

Exhibit “B”

DEVELOPMENT STANDARDS
Planned Development District No. 144 (PD-144)
Single-Family Estate (SF-E)

RED HAWK

The Development depicted in Exhibit “C” shall be in accordance with the Town of Flower Mound’s Master Plan and Land Development Regulations as amended, and shall be subject to the following requirements and conditions.

A. Single-Family Estate (SF-E) uses. Development of PD-144 designated on Exhibit “C,” the Concept Plan for Red Hawk, comprising approximately 4.16 acres, shall be in compliance with all regulations applicable to Single-Family Estate (SF-E) uses contained in the Town’s Land Development Regulations as amended, except as otherwise provided in this Ordinance.

1. Permitted Uses: The following uses may be permitted in areas designated on the Concept Plan.

- a. Dwelling, single-family detached
- b. Garage Sale, subject to section 98-982
- c. Swimming pool, private subject to section 98-996
- d. Home occupation, subject to section 98-984
- e. Accessory use, general, subject to section 98-972

2. Specific Uses: No uses requiring a specific use permit shall be permitted within PD-144.

3. Temporary Uses: No temporary uses shall be permitted within PD-144.

B. Minimum and Maximum Dimensions

- 1. Minimum lot width:** The minimum lot width for all residential uses in PD -144 shall be hundred (100') at the 40-foot front building line, subject to Section 98-1024.
- 2. Minimum side yard:** The minimum side yard for all residential uses in PD -144 shall be ten feet (10'), subject to section 98-1027.

C. Exceptions

The following exceptions shall be granted with the approval of Planned Development District-144 (PD-144).

- 1. An exception to the requirements of Section 90-423, Underground Utilities, of the Code of Ordinances to allow approximately 152 linear feet of overhead utility lines**

ORDINANCE NO. _____

Page 7

that are located within the subject property and along Wichita Trail and Simmons Road to remain overhead.

2. An exception to allow driveway access to residential lots from arterial and/or collector streets.
3. An exception to the Town's 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 it may be amended, specifically to allow the construction of driveway for Lot 2 along Simmons Road at a distance not less than 150 feet from the curb line of the Wichita Trail right turn lane.
4. An exception to Section 90-272, to allow the lot depth to exceed 2 1/2 times the lot width.



TOWN COUNCIL AGENDA ITEM NO. 28 REGULAR ITEM

DATE: March 21, 2016

FROM: Gina Costanza-Grant, Senior Planner

ITEM: Public Hearing to consider a request for rezoning (ZPD15-0018 – Lakeside Ranch Business Park) to amend Planned Development District No. 83 (PD-83) with Campus Industrial District (CI) uses, by amending the Development Standard(s) to add “Miniwarehouse” as a use that may be permitted upon approval of a Specific Use Permit on certain tract of land, and to consider a request for a Specific Use Permit No. 446 (SUP-446) to permit a Miniwarehouse with certain modifications, exceptions and waivers to the Code of Ordinances, and to consider adopting an ordinance providing for said amendment. The property is generally located north of Lakeside Parkway and east of Gerault Road. *(The Planning and Zoning Commission recommended approval by a vote of 4 to 0 at its March 14, 2016, meeting.)*

BACKGROUND INFORMATION: Attached is the Planning and Zoning Commission (P&Z) 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 rezoning (ZPD15-0018 – Lakeside Ranch Business Park) to amend Planned Development District No. 83 (PD-83) with Campus Industrial District (CI) uses, by amending the Development Standard(s) to add “Miniwarehouse” as a use that may be permitted upon approval of a Specific Use Permit on certain tract of land, and to consider a request for a Specific Use Permit No. 446 (SUP-446) to permit a Miniwarehouse with certain modifications, exceptions and waivers to the Code of Ordinances, and adopt an ordinance providing for said amendment.



PLANNING AND ZONING COMMISSION AGENDA ITEM NO: 5

DATE: March 14, 2016

FROM: Gina Costanza-Grant, Senior Planner

ITEM: Public Hearing to consider a request for rezoning (ZPD15-0018 – Lakeside Ranch Business Park) to amend Planned Development District No. 83 (PD-83) with Campus Industrial District (CI) uses, by amending the Development Standard(s) to add “Miniwarehouse” as a use that may be permitted upon approval of a Specific Use Permit on certain tract of land, and to consider a request for a Specific Use Permit No. 446 (SUP-446) to permit a Miniwarehouse with certain modifications, exceptions and waivers to the Code of Ordinances. The property is generally located north of Lakeside Parkway and east of Gerault Road.

I. ITEM SUMMARY

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

This application will require final action by the Town Council.

II. APPLICATION ANALYSIS

The purpose of this amendment is to modify one section of Planned Development District No. 83 (PD-83) with Campus Industrial District (CI) uses to add “miniwarehouse” as a use that may be permitted with the approval of a Specific Use Permit, and to request approval of Specific Use Permit No. 446 (SUP-446) to allow a miniwarehouse to be constructed on a certain tract of land within the PD. The subject site is located within the Lakeside Business District Area Plan of the Town’s Master Plan, with the designation for Campus Industrial development, and is currently undeveloped.

On December 6, 2004, the Town Council approved Ordinance No. 94-04 establishing PD-83. The development standards for PD-83 do not list “miniwarehouse” as a permitted use. However, the use “miniwarehouse” is permitted in the base CI zoning district subject to Council approval of an SUP.

The proposed zoning and Specific Use Permit will be limited to a 2.11 acre portion of Lot 1R1, Block C, Lakeside Ranch Business Park Addition. The proposed building will contain approximately 107,415 gross square feet within a three-story building. The net rentable area will be approximately 82,000 square feet comprised of approximately 650 self-storage units ranging in size from 25

to 300 square feet. The remaining square footage will consist of internal walkways and office space. In accordance with PD-83 and the Urban Design Guidelines, any overhead doors have been located on the north and east sides of the proposed building and will not face Gerault Road or Lakeside Parkway. In addition, the western portion of the north façade of the building projects in such a way that it serves as a screening wall for the overhead doors.

The proposed buildings are in compliance with the standards outlined in PD-83 as well as those of the Lakeside Business District and the Town's Urban Design Guidelines. The proposed design is consistent with the nearby buildings that are located within PD-83 as well as those buildings to the north and west.

The development standards established by PD-83 specify the width of the landscape buffer at 45 feet along Gerault Road and a building setback of 65 feet. Access will be from Gerault Road. The applicant is requesting an exception to the 360-foot driveway spacing requirement, which is discussed in further detail below.

For miniwarehouse uses, the parking requirement is 1 space per 75 storage bays with minimum of 3 spaces. The proposed development requires 9 spaces and the plan depicts 11 parking spaces.

A. Exceptions to Compatibility setback and buffer

A portion of the northern boundary of the project (approximately 186 feet) is adjacent to residential zoning (Agricultural) and use. The construction of a non-residential building requires a 60-foot setback from the property line adjacent to an existing or proposed residential use. However, the adjacent property is located within the Lakeside Business District and master-planned for campus industrial uses. The applicant is requesting to reduce this setback to approximately 36 feet at the nearest point from the property line.

In addition, the proposed use triggers a compatibility buffer (25-foot landscape buffer, six-foot masonry wall, shrubs, and trees). The applicant is requesting a waiver for the landscaping and wall requirement for the same portion of the northern boundary adjacent to the residential use. The landscape plan depicts a five-foot landscape strip adjacent to the north property line. The applicant has provided a letter in support of the exception requests from the affected property owner to the north (See Attachment C(1)).

B. Exception to Driveway Spacing

The applicant is requesting a waiver to the driveway spacing requirements of a major arterial. This waiver is for the northernmost driveway opening along Gerault Road. The conceptual site has been laid out with a driveway to generally line up with the existing median opening near the northwest corner of the site. There is an existing driveway 94 feet north of the proposed drive approach. The next drive approach to the north is a recently constructed commercial drive approach approximately 340 feet north of the proposed drive approach. This is 20 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.

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 rezoning requests. At the time this report was written, staff had received two letters of support and one letter of opposition.

IV. ATTACHMENTS

A. Background Information

1. Vicinity Map
2. Letter of Intent

B. Application Details

1. Conceptual Site Plan
2. Conceptual Landscape Plan
3. Conceptual Elevations

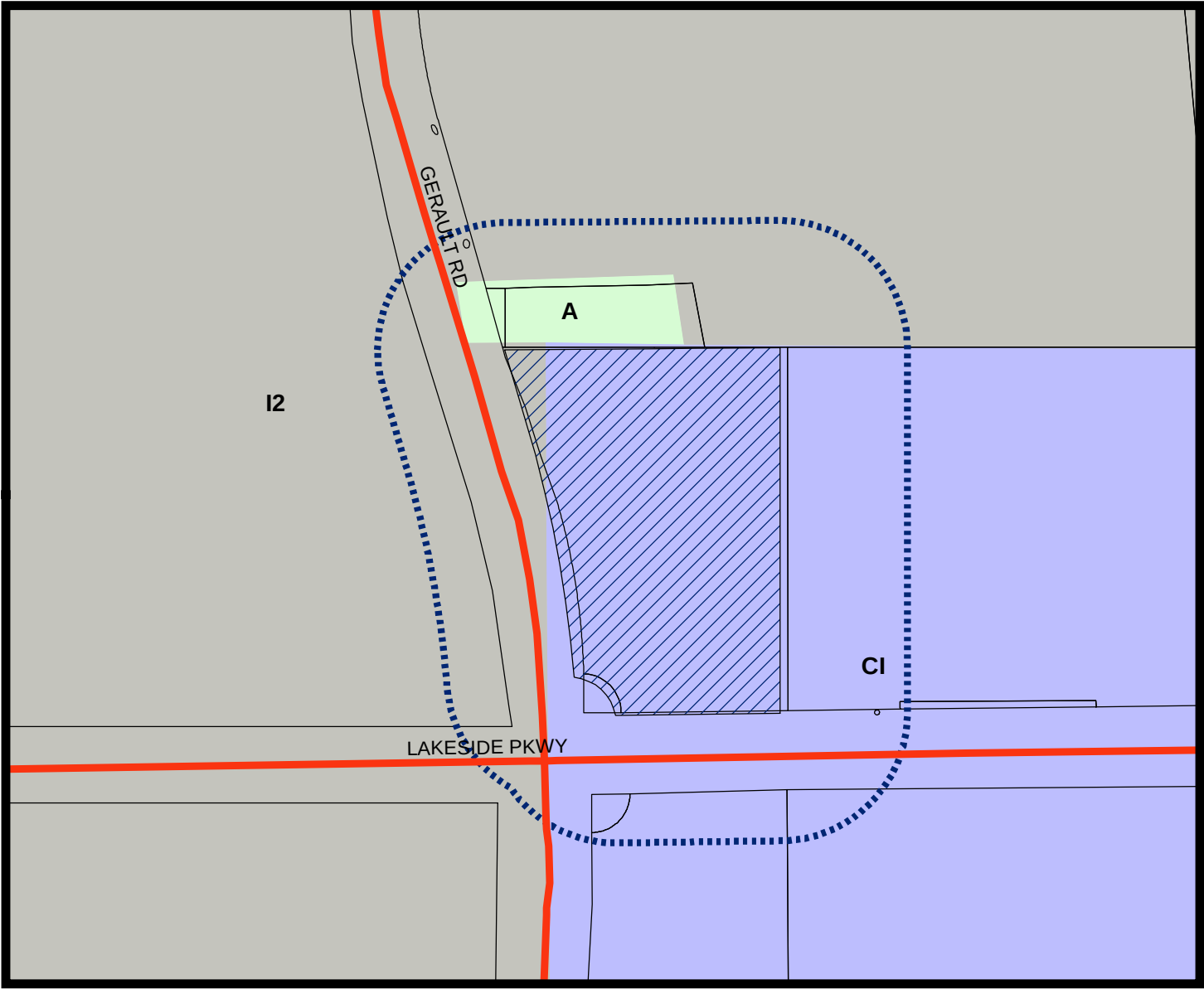
C. Correspondence

1. Letters of support
2. Letter of opposition



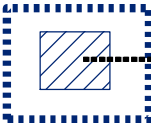
Vicinity Map

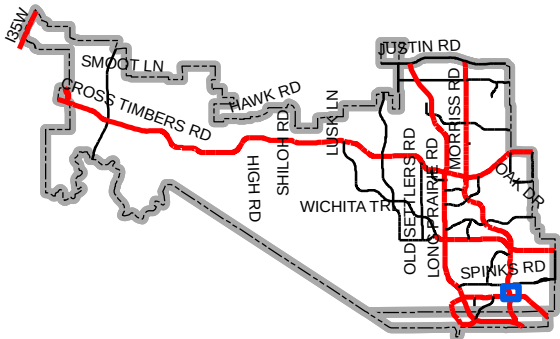
Reference Project: ZPD15-0018



LEGEND

 Agriculture	 Campus Industrial	 Industrial 2
--	---	--

 Subject Property
200 ft Notification Buffer around Property



Map Location



1512 Bray Central Drive, Suite 100
McKinney, TX 75069

Main (214) 473-4640
Fax (214) 544-8882

westwoodps.com
(888) 937-5150

March 9, 2016

Ms. Gina Costanza-Grant
Planning Services Division
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028

Re: Advantage Flower Mound (ZPD15-0018)
NEC Lakeside Parkway at Gerault Road
Lot 1R1, Block C, Lakeside Ranch Business Park Addition

Dear Gina:

Advantage Self Storage Advisors, LLC (Advantage) currently has the subject property under contract to purchase. The existing zoning of the property is Planned Development – 83, Subdistrict A. The proposed zoning would be to amend the existing Planned Development to allow for self-storage use only on the subject tract. Advantage requests this zoning amendment to facilitate the development of a very high quality, state-of-the-art self-storage facility. The proposed zoning would affect 2.11 acres, a portion of Lot 1R1, Block C, Lakeside Ranch Business Park Addition. The proposed building will contain approximately 107,415 gross square feet within a three-story building. Net rentable area will be approximately 82,000 square feet comprised of approximately 650 self-storage units ranging in size from 25 to 300 square feet. The site layout and building architecture will substantially conform to that submitted with the request. It is the applicant's intent is that the proposed self-storage building conform to all other current PD and Town requirements, for the Lakeside Ranch Business District, with the exception of the following requested waivers:

1. Applicant requests a waiver of the compatibility buffer requirements of Section 82-302, of the Town's Land Development Code, along the north side of the property. The adjacent property owner is aware of and supports this waiver request (refer to letter from Nemo Baker w/ 6 Star Group, LLC). Included in this request is waiver of screening requirements. No wall or fence is proposed along the north property boundary.
2. Applicant requests a waiver of the compatibility setback requirements of Section 82-303, of the Town's Land Development Code, along the north side of the property. The adjacent property owner is aware of and supports this waiver request (refer to letter from Nemo Baker w/ 6 Star Group, LLC).
3. Applicant requests a waiver to the 360' driveway spacing requirement on Gerault Road. The conceptual site has been laid out with a driveway to generally line up with the existing median opening near the northwest corner of the site. There is an existing residential drive 94 feet north of the proposed drive approach. The next drive approach to the north is a recently constructed commercial drive approach approximately 340 feet north of the proposed drive approach.

March 8, 2016
Page 2

Thank you for your consideration. If you have any questions or require additional information, please let me know.

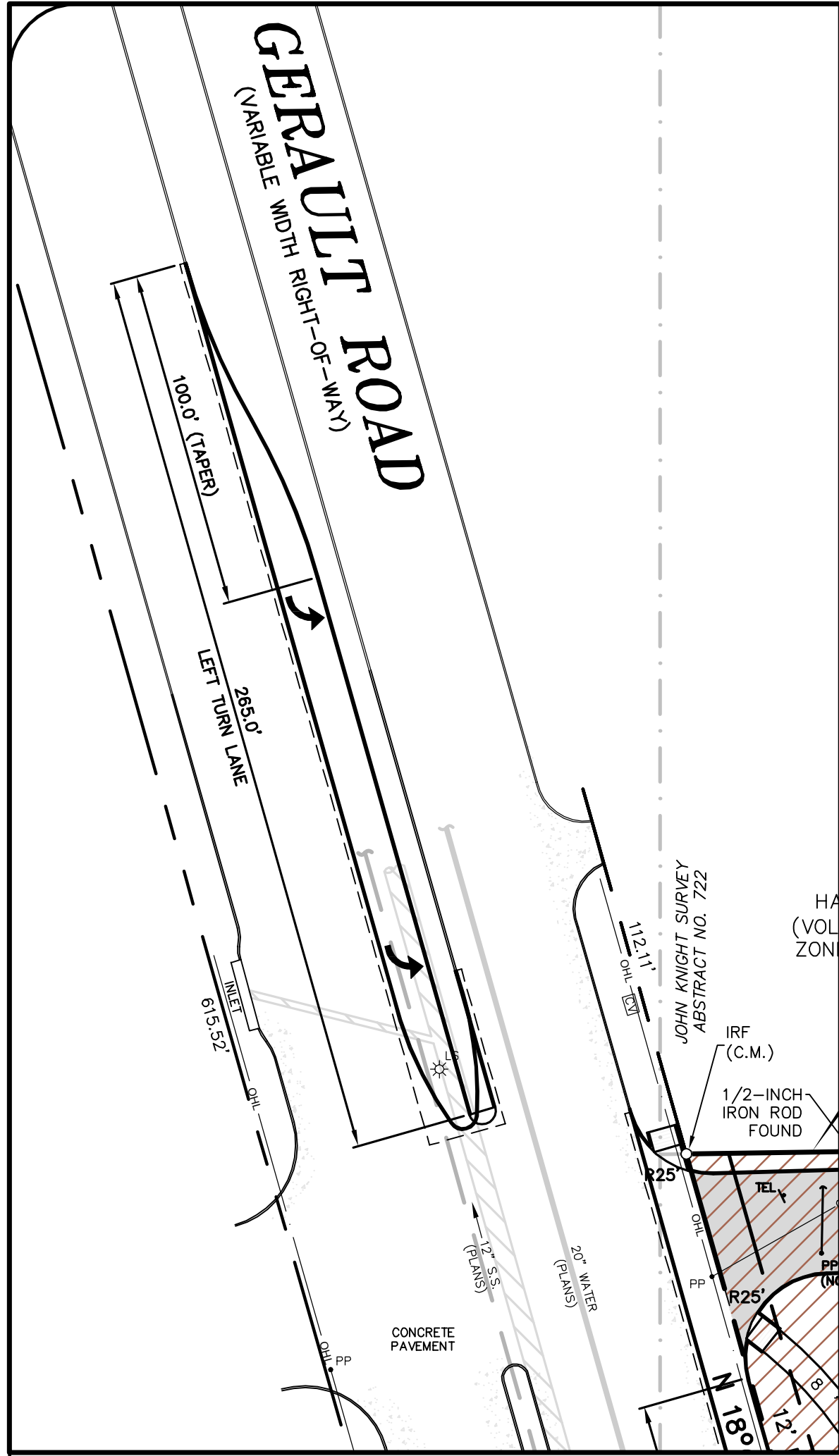
Sincerely,

WESTWOOD PROFESSIONAL SERVICES

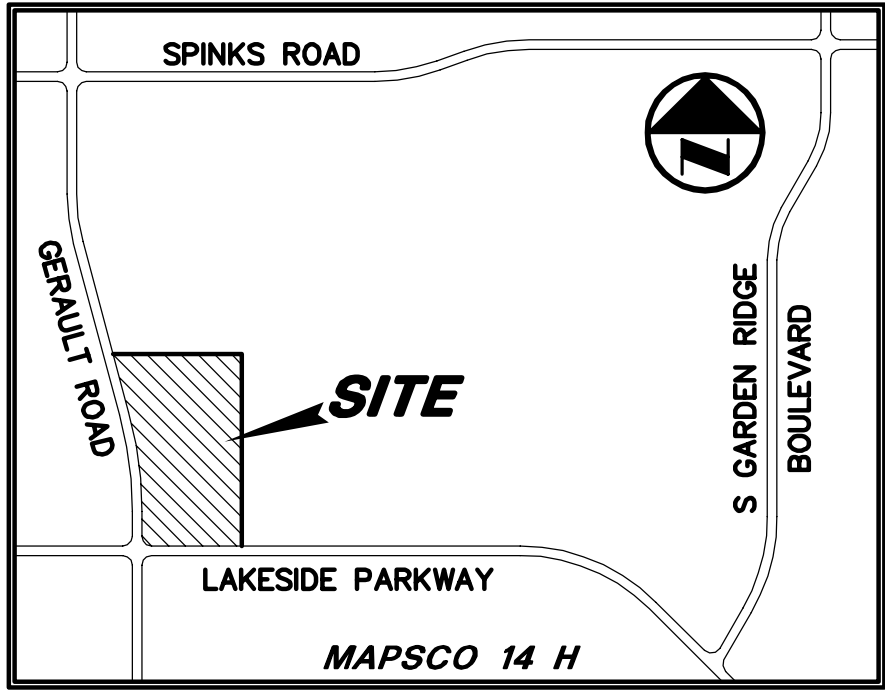
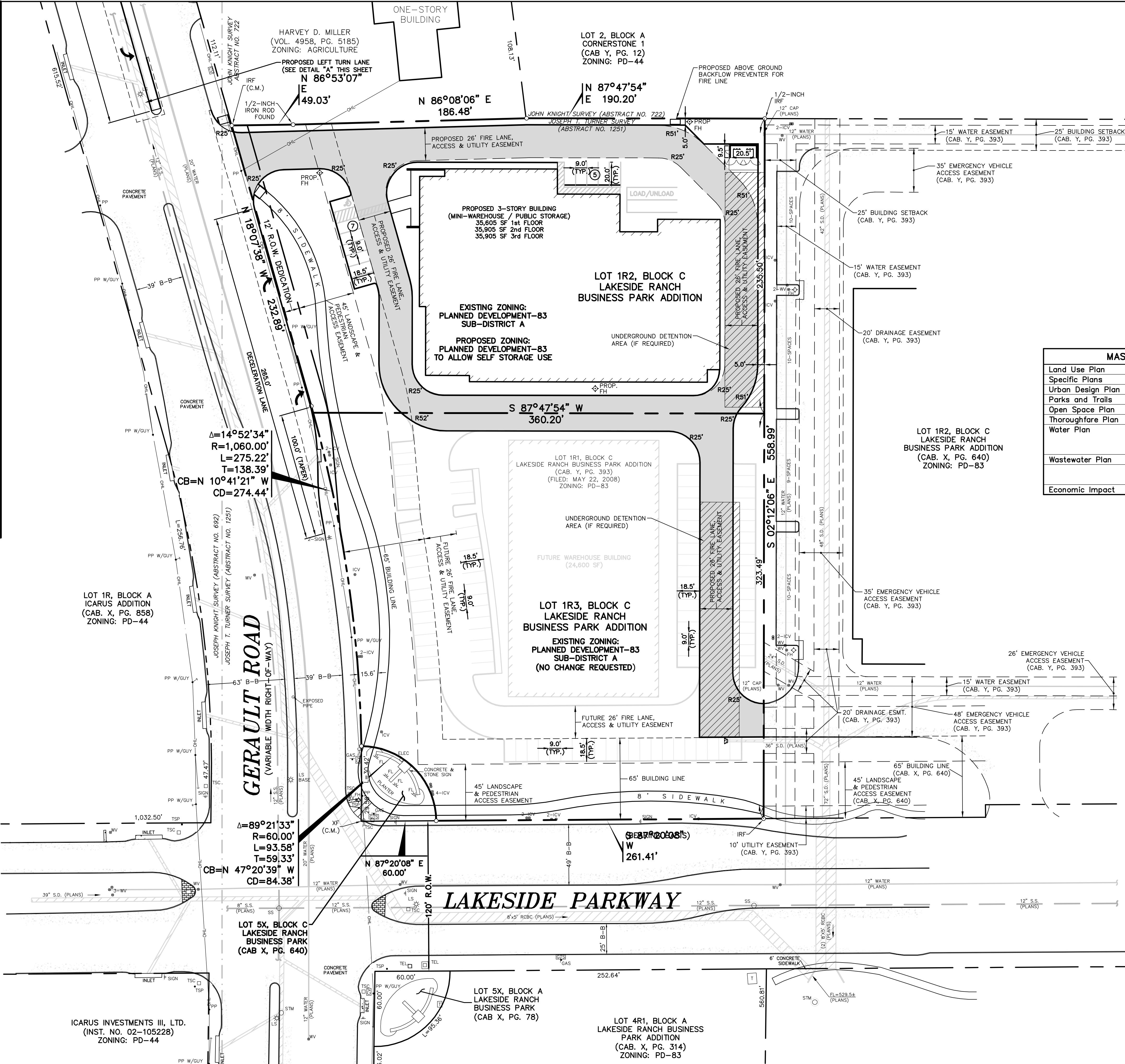
A handwritten signature in blue ink, appearing to read "Arlyn W. Samuelson", with a long horizontal flourish extending to the right.

Arlyn W. Samuelson, P.E.
Project Manager

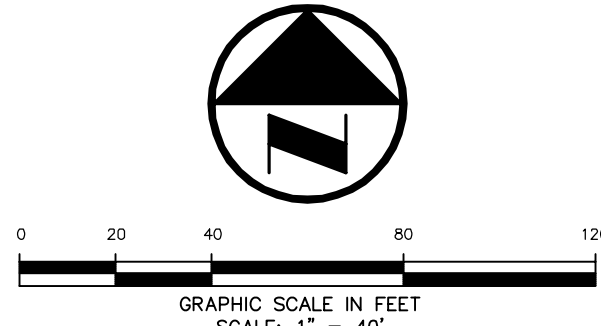
AWS/mdl



DETAIL "A"
SCALE: 1"=40'



VICINITY MAP
NOT TO SCALE



MASTER PLAN FEATURES	
Land Use Plan	Lakeside Business District with Campus Industrial Uses
Specific Plans	None
Urban Design Plan	Lakeside Business District
Parks and Trails	8' Trail adjacent to Lakeside Parkway and Gerault Road
Open Space Plan	N/A
Thoroughfare Plan	Lakeside Parkway & Gerault Road (Major Arterial - 120' R.O.W.)
Water Plan	East Plane (Low) Pressure Existing 20" Water in Gerault Road Existing 12" Water in Lakeside Parkway
Wastewater Plan	Lakeside Business District Existing 12" Sanitary Sewer in Gerault Road Existing 12" Sanitary Sewer in Lakeside Parkway
Economic Impact	\$12,000,000 in Ad Valorem Property Value

LEGEND

B	BOLLARD
EM	ELECTRIC METER
PP	POWER POLE
LS	LIGHT STANDARD
WM	WATER METER
WV	WATER VALVE
ICV	IRRIGATION CONTROL VALVE
FH	FIRE HYDRANT
FDC	FIRE DEPARTMENT CONNECTION
CO	CLEAN OUT
MH	MANHOLE
GM	GAS METER
TSC	TRAFFIC SIGNAL CONTROL
TSP	TRAFFIC SIGNAL POLE
SIGN	TRAFFIC SIGN
TELE	TELEPHONE BOX
TV	TV BOX
FP	FLAG POLE
L.A.	LANDSCAPE AREA
---	PROPERTY LINE
---OHL---	O.H. POWER LINES
---U/G TEL---	U/G TELEPHONE LINES
---WATER---	U/G WATER LINE
---GAS---	U/G GAS LINE
---X---	FENCE

NO.	DATE	REVISION / DESCRIPTION
DESIGN	DRAWN	DATE
AW	MLM	02-01-2016

PROJECT INFORMATION
ADVANTAGE FLOWER MOUND NEQ GERAULT ROAD AT LAKESIDE PARKWAY CITY OF FLOWER MOUND DENTON COUNTY, TEXAS JOSEPH T. TURNER SURVEY, ABSTRACT NO. 1251 PROPOSED USE: PUBLIC STORAGE ZONING: PD-83

DEVELOPER
ADVANTAGE SELF STORAGE, INC. 2600 ELDORADO PARKWAY, SUITE 100 MCKINNEY, TEXAS 75070 MR. RICK JONES (972) 547-0236 PHONE

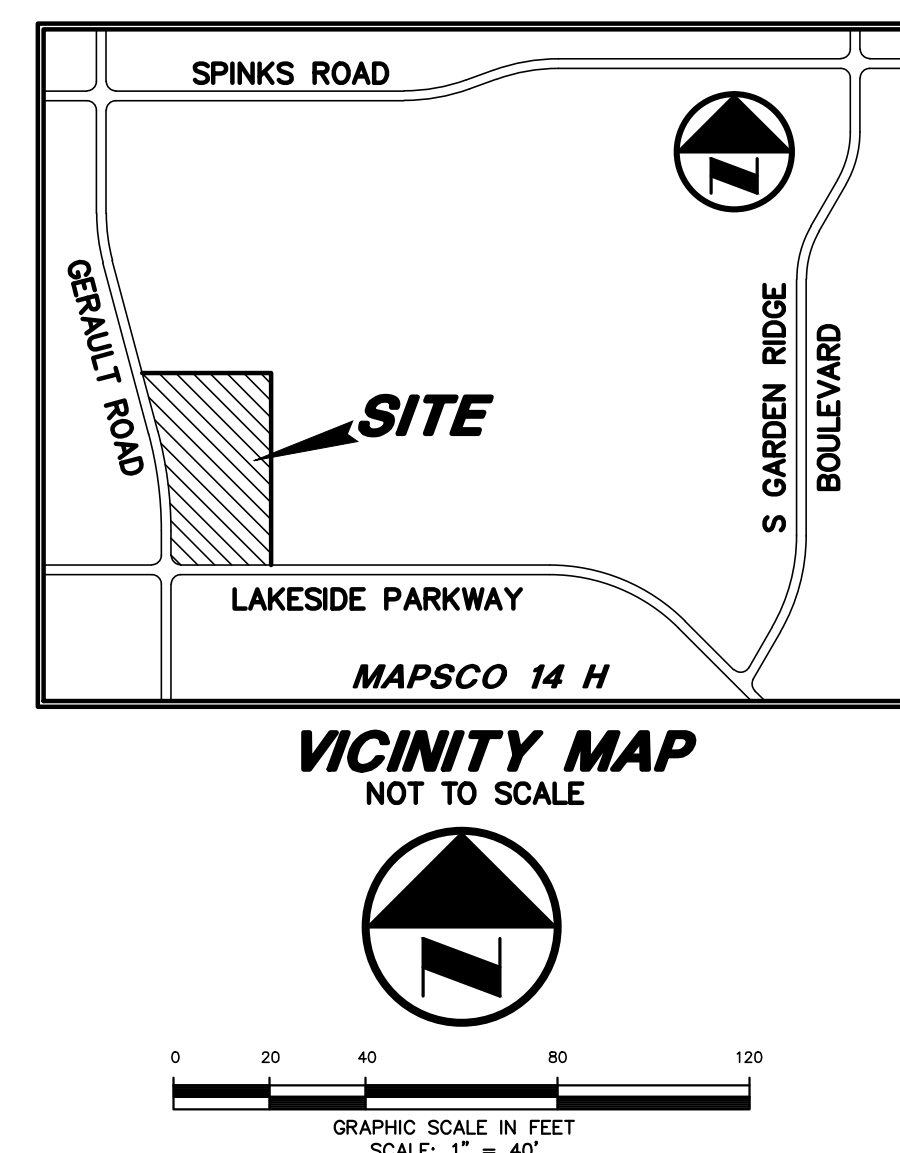
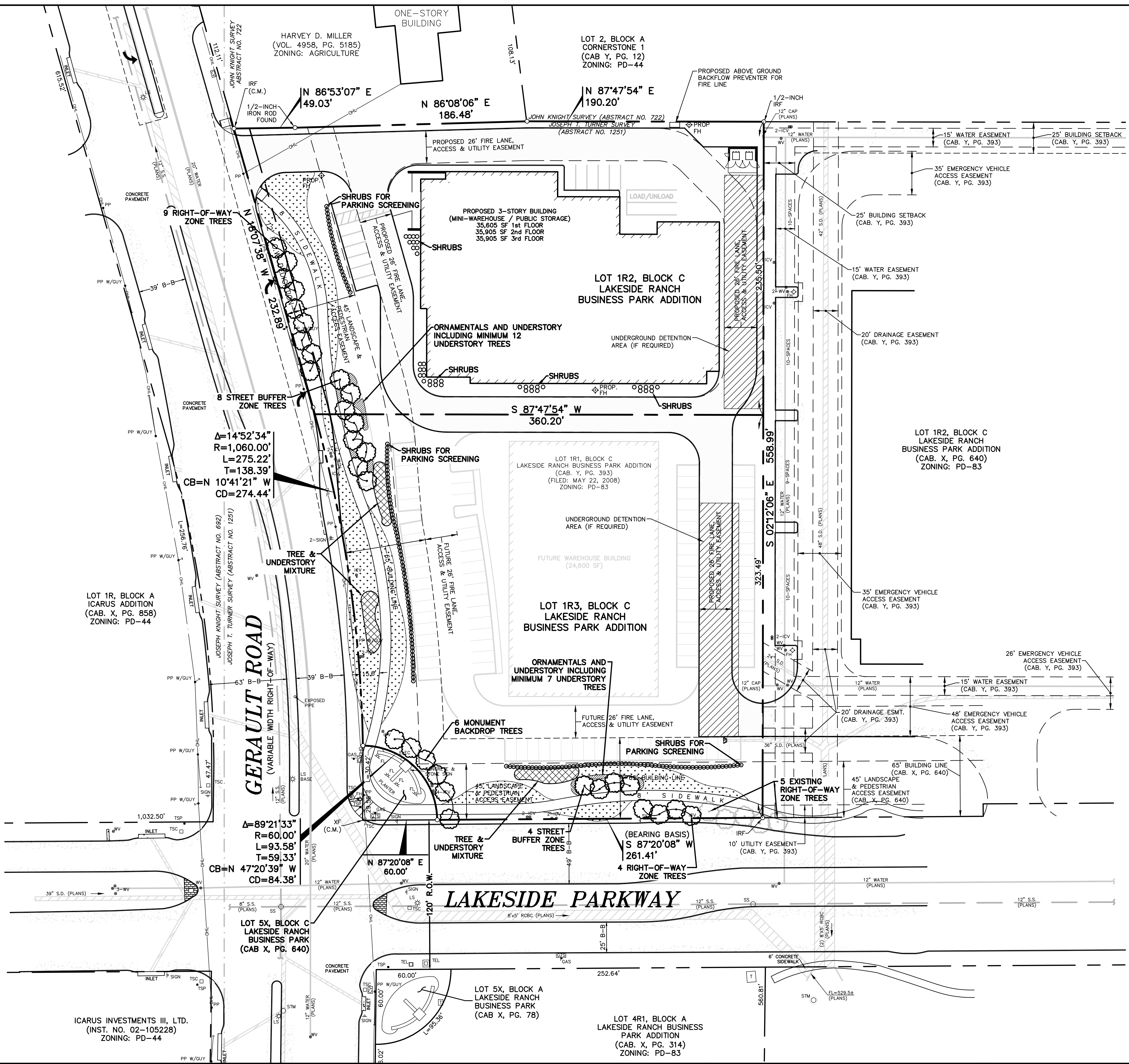
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PRELIMINARY FOR INTERIM REVIEW ONLY NOT TO BE USED FOR CONSTRUCTION OR BIDDING PURPOSES.
Engineer: ARJUN W. SAMUELSON, P.E.
P.E. No.: 95871
Date: 02-01-2016

POGUE
ENGINEERING & DEVELOPMENT COMPANY, INC.
a division of **Westwood**
1512 BRAY CENTRAL DRIVE
SUITE 100
MCKINNEY, TEXAS 75069
TX BOARD PROF. ENGINEERS, CERT. #1756; TX BOARD PROF. LAND SURVEYING, CERT. 1007430
(214) 437-4640 PHONE
(888) 837-5150 TOLL FREE
WWW.WESTWOODPS.COM

CONCEPTUAL SITE PLAN	SHEET NO.
ADVANTAGE FLOWER MOUND BLOCK C, LOT 1R1 LAKESIDE RANCH BUSINESS PARK ADDITION CITY OF FLOWER MOUND, TEXAS	CSP

ANSAMUELSON, 01/07/2016 - 4:51PM
C:\WINDOWS\TEMP\ACAPUBLISH\6512\1627-15-051_CONCEPT LSP.DWG
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LEGEND

- BOLLARD
- ELECTRIC METER
- POWER POLE
- LIGHT STANDARD
- WATER METER
- WATER VALVE
- IRRIGATION CONTROL VALVE
- FIRE HYDRANT
- FIRE DEPARTMENT CONNECTION
- CLEAN OUT
- GAS METER
- TRAFFIC SIGNAL CONTROL
- TRAFFIC SIGNAL POLE
- TRAFFIC SIGN
- TELEPHONE BOX
- TV BOX
- FLAG POLE
- LANDSCAPE AREA
- PROPERTY LINE
- O.H. POWER LINES
- U/G TELEPHONE LINES
- U/G WATER LINE
- U/G GAS LINE
- FENCE
- CONTROLLING MONUMENT
- 5/8-INCH IRON ROD WITH "POQUE ENG & DEV" CAP SET
- ORNAMENTALS AND UNDERSTORY
- TREE AND UNDERSTORY MIXTURE
- NATIVE GRASSES PER APPROVED LIST.
- 20% MINIMUM IN RIGHT OF WAY ZONE.
- 40% MINIMUM IN STREET BUFFER ZONE
- WITH LANDSCAPE EDGE BETWEEN NATIVE GRASSES AND IRRIGATED GRASSES.

NO.	DATE	REVISION / DESCRIPTION
DESIGN	DRAWN	DATE
AW	MLM	01-06-2016
		R0007949.00

PROJECT INFORMATION
ADVANTAGE FLOWER MOUND
NEQ GERAULT ROAD AT LAKESIDE PARKWAY
CITY OF FLOWER MOUND
DENTON COUNTY, TEXAS
JOSEPH T. TURNER SURVEY, ABSTRACT NO. 1251
PROPOSED USE: PUBLIC STORAGE
ZONING: PD-83

DEVELOPER
ADVANTAGE SELF STORAGE, INC.
2600 ELDORADO PARKWAY, SUITE 100
MCKINNEY, TEXAS 75070
MR. RICK JONES
(972) 547-0236 PHONE

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OF INTERIM REVIEW UNDER THE AUTHORITY OF ARJYN W.
SAMUELSON, P.E. 95671 ON 01-06-2016. IT IS
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CONSTRUCTION OR
BIDDING PURPOSES.
Engineer: ARJYN W. SAMUELSON, P.E.
P.E. No.: 95671
Date: 01-06-2016

POQUE
ENGINEERING & DEVELOPMENT COMPANY, INC.
a division of **Westwood**
1512 BRAY CENTRAL DRIVE
SUITE 100
MCKINNEY, TEXAS 75069
TX BOARD PROF. ENGINEERS, CERT. #11756; TX BOARD PROF. LAND SURVEYING, CERT. 1007430
(214) 437-4640 PHONE
(888) 937-5150 TOLL FREE
WWW.WESTWOODPS.COM

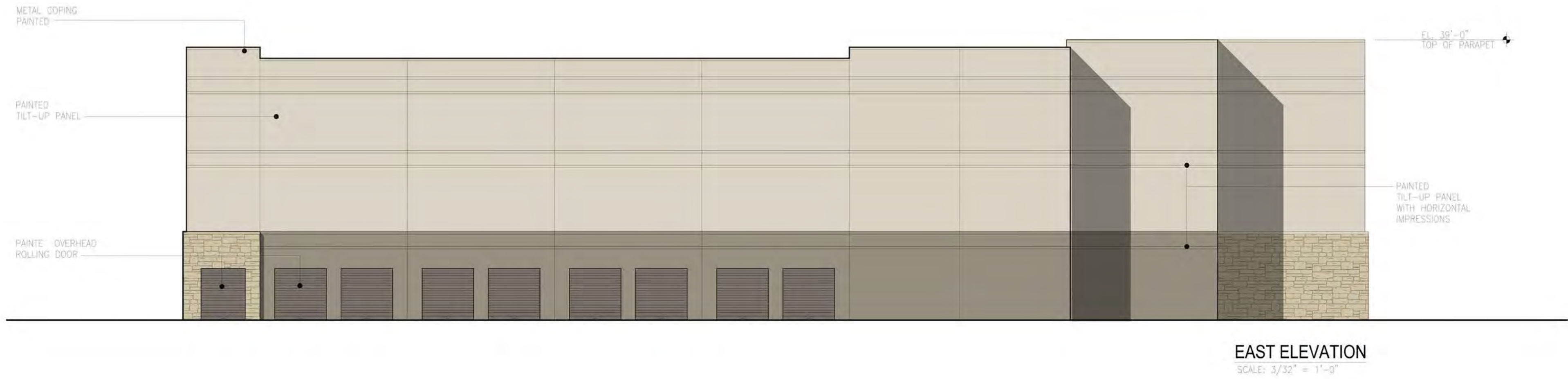
CONCEPTUAL LANDSCAPE PLAN
ADVANTAGE FLOWER MOUND
BLOCK C, LOT 1R1
LAKESIDE RANCH BUSINESS PARK ADDITION
CITY OF FLOWER MOUND, TEXAS

SHEET
NO.
CLP



BUILDING EXTERIOR MATERIAL CALCULATIONS				
	North	South	East	West
1. Total Facade S.F.	9,839 SF	9,605 SF	5,852 SF	6,111 SF
2. Doors and Windows S.F.	762 SF	1,306 SF	434 SF	943 SF
3. Facade S.F. (exclusive of doors and windows)	9,077 SF	8,299 SF	5,418 SF	5,168 SF
4. Primary Masonry totals (% of line 3)	7,207 SF (79.4%)	4,788 SF (57.6%)	5,089 SF (93.9%)	3,278 SF (63.4%)
• Brick s.f.	NA	NA	NA	NA
• Tilt Wall s.f.	7,207 SF (79.4%)	4,788 SF (57.6%)	5,089 SF (93.9%)	3,278 SF (63.4%)
5. Secondary Masonry totals (35% max of line 3)	1,837 SF (20.2%)	3,432 SF (41.4%)	329 SF (6.1%)	1,696 SF (32.8%)
• Stucco s.f.	NA	NA	NA	NA
• EIFS s.f.	NA	NA	NA	NA
• Stone s.f.	1,837 SF (20.2%)	3,432 SF (41.4%)	329 SF (6.1%)	1,696 SF (32.8%)
• Hardiplank s.f.	NA	NA	NA	NA
6. Architectural Metals totals (30% max)	33 SF (.4%)	79 SF (1%)	0 SF (.00%)	194 SF (3.8%)

NOTE: STONE, CONCRETE FINISHES, AND EXPOSED METAL FINISHES ARE TO BE SELECTED FROM THE COLOR CHARTS PROVIDED WITHIN PD 83.



SCHEMATIC
DESIGN
REVIEW

NOT FOR REGULATORY
APPROVAL, PERMITTING, OR
CONSTRUCTION

davidbaca
STUDIO

Advantage Storage - Flower Mound

Lakeside Ranch Business Park, Gerault Road, Flower Mound, Texas



PROJECT NUMBER
1532

DATE
03.03.16

SHEET NUMBER
A0.0

exterior elevations

100 NORTH TRAVIS STREET, NO. 500A, SHERMAN, TEXAS 75090
t 903 893 5800 f 903 893 5866 e david@davidbacastudio.com

November 19, 2015

Town of Flower Mound
Planning Services Division
Attention: Chuck Russell, AICP, Planning Manager
1001 Cross Timbers Road
Flower Mound, TX 75028

Re: Advantage Storage Proposed Development
Lot 1R1, Block C, Lakeside Ranch Business Park Addition
Town of Flower Mound

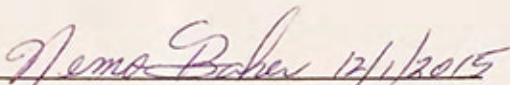
Mr. Russell,

I am the property owner of 880 Gerault Road, Flower Mound, Texas (tax parcels A0722A-000-0003-000A and A0692A-000-0004-0000). My property is zoned Agricultural (but listed in the Land Use Plan as Lakeside Business District) and adjoins the north border of the proposed commercial development of Advantage Storage. After reviewing Advantage's proposed development plans for their site, please accept this letter as our formal notification that we are in favor of their proposed use and variance regarding the compatibility landscape buffer and compatibility building set back along our shared property line.

Regards,

6 Star Group LLC

By:


Nemo Baker, President and CEO



February 24, 2016

Town of Flower Mound
Planning Services Division
Attention: Chuck Russell, AICP, Planning Manager
1001 Cross Timbers Road
Flower Mound, TX 75028

Re: Advantage Storage Proposed Development
Lot 1R1, Block C, Lakeside Ranch Business Park Addition
Zoning Case: ZPD15-0018 1100 LAKESIDE PKWY
Town of Flower Mound

Mr. Russell,

I am the property owner of 900 Gerault Road, 901 Spinks Road, and 1001 Spinks Road, Flower Mound, Texas (also known as ParkView Commerce Center). After reviewing Advantage's proposed development plans (dated February 1, 2016 and attached hereto) for their site located on Gerault Road approximately 370' north of Lakeside Parkway, please accept this letter as our indication that we have no objection to their proposed request.

Regards,

A handwritten signature in blue ink, appearing to read "David Hicks".

David Y. Hicks, Jr.
Vice President

Enclosure

Desert Sierra Properties, Inc.

P.O. Box 9203
Sylmar, CA 91392

March 1, 2016

Chuck Russell, AICP, Planning Manager
Town of Flower Mound
Planning Services Division
2121 Cross Timbers Road
Flower Mound, TX 75028

RE: Advantage Storage Proposed Development
Lot 1R1, Block C, Lakeside Ranch Business Park Addition
Zone Case: ZPD15-0018 1100 Lakeside Pkwy
Town of Flower Mound

Dear Mr. Russell:

Desert Sierra Properties is the owner of the property located at 1000 Lakeside Parkway in the Lakeside Ranch Business Park and we would like to go on record to announce that we are **NOT** in favor of the Advantage Storage Proposed development plans on Gerault Road. This acceptance would be loosening the standards for one company in the Business Park which will ultimately undermine the progress that has kept the area in pristine condition and will lead to future requests of zoning leniency.

Also, the business proposed, which is a public storage business will increase the amount of public traffic which can lead to other problems including increased crime in the area.

In conclusion, the Lakeside Ranch Business Park has enforced strict standards and it should be kept that way.

Sincerely,



Kenneth E. Ruggles

CFO

Cc: Gina Costanza-Grant, Planning Services Division

Tom Hayden, Mayor

Members of the Town Council

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

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING ORDINANCE NO. 94-04, WHICH ESTABLISHED PLANNED DEVELOPMENT DISTRICT NO. 83 (PD-83) WITH CAMPUS INDUSTRIAL DISTRICT (CI) USES, THROUGH THE AMENDMENT OF EXHIBIT C, "DEVELOPMENT STANDARDS," BY AMENDING SECTION A(3), ENTITLED "SPECIFIC USES," BY ADDING "MINIWAREHOUSE" AS A USE THAT MAY BE PERMITTED UPON APPROVAL OF A SPECIFIC USE PERMIT ONLY ON A 2.11 ACRE PORTION OF LOT 1R1, BLOCK C, OF THE LAKESIDE RANCH BUSINESS PARK ADDITION; APPROVING SPECIFIC USE PERMIT NO. 446 (SUP-446) FOR A MINIWAREHOUSE ON A 2.11 ACRE PORTION OF LOT 1R1, BLOCK C, OF THE LAKESIDE RANCH BUSINESS PARK ADDITION; GRANTING CERTAIN EXCEPTIONS IN ACCORDANCE WITH SPECIFIC REQUIREMENTS STATED HEREIN AND EXHIBITS ATTACHED HERETO; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS 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 a 2.11 acre portion of Lot 1R1, Block C, Lakeside Ranch Business Park Addition, have filed an application for a Zoning Planned Development amendment to amend Ordinance No. 94-04 to allow a miniwarehouse use only by approval of a Specific Use Permit in Planned Development District No. 83 (PD-83) with Campus Industrial District (CI) uses and for a Specific Use Permit for a Miniwarehouse; and,

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on March 14, 2016, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on March 21, 2016, with respect to the Zoning Planned Development amendment and Specific Use Permit 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 the Zoning Planned Development amendment and Specific Use Permit on the property; and

WHEREAS, the Town Council finds that the Zoning Planned Development amendment and Specific Use Permit as outlined herein are 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 Land Development Regulations of the Town of Flower Mound, Texas, as amended, are hereby amended on the hereinafter described property and area as shown below:

A 2.11 acre portion of Lot 1R1, Block C, Lakeside Ranch Business Park Addition, Denton County, Texas.

Exhibit "C" to Ordinance No. 94-04, which exhibit is entitled "Development Standards," is hereby amended by the amendment of Paragraph A(3), entitled "Specific Uses," by adding "Miniwarehouse" as a use that may be permitted upon approval of a Specific Use Permit on said property.

Specific Use Permit No. 446 (SUP-446) for a Miniwarehouse, as more fully described in the conceptual plans attached as exhibits hereto and incorporated herein.

SECTION 2

The conceptual site plan, conceptual landscape plan, and conceptual elevations of the proposed Miniwarehouse, attached hereto as Exhibits "A," "B," and "C," each incorporated herein for all purposes allowed by law, are hereby approved as the conceptual site plan, conceptual landscape plan, and conceptual elevations for this Specific Use Permit No. 446 (SUP-446).

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 Specific Use Permit, 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 "A," "B," and "C," attached hereto, as well as the applicable regulations contained in PD-83, the Land Development Regulations and all other applicable and pertinent ordinances of the Town of Flower Mound.

SECTION 5

An exception is hereby granted to Sections 82-301 and 82-302, "Compatibility buffer," of PD-83 to waive the requirement for the 25-foot landscape buffer and six-foot masonry wall for a portion of the northern property boundary adjacent to the existing residential use as depicted in Exhibit "A," the conceptual site plan.

SECTION 6

An exception is hereby granted to Section 82-303, "Compatibility setback," of PD-83, to waive the requirement for the minimum 60-foot setback and allow an approximately 36-foot setback for a portion of the northern property boundary adjacent to the existing residential use as depicted in Exhibit "A," the conceptual site plan.

SECTION 7

An exception is hereby granted to the access management policy and criteria, regarding driveway spacing requirements of a major arterial, contained in the Town's Engineering Design Criteria and Construction Standards adopted through Chapter 32 of the Code of Ordinances, as it may be amended, specifically to allow the northernmost driveway opening on Gerault Road to be located approximately 94 feet from an existing residential driveway to the north and approximately 340 feet from an existing commercial driveway to the north in order to generally line up with the existing median opening near the northwest corner of the site.

SECTION 8

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 9

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 10

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 11

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 12

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 13

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:

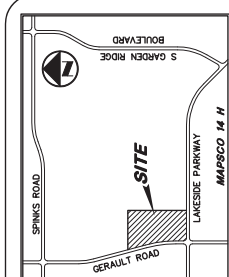
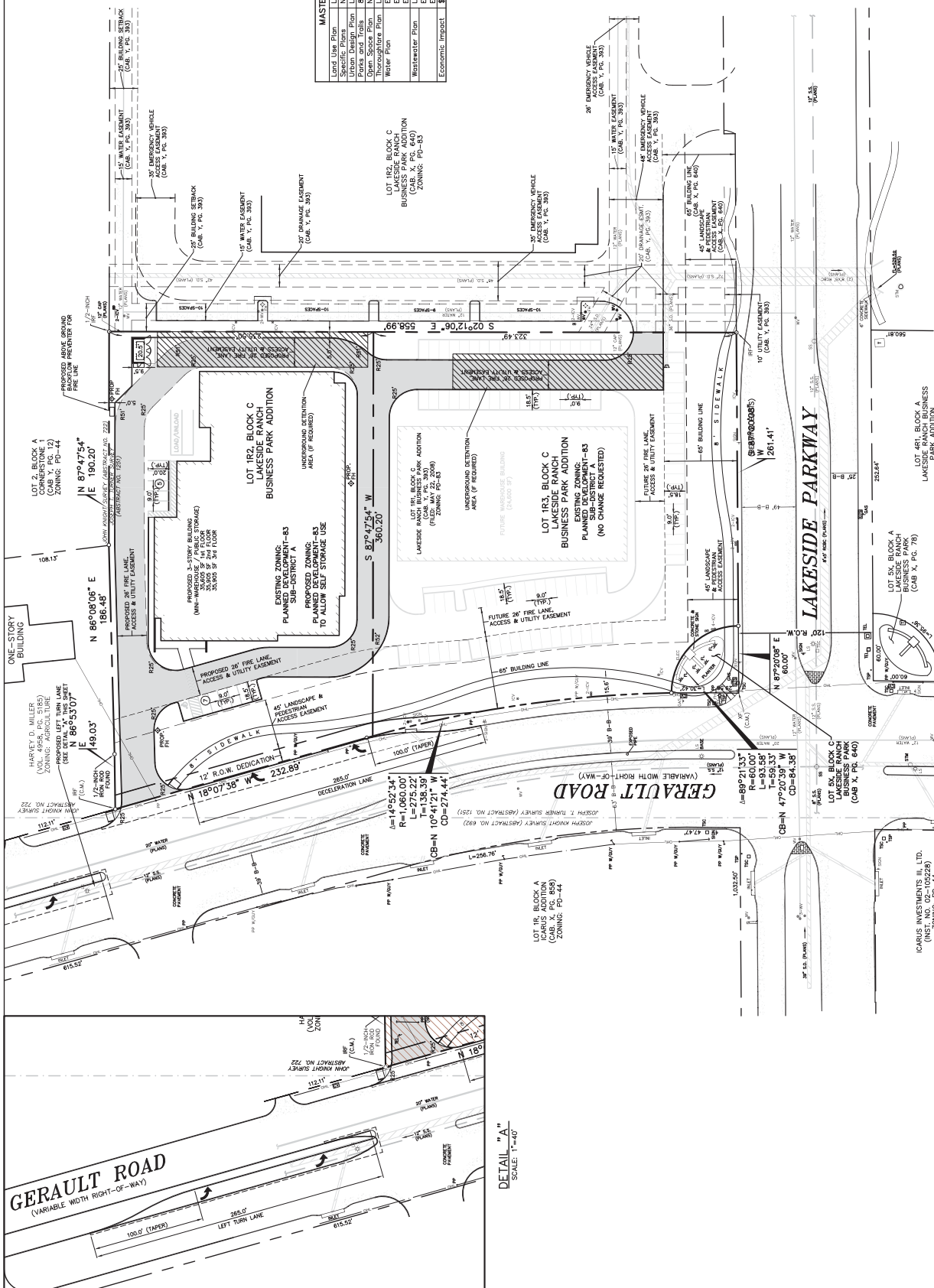
Thomas E. Hayden, **MAYOR**

ATTEST:

Theresa Scott, **TOWN SECRETARY**

APPROVED AS TO FORM AND LEGALITY:

Bryn Meredith, **TOWN ATTORNEY**

[illegible][illegible]

FINOCORP
ENGINEERING & DEVELOPMENT COMPANY, INC.
a division of **Westwood**
(714) 371-6640 PHONEX

FOR INTERIM REVIEW ONLY
NOT TO BE USED FOR:
CONSTRUCTION OR
BIDDING PURPOSES.
Engineer: ALVIN M. SMITH, P.E.
P.E. No.: 95677
Date: 02-01-2016

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SAMUELSON, P.E. 980771 ON 02-02-2006. IT IS
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PERMIT PURPOSES.

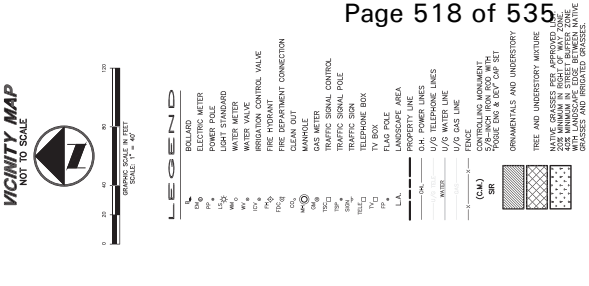
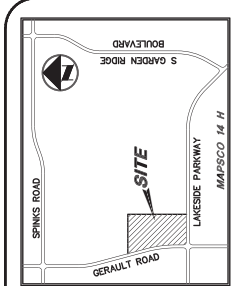
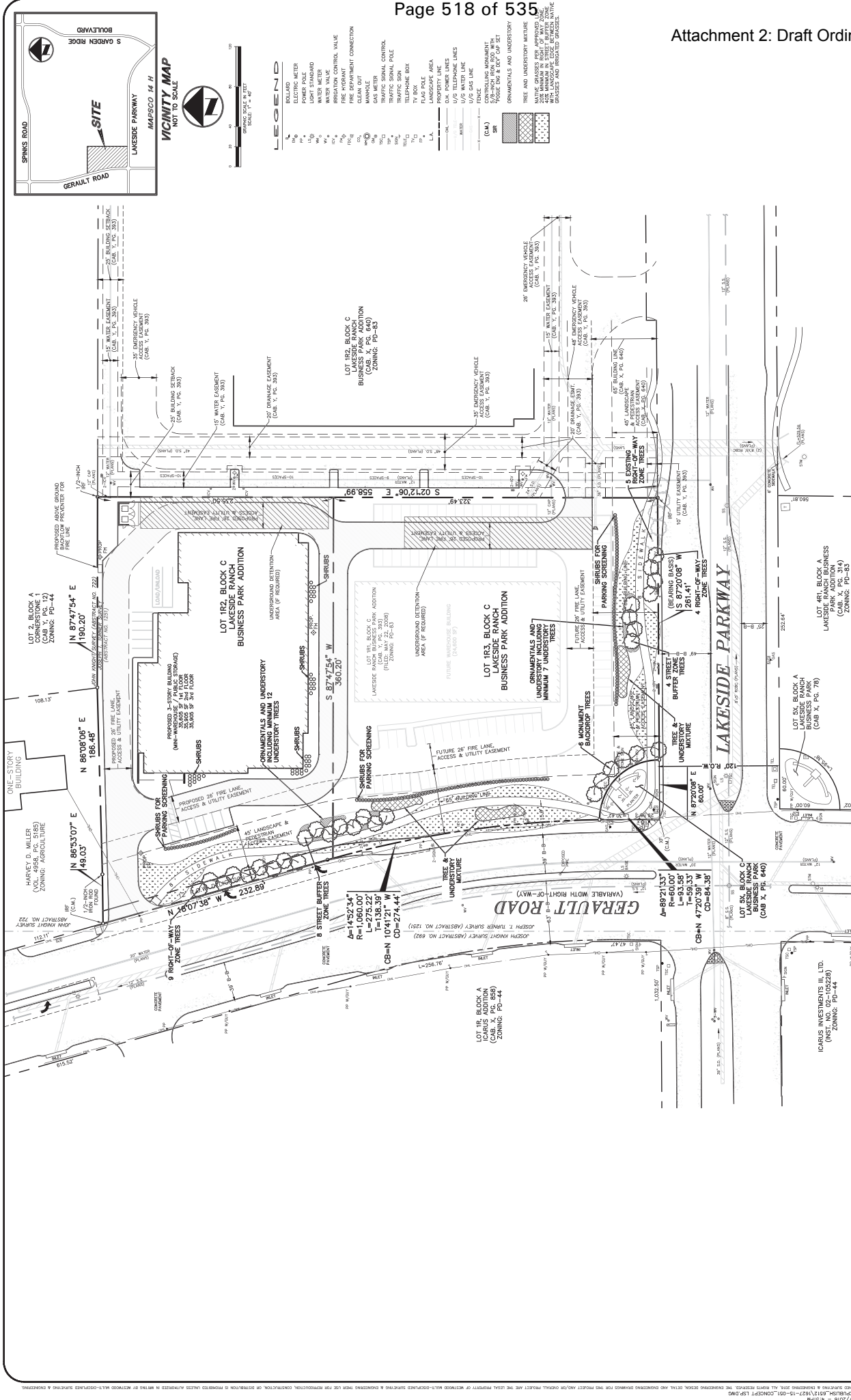
DEVELOPER
ANTAGE SELF STORAGE, INC.
ILDORADO PARKWAY, SUITE 100
CKINNEY, TEXAS 75070
MR. RICK JONES
(972) 547-0736 PHONE

PROJECT INFORMATION
ADVANTAGE FLOWER MOUND
NEQ GERAULT ROAD AT LAKESIDE PARKWAY
CITY OF FLOWER MOUND
DENTON COUNTY, TEXAS
JOSEPH T. TURNER SURVEY, ABSTRACT NO. 1251

REV.	DATE	REVISION / DESCRIPTION

AMSAMUELSON 03/09	U:\JOBS\1600-1699\1	© WESTWOOD MULTI-DESIGN	NO
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PROJECT INFORMATION		DEVELOPER		PIPOGUE		CONCEPTUAL LANDSCAPE PLAN	
ADVANTAGE FLOWER MOUND NEO GERRAULT ROAD AT LAKESIDE PARKWAY CITY OF FLOWER MOUND, TEXAS JOSEPH T. TURNER SURVEY, ABSTRACT NO. 1251 PROPOSED USE: PUBLIC STORAGE ZONING: PD-43		ADVANTAGE SELF STORAGE, INC. 2600 ELLORADO PARKWAY, SUITE 100 MCKINNEY, TEXAS 75070 MR. RICK JONES (972) 547-0236 PHONE		a division of Westwood BUSINESS & DEVELOPMENT COMPANY, INC. 1500 WEST CENTRAL DRIVE SUITE 100 MCKINNEY, TEXAS 75069 P.O. BOX 999777 DENVER, COLORADO 80209-9777 FAX: (303) 733-1100 WWW.PIPOGUE.COM		ADVANTAGE FLOWER MOUND BLOCK C, LOT 1R1 LAKESIDE RANCH BUSINESS PARK ADDITION CITY OF FLOWER MOUND, TEXAS	
NO.	DATE	REVISION / DESCRIPTION	DATE	W. NUMBER	SHEET NO.		
DESIGN	01-06-2016				CLP		
AMS	01-06-2016				R0007949.00		



LOT 1R1, BLOCK C
LAKESIDE RANCH
BUSINESS PARK ADDITION
(VOL. 45-58, P.C. 5185)
ZONING: PD-44

LOT 1R2, BLOCK C
LAKESIDE RANCH
BUSINESS PARK ADDITION
(VOL. 45-58, P.C. 5185)
ZONING: PD-44

LOT 1R3, BLOCK C
LAKESIDE RANCH
BUSINESS PARK ADDITION
(VOL. 45-58, P.C. 5185)
ZONING: PD-44

LOT 1R4, BLOCK C
LAKESIDE RANCH
BUSINESS PARK ADDITION
(VOL. 45-58, P.C. 5185)
ZONING: PD-44

SCHEMATIC
DESIGN
REVIEW
NOT FOR REGULATORY
APPROVAL, PERMITTING, OR
CONSTRUCTION

davidbaca
STUDIO

Advantage Storage - Flower Mound

Lakeside Ranch Business Park, Gerault Road, Flower Mound, Texas

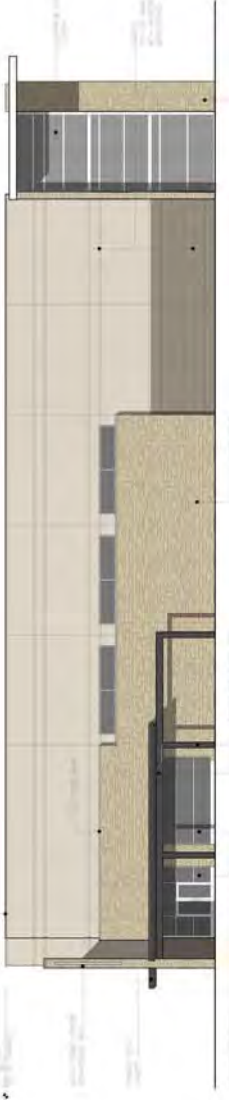
Attachment 2: Draft Ordinance



PROJECT NUMBER
1832
DATE
03.08.16
SHEET NUMBER
A0.0

exterior elevations

REVISIONS			
NO.	DATE	DESCRIPTION	BY
1	03/08/16	Initial Design	DB
2	03/08/16	Revised Design	DB
3	03/08/16	Final Design	DB



WEST (GERAULT RD) ELEVATION



SOUTH (LAKESIDE PKWY) ELEVATION



EAST ELEVATION



NORTH ELEVATION



TRASH ENCLOSURE (SIDE ELEVATION)



TRASH ENCLOSURE (FRONT ELEVATION)



TOWN COUNCIL AGENDA ITEM NO. 29 REGULAR ITEM

DATE: March 21, 2016

FROM: Doug Powell, Executive Director of Development Services

ITEM: Public Hearing to consider a request to amend the Land Development Regulations (LDR16-0001) by amending Section 98-2, entitled "Definitions," and Section 98-980, entitled "Farmer's market," of the Town's Code of Ordinances to allow a farmer's market to operate on any Town-owned property and to provide that all farmer's markets must abide by Town regulations and applicable provisions of state law, and to consider adopting an ordinance providing for said amendment. *(The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its February 22, 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 to amend the Land Development Regulations (LDR16-0001) by amending Section 98-2, entitled "Definitions," and Section 98-980, entitled "Farmer's market," of the Town's Code of Ordinances to allow a farmer's market to operate on any Town-owned property and to provide that all farmer's markets must abide by Town regulations and applicable provisions of state law, and adopt an ordinance providing for said amendment.



PLANNING AND ZONING COMMISSION AGENDA ITEM NO: 5

DATE: February 22, 2016

FROM: Doug Powell, Executive Director of Development Services

ITEM: Public Hearing to consider a request to amend the Land Development Regulations (LDR16-0001) by amending Section 98-2, entitled "Definitions," and Section 98-980, entitled "Farmer's market," of the Town's Code of Ordinances to allow a farmer's market to operate on any Town-owned property and to provide that all farmer's markets must abide by Town regulations and applicable provisions of state law.

I. ITEM SUMMARY

There are no outstanding issues associated with this request.

This application will require final action by the Town Council.

II. APPLICATION ANALYSIS

The purpose of this request is to amend the Town's Land Development Regulations in order to allow a farmer's market to operate on any Town-owned property and to amend the definition to match state regulations. The Town Council directed staff to proceed with this amendment during their meeting of February 1, 2016. Currently, the Code of Ordinances only allows farmer's markets on Agricultural zoned property with a SUP and within The River Walk at Central Park and Lakeside DFW developments. The zoning on the Town Hall site is currently Retail District-2 (R-2), and thus not eligible for a farmer's market under the current zoning regulations.

The following shows the proposed changes; the underlined words are new and the strike out words being deleted from the Code of Ordinances. As indicated, the changes to Section 98-980 (a) and 98-2 align the Town's regulations with current state statutes. The new Section 98-980 (b) is the provision that will allow the use to be on any property owned by the Town.

Section 98-980

- (a) All farmer's markets shall be located in covered spaces providing shelter for vendors and customers and shall provide for adequate off-street parking. No more than 20 percent of the display area shall be devoted to

~~the sale of nonfood articles and the sale of any type of meat, fish, poultry, eggs, refrigerated dairy products, and/or home canned or packaged items shall be prohibited.~~ All vendors shall abide by the provisions of applicable Town ordinances and regulations and applicable state laws and regulations related to farmer's markets, including Texas Administrative Code, Title 25, Chapter 229, Subchapter FF.

- (b) A farmer's market may be permitted by the Town to operate on any property owned by the Town notwithstanding the district regulations applicable to said property.

Section 98-2

Farmer's market means a designated location used primarily for the distribution and sale directly to consumers of food by farmers and other producers~~the retail sale of farm produce by individual vendors for the primary purpose of selling fruits, vegetables, herbs, spices, edible seeds, nuts, live plants, flowers and honey, where such produce, or its portion, is not grown on the premises.~~

It is anticipated that any farmer's market on Town property will be managed by a private contractor through a contract with the Town. Specifics of the location, operation, parking, etc., will be addressed in the contract.

Finally, the discussion of a farmer's market located at Town Hall included the notion that the use would be temporary. A market is planned for The River Walk at Central Park development, and the Town Hall site would be to initiate the concept, not compete with the River Walk site.

III. CORRESPONDENCE

The Town Code requires public notice in a newspaper of general circulation (Denton Record Chronicle) for all Land Development Regulation amendments. At the time this report was written, staff had received no correspondence regarding the request.

IV. ATTACHMENTS

None

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

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 98, ZONING, OF THE CODE OF ORDINANCES BY AMENDING SECTION 98-2, "DEFINITIONS;" PROVIDING AN UPDATED DEFINITION OF FARMER'S MARKET; BY AMENDING SECTION 98-980, "FARMER'S MARKET;" PROVIDING THAT ALL FARMER'S MARKETS MUST ABIDE BY PROVISIONS OF STATE LAW AND TOWN REGULATIONS AND ALLOWING A FARMER'S MARKET TO OPERATE ON ANY TOWN-OWNED PROPERTY; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATION; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; 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 Planning and Zoning Commission of the Town of Flower Mound, Texas, held a public hearing on February 22, 2016, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on March 21, 2016, with respect to the Land Development Regulations Amendment described herein; and,

WHEREAS, the Town has complied with all requirements of Chapter 211 of the Texas 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 a Land Development Regulations Amendment;

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

SECTION 1.

Section 98-2 of Article I of Chapter 98 of the Code of Ordinances of the Town of Flower Mound is hereby amended to modify the definition of "Farmer's Market" contained therein to read as follows:

"Farmer's market means a designated location used primarily for the distribution and sale directly to consumers of food by farmers and other producers."

SECTION 2.

Section 98-980 of Article IV of Chapter 98 of the Code of Ordinances of the Town of Flower Mound is hereby amended to read as follows:

"Section 98.980. Farmer's market.

- (a) All farmer's markets shall be located in covered spaces providing shelter for vendors and customers and shall provide for adequate off-street parking. No more than 20 percent of the display area shall be devoted to the sale of nonfood articles. All vendors shall abide by the provisions of applicable Town ordinances and regulations and applicable state laws and regulations related to farmer's markets, including Texas Administrative Code, Title 25, Chapter 229, Subchapter FF.
- (b) A farmer's market may be permitted by the Town to operate on any property owned by the Town notwithstanding the district regulations applicable to said property."

SECTION 3

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 4

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

SECTION 5

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 6

All rights and remedies of the Town of Flower Mound are expressly saved as to any and all violations of the provisions of the Code of Ordinances as amended or revised herein, or any other ordinances affecting the matters regulated herein which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 7

ORDINANCE NO. _____

Page 3

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

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 9

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

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE ____ DAY OF MARCH, 2016.

APPROVED:

Thomas E. Hayden, **MAYOR**

ATTEST:

Theresa Scott, **TOWN SECRETARY**

ORDINANCE NO. _____

APPROVED AS TO FORM AND LEGALITY:

Bryn Meredith, **TOWN ATTORNEY**



TOWN COUNCIL AGENDA ITEM NO. 30

REGULAR ITEM

DATE: March 21, 2016

FROM: Theresa Scott, Town Secretary

ITEM: **A Resolution of the Town Council of the Town of Flower Mound Texas, creating a Charter Review Commission approving a charge for the Charter Review Commission, providing that the Town Council shall appoint members to the Charter Review Commission; making findings relative thereto; and providing for an effective date.**

BACKGROUND INFORMATION: The Flower Mound Home Rule Charter was originally adopted on November 3, 1981. It has subsequently been amended five times, and most recently May 2012. There was a Charter Review Commission (CRC) appointed in October of 2013, with a final report presented to Council in February of 2014. The CRC presented various recommendations in relation to policy or future Charter items; however, ultimately recommended no amendments come forward for a Charter election.

The Town Council is required by Charter to begin a review of the Charter every fifth year after 2011. The Council has the option of conducting the review itself, or to appoint a Charter Review Commission (CRC) composed of at least five qualified voters (Section 11.19). If appointed, the Commission would review the Charter and make recommendations to the Town Council for changes to the Charter or recommend that no changes be considered. Amendments to the Charter may be submitted to the voters of the Town in accordance with Texas Election Code.

The topic of having Charter items on the ballot was initially discussed at the February 1, 2016, council meeting with staff direction at the February 15, 2016, meeting to have an agenda item for the March 21, 2016, meeting to establish a Charter Review Commission.

This item presents a resolution to create a Charter Review Commission. The resolution identifies the charge of the commission and establishes the ability of the Town Council to appoint the commission members.

Proposed Timeline/Important Dates:

May 16	Election Canvass
June 6	CRC interim report to Council
Aug. 1	CRC Final report to Council
Aug. 15	Council calls election
Aug. 22	Last day by statute to call election
Nov. 8	Election Day

May							June						
Su	M	Tu	W	Th	F	Sa	Su	M	Tu	W	Th	F	Sa
8	9	10	11	12	13	14	5	6	7	8	9	10	11
15	16	17	18	19	20	21	12	13	14	15	16	17	18
22	23	24	25	26	27	28	19	20	21	22	23	24	25
July							August						
					1	2		1	2	3	4	5	6
3	4	5	6	7	8	9	7	8	9	10	11	12	13
10	11	12	13	14	15	16	14	15	16	17	18	19	20
17	18	19	20	21	22	23	21	22	23	24	25	26	27

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT:

Proposed Expenditure:	Account Number(s):
County Contracts 6,000 (Denton) & 400 (Tarrant): 6,400	100-610-10300
Language Translation: 200	
Newspaper Publications (2): 1,500	
Total: \$8,100	

Finance Review by: N/A

LEGAL REVIEW: Andrea Russell, of Taylor, Olson, Adkins, Sralla, and Elam, has reviewed the resolution as to form and legality.

ATTACHMENTS:

1. Draft Resolution
2. [Link to Town Charter](#)

RECOMMENDATION: Move to approve a resolution of the Town Council of the Town of Flower Mound Texas, creating a Charter Review Commission approving a charge for the Charter Review Commission, providing that the Town Council shall appoint members to the Charter Review Commission; making findings relative thereto; and providing for an effective date.

TOWN OF FLOWER MOUND, TEXAS**RESOLUTION NO. xx-16**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, CREATING A CHARTER REVIEW COMMISSION; APPROVING A CHARGE FOR THE CHARTER REVIEW COMMISSION; PROVIDING THAT THE TOWN COUNCIL SHALL APPOINT MEMBERS TO THE CHARTER REVIEW COMMISSION; MAKING FINDINGS RELATIVE THERETO; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Charter serves as the governing document for the actions of the Town Council and staff, establishes a structure and sets boundaries for the Town, and creates the basic guidelines and principles under which the Town operates; and

WHEREAS, it is the desire of the Town Council to review the Town Charter to ensure public interest is maintained; and

WHEREAS, Section 11.19 of the Charter authorizes the Town Council to appoint a Charter Review Commission composed of at least five qualified voters of the Town; and

WHEREAS, it is the intent of the Town Council to appoint a Charter Review Commission that will serve in an advisory capacity and will undertake a review of the Town Charter \.

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

SECTION 1

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

SECTION 2

The Town Council hereby creates a Charter Review Commission ("Commission") and, the Charter Review Commission is charged as follows:

1. Review and understand the Town Charter in Flower Mound; and
2. Review the book *Texas Home Rule Charters* by Terrell Blodgett and revised by Scott Houston, published by the Texas Municipal League; and
3. Review and discuss any provisions that conflict with state law or any of the Town's Ordinances; and
4. Review and discuss any provisions that would improve efficiencies and/or result in a cost savings for the Town; and
5. Discuss options for processing charter violations; and

6. Review and discuss provisions relating to term limits and consecutive terms for elected officials; and
7. Review and discuss removal of the provisions relating to the Parks, Arts, and Library Services Board; and
8. Identify a process for public review of proposed Charter amendments; and
9. Based upon the Commission's review and the public's input, consider and identify recommendations for amendments to the Town Charter.

Items listed above are not necessarily in order by priority or preference.

SECTION 3

The Town Council shall appoint interested individuals who are qualified voters of the Town to serve on the Commission and may appoint a chair of said Commission. All members shall serve without compensation and at the will of the Town Council.

The following individuals are appointed to serve as members:

1. _Jody Smith, Non-Voting Chair
2. _Amy Wallace_
3. _Tim Trotter____
4. _Robert Rawson_____
5. _Connie Smith_____
6. __ (TBD)_____

SECTION 4

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

PASSED, APPROVED, AND ADOPTED THIS 21ST DAY OF MARCH, 2016

Thomas E. Hayden, Mayor

ATTEST:

Theresa Scott, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Bryn Meredith, Town Attorney

Town Council Future Agenda Items



SCHEDULED	4/4/2016	Presentation	Presentation of Texas Municipal Library Directors Association (TMLDA) "Achievement of Library Excellence" Award
		Presentation	Graduation of Flower Mound Citizens Academy members
		Presentation	Public Works American Public Works Accreditation Presentation
		Consent	Consider approval of an amended Development Agreement for the property located at 4809 Lighthouse Drive; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of the minutes from a regular meeting of the Town Council held on March 21, 2016.
		Consent	Consider approval of the award of Request for Bids Number 2016-38 to Zac Moore Construction and Unlimited Hotel Services, Incorporated to establish an annual unit price contract to provide minor construction and repair activities in an estimated amount of \$200,000; 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.
		Consent	Consider approval of a Professional Services Agreement with Kimley-Horn and Associates, Inc., to provide contract construction administration phase services, associated with the Pintail Pump Station Capacity Improvement project, in the amount of \$67,500.00; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of the CoServ Electric Service and Easement Agreement to provide dual source electric service to the Town's Wastewater Treatment, and authorize the Mayor to execute same on behalf of the Town.
		Consent	Heritage Park Dog Park Change Order 3.
		Consent	Consider approval of the award bid of Bid No. 2016-34 to Saber Development Corporation, for the Long Prairie 12-Inch Water Line project, section 2, in the amount of \$499,551.00; 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."

SCHEDULED	4/4/2016	Regular	Public Hearing to consider adopting on first reading an ordinance of the Town Council of the Town of Flower Mound, Texas, granting to xxxxxxxxxxxx., the right and privilege to operate and maintain the service of solid waste and recycling collection and hauling over, upon, along, and across the present and future streets, alleys, bridges, and public properties of the Town of Flower Mound, Texas; providing regulations for the operation of said service, and all matters incident and related thereto; repealing all conflicting ordinances; providing for a severability clause; and providing for an effective date and publication.
		Regular	Public Hearing to consider a request for a Master Plan Amendment (MPA16-0001 – Hawks Hill QT) to amend Section 3.0, Specific Plans, and Section 4.0, Urban Design Plan, by amending the roof and parapet standards for Specific Plan Area 5 (SPA 5) that apply to the subject property, and to consider adopting an ordinance providing for said amendment. The property is generally located west of Long Prairie Road and south of Waketon Road. (Planning and Zoning Commission recommended by a vote of to at its March 28, 2016, meeting.)
		Regular	Public Hearing to consider a request for a Specific Use Permit No. 443 (SUP16-0001 - Hawks Hill QT) to permit a convenience store with gasoline sales, and to consider adopting an ordinance providing for said amendment. The property is generally located west of Long Prairie Road and south of Waketon Road. (Planning and Zoning Commission recommended by a vote of to at its March 28, 2016, meeting.)
		Regular	Public Hearing to consider an application for a tree removal permit for one (1) specimen tree on property proposed for development at Hawks Hill QT. The property is generally located west of Long Prairie Road and south of Waketon Road. (The Environmental Conservation Commission recommended approval by a vote of 4-2-0 at its March 1, 2016, meeting).
		Regular	Public Hearing to consider a request for a Master Plan Amendment (MPA15-0013 – Parkside at Woodlake, Phase 2) to amend Section 1.0, Land Use Plan, of the Master Plan to change the current land use designation from Medium Density Residential to High Density Residential on approximately 1.0 acre of land, and to consider adopting an ordinance providing for said amendment. The property is generally located south of Rembert Drive and west of Long Prairie Road. (The Planning and Zoning Commission recommended by a vote of to at its March 14, 2016, meeting.)
		Regular	Public Hearing to consider a request for rezoning (ZPD15-0020 – Parkside at Woodlake, Phase 2) to amend Planned Development District No. 132 (PD-132) with Single-Family District-5 (SF-5) uses to include additional land, modify the development standards, and request certain exceptions and modifications to the Code of Ordinances, and to consider adopting an ordinance providing for said amendment. The property is generally located south of Rembert Drive and west of Long Prairie Road. (Planning and Zoning Commission recommended by a vote of to at its March 14, 2016, meeting.)

SCHEDULED	4/4/2016	Regular	Public Hearing to consider an application for a tree removal permit for two (2) specimen trees on property proposed for development at Parkside at Woodlake, Ph. 2. The property is generally located south of Rembert Drive and west of Long Prairie Road. (The Environmental Conservation Commission recommended denial by a vote of 4-2-0 at its March 1, 2016, meeting).
		Regular	Public Hearing to consider a request for a Master Plan Amendment (MPA16-0003 – Lakeside Business District Parking Amendment) to amend Section 4.0, Urban Design Plan, to modify the provision related to “Town Entrance Landscape: Parking” in the Lakeside Business District to add an exception process, and to request the exception for property located at 1001 Lakeside Parkway, and to consider adopting an ordinance providing for said amendment. (The Planning and Zoning Commission recommended by a vote of to at its March 28, 2016, meeting.)
	4/18/2016	Consent	Consider approval of the minutes from a regular meeting of the Town Council held on April 4, 2016.
		Consent	Long Prairie 12-Inch Water Line Section 2 Testing Award.
		Consent	Sheffield Court & Colonial Drive Reconstruction Construction Award.
		Consent	Regency Park Booster Pump Station Change Order 3 and Final Acceptance.
		Consent	Upper Timber Creek Interceptor Phase III (FM 1171 to Hidden Forest Drive) Design Award.
		Consent	Timber Creek Road Improvements.
		Consent	2015-16 Playground Replacements - Timber Creek.
		Regular	Public Hearing to consider adopting on second reading an ordinance of the Town Council of the Town of Flower Mound, Texas, granting to xxxxxxxxxxxx., the right and privilege to operate and maintain the service of solid waste and recycling collection and hauling over, upon, along, and across the present and future streets, alleys,
		Regular	PLACEHOLDER: Amend Ch. 94 Trees
	5/2/2016	Consent	Consider approval of the minutes from a regular meeting of the Town Council held on April 18, 2016.
		Consent	Consider approval of the minutes from a work session of the Town Council held on April 21, 2016.
		Consent	2015 Street Reconstruction Construction Award.
		Consent	2015-16 CIP Amendment 4

SCHEDULED	5/2/2016	Consent	Timber Creek Road Improvements Testing Award.
		Consent	Gerault Game Field Change Order 1 and Final Acceptance.
		Consent	Forest Vista Reconstruction Phase I Testing Award.
		Consent	Forest Vista Reconstruction Phase I Construction Award.
		Consent	Shady Point Acres Water Line Replacement Design Award.
		Consent	Raintree 12-Inch Water Line Change Order 1 and Final Acceptance.
	5/16/2016	Consent	Consider approval of the minutes from a regular meeting of the Town Council held on May 2, 2016.
		Consent	Consider approval of an ordinance canvassing and declaring the results of a general/special 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.
		Consent	FM 2499 @ Lakeside Intersection Improvements Final Acceptance.
		Consent	2015 Street Reconstruction Testing Award.
		Consent	Western Pump Station Change Order 9 and Final Acceptance.
	6/6/2016	Consent	Consider approval of the minutes from a regular meeting of the Town Council held on May 16, 2016.
		Consent	Consider approval of the minutes from a work session of the Town Council held on May 19, 2016.
		Consent	FM 2499 / Gerault Drainage and Intersection Construction Award.
		Consent	FM 2499 12-Inch Water Line Phase III Construction Award.
		Consent	Heritage Park Phase III Design Award.
		Consent	Individual Park Improvements (Glenwick Park Bridge) Construction Award.
		Consent	Consider approval of final acceptance of the Heritage Park of Flower Mound Phase II project, Dog Park section, and authorization for final payment to 2L Construction, LLC., in the amount of \$46,417.34.
	6/10/2016	Presentation	PLACEHOLDER: Tentative Strategic Planning Session of the Town Council
	6/20/2016	Consent	Oak Street Lift Station and Force Main Final Acceptance.

SCHEDULED	6/20/2016	Consent	FM 2499 12-Inch Water Line Phase III Testing Award.
	7/18/2016	Consent	Professional Engineering Services Selection.
		Consent	Material Testing Services Selection.
FUTURE		Consent	Consider adoption of an ordinance granting to Oncor Electric Delivery Company LLC, its successors and assigns, an electric power franchise to use the present and future streets, alleys, highways, public utility easements, public ways and public property of the Town of Flower Mound, Texas, providing for compensation therefor, providing for an effective date and a term of said franchise, providing for written acceptance of this franchise, providing for the repeal of all existing franchise ordinances to Oncor Electric Delivery Company LLC, its predecessors and assigns, and finding that the meetings at which this ordinance is passed is open to the public.
		Consent	FM 2499 @ FM 3040 Water Line Replacement Construction Award.
		Consent	FM 2499 @ FM 3040 Water Line Replacement Testing Award.
		Consent	Bakersfield Bridge Erosion Construction Award.
		Regular	Tree Removal Permit- The Conservatory