

## AGENDA

### FLOWER MOUND TOWN COUNCIL REGULAR MEETING

JULY 18, 2016

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

6:00 P.M.

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An agenda information packet is available online at [www.flower-mound.com/AgendaCenter](http://www.flower-mound.com/AgendaCenter)

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*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. PRESENTATIONS**

1. Certificate of Achievement awarded to Eagle Scout Austin Carr.
2. Update on Parker Square

**E. 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.

**F. ANNOUNCEMENTS**

1. Announce recent and upcoming civic and social events.

**G. 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 town hall and library expansion.

## **H. 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).

## **I. COORDINATION OF CALENDARS**

1. The Strategic Planning Session is scheduled for Fri, July 22<sup>nd</sup> (5pm start), with a tentative overflow date of Sat, July 23<sup>rd</sup> (9am start) and to be held at the Town's Operations & Maintenance facility located at 201 Spinks Rd.
2. The next regular Town Council meeting is scheduled for Thursday, August 4<sup>th</sup>.
3. Consider canceling or rescheduling the January 2 & January 16, 2017, Town Council regular meetings to January 17, 2017.
4. Confirm availability for Tuesday, September 6<sup>th</sup> rescheduled Town Council meeting.

## **J. 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 6/20** - Consider approval of the minutes from a regular meeting of the Town Council held on June 20, 2016.
2. **Oncor franchise ordinance** - Consider approval of the second reading of an ordinance granting a non-exclusive electric franchise to Oncor Electric Delivery Company LLC; and authorization for the Mayor to execute the same on behalf of the Town.
3. **Property tax collection** - Consider the approval of an amendment to the contract with Elsey & Elsey, Attorneys at Law for the collection of outstanding property taxes.
4. **Engineering and geotechnical services** - Consider approval of fifteen engineering firms to provide professional engineering services and four geotechnical engineering firms to provide professional material testing services for the Town for a two-year term ending July 18, 2018.
5. **FM 2499 12-Inch Water Line** - Consider approval of the award bid of Bid No. 2016-67 to Wildstone Construction, LLC, to construct section two of the FM 2499 12-Inch Water Line Phase III project, in the amount of \$373,385.00; and authorization for the Mayor to execute same on behalf of the Town.
6. **Lakeside DA** - Consider approval of a Development Agreement for Lakeside DFW Land, Ltd., and authorization for the Mayor to execute same on behalf of the Town.

7. **Valley View Lane utility easement** - Consider approval of an ordinance for the partial abandonment of an existing utility easement located along the south property line of 3812 Valley View Lane.
8. **Wastewater Treatment Plant** - Consider approval of the purchase of materials and services identified in RFP No. TCPN-SWIII-10-5293 by Brown & Root Industrial Services, LLC., for Clarifier No. 1, of the Wastewater Treatment Plant Final Clarification Rehabilitation project, in the amount of \$308,557.00.
9. **Drainage Easement** - Consider approval of a Drainage Easement Dedication Agreement between the Department of the Army and the Town of Flower Mound; and authorize the Mayor to execute same on behalf of the Town.
10. **Lakeside Parkway 380** - Consider approval of Estoppel Certificate and Confirmation and Amendment Regarding 380 and Tax Abatement Agreement for property located at 2000 and 2010 Lakeside Parkway; and authorize Mayor to execute same on behalf of the Town.

**K. REGULAR ITEMS**

**11. Ivy Estates (Z16-0003)**

**Public Hearing**

Public Hearing to consider a request for rezoning (Z16-0003 - Ivy Estates, Lot 2, Block A) from Single-Family District-30 (SF-30) uses to Single-Family District-10 (SF-10) uses, and to consider adopting an ordinance providing for said amendment. The property is generally located south of Rembert Drive and north of Lismore Drive. *(The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its July 11, 2016, meeting.)*

12. **Charter report** - Charter Review Commission Final Report, including council direction on proposed Charter amendment recommendations.

**L. 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 Transportation Commission.

**M. CLOSED MEETING**

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

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- a. Discuss and consider resignations, appointments, evaluations, reassignments, discipline, or dismissals for the following boards or commissions: **Board of Adjustment/Oil & Gas Board of Appeals, Community Development Corporation, Planning and Zoning Commission.**
- b. Deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the Municipal Court Judge.
- c. Discuss and consider economic development incentives, including retail centers, corporate relocation/expansion/retention, hospitality projects, and performance related to certain incentive agreements.
- d. 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.

### **N. 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.

### **O. 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: July 15, 2016, at 11:35 a.m. at least 72 hours prior to the scheduled time of said meeting.



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Theresa Scott, Town Secretary



## TOWN COUNCIL AGENDA ITEM NO. 1

### CONSENT ITEM

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**DATE:** July 18, 2016  
**FROM:** Theresa Scott, Town Secretary  
**ITEM:** Consider approval of the minutes from a regular meeting of the Town Council held on June 20, 2016.

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**BACKGROUND INFORMATION:** The Town Council held a regular meeting on June 20, 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 June 20, 2016.

**THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 20TH DAY OF JUNE, 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                 |
| Kevin Bryant   | Mayor Pro Tem         |
| Jason Webb     | Councilmember Place 1 |
| Don McDaniel   | Councilmember Place 4 |
| Itamar Gelbman | Councilmember Place 5 |

With the following members absent:

|            |                      |
|------------|----------------------|
| Bryan Webb | Deputy Mayor Pro Tem |
|------------|----------------------|

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                 |
| Doug Powell     | Executive Director of Development Services |
| Tiffany Bruce   | Engineering Manager                        |

**A. CALL REGULAR MEETING TO ORDER**

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

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

Mayor Hayden gave the invocation and led the pledges.

**D. PRESENTATIONS**

**1. Proclamation for National Parks and Recreation Month**

Chuck Jennings, Director of Parks and Recreation, introduced Parks staff, and provided background information about various park facilities and programs underway, and accepted the Proclamation.

**2. Certificate of Achievement to Sam White for National Archery in the Schools Program All-Star Team**

Mr. White provided background information about his achievement in the archery program and accepted the Certificate of Achievement.

**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.*

|    | <b>Speaker names and address</b>   | <b>Subject<br/>(as written on speaker form)</b> |
|----|------------------------------------|-------------------------------------------------|
| 1. | Baldit Singh, 2201 Long Prairie Rd | Roar 4 Change                                   |
| 2. | Jason Hitt, 912 Wood Duck Way      | Renaming Park for Linda Martin                  |
| 3. | Janvier Scott, 2829 Bob White Ln   | Donating time to Jason Hitt                     |
| 4. | Shyron Shenko, 5001 Rippy Rd       | Linda Martin                                    |

**F. ANNOUNCEMENTS**

Mayor Pro Tem Bryant announced the Charter Review Commission public hearing dates of June 21 and June 30. He also announced appreciation for those who organized and participated in the recent wounded warrior basketball game event at the YMCA.

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

1. Report related to capital improvement projects

Mr. Stathatos provided an update on the following CIP Projects:

- Due to the amount of rain experienced there are no project update reports.

2. Economic Development projects

Mr. Stathatos provided an update on the following ED Projects:

- Flower Mound was recently named one of 34 economic development organizations in the state to be awarded the Texas Economic Development Council Certificate of Achievement for Economic Excellence.
- The entrepreneur center will be opening soon
- The business of Main Freight is now open

3. Update and discussion on town hall and library expansion.

Mr. Stathatos provided an update on these two projects noting that background information has been provided to Council.

Mayor Hayden reported that there was a meeting about the TIRZ today with Commissioners Eads and Mitchell, as well as TIRZ Chair Jeff Tasker, and various Town staff to talk about initial plans and get feedback on these or other projects. He noted the next step will be to have a joint TIRZ Board and Council meeting to discuss and gather input.

## **H. FUTURE AGENDA ITEMS**

There were no items brought forward for future agenda items.

## **I. COORDINATION OF CALENDARS AND FUTURE AGENDAS/MEETINGS**

1. Mayor Hayden announced the following future Council meeting dates:
  - The next regular Town Council meeting is scheduled for July 18<sup>th</sup>
  - The July 21 work session has been canceled
  - The Strategic Planning Session is scheduled for Fri, July 22<sup>nd</sup> (5pm start), with a tentative overflow date of Sat, July 23<sup>rd</sup> (9am start) and to be held at the Town's Operations & Maintenance facility located at 201 Spinks Rd

## **J. CONSENT ITEMS**

1. Consider approval of the minutes from a regular meeting of the Town Council held on June 6, 2016.

**RECOMMENDATION:** Move to approve the minutes from a regular meeting of the Town Council held on June 6, 2016.

2. Consider approval of the engagement letter with Pattillo, Brown & Hill, L.L.P., to perform external auditing services for the fiscal year ending September 30, 2016; and authorization for the Mayor to execute same on behalf of the Town.

**RECOMMENDATION:** Move to approve the engagement letter with Pattillo, Brown & Hill, L.L.P., to perform external auditing services for the fiscal year ending September 30, 2016; and authorization for the Mayor to execute same on behalf of the Town.

3. Consider approval of a resolution designating all funds collected and received through the Flower Mound Log Cabin Fund for the purpose of restoring the log cabin and maintaining the log cabin park.

**RECOMMENDATION:** Move to approve a resolution designating all funds collected and received through the Flower Mound Log Cabin Fund for the purpose of restoring the log cabin and maintaining the log cabin park.

### **RESOLUTION NO. 13 -16**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS DESIGNATING ALL FUNDS COLLECTED AND RECEIVED THROUGH THE FLOWER MOUND LOG CABIN FUND FOR THE PURPOSE OF THE RESTORING, MAINTAINING AND REPAIRING THE GIBSON-GRANT LONG PRAIRIE LOG CABIN SITE; AND PROVIDING AN EFFECTIVE DATE.**

4. 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, No. 09-16 and No. 13-16 for an adjustment to the General Fund and the Vehicle and Equipment Replacement 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, No. 04-16, No. 09-16 and No. 13-16 for an adjustment to the General Fund and the Vehicle and Equipment Replacement Fund.

**ORDINANCE NO. 29-16**

**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, 04-16, 09-16 and 13-16, BY PROVIDING FOR ADJUSTMENTS TO THE GENERAL FUND AND VEHICLE AND EQUIPMENT REPLACEMENT 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.**

5. Consider approval of an ordinance adopting Atmos Energy Corp., Mid-Tex Division's rate tariffs that reflect the negotiated rate change pursuant to the Rate Review Mechanism process.

**RECOMMENDATION:** Move to approve an ordinance adopting Atmos Energy Corp., Mid-Tex Division's rate tariffs that reflect the negotiated rate change pursuant to the Rate Review Mechanism process.

**ORDINANCE NO. 30 -16**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, APPROVING A NEGOTIATED SETTLEMENT BETWEEN THE ATMOS CITIES STEERING COMMITTEE ("ACSC") AND ATMOS ENERGY CORP., MID-TEX DIVISION REGARDING THE COMPANY'S 2016 RATE REVIEW MECHANISM FILINGS; DECLARING EXISTING RATES TO BE UNREASONABLE; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT; FINDING THE RATES TO BE SET BY THE SETTLEMENT TARIFFS TO BE JUST AND REASONABLE AND IN THE PUBLIC INTEREST; REQUIRING THE COMPANY TO REIMBURSE ACSC'S REASONABLE RATEMAKING EXPENSES; DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; ADOPTING A SAVINGS CLAUSE; DECLARING AN EFFECTIVE DATE; AND REQUIRING DELIVERY OF THIS ORDINANCE TO THE COMPANY AND THE ACSC'S LEGAL COUNSEL.**

6. Consider approval of the first reading of an ordinance granting a non-exclusive electric franchise to Oncor Electric Delivery Company LLC; and authorization for the Mayor to execute the same on behalf of the Town.

**RECOMMENDATION:** Move to approve the first reading of an ordinance granting a non-exclusive electric franchise to Oncor Electric Delivery Company LLC; and authorization for the Mayor to execute the same on behalf of the Town.

7. Consider approval of the purchase of one 2017 Velocity PUC Pumper truck for the Fire and Emergency Services Department from Siddons-Martin Emergency Group, through the Houston-Galveston Area Council of Governments (H-GAC) cooperative purchasing program, in the total amount of \$595,137.00; and authorization for the Mayor to execute same on behalf of the Town.

**RECOMMENDATION:** Move to approve the purchase of one 2017 Velocity PUC Pumper truck for the Fire and Emergency Services Department from Siddons-Martin Emergency Group, through the Houston-Galveston Area Council of Governments (H-GAC) cooperative purchasing program, in the total amount of \$595,137.00; and authorization for the Mayor to execute same on behalf of the Town.

8. Consider approval of an ordinance amending Chapter 38 of the code of ordinances, entitled "Fire Prevention and Protection" to provide for adoption of the International Fire Code, 2015 edition and local amendments thereto.

**RECOMMENDATION:** Move to approve an ordinance amending Chapter 38 of the code of ordinances, entitled "Fire Prevention and Protection" to provide for adoption of the International Fire Code, 2015 edition and local amendments thereto.

#### **ORDINANCE NO. 31 -16**

**AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 38 OF THE CODE OF ORDINANCES, ENTITLED "FIRE PREVENTION AND PROTECTION" TO PROVIDE FOR ADOPTION OF THE INTERNATIONAL FIRE CODE, 2015 EDITION AND LOCAL AMENDMENTS THERETO: REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

9. Consider approval of an ordinance amending Chapter 14, "Buildings and Building Regulations," Article II of the Code of Ordinances of the Town of Flower Mound, by amending Section 14-31,"International Building Code", and by adopting the 2015 edition of the International Building Code with amendments.

**RECOMMENDATION:** Move to approve an ordinance amending Chapter 14, "Buildings and Building Regulations," Article II of the Code of Ordinances of the Town of Flower Mound, by amending Section 14-31, "International Building Code", and by adopting the 2015 edition of the International Building Code with amendments.

**ORDINANCE NO. 32 -16**

**AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 14, "BUILDINGS AND BUILDING REGULATIONS," ARTICLE II, OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TO PROVIDE FOR THE ADOPTION OF THE 2015 EDITION OF THE INTERNATIONAL BUILDING CODE AND LOCAL AMENDMENTS THERETO; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.**

10. Consider approval of an ordinance amending Chapter 14, "Buildings and Building Regulations," Article III of the Code of Ordinances of the Town of Flower Mound, by adopting the 2015 edition of the International Plumbing Code and by adopting the 2015 edition of the International Fuel Gas Code together and local amendments to such codes.

**RECOMMENDATION:** Move to approve an ordinance amending Chapter 14, "Buildings and Building Regulations," Article III of the Code of Ordinances of the Town of Flower Mound, by adopting the 2015 edition of the International Plumbing Code and by adopting the 2015 edition of the International Fuel Gas Code together and local amendments to such codes.

**ORDINANCE NO. 33 -16**

**AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 14, "BUILDINGS AND BUILDING REGULATIONS," ARTICLE III, OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TO PROVIDE FOR ADOPTION OF THE INTERNATIONAL PLUMBING CODE, 2015 EDITION, AND THE INTERNATIONAL FUEL GAS CODE, 2015 EDITION AND LOCAL AMENDMENTS THERETO; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

11. Consider approval of an ordinance amending Chapter 14, "Buildings and Building Regulations," Article IV, of the Code of Ordinances of the Town of Flower Mound, by adopting the 2015 edition of the International Mechanical Code and local amendments thereto.

**RECOMMENDATION:** Move to approve an ordinance amending Chapter 14, "Buildings and Building Regulations," Article IV, of the Code of Ordinances of the Town of Flower Mound, by adopting the 2015 edition of the International Mechanical Code and local amendments thereto.

**ORDINANCE NO. 34 -16**

**AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 14, "BUILDINGS AND BUILDING REGULATIONS," ARTICLE IV, OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TO PROVIDE FOR ADOPTION OF THE INTERNATIONAL MECHANICAL CODE, 2015 EDITION, AND LOCAL AMENDMENTS THERETO; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

12. Consider approval of an ordinance amending Chapter 14, "Buildings and Building Regulations," Article XIV, of the Code of Ordinances of the Town of Flower Mound, by adopting the 2015 edition of the International Residential Code and local amendments thereto.

**RECOMMENDATION:** Move to approve an ordinance amending Chapter 14, "Buildings and Building Regulations," Article XIV, of the Code of Ordinances of the Town of Flower Mound, by adopting the 2015 edition of the International Residential Code and local amendments thereto.

**ORDINANCE NO. 35 -16**

**AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 14, "BUILDINGS AND BUILDING REGULATIONS," ARTICLE XIV, OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TO PROVIDE FOR ADOPTION OF THE INTERNATIONAL RESIDENTIAL CODE, 2015 EDITION, AND LOCAL AMENDMENTS THERETO; PROVIDING THAT THE BOARD OF ADJUSTMENT SHALL BE THE BOARD OF APPEALS FOR PURPOSES SET OUT HEREIN; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

13. Consider approval of an ordinance amending Chapter 14, "Buildings and Buildings Regulations," Article XV, of the Code of Ordinances of the Town of Flower Mound, by adopting the 2015 edition of the International Energy Conservation Code and local amendments thereto.

**RECOMMENDATION:** Move to approve an ordinance amending Chapter 14, "Buildings and Buildings Regulations," Article XV, of the Code of Ordinances of the Town of Flower Mound, by adopting the 2015 edition of the International Energy Conservation Code and local amendments thereto.

**ORDINANCE NO. 36 -16**

**AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 14, "BUILDINGS AND BUILDING REGULATIONS," ARTICLE XV, OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TO PROVIDE FOR ADOPTION OF THE INTERNATIONAL ENERGY CONSERVATION CODE, 2015 EDITION, AND LOCAL AMENDMENTS THERETO; PROVIDING THAT THE BOARD OF ADJUSTMENT SHALL BE THE BOARD OF APPEALS FOR PURPOSES SET OUT HEREIN; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

14. Consider approval of an agreement releasing a Temporary Construction Easement executed by Lakeside DFW Land, Ltd. for the purpose of construction activities for Lakeside Parkway, and consider adopting an ordinance providing for said release.

**RECOMMENDATION:** Move to approve an agreement releasing a Temporary Construction Easement executed by Lakeside DFW Land, Ltd. for the purpose of construction activities for Lakeside Parkway, and consider adopting an ordinance providing for said release.

15. Consider approval of an agreement releasing a Right-of-Way Easement executed by D.E. Box Estate for the purpose of construction of a water line within the Lakeside DFW development, and consider adopting an ordinance providing for said release.

**RECOMMENDATION:** Move to approve an agreement releasing a Right-of-Way Easement executed by D.E. Box Estate for the purpose of construction of a water line within the Lakeside DFW development, and consider adopting an ordinance providing for said release.

16. Consider approval of Amendment No. 5 to the Fiscal Year 2015-2016 Capital Improvement Program.

**RECOMMENDATION:** Move to approve amendment No. 5 to the Fiscal Year 2015-2016 Capital Improvement Program.

17. Consider approval of final acceptance of the Individual Parks Improvement (Gerault Game Field) project; authorization for final payment to Brownstone Companies, LLC, in the amount of \$11,081.25; and authorization for the Mayor to execute the same on behalf of the Town.

**RECOMMENDATION:** Move to approve the final acceptance of the Individual Parks Improvement (Gerault Game Field) project; authorization for final payment to Brownstone Companies, LLC, in the amount of \$11,081.25; and authorization for the Mayor to execute the same on behalf of the Town.

18. Consider approval to award Bid No. 2016-63 to Humphrey & Morton Construction Co., Inc., for the construction of the Bakersfield Park Pedestrian Bridge project, in the amount of \$252,492.00; and authorization for the Mayor to execute same on behalf of the Town.

**RECOMMENDATION:** Move to approve award Bid No. 2016-63 to Humphrey & Morton Construction Co., Inc., for the construction of the Bakersfield Park Pedestrian Bridge project, in the amount of \$252,492.00; and authorization for the Mayor to execute same on behalf of the Town.

19. Consider approval to award Bid No. 2016-66 to Mountain Cascade of Texas, LLC., for the construction of the FM2499/FM3040 24-inch Waterline Crossing Replacement project, in the amount of \$442,210.00; and authorization for the Mayor to execute same on behalf of the Town.

**RECOMMENDATION:** Move to approve award Bid No. 2016-66 to Mountain Cascade of Texas, LLC., for the construction of the FM2499/FM3040 24-inch Waterline Crossing Replacement project, in the amount of \$442,210.00; and authorization for the Mayor to execute same on behalf of the Town.

20. Consider approval of the Professional Services Agreement with Criado and Associates, Inc., to provide professional engineering services, for the Yucca Drive and Woodbine Street Reconstruction projects, at an amount not to exceed \$181,249.00; and authorization for the Mayor to execute same on behalf of the Town.

**RECOMMENDATION:** Move to approve the Professional Services Agreement with Criado and Associates, Inc., to provide professional engineering services, for the Yucca Drive and Woodbine Street Reconstruction projects, at an amount not to exceed \$181,249.00; and authorization for the Mayor to execute same on behalf of the Town.

21. Consider approval of an Intergovernmental Cooperative/Mutual Aid Agreement for Operational Assistance in Providing Security for the 2016 Republican National Convention in Cleveland, Ohio.

**RECOMMENDATION:** Move to approve an Intergovernmental Cooperative/Mutual Aid Agreement for Operational Assistance in Providing Security for the 2016 Republican National Convention in Cleveland, Ohio.

Councilmember Jason Webb moved to approve by consent Items 1 – 21. 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: J WEBB, MCDANIEL, BRYANT, GELBMAN**

**NAYS: NONE**

**ABSENT: B WEBB**

**K. REGULAR ITEMS**

22. Consider approval of a resolution approving and authorizing publication of notice of intention to issue Certificates of Obligation, Series 2016, in the principal amount not to exceed \$13,950,000.

**Staff Presentation**

Ms. Wallace provided background information related to the purpose of this item, including the projects involved.

Mayor Hayden offered an explanation relative to the process of issuing the certificates of obligation, noting it's basically restoring the reserves (and for the projects funded last year).

Mayor Pro Tem Bryant moved to approve a resolution approving and authorizing publication of notice of intention to issue Certificates of Obligation, Series 2016, in the principal amount not to exceed \$13,950,000. Councilmember McDaniel seconded the motion.

**RESOLUTION NO. 14-16**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, APPROVING AND AUTHORIZING PUBLICATION OF NOTICE OF INTENTION TO ISSUE CERTIFICATES OF OBLIGATION.**

**VOTE ON MOTION:**

*Motion passed*

**AYES: GELBMAN, BRYANT, MCDANIEL, J WEBB**

**NAYS: NONE**

**ABSENT: B WEBB**

23. Discuss and consider a resolution of the Flower Mound Town Council affirming its support for the LISD in seeking fair and appropriate methods for educating local students.

**Staff Presentation**

Ms. Kristi Hassett, LISD Board of Trustees

Ms. Hassett pointed out several problems associated with the STAAR testing program.

Ms. Hassett responded to questions from Council as follows:

- What does the financial picture look like and is there any recourse for LISD

- What has changed that caused the problem of grading a test to be such an impossible task
- Has there been feedback from Austin that they are listening

Mayor Pro Tem Bryant read the Resolution in its entirety.

Mayor Pro Tem Bryant moved to approve a resolution of the Flower Mound Town Council affirming its support for the LISD in seeking fair and appropriate methods for educating local students and Councilmember Gelbman seconded the motion.

#### **RESOLUTION NO. 15-16**

**A RESOLUTION OF THE TOWN OF FLOWER MOUND, TEXAS, AFFIRMING ITS SUPPORT FOR THE LEWISVILLE INDEPENDENT SCHOOL DISTRICT IN SEEKING FAIR AND APPROPRIATE METHODS FOR EDUCATING LOCAL STUDENTS; AND PROVIDING AN EFFECTIVE DATE.**

**VOTE ON MOTION:**

*Motion passed*

**AYES: J. WEBB, MCDANIEL, BRYANT, GELBMAN**

**NAYS: NONE**

**ABSENT: B. WEBB**

24. Consider a request for a Record Plat (RC16-0005 – Longhorn Addition) to create a residential subdivision, with an exception to allow residential access from a rural collector pursuant to Section 82-134 of the Code of Ordinances. The property is generally located east of Scenic Drive and south of Kensington Court. *(The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its June 13, 2016, meeting.)*

**Staff Presentation**

Mr. Powell gave a presentation identifying or noting:

- General and detailed location
- Land use and zoning
- Photographs of the subject plat
- Record plat and the purpose of the exception

Mr. Powell responded to questions from Council as follows:

- If the property is part of the Kensington HOA
- Has anyone contacted staff with concerns
- What will happen to the livestock on the property

Councilmember Gelbman moved to approve a request for a Record Plat (RC16-0005 – Longhorn Addition) to create a residential subdivision, with an exception to allow residential access from a rural collector pursuant to Section 82-134 of the Code of Ordinances. The property is generally located east of Scenic Drive and south of Kensington Court, and Councilmember McDaniel seconded the motion.

**VOTE ON MOTION:**

*Motion passed.*

**AYES: GELBMAN, BRYANT, MCDANIEL, J WEBB**

**NAYS: NONE**

**ABSENT: B WEBB**

**L. BOARDS/COMMISSIONS (Executive Conference Room)**

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

No action taken.

**M./N. CLOSED/OPEN MEETING**

The Town Council convened into a closed meeting at 6:56 p.m. on June 20, 2016, 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 and reconvened into an open meeting at 8:08 p.m. on June 20, 2016, to take action on the items as follows:

- a. Discuss and consider resignations, appointments, evaluations, reassignments, discipline, or dismissals for the following boards or commissions: **Board of Adjustment/Oil & Gas Board of Appeals**, Community Development Corporation, **Planning and Zoning Commission**.

No action taken.

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

No action taken.

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

No action taken.

- d. Consultation with Attorney as follows:

- 1. Cause No. 2010-40418-362; *Keystone Exploration, Ltd. and Expro Engineering, Inc. v. The Town of Flower Mound and the Flower Mound Oil and Gas Board of Appeals*; in the 442<sup>nd</sup> Judicial District Court of Denton County, Texas

2. Cause No. CV-2012-01997; *State Farm Mutual Automobile Insurance Company, as subrogee of Sandra Terrell v. Town of Flower Mound*; in the County Court at Law No. 2 of Denton County, Texas

3. Cause No. 15-01176-158; *GTE Southwest, Inc. d/b/a Verizon Southwest v. Town of Flower Mound*; in the 158th Judicial District Court of Denton County, Texas

4. Cause No. 2012-40480-362; *Lanette Williams a/n/f A.W., a Minor Child vs. Town of Flower Mound*; in the 362nd District Court of Denton County, Texas

5. Case No. 6:16CV103 MHS/KNM; *Victor Vega #1447025 v. Town of Flower Mound, Chief of Police, and Martha Kotila*; in the United States District Court for the Eastern District of Texas, Tyler Division

No action taken.

**O. ADJOURN REGULAR MEETING**

Mayor Hayden adjourned the meeting at 8:08 p.m. on Monday, June 20, 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:** July 18, 2016

**FROM:** Kay Wilkinson, Budget and Grants Manager

**ITEM:** Consider approval of the second reading of an ordinance granting to a non-exclusive electric franchise to Oncor Electric Delivery Company LLC; and authorization for the Mayor to execute the same on behalf of the Town.

**BACKGROUND INFORMATION:** The proposed ordinance will extend the existing electric franchise with Oncor Electric Delivery Company LLC. The original electric franchise agreement was passed on April 12, 1961. On August 7, 2006 Council approved an extension for the agreement that expired on March 31, 2016. After months of negotiations, Town staff and Oncor representatives have arrived at a mutually agreeable franchise. The final payment under this franchise agreement is due on or before January 1, 2036.

The original franchise fee factor calculated for the Town in 2002 was 0.003031 (the Base Factor) multiplied by each kilowatt hour of electricity delivered by Oncor Electric Delivery Company LLC to each retail customer whose consuming facility's point of delivery is located within the Town's municipal boundaries. In 2006 the factor was increased to 0.003183 (the Current Factor). However, should the Public Utility Commission of Texas at any time disallow Oncor's recovery through rates of the higher franchise payments made under the Current Factor as compared to the Base Factor, then the franchise fee factor shall immediately revert to the Base Factor of 0.003031 and all future payments will be made using the Base Factor. The Town will also receive a sum equal to four percent of gross revenues received by Oncor Electric Delivery Company LLC from services identified as discretionary service charges.

Per the Town Charter, franchise ordinances must be considered at two readings of regularly scheduled meetings of the Town Council. The first reading was at the Council meeting on June 20, 2016. This is the second and final reading.

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

**ALTERNATIVES/OPTIONS:** N/A

**FISCAL IMPACT:** Electric Franchise Fees

| Proposed Receipts/Collections:            | Account Number(s): |
|-------------------------------------------|--------------------|
| Estimated revenues for FY15-16: \$890,000 | 100-4122           |

**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 ordinance as to form and legality.

**ATTACHMENTS:** Oncor Franchise Agreement

**RECOMMENDATION:** Move to approve the second reading of an ordinance granting a non-exclusive electric franchise to Oncor Electric Delivery Company LLC; and authorization for the Mayor to execute the same on behalf of the Town.

**ORDINANCE NO. \_\_\_\_\_**

**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 OTHER PUBLIC PROPERTY (PUBLIC RIGHTS-OF-WAY) OF FLOWER MOUND, TEXAS, PROVIDING FOR THE REPEAL OF ALL PRIOR FRANCHISE ORDINANCES TO ONCOR ELECTRIC DELIVERY COMPANY LLC, ITS PREDECESSORS AND ASSIGNS, PROVIDING FOR COMPENSATION THEREFOR, PROVIDING FOR AN EFFECTIVE DATE AND A TERM OF SAID FRANCHISE, PROVIDING FOR WRITTEN ACCEPTANCE OF THIS FRANCHISE, AND FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC.**

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

**SECTION 1**  
**GRANT OF AUTHORITY**

A. The Town of Flower Mound, Texas ("Town") hereby grants to Oncor Electric Delivery Company LLC, its successors and assigns (herein called "Company"), the right, privilege and franchise to construct, extend, maintain and operate in, along, under and across the present and future streets, alleys, highways, public utility easements, public ways, and other public property ("Public Rights-of-Way") of Flower Mound, electric power lines, with all necessary or desirable appurtenances (including underground conduits, poles, towers, wires, transmission lines and other structures, and telephone and communication lines solely for Company's own use), for the purpose of delivering electricity to the Town, the inhabitants thereof, and persons, firms and corporations beyond the corporate limits thereof, for the term set out in Section 10, subject to this consent by the Town in accordance with Texas Utilities Code, Section 181.043 and in accordance with the Public Utility Regulatory Act (PURA) and all other applicable laws, rules, and regulations.

B. The provisions set forth in this ordinance represent the terms and conditions under which Company shall construct, operate, and maintain its system facilities within the Public Rights-of-Way of the Town. This franchise agreement shall in no way affect or impair the rights, obligations or remedies of the parties under PURA, other state, local, or federal laws, rules or regulations, or the Texas Constitution. Nothing herein shall be deemed a waiver, release or relinquishment of either party's right to contest, appeal, or file suit with respect to any action or decision of the other party, including ordinances adopted by the Town, that Company believes is in violation of any federal, state, or local laws, rules or regulations. The Town shall provide Company notice and opportunity to review and comment upon proposed ordinances relating to the Public Rights-of-Way.

C. This Franchise does not grant to the Company the right, privilege or authority to engage in any other activities within the Town other than as specified in this Franchise.

## **SECTION 2**

### **USE OF PUBLIC RIGHTS-OF-WAY**

A. The poles, towers and other structures shall be so erected as not to unreasonably interfere with traffic over streets, alleys and highways.

B. Company shall, except in cases of (i) emergency conditions or (ii) routine maintenance and repair of facilities that do not involve any of the following (a) cutting or breaking of pavement or (b) closure of traffic lane for longer than 24 hours or (c) boring or (d) excavation greater than 100 cubic feet or (iii) connection of real property to a utility service on the same side of the Public Rights-of-Way if connection does not require a pavement cut in the Public Rights-of-Way or (iv) replacement of a single damaged pole and associated work within a ten (10) foot radius of the damaged pole or (v) installation of aerial lines on less than 11 existing poles or installation of aerial lines on less than 11 new poles, provide Town reasonable advance notice, and obtain a permit, (if required by Town Ordinance), prior to performing work in the Public Rights-of-Way, except in no instance shall Company be required to pay fees or bonds related to its use of the Public Rights-of-Way, despite the Town's enactment of any ordinance providing the contrary. Company shall construct and maintain its facilities in conformance with the applicable provisions of the National Electrical Safety Code or such comparable standards as may be adopted, and in a good and workmanlike manner.

C. The Town retains the right to make visual, non-invasive inspections of the Company's facilities and upon reasonable notice and request, to require the Company to make available for inspection available records or data to demonstrate its current compliance with the terms of this Franchise.

D. The location of Company's facilities in the Public Rights-of-Way shall be subject to approval by the Town Manager or the Town Manager's designated representative (the "Manager") prior to construction; provided however, said approval shall not be unreasonably withheld. This approval will be obtained through the Town's permitting process (if required by Town Ordinance). In the event of a conflict between the location of the proposed facilities of Company and the locations of the facilities of Town or other Public Rights-of-Way users which exist or have been authorized by the Town, the Manager shall resolve the conflict and determine the location of the respective facilities within the Town's Public Rights-of-Way. To avoid a facilities location conflict, the Manager will designate a reasonable alternate location within the Town's Public Rights-of-Way for Company's facilities if a reasonable alternate location exists. The Company will use reasonable efforts to work with the Town to avoid installing its facilities in park or Town property other than utility easements or street,

alley, or highway Right-of-Way. Company has the right to request Town Council review of this or any actions concerning Company's use of the Public Rights-of-Way. Company also has the right to request review of any Town action by any court or regulatory agency having jurisdiction.

E. The Company shall restore at the Company's expense, all work within the Town Rights-of-Way, to a condition equally as good as it was immediately prior to being disturbed by Company's construction, excavation, repair or removal or to a condition agreed upon by Town and Company. If Town or Company believe that there are extenuating circumstances that do not allow for restoration of all work within the Town Rights-of-Way to a condition equally as good as it was immediately prior to being disturbed by Company, Town and Company will negotiate an alternative restoration plan (in writing) to remedy the situation. Absent an agreement to an alternative restoration plan, either party has a right to request review of the matter by any court or regulatory agency having jurisdiction.

F. Company shall cooperate with the Town in providing information regarding the location of current and future overhead and underground wires and poles within Town's Public Rights-of-Way. Reproducible copies of maps showing the location of all overhead and underground wires and poles within the Public Rights-of-Way shall be furnished to the Town upon reasonable request, if available. The maps shall be provided in electronic digital format, if available.

### **SECTION 3**

### **RELOCATION AND ABANDONMENT**

The Town reserves the right to lay, and permit to be laid, storm, sewer, gas, water, wastewater and other pipe lines, cables, and conduits, or other improvements or to do and permit to be done any underground or overhead work that Town in its sole discretion determines may be necessary or proper in, across, along, over, or under Public Rights-of-Way occupied by Company. The Town also reserves the right to change in any manner any curb, sidewalk, highway, alley, public way, street, utility lines, storm sewers, drainage basins, drainage ditches, and the like.

Upon request by Town, Company shall relocate its facilities at the expense of the Town except as otherwise required by Section 37.101(c) of PURA, which statutory provision currently states the governing body of a municipality may require an electric utility to relocate the utility's facility at the utility's expense to permit the widening or straightening of a street. Town and Company further agree that widening and straightening of a street includes the addition of any acceleration, deceleration, center or side turn lanes, and sidewalks (meaning sidewalks done in conjunction with widening or straightening of a street), provided that the Town shall provide Company with at least thirty (30) days notice and shall specify a new location for such facilities along the Public Rights-of-Way of the street.

If the Town requires the Company to adapt or conform its Facilities, or in any manner to alter, relocate, or change its Facilities to enable any other corporation or person to use, or use with greater convenience, said street, alley, highway, or public way, the Company shall not be bound to make such changes until such other corporation or person shall have undertaken, with good and sufficient bond, to reimburse the Company for any costs, loss, or expense which will be caused by, or arises out of such change, alteration, or relocation of Company's Facilities.

If Town abandons any Public Rights-of-Way in which Company has facilities such abandonment shall be conditioned on Company's right to maintain its use of the former Public Rights-of-Way and on the obligation of the party to whom the Public Rights-of-Way is abandoned to reimburse Company for all removal or relocation expenses if Company agrees to the removal or relocation of its facilities following abandonment of the Public Rights-of-Way. If the party to whom the Public Rights-of-Way is abandoned requests the Company to remove or relocate its facilities and Company agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Rights-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

#### **SECTION 4** **INDEMNIFICATION**

A. In consideration of the granting of this Franchise, Company shall, at its sole cost and expense, indemnify and hold the Town, and its past and present officers, agents and employees harmless against any and all liability arising from suits, actions or claims regarding injury or death to any person or persons, or damages to any property arising out of, or occasioned by the intentional and/or negligent acts or omissions of the Company or any of its officers, agents, or employees, in connection with Company's construction, maintenance and operation of Company's System in the Public Rights-of-Way, including any court costs, reasonable expenses and reasonable defenses thereof.

B. This indemnity shall only apply to the extent that the loss, damage or injury is attributable to the negligence or wrongful act or omission of the Company, its officers, agents or employees, and does not apply to the extent such loss, damage or injury is attributable to the negligence or wrongful act or omission of the Town, or the Town's officers, agents, or employees or any other person or entity. This provision is not intended to create a cause of action or liability for the benefit of third parties but is solely for the benefit of the Company and the Town.

C. In the event of joint and concurrent negligence or fault of both the Company and the Town, responsibility and indemnity, if any, shall be apportioned comparatively between the Town and Company in accordance with the laws of the State of Texas without, however, waiving any governmental immunity available to the

Town under Texas law and without waiving any of the defenses of the parties under Texas law. Further, in the event of joint and concurrent negligence or fault of both the Company and the Town, responsibility for all costs of defense shall be apportioned between the Town and Company based upon the comparative fault of each.

D. In fulfilling its obligation to defend and indemnify Town, Company shall have the right to select defense counsel, subject to Town's approval, which will not be unreasonably withheld. Company shall retain defense counsel within seven (7) business days of Town's written notice that Town is invoking its right to indemnification under this Franchise. If Company fails to retain Counsel within such time period, Town shall have the right to retain defense counsel on its own behalf, and Company shall be liable for all reasonable defense costs incurred by Town, except as otherwise provided in Section 4.B and 4.C.

## **SECTION 5**

### **LIABILITY INSURANCE**

Company shall, at its sole cost and expense, obtain, maintain, or cause to be maintained, and provide, throughout the term of this Franchise, insurance in the amounts, types and coverages in accordance with the following requirements. Such insurance may be in the form of self-insurance to the extent permitted by applicable law or by obtaining insurance, as follows:

- A. Commercial general or excess liability on an occurrence or claims made form with minimum limits of five million dollars (\$5,000,000) per occurrence and ten million dollars (\$10,000,000) aggregate. This coverage shall include the following:
  - (1) Products/completed operations to be maintained for the warranty period.
  - (2) Personal and advertising injury.
  - (3) Contractual liability.
  - (4) Explosion, collapse, or underground (XCU) hazards.
- B. Automobile liability coverage with a minimum policy limit of one million dollars (\$1,000,000) combined single limit each accident. This coverage shall include all owned, hired and non-owned automobiles.
- C. Workers compensation and employers liability coverage. Statutory coverage limits for Coverage A and five hundred thousand dollars (\$500,000) bodily injury each accident, five hundred thousand dollars (\$500,000) each employee bodily injury by disease, and five hundred thousand dollars (\$500,000) policy limit bodily injury by disease Coverage B employers' liability are required. Company must provide the Town with a waiver of subrogation for worker's compensation claims.

- D. Company must name the Town, which includes all authorities, commissions, divisions and departments, as well as elected and appointed officials, agents, employees and volunteers, as an additional insureds under the coverage required herein, except Worker's Compensation Coverage. The certificate of insurance must state that the Town is an additional insured.
- E. Coverages required to be maintained under Sections 5.A, 5.B., and 5.C. shall include a waiver of subrogation in favor of the Town, its officers, agents and employees.
- F. Company will require its contractors and subcontractors to maintain, at their sole cost and expense, a minimum of three million dollars (\$3,000,000) each occurrence or each accident general liability and automobile liability throughout the course of work performed. Also, contractors and subcontractors will be required to maintain statutory workers' compensation benefits in accordance with the regulations of the State of Texas or state of jurisdiction as applicable. The minimum limits for employers' liability insurance will be five hundred thousand dollars (\$500,000) bodily injury each accident, five hundred thousand dollars (\$500,000) each employee bodily injury by disease, and five hundred thousand dollars (\$500,000) policy limit bodily injury by disease.

The Company will provide proof of its insurance in accordance with this Franchise within 30 days of the effective date of the Franchise and annually thereafter as applicable insurance coverages renew. Company will not be required to furnish separate proof when applying for permits.

#### **SECTION 6** **NON-EXCLUSIVITY**

This franchise is not exclusive, and nothing herein contained shall be construed so as to prevent the Town from granting other like or similar rights, privileges and franchises to any other person, firm, or corporation

#### **SECTION 7** **CONSIDERATION**

In consideration of the grant of said right, privilege and franchise by the Town and as full payment for the right, privilege and franchise of using and occupying the said Public Rights-of-Way, and in lieu of any and all occupation taxes, assessments, municipal charges, fees, easement taxes, franchise taxes, license, permit and inspection fees or charges, street taxes, bonds, street or alley rentals, and all other taxes, charges, levies, fees and rentals of whatsoever kind and character which the Town may impose or hereafter be authorized or empowered to levy and collect, excepting only the usual general or special ad valorem taxes which the Town is

authorized to levy and impose upon real and personal property, sales and use taxes, and special assessments for public improvements, Company shall pay to the Town the following:

- A. A final quarterly payment was made on or before January 1, 2016 for the basis period of August 1, 2015 through October 31, 2015 and the privilege period of October 1, 2016 through December 31, 2016 in accordance with the provisions in the previous franchise.
- B. As authorized by Section 33.008(b) of PURA, the original franchise fee factor calculated for the Town in 2002 was 0.003031 (the "Base Factor"), multiplied by each kilowatt hour of electricity delivered by Company to each retail customer whose consuming facility's point of delivery is located within the Town's municipal boundaries for determining franchise payments going forward.

Due to a 2006 agreement between Company and Town the franchise fee factor was increased to a franchise fee factor of 0.003183 (the "Current Factor"), multiplied by each kilowatt hour of electricity delivered by Company to each retail customer whose consuming facility's point of delivery is located within the Town's municipal boundaries on an quarterly basis.

However, consistent with the 2006 agreement, should the Public Utility Commission of Texas at any time disallow Company's recovery through rates of the higher franchise payments made under the Current Factor as compared to the Base Factor, then the franchise fee factor shall immediately revert to the Base Factor of 0.003031 and all future payments, irrespective of the time period that is covered by the payment, will be made using the Base Factor.

1. Company shall make quarterly pre-pay payments as follows:

| <u>Payment Due Date</u> | <u>Basis Period</u> | <u>Privilege Period</u><br><u>(Following Year)</u> |
|-------------------------|---------------------|----------------------------------------------------|
| April 1                 | Nov. 1 – Jan. 31    | Jan. 1 – Mar. 31                                   |
| July 1                  | Feb 1 – Apr. 30     | Apr. 1 – Jun. 30                                   |
| October 1               | May 1 – Jul. 31     | Jul. 1 – Sept. 30                                  |
| January 1               | Aug.1 – Oct. 31     | Oct. 1 – Dec. 31                                   |

2. The first quarterly payment hereunder shall be due and payable on or before April 1, 2016, and will cover the basis period of November 1, 2015 through January 31, 2016 and the privilege period of January 1, 2017 through March 31, 2017. If this Franchise is not effective prior to the first quarterly payment date, Company will pay any payments due within 30 days of the effective date of this agreement. The final payment under this Franchise is due on or before January 1, 2036 and covers the basis period of August 1, 2035 through October 31, 2035 and the privilege period of October 1, 2036 through December 31, 2036.
  3. After the final payment date of January 1, 2036, Company may continue to make additional quarterly payments in accordance with the above schedule. Town acknowledges that such continued payments will correspond to privilege periods that extend beyond the term of this Franchise and that such continued payments will be recognized in any subsequent franchise as full payment for the relevant quarterly periods.
- C. A sum equal to four percent (4%) of gross revenues received by Company from services identified as DD1 through DD24 in Section 6.1.2 "Discretionary Service Charges," in Oncor's Tariff for Retail Delivery Service (Tariff), effective 1/1/2002, that are for the account and benefit of an end-use retail electric consumer. Company will, upon request by Town, provide a cross reference to Discretionary Service Charge numbering changes that are contained in Company's current approved Tariff.
1. The franchise fee amounts based on "Discretionary Service Charges" shall be calculated on an annual calendar year basis, i.e. from January 1 through December 31 of each calendar year.
  2. The franchise fee amounts that are due based on "Discretionary Service Charges" shall be paid at least once annually on or before April 30 each year based on the total "Discretionary Service Charges", as set out in Section 7C, received during the preceding calendar year. The initial Discretionary Service Charge franchise fee amount will be paid on or before April, 30 2016 and will be based on the calendar year January 1 through December 31, 2015. The final Discretionary Service Charge franchise fee amount will be paid on or

before April 30, 2037 and will be based on the calendar year of January 1 through December 31, 2036.

3. Company may file a tariff or tariff amendment(s) to provide for the recovery of the franchise fee on Discretionary Service Charges.
  4. Town agrees (i) to the extent the Town acts as regulatory authority, to adopt and approve that portion of any tariff which provides for 100% recovery of the franchise fee on Discretionary Service Charges; (ii) in the event the Town intervenes in any regulatory proceeding before a federal or state agency in which the recovery of the franchise fees on such Discretionary Service Charges is an issue, the Town will take an affirmative position supporting the 100% recovery of such franchise fees by Company and; (iii) in the event of an appeal of any such regulatory proceeding in which the Town has intervened, the Town will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Company.
  5. Town agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Company.
  6. In the event of a regulatory disallowance of the recovery of the franchise fees on the Discretionary Service Charges, Company will not be required to continue payment of such franchise fees.
- D. With each payment of compensation required by Section 7.B, Company shall furnish to Town a statement that provides the franchise basis period, the total amount of kilowatt hours of electricity delivered during the franchise basis period by the Company to retail customers whose consuming facility's point of delivery is located within the Town's municipal boundaries, and the privilege period covered by the payment. The parties agree that any information exchanged or provided to the other party is true and correct to the best of their knowledge.
- E. With each payment of compensation required by Section 7.C, Company shall furnish to the Town a statement reflecting the total amount of gross revenues received by Company within the Town's municipal boundaries for services identified in its Tariff, Section 6.1.2, "Discretionary Service Charges," Items DD1 through DD24. The parties agree that any information exchanged or provided to the other party is true and correct to the best of their knowledge.

**SECTION 8**  
**MOST FAVORED NATIONS**

A. This Section 8 applies only if, after the effective date of this Franchise Agreement, Company enters into a new municipal franchise agreement or renews an existing municipal franchise agreement with another municipality that provides for a different method of calculation of franchise fees for use of the Public Rights-of-Way than the calculation under PURA, Section 33.008(b), which, if applied to the Town, would result in a greater amount of franchise fees owed the Town than under this Franchise Agreement.

B. In the event of an occurrence as described in Section 8 hereof, Town shall have the option to:

1. Have Company select, within 30 days of the Town's request, any or all portions of the franchise agreement with the other municipality or comparable provisions that, at Company's sole discretion, must be considered in conjunction with the different method of the calculation of franchise fees included in that other franchise agreement; and
2. Modify this franchise agreement to include both the different method of calculation of franchise fee found in the franchise agreement with the other municipality and all of the other provisions identified by Company pursuant to Section 8.B.1. In no event shall Town be able to modify the franchise to include the different method of calculation of franchise fee found in the franchise agreement with the other municipality without this franchise also being modified to include all of the other provisions identified by Company pursuant to Section 8.B.1.

C. Town may not exercise the option provided in Section 8 if any of the provisions that would be included in this franchise are, in Company's sole opinion, inconsistent with or in any manner contrary to any then-current rule, regulation, ordinance, law, Code, or Town Charter.

D. In the event of a regulatory disallowance of the increase in franchise fees paid pursuant to Town's exercise of its option under Section 8, then at any time after the regulatory authority's entry of an order disallowing recovery of the additional franchise fee expense in rates, Company shall have the right to cancel the modification of the franchise made pursuant to Section 8, and the terms of the Franchise shall immediately revert to those in place prior to Town's exercise of its option under Section 8.

E. Notwithstanding any other provision of this franchise, should the Town exercise the option provided in Section 8.B, and then adopt any rule, regulation, ordinance, law, Code, or Town Charter that, in Company's sole opinion, is inconsistent with or in any manner contrary to the provisions included in this franchise pursuant to Section 8.B, then Company shall have the right to cancel all of the modifications to this

franchise made pursuant to Section 8 and, effective as of the date of the Town's adoption of the inconsistent provision, the terms of the franchise shall revert to those in place prior to the Town's exercise of its option under Section 8.

F. The provisions of Section 8 apply only to the amount of the franchise fee to be paid and do not apply to other franchise fee payment provisions, such as the timing of such payments. The provisions of Section 8 do not apply to differences in the franchise fee factor that result from the application of the methodology set out in Section 33.008(b) of PURA or a successor methodology.

## **SECTION 9**

### **RECORDS AND REPORTS**

- A. Company shall keep accurate books of account at its principal office for the purpose of determining the amount due to the Town under this Franchise.
- B. Pursuant to Section 33.008(e) of the Texas Utilities Code, the Town may conduct an audit or other inquiry in relation to a payment made by Company less than two (2) years before the commencement of such audit or inquiry. The Town may, if it sees fit, and upon reasonable notice to the Company, have the books and records of the Company examined by a representative of the Town to ascertain the correctness of the reports agreed to be filed herein.
- C. The Company shall make available to the auditor during the Company's regular business hours and upon reasonable notice, such personnel and records as the Town may, in its reasonable discretion, request in order to complete such audit, and shall make no charge to the Town therefore.
  - 1. If as the result of any Town audit, Company is refunded/credited for an overpayment, or pays the Town for an underpayment, of the Franchise Fee, such refund/credit or payment shall be made pursuant to the payment terms established in Section 7.
- D. The Company shall assist the Town in its review by responding to all requests for information no later than thirty (30) days after receipt of a request.
- E. The Town agrees to maintain the confidentiality of any non-public information obtained from Company to the extent allowed by law if Company identifies the information as non-public prior to providing the information to Town. Town shall not be liable to Company for the release of any information the Town is required by law to release. Town shall provide notice to Company of any request for release of non-public information prior to releasing the information so as to allow Company adequate time to pursue available remedies for protection. If the Town receives a request under the Texas Public Information Act that includes information Company has identified as Company's proprietary information, Town

will notify the Texas Attorney General of the proprietary nature of the document(s). The Town also will provide Company with a copy of this notification, and thereafter Company is responsible for establishing that an exception under the Act allows the Town to withhold the information.

- F. If either party discovers that the Company has either overpaid the Town or failed to pay the entire or correct amount of compensation due the Town, the correct amount shall be mutually determined by the Town and Company and shall be paid by the responsible party within thirty (30) calendar days of such mutual determination. Such underpayments or overpayments shall include interest calculated in accordance with the interest rate for customer deposits established by the PUC in accordance with Texas Utilities Code Section 183.003. Any overpayment to the Town by Company through error or otherwise, will, at the option of the Town, either be refunded within thirty (30) days of the mutual determination or be offset against the next payment due from Company. If neither party can mutually agree on either the underpayment due the Town or an overpayment due the Company, both the Town and Company may seek any other rights and remedies provided by law or in equity. Acceptance by the Town or Company of any payment due under this Section shall not be deemed to be a waiver by the Town or Company of any breach of this Franchise, nor shall the acceptance by the Town or Company of any such payments preclude the Town or Company from later establishing that a larger amount was actually due or from collecting any balance due.

#### **SECTION 10** **TERM**

This Ordinance shall become effective upon Company's written acceptance hereof, said written acceptance to be filed by Company with the Town Secretary within sixty (60) days after final passage and approval by the Town hereof but not prior to thirty (30) days after passage by Town. The right, privilege and franchise granted hereby shall expire on December 31, 2036 provided that, unless written notice of cancelation is given by either party hereto to the other not less than sixty (60) days before the expiration of this franchise agreement, it shall be automatically renewed for an additional period of six (6) months from such expiration date and shall be automatically renewed thereafter for like periods until canceled by written notice given not less than sixty (60) days before the expiration of any such renewal period.

#### **SECTION 11** **REPEALER CLAUSE**

This Ordinance shall supersede any and all other franchises granted by the Town to Company its predecessors and assigns, provided the parties agree any claim, action or complaint by either party that arose under or pursuant to any such previous franchise ordinance shall be preserved and saved from repeal, subject to all applicable statutes of limitations.

**SECTION 12**  
**DEFAULT, REMEDIES, TERMINATION**

- A. Events of Default. The occurrence, at any time during the term of the Franchise Agreement, of any one or more of the following events, shall constitute an Event of Default by Company under this Franchise:
1. The failure of Company to pay the franchise fee on or before the due dates specified herein.
  2. Company's material breach or material violation of any material terms, covenants, representations or warranties contained herein.
- B. Uncured Events of Default.
1. Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to Town, Company shall have thirty (30) calendar days from receipt of written notice from Town of an occurrence of such Event of Default to cure same before Town may exercise any of its rights or remedies provided for in Section 12.C.
  2. Upon the occurrence of an Event of Default by Company which cannot be cured by the immediate payment of money to Town, Company shall have sixty (60) calendar days (or such additional time as may be agreed to by the Town) from receipt of written notice from Town of an occurrence of such Event of Default to cure same before Town may exercise any of its rights or remedies provided for in Section 12.C.
  3. If the Event of Default is not cured within the time period allowed for curing the Event of Default as provided for herein, such Event of Default shall, without additional notice, become an Uncured Event of Default, which shall entitle Town to exercise the remedies provided for in Section 12.C.
- C. Remedies. The Town shall notify the Company in writing of an alleged Uncured Event of Default as described in Section 12.B, which notice shall specify the alleged failure with reasonable particularity. The Company shall, within thirty (30) business days after receipt of such notice or such longer period of time as the Town may specify in such notice, either cure such alleged failure or in a written response to the Town either present facts and arguments in refuting or defending such alleged failure or state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure. In the event that such cure is not forthcoming, Town shall be entitled to exercise any and all of the following cumulative remedies:

1. The commencement of an action against Company at law for monetary damages.
  2. The commencement of an action in equity seeking injunctive relief or the specific performance of any of the provisions that as a matter of equity, are specifically enforceable.
  3. The termination of this Franchise.
- D. The rights and remedies of Town and Company set forth in this Franchise Agreement shall be in addition to, and not in limitation of, any other rights and remedies provided by law or in equity. Town and Company understand and intend that such remedies shall be cumulative to the maximum extent permitted by law and the exercise by Town of any one or more of such remedies shall not preclude the exercise by Town, at the same or different times, of any other such remedies for the same failure to cure. However, notwithstanding this Section or any other provision of this Franchise, Town shall not recover both liquidated damages and actual damages for the same violation, breach, or noncompliance, either under this Section or under any other provision of this Franchise.
- E. Termination. In accordance with the provisions of Section 12.C, this Franchise may be terminated upon thirty (30) business day's prior written notice to Company. Town shall notify Company in writing at least fifteen (15) business days in advance of the Town Council meeting at which the question of forfeiture or termination shall be considered, and Company shall have the right to appear before the Town Council in person or by counsel and raise any objections or defenses Company may have that are relevant to the proposed forfeiture or termination. The final decision of the Town Council may be appealed to any court or regulatory authority having jurisdiction. Upon timely appeal by Company of the Town Council's decision terminating the Franchise, the effective date of such termination shall be either when such appeal is withdrawn or an order upholding the termination becomes final and unappealable. Until the termination becomes effective the provisions of this Franchise shall remain in effect for all purposes. The Town recognizes Company's right and obligation to provide service in accordance with the Certificate of Convenience and Necessity authorized by the Public Utility Commission of Texas in accordance with the Texas Utilities Code.
- F. This Franchise Ordinance shall be construed and governed by the laws of the State of Texas. Town and Company agree that any lawsuit between the Town and the Company concerning this Ordinance will be filed in the state of Texas. Nothing in this Ordinance shall prohibit the Town from filing an action related to this Ordinance in Tarrant County, Texas.

### **SECTION 13** **NOTICES**

Notices, reports or demands required to be given under this franchise shall be deemed to be given when delivered in writing, whether by email (with proof of delivery) or personally to the person designated below, or when five days have elapsed after it is deposited in the United States Mail with registered or certified mail postage prepaid to the person designated below, or on the next business day if sent by Express Mail or overnight air courier addressed to the person designated below:

If to Town:

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

If to the Company:

Regulatory Affairs  
Oncor Electric Delivery Company LLC  
1616 Woodall Rodgers Fwy, 6<sup>th</sup> floor  
Dallas, Texas 75202-1234

### **SECTION 14** **SEVERABILITY**

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court or agency of competent jurisdiction, such portion shall be deemed a separate provision and such holding shall not affect the validity of the remaining portions of the ordinance.

### **SECTION 15** **PUBLIC NOTICE**

It is hereby officially found that the meeting at which this Ordinance is passed is open to the public and that due notice of this meeting was posted by the Town, all as required by law.

### **SECTION 16** **PUBLICATION**

The Town Secretary will, after its passage, publish the full text of this Ordinance in the official Town newspaper once each week for two consecutive weeks, at the expense of Company.

**DULY PASSED AND APPROVED ON THE 1<sup>st</sup> VOTE BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS BY A VOTE OF \_\_\_\_ TO \_\_\_\_ ON this \_\_\_\_ day of \_\_\_\_\_, 2016.**

**DULY PASSED AND APPROVED ON THE 2<sup>ND</sup> AND FINAL VOTE BY THE TOWN**

ORDINANCE NO. \_\_\_\_\_

16

**COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS BY A VOTE OF \_\_\_\_\_ TO  
\_\_\_\_\_ ON this \_\_\_\_\_ day of \_\_\_\_\_, 2016.**

**APPROVED:**

\_\_\_\_\_  
**Thomas E. Hayden, MAYOR**

**ATTEST:**

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

**APPROVED AS TO FORM AND LEGALLITY:**

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



## TOWN COUNCIL AGENDA ITEM NO. 3

### CONSENT ITEM

**DATE:** July 18, 2016

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

**ITEM:** Consider the approval of an amendment to the contract with Elsey & Elsey, Attorneys at Law for the collection of delinquent property taxes.

**BACKGROUND INFORMATION:** This agreement is for the collection of all the Town's delinquent taxes receivable. This amendment will extend the agreement to three years from the date of approval. All other items within the original contract remain the same.

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

**ALTERNATIVES/OPTIONS:** N/A

**FISCAL IMPACT:** A 20% fee will be assessed of the amount collected for all delinquent accounts. This fee will be payment to Elsey & Elsey, Attorney at Law for services provided.

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

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

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

**ATTACHMENTS:**

1. First amendment to delinquent property tax accounts collection contract
2. Original contract

**RECOMMENDATION:** Move to approve the first amendment to the contract with Elsey & Elsey, Attorneys at Law for the collection of delinquent property taxes.

**FIRST AMENDMENT TO CONTRACT FOR THE COLLECTION OF  
DELINQUENT PROPERTY TAX ACCOUNTS**

THIS FIRST AMENDMENT TO CONTRACT FOR THE COLLECTION OF DELINQUENT PROPERTY TAX ACCOUNTS (the “Amendment”) is made and entered into on \_\_\_\_\_, 2016 (“Effective Date”) by and between the **TOWN OF FLOWER MOUND** by and through its governing body, hereinafter called “Town” and **ELSEY & ELSEY**, Attorneys at Law, hereinafter called “Law Firm”.

**RECITALS:**

**WHEREAS**, on May 20, 2013, the Town and Law Firm entered into a Contract for the Collection of Delinquent Property Tax Accounts, beginning with the 2012 tax year (“Contract”); and

**WHEREAS**, the Town desires that Law Firm continue to collect delinquent taxes through the 2015 tax year pursuant to the Contract; and

**WHEREAS**, the Town and Law Firm wish to extend and continue this relationship by extending the term of the Contract.

**NOW THEREFORE**, the parties agree as follows:

**I.**

That the first sentence of Section VIII of the Contract is hereby amended to read as follows:

“The term of this Contract begins upon execution of this Contract for the collections related to the 2012 tax year and years thereafter and ending on July 1, 2019, only upon written notice of termination from Town.”

The remainder of Section VIII shall remain unchanged.

Except as stated herein, the Contract for the Collection of Delinquent Property Tax Accounts shall be in full force and effect as to all other terms and provisions.

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to be executed as of the Effective Date hereof.

**ELSEY & ELSEY**

**TOWN OF FLOWER MOUND, TEXAS**

By: \_\_\_\_\_  
Chuck Elsey  
Attorney at Law

By: \_\_\_\_\_  
Mayor

**ATTEST:**

By: \_\_\_\_\_  
Chad Elsey  
Attorney at Law

By: \_\_\_\_\_  
Town Secretary

**CONTRACT FOR THE COLLECTION OF  
DELINQUENT PROPERTY TAX ACCOUNTS**

**THIS CONTRACT FOR THE COLLECTION OF DELINQUENT PROPERTY TAX ACCOUNTS** ("Contract") is made and entered into by and between the **TOWN OF FLOWER MOUND, TEXAS**, by and through its Town Council, hereinafter called "Town," and **ELSEY & ELSEY**, Attorneys at Law, hereinafter called "Law Firm."

**I.**

Town agrees to employ and does hereby employ Law Firm to enforce by suit or otherwise the collection of all delinquent ad valorem taxes, penalty and interest owing to Town.

Taxes which become delinquent for the 2012 tax year and within the term of this Contract (the "Contract Term") shall become subject to the terms of this Contract upon the following conditions:

- A. Taxes that become delinquent during the Contract Term, that are not delinquent for any prior years, become subject to the terms of this Contract on July 1 of the year in which they become delinquent.
- B. Taxes that become delinquent during the Contract Term, on property that is delinquent for prior years and is the subject of a suit to collect the prior year's delinquent taxes, shall become subject to the Contract terms on the first day of delinquency as defined by the Texas Property Tax Code.

Law Firm acknowledges that the Town previously employed Sawko & Burroughs P.C., hereinafter called "Prior Law Firm," to collect delinquent ad valorem taxes, penalty and interest owing to the Town for tax years preceding 2012. Delinquent taxes, penalty and interest, for those preceding years shall become subject to the terms of this Contract, upon the following conditions:

**Town of Flower Mound  
Town Secretary's Office  
OFFICIAL FILE COPY**

- A. Prior Law Firm shall have six (6) months from the date of termination (“Termination Date”) as set out in its contract with Town to reduce to judgment and sale all tax collection lawsuits filed and collect all bankruptcy claims filed for the years preceding 2012, provided further that Prior Law Firm shall handle to conclusion all suits in which trial court judgments are obtained prior to the Termination Date which are appealed by any party.
- B. Should a dispute arise between Law Firm and Prior Law Firm regarding compensation due in connection with the collection of delinquent taxes for the years preceding 2012, Law Firm acknowledges that Town shall never be obligated to pay more than 20% of the amount collected of such delinquent taxes.

## **II.**

Law Firm is to call to the attention of Town’s designated tax collector (“Tax Collector”) or other officials, any errors, double assessments or other discrepancies coming under his observation during the progress of the work, and Law Firm is to intervene on behalf of Town in all suits for ad valorem taxes of property within its geographical limits.

## **III.**

Town agrees to furnish and/or allow the Tax Collector/Assessor to furnish a delinquent tax roll to Law Firm on all property within Town’s taxing jurisdiction. Law Firm shall furnish delinquent tax statements and assume responsibility for having penalty and interest computed on said statements before statements are mailed to property owners.

## **IV.**

Law Firm agrees to file suit on and reduce to judgment and sale any property located within the Town’s taxing jurisdiction upon which Town may assert or place a lien for taxes. Law Firm shall have the authority to procure on behalf of Town the necessary data and information as to the name, identity, and location of the necessary parties, and legal description of the property to

be sold. Law Firm agrees to sue for recovery of these costs as court costs as provided by Texas Property Tax Code Section 33.48.

**V.**

Law Firm agrees to make regular progress reports to Town and shall advise the Town concerning delinquent accounts where an investigation reveals mitigating circumstances.

**VI.**

Town agrees that Law Firm shall be entitled to receive, as compensation for services required hereunder, twenty percent (20%) of the amount collected on all delinquent taxes, penalty and interest for the tax year 2012 and subsequent years which are subject to the terms of this Contract. Law Firm agrees to sue for attorney's fees pursuant to Texas Property Tax Code Section 33.48 for all tax years subject to the terms of this Contract.

**VII.**

The Town agrees to turn over and/or allow the Tax Collector/Assessor to turn over to the Law Firm on February 1 of each year of this contract for collection, all current year delinquent real property taxes and business personal property taxes. The Law Firm shall employ the same or similar methods used to collect other ad valorem taxes to collect these taxes at no cost to the Town. This procedure will be in place between February 1 and June 30 of each year.

**VIII.**

The term of this Contract begins upon execution of this Contract for the collections related to the 2012 tax year and years thereafter and ending on July 1, 2015, only upon written notice of termination from Town.

- A. If this Contract is not terminated as set out herein, this Contract shall continue in full force and effect from year to year unless either party delivers written notice to the other party of its intent to terminate this Contract at least thirty (30) days prior to the July 1<sup>st</sup> of the termination year. On termination of this Contract, the Law

Firm shall have an additional six (6) months after termination to reduce to judgment and sale all tax collection lawsuits filed and collect all bankruptcy claims filed prior to the termination date, and provided further that the Law Firm shall handle to conclusion all suits in which trial court judgments are obtained during the period of this Contract and which are appealed by any party. In case of termination, the Law Firm shall be entitled to receive and retain all compensation of fees due up to the date of said termination. In consideration of the terms and compensation herein stated, Law Firm hereby accepts said employment and undertakes the performance of this Contract as above written.

- B. Town shall have the right to sooner terminate this contract if Law Firm is found to have violated any of the Supreme Court of Texas' Rules of Professional Conduct as they pertain to the Law Firm's duties under this contract; and, upon such a finding, giving thirty (30) days' written notice of such intention, with a statement of the cause or reasons for such termination, after giving Law Firm a reasonable opportunity of explaining or rectifying the same. In case of such termination, Law Firm shall be entitled to receive and retain all compensation due up to the date of said termination.
- C. Town shall have the right to sooner terminate this Contract without cause by giving Law Firm one hundred and twenty (120) days' written notice of its intent to terminate this Contract. In case of such termination, Law Firm shall be entitled to receive and retain all compensation due up to the date of said termination.

#### **IX.**

If any portion of this Contract is deemed unenforceable due to operation of law or otherwise, all remaining provisions shall continue to operate in full force and the parties shall be bound thereby until the end of the Contract term.

**X.**

This Contract is executed on behalf of Town by the presiding officer of its governing body who is authorized to execute this instrument by order heretofore passed and duly recorded as of the 20 day of May, 2013, in the Town of Flower Mound, Denton County, Texas.

**XI.**

In the event of any disagreement or conflict concerning the interpretation of this Contract, and such disagreement cannot be resolved by the parties hereto, the parties agree to submit such disagreement to nonbinding mediation.

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

**ELSEY & ELSEY**

By: \_\_\_\_\_

Chuck Elsey  
Attorney at Law

**TOWN OF FLOWER MOUND, TEXAS**

By: \_\_\_\_\_

Thomas E Hayden  
Mayor

By: \_\_\_\_\_

Chad Elsey  
Attorney at Law

**ATTEST:**

By: \_\_\_\_\_

Doreen Sison  
Town Secretary



## TOWN COUNCIL AGENDA ITEM NO. 4

### CONSENT ITEM

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**DATE:** July 18, 2016

**FROM:** Tiffany Bruce, P.E., Engineering Manager

**ITEM:** Consider approval of fifteen engineering firms to provide professional engineering services and four geotechnical engineering firms to provide professional material testing services for the Town for a two-year term ending July 18, 2018.

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**BACKGROUND INFORMATION:** A request for Statement of Qualifications from prospective engineering firms was advertised in the Denton Record Chronicle on May 1, 2016 and May 8, 2016. Each firm was requested to submit their professional engineering qualifications for master plans, roadway, water, wastewater, project cost estimating, property acquisition, modeling for water and wastewater systems, parks design and facilities design. The selection team reviewed each submittal based upon qualifications, experience, office location, and previous experience with the Town.

Thirty-seven firms responded to the request for Statement of Qualifications for Professional Engineering Services for Various Projects (No. 2016-60). A selection team, comprised of Project Managers and Project Engineers in the Town's CIP group, reviewed the submittals and chose the following fifteen firms as qualified:

- Nathan D. Maier Consulting Engineers, Inc.
- Alan Plummer Associates, Inc.
- Lee Engineering, LLC.
- Mesa Design Associates, Inc.
- Kimley-Horn and Associates, Inc.
- CP&Y, Inc.
- Criado & Associates, Inc.
- Garver, LLC.
- Halff & Assoc., Inc.
- Kendall Landscape Architecture
- Pacheco Koch, LLC.
- Stantec Consulting Services., Inc.
- Studio Outside, LLC.
- Urban Engineers Group, Inc.
- Wade-Trim Associates, Inc.

Upon approval by the Town Council, staff will have the authority to initiate negotiations with any of the fifteen firms to perform professional engineering services for individual Town projects. Each time staff negotiates with one of the selected firms, the professional services agreement will be submitted to the Town Council or the Town Manager for approval.

Also advertised on May 1, 2016 and May 8, 2016 in the Denton Record Chronicle was a request for Statement of Qualifications for Professional Material Testing. The selection team reviewed each submittal based upon qualifications, experience, office location, and previous experience with the Town.

Thirteen firms responded to a request for Statement of Qualifications for Professional Material Testing for Various Projects (No. 2016-59). A selection team, comprised of Project Managers and Project Engineers in the Town's CIP group, reviewed the submittals and chose the following four firms as qualified:

- Globe Engineers, Inc.
- Alliance Geotechnical Group, Inc.
- Kleinfelder Central, Inc.
- Professional Services Industries, Inc.

Upon approval by the Town Council, staff will have the authority to initiate negotiations with any of the four firms to perform professional materials testing services for individual Town projects. Each time staff negotiates with one of the selected firms, the Professional Services Agreement will be submitted to the Town Council or the Town Manager for approval.

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

**FISCAL IMPACT:** N/A

**LEGAL REVIEW:** N/A

**ATTACHMENTS:** N/A

**RECOMMENDATION:** Move to approve fifteen engineering firms to provide professional engineering services and four geotechnical engineering firms to provide professional material testing services for the Town for a two-year term ending July 18, 2018.



## TOWN COUNCIL AGENDA ITEM NO. 5

### CONSENT ITEM

**DATE:** July 18, 2016

**FROM:** Clay Riggs, PE, CFM, Senior Project Engineer

**ITEM:** Consider approval of the award of Bid No. 2016-67 to Wildstone Construction, LLC, to construct Section 2 of the FM 2499 12-Inch Water Line Phase III project, in the amount of \$373,385.00; and authorization for the Mayor to execute same on behalf of the Town.

**BACKGROUND INFORMATION:** On June 16, 2016, bids were received and opened for Section 2 of the FM 2499 12-Inch Water Line Phase III project. Wildstone Construction, LLC submitted the lowest qualified bid of the twelve responding bidders, for a total base bid, plus optional bid item, of \$373,385.00.

Section 2 of the FM 2499 12-Inch Water Line Phase III project, includes approximately 3,900 linear feet of 12-inch water line along the east side of FM 2499 from FM 3040 to Spinks Road. The water line is included in the Town's Water Master Plan.

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

**ALTERNATIVES/OPTIONS:** N/A

**FISCAL IMPACT:** \$373,385.00

| Proposed Expenditure: | Account Number(s): |
|-----------------------|--------------------|
| \$300,000.00          | 601-900-98840      |
| \$73,385.00           | 630-960-98840      |

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

**LEGAL REVIEW:** The Town's standard 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 document.

#### ATTACHMENTS:

1. Bid Tabulation
2. Construction Agreement

**RECOMMENDATION:** Move to approve the award of Bid No. 2016-67 to Wildstone Construction, LLC, to construct Section 2 of the FM 2499 12-Inch Water Line Phase III project, in the amount of \$373,385.00; and authorize the Mayor to execute same on behalf of the Town.



**Town of Flower  
Mound  
Bid Tabulation**

**Bid No: 2016-67 - FM 2499 12-Inch Water Line Phase III**

**Bid Opening: June 16, 2016 at 11:00am**

| Company                                               | Total Bid     |
|-------------------------------------------------------|---------------|
| Wildstone Construction, LLC                           | \$ 373,385.00 |
| Dickerson Construction Company, Inc.                  | \$ 414,730.00 |
| Nu-Way Construction, LLC                              | \$ 418,301.00 |
| C3 Site Construction, LLC                             | \$ 445,541.00 |
| Saber Development Corporation - <b>NON-RESPONSIVE</b> | \$ 474,242.15 |
| Four Star Excavating                                  | \$ 524,678.00 |
| Dowager Utlitiy Constrction. LTD                      | \$ 559,847.00 |
| Canary Construction, Inc.                             | \$ 565,074.00 |
| Atkins Brothers Equipment Company, Inc.               | \$ 676,704.00 |
| Reytech Services, LLC                                 | \$ 717,918.00 |
| Ace Pipe Cleaning, Inc. - <b>NON-RESPONSIVE</b>       | \$ 732,497.00 |
| Wilson Contractor Services, LLC                       | \$ 784,436.35 |

**\*\***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     | 6/16/2016 |
|               | Purchasing Manager          |           |
|               | Town of Flower Mound, Texas |           |

**TOWN OF FLOWER MOUND**

**FM 2499 12-Inch Water Line Phase III**

**Bid # 2016-67**

**CONSTRUCTION AGREEMENT**

THIS CONSTRUCTION AGREEMENT (the “Agreement”), made and entered into this 18th day of July, 2016, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the “Town,” and Wildstone Construction, LLC, a Limited Liability Company, 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:

FM 2499 12-Inch Water Line Phase III  
Bid # 2016-67

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 **Three**

**Hundred Seventy Three Thousand, Three Hundred Eighty Five Dollars (\$373,385)**

taking into consideration additions to or deductions from the Total Bid through properly executed change orders by reason of alterations or modifications of the original quantities or by reason of "Extra Work" authorized under this Agreement in accordance with the provisions of the Contract Documents. It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the Contractor by the Town, the said Contractor shall furnish all labor, equipment, and material (except as otherwise specified above) and shall perform all work necessary to complete the improvements in a good and workmanlike manner, ready for use, within the specified time for substantial completion of One Hundred Twenty (120) calendar days, and final completion of One Hundred Fifty (150) calendar days ready for final payment, as measured from the Effective Start Date shown in the Notice to Proceed. The work shall be in strict accordance with this Agreement, a copy of which is filed pursuant to law in the office of the legal representative of the Town.

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

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

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

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

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

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

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

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

The fact that the Town makes a progress payment shall not be deemed to be an admission by the Town concerning the quantity, quality, or sufficiency of the Contractor's work. Progress payments shall not be deemed to be acceptance of the Work nor shall a progress payment release the Contractor from any of its responsibilities under the Contract Documents.

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

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

Retainage shall be withheld and may be paid to:

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

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

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

The Town may withhold payment of some or all of any progress or final payment that would otherwise be due if the Town determines, in its discretion, that it is necessary and proper to provide an additional source of funds to pay claims for which the Town is

entitled to indemnification from Contractor under the Contract Documents. Amounts withheld under this section shall be in addition to any retainage.

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

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

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

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

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

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

Final payment to the Contractor shall not be due until the Contractor provides original full releases of liens, or other evidence satisfactory to the Town to show that all sums due

for labor, services, and materials furnished for or used in connection with the Work have been paid or shall be paid with the final payment. To ensure this result, Contractor consents to the issuance of the final payment in the form of joint checks made payable to Contractor and others. The Town may, but is not obligated to, issue final payment using joint checks.

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

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

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

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

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

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

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

ARTICLE 11. The Contractor understands and agrees that time is of the essence in performing and completing the Work. The Town and Contractor acknowledge that the actual damages the Town may sustain if the Contractor fails to complete the Work on time are uncertain and will be difficult to ascertain. The Contractor agrees that the sum of Two Hundred 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. Two 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 18th day of July, 2016.

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. 6

### CONSENT ITEM

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**DATE:** July 18, 2016

**FROM:** Doug Powell, Executive Director of Development Services

**ITEM:** Consider approval of a Development Agreement for Lakeside DFW Land, Ltd., and authorization for the Mayor to execute same on behalf of the Town.

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**BACKGROUND INFORMATION:** This development agreement outlines the responsibilities for the construction of the turn lanes and driveway improvements identified by the Transportation Impact Analysis (TIA) for the proposed 7-11 development at the southeast corner of Lakeside Parkway and FM 2499.

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

**ALTERNATIVES/OPTIONS:** If the Town Council does not approve the development agreement, then either the required turn lanes would not be constructed, or the Town would bear the full cost.

**FISCAL IMPACT:** N/A

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

**ATTACHMENTS:**

1. Proposed Development Agreement

**RECOMMENDATION:** Move to approve the Development Agreement for the Lakeside DFW Land, Ltd project, and authorize the Mayor to execute same on behalf of the Town.

**DEVELOPMENT AGREEMENT FOR CONSTRUCTION OF TURN LANES  
AND DRIVEWAY IMPROVEMENTS**

THIS DEVELOPMENT AGREEMENT FOR CONSTRUCTION OF TURN LANES AND DRIVEWAY IMPROVEMENTS ("Agreement") is made and entered into this \_\_\_\_ day of July, 2016, by and between the Town of Flower Mound, Texas, a Texas home rule municipality ("Town"), and Lakeside DFW Land, Ltd., a Texas limited partnership ("Lakeside DFW").

**W I T N E S S E T H:**

WHEREAS, the Lakeside DFW Project ("Lakeside" or "Project") encompasses approximately one hundred forty-nine (149) acres of land in Flower Mound (the "Property") being developed along the shores of Lake Grapevine; and

WHEREAS, on November 19, 2012, the Town entered into a Development Agreement ("the 2012 Agreement") with Lakeside DFW to complete construction of certain aspects of the Project governing the development of the Property; and

WHEREAS, the Town and Lakeside DFW now desire to address additional roadway construction work on the Property which was not addressed by the 2012 Agreement as set forth herein;

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

1. Separate Agreement. The Town and Lakeside DFW agree that the provisions and terms contained in the 2012 Agreement, as amended, remain in full force and effect and shall continue to be applicable to the development of Lakeside. The Town and Lakeside DFW further agree that this Agreement is a separate agreement and does not modify or conflict with the 2012 Agreement, as amended.
2. Lakeside DFW 7-11 Development. The Town has previously approved the Lakeside DFW 7-11 Development numbered RC16-0008 ("7-11 Development"), and a plat thereof is recorded in the Plat Records of Denton County, Texas (the "Plat"). The 7-11 Development includes all improvements to be constructed on Lot 3 (the "7-11 Tract"), the regional detention system, the construction of an eastbound right turn lane on Lakeside Parkway as provided for in Section 4 of this Agreement, and the construction of driveway improvements as provided for in Section 5 of this Agreement.
3. Construction of Northbound Right Turn Lane on F.M. 2499. The Town agrees to design, construct, and pay for a northbound right turn lane on F.M. 2499 at Lakeside Parkway ("F.M. 2499 Turn Lane") in accordance with Exhibit "A" attached hereto. Said design and construction shall occur at a time of the Town's choosing, provided, however, such design and construction shall occur on or before ten (10) years after the date of this Agreement. Town acknowledges that all right-of-way and easement property required for F.M. 2499 Turn Lane has previously been dedicated to the Town pursuant to the Plat.

4. Construction of Eastbound Right Turn Lane on Lakeside Parkway. Lakeside DFW agrees to design, construct, and pay for an eastbound right turn lane on Lakeside Parkway ("Lakeside Turn Lane") as depicted on Exhibit "A." The Lakeside Turn Lane shall be completed and accepted by the Town before any building to be located on the 7-11 Tract as contemplated in the 7-11 Development receives a certificate of occupancy from the Town. Town agrees it will act reasonably and diligently in determining such acceptance. Town acknowledges that the Lakeside Turn Lane may be constructed within the existing right-of-way of Lakeside Parkway as previously approved on the Plat.

5. Driveway Improvements. Lakeside DFW agrees to use commercially reasonable efforts to acquire the necessary property rights in order to construct improvements to the existing driveway located in the Home Depot – Silveron Addition so that it aligns with the existing commercial driveway on the north side of Lakeside Parkway as depicted on Exhibit "A" ("Driveway Improvements"). In the event Lakeside DFW is successful in acquiring such property rights, then Lakeside DFW agrees to design, construct, and pay for the Driveway Improvements in accordance with the Plat, and in such event, the Driveway Improvements shall be completed and accepted by the Town before any building to be located on the 7-11 Tract as contemplated in the 7-11 Development receives a certificate of occupancy from the Town. However, in the event Lakeside DFW is not successful in acquiring such property rights, then (i) it shall notify Town in writing, and Town may, at its option, attempt to obtain such property rights (which efforts may include exercise of the Town's powers of eminent domain), and (ii) completion and acceptance of the Driveway Improvements shall not be a condition to the Town's issuance of a certificate of occupancy for any building to be located on the 7-11 Tract. If Town acquires such property rights, it shall notify Lakeside DFW and Lakeside DFW shall design, construct, and pay for the Driveway Improvement.

6. Term. The term of this Agreement shall begin on the date of execution and shall end when the Town accepts the Improvements provided for in Section 3, Section 4, and Section 5 herein or when the construction of the building on the 7-11 Tract is completed, whichever is later.

7. Indemnification. **LAKESIDE DFW SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE TOWN, ITS OFFICERS, OFFICIALS, CONSULTANTS, AGENTS AND EMPLOYEES, IN BOTH THEIR PRIVATE AND OFFICIAL CAPACITIES, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CLAIMS, DAMAGES, LOSSES, AND EXPENSES OF ANY CHARACTER, NAME, AND DESCRIPTION, INCLUDING, BUT NOT LIMITED TO, COURT COSTS AND REASONABLE ATTORNEY'S FEES, ARISING ON ACCOUNT OF ANY NEGLIGENT ACT OF LAKESIDE DFW, ITS AGENTS, EMPLOYEES OR SUBCONTRACTORS IN CONSTRUCTION OR DESIGN OF THE IMPROVEMENTS PROVIDED FOR HEREIN, INCLUDING, BUT NOT LIMITED TO, ANY CLAIM, DAMAGE, LOSS OR EXPENSE ATTRIBUTABLE TO BODILY OR PERSONAL INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND SHALL PAY ANY JUDGMENT, WITH COSTS, WHICH MAY BE OBTAINED AGAINST THE TOWN GROWING OUT OF ANY SUCH CLAIM. NOTHING HEREIN SHALL WAIVE ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE TOWN**

**UNDER TEXAS LAW. LAKESIDE DFW'S INDEMNITY OBLIGATIONS UNDER THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

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

9. Notices. Any notices required or permitted to be given hereunder shall be given by certified or registered mail, return receipt requested, 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<br>2121 Cross Timbers Road<br>Flower Mound, Texas 75028<br>Attn: Town Manager's Office |
|-----------------|------------------------------------------------------------------------------------------------------------------------|

|                     |                                                                                                             |
|---------------------|-------------------------------------------------------------------------------------------------------------|
| If to Lakeside DFW: | Lakeside DFW Land, Ltd.<br>909 Lake Carolyn Parkway, Suite 150<br>Irving, Texas 75039<br>Attn: Jimmy Archie |
|---------------------|-------------------------------------------------------------------------------------------------------------|

10. Attorneys' Fees. In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's 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 I of Chapter 271 of the Texas Local Government Code.

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. Binding Obligation. Upon execution of this Agreement by all signatories hereto, the Agreement shall become a binding obligation on the signatories. 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 same. Lakeside DFW warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind Lakeside DFW to same. Further, this Agreement is and shall be binding upon Lakeside DFW, its successors, heirs, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future.

13. 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 mediation.

14. Roughly Proportionate Determination under Texas Law. Lakeside DFW has been represented by legal counsel in the negotiation of this Agreement and been advised, or has had the opportunity to have legal counsel review this Agreement and advise Lakeside DFW, regarding Lakeside DFW's rights under Texas and federal law. Lakeside DFW hereby waives any requirement that the Town retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions required by the Town in this Agreement, if any, are roughly proportionate to the Project's anticipated impact. Lakeside DFW specifically reserves its right to appeal the apportionment of municipal infrastructure costs under this Agreement in accordance with Section 212.904 of the Texas Local Government Code and acknowledges that the time line for commencing such appeal commences upon execution of this Agreement. Notwithstanding the foregoing, Lakeside DFW hereby waives and releases the Town from any and all liability under Section 212.904 of the Texas Local Government Code, as amended, regarding or related to the cost of those municipal infrastructure improvements required by this Agreement.

15. Rough Proportionality Determination under Federal Law. Lakeside DFW hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution and Chapter 395 of the Texas Local Government Code in regard to this Agreement. Both Lakeside DFW and the Town further agree to waive and release all claims one may have against the other related to any and all rough proportionality and individual determination requirements in this Agreement, if any, mandated by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny, as well as any other requirements of a nexus between development conditions and the projected impact of the terms of this Agreement. Lakeside DFW acknowledges the receipt of good and valuable consideration for the release and waiver of such claims.

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

Exhibit A: Map depicting F.M. 2499 Turn Lane, Lakeside Turn Lane, and Driveway Improvements

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

**LAKESIDE DFW LAND, LTD.,**  
A Texas limited partnership

By: Lakeside DFW, Inc.,  
    A Texas corporation, its General Partner

By: \_\_\_\_\_  
Name: Peter B. Stewart, its President

STATE OF TEXAS       §  
                                     §  
COUNTY OF DALLAS   §

      This instrument was acknowledged before me on this the \_\_\_\_ day of \_\_\_\_\_, 2016 by Peter B. Stewart, President of Lakeside DFW Inc., a Texas corporation, General Partner of Lakeside DFW Land, Ltd., a Texas limited partnership, on behalf of said corporation and limited partnership.

\_\_\_\_\_  
Notary Public, State of Texas





## **TOWN COUNCIL AGENDA ITEM NO. 7**

### **CONSENT ITEM**

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**DATE:** July 18, 2016

**FROM:** Robert Pegg, Engineering Manager-Development Services

**ITEM:** Consider approval of an ordinance for the partial abandonment of an existing utility easement located along the south property line of 3812 Valley View Lane.

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**BACKGROUND INFORMATION:** Trent and Janie Cragin, the current owners of Lot 25, Block 1, of the Hidden Valley Country Estates Addition, which lot is more commonly known as 3812 Valley View Lane, are requesting the vacation of the existing 15-foot utility easement located along the southern property line of the backyard that burdens their property. The utility easement is not being utilized and all current utility providers within the Town have provided letters approving the abandonment of the utility easement described above within the Cragin's property.

The current owners of the lot have agreed to the Hold Harmless Agreement for the abandonment of the existing 15-foot utility easement. By signing the Hold Harmless Agreement, the owners will agree to indemnify, hold harmless and defend the Town of Flower Mound, Texas, its agents, officers, and employees from any loss, damage, liability, or judgment, including reasonable attorney fees and costs, on account of any damage to the property and injuries whatsoever to all persons which may arise as a result of the vacation, closing, and abandonment of the utility easement described above.

The current owners have also agreed to grant the Town a new 15-foot utility easement that will be located along the northern property line of the property.

The Quitclaim Deed releases the public ownership interest and control in the property.

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

**ALTERNATIVES/OPTIONS:** N/A

**FISCAL IMPACT:** N/A

**LEGAL REVIEW:** James Donovan with Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the proposed Ordinance, Hold Harmless Agreement and Quitclaim Deed as to form and legality.

**ATTACHMENTS:**

1. Proposed Ordinance
2. Hold Harmless Agreement
3. Quitclaim Deed

**RECOMMENDATION:** Move to approve an ordinance vacating and abandoning the existing 15-foot utility easement located along the southern property line of Lot 25, Block 1, of the Hidden Valley Country Estates Addition, which lot is more commonly known as 3812 Valley View Lane.

**TOWN OF FLOWER MOUND, TEXAS**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, VACATING AND ABANDONING THE EXISTING 15-FOOT UTILITY EASEMENT LOCATED ALONG THE SOUTHERN PROPERTY LINE OF LOT 25, BLOCK 1, OF THE HIDDEN VALLEY COUNTRY ESTATES ADDITION, AN ADDITION TO THE TOWN OF FLOWER MOUND, DENTON COUNTY, TEXAS, WHICH LOT IS MORE COMMONLY KNOWN AS 3812 VALLEY VIEW LANE; AUTHORIZING THE MAYOR TO EXECUTE A QUITCLAIM DEED RELEASING THE PUBLIC OWNERSHIP INTEREST AND CONTROL IN THE PROPERTY; REQUIRING A HOLD HARMLESS AGREEMENT; AUTHORIZING THE TOWN SECRETARY TO FILE THE QUITCLAIM DEED AND HOLD HARMLESS AGREEMENT IN THE DEED RECORDS OF DENTON COUNTY; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Trent Craign and Janie Craign are the sole and current owners of Lot 25, Block 1, of the Hidden Valley Country Estates, also known as 3812 Valley View Lane ("Property"); and,

**WHEREAS**, Trent Craign and Janie Craign, have requested the Town of Flower Mound to abandon all rights, title, and interest to the existing 15 foot utility easement located along the southern property line ("Utility Easement") which burdens their Property; and,

**WHEREAS**, the Utility Easement is not required to contain the existing flood plain, and the Utility portion of the Utility Easement is not being utilized and all current utility providers within the Town have consented to the abandonment of the Easement of the Utility portion of the Utility Easement or provided a waiver of use of the Utility portion of the Utility Easement; and,

**WHEREAS**, the Town Council has determined that the Utility Easement is not useful or convenient to the public in general, that it therefore constitutes a public charge without a corresponding public benefit, and that the public would be better served and benefitted by its vacation and abandonment; and,

**WHEREAS**, Trent Craign and Jane Cragin have agreed to grant to the Town a 15 foot utility easement that will be located along the northern property line of the Property; and

**WHEREAS**, in order to remove any question as to the continued interest or ownership of the public in the Utility Easement, the Town desires to execute a quitclaim deed releasing all title, ownership and control in the Utility Easement to the owners of the title to the underlying property.

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

**SECTION 1**

The Town does hereby vacate and abandon all of the rights, title, and interest of the Town and the public in the said 15 foot Utility Easement that is located along the southern property line of the Property, as depicted in Exhibit "A," which exhibit is attached hereto and incorporated herein by reference for all purposes.

**SECTION 2**

The Mayor of the Town of Flower Mound is hereby authorized and empowered to execute, on behalf of the Town, a quitclaim deed releasing to the owners of title to the Property, all claims to title, ownership or control of the Utility Easement described in Section 1 of this Ordinance ("Quitclaim Deed").

**SECTION 3**

As a condition precedent to the receipt of the Quitclaim Deed, Trent Craign and Janie Craign shall file with the Town Manager a fully executed hold harmless agreement on a form provided by the Town, which shall run with the Property and be binding on Trent Craign and Janie Craign and all successors-in-interest to the Property ("Hold Harmless Agreement").

**SECTION 4**

The Town Secretary is directed to file an original of the Quitclaim Deed and the Hold Harmless Agreement in the Deed Records of Denton County, Texas.

**SECTION 5**

If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance; and the Town Council hereby declares it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

**SECTION 6**

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 JULY 18, 2016.

APPROVED:

\_\_\_\_\_  
Thomas E. Hayden, MAYOR

ATTEST:

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

APPROVED AS TO FORM AND LEGALITY:

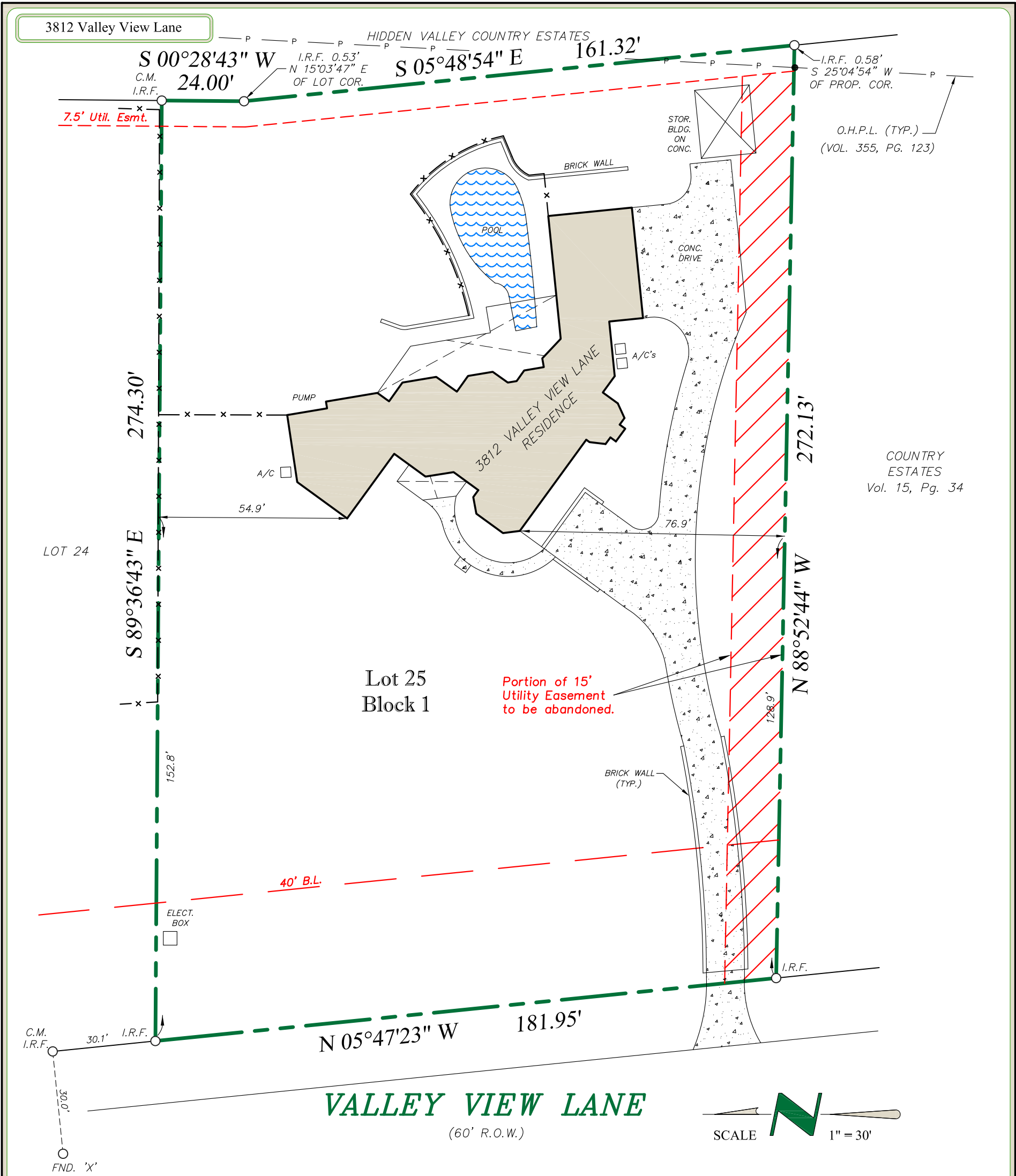
\_\_\_\_\_  
Bryn Meredith, TOWN ATTORNEY

STATE OF TEXAS                   §  
                                          §  
COUNTY OF DENTON           §

BEFORE ME, \_\_\_\_\_, Notary Public, on this day personally appeared Thomas E. Hayden, Mayor of the Town of Flower Mound, Texas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed that instrument for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Texas  
(Seal)



**PROPERTY DESCRIPTION:** Lot 25, in Block 1, of Hidden Valley Country Estates, Section IV, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof, as recorded in Cabinet G, Page, 106, of the Plat Records of Denton County, Texas.

The undersigned have/has received and reviewed a copy of this survey.

x \_\_\_\_\_

x \_\_\_\_\_

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

|         |              |
|---------|--------------|
| Date:   | 08/22/2002   |
| ASC No. | 1509173-1    |
| Drawn   | J.H.B./S.M.  |
| Client  | Trent Cragin |
| Revised | 06/20/2016   |

**LEGEND** - C.M.= Controlling Monument; I.R.F.= Iron Rod Found; I.P.F.= Iron Pipe Found; F.C.P.= Fence Corner Post. OHE=Overhead Electric. I.R.S.= Iron Rod Set 1/2" diameter with yellow cap stamped "Arthur Surveying Company". All found iron rods are 1/2" diameter unless otherwise noted. — x — (fence /  $\nabla$  fence post) — □ — (overhead power)

**FLOOD NOTE:** It is my opinion that the property described hereon is not within the 100-year flood zone area according to the Federal Emergency Management Agency Flood Insurance Rate Map Community-Panel No. 480777 0520 E, present effective date of map, April 2, 1997, herein property situated within Zone "X".

## EASEMENT EXHIBIT A



**Arthur Surveying Co.**  
Professional Land Surveyors  
220 Elm St., # 200 - Lewisville, TX 75057  
Ph. 972.221.9439 - TFRN# 10063800  
arthursurveying.com Established 1986

Note: This exhibit was prepared without the benefit of a title search, therefore no search of recorded easements was performed on subject property.

STATE OF TEXAS       §  
                                  §  
COUNTY OF DENTON   §

**HOLD HARMLESS AND  
INDEMNITY AGREEMENT**

TRENT CRAIGN and JANIE CRAIGN are the sole and current owners of Lot 25, Block 1, of the Hidden Valley Country Estates, also known as 3812 Valley View Lane. Owners have requested the Town of Flower Mound to abandon all rights, title and interest to the 15 foot utility easement located along the southern property line, as depicted in Exhibit "A" of Ordinance No. \_\_\_\_\_.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE TOWN OF FLOWER MOUND, TEXAS, VACATING AND ABANDONING ALL RIGHTS, TITLE AND INTEREST IN AND TO THE ABOVE-DESCRIBED DRAINAGE AND UTILITY EASEMENT, OWNERS DO HEREBY AGREE TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE TOWN OF FLOWER MOUND, TEXAS, ITS AGENTS, OFFICERS AND EMPLOYEES FROM AND AGAINST ANY LOSS, DAMAGE, LIABILITY OR JUDGEMENT, INCLUDING REASONABLE ATTORNEYS FEES AND COSTS, ON ACCOUNT OF ANY DAMAGE TO PERSONS OR PROPERTY WHATSOEVER WHICH MAY ARISE AS A RESULT OF THE VACATION AND ABANDONMENT OF THE ABOVE-DESCRIBED DRAINAGE AND UTILITY EASEMENT.

It is agreed and understood that this agreement shall be filed in the Deed Records of Denton County, Texas, and that the covenants made herein shall run with the land as described above.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 2016.

OWNERS:

\_\_\_\_\_  
Trent CRAIN

\_\_\_\_\_  
Janie CRAIN

STATE OF TEXAS           §  
                                      §  
COUNTY OF DENTON      §

**ACKNOWLEDGMENT**

BEFORE ME, the undersigned, a Notary Public, in and for said County and State, on this day personally appeared Trent Cragin, known to me to be the person whose name is subscribed to the foregoing Hold Harmless and Indemnity Agreement and acknowledged to me that he executed the same for the purposes and consideration therein expressed and that he has the authority and power to enter into the foregoing instruments.

SUBSCRIBED AND SWORN TO BEFORE ME, on this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Texas

STATE OF TEXAS           §  
                                      §  
COUNTY OF DENTON      §

**ACKNOWLEDGMENT**

BEFORE ME, the undersigned, a Notary Public, in and for said County and State, on this day personally appeared Janie Cragin, known to me to be the person whose name is subscribed to the foregoing Hold Harmless and Indemnity Agreement and acknowledged to me that she executed the same for the purposes and consideration therein expressed and that she has the authority and power to enter into the foregoing instruments.

SUBSCRIBED AND SWORN TO BEFORE ME, on this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Texas

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**QUITCLAIM DEED**

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

**KNOW ALL MEN BY THESE PRESENTS:**

**WHEREAS**, the Town Council of the Town of Flower Mound, Texas, after careful study and consideration, found and determined that the existing 15-foot utility easement which is located on property located at 3812 Valley View Lane, Town of Flower Mound, Denton County, Texas ("Property"), was not being used by, nor useful or convenient to, the public in general, and constituted a public charge without a corresponding public benefit, and that the public would be better served and benefitted by the vacation and abandonment of such portion of the drainage utility easement; and

**WHEREAS**, on the \_\_\_\_ day of July, 2016, based on such findings and determinations, the Town Council of the Town of Flower Mound, Texas, adopted Ordinance No. \_\_\_\_\_ which vacated and abandoned such portion of the utility easement, in the Town of Flower Mound, Denton County, Texas; and

**WHEREAS**, TRENT CRAIGN and JANIE CRAIGN own the underlying title to the hereinafter described property where the vacated and abandoned portion of a utility easement was located and desire a quitclaim deed to remove any question concerning the continued interest of the Town of Flower Mound in such vacated and abandoned portion of the utility easement.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the TOWN OF FLOWER MOUND, TEXAS, Grantor, does hereby bargain, sell, release, vacate, abandon and forever quitclaim unto TRENT CRAIGN and JANIE CRAIGN, Grantees, and their heirs, successors and assigns, all of Grantor's right, title, and interest, if any, in and to that portion of a utility easement described on Exhibit "A" attached hereto and incorporated herein for all purposes.

TO HAVE AND TO HOLD all of Grantor's right, title and interest, if any, in and to the above-described vacated and abandoned portion of a drainage utility easement unto the Grantees, and their heirs, successors and assigns forever, so that neither Grantor nor its successors or assigns shall have, claim or demand any right, title or interest in or to the vacated and abandoned portion the utility easement and appurtenances or any part thereof.

EXECUTED this            day of            , 2016.

# TOWN OF FLOWER MOUND

Thomas E. Hayden, MAYOR

[illegible]

BEFORE ME, \_\_\_\_\_, Notary Public, on this day personally appeared Thomas E. Hayden, Mayor of the Town of Flower Mound, Texas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed that instrument for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

NOTARY PUBLIC in and for the State of Texas

(Seal)



## TOWN COUNCIL AGENDA ITEM NO. 8

### CONSENT ITEM

**DATE:** July 18, 2016

**FROM:** Randy Williams, Utility Services Manager

**ITEM:** Consider approval of the purchase of materials and services identified in RFP No. TCPN-SWIII-10-5293 by Brown & Root Industrial Services, LLC., for Final Clarifier No. 1, of the Wastewater Treatment Plant Final Clarification Rehabilitation project, in the amount of \$308,557.00.

**BACKGROUND INFORMATION:** The CIP project, Wastewater Treatment Plant Final Clarification Rehabilitation project, provides funding to rehabilitate all three existing clarification structures located at the wastewater treatment plant (WTP). In 2015, Final Clarifier No. 3 (FC No. 3) was rehabilitated at a cost of \$164,767. The next structure scheduled to be rehabilitated is Final Clarifier No.1 with this approval, for a cost of \$308,557, followed by the update of Final Clarifier No. 2. At the end of the project, all three clarification units will be rehabilitated to like-new condition.

Brown & Root Industrial Services, LLC., is currently under contract with the Texas Cooperative Purchasing Network (TCPN) to provide the services required for this project. The Town of Flower Mound adopted a resolution on January 22, 2004, providing for the Town's participation in TCPN, administered through the Region IV Service Center, and established under sections 791.001 and 791.029 of the Government Code, V.T.C.A. Participation in the cooperative purchasing program allows our local government to purchase goods and services from TCPN contracts, while satisfying all competitive bidding requirements. The rehabilitation of Final Clarifier No. 1 will proceed as outlined in the Brown & Root Proposal # TCPN-SWIII-10-5293.

**FISCAL IMPACT:** \$308,557.00

| Proposed Expenditure: | Account Number(s): |
|-----------------------|--------------------|
| \$308,557.00          | 630-970-98475      |

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

#### ATTACHMENTS:

1. Brown & Root – TCPN STATEWIDE RFP No. TCPN-SWIII-10-5293

**RECOMMENDATION:** Move to approve the purchase of materials and services identified in RFP No. TCPN-SWIII-10-5293 by Brown & Root Industrial Services, LLC., for Final Clarifier No. 1, of the Wastewater Treatment Plant Final Clarification Rehabilitation project, in the amount of \$308,557.00.



# Brown & Root

5956 Sherry Lane, Suite 1000  
Dallas, TX 75225

Randy Williams  
Town of Flower Mound  
1101 Duncan Lane  
Flower Mound, TX 75028

6/24/16

Subject: Proposal for RFP# TCPN-SW III-10-5293  
Location: 1101 Duncan Lane  
Flower Mound, TX 75028

Project Title: Clarifier 1 Rehab

Mr. Williams,

Enclosed is our firm fixed price proposal for the above subject RFP. Work to be performed under the terms and conditions of the TCPN Contract No. R5087. The proposal was prepared using the following data: RS Means **2016** Facilities Construction Cost Data

|                                                                                       |                     |
|---------------------------------------------------------------------------------------|---------------------|
| The Fab Tech pricing with overhead & supervision for the attached Base Scope of Work: | \$307,022.00        |
| Performance & Payment Bond:                                                           | \$1,535.00          |
| The total price for the attached Base Scope of Work:                                  | <b>\$308,557.00</b> |

The proposed project duration is **70** days after notice to proceed (includes contracting and material lead time).

The proposal is valid for **45** days.

Please direct any questions to Brian Mitchell at (817) 925-8866 or Doug Whitmarsh at (713) 980-3250.

Sincerely,

Doug Whitmarsh  
Project General Manager

Attachments: scope, estimate, bid, drawings



Proposal # R5087-TX-8439

Funding Approval \_\_\_\_\_ Date: \_\_\_\_\_  
Customer PO# \_\_\_\_\_

Price is accepted as a lump sum fixed firm price and the incorporated scope of work becomes the controlling document taking precedence over line item estimate detail.

This proposal includes data that shall not be disclosed outside of addressee and shall not be duplicated, used, or disclosed – in whole or part – for any purpose other than to evaluate this proposal.



# Brown & Root

5956 Sherry Lane, Suite 1000  
Dallas, TX 75225

## **Brown & Root - TCPN STATEWIDE**

RFP No. TCPN-SWIII-10-5293

Town of Flower Mound

1101 Duncan Lane, Flower Mound, TX 75028

Clarifier 1 Rehabilitation

### **Outline**

The intent of this proposal is to provide renovation services as detailed below. All work shall be in accordance with all OSHA standards, applicable federal, state and local codes and regulation and good construction practices.

### **Brown & Root General Scope of Work**

- Provide all safety tape, dowel caps and barricades needed
- Provide protection of all adjacent surfaces
- Provide all trash hauling
- Install a rebuilt Envirex H-30 drive unit. Rebuild components will include: Gear motor reducer, bearing races, ball bearings, seals, gaskets, drive sprockets, drive chain, driven sprocket, shear pin hub and shear pins, drive and drive shaft. Housing will be reused.
- All stainless steel hardware to be replaced with new stainless steel hardware.
- Demo and replace the following items; Center tube, cage, influent well, trusses, a-frames, support beams, tie chords, scum blade, skimming arm, scum trough, flush device, brass squeegees and plow blades.
- See attached drawings for new style of skimming arm and scum trough/flush device.
- Check and adjust level of weirs and baffles to ensure correct water surface elevation
- Bridge to be removed, repaired, sand blasted, primed & painted and reinstalled
- Conduit under bridge that is not damaged will be reused, pending approval by Flower Mound inspector. Replace any conduit under bridge that is damaged or deemed unacceptable.
- Water sprayers and associated piping will be replaced
- All fasteners associated with the project to be stainless steel
- Painting: All steel elements of the structure that remain submerged during operation shall be primed and coated with Sherwin Williams, Macropoxy 646-100. Finish paint for bridge shall be PPG Sil-Shield Silicone Alkyd High Gloss Enamel 95-5000 Series, color safety blue.
- 2 year warranty on all parts
- 5 year warranty on drive unit
- Completion to be approximately 70 days from NTP.

### **General Notes**

- All work shall be in accordance with OSHA Standards, applicable federal, state, and local codes, regulations and good construction practices.
- Include all materials, equipment, and labor in bid to complete the scope of work.
- Daily and final clean-up as well as protection of adjacent surfaces.
- Approval of this proposal designates acceptance of the scope of work statement and line item estimate which has been used only to develop a mutually agreed price. The price is accepted as a lump sum fixed firm price and the incorporated scope of work becomes the controlling document taking precedence over line item estimate detail.

### **Exclusions/Clarifications**



- Handling or removal of any hazardous material.
- Hidden or unforeseen conditions.
- No permits have been anticipated for this work and are not included in this proposal.
- Any permits required by the City shall be at 'No Cost'.
- Any repair or replacement of concrete or exposed rebar.
- Davis-Bacon Wages and/or Certified Payrolls.
- Any electrical work aside from that which is required to remove/reset bridge structure
- Any controls work or control panel
- Any repairs not specifically mentioned above.

### **End of Scope**

|                             |                                             |
|-----------------------------|---------------------------------------------|
| <b>Labor Rate Table</b>     | <b>2016 RS Means Facil with O&amp;P</b>     |
| <b>Equipment Rate Table</b> | <b>2016 RS Means Equipment with O&amp;P</b> |

|                                   |                                                   |
|-----------------------------------|---------------------------------------------------|
| <b>Client</b>                     | <b>City of Flower Mound</b>                       |
| <b>Project</b>                    | <b>Clarifier 1 Rehabilitation</b>                 |
| <b>JO No.</b>                     | <b>TCPN SW III - 10 - 5293</b>                    |
| <b>Duration</b>                   | <b>70 Days</b>                                    |
| <b>District Technical Contact</b> | <b>Randy Williams</b>                             |
| <b>Estimator</b>                  | <b>B Mitchell</b>                                 |
| <b>Unit Price Book</b>            | <b>2016 RS Means</b>                              |
| <b>City Cost Index</b>            | <b>Dallas</b>                                     |
| <b>Area</b>                       | <b>JOC III - TCPN Statewide R5087 - Region 10</b> |

TCPN SW III - 10 - 5293  
KBR JOC III - TCPN Statewide R5087 - Region 10

City of Flower Mound  
Clarifier 1 Rehabilitation

4/21/2016

| CSI      | Line | Item Description                         | Qty  | Unit | Labor Total   | Mat Total | Subs Total     | Equip Total | Other Total | Grand Total    |
|----------|------|------------------------------------------|------|------|---------------|-----------|----------------|-------------|-------------|----------------|
|          |      | RS Means                                 |      |      |               |           |                |             |             |                |
| 01310700 | 0240 | Field personnel, superintendent, average | 10.0 | week | 20,383        |           |                |             |             | 20,383         |
|          |      | <b>RS Means Total</b>                    |      |      | <b>20,383</b> |           |                |             |             | <b>20,383</b>  |
|          |      | Subcontractor                            |      |      |               |           |                |             |             |                |
|          |      | Fab Tech LLC                             | 1.0  |      |               |           | 288,174        |             |             | 288,174        |
|          |      | <b>Subcontractor Total</b>               |      |      |               |           | <b>288,174</b> |             |             | <b>288,174</b> |
|          |      | <b>Grand Total</b>                       |      |      | <b>20,383</b> |           | <b>288,174</b> |             |             | <b>308,557</b> |

TCPN SW III - 10 - 5293  
KBR JOC III - TCPN Statewide R5087 - Region 10

City of Flower Mound  
Clarifier 1 Rehabilitation

4/21/2016

| Percent  | Amount    | Category                 |
|----------|-----------|--------------------------|
| 12.43 %  | \$34,500  | Labor                    |
|          | \$0       | Material                 |
| 87.57 %  | \$243,000 | Subcontractor            |
|          | \$0       | Equipment                |
|          | \$0       | Other                    |
|          | \$0       | User                     |
|          | \$277,500 | Net Costs                |
| -14.80 % | (\$5,106) | City Cost Index (Dallas) |
|          | \$272,394 | Subtotal                 |
| -31.00 % | (\$9,112) | Normal Hour Coefficient  |
|          | \$263,282 | Subtotal                 |
| 18.00 %  | \$43,740  | OH&P                     |
|          | \$307,022 | Subtotal                 |
| 0.55 %   | \$1,535   | Bond                     |
|          | \$308,557 | Total Estimate           |

# Sales Quote



## FAB TECH WASTEWATER SOLUTIONS LLC

865 Midpoint dr  
O'Fallon Mo. 63366  
(314) 478-3344  
[roger.roderick@fabtechwss.com](mailto:roger.roderick@fabtechwss.com)

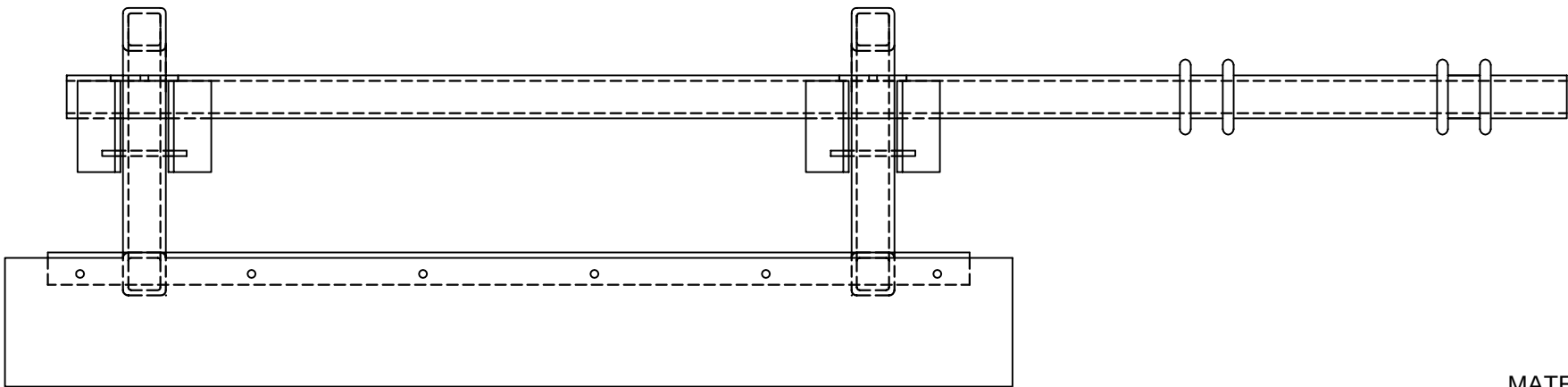
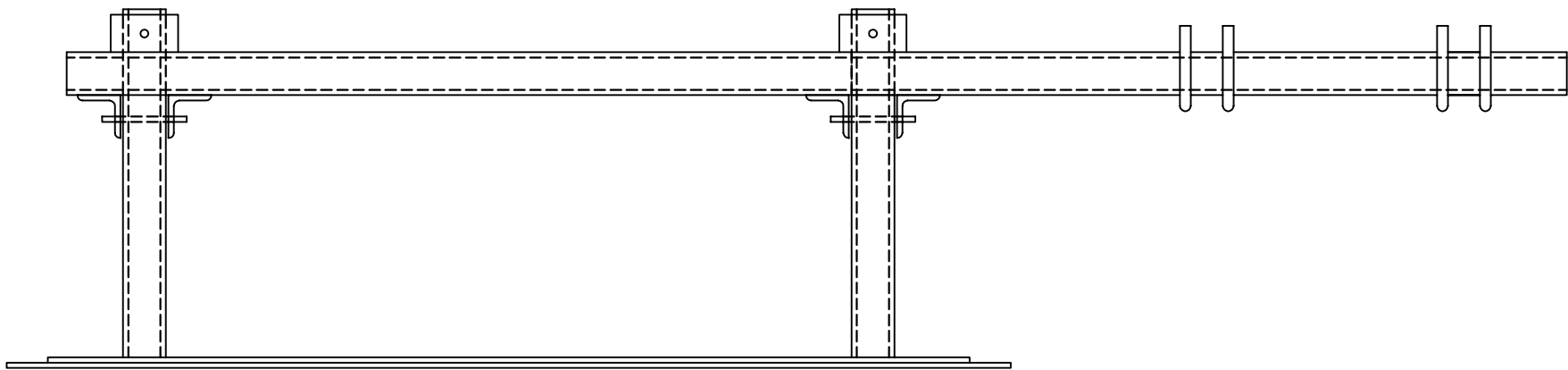
**Quotation NO.** QFT-30030  
**DATE** 6/20/2016  
**CUSTOMER ID** FTflowermound

**TO: Jim Blackwell**  
Chief Mechanic  
Town of Flower Mound  
1105 Duncan Lane  
Flower Mound Texas 75028  
972-874-6407 Office  
972-741-0758 Cell

45 day price guarantee

| JOB Flowermound | PAYMENT TERMS |
|-----------------|---------------|
|                 | Net 30        |

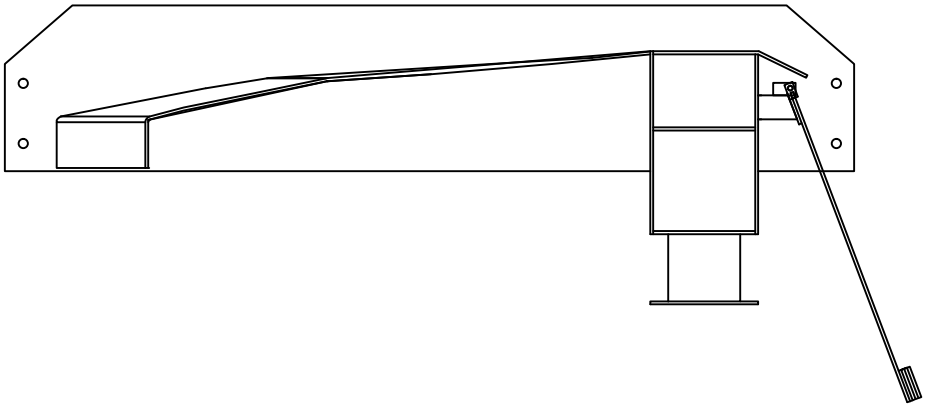
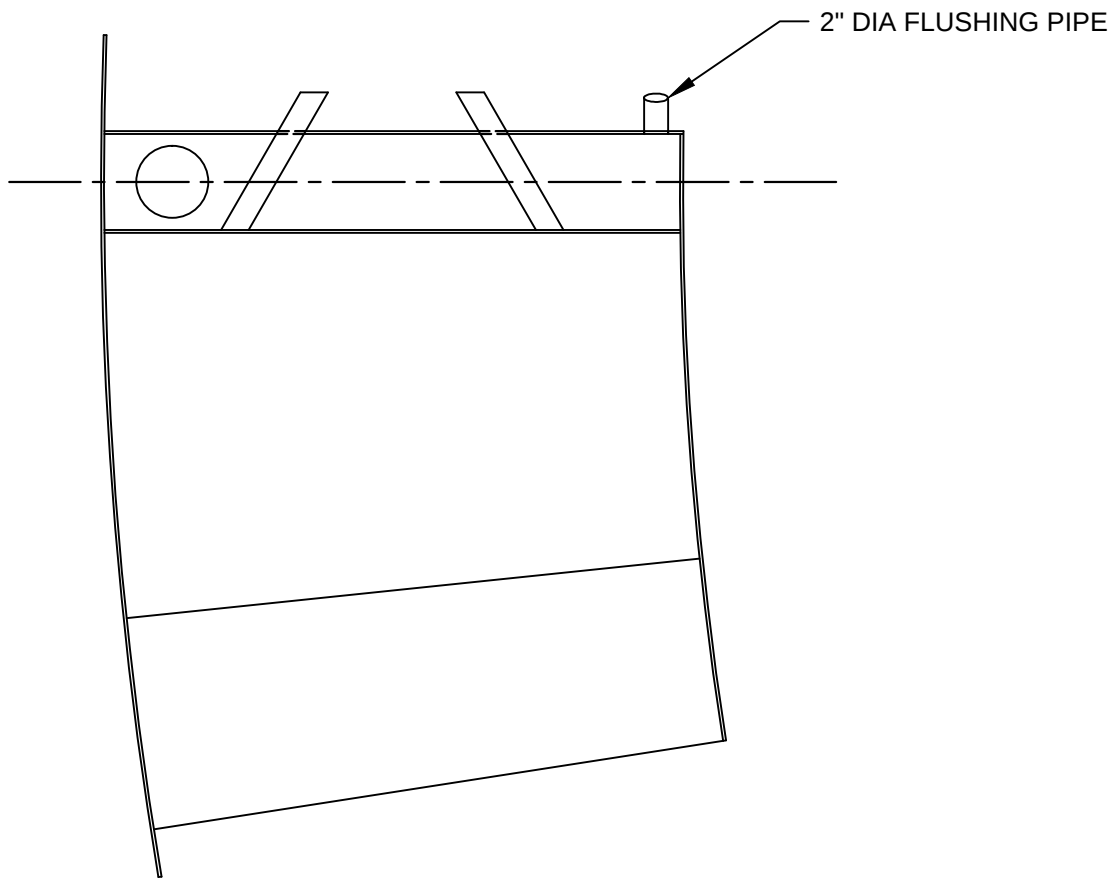
| DESCRIPTION                                                                                                          | QUANTITY | AMOUNT           | TOTAL               |
|----------------------------------------------------------------------------------------------------------------------|----------|------------------|---------------------|
| Circular Collector 75'-0 diameter scraper style with skimming                                                        | 1.00     | \$255,000.00     | \$255,000.00        |
|                                                                                                                      |          |                  | \$0.00              |
| Fab Tech remanufactured Envirex H 30lt Gear Drive Unit (1)                                                           |          |                  | \$0.00              |
| The Rebuild components will consist of the following :                                                               |          |                  | \$0.00              |
| Gear motor reducer, bearing races, ball bearings, seals, gaskets                                                     |          |                  | \$0.00              |
| Drive Sprockets, drive chain, driven sprocket, shear pin hub and shear pins                                          |          |                  | \$0.00              |
| drive and driven shafts.                                                                                             |          |                  | \$0.00              |
| The existing housing . IS THE ONLY REUSED PART                                                                       |          |                  | \$0.00              |
| STAINLESS STEEL HARDWARE TO REPLACE EXISTING                                                                         |          |                  | \$0.00              |
| <b>Includes:</b>                                                                                                     |          |                  | \$0.00              |
| Center tube, cage, influent well, trusses, a-frames, support beams, tie-chords                                       |          |                  | \$0.00              |
| scum blade and (NEW STYLE) skimming arm. (NEW STYLE) scum trough,                                                    |          |                  | \$0.00              |
| (NEW STYLE) flush device. Brass squeegees, plow blades and SS bolted connections                                     |          |                  | \$0.00              |
| All structural steel are to be per ASTM-A36 steel. Surfaces will be sspc-sp10 blast clean                            |          |                  | \$0.00              |
| And will receive (1) coat primer and (1) finish coat , color BLACK                                                   |          |                  | \$0.00              |
|                                                                                                                      |          |                  | \$0.00              |
| Replace water sprayers, and conduit from end of bridge to drive unit.                                                |          |                  | \$0.00              |
|                                                                                                                      |          |                  | \$0.00              |
| <b>Bridge and bridge material to be repaired, blasted clean and repainted, using a UV rated top coat Safety Blue</b> |          |                  | \$0.00              |
| <b>Handrail to be reused.</b>                                                                                        |          |                  | \$0.00              |
|                                                                                                                      |          |                  | \$0.00              |
| Removal of existing equipment and installation on new clarifier mechanism.                                           |          |                  | \$0.00              |
|                                                                                                                      |          |                  | \$0.00              |
| <b>Controls and Electrical panel by OTHERS</b>                                                                       |          |                  | \$0.00              |
|                                                                                                                      |          |                  | \$0.00              |
| Drive Core Credit                                                                                                    | 1.00     | -\$12,000.00     | -\$12,000.00        |
|                                                                                                                      |          |                  | \$0.00              |
| <b>Drive to be used will be H-30</b>                                                                                 |          |                  | \$0.00              |
| <b>2 year warranty on all parts</b>                                                                                  |          |                  | \$0.00              |
| <b>5 year warranty on drive unit</b>                                                                                 |          |                  | \$0.00              |
| <b>All Fasteners associated with work to be stainless steel</b>                                                      |          |                  | \$0.00              |
| <b>Check level of weirs in relation to existing clarifiers elevation and adjust accordingly</b>                      |          |                  | \$0.00              |
|                                                                                                                      |          | <b>TOTAL DUE</b> | <b>\$243,000.00</b> |



MATERIAL SPECIFICATIONS

- ANGLE SHAPES - 304 STAINLESS STEEL
- SQUARE STRUCTURAL TUBE - 304 STAINLESS STEEL
- PLATES - 304 STAINLESS STEEL
- NEOPRENE RUBBER - 50 DUROMETER
- HARDWARE AND U-BOLTS TO BE 316 STAINLESS STEEL

|                                                                                                               |                                                         |         |     |             |      |      |      |                 |                                                                                                                                                                                                        |                            |            |                   |                      |                |                 |                 |
|---------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|---------|-----|-------------|------|------|------|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|------------|-------------------|----------------------|----------------|-----------------|-----------------|
| <div><div>FAB TECHWASTEWATER SOLUTIONS LLC</div><div>O'FALLON, MO<br/>314-478-3344 · 314-223-6473</div></div> |                                                         |         |     |             |      |      |      | DESIGNED<br>BMK | DATE<br>4/18/16                                                                                                                                                                                        | PRODUCT<br><br>SKIMMER ARM |            |                   |                      |                |                 |                 |
|                                                                                                               |                                                         |         |     |             |      |      |      |                 | DRAWN<br>BMK                                                                                                                                                                                           |                            |            |                   |                      |                |                 | DATE<br>4/18/16 |
|                                                                                                               |                                                         |         |     |             |      |      |      |                 | CHECKED<br>RR                                                                                                                                                                                          | DATE<br>4/18/16            | CUSTOMER   |                   |                      |                |                 |                 |
|                                                                                                               |                                                         |         |     |             |      |      |      |                 | THIS DRAWING IS THE<br>PROPERTY OF FAB TECH<br>WASTEWATER SOLUTIONS<br>LLC AND CANNOT BE COPIED<br>OR DISTRIBUTED WITHOUT<br>THE EXPRESS WRITTEN<br>CONSENT OF FAB TECH<br>WASTEWATER<br>SOLUTIONS LLC |                            |            |                   |                      |                |                 |                 |
| A                                                                                                             | APPROVED GA                                             | 4/18/16 | BMK | BMK         | RR   |      |      |                 |                                                                                                                                                                                                        |                            |            |                   |                      |                |                 |                 |
| 04/18/2016 - 6:11 PM                                                                                          | <div><div></div><div>BAR = 1" AT PLOT SCALE</div></div> | REV     |     | DESCRIPTION | DATE | DRWN | CHKD | APVD            | ECN                                                                                                                                                                                                    |                            | PROJECT NO | DRAWING NO<br>101 | SCALE<br>1-1/2" = 1' | SIZE<br>11X17B | SHEET<br>1 OF 1 | REV<br>A        |
|                                                                                                               |                                                         |         |     |             |      |      |      |                 |                                                                                                                                                                                                        |                            |            |                   |                      |                |                 |                 |



MATERIAL SPECIFICATIONS

- PLATES - A36 PLATE
- PIPE - A36 PIPE
- NEOPRENE RUBBER - 50 DUROMETER
- HARDWARE AND U-BOLTS TO BE 316 STAINLESS STEEL

|                                                                                                      |                                    |     |             |     |     |      |      |                                                                                                                                                                                |                 |                        |                   |                      |                |                 |          |
|------------------------------------------------------------------------------------------------------|------------------------------------|-----|-------------|-----|-----|------|------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|------------------------|-------------------|----------------------|----------------|-----------------|----------|
| <div>FAB TECH WASTEWATER SOLUTIONS LLC</div> <div>O'FALLON, MO<br/>314-478-3344 · 314-223-6473</div> |                                    |     |             |     |     |      |      | DESIGNED<br>BMK                                                                                                                                                                | DATE<br>4/18/16 | PRODUCT<br>SCUM TROUGH |                   |                      |                |                 |          |
|                                                                                                      |                                    |     |             |     |     |      |      | DRAWN<br>BMK                                                                                                                                                                   | DATE<br>4/18/16 |                        |                   |                      |                |                 |          |
|                                                                                                      |                                    |     |             |     |     |      |      | CHECKED<br>RR                                                                                                                                                                  | DATE<br>4/18/16 | CUSTOMER               |                   |                      |                |                 |          |
|                                                                                                      |                                    |     |             |     |     |      |      | THIS DRAWING IS THE PROPERTY OF FAB TECH WASTEWATER SOLUTIONS LLC AND CANNOT BE COPIED OR DISTRIBUTED WITHOUT THE EXPRESS WRITTEN CONSENT OF FAB TECH WASTEWATER SOLUTIONS LLC |                 |                        |                   |                      |                |                 |          |
| A                                                                                                    | APPROVED GA                        |     | 4/18/16     | BMK | BMK | RR   |      |                                                                                                                                                                                |                 | PROJECT NO             | DRAWING NO<br>102 | SCALE<br>1-1/2" = 1' | SIZE<br>11X17B | SHEET<br>1 OF 1 | REV<br>A |
| 04/20/2016 - 2:32 PM                                                                                 | <div></div> BAR = 1" AT PLOT SCALE | REV | DESCRIPTION |     |     | DATE | DRWN | CHKD                                                                                                                                                                           | APVD            | ECN                    |                   |                      |                |                 |          |



## TOWN COUNCIL AGENDA ITEM NO. 9

### CONSENT ITEM

**DATE:** July 18, 2016

**FROM:** Ken Parr, Executive Director of Public Works

**ITEM:** Consider approval of a Drainage Easement Dedication Agreement between the Department of the Army and the Town of Flower Mound; and authorize the Mayor to execute same on behalf of the Town.

**BACKGROUND INFORMATION:** This item is to consider approval of an easement dedication agreement between the Department of the Army and the Town of Flower Mound. This agreement provides for the Department of the Army to dedication a drainage easement across the northeast corner of the Grapevine Municipal Golf Course to the Town. The land on which the Grapevine Municipal Golf Course is located is property owned by the Department of the Army and is managed by the Corps of Engineers. The term of the agreement is 25 years at which time it will need to be renewed. There is a \$1,160.00 administration fee that will be paid by the Town.

This proposed drainage easement is needed for the installation a new buried drainage structure that the Town will be installing across the northeast corner of the Golf Course.

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

**ALTERNATIVES/OPTIONS:** N/A

**FISCAL IMPACT:** \$1,160.00

| Proposed Expenditure: | Account Number(s): |
|-----------------------|--------------------|
| \$1,160.00            | 610-590-98902      |

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

**LEGAL REVIEW:** James Donovan, of Taylor, Olson, Adkins, and Elam L.L.P, has reviewed the drainage easement dedication agreement as to form and legality.

#### ATTACHMENTS:

1. Drainage Easement Dedication Agreement

**RECOMMENDATION:** Move to approve Drainage Easement Dedication Agreement between the Department of the Army and the Town of Flower Mound; and authorize the Mayor to execute same on behalf of the Town.

**EASEMENT NO. DACW63-2-16-0644**

**DEPARTMENT OF THE ARMY  
EASEMENT FOR STORM DRAIN RIGHT-OF-WAY  
LOCATED ON  
GRAPEVINE LAKE  
TARRANT COUNTY, TEXAS**

**THE SECRETARY OF THE ARMY** under and by virtue of the authority vested in the Secretary by Title 10, United States Code, Section 2668, having found that the granting of this easement will be in the public interest and will not substantially injure the interests of the United States, hereby grants to the Town of Flower Mound, a municipality, 2121 Cross Timbers Road, Flower Mound, Texas 75028, hereinafter referred to as the Grantee, an easement for a storm drain, 12,135 square feet, containing approximately 0.2786 acre, hereinafter referred to as the Facilities, Tract A-6, over, across, in and upon the lands of the United States as identified in **EXHIBITS A, B, and C**, hereinafter referred to as the Premises, and which are attached hereto and made a part hereof.

**THIS EASEMENT** is granted subject to the following conditions:

**1. TERM**

This easement is granted for a term of Twenty-Five (25) years, beginning July 1, 2016 and ending June 30, 2041.

**2. CONSIDERATION**

The consideration for this easement shall be the construction, operation and maintenance of a storm drain for the benefit of the United States and the general public in accordance with the terms herein set forth.

**3. NOTICES**

All correspondence and notices to be given pursuant to this easement shall be addressed, if to the Grantee, to the Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, Texas 75028; and if to the United States, to the Real Estate Contracting Officer, Attention: Chief, Real Estate Division CESWF-RE-M, Post Office Box 17300, Fort Worth, Texas 76102-0300, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

**EASEMENT NO. DACW63-2-16-0644**

**4. AUTHORIZED REPRESENTATIVES**

Except as otherwise specifically provided, any reference herein to "Secretary", "Real Estate Contracting Officer", or "said officer" shall include their duly authorized representatives. Any reference to "Grantee" shall include assignees, transferees and their duly authorized representatives.

**5. SUPERVISION BY THE REAL ESTATE CONTRACTING OFFICER**

The construction, operation, maintenance, repair or replacement of said Facilities, including culverts and other drainage Facilities, shall be performed at no cost or expense to the United States and subject to the approval of the Real Estate Contracting Officer, Fort Worth District, hereinafter referred to as said officer. Upon the completion of any of the above activities, the Grantee shall immediately restore the Premises to the satisfaction of said officer. The use and occupation of the Premises for the purposes herein granted shall be subject to such rules and regulations as said officer prescribes in writing from time to time.

**6. APPLICABLE LAWS AND REGULATIONS**

The Grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the Premises are located.

**7. CONDITION OF PREMISES**

The Grantee acknowledges that it has inspected the Premises, knows the condition, and understands that the same is granted without any representation or warranties whatsoever and without any obligation on the part of the United States.

**8. INSPECTION AND REPAIRS**

The Grantee shall inspect the Facilities at reasonable intervals and immediately repair any defects found by such inspection or when required by said officer to repair any such defects.

**9. PROTECTION OF GOVERNMENT PROPERTY**

The Grantee shall be responsible for any damage that may be caused to property of the United States by the activities of the Grantee under this easement, and shall exercise due diligence in the protection of all property located on the Premises against fire or damage from any and all causes. Any property of the United States damaged or destroyed by the Grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the Grantee in an amount necessary to restore or replace the property to a condition

**EASEMENT NO. DACW63-2-16-0644**

satisfactory to said officer.

**10. RIGHT TO ENTER**

The right is reserved to the United States, its officers, agents, and employees to enter upon the Premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to remove timber or other material, except property of the Grantee, to flood the Premises and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Grantee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

**11. TRANSFERS AND ASSIGNMENTS**

Without proper written approval by said Real Estate Contracting Officer, the Grantee shall neither transfer nor assign this easement or any part thereof nor grant any interest, privilege or license whatsoever in connection with this easement. The provisions and conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the representatives, successors and assigns of the Grantee.

**12. INDEMNITY**

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property or injuries to the person of the Grantee's officers, agents, or employees or others who may be on the Premises at their invitation or the invitation of any one of them, and the Grantee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

**13. SUBJECT TO EASEMENTS**

This easement is subject to all other existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the Premises, provided that the proposed grant of any new easement or route will be coordinated with the Grantee, and easements will not be granted which will, in the opinion of said officer, interfere with the use of the Premises by the Grantee.

**14. REQUIRED SERVICES**

The Grantee shall furnish through said Facilities such services as may be required from time to time for governmental purposes, provided that payment for such service will be made by the United States at rates which shall be mutually agreeable but

**EASEMENT NO. DACW63-2-16-0644**

which shall never exceed the most favorable rates granted by the Grantee for similar service.

**15. RELOCATION OF FACILITIES**

In the event all or any portion of the Premises occupied by the said Facilities shall be needed by the United States, or in the event the existence of said Facilities is determined to be detrimental to governmental activities, the Grantee shall from time to time, upon notice to do so, and as often as so notified, remove said Facilities to such other location on the Premises as may be designated by said officer. In the event said Facilities shall not be removed or relocated within ninety (90) days after such notice, the United States may cause such relocation at the sole expense of the Grantee.

**16. TERMINATION**

This easement may be terminated by the Secretary upon 30 days written notice to the Grantee if the Secretary shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by the Secretary for failure of the Grantee to comply with any or all of the conditions of this easement, or for non-use for a period of two (2) years, or for abandonment.

**17. SOIL AND WATER CONSERVATION**

The Grantee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said Premises at the beginning of or that may be constructed by the Grantee during the term of this easement, and the Grantee shall take appropriate measures to prevent or control soil erosion within the right-of-way herein granted. Any soil erosion occurring outside the Premises resulting from the activities of the Grantee shall be corrected by the Grantee as directed by said officer.

**18. ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties hereto shall protect the Premises against pollution of its air, ground and water. The Grantee shall comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the Premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this easement. The Grantee shall not discharge waste or effluent from the Premises in such a manner

**EASEMENT NO. DACW63-2-16-0644**

that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The use of any pesticides or herbicides within the Premises shall be in conformance with all applicable Federal, state, interstate, and local laws and regulations. The Grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the Premises.

c. The Grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the Grantee's activities, the Grantee shall be liable to restore the damaged resources.

**19. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS), documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as **EXHIBIT D**. Upon revocation or termination of this easement, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the Grantee in accordance with the condition on **RESTORATION**.

**20. HISTORIC PRESERVATION**

The Grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the Premises, the Grantee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

**21. NON-DISCRIMINATION**

a. The Grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national origin or religion.

b. The Grantee, by acceptance of this easement, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directive 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Grantee, its agents, successors, transferees, and assignees.

**EASEMENT NO. DACW63-2-16-0644****22. RESTORATION**

On or before the termination or revocation of this easement, the Grantee shall, without expense to the United States and within such time as said officer may indicate, restore the Premises to the satisfaction of said officer. In the event the Grantee shall fail to restore the Premises, at the option of said officer, said improvements shall either become the property of the United States without compensation therefore, or said officer shall have the option to perform the restoration at the expense of the Grantee, and the Grantee shall have no claim for damages against the United States or its officers or agents for such action.

**23. DISCLAIMER**

This instrument is effective only insofar as the rights of the United States in the Premises are concerned; and the Grantee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this easement does not eliminate the necessity for obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. § 403), Section 404 of the Clean Water Act (33 U.S.C. § 1344) or any other permit or license which may be required by Federal, state, interstate or local laws in connection with the use of the Premises.

**24. DETERMINATION REGARDING EXECUTIVE ORDER 13658**

a. It has been determined this contract is not subject to Executive Order 13658 or the regulations issued by the Secretary of Labor in 29 CFR Part 10 pursuant to the Executive Order.

b. If a duly authorized representative of the United States discovers or determines, whether before or subsequent to executing this contract, that an erroneous determination regarding the applicability of Executive Order 13658 was made, contractor, to the extent permitted by law, agrees to indemnify and hold harmless the United States, its officers, agents, and employees, for and from any and all liabilities, losses, claims, expenses, suites, fines, penalties, judgments, demands or actions, costs, fees, and damages directly or indirectly arising out of, caused by, related to, resulting from or in any way predicated upon, in whole or in part, the erroneous Executive Order 13658 determination. This includes contractor releasing any claim or entitlement it would otherwise have to an equitable adjustment to the contract and indemnifying and holding harmless the United States from the claims of subcontractors and contractor employees.

**25. ADDED CONDITIONS**

a. Construction of the storm drain will be as depicted on the submitted plans and drawings from the Town of Flower Mound.

**EASEMENT NO. DACW63-2-16-0644**

b. During the construction of the storm drain, the Grantee will be permitted to have two temporary construction areas, one of which will be 6,142 square feet, containing approximately 0.1410 acre and the second one will be 1,046 square feet, containing approximately 0.0240 acre. The temporary construction areas will only be allowed during the time needed for actual construction of the storm drain.

c. The project will be located within the City of Grapevine's Park and Recreation Lease, DACW63-1-94-0552, municipal golf course area. The City of Grapevine has given permission for the Town of Flower Mound to construct the storm drain within the leased area.

**THIS EASEMENT** is not subject to Title 10, United States Code, Section 2662, as amended.

**IN WITNESS WHEREOF**, I have hereunto set my hand by authority of the Secretary of the Army this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Rocky D. Lee  
District Chief, Real Estate Division  
Real Estate Contracting Officer

**THIS EASEMENT** is also executed by the Grantee this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

The Town of Flower Mound

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

## CERTIFICATE OF AUTHORITY

I \_\_\_\_\_, certify that I am the \_\_\_\_\_  
of the Town of Flower Mound, named as the grantee herein; and that  
\_\_\_\_\_, who signed the foregoing instrument on behalf of the  
Town of Flower Mound, was then \_\_\_\_\_ of the Town of Flower Mound.  
I further certify that the said officer was acting within the scope of powers delegated to  
this officer by the governing body of the Town of Flower Mound, in executing said  
instrument.

Date \_\_\_\_\_

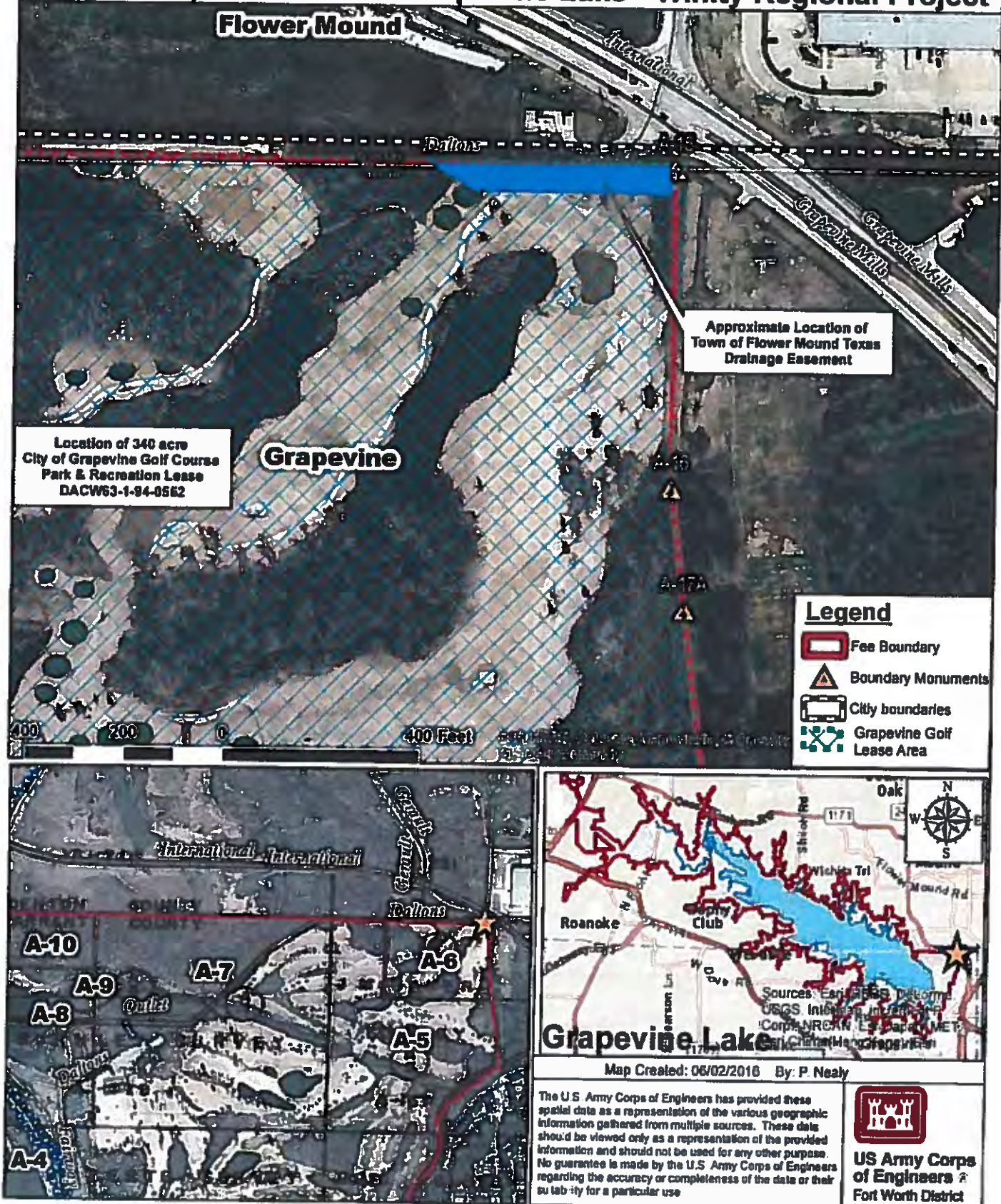
\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
(Title)

**AFFIX COMPANY SEAL**

**NOTE: This form certifies that the person signing the attached instrument has the authority to do so. The signature of the Secretary/Attesting Officer and the individual signing the attached instrument cannot be the same person.**

# **Drainage Easement w/Temporary Construction License - Tract A-6** **Town of Flower Mound Texas - FM 2499 @ Gerault Road** **City of Grapevine Texas - Grapevine Lake - Trinity Regional Project**





RE: CITY OF FLOWER MOUND

**SKETCH TO ACCOMPANY DESCRIPTIONS OF  
DRAINAGE EASEMENT AND TEMPORARY CONSTRUCTION EASEMENTS  
J. BAKER SURVEY, ABSTRACT NO. 167  
TARRANT COUNTY, TEXAS**

| LINE TABLE |                |        |
|------------|----------------|--------|
| LINE       | BEARING        | LENGTH |
| 1          | N41° 54' 35" E | 50.57' |
| 2          | S41° 23' 04" E | 8.51'  |
| 3          | S60° 11' 58" W | 48.67' |
| 4          | N41° 23' 04" W | 21.65' |
| 5          | N41° 23' 04" E | 57.58' |
| 6          | N41° 36' 52" E | 1.50'  |
| 7          | N41° 36' 52" E | 15.10' |
| 8          | N41° 23' 04" E | 10.58' |
| 9          | S41° 11' 58" E | 62.27' |

SCALE 1" = 100'

MATCH PAGE 9 OF 15

UNITED STATES OF AMERICA  
JULY 14, 1948  
VOL. 2821, PG. 28  
D.R.D.C.  
TRACT NO. A-6 (25.3 AC.)

TCE 1  
0.1410 AC.  
6,142 SQ. FT.

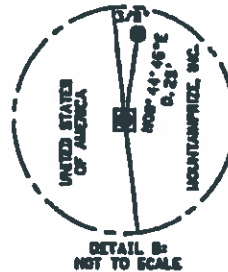
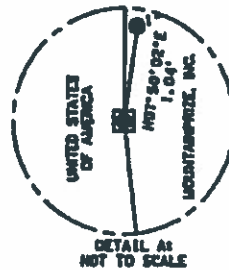
City of Flower Mound  
Tarrant County

J. BAKER SURVEY  
ABSTRACT NO. 167

MOUNTAINPRIZE, INC.  
MAY 31, 2013  
DOC. 0213180012, O.P.R.C.  
TRACT # (31.814 AC.)

**LEGEND**

- CONCRETE MONUMENT FOUND
- 1/2" IRON ROD FOUND WITH CAP
- 1/2" IRON ROD FOUND
- 1/2" IRON ROD SET WITH PLASTIC CAP "MCGRAY MCGRAY"
- (XXX) RECORD INFORMATION
- D.R.D.C. DEED PROPERTY RECORDS DENTON COUNTY
- P.R.D.C. PLAT PROPERTY RECORDS DENTON COUNTY
- D.P.R.T.C. OFFICIAL PUBLIC RECORDS TARRANT COUNTY
- R.O.W. RIGHT-OF-WAY
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT
- D.E. DRAINAGE EASEMENT
- TCE TEMPORARY CONSTRUCTION EASEMENT

SEE  
DETAIL ASEE  
DETAIL B**NOTES:**

1) BEARINGS AND COORDINATES ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, NORTH CENTRAL ZONE, NAD83(2011) EPOCH 2010.00. ALL DISTANCES AND COORDINATES WERE ADJUSTED TO SURFACE USING A COMBINED SCALE FACTOR OF 1.00012.

2) THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE COMMITMENT.

03/01/16

CHRIS CONRAD, REG. PROF. LAND SURVEYOR NO. 5623 DATE  
Note: This copy of this plat is not valid unless an original signature through an original seal appears on its face. There is a description to accompany this plat.

M:\Growth-Harvesting\DWG\Parcels\USA

SURVEYED BY: ISSUED: 01/28/16  
PAGE 10 OF 10



**McGRAY & McGRAY**  
**LAND SURVEYORS, INC.**  
TIFLS FIRM# 10095800  
3301 HANCOCK DRIVE #5  
AUSTIN, TEXAS 78731  
(512) 451-8591

JOB NO: 16-013

**(DRAINAGE EASEMENT)  
J. BAKER SURVEY, ABSTRACT NO. 167  
TARRANT COUNTY, TEXAS**

**DESCRIPTION OF 0.2786 OF ONE ACRE TRACT  
(DRAINAGE EASEMENT)**

**DESCRIPTION OF 0.2786 OF ONE ACRE OR 12,135 SQUARE FEET OF LAND, MORE OR LESS, OUT OF THE J. BAKER SURVEY, ABSTRACT NO. 167, TARRANT COUNTY, TEXAS, AND BEING A PORTION OF THAT TRACT DESCRIBED AS 25.3 ACRES (TRACT NO. 6-A), IN A WARRANTY DEED, DATED JULY 14, 1948, TO THE UNITED STATES OF AMERICA, OF RECORD IN VOLUME 2021, PAGE 26, DEED RECORDS, DENTON COUNTY, TEXAS; SAID 0.2786 OF ONE ACRE BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:**

**COMMENCING at a 1/2 inch iron rod found at the southwest corner of that tract described as 30.964 acres (Tract C) in a Warranty Deed, dated August 23, 2007, to FLCT, LTD. (undivided 12% interest), FLCS, LTD. (undivided 49% interest), FLST, LTD. (undivided 39% interest), of record in Document No. D207302377, Official Public Records, Tarrant County, Texas;**

**THENCE, with the south line of said FLCT, et al tract, N89°54'39"E 2,532.08 feet to a 1/2 inch iron rod set with a plastic cap at the northwest corner and POINT OF BEGINNING of this tract, same being in the north line of said United States of America tract, and the south line of said FLCT, et al tract;**

- 1) THENCE, with the north line of this tract, and the south line of said FLCT, et al tract, and the south line of Lot 3, Southpoint Addition, a subdivision of record in Cabinet M, Page 346, Plat Records, Denton County, Texas, said Lot 3 owned by the City of Flower Mound, Texas, according to Tarrant County Appraisal District (no record information found), N89°54'39"E, passing at 43.81 feet a 1/2 inch iron rod found with cap at the southeast corner of said FLCT, et al tract, and the southwest corner of said Lot 3 and said City of Flower Mound tract, continuing 6.76 feet for a total distance of 50.57 feet to a 1/2 inch iron rod set with a plastic cap at an exterior el corner in the north line of this tract;**

0.2786 AC.

**THENCE, with continuing with the north line of this tract, the following three (3) courses, numbered 2 through 4:**

- 2) crossing said United States of America tract, S41°23'08"E 8.21 feet to a 1/2 inch iron rod set with a plastic cap;**
  - 3) crossing said United States of America tract, S89°55'55"E 193.77 feet to a 1/2 inch iron rod set with a plastic cap in the north line of said United States of America tract, and the existing southwest right-of-way line of F.M. 2499; and**
  - 4) with the north line of the United States of America tract, and the existing southwest right-of-way line of F.M. 2499, S84°11'50"E 76.39 feet to a concrete monument found at the northeast corner of this tract and said United States of America tract, and the north corner of that tract described as 31.614 acres (Tract II) in a Warranty Deed, dated May 31, 2013, to Mountainprize, Inc., of record in Document No. D213160012, Official Public Records, Tarrant County, Texas;**
- 5) THENCE, with the east line of this tract and said United States of America tract, and the west line of said Mountainprize tract, S00°11'39"W 48.07 feet to a 1/2 inch iron rod set with a plastic cap at the southeast corner of this tract, from which a concrete monument found at an angle point in the east line of said United States of America tract and the west line of said Mountainprize tract bears S00°11'39"W 605.08 feet;**

**THENCE, with the south line of this tract, crossing said United States of America tract, the following two (2) courses, numbered 6 and 7:**

- 6) N41°23'08"W 21.85 feet to a 1/2 inch iron rod set with a plastic cap; and**
- 7) N89°55'55"W 272.94 feet to a 1/2 inch iron rod set with a plastic cap at the southwest corner of this tract;**

**THENCE, with the west line of this tract, crossing said United States of America tract, the following two (2) courses, numbered 8 and 9:**

- 8) N41°23'08"W 57.98 feet to a 1/2 inch iron rod set with a plastic cap; and**
- 9) N03°36'52"E 1.90 feet the POINT OF BEGINNING and containing 0.2788 of one acre, more or less, within these metes and bounds.**

**0.2786 AC.**

**Bearing Basis Note**

The bearings described herein are Texas State Plane Grid bearings (Texas North Central Zone, NAD83(2011) EPOCH 2010.00. The Combined Scale Factor is 1.00012).

**SURVEYED BY:**

**McGRAY & McGRAY LAND SURVEYORS, INC.**  
3301 Hancock Dr., Ste. 6, Austin, TX 78731 (512) 451-8591  
TBPLS Firm# 10095500

\_\_\_\_\_  
**Chris Conrad, Reg. Professional Land Surveyor No. 5623**

**03/16**

**Date**

**Note:** This copy of this description is not valid unless an original signature through an original seal appears on its face. There is a plat to accompany this description.

Descriptions 2016/City of Flower Mound/0.2786 ac. DE  
Issued 03/2016

**(TEMPORARY CONSTRUCTION EASEMENT)  
J. BAKER SURVEY, ABSTRACT NO. 167  
TARRANT COUNTY, TEXAS**

**DESCRIPTION OF 0.1410 OF ONE ACRE TRACT  
(TEMPORARY CONSTRUCTION EASEMENT)**

**DESCRIPTION OF 0.1410 OF ONE ACRE OR 6,142 SQUARE FEET OF LAND, MORE OR LESS, OUT OF THE J. BAKER SURVEY, ABSTRACT NO. 167, TARRANT COUNTY, TEXAS, AND BEING A PORTION OF THAT TRACT DESCRIBED AS 25.3 ACRES (TRACT NO. 6-A), IN A WARRANTY DEED, DATED JULY 14, 1948, TO THE UNITED STATES OF AMERICA, OF RECORD IN VOLUME 2021, PAGE 26, DEED RECORDS, DENTON COUNTY, TEXAS; SAID 0.1410 OF ONE ACRE BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:**

**COMMENCING at a 1/2 inch iron rod found at the southwest corner of that tract described as 30.964 acres (Tract C) in a Warranty Deed, dated August 23, 2007, to FLCT, LTD. (undivided 12% interest), FLCS, LTD. (undivided 49% interest), FLST, LTD. (undivided 39% interest), of record in Document No. D207302377, Official Public Records, Tarrant County, Texas;**

**THENCE, with the south line of said FLCT, et al tract, N89°54'39"E 2,516.99 feet to a calculated point at the northwest corner and POINT OF BEGINNING of this tract, same being in the north line of said United States of America tract, and the south line of said FLCT, et al tract;**

**1) THENCE, with the north line of this tract, and the south line of said FLCT, et al tract, N89°54'39"E 15.10 feet to a 1/2 inch iron rod set with a plastic cap at an exterior el corner in the north line of this tract;**

**THENCE, with continuing with the north line of this tract, crossing said United States of America tract, the following four (4) courses, numbered 2 through 5:**

**2) S03°36'52"W 1.90 feet to a 1/2 inch iron rod set with a plastic cap;**

**3) S41°23'08"E 57.98 feet to a 1/2 inch iron rod set with a plastic cap;**

**4) S89°55'55"E 272.94 feet to a 1/2 inch iron rod set with a plastic cap; and**

1.5120 AC.

- 5) **S41°23'08"E 21.85 feet to a 1/2 inch iron rod set with a plastic cap at the most northerly east corner of this tract, same being in the east line of said United States of America tract and the west line of that tract described as 31.614 acres (Tract II) in a Warranty Deed, dated May 31, 2013, to Mountainprize, Inc., of record in Document No. D213160012, Official Public Records, Tarrant County, Texas;**
- 6) **THENCE, with the east line of this tract and said United States of America tract, and the west line of said Mountainprize tract, S00°11'39"W 433.16 feet to a calculated point at the south corner of this tract, from which a concrete monument found at an angle point in the east line of said United States tract, and the west line of said Mountainprize tract, bears S00°11'39"W 171.92 feet;**
- THENCE, with the south line of this tract, crossing said United States of America tract, the following three (3) courses, numbered 6 through 8:**
- 7) **N01°23'08"W 431.67 feet to a calculated point;**
- 8) **N41°23'08"W 10.68 feet to a calculated point; and**
- 9) **N89°55'55"W 272.94 feet to a calculated point at the southwest corner of this tract;**
- 10) **THENCE, with the west line of this tract, crossing said United States of America tract, N41°23'08"W 73.79 feet the POINT OF BEGINNING and containing 0.1410 of one acre, more or less, within these metes and bounds.**

0.1410 AC.

**Bearing Basis Note**

The bearings described herein are Texas State Plane Grid bearings (Texas North Central Zone, NAD83(2011) EPOCH 2010.00. The Combined Scale Factor is 1.00012).

**SURVEYED BY:**

**McGRAY & McGRAY LAND SURVEYORS, INC.**  
3301 Hancock Dr., Ste. 6, Austin, TX 78731 (512) 451-8591  
TBPLS Firm# 10095500

**03/16**

**Chris Conrad, Reg. Professional Land Surveyor No. 5623**

**Date**

**Note: This copy of this description is not valid unless an original signature through an original seal appears on its face. There is a plat to accompany this description.**

**Descriptoes 2016/City of Flower Mound/0.14103 ac. TCE  
Issued 03/2016**

**(TEMPORARY CONSTRUCTION EASEMENT)  
J. BAKER SURVEY, ABSTRACT NO. 167  
TARRANT COUNTY, TEXAS**

**DESCRIPTION OF 0.0240 OF ONE ACRE TRACT  
(TEMPORARY CONSTRUCTION EASEMENT)**

**DESCRIPTION OF 0.0240 OF ONE ACRE OR 1,046 SQUARE FEET OF LAND, MORE OR LESS, OUT OF THE J. BAKER SURVEY, ABSTRACT NO. 167, TARRANT COUNTY, TEXAS, AND BEING A PORTION OF THAT TRACT DESCRIBED AS 25.3 ACRES (TRACT NO. 6-A), IN A WARRANTY DEED, DATED JULY 14, 1948, TO THE UNITED STATES OF AMERICA, OF RECORD IN VOLUME 2021, PAGE 26, DEED RECORDS, DENTON COUNTY, TEXAS; SAID 0.0240 OF ONE ACRE BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:**

**COMMENCING at a 1/2 inch iron rod found at the southwest corner of that tract described as 30.964 acres (Tract C) in a Warranty Deed, dated August 23, 2007, to FLCT, LTD. (undivided 12% interest), FLCS, LTD. (undivided 49% interest), FLST, LTD. (undivided 39% interest), of record in Document No. D207302377, Official Public Records, Tarrant County, Texas;**

**THENCE, with the south line of said FLCT, et al tract, and the south line of Lot 3, Southpoint Addition, a subdivision of record in Cabinet M, Page 346, Plat Records, Denton County, Texas, said Lot 3 owned by the City of Flower Mound, Texas, according to Tarrant County Appraisal District (no record information found), N89°54'39"E, passing at 2,575.89 feet a 1/2 inch iron rod found with cap at the southeast corner of said FLCT, et al tract, and the southwest corner of said Lot 3 and said City of Flower Mound tract, same being in the north line of said United States of America tract, continuing 6.76 feet for a total distance of 2,582.65 feet to a 1/2 inch iron rod set with a plastic cap at the northwest corner and POINT OF BEGINNING of this tract;**

**THENCE, with the north line of this tract and said United States of America tract, the following two (2) courses, numbered 1 and 2:**

- 1) with the south line of said Lot 3 and said City of Flower Mound tract, N89°54'39"E 134.26 feet to a calculated point at the southeast corner of said Lot 3 and said City of Flower Mound tract, at an angle point in the north line of said United States of America tract, same being in the southwest right-of-way line of F.M. 2499; and**
- 2) with the southwest right-of-way line of F.M. 2499, S84°11'50"E 65.27 feet to a 1/2 inch iron rod set with a plastic cap at the east corner of this tract;**

0.0240 AC.

- 3) THENCE, with the south line of this tract, crossing said United States of America tract, N89°55'55"W 193.77 feet to a 1/2 inch iron rod set with a plastic cap at the southwest corner of this tract;
- 4) THENCE, with the west line of this tract, crossing said United States of America tract, N41°23'08"W 8.21 feet the POINT OF BEGINNING and containing 0.0240 of one acre, more or less, within these metes and bounds.

Bearing Basis Note

The bearings described herein are Texas State Plane Grid bearings (Texas North Central Zone, NAD83(2011) EPOCH 2010.00. The Combined Scale Factor is 1.00012).

**SURVEYED BY:**

**McGRAY & McGRAY LAND SURVEYORS, INC.**  
3301 Hancock Dr., Ste. 6, Austin, TX 78731 (512) 451-8591  
TBPLS Firm# 10095500

03/16

Chris Conrad, Reg. Professional Land Surveyor No. 5623

Date

Note: This copy of this description is not valid unless an original signature through an original seal appears on its face. There is a plat to accompany this description.

Descriptions 2016/City of Flower Mound/0.0240 ac. TCE

Issued 03/2016

## **PRELIMINARY ASSESSMENT SCREENING**

**1. REAL PROPERTY TRANSACTION:** The Corps proposes to issue Easement, DACW63-2-16-0644, which will allow the Town of Flower Mound to construct a storm drain on Tract A-6 at Grapevine Lake, Texas. The new Easement will become effective July 1, 2016 and expire June 30, 2041.

a. A **COMPREHENSIVE RECORDS SEARCH** was conducted which included a review of the following areas:

- 1) Real Estate Division files.
- 2) Real Estate Division maps.
- 3) Grapevine Lake Master plan.
- 4) Operations Division files.
- 5) Environmental Review Guide for Operations (ERGO).

b. **INTERVIEWS WERE CONDUCTED** with the following: Martin Underwood, Trinity Environmental Stewardship BLM, Kenneth Myers, Acting Grapevine Lake manager and Daniel Sammon, Grapevine Park Ranger, on June 1, 2016.

c. A **SITE INVESTIGATION** was performed by Park Ranger Daniel Sammon on June 2, 2016, which consisted of a visual inspection of the area.

## **2. STATEMENT OF FINDINGS**

### **a. COMPREHENSIVE RECORDS SEARCH SUMMARY**

A complete search of the District files which pertain to the proposed lease area was made as stated in 1.a. above. The records search revealed no other evidence of any hazardous substance being stored, released or disposed of on the property involved. The operating plans and historical records also showed no other evidence of any activity which would have contaminated the property with hazardous substances.

**EXHIBIT D**

**b. SITE INVESTIGATION SUMMARY**

A site investigation of the proposed lease area was made as stated in 1.c. above. This visual inspection revealed no unusual odors, stained soils, stressed vegetation, suspicious seepage, manmade land features, unnatural surface features or other evidence that would indicate the presence of hazardous wastes. Based on this inspection it was determined no hazardous substance has been stored, released or disposed of on the property involved. Project personnel have no other knowledge of past activities which might have created a hazardous situation.

\_\_\_\_\_  
Prepared By: JOANNE MURPHY  
Realty Specialist, Management and Disposal Branch

\_\_\_\_\_  
Date

\_\_\_\_\_  
Approved By: ROCKY D. LEE  
District Chief, Real Estate Division  
Real Estate Contracting Officer

\_\_\_\_\_  
Date

**EXHIBIT D**



## TOWN COUNCIL AGENDA ITEM NO. 10

### CONSENT ITEM

---

**DATE:** July 18, 2016

**FROM:** Alora Wachholz

**ITEM:** Consider approval of Estoppel Certificate and Confirmation and Amendment Regarding 380 and Tax Abatement Agreement for property located at 2000 and 2010 Lakeside Parkway; and authorize Mayor to execute same on behalf of the Town.

---

**BACKGROUND INFORMATION:** In August 2014 the Town entered into a 380 and Tax Abatement Agreement with Huntington Industrial Partners-Texas, LLC ("Huntington"). Huntington subsequently assigned the Agreement to its affiliate, Mach II – HIP DFW North Airport, LLC ("Mach II"). The Agreement covers Lots 1 and 2, Block A, DFW AIRPORT NORTH DISTRIBUTION CENTER II, also known as 2000 and 2010 Lakeside Parkway. The property located at 2010 Lakeside Parkway was previously sold to LRC-2010 Lakeside, LLC (the Lisanti property). Mach II is now under contract to sell 2000 Lakeside Parkway to IPT Lakeside DC, LLC.

Buyer is requesting that the Town execute the documents in order to close on the property. The estoppel certificate is a standard document whereby the Town is representing to interested parties involved in the transaction that the Agreement does encumber the property, and that no parties are in default of the Agreement. The estoppel certificate also consents to the assignment of the Agreement to IPT Lakeside DC, LLC.

The Confirmation and Amendment confirms that (1) each property (2000 and 2010 Lakeside) will be treated separately in terms of benefits and obligations under the Agreement; (2) all core obligations under the Agreement have been met; and (3) that the Tax Abatement Period begins January 1, 2017. The document amends the original agreement by reallocating the Base Value under the original Agreement, which was defined as \$3,600,000. Since the property has been replatted and split up, Buyer is requesting that the Base Value be apportioned based off square footage of each lot. The Confirmation and Amendment document also amends the Agreement by eliminating the need for future assignments to be approved by the Town or the owner of the other lot, provided that each assignee agrees to assume the obligations and duties of assignor contained in the Agreement.

All major obligations under the Agreement have been met. The two Class A industrial warehouse buildings have been constructed, the required appraised aggregate value of both lots has been achieved, and certificates of occupancy have been issued. The only outstanding and continuous obligation for the property owners would be to use the lots as Class A warehouse use.

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

**ALTERNATIVES/OPTIONS:** N/A

**FISCAL IMPACT:** N/A

**LEGAL REVIEW:** Drew Larkin of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the documents as to form and legality.

**ATTACHMENTS:**

1. Estoppel Certificate
2. Confirmation and Amendment Regarding 380 and Tax Abatement Agreement

**RECOMMENDATION:** Consider approval of Estoppel Certificate and Confirmation and Amendment Regarding 380 and Tax Abatement Agreement for property located at 2000 and 2010 Lakeside Parkway; and authorize Mayor to execute same on behalf of the Town.

## TOWN OF FLOWER MOUND ESTOPPEL CERTIFICATE

### 380 AND TAX ABATEMENT AGREEMENT

**WHEREAS**, the Town of Flower Mound, Texas (“**Town**”), and Huntington Industrial Partners – Texas, L.L.C., a Delaware limited liability company (“**Huntington**”), entered into that certain 380 and Tax Abatement Agreement recorded in the Real Property Records of Denton County, Texas, as Document No. 2014-81474 (“**Agreement**”), as assigned by Huntington to MACH II – HIP DFW North Airport, LLC, a Delaware limited liability company (“**Owner**”), pursuant to that certain Omnibus Assignment and Assumption of Agreement recorded in the Real Property Records of Denton County, Texas, as Document No. 2014-122781;

**WHEREAS**, the Agreement encumbers certain property owned by Owner more particularly described on Exhibit A attached hereto and made a part hereof (“**Property**”);

**WHEREAS**, Owner intends to sell the Property to IPT Lakeside DC LLC, a Delaware limited liability company (“**Purchaser**”), and partially assign the Agreement to Purchaser as relates solely to the Property. In connection with the purchase and assignment, Purchaser has requested that the Town consent and certify to certain matters under the Agreement;

**NOW, THEREFORE**, the Town hereby states and certifies to Purchaser and Commonwealth Title, together with their respective successors and/or assigns (collectively, the “**Certified Parties**”), as of the date hereof:

1. The Agreement does encumber the Property.
2. The Town consents to the partial assignment of the Agreement, and all rights and obligations thereunder, from Owner to Purchaser, solely as relates to the Property.
3. The provisions of the Agreement have not been amended or modified, except as may be referenced herein.
4. The Town and Owner (and any other “Owner” under the Agreement) are each in full compliance with the terms, covenants, conditions and requirements set forth in the Agreement and there is no violation of any provisions therein.
5. The issuance of this estoppel certificate shall be conclusive evidence of the matters set forth herein and may be relied upon by the Certified Parties.

[Signature page follows.]

**IN WITNESS WHEREOF**, the undersigned has executed this estoppel certificate this \_\_\_\_ day of \_\_\_\_\_, 2016.

**TOWN:**

TOWN OF FLOWER MOUND, TEXAS

By: \_\_\_\_\_

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

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

Exhibit A

Being all of Lot 2, Block A, DFW AIRPORT NORTH DISTRIBUTION CENTER II, an Addition to the Town of Flower Mound, Denton County, Texas according to the plat thereof, recorded in Document No. 2015-366, Plat Records of Denton County, Texas.

THE STATE OF TEXAS            )

COUNTY OF DENTON            )

# **CONFIRMATION AND AMENDMENT REGARDING 380 AND TAX ABATEMENT AGREEMENT**

**WHEREAS**, the Town of Flower Mound, Texas (“**Town**”), and Huntington Industrial Partners – Texas, L.L.C., a Delaware limited liability company (“**Huntington**”), entered into that certain 380 and Tax Abatement Agreement recorded in the Real Property Records of Denton County, Texas, as Document No. 2014-81474 (“**Agreement**”), as assigned by Huntington to MACH II – HIP DFW North Airport, LLC, a Delaware limited liability company (“**Developer**”), pursuant to that certain Omnibus Assignment and Assumption of Agreement recorded in the Real Property Records of Denton County, Texas, as Document No. 2014-122781 and as assigned in part with respect to Parcel I (hereinafter defined) to LRC-2010 Lakeside LLC, a Texas limited liability company (“**Lisanti**”) pursuant to that certain Partial Assignment of 380 and Tax Abatement Agreement made as of May \_\_\_, 2016;

**WHEREAS**, the Agreement encumbers certain property described on Exhibit A attached hereto and made a part hereof (**Property**);

**WHEREAS**, following the date of the Agreement, the Property was replatted to reflect the lot described on Exhibit B (“**Parcel I**”) and the lot described on Exhibit C (“**Parcel II**”);

**WHEREAS**, the parties to the Agreement wish to confirm certain matters relating to the Agreement as more fully set forth herein;

**NOW, THEREFORE**, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Capitalized terms contained herein that are not defined herein shall have the meanings ascribed thereto in the Agreement.
2. In event that, at any time, Parcel I and Parcel II are owned by separate persons or entities, (i) the term “Owner” shall mean each such individual owner, individually and as to Parcel I or Parcel II, as applicable, (ii) all rights, obligations and liabilities under the Agreement shall apply to and be enforceable (and the Town shall be entitled to exercise remedies with respect thereto) against each Owner and as to Parcel I and Parcel II, as applicable, separately, (iii) each Owner shall be severally (and not jointly and severally) liable for the obligations and liabilities with respect to Parcel I or Parcel II, as applicable, (iv) the termination of the Agreement as to one Owner and/or a portion of the Property only shall not result in a termination of the Agreement as to any other Owner and/or other portion of the Property and (v) a default by one Owner shall in no event constitute a default by the other Owner or impact the rights or obligations of such other Owner under the Agreement.
3. Town hereby acknowledges and agrees that (i) construction of the Improvements has been completed prior to the Substantial Completion Deadline in accordance with the terms of the Agreement, (ii) certificates of occupancy for the Improvements have been obtained prior to the Substantial Completion Deadline in accordance with the terms of the Agreement and (iii) the Obligations contained in Section 5(a), (b) and (c) of the Agreement (the Obligation contained in Section 5(d) being ongoing) have been fully and finally satisfied.
4. Lisanti and Developer agree between themselves that the Base Value shall be allocated as follows for all purposes under the Agreement: (i) \$1,728,000 to Parcel I and (ii) \$1,872,000 to Parcel II, and the abatement of taxes with respect to each of Parcel I and Parcel II pursuant to the Agreement shall be calculated based on the value of the Real Property and Improvements (including Business Personal

Property) on or at Parcel I or Parcel II, as applicable, over the Base Value for such Parcel I or Parcel II, as applicable. The Town agrees that it will not contest the foregoing.

5. The Tax Abatement Period shall commence January 1, 2017.
6. Notwithstanding anything contained in the Agreement to the contrary, without the consent of Town or any other Owner, an Owner may assign such Owner's right, title and interest in and to the Agreement to any successor-in-interest of such Owner with respect to the Property or any portion thereof, provided that each assignee agrees to assume the obligations and duties of Owner contained in the Agreement.
7. The provisions of the Agreement have not been amended or modified, except as may be referenced herein.
8. The provisions of the instrument shall run with the land and be binding on and inure to the benefit of the parties hereto and their respective successors and assigns and successors in title and shall be recorded in the real property records of Denton County, Texas.

[Signature page follows.]

**IN WITNESS WHEREOF**, the undersigned has executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 2016.

**TOWN:**

TOWN OF FLOWER MOUND, TEXAS

By: \_\_\_\_\_

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

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

ATTEST:

\_\_\_\_\_

STATE OF TEXAS )

COUNTY OF DENTON )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, Mayor or the Town of Flower Mount, Texas, a Texas home rule municipality, on behalf of said Town.

\_\_\_\_\_

Notary Public, State of Texas

**DEVELOPER:**

**MACH II – HIP DFW NORTH AIRPORT, LLC,**  
a Delaware limited liability company

By: MACH II Huntington Investments LLC,  
a Delaware limited liability company,  
its sole member

By: Huntington Industrial Partners-Mach II, LLC,  
a Delaware limited liability company,  
its Administrative Manager

By: Huntington Property Company LLC,  
a Colorado limited liability company,  
its sole member

By: \_\_\_\_\_  
Name: John W. Seiple, Jr.,  
Its: Manager

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this the \_\_\_\_ day of \_\_\_\_\_, 2016, by John W. Seiple, Jr., manager of Huntington Property Company LLC, a Colorado limited liability company, the sole member of Huntington Industrial Partners-Mach II, LLC, a Delaware limited liability company, administrative manager of MACH II Huntington Investments LLC, a Delaware limited liability company, the sole member of MACH II – HIP DFW North Airport, LLC, a Delaware limited liability company, on behalf of said entities.

(SEAL)

Notary Public in and for said County and State

LISANTI:

LRC-2010 Lakeside LLC, a Texas limited liability company

By: \_\_\_\_\_

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

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

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

          This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, by  
\_\_\_\_\_, the \_\_\_\_\_ of LRC-2010 Lakeside LLC, a Texas limited liability company.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

Exhibit A

Lots 1 and 2, Block A, of DFW AIRPORT NORTH DISTRIBUTION CENTER II, an addition to the Town of Flower Mound, Denton County, Texas, according to the Plat thereof recorded in Volume 2015, Page 366, Plat Records, Denton County, Texas.

Exhibit B

Lot 1, Block A, of DFW AIRPORT NORTH DISTRIBUTION CENTER II, an addition to the Town of Flower Mound, Denton County, Texas, according to the Plat thereof recorded in Volume 2015, Page 366, Plat Records, Denton County, Texas.

Exhibit C

Lot 2, Block A, of DFW AIRPORT NORTH DISTRIBUTION CENTER II, an addition to the Town of Flower Mound, Denton County, Texas, according to the Plat thereof recorded in Volume 2015, Page 366, Plat Records, Denton County, Texas.



---

**DATE:** July 18, 2016

**FROM:** Poornima Srinarasi, Senior Planner

**ITEM:** Public Hearing to consider a request for rezoning (Z16-0003 - Ivy Estates, Lot 2, Block A) from Single-Family District-30 (SF-30) uses to Single-Family District-10 (SF-10) uses, and to consider adopting an ordinance providing for said amendment. The property is generally located south of Rembert Drive and north of Lismore Drive. *(The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its July 11, 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 (Z16-0003 - Ivy Estates, Lot 2, Block A) from Single-Family District-30 (SF-30) uses to Single-Family District-10 (SF-10) uses, and adopt an ordinance providing for said amendment.

## **PLANNING AND ZONING COMMISSION AGENDA ITEM NO: 3**

---

**DATE:** July 11, 2016

**FROM:** Poornima Srinarasi, Senior Planner

**ITEM:** Public Hearing to consider a request for rezoning (Z16-0003 - Ivy Estates, Lot 2, Block A) from Single-Family District-30 (SF-30) uses to Single-Family District-10 (SF-10) uses. The property is generally located south of Rembert Drive and north of Lismore Drive.

---

### **I. ITEM SUMMARY**

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

This application will require final action by the Town Council.

### **II. APPLICATION ANALYSIS**

The purpose of the request is to rezone approximately 1.073 acres of land to Single-Family District-10 (SF-10) zoning district to allow future subdivision of land to create one new residential lot. There is an existing residence on the subject property which will remain. The zoning request is in conformance with the Master Plan designation of Medium Density Residential which requires minimum 10,000-square-foot lots.

The lot configuration for the proposed residential lots will be provided at the time of replat application. The existing residential developments to the north, west and south are all master-planned for Medium Density Residential uses and zoned for Single-Family District-30 (SF-30) uses (minimum lot size of 30,000 square feet), PD-46 with Single-Family Density Medium (SFDM) uses (minimum lot size of 6,000 square feet), and Single-Family District-10 (SF-10) uses (minimum lot size of 10,000 square feet) respectively.

### **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 not received any correspondence regarding the requested zoning amendment.

#### **IV. ATTACHMENTS**

##### **A. Background Information**

1. Vicinity Map
2. Letter of Intent

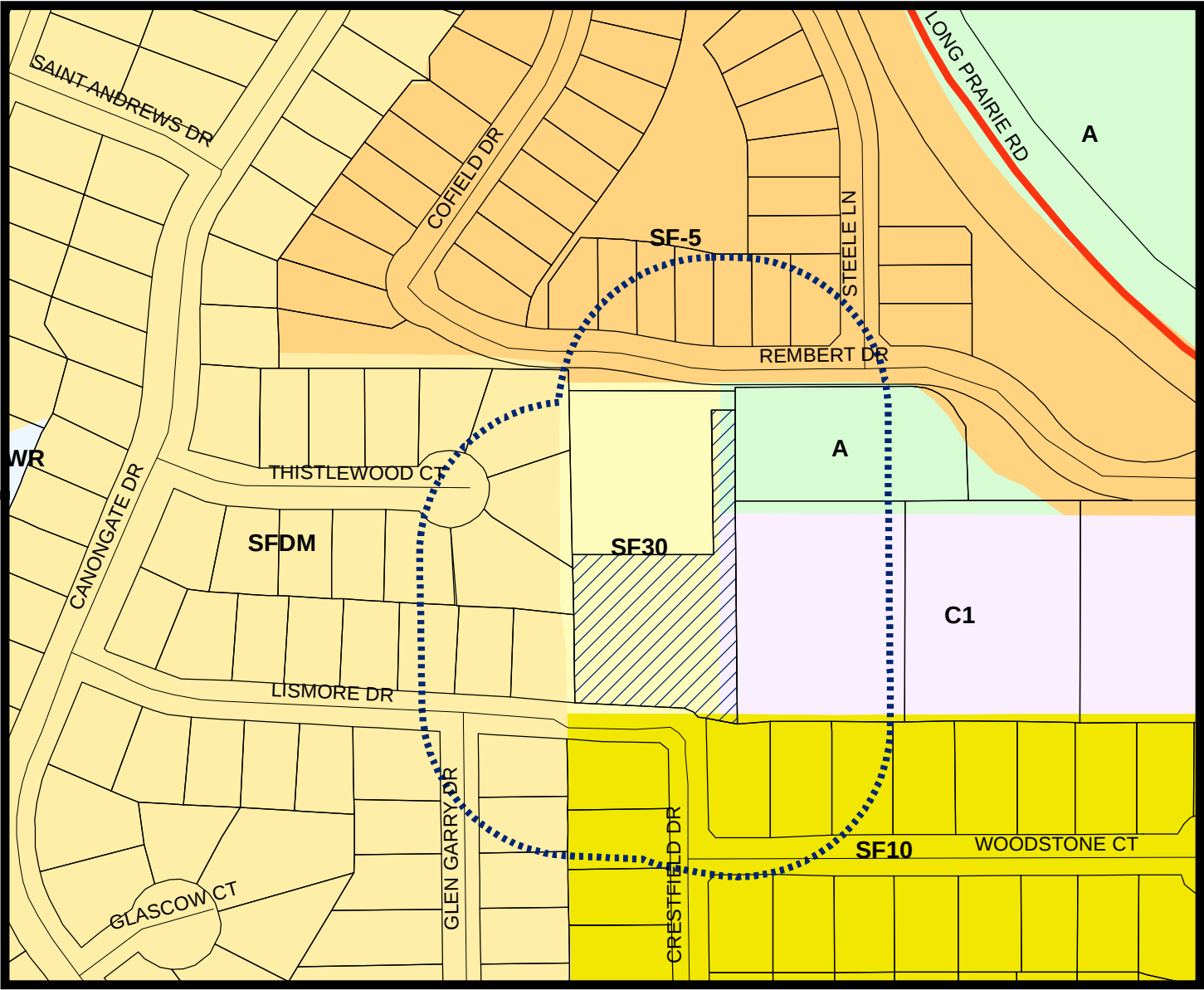
##### **B. Application Details**

1. Zoning Exhibit



# Vicinity Map

Reference Project: Z16-0003

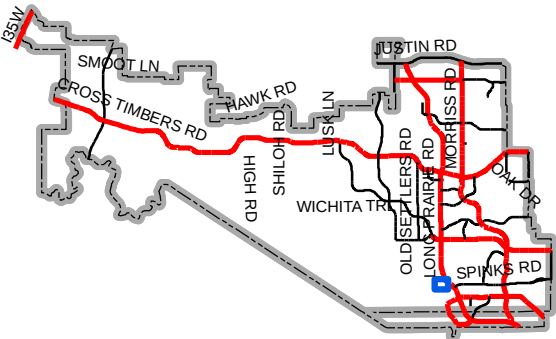
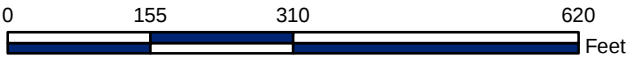


**LEGEND**

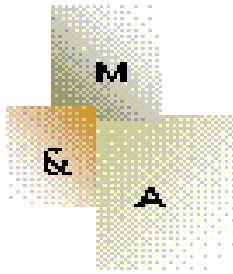
|                  |                  |                                 |                 |
|------------------|------------------|---------------------------------|-----------------|
| Agriculture      | Commercial 1     | SFDM (obsolete)                 | Single Family 5 |
| Water Recreation | Single Family 10 | Single Family 30 & 1 (obsolete) |                 |

Subject Property

200 ft Notification Buffer around Property



Map Location



**MIDDLETON & ASSOCIATES, LLC**

**CONSULTING CIVIL ENGINEERS, SURVEYORS AND LAND PLANNERS**

June 15, 2016

Ms. Poornima Srinarasi  
Planner  
Town of Flower Mound  
1001 Cross Timbers, Ste. 2330  
Flower Mound, TX 75028

RE: Letter of Intent  
Rezoning for Ivy Estates  
Z16-0003  
Flower Mound, Texas

Dear Poornima:

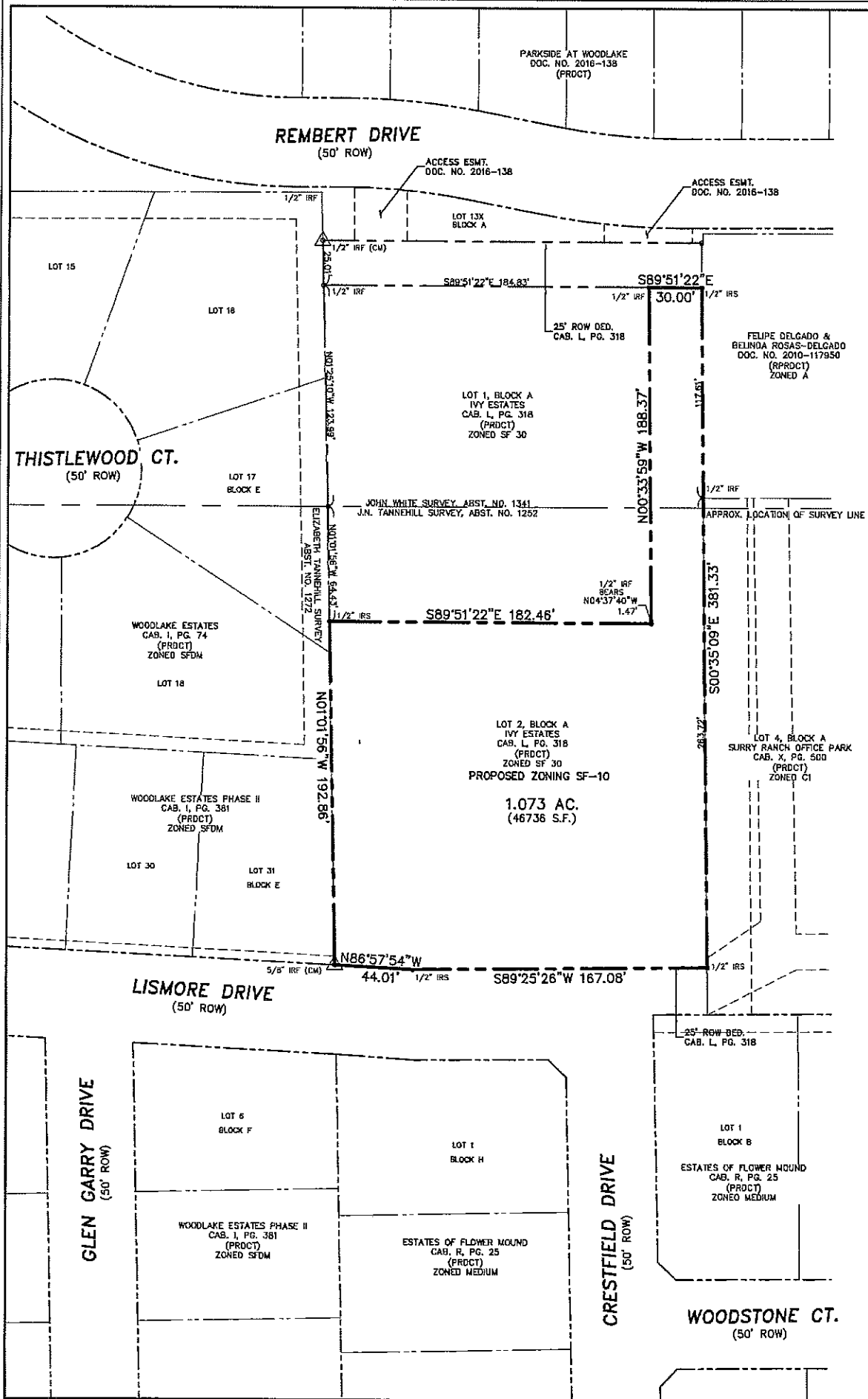
Please accept this Letter of Intent for the rezoning of 2620 Lismore Drive, Lot 2, Block A of Ivy Estates in Flower Mound. The lot is currently 1.073 acres in size with an existing home on the northeasterly section.

The purpose of this request is to change the zoning from existing SF-30 to SF-10, which would allow for the re-platting of this lot into two separate parcels and the construction of a new single family home along Lismore Drive. No waivers or variances will be needed.

If you have any other questions or would like additional information regarding our submittal, please contact me at 972-393-9800.

Sincerely,  
**MIDDLETON & ASSOCIATES, LLC.**

Eugene Middleton, P.E.  
President



STATE OF TEXAS  
COUNTY OF DENTON

BEING a tract of land situated in the John White Survey, Abstract No. 1341 and the J. N. Tannehill Survey, Abstract No. 1252, Denton County, Texas and being all of Lot 2, Block A of Ivy Estates Addition, an addition to the Town of Flower Mound as recorded in Cabinet L, Page 318 of the Plat Records of Denton County, Texas (PRDCT) and being more particularly described as follows:

BEGINNING at a 5/8 inch iron rod found for the most southeasterly corner of Lot 31, Block E of Woodlake Estates, Phase II, an addition to the Town of Flower Mound as recorded in Cabinet L, Page 381 (PRDCT);

THENCE along the easterly line of said Woodlake Estates, Phase II North 01° 01' 56" West a distance of 192.65 feet to a 1/2 inch iron rod set for the most southwesterly corner of Lot 1, Block A of said Ivy Estates;

THENCE along the southerly line of said Lot 1, Block A South 89° 51' 22" East a distance of 182.48 feet to a point for the most southeasterly corner of said Lot 1, Block A (from which a 1/2 inch iron rod found bears North 04° 37' 40" West a distance of 1.47 feet);

THENCE along the westerly line of said Lot 1, Block A North 00° 33' 59" West a distance of 188.37 feet to a 1/2 inch iron rod found for the most northwesterly corner of said Lot 1, Block A, said iron rod also being in the southerly line of a 25 foot right-of-way dedication for Spinks Road as recorded in said Ivy Estates Addition;

THENCE departing the westerly line of said Lot 1, Block A and along the southerly line of said 25 foot right-of-way dedication South 89° 51' 22" East a distance of 30.00 feet to a 1/2 inch iron rod set for the most southeasterly corner of said 25 foot right-of-way dedication, said iron rod also being in the westerly line of a tract of land as described in a deed to Felipe and Belinda Rosas-Delgado and recorded in Document No. 2010-117950 of the Real Property Records of Denton County, Texas (RPRDCT);

THENCE departing the southerly line of said 25 foot right-of-way dedication and along the westerly line of said Delgado tract South 00° 35' 09" East the following distances;

Passing a 1/2 inch iron rod found for the most northwesterly corner of Lot 4, Block A of Surry Ranch Office Park, an addition to the Town of Flower Mound as recorded in Cabinet X, Page 500 (PRDCT) at 117.61 feet;

Continuing along the westerly line of said Surry Ranch Office Park for 263.72 feet for a total distance of 381.33 feet to a 1/2 inch iron rod set for the northwesterly corner of a 25 foot right-of-way dedication for Lismore Drive as recorded in said Ivy Estates Addition;

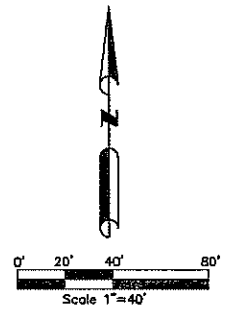
THENCE departing the westerly line of said Surry Ranch Office Park and along the northerly line of said 25 foot right-of-way dedication for Lismore Drive as follows;

South 89° 25' 26" West a distance of 167.08 feet to a 1/2 inch iron rod set for corner;

North 86° 57' 54" West a distance of 44.01 feet to the Point of Beginning;

Containing within these metes and bounds 1.073 acres or 46,736 square feet of land more or less.

The bearings contained herein are based on GPS measurements taken at the time of survey.

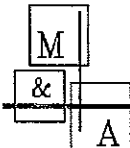


| MASTER PLAN FEATURES |                                       |
|----------------------|---------------------------------------|
| LAND USE PLAN        | MEDIUM DENSITY RESIDENTIAL            |
| SPECIFIC PLANS       | NA                                    |
| URBAN DESIGN PLAN    | NA                                    |
| PARKS AND TRAILS     | NA                                    |
| OPEN SPACE PLAN      | NA                                    |
| THOROUGHFARE PLAN    | LISMORE DRIVE (50' ROW) RESIDENTIAL   |
| WATER PLAN           | EX. 8" SEWER ON SOUTH SIDE OF LISMORE |
| WASTEWATER PLAN      | EX. 8" WATER ON NORTH SIDE OF LISMORE |
| ECONOMIC IMPACT      | NA                                    |

| RESIDENTIAL LOT CRITERIA |                  |                  |
|--------------------------|------------------|------------------|
|                          | EXISTING (SF-30) | PROP. (SF-10)    |
| MIN. LOT AREA            | 30,000 S.F.      | 10,000 S.F.      |
| MIN. LOT WIDTH           | 100'             | 70'              |
| MIN. FRONT SETBACK       | 25'              | 25'              |
| MIN. REAR SETBACK        | 30'              | 25'              |
| MIN. SIDE SETBACK        | 15'              | 10'              |
| MAX. LOT COVERAGE        | 35%              | 40%              |
| MIN. FLOOR AREA          | 2,100 S.F.       | 1,800 S.F.       |
| MAX. BUILDING HEIGHT     | 3 STORIES OR 35' | 3 STORIES OR 35' |

OWNERS:  
JOSE & SALAMMA VARGHESE  
10022 STONE HARBOR WAY  
IRVING, TEXAS 75063

|     |      |          |         |
|-----|------|----------|---------|
| No. | DATE | REVISION | APPROV. |
|     |      |          |         |
|     |      |          |         |
|     |      |          |         |



**Middleton PROJECT ENGINEER:  
& Associates, LLC.**

CONSULTING CIVIL ENGINEERS, SURVEYORS &  
LAND PLANNERS  
TBPE #F-10500 TBPLS #10157700  
1111 SOUTH MAIN ST., SUITE 123 GRAPEVINE,  
TEXAS 76051 (972) 393-9800

**ZONING EXHIBIT**  
2620 LISMORE DRIVE  
LOT 2, BLOCK A - IVY ESTATES  
FLOWER MOUND, TEXAS

|                               |               |               |             |
|-------------------------------|---------------|---------------|-------------|
| Drawing File: 0077001ZONE.DWG | DATE: 8-14-16 | SCALE: 1"=40' | SHEET NO: 1 |
| Project No. 0077001           |               |               |             |

**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 1.073 ACRES BEING ALL OF LOT 2, BLOCK A, OF THE IVY ESTATES ADDITION FROM SINGLE-FAMILY DISTRICT-30 (SF-30) TO SINGLE-FAMILY DISTRICT-10 (SF-10) IN ACCORDANCE WITH THE TOWN'S MASTER PLAN AND SPECIFIC REQUIREMENTS STATED HEREIN AND EXHIBITS ATTACHED HERETO; 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 owner of the property described as 1.073 acres being all of Lot 2, Block A, of the Ivy Estates Addition, has filed an application for a Zoning amendment to change the zoning from Single-Family District-30 (SF-30) to Single-Family District-10 (SF-10) for said property; and

**WHEREAS**, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on July 11, 2016, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on July 18, 2016, with respect to the Zoning 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 amendment 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:**

### **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:

1.073 acres being all of Lot 2, Block A, of the Ivy Estates Addition, Denton County, Texas, and more fully described in Exhibit "A" hereto.

Single-Family District-10 (SF-10) uses as depicted in the zoning exhibit attached as Exhibit "B" hereto.

### **SECTION 2**

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 zoning, as set forth above.

### **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 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 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.

ORDINANCE NO. \_\_\_\_\_

**Page 3****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 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 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**

**Exhibit "A"**

## Description of Property

STATE OF TEXAS  
COUNTY OF DENTON

BEING a tract of land situated in the John White Survey, Abstract No. 1341 and the J. N. Tannehill Survey, Abstract No. 1252, Denton County, Texas and being all of Lot 2, Block A of Ivy Estates Addition, an addition to the Town of Flower Mound as recorded in Cabinet L, Page 318 of the Plat Records of Denton County, Texas (PRDCT) and being more particularly described as follows:

BEGINNING at a 5/8 inch iron rod found for the most southeasterly corner of Lot 31, Block E of Woodlake Estates, Phase II, an addition to the Town of Flower Mound as recorded in Cabinet I, Page 381 (PRDCT);

THENCE along the easterly line of said Woodlake Estates, Phase II North 01° 01' 56" West a distance of 192.86 feet to a 1/2 inch iron rod set for the most southwesterly corner of Lot 1, Block A of said Ivy Estates;

THENCE along the southerly line of said Lot 1, Block A South 89° 51' 22" East a distance of 182.46 feet to a point for the most southeasterly corner of said Lot 1, Block A (from which a 1/2 inch iron rod found bears North 04° 37' 40" West a distance of 1.47 feet);

THENCE along the westerly line of said Lot 1, Block A North 00° 33' 59" West a distance of 188.37 feet to a 1/2 inch iron rod found for the most northeasterly corner of said Lot 1, Block A, said iron rod also being in the southerly line of a 25 foot right-of-way dedication for Spinks Road as recorded in said Ivy Estates Addition;

THENCE departing the westerly line of said Lot 1, Block A and along the southerly line of said 25 foot right-of-way dedication South 89° 51' 22" East a distance of 30.00 feet to a 1/2 inch iron rod set for the most southeasterly corner of said 25 foot right-of-way dedication, said iron rod also being in the westerly line of a tract of land as described in a deed to Felipe and Belinda Rosas-Delgado and recorded in Document No. 2010-117950 of the Real Property Records of Denton County, Texas (RPRDCT);

THENCE departing the southerly line of said 25 foot right-of-way dedication and along the westerly line of said Delgado tract South 00° 35' 09" East the following distances;

Passing a 1/2 inch iron rod found for the most northwesterly corner of Lot 4, Block A of Surry Ranch Office Park, an addition to the Town of Flower Mound as recorded in Cabinet X, Page 500 (PRDCT) at 117.61 feet;

Continuing along the westerly line of said Surry Ranch Office Park for 263.72 feet for a total distance of 381.33 feet to a 1/2 inch iron rod set for the northeasterly corner of a 25 foot right-of-way dedication for Lismore Drive as recorded in said Ivy Estates Addition;

THENCE departing the westerly line of said Surry Ranch Office Park and along the northerly line of said 25 foot right-of-way dedication for Lismore Drive as follows:

South 89° 25' 26" West a distance of 167.08 feet to a 1/2 inch iron rod set for corner;

North 86° 57' 54" West a distance of 44.01 feet to the Point of Beginning;

Containing within these metes and bounds 1.073 acres or 46,736 square feet of land more or less.

The bearings contained herein are based on GPS measurements taken at the time of survey.



STATE OF TEXAS  
COUNTY OF SUTTON

BEFORE ME, the undersigned authority, on this \_\_\_\_\_ day of \_\_\_\_\_, 2012, personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, acknowledged to me that he executed the same for the purposes and consideration therein expressed.

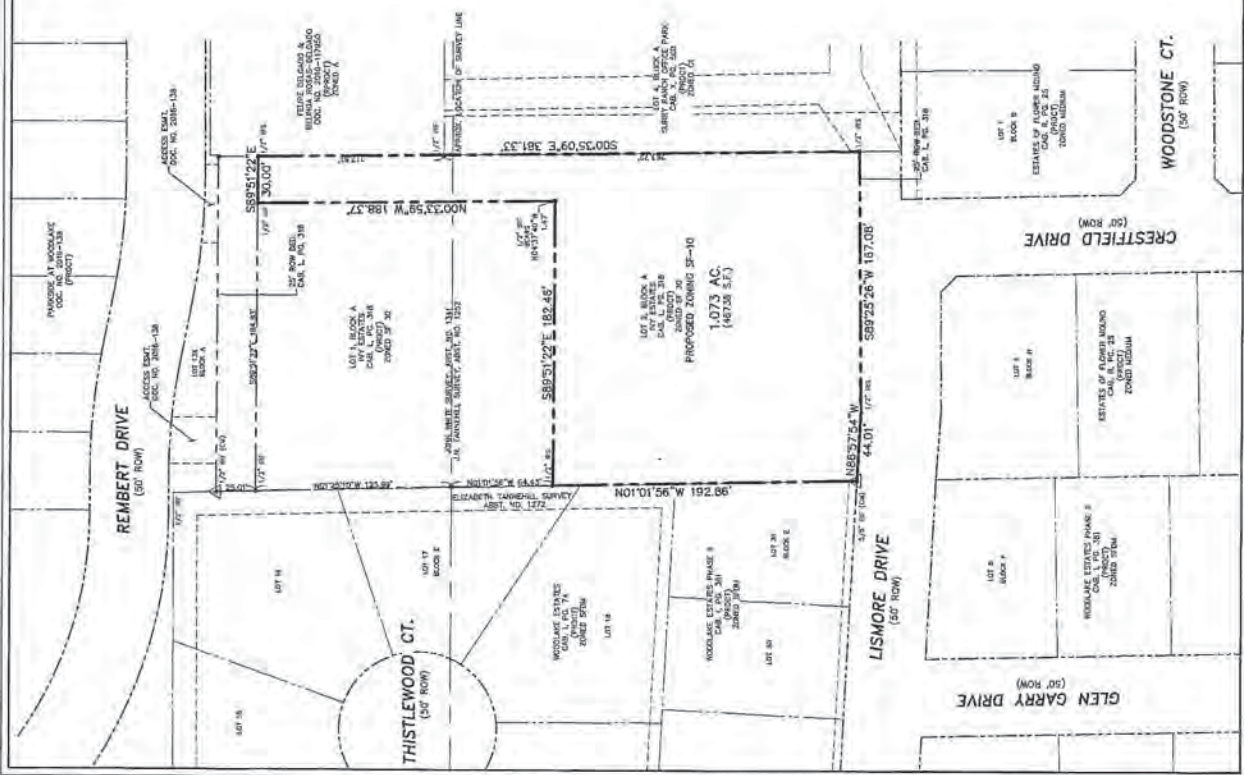
Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Notary Public in and for the State of Texas

My commission expires on \_\_\_\_\_, 2013.

| MASTER PLAN FEATURES |                                       |
|----------------------|---------------------------------------|
| LAND USE PLAN        | MEDIUM DENSITY RESIDENTIAL            |
| SPECIFIC PLANS       | NA                                    |
| URBAN DESIGN PLAN    | NA                                    |
| PARKS AND TRAILS     | NA                                    |
| OPEN SPACE PLAN      | NA                                    |
| THOROUGHFARE PLAN    | LSMORE DRIVE (50' ROW) RESIDENTIAL    |
| WATER PLAN           | EX. 8" SEWER ON SOUTH SIDE OF LSUMORE |
| WASTEWATER PLAN      | EX. 8" WATER ON NORTH SIDE OF LSUMORE |
| ECONOMIC IMPACT      | NA                                    |

| RESIDENTIAL LOT CRITERIA |                  |                  |
|--------------------------|------------------|------------------|
| MIN. LOT AREA            | EXISTING (SF-30) | PROP. (SF-10)    |
| MIN. LOT WIDTH           | 30,000 S.F.      | 10,000 S.F.      |
| MIN. FRONT SETBACK       | 100'             | 70'              |
| MIN. REAR SETBACK        | 25'              | 25'              |
| MIN. SIDE SETBACK        | 30'              | 25'              |
| MAX. LOT COVERAGE        | 15'              | 10'              |
| MIN. FLOOR AREA          | 35%              | 40%              |
| MAX. BUILDING HEIGHT     | 2,100 S.F.       | 1,800 S.F.       |
|                          | 3 STORIES OR 35' | 3 STORIES OR 35' |



OWNERS:  
JOSE & SALAMMA VARGHESE  
10022 STONE HARBOR WAY  
IRVING, TEXAS 76039

**Middleton Project Engineering  
& Associates, LLC**  
CONSULTING CIVIL ENGINEERS, SURVEYORS  
LAND PLANNERS  
TYPE 10-10590 TRPLS 010157700  
1111 SOUTH MAIN ST., SUITE 123, GRAPEVINE,  
TEXAS 76051 (972) 383-9660

**ZONING EXHIBIT**  
2620 LISMORE DRIVE  
LOT 2, BLOCK A - IVY ESTATE  
FLOWER MOUND, TEXAS

|                               |               |               |         |
|-------------------------------|---------------|---------------|---------|
| Drawing File: 0077001ZONE.DWG | DATE: 8-14-18 | SCALE: 1"=40' | SHEET 1 |
| Project No. 0077001           |               |               |         |



## **TOWN COUNCIL AGENDA ITEM NO. 12**

### **REGULAR ITEM**

---

**DATE:** July 18, 2016

**FROM:** Theresa Scott, Town Secretary

**ITEM:** **Charter Review Commission Final Report, including council direction on proposed Charter amendment recommendations or any other Charter amendment considerations.**

---

**BACKGROUND INFORMATION:** The Charter Review Commission (CRC) was appointed by Council on March 21, 2016. The CRC had 7 meetings, with most of them taking place at Town Hall. All meetings were open to the public and televised. The CRC began with items as charged by Council, and was open to hearing suggested item from the public, as well as coming up with some of their own.

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

**ALTERNATIVES/OPTIONS:** N/A

**FISCAL IMPACT:** The cost for conducting a November election, which includes contracting with Denton and Tarrant County, required publications, and language translation services, is estimated at \$8,164.

**Finance Review by:** N/A

**LEGAL REVIEW:** N/A

**ATTACHMENTS:**

1. Charter Review Commission presentation – final report
2. Minutes (June 30, 2016 Charter Review Commission)

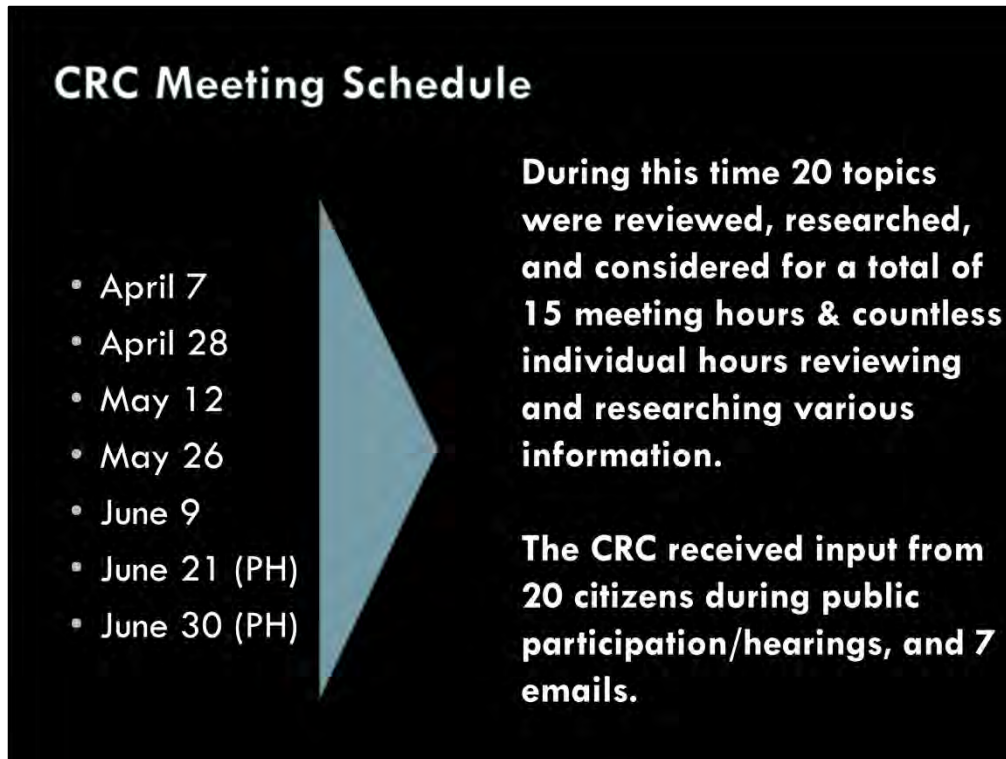
**RECOMMENDATION:** Staff is seeking direction relative to the recommendations as presented by the CRC or any other Charter amendment considerations.



# **Charter Review Commission (CRC) Presentation & Final Report**

July 18, 2016





Most meetings took place at Town Hall, with other locations of central fire station and the library. Public hearings were held at Town Hall on June 21 & 30 and speakers were not time limited, and CRC members often asked questions from participants.

- 
- Town website and social media outlets
  - Charter@flower-mound.com
  - FMTV – Town Matters
  - All meetings televised
  - Postcards to HOA leaders, past elected officials, past CRC members, & past Charter meeting participants
  - Newspaper articles – The Leader & Cross Timbers Gazette
  - Meeting notice signs at Library, CAC, Senior Center, Dog Park, & Town Hall
  - Utility billing insert
  - Announcements made at Council meetings:
    - April 4, May 16, June 20
  - Fliers created & distributed at Town Hall & the Library
  - Electronic message boards at key locations promoting the public hearing dates



## **CRC REPORT (FINDINGS AND RECOMMENDATIONS)**

---

- Council Original Charge Items (12)
  - Charter Review Commission Initiated Items (2)
  - Public Initiated Items (6)
- 

Recommendations presented include either:  
No recommendation, a Charter Amendment,  
or a Policy Recommendation

## COUNCIL INITIATED ITEMS

1. Review & discuss any provisions that conflict with state law or any of the Town's Ordinances

| <u>CURRENT</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <u>CRC RECOMMENDATION:</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>5.04. - Filing for Office.</p> <p>Each candidate for an elective office shall meet the qualifications set forth in <u>§ 3.02.1</u> of this Charter. If a member of any board appointed by the Council shall announce candidacy or becomes a candidate for election to any Town elected office, he may continue to serve on that board until elected. If a Town employee shall announce candidacy or becomes a candidate for election to any public office, he shall immediately forfeit employment held under the Town.</p> | <p>5.04. - Filing for Office.</p> <p>Each candidate for an elective office shall meet the qualifications set forth in <u>§ 3.02.1</u> of this Charter. If a member of any board appointed by the Council shall announce candidacy or becomes a candidate for election to any Town elected office, he may continue to serve on that board until elected. <del>If a Town employee shall announce candidacy or becomes a candidate for election to any public office, he shall immediately forfeit employment held under the Town.</del></p> |

4/28/16: Vote 5-0

The following prohibition in the Charter was preempted by the Legislature in 2013:

§ 5.04. - Filing for Office.

Each candidate for an elective office shall meet the qualifications set forth in § 3.02.1 of this Charter. If a member of any board appointed by the Council shall announce candidacy or becomes a candidate for election to any Town elected office, he may continue to serve on that board until elected. If a Town employee shall announce candidacy or becomes a candidate for election to any public office, he shall immediately forfeit employment held under the Town.

(Amend. of 5-15-2004; Ord. No. 33-07, (Prop. 3, approved at referendum 5-12-2007), adopted 5-21-2007)

The 2013 legislation reads as follows:

SUBCHAPTER C. EMPLOYEES AS CANDIDATES FOR OFFICE

Sec. 150.041. PROHIBITED MUNICIPAL ACTIONS. (a) In this section, "candidate" has the meaning assigned by Section 251.001(1), Election Code.

(b) A municipality may not prohibit a municipal employee from becoming a candidate for public office.

(c) A municipality may not take disciplinary action against a municipal employee, including terminating the employment of the employee, solely because the employee becomes a candidate for public office. However, the employee is still expected to fulfill all the duties and responsibilities associated with their municipal employment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1104 (H.B. 3739), Sec. 2, eff. June 14, 2013.

## COUNCIL INITIATED ITEMS

2(a). Review & discuss any provisions that conflict with state law or any of the Town's Ordinances

### CURRENT

#### § 3.02.1. - Qualifications.

Each member of the Council shall be a qualified voter of the Town, shall be twenty-one (21) years of age or older on the first day of the term to be filled at the election or on the date of appointment, as applicable, have been a resident of the Town for at least one (1) year prior to election date, shall not be employed by the Town, and shall hold no other public office except that of Notary Public or a member of the National Guard, military reserve or Coast Guard reserve.

### CRC RECOMMENDATION:

#### § 3.02.1. - Qualifications.

Each member of the Council shall be a qualified voter of the Town, shall be twenty-one (21) years of age or older on the first day of the term to be filled at the election or on the date of appointment, as applicable, have been a resident of the Town for at least one (1) year prior to election date, shall hold no other public office except that of Notary Public or a member of the National Guard, military reserve or Coast Guard reserve, and **a newly elected Councilmember who is an employee of the town shall forfeit employment with the Town.**

4/28/16: Vote 5-0

§3.02.1 of the Town Charter may not be applied to prevent an employee from becoming a candidate for public office. As a result, the Council may wish to clarify §3.02.1 such that upon taking office, a newly elected Councilmember – who is an employee of the Town – shall forfeit employment with the Town.

## COUNCIL INITIATED ITEMS

2(b). Review & discuss any provisions that conflict with state law or any of the Town's Ordinances

| <u><b>CURRENT:</b></u>                                                                                                                                                                                                                                                                                                                                   | <u><b>CRC RECOMMENDATION:</b></u>                                                                                                                                                                                                                                                                                                                                                               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>§ 9.10. - Effective Date of Budget; Certification of Copies; Copies Made Available.</p> <p>Upon final adoption, the budget shall be in effect for the fiscal year. A copy of the budget, as finally adopted, shall be filed with the Town Secretary, the County Clerk of Denton County, and the State Comptroller of Public Accounts at Austin...</p> | <p>§ 9.10. - Effective Date of Budget; Certification of Copies; Copies Made Available.</p> <p>Upon final adoption, the budget shall be in effect for the fiscal year. A copy of the budget, as finally adopted, shall be filed with the Town Secretary, the County Clerks of Denton <b>and Tarrant</b> County. <b><del>and the State Comptroller of Public Accounts at Austin....</del></b></p> |

6/30/16: Vote 5-0

There is currently not a legal requirement to submit a copy of the Town's budget to the state comptroller's office. This was confirmed with both the Town Attorney and a representative from the state comptroller's office. It is believed to simply be an old provision that was since rescinded.

Filing requirements for the budget are defined by Texas Local Government Code section 109.009(d) which stipulates that amendments be filed in the office of the county clerk of the county in which the municipality is located. For that reason "Tarrant County" was added to the text.

## COUNCIL INITIATED ITEMS

3(a). Review & discuss any provisions that would improve efficiencies and/or result in a cost savings for the Town

| <u><b>CURRENT:</b></u>                                                                                                                                                                                                                              | <u><b>CRC RECOMMENDATION:</b></u>                                                                                                                                                                                                                                           |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>§ 9.14. - Transfer of Appropriations.<br/>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...</p> | <p>§ 9.14. - Transfer of Appropriations.<br/>During the fiscal year, the Town Council shall have the power to transfer funds allocated by the budget from one <b>department fund</b> to another <b>department fund</b>, and to re-estimate revenues and expenditures...</p> |

6/30/16: Vote 5-0

The change would eliminate budget amendments coming to Council for minor items if the Town Manager had the approval to transfer between departments instead of just at the division level (as presented by the Executive Director of Financial Services at the 6/9/16 CRC meeting)

## COUNCIL INITIATED ITEMS

3(b). Review & discuss any provisions that would improve efficiencies and/or result in a cost savings for the Town

| <b><u>CURRENT:</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b><u>CRC RECOMMENDATION:</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>§ 3.07. - Powers of the Council.</p> <p>All powers of the Town and the determination of all matters of policy shall be vested in the Town Council. Without limitation of the foregoing and among the other powers that may be exercised by the Town Council, the following are hereby enumerated for greater certainty:</p> <p>(w) To name and designate an Official Newspaper for the Town of Flower Mound, Texas and to cause only the caption of duly enacted ordinances to be published except as provided otherwise by law.</p> | <p>§ 3.07. - Powers of the Council.</p> <p>All powers of the Town and the determination of all matters of policy shall be vested in the Town Council. Without limitation of the foregoing and among the other powers that may be exercised by the Town Council, the following are hereby enumerated for greater certainty:</p> <p>(w) To name and designate an Official Newspaper for the Town of Flower Mound, Texas <del>and to cause only the caption of duly enacted ordinances to be published except as provided otherwise by law.</del></p> |

6/30/16: Vote 5-0

Currently the Town Secretary's office submits the caption of enacted ordinances that contain a fine or penalty clause after every Council meeting to the Denton Record Chronical. By statute, given the Town is a Home Rule Municipality; there is not a legal requirement to publish these same captions in the newspaper of record.

Note, Section 4.03.1 (1) of the Town Charter requires the captions of enacted ordinances be recorded in the minutes. In addition, these same Ordinances are captured in their entirety on the Town's website via the electronic [MuniCode Book](#).

Removal of this text would not change the Town's responsibilities as it relates to other legally required publications.

Removing this text (requirement) would equate to an average savings of \$1,400 per year for the Town

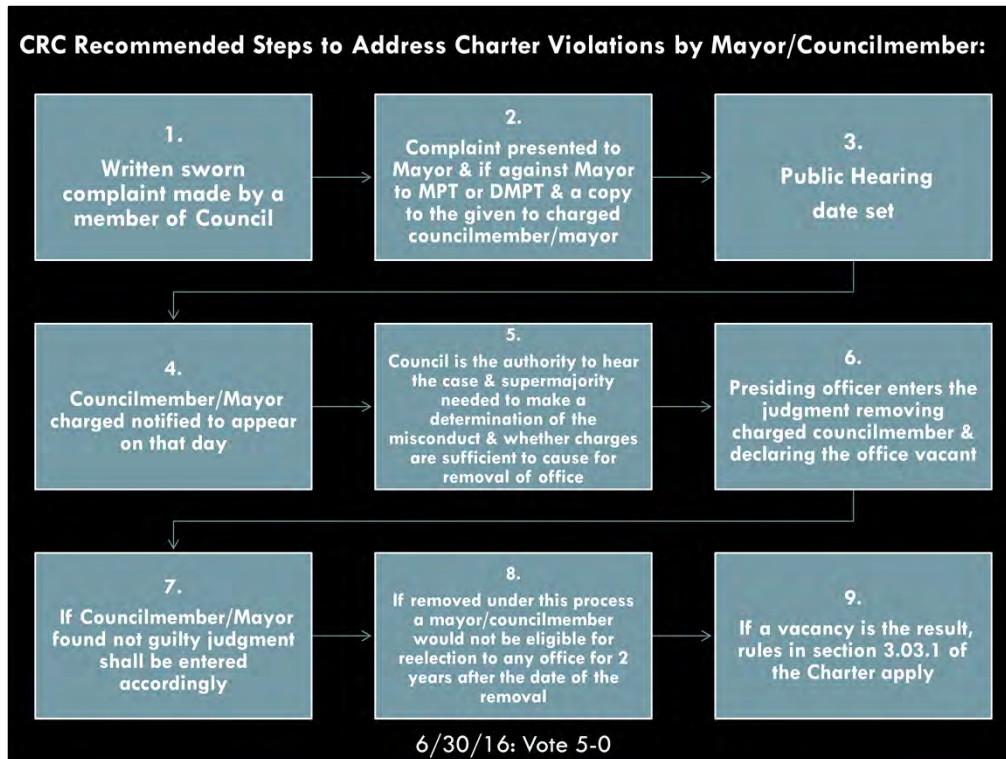
## COUNCIL INITIATED ITEMS

4. Discuss options for processing charter violations

### CRC RECOMMENDATION:

Recommend Council consider a Charter amendment to address Charter violations by the Mayor or a member of Council outlined as follows...





- 1) A written sworn complaint must be filed by a member of council and presented to the mayor; and if the complaint is made against the mayor, the complaint is presented to the Mayor Pro Tem or Deputy Mayor Pro Tem;
- 2) A copy of the complaint would be given to the charged councilmember/mayor;
- 3) A public hearing date would be set to hear the case & the mayor/councilmember charged would be notified to appear on that day;
- 4) A majority of the councilmembers is sufficient to hear the case; however an affirmative vote of at least three-fourths (supermajority) of all members of the Town Council would be required to find the charged councilmember/mayor guilty of the charges contained in the complaint and find that the charges are sufficient cause for removal from office;
- 5) The presiding officer of the Town Council shall enter a judgment removing charged councilmember and declaring the office vacant. If the councilmember is found not guilty, judgment shall be entered accordingly. Note, the Mayor Pro Tem or Deputy Mayor Pro Tem would serve as the presiding officer in the event the complaint is charged against the Mayor;
- 6) If removed under this process, a mayor/councilmember would not be eligible for reelection to any office for two years after the date of the removal;
- 7) In the event a vacancy occurs the rules in section 3.03.1 (Vacancies) of the Town Charter would apply.

There was in depth discussion by the Commission regarding each of the steps associated with the Carrollton model, which was modified as a result of discussions by the CRC. Much of the discussion and debate involved whether or not there should be a grace period for newly elected officials before a written complaint could be filed, public hearing versus public meeting, and potentially classifying the level of violation (minor vs. major).

There was a brief discussion about whether or not to introduce language relative to an independent investigation.

## COUNCIL INITIATED ITEMS

### 5. Review & discuss provisions relating to term limits and consecutive terms for elected officials.

*This item also included a discussion and vote on expanding the size of Council.*

#### **CRC RECOMMENDATION:**

- a. Make no changes as it relates to either term limits or term lengths.  
6/30/16: Vote 4:1
- b. Make no changes as it relates to expanding the size of Council.  
6/30/16: Vote 5:0



There was discussion by the Commission regarding:

- A past CRC recommendation of three year terms
- Term lengths (i.e. three years) pros and cons
  - Comments summary:
    - 3 years get past the learning curve, offers a political break to make council more productive as they are not thinking about a reelection soon after that 1<sup>st</sup> yr.
    - Longer term beneficial to elected official
    - Residents decide term limits when they go to the polls
    - 3 years is a compromise considering some cities have 4 or more
    - 3 vs 2 year term could be a factor in getting people to come forward
    - Is 2 years an appropriate time to have influence in the community
    - There is a financial gain for the Town in not having an election one year
    - State law rules that apply to 3 yr terms (calling a special election)
- For the clock reset topic – there were concerns that a person would want to run for mayor solely for the purpose of extending their term (to 12 years) if there was a clock reset for that position
- Two year term limits pros and cons

## COUNCIL INITIATED ITEMS

### 6. Review & discuss removal of the provisions relating to the Parks, Arts, and Library Services Board

#### CURRENT:

§ 8.04. - Parks, Arts, and Library Services Board.  
The Town Council shall at its discretion appoint seven (7) citizens and qualified voters of the Town of Flower Mound, who shall constitute its Parks, Arts, and Library Services Board, and who shall serve at the pleasure of the Town Council for such term as may be established by ordinance. The Parks, Arts, and Library Services Board shall perform such duties as the Town Council may direct.

#### CRC RECOMMENDATION:

§ 8.04. - Parks, ~~Arts, and Library Services~~ Board.  
The Town Council shall at its discretion appoint seven (7) citizens and qualified voters of the Town of Flower Mound, who shall constitute its Parks, ~~Arts, and Library Services~~ Board, and who shall serve at the pleasure of the Town Council for such term as may be established by ordinance. The Parks, ~~Arts, and Library Services~~ Board shall perform such duties as the Town Council may direct.

6/30/16: Vote 5:0

In 2014 there was Council action to shift the responsibilities of the arts and library services duties from the PALS Board to the Cultural Arts Commission (previously known as the Public Arts Committee). This change was primarily due to park items dominating the agenda because of the level of activity. There were typically minimal or no items on the agenda related to the art and library functions. This change allowed members of the PALS Board to shift to the CAC where their interests were more aligned, and also allowed library staff to utilize their time more efficiently. Currently there are two governing documents that have the arts and library functions defined (PALS Ordinance No. 106-07 and CAC Resolution No. 19-14). In order to change the PALS Ordinance to reflect what is actually happening now, there would need to be a name change and an update of the duties and responsibilities (parks functions only). Council has indicated a preference not to make any changes to the Ordinance given the current reference of the PALS Board in the Charter.

**PUBLIC INITIATED ITEMS**

**CRC RECOMMENDATION:**

7. Recommend Council consider a policy change to introduce an enhanced notification process as it relates to eminent domain that goes beyond the state law requirements for any impacted property owner(s).

6/30/16 Vote: 4:1



There was discussion by the Commission regarding:

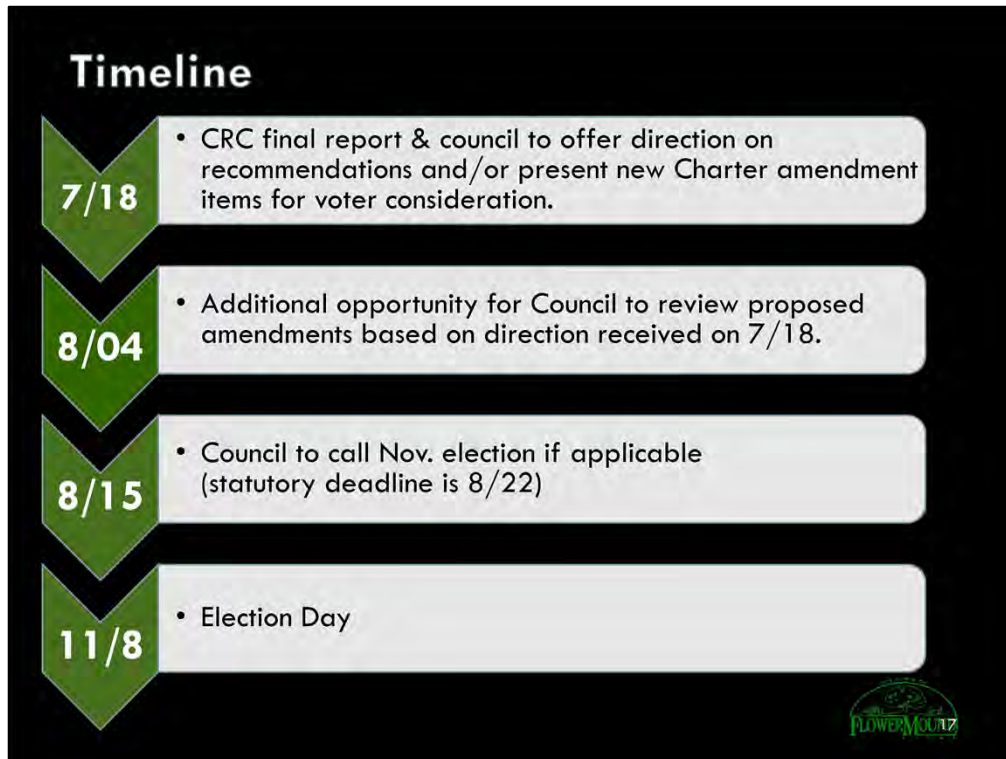
- State law relative to definitions and protection levels for property owners
- How the topic is heavily weighted on one issue
- Not necessarily a need to recommend a Charter amendment as the Charter already defines it must be for public use
- Interest in considering a policy change to provide an enhanced notification process to make sure the Town is going above and beyond the effort with the property owner being notified
- How the resident stated they were not aware of the condemnation proceedings until it was on the agenda

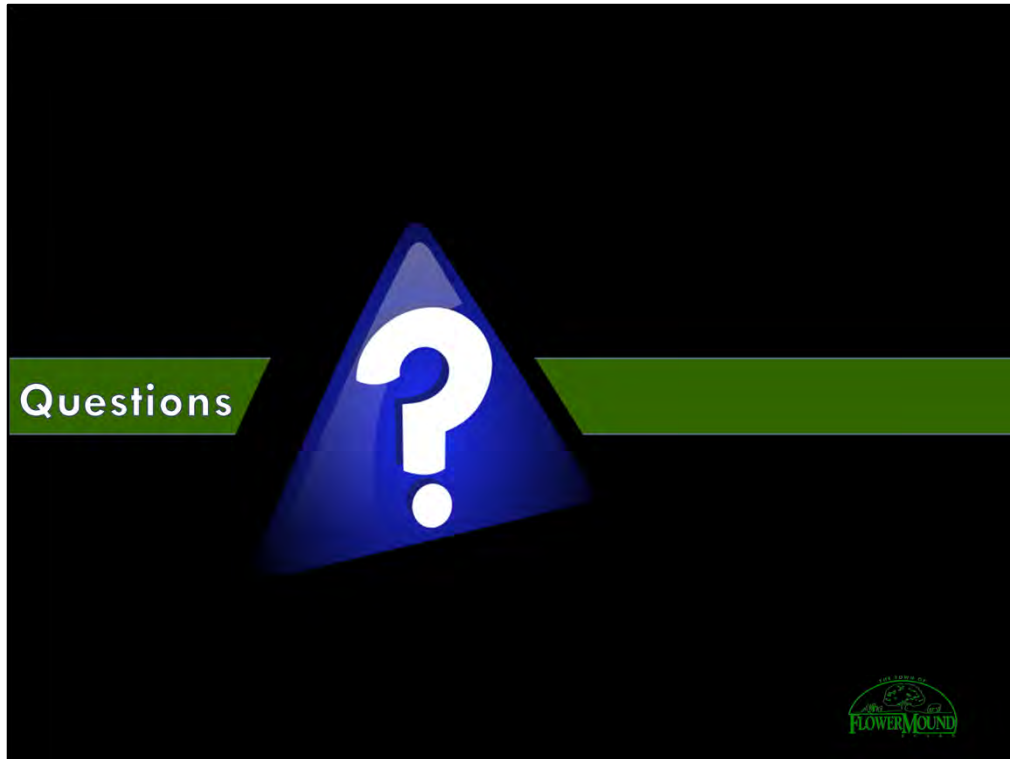
## **PUBLIC/CRC INITIATED ITEMS**

The following topics were generated by either the CRC or public, and discussions or a vote by the CRC resulted in no proposed changes:

8. Single Member versus At-large Districts
9. Charter change to allow the mayor to vote
10. Charter item to put it to the voters whether taxpayer dollars should be used for charitable organizations
10. Consider an amendment to change the qualifications for Council -- same qualifications (other than agility) that is required of police and fire for screening, and that they have voted in every local Town election consistently for at least the past three years.

Two additional items were brought up by the public as it relates to qualifications and spending allocations; however, not included with this report because state law already addresses.





**THE FLOWER MOUND CHARTER REVIEW COMMISSION MEETING HELD ON THE 30TH DAY OF JUNE 2016, AT TOWN HALL, LOCATED AT 2121 CROSS TIMBERS ROAD IN THE TOWN OF FLOWER MOUND, COUNTY OF DENTON, TEXAS AT 6:00 P.M.**

The Charter Review Commission met with the following members present:

|               |                                     |
|---------------|-------------------------------------|
| Jody Smith    | Chair                               |
| Tim Trotter   | Vice Chair                          |
| Kia Mastey    | Member                              |
| Robert Rawson | Member                              |
| Connie Smith  | Member                              |
| Amy Wallace   | Member                              |
| Robert Rawson | Member (participating by telephone) |

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

|               |                |
|---------------|----------------|
| Theresa Scott | Town Secretary |
| Betsy Elam    | Town Attorney  |

**A. CALL MEETING TO ORDER**

Chair Smith called the meeting to order at 6:07 p.m.

**B. MINUTES**

1. Consider approval of June 21, 2016, Minutes

Commissioner Mastey moved to approve the minutes from the June 21, 2016 meeting. Commissioner Smith seconded the motion.

**VOTE ON THE MOTION:**

**AYES: TROTTER, WALLACE, MASTEY, SMITH, RAWSON**

**NAYS: NONE**

**C. REVIEW ITEMS OUTLINED IN RESOLUTION NO. 08-16 (COUNCIL CHARGE); AND REVIEW ITEMS INITIATED BY THE CHARTER REVIEW COMMISSION; AND REVIEW ITEMS INITIATED BY THE PUBLIC AND AS AGREED UPON BY THE CHARTER REVIEW COMMISSION FOR CONSIDERATION.**

Chair Smith opened the public hearing at 6:14 p.m. for all items (1 – 10). She further outlined the process and options the Commission has when considering the various items.

1. Public Hearing to discuss and consider if a proposed Charter amendment or policy recommendation is needed to enhance the Town's notification process as it relates to eminent domain.

There was discussion by the Commission regarding:

- State law relative to definitions and protection levels for property owners
- How the topic is heavily weighted on one issue
- Not necessarily a need to recommend a Charter amendment as the Charter already defines it must be for public use
- Interest in considering a policy change to provide an enhanced notification process to make sure the Town is going above and beyond the effort with the property owner being notified
- How the resident was not aware of the condemnation proceedings until it was on the agenda

Ms. Scott provided comments or responded to questions from the Commission regarding:

- Clarification regarding communication between Town staff and the property owner

Commissioner Rawson moved to recommend Council consider a policy change to introduce an enhanced notification process beyond the state law requirements for any impacted property owner(s). Commissioner Smith seconded the motion.

**VOTE ON MOTION:**

**AYES: MASTEY, SMITH, RAWSON, TROTTER**

**NAYS: WALLACE**

2. Public Hearing to discuss and consider if a proposed Charter amendment should be recommended to create a process in which to use in the event a Charter violation should occur by the Mayor or a member of Council.

Chair Smith summarized that the public input to date has been unanimous to recommend a process.

There was in depth discussion by the Commission regarding each of the steps associated with the Carrollton model, which was modified as a result of discussions by the CRC. Much of the discussion and debate involved whether or not there should be a grace period for newly elected officials before a written complaint could be filed, public hearing versus public meeting, and potentially classifying the level of violation (minor vs. major).

There was a brief discussion about whether or not to introduce language relative to an independent investigation.

Chair Smith reopened the public hearing for this item to seek public input just for the step regarding whether there should be a grace period of time where a newly elected Councilperson could not be removed.

Randall Wilson, 3005 Oak Meadow, and Don Shields, 3815 Cortadera Ct

Mr. Wilson and Mr. Shields indicated not being in favor of a grace period and indicated they should go by the rules from day one.

Ms. Scott provided comments or responded to questions from the Commission regarding:

- Timing for future meeting dates
- the process outlined in the packet is basically using the City of Carrollton's statutes as a model based on CRC input

Ms. Scott sought clarification as follows:

- Re-election eligibility if the mayor or a councilmember should get expelled
- Should there be a grace period from the time a member of Council takes office before a complaint can be filed

Ms. Elam responded to questions from the Commission regarding timing, and if item two is approved by the voters, whether it would be applicable for just new complaints, noting just for new complaints.

Commissioner Trotter moved to recommend Council consider a Charter amendment to address Charter violations by the Mayor or a member of Council outlined as follows:

- A written sworn complaint must be filed by a member of council and presented to the mayor; and if the complaint is made against the mayor, the complaint is presented to the Mayor Pro Tem or Deputy Mayor Pro Tem;
- A copy of the complaint would be given to the charged councilmember/mayor;
- A public hearing date would be set to hear the case & the mayor/councilmember charged would be notified to appear on that day;
- A majority of the councilmembers is sufficient to hear the case; however an affirmative vote of at least three-fourths (supermajority) of all members of the Town Council would be required to find the charged councilmember/mayor guilty of the charges contained in the complaint and find that the charges are sufficient cause for removal from office;
- The presiding officer of the Town Council shall enter a judgment removing charged councilmember and declaring the office vacant. If the councilmember is found not guilty, judgment shall be entered accordingly. Note, the Mayor Pro Tem or Deputy Mayor Pro Tem would serve as the presiding officer in the event the complaint is charged against the Mayor;
- If removed under this process, a mayor/councilmember would not be eligible for reelection to any office for two years after the date of the removal;
- In the event a vacancy occurs the rules in section 3.03.1 (Vacancies) of the Town Charter would apply.

Commissioner Rawson seconded the motion.

**VOTE ON MOTION:**

**AYES: MASTEY, SMITH, RAWSON, TROTTER, WALLACE**

**NAYS: NONE**

3. Public Hearing to discuss and consider if a proposed Charter amendment should be recommended to change any provisions related to term limits or consecutive terms for elected officials.

There was discussion by the Commission regarding:

- A past CRC recommendation of three year terms
- Term lengths (i.e. three years) pros and cons
- Two year term limits pros and cons

Commissioner Trotter moved to make no changes as it relates to either term limits or term lengths. Commissioner Mastey seconded the motion.

**VOTE ON MOTION:**

**AYES: RAWSON, TROTTER, MASTEY, SMITH**

**NAYS: WALLACE**

4. Public Hearing to discuss and consider if a proposed Charter amendment should be recommended to expand the size of Council.

There was discussion by the Commission regarding:

- The majority of public comments favored leaving things as they are
- The impact as it relates to a supermajority vote in the event of a change

Commissioner Trotter moved to make no changes as it relates to expanding the size of Council. Commissioner Mastey seconded the motion.

**VOTE ON MOTION:**

**AYES: RAWSON TROTTER, WALLACE, MASTEY, SMITH**

**NAYS: NONE**

5. Public Hearing to discuss and consider if a proposed Charter amendment should be recommended to change the current Council at large structure to single member districts (SMD), or any variation thereof.

There was discussion by the Commission regarding:

- The majority of public that spoke were overwhelming opposed to single member districts

Commissioner Mastey moved to make no changes as it relates to changing the structure from the current at large structure. Commissioner Smith seconded the motion.

**VOTE ON MOTION:**

**AYES: TROTTER, MASTEY, SMITH, RAWSON**

**NAYS: WALLACE**

6. Public Hearing to discuss and consider if a proposed Charter amendment should be recommended to change the Parks, Arts, and Library Services (PALS) Board to the Parks Board.

There was discussion by the Commission regarding:

- Background information for the proposed change, noting there are boards in place to discuss parks and trails, and another board to discuss arts and library services

Commissioner Trotter moved to recommend Council consider a Charter amendment to change the name of Parks, Arts, and Library Services to the Parks Board. Commissioner Rawson seconded the motion.

**VOTE ON MOTION:**

**AYES: WALLACE, MASTEY, SMITH, RAWSON, TROTTER**

**NAYS: NONE**

7. Public Hearing to discuss and consider if a proposed Charter amendment should be recommended to remove the text of "and the State Comptroller of Public Accounts at Austin" and instead add the text "and the Tarrant County Clerk's office" in Section 9.10 of the Town Charter.

Commissioner Smith moved to recommend Council consider a Charter amendment to remove the text of "and the State Comptroller of Public Accounts at Austin" and instead add "and the Tarrant County Clerk's office" from/to section 9.10 of the Town Charter. Commissioner Mastey seconded the motion.

**VOTE ON MOTION:**

**AYES: MASTEY, SMITH, RAWSON, TROTTER, WALLACE**

**NAYS: NONE**

8. Public Hearing to discuss and consider if a proposed Charter amendment should be recommended to remove the text of "to cause only the caption of duly enacted ordinance to be published except as provided otherwise by law" from section 3.07 (w) of the Town Charter.

Commissioner Smith moved to recommend Council consider a Charter amendment to remove the text of "to cause only the caption of duly enacted ordinances to be published except as provided otherwise by law" from section 3.07 (w) of the Town Charter. Commissioner Trotter seconded the motion.

**VOTE ON MOTION:****AYES: SMITH, RAWSON, TROTTER, WALLACE, MASTEY****NAYS: NONE**

9. Public Hearing to discuss and consider if a proposed Charter amendment should be recommended to remove the two references of the word "department" from section 9.14 of the Town Charter.

Commissioner Trotter moved to recommend Council consider a Charter amendment to remove the two references of the word "department" from section 9.14 of the Town Charter. Commissioner Mastey seconded the motion.

**VOTE ON MOTION:****AYES: RAWSON, TROTTER, WALLACE, MASTEY, SMITH****NAYS: NONE.**

10. Public Hearing to discuss and consider if a proposed Charter amendment should be recommended to delete the portion of the text that states "If a Town employee shall announce candidacy or becomes a candidate for election to any public office, he shall immediately forfeit employment held under the Town".

*Administrative note: Commission action was taken on this item at the April 28, 2016 meeting as follows:*

Commissioner Trotter moved to recommend that Section 5.04 of the Town Charter be amended by deleting the portion of the text as follows: "If a Town employee shall announce candidacy or becomes a candidate for election to any public office, he shall immediately forfeit employment held under the Town". Commissioner Rawson seconded the motion.

**VOTE ON THE MOTION:****AYES: MASTEY, RAWSON, SMITH, TROTTER, WALLACE****NAYS: NONE**

The following individuals either spoke in support or opposition, or had questions / comments related to the items: *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.*

F = For; A = Against; Q = Question; C = Comment

|                                    | Public Hearing Items |                            |                     |                     |          |           |                       |                             |                       |                                         |
|------------------------------------|----------------------|----------------------------|---------------------|---------------------|----------|-----------|-----------------------|-----------------------------|-----------------------|-----------------------------------------|
|                                    | 1<br>Emin.<br>Dom.   | 2<br>Discipline<br>Process | 3<br>Term<br>limits | 4<br>Expand<br>size | 5<br>SMD | 6<br>PALS | 7<br>Budget<br>filing | 8<br>Caption<br>to<br>paper | 9<br>Xfer of<br>funds | 10<br>Employee<br>running<br>for office |
| Dave Johnson, 3617<br>San Paula    | A                    | F                          | F –<br>3 yrs        | A                   | A        |           |                       |                             |                       |                                         |
| Warner Watkins, 2800<br>London Way | A                    | F                          | A<br>F-3 yrs        | F                   | A        | F         | F                     | F                           | F                     | F                                       |

|                                    | Public Hearing Items |                            |                              |                     |                    |            |                       |                             |                       |                                         |
|------------------------------------|----------------------|----------------------------|------------------------------|---------------------|--------------------|------------|-----------------------|-----------------------------|-----------------------|-----------------------------------------|
|                                    | 1<br>Emin.<br>Dom.   | 2<br>Discipline<br>Process | 3<br>Term<br>limits          | 4<br>Expand<br>size | 5<br>SMD           | 6<br>PALS  | 7<br>Budget<br>filing | 8<br>Caption<br>to<br>paper | 9<br>Xfer of<br>funds | 10<br>Employee<br>running<br>for office |
| Kendra Stephenson, 2321 Roadrunner | A                    | F                          | F – 3 yrs                    | F                   |                    |            |                       |                             |                       |                                         |
| Paul Stone, 709 Lake Bluff Dr      | A                    | F                          | A                            | A                   | A                  | F          | F                     | F                           | F                     | F                                       |
| Eddie Wynne, 4841 Rippy            | F                    | F                          | A                            | A                   | A                  | F          | F                     | F                           | F                     | F                                       |
| Don Shields 3815 Cortadera Ct      |                      |                            | A                            | F                   | A                  |            |                       |                             |                       |                                         |
| Shyron Shenko, 5001 Rippy Rd       | F                    | ?                          | A                            | F                   | A                  |            |                       |                             |                       |                                         |
| Jim Engel, 5110 Bayberry St        | A                    | F                          | A                            | A                   | A                  | F          | F                     | F                           | F                     | F                                       |
| Don Gilmore, 5300 Kensington Ct    |                      |                            | F - 3                        | F                   |                    |            |                       |                             |                       |                                         |
| Randall Wilson 3005 Oak Meadow     | A                    | A                          | A                            | A                   | A                  | F          |                       |                             |                       |                                         |
| <b>Summary</b>                     | <b>6-A<br/>2-F</b>   | <b>6-F<br/>1-A<br/>1-?</b> | <b>4-F-3<br/>YRS<br/>6-A</b> | <b>5-A<br/>5-F</b>  | <b>8-A</b>         |            |                       |                             |                       |                                         |
| <b>6/21 summary</b>                | <b>4-F</b>           | <b>5-F<br/>2A</b>          | <b>3-F<br/>4-A<br/>1-C</b>   | <b>2-F<br/>3-A</b>  | <b>1-F<br/>6-A</b> | <b>5-F</b> |                       |                             | <b>1-Q</b>            |                                         |

Chair Smith closed the public hearing at 8:07 p.m.

Ms. Scott responded to questions from the Commission regarding:

- Timing associated with the work of the past Charter Review Commission

#### **D. PUBLIC COMMENTS**

Ms. Scott noted that the CRC received three emails since the last meeting.

Chair Smith opened the floor to the public for additional input from the audience.

##### Randall Wilson, 3005 Oak Meadow

Mr. Wilson indicated he had two items he would like the CRC to consider:

1. Charter amendment to require candidates who file for Town Council or Mayor be required to list their party affiliation
2. He would like the CRC recommend a Charter amendment to allow the public an opportunity to vote on whether the Town should continue or stop the practice of spending funds on area community support organizations

##### Don Shields, 3815 Cortadera Ct

Mr. Shields echoed Mr. Wilson's concern regarding the use of taxpayer dollars for community support funding.

Carol Kohankie, 4312 Lauren Way

Ms. Kohankie recommended that the CRC consider an amendment to change the qualifications associated with Council members in that they are a resident for three or more years (instead of one), no criminal record, and basically the same qualifications (other than agility) that is required of police and fire for screening, and that they have voted in every local Town election consistently for at least the past three years. She also provided background information about community support funding, and the services being provided to Flower Mound residents.

Ms. Elam responded to questions from the Commission regarding:

1. the question about listing party affiliation, noting that doing so would be a violation of the state Election Code and would not be allowed
2. Legalities associated with taking up the topic of community support funding
3. Legalities associated with a residency requirement, noting Election Code does not allow it to be any more than one year

There was a brief discussion relative to the history of community support funding expenditures for the purpose of deciding whether or not it should move forward on a future CRC agenda. In summary, it was suggested that any concerns regarding these expenditures can be brought up during the budget hearings with Council.

**E. COORDINATION OF CALENDARS**

Chair Smith confirmed there would not be a meeting on July 6<sup>th</sup>.

Ms. Scott announced that next steps include a final report to Council on July 18<sup>th</sup>, a public hearing at the August 4<sup>th</sup> Council meeting for any recommended items (as directed by Council), and Council would call the election (if applicable), on August 15, 2016.

There was consensus by the CRC to circulate the final report via email to the Commission prior to the July 18<sup>th</sup> date.

**F. ADJOURNMENT**

Chair Smith adjourned the meeting at 9:52 p.m. on Thursday, June 30, 2016, and all were in favor.

**TOWN OF FLOWER MOUND, TEXAS**

\_\_\_\_\_  
**JODY SMITH, CHAIR**

**ATTEST:**

\_\_\_\_\_  
**THERESA SCOTT, TOWN SECRETARY**

# Town Council Future Agenda Items



|                  |                  |                           |                                                                                                                                                                                                                                                                                                                                      |
|------------------|------------------|---------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>SCHEDULED</b> | <b>7/22/2016</b> | <b>Strategic Planning</b> | Friday, July 22, 2016 Strategic Planning Session (5pm start) with the overflow option of Sat, July 23, 2016 (9am start). Location: Town Operations and Maintenance Facility - 201 Spinks Rd                                                                                                                                          |
|                  | <b>8/4/2016</b>  | <b>Presentation</b>       | Presentation by Mobilite, LLC regarding construction of utility poles in the Town owned right-of-way                                                                                                                                                                                                                                 |
|                  |                  | <b>Consent</b>            | Consider approval of the minutes from a regular meeting of the Town Council held on July 18, 2016.                                                                                                                                                                                                                                   |
|                  |                  | <b>Consent</b>            | Consider approval of the minutes from the strategic planning session of the Town Council held on July 22, 2016.                                                                                                                                                                                                                      |
|                  |                  | <b>Consent</b>            | Consider canceling or rescheduling the January 2 & January 16, 2017, Town Council regular meetings.                                                                                                                                                                                                                                  |
|                  |                  | <b>Consent</b>            | Consider approval of a professional services agreement with Sawko & Burroughs, P.C. for the collection of outstanding Class C misdemeanor capias warrants and delinquent municipal fines, utility bills and miscellaneous receivables, and authorization of Mayor to execute same on behalf of the Town.                             |
|                  |                  | <b>Consent</b>            | Consider approval of a resolution authorizing the adoption of the Program Year 2016 Action Plan for Housing and Community Development Block Grant; and authorization for the Mayor to execute same on behalf of the Town and submit to the U.S. Department of Housing and Urban Development.                                         |
|                  |                  | <b>Consent</b>            | Consider approval of an Interlocal Cooperation Agreement with Denton County for the assessment and collection of ad valorem taxes for the period beginning October 1, 2016 and ending September 30, 2017, subject to renewal for an additional one-year term, and authorization for the Mayor to execute same on behalf of the Town. |
|                  |                  | <b>Consent</b>            | Consider approval of an ordinance establishing the 2016 certified appraisal roll.                                                                                                                                                                                                                                                    |
|                  |                  | <b>Consent</b>            | Consider accepting the submission of the certified collection rate of 100 percent for the fiscal year beginning October 1, 2016, and ending September 30, 2017.                                                                                                                                                                      |
|                  |                  | <b>Consent</b>            | Consider accepting the submission of the notice of an effective tax rate of \$_____ per \$100 assessed valuation and a rollback tax rate of \$_____ per \$100 assessed valuation for the fiscal year beginning October 1, 2016, and ending September 30, 2017.                                                                       |

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| <b>SCHEDULED</b> | 8/4/2016 | Consent | Consider proposing a maximum tax rate of \$0._____ per \$100 valuation for the fiscal year beginning October 1, 2016, and ending September 30, 2017; and scheduling August 15, 2016, public hearings on the budget and tax rate, September 6, 2016, public hearing on the tax rate, and scheduling the September 19, 2016, adoption of said budget and tax rate; with each meeting to be held at 6:00 PM, at Town Hall, located at 2121 Cross Timbers Road.                                                                                             |
|                  |          | Consent | Town Council acting as the Board of Directors for the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District to schedule a public hearing for August 15, 2016, on the Flower Mound Fire Control, Prevention, and Emergency Medical Services District budget and to schedule a meeting for September 19, 2016, to take action on the proposed budget; with each meeting to be held at 6:00 PM, at Town Hall, located at 2121 Cross Timbers Road.                                                                         |
|                  |          | Consent | Town Council acting as the Board of Directors for the Town of Flower Mound Crime Control and Prevention District to schedule a public hearing for August 15, 2016, on the Flower Mound Crime Control and Prevention District budget and to schedule a meeting for September 19, 2016, to take action on the proposed budget; with each meeting to be held at 6:00 PM, at Town Hall, located at 2121 Cross Timbers Road.                                                                                                                                 |
|                  |          | Consent | Consider approval of the Professional Services Agreement with Kleinfelder Central, Inc., for the materials testing associated with the second section of the FM 2499 12-Inch Water Line Phase III project, in the amount of \$19,689.00; and authorization for the Mayor to execute same on behalf of the Town.                                                                                                                                                                                                                                         |
|                  |          | Consent | Consider approval of a Permit to Operate and Maintain Facilities within Trinity River Authority of Texas (TRA) Easement, and authorization for the Mayor to execute same on behalf of the Town.                                                                                                                                                                                                                                                                                                                                                         |
|                  |          | Consent | Consider approval of Change Order No.1 with Basic IDIQ Inc., for the Western Operations and Maintenance Facility (Temporary Fire Station No.6), in the amount of \$35,526.32; and authorization for the Mayor to execute same on behalf of the Town.                                                                                                                                                                                                                                                                                                    |
|                  |          | Regular | Public Hearing to reconsider 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. (This item was denied by the Town Council at its April 4, 2016, meeting.) |

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| <b>SCHEDULED</b> | <b>8/4/2016</b>     | <b>Regular</b> | Public Hearing to reconsider 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. (This item was denied by the Town Council at its April 4, 2016, meeting.) |
|                  |                     | <b>Regular</b> | Public Hearing to reconsider 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). (This item was denied by the Town Council at its April 4, 2016, meeting.)                                                                                                                          |
|                  |                     | <b>Regular</b> | Consider approval of an ordinance authorizing the issuance of the Town of Flower Mound, Texas, Certificates of Obligation, 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.                                                                                                                                                                                                                                                 |
| <b>8/11/2016</b> | <b>Work Session</b> |                | Hold a discussion and provide direction regarding the FY 2016-2017 Proposed Budget, including Community Support funding.                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>8/15/2016</b> | <b>Consent</b>      |                | Consider approval of the minutes from a regular meeting of the Town Council held on August 4, 2016.                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|                  | <b>Consent</b>      |                | Individual Park Improvements (Glenwick Park Bridge) Construction Award.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|                  | <b>Consent</b>      |                | Western O&M Facility (Temporary Fire Station No.6) Change Order No.1.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|                  | <b>Consent</b>      |                | Inflow/Infiltration Evaluation and Repair (2016 Manhole Rehabilitation) Construction.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|                  | <b>Consent</b>      |                | Wastewater Treatment Plant Rehabilitation Phase IV - Solids Facility Improvements - Construction                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|                  | <b>Consent</b>      |                | Consider approval of Change Order No. 4, for the Sagebrush Drive Improvements project, amending the contract with CD Builders, Inc., for an increase to the contract in the amount of \$XXXXXX; and authorization for the Mayor to execute same on behalf of the Town.                                                                                                                                                                                                                                                                                                            |
|                  | <b>Consent</b>      |                | Consider approval of a Service Agreement for Demand Response Transit Service with Special Programs for Aging Needs, Inc., in an amount not-to-exceed \$36,840.96, to provide transportation service for Town citizens who are age 65 or older and Town citizens with verifiable disabilities that prevent them from driving; and authorization for the Mayor to execute same on behalf of the Town.                                                                                                                                                                               |

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| <b>SCHEDULED</b> | 8/15/2016 | Regular | Public Hearing by the Town Council acting as the Board of Directors for the Town of Flower Mound Crime Control and Prevention District to consider the Flower Mound Crime Control and Prevention District proposed budget for the fiscal year beginning on October 1, 2016, and ending on September 30, 2017.                                                                                |
|                  |           | Regular | Public Hearing by the Town Council acting as the Board of Directors for the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District to consider the Flower Mound Fire Control, Prevention, and Emergency Medical Services District proposed budget for the fiscal year beginning on October 1, 2016, and ending on September 30, 2017.                        |
|                  |           | Regular | Public Hearing to consider a tax rate of \$0.____ per \$100 assessed valuation.                                                                                                                                                                                                                                                                                                              |
|                  |           | Regular | Public Hearing to consider the proposed budget for the fiscal year beginning on October 1, 2016, and ending on September 30, 2017.                                                                                                                                                                                                                                                           |
|                  |           | Regular | Public Hearing to consider an application for a tree removal permit for nineteen (19) specimen trees on property proposed for development as The Lakes. The property is generally located west of Shiloh Road and north of Cross Timbers Road. (The Environmental Conservation Commission recommended approval by a vote of 4-2-0 at its June 7, 2016, meeting).                             |
|                  |           | Regular | Placeholder - Call Special Election for November (Charter Amendments) as applicable.                                                                                                                                                                                                                                                                                                         |
|                  | 9/6/2016  | Regular | Public Hearing to consider a tax rate of \$0.____ per \$100 assessed valuation.                                                                                                                                                                                                                                                                                                              |
|                  | 9/19/2016 | Regular | Consider approval of an ordinance fixing and levying municipal ad valorem taxes for the fiscal year beginning on October 1, 2016 and ending on September 30, 2017, and for each fiscal year thereafter until otherwise provided, at the rate of \$0.____ per \$100 assessed valuation on all taxable property within the corporate limits of the Town of Flower Mound as of January 1, 2016. |
|                  |           | Regular | Town Council acting as the Board of Directors for the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District to consider approval of a resolution adopting the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District budget for the fiscal year beginning on October 1, 2016, and ending on September 30, 2017.             |
|                  |           | Regular | Town Council acting as the Board of Directors for the Town of Flower Mound Crime Control and Prevention District to consider approval of a resolution adopting the Town of Flower Mound Crime Control and Prevention District budget for the fiscal year beginning on October 1, 2016, and ending on September 30, 2017.                                                                     |

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| <b>SCHEDULED</b> | 9/19/2016  | Regular      | Consider approval of an ordinance adopting the budget for the fiscal year beginning on October 1, 2016, and ending on September 30, 2017, and making appropriations for each fund and department.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|                  | 10/3/2016  | Consent      | 2015 Street Reconstruction Construction Award.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|                  |            | Consent      | FM 1171 at FM 2499 Westbound Right Turn Lane Design Award.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|                  |            | Consent      | Firewheel Drive Reconstruction Design Award.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|                  |            | Consent      | Rippy Road Water Line Design Award.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|                  | 10/17/2016 | Consent      | 2015 Street Reconstruction Testing Award.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|                  |            | Consent      | FM 2499 / Gerault Drainage and Intersection Construction Award.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|                  |            | Consent      | Oak Street Lift Station and Force Main Change Order No. 3 and Final Acceptance.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
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| <b>FUTURE</b>    |            | Presentation | Public Information Act and Open Records Request review and discussion.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|                  |            | Regular      | Public Hearing to consider approval of an ordinance amending Chapter 94, "Trees", of the Land Development Regulations (LDR16-0002 – Tree Ordinance Amendments) of the Code of Ordinances by amending Section 94-22, entitled "Protected tree lists," Section 94-23, entitled "Tree survey; development projects," Section 94-32, entitled "Trees located in buildable area," Section 94-39, entitled "Mitigation requirements for authorized tree removal," Section 94-40, entitled "Incentives for preservation of protected, specimen, and historic trees," Section 94-51, entitled "Enumeration," Section 94-65, entitled "Residential lots," Section 94-66, entitled "Approved tree planting lists," Section 94-81, entitled "Exceptions," and deleting Section 94-67, entitled "Landscape credit for large trees," and to consider adopting an ordinance providing for said ordinance. (The Planning and Zoning Commission recommended approval by a vote of 5 to 0 at its May 23, 2016, meeting.) |
|                  |            | Regular      | PLACEHOLDER Consider approval of Exotic Animal Ordinance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |