AGENDA

FLOWER MOUND TOWN COUNCIL REGULAR MEETING

4/17/2017

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

6:00 P.M.

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

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

A. CALL MEETING TO ORDER

B. INVOCATION

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

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

D. PRESENTATIONS

1. Recognition of the Flower Mound Citizens Academy - Class of 2017

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

Update and discussion on:

1. Capital improvement projects
2. Economic Development projects
3. New 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 next Town Council regular meeting is a scheduled for Monday, May 1, 2017.

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 4/3-** Consider approval of the minutes from a regular meeting of the Town Council held on April 3, 2017.
2. **WWTP Renovation-** Consider approval for Waste Water Treatment Plant Administrative Building Renovation.
3. **Twin Coves park fees-** Consider approval of an ordinance amending section 54-178(a) of the Town of Flower Mound Code of Ordinances and the general restrictions applicable to property subject to United States Army Corps of Engineers property rules and regulations; amending recreational use fees contained in Appendix A "Fee Schedule" established by Section 54-178.1 of the Code of Ordinances; providing a penalty; for severability; for repeal of conflicting ordinances; establishing an effective date and providing for publication. (The Parks Board recommended approval by a vote of 6 to 0 at its April 6, 2017, regular meeting.)
4. **Park naming recommendation-** Consider approval of naming the 10.756 acre public park located at 6425 Stonecrest Road in the Canyon Falls Development as Canyon Falls Park.
5. **Denton Co. Library Interlocal-** Consider approval of an Interlocal Cooperation Agreement for Library Services.
6. **Oncor rate case-** Consider approval of a resolution suspending the April 21, 2017, effective date of Oncor Electric Delivery Company's requested rate change to permit the Town time to study the request and to establish reasonable rates; approving cooperation with the Steering Committee of Cities Served by Oncor to hire legal and consulting services and to negotiate with the company and direct any necessary litigation and appeals; finding that the meeting at which this resolution is passed is open to the public as requested by law; requiring notice of this resolution to the company and legal counsel for the Steering Committee.
7. **ACMS agreement-** Consider approval of an agreement with All City Management Services (ACMS).
8. **Glenwick Park playground-** Consider approval of the purchase and installation of play equipment for the 2016-17 Playground Replacements for Glenwick Park, from Playcraft Systems, Inc., through the Texas Local Government Purchasing Cooperative, in the amount of $135,743.47.

9. **Grove Park playground-** Consider approval of the purchase and installation of play equipment for the 2016-17 Playground Replacements project for Grove Park, from Child's Play, Inc., through the Texas Local Government Purchasing Cooperative, in the amount of $134,186.00.

10. **Fire Station 1 upgrades-** Consider approval of Bid No. 2017-61, to purchase materials and installation for the renovation of Fire Station No. 1's crew showers and mechanical areas, from Unified Services of Texas, Inc., as part of the Fire Station No. 1 Facility Upgrades project in the amount of $299,057.00

11. **Police and Courts upgrades-** Consider approval of Bid No. 2017-62, to purchase materials and installation for the renovation of the Police Department's Jail, Locker and Shower areas, for the Police and Courts Facility Upgrades project, from Unified Services of Texas, Inc., in the amount of $639,341.00

12. **Server backup system-** Consider approval for emergency purchase of a backup system for all Town servers.

K. REGULAR ITEMS

13. **MISC-Lakeside DFW Roundabout-** Consider approval of a design change (MISC17-0003) for the terminus feature in the central roundabout within the Lakeside DFW development. The property is within the intersection of Edgemere Road and Lakeside Parkway. (The Planning and Zoning Commission denied the item by a vote of 6 to 0 at its April 10, 2017, meeting.)

14. **Public Hearing: ZPD-Victory Retail-** Public Hearing to consider a request for rezoning (ZPD17-0002 - Victory Retail) to amend Planned Development District No. 51 (PD-51) by amending the development standards related to permitted uses and parking standards for the Retail District-2 (R-2) tract, and to consider adopting an ordinance providing for said amendment. The property is generally located north of Flower Mound Road and east of Morriss Road. (The Planning and Zoning Commission recommended denial by a vote of 6 to 0 at its April 10, 2017, meeting.)

15. **MISC-Victory Retail Parking Deviation-** Consider approval of a request (MISC17-0002 - Victory Retail Parking Deviation) for a deviation to the required parking spaces in excess of 20 percent as outlined in Section 82-73, Computing parking and loading requirements, of the Code of Ordinances. The property is generally located north of Flower Mound Road and east of Morriss Road. (The Planning and Zoning Commission recommended denial by a vote of 6 to 0 at its February 27, 2017, meeting.) (This item was postponed indefinitely at the March 20, 2017, Town Council meeting.)

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

Discuss and consider resignations, appointments, evaluations, reassignments, discipline, or dismissals for the following boards or commissions: Animal Services Board, Cultural Arts Commission, Environmental Conservation Commission, **Parks 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:

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

b. Deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the Presiding and Alternate 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 also posted on the Town's website in accordance with GC Section 551.056 on the following date and time: April 13, 2017, at 3:40 p.m., at least 72 hours prior to the scheduled time of said meeting.

____
Theresa Scott, Town Secretary

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

TOWN COUNCIL AGENDA ITEM NO. 1

CONSENT ITEM

DATE: April 17, 2017

FROM: Theresa Scott, Town Secretary

ITEM: **Consider approval of the minutes from a regular meeting of the Town Council held on April 3, 2017.**

BACKGROUND INFORMATION: The Town Council held a regular meeting on April 3, 2017.

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

DRAFT MOTION: Move to approve the minutes from a regular meeting of the Town Council held on April 3, 2017.

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 3RD DAY OF APRIL 2017, 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.

Meeting Video Link: http://flowermoundtx.swagit.com/play/04032017-1184 *(subject to change)*

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

Tom Hayden	Mayor
Kevin Bryant	Mayor Pro Tem
Bryan Webb	Deputy Mayor Pro Tem
Jason Webb	Councilmember Place 1
Don McDaniel	Councilmember Place 4
Itamar Gelbman	Councilmember Place 5

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	Deputy Town Manager/CFO
Tommy Dalton	Assistant Town Manager
Doug Powell	Executive Director of Development Services
Ken Parr	Executive Director of Public Works

A. CALL REGULAR MEETING TO ORDER

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

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

Chaplain Will Langstaff gave the invocation and Mayor Hayden led the pledges.

D. PRESENTATIONS

1. Recognition to Keep Flower Mound Beautiful (KFMB) for their recent Spring Trash Off Event and sponsors.

   Marilyn Lawson, President, Keep Flower Mound Beautiful, gave a presentation identifying or noting 2016 accomplishments. She also highlighted the results of the 2017 Spring trash off event, and later announced various recognitions from Keep Texas Beautiful.

E. PUBLIC PARTICIPATION

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

	Speaker names and address	Subject *(as written on the form)*
1.	Todd Weaver, 3505 Yucca	Concerns regarding video

F. ANNOUNCEMENTS

Mayor Pro Tem Bryant and Councilmember McDaniel expressed appreciation for the work of KFMB with the trash off event this past Saturday, as well as for Marilyn's recognition by Keep Texas Beautiful.

Councilmember Jason Webb announced various events in association with the Easter holiday. He also expressed thanks to Town staff and Republic Services for their collective efforts in cleaning up after the recent storm.

Mayor Hayden provided an update on commercial space construction and leasing rates.

Deputy Mayor Pro Tem Bryan Webb announced that the Summit Club and The Mound Foundation will be taking the crosses up The Mound in conjunction with Easter services.

G. TOWN MANAGER'S REPORT

Mr. Stathatos provided an update on the following projects or items:

1. Capital improvement projects.
   - FM 2499 roadway and drainage improvements
   - Clarification regarding rumors associated with Garden Ridge being designated as a truck route

   Mr. Parr responded to questions from Council as follows:

   - Near the Taco Bueno currently the light at West Windsor going eastbound is painted for a left and right turn. Will there soon be the option to go straight?

2. Economic Development projects.
   - Sonora Grill (Victory retail center) is now open
   - Taco Bueno is now open
   - Trio Coffee relocated to a previously vacated Starbucks location after they moved to Lakeside
   - CVS to open a pharmaceutical distribution center (Spinks @ Gerault)

3. New town hall and library expansion.
   - Library: There will be a TIRZ Board meeting in May
   - Town Hall: 60% construction drawings received last week and the Guarantee Maximum Price (GMP) contract to come forward to Council the first meeting in June

   Mr. Stathatos responded to questions from Council as follows:

   - The possibility of utilizing Facebook live to broadcast council meetings

4. Discussion regarding sidewalk/street lighting improvements

   Mr. Parr gave a presentation identifying or noting:

   - Shadow Ridge Middle School and Bluebonnet Elementary existing and proposed street light locations
   - Timber Creek/Old Town

  - o Timber Creek/Old Town area that is private property, which restricts the Town's ability to install lights due to no existing easement.
- Forest Vista Elementary
- Estimated cost associated with 17 light installations (average of $6,700 each)

Mr. Parr or Ms. Wallace responded to questions or comments from Council as follows:

- Clarification regarding adjacent lights not noted on the map
- For the school locations, a suggestion to reach out to LISD to see if they are okay with the proposed locations for the new lights
- Is there a plan to continue westbound on Spinks as you head to the intersection of 2499 and what's the distance from Aberdeen to 2499
- What is the possibility of continuing east along Spinks
- Interest in doing a Town-wide audit to identify gaps where lights are non-existent, with emphasis in areas by schools
- What is the recourse for odd scenario where the areas that need lights are private property and there are no easements
- Past history associated with sidewalk and trail links, particularly at the locations of north of Flower Mound High School (Peters Colony), north of Liberty on Quail Run, then South 3040 and 2499
- Possible solutions in situations where lights are being blocked by trees

There was Council discussion as follows:

- How decisions were made decades ago to purposely reduce the amount of lights throughout the Town
- Intersection of Garden Ridge and Forest Vista is a significant concern
- Have light poles as part of the Town's long term plan such as a street light program
- Interest in being fiscally responsible with the approach in the program

There was Council consensus with the direction to move forward with the proposed 17 locations, and going forward consider a phased street light program that would focus on arterials, collectors, and areas around schools, and possibly median lights on Morriss.

H. FUTURE AGENDA ITEMS

1. There was some discussion relative to having a future agenda item for the purpose of allowing the Town Manager to exercise some latitude with respect to Town ordinances in a situation of severe weather conditions. The discussion continued when item 10 was opened given the relevancy.

I. COORDINATION OF CALENDARS

1. Mayor Hayden announced that the next Town Council regular meeting is scheduled for Monday, April 17, 2017 and there were no objections to moving the April 20th work session to the July 17th Strategic Planning Session.

J. CONSENT ITEMS

1. Consider approval of the minutes from a regular meeting of the Town Council held on March 20, 2017.

   RECOMMENDATION: Move to approve the minutes from a regular meeting of the Town Council held on March 20, 2017.

2. Consider approval of the minutes from a Joint Town Council/Transportation Commission work session held on March 23, 2017.

   RECOMMENDATION: Move to approve the minutes from a Joint Town Council/Transportation Commission work session held on March 23, 2017.

3. Consider approval of an ordinance amending the Town of Flower Mound's Annual Budget for the fiscal year beginning October 1, 2016, and ending on September 30, 2017, as adopted by Ordinance No. 52-16 and amended by Ordinance 70-16 and 02-17 for adjustments to the General Fund.

   RECOMMENDATION: Move to approve an ordinance amending the Town of Flower Mound's Annual Budget for the fiscal year beginning October 1, 2016, and ending on September 30, 2017, as adopted by Ordinance No. 52-16 and amended by Ordinance 70-16 and 02-17 for adjustments to the General Fund.

   ORDINANCE NO. 10-17

   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, 2016, AND ENDING ON SEPTEMBER 30, 2017, AS ADOPTED BY ORDINANCE NO. 52-16 AND AMENDED BY ORDINANCE NO. 70-16 and 02-17, BY PROVIDING FOR ADJUSTMENTS TO THE GENERAL FUND; PROVIDING THAT EXPENDITURES FOR SAID FISCAL YEAR SHALL BE MADE IN ACCORDANCE WITH SAID BUDGET, AS AMENDED; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

4. Consider approval of the Best Value Bid Nos. 2017-40 (Northwest), 2017-41 (Southeast), 2017-42 (Southwest) and 2017-43 (Northeast) Landscape Maintenance Program to TCA Terracare Associates at the unit prices bid, in the estimated annual amount of $626,870.00; and authorize the Mayor to execute same on behalf of the Town.

   RECOMMENDATION: Move to approve the Best Value Bid Nos. 2017-40 (Northwest), 2017-41 (Southeast), 2017-42 (Southwest) and 2017-43 (Northeast) Landscape Maintenance Program to TCA Terracare Associates at the unit prices bid, in the estimated annual amount of $626,870.00; and authorize the Mayor to execute same on behalf of the Town.

5. Consider approval of the purchase of creek bank stabilization and erosion control services, associated with the Bakers Branch Stabilization at 1804 Doubletree Trail project, to Knight Erosion Control, Inc., a sole source provider, in the total amount of $91,039.00.

   RECOMMENDATION: Move to approve the purchase of creek bank stabilization and erosion control services, associated with the Bakers Branch Stabilization at 1804 Doubletree Trail project, to Knight Erosion Control, Inc., a sole source provider, in the total amount of $91,039.00.

6. Consider approval of the purchase of creek bank stabilization and erosion control services, associated with Wichita Creek, to Knight Erosion Control, Inc., a sole source provider, in the amount of $19,999.00 for the Creek Bank Stabilization at 3100 River Hill Drive, and the amount of $44,999.00 for the Creek Bank Stabilization at 5105 River Hill Drive.

   RECOMMENDATION: Move to approve the purchase of creek bank stabilization and erosion control services, associated with Wichita Creek, to Knight Erosion Control, Inc., a sole source provider, in the amount of $19,999.00 for the Creek Bank Stabilization at 3100 River Hill Drive, and the amount of $44,999.00 for the Creek Bank Stabilization at 5105 River Hill Drive.

7. Consider approval of Change Order No. 1 for the Twin Coves Park Improvements project, through the Construction Manager at Risk (CMR) Agreement with Dean Electric, Inc., dba, Dean Construction, at a not to exceed amount of $438,857.98, for a total CMR contract value of $3,319,729.95; and authorization for the Mayor to execute same on behalf of the Town.

   This item was not pulled from consent; however, Mayor Hayden indicated the entrance to Twin Coves Park could use some improvements as it doesn't fit the grand scale of what the park is becoming.

   RECOMMENDATION: Move to approve Change Order No. 1 for the Twin Coves Park Improvements project, through the Construction Manager at Risk (CMR) Agreement with Dean Electric, Inc., dba, Dean Construction, at a not to exceed amount of $438,857.98, for a total CMR contract value of $3,319,729.95; and authorization for the Mayor to execute same on behalf of the Town.

<u>Mayor Pro Tem Bryant moved to approve by consent Items 1 – 7. Councilmember Jason Webb 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.</u>

VOTE ON MOTION: *Motion passed*
AYES: J. WEBB, MCDANIEL, BRYANT, B. WEBB, GELBMAN
NAYS: NONE

K. REGULAR ITEMS

8. Public Hearing to consider a request for a Comprehensive Sign Package (CSP17-0001 – Stryker Industrial) for Stryker Industrial to allow a painted roof sign. The property is generally located east of Lake Forest Boulevard, between Lakeside Parkway and Silveron Boulevard. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its March 27, 2017, meeting.)

Staff Presentation

Mr. Powell gave a presentation identifying or noting:

- Site location
- Approved plan
- Photo of what the roof sign will look like
- Provisions of comprehensive sign package

Mayor Hayden opened the Public Hearing at 7:05 p.m.

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

Support: Comments/Questions	Opposition: Comments/Questions	Question(s)/Comments Only
Jim Engel, 5110 Bayberry	None.	None.

Mayor Hayden closed the Public Hearing at 7:07 p.m.

Councilmember McDaniel moved to approve a request for a Comprehensive Sign Package (CSP17-0001 – Stryker Industrial) for Stryker Industrial to allow a painted roof sign. Councilmember Gelbman seconded the motion.

VOTE ON MOTION: *Motion passed*
AYES: GELBMAN, B. WEBB, BRYANT, MCDANIEL, J. WEBB
NAYS: NONE

9. Consider a request for a Site Plan (SP16-0022 - Jerry's Express Car Wash) to develop a car wash with an exception to Section 82-302, Compatibility buffer, and an exception to Section 82-303, Compatibility setback, of the Code of Ordinances. The property is generally located at the northeast corner of Spinks Road and Long Prairie Road. *(The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its March 27, 2017, meeting.)*

Staff Presentation

Mr. Powell gave a presentation identifying or noting:

- General and detailed location
- Land use and zoning
- Photos of the site
- Site plan/landscape plan

- Letter from school - acceptable to the waiver
- Elevations
- No correspondence received

Applicant Presentation

James Nader(architect), with Nader Design Group, 916 Bryan, Fort Worth, Tx, and Doug Cookston, Director of Operations for Jerry's Express Car Wash, 6300 Ridglea Place, Fort Worth, Tx gave a presentation identifying or noting:

- Past projects
- Car wash operations
- Photo of the back room of one of their facilities
- Environmental steps being taken to conserve water and reduce noise pollution
- Community involvement
- Steps and modifications that were taken to adapt to the location

Mr. Nader or Mr. Cookston responded to questions from Council as follows:

- Clarification regarding the landscape plan, including the amount of trees that will be planted and the species type
- How many cars per day are expected
- What are the hours of operation
- When would they be able to open
- Clarification regarding the differential from the roof line and top of tower
- What is planned for signage and concerns relative to the placement location
- Clarification regarding the existence of windows or not

Mr. Powell responded to questions from Council as follows:

- Clarification regarding the location of the fire lane, location of overhead lines, and setbacks
- Concerns regarding the angle entrance off 2499
- Are there any backup issues on Spinks given the proximity of the school

There as Council discussion regarding:

- Not sure if a car wash is the best use for this prime entrance location to the town; however, it's zoned properly and it's a challenging site
- Appreciation for the water reclamation efforts

Deputy Mayor Pro Tem Bryan Webb moved to approve a request for a Site Plan (SP16-0022 - Jerry's Express Car Wash) to develop a car wash with an exception to Section 82-302, Compatibility buffer, and an exception to Section 82-303, Compatibility setback, of the Code of Ordinances. Councilmember Don McDaniel seconded the motion.

VOTE ON MOTION: *Motion passed*
AYES: J. WEBB, MCDANIEL, BRYANT, B. WEBB, GELBMAN
NAYS: NONE

10. Discuss and consider measures to facilitate public access to insurance assistance in light of recent severe weather events.

Mayor Hayden provided background information as to how this topic became an agenda item, and how the Town Manager should be given the authority to grant exceptions to the Town's ordinances that restricts operating a business in a parking lot in a case of a natural disaster for insurance companies to process claims, for example.

Mr. Meredith responded to questions from Council as follows:
- How the role of the Town Manager, including by contractual obligation, is to enforce the Town's Ordinances and how the motion would assist him, as well as staff, with the comfort of knowing they are not contravening the will of the Council by not issuing a citation
- Difficulty with writing an inclement weather exception to the application of any of the Town ordinances is problematic with respect to certain regulations
- Clarification that the action tonight indemnifies the current action and going forward Council will look at its ordinances, and possibly the Town Manager contract, to see what needs to be done relative to granting him special exemptions in the act of a disaster (basically a disaster clause to allow him the ability to function in the best interest of the health and welfare of the residents)

Mr. Stathatos responded to questions from Council as follows:
- There are other areas as it relates to special events that need to be discussed relative to offering some exceptions
- Would there need to be a change to the Town's Ordinances or the Town Manager contract to allow for the discernment

There was Council discussion as follows:
- How companies like State Farm would need to get permission from businesses such as Lowe's before they could operate at that location
- How the change allows the Town Manager to exercise common sense without any possibility of retribution coming back to him, particular in a disaster situation
- Proposed text modifications
- Whether allowing exemptions in the ordinance should be made or if it should be just a change to the contract
- Communication process relative to decisions being made by the Town Manager
- Process code enforcement currently takes relative to issuing citations
- The risk of making exceptions and potentially opening the door for other activities
- How it's difficult to innumerate all the organizations that could be involved in a natural disaster, and for that reason it's best to adjust the Town Manager's contract
- How if there are any issues relative to operations lasting longer than desired Council could convey that concern to the Town Manager at a Council meeting

Deputy Mayor Pro Tem Bryan Webb moved to allow the Town Manager to cooperate with insurance companies to provide relief to citizens affected by weather or other catastrophic events, and in these limited instances to exercise discretion and restraint in the enforcement of the Town regulations that he, in good faith, believes are contrary to the best interest of the public health, safety and general welfare, and suspend specific performance of this contractual obligation to strictly enforce any such regulation. Additionally, the Town Manager, upon exercising discretion, will notify Town Council and the Mayor via their Town email within one business day. Mayor Pro Tem Kevin Bryant seconded the motion.

VOTE ON MOTION: *Motion passed*
AYES: GELBMAN, B. WEBB, BRYANT, MCDANIEL, J. WEBB
NAYS: NONE

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 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 8:02 p.m. on April 3, 2017, pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.074, 551.087, 551.072, and 551.071 to discuss matters relating to personnel, economic development negotiations, real property, and consultation with attorney, and reconvened into an open meeting at 8:37 p.m. on April 3, 2017, to take action on the items as follows:

a. 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.

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

   No action taken.

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

   No action taken.

d. Consultation with Attorney as follows:

   1. Official request for information

   No action taken.

O. ADJOURN REGULAR MEETING

Mayor Hayden adjourned the meeting at 8:37 p.m. on Monday, April 3, 2017, 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: April 17, 2017

FROM: Jeff Garner, Director Of Facilities Management

ITEM: **Consider approval for Waste Water Treatment Plant Administrative Building Renovation**

BACKGROUND INFORMATION: Consider approval of Bid No 2017-63 with RKM General Contractors LLC for the Flower Mound Wastewater Treatment Plant Building Renovation, to include a complete renovation of the existing building interior and exterior. Due to asbestos containing materials in and on the building the entire interior and exterior of the building has received extensive asbestos abatement and is now ready for renovation. The renovation includes new electrical and HVAC systems, new floor plan, new flooring and ceilings, new ADA accessible restrooms and showers. The building exterior will receive a new three coat stucco system. If add alternate bids for new sidewalks and shade canopy are affordable they will be included as well.

FISCAL IMPACT: $277,300.00

Proposed Expenditure:	Account Number(s):
$277,300.00	100-655-59200-5110

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

ATTACHMENTS:

1. Bid Tabulation
2. Construction Agreement

RECOMMENDATION: Move to approve Bid No 2017-63 with RKM General Contractors LLC for renovation of Waste Water Treatment Plant Administrative Building.

Attachment 1

Town of Flower Mound Bid Tabulation

Bid No: 2017-63 - Wastewater Treatment Administration Renovations & Improvements Bid Opening: 4/4/2017 at 11:00am	
Company	Total Base Bid
RKM General Contractors	$ 277,300.00
United Services of Texas	$ 378,732.00
Harendt Construction Group, LLC	$ 408,634.00

**All bids/proposals submitted for the designated project are reflected on this tabulation sheet. However, the listing of the bid/proposal on this tabulation sheet shall not be construed as a comment on the responsiveness of such bid/proposal or as any indication that the agency accepts such bid/proposal as being responsive. The agency will make a determination as to the responsiveness of the vendor responses submitted based upon compliance with all applicable laws, purchasing guidelines and project documents, including but not limited to the project specifications and contract documents. The agency will notify the successful vendor upon award of the contract and, as according to the law, all bid/proposal responses received will be available for inspection at that time.

Certified By: Sabrina R. Zadow 04/04/2017

Purchasing Manager

Town of Flower Mound, Texas

TOWN OF FLOWER MOUND

Wastewater Treatment Administration Building Renovations & Improvements

Bid # 2017-63

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the "Agreement"), made and entered into this 17th day of April, 2017, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the "Town," and RKM General Contractors, 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:

Wastewater Treatment Administration Building Renovations & Improvements,
Bid # 2017-63

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 **Two Hundred Seventy Seven Thousand, Three Hundred Dollars ($277,300)** 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 ninety (90) calendar days, and final completion of one hundred (100) 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.

<u>ARTICLE 5.</u> 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:

Contract Amount	Retainage Percentage
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.

<u>ARTICLE 6.</u> 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.

<u>ARTICLE 7.</u> 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.

<u>ARTICLE 8.</u> 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.

<u>ARTICLE 9.</u> 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.

<u>ARTICLE 10.</u> **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.

<u>ARTICLE 11.</u> 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 Forty and Zero/One Hundredths Dollars ($240.00) per day or portion of a day in Liquidated Damages will be deducted from the Contract price by the Town for each calendar day or portion thereof that the work is not substantially complete beyond the Substantially Complete Contract time, or within such extra time as may have been allowed by an extension approved by the Town. The Contractor also agrees that the sum of Two Hundred Forty and Zero/One Hundredths Dollars ($240.00) per day or portion of a day in Liquidated Damages for each calendar day or portion thereof the work has not been finally completed by the Contractor beyond the Contract time for final completion, or within such extra time as may have been allowed by an extension approved by the Town. The Town and the Contractor agree that this amount is payable as reasonable and just compensation for failure to complete the Work on time. This amount is payable as liquidated damages and not as a penalty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Payments under this Contract are due and payable in accordance with the provisions of Texas Government Code Section 2251.022. Interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.
Attention is called to the Government Code, Chapter 2258, Prevailing Wage Rates. Contractor and any subcontractor shall pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of this Agreement. The Town has determined the general prevailing rate of per diem wages in the locality in which the public work is to be constructed by using the prevailing wage rates as determined by the United States Department of Labor in accordance with the Davis-Bacon Act as applicable to this Project. Contractor or a subcontractor who violates this provision shall be liable for the penalty specified in Texas Government Code Section 2258.023, which as of the date of this Agreement is $60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. Town reserves the right to receive and review payroll records, payment records, and earnings statements of employees of Contractor, and of Contractor's Subcontractors, and of Sub-Subcontractors to verify payments made to same. However, no Claim for additional compensation shall be considered by Town because of payments of wage rates in excess of the applicable rate provided herein.

It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialmen, artisan, laborer, or subcontractor, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the project of whatever nature or kind

so erected or to be erected by virtue of this Contract, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas.

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

1. that it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

2. that it is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

3. that it is authorized to do business in the State of Texas and properly licensed by all necessary governmental, public and quasi-public authorities having jurisdiction over it, the Work, or the site of the Project; and

4. that the execution of the Contract and its performance thereof are within its duly-authorized powers.

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

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

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

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

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

This Agreement will be effective on the 17th day of April, 2017.

TOWN OF FLOWER MOUND	CONTRACTOR
____________________________	____________________________ (Signature)
Thomas E. Hayden, MAYOR	____________________________ (Printed Name)
	____________________________ (Position)
(CORPORATE SEAL)	(CORPORATE SEAL)
ATTEST:____________________________	ATTEST:______________________ (Signature)
Theresa Scott, TOWN SECRETARY	______________________ (Position)

TOWN COUNCIL AGENDA ITEM NO. 3

CONSENT ITEM

DATE: April 17, 2017

FROM: Chuck Jennings, Parks and Recreation Director

ITEM: **Consider approval of an ordinance amending section 54-178(a) of the Town of Flower Mound Code of Ordinances and the general restrictions applicable to property subject to United States Army Corps of Engineers property rules and regulations; amending recreational use fees contained in Appendix A "Fee Schedule" established by Section 54-178.1 of the Code of Ordinances; providing a penalty; for severability; for repeal of conflicting ordinances; establishing an effective date and providing for publication. (The Parks Board recommended approval by a vote of 6 to 0 at its April 6, 2017, regular meeting.)**

BACKGROUND INFORMATION: Town staff is proposing to update the usage rates for Twin Coves Park based on the recommendations from the feasibility study approved on August 19, 2013, as well as the market research complied by Town staff. The usage fees and policy changes have been formulated as an amendment to the existing ordinance Chapter 54-178.1 (Recreational Use Fees) and brought forth to the Town Council for their consideration and approval. The amended ordinance includes adding and updating usage fees which include; annual pass fees, additional access card fee, day use fees, RV, cabin and primitive site nightly rates, lost key fees, pavilion rental fees, and discounts.

On September 8, 2011, staff presented a comprehensive list of rules, regulations and fees for PALS Board input. After receiving feedback and consulting with Police, Fire, Town Attorney, and the U.S. Army Corp of Engineers staff determined that many of the rules and regulations were already addressed within the Town's existing ordinances. It was decided at that time that amending Chapter 54, Article IV was the best course of action and would prevent the Town from duplicating ordinances. Staff is requesting that the fees associated with the ordinance be amended to better support the operations of the renovated park.

In May of 2012, PROS Consulting was contracted by the Town to conduct a feasibility study as an in depth analysis of potential costs, revenues, community outreach and overall benefit to the Town regarding renovations of Twin Coves Park. In regards to policy and fees, specific outcomes were identified in the feasibility study that included the following:

1. Identify and evaluate the service market of the park for indicators of reliable usage and complimentary/competitive sites.
2. Conduct a financial analysis.
3. Provide objective and straightforward recommendations to the Town on the feasibility of the proposed development from a financial perspective.

The overall analysis of the feasibility study revealed that with an appropriate "go to market" strategy the Twin Coves pro forma would be financially beneficial to the Town and a total cost recovery could be achievable in the first year of operations. With the final completion of Twin Coves Park construction expected in the summer of 2017, staff consulted with PROS and determined that an annual increase of 5% over the 2013 numbers is necessary to bring the feasibility study pro forma numbers into today's dollars.

Town staff revised the fees and is proposing usage rates based on the operational model provided in the feasibility study, and market research of other area parks that are comparable in offerings to Twin Coves Park. The proposed changes cover areas related to establishing new fees and amending existing recreational use fees. The fee increase is necessary based on inflation, new infrastructure, and additional amenities provided in the park that will allow Twin Coves to obtain a competitive market share. The proposed fee structure will provide staff with the tools to effectively operate the park in a fiscally sound manner, insuring future financial sustainability. As the park continues to grow and develop, staff will revisit the fees and policies on an annual basis and will seek the Parks Board and Town Council's recommendation and approval as needed.

BOARD REVIEW/CITIZEN FEEDBACK: The Parks Board recommended approval by a unanimous vote of 6 to 0 at its April 6, 2017, regular meeting.

ALTERNATIVES/OPTIONS: The Town Council can make changes to the proposed fees and policies as desired.

FISCAL IMPACT: N/A

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

ATTACHMENTS:

1. Draft Ordinance

RECOMMENDATION: Move to approve an ordinance amending section 54-178(a) of the Town of Flower Mound Code of Ordinances and the general restrictions applicable to property subject to United States Army Corps of Engineers property rules and regulations; amending recreational use fees contained in Appendix A "Fee Schedule" established by Section 54-178.1 of the Code of Ordinances; providing a penalty; for severability; for repeal of conflicting ordinances; establishing an effective date and providing for publication.

Attachment 1

TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO. ______________

AN ORDINANCE AMENDING SECTION 54-178(a) OF THE FLOWER MOUND CODE OF ORDINANCES AND THE GENERAL RESTRICTIONS APPLICABLE TO PROPERTY SUBJECT TO UNITED STATES ARMY CORPS OF ENGINEERS PROPERTY RULES AND REGULATIONS; AMENDING RECREATIONAL USE FEES CONTAINED IN APPENDIX A "FEE SCHEDULE" ESTABLISHED BY SECTION 54-178.1 OF THE CODE OF ORDINANCES; PROVIDING A PENALTY; FOR SEVERABILITY; FOR REPEAL OF CONFLICTING ORDINANCES; ESTABLISHING AN EFFECTIVE DATE AND PROVIDING FOR PUBLICATION.

WHEREAS, the Town of Flower Mound is a home rule municipal corporation organized and existing by virtue of the Constitution and laws of the State of Texas and by its Home Rule Charter adopted November 3, 1981; and

WHEREAS, the Town of Flower Mound has entered into a lease agreement with the United States Army Corps of Engineers ("Corps") for Corps-owned property adjacent to Grapevine Lake, known as Twin Coves Park, which provides the Town with the authority to adopt regulations and manage daily operations in Twin Coves Park; and

WHEREAS, the Town of Flower Mound and the Corps have entered into an Interlocal Agreement for the enforcement of federal, state and local regulations on property owned and controlled by the Corps in and around Grapevine Lake; and

WHEREAS, the Town of Flower Mound possesses all the rights, powers, and authorities possessed by all home rule municipalities to regulate park and recreation services and the fees for services provided by the Town; and

WHEREAS, the Town of Flower Mound has determined the need to amend the current regulations relating to Corps property in the Town, including Twin Coves Park, regarding the use of such Corps property.

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

SECTION 1

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

SECTION 2

From and after the effective date of this Ordinance, Section 54.178(a) of the Flower Mound Code of Ordinances, entitled “United States Army Corps of Engineers Property Rules and Regulations,” shall be amended to read as follows:

“Sec. 54-178. General restrictions.

(a) Quiet shall be maintained in all public use areas between the hours of 10 p.m. and 7 a.m., or those hours designated by the town manager. Excessive noise during such times which unreasonably disturbs persons is prohibited.”

SECTION 3

From and after the effective date of this Ordinance, Schedule A, “Fee Schedule,” established by Section 54-178.1 of the Flower Mound Code of Ordinances is hereby amended to read as follows:

TWIN COVES PARK FEES - Sec. 54-178.1 – Recreational Use Fees.	
Day use fee	$10.00 per vehicle
Annual pass	Residents: $45.00 per year for one access card
	Non-resident: $75.00 per year for one access card
Additional Access Card (Only one additional access card per annual pass purchased.)	Resident: $20.00 Non-Resident: $40.00
Replacement Access Card	$10.00
RV Camping Fees	$35.00 per night (water and electric (50amp)) $45.00 per night (water, sewer and electric (50amp)) $55.00 per night (pull-through site with water, sewer and electric (50amp))
RV Late Checkout	$25 per hour (If not checked out by 1:30 p.m.)
Cabin Fees - Peak Season (March - October)	$130.00 per night for 2 person accommodations $145.00 per night for 4 person accommodations $160.00 per night for 6 person accommodations
Cabin Fees - Off Peak (November through February)	$115.00 per night for 2 person accommodations $130.00 per night for 4 person accommodations $145.00 per night for 6 person accommodations

Cabin Fees - Holiday Holiday is defined as: New Year's, Spring Break, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas.	\$145.00 per night for 2 person accommodations \$160.00 per night for 4 person accommodations \$175.00 per night for 6 person accommodations
Cabin Late Check-out Fee Check-in at 3:00 p.m. Check-out at 11:30 a.m.	\$50 per hour
Lost Key Charge	\$30.00 per key
Primitive Camping	\$20.00 per night
Discounts	10% discount on nightly RV, Cabin and Primitive camp sites for Active Military, Seniors (65 and older) and current Flower Mound Residents.
Pavilion Rental Fee	\$100.00 flat fee to include up to four hours \$20.00 each additional hour after the first four hours.
Park Quiet Hours	10:00 p.m. and 7:00 a.m.
Minimal Rental Age	Guests renting a cabin, primitive, and/or RV site must be 21 years of age or older with photo ID.
Cabin and RV Nightly Minimum Rental Requirements	Weekend: Two (2) Night Minimum (Friday through Sunday). Holidays: Three (3) Night Minimum (Friday through Sunday, including the Friday or Monday of the holiday. If a holiday falls outside of Friday or Monday, the days charged will be the holiday and the preceding days or days after.
RV & Cabin Cancellation Policy	Cancellations are subject to a minimum \$25.00 cancellation fee. In addition, cancellations made within 14 days of scheduled check-in are subject to a penalty equal to one (1) days reservation fee.

SECTION 4

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

SECTION 5

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

SECTION 6

Any person, firm, or corporation who violates any provision of this Ordinance as adopted by the Town Council of the Town of Flower Mound shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine as provided in Section 1-13 of the Code of Ordinances of the Town of Flower Mound. Each day any such violation or violations exist shall constitute a separate offense and shall be punishable as such.

SECTION 7

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

SECTION 8

The Town Secretary of the Town of Flower Mound is hereby directed to publish the caption in the official newspaper of the Town of Flower Mound as required by Section 3.07 of the Charter of the Town of Flower Mound.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF _______ TO _______, ON THIS THE 17TH DAY OF APRIL, 2017.

____
THOMAS E. HAYDEN, MAYOR

ATTEST:

____
Theresa Scott, TOWN SECRETARY

TOWN COUNCIL AGENDA ITEM NO. 4

CONSENT ITEM

DATE: April 17, 2017

FROM: Chuck Jennings, Parks and Recreation Director

ITEM: **Consider approval of naming the 10.756 acre public park located at 6425 Stonecrest Road in the Canyon Falls Development as Canyon Falls Park.**

BACKGROUND INFORMATION: The naming of Town parks is the responsibility of the Parks Board. The process for determination of a name for recommendation to the Town Council is specified in Town Ordinance Sec. 54-1. The 10.756 acre tract was acquired by the Town on January 24, 2017, and a master plan for the park was approved by the Town Council on March 6, 2017. Per the Town's code of ordinances, names for new parks shall typically be established within 90 days from the date of land acquisition or at the earliest possible time. Therefore, it was appropriate for the Parks Board to begin the naming process.

At the February 2, 2017, regular meeting, the Chair of the Parks Board appointed a Committee that was tasked with recommending naming options for the new park. The Committee consisted of board members Gloria Jones, Ann Handren, and Warner Watkins. The committee met on March 27 at the Town's Operations and Maintenance Building. The Naming Committee looked at a variety of different options that took the following into consideration: streets, geographical locations, ecological features, historical figures, events, concepts, local, state or national leaders, or in memoriam for public servants or residents who perished in the line of duty.

Considering all of the information provided, the Committee recommended the name Canyon Falls Park. The committee chose the name for the following reasons:

- Will be the Town's only public park in the residential development
- Name would provide for easy identification and location
- Development is called Canyon Falls
- The Town has not received any other outside requests to consider
- The park has been commonly referred to as Canyon Falls Park during recent Master Plan discussions

BOARD REVIEW/CITIZEN FEEDBACK: The Parks Board recommended approval by a unanimous vote of 6 to 0 at its April 6, 2017, regular meeting.

ALTERNATIVES/OPTIONS: The Town Council can decide to name the park something different or send the item back to the Parks Board for additional options.

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Conceptual Master Plan

RECOMMENDATION: Move to approve naming the 10.756 acre public park located at 6425 Stonecrest Road in the Canyon Falls Development as Canyon Falls Park.

Attachment 1

Canyon Falls Public Park Master Plan

MARCH 6, 2017

TOWN COUNCIL AGENDA ITEM NO. 5

CONSENT ITEM

DATE: April 17, 2017

FROM: Sue Ridnour, Director of Library Services

ITEM: **Consider approval of an Interlocal Cooperation Agreement for Library Services**

BACKGROUND INFORMATION: Denton County provides annual funding to public libraries located in the county which agree to provide services to all Denton County residents. The Town of Flower Mound has participated in this arrangement since 1985. A per capita formula is used to compute the amount allocated to each participating municipality.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: $50,200 intergovernmental revenue

Proposed Receipts/Collections	Account Number(s):
$50,200	100-4605

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

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Interlocal Cooperation Agreement for Library Services

DRAFT MOTION: Move to approve Interlocal Cooperation Agreement for Library Services with Denton County and authorize the Mayor to execute same on behalf of the Town.

THE STATE OF TEXAS §
§ **FLOWER MOUND PUBLIC LIBRARY**
COUNTY OF DENTON §

INTERLOCAL COOPERATION AGREEMENT FOR LIBRARY SERVICES

THIS AGREEMENT is made and entered into by and between Denton County, a political subdivision of the State of Texas, hereinafter referred to as ("the **COUNTY**"), and the Town of Flower Mound, a municipality of Denton County, Texas, hereinafter referred to as ("the **MUNICIPALITY**"), and has an effective date of October 1, 2016.

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

WHEREAS, the **MUNICIPALITY** is a duly organized municipality in Denton County, Texas, engaged in the provision of library and related services for the benefit of the citizens of the **MUNICIPALITY**; and

WHEREAS, the **COUNTY** has requested, and the **MUNICIPALITY** has agreed to provide library services for all residents of the **COUNTY**; and

WHEREAS, the **COUNTY** and the **MUNICIPALITY** mutually desire to be subject to the provisions of Chapter 791 of the Texas Government Code, the Interlocal Cooperation Act and Chapter 323 of the Texas Local Government Code, regarding County Libraries.

NOW, THEREFORE, the **COUNTY** and the **MUNICIPALITY**, for the mutual consideration hereinafter stated, agree and understand as follows:

I.

The term of this Agreement shall be for the period from October 1, 2016, through September 30, 2017.

II.

For the purposes and consideration herein stated and contemplated, the **MUNICIPALITY** shall provide library services for the residents of the **COUNTY** without regard to race, religion, color, age, disability and/or national origin. Upon proper proof by individual(s) of residence in the **COUNTY**, Texas, such individual(s) shall be entitled issuance, at no cost, a library card to be used in connection with said library services.

The **MUNICIPALITY** shall develop and maintain through the Library one or more of the following programs of service:

1. Educational and reading incentive programs and materials for youth.
2. Functional literacy materials and/or tutoring programs for adults.
3. Job training/career development programs and/or materials for all ages.
4. Outreach services to eliminate barriers to library services.
5. Educational programs designed to enhance quality of life for adults.

III.

The **COUNTY** designates the County Judge to act on behalf of the **COUNTY** and serve as liaison officer for the **COUNTY** with and between the **COUNTY** and the **MUNICIPALITY**. The County Judge or his designated substitute shall insure the performance of all duties and obligations of the **COUNTY** herein stated and shall devote sufficient time and attention to the execution of said duties on behalf of the **COUNTY** in full compliance with the terms and conditions of this Agreement. The County Judge shall provide immediate and direct supervision of the **COUNTY'S** employees, agents, contractors, sub-contractors, and/or laborers, if any, in the furtherance of the purposes, terms and conditions of this Agreement for the mutual benefit of the **COUNTY** and the **MUNICIPALITY**.

IV.

The **MUNICIPALITY** shall designate the Director of Library Services to act on behalf of the **MUNICIPALITY** and to serve as liaison officer for the **MUNICIPALITY** with and between the **MUNICIPALITY** and the **COUNTY** to insure the performance of all duties and obligations of the **MUNICIPALITY** as herein stated and shall devote sufficient time and attention to the execution of said duties on behalf of the **MUNICIPALITY** in full compliance with the terms and conditions of this Agreement. The Director of Library Services shall provide management of the **MUNICIPALITY'S** employees, agents, contractors, sub-contractors, and/or laborers, if any, in the furtherance of the purposes, terms and conditions of this Agreement for the mutual benefit of the **MUNICIPALITY** and the **COUNTY.**

The **MUNICIPALITY** shall provide the **COUNTY** with a copy of the annual report submitted to the Texas State Library and shall respond to the **COUNTY'S** annual questionnaire as documentation of the **MUNICIPALITY'S** expenditures and provision of service.

V.

The **MUNICIPALITY** shall be solely responsible for all techniques, sequences, procedures and coordination of all work performed under the terms and conditions of this

Agreement. The **MUNICIPALITY** shall insure, dedicate and devote the full time and attention of those employees necessary for the proper execution and completion of the duties and obligations of the **MUNICIPALITY** as stated in this Agreement and shall give all attention required for proper supervision and direction of their employees.

VI.

The **MUNICIPALITY** agrees that its established library shall assume the functions of a county library within Denton County, Texas, and to provide a librarian who meets the requirements of the **MUNICIPALITY'S** job description.

VII.

The **COUNTY** and the **MUNICIPALITY** agree and acknowledge that each entity is not an agent of the other entity and that each entity is responsible for its own acts, forbearance, negligence and deeds and for those of its agents or employees. This Agreement does not and shall not be construed to entitle either party or any of their respective employees, if applicable, to any benefit, privilege or other amenities of employment applicable to the other party. The **MUNICIPALITY** understands and agrees that the **MUNICIPALITY**, its employees, servants, agents and representatives shall not represent themselves to be employees, servants, agents and/or representatives of the **COUNTY**.

To the fullest extent permitted by law, the MUNICIPALITY agrees to hold harmless and indemnify the COUNTY from and against any and all claims and for all liability arising out of, resulting from or occurring in connection with the performance of the work hereunder, including but not limited to, any negligent act or omission of the MUNICIPALITY, its officers, agents or employees.

The **COUNTY** and the **MUNICIPALITY** acknowledge and agree that the **COUNTY** does not waive any sovereign or governmental immunity available to the **COUNTY** under Texas law and does not waive any available defenses under Texas law. Nothing in this paragraph shall be construed to create or grant any rights, contractual or otherwise, in or to any third persons or entities.

VIII.

This Agreement is not intended to extend the liability of the parties beyond that provided by law. Neither the **MUNICIPALITY** nor the **COUNTY** waives any immunity or defense that would otherwise be available to it against claims by third parties.

IX.

Any notice required by this Agreement shall be delivered, in writing, by either the **COUNTY** or the **MUNICIPALITY** to the following addresses:

The address of the **COUNTY** is:

County Judge, Denton County
110 West Hickory Street, 2nd Floor
Denton, Texas 76201
Telephone: 940-349-2820

The address of the **MUNICIPALITY** is:

The Town of Flower Mound through
Flower Mound Public Library
3030 Broadmoor Lane
Flower Mound, Texas 75022
Attention: Sue Ridnour
Telephone: 972-874-6200

X.

For the full performance of the services above stated the **COUNTY** agrees to pay the **MUNICIPALITY** fees as described herein from current revenues available for such payment. The **COUNTY** shall pay the **MUNICIPALITY** fees in the amount of **FIFTY THOUSAND TWO HUNDRED AND NO/100 DOLLARS ($50,200.00)**, based upon North Central Texas Council of Governments service population allocation figures provided to the **COUNTY** by the Library Advisory Board, payable in equal quarterly installments to the **MUNICIPALITY** commencing on October 1, 2016. The Allocation chart setting forth said figures is attached hereto and incorporated herein for all intents and purposes as Exhibit "A."

Payment by the **COUNTY** to the **MUNICIPALITY** shall be made in accordance with the normal and customary processes and business procedures of the **COUNTY** and payment shall be satisfied from current revenues of the **COUNTY**.

All funding by the COUNTY to the MUNICIPALITY is subject to the condition that the MUNICIPALITY shall have in place technology protection measures (commonly referred to as "filters") with respect to any computers used by the public that have Internet access which are designed to block access through such computers to visual depictions that are (1) obscene, as defined by Section 43.21 of the Texas Penal Code, or (2) contain pornography. The technology protection measures shall be in compliance with the Children's Internet Protection Act.

The MUNICIPALITY hereby certifies that its libraries have either installed and are using the required technology protection measures during use of its computers that have Internet access by the public at the present time or will have such protection measures in place and operational by October 1, 2016.

XI.

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

XII.

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

XIII.

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. Further, this Agreement shall be performable and all compensation payable in Denton County, Texas.

XIV.

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

XV.

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto and each party hereby certifies to the other that any necessary orders or resolutions extending said authority have been duly passed and are now in full force and effect.

EXECUTED in triplicate originals on the dates set forth below.

The **COUNTY**

By: ______________________
Mary Horn, County Judge
Denton County, Texas

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

DATED:______________________

ATTEST:

By:______________________
Denton County Clerk

APPROVED AS TO FORM:

By:______________________
Assistant District Attorney

The **MUNICIPALITY**

By:______________________
Name: Thomas E. Hayden
Title: Mayor, Town of Flower Mound

Acting on behalf of and by the authority of the Town Council of Flower Mound, Texas

DATED:______________________

ATTEST:

By:______________________
Town Secretary

APPROVED AS TO FORM:

By:______________________
Town Attorney

APPROVED AS TO CONTENT:

By: ______________________
Director, Library Services

AUDITOR'S CERTIFICATE

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

____
James Wells, Denton County Auditor

DENTON COUNTY LIBRARY'S FUNDING REQUEST (2016-2017) - Rev. 6/20/16

PER CAPITA:	$	0.342840
MATCHING:	$	10,000.00

DENTON COUNTY POPULATION:	758,370
POPULATION OF CITIES WITH LIBRARIES	352,627
REMAINING POPULATION	405,743

LIBRARY	TOTAL POP	CITY POP	COUNTY allocation	PER CAPITA ALLOCATION	MATCHING FUNDS	TOTAL	ROUNDED
AUBREY	26,410	12,280	14,130	$ 9,054	$ 10,000	$ 19,054	19,000
CARROLLTON	165,555	76,980	88,575	$ 56,759	$ -	$ 56,759	56,800
FLOWER MOUND	146,350	68,050	78,300	$ 50,175	$ -	$ 50,175	50,200
JUSTIN	7,248	3,370	3,878	$ 2,485	$ 10,000	$ 12,485	12,500
KRUM	10,495	4,880	5,615	$ 3,598	$ 10,000	$ 13,598	13,600
LAKE CITIES	-	-	-	$ -	$ -	$ -	
LEWISVILLE	213,831	99,427	114,404	$ 73,310	$ -	$ 73,310	73,300
LITTLE ELM	73,982	34,400	39,582	$ 25,364	$ 10,000	$ 35,364	35,400
PILOT POINT	8,710	4,050	4,660	$ 2,986	$ 10,000	$ 12,986	13,000
PONDER	3,355	1,560	1,795	$ 1,150	$ 10,000	$ 11,150	11,100
SANGER	16,818	7,820	8,998	$ 5,766	$ 10,000	$ 15,766	15,800
THE COLONY	85,617	39,810	45,807	$ 29,353	$ 10,000	$ 39,353	39,300
TOTAL	758,370	352,627	405,743	$ 260,000	$ 80,000	$ 340,000	$ 340,000

Aubrey Population:	
Aubrey	3,100
Crossroads	1,300
Krugerville	1,680
Providence	6,200
Total	12,280
Carrollton	127,980
less Dallas Co.	51,000
Carrollton (Denton Co.)	76,980

Lewisville	100,400
less Dallas Co.	973
Lewisville	99,427

Exhibit A

TOWN COUNCIL AGENDA ITEM NO. 6

CONSENT ITEM

DATE: April 17, 2017

FROM: Kay Wilkinson, Budget Officer

ITEM: **Consider approval of a resolution suspending the April 21, 2017, effective date of Oncor Electric Delivery Company's requested rate change to permit the Town time to study the request and to establish reasonable rates; approving cooperation with the Steering Committee of Cities Served by Oncor to hire legal and consulting services and to negotiate with the company and direct any necessary litigation and appeals; finding that the meeting at which this resolution is passed is open to the public as requested by law; requiring notice of this resolution to the company and legal counsel for the Steering Committee.**

BACKGROUND INFORMATION:

Oncor Electric Delivery Company ("Oncor" or "the Company") filed an application on or about March 17, 2017 with cities retaining original jurisdiction seeking to increase system-wide transmission and distribution rates by $317 million or approximately 7.5% over present revenues. The Company asks the Town to approve an 11.8% increase in residential rates and a 0.5% increase in street lighting rates. If approved, a residential customer using 1000 kWh per month would see a bill increase of about $6.68 per month.

The resolution suspends the April 21, 2017 effective date of the Company's rate increase for the maximum period permitted by law to allow the Town, working in conjunction with the Steering Committee of Cities Served by Oncor, to evaluate the filing, determine whether the filing complies with law, and if lawful, to determine what further strategy, including settlement, to pursue.

The Town of Flower Mound is a member of a 156-city coalition known as the Steering Committee of Cities Served by Oncor ("Steering Committee"). The Steering Committee has been in existence since the late 1980s. It took on a formal structure in the early 1990s when cities served by the former TXU gave up their statutory right to rate case expense reimbursement in exchange for higher franchise fee payments. Empowered by city resolutions and funded by *per capita* assessments, the Steering Committee has been the primary public interest advocate before the Public Utility Commission, the Courts, and the Legislature on electric utility regulation matters for the last 30 years.

Although Oncor has increased rates many times over the past few years, this is the first comprehensive base rate case for the Company since January, 2011.

The law provides that a rate request made by an electric utility cannot become effective until at least 35 days following the filing of the application to change rates. The law permits the Town to suspend the rate change for 90 days after the date the rate change would otherwise be effective. If the Town fails to take some action regarding the filing before the effective date, Oncor's rate request is deemed administratively approved.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

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

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

ATTACHMENTS:

1. Proposed Resolution

RECOMMENDATION: Move to approve a resolution suspending the April 21, 2017, effective date of Oncor Electric Delivery Company's requested rate change to permit the Town time to study the request and to establish reasonable rates; approving cooperation with the Steering Committee of Cities Served by Oncor to hire legal and consulting services and to negotiate with the company and direct any necessary litigation and appeals; finding that the meeting at which this resolution is passed is open to the public as requested by law; requiring notice of this resolution to the company and legal counsel for the Steering Committee.

Attachment 1

RESOLUTION NO.

RESOLUTION OF THE TOWN OF FLOWER MOUND SUSPENDING THE APRIL 21, 2017, EFFECTIVE DATE OF ONCOR ELECTRIC DELIVERY COMPANY'S REQUESTED RATE CHANGE TO PERMIT THE TOWN TIME TO STUDY THE REQUEST AND TO ESTABLISH REASONABLE RATES; APPROVING COOPERATION WITH THE STEERING COMMITTEE OF CITIES SERVED BY ONCOR TO HIRE LEGAL AND CONSULTING SERVICES AND TO NEGOTIATE WITH THE COMPANY AND DIRECT ANY NECESSARY LITIGATION AND APPEALS; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL FOR THE STEERING COMMITTEE

WHEREAS, on or about March 17, 2017, Oncor Electric Delivery Company (Oncor), pursuant to PURA §§ 33.001 and 36.001 filed with the Town of Flower Mound a Statement of Intent to increase electric transmission and distribution rates in all municipalities exercising original jurisdiction within its service area effective April 21, 2017; and

WHEREAS, the Town of Flower Mound is a member of the Steering Committee of Cities Served by Oncor ("Steering Committee") and will cooperate with the 156 similarly situated city members and other city participants in conducting a review of the Company's application and to hire and direct legal counsel and consultants and to prepare a common response and to negotiate with the Company prior to getting reasonable rates and direct any necessary litigation; and

WHEREAS, PURA § 36.108 grants local regulatory authorities the right to suspend the effective date of proposed rate changes for ninety (90) days after the date the rate change would otherwise be effective; and

WHEREAS, PURA § 33.023 provides that costs incurred by Cities in ratemaking proceedings are to be reimbursed by the regulated utility.

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

1. That the April 21, 2017, effective date of the rate request submitted by Oncor on or about March 17, 2017, be suspended for the maximum period allowed by law to permit adequate time to review the proposed changes and to establish reasonable rates.

Attachment 1

2. As indicated in the Town's resolution approving membership in the Steering Committee, the Executive Committee of Steering Committee is authorized to hire and direct legal counsel and consultants, negotiate with the Company, make recommendations regarding reasonable rates, and to intervene and direct any necessary administrative proceedings or court litigation associated with an appeal of a rate ordinance and the rate case filed with the Town or Public Utility Commission.

3. That the Town's reasonable rate case expenses shall be reimbursed by Oncor.

4. That it is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

5. A copy of this Resolution shall be sent to Oncor, Care of Howard Fisher, Oncor Electric Delivery Company, LLC, 1616 Woodall Rodgers Freeway, Dallas, Texas 75202 and to Thomas Brocato, Counsel to the Steering Committee, at Lloyd Gosselink Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

PASSED AND APPROVED this the 17th day of April, 2017.

____
Thomas E. Hayden
Mayor, Town of Flower Mound

ATTEST:

____
Theresa Scott
Town Secretary, Town of Flower Mound

TOWN COUNCIL AGENDA ITEM NO. 7

CONSENT ITEM

DATE: April 17, 2017

FROM: Andy Kancel, Chief of Police

ITEM: **Consider approval of an agreement with All City Management Services (ACMS).**

BACKGROUND INFORMATION: We propose Flower Mound should enter into a contract with All Cities Management Services to assist in the continued implementation of the school crossing guard program.

As illustrated below, the five year annual expenditure history of the crossing guard program exceeds the budgeted amount by an average of 12.57%. This overage was offset in salary savings related to vacancies in previous years. Based on this five year average, the projection for this fiscal year would estimate the true end of year cost at $483,594. We have calculated, to the best of our ability, additional non-listed expenses such as police officer backfill, Human Resource expenses, training and more that show the total budgetary liability to be $556,157 for FY 17/18. ACMS has offered a contract to transition the program to private management for $529,046, or a financial liability reduction of approximately $27,111.

FY	Budget	Actual Spent	Projected	% Over Budget
2016-2017	429,594.00	450,000.00*	483,594.00	12.57
2015-2016	396,750.00	439,504.00		10.78
2014-2015	386,906.00	449,509.88		16.18
2013-2014	379,762.00	428,316.71		12.79
2012-2013	374,806.00	414,300.25		10.54

The below line items are expenses included in the existing program budget:

- Cell phone allowance – 100-640-43500-1320 ($480)
- Worker's comp claims – 100-640-43500-1150 ($2,870)
- Unemployment – 100-640-43500-1160 ($3,564)
- Hiring expenses – 100-640-43500-2150

The below line items could be reduced in the line item budget if the program was contracted:

- Training expenses – 100-640-43500-5060 ($1,000)
- Equipment – 100-640-43500-2150 ($1,500)
- Mileage – 100-640-43500-5060 ($687)

Financial liability in addition to current Town budget for crossing guard program:

- Police Officer Overtime Compensation to fill annual average of unmanned crosswalks- ($69,583)
- Savings recognized by reducing above three line items, ($3,187)

Total Additional Financial Liability $72,770

Current Staffing

Flower Mound has 51 crossing guard positions, including six substitute positions. There is one supervisor and two “lead guards” included in these 51 positions as well. The Flower Mound crossing guard program has been difficult to manage and staff for the past several years.

This past August we started the school year 10 crossing guards less than our allotted 51 positions. This is not unique to the 2016 school year. Many crossing guards quit over the summer months, or often times a few days before school starts. In the past two years we’ve lost 18 crossing guards through turnover. The guards work split shifts in numerous locations for low pay, and often call in of fail to show up for work. Human Resources estimates that each new hire takes an average investment of 3 man hours to hire. For worker’s compensation claims and unemployment insurance administrative work, Human Resources estimates an average of three hours per incident with as many as five incidents per year. Over the last two years, that amounts to an average of 69 man hours per year just for Human Resources.

The 51 positions are not representative of the total number of student crossings in town. We use the “School Crossing Guard Index”, which factors in variables like sight distance, number of lanes, number of students and number of traffic lanes to determine how many guards are needed to safely staff a location. We have many locations that require multiple guards. Also, many guards cover an elementary school, and then cover a middle school immediately after their first assignment. We have 47 elementary school crossing positions and 31 middle school crossing positions.

Our 51 guards must cover 78 positions each day for 175 school days, over 27,000 annual duty hours. If we fall short of staffing capability we must cover crosswalks with on-duty police personnel or overtime police personnel. We have historically used police officers for 410 hours of crosswalk duty during the school year and unpaid volunteers for 822 hours annually. It is very unlikely that we will be able to continue using volunteers for these duties to this extent. For purposes of calculating the amount of financial liability for the program, we should calculate using police to fill the assignments at an overtime rate so that we can maintain effective and efficient police response for the remainder of the Town, our primary duty. Therefore, 1232 hours calculated at the average patrol officer overtime rate (plus 3% for anticipated pay adjustment FY 17/18) of $56.48/hr. This provides a total financial liability to the Town of $69,583.

Proposal

The Finance Department projected total crossing guard expenses this year to exceed budget by $20,406. That puts the budget around $450,000. The projection included payroll taxes. Reducing the training budget by $1,000 and the equipment budget by $1,500 annually would offset that cost by an additional $2,500. Then, factor in the outstanding financial liability for using police overtime to fill the average unmanned crossings at a cost of $72,563, and the total cost of the program is $522,563. If the annual program cost includes the average 12.57% over budget amount, then the total cost would be an additional $33,594, or $556,157.

ACMS sent a cost proposal of $529,046 to take over our program. The proposal takes all factors into account including our guards’ current rate of pay and is estimated on 51 positions and a 27,612 hour work-year.

All City Management Services (ACMS) is a California company that specializes in the privatization and management of school crossing guard programs. They address transitioning existing employees, orientation, training, recruitment and staffing. They also incorporate existing personnel into their organization. They have standards of procedure, employee handbooks, a field training program, and regular site visits with area supervisors. ACMS has been in business since 1985 and several Texas agencies currently use them. I have attached a letter of recommendation Carrollton Police Department. Carrollton has used ACMS for three years. They reported that ACMS is easy to work with, complaints are rare, and crosswalks get staffed. Additionally, Highland Park ISD PD (covering University Park and Highland Park), New Braunfels PD, City of Midland PD, City of Odessa PD, and Corpus Christi PD all use and highly recommend ACMS.

Invoices would be mailed every two weeks with a work summary detailing each site, each day, and the hours worked at the site.

BOARD REVIEW/CITIZEN FEEDBACK: NA

ALTERNATIVES/OPTIONS:

FISCAL IMPACT: This fiscal year contractually we would pay ACMS for 24 school days (August and September) at $19.16 per hour per guard for 3.1 hours per guard, or $72,700.70. If we experience our same shortage this year as last year, which is 10 positions unfilled, and we work those positions with police on average overtime pay, we would pay $100,466.78 for the first 24 days of school in this fiscal year, or an estimated savings of $27,766.08.

Proposed Expenditure:	**Account Number(s):**
$27,766.08 estimated savings	Various accounts

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

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

ATTACHMENTS:

1. All City Management Services Contract

DRAFT MOTION: Move to approve an agreement with All City Management Services (ACMS) and authorize the Mayor to execute same on behalf of the Town.

Attachment 1

AGREEMENT FOR CROSSING GUARD SERVICES

This AGREEMENT made and entered into this April 17, 2017 by and between the TOWN OF FLOWER MOUND, TX. hereinafter called the "Town", and ALL CITY MANAGEMENT SERVICES, INC., hereinafter called the "Contractor";

WITNESSETH

The parties hereto have mutually covenanted and agreed as follows:

1. This Agreement is for a period which commences upon Contractor's best availability on or around August 28, 2017 and ends on June 30, 2018 and for such term thereafter as the parties may agree upon in writing.

2. The Contractor will provide 51 personnel equipped and trained in appropriate procedures for crossing pedestrians in marked crosswalks. Such personnel shall be herein referred to as a Crossing Guard. The Contractor is an independent Contractor and the Crossing Guards to be furnished by it shall at all times be its employees and not those of the Town.

3. The Town's representative in dealing with the Contractor shall be designated by Flower Mound Police Department.

4. The Town shall determine the locations where Crossing Guards shall be furnished by the Contractor. The Contractor shall provide at each designated location personnel properly trained as herein specified for the performance of duties as a Crossing Guard. The Contractor shall provide supervisory personnel to see that Crossing Guard activities are taking place at the required places and times, and in accordance with all items of this Agreement.

5. The Contractor shall maintain adequate reserve personnel to be able to furnish alternate Crossing Guards in the event that any person fails to report for work at the assigned time and location and agrees to provide immediate replacement.

6. In the performance of their duties the Contractor and all employees of the Contractor shall conduct themselves in accordance with the conditions of this Agreement and the laws of the State of Texas and the Flower Mound Code.

7. Persons provided by the Contractor as Crossing Guards shall be trained in the laws of the State of Texas and the Flower Mound Code pertaining to general pedestrian safety in school crossing areas.

8. Crossing Guard Services shall be provided by the Contractor at the designated locations on all days in which School is in session. The Contractor also agrees to maintain communication with the designated schools to maintain proper scheduling.

9. The Contractor shall provide all Crossing Guards with apparel by which they are readily visible and easily recognized as Crossing Guards. Such apparel shall be uniform for all persons performing the duties of Crossing Guards and shall be worn at all times while performing said duties. This apparel must be appropriate for weather conditions. The Contractor shall also provide all Crossing Guards with hand held Stop signs and any other safety equipment which may be necessary.

10. The Contractor shall at all times provide workers' compensation insurance covering its employees, and shall provide and maintain liability insurance for Crossing Guard activities. The Contractor will provide to the Town a Certificate of Insurance naming the Town and its officials, officers and employees as an additional insured. Such insurance shall include commercial general liability with a combined single limit of not less than $1,000,000.00 per occurrence and in aggregate for property damage and bodily injury. Such insurance shall be primary with respect to any insurance maintained by the Town and shall not call on the Town's insurance contributions. Such insurance shall be endorsed for contractual liability and personal injury and shall include the Town, its officers, agents and interest of the Town. Such insurance shall not be canceled, reduced in coverage or limits or non-renewed except after sixty (60) days written notice has been given to the designee for the Town of Flower Mound.

11. Contractor agrees to indemnify the Town, its officers, employees and agents against, and will hold and save each of them harmless from, any and all actions, claims for damages to persons or property, penalties, obligations or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision or other organization arising out of the sole negligent or intentional acts, errors, or omissions of Contractor, its agents, employees, subcontractors, or invitee, provided for herein. This indemnification is limited to the maximum combined aggregate of the general liability and umbrella insurance policies of $9 million dollars.

    a) Contractor will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations or liabilities and will pay all costs and expenses including attorney's fees incurred in connection herewith.

    b) Contractor will promptly pay any judgment rendered against the Town, its officers, agents or employees for any such claims, damages, penalties, obligations or liabilities.

    c) In the event the Town, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the sole negligence of Contractor hereunder, Contractor agrees to pay Town, its officers, agents, or employees, any and all costs and expenses incurred by the Town, its officers agents or employees in such action or proceeding, including, but not limited to, reasonable attorney's fees.

12. Either party shall have the right to cancel this Agreement by giving thirty (30) days written notice to the other.

13. The Contractor shall not have the right to assign this Contract to any other person or firm except with the prior written consent of the Town.

14. The Town agrees to pay the Contractor for services rendered pursuant to this Agreement the sum Nineteen Dollars and Sixteen Cents **($19.16)** per hour, per guard during the contract period.

    Contractor has based pricing upon 51 crossing guard positions on site and compensated per the schedule provided by the Town for 175 school days annually.

15. Payment is due within thirty (30) days of receipt of Contractor's properly prepared invoice.

16. Contractor may request a price increase during the contract period as a result of legislatively mandated increases in wages or benefits to State of Texas and or local municipality employees.

    Contractor shall provide Town with 60 days written notice of its request to increase pricing. Town agrees to review and respond to said notice within 30 days of service.

17. The Town shall have an option to renew this contract by amendment. In the event this Agreement is extended beyond June 30, 2018; the compensation and terms for services shall be established by mutual written consent of both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

Town of Flower Mound	**All City Management Services, Inc.**
By______________________________	By______________________________
Signature	D. Farwell, Corporate Secretary
______________________________	
Thomas E. Hayden, Mayor	
Date: ________April 17, 2017____________	Date______________________________

TOWN COUNCIL AGENDA ITEM NO. 8

CONSENT ITEM

DATE: April 17, 2017

FROM: Kari Biddix, Park Development Manager

ITEM: **Consider approval of the purchase and installation of play equipment for the 2016-17 Playground Replacements for Glenwick Park, from Playcraft Systems, Inc., through the Texas Local Government Purchasing Cooperative, in the amount of $135,743.47.**

BACKGROUND INFORMATION: The Community Development Corporation and Town Council approved various playground upgrades in the Fiscal Year 2016-2017 after recommendation from the Parks Board for Park and Recreation needs for the Capital Improvement Program projects. Glenwick Park playground is one of the playgrounds funded.

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

FISCAL IMPACT: $135,743.47

Proposed Expenditure:	Account Number(s):
$135,743.47	317-110-90817

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

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Buyboard Proposal
2. Play Equipment picture

RECOMMENDATION: Move to approve the purchase and installation of play equipment for the 2016-17 Playground Replacements for Glenwick Park, from Playcraft Systems, Inc., through the Texas Local Government Purchasing Cooperative, in the amount of $135,743.47.

Attachment 1

Playcraft Systems
A division of Krauss Craft, Inc.
123 North Valley Drive
Grants Pass, OR 97526
Tel: (541) 955-9199
Fax: (541) 955-6130

PRICE QUOTATION

Quote Date	Quote No.
3/30/2017	12965
Project Name	
TOWN OF FLOWER MOUND	

Playcraft Representative:		Ship To:	
Factory Direct *123 North Valley Drive* *Grants Pass, OR 97526*		*Flower Mound, TX*	
Terms	**Contact Name**	**Ship Date**	**Ship Via**
100% Due Upon Order	*Greg Hawkins*		

PC#	Product Description	Qty.	List Price Ea.	Disc. (%)	Disc. Price Ea.	Extended Price	Extended Weight
PR-R5	SN:R506DA5CA Custom Round 5 Steel Play System	1	$61,098.60	13.0%	$53,155.78	$53,155.78	0 lbs.
PC-2123	Arch Swing R35 (2 Position/ 1 Bay)	1	$1,694.00	13.0%	$1,473.78	$1,473.78	139 lbs.
PC-2123-AB	Arch Swing R35 (2 Position/ 1 Bay) Add-A-Bay w/ (2) Full Bucket Seats	1	$1,324.00	13.0%	$1,151.88	$1,151.88	139 lbs.
PC-2474	Enclosed Stand-N-Spin	1	$1,675.00	13.0%	$1,457.25	$1,457.25	385 lbs.
PC-2457	Bucket Spinner	1	$567.00	13.0%	$493.29	$493.29	30 lbs.
MISC	2,634 sq. ft. of PIP in Playground Area	1	$30,275.86	13.0%	$26,340.00	$26,340.00	0 lbs.
MISC	1,349 sq. ft. of Turf in Swing Area	1	$16,281.03	13.0%	$14,164.50	$14,164.50	0 lbs.
MISC	Base Material/Excavation and Installation	1	$1,724.14	13.0%	$1,500.00	$1,500.00	0 lbs.
MISC	Installation	1	$34,490.80	13.0%	$30,007.00	$30,007.00	0 lbs.

* All orders must be accompanied by a purchase order.
* This price quotation is valid for 30 days from the quote date.
* Prices may not include shipping, installation, safety surfacing or applicable taxes.
* Allow a margin of at least 15% over freight estimate due to fluctuations of freight costs.

IMPORTANT: PLEASE REVIEW ALL DETAILS OF THIS QUOTE. KRAUSS CRAFT, INC. IS NOT RESPONSIBLE FOR UNREPORTED ERRORS.

Memo: TCPN Contract #R5201

Total Weight	*693* lbs.
Discounted Subtotal	*$129,743.47*
Shipping Estimate	*$6,000.00*
Quote Total	*$135,743.47*

* All orders must be accompanied by a purchase order.
* This price quotation is valid for 30 days from the quote date.
* Prices may not include shipping, installation, safety surfacing or applicable taxes.
* Allow a margin of at least 15% over freight estimate due to fluctuations of freight costs.

IMPORTANT: PLEASE REVIEW ALL DETAILS OF THIS QUOTE. KRAUSS CRAFT, INC. IS NOT RESPONSIBLE FOR UNREPORTED ERRORS.

ATTACHMENT 2

TOWN COUNCIL AGENDA ITEM NO. 9

CONSENT ITEM

DATE: April 17, 2017

FROM: Kari Biddix, Park Development Manager

ITEM: **Consider approval of the purchase and installation of play equipment for the 2016-17 Playground Replacements project for Grove Park, from Child's Play, Inc., through the Texas Local Government Purchasing Cooperative, in the amount of $134,186.00.**

BACKGROUND INFORMATION: The Community Development Corporation and Town Council approved various playground upgrades in the Fiscal Year 2016-2017 after recommendation from the Parks Board for Park and Recreation needs for the Capital Improvement Program projects. Grove Park playground is one of the playgrounds funded.

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

FISCAL IMPACT: $134,186.00

Proposed Expenditure:	Account Number(s):
$134,186.00	317-110-90817

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

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Buyboard Proposal
2. Play Equipment picture

RECOMMENDATION: Move to approve the purchase and installation of play equipment for the 2016-17 Playground Replacements project for Grove Park, from Child's Play, Inc., through the Texas Local Government Purchasing Cooperative, in the amount of $134,186.00.

ATTACHMENT 1

Child's Play, Inc.
10661 Shady Trail
Dallas, TX 75220
(P) 972-484-0600 (F) 972-484-0333

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

SHIP TO
Grove Park 3901 Braxton Lane Flower Mound, TX 75028

QUOTE #	DATE	EXPIRATION DATE
2017-342	03/21/2017	05/05/2017

PROJECT

Grove Park

SALES REP

KR

DESCRIPTION	QTY	PRICE EACH	AMOUNT
BCISNucleus Custom Nucleus Series Ship Playground Structure, Two Bay 5" Arch Swing with (2) Belt Seats & (2) Tot Seats	1	40,759.00	40,759.00
SPShade 36' x 30' x 12' Four Post Hip Shade Canopy, Freight & Installation - Swing Area	1	13,995.00	13,995.00
SPShade 40' x 35' x 12' Four Post Hip Shade Canopy, Freight & Installation - Ship Area	1	18,325.00	18,325.00
Freight Freight	1	2,910.00	2,910.00
Site Work Removal of Existing Equipment & Wood Fiber	1	3,900.00	3,900.00
Installation Professional Turn-Key Installation of Playground Equipment	1	14,275.00	14,275.00
Artificial Turf System Blue Artificial Turf, 2-1/8" Pad, Tape & Glue, Infill Sand, Geo Textile Fabric, Gravel, Freight, & Installation - Ship Area	1	22,171.00	22,171.00
Artificial Turf System Green Artificial Turf with Brown Thatch, 2-1/8" Pad, Tape & Glue, Infill Sand, Geo Textile Fabric, Gravel, Freight, & Installation - Swing Area	1	17,851.00	17,851.00
BUYBOARD CONTRACT # 512-16			

TOTAL **$134,186.00**

ATTACHMENT 2

TOWN COUNCIL AGENDA ITEM NO. 10

CONSENT ITEM

DATE: April 17, 2017

FROM: Jeff Garner, Director of Facilities Management

ITEM: **Consider approval of Bid No. 2017-61, to purchase materials and installation for the renovation of Fire Station No. 1's crew showers and mechanical areas, from Unified Services of Texas, Inc., as part of the Fire Station No. 1 Facility Upgrades project in the amount of $299,057.00; and authorization for the Mayor to execute same on behalf of the Town.**

BACKGROUND INFORMATION: The Central Fire Station renovation of the crew showers and mechanical areas is now running two crews from this station. Existing restroom facilities are no longer adequate to support the additional crews. This project includes complete renovation of the crew showers and restrooms, relocation of water heater, mechanical equipment and the crew library are also required in order to expand the crew showers. Of the responding bidders, Unified Services of Texas, Inc., was the lowest qualified responding bidder.

FISCAL IMPACT: $299,057.00

Proposed Expenditure:	Account Number(s):
$299,057.00	533-111-50102

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

ATTACHMENTS:

1. Bid Tab
2. Contract Agreement

RECOMMENDATION: Move to approve Bid No. 2017-61, to purchase materials and installation for the renovation of Fire Station No. 1's crew showers and mechanical areas, from Unified Services of Texas, Inc., as part of the Fire Station No. 1 Facility Upgrades project, in the amount of $299,057.00; and authorize the Mayor to execute same on behalf of the Town.

Attachment 1

Town of Flower Mound
Bid Tabulation

Bid No: 2017-61 - Central Fire Station Building Renovations & Improvements	
Bid Opening: 4/4/2017 at 11:00am	
Company	**Total Base Bid**
Unified Services of Texas	$ 299,057.00
Harendt Construction Group, LLC	$ 352,149.00

**All bids/proposals submitted for the designated project are reflected on this tabulation sheet. However, the listing of the bid/proposal on this tabulation sheet shall not be construed as a comment on the responsiveness of such bid/proposal or as any indication that the agency accepts such bid/proposal as being responsive. The agency will make a determination as to the responsiveness of the vendor responses submitted based upon compliance with all applicable laws, purchasing guidelines and project documents, including but not limited to the project specifications and contract documents. The agency will notify the successful vendor upon award of the contract and, as according to the law, all bid/proposal responses received will be available for inspection at that time.

Certified By: Sabrina R. Zadow 04/04/2017

Purchasing Manager

Town of Flower Mound, Texas

TOWN OF FLOWER MOUND

Central Fire Station Building Renovations & Improvements

Bid # 2017-61

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the "Agreement"), made and entered into this 17th day of April, 2017, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the "Town," and Unified Services of Texas, Inc., a Corporation, hereinafter referred to as the "Contractor." For and in consideration of the payment, agreements, and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

Central Fire Station Building Renovations & Improvements,
Bid # 2017-61

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 **Two Hundred Ninety Nine Thousand, Fifty Seven Dollars ($299,057)** 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 ninety (90) calendar days, and final completion of one hundred (100) 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:

Contract Amount	Retainage Percentage
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.

<u>ARTICLE 7.</u> 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.

<u>ARTICLE 8.</u> 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.

<u>ARTICLE 9.</u> 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.

<u>ARTICLE 11.</u> 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 Forty and Zero/One Hundredths Dollars ($240.00) per day or portion of a day in Liquidated Damages will be deducted from the Contract price by the Town for each calendar day or portion thereof that the work is not substantially complete beyond the Substantially Complete Contract time, or within such extra time as may have been allowed by an extension approved by the Town. The Contractor also agrees that the sum of Two Hundred Forty and Zero/One Hundredths Dollars ($240.00) per day or portion of a day in Liquidated Damages for each calendar day or portion thereof the work has not been finally completed by the Contractor beyond the Contract time for final completion, or within such extra time as may have been allowed by an extension approved by the Town. The Town and the Contractor agree that this amount is payable as reasonable and just compensation for failure to complete the Work on time. This amount is payable as liquidated damages and not as a penalty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Payments under this Contract are due and payable in accordance with the provisions of Texas Government Code Section 2251.022. Interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.
Attention is called to the Government Code, Chapter 2258, Prevailing Wage Rates. Contractor and any subcontractor shall pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of this Agreement. The Town has determined the general prevailing rate of per diem wages in the locality in which the public work is to be constructed by using the prevailing wage rates as determined by the United States Department of Labor in accordance with the Davis-Bacon Act as applicable to this Project. Contractor or a subcontractor who violates this provision shall be liable for the penalty specified in Texas Government Code Section 2258.023, which as of the date of this Agreement is $60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. Town reserves the right to receive and review payroll records, payment records, and earnings statements of employees of Contractor, and of Contractor's Subcontractors, and of Sub-Subcontractors to verify payments made to same. However, no Claim for additional compensation shall be considered by Town because of payments of wage rates in excess of the applicable rate provided herein.

It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialmen, artisan, laborer, or subcontractor, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the project of whatever nature or kind

so erected or to be erected by virtue of this Contract, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas.

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

1. that it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

2. that it is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

3. that it is authorized to do business in the State of Texas and properly licensed by all necessary governmental, public and quasi-public authorities having jurisdiction over it, the Work, or the site of the Project; and

4. that the execution of the Contract and its performance thereof are within its duly-authorized powers.

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

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

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

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

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

This Agreement will be effective on the 17th day of April, 2017.

TOWN OF FLOWER MOUND	CONTRACTOR
___________________________	___________________________ (Signature)
Thomas E. Hayden, MAYOR	___________________________ (Printed Name)
	___________________________ (Position)
(CORPORATE SEAL)	(CORPORATE SEAL)
ATTEST:___________________________	ATTEST:_____________________ (Signature)
Theresa Scott, TOWN SECRETARY	_____________________ (Position)

TOWN COUNCIL AGENDA ITEM NO. 11

CONSENT ITEM

DATE: April 17, 2017

FROM: Jeff Garner, Director of Facilities Management

ITEM: **Consider approval of Bid No. 2017-62, to purchase materials and installation for the renovation of the Police Department's Jail, Locker and Shower areas, for the Police and Courts Facility Upgrades project, from Unified Services of Texas, Inc., in the amount of $639,341.00; and authorization for the Mayor to execute same on behalf of the Town.**

BACKGROUND INFORMATION: The existing locker and shower areas in the Police Department are too small for the existing staff and renovation is required. Existing lockers are not adequate to hold the patrol officers gear. The Police and Courts Facility Upgrades project includes a complete renovation of all locker areas and restroom areas used by the officers and Police Department staff. New lockers are already on order for this project and will arrive in June 2017 ready to be installed.

The jail area requires additional holding areas for prisoners, which includes a complete renovation of the existing jail. The project includes adding one additional holding cell, a new security vestibule in the Police front lobby, and new ceilings, flooring, and the rework of the detention area.

Of the responding bidders, Unified Services of Texas, Inc., was the lowest qualified responding bidder.

FISCAL IMPACT: $639,341.00

Proposed Expenditure:	Account Number(s):
$639,341.00	533-111-50101

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

ATTACHMENTS:

1. Bid Tab
2. Contract Agreement

RECOMMENDATION: Move to approve Bid No. 2017-62, to purchase materials and installation for the renovation of the Police Department's Jail, Locker and Shower areas, for the Police and Courts Facility Upgrades project, from Unified Services of Texas, Inc., in the amount of $639,341.00; and authorize the Mayor to execute same on behalf of the Town.

Attachment 1

Town of Flower Mound
Bid Tabulation

Bid No: 2017-62 - Jail Facility and Police Locker Room Renovations & Improvements	
Bid Opening: 4/4/2017 at 11:00am	
Company	**Total Base Bid**
Unified Services of Texas	$ 639,341.00
Rocky Durod & Associates, Inc	Not Read - Subcontractor Bid

**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: Sabrina R. Zadow 04/04/2017

Purchasing Manager

Town of Flower Mound, Texas

TOWN OF FLOWER MOUND

Jail Facility and Police Locker Room Renovations & Improvements

Bid # 2017-62

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the "Agreement"), made and entered into this 17th day of April, 2017, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the "Town," and Unified Services of Texas, Inc., a Corporation, hereinafter referred to as the "Contractor." For and in consideration of the payment, agreements, and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

Jail Facility and Police Locker Room Renovations & Improvements,
Bid # 2017-62

in the Town of Flower Mound, Texas, and all extra work in connection therewith, under the terms as stated in this Agreement, and under the terms of the Contract Documents; and at his, her, or their own proper cost and expense to furnish all superintendence, labor, insurance, equipment, tools, and other accessories and services necessary to complete the said construction in accordance with all the Contract Documents, incorporated herein as if written word for word, and in accordance with the Plans, which include all maps, plats, blueprints, and other drawings and printed or written explanatory manner therefore, and the Conditions and Specifications as prepared by the Town or its consultant hereinafter called "Engineer", who has been identified by the endorsement of the Contractor's written proposal, and the General Conditions, Supplemental Conditions, and Special Provisions of this Agreement, and the payment, performance, and maintenance bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Agreement.

ARTICLE 1. The Contract Documents shall consist of the following documents:

A. The Construction Agreement;

B. Properly executed Change Orders and Field Orders in writing and executed by the Town, the last in time being first in precedence;

C. Any listed and numbered addenda;

D. Special Provisions;

E. Supplementary Conditions;

F. Construction Drawings or Plans;

G. Technical Specifications;

H. Town's Standard Construction Details;

I. The most current edition of the *Town of Flower Mound Design Criteria and Construction Standards* (by reference);

J. *Occupational Safety and Health Standards – Excavation*, 20 CFR Part 1926 (by reference);

K. *Texas Manual on Uniform Traffic Control Devices (TMUTCD)* (by reference);

L. The General Conditions;

M. *Public Works Construction Standards - North Central Texas, as amended* (by reference);

N. Notice to Bidders;

O. Instructions to Bidders;

P. The Town's written notice to proceed to Contractor;

Q. The Contractor’s Bid Proposal;

R. The Performance Bond, Payment Bond and Maintenance Bond; and

S. Bid materials distributed by the Town that relate to the Project.

These Contract Documents are incorporated by reference into this Agreement as if set out in their entirety. The Contract Documents are intended to be complementary; what is called for by one document shall be as binding as if called for by all Contract Documents. It is specifically provided; however, that in the event of any inconsistency in the Contract Documents, the inconsistency shall be resolved by giving precedence to the Contract Documents in the order in which they are listed herein above. If, however, there exists a conflict or inconsistency between the Technical Specifications and the Construction Drawings, it shall be the Contractor’s obligation to seek clarification as to which requirements or provisions control before undertaking any work on that component of the project. Should the Contractor fail or refuse to seek a clarification of such conflicting or inconsistent requirements or provisions prior to any work on that component of the project, the Contractor shall be solely responsible for the costs and expenses - including additional time - necessary to cure, repair, and/or correct that component of the project.

ARTICLE 2. For performance of the Work in accordance with the Contract Documents, the Town shall pay the Contractor in current funds an amount not to exceed **Six Hundred Thirty Nine Thousand, Three Hundred Forty One Dollars ($639,341)** 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 ninety (90) calendar days, and final completion of one hundred (100) 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:

Contract Amount	Retainage Percentage
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.

<u>ARTICLE 6.</u> 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.

<u>ARTICLE 11.</u> 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 Forty and Zero/One Hundredths Dollars ($240.00) per day or portion of a day in Liquidated Damages will be deducted from the Contract price by the Town for each calendar day or portion thereof that the work is not substantially complete beyond the Substantially Complete Contract time, or within such extra time as may have been allowed by an extension approved by the Town. The Contractor also agrees that the sum of Two Hundred Forty and Zero/One Hundredths Dollars ($240.00) per day or portion of a day in Liquidated Damages for each calendar day or portion thereof the work has not been finally completed by the Contractor beyond the Contract time for final completion, or within such extra time as may have been allowed by an extension approved by the Town. The Town and the Contractor agree that this amount is payable as reasonable and just compensation for failure to complete the Work on time. This amount is payable as liquidated damages and not as a penalty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Payments under this Contract are due and payable in accordance with the provisions of Texas Government Code Section 2251.022. Interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.
Attention is called to the Government Code, Chapter 2258, Prevailing Wage Rates. Contractor and any subcontractor shall pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of this Agreement. The Town has determined the general prevailing rate of per diem wages in the locality in which the public work is to be constructed by using the prevailing wage rates as determined by the United States Department of Labor in accordance with the Davis-Bacon Act as applicable to this Project. Contractor or a subcontractor who violates this provision shall be liable for the penalty specified in Texas Government Code Section 2258.023, which as of the date of this Agreement is $60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. Town reserves the right to receive and review payroll records, payment records, and earnings statements of employees of Contractor, and of Contractor's Subcontractors, and of Sub-Subcontractors to verify payments made to same. However, no Claim for additional compensation shall be considered by Town because of payments of wage rates in excess of the applicable rate provided herein.

It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialmen, artisan, laborer, or subcontractor, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the project of whatever nature or kind

so erected or to be erected by virtue of this Contract, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas.

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

1. that it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

2. that it is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

3. that it is authorized to do business in the State of Texas and properly licensed by all necessary governmental, public and quasi-public authorities having jurisdiction over it, the Work, or the site of the Project; and

4. that the execution of the Contract and its performance thereof are within its duly-authorized powers.

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

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

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

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

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

Attachment 2

This Agreement will be effective on the 17th day of April, 2017.

TOWN OF FLOWER MOUND	CONTRACTOR
____________________________	__________________________ (Signature)
Thomas E. Hayden, MAYOR	__________________________ (Printed Name)
	__________________________ (Position)
(CORPORATE SEAL)	(CORPORATE SEAL)
ATTEST:___________________________	ATTEST:_____________________ (Signature)
Theresa Scott, TOWN SECRETARY	_____________________ (Position)

TOWN COUNCIL AGENDA ITEM NO. 12

CONSENT ITEM

DATE: April 17, 2017

FROM: Gary Bertagnolli, Director of Information Technology

ITEM: **Consider approval for emergency purchase of a backup system for all Town servers.**

BACKGROUND INFORMATION: The current backup solution, Dell's Appassure/Rapid Restore for all the Town servers, has become highly unstable. Dell has reviewed the problem several times in recent months but is unable to correct the issues. The server must be replaced as soon as possible to avoid loss of data. After extensive research on products, Technologent (now owned by Dell) has the best solution. It is used by fortune 500 companies and the only solution that can claim they have never lost a customer's data. The initial quote was for $170,000 but due to our previous issues with Rapid Recovery, Dell discounted the price to $131,000. Included in the price are three years of all support costs and about $10,000 a year thereafter.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: Keep current unreliable backup system running the risk of losing data.

FISCAL IMPACT: $131,000

Proposed Expenditure:	Account Number(s):
$131,000	567-270-84510-6120

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

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Backup System Quote

DRAFT MOTION: Move to approve the emergency purchase of a backup system for all Town servers.

Attachment 1

Technologent

PRICE QUOTE

PO Must be Made out to Technologent
EMAIL Purchase Orders To: purchaseorder@technologent.com
FAX Purchase Orders to 303-296-3369

Remit To:

Technologent C/O Ca United Bank
15821 Ventura Blvd Ste 100
Encino CA 91436

Quotation For:

City of Flower Mound
2121 Cross Timbers Rd
Flower Mound TX 75028

Quote Date	4/10/2017
Quote Expires	5/10/2017
Quote No.	QT176232-3
Quote Name	ML03282017 Flower Mound DPS DD6300 x2
Sales Rep	Mark Laible
Phone	214-663-2395
Email	mark.laible@technologent.com
Prepared By	Deanna Nicholson
Phone	469-304-2185
Email	deanna.nicholson@technologent.com

Contact:

Line	Item Sku	Description	Qty	Unit Price	Extd Price
		Texas DIR Contract Number DIR-TSO-2634			
		DATA PROTECTION SUITE (DPS) FOR VM			
1	458-002-060	DPA Single Federated Reporting Server	1	0.00	0.00
2	456-112-408	DPA Single Fed Reporting Server=IA	1	0.00	0.00
3	M-ENHSWDD-M1	ENHANCED SOFTWARE SUPPORT (DD)	1	0.00	0.00
4	458-002-015	Multiple Systems Management	1	0.00	0.00
5	456-112-201	Multiple Systems Management=CC	1	0.00	0.00
6	M-ENHSWDD-H1	ENHANCED SOFTWARE SUPPORT (DD)	1	0.00	0.00
7	458-001-192	DPS FOR VMWARE	1	0.00	0.00
8	456-109-974	DPS FOR VMWARE 2TB AVE ENABLER=CA	2	0.00	0.00
9	456-112-195	AVAMAR G DPS BACKUP ENABLER=IA	1	0.00	0.00
10	456-110-832	DPS FOR VMWARE SOCKETS=IA	20	750.00	15,000.00
11	456-110-834	DPS FOR VMWARE DPA ENABLER-C=CB	1	0.00	0.00
12	456-110-835	DPS FOR VMWARE DPSEARCH ENABLER=CA	1	0.00	0.00
13	456-107-804	DPS for VMWare RP4VM Enabler=IB	200	0.00	0.00
14	M-ENHSWDD-M1	ENHANCED SOFTWARE SUPPORT (DD)	1	9,441.00	9,441.00
		DATA DOMAIN 6300 (PRIMARY)			
15	DDOS-60	DOCS DD OS DOC 6=IA	1	0.00	0.00
16	C-10GBTM4P-NF	OPTION DD 10GBASE T IO MODULE 4PORT	1	1,548.00	1,548.00
17	DD6300-34TB	SYSTEM DD6300-12X4 34TB NFS CIFS	1	23,005.00	23,005.00
18	DD6300	SYSTEM DD6300 NFS CIFS	1	0.00	0.00
19	M-ENHHWDD-DD1	ENHANCED HARDWARE SUPPORT	1	6,293.00	6,293.00
20	458-001-335	DD6300 OPERATING ENVIRONMENT SOFTWARE	1	0.00	0.00
21	456-109-424	LICENSE BASE DD OE DD6300=IA	1	6,190.00	6,190.00

Attachment 1

Technologent

PRICE QUOTE

PO Must be Made out to Technologent
EMAIL Purchase Orders To: purchaseorder@technologent.com
FAX Purchase Orders to 303-296-3369

Remit To:

Technologent C/O Ca United Bank
15821 Ventura Blvd Ste 100
Encino CA 91436

Quotation For:

City of Flower Mound
2121 Cross Timbers Rd
Flower Mound TX 75028

Quote Date	4/10/2017
Quote Expires	5/10/2017
Quote No.	QT176232-3
Quote Name	ML03282017 Flower Mound DPS DD6300 x2
Sales Rep	Mark Laible
Phone	214-663-2395
Email	mark.laible@technologent.com
Prepared By	Deanna Nicholson
Phone	469-304-2185
Email	deanna.nicholson@technologent.com

Line	Item Sku	Description	Qty	Unit Price	Extd Price
22	M-ENHSWDD-DD1	ENHANCED SOFTWARE SUPPORT	1	1,671.00	1,671.00
23	458-001-330	DD6300 OE APPLICATION SOFTWARE	1	0.00	0.00
24	456-109-417	DD6300 CAPACITY AIO 14TB=IA	1	0.00	0.00
25	M-ENHSWDD-DD1	ENHANCED SOFTWARE SUPPORT	1	0.00	0.00
26	458-001-929	DD6300 SSD CAPACITY LICENSE	1	0.00	0.00
27	456-111-330	FS 800GB 0.8TB RAW=CF	1	0.00	0.00
28	M-ENHSWDD-DD1	ENHANCED SOFTWARE SUPPORT	1	0.00	0.00
29	458-001-836	DD6300 SOFTWARE=CB	1	0.00	0.00
30	M-ENHSWDD-DD1	ENHANCED SOFTWARE SUPPORT	1	0.00	0.00
31	458-002-006	DD BOOST/REPLICATION AIO ENABLER=CB	1	0.00	0.00
32	M-ENHSWDD-DD1	ENHANCED SOFTWARE SUPPORT	1	0.00	0.00
		DATA PROTECTION SUITE (DPS) CAPACITY			
33	458-000-882	EMC DATA PROTECTION SUITE FOR BACKUP	1	0.00	0.00
34	456-107-280	DPS FOR BU DP SEARCH ENABLER-CA	1	0.00	0.00
35	456-110-556	CloudBoost v2 VM 2TB for DPS ENABLER=CA	1	0.00	0.00
36	456-110-557	CloudBoost v2 Client for DPS ENABLER=CA	1	0.00	0.00
37	456-112-195	AVAMAR G DPS BACKUP ENABLER=IA	1	0.00	0.00
38	456-106-406	DPS FOR BU DDBOOST FOR APPS ENABLER=CA	1	0.00	0.00
39	456-103-950	BACKUP AND RECOVERY MANAGER AVAMAR	1	0.00	0.00
40	456-103-951	Backup and Recovery Manager - NetWorker	1	0.00	0.00
41	456-112-196	NW 9.1 DPS CAP ENABLER=CA	1	0.00	0.00
42	456-106-112	EMC BACKUP SUITE DPA ENABLER-B=CB	1	0.00	0.00
43	456-105-958	DATA PROT SUITE BACKUP 1-10TB=CA	1	4,316.00	4,316.00
44	M-ENHSWDD-M1	ENHANCED SOFTWARE SUPPORT (DD)	1	2,720.00	2,720.00
45	458-002-015	Multiple Systems Management	1	0.00	0.00

Technologent

PRICE QUOTE

PO Must be Made out to Technologent
EMAIL Purchase Orders To: purchaseorder@technologent.com
FAX Purchase Orders to 303-296-3369

Remit To:

Technologent C/O Ca United Bank
15821 Ventura Blvd Ste 100
Encino CA 91436

Quotation For:

City of Flower Mound
2121 Cross Timbers Rd
Flower Mound TX 75028

Quote Date 4/10/2017
Quote Expires 5/10/2017
Quote No. QT176232-3
Quote Name ML03282017 Flower Mound DPS DD6300 x2

Sales Rep Mark Laible
Phone 214-663-2395
Email mark.laible@technologent.com

Prepared By Deanna Nicholson
Phone 469-304-2185
Email deanna.nicholson@technologent.com

Line	Item Sku	Description	Qty	Unit Price	Extd Price
46	456-112-201	Multiple Systems Management=CC	1	0.00	0.00
47	M-ENHSWDD-H1	ENHANCED SOFTWARE SUPPORT (DD)	1	0.00	0.00
48	458-002-060	DPA Single Federated Reporting Server	1	0.00	0.00
49	456-112-408	DPA Single Fed Reporting Server=IA	1	0.00	0.00
50	M-ENHSWDD-M1	ENHANCED SOFTWARE SUPPORT (DD)	1	0.00	0.00
		DATA DOMAIN 6300 (DR)			
51	DDOS-60	DOCS DD OS DOC 6=IA	1	0.00	0.00
52	C-10GBTM4P-NF	OPTION DD 10GBASE T IO MODULE 4PORT	1	1,548.00	1,548.00
53	DD6300-34TB	SYSTEM DD6300-12X4 34TB NFS CIFS	1	23,005.00	23,005.00
54	DD6300	SYSTEM DD6300 NFS CIFS	1	0.00	0.00
55	M-ENHHWDD-DD1	ENHANCED HARDWARE SUPPORT	1	6,293.00	6,293.00
56	458-001-335	DD6300 OPERATING ENVIRONMENT SOFTWARE	1	0.00	0.00
57	456-109-424	LICENSE BASE DD OE DD6300=IA	1	6,190.00	6,190.00
58	M-ENHSWDD-DD1	ENHANCED SOFTWARE SUPPORT	1	1,671.00	1,671.00
59	458-001-330	DD6300 OE APPLICATION SOFTWARE	1	0.00	0.00
60	456-109-417	DD6300 CAPACITY AIO 14TB=IA	1	0.00	0.00
61	M-ENHSWDD-DD1	ENHANCED SOFTWARE SUPPORT	1	0.00	0.00
62	458-001-929	DD6300 SSD CAPACITY LICENSE	1	0.00	0.00
63	456-111-330	FS 800GB 0.8TB RAW=CF	1	0.00	0.00
64	M-ENHSWDD-DD1	ENHANCED SOFTWARE SUPPORT	1	0.00	0.00
65	458-001-836	DD6300 SOFTWARE=CB	1	0.00	0.00
66	M-ENHSWDD-DD1	ENHANCED SOFTWARE SUPPORT	1	0.00	0.00
67	458-002-006	DD BOOST/REPLICATION AIO ENABLER=CB	1	0.00	0.00
68	M-ENHSWDD-DD1	ENHANCED SOFTWARE SUPPORT	1	0.00	0.00
		PROFESSIONAL SERVICES			

Attachment 1

Technologent

PRICE QUOTE

PO Must be Made out to Technologent
EMAIL Purchase Orders To: purchaseorder@technologent.com
FAX Purchase Orders to 303-296-3369

Remit To:

Technologent C/O Ca United Bank
15821 Ventura Blvd Ste 100
Encino CA 91436

Quotation For:

City of Flower Mound
2121 Cross Timbers Rd
Flower Mound TX 75028

Quote Date	4/10/2017
Quote Expires	5/10/2017
Quote No.	QT176232-3
Quote Name	ML03282017 Flower Mound DPS DD6300 x2
Sales Rep	Mark Laible
Phone	214-663-2395
Email	mark.laible@technologent.com
Prepared By	Deanna Nicholson
Phone	469-304-2185
Email	deanna.nicholson@technologent.com

Line	Item Sku	Description	Qty	Unit Price	Extd Price
69	Tech PS	TECHNOLOGENT PROFESSIONAL SERVICES FOR: - IMPLEMENTATION OF AVAMAR x2 - IMPLEMENTATION OF DD6300 x2 - INTEGRATION OF AVAMAR AND DD	1	16,500.00	16,500.00
70	PS-BAS-DPA	DELL/EMC DPA BASIC QUICKSTART	1	5,609.00	5,609.00
71	Freight	Freight Charges TBD	1	0.00	0.00

Total $131,000.00

Any deviation from the quoted items to include price, part numbers, or quantities will void this quote and pricing therein.
1. Please include Item SKU #'s for all line items, a technical contact including name/address/phone/email, and the billing address.
2. Terms: Net 30 days, pending proper credit approval.
3. Title shall pass to Customer upon delivery to the carrier. Freight is prepaid and add. Risk of Loss transfers upon Delivery.
4. If partial shipments are made, individual Invoices are Net 30 and not dependent on receipt of the total order.
5. Pricing is subject to change and is contingent on manufacturers' price list at time of receipt of purchase order.
6. Estimated sales tax applied. Actual sales tax, shipping charges, and fuel surcharges will be determined at time of invoice
7. This quote is considered Confidential and Proprietary and will not be disclosed to third parties by Recipient or Recipient's associates or employees.

*** Installation and Training are available by Technologent's Certified Senior Systems Engineer. Call your Sales Rep for Pricing.
***For a full listing of Technologent's partners, click here: (Technologent Line Card) http://www.technologent.com/technology-partners/

TOWN COUNCIL AGENDA ITEM NO. 13

REGULAR ITEM

DATE: April 17, 2017

FROM: Chuck Russell, Town Planner

ITEM: **Consider approval of a design change (MISC17-0003) for the terminus feature in the central roundabout within the Lakeside DFW development. The property is within the intersection of Edgemere Road and Lakeside Parkway.** ***(The Planning and Zoning Commission denied the item by a vote of 6 to 0 at its April 10, 2017, meeting.)***

BACKGROUND INFORMATION: Attached is the Planning and Zoning Commission (P&Z) report and backup for this item. There was lengthy discussion at the P&Z meeting, during which several concerns were raised by commissioners. The following are some of the concerns:

- Lack of justification for change from the obelisk
- Survivability of the large transplanted tree
- Future maintenance costs for BOA / POA
- Suitability of tree vs. structure for terminus feature
- Visual uniqueness of tree with other trees nearby

ATTACHMENTS:

1. Planning and Zoning Commission Staff Report

LEGAL REVIEW: N/A

DRAFT MOTION: Move to approve a design change (MISC17-0003) for the terminus feature in the central roundabout within the Lakeside DFW development.

PLANNING AND ZONING COMMISSION
AGENDA ITEM NO: 3

DATE: April 10, 2017

FROM: Chuck Russell, Town Planner

ITEM: **Consider approval of a design change (MISC17-0003) for the terminus feature in the central roundabout within the Lakeside DFW development. The property is within the intersection of Edgemere Road and Lakeside Parkway.**

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 Planning and Zoning Commission.

II. APPLICATION ANALYSIS

The purpose of this request is to obtain approval of a proposed change to the visual terminus element located within the central roundabout of Lakeside Parkway. On May 23, 2016, the Planning and Zoning Commission approved a site plan for the Lakeside Condominium Tower (SP15-0021) that included an approximately 30-foot-tall obelisk structure within the central roundabout:

The approved obelisk is intended to serve as the required visual terminus on the approved concept plan for Lakeside DFW in lieu of the condominium tower since it is located west of the central roundabout:

Now the applicant is proposing to replace the approved obelisk with a 30-foot-tall live oak tree. According to the applicant, this live oak "will be complemented by seasonal flowers, accent lighting, and additional masonry to help merge the connection between luxury and nature." The applicant provided an example of a roundabout that features a live oak as its anchor located in Coto de Caza in Orange County, California:

The applicant has indicated they have sourced a 30-foot-tall live oak tree pictured below to use as the “visual anchor” for this roundabout:

After reviewing the proposal internally with our tree experts, staff has serious concerns about the survivability of transplanting such a large tree into a relatively small planting area. At least two transplanted 8” live oaks have died in the northern roundabout planting area and had to be replaced. In accordance with the Development Agreement executed in November of 2012, the developer will be responsible for replacing the proposed tree if it dies:

> All landscaping, including installation and maintenance of same, in the public right-of-way of the Project shall be the responsibility of Developer. Except for medians in Lakeside Parkway and the street trees along Lakeside Parkway, Developer shall be responsible for all irrigation costs associated with landscaping in the public right-of-way. The Town shall provide water for irrigation of medians in Lakeside Parkway and the street trees along Lakeside Parkway, subject to any and all Town ordinances and obligations related to drought conditions, water emergencies and water/irrigation restrictions.

This item is being referred to the Planning and Zoning Commission to resolve whether the proposed substantive change to the roundabout terminus feature is an appropriate substitution for the previously approved obelisk.

III. ATTACHMENTS

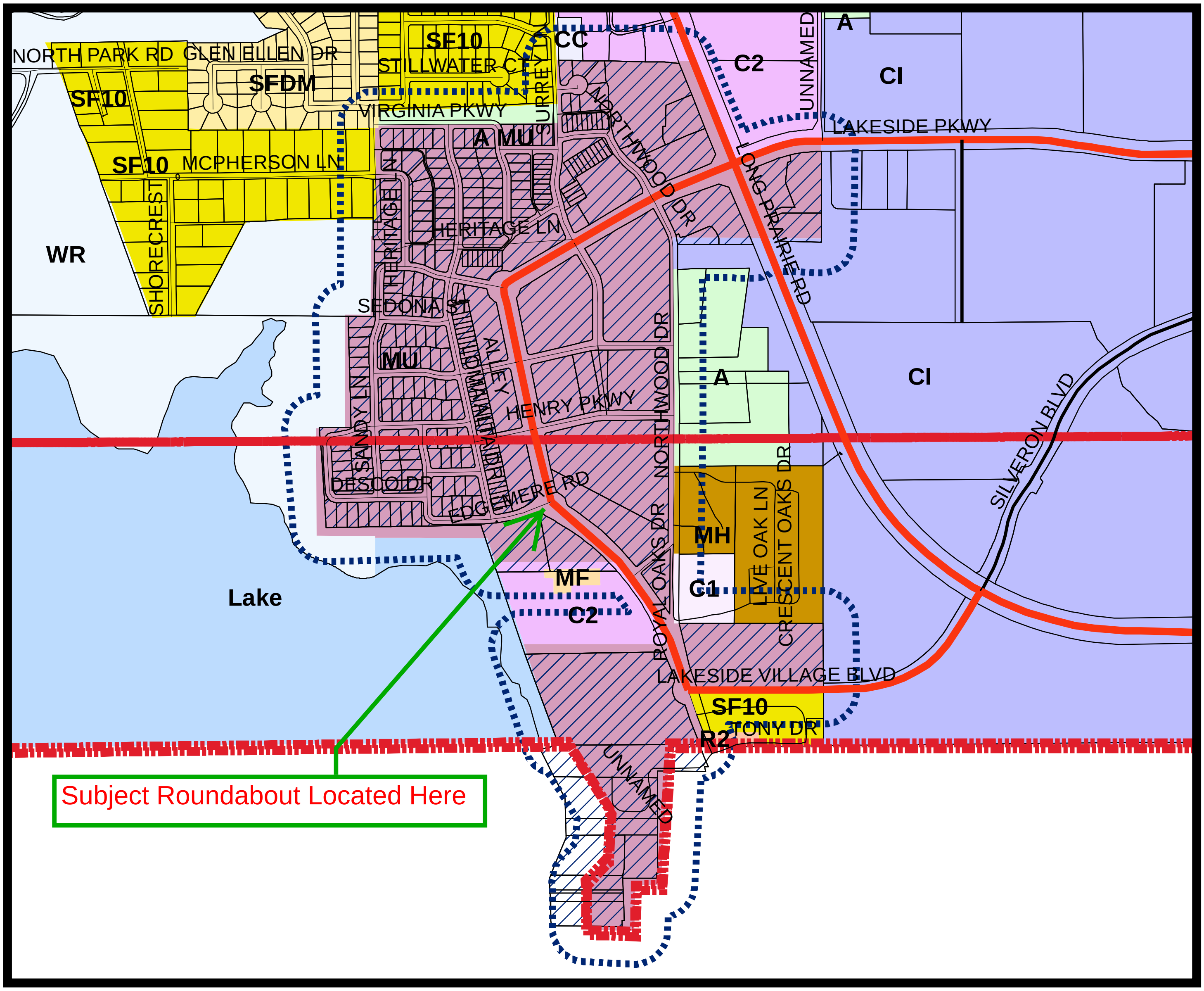
A. Background Information

1. Vicinity Map
2. Letter of Intent

THE TOWN OF FLOWER MOUND TEXAS

Vicinity Map

Reference Project: MISC17-0003

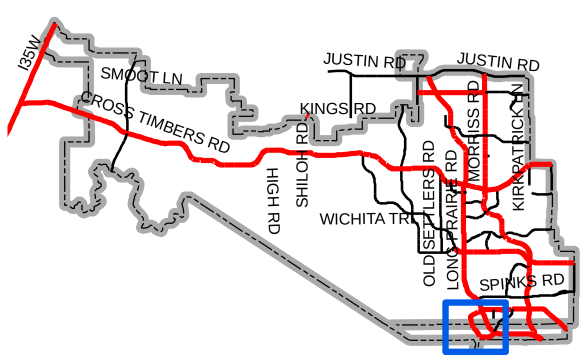


LEGEND

Agriculture | Campus Commercial | Campus Industrial | Commercial 1 | Commercial 2
Lake | Mixed Use | Mobile Home | Multi-Family | Retail 2 | Single Family 10
Single Family Density Medium | Water Recreation

Subject Property
200 ft Notification Buffer around Property

0 700 1,400 2,800 Feet



Map Location

REALTY CAPITAL
909 Lake Carolyn Parkway • Suite 150
Irving, Texas 75039
469.533.4100 • Fax 469.533.4150
RealtyCapital.com

April 6th, 2017

Mr. Chuck Russell
Town Planner
Planning Services Division
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, TX 75028

RE: Lakeside Tower Element in Lakeside Parkway Roundabout

Dear Mr. Russell,

Realty Capital Management proposes to use the attached plan and rendering as an alternative element to serve as a terminus for Lakeside Parkway, which was included in the original Site Plan application for Lakeside Tower (SP15-0021).

The “Live Oak Roundabout” example is a photograph taken in Coto de Caza, an upscale gated community located in Orange County California. For the Lakeside Parkway Roundabout, Realty Capital would like to mirror this example, by transplanting a 30-foot tall Live Oak as the “Visual Anchor”. The additional space within the roundabout will be enhanced with seasonal flowers, masonry and accent lighting (Roundabout Rendering).

The Live Oak will be provided and installed by Fannin Tree Farms, located in Frisco, Texas (Fannin Live Oak). Fannin has over 35 years of experience providing trees of all sizes to commercial and residential properties in the Dallas/Fort Worth area. Their installation crew has between 20-25 years of experience planting trees and provide a one-year “Fannin Guarantee” that begins the day the tree is transplanted. Fannin is confident that there is adequate space within the roundabout for a tree of this size to thrive.

Please do not hesitate to contact me if you have any questions.

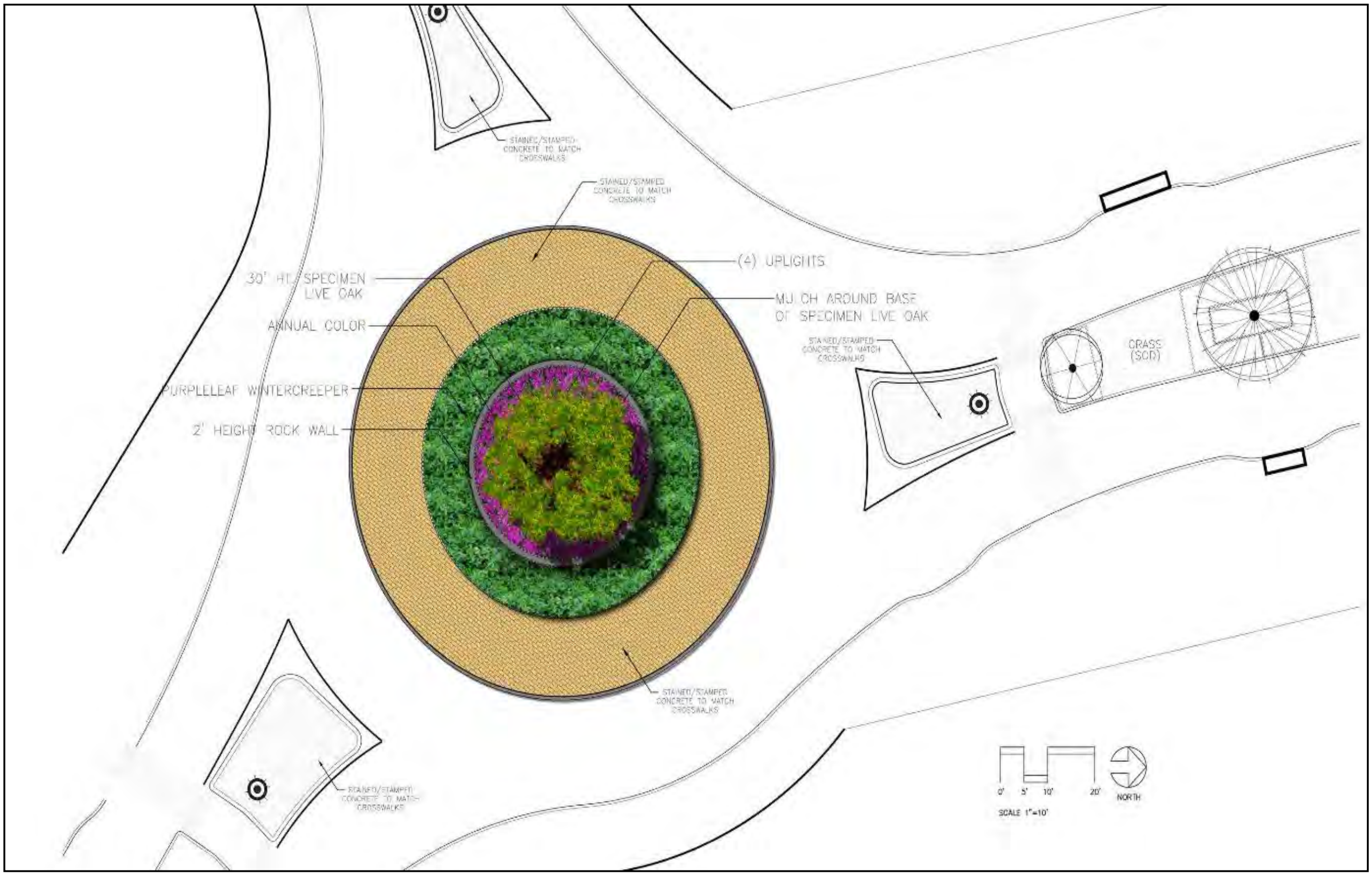
Thank you for our consideration,

Richard Myers
Managing Director - Realty Capital Management, LLC
817-313-5000 (c)
Myers@RealtyCapital.com

Live Oak Roundabout

Fannin Live Oak

Lakeside Roundabout Rendering



TOWN COUNCIL AGENDA ITEM NO. 14

REGULAR ITEM

DATE: April 17, 2017

FROM: Doug Powell, Executive Director of Development Services

ITEM: **Public Hearing to consider a request for rezoning (ZPD17-0002 - Victory Retail) to amend Planned Development District No. 51 (PD-51) by amending the development standards related to permitted uses and parking standards for the Retail District-2 (R-2) tract, and to consider adopting an ordinance providing for said amendment. The property is generally located north of Flower Mound Road and east of Morriss Road.** ***(The Planning and Zoning Commission recommended denial by a vote of 6 to 0 at its April 10, 2017, meeting.)***

BACKGROUND INFORMATION: Attached is the Planning and Zoning Commission (P&Z) report and backup for this item. Additional correspondence not included in the P&Z agenda packet has been attached as Attachment 3.

During the P&Z public hearing, concerns were raised about whether the retail center would have sufficient parking for the proposed uses. Since the meeting, the applicant has changed the proposal to only address parking for Storefront Restaurants. Parking for all other restaurant uses will comply with Town Code. The attached draft ordinance reflects that change.

ATTACHMENTS:

1. Planning and Zoning Commission Staff Report
2. Draft Ordinance
3. Additional Correspondence

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

DRAFT MOTION: Move to approve a request for rezoning (ZPD17-0002 - Victory Retail) to amend Planned Development District No. 51 (PD-51) by amending the development standards related to permitted uses and parking standards for the Retail District-2 (R-2) tract, and adopt an ordinance providing for said amendment.

PLANNING AND ZONING COMMISSION
AGENDA ITEM NO: 4

DATE: April 10, 2017

FROM: Doug Powell, Executive Director

ITEM: **Public Hearing to consider a request for rezoning (ZPD17-0002 - Victory Retail) to amend Planned Development District No. 51 (PD-51) by amending the development standards related to permitted uses and parking standards for the Retail District-2 (R-2) tract. The property is generally located north of Flower Mound Road and east of Morriss Road.**

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

Planned Development District-51 (PD-51) encompasses approximately 54 acres, out of which approximately 7.19 acres at the northeast corner of Morriss Road and Flower Mound Road are zoned for Retail District-2 (R-2) uses. The purpose of this request is to amend the development standards associated with Lot 1, Block 1, of the R-2 tract related to parking standards for restaurants.

Earlier in the year, the developer of the Victory Retail development requested a waiver to the Town's parking regulations (MISC17-0002 - Victory Retail Parking Deviation). For that request, a Parking Study was provided by the applicant (Attachment A(3)). The item was discussed at the Commission's January 23, 2017, and February 27, 2017, meetings. After a recommendation of denial, the item was discussed at the March 20, 2017, Town Council meeting.

Based on the discussion at the Town Council meeting, the applicant was requested to work with staff to create restaurant parking standards specific to the site. The applicant has provided staff with an amendment to the Planned Development standards that creates new restaurant categories and specific parking ratios for those uses. This proposal does not add any parking spaces to the site, but rather acknowledges the wide range of parking needs.

Specifically, restaurant uses are divided into three categories; Storefront Restaurant, Limited-Service Restaurant, and Full-Service Restaurant. The categories are defined and a parking ratio is specified for each. The difference in the required parking is due to the nature and operation of the business, and again is an acknowledgement that all 'restaurants' do not require the same amount of parking. The proposed text amendment to PD-51 is as follows:

A. Amendment to the development standards:

Within this lot parking for restaurant uses will be subject to the following standards:

a. **Storefront Restaurant** = 1 parking space per 250 square feet

This use includes businesses that do not have seating for patrons. Establishments are for pick up and take out only. Uses shall include, but not limited to; bakery, donut shop, cake shop, smoothie shop.

b. **Limited-Service Restaurant** = 1 parking space per 4 seats (Up to 40 seats)

This use comprises establishments where patrons generally order or select items and pay before eating at a walk-up counter. Most establishments do not have waiter/waitress service, but some provide limited service, such as cooking to order (i.e., per special request), bringing food to seated customers, or providing off-site delivery.

c. **Full-Service Restaurant** = 1 parking space per 75 square feet

This use comprises establishments where patrons order and are served while seated (i.e., waiter/waitress service) and pay after eating.

Staff is in agreement that this proposal reflects the differentiation of parking needs for the broad range of uses classified as 'restaurants' under the Town's existing code. Further, if this item receives support, staff is prepared to bring forward a text amendment to the Code to use these definitions for all developments within the Town.

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 this request.

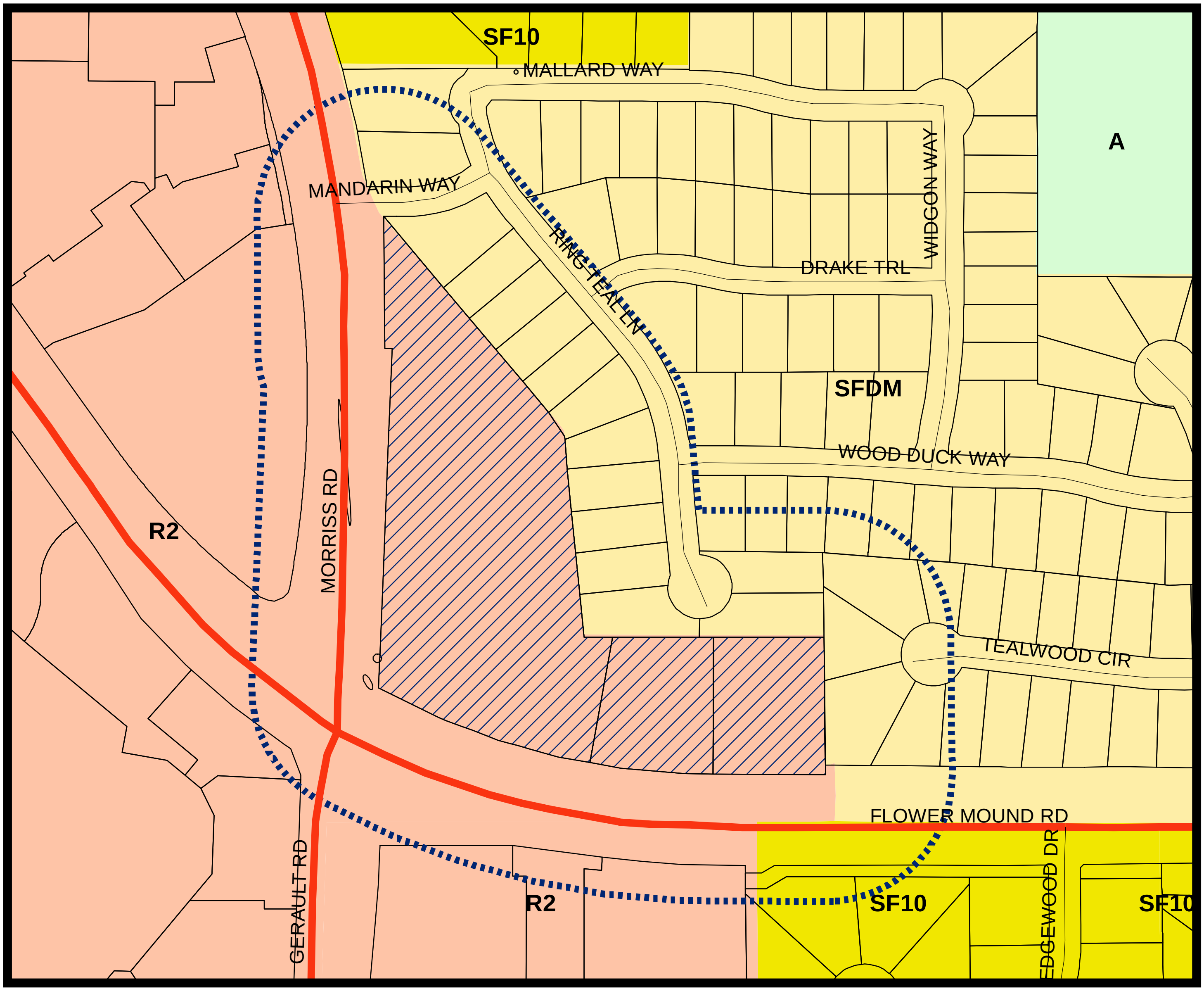
IV. ATTACHMENTS

A. Background Information

1. Vicinity Map
2. Letter of Intent
3. Parking Study

Vicinity Map

Reference Project: ZPD17-0002

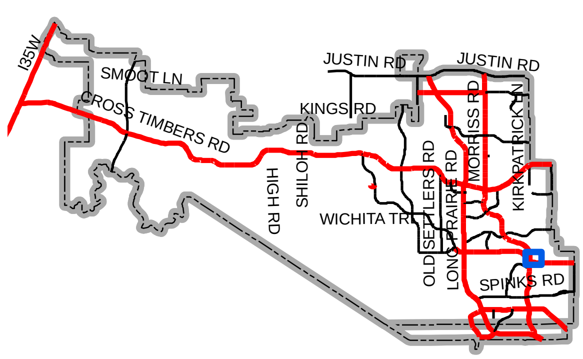


LEGEND

Agriculture
Retail 2
Single Family 10
Single Family Density Medium

Subject Property
200 ft Notification Buffer around Property

0 187.5 375 750 Feet



Map Location

March, 23 2017

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

RE: Victory @ FM 3040 PD Amendment Letter of Intent
Lots1-3, Block 1, Victory Retail at FM 3040 & Morris Addition

Dear Ms. Srinarasi:

On behalf of the owner and developer of 7.19 acres along FM 3040 in Flower Mound, Texas, I would like to submit an application amending the current PD to adjust the parking requirements.

Please don't hesitate to contact me at 817-488-4960 if you have any questions.

Sincerely,

Patrick Filson, P.E.

KRIS RAMJI
VICTORY RETAIL AT FM 3040, LLC

Parking Study

for

Victory Retail

Prepared

Kirkman Engineering

November 21, 2016

By

Binkley & Barfield, Inc.
consulting engineers
Texas Registration Number F-257

INTERIM REVIEW ONLY	
This document is not for permit or construction.	
Name:	Cameron L. Williams, P.E.
License:	110416
Date:	11/21/16
TBPE Firm Registration No. 257	

Cameron L. Williams, P.E., PTOE, PTP

TABLE OF CONTENTS

Introduction 1
Study Area Conditions 1
Lot 1 1
Trip Generation 2
Town of Flower Mound Parking Requirements 3
Provided Parking Requirements 3
Shared Parking analysis 3
Conclusions and recommendations 4
Appendix 5

LIST OF TABLES

Table 1. Land Use Data 1
Table 2. Trip Generation Data 2
Table 3. AM Peak Hour – Internal and External Trips 2
Table 4. PM Peak Hour – Internal and External Trips 2
Table 5. Victory Retail – Required Parking 3
Table 6. Victory Retail – Proposed Parking 3
Table 7. Shared Parking Analysis 4

INTRODUCTION

At the request of Kirkman Engineer, Binkley & Barfield, Inc. (BBI) has completed a parking study for the proposed development called Victory Retail which is located at the northeast corner of FM 3040 and Morriss Road in the Town of Flower Mound. This report documents the results of that study including: study area conditions, analyses, and recommendations. Provided in the Appendix is a proposed site plan.

STUDY AREA CONDITIONS

The proposed development is bounded by FM 3040 on the south, Morriss Road on the west, and a residential development called Tealwood Oaks on the north. There is a small are retail centers on each of the other three quadrants of the FM 3040 and Morriss Road intersection. The remaining surrounding area is largely single-family residential. The proposed development consists of restaurant and retail land uses. Provided below is a summary of the proposed development.

LOT 1

Lot 1 is 4.54 acres and has a total building area of 37,606 square feet which consists of 29,370 square feet of retail, 5,236 square feet of restaurant (sit-down), and 3,000 square feet of fast food restaurant which includes a drive-thru lane. This land use data is summarized in **Table 1**.

Table 1. Land Use Data

Land Use	Development Segment	ITE Code	Units	Quantity
Lot 1	Retail (Shopping Center)	820	SF	29,370
	High Turnover (Sit-Down) Restaurant	932	SF	5,236
	Fast-Food Restaurant with Drive-Thru	934	SF	3,000

There are two additional lots, Lot 2 and Lot 3, which are undeveloped and adjacent to the proposed development. Both Lot 2 and Lot 3 are 0.87 acres in size. The required parking for these lots are not included in the analyses of this report as their land uses are unknown at this time.

TRIP GENERATION

Estimated vehicle trip ends to and from the study area were calculated utilizing trip generation rates and characteristics collected and compiled by the Institute of Transportation Engineers (ITE) in the ninth edition of their trip generation manual. **Table 2** has been prepared to summarize the associated trip generation data and the calculated trips that are anticipated to be generated by the proposed land uses.

Table 2. Trip Generation Data

Land Use (ITE Code)	Daily (vpd)	AM Peak (vph)			PM Peak (vph)		
		Total	Enter	Exit	Total	Enter	Exit
Shopping Center (820)	1,254	28	17	11	109	52	57
High Turnover Restaurant (932)	666	57	31	26	52	31	21
Fast-Food Restaurant with Drive-Thru (934)	1,488	136	69	67	98	51	47
Totals:	**3,408**	**221**	**117**	**104**	**259**	**134**	**125**

Utilizing NCHRP Internal Trip Capture Rates, an internal trip capture analysis was completed for the proposed development. **Table 3** and **Table 4** summarize the development's internal and external trips for the AM and PM Peak Hours respectively.

Table 3. AM Peak Hour – Internal and External Trips

Land Use	Enter			Exit		
	Internal	External	Total	Internal	External	Total
Retail	1	16	17	1	10	11
Restaurant/Drive-Thru	1	99	100	1	92	93
Total	**2**	**115**	**117**	**2**	**102**	**104**

Table 4. PM Peak Hour – Internal and External Trips

Land Use	Enter			Exit		
	Internal	External	Total	Internal	External	Total
Retail	26	26	52	17	40	57
Restaurant/Drive-Thru	17	65	82	26	42	68
Total	**43**	**91**	**134**	**43**	**82**	**125**

Based on the information in **Table 3** and **Table 4**, the internal trip capture for the site is 1.8% and 33% in the AM and PM Peak Hours respectively.

TOWN OF FLOWER MOUND PARKING REQUIREMENTS

The Town of Flower Mound "Off-Street Parking and Loading Requirements" states the following regarding retail and restaurant parking:

- Restaurant: 1 space per 75 square feet.
- Retail: 1 space per 250 square feet

Based on this information, **Table 5** summarizes what is understood to be the required parking spaces per the "Off-Street Parking and Loading Requirements".

Table 5. Victory Retail – Required Parking

Area	Parameter	Retail	Restaurant	Drive-Thru	Totals	Equivalent Rate
Lot 1	SF	29,370	5,236	3,000	37,606	6.06
	Parking	118	70	40	228	per 1,000 SF

PROVIDED PARKING REQUIREMENTS

The proposed development is requesting a variance from the Town of Flower Mound's parking requirements. **Table 6** summarizes the parking being proposed by the development.

Table 6. Victory Retail – Proposed Parking

Area	Parameter	Retail	Restaurant	Drive-Thru	Totals	Equivalent Rate
Lot 1	SF	29,470	5,236	3,000	37,706	4.83
	Parking	-	-	-	182	per 1,000 SF

The proposed parking in **Table 6** represents a 20% reduction in the required parking per the Town of Flower Mound code.

SHARED PARKING ANALYSIS

The Urban Land Institute (ULI) provides a rates and methodologies for calculating shared parking for multi-use developments. Some broad assumptions which included the following:

- Visitors require 90% of the gross leasable space
- Employees require 10% of the gross leasable space
- Weekend parking ratios
- Noon time of day adjustments
- December monthly adjustments
- Non-captive ratio of 90%

The 90/10 split on the visitor/employee usage of space is felt to be conservative. Also, the day of the week, time of the day, and ratios and adjustments selected represent what are expected to be the busiest times of the week, day, and month. Per the ULI Shared Parking manual, "Non-captive ratio is an estimate of the percentage of parkers at a land use in a mixed-use development or district who are not already counted as being parked at another of the land uses."

Table 7 represents the full development of Lot 1. As can be seen, based on these assumptions, which should represent the busiest time of the week, day, and month, the proposed parking is adequate.

Table 7. Shared Parking Analysis

Land Use	Person	SF	Parking Ratio	Base Parking Need	Monthly Adj.	Time of Day Adj.	Non-Captive	Adjusted Need
Family Restaurant	Visitor	4,712	12.75	61	100%	100%	90%	55
	Employee	524	2.25	2	100%	100%	90%	2
Fast Food	Visitor	2,700	12	33	100%	100%	90%	30
	Employee	300	2	1	100%	100%	90%	1
Retail	Visitor	26,433	3.2	85	100%	85%	90%	66
	Employee	2,937	0.8	3	100%	100%	90%	3
			Total:	**185**		**Total:**	**Total:**	**157**

CONCLUSIONS AND RECOMMENDATIONS

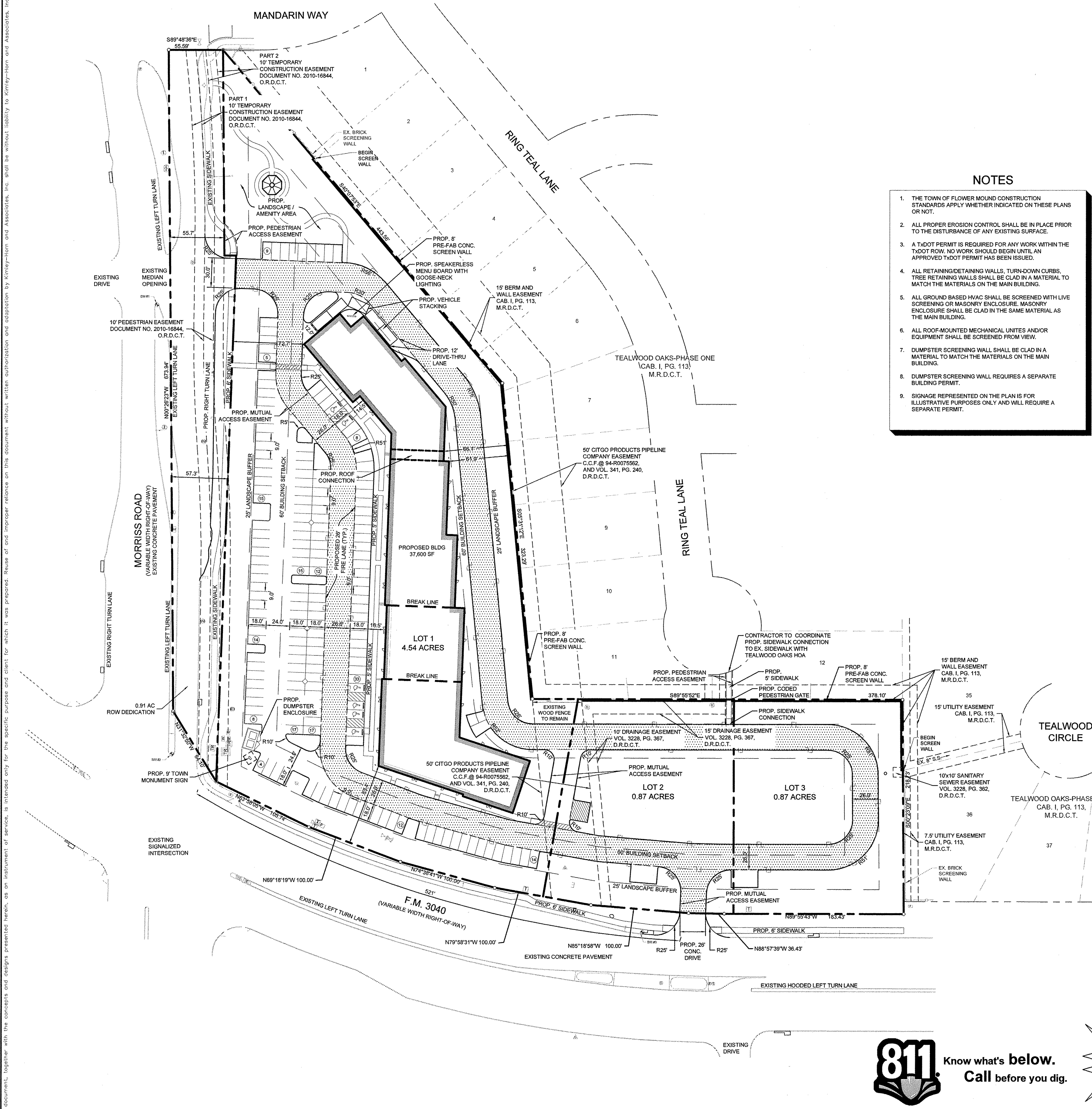
The proposed land uses should create a mixed-used development and as such, the land uses will benefit from internal trip capture as well as shared used parking. This internal trip capture aspect of the site, should reduce the parking demand. This reduced demand is expected to range between 1% and 33% depending on the day of the week and time of day.

The shared used parking guidelines from ULI indicated the proposed development provides adequate parking for even the anticipated busiest times of the day, week, and year. This analysis indicated that 157 spaces would be adequate which is less than the proposed 182 spaces. The 157 spaces is approximately 31% of the 228 required by ordinance which is similar the 33% internal trip capture stated above.

In summary, based on the proposed land uses and assumptions stated in the report the proposed 182 spaces should be adequate. Furthermore, per calculations from the ULI shared used parking guidelines the parking could be reduced to 157 spaces or the square footage of the land uses could be increased and the parking would still be adequate.

APPENDIX

CONCEPT/SITE PLAN .... 1 PAGE
ITE TRIP GENERATION SHEETS .... 1 PAGE
ITE INTERNAL CAPTURE CALCULATION SHEET .... 1 PAGE



NOTES

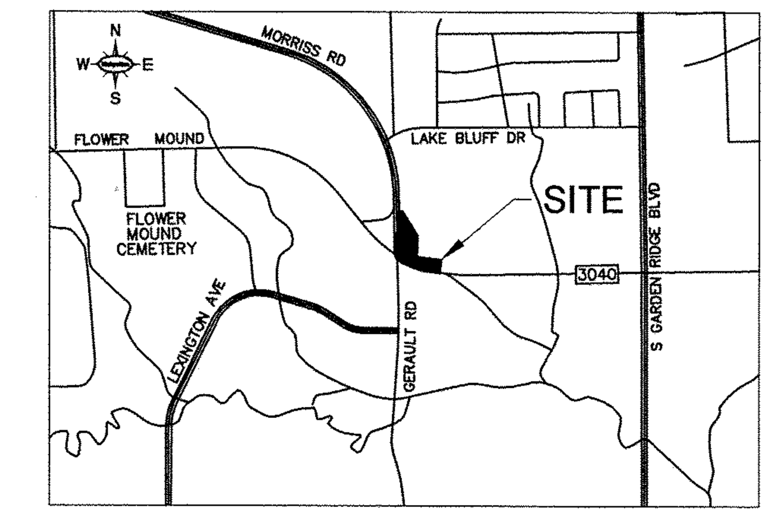
1. THE TOWN OF FLOWER MOUND CONSTRUCTION STANDARDS APPLY WHETHER INDICATED ON THESE PLANS OR NOT.
2. ALL PROPER EROSION CONTROL SHALL BE IN PLACE PRIOR TO THE DISTURBANCE OF ANY EXISTING SURFACE.
3. A TxDOT PERMIT IS REQUIRED FOR ANY WORK WITHIN THE TxDOT ROW. NO WORK SHOULD BEGIN UNTIL AN APPROVED TxDOT PERMIT HAS BEEN ISSUED.
4. ALL RETAINING/DETAINING WALLS, TURN-DOWN CURBS, TREE RETAINING WALLS SHALL BE CLAD IN A MATERIAL TO MATCH THE MATERIALS ON THE MAIN BUILDING.
5. ALL GROUND BASED HVAC SHALL BE SCREENED WITH LIVE SCREENING OR MASONRY ENCLOSURE. MASONRY ENCLOSURE SHALL BE CLAD IN THE SAME MATERIAL AS THE MAIN BUILDING.
6. ALL ROOF-MOUNTED MECHANICAL UNITES AND/OR EQUIPMENT SHALL BE SCREENED FROM VIEW.
7. DUMPSTER SCREENING WALL SHALL BE CLAD IN A MATERIAL TO MATCH THE MATERIALS ON THE MAIN BUILDING.
8. DUMPSTER SCREENING WALL REQUIRES A SEPARATE BUILDING PERMIT.
9. SIGNAGE REPRESENTED ON THE PLAN IS FOR ILLUSTRATIVE PURPOSES ONLY AND WILL REQUIRE A SEPARATE PERMIT.

SITE DATA TABLE

PHYSICAL ADDRESS	NEC OF MORRISS ROAD AND F.M. 3040	
GROSS SITE AREA	5.45 AC. / 237,461 S.F.	
NET SITE AREA	4.54 AC. / 197,606 S.F.	
ZONING	RETAIL - 2	
CURRENT USE	PD - 51 FOR RETAIL - 2 USES	
LOT COVERAGE DATA		
BUILDING COVERAGE	19.0% / 37,605 S.F.	
IMPERVIOUS AREA	63.1% / 124,642 S.F.	
PERVIOUS AREA	36.9% / 72,964 S.F.	
PARKING SUMMARY	REQUIRED	PROVIDED
SURFACE PARKING		
RETAIL: 78.1%	118	
RESTAURANT: 21.9%	110	
TOTAL PARKING	228	182
20% REDUCTION ALLOWANCE	182	
BUILDING DATA		
BUILDING	1 STORY	
PEAK HEIGHT	32 FEET	
MEAN HEIGHT	21 FEET	
TOTAL SQUARE FOOTAGE	37,600 S.F.	

NORTH

GRAPHIC SCALE IN FEET
0 25 50 100



VICINITY MAP
N.T.S.

LEGEND

PROPERTY LINE	
FIRE LANE STRIPING	FL
SETBACK (BUILDING AND LANDSCAPE)	
FIRE LANE HATCH	
PARKING COUNT	(15)

DEVELOPER:

VICTORY @ FM 3040, LLC
825 WEST ROYAL LANE
SUITE 250
IRVING, TX 75039
CONTACT: KRIS RAMJI, MANAGER
PHONE: 972-707-9555

ENGINEER:

KIMLEY-HORN AND ASSOCIATES, INC.
12750 MERIT DR
SUITE 1000
DALLAS, TX 750251
CONTACT: JOSEPH HELMBERGER, P.E.
PHONE:972-770-1329

REVIEWED
TOWN OF FLOWER MOUND
Released for Construction
Date 1/22/15
Town of Flower Mound
Engineering Services Division

REVIEWED
Town of Flower Mound
Planning Services
By
Date 1/22/15

Know what's below.
Call before you dig.

CAUTION!!
CONTRACTOR IS TO VERIFY PRESENCE AND EXACT LOCATION OF ALL UTILITIES PRIOR TO CONSTRUCTION.

No.	REVISIONS	DATE	BY

Kimley-Horn
12750 MERIT DRIVE, SUITE 1000, DALLAS, TX 75251
PHONE: 972-770-1300 FAX: 972-239-3820
WWW.KIMLEY-HORN.COM TX F-928

STATE OF TEXAS
JOSEPH E. HELMBERGER
66060
01.14.15

KHA PROJECT	DATE	SCALE	DESIGNED BY	DRAWN BY	CHECKED BY
064475900	DEC 23, 2014	AS SHOWN	JEH	BAG	JEH

SITE PLAN

PROPOSED MIXED USE DEVELOPMENT FOR VICTORY RETAIL @ FM 3040 & MORRISS
NEC OF MORRISS RD AND FM 3040, FLOWER MOUND, TEXAS

SHEET NUMBER
C-01

Trip Generation Summary

Alternative: Alternative 1
Phase:
Project: Flower Mound Parking Study

Open Date: 11/15/2016
Analysis Date: 11/15/2016

ITE	Land Use	*	Weekday Average Daily Trips Enter	Exit	Total	*	Weekday AM Peak Hour of Adjacent Street Traffic Enter	Exit	Total	*	Weekday PM Peak Hour of Adjacent Street Traffic Enter	Exit	Total
820	CENTERSHOPPING 1		627	627	1254		17	11	28		52	57	109
	29.37 Gross Leasable Area 1000 SF												
932	RESTAURANTHT 1		333	333	666		31	26	57		31	21	52
	5.24 Gross Floor Area 1000 SF												
934	FASTFOODDT 1		744	744	1488		69	67	136		51	47	98
	3 Gross Floor Area 1000 SF												
Unadjusted Volume			1704	1704	3408		117	104	221		134	125	259
Internal Capture Trips			0	0	0		2	2	4		43	43	86
Pass-By Trips			0	0	0		33	33	66		36	36	72
Volume Added to Adjacent Streets			1704	1704	3408		82	69	151		55	46	101

Total Weekday Average Daily Trips Internal Capture = 0 Percent

Total Weekday AM Peak Hour of Adjacent Street Traffic Internal Capture = 2 Percent

Total Weekday PM Peak Hour of Adjacent Street Traffic Internal Capture = 33 Percent

* - Custom rate used for selected time period.

Internal Capture Report - Alternative 1

AM & PM Peak Hour

Open Date: 11/15/2016
Project: Flower Mound Parking Study
Analysis Date: 11/15/2016

AM	Entering Trips				Exiting Trips			
Category	**Internal**	**External**	**Total**	**Percent**	**Internal**	**External**	**Total**	**Percent**
Cinema	0	0	0	0%	0	0	0	0%
Hotel	0	0	0	0%	0	0	0	0%
Office	0	0	0	0%	0	0	0	0%
Residential	0	0	0	0%	0	0	0	0%
Restaurant	1	99	100	1%	1	92	93	1%
Retail	1	16	17	6%	1	10	11	9%
All Other Land Uses	0	0	0	0%	0	0	0	0%
Totals	2	115	117	2%	2	102	104	2%

PM	Entering Trips				Exiting Trips			
Category	**Internal**	**External**	**Total**	**Percent**	**Internal**	**External**	**Total**	**Percent**
Cinema	0	0	0	0%	0	0	0	0%
Hotel	0	0	0	0%	0	0	0	0%
Office	0	0	0	0%	0	0	0	0%
Residential	0	0	0	0%	0	0	0	0%
Restaurant	17	65	82	21%	26	42	68	38%
Retail	26	26	52	50%	17	40	57	30%
All Other Land Uses	0	0	0	0%	0	0	0	0%
Totals	43	91	134	32%	43	82	125	34%

TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO._______

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING ORDINANCE NO. 50-91, WHICH ESTABLISHED PLANNED DEVELOPMENT DISTRICT NO. 51 (PD-51) ON CERTAIN PROPERTY DESCRIBED AS 4.536 ACRES OF LAND IN THE VICTORY RETAIL AT FM 3040 & MORRISS ADDITION; BY AMENDING EXHIBIT "B," ENTITLED "DEVELOPMENT STANDARDS," TO ADD PARKING STANDARDS FOR RESTAURANT USES LOCATED SPECIFICALLY WITHIN LOT 1, BLOCK 1, OF THE RETAIL DISTRICT-2 (R-2) TRACT IN ACCORDANCE WITH SPECIFIC REQUIREMENTS STATED HEREIN AND EXHIBITS ATTACHED HERETO; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF IN ACCORDANCE WITH SECTION 1-13 OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE..

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

WHEREAS, the Town Council of the Town of Flower Mound heretofore adopted the Land Development Regulations of the Town of Flower Mound, as amended, which Ordinance regulates and restricts the location and use of buildings, structures and land for trade, industry, residence and other purposes, and provides for the establishment of zoning districts of such number, shape and area as may be best suited to carry out these regulations; and,

WHEREAS, in accordance with Chapter 78 of the Land Development Regulations, the owners of the property described as 4.536 acres of land being all of Lot 1, Block 1, of the Victory Retail at FM 3040 & Morriss Addition, have filed an application for a Zoning Planned Development amendment to amend Ordinance No. 50-91 for Planned Development District No. 51 (PD-51); and,

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on April 10, 2017, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on April 17, 2017, with respect to the Zoning Planned Development described herein; and,

WHEREAS, the Town has complied with all requirements of Chapter 211 of the Local Government Code, Chapter 78 of the Land Development Regulations, and all other laws dealing with notice, publication and procedural requirements for the approval of a Zoning Planned Development amendment on the property;

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:

4.536 acres of land being all of Lot 1, Block 1, of the Victory Retail at FM 3040 & Morriss Addition, Denton County, Texas.

Exhibit “B” to Ordinance No. 50-91, entitled “Development Standards,” is hereby amended to add parking standards for restaurant uses located specifically within Lot 1, Block 1, of the Retail District-2 (R-2) Tract in Planned Development District No. 51 (PD-51), attached as Exhibit “A” hereto and incorporated herein.

SECTION 2

The use of the property described above shall be subject to all restrictions, terms and conditions contained in Exhibit “A,” attached hereto, as well as the applicable regulations contained in Ordinance No. 50-91, the Land Development Regulations, and all other applicable and pertinent ordinances of the Town of Flower Mound.

SECTION 3

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

SECTION 4

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

SECTION 5

Any person, firm, or corporation who violates any provision of this Ordinance as adopted by the Town Council of the Town of Flower Mound shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine as provided in Section 1-13 of the Code of Ordinances of the Town of Flower Mound. Each day any such violation or violations exist shall constitute a separate offense and shall be punishable as such.

SECTION 6

All rights and remedies of the Town of Flower Mound are expressly saved as to any and all violations of the provisions of the Land Development Regulations or any ordinances governing zoning that have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

SECTION 7

The Town Secretary of the Town of Flower Mound is hereby directed to publish the caption in the official newspaper of the Town of Flower Mound as required by Section 3.07 of the Charter of the Town of Flower Mound.

SECTION 8

This Ordinance shall take effect and be in full force from and after 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 ______________, 2017.

APPROVED:

____
Thomas E. Hayden, **MAYOR**

ATTEST:

____
Theresa Scott, **TOWN SECRETARY**

EXHIBIT "A"

II. DEVELOPMENT STANDARDS – Tract 2, R-2, Retail-2

1. PERMITTED USES – As allowed in Retail District-2 (R-2).

2. Curb cuts will be limited to two (2) on the western boundary and two (2) on the southern boundary.

3. Within Lot 1, Block 1, parking for "Storefront Restaurant" uses, as defined below, will be subject to the following standard. All other restaurant uses will comply with the parking standards in the Town of Flower Mound Code of Ordinances.

    a. **Storefront Restaurant** = 1 parking space per 250 square feet
    This use includes businesses that do not have seating for patrons. Establishments are for pick up and take out only. Uses shall include, but not limited to; bakery, donut shop, cake shop, smoothie shop.

From: Bill Hanks [
Sent: Monday, April 10, 2017 3:13 PM
To: Chuck Russell <chuck.russell@flower-mound.com>
Cc: Doug Powell <doug.powell@flower-mound.com>; Ryan Stewart; Robert Adams
Subject: Victory Development--Agenda tonight

Hi Chuck,

I left you a voicemail discussing our support for the zoning/parking change for the Victory development. We agree with the back-up information in the Staff report and Applicant's request, and we support the change if you can get it implemented 1) in the FM zoning/parking code as noted in your report 2) if this can't happen, your support to implement the same change in the four corners of the original SPA-9. Rosebriar truly has a mixed use development on our corner, and in our case, the fuel center does not require any parking, and with the large Kroger parking field, everything works.

Thanks.

Bill

William R. Hanks
Chief Executive Officer
Rosebriar Holdings

TOWN COUNCIL AGENDA ITEM NO. 15

REGULAR ITEM

DATE: April 17, 2017

FROM: Doug Powell, Executive Director of Development Services

ITEM: **Consider a request (MISC17-0002 - Victory Retail Parking Deviation) for a deviation to the required parking spaces in excess of 20 percent as outlined in Section 82-73, Computing parking and loading requirements, of the Code of Ordinances. The property is generally located north of Flower Mound Road and east of Morriss Road.** ***(The Planning and Zoning Commission recommended denial by a vote of 6 to 0 at its February 27, 2017, meeting.)***

BACKGROUND INFORMATION: This item was tabled indefinitely by the Town Council at its March 20, 2017, meeting. Based on the discussion at the meeting, it was requested by the Town Council that the applicant work with Town staff to address the issue by creating specific restaurant parking standards for the site through an amendment to Planned Development District No. 51 (PD-51).

A companion rezoning application (ZPD17-0002) is being brought forward for consideration on the same agenda for that purpose. If the ZPD item is approved, this MISC item needs to be closed.

ATTACHMENTS:

1. March 20, 2017, Town Council Staff Report

TOWN COUNCIL AGENDA ITEM NO. 10

REGULAR ITEM

DATE: March 20, 2017

FROM: Chuck Russell, Town Planner

ITEM: **Consider a request (MISC17-0002 - Victory Retail Parking Deviation) for a deviation to the required parking spaces in excess of 20 percent as outlined in Section 82-73, Computing parking and loading requirements, of the Code of Ordinances. The property is generally located north of Flower Mound Road and east of Morriss Road.** ***(The Planning and Zoning Commission recommended denial by a vote of 6 to 0 at its February 27, 2017, 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

LEGAL REVIEW: N/A

DRAFT MOTION: Move to approve a request (MISC17-0002 - Victory Retail Parking Deviation) for a deviation to the required parking spaces in excess of 20 percent as outlined in Section 82-73, Computing parking and loading requirements, of the Code of Ordinances.

PLANNING AND ZONING COMMISSION
AGENDA ITEM NO: 5

DATE: February 27, 2017

FROM: Chuck Russell, Town Planner

ITEM: **Consider a request (MISC17-0002 - Victory Retail Parking Deviation) for a deviation to the required parking spaces in excess of 20 percent as outlined in Section 82-73, Computing parking and loading requirements, of the Code of Ordinances. The property is generally located north of Flower Mound Road and east of Morriss Road.** ***(This item was tabled at the January 23, 2017, meeting.)***

This item was tabled at the January 23, 2017, Planning and Zoning Commission (P&Z) meeting to allow the applicant additional time to address concerns raised about the amount of on-site parking being provided and whether it would be adequate to serve the development (see staff report below). The applicant has requested to be re-scheduled for consideration and has stated:

- **They vetted the angled parking solution and did not gain any spaces**
- **They worked with the owner of Lot 2 for a shared parking agreement and got a firm no from the owner.**
- **They have been working for any potential solution and will present their case as best as possible.**

The staff report below is unchanged from the January 23, 2017, report.

I. ITEM SUMMARY

This application has been reviewed by DRC and, aside from the requested deviation, has been found to be in conformance with all applicable Town regulations.

This application will require final action by the Town Council.

II. APPLICATION ANALYSIS

The purpose of this application is to request a deviation to required parking on the subject property in accordance with Section 82-73 of the Town's Code of Ordinances. Section 82-73, entitled "Computing parking and loading requirements," states in part:

- Deviation of required spaces. The amount of parking can be reduced or increased by 20 percent. **Deviations in excess of 20 percent must be**

accompanied by a parking study and approved by the town council. Any approved parking in excess of 20 percent must be mitigated. Mitigation can be achieved by the use of pervious paving, increased landscaping, increased stormwater treatment, or other method to reduce the impact of the increased parking.

On December 15, 2014, the Town Council approved a site plan for the subject property (SP14-0023) to develop a building containing 37,600 square feet of retail and restaurant uses. The building is complete and is in the tenant finish out phase. According to the approved site plan, the tenant mix was intended to be 77.7 percent retail uses (29,370 square feet) and 22.3 percent restaurant uses (8,236 square feet).

The Town Code requires one space per 250 square feet of retail floor area and one space per 75 square feet of restaurant floor area or 229 total parking spaces based on the approved ratio. The approved site plan contains 183 parking spaces that have now been constructed, which is a 20 percent reduction in the amount of required spaces and within the 20 percent deviation allowed (see above).

The applicant is now requesting a 6.3 percent (2,550 square feet) increase in the ratio of restaurant uses to 28.6 percent (10,786 square feet) with a corresponding reduction in retail space. The total amount of required parking per the Town Code is 252 parking spaces with this increase. The request would exceed the allowable 20 percent parking deviation by 7.4 percent or 23 parking spaces. In other words, the applicant's proposed number of parking spaces would be 27.4 percent below what is required by the Town Code.

According to the applicant, the attached parking study (Attachment B(2)) concluded that 29,370 square feet retail and 8,236 square feet of restaurant uses only required 157 total parking spaces (Based on Institute of Transportation Engineers 9th Edition (ITE)). Therefore, it is the applicant's position that the Town Code requires 25 more parking spaces than what their study states is actually needed and the 23 spaces that exceed the 20 percent deviation are warranted. The applicant also stated in their Letter of Intent (Attachment A(2)) that "the impervious area has already been mitigated for this site with the original site plan and corresponding civil construction documents".

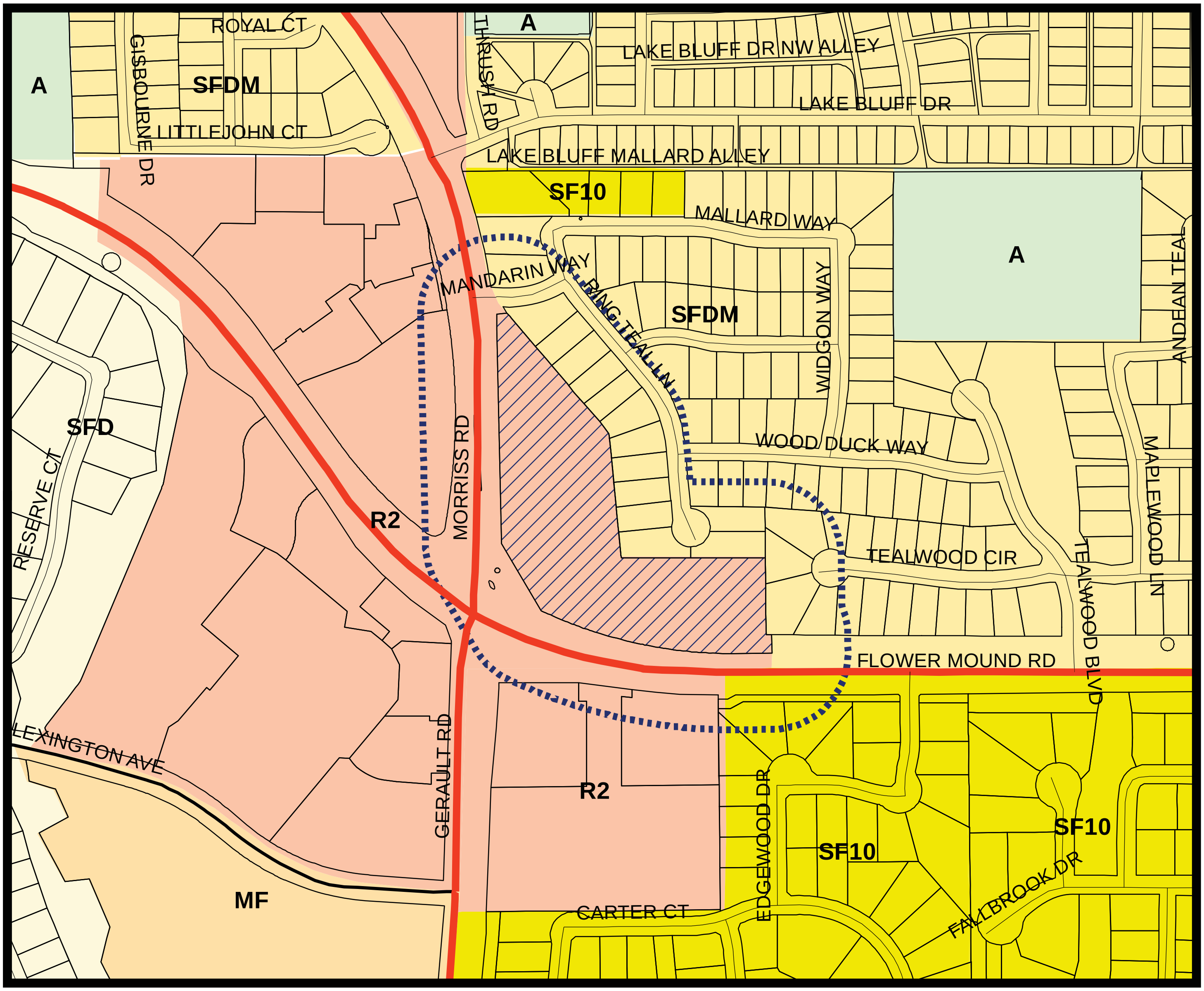
III. ATTACHMENTS

A. Background Information
1. Vicinity Map
2. Letter of Intent

B. Application Details
1. Approved Site Plan
2. Parking Study

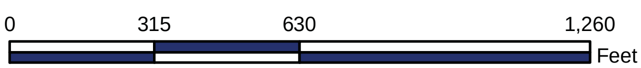
Vicinity Map

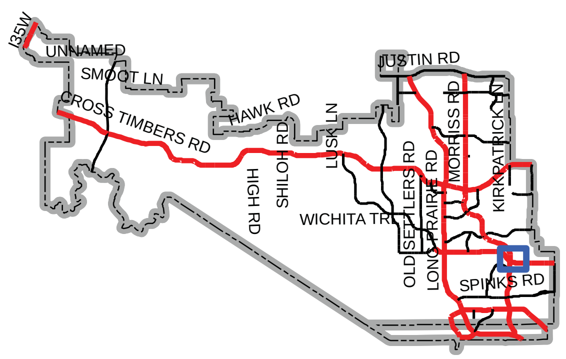
Reference Project: MISC17-0002



LEGEND

- Retail 2
- Multi-Family
- Single Family Density Medium
- Single Family 10
- Single Family Density
- Agriculture
- Subject Property





Map Location

January 17, 2017

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

RE: Victory @ FM 3040 Parking Analysis Waiver
Lot 2, Block 1, Victory Retail at FM 3040 & Morriss Addition

Dear Ms. Srinarasi:

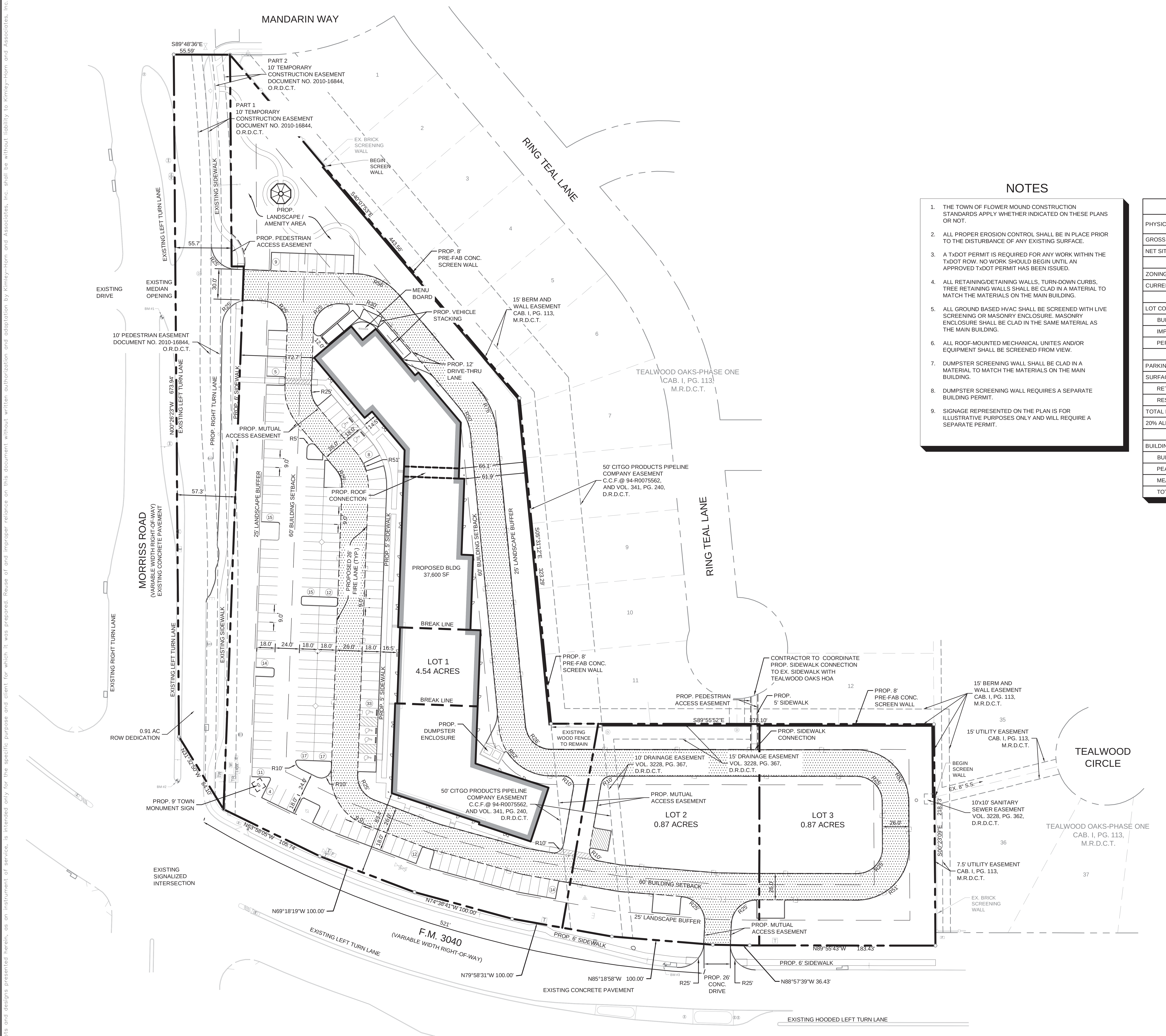
On behalf of the owner and developer of 0.87 acres along FM 3040 in Flower Mound, Texas, I would like to submit a parking analysis and a formal request for parking waiver. The parking has already been constructed for this site. The waiver request would simply be based on the specific uses within the building and how they are calculated. A parking study has been performed and uses the Urban Land Institute of Traffic Engineers standards. The impervious area has already been mitigated for this site with the original site plan and corresponding civil construction documents.

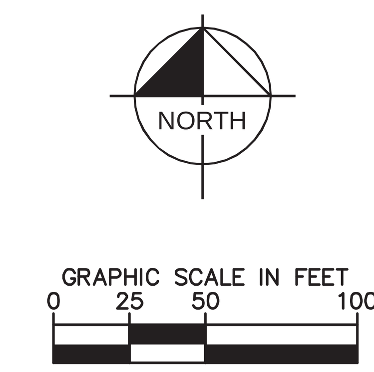
Please don't hesitate to contact me at 817-488-4960 if you have any questions.

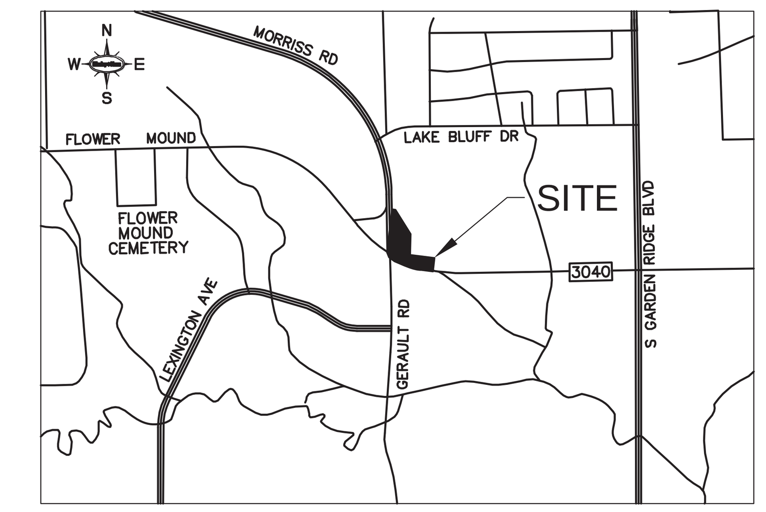
Sincerely,

Patrick Filson, P.E.

Attachment B(1): Approved Site Plan







VICINITY MAP

N.T.S.

NOTES

1. THE TOWN OF FLOWER MOUND CONSTRUCTION STANDARDS APPLY WHETHER INDICATED ON THESE PLANS OR NOT.
2. ALL PROPER EROSION CONTROL SHALL BE IN PLACE PRIOR TO THE DISTURBANCE OF ANY EXISTING SURFACE.
3. A TxDOT PERMIT IS REQUIRED FOR ANY WORK WITHIN THE TxDOT ROW. NO WORK SHOULD BEGIN UNTIL AN APPROVED TxDOT PERMIT HAS BEEN ISSUED.
4. ALL RETAINING/DETAINING WALLS, TURN-DOWN CURBS, TREE RETAINING WALLS SHALL BE CLAD IN A MATERIAL TO MATCH THE MATERIALS ON THE MAIN BUILDING.
5. ALL GROUND BASED HVAC SHALL BE SCREENED WITH LIVE SCREENING OR MASONRY ENCLOSURE. MASONRY ENCLOSURE SHALL BE CLAD IN THE SAME MATERIAL AS THE MAIN BUILDING.
6. ALL ROOF-MOUNTED MECHANICAL UNITES AND/OR EQUIPMENT SHALL BE SCREENED FROM VIEW.
7. DUMPSTER SCREENING WALL SHALL BE CLAD IN A MATERIAL TO MATCH THE MATERIALS ON THE MAIN BUILDING.
8. DUMPSTER SCREENING WALL REQUIRES A SEPARATE BUILDING PERMIT.
9. SIGNAGE REPRESENTED ON THE PLAN IS FOR ILLUSTRATIVE PURPOSES ONLY AND WILL REQUIRE A SEPARATE PERMIT.

SITE DATA TABLE

PHYSICAL ADDRESS	NEC OF MORRISS ROAD AND F.M. 3040	
GROSS SITE AREA	5.45 AC. / 237,461 S.F.	
NET SITE AREA	4.54 AC. / 197,606 S.F.	
ZONING	RETAIL - 2	
CURRENT USE	PD - 51 FOR RETAIL - 2 USES	
LOT COVERAGE DATA		
BUILDING COVERAGE	19.0% / 37,605 S.F.	
IMPERVIOUS AREA	63.1% / 124,642 S.F.	
PERVIOUS AREA	36.9% / 72,964 S.F.	
PARKING SUMMARY	REQUIRED	PROVIDED
SURFACE PARKING		
RETAIL: 77.7%	117	
RESTAURANT: 22.3%	112	
TOTAL PARKING	229	183
20% ALLOWANCE	183	
BUILDING DATA		
BUILDING	1 STORY	
PEAK HEIGHT	32 FEET	
MEAN HEIGHT	21 FEET	
TOTAL SQUARE FOOTAGE	37,600 S.F.	

LEGEND

PROPERTY LINE	
FIRE LANE STRIPING	FL
SETBACK (BUILDING AND LANDSCAPE)	
FIRE LANE HATCH	
PARKING COUNT	15

DEVELOPER:

VICTORY @ FM 3040, LLC
825 WEST ROYAL LANE
SUITE 250
IRVING, TX 75039
CONTACT: KRIS RAMJI, MANAGER
PHONE: 972-707-9555

ENGINEER:

KIMLEY-HORN AND ASSOCIATES, INC.
12750 MERIT DR
SUITE 1000
DALLAS, TX 750251
CONTACT: JOSEPH HELMBERGER, P.E.
PHONE:972-770-1329

REVIEWED
TOWN OF FLOWER MOUND
Released for Construction
Date________________

____
Town of Flower Mound
Engineering Services Division

THE FOLLOWING REPRESENTS THE APPROVED DOCUMENT / GRAPHIC
P & Z 12/08/2014
T C 12/15/2014
SEE FILE FOR CONDITIONS SP14-0023

811 Know what's below. Call before you dig.

CAUTION!!
CONTRACTOR IS TO VERIFY PRESENCE AND EXACT LOCATION OF ALL UTILITIES PRIOR TO CONSTRUCTION.

No.	REVISIONS	DATE	BY

Kimley»Horn
12750 MERIT DRIVE, SUITE 1000, DALLAS, TX 75251
PHONE: 972-770-1300 FAX: 972-239-3820
WWW.KIMLEY-HORN.COM TX F-928

PRELIMINARY
FOR REVIEW ONLY
Not for construction or permit purposes.
Kimley»Horn
Engineer JOSEPH E. HELMBERGER
P.E. No. 66040 Date 12/03/2014

KHA PROJECT 064475200
DATE DEC 03, 2014
SCALE AS SHOWN
DESIGNED BY JEH
DRAWN BY BAG
CHECKED BY JEH

SITE PLAN

PROPOSED MIXED USE DEVELOPMENT FOR VICTORY RETAIL @ FM 3040 & MORRISS
NEC OF MORRISS RD AND FM 3040, FLOWER MOUND, TEXAS

SHEET NUMBER
C-01

Town Council Future Agenda Items

SCHEDULED	**5/1/2017**	Presentation	Proclamation for Children's Mental Health Awareness Day
		Consent	Consider approval of the purchase of Horton C4500 Medic for the Fire and Emergency Services Department through the Texas Local Government Purchasing Cooperative Program; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of Change Order No. 5 in the amount of $14,557.08 and final acceptance with Basic IDIQ Inc., for the Western Operations and Maintenance Facility (Temporary Fire Station No. 6) project, authorization for final payment to Basic IDIQ Inc., in the amount of $69,576.31; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of Change Order No. 5, in the increased amount of $76,570.17, final acceptance of the Sagebrush Drive project, and authorization for final payment to CD Builders, Inc., in the amount of $293,428.97; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of the Construction Agreement with Northstar Construction, LLC., for the Heritage Park Phase III project, in the amount of $1,591,910.00 and selected bid options of $222,800.00, for a total not to exceed amount of $1,814,710.00; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of the minutes from a regular meeting of the Town Council held on April 17, 2017.
	5/15/2017	Presentation	National Public Works Weeks (5/21/17- 5/27/17) - Proclamation
		Consent	FM2499 12-Inch Water Line Ph III CO1 and Final Acceptance.
		Consent	Long Prairie 12-Inch Water Line CO1 and Final Acceptance.
		Consent	Heritage Park Phase III - Testing Award
		Consent	2016-2017 Playground Equipment Replacement - Oak Park.
		Consent	Consider approval of Professional Services Agreement with Kimley Horn and Associates, Inc., for the traffic signal designs of FM 2499 at College Parkway, and FM 2499 at Silveron Boulevard/Lakeside Village Boulevard, in the amount of $XX,XXX.00; and authorization for the Mayor to execute same on behalf of the Town.

SCHEDULED	**5/15/2017**	Consent	Consider approval of Professional Services Agreement with Stantec Consulting Services, Inc., for the traffic signal designs of US 377 at Canyon Falls Drive, and FM 407 at Browning - Reconstruction, in the amount of $45,330.00; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of the minutes from a regular meeting of the Town Council held on May 1, 2017.
		Regular	Bradford Park Development Agreement.
		Regular	Placeholder: Canvass May 6, 2017 Election
	6/5/2017	Consent	Lakeside Lift Station and Force Main Change Order 3 and Final Acceptance.
		Consent	Pintail Pump Station Capacity Change Order 2 & Final Acceptance.
		Consent	2016-17 CIP Amendment 5
		Consent	Town Hall GMP
		Consent	2016-17 Playground Replacement - Bluebonnet Park.
		Consent	2015 Street Reconstruction (Canterbury Lane & Superior Place)
		Consent	FM 2499 / Gerault Drainage and Intersection Construction Award.
		Consent	2016-17 Playground Replacement - Spring Meadow Park.
		Consent	Consider approval of the minutes from a regular meeting of the Town Council held on May 15, 2017.
		Consent	Consider approval of the minutes from a work session of the Town Council held on May 18, 2017.
	6/15/2017	Work Session	Presentation and discussion on the Town's floodplain standards
	6/19/2017	Consent	Shady Point Acres Water Main Replacement Construction Award.
		Consent	FM 2499 & FM 3040 Water Line Crossing Change Order 2 and Final Acceptance.
		Consent	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, 2017 and ending September 30, 2018, subject to renewal for an additional one-year term, and authorization for the Mayor to execute same on behalf of the Town.

SCHEDULED	**6/19/2017**	Consent	Oak Street Lift Station and Force Main Change Order No. 3 and Final Acceptance.
		Consent	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, 2017; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	FM 1171 @ FM 2499 Eastbound Right Turn Lane Construction Award.
	8/7/2017	Consent	Consider accepting the submission of the certified collection rate of 100 percent for the fiscal year beginning October 1, 2017, and ending September 30, 2018.
		Consent	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, 2017, and ending September 30, 2018.
		Consent	Consider proposing a maximum tax rate of $0._____ per $100 valuation for the fiscal year beginning October 1, 2017, and ending September 30, 2018; and scheduling August 21, 2017, public hearings on the budget and tax rate, September 5, 2017, public hearing on the tax rate, and scheduling the September 18, 2017, 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 21, 2017, on the Flower Mound Fire Control, Prevention, and Emergency Medical Services District budget and to schedule a meeting for September 18, 2017, 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 21, 2017, on the Flower Mound Crime Control and Prevention District budget and to schedule a meeting for September 18, 2017, 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 an ordinance establishing the 2017 certified appraisal roll.
	8/17/2017	Work Session	Hold a discussion and provide direction regarding the FY 2017-2018 Proposed Budget, including Community Support funding.
	8/21/2017	Regular	Public Hearing to consider the proposed budget for the fiscal year beginning on October 1, 2017, and ending on September 30, 2018.

SCHEDULED	**8/21/2017**	Regular	Public Hearing to consider a tax rate of $0._____ per $100 assessed valuation.
		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, 2017, and ending on September 30, 2018.
		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, 2017, and ending on September 30, 2018.
	9/5/2017	Regular	Public Hearing to consider a tax rate of $0._____ per $100 assessed valuation.
	9/18/2017	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, 2017, and ending on September 30, 2018.
		Regular	Consider approval of an ordinance fixing and levying municipal ad valorem taxes for the fiscal year beginning on October 1, 2017 and ending on September 30, 2018, 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, 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, 2017, and ending on September 30, 2018.
		Regular	Consider approval of an ordinance adopting the budget for the fiscal year beginning on October 1, 2017, and ending on September 30, 2018, and making appropriations for each fund and department.
FUTURE		Presentation	Public Information Act and Open Records Request review and discussion.
		Consent	Fire Station #7 Design Award.