

AGENDA

FLOWER MOUND TOWN COUNCIL REGULAR MEETING

7/17/2017

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."

Led by Flower Mound High School's AFJROTC

D. **PRESENTATIONS**

1. Proclamation for Town of Flower Mound 'Purple Heart Town' designation.

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).

**Town Council Meeting Agenda
July 17, 2017
Page 2**

I. COORDINATION OF CALENDARS

1. The next Town Council regular meeting is a scheduled for Monday, August 7, 2017.
2. Discuss and reschedule date options for the Strategic Planning Session.

J. CONSENT AGENDA - Consent Items

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

1. **Minutes 6/19-** Consider approval of the minutes from a regular meeting of the Town Council held on June 19, 2017.
2. **Amending SPAN agreement-** Consider approval of Amendment No. 1 to the Service Agreement for Demand Response Transit Service, with SPAN, Inc., for an increase of \$6,289.92; and authorization for the Mayor to execute same on behalf of the Town.
3. **Budget Amendment #5-** 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 No. 70-16, 02-17, 10-17 and 17-17 for adjustments to the General Fund and the Utility Fund.
4. **Storm damage vehicle repairs-** Consider approval of issuing a purchase order for repairs to Town vehicles that have external body and/or hail damage from the March and April 2017 storms, in the amount of \$290,407.26.
5. **Digital scanner and software-** Consider approval of the purchase Fed Submit (Criminal) Palm Scan Print Pack for Police Services from Mentalix, through the GSA Advantage cooperative purchasing program, in the amount of \$24,036.00.
6. **Axon Body Worn Camera-** Consider approval of an agreement with Axon Enterprise, Inc., for the trial use of body worn camera products; and authorization for the Mayor to execute same on behalf of the Town.
7. **Lakeside Water Reuse System Master Plan-** Consider approval of award of the engineering services to Alan Plummer Associates, Inc. for the Lakeside Business District – Water Reuse Master Plan project, in the amount of \$118,173.00; and authorization for the Mayor to execute same on behalf of the Town.
8. **FM2499 Roadway testing-** Consider approval of the award of material testing services to Globe Engineers, Inc. for the FM 2499 Roadway, Drainage, and Traffic Signal Improvements project, in the amount of \$41,360.00; and authorization for the Mayor to execute same on behalf of the Town.
9. **Bakers Branch Collector design award-** Consider approval of a Professional Services Agreement for the design phase services of the Bakers Branch Collector Phase II project, with Kimley-Horn and Associates, Inc., for \$120,000.00; and authorization for the Mayor to execute same on behalf of the Town.
10. **Asphalt overlay services-** Consider approval of the purchase of asphalt overlay services from Reynolds Asphalt & Construction Company, through a City of Grand Prairie contract #16112, in the estimated annual amount of \$225,000.00.

Town Council Meeting Agenda

July 17, 2017

Page 3

11. **FM 2499 @ FM 3040 water line-** Consider approval of Change Order No. 2 and final acceptance of the FM 2499/FM3040 24-inch Water Line Crossing Replacement project, amending the contract with Mountain Cascade of Texas LLC, for a decrease to the contract in the amount of \$14,638.22, and authorization of final payment to Mountain Cascade of Texas LLC, in the amount of \$22,076.23; and authorization for the Mayor to execute same on behalf of the Town.
12. **FM 1171 @ FM 2499 turn lane-** Consider approval to award Bid No. 2017-76 to Axis Contracting, Inc., for the FM 1171 at FM 2499 Eastbound Right Turn Lane project, in the amount of \$426,276.25; and authorization for the Mayor to execute same on behalf of the Town.
13. **Twin Coves fee waiver-** Consider a request to waive certain fees associated with the use of Twin Coves Park amenities and finding a public purpose for such waiver.
14. **Gibson Grant cabin-** Consider approval a Professional Services Agreement for preservation planning and architectural services for the Gibson-Grant Cabin project to Quimby McCoy Preservation Architecture, LLP, in the amount of \$35,000; and authorization for the Mayor to execute same on behalf of the Town.
15. **Sidewalk Replacement Program-** Consider approval of the award of Bid No. 2017-87 Annual Sidewalk Replacement Program to (Contractor), at the unit prices bid, in the estimated annual amount of \$100,000.00; and authorization for the Mayor to execute same on behalf of the Town.

K. REGULAR ITEMS

16. **Local control / tree preservation-** Consider approval of a resolution opposing the legislative curtailment of local control / tree preservation authority; reaffirming home rule control and local governance.
17. **Public Hearing-ZPD-Lakeside Crossing-** Public Hearing to consider a request for rezoning (ZPD17-0001 - Lakeside Crossing) from Agricultural District (A) and a portion of Planned Development District No. 31 (PD-31) to Planned Development District No. 153 (PD-153) for both residential and non-residential uses in compliance with the Campus Commercial land use designation within the Lakeside Business District Area Plan, including a Comprehensive Sign Package, with certain modifications and exceptions to the Code of Ordinances, and with an exception to the Architectural Standards of the Town's Urban Design Plan for meritorious design, and to consider adopting an ordinance providing for said amendment, and acceptance of cash in lieu of land in the amount of \$189,504.00 in place of the otherwise required Park Land dedication and Park Development Fees in the amount of \$20,820.00. The property is generally located south of Lakeside Parkway along and between Long Prairie Road and Northwood Drive. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its May 8, 2017, meeting.)
18. **Public Hearing-Lakeside 380 Agreement-** Public Hearing to consider approval of a Chapter 380 Agreement between the Town of Flower Mound and Newstream Hotels & Resorts, LLC, and authorization for the Mayor to execute same on behalf of the Town.

Town Council Meeting Agenda
July 17, 2017
Page 4

19. **Certificates of Obligation-** Consider approval of an ordinance authorizing the issuance of the Town of Flower Mound, Texas, Certificates of Obligation, Series 2017A, establishing parameters for the sale and issuance of such bonds, delegating certain matters to an authorized official of the Town and resolving all matters incident and related thereto.
20. **General Obligation Refunding Bonds-** Consider approval of an ordinance authorizing the issuance of the Town of Flower Mound, Texas, General Obligation Refunding Bonds, Series 2017, establishing parameters for the sale and issuance of such bonds, delegating certain matters to an authorized official of the Town and resolving all matters incident and related thereto.
21. **Pond dredging-** Consider approval to award Bid No. 2017-81 to Shirley and Sons Construction Co., Inc. for the Rheudasil, Wilkerson, and Cortadera Park Pond Improvements project, in the amount of \$2,606,566.00; and authorization for the Mayor to execute same on behalf of the Town.
22. **Board and commission appointments-** Discuss and consider a process to use for board & commission appointments, including current members, and new/past applicants.

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. Discuss and consider economic development incentives, including retail centers, corporate relocation/expansion/retention, hospitality projects, and performance related to certain incentive agreements.
- c. Discuss and consider purchase, exchange, lease or value of real property for parks, public rights of way, and/or other municipal purposes and all matters incident and related thereto.
- d. Consultation with Attorney as follows:
 1. Ordinance 33-00, establishing Planned Development District No. 31

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.

**Town Council Meeting Agenda
July 17, 2017
Page 5**

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: July 13, 2017, at 3:20 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: July 17, 2017

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a regular meeting of the Town Council held on June 19, 2017.

BACKGROUND INFORMATION: The Town Council held a regular meeting on June 19, 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 June 19, 2017.

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 19TH DAY OF JUNE 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/06192017-1298> (subject to change)

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

Tom Hayden	Mayor
Don McDaniel	Mayor Pro Tem
Kevin Bryant	Deputy Mayor Pro Tem
Bryan Webb	Councilmember Place 2
Claudio Forest	Councilmember Place 5

with the following member absent:

Jason Webb	Councilmember Place 1
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constituting a quorum with the following members of the Town Staff participating:

Theresa Scott	Town Secretary
Bryn Meredith	Town Attorney
Jimmy Stathatos	Town Manager
Debra Wallace	Deputy Town Manager/CFO
Tommy Dalton	Assistant Town Manager
Doug Powell	Executive Director of Development Services
Ken Parr	Executive Director of Public Works
Chuck Jennings	Director of Parks and Recreation
J.P. Walton	Intern, Town Manager's Office

A. CALL REGULAR MEETING TO ORDER

Mayor Hayden called the regular meeting to order at 6:01p.m.

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

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

D. PRESENTATIONS

1. Proclamation for National Parks and Recreation Month

Mr. Jennings accepted the proclamation and provided background information about the parks department.

2. Certificate of Achievement for Flower Mound High School's Water Polo Team

Members of the Flower Mound High School Water Polo Teams accepted the certificates of achievement and provided background information about the competition.

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.	Jody Smith, 3705 Sarah Springs	Fruitvale initiative
2.	Mary Kay Walker, 3229 Oak Meadow Dr	Youth and Family Counseling; Senior Center health fair
3.	Akshay Durvasula, 4133 Sandra Lynn Dr	Climate Report Card
4.	Samuel E Shotts, 2221 Cross Timbers, Ste 117 (business); 3210 Shoreview Dr, Highland Village with the following individual donating their time: 1) Katy Grote, 165 Double Oak, Double Oak 2) Janvier Scott, 2828 Bob White Ln 3) Shyron Shenko, 5001 Rippy Rd 4) Nathaniel Katz, 4901 Timberview Dr 5) Kim Katz, 4901 Timberview Dr 6) Mike Doyle, 920 Drake Tr 7) Jeff Strathmann, 2612 Belmont Ct 8) Cathy Strathmann, 2612 Belmont Ct 9) KC Walsh, 3525 High Rd	RFP Consideration

F. ANNOUNCEMENTS

Mayor Hayden provided background information regarding the Fruitvale initiative.

Deputy Mayor Pro Tem Bryant announced that the Town will have a special recognition at the July 17th Council meeting for veterans who were awarded the purple heart.

Mr. Forest reported on the basketball game held at the YMCA with the Town's first responders and wounded warriors.

G. TOWN MANAGER'S REPORT

Mr. Stathatos provide an update and discussion on:

1. Capital improvement projects:
 - 2499 roadway drainage improvements
 - Bruton Orand elevated storage tank
2. Economic Development projects:
 - Order Talk now has their certificate of occupancy (Parker Square)
 - CTDI is expanding again in the Lakeside Business District
 - Bound Tree medical taking part of the previous Striker facility
 - The market at Lakeside is close to being finished in Lakeside
 - Mi Dia is anticipated to be open in mid-July

3. New town hall and library expansion:
 - Town Hall ground breaking took place today and will be substantially complete at 15 months
 - At their 6/19 meeting the TIRZ Board recommended that the Town Council use TIRZ funds for a library expansion

4. Presentation and discussion of the 2017 Citizen Survey

Mr. Walton gave a presentation on the survey results including:

- Response rates
- Overall quality of life
- Focus areas
- Quality of town services
- Improved services
- Items to monitor
- Summary

And he responded to questions from Council as follows:

Mayor Hayden requested a copy of the full survey report be sent to the entire Council, including a compilation of the results, in addition to all of the comments.

Crossing Guards (Statements of Fact in response to public inquiries):

Mr. Stathatos reported that all but four to five crossing guards have signed on with the new crossing guard company and normally five to six people leave through attrition anyway.

Mayor Hayden indicated that Council received several emails from a Highland Village resident who had questions about the issuance of a contract with All Cities Management Services for crossing guard services. Mr. Meredith or Mr. Stathatos provided statements of fact related to the bid process or legal issues that were raised in those emails.

Legislative Update:

Mr. Stathatos provided a statement of fact to Mayor Hayden as it relates to legislation and the associated potential impact on the Town's Tree Ordinance. Mayor Hayden added that he would like the Town to initiate a resolution, showing the Town's position that protects the environment and trees. In addition, there was council discussion to reach out to the Texas Municipal League, and make it a collective effort with neighboring cities to present the resolution to Austin on the same day. In addition, residents were encouraged to reach out to their state representatives to voice their concerns about the importance of protecting the ordinances that the Town has in place, such as the tree ordinance.

H. FUTURE AGENDA ITEMS

1. There was Council consensus to draft a resolution for the next council meeting regarding emphasis on local control, including support of the Town's tree ordinance.
2. Mayor Hayden indicated he would like the Town Attorney to provide a brief report that outlines the Town's legalities as it relates to denial of tree removal permit applications.

I. COORDINATION OF CALENDARS

Mayor Hayden announced that the next Town Council regular meeting is scheduled for Monday, July 17, 2017.

J. CONSENT ITEMS

1. Consider approval of the minutes from a regular meeting of the Town Council held on June 5, 2017.

RECOMMENDATION: Move to approve the minutes from a regular meeting of the Town Council held on June 5, 2017.

2. 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.

RECOMMENDATION: Move to approve 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.

3. 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.

RECOMMENDATION: Move to approve an 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.

4. Consider approval of an Interlocal Cooperation Agreement with Denton County for the collection of assessments for River Walk Public Improvement District No. 1 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.

RECOMMENDATION: Move to approve an Interlocal Cooperation Agreement with Denton County for the collection of assessments for River Walk Public Improvement District No. 1 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.

5. Consider approval of the purchase of one ambulance for the Fire and Emergency Services Department from Siddons-Martin Emergency Group, through the Houston-Galveston Area Council of Governments (H-GAC) cooperative purchasing program, in the total amount of \$ 273,577.00; and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Move to approve the purchase of one ambulance for the Fire and Emergency Services Department from Siddons-Martin Emergency Group, through the Houston-Galveston Area Council of Governments (H-GAC) cooperative purchasing program, in the total amount of \$ 273,577.00; and authorization for the Mayor to execute same on behalf of the Town.

6. Consider approval of revisions to Article IV, "Impoundment," of Chapter 6, "Animals," of the Code of Ordinances, Town of Flower Mound.

RECOMMENDATION: Move to approve revisions to Article IV, "Impoundment," of Chapter 6, "Animals," of the Code of Ordinances, Town of Flower Mound.

ORDINANCE NO. 21-17

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING ARTICLE IV, "IMPOUNDMENT," OF CHAPTER 6, "ANIMALS," OF THE CODE OF ORDINANCES, TOWN OF FLOWER MOUND, TEXAS; PROVIDING THAT THE TOWN IS DEEMED THE OWNER OF IMPOUNDED ANIMALS NOT REDEEMED WITHIN FIVE DAYS OF IMPOUNDMENT; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

7. Consider approval of a resolution granting the Flower Mound Police Department permission to request to use Federal Equitable Sharing funds to purchase a Wheeled Armored Rescue Vehicle, and authorizing submission of the required justification letter to the Federal Government.

RECOMMENDATION: Move to approve a resolution granting the Flower Mound Police Department permission to request to use Federal Equitable Sharing funds to purchase a Wheeled Armored Rescue Vehicle, and authorizing submission of the required justification letter to the Federal Government.

RESOLUTION NO. 09-17

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

8. Consider approval of the purchase of traffic signal poles, in the estimated annual amount of \$80,000.00, from Structural & Steel Products, Inc., through a City of McKinney contract.

RECOMMENDATION: Move to approve the purchase of traffic signal poles, in the estimated annual amount of \$80,000.00, from Structural & Steel Products, Inc., through a City of McKinney contract.

9. Consider approval of a Professional Services Agreement with Alliance Geotechnical Group, for the 2015 Street Reconstruction project, for Superior Place & Canterbury Lane Reconstruction, in the amount of \$24,926.50; and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Move to approve a Professional Services Agreement with Alliance Geotechnical Group, for the 2015 Street Reconstruction project, for Superior Place & Canterbury Lane Reconstruction, in the amount of \$24,926.50; and authorization for the Mayor to execute same on behalf of the Town.

10. Consider approval to award Bid No. 2017-35 to 3D Paving & Contracting, LLC., for the 2015 Street Reconstruction project, for Superior Place & Canterbury Lane Reconstruction, in the amount of \$888,677.00; and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Move to approve award Bid No. 2017-35 to 3D Paving & Contracting, LLC., for the 2015 Street Reconstruction project, for Superior Place & Canterbury Lane Reconstruction, in the amount of \$888,677.00; and authorization for the Mayor to execute same on behalf of the Town.

11. Consider approval of a Professional Services Agreement with Alan Plummer Associates, Inc., to prepare a detailed design plans and specifications for the Wastewater Treatment Plant Rehabilitation Phase IV, Solids Facility Improvements Part 2 Project, in the amount of \$623,681.00; and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Move to approve a Professional Services Agreement with Alan Plummer Associates, Inc., to prepare a detailed design plans and specifications for the Wastewater Treatment Plant Rehabilitation Phase IV, Solids Facility Improvements Part 2 Project, in the amount of \$623,681.00; and authorization for the Mayor to execute same on behalf of the Town.

12. Consider approval of the purchase and installation of the 2016-17 Playground Replacements project, for the Spring Meadow Park Playground, from Childs Play, Inc., through the Texas Local Government Purchasing Cooperative, in the amount of \$237,973.00.

RECOMMENDATION: Move to approve the purchase and installation of the 2016-17 Playground Replacements project, for the Spring Meadow Park Playground, from Childs Play, Inc., through the Texas Local Government Purchasing Cooperative, in the amount of \$237,973.00.

13. Consider approval of Amendment No. 5 to the Fiscal Year 2016-2017 Capital Improvement Program.

RECOMMENDATION: Move to approve Amendment No. 5 to the Fiscal Year 2016-2017 Capital Improvement Program.

14. Consider approval of a Professional Services Agreement with Kleinfelder Inc., for construction testing of materials and methods for Town Hall project, in the not to exceed amount of \$128,132.00; and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Move to approve a Professional Services Agreement with Kleinfelder Inc., for construction testing of materials and methods for Town Hall project, in the not to exceed amount of \$128,132.00; and authorization for the Mayor to execute same on behalf of the Town.

Mayor Pro Tem McDaniel moved to approve by consent Items 1 - 14. Councilmember Forest seconded the motion. Each item, as approved by consent, is restated above along with the approved recommendation, and if applicable, the Ordinance or Resolution caption for each, for the record.

VOTE ON MOTION:

AYES: FOREST, BRYANT, MCDANIEL, B WEBB

NAYS: NONE

ABSENT: J WEBB

Motion passed

K. REGULAR ITEMS

15. Public Hearing to consider a request for rezoning (ZPD17-0005 – Hillside of Flower Mound) to amend Planned Development District No. 143 (PD-143) by amending the development standard related to maximum lot coverage, and to consider adopting an ordinance providing for said amendment. The property is generally located south of Cross Timbers Road and west of Shiloh Road. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its June 12, 2017, meeting.)

Staff Presentation

Mr. Powell gave a presentation identifying or noting:

- General and detailed location
- Land use and zoning
- Photographs of the site
- Site plan and amendment request
- Code of Ordinances Section 98-1029 and 98-1032
- Comparison table (standard, original request, revised request)
- Summary of P & Z discussion

and he responded to questions from Council as follows:

- If the cap remains on the lot
- Clarification regarding the classification of accessory structure
- Has this type of request been done before for an entire development
- Clarification regarding the revised request as it relates to the primary structure

Applicant Presentation

Reginald Rembert, 3625 Bonanza Ln, Flower Mound

Mr. Rembert provided background information as to what they are coming forward with the request, and what the original intent was.

Mayor Hayden opened the Public Hearing at 7:42 p.m. No one spoke in support or opposition. Mayor Hayden closed the Public Hearing at 7:42 p.m.

Councilmember Bryan Webb moved to approve a request for rezoning (ZPD17-0005 – Hillside of Flower Mound) to amend Planned Development District No. 143 (PD-143) by amending the development standard related to maximum lot coverage, and to consider adopting an ordinance providing for said amendment. The property is generally located south of Cross Timbers Road and west of Shiloh Road. Deputy Mayor Pro Tem Bryant seconded the motion.

ORDINANCE NO. 20-17

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING ORDINANCE NOS. 56-15, 64-15 AND 19-16, WHICH ESTABLISHED AND LATER AMENDED PLANNED DEVELOPMENT DISTRICT NO. 143 (PD-143) ON CERTAIN PROPERTY DESCRIBED AS 43.20 ACRES OF LAND SITUATED IN THE TEXAS & PACIFIC RAILROAD COMPANY SURVEY, ABSTRACT NUMBER 1618, AND MEMPHIS, EL PASO & PACIFIC RAILROAD COMPANY SURVEY, ABSTRACT NUMBER 935, DENTON COUNTY, TEXAS; BY AMENDING EXHIBIT "B," ENTITLED "DEVELOPMENT STANDARDS," TO AMEND THE STANDARD FOR MAXIMUM LOT COVERAGE IN ACCORDANCE WITH SPECIFIC REQUIREMENTS STATED HEREIN; 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.

VOTE ON MOTION:

AYES: B WEBB, MCDANIEL, BRYANT, FOREST

NAYS: NONE

ABSENT: J WEBB

Motion passed

16. MISC-Lakeside Tower – Reconsider an appeal of a request (MISC17-0005) for a variance to Section 34-182(b)(5), entitled "Construction work," of the Code of Ordinances to allow extended hours for construction of the Lakeside Tower development. This item was previously approved at the May 15, 2017 Town Council Meeting.

Mayor Pro Tem McDaniel provided an explanation as to why he requested this item come back for reconsideration, and more specifically for the following reasons:

- Lack of preliminary notice to the impacted residents
- Pour schedule was not as agreed upon at the May 15th Council meeting
- Lack of timely pour schedule notification letters to the impacted residents

He also noted that the goal is to make sure the residents have all the information they need to adjust their lives accordingly, and that everyone is on the same page going forward.

Applicant Presentation

Jimmy Archie and Alex Brown, Realty Capital, 909 Lake Carolyn Parkway, Irving, Tx

Mr. Archie or Mr. Brown responded to questions from Council as follows:

- addressed the three concerns as identified by Mayor Pro Tem McDaniel
- the number and frequency of the concrete pours
- notification of the residents since the May 15th meeting
- what is a realistic pour schedule
- how many trucks come out for the pours
- what is the communication process when there are changes to the schedule based on rain delays, etc.
- do you anticipate pouring more than two times in a seven day period

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

- Notification requirements
- What are the consequences should there be an additional violation

Mayor Pro Tem McDaniel moved to reconsider and amend MISC17-0005 from May 15, 2017, with the following amendments:

- That the pour schedule will not exceed three times in a seven day period through the completion of the concrete pour schedule
- That Realty Capital will notify residents with 250 feet of the full pour schedule, in addition to Town staff, and endeavor to garner their full email addresses or cell phone numbers for electronic communication henceforward and will notify resident seven days prior to each of the pours and will have a follow up notification should that pour schedule change with a tertiary follow up with the new pour schedule for that scheduled pour

Councilmember Claudio Forest seconded the motion.

VOTE ON MOTION:

Motion passed

AYES: FOREST, BRYANT, MCDANIEL, B WEBB

NAYS: NONE

ABSENT: J WEBB

17. Consider a request for an exception to the Town's street design standards to allow the installation of emergency access gates at the southern terminus of Currant Way, and the proposed southern terminus of Kings Lake Drive.

Administrative Note: This item was removed from the regular agenda via a separate addendum posting since an emergency access was previously granted by Town Council at the August 20, 2012 meeting. No additional Council action was taken.

18. Consider approval of the award of Bid No. 2017-78 to Mario Sinacola & Sons Excavating, Inc., for the FM 2499 Roadway, Drainage, and Traffic Signal Improvements project, in the amount of \$6,975,634.45; and authorization for the Mayor to execute same on behalf of the Town.

Staff Presentation

Mr. Parr gave a presentation identifying or noting:

- Background information about the project, noting the drainage capacity has been inadequate for quite some time
 - Collaboration efforts that began in 2014 with four organizations for a proposed solution
 - Alignment summary options, and cooperative efforts that allowed for the proposed alignment
 - What the \$7 million covers
 - Roadway improvements associated with the project
- and he responded to questions from Council regarding:
- Ability to pool resources
 - How deep is the pipeline and what is the separation
 - What is the timing from start to finish
 - How will traffic be impacted
 - Could any work schedule restrictions be eliminated to allow the contractor to finish sooner
 - How far is the project from the apartments in Grapevine

Councilmember Bryan Webb moved to approve the award of Bid No. 2017-78 to Mario Sinacola & Sons Excavating, Inc., for the FM 2499 Roadway, Drainage, and Traffic Signal Improvements project, in the amount of \$6,975,634.45. Councilmember Forest seconded the motion.

VOTE ON MOTION:

AYES: B WEBB, MCDANIEL, BRYANT, FOREST

NAYS: NONE

ABSENT: J WEBB

Motion passed

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 8:44 p.m. on June 19, 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 9:12 p.m. on June 19, 2017, to take action on the items as follows:

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

No action taken.

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

No action taken.

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

No action taken.

- d. Consultation with Attorney as follows:

1. Regulation of alcohol sales

No action taken.

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.

O. ADJOURN REGULAR MEETING

Mayor Hayden adjourned the meeting at 9:12 p.m. on Monday, June 19, 2017, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

THOMAS E. HAYDEN, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY

DRAFT



TOWN COUNCIL AGENDA ITEM NO. 2

CONSENT ITEM

DATE: July 17, 2017

FROM: Chuck Jennings, Parks and Recreation Director

ITEM: **Consider approval of Amendment No. 1 to the Service Agreement for Demand Response Transit Service, with SPAN, Inc., for an increase of \$6,289.92; and authorization for the Mayor to execute same on behalf of the Town.**

BACKGROUND INFORMATION: On August 15, 2016, Town Council approved an annual agreement with SPAN to provide Demand Response Transit Service for TOWN citizens who are age sixty-five (65) or older and/or TOWN citizens with verifiable disabilities that prevent them from driving. The Town has utilized SPAN's services since 2005 with a gap in 2009 due to funding concerns. The approval of the amended agreement is necessary as ridership has exceeded the projected usage for FY16-17.

Per the agreement, the Town pays a fixed price of \$24.96 per one-way ride and the user pays \$5.00 per one-way ride. The budget for the program including unspent Community Development Block Grant funds from FY15-16 provided enough funds to support 132 one-way rides per month. For the year, the transportation program is averaging 146 one-way rides per month and over the last two months the number is 158 rides. The addition of \$6,289.92 will provide enough funding for SPAN to provide a maximum of 172 one-way rides per month for the remainder of the fiscal year.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: If additional funding is not approved, SPAN will be required to follow the agreement which requires them to only provide transportation service to an eligible rider needing transportation for dialysis, chemotherapy or other medically necessary treatment or therapy once that month's allotment has been exhausted and only if additional one-way trips still remain. These excess one-way trips will be deducted from the immediately following month's allotment. If no additional one-way trips remain, SPAN can provide transportation service to an eligible rider at the full cost of \$29.96 per one-way trip.

FISCAL IMPACT: \$6,289.92

Proposed Expenditure:	Account Number(s):
\$6,289.92	100-630-34300-5110

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

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

ATTACHMENTS:

1. Proposed Amendment to Agreement
2. Executed Agreement

DRAFT MOTION: Move to approve an amended Service Agreement for Demand Response Transit Service, with SPAN, Inc., for an increase of \$6,289.92; and authorization for the Mayor to execute same on behalf of the Town.

FIRST AMENDED SERVICE AGREEMENT

THIS FIRST AMENDED SERVICE AGREEMENT ("Agreement") is entered into by and between the TOWN OF FLOWER MOUND, TEXAS, located in Denton County, Texas acting by and through its duly authorized Mayor (hereinafter referred to as "TOWN"), and Special Programs For Aging Needs, Inc., known as, SPAN, INC., (hereinafter referred to as "SPAN"), a Texas non-profit corporation operating in Denton County, Texas as an organization described in Section 501(c)3 of the Internal Revenue Code, acting by and through its duly authorized Executive Director.

RECITALS

WHEREAS, TOWN and SPAN entered into a Service Agreement on August 15, 2016 ("Agreement") whereby SPAN provides Demand Response Transit Service for TOWN citizens who are age sixty-five (65) or older and/or TOWN citizens with verifiable disabilities that prevent them from driving (hereafter referred to collectively as "Eligible Riders"); and

WHEREAS, the parties wish to amend the Agreement to provide additional funding to increase the maximum allowed one way trips per month from one hundred and twenty-three (123) to one hundred and forty-four (144) one-way trips.

NOW, THEREFORE, the parties agree to amend the Agreement as follows:

Subsections a – f of Section 4 "Payment" is hereby amended to read as follows :

a. TOWN agrees to pay a reasonable fee for Demand Response Transit Service provided to Eligible Riders. Such fee for fiscal year October 1, 2016, through September 30, 2017, will be a cumulative amount not to exceed Forty-Three Thousand One Hundred Thirty Dollars and Eighty-Eight Cents (\$43,130.88) for up to a total of one thousand seven hundred twenty-eight (1,728) one-way trips for Eligible Riders, invoiced to TOWN on a monthly basis at a price per one-way trip of Twenty-Four Dollars and Ninety-Six Cents (\$24.96). Eligible Riders shall pay SPAN a price per one-way trip of Five Dollars (\$5.00) to be collected by SPAN at the time of such trip.

b. The number of one-way trips shall be limited to a maximum of one hundred and forty-four (144) one-way trips per month at a price of Twenty-Four Dollars and Ninety-Six Cents (\$24.96) per one-way trip payable by the Town.

c. EXCEPTION: If the full allotment of one hundred and forty-four (144) one-way trips has been exhausted for a particular month and additional one-way trips remain available under this Agreement SPAN may provide transportation service to an Eligible Rider needing transportation for dialysis, chemotherapy or other medically necessary treatment or therapy upon provision by the Eligible Rider to SPAN of a doctor's order documenting the need for treatment or therapy on the date such service is requested by said Eligible Rider (an "Excess One-Way Trip"). Town will pay SPAN for such Excess One-Way Trip upon submission of documentation supporting the Excess One-Way Trip

provided that funds remain available under the maximum amount of this Agreement for such purpose.

d. Excess One-Way Trips shall be deducted from the immediately following month's allotment of one hundred and forty-four (144) one-way trips.

e. If fewer than one hundred and forty-four (144) one-way trips are used in any given month the unused one-way trips from that month will accrue and be available for use during the immediately following month. If unused during the immediately following month, the accrued trips shall continue to roll forward on a monthly basis until the conclusion of the Term of this Agreement.

f. It is expressly understood and agreed that in no event under the terms of this Agreement will the total compensation to be paid hereunder exceed Forty-Three Thousand One Hundred Thirty Dollars and Eighty-Eight Cents (\$43,130.88) for all services rendered.

II.

Section 10 "Term of Agreement" is hereby amended in its entirety to read as follows:

The term of this Agreement shall be from October 1, 2016 through September 30, 2017. Either party may modify this Agreement by submitting, in writing, the proposed amendment to be considered and executed by both parties. This Agreement may be terminated with or without cause by either party by giving thirty (30) days written notice to the other party of their intent to terminate the Agreement. In the event the Town terminates without cause, SPAN shall be entitled to receive just and equitable compensation for any satisfactory work completed in accordance with this Agreement and prior to the termination. This Agreement shall automatically terminate upon the exhaustion of the one thousand seven hundred twenty-eight (1,728) one-way trips provided for by this Agreement or the payment of Forty-Three Thousand One Hundred Thirty Dollars and Eighty-Eight Cents (\$43,130.88) by Town to SPAN.

III.

All other terms and conditions of the Agreement shall remain unchanged.

IN WITNESS WHEREOF, the parties have hereunto set their hands by their representatives duly authorized on the day and year first written above.

TOWN OF FLOWER MOUND, TEXAS

By: _____
Thomas E. Hayden, Mayor

ATTEST:

SPAN, INC.

By: _____
Deborah Robertson, Executive Director
SPAN, INC.

By: _____
Theresa Scott, Town Secretary

STATE OF TEXAS §

COUNTY OF DENTON §

SERVICE AGREEMENT FOR DEMAND RESPONSE TRANSIT SERVICE

THIS SERVICE AGREEMENT ("Agreement") is entered into by and between the Town of Flower Mound, Texas, located in Denton County, Texas, acting by and through its duly authorized Mayor (hereinafter referred to as "TOWN") and SPAN, Inc., (hereinafter referred to as "SPAN"), a Texas non-profit corporation operating in Denton County, Texas as an organization described in Section 501(c)3 of the Internal Revenue Code, acting by and through its duly authorized Executive Director.

WHEREAS, SPAN transportation services were developed to provide safe and efficient transportation to the general public, persons with special needs, and as defined by agreements into which SPAN may enter from time to time; and

WHEREAS, The TOWN and SPAN desire to enter into this Agreement whereby SPAN will provide Demand Response Transit Service for TOWN citizens who are age sixty-five (65) or older and/or TOWN citizens with verifiable disabilities that prevent them from driving (hereafter referred to collectively as "Eligible Riders"); and

WHEREAS, Eligible Riders in TOWN are taken anywhere in the Demand Response Transit Service area (cities include: TOWN, City of Lewisville, and City of Highland Village) at a cost to the Eligible Riders of \$5.00 per one-way ride for the limited purposes of medical treatments, doctor's and dentist's appointments, shopping for necessities, travel to and from places of employment, and participation in the TOWN'S Seniors In Motion senior citizen program; and

WHEREAS, Eligible Riders may call in at least one (1) day in advance, but no more than two (2) weeks in advance, to set-up appointments for pick-up and drop off by calling SPAN'S Transportation Office weekdays between the hours of 8:00 a.m. and 2:00 p.m.; and

WHEREAS, Demand Response Transit Service is available between the hours of 6:00 a.m. and 6:00 p.m. Monday through Friday, and such services may also be available on certain holidays depending upon SPAN's demand and staffing availability.

NOW, THEREFORE, THE TOWN AND SPAN DO HEREBY COVENANT AND AGREE AS FOLLOWS:

1. Recitals

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

2. Scope of Services

SPAN shall provide door-to-door Demand Response Transit Services to TOWN citizens who are Eligible Riders in accordance with this Agreement and SPAN's "Transportation Policy and Procedures" which is attached hereto as Exhibit "A" and incorporated herein by reference as though it were set out in its entirety ("Policy"). In the event of conflict between this Agreement and the Policy, this Agreement shall control. In performing services under this Agreement, the relationship between the TOWN and SPAN is that of an independent contractor. No term or provision of this Agreement or act of SPAN in the performance of this Agreement shall be construed as making SPAN the agent, servant, or employee of the TOWN.

3. SPAN Operations

- a. SPAN shall provide all equipment, facilities, qualified employees, training, and insurance necessary to establish a Demand Response Transit Service for the TOWN's Eligible Riders. SPAN shall further establish, operate, and maintain an accounting system for this program that will allow for a tracking of services provided to Eligible Riders and a review of the financial status of the program. SPAN shall also track and break down the information regarding the number of one-way trips it provides to Eligible Riders.
- b. The TOWN shall have the right to review the activities and financial records kept incident to the services provided to the TOWN's Eligible Riders by SPAN. In addition, SPAN shall provide monthly ridership information to the Executive Director of Community Services or his/her designee specifically identifying the number of Eligible Rider trips including rider origination, destination, and purpose.
- c. SPAN will be responsible for verifying and documenting the eligibility of riders. SPAN reserves the right to determine on an individual basis whether SPAN has the capability to safely transport a passenger. In the event that safety is compromised, SPAN may decline transportation for this person and must document the reason why service was declined.
- d. SPAN will inform riders that their trips to the doctor or dentist's office, hospital, drug store or other location may qualify as a Medicaid eligible trip. SPAN will direct potential Medicaid eligible riders to call Texas Health and Human Services toll free at 1-877-633-8747 (TTY: 1-800-735-2989) or 1-877-MED-TRIP on Monday through Friday between 8:00 a.m. and 5:00 p.m. at least two days before their appointment or trip to schedule free transportation through Medicaid.

4. Payment

- a. TOWN agrees to pay a reasonable fee for Demand Response Transit Service provided to Eligible Riders. Such fee for fiscal year October 1, 2016, through September 30, 2017, will be a cumulative amount not to exceed Thirty-Six Thousand Eight Hundred Forty Dollars and Ninety-Six Cents (\$36,840.96) for up to a total of one thousand fourteen hundred seventy-six (1,476) one-way trips for Eligible Riders, invoiced to TOWN on a monthly basis at a price per one-way trip of Twenty-Four Dollars and Ninety-Six Cents (\$24.96). Eligible Riders shall pay SPAN a price per one-way trip of Five Dollars (\$5.00) to be collected by SPAN at the time of such trip.
- b. The number of one-way trips shall be limited to a maximum of one hundred and twenty-three (123) one-way trips per month at a price of Twenty-Four Dollars and Ninety-Six Cents (\$24.96) per one-way trip payable by the Town.
- c. EXCEPTION: If the full allotment of one hundred and twenty-three (123) one-way trips has been exhausted for a particular month and additional one-way trips remain available under this Agreement SPAN may provide transportation service to an Eligible Rider needing transportation for dialysis, chemotherapy or other medically necessary treatment or therapy upon provision by the Eligible Rider to SPAN of a doctor's order documenting the need for treatment or therapy on the date such service is requested by said Eligible Rider (an "Excess One-Way Trip"). Town will pay SPAN for such Excess One-Way Trip upon submission of documentation supporting the Excess One-Way Trip provided that funds remain available under the maximum amount of this Agreement for such purpose.
- d. Excess One-Way Trips shall be deducted from the immediately following month's allotment of one hundred and twenty-three (123) one-way trips.
- e. If fewer than one hundred and twenty-three (123) one-way trips are used in any given month the unused one-way trips from that month will accrue and be available for use during the immediately following month. If unused during the immediately following month, the accrued trips shall continue to roll forward on a monthly basis until the conclusion of the Term of this Agreement.
- f. It is expressly understood and agreed that in no event under the terms of this Agreement will the total compensation to be paid hereunder exceed Thirty-Six Thousand Eight Hundred Forty Dollars and Ninety-Six Cents (\$36,840.96) for all services rendered.
- g. It is further understood and agreed that the service provided hereunder shall be secondary to and not in lieu of or as a substitute for transportation services available through or funded by Medicare and/or Medicaid or any other program, insurance or provider.
- h. If an otherwise Eligible Rider contacts SPAN for service and the Eligible Rider's trip does not qualify for payment by the Town under this Agreement and/or there are no remaining trips or funding available under this Agreement for such trip, SPAN may offer its service to an otherwise Eligible Rider at the total cost of Twenty-Nine Dollars and Ninety-Six Cents

(\$29.96) per one-way trip within the Demand Response Transit Service area to be collected by SPAN at the time of such trip.

5. Indemnification

SPAN assumes all liability and responsibility for and agrees to fully indemnify, hold harmless and defend the TOWN, and its officials, officers, agents, servants and employees from and against any and all claims, damages, losses and expenses, including but not limited to attorney's fees, for injury to or death of a person or damage to property, arising out of or in connection with, directly or indirectly, the performance, attempted performance or nonperformance of the services described hereunder or in any way resulting from or arising out of the management, supervision, and operation of the program and activities of SPAN. In the event of joint and concurring responsibility of SPAN and TOWN, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with Texas Law, without waiving any defense of either party under Texas Law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

6. Insurance

SPAN shall obtain public liability insurance of the types and in the amounts set forth below from an insurance carrier or underwriter licensed to do business in the State of Texas and acceptable to the TOWN. SPAN shall furnish TOWN with certificates of insurance or copies of the policies, evidencing the required insurance on or before the beginning date of this Agreement. SPAN agrees to submit new certificates or policies to TOWN on before the expiration date of the previous certificates or policies. The insurance shall be the following types in amounts not less than indicated:

- a. Comprehensive General (Public) Liability Insurance or its equivalent including minimum coverage limits of \$1,000,000 per occurrence combined single limit for bodily injury and property damage.
- b. Automobile Liability Insurance including minimum coverage limits of \$1,000,000 per combined single limit for bodily injury and property damage.
- c. On all insurance required, SPAN shall require insurance providers to:
 - 1) Name the TOWN, and its officials, officers and employees, as additional insureds; and,
 - 2) Provide thirty (30) days written notice to TOWN of any material change to or cancellation of the insurance.

7. Assignment and Delegation

Neither party shall assign or delegate the rights or obligations under this Agreement without the prior written consent of the other party.

8. Severability

In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in full force and effect as to the balance of its provisions and shall be construed as if such invalid provision were not a part hereof.

9. Mediation

In the event of any dispute regarding this Agreement or the terms contained herein, the parties hereto agree that they shall submit such dispute to non-binding mediation.

10. Term of Agreement

The term of this Agreement shall be from October 1, 2016 through September 30, 2017. Either party may modify this Agreement by submitting, in writing, the proposed amendment to be considered and executed by both parties. This Agreement may be terminated with or without cause by either party by giving thirty (30) days written notice to the other party of their intent to terminate the Agreement. In the event the Town terminates without cause, SPAN shall be entitled to receive just and equitable compensation for any satisfactory work completed in accordance with this Agreement and prior to the termination. This Agreement shall automatically terminate upon the exhaustion of the one thousand fourteen hundred seventy-six (1,476) one-way trips provided for by this Agreement or the payment of Thirty-Six Thousand Eight Hundred Forty Dollars and Ninety-Six Cents (\$36,840.96) by Town to SPAN.

11. U.S. Department Of Housing And Urban Development Community Development Block Grant Funds

The services provided under this Agreement may be, in part, eligible for reimbursement from the Community Development Block Grant (CDBG) program. SPAN shall comply with all necessary requirements of the CDBG program as set forth in Exhibit "B" and incorporated herein by reference as though it were set out in its entirety. The TOWN shall assume all responsibility for CDBG submittals and required reporting, unless otherwise requested in writing to SPAN. SPAN shall provide all information necessary for TOWN to comply with CDBG requirements.

12. Applicable Law/Venue

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Texas, and venue for any claim or cause of action shall lie exclusively in Denton County, Texas or the Federal courts having jurisdiction over claims arising in Denton County, Texas.

13. Attorney's Fees and Costs

In the event it becomes necessary to take legal action to enforce the terms of this Agreement, the prevailing party in such action shall be entitled to recover attorney's fees and costs of court from the non-prevailing party.

IN WITNESS WHEREOF the Town of Flower Mound and Special Programs for Aging Needs, Inc. have executed this Agreement on this the 15 day of August, 2016.

SPAN, INC:



Deborah Robertson, Executive Director

ATTEST:



Town Secretary

TOWN OF FLOWER MOUND:



Thomas E. Hayden, Mayor

APPROVED AS TO FORM AND LEGALITY:



Town Attorney

FLOWER MOUND TRANSPORTATION POLICY AND PROCEDURES

SPAN Transit is the contracted service provider for the Town of Flower Mound. The service is reserved for individuals 65 years or older and/or with a professionally verified disability. It is the policy of SPAN that no person shall on the grounds of race, color, national origin, sex, age, disability, or income status be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation under any program or activity administered by SPAN.

Information in these policies and procedures includes the following:

- I. Description of SPAN Transit Services
- II. Application Process
- III. Disability Certification
- IV. How to Schedule a Trip
- V. SPAN Transit Fares
- VI. Aides, Companions and Animals
- VII. Wait Time, No Shows and Trip Cancellations
- VIII. Mobility Devices
- IX. Seatbelts and Restraints
- X. Passenger Behavior
- XI. Termination of Services
- XII. Grievance and Appeal Procedures
- XIII. Title VI Complaints
- XIV. Definitions
- XV. Frequently Asked Questions

For additional information, please call 940-382-1900.

I. Description of SPAN Transit Services in Flower Mound

Service is provided to individuals residing in the Town of Flower Mound to locations in Flower Mound, Lewisville, and Highland Village.

SPAN transportation service is provided by lift equipped vehicles. Operators are available to provide some assistance upon request. Operators are not trained to provide medical assistance.

Assistance includes:

- The operator will assist passenger from the door of a residence or pick-up location to the vehicle if needed.
- The operator will attempt to notify passengers of arrival.
- The operator will assist passengers in boarding and exiting the vehicle.
- The operator will deliver the passenger to the door of his/her destination.

Assistance DOES NOT include:

- Assistance getting in or out of a wheelchair.
- Assistance in getting ready for the trip.
- Administering medication or oxygen.
- Assisting passengers in wheelchairs up or down stairs.
- Assisting passengers on ramps deemed unsafe.
- Assisting in carrying personal belongings or purchases.

SPAN IS NOT AN EMERGENCY MEDICAL TRANSPORTATION SERVICE.

PLEASE NOTE THAT SPAN INC. POLICY DOES NOT ALLOW AN OPERATOR TO LOSE VISUAL CONTACT WITH THE AGENCY VEHICLE AT ANY TIME, FOR ANY REASON.

Service Hours

Trips can be scheduled for pick-up as early as 6:00 a.m. and drop off as late as 6:00 p.m., Monday through Friday. Currently, there is no weekend service. Service is provided throughout the year, except for the following observed holidays:

- | | |
|--------------------------|--------------------------|
| • New Year's Day | • Labor Day |
| • Martin Luther King Day | • Thanksgiving Day |
| • Memorial Day | • Day after Thanksgiving |
| • Independence Day | • Christmas Eve |
| | • Christmas Day |

II. APPLICATION

In order to use SPAN Transit, passengers must complete and submit an application. Applications can be obtained by calling the SPAN Dispatch Office at (940) 382-1900. Upon receipt of completed applications, please allow a maximum of 21 days to process applications. SPAN will begin processing properly completed applications immediately upon receipt. Only completed, signed applications will be considered for review. Once the application is fully completed, the signed original should be dropped off, mailed or faxed to:

SPAN
1800 Malone
Denton, TX 76201 940-383-8433 (fax)

Upon completion of review, Applicants will receive written notice via U.S. mail and may begin scheduling trips.

Reapplication Process

Passengers will need to reapply every three years from the date they are initially approved. Reapplication ensures that SPAN's files are accurate and contain up-to-date information. SPAN will notify passengers when they are due for reapplication.

III. DISABILITY CERTIFICATION

People with disabilities that meet regulatory criteria are entitled to reduced fares. In addition to the regular application, applicants must submit a properly completed Certification Form. Both documents must be received and reviewed to begin the application process to qualify for reduced-fare trips due to disability.

A licensed physician or certified human services professional familiar with the applicant's condition must sign the Certification Form verifying the disability and the applicant's functional limitations if applying for reduced-fare based upon disability. It is recommended that the Certification Form and Application be submitted at the same time in order to prevent delay of the application review. Examples of licensed or certified human service professionals include: Medical Doctor, Psychiatrist, Psychologist, Social Worker, Rehabilitation Professional, Physical/Occupational Therapist, Physician's Assistant, Nurse Practitioner, Registered Nurse.

Once all documentation is received, SPAN personnel will evaluate it and request, if necessary, any additional relevant information about the applicant's functional limitations related to transportation. The applicant will be notified in writing of eligibility upon determination.

Notice of Eligibility Determination

An applicant that is determined to be eligible for reduced-fare service due to disability will be mailed (to the address printed on the application) documentation of eligibility. The document will include the name of the eligible individual, the phone number of the SPAN dispatch office, an expiration date for eligibility, and any conditions or limitation on the individual's eligibility including the use of a personal care attendant. If the determination is that the person is not eligible, the written notification will state the specific reason(s) for the finding. All applicants have the right to appeal the initial determination of eligibility (see *Grievance and Appeal Procedures*). SPAN employees and SPAN Board of Directors will strive to maintain an accommodation process that is cooperative rather than adversarial in nature, attempt to fulfill disability eligibility requests when possible and will document any and all attempts at reasonable accommodations.

Recertification Process

Passengers with disabilities will need to recertify their eligibility every three years from the date they are initially approved. Re-certification is done to ensure that circumstances have not changed which would invalidate a passenger's eligibility. Recertification also ensures that SPAN's files are accurate and contain up-to-date information. SPAN reserves the right to re-certify eligibility at any time. SPAN will notify passengers when they are due for recertification.

IV. HOW TO SCHEDULE A TRIP

Trip Requests

1. Requests for service can be made from 8:00 AM until 2:00 PM, Monday through Friday by calling (940)-382-1900.
2. At the time of scheduling your reservation you will need to provide SPAN with your name, addresses of the pick-up/drop off points and the pick-up/drop off times. Please note that all schedule requests can be made as early as 14 days prior or as late as 1 day prior to the day of service.
3. Same day call-ins, including unscheduled requests or will-calls for return trips, will not be accepted. Bus drivers are not able to make unscheduled stops while in-route.

Scheduling

1. SPAN Transit is a shared ride, public transportation service. As such, we will attempt to schedule your pick-up time as close to your requested time as possible. Once our schedule is completed the day before your trip, **you must call us between 5:00 p.m. and 5:30 p.m. the day before your trip to obtain your scheduled pick-up time.** If the scheduled time is not acceptable to you, you may cancel your trip. (The trip must be cancelled by the day before in order to avoid a "late cancellation" or "no show" penalty. See *Failure to Meet the Bus*)
2. Because of traffic and other issues beyond our control, please note the vehicle may arrive **up to 15 minutes before or after your scheduled pick-up time** ("30-minute ready time window"). Once the bus has arrived, the driver **will not wait more than 5 minutes** for the scheduled passenger to board the bus.
3. Whenever possible, SPAN Transit will attempt to notify all passengers that the vehicle will be early or late (beyond the 30-minute window). This will allow the passenger time to make arrangements if the vehicle is unavoidably detained. If SPAN Transit does not have a telephone on record or if the number has been changed, we will not be able to notify the passenger of the change in pick-up time. It is the responsibility of the passenger to provide accurate and up-to-date contact information to SPAN. Please make sure that we have a current telephone number and address on file.
4. Only trips with scheduled pick-up times will be entered on the daily schedules.
5. Subscription service is available to a limited number of passengers that travel to the same place at the same time every week. If a passenger is afforded a subscription slot, the passenger will automatically be placed on the schedule for those trips. The passenger will not be required to schedule each trip separately; however subscription passengers are still required to call the day before (between 5 p.m. and 5:30 p.m.) to get their scheduled pick-up time for the following day, and must cancel subscription trips to avoid penalties.

V. SPAN TRANSIT FARES

Fare for SPAN Transit is established by Flower Mound and approved the SPAN Board of Directors. The current fare for Flower Mound is as follows:

- Flower Mound Trip Fare - \$5.00 per one way trip

Without exception, SPAN passengers must pay the bus driver promptly for that leg of the trip PRIOR to the vehicle's departure. Passengers shall pay the fare in exact change or with a pass. Bus drivers will not make change. Drivers may not take payment for a subsequent leg of your trip if that bus will not be providing the trip. A one way trip ("trip leg") is each boarding of the passenger onto the bus. Please note that if you purchase and use the passes identified below, you will need to use two (2) passes for each one way trip to pay the \$5.00 fare.

Passes

Passes may be purchased in books of 10 (for \$25.00) or 20 (for \$50.00) by submitting requests by mail or in person at the following location:

SPAN Administrative Office
1800 Malone
Denton, TX 76201

Requests submitted by mail should include the address to which the passes should be mailed along with appropriate payment in the form of a check or money order. Please do not mail cash.

VI. AIDES, COMPANIONS AND ANIMALS

Aides

An aide is a social services attendant or personal care assistant required to travel with a passenger. Aides ride for free; the aide must be picked up and dropped off at the same address as the passenger. Aides will need to be placed onto the schedule and the need for an aide must be indicated on the certification form in order for the aide to ride for free.

SPAN may require a passenger to supply their own aide. SPAN does not provide aides. Generally the following conditions warrant an aide:

- Incapable of self-mobility
- Unable to communicate
- Unable to handle common activities
- Unable to control his/her own actions
- Unable to remain seated and belted
- Unable to independently transfer from wheelchair
- Children under 15 years of age
- Others as reasonably determined by SPAN's Transportation Manager

Companions

A companion is anyone *other than an aide* who travels with a disability-certified passenger. Companions may accompany such passengers on a trip. A companion will be charged a fare comparable to the passenger. A companion must be picked up and dropped off at the same address as the passenger. An aide does not count as the one companion. Additional companions may accompany a passenger if space on the vehicle permits. Companions must be scheduled at the same time you call in to schedule your trip.

Animals

Guide dogs and other service animals are permitted on SPAN vehicles and allowed to accompany passengers if this need is indicated in the passenger's SPAN file. Other small animals are also allowed, but must be contained in an approved pet travel kennel and must be restrained in the kennel throughout the trip. When scheduling a trip, passengers must indicate that an animal will be accompanying the passenger.

VII. WAIT TIME, NO SHOWS AND TRIP CANCELLATION

Bus drivers will utilize the following guidelines concerning a person's failure to meet the SPAN vehicle.

Wait Time

SPAN bus drivers will not wait longer than five (5) minutes from the arrival time for passengers to board the vehicle. If the vehicle arrives within the 30-minute ready window (15 minutes before to 15 minutes after the scheduled pick-up time), the passenger must board the vehicle within five minutes of arrival time. Passengers or their associates may not ask the bus driver to delay this five-minute interval under any circumstances; this is to assure the timely pick-up and transportation of all SPAN passengers.

No Show

Failure to meet the vehicle within five minutes from the time of arrival will constitute a no-show. Also if a passenger fails to cancel their trip within 3 hours before the pick-up time it will also be considered a no-show. A passenger is allowed 2 no-shows per calendar month without penalty.

Late Cancellation

If a passenger cancels their trip on the day of service but does so **more than 3 hours** before the pick-up time it will be considered a late cancellation. A passenger is allowed 4 late cancellations per calendar month without penalty.

Penalties

- Three (3) no-shows in a 30 day period will result in the suspension of services for 1 month. If the problem continues service can be suspended indefinitely.
- Five (5) Late Cancellations in a 30 day period will result in the suspension of services for 1 month. If the problem continues service can be suspended indefinitely.
- In addition, SPAN may impose reasonable penalties for any passenger that develops a pattern or practice of missing scheduled trips

- Subscription riders that face penalties may lose their subscription slot.

VIII. MOBILITY DEVICES

SPAN vehicles, in compliance with the ADA and the Federal Code of Regulations, are designed to carry passengers utilizing wheelchairs. A wheelchair is defined as a mobility aid belonging to any class of three or more-wheeled devices, usable indoors, designed for and used by individuals with mobility impairments, whether operated manually or powered. SPAN vehicles are not designed to accommodate wheelchairs weighing 600 pounds or more when occupied by the passenger. Mobility devices that do not meet these criteria are unable to be carried on SPAN vehicles.

SPAN reserves the right to deny service if carrying the passenger would be inconsistent with legitimate safety requirements.

IX. SEATBELTS AND RESTRAINTS

SPAN provides seatbelts for all passengers. Agency policy requires that all passengers utilize them at all times for their own safety as well as the safety of other passengers. All carry-on items must be safely restrained during transport. All wheeled mobility devices must be properly secured at all times the SPAN vehicle is in operation.

X. PASSENGER BEHAVIOR

To assure the safety and comfort of all passengers and the driver, the following activities are prohibited on all vehicles and persons who engage in these activities may be refused service:

- Smoking
- Eating or drinking
- Playing personal radios unless headphones are used at a volume unable to be heard by surrounding passengers
- Consuming alcoholic beverages
- Using illegal drugs
- Using obscene or abusive language
- Violent, disruptive or threatening behavior
- Shoving, pushing, or behaving in a disorderly manner
- Causing actual or potential damage to the vehicle

SPAN reserves the right to deny service (including removing the passenger from the bus) if the situation is determined to be unsafe for the passenger, other passengers, the driver or the public.

XI. TERMINATION OF SERVICES

If a passenger does not follow guidelines and procedures involving the use of SPAN Transit, services will be terminated as follows:

- If feasible a verbal warning will be given.
- If compliance is not achieved after the verbal warning, the passenger will receive a written warning in detail concerning the area of non-compliance and possible sanctions.
- If compliance is not achieved after the written warning, the passenger will be notified in writing that his/her use of all or a portion of SPAN services is terminated, with a statement of reasons for termination.

SPAN reserves the right to immediately terminate services without prior warning if a passenger poses a safety risk to himself/herself or any other person.

XII. GRIEVANCE AND APPEAL PROCEDURES

1. Any individual has the option to appeal a suspension, termination or rate eligibility determination. Appeals must be presented in writing within 60 days. SPAN's Executive Director will first hear appeals. If the Executive Director upholds the determination, the individual may request that the matter be reviewed by a panel of SPAN board members designated by the SPAN Board Chair.
2. Once an individual requests an appeal, the SPAN board member panel will review all material submitted. SPAN service will not be suspended while the SPAN board panel is considering an appeal unless suspension or termination resulted from behavior that was determined to pose a risk to the passenger or others.
3. SPAN will notify the individual, in writing, of the Executive Director's or the board panel's ruling on all appeals. This notification will outline the ruling and the reasons for it.
4. Once the individual has been informed of the board's ruling, the determination will either be dismissed or imposed on the next day of service.
5. SPAN requires that all appeals must be made within 60 days of notification of sanctions or eligibility determination.
6. All decisions made by the SPAN board panel are considered final.

SPAN Employees and SPAN Board of Directors will strive to maintain an accommodation process that is cooperative rather than adversarial in nature, attempt to fulfill eligibility requests when possible and will document any and all attempts at reasonable accommodations.

XIII. TITLE VI COMPLAINTS

A Title VI Complaint may be filed by any individual or individuals who allege they have been subjected to discrimination or adverse impact under any SPAN program or activity based on race, religion, color, national origin, sex, age or disability.

SPAN follows the Texas Department of Transportation's Title VI complaint process. Complaint forms and informational flyers are available from SPAN's Title VI Officer (Executive Director) at SPAN's office (940-382-2224) or from TxDOT (www.TxDOT.gov, 1-866-480-2518). Complaints may be mailed to SPAN's office in Denton or directly to TxDOT's Office of Civil Rights, 125 E. 11th Street, Austin, TX 78701.

XIV. DEFINITIONS

Aide – An aide is a social services attendant or personal care assistant who accompanies a passenger to assist the passenger in utilizing SPAN's transportation service.

Companion – A companion is anyone *other than an aide* who travels with a disability-certified passenger.

Demand Response Service – Non-fixed-route shared transportation service utilizing vans or buses with passengers boarding and alighting at pre-arranged times and locations within the system's service area.

Disability – The Americans with Disabilities Act utilizes a three-pronged definition of disability. An individual with a disability is any person who:

1. Has a physical or mental impairment that substantially limits one or more major life activities,
2. Has a record of such an impairment; or
3. Is regarded as having such an impairment.

An individual must satisfy at least one of the three prongs of the above definition in order to be considered an individual with a disability.

Mobility Device – A mechanism such as a wheelchair, a walker or a scooter, designed to aid passengers with mobility impairments. They can be either manually operated or powered.

Late Cancellation – If a passenger cancels their trip on the day of service but does so **more than 3 hours** before the pick-up time it will be considered a late cancellation.

No Show – A no-show occurs when a passenger fails to cancel their trip at least 3 hours before the scheduled pick-up time or board the SPAN vehicle within 5 minutes after it arrives within the 30-minute ready-time window.

Ready Time Window – A 30 minute window from 15 minutes before to 15 minutes after the scheduled pick-up time, during which a passenger should be ready for pick-up.

Service Animals – Animals that are individually trained to perform tasks for people with disabilities, such as guiding people who are blind or who have low vision, alerting people who are deaf, pulling wheelchairs, alerting a person who is having a seizure or performing other special tasks. Service animals are working animals, not pets.

Service Area – Service is provided to individuals residing in the Town of Flower Mound to locations in Flower Mound, Lewisville, and Highland Village.

Subscription Service – An ongoing standing order is entered in SPAN's schedule for a passenger travelling to the same place at the same time each week.

Wheelchair – A mobility aid belonging to any class of 3 or 4-wheeled devices, usable indoors, designed for and used by passengers with mobility impairments. They may be either operated manually or powered.

XV. FREQUENTLY ASKED QUESTIONS

Question: What if I run late at my appointment?

Answer: It is suggested that riders over-estimate rather than under-estimate the travel and appointment times.

Question: Do I have to call each day to schedule a trip if the times and days that I travel are the same week to week?

Answer: No, subscription service is available when travel is at the same time and day each week. However, the passenger must call the evening before each trip to get the pick-up time, and when necessary, the passenger must remember to cancel a subscription ride to avoid a no-show being recorded. Three (3) cancellations within a 1-month period shall invalidate the subscription.

Question: Will I be taken directly to and from my destination?

Answer: Not necessarily. SPAN is public transportation and usually passengers share rides. Other passengers may be picked up and/or dropped off during your trip.

Question: What is the service area?

Answer: Service is provided to individuals residing in the Town of Flower Mound to locations in Flower Mound, Lewisville, and Highland Village.

Question: How many grocery bags are allowed on the bus? (Cases of drinks and large bags of pet food are not allowed)

Answer: SPAN allows each passenger to carry a maximum of 2 standard size paper grocery bags (or equivalent volume thereof in plastic bags) while riding the bus. Passengers must be able to carry groceries on and off the bus in one trip.

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS**

1. Statement of Work

During the period October 1, 2016 through September 30, 2017, the Town of Flower Mound will use Community Development Block Grant (CDBG) funds to reimburse SPAN for providing "Demand Response" transit service to the following citizens of the Town of Flower Mound (TOWN):

- Elderly who are 65 years and older
- Severely disabled adults who are 21 years and older and
 - Use a wheel-chair or another special aid for six months or longer; or
 - Are unable to perform one or more "functional activities" (i.e., seeing, hearing, having one's speech understood, lifting and carrying, walking up a flight of stairs, or walking); or
 - Need assistance with an "ADL" (i.e., an activity of daily living including getting around inside the home, getting in or out of bed or a chair, bathing, dressing, eating, and toileting); or
 - Need assistance with an "IADL" (i.e., going outside the home, keeping track of money or bills, preparing meals, doing light housework and using the telephone); or
 - Are prevented from working at a job or doing housework; or
 - Have a selected condition including autism, cerebral palsy, Alzheimer's disease, senility or dementia, or mental retardation; or
 - Are less than 65 years and covered by Medicare or receive Supplemental Social Security Income.

It is expressly agreed and understood that the total amount of CDBG funds to be paid by the TOWN under this agreement shall not exceed Twenty Six Thousand Six Hundred Fifteen Dollars (\$26,615.00). Costs exceeding Twenty Six Thousand Six Hundred Fifteen Dollars (\$26,615.00) for providing Demand Response transit service to the above citizens will remain as described in the General Agreement between SPAN and the TOWN.

The TOWN's obligations under this agreement are contingent upon the actual receipt of adequate CDBG funds to meet SPAN's liabilities under this agreement. If adequate funds are not available to make payments under this agreement, the TOWN will notify SPAN in writing within a reasonable time after such fact has been determined, so that SPAN can modify its services. The TOWN may, at its option, either reduce the amount of its liability, or terminate the agreement. It is expressly understood that this agreement in no way obligates the General Fund or any other monies or credits of the TOWN.

CDBG grant funds will not be used for any cost or portion thereof of which:

- Has been paid, reimbursed or is subject to payment or reimbursement from any other source;
- Was incurred prior to the beginning date, or after the ending date specified in this agreement;
- Is not in strict accordance with the terms of this agreement; or,
- Has not been billed to TOWN within 30 calendar days following termination of the agreement.

CDBG grant funds reimbursed under this agreement will not be paid to any party other than SPAN. Upon termination of this agreement, should any expense for which payment has been made be subsequently disallowed or disapproved as a result of any auditing or monitoring by the TOWN, the Department of Housing and Urban Development, or any other federal agency, SPAN will refund such amount to the TOWN within ten working days of a written notice to SPAN, which specifies the amount disallowed. Refunds of disallowed costs may not be made from these or any funds received from or through the TOWN.

2. Records and Reports

SPAN agrees to maintain records that provide accurate, current, separate, and complete disclosure of the status of the funds received under this agreement. SPAN shall retain all records pertinent to expenditures incurred under this agreement for five years from the date of termination of the agreement. If there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs first.

SPAN agrees to grant access by the TOWN, the U. S. Department of Housing and Urban Development, and the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of SPAN which are directly pertinent to this specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

At the time SPAN submits a request to TOWN for reimbursement, SPAN shall provide a report to TOWN identifying the costs by line item and the actual rider ship provided, including name, address, age, disability, and race. SPAN will provide TOWN staff access to records necessary to obtain documentation to support CDBG eligibility requirements.

3. Program Income

No program income will be generated under this agreement.

4. Uniform Administrative Requirements

In regard to funds provided under this agreement, SPAN agrees to comply with the requirements of Title 24: Housing and Urban Development of the Code of Federal Regulations (CFR) Part 570.502 concerning Community Development Block Grants (CDBG). The TOWN has a copy available for review or reproduction. SPAN also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this agreement.

5. Other Program Requirements

SPAN further agrees to utilize funds available under this agreement to supplement rather than supplant funds otherwise available. For example, if an eligible rider's fee is partially paid by other funds, CDBG funds will be used to pay only the difference in cost for the ride. CDBG grant funds will not be used to fund any claims, actions, suits, charges or judgments whatsoever that arise out of SPAN's performance or nonperformance of the services or subject matter called for in the agreement. SPAN shall:

- Hold harmless, defend, and indemnify TOWN from any and all claims, actions, suits, charges and judgments whatsoever that arise out of SPAN's performance or nonperformance of the services or subject matter called for in the agreement;
- Comply with the bonding and insurance requirements of OMB Circular A-110 (Flower Mound has a copy available for review or reproduction). Actual losses not covered by insurance as required by this agreement are not allowable costs under this agreement and remain the sole responsibility of SPAN;
- Comply with all applicable equal employment opportunity and affirmative action laws or regulations;
- Provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this agreement;
- Maintain adequate and continuous liability insurance on all vehicles owned, leased or operated that are used to provide services under this agreement; and,
- Ensure that all drivers possess a valid Texas driver's license.

6. Conditions for Religious Organizations

SPAN shall provide all services under this agreement in a manner that is exclusively non-religious in nature and scope. There shall be no religious services, proselytizing, instruction or any other religious preference, influence or discrimination in connection with providing these services.

7. Suspension and Termination

Either party may terminate the agreement at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least 30 days before the effective date of such termination. In the event of any termination for convenience, SPAN shall be entitled to receive just and equitable compensation for any satisfactory work completed prior to the termination. TOWN may also suspend or terminate this agreement, in whole or in part, if SPAN materially fails to comply with any term of this agreement.

8. Reversion of Assets

Payment for allowable costs under the terms of the agreement is on a reimbursement basis. Expenditures will not be reimbursed to SPAN for the purchase of real property or equipment. These are not allowable costs under this agreement.



TOWN COUNCIL AGENDA ITEM NO. 3

CONSENT ITEM

DATE: July 17, 2017

FROM: Tammy Wilson, Executive Director of Financial Services

ITEM: 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 No. 70-16, 02-17, 10-17 and 17-17 for adjustments to the General Fund and the Utility Fund.

BACKGROUND INFORMATION: The attached budget amendment represents the fifth proposed adjustment of the FY 2016-2017 Annual Budget. According to Section 9.14 of the Town Charter, "During the fiscal year, the Town Council shall have the power to transfer funds allocated by the budget from one department to another department, and to re-estimate revenues and expenditures." Transfers such as these are presented to the Town Council throughout the fiscal year in an effort to resolve variances from the Annual Budget and reallocate resources to cover unanticipated expenditures.

This budget amendment increases expenditures by \$6,290 in the General Fund for increased usage of SPAN which increases the Town's cost and \$132,000 in the Utility Fund for the unanticipated repairs to the utility system.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT:

Proposed Expenditure:	Account Number(s):
\$ 6,290.00	100-630-34300 Community Services-Seniors In Motion
120,000.00	200-690-92420 Public Works-Utility Operations Maintenance
12,000.00	200-690-92320 Public Works-Utility Line Maintenance Water Line
<u>\$ 138,290.00</u>	

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

LEGAL REVIEW: No alteration to the legal content of this ordinance, which was originally approved by Taylor, Olson, Adkins, Sralla, & Elam L.L.P, was made.

ATTACHMENTS:

1. Proposed Ordinance

DRAFT MOTION: 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 No. 70-16, 02-17, 10-17 and 17-17 for adjustments to the General Fund and the Utility Fund.

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

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE TOWN'S BUDGET FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2016, AND ENDING ON SEPTEMBER 30, 2017, AS ADOPTED BY ORDINANCE NO. 52-16 AND AMENDED BY ORDINANCE NO. 70-16, 02-17, 10-17 and 17-17, BY PROVIDING FOR ADJUSTMENTS TO THE GENERAL FUND AND THE UTILITY 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.

WHEREAS, the Town Council of the Town of Flower Mound, Texas ("Town Council") has heretofore adopted its Annual Budget for the fiscal year beginning on October 1, 2016, and ending on September 30, 2017; and,

WHEREAS, said Annual Budget was adopted by Ordinance No. 52-16 on September 19, 2016; and,

WHEREAS, said Annual Budget was amended by Ordinance No. 70-16 on December 19, 2016 and by Ordinance No. 02-17 on February 20, 2017 and by Ordinance No. 10-17 on April 3, 2017 and by Ordinance No. 17-17 on June 5, 2017; and,

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

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

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

SECTION 1

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

SECTION 2

The Annual Budget of the Town of Flower Mound, Texas, for the fiscal year beginning on October 1, 2016, and ending on September 30, 2017, as heretofore adopted by Ordinance No. 52-16 and amended by Ordinance No. 70-16, 02-17, 10-17 and 17-17, is hereby amended to provide for adjustments to the General Fund and the Utility Fund, as shown in Exhibit "A," attached hereto and incorporated herein, and expenditures for said fiscal year shall be made in accordance with said Annual Budget, as amended.

ORDINANCE NO. _____

PAGE 2

SECTION 3

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

SECTION 4

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

SECTION 5

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

SECTION 6

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

SECTION 7

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

ORDINANCE NO. _____

PAGE 3

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF
FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS 17th DAY OF JULY,
2017.

APPROVED:

Thomas E. Hayden, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

ORDINANCE NO. _____

PAGE 4

EXHIBIT "A"

**Town of Flower Mound
Amended Budget
Fiscal Year 2016-2017**

REASON FOR ADJUSTING THE GENERAL FUND APPROPRIATION:

In the General Fund, expenditures will increase by \$6,290 from \$60,645,826 to 60,652,116. Funds will be used for increased usage of SPAN which increases the Town's cost in the Seniors in Motion division of Community Services.

<u>General Fund</u>	<u>Original Budget</u>	<u>Current Budget</u>	<u>Amended Budget</u>	<u>Increase / (Decrease)</u>
Expenditures:				
Town Manager's Office	\$ 1,296,014	\$ 1,693,914	\$ 1,693,914	\$ -
Legislative Services	453,170	453,170	453,170	-
Development Services	2,255,052	2,255,052	2,255,052	-
Community Services	9,292,408	9,497,055	9,503,345	6,290
Police Services	12,783,200	12,886,915	12,886,915	-
Financial Services	3,489,625	3,497,725	3,497,725	-
Administrative Services	5,404,559	5,779,059	5,779,059	-
Fire and Emergency Services	12,870,161	13,465,714	13,465,714	-
Community Relations	824,374	824,374	824,374	-
Non-Departmental Services	4,079,257	4,079,257	4,079,257	-
Public Works	4,719,115	4,719,115	4,719,115	-
Environmental Services	1,494,476	1,494,476	1,494,476	-
Total	\$58,961,411	\$60,645,826	\$60,652,116	\$ 6,290

REASON FOR ADJUSTING THE UTILITY FUND APPROPRIATION:

In the Utility Fund, expenditures will increase by \$132,000, from \$42,326,426 to \$42,458,426. Funds will be used unanticipated repairs to the utility system.

<u>Utility Fund</u>	<u>Original Budget</u>	<u>Current Budget</u>	<u>Amended Budget</u>	<u>Increase / (Decrease)</u>
Expenditures:				
Development Services	\$ 468,116	\$ 468,116	\$ 468,116	\$ -
Financial Services	1,642,003	1,642,003	1,642,003	-
Non-Departmental Services	11,746,437	11,746,437	11,746,437	-
Public Works	27,162,370	28,469,870	28,601,870	132,000
Total	\$41,018,926	\$42,326,426	\$42,458,426	\$ 132,000



TOWN COUNCIL AGENDA ITEM NO. 4

CONSENT ITEM

DATE: July 17, 2017

FROM: Sabrina Zadow, Purchasing Manager

ITEM: Consider approval of issuing a purchase order for repairs to Town vehicles that have external body and/or hail damage from the March and April 2017 storms, in the amount of \$290,407.26.

BACKGROUND INFORMATION: After the March and April 2017 storms, staff identified a total of 95 units with hail or body damage, which were then submitted as an insurance claim to Texas Municipal League Intergovernmental Risk Pool (TMLIRP). Fleet Services solicited bids from (3) vendors who came on site June 12-14, 2017. Low bidder is Magic Touch Up. The insurance claim reimbursement check has been received. Units with body damage will be taken to the vendor's body shop for repairs; and the units with hail damage will be repaired on site at the Fleet Service Center.

FISCAL IMPACT: Net impact is \$0 due to insurance reimbursement. However, the purchase order in the amount of \$290,407.26 must be approved by Town Council.

Proposed Expenditure:	Account Number(s):
\$290,407.26	100-1117

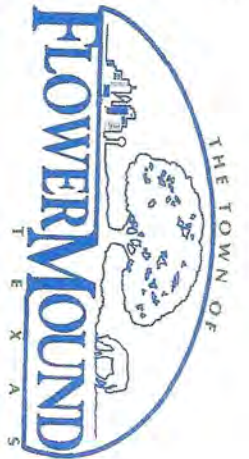
Finance Review by: Debra Wallace, Deputy Town Manager/CFO *DW*

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Magic Touch Up Bid
2. Bid Award Recommendation

DRAFT MOTION: Move to approve issuing a purchase order for repairs to Town vehicles that have external body and/or hail damage from the March and April 2017 storms, in the amount of \$290,407.26.



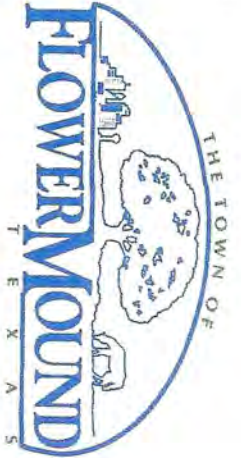
Town of Flower Mound
Hail Damage Repair Bid
 June 12-14, 2017 8:00 AM

Attachment 1

Vendor Name: Magic Touch Hail Strategies
 Contact Name: Shawn Mueller
 Contact Phone #: 314-518-1455

Unit #	Description	VIN	Mon 06/12/17	Tue 06/13/17	Wed 06/14/17	Vendor Notes
21000-01	2006 Ford F150	1FTRX12W06KKB90745	3749.60			
21000-03	2007 Ford F150	1FTRX12W07F833155	3923.65			
21000-04	2012 Ford F150	1FTFX1CF6CKD83222	3243.60			
21000-06	2014 Ford F150	1FTFX1CF5EK608734	3930.85			
4200-08	2009 Chevrolet Silverado	1GCEC19029E153906	3644.03			
5220-10	2008 Jeep Wrangler	1J4FZ24198LS89570	1558.10			
5600-02	2003 Ford Crown Vic	2FAPF71W43X186882	4256.75			
59200-03	2015 Ford F250	1FT7X2B65FED18568	3727.60			
5920-11	2011 Ford Econoline E250	1FTNE2EW6BDA70520	3292.06			
5920-12	2011 Ford Econoline E250	1FTNE2EWXBD70519	5271.13			
5920-13	2012 Chevrolet CG23405 Van	1GCMGFC44C1156764	4308.10			
65000-03	2013 Ford F150	1FTFX1CF6DKD61531	1345.05			
65000-04	2016 Chevrolet Tahoe	1GNSKFKC2GR348425	1923.50			
93000-01	2010 Ford F150	1FTEX1CWVAKA48277	3748.83			
95100-04	2015 Ford F450	1FDUF4GYGEA39246	1041.12			
96050-05	2000 Ford Taurus SE	1FAFP5329YA255984	2621.03			
96050-10	2001 Ford F150	1FTRF17W61NA34518	1941.87			
96050-14	2014 Ford Fusion	3FA6P0LU5ER114187	4841.18			

58502.49

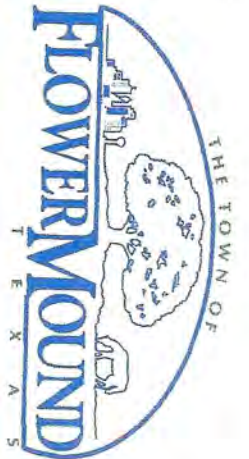


Town of Flower Mound
Hail Damage Repair Bid
June 12-14, 2017 8:00 AM

Vendor Name: Magic Touch / Hail Strategies
 Contact Name: Shawn Mueller
 Contact Phone #: 314-518-1455

Unit #	Description	VIN	Mon 06/12/17	Tue 06/13/17	Wed 06/14/17	Vendor Notes
21000-02	2006 Ford F150	1FTRX12WXX6KRB90736	3365.99			
2100-10	2005 Ford F150	1FTRF12WXSNA47625	2555.50			
2100-11	2010 Ford F150	1FTMF1CW7AKA16580	1609.56			
4200-07	2009 Chevrolet Silverado	1GCEC19039E153736	2786.77			
52200-01	2014 Ford F150	1GCEC19039E153736	2661.89			
52200-02	2014 Ford F150	1FTNF1CF7EKE45468	2669.58			
59200-01	2014 Chevrolet CG23405 Van	1GCMGFCAS5E1169428	3744.57			
59200-02	2014 Chevrolet CG23405 Van	1GCMGFCAS5E1201262	3510.84			
5920-10	2008 Chevrolet Express Van	1GCF6154381231570	4141.71			
6300-25	2009 Chevrolet Tahoe	1GNEC03069R202267	3259.06			
6300-29	2008 Pierce 105HD/ArrowXT	4P1CA01H29A009652	1000.00			
65000-05	2010 Chevrolet Tahoe	1GNMCAE00AR216698	3521.51			
90000-01	2014 Ford F150	1FTFX1CF0EKE58242	3321.55			
9242-07	2011 Ford F250	1FT7X2A61BEC36879	267.46			
95100-05	2016 Ford F150	1FTFW1CF9GKD96664	1234.16			
96010-11	2010 Ford F150	1FTVX1CV3AKE30044	2910.91			
96050-06	2000 Ford F150	1FTZF1722YNC23934	1832.26			
96050-09	2007 Ford F150	1FTVX12567KD31745	3411.21			

45,588.47

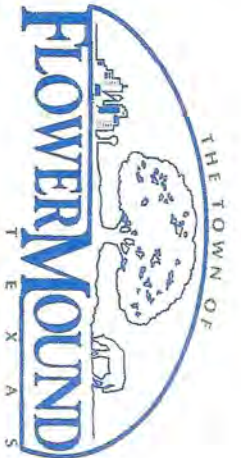


Town of Flower Mound
Hail Damage Repair Bid
 June 12-14, 2017 8:00 AM

Vendor Name: Magic Touch / Hail Structures
 Contact Name: Shawn Mueller
 Contact Phone #: 314-518-1455

Unit #	Description	VIN	Mon 06/12/17	Tue 06/13/17	Wed 06/14/17	Vendor Notes
21000-05	2010 Ford F150	1FTVX1CV6AKB36508	3323.46			
2100-07	2007 Ford F150	1FTPF12V37MA59634	2180.93			
2100-12	2010 Ford F150	1FTNF1CV7AKE34925	1783.14			
4200-09	2009 Chevrolet Silverado	1GCEC19059E154077	3939.41			
5220-11	2008 Jeep Wrangler	1J4FZ24168L560401	1637.95			
5220-12	2008 Jeep Wrangler	1J4FZ24128L570035	1382.41			
59200-04	2016 Ford Transit 250 Van	1FTYR1VM6GKB54216	4925.32			
5920-07	2007 Ford F150	1FTPF12V97KC72346	2119.64			
5920-08	2007 Ford Econoline E150	1FTNE14W97DA87007	3132.25			
5920-09	2008 Pace American Trailer	47ZFB12118X058335	Ø			
63000-05	2017 Pierce Wildland Pumper	3HAWESTR2HL722498	2584.00			Needs to be replaced
6300-13	2004 Pierce Contender	1HTWGADT94J090090	5649.00			
92420-02	2015 Ford F350	1FT8X3A68FEB63848	492.23			
93100-01	2012 Ford F150	1FTFX1CFACKD83221	3399.38			
96050-07	2003 Ford F250	3FTNX21L13MB28562	2262.19			
96050-12	2010 Ford F150	1FTVX1CV5AKD30045	2874.53			
96050-13	2011 Ford F150	1FTNF1CFXBKD38541	2530.63			

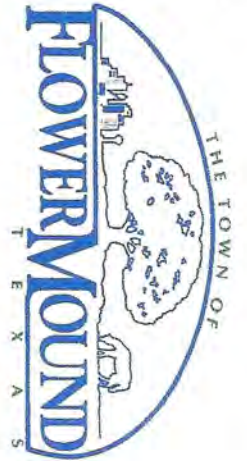
43,616.47



Town of Flower Mound
Hail Damage Repair Bid
June 12-14, 2017 8:00 AM

Vendor Name: Magic Touch / Hail Strategies
 Contact Name: Shawn Meller
 Contact Phone #: 214-518-1455

Unit #	Description	VIN	Mon 06/12/17	Tue 06/13/17	Wed 06/14/17	Vendor Notes
43500-05	2013 Dodge Charger	2C3CDXAG3DH690077	7594.58			
43500-06	2013 Dodge Charger	2C3CDXAG5DH690078	7878.82			
43500-07	2013 Dodge Charger	2C3CDXAG7DH690079	3377.56			
43500-08	2013 Dodge Charger	2C3CDXAT3DH690080	5581.65			
43500-09	2013 Chevrolet Impala	2G1WF5E36D1265596	4032.65			
43500-11	2014 Chevrolet Tahoe	1GNLC2E05ER193166	4865.77			
43500-12	2014 Chevrolet Tahoe	1GNLC2E04ER162135	4714.27			
43500-14	2014 Chevrolet Tahoe	1GNLC2E01ER193407	4687.71			
43500-15	2014 Chevrolet Tahoe	1GNLC2E08ER193680	4714.27			
43500-16	2014 Chevrolet Tahoe	1GNLC2E07ER193024	4452.16			
43500-17	2014 Chevrolet Tahoe	1GNLC2E01ER193567	4714.27			
43500-18	2014 Chevrolet Tahoe	1GNLC2E01ER193682	1914.58			
43500-19	2014 Chevrolet Tahoe	1GNLC2E07ER193301	4714.27			
43500-20	2014 Chevrolet Tahoe	1GNLC2E00ER193446	1836.06			
43500-21	2014 Chevrolet Tahoe	1GNLC2E01ER194301	4714.27			
43500-22	2014 Chevrolet Tahoe	1GNLC2E01ER194931	4714.27			
43500-23	2014 Chevrolet Tahoe	1GNLC2E08ER193436	4714.27			
43500-24	2015 Chevrolet Tahoe	1GNLC2EC2FR649524	6218.39			
43500-25	2015 Ford Taurus	1FAHP2MK7FG159853	5636.60			
43500-26	2015 Ford Taurus	1FAHP2MK9FG159854	3513.74			
43500-27	2015 Ford Taurus	1FAHP2MK0FG159855	5636.60			
43500-28	2015 Ford Taurus	1FAHP2D84FG170250	965.59			
43500-29	2007 Chevrolet C4500 Ambulance	1GBE4V1247414918	1462.00			
43500-34	2016 Ford Taurus	1FAHP2MK6G6119751	5636.00			
43500-35	2016 Ford Taurus	1FAHP2MK8G6119752	5636.00			
43500-36	2015 Ford Mustang	1FA6P8THX5399636	5808.39			
43500-37	2016 Ford F450 Cutaway	1FDXE4F59GDC54787	456.00	1156.00		
43500-38	2016 Chevrolet Tahoe	1GNLCDEC2GR418362	4714.27			
43500-39	2016 Chevrolet Tahoe	1GNLCDEC5GR423166	4714.27			
4350-120	2008 Dodge Magnum XE	2D4FV47T88H261812	5581.65			
4350-121	2008 Dodge Magnum XE	2D4FV47T88H261813	5581.65			
4350-122	2008 Chrysler Sebring LX	1C3LC46R08N251976	1677.25			
4350-124	2008 Chevrolet Uplander	1GNDV23W98D183781	5627.20			



Town of Flower Mound
Hail Damage Repair Bid
June 12-14, 2017 8:00 AM

Vendor Name: Magic Touch / Hail Strategies
 Contact Name: Shawn Mueller
 Contact Phone #: 314-518-1455

Unit #	Description	VIN	Mon 06/12/17	Tue 06/13/17	Wed 06/14/17	Vendor Notes
4350-129	2008 Dodge Charger LXDH48	2B3KA43G38H279636	3356.82			
4350-134	2009 Dodge Charger LXDH48	2B3KA43D99H506366	5581.65			
4350-145	2010 Ford Fusion	3FAHP0HGOAR114779	606.39			
4350-147	2009 Ford F250	1FTNF20599EA90714	1634.72			
4350-171	2012 Chevrolet Tahoe	1GNLC2EOXCR191085	4714.27			
4350-183	2012 Dodge Charger	2C3CDXAG5CH240140	383.04			

GRAND TOTAL: \$0.00 = 314960.09

* PLEASE EMAIL COMPLETED BID SHEETS TO FLEET@FLOWER-MOUND.COM NO LATER THAN MONDAY, JUNE 19th*

167252.69



Bid Award Recommendation

Quote: 6-12/13/14-2017

Date: 06-27-2017

Description: **2017 Hail Storm Damage to TOFM Fleet, (85 total units)**

Replaces/Trade-in/New: N/A

Bidder #1: Magic Touch Paint & Body

Brodie 214-222-3466

bid: PDR (Paintless Dent Repair) and conventional body damage repair

Total Bid: \$290,407.00

Bidder #2: Farmers PDR

Ken Farmer 325-829-3365

Bid: PDR (Paintless Dent Repair) and conventional body damage repair

Total Bid: \$316,700.00

Bidder #3: DFW Dent Guys

John Trice 817-874-3424

Bid: PDR (Paintless Dent repair) and conventional body damage repair

Total Bid: \$321,108.00

All PDR work will be performed at the TOFM Fleet Services Facility. Proof of liability insurance will be required prior to any vendor employees being able to work on TOFM property. All conventional repairs will be performed at vendor's facility.

It is Fleet Services recommendation to award the bid to **Magic Touch Paint & Body** as the lowest responsible bidder in the amount of \$ **290,407.00**.

H. Deats Stewart
Fleet Services Manager

06-27-2017
Date



TOWN COUNCIL AGENDA ITEM NO. 5

CONSENT ITEM

DATE: July 17, 2017

FROM: Andy Kancel, Chief of Police
DeDe Garrett, Director of Police Support Services

ITEM: Consider approval of the purchase Fed Submit (Criminal) Palm Scan Print Pack for Police Services from Mentalix, through the GSA Advantage cooperative purchasing program, in the amount of \$24,036.00.

BACKGROUND INFORMATION: The Denton County Sherriff's office donated funds to pay for the purchase of a digital fingerprint scanner and software; the donation will completely fund this purchase. This will allow the Police Department to electronically submit digital fingerprints to the Texas Department of Public Safety.

The equipment and software will be purchased through a GSA Advantage cooperative purchasing program from Mentalix. Mentalix offers many unique features including their Fed Submit software. They are able to provide different levels of access control for end users and administrators that can be uniquely designed for the Department's needs. The Fed Submit software can provide the user with a rating of each scanned fingerprint so the user can determine if a re-scan is needed. The Fed Submit software uses the same algorithms the FBI uses to determine quality; Fed Submit will immediately recognize and single out erroneous fingerprints for correction to ensure that all fingerprints are of acceptable quality. Digital fingerprinting will reduce fingerprint errors and increase the speed of the capture and submission process, and eliminates the mess of ink.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: 0.00 (County funds)

Proposed Expenditure:	Account Number(s):
\$24,036.00	333-368-00000-6100

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

LEGAL REVIEW: Stacie White of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the quote as to form and legality.

ATTACHMENTS:

1. Mentalix Quote

DRAFT MOTION: Move to approve the purchase of Fed Submit (Criminal) Palm Scan Print Pack for Police Services from Mentalix, through the GSA Advantage cooperative purchasing program, in the amount of \$24,036.00.



1255 W. 15th Street, Suite 370, Plano, Texas 75075
Tel 972-423-9377 Fax 972-423-1145
info@mentalix.com
http://www.mentalix.com

July 05, 2017

Dede Garrett
Flower Mound
4150 Kirkpatrick Lane
Flower Mound, TX 75028

Dear Ms. Dede Garrett:

Mentalix is pleased to provide the attached proposal for our Fed Submit (TX) Palm Scan Print Pack. The Pack includes all hardware and FBI-certified software necessary for capture and submission of fingerprints and palm prints electronically. Please note that the first year's technical support, annual maintenance, and warranty is included in all our 'Pack' products.

Please note that with the purchase of the Mug Shot Pack (Add-On), you will be able to also submit Law Enforcement Applicant and Sex Offender Registration fingerprints to Texas DPS. This is a new project and we are currently transitioning our customers over to these new features as Texas DPS allows.

Mentalix's GSA contract number is GS-07F-0014V. Please put this number on your PO when purchasing.

Our Fed Submit software has many unique features and is what sets Mentalix apart from other live scan vendors. We are able to provide different levels of access control for end users and administrators that can be uniquely designed for your company's needs. The software also has full text search capability and can store 70,000+ fingerprint transactions that can be recalled when needed. Fed Submit also generate reports for live scan monitoring to provide ease of use to the end user.

The Fed Submit software can provide the user with a rating of each scanned fingerprint, either giving it a poor, good, or best rating so the user has a better idea of whether to re-scan the live finger. Using the same algorithms the FBI uses to determine quality, Fed Submit will immediately recognize and single out erroneous fingerprints for correction to ensure that all fingerprints are of acceptable quality. The Fed Submit System reduces fingerprint errors so and increases the speed of the capture and submission process and the live scanner eliminates the mess of ink.

We have depot to depot & overnight replacement of our scanners and we are also able to provide fixes and updates at times that are convenient to you. We pride ourselves on our commitment to support and maintain our product to meet our customer's needs. It's our goal to offer a quality product with competitive pricing and to maintain our reputation for excellent customer support.

Please do not hesitate to contact me if you have questions or need additional information.

Best Regards,

Kimberly Mahan

Kimberly Mahan

Inside Sales Manager

(972) 423-9377 Ext. 128

KMahan@mentalex.com

Confidential - Prepared exclusively for Flower Mound

Valid Until: August 05, 2017

Product Descriptions for Package 1

9.3-031115

FS (TX) Palm Scan Station Print Pack

B-FS-TX-SPSCS-P-5

- Fed Submit (TX) scanning software
 - Fingerprint & palm print card scan & live scan support for criminal & applicant transactions
 - 500 ppi FBI certification
 - FBI-certified WSQ compression
 - EFTS/EBTS formatting
 - NFIQ 2.0 fingerprint quality & sequence checks
 - Stores 70,000+ transactions
 - Full text search capability
 - Transaction reports
 - Submission of encrypted Adult & Juvenile criminal transactions via encrypted FTP to Texas DPS
 - Includes support for submitting Class C misdemeanors to Texas DPS
 - Customized field checks as required by the TXDPS Data Dictionary & interface documents
 - Fingerprint matching & facial recognition capability within local database for searches or inmate release verification
 - Photo/mug shot import -Includes integration with many AFIS matching systems & JMS/booking systems
 - Texas DPS CR-43 & CR-44 printing -Specialized Two-Finger Lookup transactions supported by Texas DPS
- Fed Submit CardPrint software
 - FBI-certified fingerprint & palm print card printing software supports certified laser printer (included)
 - Enables printing of electronic fingerprints at FBI-certified quality on standard ten-print card forms or on blank card stock, along with card boundaries & mug shots
 - Single license can be shared among all Admin Stations used in conjunction with the Fed Submit station that has CardPrint license
- Fed Submit PC
 - Microsoft SQL Server 2014 Express
 - Windows 7 or similar, Adobe Acrobat Reader XI+
 - UPS
 - One-year warranty included
- Ruggedized Cabinet for Fed Submit Live Scanner
 - Installation space for a Fed Submit live scanner, PC & UPS
 - Built-in foot switches to enable hands-free control of palm scanner
 - 19-inch, color industrial touchscreen monitor
- Fed Submit Palm Print Live Scanner
 - Supports both fingerprint & palm print capture
 - 500 ppi FBI certification
 - One-year warranty included
- Fed Submit Flatbed Card Scanner
 - 500 ppi FBI certification
- Fed Submit Certified Printer
 - FBI-certified laser network printer
 - 1200 x 1200 dpi resolution
 - One-year warranty included
- Fed Submit Swipe Card Reader
 - USB 3-Track Magnetic Swipe Card Reader with USB cable
- First-year Fed Submit software maintenance & live scanner maintenance included



Descriptions continued on next page.

Product Descriptions continued:

Fed Submit Mug Shot Pack (Add-On)

T-FS-MUGSHOTPK

- Fed Submit Mug Shot software enables control of digital camera from Fed Submit live scan software
- Fully integrated with Fed Submit system
- Fed Submit Digital Camera
- Requires Fed Submit Pack product



Fed Submit Mug Shot Pack (Add-On) Annual Maintenance

M-FS-MUGSHOTPK

- One-year maintenance for Fed Submit Premium Mug Shot Pack software

Fed Submit Installation & Training Services

A-FS-SETUP

Pack Cabinet Credit

A-FS-LSPK1-CAB-C

Loyal Customer Discount

Loyal Customer Discount

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Valid Until: August 05, 2017

Product Descriptions for Package 2

9.3-031115

Option Switch 500P to 1000PX

U-1000PX-OPT

- This option: 1) Removes a 500 ppi palm scan device from product package, and 2)) adds a Fed Submit L SCAN 1000PX palm scan device to product package
- Enables 1000 ppi scanning capability in Fed Submit palm scan system
- Fed Submit L SCAN 1000PX features:
 - Ten-print & palm print capture support
 - Easy to use, yet rugged enough for a law enforcement environment
 - 1000 ppi FBI certification
 - 12.0 x 12.1 x 5.2 inches, 14.9 pounds
 - Accepts both flats & rolls, as well as upper palm, lower palm, & side/writers palm
 - Automatically captures prints without requiring the user to press buttons at each step
 - IEEE 1394a (FireWire) cable
 - One-year warranty included
- Requires new purchase of either: 1) a Fed Submit Palm Scan Pack that normally includes a 500 ppi palm scan device, or 2) the Fed Submit 500P Upgrade product



Option Switch 500P to 1000PX Annual Maintenance

M-1000PX-OPT

- One-year maintenance for Option Switch 500P to 1000PX

Option Switch Maintenance Discount

- Removes the annual maintenance fees when upgrading from a 500 ppi scanner to a 1000 ppi scanner.

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SUBTOTALS			
Products	Price	Qty	Total per Product
This package shows pricing for Mentalix's Fed Submit (Criminal) Palm Scan Station Print Pack. The Pack is a turnkey solution that includes a 500 ppi palm scanner, Desktop PC, Printer, Swipe Card Reader, Flatbed Scanner, and a Ruggedized Cabinet to house the system. Please note that the first year's annual maintenance, technical support, and warranty is included in the "Pack". I have also included installation and training for your staff at your location. Please note that Mentalix will not charge additional installation fees if installation is scheduled at least two weeks in advance.			
GSA Items:			
FS (TX) Palm Scan Station Print Pack	\$35,979.03	1	\$35,979.03
Fed Submit Mug Shot Pack (Add-On)	\$2,468.38	1	\$2,468.38
Fed Submit Mug Shot Pack (Add-On) Annual Maintenance	\$423.91	1	\$423.91
Fed Submit Installation & Training Services	\$493.68	1	\$493.68
Pack Cabinet Credit	(\$3,500.00)	1	(\$3,500.00)
Loyal Customer Discount	(\$12,254.00)	1	(\$12,254.00)
Shipping			\$425.00
Package 1 Total			\$24,036.00

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Valid Until: August 05, 2017

SUBTOTALS			
Products	Price	Qty	Total per Product
Package 2 shows pricing to upgrade the 500 ppi palm scanner in Package 1 to a 1000 ppi palm scanner.			
GSA Items:			
Option Switch 500P to 1000PX	\$1,974.70	1	\$1,974.70
Option Switch 500P to 1000PX Annual Maintenance	\$299.23	1	\$299.23
Option Switch Maintenance Discount	(\$299.23)	1	(\$299.23)
Shipping			\$0.00
Package 2 Total			\$1,974.70

Confidential - Prepared exclusively for Flower Mound

Valid Until: August 05, 2017

1. This is a proposal only and confers no rights or obligations on either party. Rights to the usage of certain of Mentalix's products by Flower Mound will be accomplished by the issuance of a Purchase Order by Flower Mound. Special discounts, such as distance discounts, which may be included on this proposal, will be applied to the invoice after receipt of Purchase Order by Mentalix.
2. All Pricing information contained herein is confidential and only to be used by Flower Mound. Pricing is not for disclosure to outside parties without prior permission from Mentalix, Inc.
3. This proposal is valid until Saturday, August 5, 2017, unless extended in writing by Mentalix.
4. Pricing for Mentalix products is attached herein.
5. All products and derivative work developed by Mentalix in connection with this proposal will remain the exclusive property of Mentalix. Flower Mound acknowledges receipt and acceptance of terms of Mentalix Fed Submit End User License Agreement.
6. After Saturday, August 5, 2017, prices are subject to change without notice.
7. Shipping fees in this proposal are only estimates, to be used for planning purposes. Mentalix will include actual shipping costs, which are F.O.B. origin, on any applicable invoices upon shipment.
8. Warranty Information: Mentalix warrants that the products will substantially conform, as to all material operational features, to Mentalix's applicable standard written specifications, provided that it is used on the computer hardware and with the operating system for which it is designed, and will be free from error that substantially adversely affects performance for a period of ninety (90) days from the date of purchase. This limited warranty shall not apply to any product that Mentalix determines has been subject to misuse, neglect, improper installation, repair, alteration, or damage by you. The purchase of maintenance for all products effectively extends the warranty to one year.
9. Annual Maintenance includes one year of phone/e-mail/remote support (weekdays 8am-5pm, Central Time Zone, excluding holidays) for Fed Submit software, plus Fed Submit maintenance releases for the duration of the agreement. Mentalix can perform remote technical support - under the customer's initiation and control - for problem resolution and/or periodic maintenance procedures. Requires that customer has PC Anywhere V12.5 Host or installed LogMeIn client. Maintenance releases (designated by the minor identifier to the right of the version number decimal point) consist of problem corrections and updates. Live scan hardware maintenance covers depot repair/replacement of equipment for any problems that arise during normal wear-and-tear use of equipment.
10. Restocking Policy: Mentalix does not accept returns, so we do not have a restocking policy.
11. For customers who will be submitting data to Texas DPS: Texas DPS allows Internet submission of fingerprint records for most law enforcement agencies. However, Texas DPS restricts Internet submission to only certain qualifying agencies (consult your Texas DPS contact to determine whether your agency qualifies for Internet submission). Agencies that do not qualify for Internet submission are required by Texas DPS to use a dedicated line, firewall and router.
12. Fed Submit hardware products are only sold for use with Fed Submit software.
13. At this time, Mentalix does not sell hardware outside of North America.
14. All products are sold on a per-seat basis.
15. All prices listed are in U.S. Dollars. Prices do not include any taxes which might be applicable.



TOWN COUNCIL AGENDA ITEM NO. 6

CONSENT ITEM

DATE: July 17, 2017

FROM: Andy Kancel, Police Chief

ITEM: Consider approval of an agreement with Axon Enterprise, Inc., for the trial use of body worn camera products; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The use of body worn cameras (BWC) by law enforcement agencies has become common practice over the last five years. It has proven to be an effective tool for officers to collect valuable video evidence as well as reduce frivolous complaints against officers. Some of the biggest challenges with establishing BWC solutions are cost and the impact on other areas of a municipality.

The Flower Mound Police and Fire Departments recognize the value of implementing a BWC solution and have been scrutinizing various products, trying to find one that will meet our needs. These product reviews generally involve a 30 to 60 day product trial with one or two demo cameras from various vendors. These product trials are common and do normally identify glaring issues, such as fit on the uniform or too short of a battery life. However, these trials cannot give us an accurate understanding of how a BWC solution is going to impact us when fully deployed. Impacts, such as, what are our physical and data storage needs, how will this impact case preparation and filing, what will the impact be on Public Information Request, etc.

This agreement grants the Flower Mound Police and Fire Departments the opportunity to enter into a no cost 365 day, full deployment trial of Axon BWC products. This is a unique opportunity being offered by Axon for law enforcement agencies to determine whether Axon's BWC solution will meet an agency's needs prior to making a long-term financial commitment.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: There is no fiscal impact at this time. Should the equipment not be returned to Axon by the required date the cost would be \$66,545.64.

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. Axon National Field Trial Agreement with Flower Mound Police and Fire Departments
2. Zero dollar quote for Flower Mound Police BWC equipment
3. Zero dollar quote for Flower Mound Fire Department equipment
4. Zero dollar quote for one mounting bracket

DRAFT MOTION: Move to approve an agreement with Axon Enterprise, Inc., for the trial use of body worn camera products; and authorization for the Mayor to execute same on behalf of the Town.



National Field Trial Agreement

This Agreement grants the right to use the Axon Enterprise, Inc. ("Axon") Product(s) identified in this Agreement to your law enforcement agency ("Agency" or "you") on loan and free of charge for a trial and evaluation of the Product(s) by the Agency.¹ The Trial Period is 365 days unless extended by Axon. This offer from Axon is void where prohibited by law or regulation.

1. Trial Kit. The Trial Kit may include the following:

- ☐ 74016 – Axon Body 2
- ☐ 70042 – Axon Dock, Single Camera Bay
- ☐ 70043 – Axon Dock, 6-Camera Bay

which will be specified on your Sales Order ("Product").

Axon reserves the right to limit the number of Trial Kits you receive. Axon reserves the right to supply a refurbished Product as part of the Trial Kit. Axon's warranty, limitations and releases for the Products is applicable and available on Axon's website at www.axon.com.

2. Agency Obligations. You agree to only use the Product for trial and evaluation purposes and will not: (a) reproduce or modify the Product; (b) rent, sell, lease or otherwise transfer the Product; (c) use the Product or Evidence.com to store or transmit infringing, libelous, or otherwise unlawful or tortious material or to store or transmit material in violation of third-party privacy rights; or (d) attempt to gain unauthorized access to Evidence.com or related systems or networks. You agree to comply with all Axon materials, including all addendums attached hereto regarding the Products during the Trial Period. Upon request of Axon, you also agree to cooperate and participate in a case study involving the Product and your use of the Product. You agree that Axon will have a non-exclusive, perpetual license to utilize the results and any report or publication resulting from the case study in Axon's training, markets and sales materials.

3. Return of Product. You agree to either return the Product to Axon within 10 days after the end of the Trial Period, or be invoiced for the full MSRP of the Product and pay the invoice along with any applicable taxes and shipping costs pursuant to Axon's standard sales terms and conditions. If any individual piece of the Trial Kits not returned to Axon at the end of the Trial Period, then Axon will issue to you an invoice for the MSRP of the unreturned item(s). You agree to pay the invoice along with any applicable taxes. In the event you decide to enter into a contract with Axon after the Trial Period for the continued use of the Evidence.com Services, Axon will negotiate

pricing with you at that time.

If you choose to return the Product to Axon instead of purchasing the Product, you agree to return the Product to Axon in good working condition, normal wear and tear excepted. Axon reserves the right to charge you if there is damage beyond the normal wear and tear and outside of the warranty coverage.

Before you return the Product, it is your responsibility to download the Product and keep a backup copy of the data. All data stored in the Product will be erased upon receipt of the Product by Axon. Product is to be returned via the RMA process to Axon Enterprise, Inc., 17800 N. 85th Street, Scottsdale, Arizona USA 85255, Attention: Trial Returns.

4. Agency Data. With your return of the Product, you may request Axon make available to you for download your data and any attachments that you uploaded to Evidence.com during the Trial Period. During the 30 days following this request you may retrieve your data from the Evidence.com services. After this 30-day period, Axon will have no obligation to maintain or provide any data uploaded to Evidence.com and will thereafter, unless legally prohibited, delete all of this data in Axon's systems or otherwise in its possession or control. In the event the Agency chooses to not continue Evidence.com services after the Trial Period, Axon will provide reasonable assistance in migrating the Agency's data to Agency's servers.

5. Proprietary Information. You agree that Axon has and claims various proprietary rights in the hardware, firmware, software, and the integration of ancillary materials, knowledge, and designs that constitute the Product, and that you will not directly or indirectly cause any proprietary rights to be violated.

6. Intellectual Property. You acknowledge and agree that you do not acquire ownership of any rights in the Product or Evidence.com services, and that Axon and its affiliates own all right, title and interest in and to the Product and Evidence.com services, and its data and any modifications, alterations, translations or derivative works relating to the Products and Evidence.com services.

7. Confidentiality. You agree that your evaluation of the Product is confidential. You agree that you shall not directly or indirectly disclose any information about the Product and your evaluation of the Product to any third person or entity and only to those people of your Agency who have a need to know. Should the Agency receive a request for information subject to the Texas Public Information Act, deemed confidential by this section.



National Field Trial Agreement

Agency will notify Axon and submit a letter to the Texas Attorney General in accordance with the requirements of the Texas Public Information Act, provided Axon submits arguments to the Texas Attorney General to substantiate any claim of confidentiality.

Formal Matters.

A. Signature. Your signature warrants and acknowledges that you are authorized to execute this Agreement on behalf of your Agency.

B. Entire Agreement; Modification; Severability. This Agreement incorporates the Community One Field Trial Addendum in its entirety and contains all the terms and conditions agreed on by the parties regarding the Trial Kit. Any previous agreements between the parties regarding a free trial of the Product are replaced by this Agreement. This Agreement can be modified or changed only by a written instrument signed by both parties. This Agreement is contractual and not a mere recital. If any part of this Agreement is held indefinite, invalid, or otherwise unenforceable, the rest of the Agreement will continue in full force and effect. You must accept this Agreement unmodified and as written.

C. Relationship of the Parties. The parties are independent contractors and this Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

D. Assignment. You must not, by operation of law or otherwise, assign any of your rights or delegate any of your obligations under this Agreement without the prior express written consent of Axon.

E. Governing Law; Venue. The laws of the State of Texas, without reference to conflict of law rules, govern this Agreement and any dispute of any sort that might arise between the Parties. The United Nations Convention for the International Sale of Goods does not apply to this Agreement. Exclusive Venue for any conflict arising from this Agreement will be in a court of competent jurisdiction within Denton County, Texas.

Name: _____

Title: _____

¹This Agreement does not cover trials or evaluations solely of any Axon beta software or firm ware.

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Axon Enterprise, Inc.

Signature: _____

Name: _____

Title: _____

Agency

Signature: _____



National Field Trial Agreement

NATIONAL FIELD TRIAL ADDENDUM

This Addendum sets forth the terms and conditions for the delivery, use, and support of Axon products and services as detailed in the Field Trial Agreement, which is hereby incorporated by reference.

1 **Definitions.**

"Documentation" means the (i) specifications, explanatory or informational materials, whether in paper or electronic form, that relate to the Services provided under this Addendum, or (ii) user manuals, technical manuals, training manuals, warnings, specification or other explanatory or informational materials, whether in paper or electronic form, that relate to the Products provided under this Addendum.

"Evidence.com Service" means Axon web services for Evidence.com, the Evidence.com site, Evidence Sync software, Axon Capture App, Axon View App, other software, maintenance, storage, and product or service provided by us under this Addendum for use with Evidence.com. This does not include any Third Party Applications, hardware warranties, or the my.evidence.com services.

"Installation Site" means the location(s) where the Products are to be installed.

"Products" means all Axon equipment, software, cloud based services, Documentation and software maintenance releases and updates provided by Axon under this Addendum.

"Quote" is an offer to sell, is valid only for products and services listed on the quote at prices on the quote. All Quotes referenced in this Addendum or issued and accepted after the Effective Date of this Addendum will be subject to the terms of this Addendum. Any terms and conditions contained within the Agency's purchase order in response to the Quote will be null and void and shall have no force or effect. Axon is not responsible for pricing, typographical, or other errors in any offer by Axon and Axon reserves the right to cancel any orders resulting from such errors. Axon reserves the right to adjust prices or Products unless otherwise specified in the Quote.

"Services" means all services provided by Axon pursuant to this Addendum.

"Agency Content" means software, data, text, audio, video, images or other Agency content or any of the Agency's end users (a) run on the Evidence.com Services, (b) cause to interface with the Evidence.com Services, or (c) upload to the Evidence.com Services under the Agency account or otherwise transfer, process, use or store in connection with the Agency account.

2 **Agency Responsibilities.** The Agency is responsible for (i) use of Axon Products (including any



National Field Trial Agreement

activities under the Agency Evidence.com account and use by Agency employees and agents), (ii) breach of this Addendum or violation of applicable law by the Agency or any of the Agency's end users, (iii) Agency Content or the combination of Agency Content with other applications, content or processes, including any claim involving alleged infringement or misappropriation of third party rights by Agency Content or by the use of Agency Content, (iv) a dispute between the Agency and any third party over Agency use of Axon products or the collection or use of Agency Content, (v) any hardware or networks that the Agency connects to the Evidence.com Services, and (vi) any security settings the Agency establishes to interact with or on the Evidence.com Services.

3 Warranties.

3.1 Hardware Limited Warranty. Axon warrants that its law enforcement hardware products are free from defects in workmanship and materials for a period of ONE (1) YEAR from the date of receipt. Extended warranties run from the date of purchase of the extended warranty through the balance of the 1-year limited warranty term plus the term of the extended warranty measured after the expiration of the 1-year limited warranty. Axon-Manufactured Accessories are covered under a limited 90-DAY warranty from the date of receipt. Non-Axon manufactured accessories are covered under the manufacturer's warranty. If Axon determines that a valid warranty claim is received within the warranty period, Axon agrees to repair or replace the Product. Axon's sole responsibility under this warranty is to either repair or replace with the same or like Product, at Axon's option.

3.2 Warranty Limitations.

3.2.1 The warranties do not apply and Axon will not be responsible for any loss, data loss, damage, or other liabilities arising from: (a) damage from failure to follow instructions relating to the Product's use; (b) damage caused by use with non-Axon products or from the use of cartridges, batteries or other parts, components or accessories that are not manufactured or recommended by Axon; (c) damage caused by abuse, misuse, intentional or deliberate damage to the product, or force majeure; (d) damage to a Product or part that has been repaired or modified by persons other than Axon authorized personnel or without the written permission of Axon; or (e) if any Axon serial number has been removed or defaced.

3.2.2 To the extent permitted by law, the warranties and the remedies set forth above are exclusive and Axon disclaims all other warranties, remedies, and conditions, whether oral or written, statutory, or implied, as permitted by applicable law. If statutory or implied warranties cannot be lawfully disclaimed, then all such warranties are limited to the duration of the express warranty described above and limited by the other provisions contained in this Agreement.

3.2.3 Axon's cumulative liability to any Party for any loss or damage resulting from any claims, demands, or actions arising out of or relating to any Axon product will not exceed the purchase price paid to Axon for the product or if for services, the amount paid for such services over the prior 12 months preceding the claim. In no event will either Party be liable for any direct, special, indirect, incidental, exemplary, punitive or consequential damages, however caused, whether for breach of warranty, breach of contract, negligence, strict liability, tort or under any other legal theory.

3.3 Warranty Returns. If a valid warranty claim is received by Axon within the warranty period, Axon agrees to repair or replace the Product which Axon determines in its sole discretion to be defective under normal use, as defined in the Product instructions. Axon's sole responsibility under this warranty is to either repair or replace with the same or like Product, at Axon's option.

3.3.1 For warranty return and repair procedures, including troubleshooting guides, please go to Axon's websites www.axon.com/support or www.evidence.com, as indicated in the



National Field Trial Agreement

appropriate product user manual or quick start guide.

- 332** Before delivering product for warranty service, it is the Agency's responsibility to upload the data contained in the product to the EVIDENCE.com services or download the product data and keep a separate backup copy of the contents. Axon is not responsible for any loss of software programs, data, or other information contained on the storage media or any other part of the product services.

- 4** A replacement product will be new or like new and have the remaining warranty period of the original product or 90 days from the date of replacement or repair, whichever period is longer. When a product or part is exchanged, any replacement item becomes Purchaser's property and the replaced item becomes Axon's property.

Evidence.com Terms of Use Addendum

- 1** **Access Rights.** Upon the purchase or granting of a subscription from Axon and the opening of an Evidence.com account the Agency will have access and use of the Evidence.com Services for the storage and management of Agency Content during the subscription term (**Term**). The Evidence.com Service and data storage are subject to usage limits. The Evidence.com Service may not be accessed by more than the number of end users specified in the Quote. If Agency becomes aware of any violation of this Addendum by an end user, the Agency will immediately terminate that end user's access to Agency Content and the Evidence.com Services.
- 2** **Agency Owns Agency Content.** The Agency controls and owns all right, title, and interest in and to Agency Content and Axon obtains no rights to the Agency Content and the Agency Content are not business records of Axon. The Agency is solely responsible for the uploading, sharing, withdrawal, management and deletion of Agency Content. Axon will have limited access to Agency Content solely for the purpose of providing and supporting the Evidence.com Services to the Agency and Agency end users. The Agency represents that the Agency owns Agency Content; and that none of Agency Content or Agency end users' use of Agency Content or the Evidence.com Services will violate this Addendum or applicable laws.
- 3** **Evidence.com Data Security.**
- 3.1. Generally.** Axon will implement commercially reasonable and appropriate measures designed to secure Agency Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive Information Security Program (**ISP**) that includes logical and physical access management, vulnerability management, configuration management, incident monitoring and response, encryption of digital evidence uploaded, security education, risk management, and data protection. The Agency is responsible for maintaining the security of end user names and passwords and taking steps to maintain appropriate security and access by end users to Agency Content. Log-in credentials are for Agency internal use only and Agency may not sell, transfer, or sublicense them to any other entity or person. The Agency agrees to be responsible for all activities undertaken by the Agency, Agency employees, Agency contractors or agents, and Agency end users which result in unauthorized access to the Agency account or Agency Content. Audit log tracking for the video data is an automatic feature of the Services which provides details as to who accesses the video data and may be downloaded by the Agency at any time. The Agency shall contact Axon immediately if an unauthorized third party may be using the Agency account or Agency Content or if account information is lost or



National Field Trial Agreement

stolen.

3.2. FBI CJS Security Addendum. For customers based in the United States, Axon agrees to the terms and requirements set forth in the Federal Bureau of Investigation (FBI) Criminal Justice Information Services (CJS) Security Addendum for the Term of this Addendum.

4. Our Support. Axon will make available updates as released by Axon to the Evidence.com Services. Updates may be provided electronically via the Internet. Axon will use reasonable efforts to continue supporting the previous version of any API or software for 6 months after the change (except if doing so (a) would pose a security or intellectual property issue, (b) is economically or technically burdensome, or (c) is needed to comply with the law or requests of governmental entities. The Agency is responsible for maintaining the computer equipment and Internet connections necessary for use of the Evidence.com Services.

5. Data Privacy. Axon will not disclose Agency Content or any information about the Agency except as compelled by a court or administrative body or required by any law or regulation. Axon will give notice if any disclosure request is received for Agency Content so the Agency may file an objection with the court or administrative body. The Agency agrees to allow Axon access to certain information from the Agency in order to: (a) perform troubleshooting services for the account upon request or as part of our regular diagnostic screenings; (b) enforce this agreement or policies governing use of Evidence.com Services; or (c) perform analytic and diagnostic evaluations of the systems.

6. Data Storage. Axon will determine the locations of the data centers in which Agency Content will be stored and accessible by Agency end users. For United States customers, Axon will ensure that all Agency Content stored in the Evidence.com Services remains within the United States including any backup data, replication sites, and disaster recovery sites. Axon may transfer Agency Content to third parties for the purpose of storage of Agency Content. Third party subcontractors responsible for storage of Agency Content are contracted by Axon for data storage services. Ownership of Agency Content remains with the Agency. For use of an Unlimited Evidence.com License unlimited data may be stored in the Agency's Evidence.com account if the data originates from a Axon device.

7. Suspension of Evidence.com Services. Axon may suspend Agency access or any end user's right to access or use any portion or all of the Evidence.com Services immediately upon notice in accordance with the following:

7.1. The Agency or an end user's use of or registration for the Evidence.com Services (i) poses a security risk to the Evidence.com Services or any third party, (ii) may adversely impact the Evidence.com Services or the systems or content of any other customer, (iii) may subject Axon, Axon's affiliates, or any third party to liability, or (iv) may be fraudulent;

7.2. Axon will not delete any of Agency Content on Evidence.com as a result of a suspension, except as specified elsewhere in this Addendum.

8. Software Services Warranty. Axon warrants that the Evidence.com Services will not infringe or misappropriate any patent, copyright, trademark, or trade secret rights of any third party. Axon disclaims any warranties or responsibility for data corruption or errors before the data is uploaded to the Evidence.com Services.

9. License Restrictions. Neither the Agency nor any Agency end users may, or attempt to: (a) permit any



National Field Trial Agreement

third party to access the Evidence.com Services except as permitted in this Addendum; (b) modify, alter, tamper with, repair, or otherwise create derivative works of any of the Evidence.com Services; (c) reverse engineer, disassemble, or decompile the Evidence.com Services or apply any other process or procedure to derive the source code of any software included in the Evidence.com Services, or allow any others to do the same; (d) access or use the Evidence.com Services in a way intended to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas; (e) copy the Evidence.com Services in whole or part, except as expressly permitted in this Addendum; (f) use trade secret information contained in the Evidence.com Services, except as expressly permitted in this Addendum; (g) resell, rent, loan, or sublicense the Evidence.com Services; (h) access the Evidence.com Services in order to build a competitive product or service or copy any features, functions, or graphics of the Evidence.com Services; (i) remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of ours or our licensors on or within the Evidence.com Services or any copies of the Evidence.com Services; or (j) use the Evidence.com Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, to store or transmit material in violation of third party privacy rights, or to store or transmit malicious code. All licenses granted in this Addendum are conditional on continued compliance this Addendum, and will immediately and automatically terminate if the Agency does not comply with any term or condition of this Addendum. The Agency may only use our trademarks in accordance with the Axon Trademark Use Guidelines (located at www.axon.com).



National Field Trial Agreement

Professional Services Addendum

1 **Scope of Services.** The project scope will consist of the Services identified on the Quote.

1.1. The Package for the Axon and Evidence.com related Services are detailed below:

System set up and configuration Setup Axon View on smart phones (if applicable). Configure categories & custom roles based on Agency need. Troubleshoot IT issues with Evidence.com and Evidence.com Dock (Dock) access. Work with IT to install Evidence Sync software on locked-down computers (if applicable). For the Full Service Package: One on-site session Included
Dock installation Work with Agency to decide ideal location of Dock setup and set configurations on Dock if necessary. Authenticate Dock with Evidence.com using "admin" credentials from Agency. Work with Agency's IT to configure its network to allow for maximum bandwidth and proper operation within Agency's network environment. On site Assistance Included
Dedicated Project Manager Assignment of a specific Axon representative for all aspects of planning the Product rollout (Project Manager). Ideally, the Project Manager will be assigned to the Agency 4–6 weeks prior to rollout.
Weekly project planning meetings Project Manager will develop a Microsoft Project plan for the rollout of Axon camera units, Docks and Evidence.com account training based on size, timing of rollout and Agency's desired level of training. Up to 4 weekly meetings leading up to the Evidence.com Dock installation of not more than 30 minutes in length.
Best practice implementation planning session—1 on-site session to: Provide considerations for establishment of video policy and system operations best practices based on Axon's observations with other agencies. Discuss importance of entering metadata in the field for organization purposes and other best practice for digital data management. Provide referrals of other agencies using the Axon camera products and Evidence.com services Create project plan for larger deployments. Recommend rollout plan based on review of shift schedules.
System Admin and troubleshooting training sessions (only included in Full Service Package) 2 on-site sessions—each providing a step-by-step explanation and assistance for Agency's configuration of security, roles & permissions, categories & retention, and other specific settings for Evidence.com.
Axon instructor training Prior to general user training on Axon camera systems and Evidence.com services, Axon's on-site professional services team will provide training for instructors who can support the Agency's subsequent Axon camera and Evidence.com training needs.
End user go live training and support sessions Provide individual device set up and configuration assistance; pairing with viewers when applicable; and training on device use, Evidence.com and Evidence Sync.
Implementation document packet Evidence.com administrator guides, camera implementation guides, network setup guide, sample policies, and categories & roles guide
Post go live review session

1.2. Additional training days may be added on to any service package for additional fees set forth in the Quote.



National Field Trial Agreement

- 2 **Out of Scope Services.** Axon is responsible to perform only the Services described on the Quote. Any additional services discussed or implied that are not defined explicitly by the Quote will be considered out of the scope.
- 3 **Delivery of Services.**
 - 3.1. **Hours and Travel.** Axon personnel will work within normal business hours, Monday through Friday, 8:30 a.m. to 5:30 p.m., except holidays unless otherwise agreed in advance. All tasks on-site will be performed over a consecutive timeframe unless otherwise agreed to by the Parties in advance. Travel time by Axon personnel to Agency premises will not be charged as work hours performed.
 - 3.2. **Changes to Services.** Changes to the scope of Services must be documented and agreed upon by the Parties in a change order. Changes may require an equitable adjustment in the charges or schedule.
- 4 **Authorization to Access Computer Systems to Perform Services.** The Agency authorizes Axon to access relevant Agency computers and network systems solely for the purpose of performing the Services. Axon will work diligently to identify as soon as reasonably practicable the resources and information Axon expects to use, and will provide an initial itemized list to the Agency. The Agency is responsible for, and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by the Agency.
- 5 **Site Preparation and Installation.** Prior to delivering any Services, Axon will provide 1 copy of the then-current user documentation for the Services and related Products in paper or electronic form (**Product User Documentation**). The Product User Documentation will include all environmental specifications that must be met in order for the Services and related Products to operate in accordance with the Product User Documentation. Prior to the installation of Product (whether performed by the Agency or Axon), the Agency must prepare the Installation Site in accordance with the environmental specifications set forth in the Product User Documentation. Following the installation of the Products, the Agency must maintain the Installation Site where the Products have been installed in accordance with the environmental specifications set forth in the Product User Documentation. In the event that there are any updates or modifications to the Product User Documentation for any Products provided by Axon under this Addendum, including the environmental specifications for the Products, Axon will provide the updates or modifications to Agency when they are generally released by Axon to Axon customers.
- 6 **Liability for Loss or Corruption of Data.** The Agency is responsible for: (i) instituting proper and timely backup procedures for Agency software and data; (ii) creating timely backup copies of Agency software or data that may be damaged, lost, or corrupted due to our provision of Services; and (iii) using backup copies to restore any Agency software or data in the event of any loss of, damage to, or corruption of the operational version of Agency software or data, even if such damage, loss, or corruption is due to Axon negligence. However, regardless of any assistance provided by Axon: (i) Axon will in no way be liable for the accuracy, completeness, success, or results of efforts to restore Agency software or data; (ii) any assistance provided by Axon under this Section is without warranty, express or implied; and (iii) in no event will Axon be liable for loss of, damage to, or corruption of



National Field Trial Agreement

Agency data from any cause.

Axon Enterprise, Inc.*Protect Life.*

17800 N 85th St.
 Scottsdale, Arizona 85255
 United States
 Phone: (800) 978-2737
 Fax:

**Wendell Mitchell**

(972) 874-3344
 wendell.mitchell@flower-mound.com

Quotation**Quote:** Q-114713-3**Date:** 6/6/2017 9:04 AM**Quote Expiration:** 6/30/2017**Contract Start Date*:** 6/15/2017**Contract Term:** 1 year**AX Account Number:**

157674

Bill To:

Flower Mound Police Dept. - TX
 4150 KIRKPATRICK LN
 FLOWER MOUND, TX 75028
 US

Ship To:

Wendell Mitchell
 Flower Mound Police Dept. - TX
 4150 KIRKPATRICK LN
 FLOWER MOUND, TX 75028
 US

SALESPERSON	PHONE	EMAIL	DELIVERY METHOD	PAYMENT METHOD
Paul Strozier		pstrozier@axon.com	Fedex - Ground	Net 30

*Note this will vary based on the shipment date of the product.

Year 1

Due Net 30

QTY	ITEM #	DESCRIPTION	UNIT PRICE	TOTAL BEFORE DISCOUNT	DISCOUNT (\$)	NET TOTAL
79	74001	AXON CAMERA ASSEMBLY, ONLINE, AXON BODY 2, BLK	USD 399.00	USD 31,521.00	USD 31,521.00	USD 0.00
79	74020	MAGNET MOUNT, FLEXIBLE, AXON RAPIDLOCK	USD 0.00	USD 0.00	USD 0.00	USD 0.00
79	74021	MAGNET MOUNT, THICK OUTERWEAR, AXON RAPIDLOCK	USD 0.00	USD 0.00	USD 0.00	USD 0.00
79	11553	SYNC CABLE, USB A TO 2.5MM	USD 0.00	USD 0.00	USD 0.00	USD 0.00
13	74008	AXON DOCK, 6 BAY + CORE, AXON BODY 2	USD 1,495.00	USD 19,435.00	USD 19,435.00	USD 0.00
13	70033	WALL MOUNT BRACKET, ASSY, EVIDENCE.COM DOCK	USD 35.00	USD 455.00	USD 455.00	USD 0.00
30	70112	AXON SIGNAL UNIT	USD 279.00	USD 8,370.00	USD 8,370.00	USD 0.00
36	70116	PPM, SIGNAL	USD 89.99	USD 3,239.64	USD 3,239.64	USD 0.00
Year 1 Total Before Discounts:						USD 63,020.64
Year 1 Discount:						USD 63,020.64
Year 1 Net Amount Due:						USD 0.00

Grand Total

USD 0.00

Axon Body 2 Shipping

Axon Body 2 is available for delivery between 8-10 weeks after purchase date. You will be notified if there are any delays. Axon reserves the right to make product changes without notice.

Signal Performance Power Magazine (SPPM) Pre-order

Thank you for your interest in the Signal Performance Power Magazine (SPPM). This pre-order is a commitment to purchase the SPPM. The SPPM is available for delivery starting in November 2016. You will be notified if there are any delays. Axon reserves the right to make product changes without notice.

**Axon Enterprise, Inc.'s Sales Terms and Conditions
for Direct Sales to End User Purchasers**

By signing this Quote, you are entering into a contract and you certify that you have read and agree to the provisions set forth in this Quote and Axon's Master Services and Purchasing Agreement posted at www.axon.com/legal. You represent that you are lawfully able to enter into contracts and if you are entering into this agreement for an entity, such as the company, municipality, or government agency you work for, you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, do not sign this Quote.

Signature:	_____	Date:	_____
Name (Print):	_____	Title:	_____
PO# (if needed):	_____		

Quote: Q-114713-3

Please sign and email to Paul Strozier at pstrozier@axon.com or fax to

THANK YOU FOR YOUR BUSINESS!

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Axon Enterprise, Inc.*Protect Life.*

17800 N 85th St.
 Scottsdale, Arizona 85255
 United States
 Phone: (800) 978-2737
 Fax:

**Laramie Vest**

(972) 874-6270
 laramie.vest@flower-mound.com

Quotation**Quote:** Q-115509-2**Date:** 5/18/2017 9:10 AM**Quote Expiration:** 6/30/2017**Contract Start Date*:** 7/1/2017**Contract Term:** 1 year**AX Account Number:**

462655

Bill To:

Flower Mound Fire Dept.
 3838 Forums Dr.
 Flower Mound, TX 75028
 US

Ship To:

Laramie Vest
 Flower Mound Fire Dept.
 3838 Forums Dr.
 Flower Mound, TX 75028
 US

SALESPERSON	PHONE	EMAIL	DELIVERY METHOD	PAYMENT METHOD
Paul Strozier		pstrozier@axon.com	Fedex - Ground	Net 30

*Note this will vary based on the shipment date of the product.

Hardware

QTY	ITEM #	DESCRIPTION	UNIT PRICE	TOTAL BEFORE DISCOUNT	DISCOUNT (\$)	NET TOTAL
5	74001	AXON CAMERA ASSEMBLY, ONLINE, AXON BODY 2, BLK	USD 399.00	USD 1,995.00	USD 1,995.00	USD 0.00
5	74020	MAGNET MOUNT, FLEXIBLE, AXON RAPIDLOCK	USD 0.00	USD 0.00	USD 0.00	USD 0.00
5	74021	MAGNET MOUNT, THICK OUTERWEAR, AXON RAPIDLOCK	USD 0.00	USD 0.00	USD 0.00	USD 0.00
5	11553	SYNC CABLE, USB A TO 2.5MM	USD 0.00	USD 0.00	USD 0.00	USD 0.00
1	74008	AXON DOCK, 6 BAY + CORE, AXON BODY 2	USD 1,495.00	USD 1,495.00	USD 1,495.00	USD 0.00
Hardware Total Before Discounts:						USD 3,490.00
Hardware Discount:						USD 3,490.00
Hardware Net Amount Due:						USD 0.00
Grand Total						USD 0.00

Axon Body 2 Shipping

Axon Body 2 is available for delivery between 8-10 weeks after purchase date. You will be notified if there are any delays. Axon reserves the right to make product changes without notice.

**Axon Enterprise, Inc.'s Sales Terms and Conditions
for Direct Sales to End User Purchasers**

By signing this Quote, you are entering into a contract and you certify that you have read and agree to the provisions set forth in this Quote and Axon's Master Services and Purchasing Agreement posted at www.axon.com/legal. You represent that you are lawfully able to enter into contracts and if you are entering into this agreement for an entity, such as the company, municipality, or government agency you work for, you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, do not sign this Quote.

Signature: _____	Date: _____
Name (Print): _____	Title: _____
PO# (if needed): _____	

Quote: Q-115509-2

Please sign and email to Paul Strozier at pstrozier@axon.com or fax to

THANK YOU FOR YOUR BUSINESS!

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Axon Enterprise, Inc.*Protect Life.*

17800 N 85th St.
 Scottsdale, Arizona 85255
 United States
 Phone: (800) 978-2737
 Fax:

**Wendell Mitchell**

(972) 874-3344
 wendell.mitchell@flower-mound.com

Quotation

Quote: Q-120542-1
Date: 6/14/2017 5:03 PM
Quote Expiration: 6/30/2017
Contract Start Date*: 7/1/2017
Contract Term: 1 year

AX Account Number:

157674

Bill To:

Flower Mound Police Dept. - TX
 4150 KIRKPATRICK LN
 FLOWER MOUND, TX 75028
 US

Ship To:

Wendell Mitchell
 Flower Mound Police Dept. - TX
 4150 KIRKPATRICK LN
 FLOWER MOUND, TX 75028
 US

SALESPERSON	PHONE	EMAIL	DELIVERY METHOD	PAYMENT METHOD
Paul Strozier		pstrozier@axon.com	Fedex - Ground	Net 30

*Note this will vary based on the shipment date of the product.

Hardware

QTY	ITEM #	DESCRIPTION	UNIT PRICE	TOTAL BEFORE DISCOUNT	DISCOUNT (\$)	NET TOTAL
1	70033	WALL MOUNT BRACKET, ASSY, EVIDENCE.COM DOCK	USD 35.00	USD 35.00	USD 35.00	USD 0.00
Hardware Total Before Discounts:						USD 35.00
Hardware Discount:						USD 35.00
Hardware Net Amount Due:						USD 0.00
Grand Total						USD 0.00

Axon Enterprise, Inc.'s Sales Terms and Conditions for Direct Sales to End User Purchasers

By signing this Quote, you are entering into a contract and you certify that you have read and agree to the provisions set forth in this Quote and Axon's Master Services and Purchasing Agreement posted at www.axon.com/legal. You represent that you are lawfully able to enter into contracts and if you are entering into this agreement for an entity, such as the company, municipality, or government agency you work for, you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, do not sign this Quote.

Signature: _____	Date: _____
Name (Print): _____	Title: _____
PO# (if needed): _____	

Quote: Q-120542-1

Please sign and email to Paul Strozier at pstrozier@axon.com or fax to

THANK YOU FOR YOUR BUSINESS!

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TOWN COUNCIL AGENDA ITEM NO. 7

CONSENT ITEM

DATE: July 17, 2017

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

ITEM: Consider approval of award of the engineering services to Alan Plummer Associates, Inc. for the Lakeside Business District – Water Reuse Master Plan project, in the amount of \$118,173.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The project provides for a Lakeside Business District – Water Reuse Master Plan that will present analysis, findings, and recommendations for implementing a plan to meet the Town's reuse water system infrastructure needs over the build-out of the system located in the Lakeside Business District, including Gerault Park and surrounding areas. The goal of the produced document is to serve as a planning tool for current and future needs by projecting reuse water demands, identifying the resulting required infrastructure and developing a list of recommended capital improvements along with corresponding budgets.

FISCAL IMPACT: \$118,173.00

Proposed Expenditure:	Account Number(s):
\$118,173.00	601-900-95041

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

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

ATTACHMENTS:

1. Professional Services Agreement

DRAFT MOTION: Move to approve the award of the engineering services to Alan Plummer Associates, Inc. for the Lakeside Business District - Water Reuse Master Plan project, in the amount of \$118,173.00; and authorize the Mayor to execute same on behalf of the Town.

THE STATE OF TEXAS §
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH
ALAN PLUMMER ASSOCIATES, INC.**

This contract is entered into on this _____ day of _____, 20____, by and between the **TOWN OF FLOWER MOUND, TEXAS**, a municipal corporation located in Denton County, Texas, (hereinafter referred to as "TOWN"), acting by and through its Mayor, and **Alan Plummer Associates, Inc.**, ("hereinafter referred to as "CONSULTANT") whose address is 1320 South University Drive, Suite 300, Fort Worth, TX 76107.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to surveying, design and providing construction documents for the Lakeside Reuse Master Plan project; and

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

TERMS OF AGREEMENT

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

I.

Employment of Consultant

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

II.

Scope of Services

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

III.

Payment for Services

Total payment for services described herein shall be a sum not to exceed One Hundred Eighteen Thousand One Hundred Seventy Three and No/100 Dollars (\$118,173.00). This total payment for services includes CONSULTANT’s ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT. If CONSULTANT retains any subcontractors to perform any of the work, CONSULTANT acknowledges that payments to such subcontractors are due and payable in accordance with the provisions of Texas Government Code Section 2251.022, and that interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.

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

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

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

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

IV.

Revisions of the Scope of Services

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

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

V.

Term

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

VI.

Contract Termination Provision

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

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

VII.

Ownership of Documents

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

VIII.

Insurance

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

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

Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, TX 75028
Email: purchasing@flower-mound.com

The following policies and coverage shall be required:

1. Worker's Compensation Insurance (as required by law) with the policy endorsed to provide a waiver of subrogation as to TOWN; such policy to provide for Employers' Liability Insurance of not less than \$100,000.00 for each accident, \$100,000.00 disease-each employee, \$500,000.00 disease-policy limit;
2. Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractor's and Contractual Liability, including but not limited to coverage for all of the indemnification obligations of CONSULTANT under this Contract, and fully insuring CONSULTANT's liability for injury to or death of employees of TOWN and of third parties, extended to include personal injury liability coverage and for damage to property of third parties, with minimum combined single limits of \$1,000,000 per occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate per occurrence. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis;
3. Business Automobile Liability Insurance, covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000.00 per occurrence; and
4. Professional Liability Insurance: CONSULTANT shall obtain and maintain at all times during the prosecution of the work under this Contract professional liability insurance, which may be written on a claims made form provided that "tail coverage" or continuation coverage is provided. Limits of liability shall be \$1,000,000.00 per claim, \$1,000,000.00 annual aggregate. The coverage under this policy shall include a contractual liability endorsement.

If any of the foregoing insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than thirty-six (36) months following completion of the Contract and acceptance by the TOWN. All such insurance shall be purchased from an insurance company that meets a financial rating of B+VI or better as assigned by A.M. Best Company or equivalent.

B. Each insurance policy to be furnished by CONSULTANT shall include the following conditions by endorsement to the policy

1. The TOWN shall be named as an additional insured on the Commercial General Liability policy, by using endorsement CG2026 or broader;

2. The TOWN shall also be named as an additional insured as to all other applicable coverage save and except the Worker's Compensation Insurance and Professional Liability Insurance;
3. Each policy will require that thirty (30) days prior to the expiration, cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to TOWN by certified mail to:

Tiffany Bruce, P.E.,
 Engineering Manager
 Town of Flower Mound
 2121 Cross Timbers Road
 Flower Mound, Texas 75028
 972-874-6306 Telephone

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

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

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

1. Any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by CONSULTANT. The TOWN's decision(s) thereon shall be final;
2. All policies are to be written through companies duly approved to transact that class of insurance in the State of Texas; and
3. All liability policies required herein, save and except Professional Liability Insurance, shall be written with an "occurrence" basis coverage trigger.

D. CONSULTANT agrees to the following:

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

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

IX.
Right to Inspect Records

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

If TOWN agrees that CONSULTANT may retain any subcontractors, CONSULTANT further agrees to include in subcontract(s), if any, a provision that any subcontractor or engineer agrees that TOWN shall have access to and the right to examine any directly pertinent books, documents, papers and records of such engineer or sub-contractor involving transactions to the subcontract, and further, that TOWN shall have access during normal working hours to all such engineer or sub-contractor

facilities and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of the paragraph. TOWN shall give any such engineer or sub-contractor reasonable advance notice of intended audits.

X.

Successors and Assigns

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

XI.

CONSULTANT's Liability

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

XII.

Indemnification

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

OR CAUSES OF ACTION IS THE RESULT IN PART OF TOWN'S NEGLIGENCE OR FAULT, AND CONSULTANT WILL, AT ITS OWN COST AND EXPENSE, DEFEND AND PROTECT TOWN AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS, INCLUDING PAYMENT OF TOWN'S REASONABLE ATTORNEYS' FEES. IN THE EVENT OF A CLAIM IS BROUGHT AGAINST TOWN, TOWN SHALL HAVE THE RIGHT TO RETAIN LEGAL COUNSEL OF ITS CHOOSING IN DEFENSE OF SUCH A CLAIM, AND SUCH ELECTION SHALL NOT RELIEVE CONTRACTOR OF ITS OBLIGATIONS UNDER THIS SECTION.

XIII.

Independent Contractor

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

XIV.

Default

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

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

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

XV.

Provisions Surviving Termination

The terms of Sections XII entitled Indemnification, and XVII entitled Confidential Information shall survive termination of this Contract.

XVI.

Changes

TOWN may, from time to time, require changes in the scope of services to be performed under this Contract. Such changes as are mutually agreed upon by and between TOWN and CONSULTANT shall be incorporated by written modification to this Contract.

XVII.

Conflicts of Interest

CONSULTANT covenants and agrees that CONSULTANT and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Contract. All activities, investigations and other efforts made by CONSULTANT pursuant to this Contract will be conducted by employees, associates or subcontractors of CONSULTANT.

No officer or employee of TOWN shall have any personal, financial interest, direct or indirect, in this Contract nor have any direct financial interest in the sale to TOWN of any land, materials, supplies, or services under this Contract, except on behalf of TOWN as a TOWN officer or employee. Any violation of this prohibition with knowledge, expressed or implied, of the person or corporation contracting with TOWN shall render the Contract voidable by the Director or the Town Council.

XVIII.

Confidential Information

CONSULTANT hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations in accordance with this Contract, which is of a confidential, non-public or proprietary nature. CONSULTANT shall treat any such information received in full confidence and will not disclose or appropriate such Confidential Information for its own use or the use of any third party at any time during or subsequent to this Contract. As used herein,

“Confidential Information” means all oral and written information concerning TOWN, its affiliates and subsidiaries, and all oral and written information concerning TOWN or its activities, that is of a non-public, proprietary or confidential nature including, without limitation, information pertaining to customer lists, services, methods, processes and operating procedures, together with all analyses, compilation, studies or other documents, whether prepared by CONSULTANT or others, which contain or otherwise reflect such information. The term “Confidential Information” shall not include such materials that are or become generally available to the public other than as a result of disclosure of CONSULTANT, or are required to be disclosed by a governmental authority or by law, as determined by TOWN’s attorney.

XIX.
Notice Information

All notices and communications under this CONTRACT to be mailed to TOWN shall be sent to the address of TOWN’s agent as follows, unless and until CONSULTANT is otherwise notified:

Tiffany Bruce, P.E.,
Engineering Manager
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6234 Telephone

Notices and communications to be mailed or delivered to CONSULTANT shall be sent to the address of CONSULTANT as follows, unless and until TOWN is otherwise notified:

Ellen McDonald, P.E.
Principal
Alan Plummer Associates, Inc.
1320 South University Drive, Suite 300
Fort Worth, Texas 76107
817-806-1714 Telephone

Any notices and communications required to be given in writing by one party to the other shall be considered as having been given to the addressee on the date the notice or communication is posted, faxed or personally delivered by the sending party.

XX.
Applicable Law

The Contract is entered into subject to the Flower Mound Town Charter and ordinances of TOWN, as same may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and

federal laws. CONSULTANT will make any and all reports required per federal, state or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with CONSULTANT's income.

XXI.
Non-Discrimination

CONSULTANT shall not discriminate against any employee, applicant for employment, contractor, or sub-contractor because of the race, age, color, religion, sex, or national origin of such person. Engineer shall take affirmative action to insure that all such persons are treated equally during their employment without regard to their race, age, color, religion, sex, or national origin. If CONSULTANT fails to comply with the federal or state laws relating to Equal Employment Opportunity, it is agreed that TOWN, at its option, may do either or both of the following:

- (a) Cancel, terminate, or suspend the Contract in whole or in part; or
- (b) Declare CONSULTANT ineligible for future TOWN contracts until it is determined to be in compliance.

XXII.
Arbitration

CONSULTANT agrees not to enter into any agreement to arbitrate arising out of, or relating to, this Contract which would subject TOWN to being a party to any arbitration without TOWN's prior written consent.

XXIII.
No Waiver of Governmental Immunity

Nothing in this Contract shall be construed as a waiver of TOWN'S governmental immunity, or of any applicable limitation on damages, or any other legal protection or defense or privilege of TOWN, except to the extent expressly provided otherwise herein.

XXIV.
Severability

If any of the terms, provisions, covenants, conditions or any other part of this Contract are for any reason held to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants, conditions or any other part of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

XXV.
Remedies

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Contract may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

XXVI.
Entire Agreement

This Contract embodies the entire agreement of the parties hereto, superseding all oral or written previous and contemporaneous agreements between the parties relating to matters herein, and except as otherwise provided herein cannot be modified without written agreement of the parties.

XXVII.
Non-Waiver

It is further agreed that one (1) or more instances of forbearance by TOWN in the exercise of its rights herein shall in no way constitute a waiver thereof.

XXVIII.
Headings

The headings of this Contract are for the convenience of reference only and shall not affect any of the terms and conditions hereof in any manner.

XXIX.
Venue

Situs of this Contract is agreed to be Denton County, Texas, for all purposes, including performance and execution, and the parties to this Contract agree and covenant that this Contract will be enforceable in Flower Mound, Texas; and that if legal action is necessary to enforce this Contract, exclusive venue will lie in Denton County, Texas.

XXX.
No Third Party Beneficiary

For purposes of this Contract, including its intended operation and effect, the parties (TOWN and CONSULTANT) specifically agree and contract that: (1) the Contract only affects matters/disputes between the parties to this Contract, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual

relationship with TOWN or CONSULTANT or both; and (2) the terms of this Contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either TOWN or CONSULTANT.

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

**THE TOWN OF FLOWER MOUND,
TEXAS**

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

Date Signed: _____

Attest:

Town Secretary

CONSULTANT:**Alan Plummer Associates, Inc.**

By: Ellen McDonald
 Name: Ellen McDonald
 Title: Principal
 Date Signed: 7/28/17

State of Texas §
 §
 County of Tarrant §

This instrument was acknowledged before me on the 28th day of June, 20 17, by Ellen McDonald in his/her capacity as Principal of Alan Plummer Associates, a Texas Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of Alan Plummer Associates, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 28th DAY OF JUNE, 20 17.

Donald Zachary Thoms
 Notary Public, State of Texas

My Commission Expires:

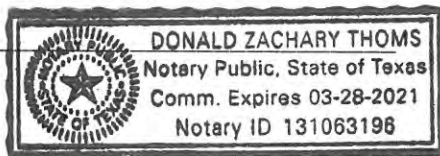


EXHIBIT A
Town of Flower Mound
Lakeside Reuse System Master Plan
Scope of Work

Prepare a Reuse Master Plan report which summarizes the evaluation of customers and conveyance alternatives for the Lakeside Area.

The ENGINEER agrees to furnish the TOWN the following specific services:

BASIC ENGINEERING SERVICES

ENGINEER agrees to perform BASIC ENGINEERING SERVICES for the evaluation of reuse customers, water usages, and plant facilities for the Lakeside Area Reuse Masterplan, in accordance with the stipulations within this AGREEMENT. The ENGINEER shall perform BASIC ENGINEERING SERVICES necessary for the development of the PROJECT as follows:

A. EVALUATION PHASE SERVICES

1. Kickoff Meeting: Prepare for and facilitate kickoff meeting with the Town.
 - a. Review project scope, schedule and deliverables.
 - b. Discuss overall objectives – short term and long term -- for the Town's reuse program, including both the western and southern programs and plans for future areas.
 - c. Identify and discuss those potential future reclaimed water customers that have already been identified by the Town. Additional customers will be identified in Task 2.
 - d. Discuss and identify potential pipeline alignments for the Lakeside reuse system.
 - e. Summarize available supply and storage options within the system for dry weather and dry years.
2. Develop potential reuse customer list and possible water usages:
 - a. Town will provide a collection system map of the southern reuse area.
 - b. Town will provide most recent five years of monthly water usage data in electronic format. The Town will also provide GIS data showing locations of meters (associated with data provided) for each user in the southern area.
 - c. Locate the potential customers already identified by the Town and, based on review of aerials, water use data, and inspection of the collection system map, identify any additional customers that might participate in a reuse system.
 - d. Develop refined list of potential reuse customers and possible water usages.

- e. Identify future development areas that may become additional users.
3. Evaluation Wastewater Treatment Plant Facilities:
 - a. Identify additional facilities needed at the Wastewater Treatment Plant including a reuse pump station, sodium hypochlorite disinfection supply, yard piping, electrical and instrumentation controls.
 - b. Evaluate the use of the existing primary clarifiers for storage compared to new ground storage tanks.
 - c. Provide OPCC for proposed modifications to the plant.
 4. Prepare for and facilitate meetings with up to five (5) potential users. The purpose of the meetings is to provide information about the Town's reclaimed water system, identify potential connection and retrofit issues, determine anticipated peak reclaimed water usage needs, and identify general diurnal and seasonal water usage trends. Prepare and distribute minutes from each meeting.
 5. Develop up to two conceptual conveyance alternatives to serve the customers identified in Task 2. Develop hydraulics for each alternative. Prepare GIS map exhibits for each alternative. Prepare planning-level opinions of probable capital and O&M costs for each alternative. The hydraulics could be:
 - a. Hydraulic calculations based on recommended pipeline sizes
 - b. Hydraulic models using GIS, InfoWater, or other per the Town's preference.
 6. Develop phased-approach for implementing the Lakeside Reuse Master Plan. A schedule of implementation will be developed in coordination with the Town.
 7. Summarize results of evaluation in a Lakeside Area Reuse Master Plan report. Content and format of the report will be structured so that it will meet the requirements of feasibility reports needed when applying for TWDB funding. Provide a draft to the Town in electronic format for review. Incorporate comments and provide final report to the Town in electronic format.
 8. Prepare for and attend up to two meetings with the Town to review project progress.
 9. Assist in responding to requests for information from the TCEQ related to the Master Plan.

ADDITIONAL SERVICES

Additional services to be performed by the ENGINEER, if authorized by the TOWN, which are not included in the above-described Basic Engineering Services, are described as follows:

- A. Providing shop, mill, field or laboratory inspection of materials and equipment.
- B. Coordination with other consultants.
- C. Assisting the TOWN in claims disputes with Contractor(s).
- D. Assisting TOWN or Contractor in the defense of prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. ENGINEER shall furnish such services, if any, on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
- E. Sampling, testing or analysis beyond that specifically included in Basic Services.
- F. Preparing copies of Computer-Aided Drafting (CAD) electronic databases, drawings, or files for the TOWN's use in a future CAD system.
- G. Attending additional meetings as requested by TOWN.
- H. Providing additional copies of plans and specifications or providing services for more than one construction project.
- I. Providing arrangements for all subsurface investigations, including but not limited to geotechnical borings, test pits, soil resistivity surveys, and other subsurface explorations beyond what is specifically included in basic services, and the TOWN making or arranging to have made the interpretations of data and reports resulting from such investigations.
- J. Corps of Engineer Permitting, SWPPP, Traffic Control Plans, Subsurface Utility Engineering.
- K. Providing design services to upsize the capacity of Justin or Sanctuary pumps, wet wells, force mains or gravity pipelines.
- L. Providing design and surveying services for easements or temporary construction easements.
- M. Providing design services for modeling any of the lift stations.

- N. Revisions to the plans, specifications, or bid proposal made after approval of the final documents by the TOWN.
- O. Any additional services that may be required by the TOWN for completion of the project that are not included in the Basic or Special Services.

END OF DOCUMENT

EXHIBIT B
COMPENSATION

Alan Plummer Associates will provide the Scope of Services for a lump sum fee.

A. Evaluation Services	\$117,540
B. Reimbursable Expenses	\$ 633

Total: \$118,173

*Direct Reimbursable Expenses includes Mileage, Reproduction, Print, and Postage and Freight fees.

The ENGINEER may submit interim statements, not to exceed one per month, for partial payment for SERVICES rendered. The statements to the TOWN will be by task for the percentage of work actually completed. The TOWN shall make interim payments within 30 calendar days in response to ENGINEER's interim statements.

EXHIBIT C
TIME OF COMPLETION

Upon Receipt of a notice to proceed, we anticipate the following:

	<u>Calendar Days</u>
Evaluation Services	221

EXHIBIT D
ALAN PLUMMER ASSOCIATES, INC.
HOURLY FEE SCHEDULE
2017

Staff Description	Staff Code	2017 Rate
Admin Staff	A1-A3	\$ 80.00
Senior Admin Staff	A4	\$ 105.00
Designer/Technician	C1-C2	\$ 90.00
Designer/Technician	C1-C2	\$ 90.00
Designer/Technician	C3	\$ 115.00
Senior Designer/Technician	C4	\$ 135.00
Electrical Engineer	EE1	\$ 145.00
Senior Electrical Engineer	EE2	\$ 265.00
Engineer/Scientist Intern	ES0	\$ 60.00
Engineer-in-Training/Scientist-in-Training	ES1-ES2	\$ 115.00
Engineer-in-Training/Scientist-in-Training	ES3	\$ 125.00
Project Engineer/Scientist	ES4	\$ 140.00
Senior Project Engineer/Scientist	ES5	\$ 160.00
Project Manager	ES6	\$ 193.00
Senior Project Manager	ES7	\$ 240.00
Principal	ES8-ES9	\$ 280.00

Billing rates may be adjusted by up to 4 percent annually (at the beginning of each calendar year) during the term of this agreement.

A multiplier of 1.15 will be applied to all direct expenses.



TOWN COUNCIL AGENDA ITEM NO. 8

CONSENT ITEM

DATE: July 17, 2017

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

ITEM: Consider approval of the award of material testing services to Globe Engineers, Inc. for the FM 2499 Roadway, Drainage, and Traffic Signal Improvements project, in the amount of \$41,360.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The project provides for roadway, drainage and traffic signal improvements along FM 2499 between Gerault Road and the Denton Creek Bridge in southeast Flower Mound and the City of Grapevine. The existing four 30-inch culverts across FM 2499 just west of the intersection with Gerault will be replaced with larger box culverts and a primary drainage system will continue to carry that flow south along FM 2499 and outfall upstream of the Denton Creek Bridge in Grapevine. This will help alleviate drainage problems that have occurred in the past causing the shutdown of lanes on FM 2499 temporarily due to water on the road. The roadway improvements will include a new entrance to the Town's existing lift station site, the addition of a fourth leg to the signal at FM 2499/Gerault, a westbound left turn lane at the signal and lengthening of the acceleration lane from the Gerault flyover to help provide for traffic relief in the area. Funding for this project is being provided from North Central Texas Council of Governments.

FISCAL IMPACT: \$41,360.00

Proposed Expenditure:	Account Number(s):
\$24,365.55	508-220-98902
\$15,824.05	531-220-98902
\$1,170.40	610-590-98902

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

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

ATTACHMENTS:

1. Professional Services Agreement

DRAFT MOTION: Move to approve the award of material testing services to Globe Engineers, Inc. for the FM 2499 Roadway, Drainage, and Traffic Signal Improvements project, in the amount of \$41,360.00; and authorize the Mayor to execute same on behalf of the Town.

THE STATE OF TEXAS §
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH
GLOBE ENGINEERS, INC.**

This contract is entered into on this _____ day of _____, 20____, by and between the **TOWN OF FLOWER MOUND, TEXAS**, a municipal corporation located in Denton County, Texas, (hereinafter referred to as "TOWN"), acting by and through its Mayor, and **GLOBE ENGINEERS, INC.**, ("hereinafter referred to as "CONSULTANT") whose address is 4601 Langland Road, Suite 104, Dallas, Texas 75244.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to construction materials engineering and testing and other services for the FM 2499 Roadway, Drainage, and Traffic Signal Improvements project; and

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

TERMS OF AGREEMENT

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

I.

Employment of Consultant

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

II.

Scope of Services

CONSULTANT shall perform such services as are necessary to provide the materials testing for the FM 2499 Roadway, Drainage, and Traffic Signal Improvements project specifically including, but not necessarily limited to, the tasks enumerated more fully in Attachment "A" hereto entitled "Scope of Work" (hereafter referred to as the "Project"). Attachment "A" is hereby incorporated herein by reference and made a part hereof as if written word for word. However, in case of conflict in the language of Attachment "A" and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.

III. Payment for Services

Total payment for services described herein shall be a sum not to exceed Forty One Thousand Three Hundred Sixty and No/100 Dollars (\$41,360.00). This total payment for services includes CONSULTANT's ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT.

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

Each month CONSULTANT will submit to TOWN an invoice for actual services performed and reimbursable expenses incurred by CONSULTANT during the previous month for which payment is sought. Each invoice shall be itemized to show the amount of work performed that month broken down by the identity of the person(s) performing such work, the amount of time expended by such person(s) in performing that work, the billing rate for each such person, and a brief summary of the work or testing performed by each such person. Each invoice shall also state the percentage of work completed on the Project, the total of the current invoice amount and a running total balance for the Project to date.

Assuming that TOWN agrees with the invoice, that TOWN has not determined any of the work to be unsatisfactory, or that TOWN otherwise does not dispute any of the amounts billed, within thirty (30) days of receipt of each such monthly invoice

TOWN shall make monthly payments in the amount shown by CONSULTANT's approved monthly statements and other documentation submitted.

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

IV.

Revisions of the Scope of Services

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

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

V.

Term

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

VI.

Contract Termination Provision

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

this Contract and shall proceed to promptly cancel all existing contracts insofar as they are related to this Contract.

VII.
Ownership of Documents

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

VIII.
Insurance

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

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

Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, TX 75028
Email: purchasing@flower-mound.com

The following policies and coverage shall be required:

1. Worker's Compensation Insurance (as required by law) with the policy endorsed to provide a waiver of subrogation as to TOWN; such policy to provide for Employers' Liability Insurance of not less than \$100,000.00 for each accident, \$100,000.00 disease-each employee, \$500,000.00 disease-policy limit;

2. Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractor's and Contractual Liability, including but not limited to coverage for all of the indemnification obligations of CONSULTANT under this Contract, and fully insuring CONSULTANT's liability for injury to or death of employees of TOWN and of third parties, extended to include personal injury liability coverage and for damage to property of third parties, with minimum combined single limits of \$1,000,000 per occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate per occurrence. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis;
3. Business Automobile Liability Insurance, covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000.00 per occurrence; and
4. Professional Liability Insurance: CONSULTANT shall obtain and maintain at all times during the prosecution of the work under this Contract professional liability insurance, which may be written on a claims made form provided that "tail coverage" or continuation coverage is provided. Limits of liability shall be \$1,000,000.00 per claim, \$1,000,000.00 annual aggregate. The coverage under this policy shall include a contractual liability endorsement.

If any of the foregoing insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than thirty-six (36) months following completion of the Contract and acceptance by the TOWN. All such insurance shall be purchased from an insurance company that meets a financial rating of B+VI or better as assigned by A.M. Best Company or equivalent.

B. Each insurance policy to be furnished by CONSULTANT shall include the following conditions by endorsement to the policy:

1. The TOWN shall be named as an additional insured on the Commercial General Liability policy, by using endorsement CG2026 or broader;
2. The TOWN shall also be named as an additional insured as to all other applicable coverage save and except the Worker's Compensation Insurance and Professional Liability Insurance;
3. Each policy will require that thirty (30) days prior to the expiration, cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to TOWN by certified mail to:

Tiffany Bruce
Town of Flower Mound

2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6306 Telephone

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

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

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

1. Any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by CONSULTANT. The TOWN's decision(s) thereon shall be final;
2. All policies are to be written through companies duly approved to transact that class of insurance in the State of Texas; and
3. All liability policies required herein, save and except Professional Liability Insurance, shall be written with an "occurrence" basis coverage trigger.

D. CONSULTANT agrees to the following:

1. CONSULTANT hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against TOWN, it being the intention that the insurance policies shall protect all parties to this Contract and be primary coverage for all losses covered by the policies;

2. Companies issuing the insurance policies and CONSULTANT shall have no recourse against TOWN for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of CONSULTANT;
3. Approval, disapproval or failure to act by TOWN regarding any insurance supplied by CONSULTANT (or any subcontractors) shall not relieve CONSULTANT of full responsibility or liability for damages and accidents as set forth in the Contract documents. Neither shall the insolvency or denial of liability by the insurance company exonerate CONSULTANT from liability; and
4. No special payments shall be made for any insurance that the CONSULTANT and subcontractors are required to carry; all are included in the contract price and the contract unit prices.

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

IX.

Right to Inspect Records

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

CONSULTANT further agrees to include in subcontract(s), if any, a provision that any subcontractor or engineer agrees that TOWN shall have access to and the right to examine any directly pertinent books, documents, papers and records of such engineer or sub-contractor involving transactions to the subcontract, and further, that TOWN shall have access during normal working hours to all such engineer or sub-contractor facilities and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of the paragraph. TOWN shall give any such engineer or sub-contractor reasonable advance notice of intended audits.

X.

Successors and Assigns

TOWN and CONSULTANT each bind themselves and their successors, executors, administrators and assigns to the other party to this Contract and to the successors, executors, administrators and assigns of such other party in respect to all

covenants of this Contract. Neither TOWN nor CONSULTANT shall assign or transfer its interest herein without the prior written consent of the other.

XI.
CONSULTANT's Liability

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

XII.
Indemnification

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

XIII.
Independent Contractor

CONSULTANT's status shall be that of an Independent Contractor and not an agent, servant, employee or representative of TOWN in the performance of this

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

XIV. Default

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

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

- (a) Specific performance of the Contract;
- (b) Re-performance of this Contract at no extra charge to TOWN; or
- (c) Monetary damages in an amount not to exceed:
 - (1) The amount of any applicable insurance coverage CONSULTANT is required to purchase and maintain under this Contract plus any deductible amount to be paid by CONSULTANT in conjunction with said coverage regardless of whether CONSULTANT has actually purchased and maintained said coverage, plus any additional insurance maintained

by CONSULTANT in excess or in addition to the coverage required under this Contract; plus

(2) The total dollar amount of this Contract.

XV.

Provisions Surviving Termination

The terms of Sections XII entitled Indemnification, and XVII entitled Confidential Information shall survive termination of this Contract.

XVI.

Changes

TOWN may, from time to time, require changes in the scope of services to be performed under this Contract. Such changes as are mutually agreed upon by and between TOWN and CONSULTANT shall be incorporated by written modification to this Contract.

XVII.

Conflicts of Interest

CONSULTANT covenants and agrees that CONSULTANT and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Contract. All activities, investigations and other efforts made by CONSULTANT pursuant to this Contract will be conducted by employees, associates or subcontractors of CONSULTANT.

No officer or employee of TOWN shall have any personal, financial interest, direct or indirect, in this Contract nor have any direct financial interest in the sale to TOWN of any land, materials, supplies, or services under this Contract, except on behalf of TOWN as a TOWN officer or employee. Any violation of this prohibition with knowledge, expressed or implied, of the person or corporation contracting with TOWN shall render the Contract voidable by the Director or the Town Council.

XVIII.

Confidential Information

CONSULTANT hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations in accordance with this Contract, which is of a confidential, non-public or proprietary nature. CONSULTANT shall treat any such information received in full confidence and will not disclose or appropriate such Confidential Information for its own use or the use of any third party at any time during or subsequent to this Contract. As used herein, "Confidential Information" means all oral and written information concerning TOWN,

its affiliates and subsidiaries, and all oral and written information concerning TOWN or its activities, that is of a non-public, proprietary or confidential nature including, without limitation, information pertaining to customer lists, services, methods, processes and operating procedures, together with all analyses, compilation, studies or other documents, whether prepared by CONSULTANT or others, which contain or otherwise reflect such information. The term "Confidential Information" shall not include such materials that are or become generally available to the public other than as a result of disclosure of CONSULTANT, or are required to be disclosed by a governmental authority or by law, as determined by TOWN's attorney.

XIX.
Notice Information

All notices and communications under this CONTRACT to be mailed to TOWN shall be sent to the address of TOWN's agent as follows, unless and until CONSULTANT is otherwise notified:

Tiffany Bruce
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874- 6306 Telephone

Notices and communications to be mailed or delivered to CONSULTANT shall be sent to the address of CONSULTANT as follows, unless and until TOWN is otherwise notified:

Fay Saremi, PE, PMP
Globe Engineers, Inc.
4601 Langland Road, Suite 104
Dallas, TX 75244
972-713-3030 Telephone

Any notices and communications required to be given in writing by one party to the other shall be considered as having been given to the addressee on the date the notice or communication is posted, faxed or personally delivered by the sending party.

XX.
Applicable Law

The Contract is entered into subject to the Flower Mound Town Charter and ordinances of TOWN, as same may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and federal laws. CONSULTANT will make any and all reports required per federal, state or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with CONSULTANT's income. Situs of this

Contract is agreed to be Denton County, Texas, for all purposes, including performance and execution.

XXI.
Non-Discrimination

CONSULTANT shall not discriminate against any employee, applicant for employment, contractor, or sub-contractor because of the race, age, color, religion, sex, or national origin of such person. Engineer shall take affirmative action to insure that all such persons are treated equally during their employment without regard to their race, age, color, religion, sex, or national origin. If CONSULTANT fails to comply with the federal or state laws relating to Equal Employment Opportunity, it is agreed that TOWN, at its option, may do either or both of the following:

- (a) Cancel, terminate, or suspend the Contract in whole or in part; or
- (b) Declare CONSULTANT ineligible for future TOWN contracts until it is determined to be in compliance.

XXII.
Arbitration

CONSULTANT agrees not to enter into any agreement to arbitrate arising out of, or relating to, this Contract which would subject TOWN to being a party to any arbitration without TOWN's prior written consent.

XXIII.
No Waiver of Governmental Immunity

Nothing in this Contract shall be construed as a waiver of TOWN'S governmental immunity, or of any applicable limitation on damages, or any other legal protection or defense or privilege of TOWN, except to the extent expressly provided otherwise herein.

XXIV.
Severability

If any of the terms, provisions, covenants, conditions or any other part of this Contract are for any reason held to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants, conditions or any other part of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

XXV.
Remedies

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Contract may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

XXVI.
Entire Agreement

This Contract embodies the entire agreement of the parties hereto, superseding all oral or written previous and contemporaneous agreements between the parties relating to matters herein, and except as otherwise provided herein cannot be modified without written agreement of the parties.

XXVII.
Non-Waiver

It is further agreed that one (1) or more instances of forbearance by TOWN in the exercise of its rights herein shall in no way constitute a waiver thereof.

XXVIII.
Headings

The headings of this Contract are for the convenience of reference only and shall not affect any of the terms and conditions hereof in any manner.

XXIX.
Venue

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

XXX.**No Third Party Beneficiary**

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

[The remainder of this page left blank intentionally]

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

**THE TOWN OF FLOWER MOUND,
TEXAS**

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

Date Signed: _____

Attest:

Town Secretary

**CONSULTANT:
GLOBE ENGINEERS, INC.**

By: Fay Saremi
 Name: FAY SAREMI
 Title: Principal
 Date Signed: 6/28/17

State of Texas §

County of Dallas §

This instrument was acknowledged before me on the 28th day of June, 2017, by Fay Saremi in his capacity as Principal of Globe Engineers, Inc., a Texas Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of

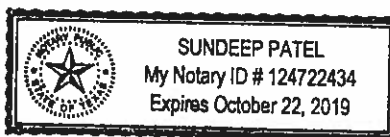
GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 28th
 DAY OF June, 2017.

Sundeep Patel

Notary Public, State of Texas

My Commission Expires:

Oct 22, 2019



GLOBE Engineers, Inc.**CONSTRUCTION MATERIALS TESTING PROPOSAL****FM 2499 Roadway, Drainage and Traffic Signal Improvements****The Town of Flower Mound****Denton County, TX****Appendix A**

SERVICE DESCRIPTION	No. of Unit	Unit	Unit Cost (\$)	AMOUNT
<u>Precon Meeting</u>				
Trip Charge	1	Trip	\$45.00	\$45.00
PM Time	2	Hr	\$85.00	\$170.00
<u>Earthwork Items</u>				
<u>Sample Pickup For Soil Proctor</u>				
Trip Charge	5	Trip	\$45.00	\$225.00
Tech Time	10	Hr	\$40.00	\$400.00
<u>Moisture/Density Relationship- Roadway/Channel/Embankment</u>				
Sample Prep	3	Ea	\$10.00	\$30.00
Std ASTM D-698 (4 points)	3	Ea	\$150.00	\$450.00
Atterberg Limits	3	Ea	\$50.00	\$150.00
% Passing #200 Sieve	3	Ea	\$35.00	\$105.00
<u>Field Density Test</u>				
Trip Charge	10	Trip	\$45.00	\$450.00
Technician Time (4 hrs/trip)	80	Hr	\$45.00	\$3,600.00
Density Gauge Rental	10	Day	\$60.00	\$600.00
<u>Utility/Drainage Items</u>				
<u>Sample Pickup For Soil Proctor</u>				
Trip Charge	5	Trip	\$45.00	\$225.00
Tech Time	10	Hr	\$40.00	\$400.00
<u>Moisture/Density Relationship</u>				
Sample Prep	3	Ea	\$10.00	\$30.00
Std ASTM D-698 (4 points)	3	Ea	\$150.00	\$450.00
Atterberg Limits	3	Ea	\$50.00	\$150.00
% Passing #200 Sieve	3	Ea	\$35.00	\$105.00
<u>Field Density Test</u>				
Trip Charge	15	Trip	\$45.00	\$675.00
Technician Time (4 hrs/trip)	60	Hr	\$45.00	\$2,700.00
Density Gauge Rental	15	Day	\$60.00	\$900.00
<u>Roadway Items</u>				
<u>Lime Series Determination</u>				
Trip Charge	1	Trip	\$45.00	\$45.00
pH Determination	2	Ea	\$210.00	\$420.00

GLOBE Engineers, Inc.

CONSTRUCTION MATERIALS TESTING PROPOSAL

FM 2499 Roadway, Drainage and Traffic Signal Improvements				
The Town of Flower Mound				
Denton County, TX				
Appendix A				
SERVICE DESCRIPTION	No. of Unit	Unit	Unit Cost (\$)	AMOUNT
<u>Sample Pickup For Lime Proctor</u>				
Trip Charge	1	Trip	\$45.00	\$45.00
Tech Time	2	Hr	\$40.00	\$80.00
<u>Moisture/Density Relationship- Lime</u>				
Sample Prep	2	Ea	\$10.00	\$20.00
Std ASTM D-698 (4 points)	2	Ea	\$150.00	\$300.00
Atterberg Limits	2	Ea	\$50.00	\$100.00
% Passing #200 Sieve	2	Ea	\$35.00	\$70.00
<u>Field Lime Gradation/Lime Depth Check</u>				
Trip Charge	2	Trip	\$45.00	\$90.00
Technician Time	16	Hr	\$45.00	\$720.00
<u>Field Density Test- Lime</u>				
Trip Charge	2	Trip	\$45.00	\$90.00
Technician Time	16	Hr	\$45.00	\$720.00
Density Gauge Rental	2	Day	\$60.00	\$120.00
<u>Concrete Mix Design</u>				
Mix Design Review	2	Ea	\$85.00	\$170.00
<u>Concrete Field Inspection</u>				
Trip Charge	5	Trip	\$45.00	\$225.00
Technician Time (8 hrs/trip)	40	Hr	\$40.00	\$1,600.00
Compression Test Cylinders	75	Ea	\$15.00	\$1,125.00
<u>Cylinder Pickup</u>				
Trip Charge	5	Trip	\$45.00	\$225.00
Technician Time	10	Hr	\$40.00	\$400.00
<u>Curb/Gutter/Handicap Items</u>				
<u>Concrete Field Inspection</u>				
Trip Charge	10	Trip	\$45.00	\$450.00
Technician Time	80	Hr	\$40.00	\$3,200.00
Compression Test Cylinders	50	Ea	\$20.00	\$1,000.00
<u>Cylinder Pickup</u>				
Trip Charge	10	Trip	\$45.00	\$450.00
Technician Time	20	Hr	\$40.00	\$800.00

GLOBE Engineers, Inc.**CONSTRUCTION MATERIALS TESTING PROPOSAL****FM 2499 Roadway, Drainage and Traffic Signal Improvements****The Town of Flower Mound****Denton County, TX****Appendix A**

SERVICE DESCRIPTION	No. of Unit	Unit	Unit Cost (\$)	AMOUNT
<u>Traffic Signals Items</u>				
<u>Pier Inspection</u>				
Trip Charge	5	Trip	\$45.00	\$225.00
Technician Time	40	Hr	\$45.00	\$1,800.00
<u>Concrete Field Inspection</u>				
Trip Charge	5	Trip	\$45.00	\$225.00
Technician Time	40	Hr	\$40.00	\$1,600.00
Compression Test Cylinders	25	Ea	\$20.00	\$500.00
<u>Cylinder Pickup</u>				
Trip Charge	5	Trip	\$45.00	\$225.00
Technician Time	10	Hr	\$40.00	\$400.00
<u>Reporting/PM Support</u>				
Support Personnel	80	hr	\$35.00	\$2,800.00
Project Manager	40	Hr	\$85.00	\$3,400.00
Report Review by PE	20	Hr	\$105.00	\$2,100.00
SUBTOTAL				\$37,600.00
Contingency 10%				\$3,760.00
TOTAL				\$41,360.00

Assumptions / Specs:

Density (Trench): One Test / 200 LF and 8" Rising.

Density (Paving): One Test / 2500 SF

Concrete Paving: Minimum One Set per day



TOWN COUNCIL AGENDA ITEM NO. 9

CONSENT ITEM

DATE: July 17, 2017

FROM: Brian Waltenburg, Senior Project Engineer

ITEM: Consider approval of a Professional Services Agreement for design phase services associated with the Bakers Branch Collector Phase II project, with Kimley-Horn and Associates, Inc., for \$120,000.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: Approximately 2,300 LF of 18-inch wastewater main is proposed to replace an existing 12-inch/15-inch wastewater main. The alignment of the proposed main begins at the intersection of Gerault Road and the east-west creek south of Lexington Avenue. The main parallels the southern fork of the creek, then parallels Strait Lane to Twilight Drive, then west approximately 1,050 LF before intersecting Lexington Avenue.

The scope of the Professional Services Agreement includes an alignment evaluation, topographic survey, geotechnical investigation, preparation of design plans, technical specifications, cost estimates, and bidding phase services.

FISCAL IMPACT: \$120,000.00

Proposed Expenditure:	Account Number(s):
\$120,000.00	600-900-98733

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

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

ATTACHMENTS:

1. Professional Services Agreement

DRAFT MOTION: Move to approve the Professional Services Agreement for design phase services associated with the Bakers Branch Collector Phase II project, with Kimley-Horn and Associates, Inc., for \$120,000.00; and authorize the Mayor to execute same on behalf of the Town.

THE STATE OF TEXAS §
COUNTY OF DENTON §

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

This contract is entered into on this _____ day of _____, 20____, by and between the **TOWN OF FLOWER MOUND, TEXAS**, a municipal corporation located in Denton County, Texas, (hereinafter referred to as "TOWN"), acting by and through its Mayor, and **Kimley-Horn and Associates, Inc.**, ("hereinafter referred to as "CONSULTANT") whose address is 12750 Merit Drive, Suite 1000, Dallas, Texas 75251.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to surveying, design and providing construction documents for the Bakers Branch Collector Phase II (Lexington Avenue to Gerault Road) project; and

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

TERMS OF AGREEMENT

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

I.

Employment of Consultant

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

II.

Scope of Services

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

III.

Payment for Services

Total payment for services described herein shall be a sum not to exceed One Hundred Twenty Thousand and No/100 Dollars (\$120,000.00). This total payment for services includes CONSULTANT's ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT. If CONSULTANT retains any subcontractors to perform any of the work, CONSULTANT acknowledges that payments to such subcontractors are due and payable in accordance with the provisions of Texas Government Code Section 2251.022, and that interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.

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

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

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

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

IV.

Revisions of the Scope of Services

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

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

V.

Term

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

VI.
Contract Termination Provision

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

VII.
Ownership of Documents

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

VIII.
Insurance

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

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

Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, TX 75028
Email: purchasing@flower-mound.com

The following policies and coverage shall be required:

1. Worker's Compensation Insurance (as required by law) with the policy endorsed to provide a waiver of subrogation as to TOWN; such policy to provide for Employers' Liability Insurance of not less than \$100,000.00 for each accident, \$100,000.00 disease-each employee, \$500,000.00 disease-policy limit;
2. Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractor's and Contractual Liability, including but not limited to coverage for all of the indemnification obligations of CONSULTANT under this Contract, and fully insuring CONSULTANT's liability for injury to or death of employees of TOWN and of third parties, extended to include personal injury liability coverage and for damage to property of third parties, with minimum combined single limits of \$1,000,000 per occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate per occurrence. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis;
3. Business Automobile Liability Insurance, covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000.00 per occurrence; and
4. Professional Liability Insurance: CONSULTANT shall obtain and maintain at all times during the prosecution of the work under this Contract professional liability insurance, which may be written on a claims made form provided that "tail coverage" or continuation coverage is provided. Limits of liability shall be \$1,000,000.00 per claim, \$1,000,000.00 annual aggregate. The coverage under this policy shall include a contractual liability endorsement.

If any of the foregoing insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than thirty-six (36) months following completion of the Contract and acceptance by the TOWN. All such insurance shall be purchased from an insurance company that meets a financial rating of B+VI or better as assigned by A.M. Best Company or equivalent.

B. Each insurance policy to be furnished by CONSULTANT shall include the following conditions by endorsement to the policy

1. The TOWN shall be named as an additional insured on the Commercial General Liability policy, by using endorsement CG2026 or broader;

2. The TOWN shall also be named as an additional insured as to all other applicable coverage save and except the Worker's Compensation Insurance and Professional Liability Insurance;
3. Each policy will require that thirty (30) days prior to the expiration, cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to TOWN by certified mail to:

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

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

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

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

1. Any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by CONSULTANT. The TOWN's decision(s) thereon shall be final;
2. All policies are to be written through companies duly approved to transact that class of insurance in the State of Texas; and
3. All liability policies required herein, save and except Professional Liability Insurance, shall be written with an "occurrence" basis coverage trigger.

D. CONSULTANT agrees to the following:

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

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

IX.

Right to Inspect Records

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

If TOWN agrees that CONSULTANT may retain any subcontractors, CONSULTANT further agrees to include in subcontract(s), if any, a provision that any subcontractor or engineer agrees that TOWN shall have access to and the right to examine any directly pertinent books, documents, papers and records of such engineer or sub-contractor involving transactions to the subcontract, and further, that TOWN shall have access during normal working hours to all such engineer or sub-contractor

facilities and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of the paragraph. TOWN shall give any such engineer or sub-contractor reasonable advance notice of intended audits.

X.

Successors and Assigns

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

XI.

CONSULTANT's Liability

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

XII.

Indemnification

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

OR CAUSES OF ACTION IS THE RESULT IN PART OF TOWN'S NEGLIGENCE OR FAULT, AND CONSULTANT WILL, AT ITS OWN COST AND EXPENSE, DEFEND AND PROTECT TOWN AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS, INCLUDING PAYMENT OF TOWN'S REASONABLE ATTORNEYS' FEES. IN THE EVENT OF A CLAIM IS BROUGHT AGAINST TOWN, TOWN SHALL HAVE THE RIGHT TO RETAIN LEGAL COUNSEL OF ITS CHOOSING IN DEFENSE OF SUCH A CLAIM, AND SUCH ELECTION SHALL NOT RELIEVE CONTRACTOR OF ITS OBLIGATIONS UNDER THIS SECTION.

XIII.

Independent Contractor

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

XIV.

Default

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

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

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

XV.

Provisions Surviving Termination

The terms of Sections XII entitled Indemnification, and XVII entitled Confidential Information shall survive termination of this Contract.

XVI.

Changes

TOWN may, from time to time, require changes in the scope of services to be performed under this Contract. Such changes as are mutually agreed upon by and between TOWN and CONSULTANT shall be incorporated by written modification to this Contract.

XVII.

Conflicts of Interest

CONSULTANT covenants and agrees that CONSULTANT and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Contract. All activities, investigations and other efforts made by CONSULTANT pursuant to this Contract will be conducted by employees, associates or subcontractors of CONSULTANT.

No officer or employee of TOWN shall have any personal, financial interest, direct or indirect, in this Contract nor have any direct financial interest in the sale to TOWN of any land, materials, supplies, or services under this Contract, except on behalf of TOWN as a TOWN officer or employee. Any violation of this prohibition with knowledge, expressed or implied, of the person or corporation contracting with TOWN shall render the Contract voidable by the Director or the Town Council.

XVIII.

Confidential Information

CONSULTANT hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations in accordance with this Contract, which is of a confidential, non-public or proprietary nature. CONSULTANT shall treat any such information received in full confidence and will not disclose or appropriate such Confidential Information for its own use or the use of any third party at any time during or subsequent to this Contract. As used herein,

“Confidential Information” means all oral and written information concerning TOWN, its affiliates and subsidiaries, and all oral and written information concerning TOWN or its activities, that is of a non-public, proprietary or confidential nature including, without limitation, information pertaining to customer lists, services, methods, processes and operating procedures, together with all analyses, compilation, studies or other documents, whether prepared by CONSULTANT or others, which contain or otherwise reflect such information. The term “Confidential Information” shall not include such materials that are or become generally available to the public other than as a result of disclosure of CONSULTANT, or are required to be disclosed by a governmental authority or by law, as determined by TOWN’s attorney.

XIX.
Notice Information

All notices and communications under this CONTRACT to be mailed to TOWN shall be sent to the address of TOWN’s agent as follows, unless and until CONSULTANT is otherwise notified:

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

Notices and communications to be mailed or delivered to CONSULTANT shall be sent to the address of CONSULTANT as follows, unless and until TOWN is otherwise notified:

Ashlyn Kelbly, P.E.
Kimley-Horn and Associates, Inc.
12750 Merit Drive, Suite 1000,
Dallas, TX 75251
972-770-1378 Telephone

Any notices and communications required to be given in writing by one party to the other shall be considered as having been given to the addressee on the date the notice or communication is posted, faxed or personally delivered by the sending party.

XX.
Applicable Law

The Contract is entered into subject to the Flower Mound Town Charter and ordinances of TOWN, as same may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and federal laws. CONSULTANT will make any and all reports required per federal, state

or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with CONSULTANT's income.

XXI.

Non-Discrimination

CONSULTANT shall not discriminate against any employee, applicant for employment, contractor, or sub-contractor because of the race, age, color, religion, sex, or national origin of such person. Engineer shall take affirmative action to insure that all such persons are treated equally during their employment without regard to their race, age, color, religion, sex, or national origin. If CONSULTANT fails to comply with the federal or state laws relating to Equal Employment Opportunity, it is agreed that TOWN, at its option, may do either or both of the following:

- (a) Cancel, terminate, or suspend the Contract in whole or in part; or
- (b) Declare CONSULTANT ineligible for future TOWN contracts until it is determined to be in compliance.

XXII.

Arbitration

CONSULTANT agrees not to enter into any agreement to arbitrate arising out of, or relating to, this Contract which would subject TOWN to being a party to any arbitration without TOWN's prior written consent.

XXIII.

No Waiver of Governmental Immunity

Nothing in this Contract shall be construed as a waiver of TOWN'S governmental immunity, or of any applicable limitation on damages, or any other legal protection or defense or privilege of TOWN, except to the extent expressly provided otherwise herein.

XXIV.

Severability

If any of the terms, provisions, covenants, conditions or any other part of this Contract are for any reason held to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants, conditions or any other part of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

XXV.
Remedies

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Contract may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

XXVI.
Entire Agreement

This Contract embodies the entire agreement of the parties hereto, superseding all oral or written previous and contemporaneous agreements between the parties relating to matters herein, and except as otherwise provided herein cannot be modified without written agreement of the parties.

XXVII.
Non-Waiver

It is further agreed that one (1) or more instances of forbearance by TOWN in the exercise of its rights herein shall in no way constitute a waiver thereof.

XXVIII.
Headings

The headings of this Contract are for the convenience of reference only and shall not affect any of the terms and conditions hereof in any manner.

XXIX.
Venue

Situs of this Contract is agreed to be Denton County, Texas, for all purposes, including performance and execution, and the parties to this Contract agree and covenant that this Contract will be enforceable in Flower Mound, Texas; and that if legal action is necessary to enforce this Contract, exclusive venue will lie in Denton County, Texas.

XXX.
No Third Party Beneficiary

For purposes of this Contract, including its intended operation and effect, the parties (TOWN and CONSULTANT) specifically agree and contract that: (1) the Contract only affects matters/disputes between the parties to this Contract, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual

relationship with TOWN or CONSULTANT or both; and (2) the terms of this Contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either TOWN or CONSULTANT.

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

**THE TOWN OF FLOWER MOUND,
TEXAS**

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

Date Signed: _____

Attest:

Town Secretary

CONSULTANT:

Kimley-Horn and Associates, Inc.

By: [Signature]Name: ERIC Z. SMITHTitle: ASSISTANT SECRETARYDate Signed: 07/05/17

State of Texas

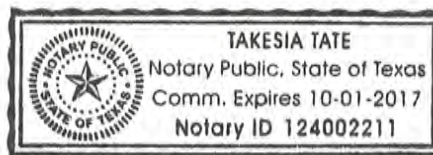
§
§
§County of DALLAS

This instrument was acknowledged before me on the 5th day of July, 2017, by ERIC Z. SMITH in his capacity as Asst. Sec. of Kimley-Horn and Associates, Inc. Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of ASSISTANT SECRETARY.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 5th DAY OF July, 2017.

[Signature]
Notary Public, State of Texas

My Commission Expires:

10-01-17



ATTACHMENT A

SCOPE OF SERVICES

PROJECT NAME: Bakers Branch Phase II (Lexington Avenue to Gerault Road)

PROJECT UNDERSTANDING

This project includes replacing existing 12-inch and 15-inch gravity wastewater lines to provide additional capacity for the Town's wastewater system. The limits of this project begin on the west side of Gerault Road north of Big Canyon Drive near the Bakers Branch creek. The project limits extend west approximately 2,200 feet, running north of Bakers Branch. Portions of the existing line are located within Strait Lane and Twilight Drive in the Oaks of Shadow Ridge residential development. A downstream portion of the Bakers Branch Interceptor, ending east of Gerault Road, was replaced in 2014. Per conversations with the Town, the portion of the existing 15-inch line crossing under Gerault Road will not be replaced as part of this project due to the difficulty and associated cost of construction.

The project is anticipated to include:

- Approximately 2,200 linear feet (LF) of 18-inch wastewater interceptor
- Nationwide 12 Permit for construction activities near the creek
- Replacement of an existing 8-inch aerial crossing connecting to the Bakers Branch interceptor just west of Gerault Road

SCOPE OF PROFESSIONAL SERVICES

TASK 1 – ROUTE EVALUATION AND HYDRAULIC ANALYSIS

A. Description

- This task includes services associated with confirming existing and projected flows from the wastewater line, confirming proposed wastewater size, and evaluating route alternatives for the proposed line.

B. Data Collection

- Kimley-Horn, with assistance from the Town, will collect information on existing utilities and planned developments in the Bakers Branch wastewater basin.
- The Town will provide plans for the creek stabilization project that was recently constructed at the upstream end of the project.

C. Wastewater Hydraulic Analysis

- Kimley-Horn will evaluate the wastewater basin and review the flow meter data. Kimley-Horn will compare this data to the existing and buildout flows

projected by the Wastewater Master Plan, and will use this information to recommend a proposed capacity requirement to the Town.

- Kimley-Horn will prepare a technical memorandum and exhibit of the project to document the findings of the hydraulic analysis.

D. Routing Evaluation

- Part of the downstream interceptor is located in a 15-foot wide sanitary sewer easement on private property owned by Archstone Lexington Apartments LP. The line appears to be located near a retaining wall built on the apartment complex site. The wastewater line continues west into the Oaks of Shadow Ridge single family development; the line is located in the southern parkway of Twilight Drive.
- The initial route assessed will be to upsize the existing wastewater interceptor in place.
- Kimley-Horn will evaluate one alternate route for the wastewater interceptor.
- Kimley-Horn will walk the project site with the Town to discuss route alternatives.
- Kimley-Horn will develop preliminary opinions of probable construction cost (OPCCs) for upsizing the existing wastewater line in place and for the alternate route identified.

E. Meetings

- Kimley-Horn will meet with the Town to review the potential routes for the proposed interceptor. This meeting will take place during a monthly progress meeting. The site visit to view alignment alternatives will take place after the monthly meeting.

F. Deliverables

- PDF copy of the Hydraulic Wastewater Analysis memo.
- PDF copies of the exhibit and OPCC showing upsizing in place.
- PDF copies of the exhibit and OPCC for the alternate route.
- PDF copies of exhibits and OPCCs for up to two (2) aerial crossing rehabilitation and/or replacement options.

TASK 2 – SURVEY

- A. After the preferred route is selected, Kimley-Horn will coordinate topographic survey of the selected route. This task includes performing field survey to identify and locate existing topographic elements within the alignment corridor including, but not limited to, the following:

- Property pins
- Existing pavement, curbs, sidewalks, barrier free ramps, etc.
- Lane striping
- Driveways

- Existing storm sewer inlets, manholes, junction boxes, outfalls, and erosion control
 - Culverts and bridges
 - Existing aerial crossing piers
 - Flowline elevations of existing aerial crossing where it enters concrete rip-rap bank
 - Guardrails
 - Utility manholes, vaults, water valves, water meters, sprinkler heads, telephone poles, power poles, utility markers, other public utilities, and franchise utilities
 - Traffic signal poles, cabinets, and other signal equipment
 - Signs (excluding temporary signs)
 - Buildings
 - Retaining walls
 - Fence limits and material types
 - Trees greater than 8-inches in diameter at breast height (DBH)
 - Other applicable physical features that could impact design
- B. Review the final topographic drawing in digital format (including one foot contours and breaklines) showing the features located in the field as well as right-of-way strip map information. Document and incorporate minor changes into the base map. Minor changes are anticipated not to require additional survey ties. If field work by a survey crew is required it shall be considered additional services.

TASK 3 - EASEMENTS

- A. Prepare permanent and temporary easement instruments (narrative and graphic exhibits as required for proposed water improvements). One instrument is included as part of this task. Additional instruments may be performed as Additional Services.
- Easement preparation will begin after the alignment through each property has been approved by the Town. Easement preparation is anticipated to take 21 days.
- B. Individual parcel exhibits shall be on 8 ½"x11" paper, shall be sealed, dated, and signed by a Registered Professional Land Surveyor, shall conform to standard format provided by the Owner and shall contain the following at a minimum:
- Parcel number
 - Area required
 - Area remaining
 - Legal description
 - Current owner
 - Any existing platted easements
 - All physical features

C. Deliverables

- Three (3) paper copies of field notes and exhibits, and an electronic version of the exhibits (i.e. PDF) for permanent and temporary construction easements.

TASK 4 – DESIGN

A. Design

- Conduct kick-off meeting with the Town during a monthly progress meeting.
- Prepare plan and profile sheets as necessary based on existing surface features and current design standards. Plan sheet will consist of a 22"x34" sheet at a scale of 1"=40' horizontal. The following sheets are anticipated:
 - o Cover
 - o General Notes
 - o Control points and sheet locator
 - o Tree survey and removal plan
 - o Wastewater interceptor plan and profile (3 sheets anticipated)
 - o Aerial crossing plan and profile (1 sheet anticipated)
 - o Aerial crossing details, including piers, carrier and casing pipe, concrete rip-rap and slope wall replacement details
 - o Construction details
 - o Bypass pumping plan
 - o Aerial plan view only sheets
- Prepare specifications which include technical specifications for materials and installation of proposed facilities. The contract documents shall be based upon Flower Mound Contract Documents. The NCTCOG Standard Specifications for Public Works Construction and the Town of Flower Mound's requirements for Public Works Construction will govern all other specifications.
- Prepare a bypass pumping plan.
- Prepare exhibits showing existing tree species and diameter as well as trees anticipated to be removed.
- Submit to the Town 50% plan view only plans (no specifications included) and OPCC for review and comment. 50% submittal will include a schematic plan and profile of aerial crossings.
- Meet with the Town to review 50% plans. This meeting will take place during a monthly progress meeting.
- Make revisions based on Town's 50% comments.
- Submit to the Town 95% plans, specifications, and OPCC for review and comment. Plans in this submittal will include detailed plan and profile sheets for interceptor and aerial crossing.
- Meet with the Town to review 95% plans. This meeting will take place during a monthly progress meeting.
- Submit to the Town 100% bid plans, bid specifications, and OPCC for review and comment.

- Submit plans to appropriate regulatory agencies for review and comment as needed.
- B. Deliverables
- Three (3) printed, half-size copies of 50% construction plans
 - Three (3) printed copies of 95% plans and specifications. Plans will be half-size; specifications will be bound into a book.
 - Three (3) printed copies of 100% bid plans and bid specifications. Plans will be half-size; specifications will be bound into a book.
 - Three (3) hard copies of the OPCCs for 50%, 95%, and 100% submittals.
- C. Services provided by the Town
- Review and comment on 50% plans and OPCC.
 - Review and comment on 95% plans and specifications and OPCC.

TASK 5 - ENVIRONMENTAL

- A. Description
- This task involves obtaining a Nationwide Permit (NWP) 12 from the USACOE for construction activities near the creek. The scope provided assumes that this project will not trigger preconstruction notification and that a NWP 12 with no notification will be sufficient. If preconstruction notification is required then additional services will be required.
- B. Nationwide 12 Permit
- Kimley-Horn will submit to the Town a descriptive memo regarding the use of NWP 12 Utility Line Activities under a no notification scenario. This Scope is based on the understanding that proposed impacts to waters of the US are temporary and that preconstruction contours will be restored below the Ordinary High Water Mark.
 - Kimley-Horn will prepare a memo discussing Corps Section 404 Permitting under a 'no notification' scenario that will include a description of selected General Conditions as well as a suggested list of BMPs required for compliance with TCEQ water quality certification. This memo can be used to document the thought process for using this permitting scenario and to provide the selected contractor with information relating to permit compliance. Though no coordination with the Corps is proposed, the activity will be authorized under a Federal permit. All terms and conditions of the permit must be met.
 - The memo will include, at a minimum, the following information:
 - o Brief project description, including site sketches, as it relates to proposed impacts to waters of the US;
 - o Site visit photographs to document existing/preconstruction conditions;
 - o A copy of the NWP 12 permit language with General Conditions;
 - o State Water Quality Certifications and Conditions;



- o NWP Regional Conditions for Texas;
 - o Cultural Resources information from readily available databases;
 - o Threatened and Endangered Species information from readily available databases.
- One site visit by a qualified professional wetland scientist is included in this task to gather information useful for the memo

TASK 6 – GEOTECHNICAL

A. Description

- This task includes up to 4 geotech bores. The bores will be used to determine the general soil stratum. The borings will be to a depth of approximately twenty (20) feet. A Geotechnical Report will be prepared as part of this task.

B. Deliverables

- Two (2) printed copies of the Geotechnical Report.

TASK 7 – BIDDING PHASE SERVICES

- ##### A. Print and issue 3 sets of bidding documents. Additional sets of bidding documents shall be printed, only upon the Town's authorization, as Additional Professional Services. Bidding documents will be issued to potential bidders upon the payment of a non-refundable fee to cover the cost of printing those documents.

- ##### B. Review Contractor questions and issue addenda as required.

C. Deliverables

- Addenda as required (digital copies)
- Print and deliver to Town up to 3 sets of bid documents. Plan sets will be half-size (11x17). Specification books will be bound 8.5x11 books.

TASK 8 – RECORD DRAWINGS

- ##### A. Prepare record drawings from Contractor's marks showing changes made during construction. Transfer Contractor's marks to digital format. Kimley-Horn will be provided the Contractor's revisions and shall not be responsible for verifying their completeness or accuracy.

B. Deliverables

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

C. Services Provided by the Town

- Review of Contractor's marks for completeness and accuracy.

ADDITIONAL SERVICES

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

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

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



ATTACHMENT B

COMPENSATION

Kimley-Horn will provide the Scope of Services for a lump sum fee.

TASK 1 – Route Evaluation and Hydraulic Analysis	\$13,400
TASK 2 – Survey	\$14,550
TASK 3 – Easements (if necessary; one included)	\$1,650
TASK 4 – Design	\$73,100
TASK 5 – Environmental	\$5,000
TASK 6 – Geotechnical	\$5,900
TASK 7 – Bidding Phase Services	\$2,600
TASK 8 – Record Drawings	\$3,800
<u>TOTAL</u>	<u>\$120,000</u>

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



TOWN COUNCIL AGENDA ITEM NO. 10

CONSENT ITEM

DATE: July 17, 2017

FROM: Doug Stevens, CPM, Assistant Director of Public works

ITEM: Consider approval of the purchase of asphalt overlay services from Reynolds Asphalt & Construction Company, through a City of Grand Prairie contract #16112, in the estimated annual amount of \$225,000.00.

BACKGROUND INFORMATION: This item is for the purchase of asphalt overlay services for the Public Works Street Services division, using the City of Grand Prairie's contract with Reynolds Asphalt & Construction Company.

Each fiscal year, funds are included in the Street Services division's budget for asphalt overlay projects. The department estimates an annual expenditure of \$225,000 for FY2017-18. Reynolds has provided the Town with this service in the past and staff is confident of their ability to perform satisfactorily.

Local governments are authorized by the Interlocal Cooperation Act, V.T.C.A. Government Code, Chapter 791, to enter into joint contracts and agreements for the performance of governmental functions and services, including administrative functions normally associated with the operation of government (such as purchasing necessary materials and equipment). The Town of Flower Mound and the City of Grand Prairie entered into an Interlocal agreement effective May 3, 2010. The initial term of the agreement was one year, and automatically renews annually, unless cancelled by either party.

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$225,000

Proposed Expenditure:	Account Number(s):
\$225,000 estimated annually	100-690-92240-4303

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

LEGAL REVIEW: N/A.

ATTACHMENTS:

1. City of Lewisville contract

DRAFT MOTION: Move to approve the purchase of asphalt overlay services from Reynolds Asphalt & Construction Company, through a City of Grand Prairie contract #16112, in the estimated annual amount of \$225,000.00.

ID**6482****Department:**

Purchasing for Streets

Vendor Name:

Reynolds Asphalt & Construction Co.

Project Name:

16112 Pavement Resurfacing Services - Reynolds Asphalt - initial contract

Work Order Number(s):**Account Number:**

251210-63030

Contract Amount:

\$3,523,900.00

Implementation Date:

8/17/2016

Termination Date:

8/16/2017

City Council Appr. Date:

8/16/2016

Insurer A Name:

Valley Forge Ins Co

Insurer A Expiration:

5/8/2017

Insurer B Name:

Am Cas Co of Reading PA

Insurer B Expiration:

5/8/2017

Insurer C Name:

Great American Ins

Insurer C Expiration:

5/8/2017

Insurer D Name:

National Fire Ins Co of Hartford

Insurer D Expiration:

5/8/2017

Insurer E Name:**Insurer E Expiration:****Return Executed Copy To:**

purchasing interoffice mail

Department Manager Signature:**Date:**

RM

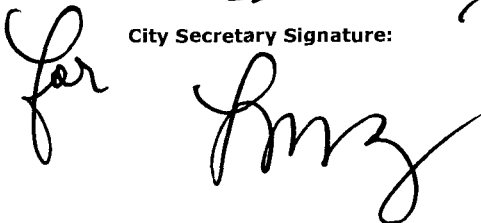
September 7, 2016

City Attorney Signature:**Date:**

9/12

City Manager/Deputy City Manager Signature:**Date:**

9-13-2016

City Secretary Signature:
for**Date:**

9/14/16

CONTRACT for SERVICES PRICE AGREEMENT
CITY OF GRAND PRAIRIE

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF DALLAS §

THIS CONTRACT is made and entered into this date by and between the **CITY OF GRAND PRAIRIE**, a Texas municipal corporation (hereinafter referred to as the “CITY”), and **REYNOLDS ASPHALT & CONSTRUCTION CO.** (hereinafter referred to as “VENDOR”) and evidences the following:

I. PURPOSE

VENDOR shall provide pavement resurfacing services per bid award resulting from VENDOR’S response to RFB #16112, submitted by Ned Tankersley, on July 26, 2016.

II. DESCRIPTION OF SERVICES

The services which VENDOR shall provide for the CITY shall include the following:

- A. VENDOR hereby covenants and agrees that VENDOR is to work closely with the CITY’s Public Works Director or their designee, and/or other appropriate officials of the CITY, and that VENDOR is to perform any and all tasks required of VENDOR to fulfill the purposes of this Contract.
- B. VENDOR and the CITY covenant and agree that VENDOR shall perform all of the services and work contained in CITY specifications and VENDOR’S bid to the CITY (attached hereto as “Exhibit A”); said document being part of this Contract and incorporated in its entirety herein. The parties agree that should there be any conflict between the terms of the incorporated document and this Contract, the provisions of this Contract shall control. The parties understand that quantity of services to be furnished to the City is an estimate and that the City may order more or less depending on the projects and the work of the City that requires the services. The price of the services shall remain constant throughout the term of contract.
- C. VENDOR expressly covenants and agrees to provide the CITY with such written reports or documentation of guaranties as may be required by the scope of the submittal.

III. PERFORMANCE OF WORK

VENDOR or VENDOR’S associates and employees shall perform all the work called for in this Contract. VENDOR hereby covenants and agrees that all of VENDOR’S associates and employees who work on this project shall be fully qualified to undertake same and competent to do the work described in this Contract, and the services performed shall be performed in a good and workmanlike manner, and that the finished product shall be fit for the particular use(s) contemplated by this agreement.

IV. PAYMENT

The CITY shall pay to VENDOR a sum not to exceed those unit prices, or percentage discount from list price where applicable in the submittal for the purchase of services designated herein and in no event shall total payments under the base contract exceed \$3,523,900.00 without additional approval. Invoice must be delivered to the attention of the department placing the order. Payments will be made as work is completed and certification by the City that the work is performed in a good and workmanlike manner within 30 day of certification or receipt of invoice, whichever is later. Payment will be made by means of a City issued check, an ACH, or with a City issued Procurement Card (Mastercard).

V. TERM OF THE CONTRACT

This Contract is for an initial term of one year with the option to renew for four additional one year periods. This Contract is effective as of August 17, 2016. No new orders shall be accepted, against this Contract term, after midnight on August 16, 2017. Contract shall terminate upon completion of all requirements for orders placed by said date, unless the parties mutually agree in writing to extend the term of the Contract through allowable renewal option, or, unless otherwise terminated as provided in Paragraph XVI herein. The parties shall evidence the renewal in writing, with any additional terms set out in the said writing.

VI. CONTRACT ASSIGNMENT

VENDOR and the CITY hereby covenant and agree that this Contract provides for services and that these services are not to be assigned or sublet in whole or part without the prior written consent of the CITY.

VII. CONFLICT OF INTEREST

VENDOR hereby covenants and agrees that during the Contract period that VENDOR and any of VENDOR'S associates and employees will have no interest nor acquire any interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Contract. All activities, investigations and other efforts made by VENDOR pursuant to this Contract will be conducted by employees or associates of VENDOR. VENDOR further covenants and agrees that it understands that the Code of Ordinances of the City of Grand Prairie prohibits any officer or employee of the CITY from having any financial interest, either direct or indirect, in any business transaction with the CITY. Any violation of this paragraph which occurred with the actual or constructive knowledge of VENDOR will render this Contract voidable by the CITY.

VIII. CHANGE IN WORK

The CITY, through its Purchasing Manager or their designee, may request changes in the scope and focus of the activities and duties called for under this Contract. Any such change which, in the opinion of VENDOR or the CITY varies significantly from the scope and focus of the work set out herein or entails a significant increase in cost or expense to VENDOR must be mutually agreed upon by VENDOR and the CITY. The parties herein acknowledge that any change in the scope or focus of the work which results in the increase in compensation to VENDOR of the fee stated in Paragraph IV hereof must first be approved by the CITY's Purchasing Manager, City Manager or City Council, where applicable.

IX. CONFIDENTIAL WORK

Any reports, designs, plan, information, project evaluations, data or any other documentation given to or prepared or assembled by VENDOR under this Contract shall be kept confidential and may not be made available to any individual or organization by VENDOR without the prior written approval of the CITY except as may be required by law.

X. OWNERSHIP OF DOCUMENTS

VENDOR acknowledges that CITY owns all notes, reports, or other documents, intellectual property or documentation produced by the vendor pursuant to this agreement or in connection with its work which are not otherwise public records. VENDOR acknowledges that CITY shall have copyright privileges to those notes, reports, documents, processes and information.

VENDOR shall provide CITY a copy of all such notes, reports, documents, and information (except to the extent that they contain confidential information about third parties) at CITY expense upon written request.

XI. NONDISCRIMINATION

As a condition of this Contract, VENDOR covenants and agrees that VENDOR shall take all necessary actions to insure, in connection with any work under this Contract, that VENDOR or VENDOR'S associates, sub-vendors, or employees, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or physical handicap unrelated to job performance, either directly or indirectly or through contractual or other arrangements. In this regard, VENDOR shall keep, retain and safeguard all records relating to this Contract for work performed hereunder for a minimum period of three (3) years from final contract completion, with full access allowed to authorized representatives of the CITY upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

XII. INDEPENDENT VENDOR

By the execution of this Contract, the CITY and VENDOR do not change the independent vendor status of VENDOR. No term or provision of this Contract or any act of VENDOR in the performance of this Contract may be construed as making VENDOR the agent or representative of the CITY. All employees of VENDOR shall perform their duties under the supervision of VENDOR, which shall have the exclusive right to dictate to the VENDOR'S employees how to perform their tasks. VENDOR agrees and covenants that each of its employees will be properly qualified and will use reasonable care in the performance of the assigned duties. VENDOR shall post all applicable warning signs if such work will disrupt normal traffic or workplace activities.

XIII. WARRANTY, HOLD HARMLESS, AND INDEMNITY

VENDOR warrants that the services it performs for CITY will be done in a good and workmanlike manner, and that any items delivered to the CITY under this contract will be fit for the particular purpose for which it was furnished. VENDOR shall defend, indemnify, and hold the CITY whole and harmless against any and all claims for damages, costs, and expenses to persons or property that may arise out of, or be occasioned by, the execution or performance of this Contract or any of VENDOR'S activities or any act of commission or omission related to this Contract of any representative, agent, customer, employee, sub-vendor or invitee of VENDOR or any representative, agent, employee, or servant of the CITY. If an item is covered by a manufacturer's warranty, it is the responsibility of the VENDOR to obtain the information for CITY and to get the manufacturer to honor the warranty.

XIV. INSURANCE

Prior to the commencement of work under this Contract, VENDOR shall obtain and shall continue to maintain in full force and effect during the term of this Contract a comprehensive liability insurance policy, with a company licensed to do business in the State of Texas and rated not less than "A" in the current Best Key Rating Guide, which shall include bodily injury, death, automobile liability and property damage coverage, in accordance with any CITY ordinance or Directive. The minimum limits for this coverage shall be \$1,000,000.00 combined single limit for liability and for property damage, unless modified in accordance with any ordinance or directive. The CITY shall be named as an additional insured under such policy and a provision shall be incorporated in the policy whereby the CITY shall be given at least thirty days prior notice of any material change in coverage or of cancellation of such policy.

XV. NO VERBAL AGREEMENT

This Contract contains the entire commitments and agreements of the parties to the Contract. Any verbal or written commitment not contained in this Contract or expressly referred to in this Contract and incorporated by reference shall have no force or effect.

XVI. TERMINATION

The CITY may, at its option and without prejudice to any other remedy to which it may be entitled at law or in equity, terminate further work under this Contract, in whole or in part, by giving at least thirty (30) days prior written notice thereof to VENDOR with the understanding that all services being terminated shall cease upon the date specified in such notice. The CITY shall equitably compensate VENDOR, in accordance with the terms of this Contract for the services properly performed prior to the date specified in such notice following inspection and acceptance of same by the CITY. VENDOR shall not, however, be entitled to lost or anticipated profits should the CITY choose to exercise its option to terminate.

XVII. VENUE

The parties to this Contract agree and covenant that this Contract will be performable in Grand Prairie, Texas, and that if legal action is necessary to enforce this Contract, exclusive venue will lie in Dallas County, Texas.

XVIII. APPLICABLE LAWS

This Contract is made subject to the existing provisions of the Charter of the City of Grand Prairie, its rules, regulations, procedures and ordinances, present and future, and all applicable laws of the State of Texas and the United States.

XIX. CONTRACT INTERPRETATION

The parties to this Contract covenant and agree that in any litigation relating to this Contract, the terms and conditions of the Contract will be interpreted according to the laws of the State of Texas.

XX. NOTICES

All notices, communications and reports under this Contract must be mailed or delivered to the respective parties at the addresses shown below, unless either party is otherwise notified in writing by the other party:

CITY:

Angi Mize, Sr. Buyer ~ Purchasing Division
972-237-8262 Phone ~ 972/237-8265 Fax
amize@gptx.org
City of Grand Prairie
326 W. Main Street, Grand Prairie, TX 75050
PO Box 534045, Grand Prairie, TX 75053-4045

Dane Stovall ~ Street Division
972-237-8526 Phone
dstovall@gptx.org
City of Grand Prairie
1821 S. SH 161, Grand Prairie, TX 75052

VENDOR:

Ned Tankersley, Vice President
817-267-3131 Phone
ntankersley@reynoldsasphalt.com
Reynolds Asphalt & Construction Co.
P.O. Box 370, Euless, TX, 76039

XXI. SEVERABILITY

In the event that any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in the Contract.

XXII. RIGHT OF REVIEW

VENDOR covenants and agrees that the CITY, upon reasonable notice to VENDOR, may review any of the work performed by VENDOR under this Contract.

XXIII. WAIVER OF ATTORNEYS FEES

VENDOR and CITY expressly covenant and agree that in the event of any litigation arising between the parties to this contract, each party shall be solely responsible for payment of its attorneys and that in no event shall either party be responsible for the other party's attorney's fees regardless of the outcome of the litigation.

EXECUTED this the 14th day of September, 2016.

CITY OF GRAND PRAIRIE, TEXAS

By: 
Tom Cox, Deputy City Manager

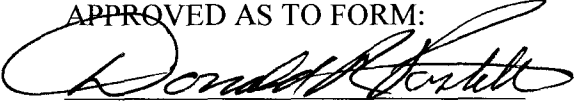
REYNOLDS ASPHALT & CONSTRUCTION CO.

By: 
Printed
Name: Ned Tankersley
Title: Vice President

ATTEST:


for Cathy E. DiMaggio, City Secretary

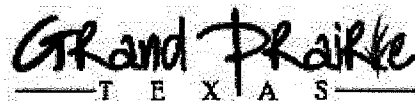
APPROVED AS TO FORM:


Donald R. Postell, City Attorney

Solicitation 16112

PAVEMENT RESURFACING SERVICES

Bid Designation: Public



City of Grand Prairie

Bid 16112 PAVEMENT RESURFACING SERVICES

Bid Number **16112**
Bid Title **PAVEMENT RESURFACING SERVICES**

Bid Start Date **Jul 8, 2016 10:30:33 AM CDT**
Bid End Date **Jul 22, 2016 2:00:00 PM CDT**
Question & Answer End Date **Jul 18, 2016 4:30:00 PM CDT**

Bid Contact **Angi Mize**
Buyer
Purchasing
972-237-8262
amize@gptx.org

Contract Duration **1 year**
Contract Renewal **4 annual renewals**
Prices Good for **120 days**

Bid Comments It is the intent of this specification to obtain an annual price agreement for the purchase of pavement resurfacing services for the City of Grand Prairie Street Maintenance Division. These services shall include but not limited to cleaning, preparing surface, placing tack coat and overlaying with HMAC of city streets. All construction shall be in accordance with this specification and standards published by North Central Texas Council of Governments (NCTCOG). This contract will begin on or after August 17, 2016.

Information, questions or clarification concerning the intent of this RFB should be in writing and addressed to Angi Mize, Sr. Buyer at amize@gptx.org / 972-237-8262

Registration for BidSync is free for notification of bids, addendums, and other information. If your company wants the convenience to download the bid documents from BidSync's website or to bid on-line through BidSync, BidSync offers these services, for bids posted by the City of Grand Prairie, for an annual fee of \$60.00. This is not a fee charged by the City, nor does the City receive any part of this fee. If your company registers under the complimentary registration and opts out of the additional paid services from BidSync, you may email a request to the responsible Buyer for a copy of the bid documents and submit a hard copy bid directly to the Purchasing office.

Item Response Form

Item **16112--01-01 - ENTER PRICING ON ATTACHMENT A, BID SHEET**
Quantity **1 each**
Prices are not requested for this item.
Delivery Location **City of Grand Prairie**
No Location Specified
Qty 1

Description
ENTER PRICING ON ATTACHMENT A, BID SHEET

Specification



**REQUEST FOR BID
RFB #16112
PAVEMENT RESURFACING SERVICES**

1. PROJECT SCOPE

It is the intent of this specification to obtain an annual price agreement for the purchase of pavement resurfacing services for the City of Grand Prairie Street Maintenance Division. These services shall include but not limited to cleaning, preparing surface, placing tack coat and overlaying with HMAC of city streets. All construction shall be in accordance with this specification and standards published by North Central Texas Council of Governments (NCTCOG). This contract will begin on or after August 17, 2016.

2. HOT MIX ASPHALT CONCRETE PAVEMENT – (HMAC) 64-22

- 2.1. Material and placement must meet specifications in accordance with the latest TXDOT Standard Specifications for Construction of Highways (<http://www.dot.state.tx.us/business/specifications.htm>) , except that the asphalt content of asphaltic concrete mixtures shall be not less than four percent (4%) and not greater than eight percent (8%). Product must be non-toxic to fish and other aquatic life
- 2.2. The mileage haul from plant shall be determined along the nearest and shortest route from the plant to the job site.
- 2.3. Materials laid and finished by the bidder shall be compacted to not less than 96% compaction tested by laboratory based on the Texas Test Method 227F.
- 2.4. MSDS sheets must be provided with products where applicable.

3. OVERLAYING OF EXISTING STREETS

- 3.1 The street surface of the existing pavement shall be cleared of grass, weeds, and swept prior to placing of the overlay.
- 3.2 SS1 (emulsion) shall be placed and used prior to placing HMAC overlay and shall cover entire area as per NCTCOG public works standards (<http://www.nctcog.org/envir/SEEDevEx/pubworks/standards.asp>). Contractor shall supply all necessary materials and equipment to tack sub-grade prior to placing HMAC Type "D" surface course as outlined in the specification.
- 3.3 Driveways will be resurfaced back to the property line, with clean joint at tie in.

Specification

4. TRAFFIC CONTROL

- 4.1** The contractor shall provide construction and maintenance signs, construction lights, barricades, channelizing devices and flagmen as required to provide for the safety of the traveling public. These items shall be in accordance with the recommended practices of the latest version of the Texas Manual on Uniform Traffic Control Devices for Streets and Highways (M.U.T.C.D.) (<http://www.txdot.gov/government/enforcement/signage/tmutcd.html>) .
- 4.2** Traffic control will be broken into the following two categories:
- 4.2.1** Residential: The contractor will be required to provide all traffic control on residential streets as part of the unit cost.
- 4.2.2** Thoroughfare: Traffic control on thoroughfares will be paid for as a separate unit cost as provided in the contract. Thoroughfare street work cannot begin prior to 8:45 am and must be clear by 4:30 pm unless prior written approval is given by city.
- 4.3** Construction signs shall not be removed from the project until approved by the city.
- 4.4** No street shall be closed except upon written authority from the city.
- 4.5** At the end of each day, the contractor shall prepare the work to the satisfaction of the city to ensure safe driving at night; and shall place temporary pavement markings and maintain it until the city has approved the final inspection.
- 4.6** Contractor shall submit a traffic control plan for approval four (4) days prior to starting work at any location. All barricades, detour signs for total closure of the street, and all maintenance of signs and removals upon completion of project shall be in accordance with Texas M.U.T.C.D.
- 4.7** All street work and closures will require a four (4) day notice to city so it may be publicized in the local paper as necessary.
- 4.8** Contractor shall provide all temporary pavement marking as needed and placed before removal of barricades for the safety of public until permanent markings are installed by owner.

5. UTILITIES

- 5.1** The contractor shall retain full responsibility for adjusting any and all public utilities and protecting same against damage during the life of the project.
- 5.2** The contractor is responsible for arranging all locates within rights-of-ways.

Specification

- 5.3** Contractor shall adjust to final grade all existing valves and utilities. The manhole and valve adjustments shall be paid for as per bid pay items. Contractor shall be responsible for providing all manhole rings, valves, lids, etc., for the adjustment/placement to finished grade of street. They shall meet the City Standard Details for design.

6. WATER FOR CONSTRUCTION

- 6.1** The contractor shall pay for water for the project. The contractor will be required to make application and deposit for a construction meter with the City of Grand Prairie Water Utility Customer Services Division.

7. START OF CONSTRUCTION

- 7.1** The successful bidder agrees that projects will begin within seven (7) days of written notice and assurance of work order from the City.
- 7.2** The contractor shall pick up two portable (2) signs from city Street Department and place at each end of their project to inform citizens that this is a Sales Tax Project. Signs shall be returned to the Street Department at the completion project. Signs shall not be removed until contractor has permission by the City.

8. MATERIAL TICKETS

The contractor shall provide the city with copies of all material tickets and certified weight tickets incorporated in the job on a daily basis. This requirement must be met to ensure quality control and quality assurance and proper payment to contractor. Any failure to provide tickets by the end of the day will result in the stoppage of the next day's planned activities and/or non-payment of work until tickets are provided.

9. PRIVATE PROPERTY CONCERNS

- 9.1** It shall be the contractor's responsibility to relocate any mailboxes and vehicles as may be necessary during the various stages of the projects.
- 9.2** It shall be the contractor's responsibility to cooperate with the property owners on all construction work to be performed.
- 9.3** Contractor shall not use property owner's water or place temporarily sanitation facilities on private property.
- 9.4** Proper sanitation requirements for contractor's employees shall be provided by contractor at no cost to the city or private property owners.
- 9.5** All private agreements between the contractor and property owners are not binding on the city of Grand Prairie.

Specification

- 9.6** Door hangers will be provided by the city for the contractor to distribute to the property owners. All door hangers must be handed out a minimum of 72 hours prior to construction beginning, at the contractors expense and as requested by city.

10. BACKFILL AND CLEANUP

- 10.1** After the new asphalt is in place, compacted, temporarily striped (tabs or tape), cleaned up and approved by owner, then street can be opened to traffic.
- 10.2** All areas disturbed by the contractor will be returned to their original condition to include grass, sprinkler systems, etc.
- 10.3** Contractor shall complete all backfilling and clean up within ten (10) business days of completing the placement of 2" HMAC.
- 10.4** All excavated earth in excess of that required for back filling shall be removed from the job site and disposed of, at contractor's expense, in a satisfactory manner except in locations where, in the judgment of the City and property owner, it can be neatly spread over the adjacent area.

11. UNSATISFACTORY WORK

The city shall not pay for work that is deemed not meeting minimum specifications. The contractor will be given a reasonable opportunity to correct the deficiency. Failure of the contractor to correct the deficiency will be ground for non-compliance and termination of the contract and/or nonpayment.

12. FINAL INSPECTION

Whenever the work provided for, and contemplated under, the contract has been satisfactorily completed and the final clean up performed, the representative authorized to accept same will make the "Final Inspection". Such inspection will be made within ten (10) days after written notification. After final inspection, if the work is found to be satisfactory, the contractor will be notified in writing of the acceptance. No time charge will be made against the contractor between said date of notification of the representative in charge and the date of final inspection of the work.

13. WORK ZONE MAINTENANCE

It shall be the sole responsibility of the contractor to maintain the work zones during all phases of construction. This will included any repair or maintenance work needed due to delays from weather, scheduling, etc.

Specification

14. WORKING HOURS

14.1 No street, lane, or alley closures will be allowed on weekends or holidays (listed below) and working times are 7:00 am to 5:00 pm (except on major thoroughfares) Monday through Friday; except as herein written in specifications.

14.2 Holidays

- 14.2.1** New Year's Day – January 1
- 14.2.2** Martin Luther King's Birthday – January 15
- 14.2.3** Memorial Day – Last Monday in May
- 14.2.4** Independence Day – July 4
- 14.2.5** Labor Day – First Monday in September
- 14.2.6** Thanksgiving – Fourth Thursday and Friday in November
- 14.2.7** Christmas – December 24th & 25th

15. WARRANTY

All work performed under this contract for the City of Grand Prairie shall be warranted for a period of two years. If within two years, after acceptance of work, any of the work is found to be defective or not in accordance with the contract, the contractor shall correct it promptly after receipt of written notice from the owner.

16. PROCUREMENT SCHEDULE

The projected schedule for this procurement is as follows:

Activity	Target Dates
Release Bid	Friday, July 8, 2016
Deadline for Questions	Monday, July 18, 2016
Responses to Questions	Tuesday, July 19, 2016
Deadline for Receipt of Bids	Friday, July 22, 2016 2:00 p.m.
Council Date	Tuesday, August 16, 2016

17. CONTACT

Information, questions or clarification concerning the intent of this RFB should be in writing and addressed to Angi Mize, Sr. Buyer at amize@gptx.org / 972-237-8262 no later than **July 18, 2016, at 4:30 pm (CST)**. City of Grand Prairie's response to questions and requests for clarification will be posted to BidSync (www.bidsync.com) by **July 19, 2016 at 4:30 pm (CST)**.

18. EVALUATION CRITERIA

The following evaluation criteria will be utilized in the selection of a vendor:

Price	40%
Reputation	30%
Experience	20%
Past Relationship with the City and/or other Municipalities	10%
TOTAL	100%

Specification

19. BID SUBMITTAL – ITEMS TO BE SUBMITTED

Interested vendor **MUST** submit at least one hard copy in a sealed envelope or electronic copy (flash drive, CD, or through BidSync) of the following items for consideration. The submission should be in the order stated below:

- a. Bid sheet (Attachment A)
- b. Questionnaire & References (Attachment B)
- c. Conflict of Interest Questionnaire (Attachment C)
- d. Submittal Affirmation Form (Attachment D)
- e. **OR** Statement of No Response (Attachment G)

Vendor must submit at least one hard copy and one electronic (flash drive or CD) copy or via www.bidsync.com for an annual fee of \$60. **Bids must be submitted as requested above no later than the response deadline of July 22, 2016 by 2:00 p.m. to:**

Angi Mize, Sr. Buyer
Purchasing Division
326 W. Main Street
Grand Prairie, Texas 75050

Late responses will be unopened and not accepted for consideration. The City of Grand Prairie is not responsible for lateness or failure of timely delivery via mail (whether delays are internal/external), carrier, etc. Please ensure you allow time to provide your response timely so that you may be properly considered. EMAIL BIDS WILL NOT BE ACCEPTED.

The City reserves the right to reject any or all responses, to waive formalities, award a separate contract to separate vendors for each item/group, or to award one contract for the entire bid.

Specification

20. AGREEMENT TERMS AND AWARD

The term of the agreement will be for an initial one-year agreement with the option to renew for up to four (4) additional one-year periods. The price agreement shall be awarded to the vendor(s) submitting the bid(s) deemed to be in the best interest of the City. The City may award one Primary and one Secondary vendor by portions or for the entire bid. The City of Grand Prairie may award to a single vendor, multiple vendors, or use any combination that serves the best interest of the City. Successful bidder will enter into a contract with the City for an annual agreement in accordance with the terms and conditions found within.

21. BONDS

22.1 Each Contractor shall have in effect a Payment Bond and Performance Bond to cover the costs of all of the projects in which they are currently performing services. At a minimum, each Contractor shall have a Payment Bond and Performance Bond in the amount of \$500,000.00. IF the total cost of all of the public works in progress exceeds such amount of the Bonds, then the Contractor will be required to get additional Bonds so that all costs of all of the projects currently in progress will be covered. The Bonds will be worded such that they cover all of the public works that are covered by specific terms of this price agreement, whether each street or project is separately designed on such bond. The Streets Division of the City of Grand Prairie shall work with the Contractor to calculate the costs of all of the projects in progress at any time. If the total amount of costs for the work in progress is greater than the amounts of Performance and Payment Bonds in effect, the Contractor shall either increase amount of bonds or reduce the amount of work in progress at any time.

22.2 The Maintenance Bond will be in the cumulative amount of payments made to each individual Contractor, or there will be a separate Maintenance Bond for each public work, at the option of each Contractor, but such bond shall remain in effect for two years from the date of acceptance of each project.

23 CONTRACT AWARD

Vendor selected for contract will be required to return an executed contract to the City, a certificate of insurance naming the City as an additional insured, and a notarized copy of Form 1295 Certificate of interested parties within 10 days of the notice of award.

Request for Bid Questionnaire

All questions should be answered clearly and completely. **Marketing materials WILL NOT be accepted in lieu of this questionnaire.** This questionnaire will assist the City in understanding your proposal and will be used in the evaluation process and therefore it is critical that the questionnaire be completed and submitted with your proposal.

General Information & References:

RESPONDENT NAME AND TITLE:	Ned Tankersley - Vice President
COMPANY:	Reynolds Asphalt & Construction Co.
ADDRESS, CITY, STATE ZIP:	P.O. Box 370 El Paso, TX 76039
TELEPHONE NUMBER:	817-267-3131
E-MAIL:	ntankersley@reynoldasphalt.com
FEDERAL TAX ID:	75-1792271
Provide 3 References, please include contact name, agency name, title, phone number and email of those you have provided similar services in the past three years	
Reference 1:	
Name & Title -	Bill Bateman - St. Supt.
Agency Name -	City of Arlington
Phone -	817-459-5435
Email -	bbateman@arlingtontx.gov
Reference 2:	
Name & Title -	Mike Adams - Dir of Eng
Agency Name -	City of Midlothian
Phone -	972-919-2597
Email -	mike.adams@midlothian.tx.us
Reference 3:	
Name & Title -	Corey Lawson - Const. Supt
Agency Name -	City of DeSoto
Phone -	214-537-6998
Email -	clawson@desototx.gov

BID SHEET RFB# 16112 PAVEMENT RESURFACING SERVICES			Vendor Name Contact Email Phone City/State		Reynolds Asphalt Ned Tankersley ntankersley@reynoldsasphalt.com 817-267-3131 North Richland Hills, TX	
Item#	Line Item Description	UOM	Est Quantity	Unit Price	Est Cost	
1	HMAC Type D Delivered more than 1500 tons	Tons	7900	74.50	\$588,550.00	
2	HMAC Type D Delivered 500 to 1499 tons	Tons	4700	80.00	\$376,000.00	
3	HMAC Type D Delivered less than 499 tons	Tons	1200	92.00	\$110,400.00	
4	HMAC Type C Delivered more than 1500 tons	Tons	5400	74.00	\$399,600.00	
5	HMAC Type C Delivered 500 to 1499 tons	Tons	3000	78.30	\$234,900.00	
6	HMAC Type C Delivered less than 499 tons	Tons	1200	92.00	\$110,400.00	
7	HMAC Type B Delivered more than 1500 tons	Tons	5400	73.50	\$396,900.00	
8	HMAC Type B Delivered 500 to 1499 tons	Tons	3000	77.00	\$231,000.00	
9	HMAC Type B Delivered less than 499 tons	Tons	1200	91.00	\$109,200.00	
10	Additional Mileage Charge - Hauled beyond the first 10 miles from bidders plant for Items # 1-9 Per Ton Per Mile	Tons	5500	.60	\$3,300.00	
11	Move In Charge	Each	30	1200.00	\$36,000.00	
12	Thorough Fare Traffic Control	Each	30	2400.00	\$72,000.00	
13	Manhole Ring Riser	Each	200	250.00	\$50,000.00	
14	Valve Ring Riser	Each	200	150.00	\$30,000.00	
15	Base Repair - Flex Base	Tons	500	67.00	\$96,600.00	
16	Flex Base Furnish and Install	Tons	3000	32.20	\$96,600.00	
17	Recycling 8" Deep More Than 3000+ sy	SY	13500	7.90	\$106,650.00	
18	Recycling 8" Deep 1400 to 2999 sy	SY	9000	9.00	\$81,000.00	
19	Recycling 8" Deep less than 1399 sy	SY	4200	16.50	\$69,300.00	
20	Hauling Excessive Material More Than 101 cy	CY	6000	18.70	\$112,200.00	

21	Hauling Excessive Material 51 to 100 cy	CY	1500	21.00	\$ 31,500 ⁰⁰
22	Hauling Excessive Material 50 or Less cy	CY	200	30.00	\$ 6,000 ⁰⁰
23	Wedge Milling	LF	6000	3.80	\$ 22,800 ⁰⁰
24	Full Depth Milling 0 to 4"	SY	15000	4.50	\$ 67,500 ⁰⁰
25	Full Depth Milling Each Additional Inch	SY	15000	.75	\$ 11,250 ⁰⁰
26	Backfill Shoulders	LF	12000	1.40	\$ 16,800 ⁰⁰
27	Pulverization	SY	15000	4.45	\$ 66,750 ⁰⁰
27	Petromat less than 2500 sy	SY	1000	5.35	\$ 5,350 ⁰⁰
28	Petromat 2500 - 4999 sy	SY	3000	3.15	\$ 9,450 ⁰⁰
29	Petromat more than 5000 sy	SY	15000	2.60	\$ 39,000 ⁰⁰
ESTIMATED TOTAL					\$ 3,523,900 ⁰⁰

Service Questions:

1.	How many years have you been in business?	35
2.	How many years have you been performing the type of work detailed in the specification?	35
3.	What is the total value of work you currently have under contract?	\$ 80,000,000 -
4.	What is the percentage of work that is self-performed? (approximate)	95%
5.	Has your firm ever failed to complete a contract?	No
6.	Has your firm ever filed for bankruptcy? If so, when?	No
7.	Please list any pending judgment claims or suits against your company and explain on an additional page.	None
8.	Have you had an OSHA fine within the past three (3) years? (If yes, you MUST submit on an additional page the circumstances of the event)	No

9. Have you had any job related fatalities within the past five (5) years? (If yes, you MUST submit on an additional page the circumstances of the event)

No

10. In the event of a breakdown, where would your equipment be serviced? (Include name of business, address, phone number, and point of contact)

Our EVIASS Yard
12650 Calloway Cemetery Rd
EVIASS, TX
817-267-3132 Clay Reynolds

11. List municipal/government agencies you have worked with, along with the contract amount, number of years contracted, agency contact, their email and phone number. Use separate sheet if needed.

Contract - \$ 5,720,000

Yrs. Contracted - 3rd Year

Name - City of Arlington / Bill Bateman

Phone - 817-459-5435

Email - bbateman@arlingtontx.gov

Contract - \$ 785,000

Yrs. Contracted - 1 Year

Name - City of Farmers Branch / Randy Walhood

Phone - 972-919-2597

Email - randy.walhood@farmersbranchtx.gov

Contract - \$ 2,240,000

Yrs. Contracted - 2nd Year

Name - City of Midlothian / Mike Adams

Phone - 972-775-7105

Email - mike.adams@midlothian.tx.us

12. Describe how you meet or exceed the minimum qualifications in the specification.

Part Performances

13. Describe the experience in providing similar services within the last 2 years:

Name - 2013 Street Reclamation - Arlington

Contract - \$ 5,718,762

Was the project finished on time - Yes - Oct. 2015

Was the project within budget - Yes

Name - Flower Mound Street Rehab

Contract - \$ 406,125

Was the project finished on time - Yes - Dec. 2015

Was the project within budget - Yes

Name - Farmers Branch Street Rehab

Contract - \$ 785,457

Was the project finished on time - Yes - Aug. 2015

Was the project within budget - Yes

Name - Wylie 2015 Mill & Overlay

Contract - \$ 514,599

Was the project finished on time - Yes - June 2015

Was the project within budget - Yes

Name - Mulvagh Street Rehab

Contract - \$ 1,426,813

Was the project finished on time - Yes - Nov. 2015

Was the project within budget - Yes

Name - DeSoto 2015 Street Recon

Contract - \$ 581,602

Was the project finished on time - Yes - Nov. 2015

Was the project within budget - Yes

14. On the following page, list employees (last name only) along with their job title and number of years' experience in your line of work (add additional pages if necessary). Also list equipment, quantity and years in service.

--

LIST OF EMPLOYEES

Employee Last Name	Job Title	Years of Experience

Reynolds	President	50
Tankersley	Exe. Vice President	40
Joseph	Vice President	20
McKay	CFO	22
Turner	General Supt.	37
Perez	Supt.	36
Faglie	Supt.	37

LIST
OF
MACHINERY
AND

EQUIPMENT

It is represented as part of this bid that the below listed items of machinery and equipment are available for use on the work covered by this bid. "Being Available" shall mean that the equipment is owned or under the control of the Bidder submitting this bid. It is important to state quantity and specifications of equipment available. Example: (2 each Walker automatic paint spray machines).

Equipment/Machinery	Years in Service	Qty
See Attached		

EQUIPMENT LIST						
Manufacturer		Description		Manufacturer		Description
WATER TRUCKS				ROLLERS:		
MACK	1996	4000 GAL TANK		INGERSOLL-RAND	1996	PNEUMATIC PT125R
INTERNATIONAL	1981	4000 GAL TANK		CATERPILLAR	2000	ROLLER CB534C
KAISER	1960	2500 GAL TANK		CATERPILLAR	2001	COMPACTOR PS200B
MACK	1984	4000 GAL TANK		CATERPILLAR	2002	PNEUMATIC PS-150B
INTERNATIONAL	1975	4000 GAL TANK		CATERPILLAR	2001	STEEL WHEEL CB634C
MACK CH613	2001	4000 GAL Tank		CATERPILLAR	2003	ROLLER PS 150B
				CATERPILLAR	2006	ROLLER CS563E
ASPHALT PAVERS :				CATERPILLAR	2003	ROLLER CS563E
CATERPILLAR	2002	AP1055B		VIBROMAX	2004	ROLLER VM66PD
ROADTEC (ASTECC)	1995	SB 2500 MTV Shuttle Buggy		CATERPILLAR	2004	STEEL WHEEL CB534D
CATERPILLAR	2004	AP1055B		CATERPILLAR	2007	PNEUMATIC PS-150C
CATERPILLAR	2011	AP1055E		HAMM	2007	MODEL 3412 COMPACTOR
ROADTEC (ASTECC)	2001	SB 2500 MTV Shuttle Buggy		CATERPILLAR	2008	Compactor CB224E
CATERPILLAR	2010	AP655D		CATERPILLAR	2008	ROLLER CB534D
				CATERPILLAR	2011	PNEUMATIC PS-360C
LOADERS FRONT END:				CATERPILLAR	2011	Compactor CB24
CASE	1998	570LXT		CATERPILLAR	2011	Compactor CB34
CATERPILLAR	1996	953B TRACK LOADER		HAMM	2010	HD14 V V Drum Roller
CATERPILLAR	2000	924G WHEEL LOADER		CATERPILLAR	2011	ROLLER CP563E
CASE	2001	570LXT		CATERPILLAR	2011	PNEUMATIC PS-360C
CATERPILLAR	2007	414E IL 4X4 LOADER		CATERPILLAR	2011	Compactor CB64
CASE	2007	570M XT 4X4 LOADER		HAMM	2011	HD+140 V V DRUM ROLLER
CATERPILLAR	2005	953C TRACK LOADER		HAMM	2010	3410 SOIL COMPACTOR
CATERPILLAR	2007	414E IL 4X4 LOADER		HAMM	2013	HD14 V V Drum Roller
CASE	2006	570M XT 4X4 LOADER		CATERPILLAR	2013	CW34 PNEUMATIC
KUBOTA	2009	L4400		HAMM	2014	HD140 VVHF
CATERPILLAR	2011	938H QC FU WHEEL LDR.		CATERPILLAR	2007	PS-150C
CATERPILLAR	2008	414E IL 4X4 LOADER				
JOHN DEERE	2013	JOHN DEERE 210K		TRACTORS AND EXCAVATORS:		
				CATERPILLAR	1999	215 EXCAVATOR
MOTORGRADERS:				CATERPILLAR	1998	D6H DOZER
CATERPILLAR	1995	140G		CATERPILLAR	2003	416D BACKHOE
CATERPILLAR	1996	140H		CATERPILLAR	1997	320B EXCAVATOR
CATERPILLAR	1998	140H		CATERPILLAR	2007	420E 4X4 BACKHOE
CATERPILLAR	2000	140H		CATERPILLAR	2011	320DLX EXCAVATOR
CATERPILLAR	2004	140H		CATERPILLAR	2012	D5K LGT DOZER
CATERPILLAR	2007	140H		CATERPILLAR	2013	420F 4S BACKHOE
CATERPILLAR	2007	140H		CATERPILLAR	2015	420F 4S BACKHOE
MIXERS:						
CAT MIXER	1994	SS250				
CAT MIXER	1998	SS250B				
CAT MIXER	2007	RM500				
TEREX MIXER	2011	RS446C				
TEREX MIXER	2012	RS446C				
CAT MIXER	2015	RM500B				

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.		OFFICE USE ONLY Date Received
1	Name of vendor who has a business relationship with local governmental entity. <u>Ned Tankersley</u>	
2	☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)	
3	Name of local government officer about whom the information in this section is being disclosed. <u>N/A</u> Name of Officer This section (item 3 including subparts A, B, C, & D) must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this CIQ as necessary. A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor? ☐ Yes ☐ No B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity? ☐ Yes ☐ No C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more? ☐ Yes ☐ No D. Describe each employment or business and family relationship with the local government officer named in this section. 	
4	<u>Ned Tankersley</u> Signature of vendor doing business with the governmental entity	<u>7/25/16</u> Date

**CITY OF GRAND PRAIRIE
SUBMITTAL AFFIRMATION FORM**

FORM AND ADDENDA ACKNOWLEDGEMENT

This will acknowledge your submittal contains all items as specified in section 19 and receipt of the following addenda which are part of the Solicitation Documents:

ALL OF SECTION 19 HAS BEEN SUBMITTED ☒

Addendum No. 1

Addendum No.

Addendum No.

Addendum No.

INTERLOCAL PURCHASING

Should other Government Entities decide to participate in this contract, would you, the Vendor, agree that all terms, conditions, specifications, and pricing would apply?

Yes ☒

No ☐

OTHER CONDITIONS

The undersigned agrees to the following:

- A. Agrees that the submittal is complete and all required information/forms were submitted.
- B. Agrees that the bid package was fully reviewed and fully understands the requirements.
- C. Agrees to the Terms & Conditions as included in this bid packet and have noted any exceptions.
- D. Agrees that their submittal shall be good and may not be withdrawn for a period of 90 calendar days after the scheduled closing time.
- E. Will supply all required insurance, and execute contract within the time stated on the notice of award.
- F. Affirms that the submittal was not prepared in collusion with any other firm and the contents of this submittal have not been communicated by the undersigned or any agent with any other person engaged in this type of business.

SUBMITTAL CERTIFICATION

BY MY SIGNATURE I AFFIRM THAT I AM DULY AUTHORIZED TO EXECUTE THIS PROPOSAL AS AN OFFER TO CONTRACT AND IN COMPLIANCE WITH THIS SOLICITATION, THE UNDERSIGNED FIRM HAVING EXAMINED THE SPECIFICATIONS, AND BEING FAMILIAR WITH THE CONDITIONS TO BE MET, HEREBY SUBMITS A PROPOSAL FOR CONSIDERATION OF BEING SELECTED AS THE CITY'S PROVIDER FOR SAID SERVICES; AND AGREES TO ENTER INTO NEGOTIATIONS IF SELECTED AS A FINALIST FOR SAID SERVICES.

Ned Tankersley
Authorized Signature

Vice President
Title

Ned Tankersley
Print/Type Name

7/26/16
Date

Standard Terms

Attachment E

STANDARD TERMS AND CONDITIONS

1. **INSTRUCTIONS:** These standard terms apply to all solicitations.
2. **BEST INTEREST:** The City reserves the right to reject any or all responses and to waive formalities. The City also reserve the right to purchase through State awarded contracts or other intergovernmental agreements when it is in the best interest of the City.
3. **PRICING:** Price(s) quoted must be held firm for ninety (90) days to allow for evaluation unless otherwise noted in this document.
4. **PAYMENT TERMS:** Payment terms are Net 30 unless otherwise specified by the City in this document.
5. **TAXES:** The City of Grand Prairie is exempt from Federal Manufacture's Excise, and State Sales taxes. **TAX MUST NOT BE INCLUDED IN PRICING.** Tax exemption certificates will be executed by the City and furnished upon request.
6. **PATENT RIGHTS:** The vendor agrees to indemnify and hold the City harmless from any claim involving patent right infringement or copyrights on goods supplied.
7. **FUNDING:** The City of Grand Prairie is a home-rule municipal corporation operated and funded on an annual basis for Oct. 1 to Sept. 30. The City reserves the right to terminate, without liability to the City, any contract for which funding is not available.
8. **ASSIGNMENT:** Vendor shall not sell, assign, transfer, or convey this contract in whole or in part, without the prior written consent of the City.
9. **SILENCE OF SPECIFICATION:** The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.
10. **VENUE:** This agreement will be governed and construed according to the laws of the State of Texas.

Standard Terms

Attachment E

11. **CONFLICT OF INTEREST:** The successful vendor hereby covenants and agrees that during the Contract period that vendor and any of vendor's associates and employees will have no interest nor acquire any interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Contract. All activities, investigations and other efforts made by vendor pursuant to this Contract will be conducted by employees or associates of vendor. Vendor further covenants and agrees that it understands that the Code of Ordinances of the City of Grand Prairie prohibits any officer or employee of the City from having any financial interest, either direct or indirect, in any business transaction with the City. Any violation of this paragraph which occurred with the actual or constructive knowledge of vendor will render this contract voidable by the City.
12. **CONFIDENTIAL WORK:** Any reports, designs, plan, information, project evaluations, data or any other documentation given to or prepared or assembled by vendor under this contract shall be kept confidential and may not be made available to any individual or organization by vendor without the prior written approval of the City except as may be required by law.
13. **WARRANTY, HOLD HARMLESS, AND INDEMNITY:** Vendor warrants that the commodities it delivers to the City shall be delivered in a good and workmanlike manner, and that any items delivered to the City under this contract will be fit for the particular purpose for which it was furnished. Vendor shall defend, indemnify, and hold the City whole and harmless against any and all claims for damages, costs, and expenses to persons or property that may arise out of, or be occasioned by, the execution or performance of this Contract or any of vendor's activities or any act of commission or omission related to this Contract of any representative, agent, customer, employee, sub-vendor or invitee of vendor or any representative, agent, employee, or servant of the City. If an item is covered by a manufacturer's warranty, it is the responsibility of the vendor to obtain the information for City and to get the manufacturer to honor the warranty.
14. **INSURANCE:** Prior to the commencement of work under this Contract, vendor shall obtain and shall continue to maintain in full force and effect during the term of this Contract any insurance required by Law and any additional insurance that may be required pursuant to the specification.
15. **F.O.B.:** All shipping shall be F.O.B. delivered.
16. **PACKAGING:** Unless otherwise indicated, items will be new, unused, and in first class condition in containers suitable for damage-free shipment and storage.

Standard Terms

Attachment E

17. **DELIVERY TIMES:** Deliveries will be acceptable only during normal working hours at the designated City Municipal Facility.
18. **COOPERATIVE/INTERLOCAL PURCHASING:** If the Vendor checked yes on the submittal affirmation form to allow for Interlocal Purchasing the following will apply: Government Entities utilizing Inter-Governmental Contracts with the City of Grand Prairie will be eligible, but not obligated, to purchase goods and services under this contract (s) awarded as a result of this solicitation. All purchases by Governmental Entities other than the City of Grand Prairie will be billed directly to that Governmental Entity and paid by that Governmental Entity. The City of Grand Prairie will not be responsible for another Governmental Entity's debts. Each Governmental Entity will order their goods and services as needed.
19. **WAIVER OF ATTORNEYS FEES:** Vendor and City expressly covenant and agree that in the event of any litigation arising between the parties to this contract, each party shall be solely responsible for payment of its attorneys and that in no event shall either party be responsible for the other party's attorney's fees regardless of the outcome of the litigation.
20. **PERFORMANCE OF WORK:** Vendor or vendor's associates and employees shall perform all the work called for in this Contract. Vendor hereby covenants and agrees that all of vendor's associates and employees who work on this project shall be fully qualified to undertake same and competent to do the work described in this Contract, and the services performed shall be performed in a good and workmanlike manner, and that the finished product shall be fit for the particular use(s) contemplated by this agreement.
21. **OWNERSHIP OF DOCUMENTS:** VENDOR acknowledges that City owns all notes, reports, or other documents, intellectual property or documentation produced by the vendor pursuant to this agreement or in connection with its work which are not otherwise public records. Vendor acknowledges that City shall have copyright privileges to those notes, reports, documents, processes and information. Vendor shall provide City a copy of all such notes, reports, documents, and information (except to the extent that they contain confidential information about third parties) at City expense upon written request.
22. **RIGHT OF REVIEW:** Vendor covenants and agrees that the City, upon reasonable notice to vendor, may review any of the work performed by vendor under this Contract.
23. **PROPRIETARY INFORMATION:** Any material or information that is considered proprietary in nature must be clearly marked as such and will be treated as confidential by the City of Grand Prairie to the extent permitted under the Open Records Act.

Standard Terms

Attachment E

24. **ORDERS AND INVOICING:** A Purchase Order Number is required for all purchases. All invoices must be clearly marked with Purchase Order Number in order to be processed. Separate invoices will be required for each individual order and shall be mailed to PO Box 534045, Grand Prairie, TX 75053. As a Municipal Government, the City of Grand Prairie is exempt from all sales and excise taxes. **DO NOT INCLUDE TAXES** in price bid. Tax Exemption Certificates will be issued to successful vendor(s) upon request.
25. **SPLIT AWARD:** The City of Grand Prairie reserves the right to award a separate contract to separate vendors for each item/group or to award one contract for the entire bid.
26. **WITHDRAWAL OF RESPONSE TO SOLICITATION:** A response may not be withdrawn or cancelled by the vendor for a period of ninety (90) days following the date designated for the receipt without approval by the City.
27. **CHANGE ORDERS:** No Oral statement of any person shall modify or otherwise change or affect the terms, conditions, or specifications stated in the resulting contract. All change orders to the contract will be made in writing by the City of Grand Prairie.
28. **ADDENDA:** Any interpretations, corrections, or changes to this solicitation will be made by the City of Grand Prairie through a written addendum.
29. **PRICE REDETERMINATION:** A price re-determination for the increase in cost for goods or services shall be considered by the City of Grand Prairie only at contract renewals. Requests for price re-determination shall be substantiated in writing and provided to the City no less than 30 days prior to contract renewal. The City reserves the right to negotiate with the vendor on any price re-determination requests and to reject any price re-determination requests that are deemed as not in the best interest of the City.

Insurance

Attachment F

INSURANCE and INDEMNITY

Insurance

The bidder, acting as an independent contractor, must provide the following insurance, which must be kept in force during the term of the contract. Performance under the contract will not start until this obligation has been met.

<u>TYPE</u>	<u>AMOUNT</u>
1. Workers' Compensation	Statutory
2. Employer's Liability	\$1,000,000
3. Comprehensive General Liability Premises Operations Products Operations Hazard Contractual Insurance	\$1,000,000 (Combined Single Limit)
4. Comprehensive Automobile Liability	\$1,000,000 (Combined Single Limit)

The successful contractor must provide insurance certificates satisfactory to the city of Grand Prairie within ten (10) working days after notification of award. Generally with a carrier authorized to do business in Texas and rated "A" or better in the current Best Key Rating Guide. Failure to supply such insurance shall be a breach of the contract. All policies shall be of the "occurrence type" and the city of Grand Prairie shall be listed as an additional insured (to the extent Contractor/City are indemnified pursuant to the indemnity provisions herein) on all certificates of insurance. Additional Insured Clauses does not apply to Workers' Compensation and Employer's Liability. A waiver of Subrogation Clause, naming the city of Grand Prairie "shall be included" on all types of coverages.

Thirty (30) days prior written notice to the city of cancellation or material change endorsement shall be attached to all policies.

Insurance certificate to be submitted to: Purchasing Division, P.O. Box 534045, Grand Prairie, Texas 75053-4045. Bid number shall be included on certificate.

Indemnity

The successful contractor shall defend, indemnify and save harmless the city of Grand Prairie and all its officers, agents and employees who are participating in this contract from all suits, actions, or other claims of any character, name and description brought for or on account of any negligent act or fault of the contractor, or of any agent, employee, subcontractor or supplier in the execution of, or performance under, any contract which may result from bid award. Successful bidder shall pay any judgment with cost which may be obtained against the city of Grand Prairie and participating entities growing out of such injury or damages.



STATEMENT OF NO RESPONSE
RFB #16112
PAVEMENT RESURFACING SERVICES

The City of Grand Prairie is very appreciative of the time and effort you expend in preparing and submitting qualifications to the city. If you are not submitting a response, please complete and return this form.

We, the undersigned, have declined to submit for the following reason(s):

- ☐ Specification too "tight", i.e. geared toward one firm only *(please explain reasons below)*
- ☐ Specification unclear. *(Please explain below)*
- ☐ Insufficient time to respond
- ☐ We do not offer the services(s) requested
- ☐ Our schedule would not permit us to perform
- ☐ Unable to meet requirements
- ☐ Job too large
- ☐ Job too small
- ☐ Cannot provide required insurance or bonding (if required)
- ☐ Do not wish to do business with the City of Grand Prairie. *(Please explain below)*
- ☐ Other *(Please explain below)*

REMARKS:

--	--

Company Name: Contact:

Phone: Email:

PERFORMANCE BOND

STATE OF TEXAS
COUNTY OF _____

KNOW ALL MEN BY THESE PRESENTS:

That _____ of the City of _____, County of _____, and State of _____, as Principal, and _____ authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto the City of Grand Prairie (Owner), in the sum of _____ Dollars (\$_____) as a proper measure of liquidated damages, for payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by the presents:

WHEREAS, the Principal has entered into a certain written contract with the OWNER, dated the _____ day of _____, 2_____, to which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform said Contract and shall in all respects duly and faithfully contract agreed and covenanted by the Principal to be observed and performed and according to the true intent and meaning of said Contract and the Plans and Specifications hereto annexed, then this obligation shall be void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Article 5160 of the Revised Civil Statutes of Texas as amended and all liabilities on this bond shall be determined in accordance with the provision of said Article to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to terms of the contract, or to work performed thereunder, or the plans, specifications or drawings accompanying the same, shall in anywise affect its obligation on this bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument the _____ day of _____, 2_____.

PRINCIPAL

SURETY

By: _____

By: _____

Title: _____

Title: _____

Address: _____

Address: _____

Name and address of the Resident Agent of Surety is: _____

PAYMENT BOND

STATE OF TEXAS
COUNTY OF _____

KNOW ALL MEN BY THESE PRESENTS:

That _____ of the City of _____, County of _____, and State of _____, as Principal, and _____ authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto the City of Grand Prairie (Owner), in the panel sum of _____ Dollars (\$ _____) for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by the presents:

WHEREAS, the Principal has entered into a certain written contract with the OWNER, dated the _____ day of _____, 2_____, to which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall pay all claimants supplying labor and materials to him or a subcontractor in the prosecution of the work provided for in said contract, then this obligation shall be void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Article 5160 of the Revised Civil Statutes of Texas as amended and all liabilities on this bond shall be determined in accordance with the provision of said Article to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to terms of the contract, or to work performed thereunder, or the plans, specifications or drawings accompanying the same, shall in anywise affect its obligation on this bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument the _____ day of _____, 2_____.

PRINCIPAL

By: _____

Title: _____

Address: _____

SURETY

By: _____

Title: _____

Address: _____

Name and address of the Resident Agent of Surety is: _____

MAINTENANCE BOND

STATE OF TEXAS
COUNTY OF _____

KNOW ALL MEN BY THESE PRESENTS:

That _____ of the City of _____, County of _____, and State of _____, as Principal, and _____ a corporation authorized under the laws of the State of Texas to act as surety on bonds for principals, do hereby acknowledge themselves to be held and firmly bound to pay unto the City of Grand Prairie (Owner), a municipal corporation of the State of Texas, its successors and assigns, at Grand Prairie, Dallas County, Texas, the sum of _____ Dollars (\$ _____), 100% of the total amount of the contract for the payment of which sum said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by the presents:

This obligation is conditioned, however, that:

WHEREAS, the Principal has entered into a certain written contract with the OWNER, dated the _____ day of _____, 2_____, to _____ which contract and the plans and specifications therein mentioned, adopted by the City of Grand Prairie, are filed with the City Secretary of said City and are hereby expressly incorporated herein by reference and made a part hereof as though the same were written and set out in full herein, and

WHEREAS, under the said plans, specifications and contracts, it is provided that the Contractor will maintain and keep in good repair the work therein contracted to be done and performed for a period of two (2) years from the date of acceptance thereof and perform all necessary work toward the repair of any defective condition growing out of or arising from the improper construction of the improvements contemplated by the said Contractor on account of any breaking of such improvements, caused by the said Contractor on constructing the same, it being understood that the purpose of this section is to cover all defective conditions arising by reason of defective material, work or labor performed by said Contractor, and in case the said Contractor shall fail to repair, reconstruct or make said improvements it is agreed that the City may do said work in accordance with said contract and supply such materials and charge the same against the said Contractor and its surety on this obligation, and said Contractor and surety shall be subject to the damages in said contract for each day's failure on the part of said Contractor to comply with the terms and provisions of said Contract and this bond.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Contractor shall perform its agreement to maintain said construction and keep same in repair for the maintenance period of two (2) years as herein and in said contract provided, then this obligation shall be null and void and have no further effect; otherwise, to remain in full force and effect;

It is further agreed that this obligation shall be a continuing one against the Principal and Surety and that successive recoveries may be had hereon for successive breaches of the conditions herein provided until the full amount of this bond shall have been exhausted, and it is further understood that the obligation to maintain said work shall continue throughout said maintenance period, and the same shall not be changed, diminished, or any matter affected from any cause during said time.

IN WITNESS WHEREOF, the said _____ as Contractor and Principal and the said _____, Attorney-in-Fact, and the said Attorney-in-Fact has hereunto set his hand this the _____ day of _____, 2_____.

PRINCIPAL

By: _____

Title: _____

Address: _____

SURETY

By: _____

Title: _____

Address: _____

Attorney-in-Fact

Question and Answers for Bid #16112 - PAVEMENT RESURFACING SERVICES

Overall Bid Questions

There are no questions associated with this bid.

PERFORMANCE BOND

STATE OF TEXAS
COUNTY OF DALLAS

KNOW ALL MEN BY THESE PRESENTS:

That Reynolds Asphalt & Construction Co. of the City of North Richland Hills, County of Tarrant, and State of Texas, as Principal, and Colonial American Casualty and Surety Co. and Fidelity and Deposit Co of MD authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto the City of Grand Prairie (Owner), in the sum of Three Million, Five Hundred Twenty-Three Thousand, Nine Hundred & No/100 Dollars (\$ 3,523,900.00----) as a proper measure of liquidated damages, for payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by the presents:

Pavement Resurfacing Services RFB #16112

WHEREAS, the Principal has entered into a certain written contract with the OWNER, dated the 17th day of August, 2016, to which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform said Contract and shall in all respects duly and faithfully contract agreed and covenanted by the Principal to be observed and performed and according to the true intent and meaning of said Contract and the Plans and Specifications hereto annexed, then this obligation shall be void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Article 5160 of the Revised Civil Statutes of Texas as amended and all liabilities on this bond shall be determined in accordance with the provision of said Article to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to terms of the contract, or to work performed thereunder, or the plans, specifications or drawings accompanying the same, shall in anywise affect its obligation on this bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument the 17th day of August, 2016.

Reynolds Asphalt & Construction Company
PRINCIPAL

By: Ned Tankerslev

Title: Ned Tankerslev, Vice President

Address: P.O. Box 370

Euless, Texas 76039

Colonial American Casualty and Surety Company and
Fidelity and Deposit Company of Maryland
SURETY

By: Kyle W. Sweeney

Title: Kyle W. Sweeney, Attorney-in-Fact

Address: 15303 Dallas Parkway, Suite 800

Addison, Texas 75001

Name and address of the Resident Agent of Surety is: The Sweeney Company, P.O. Box 8720, Fort Worth, Texas 76124

City of Grand Prairie

PAYMENT BONDSTATE OF TEXAS
COUNTY OF DALLAS

KNOW ALL MEN BY THESE PRESENTS:

That Reynolds Asphalt & Construction Co. of the City of North Richland Hills, County of Tarrant, and State of Texas, as Principal, and Colonial American Casualty and Surety Co. and Fidelity and Deposit Co of MD authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto the City of Grand Prairie (Owner), in the panel sum of Three Million, Five Hundred Twenty-Three Thousand, Nine Hundred & No/100 Dollars (\$3,523,900.00-----) for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by the presents:

WHEREAS, the Principal has entered into a certain written contract with the OWNER, dated the 17th day of August, 2016, to which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

Pavement Resurfacing Services RFB #16112

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall pay all claimants supplying labor and materials to him or a subcontractor in the prosecution of the work provided for in said contract, then this obligation shall be void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Article 5160 of the Revised Civil Statutes of Texas as amended and all liabilities on this bond shall be determined in accordance with the provision of said Article to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to terms of the contract, or to work performed thereunder, or the plans, specifications or drawings accompanying the same, shall in anywise affect its obligation on this bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument the 17th day of August, 2016.

Reynolds Asphalt & Construction Company
PRINCIPAL

By: Ned TankersleyTitle: Ned Tankersley, Vice PresidentAddress: P.O. Box 370Euless, Texas 76039

Colonial American Casualty and Surety Company and
Fidelity and Deposit Company of Maryland
SURETY

By: Kyle W. SweeneyTitle: Kyle W. Sweeney, Attorney-in-FactAddress: 15303 Dallas Parkway, Suite 800Addison, Texas 75001Name and address of the Resident Agent of Surety is: The Sweeney Company, P.O. Box 8720, Fort Worth, Texas 76124

City of Grand Prairie

MAINTENANCE BOND

STATE OF TEXAS
COUNTY OF DALLAS

KNOW ALL MEN BY THESE PRESENTS:

That Reynolds Asphalt & Construction Co. of the City of North Richland Hills, County of Tarrant, and State of Texas, as Principal, and Colonial American Casualty and Surety Co. and Fidelity and Deposit Co. of MD. a corporation authorized under the laws of the State of Texas to act as surety on bonds for principals, do hereby acknowledge themselves to be held and firmly bound to pay unto the City of Grand Prairie (Owner), a municipal corporation of the State of Texas, its successors and assigns, at Grand Prairie, Dallas County, Texas, the sum of Three Million, Five Hundred Twenty-Three Thousand, Nine Hundred & No/100 Dollars (\$3,523,900.00----), 100% of the total amount of the contract for the payment of which sum said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by the presents:

This obligation is conditioned, however, that:

WHEREAS, the Principal has entered into a certain written contract with the OWNER, dated the 17th day of August, 2016, to perform Pavement Resurfacing Services which contract and the plans and specifications therein mentioned, adopted by the City of Grand Prairie, are filed with the City Secretary of said City and are hereby expressly incorporated herein by reference and made a part hereof as though the same were written and set out in full herein, and

WHEREAS, under the said plans, specifications and contracts, it is provided that the Contractor will maintain and keep in good repair the work therein contracted to be done and performed for a period of two (2) years from the date of acceptance thereof and perform all necessary work toward the repair of any defective condition growing out of or arising from the improper construction of the improvements contemplated by the said Contractor on account of any breaking of such improvements, caused by the said Contractor on constructing the same, it being understood that the purpose of this section is to cover all defective conditions arising by reason of defective material, work or labor performed by said Contractor, and in case the said Contractor shall fail to repair, reconstruct or make said improvements it is agreed that the City may do said work in accordance with said contract and supply such materials and charge the same against the said Contractor and its surety on this obligation, and said Contractor and surety shall be subject to the damages in said contract for each day's failure on the part of said Contractor to comply with the terms and provisions of said Contract and this bond.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Contractor shall perform its agreement to maintain said construction and keep same in repair for the maintenance period of two (2) years as herein and in said contract provided, then this obligation shall be null and void and have no further effect; otherwise, to remain in full force and effect;

It is further agreed that this obligation shall be a continuing one against the Principal and Surety and that successive recoveries may be had hereon for successive breaches of the conditions herein provided until the full amount of this bond shall have been exhausted, and it is further understood that the obligation to maintain said work shall continue throughout said maintenance period, and the same shall not be changed, diminished, or any matter affected from any cause during said time.

IN WITNESS WHEREOF, the said Reynolds Asphalt & Construction Company as Contractor and Principal and the said Kyle W. Sweeney, Attorney-in-Fact, and the said Attorney-in-Fact has hereunto set his hand this the 17th day of August, 2016.

Reynolds Asphalt & Construction Company
PRINCIPAL

By: Ned TankerslevTitle: Ned Tankerslev, Vice PresidentAddress: P.O. Box 370Euless, Texas 76039

Colonial American Casualty and Surety Company and Fidelity and Deposit Company of Maryland
SURETY

By: Kyle W. SweeneyTitle: Kyle W. Sweeney, Attorney-in-FactAddress: 15303 Dallas Parkway, Suite 800Addison, Texas 75001Attorney-in-Fact



Texas Important Notice

IMPORTANT NOTICE

To obtain information or make a complaint:

You may call Zurich North America's toll-free telephone number for information or to make a complaint at:

1-800-382-2150

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights, or complaints at:

1-800-252-3439

You may write the Texas Department of Insurance:

P.O. Box 149104

Austin, TX 78714-9104

Fax: (512) 490-1007

Web: www.tdi.texas.gov

E-mail: ConsumerProtection@tdi.texas.gov

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim, you should contact the company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

AVISO IMPORTANTE

Para obtener información o para presentar una queja:

Usted puede llamar al número de teléfono gratuito de Zurich North America's para obtener información o para presentar una queja al:

1-800-382-2150

Usted puede comunicarse con el Departamento de Seguros de Texas para obtener información sobre compañías, coberturas, derechos, o quejas al:

1-800-252-3439

Usted puede escribir al Departamento de Seguros de Texas a:

P.O. Box 149104

Austin, TX 78714-9104

Fax: (512) 490-1007

Sitio web: www.tdi.texas.gov

E-mail: ConsumerProtection@tdi.texas.gov

DISPUTAS POR PRIMAS DE SEGUROS O

RECLAMACIONES:

Si tiene una disputa relacionada con su prima de seguro o con una reclamación, usted debe comunicarse con la compañía primero. Si la disputa no es resuelta, usted puede comunicarse con el Departamento de Seguros de Texas.

ADJUNTE ESTE AVISO A SU PÓLIZA: Este aviso es solamente para propósitos informativos y no se convierte en parte o en condición del documento adjunto.

**ZURICH AMERICAN INSURANCE COMPANY
 COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
 FIDELITY AND DEPOSIT COMPANY OF MARYLAND
 POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Maryland, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by **MICHAEL BOND, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Charles D. SWEENEY, Kyle W. SWEENEY, Michael A. SWEENEY and Elizabeth GRAY, all of Fort Worth, Texas, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings, EXCEPT bonds on behalf of Independent Executors, Community Survivors and Community Guardians.** and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND**, this 11th day of January, A.D. 2016.

ATTEST:

**ZURICH AMERICAN INSURANCE COMPANY
 COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
 FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



By: _____

Eric D. Barnes

*Secretary
 Eric D. Barnes*

Michael Bond

*Vice President
 Michael Bond*

**State of Maryland
 County of Baltimore**

On this 11th day of January, A.D. 2016, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **MICHAEL BOND, Vice President, and ERIC D. BARNES, Secretary**, of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

Constance A. Dunn

*Constance A. Dunn, Notary Public
 My Commission Expires: July 9, 2019*



EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 17th day of August, 2016.



Thomas O. McClellan

Thomas O. McClellan, Vice President

CERTIFICATE OF INTERESTED PARTIES**FORM 1295**

1 of 1

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

**OFFICE USE ONLY
CERTIFICATION OF FILING**

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

Reynolds Asphalt & Construction Company
 North Richland Hills, TX United States

Certificate Number:
 2016-103126

Date Filed:
 08/23/2016

Date Acknowledged:

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

City of Grand Prairie

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

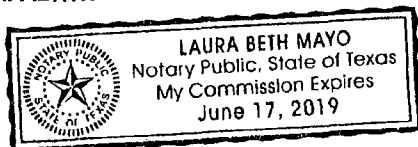
RFB #16112
 Pavement Resurfacing Services

4	Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.

**6 AFFIDAVIT**

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



Ned Tankersley

Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Ned Tankersley, this the 23rd day of August, 2016, to certify which, witness my hand and seal of office.

Laura Mayo
 Signature of officer administering oath

Laura Mayo
 Printed name of officer administering oath

Contract Admin.
 Title of officer administering oath



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/18/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER The Sweeney Company 1121 E. Loop 820 South P O Box 8720 Fort Worth TX 76124-0720	CONTACT NAME: PHONE (A/C, No, Ext): (817) 457-6700 FAX (A/C, No): (817) 457-7246 E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A: Valley Forge Ins Co NAIC # 20508 INSURER B: Am Cas Co of Reading, PA 20427 INSURER C: Great American Insurance Co 16691 INSURER D: Nat'l Fire Ins Co of Hartford 20478 INSURER E: INSURER F:
INSURED Reynolds Asphalt & Construction Company P.O. Box 370 Euless TX 76039	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY		INS 4028760229	5/8/2016	5/8/2017	EACH OCCURRENCE \$ 1,000,000
	☐ CLAIMS-MADE ☒ OCCUR					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
	☒ CONTRACTUAL, XCU					MED EXP (Any one person) \$ 5,000
	☒ CROSS LIAB, BFPD					PERSONAL & ADV INJURY \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER:					GENERAL AGGREGATE \$ 2,000,000
						PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY		U 4028760232	5/8/2016	5/8/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	☒ ANY AUTO					BODILY INJURY (Per person) \$
	☐ ALL OWNED AUTOS	☐ SCHEDULED AUTOS				BODILY INJURY (Per accident) \$
	☐ HIRED AUTOS	☐ NON-OWNED AUTOS				PROPERTY DAMAGE (Per accident) \$
	☒ MCS90					\$
C	☒ UMBRELLA LIAB ☒ OCCUR		TUU 1231247 00	5/8/2016	5/8/2017	EACH OCCURRENCE \$ 10,000,000
	☐ EXCESS LIAB ☐ CLAIMS-MADE					AGGREGATE \$ 10,000,000
	DED ☒ RETENTION \$ 10,000					\$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		WC 4028760215	5/8/2016	5/8/2017	☒ PER STATUTE ☐ OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	☐ Y/N				E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below	N/A				E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
						E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 PAVEMENT RESURFACING SERVICES RFB #16112. ALL POLICIES INCLUDE A BLANKET AUTOMATIC WAIVER OF SUBROGATION ENDORSEMENT & THE GL, AUTO & UMB POLICIES INCLUDE A BLANKET AUTOMATIC ADDITIONAL INSURED ENDORSEMENT PROVIDING ADDITIONAL INSURED & WAIVER OF SUBROGATION STATUS TO THE CERTIFICATE HOLDER ONLY WHEN THERE IS A WRITTEN CONTRACT BETWEEN THE NAMED INSURED & THE CERTIFICATE HOLDER THAT REQUIRES SUCH STATUS. THE GL ADDITIONAL INSURED ENDORSEMENT CONTAINS SPECIAL PRIMARY & NONCONTRIBUTORY WORDING. THE POLICIES INCLUDE AN ENDORSEMENT PROVIDING 30 DAYS NOTICE OF CANCELLATION (10 FOR NON-PAY OF PREMIUM) TO THE CERTIFICATE HOLDER.

CERTIFICATE HOLDER CITY OF GRAND PRAIRIE PURCHASING DIVISION PO BOX 534045 GRAND PRAIRIE, TX 75053-4045	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Charles Sweeney / JOYCE <i>Charles Sweeney</i>
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TOWN COUNCIL AGENDA ITEM NO. 11

CONSENT ITEM

DATE: July 17, 2017

FROM: Brian Waltenburg, Senior Project Engineer

ITEM: Consider approval of Change Order No. 2 and final acceptance of the FM 2499/FM3040 24-inch Water Line Crossing Replacement project, amending the contract with Mountain Cascade of Texas LLC, for a decrease to the contract in the amount of \$14,638.22, and authorization of final payment to Mountain Cascade of Texas LLC, in the amount of \$22,076.23; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: Change Order No. 2 provides for line item adjustments to match in-place quantities. Final Payment consists of \$22,068.45 of retainage, and \$7.78 of work completed, for a final contract amount of \$442,071.78.

FISCAL IMPACT: \$22,076.23

Proposed Expenditure:	Account Number(s):
\$22,076.23	630-960-98841

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

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Change Order No.2
2. Consent of Surety
3. Affidavit of Bills Paid

DRAFT MOTION: Move to approve Change Order No. 2 and final acceptance of the FM 2499/FM3040 24-inch Water Line Crossing Replacement project, amending the contract with Mountain Cascade of Texas LLC, for a decrease to the contract in the amount of \$14,638.22, and authorize final payment to Mountain Cascade of Texas LLC, in the amount of \$22,076.23; and authorize the Mayor to execute same on behalf of the Town.

CHANGE ORDER No. 2

Effective Date: Upon execution by the Mayor

Owner: Town of Flower Mound

Contractor: Mountain Cascade of Texas LLC

Project: FM 2499 & FM 3040 Water Line Crossing Replacement

CHANGE ORDER NO. 2

The compensation agreed upon in this Change Order is a full, complete, and final payment for all costs the Contractor incurs as a result of or relating to the change, whether said costs are known, unknown, foreseen, or unforeseen at this time, including without limitation, any costs for delay, extended overhead, ripple or impact costs, or any other effect on changed or unchanged work as a result of this change.

You are directed to make the following changes in the Contract Documents:

Item No.	Description	Unit	Add/ Deduct	Qty.	Unit Price	Extended Amount
5	20" Ductile Iron Waterline (Open Cut)	LF	Deduct	4	\$175.00	\$ (700.00)
7	Bore with 36" ID Steek Casing Pipe	LF	Deduct	8	\$1,150.00	\$ (9,200.00)
14	Trench Safety	EA	Deduct	19	\$2.00	\$ (38.00)
21	Concrete Pavement Repair	SY	Deduct	30.9	\$120.00	\$ (3,708.00)
CO2-A	Repair of Damaged Signal Box and Conduit	LS	Deduct	1	\$992.22	\$ (992.22)
SUBTOTAL						\$ (14,638.22)

JUSTIFICATION

Change Order No. 2 provides for the following:

Items 5, 7, 14 & 21 are quantity adjustments to reconcile item quantities with actual quantities installed.

Item CO2-A - During excavation for paving, the Contractor damaged a 3-inch traffic signal conduit and pullbox on the northwest corner of FM 2499 and FM 3040. Item CO2-A includes deductions for signal conduit repair materials (\$497.62), replacement pullbox (\$292.00), and labor (\$202.60) for the repair of the damaged items.

Original Contract	\$ 442,210.00
Change Order #1	\$ 14,500.00
Change Order #2	\$ (14,638.22)
Revised Contract Price	\$ 442,071.78

Original Substantial Completion Days	30
Change Order No. 1 Additional Days	59
Revised Substantial Completion Days	89

Original Final Completion Days	60
Change Order No. 1 Additional Days	59
Revised Final Completion Days	119

Recommended
for Approval

 Brian Waltenburg
 Sr. Project Engineer

5/19/2017

Date

Contractor

Date


EXECUTIVE VICE PRESIDENT
 Contractor Title

Approved

 Thomas E. Hayden
 Mayor

Date

**CONSENT OF SURETY
TO FINAL PAYMENT***AIA Document G707*

Bond No. 070022963

OWNER	☐
ARCHITECT	☐
CONTRACTOR	☐
SURETY	☒
OTHER	☐

TO OWNER:*(Name and address)*

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

ARCHITECT'S PROJECT NO.:

CONTRACT FOR: FM 2499-FM 3040 Water Line Crossing Replacement - Bid #2016-66

PROJECT:*(Name and address)***CONTRACT DATED:**

FM 2499/FM 3040 Water Line Crossing Replacement - Bid #2016-66

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the
(Insert name and address of Surety)

Liberty Mutual Insurance Company
175 Berkeley Street
Boston, MA 02116

, SURETY,

on bond of

(Insert name and address of Contractor)

Mountain Cascade of Texas, LLC
11729 East FM 917
Alvarado, TX 76009

, CONTRACTOR,

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

(Insert name and address of Owner)

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

, OWNER,

as set forth in said Surety's bond.

IN WITNESS WHEREOF, the Surety has hereunto set its hand on this date: April 4, 2017

(Insert in writing the month followed by the numeric date and year.)

Liberty Mutual Insurance Company

(Surety)

By:

(Signature of authorized representative)

Megan Nicole Monette, Attorney-in-Fact

(Printed name and title)

Attest:

(Seal):

Logan Lehrkamp
Logan Lehrkamp, Witness

ACKNOWLEDGEMENT OF SURETY

STATE OF **Minnesota**
COUNTY OF **Hennepin**

On this 4th day of **April, 2017**, before me personally came **Megan Nicole Monette**, to me known, who, by me duly sworn, did depose and say that she is the attorney-in-fact of the **Liberty Mutual Insurance Company**, that she knows the seal of the corporation; that the seal affixed to the said instrument is such company seal; that it was so affixed by order of the Board of Directors of said company and that she signed her name thereto by like order.





Notary Public, Kelly Nicole Bruggeman
My Commission Expires: January 31, 2021
Registration #: 31076678

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 7557323

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company West American Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Blake S. Bohlig; Julie Marie Decker; Kelly Nicole Bruggeman; Logan Charles Lehrkamp; Megan Nicole Monette; Michelle Anne McMahon; Tasha N. Williams

all of the city of Minneapolis, state of MN each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 30th day of November, 2016.



The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 30th day of November, 2016, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 28, 2017
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 4th day of April, 2017.



By: Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

**CONTRACTOR'S AFFIDAVIT OF
PAYMENT OF DEBTS AND CLAIMS**

AIA Document G706

(Instructions on reverse side)

OWNER	☐
ARCHITECT	☐
CONTRACTOR	☒
SURETY	☐
OTHER	☐

TO OWNER:

(Name and address)

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

PROJECT:

(Name and address)

FM 2499/FM 3040 Water Line
Crossing Replacement

ARCHITECT'S PROJECT NO.:

CONTRACT FOR:

Bid No. 2016-66

CONTRACT DATED:

June 20, 2016

STATE OF: Texas

COUNTY OF: Johnson

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

EXCEPTIONS:

None

SUPPORTING DOCUMENTS ATTACHED HERETO:

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

Indicate attachment: ☒ yes ☐ no

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

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

CONTRACTOR:

(Name and address)

Mountain Cascade of Texas, LLC
11729 East FM 917
Alvarado, TX 76009

BY:

(Signature of authorized representative)

Michael D. Osmus, Executive Vice President

(Printed name and title)

Subscribed and sworn to before me on this date: March 27, 2017

Notary Public:

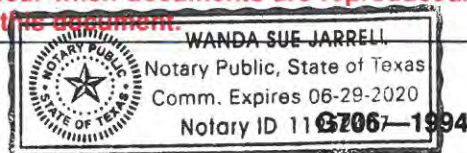
My Commission Expires: June 29, 2020



CAUTION: You should sign an original AIA document that has this caution printed in red. An original assures that changes will not be obscured as may occur when documents are reproduced. See Instruction Sheet for Limited License for Reproduction of this document.



AIA DOCUMENT G706 • CONTRACTOR'S AFFIDAVIT OF PAYMENT OF DEBTS AND CLAIMS
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AIA® Document G706A™ – 1994
Contractor's Affidavit of Release of Liens

PROJECT: *(Name and address)*
FM 2499/FM 3040 Water Line
Crossing Replacement

ARCHITECT'S PROJECT NUMBER:

OWNER: ☐

CONTRACT FOR: General
Construction Bid No. 2016-66

ARCHITECT: ☐

TO OWNER: *(Name and address)*
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, TX 75028

CONTRACT DATED:
June 20, 2016

CONTRACTOR: ☒

SURETY: ☐

OTHER: ☐

STATE OF: Texas
COUNTY OF: Johnson

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

EXCEPTIONS:**SUPPORTING DOCUMENTS ATTACHED HERETO:**

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

CONTRACTOR: *(Name and address)*

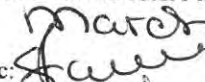
Mountain Cascade of Texas, LLC
11729 East FM 917
Alvarado, TX 76009

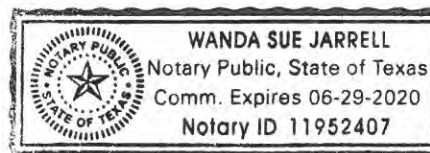
BY:


(Signature of authorized representative)

Michael D. Osmus, Executive Vice President
(Printed name and title)

Subscribed and sworn to before me on this date:

March 27, 2017
Notary Public: 
My Commission Expires: *June 29, 2020*





TOWN COUNCIL AGENDA ITEM NO. 12

CONSENT ITEM

DATE: July 17, 2017

FROM: Clay Riggs, Senior Project Engineer

ITEM: Consider approval to award Bid No. 2017-76 to Axis Contracting, Inc., for the FM 1171 at FM 2499 Eastbound Right Turn Lane project, in the amount of \$426,276.25; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On June 20, 2017, bids were received and opened (Bid No. 2017-76) for the FM 1171 at FM 2499 Eastbound Right Turn Lane project. Axis Contracting, Inc. submitted the lowest qualified bid of the five responding bidders, for a total base bid plus optional bid item, of \$426,276.25.

The project will add an eastbound right turn lane on FM 1171 at the intersection of FM 2499. The turn lane will improve traffic movement and reduce traffic back up at the intersection.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

FISCAL IMPACT: \$426,276.25

Proposed Expenditure:	Account Number(s):
\$6,276.25	531-220-70624
\$420,000.00	308-103-70624

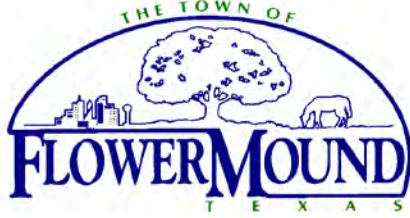
Finance Review by: Debra Wallace, Deputy Town Manager/CFO *DW*

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

ATTACHMENTS:

1. Bid Tab
2. Construction Agreement

DRAFT MOTION: Move to award Bid No. 2017-76 to Axis Contracting, Inc., for the FM 1171 at FM 2499 Eastbound Right Turn Lane project, in the amount of \$426,276.25; and authorize the Mayor to execute same on behalf of the Town.



**Town of Flower
Mound
Bid Tabulation**

Bid No: 2017-76 - FM 1171 at FM 2499 Eastbound Right Turn Lane		
Bid Opening: June 20, 2017 at 11:00am		
Company		Total Bid
Axis Contracting, Inc		\$ 426,276.25
Rebcon, Inc		\$ 466,887.40
Pavecon Public Works		\$ 475,135.75
XIT Paving & Construction		\$ 506,409.00
3D Paving & Contracting, LLC		\$ 544,170.00
**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	06/20/2017
	Purchasing Manager	
	Town of Flower Mound, Texas	

TOWN OF FLOWER MOUND**FM 1171 at FM 2499 Eastbound Right Turn Lane Project****Bid # 2017-76****CONSTRUCTION AGREEMENT**

THIS CONSTRUCTION AGREEMENT (the "Agreement"), made and entered into this ____ day of _____, 20____, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the "Town," and **Axis Contracting, 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:

FM 1171 at FM 2499 Eastbound Right Turn Lane Project,
Bid # 2017-76

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 **Four Hundred Twenty Six Thousand, Two Hundred Seventy-Six Dollars, and Twenty-Five Cents (\$426,276.25)** 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 Twenty (120) calendar days ready for final payment, as measured from the Effective Start Date shown in the Notice to Proceed. The work shall be in strict accordance with this Agreement, a copy of which is filed pursuant to law in the office of the legal representative of the Town.

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

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

The performance, payment, and maintenance bonds shall be issued by a corporate surety, acceptable to and approved by the Town, authorized to do business in the State of Texas, pursuant to Chapter 2253 of the Texas Government Code. Further, the Contractor shall supply capital and surplus information concerning the surety and reinsurance information concerning the performance, payment, and maintenance bonds upon Town request. In addition to the foregoing requirements if the amount of the bond exceeds One Hundred

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

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

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

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

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

by the Town within thirty (30) calendar days after it receives written demand from the Town.

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

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

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

Retainage shall be withheld and may be paid to:

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

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

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

The Town may withhold payment of some or all of any progress or final payment that would otherwise be due if the Town determines, in its discretion, that it is necessary and proper to provide an additional source of funds to pay claims for which the Town is entitled to indemnification from Contractor under the Contract Documents. Amounts withheld under this section shall be in addition to any retainage.

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

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

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

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

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

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

Final payment to the Contractor shall not be due until the Contractor provides original full releases of liens, or other evidence satisfactory to the Town to show that all sums due for labor, services, and materials furnished for or used in connection with the Work have been paid or shall be paid with the final payment. To ensure this result, Contractor consents to the issuance of the final payment in the form of joint checks made payable to Contractor and others. The Town may, but is not obligated to, issue final payment using joint checks.

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

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

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

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

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

In its sole discretion, the Town shall have the right to approve counsel to be retained by Contractor in fulfilling its obligation to defend and indemnify the Town. Contractor shall retain approved counsel for the Town within seven business days after receiving written notice from the Town that it is invoking its right to indemnification under this

Agreement. If Contractor does not retain counsel for the Town within the required time, then the Town shall have the right to retain counsel and the Contractor shall pay the attorneys' fees and expenses.

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

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

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

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

The Contractor shall begin the remedial work within ten (10) calendar days after receiving the written notice from the Town. If the Contractor does not begin the remedial work timely or prosecute it diligently, then the Town may pay for necessary labor and materials to effect repairs and these expenses shall be paid by the Contractor, the 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 ____ day of _____, 20__.

TOWN OF FLOWER MOUND

CONTRACTOR

Thomas E. Hayden, MAYOR

_____(Signature)
_____(Printed Name)
_____(Position)

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST:_____
Theresa Scott, TOWN SECRETARY

ATTEST:_____(Signature)
_____(Position)



TOWN COUNCIL AGENDA NO. 13

CONSENT ITEM

DATE: July 17, 2017

FROM: Debra Wallace, Deputy Town Manager *DW*

ITEM: Consider a request to waive certain fees associated with the use of Twin Coves Park amenities and finding a public purpose for such waiver.

BACKGROUND INFORMATION: At the July 17, 2017, Town Council meeting, the Town Council proclaimed the Town of Flower Mound a "Purple Heart Town". The purpose of this proclamation is to honor those who serve in the military, veterans, those who have served in combat, and their families. The Adaptive Training Foundation helps restore veteran's physical and emotional wounds. The weekend of July 21 – 23rd, the Adaptive Training Foundation is hosting a post-graduation event for a group of veterans who went thru a nine week program to recalibrate, renew and learn ways to adapt. The event for the recent graduates and families will be held at Twin Coves Park where they will be water skiing and fishing.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: Waiver of fees for 7 cabins, 3 RV spots and one night pavilion rental (\$2,765.60)

Finance Review by: Debra Wallace, Deputy Town Manager *DW*

LEGAL REVIEW: N/A

ATTACHMENTS: N/A

DRAFT MOTION: Move to waive certain fees associated with the use of Twin Coves Park amenities and finding a public purpose for such waiver.



TOWN COUNCIL AGENDA NO. 14

CONSENT ITEM

DATE: July 17, 2017

FROM: Debra Wallace, Deputy Town Manager *DW*

ITEM: Consider approval a Professional Services Agreement for preservation planning and architectural services for the Gibson-Grant Cabin project to Quimby McCoy Preservation Architecture, LLP, in the amount of \$35,000; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: In December 2015, the Town purchased the site surrounding the log cabin. The historic 1860 cabin was donated to the town by the Curtis Grant Family, the Wendell Elms Family and the Ray Robbins Family. In October 2016, the Town was awarded a matching Texas Preservation Trust Fund grant for preservation/planning of the cabin in the amount of \$15,000.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$20,000 (\$35,000 - \$15,000 grant)

Proposed Expenditure:	Account Number(s):
\$35,000	533-111-50084-6070

Finance Review by: Debra Wallace, Deputy Town Manager *DW*

LEGAL REVIEW: Jeremy Page, of Taylor, Olson, Adkins, and Elam L.L.P, has reviewed the agreement as to form and legality.

ATTACHMENTS:

1. Professional services agreement

DRAFT MOTION: Move to approve a Professional Services Agreement for preservation planning and architectural services for the Gibson-Grant Cabin project to Quimby McCoy Preservation Architecture, LLP, in the amount of \$35,000; and authorization for the Mayor to execute same on behalf of the Town.



June 16, 2017 (rev)

Debra Wallace, CPM
Deputy Town Manager/CFO
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6020
(sent via email: debra.wallace@flower-mound.com)

Re: Gibson Farmstead, Town of Flower Mound
Proposal for Preservation Planning and Architectural Services
Preparation of a Historic Structures Report and a
Historic Building Master Plan for the Gibson Homestead

Dear Debra:

It is with great pleasure that Quimby McCoy Preservation Architecture, LLP (QMc), (Consultant) submits this proposal to the Town of Flower Mound (Owner) for Preservation Planning and Architectural Services for preparation of a Historic Structures Report and a Historic Building Master Plan for the Gibson Homestead. Our preservation planning and architectural experience includes numerous Historic Structure Reports and a Master Plans for a variety of historic buildings - including the historic (1847) Sharrock Log Cabin in Dallas.

The Gibson log cabin, located on its original site, was built by William Gibson, a Peters colonist from Missouri, around 1860. This cabin was later enlarged in all directions by subsequent owners and was hidden from view from both the exterior and the interior. It was 'rediscovered' several years ago when the land was planned to be redeveloped and demolition of the house occurred - until the log cabin was uncovered. The Town of Flower Mound has since purchased the property with the cabin and the adjacent portions of the remaining farmhouse in place. Today, the cabin remains inside this farmhouse and is not visible from the exterior.

Quimby McCoy Preservation Architecture, LLP provides architectural and preservation consulting services with a specialization in the restoration, adaptive reuse and planning for new uses for historic buildings including compliance with government standards and regulations. We are particularly interested in being considered for this project as we recognize the significance of this log cabin and its association with the Peters Colonists who populated areas in North Texas over one hundred and fifty years ago. We would look forward to working for the Town of Flower Mound on the preparation of this Historic Structures Report and Historic Building Master Plan for the cabin and its site.

1.0 SCOPE OF WORK

We propose the following scope for the project - the Preparation of two documents - a Historic Structures Report (HSR) and a Historic Building Master Plan (Master Plan) for the Gibson Homestead. These documents will follow the recommended outline for Historic Structures Report by the National

Park Service and the recommended Outline for building Master Plans established by Texas Historical Commission (THC), respectively.

I.1 Historic Structures Report

A historic structure report is an important part of preservation planning and documents the historic buildings' history, changes over time, examines its existing condition and addresses the owner's goals for the use of the building and property. It also provides a thoughtful approach to selecting the most appropriate approach to treatment, and outlines a scope of recommended work. As this HSR is coupled with a Historic Buildings Master Plan (see item I.2), this HSR will focus primarily on the historic log cabin and adjacent building; the site will be further evaluated in the subsequent Master Plan task.

The proposed outline for the Historic Structures Report includes:

- I. Introduction
 - Executive Summary, Statement of Goals and Purpose and Study Summary.
2. Historical and Architectural Development
 - Historic Background and Context
 - Chronology of site development and use
 - Physical description of the site and farmstead building
 - Evaluation of significance
 - Collect available historic documentation of the buildings' original and current condition - such as photos, articles, newspapers, historic photographs, drawings (if available), site surveys, etc.
 - Develop CAD (computer aided drawings) of the log cabin and surrounding house, and show later changes - some of which have been removed. Also develop CAD drawings of the site.
 - List the buildings' historic designations and deed covenants as applicable.
 - As prior historic research has been completed by the Town of Flower Mound and Denton County, this information is to be provided for consultants use in this task.
3. Architectural Condition Assessment
 - Conduct an assessment of the site, and indicate existing buildings, vegetation, site drainage, parking, and archeologically sensitive areas on graphic site plan.
 - Conduct an assessment and inventory of the farmstead building including condition of the cabin, surrounding house and components (floor, walls, ceilings, millwork, metal hardware, accessories, etc; this should be completed on a space-by-space basis. Document this in narrative format.
 - Evaluate functional considerations including life/safety issues, accessibility, etc.
 - Describe special conditions or materials that require analysis or testing, such as lead, asbestos, mortar analysis, etc.
 - The existing mechanical, electrical, plumbing and other systems are non-functional or temporary and will not be reviewed.
4. Treatment and Work Recommendations for the historic Log Cabin
 - Historic Preservation Objectives
 - Requirements for work for the historic Log Cabin - programmatic, functional considerations. life/safety issues, accessibility, etc.

- Develop recommendations for work; these should be consistent with the *Secretary of the Interiors Standards for Rehabilitation*
- List items requiring further analysis or testing prior to developing design and construction documents, and the appropriate phase for such.
- Note: The existing mechanical, electrical, plumbing and other systems are non-functional or temporary and will not be reviewed.
- Bibliography

5. Appendix

6. Deliverables include a Historic Structures Report, delivered in PDF format to Client.

Refer to National Park Services' Preservation Brief 43 - Historic Structures Report for additional information.

I.2 Historic Building Master Plan

The Historic Building Master Plan reviews alternative uses and treatments of the historic farmstead (historic log cabin, adjacent building and site) that achieves the Owner's goals for the farmstead's future use. The end result - a report and narrative and graphic plan that reflects the selected plan for future use. The proposed outline for the Master Plan includes:

1. Introduction
 - Executive Summary, Statement of goals and purpose, methodology and identify participants.
2. Historical and Architectural Development
 - While this is typically a component of a master plan, this task will be completed in the Historic Structures Report.
3. Evaluation of Existing Conditions
 - While this is typically a component of a master plan, this task will be completed in the Historic Structures Report.
4. Master Plan Recommendations
 - Develop options of master plan recommendations for use and rehabilitation of the farmstead site and buildings. These should be consistent with the Secretary of the Interiors Standards for Rehabilitation,
 - Provide preliminary probable costs for each master plan recommendation.
 - Present master plan recommendations and preliminary probable costs to Client.
 - Based on selection of preferred master plan recommendation by Client, refine selected master plan, and develop a phasing plan.
 - Review list of items included in the Historic Structures Report requiring further analysis or testing, if needed.
 - Provide an outline of plan for regular scheduled building maintenance.
5. Appendix
6. Deliverables include a graphic Master Plan presentation drawing and Master Plan Report, to be delivered in PDF format to Client.

Refer to Texas Historic Commission's Recommended Outline for a Historic Building Master Plan for additional information. .

2.0 CONSULTANT TEAM

The consultant team shall include:

Quimby McCoy Preservation Architecture, LLP

3.0 SCHEDULE

The following schedule is proposed:

Proposal to Town Council	July 17, 2017
Draft Historic Structures Report	August 30, 2017
Draft Master Plan report	Sept 28, 2017
Flower Mound and THC to review	Sept 29 - October 13, 2017
Final HSR and MP reports issued	October 30, 2017

4.0 COMPENSATION

The following lump sum fees are proposed for the services described herein:

The Historic Structures Report and Master Plan	\$ 29,200
Reimbursable expenses and Special Testing Allowance	<u>\$6,000</u> max.
Total maximum fee:	\$ 35,000

4.1 Reimbursable Expenses and Special Testing Allowance:

The following expenses shall be considered reimbursable expenses and shall be invoiced in addition to the fee noted above: photographic reproduction of archival materials, travel to Flower Mound, etc.

Special testing, laboratory fees, and equipment rental if necessary shall be approved in advance by Client. Consultants time to facilitate such testing, equipment rental and testing shall be invoiced on an hourly rate noted below. Reimbursable expenses and special testing allowance shall be billed with a 1.1 multiplier.

4.2 Additional Services and Hourly Rates:

Fees for additional services not included in the Scope of Work shall utilize the following hourly rates. Additional architectural services shall be approved in writing by the Owner prior to commencement of the work; such additional services shall be performed on an hourly basis at the following hourly rates:

Principal	\$210
Associate/Senior Architect	\$155
Architect	\$125
Architectural Conservator	\$115
Architectural Intern	\$ 90
Clerical	\$ 70

4.3 Billing:

Invoices shall be billed to the Owner at the end of each month and reflect work completed during that month. The work completed will be based on a percentage of the

tasks noted above. Payment is due within 45 days from the date of your receipt of the invoice.

5.0 LIMITATIONS

Limitations to the work are as follows:

- 5.1 Arrangements for access to the site (including use of ladders) will be provided by the Client.
- 5.2 Unsafe conditions that may exist at the site or farmhouse are not the responsibility of the Consultant.
- 5.3 The evaluation of the farmhouse and site does not include hazardous materials asbestos, lead paint, etc). A hazardous materials survey (if necessary) will be provided by the Client.
- 5.4 Owner to make copies of documents, architectural drawings (original and later modifications if available), historic photographs and other information to the Consultant for their use.
- 5.5 A site survey is not included in this proposal. If this is required by Owner, Consultant to provide a proposal for such.
- 5.6 Landscape design or selection of landscape plantings (trees, shrubs and flowers) are not included in this proposal.
- 5.7 This proposal does not include the preparation of architectural or engineering drawings for use beyond this Master Plan.

I hope this proposal is acceptable to yourself and the Town. If so, please provide acceptance and authorization to begin work by signing below or by responding in writing to me.

Sincerely,



Marcel Quimby, FAIA
Principal

The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as architects in Texas. The Texas Board of Architectural Examiners may be reached at 8213 Shoal Creek Boulevard, Suite #107, Austin, Texas 75758, (512)458-1363; Texas Administrative Code, Title 22, Part 1, Chapter 1, Subchapter F, Rule 1.106; amended September 29, 2003.

Authorization by
Town of Flower Mound

Date



TOWN COUNCIL AGENDA ITEM NO. 15

CONSENT ITEM

DATE: July 17, 2017

FROM: Doug Stevens, CPM, Assistant Director of Public Works

ITEM: Consider approval of the award of Bid No. 2017-87 Annual Sidewalk Replacement Program to VA Construction, Inc., at the unit prices bid, in the estimated annual amount of \$100,000.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: This item is to approve the award of Bid No. 2017-87 for the Annual Sidewalk Replacement Program. The initial term of the contract will be one year, with four optional one-year renewal periods.

On June 28, 2017, three bids were received and opened for the Annual Sidewalk Replacement Program. After completion of the evaluation process, staff recommends award of bid to VA Construction, Inc., having submitted the lowest qualified unit bid pricing.

VA Construction, Inc. was the awarded vendor on previous contracts, and is currently providing sidewalk services for the annual Sidewalk Links & ADA Improvements projects.

FISCAL IMPACT: \$35,000 for remainder of FY2016-17
\$100,000 estimated annually

Proposed Expenditure:	Account Number(s):
\$100,000.00	375-630-70390-5110

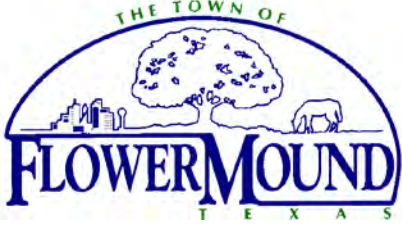
Finance Review by: Debra Wallace, Deputy Town Manager /CFO *DW*

LEGAL REVIEW: N/A

ATTACHMENTS:

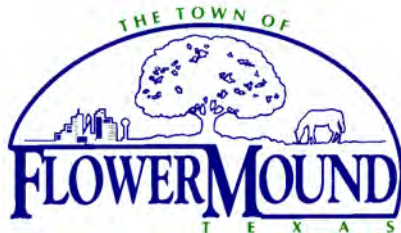
1. Bid Tabulation
2. Contract

DRAFT MOTION: Move to approve the award of Bid No. 2017-87 Annual Sidewalk Replacement Program to VA Construction, Inc., at the unit prices bid, in the estimated annual amount of \$100,000.00; and authorize the Mayor to execute same on behalf of the Town.



TOWN OF FLOWER MOUND
BID TABULATION

BID NO: 2017-87 ANNUAL SIDEWALK REPLACEMENT PROGRAM BID OPENING: JUNE 28, 2017 @ 11:00AM			AXIS CONTRACTING INC.	CAM-CRETE CONTRACTING INC	VA CONSTRUCTION INC
ITEM NO.	DESCRIPTION	UNIT	UNIT PRICE	UNIT PRICE	UNIT PRICE
1	Remove 4-5"Concrete Sidewalk, 0-50 SY	SY	\$ 22.00	\$ 18.00	\$ 18.00
2	Remove 4-5"Concrete Sidewalk, 51-250 SY	SY	\$ 20.00	\$ 18.00	\$ 18.00
3	Remove 4-5"Concrete Sidewalk, 251-500 SY	SY	\$ 18.00	\$ 18.00	\$ 18.00
4	Remove 4-5"Concrete Sidewalk, 500+ SY	SY	\$ 18.00	\$ 18.00	\$ 18.00
5	Install 5" Concrete Sidewalk, 0-50 SY	SY	\$ 75.00	\$ 100.00	\$ 72.00
6	Install 5" Concrete Sidewalk, 51-250 SY	SY	\$ 73.00	\$ 90.00	\$ 72.00
7	Install 5" Concrete Sidewalk, 251-500 SY	SY	\$ 71.00	\$ 90.00	\$ 63.00
8	Install 5" Concrete Sidewalk, 501+ SY	SY	\$ 70.00	\$ 90.00	\$ 63.00
9	Install Barrier Free Ramp – Double Connection – Intersection	EA	\$ 4,500.00	\$ 3,500.00	\$ 2,500.00
10	Remove Barrier Free Ramp	EA	\$ 2,000.00	\$ 1,000.00	\$ 750.00
11	Install Barrier Free Ramp at Alleys	EA	\$ 2,800.00	\$ 2,800.00	\$ 1,800.00
12	Install Barrier Free Ramp at Driveways	EA	\$ 2,800.00	\$ 2,800.00	\$ 1,800.00
13	Install Barrier Free Ramp at Single Sidewalk – Street	EA	\$ 2,800.00	\$ 2,800.00	\$ 1,200.00
14	Install Barrier Free Ramp at Single Sidewalk	EA	\$ 2,800.00	\$ 2,800.00	\$ 1,200.00
15	Install Barrier Free Ramp at Intersections	EA	\$ 3,800.00	\$ 2,800.00	\$ 2,500.00
16	Remove 6" Reinforced Integral Curb, 0-50 LF	LF	\$ 15.00	\$ 15.00	\$ 20.00
17	Install 6" Reinforced Integral Curb, 0-50 Lf	LF	\$ 90.00	\$ 15.00	\$ 7.00
18	Install 6" Wide Retaining Wall with Integral 5" Sidewalk (1-6" Height) (Sidewalk Paid Separately)	LF	\$ 250.00	\$ 75.00	\$ 30.00
19	Install 6" Wide Retaining Wall with Integral 5" Sidewalk (7-12" Height) (Sidewalk Paid Separately)	LF	\$ 200.00	\$ 100.00	\$ 50.00
20	Saw Cut Full Depth Concrete Sidewalk	LF	\$ 2.00	\$ 10.00	\$ 4.00
21	Install Sod, 1-2' Bermuda	SY	\$ 15.00	\$ 30.00	\$ 6.50
22	Install Sod, 1-2' St. Augustine	SY	\$ 15.00	\$ 30.00	\$ 6.50
23	Unclassified Excavation, 0-50 CY	CY	\$ 65.00	\$ 50.00	\$ 45.00
24	Unclassified Excavation, 51-100 CY	CY	\$ 60.00	\$ 50.00	\$ 40.00



Purchasing & General Services Request for Bids

Bid No:	2017-87
Bid Title:	Annual Sidewalk Replacement Program
Questions Deadline:	6/22/2017 @ 12:00PM
Bids Due:	6/28/2017 @ 11:00AM

Bids for the services specified will be received by the Town of Flower Mound until the date and time as indicated above. Please submit one (1) original bid and one (1) copy of the bid in hard copy only.

Delivery/Mailing Address:	Town of Flower Mound
	Attn: Purchasing Office
	2121 Cross Timbers Road
	Flower Mound, TX 75028

Late submissions will not be considered. Bids must be submitted with the bid number and the respondent's name and address clearly indicated on the front of the envelope. Additional instructions for preparing a bid are provided within.

RESPONDENTS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE DOCUMENT PRIOR TO SUBMITTING A BID.

For questions regarding this bid contact:	Sabrina Zadow
	Purchasing Manager
	(972) 874-6007
	sabrina.zadow@flower-mound.com

The Town of Flower Mound appreciates your time and effort in preparing a bid. **Please note that all submissions must be received at the designated location by the deadline shown.** Bids received after the deadline will not be considered for the award of the contract and will be returned unopened. Bids will be publicly opened and read aloud at 11:00 am on June 28, 2017 at the Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, Texas, 75028.

**TOWN OF FLOWER MOUND
STANDARD TERMS & CONDITIONS FOR PROCUREMENTS**

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

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

7. **PAPER SUBMISSIONS:** Paper submissions shall be submitted on the forms provided by the Town of Flower Mound and must be signed and dated by a duly designated representative or agent of the company submitting the bid/proposal. Respondents shall clearly and concisely provide all requested information as stated in the bid/proposal document. Failure to provide the requested information may be reason to deem such submission non-responsive.
 8. **PRESENTATION OF BIDS/PROPOSALS:** Paper submissions shall be presented to The Town of Flower Mound Purchasing Division, 2121 Cross Timbers Road, Flower Mound, Texas 75028 by the stated deadline. Paper submissions shall be presented in a sealed envelope with respondent's name and the bid/proposal number clearly identified on the outside of the envelope.
 9. **LATE SUBMISSIONS:** The date/time stamp located in the Town of Flower Mound Purchasing Division serves as the official time clock. Submissions received in the Purchasing Division after the stated deadline shall be refused and returned unopened. The Town of Flower Mound is not responsible for issues encountered with methods of delivery.
 10. **PRICING:** Prices offered shall be submitted for units of quantity as specified in the bid/proposal document, extended and totaled. In the case of a discrepancy in the extended price, the unit price shall govern and control. Any alteration, strike-through or erasure made prior to bid/proposal opening shall be initialed by the signer of the bid/proposal, guaranteeing authenticity.
- FOR BIDS ONLY:** Prices offered **cannot** be altered or amended after the submission deadline. Bids may not be changed for the purpose of correcting an error in bid price after bid opening.
11. **TAXES:** The Town of Flower Mound is exempt from paying federal excise and transportation taxes and Texas State or local sales and use taxes. **Tax shall not be included in prices offered.** A Tax Exempt Form will be provided by the Town of Flower Mound upon request. A request for a Tax Exempt Form can be submitted in writing to purchasing@flower-mound.com or by contacting the Purchasing Division at 972.874.6007.

12. **WITHDRAWAL OF OFFER:** Respondent agrees that an offer may not be withdrawn or cancelled for a period of one hundred twenty (120) days following the date and time designated for the receipt of bid/proposal without written approval of the Purchasing Manager.
13. **F.O.B./DAMAGE:** Prices offered shall be F.O.B. Final Destination, Town of Flower Mound, Texas, and shall be all inclusive of shipping, handling and packaging costs. The Town accepts and assumes no liability for goods delivered in damaged or unacceptable condition. The successful respondent shall be responsible for handling all claims with carriers, and in case of damaged or unacceptable goods, shall ship replacement goods immediately upon notification by the Town.
14. **PREPARATION COST:** All costs associated with the preparation of an offer shall be borne by the respondent. The Town of Flower Mound will not be liable for any costs associated with the preparation, transmittal, or presentation of submissions, or with any materials submitted in response to the same.
15. **TESTING:** At the Town of Flower Mound's discretion, testing may be required prior to award of bid/proposal or prior to delivery of goods or services. Testing shall be performed without expense to the Town.
16. **SAMPLES:** At the Town of Flower Mound's discretion, samples may be required prior to award of bid/proposal, or prior to delivery of goods or services. Samples shall be provided at no cost to the Town. Samples should not be enclosed with submission unless specifically requested.
17. **QUALITY:** Any catalog, brand names, or manufacturer's reference in this bid/proposal packet is descriptive and **not** restrictive, and is intended to indicate type and minimum quality level desired for comparison purposes, unless otherwise stated herein. All products and/or optional equipment offered shall be new and of current manufacture. No items of a demonstrator, leased, reconditioned, rebuilt, repossessed or used nature shall be considered, unless otherwise specifically stated herein.
18. **BID/PROPOSAL OPENINGS:** All offers will be read aloud at the Town of Flower Mound's scheduled opening for the designated bid/proposal. However, the reading of an offer shall not be construed as a comment on the responsiveness of such offer, or as any indication that the Town accepts such offer as responsive.

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

For processes other than low bid or best value bid, only the names of respondents will be read aloud at the scheduled opening. Pricing information will not be released until after award of the contract.

19. **SUMMARY SHEET:** Bid/Proposal summary results are typically published within one (1) business day after the scheduled opening. Bid/Proposal summary results will be available for public viewing at www.flower-mound.com and <https://flower-mound.ionwave.net/Login.aspx>. Interested parties desiring a copy of a bid/proposal summary sheet may request the same by submitting a written request to purchasing@flower-mound.com. **RESULTS WILL NOT BE RELAYED OVER THE TELEPHONE.**
20. **ANTI-COLLUSION:** In submitting an offer, respondent certifies that they have not participated in nor have they been party to any collusion, price fixing or any other illegal or unethical agreements with any company, firm or person concerning the pricing offered.
21. **NO PROHIBITED INTEREST:** Respondent acknowledges awareness of the laws, Town Charter, and Town Code of Ethics regarding conflicts of interest. No officer, employee or agent of the Town of Flower Mound shall participate in the negotiation, selection, discussion, award or administration of a contract or procurement supported by public funds if: 1) that individual has a substantial interest in a person or entity, as defined by Section 13.00, Chapter 1 of the Town's Code of Ordinances and/or Chapter 171 of the Texas Local Government Code, that is the subject of the contract or procurement; or 2) a conflict of interest, either real or apparent, would be involved, as defined herein.
22. **NON-RESIDENT BIDDERS:** Texas Government Code, Chapter 2252: Non-Resident Bidders. Texas law prohibits city and governmental units from awarding contracts to a non-resident unless the amount of such bid is lower than the lowest bid by a Texas resident by the amount a Texas resident would be required to underbid the non-resident bidder on a bid/proposal for goods and services in the non-resident bidder's state.
23. **DELINQUENT TAXES:** Any person, firm, or corporation that is in arrears to the Town of Flower Mound for delinquent taxes or otherwise, will not be recommended for award of any bid/proposal until the arrearage has been cleared in writing. If a contractor or vendor becomes delinquent while a contract is in force, payment for goods or services provided to the Town under said contract or purchase order may be withheld until the arrearage has been cleared in writing.
24. **MINIMUM STANDARDS FOR RESPONSIBILITY:** A prospective vendor must affirmatively demonstrate responsibility. The Town of Flower Mound may request representation and other information sufficient to determine respondent's ability to meet the minimum standards including but not limited to:
 - A. Have adequate financial resources, or the ability to obtain such resources as required;
 - B. Ability to comply with the required or proposed delivery schedule;

- C. Have satisfactory record of performance;
 - D. Have a satisfactory record of integrity and ethics;
 - E. Be otherwise qualified and eligible to receive an award.
25. **AWARD OF CONTRACT:** The Town of Flower Mound reserves the right to award single or multiple contracts for the goods or services as stated herein. Furthermore, the Town reserves the right to take administration costs into consideration when awarding to multiple vendors.
- The Town may award bids/proposals to the lowest responsive responsible vendor(s), or to the vendor(s) who provides goods or services at the best value to the Town. If using the best value method, the selection criteria will be clearly identified in the bid/proposal document. The best value method may take into consideration, in whole or in part, by way of illustration and not limitation, the following criteria:
- A. The purchase price;
 - B. The reputation of the respondent and of the respondent's goods or services;
 - C. The quality of the respondent's goods or services;
 - D. The extent to which the goods or services meet the Town's needs;
 - E. The respondent's past relationship with the Town;
 - F. The total long-term cost to the Town to acquire the respondent's goods or services;
 - G. Any relevant criteria specifically listed herein.
26. **ACCEPTANCE:** Respondent agrees that acceptance of any or all items by the Town of Flower Mound, Texas within a reasonable period of time, not to exceed one hundred twenty (120) days following the date and time designated for the receipt of the bid/proposal, shall be binding upon respondent. Respondent shall thereafter execute all documents necessary to enter into a contract in a form acceptable to and properly executed by the Town to provide such goods and services.
27. **CONTRACT PERIOD:** Unless otherwise stated in the specifications contained herein, the contract period for this bid/proposal will be for one (1) year upon Town approval, with four (4) optional one (1) year renewal periods if agreeable to both parties. Renewal periods will be subject to the Town's availability of funds.
28. **FUNDING:** The Town of Flower Mound is a home-rule municipal corporation operated and funded on a fiscal year basis from October 1 to September 30. Accordingly, the Town reserves the right to terminate at any time, without liability to the Town, any contract for which funding is not available.
29. **ASSIGNMENT:** The successful vendor shall not sell, assign, transfer or convey any contract, in whole or in part, without the prior written consent of the Town obtained through the Town's Purchasing Division.
30. **INTERLOCAL AGREEMENT:** The successful vendor agrees to extend prices for goods and services under the same terms and conditions of this bid/proposal to all governmental entities that have entered into, or will enter into, interlocal cooperative purchasing agreements with the Town of Flower Mound.
31. **CHANGE ORDER:** The Town of Flower Mound reserves the right to modify or change plans and specifications as deemed necessary after the performance of the contract has commenced, to decrease or increase the quantity of work to be performed, materials, equipment or supplies to be furnished, or address other provisions of the contract as approved by the Town Manager or Town Council, and as appropriate under state law. No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the contract. All change orders or modifications to the contract will be documented in written form by the Town of Flower Mound and acknowledged by the contracted vendor. **All change orders and modifications to the contract shall be processed through the Purchasing Division only.**
32. **DELIVERY PROMISE – PENALTIES:** Where indicated, respondents must provide number of calendar days required to deliver goods or services to the Town of Flower Mound after receipt of order (ARO). **Do not quote shipping dates.** When delivery delay can be foreseen, the vendor shall provide advance notice to the Purchasing Manager, who shall have the right to extend the delivery date if reasons for delay are acceptable. Default in promised delivery, without acceptable reason(s), or failure to meet specifications as contained herein or in the contract documents, authorizes the Purchasing Division to purchase goods or services from an alternate source. The defaulting vendor may be subject to re-procurement costs.
33. **DELIVERY TIMES:** Unless otherwise specified herein, deliveries will only be accepted during normal working hours at the designated Town of Flower Mound location(s).
34. **INSPECTION:** Upon receipt of goods or services, the same will be inspected for compliance with the specifications contained herein or in the contract documents. If the goods or services do not pass inspection, the vendor will be required to remedy the situation at the vendor's sole expense. The vendor will be required to retrieve the rejected goods at the delivery point and provide the necessary repairs of or replacement and return of the goods in new condition to the original point of delivery; or re-perform services in accordance with the terms and conditions of the contract and to the Town of Flower Mound's satisfaction.
35. **INVOICES:** Invoices shall be submitted to the attention of Accounts Payable Department, 2121 Cross Timbers Road, Flower Mound, Texas 75028, or electronically to accountspayable@flower-mound.com.

36. **PAYMENT TERMS:** Payment terms are net 30 days, unless otherwise specified by the Town in the bid/proposal document.
37. **AUDIT:** The Town of Flower Mound shall have access to, and the right to examine, monitor and audit all records, documents, conditions and activities related to contracts awarded by the Town. It shall be the responsibility of the vendor to maintain records associated with this procurement for a period of three (3) years after completion of the contract, or in the event of litigation, a claim or audit, the records shall be retained until the resolution of such litigation, claim or audit.
38. **INSURANCE:** The Town of Flower Mound requires vendor(s) to carry the minimum insurance as required by the greater of the requirements contained in state laws or the insurance requirements contained in the contract documents.
39. **PRICE ESCALATION:** Unless otherwise stated in the specifications herein, prices must remain firm for the initial term of the contract. The contracted vendor may request an adjustment at the time of contract renewal by submitting a request in written form to the Purchasing Manager. Basis for price escalation should be based on the Consumer Price Index for the most recent twelve-month period reported for the Dallas-Fort Worth area. The contracted vendor shall provide the Town with copies of the appropriate indices for verification purposes. The Town of Flower Mound reserves the right to approve or reject any and all requests for price escalations.
40. **PRICE REDUCTION:** If during the life of the contract, the contracted vendor's net prices to other customers for the same goods or services are lower than the Town of Flower Mound's contracted prices, an equitable adjustment shall be made in the contract price in favor of the Town.
41. **INDEMNITY:** The bidder shall defend, indemnify and hold the Town of Flower Mound, its officers, agents and employees harmless from any and all costs, expenses, suits, demands, claims, liabilities, liens, encumbrances or damages, including attorneys' fees and costs of suit, of any character, name and description, incurred or resulting from any injuries or damages received or sustained by any person, persons or property on account of any intentional wrongful conduct or negligent act or fault of the successful bidder, or of any agent, employee, subcontractor or supplier in the execution of, or performance under, any contract which may result from bid award and the bidder so agrees upon the submission of the bid. The bidder shall deliver, if so requested by the Town of Flower Mound, a written release of all liens or other proper evidence of same, to the satisfaction of the Town prior to the issuance of final payment by the Town.
42. **PATENT RIGHTS:** Respondent agrees to indemnify and hold harmless the Town of Flower Mound from any claim involving patent right infringement or copyright infringement on goods or services supplied to the Town.
43. **PROTESTS:** All protests regarding the solicitation process must be submitted in written form to the Director of General Services within five (5) working days following the opening of bids/proposals. This includes all protests relating to legal advertisements, deadlines, bid/proposal openings, and all other related procedures under the Local Government Code, as well as any protests relating to alleged improprieties or ambiguities in the specifications contained herein or in the contract documents.
- Post-award protests must be submitted in written form to the Director of General Services within five (5) working days after award.
- The protest must include, at a minimum, the name of protester, bid/proposal number or description of goods or services, and a statement of grounds for protest. The Director of General Services, having authority to make the final determination, will respond within ten (10) working days to each substantive issue raised in the protest. Allowances for reconsiderations shall be made only if data becomes available that was not previously known, or if there has been an error of law or regulation.
44. **TERMINATION FOR DEFAULT:** The Town of Flower Mound reserves the right to enforce the performance of the contract in any manner prescribed by law or deemed to be in the best interest of the Town in the event of breach or default of the contract. The Town reserves the right to terminate the contract immediately in the event the contracted vendor fails to meet delivery schedules, or otherwise perform in accordance with the specifications contained herein or in the contract documents. Breach of contract or default authorizes the Town to award the contract to another vendor, or purchase from an alternate source, and charge the full increase in cost to the defaulting contracted vendor.
45. **REMEDIES:** The successful vendor and the Town of Flower Mound agree that each party may have rights, duties, and remedies available as stated in the Uniform Commercial Code and any other available remedy, whether in law or equity.
46. **VENUE:** The validity of the contract and of any of its terms or provisions, as well as the rights and duties hereunder or the contract documents, shall be governed by and construed in accordance with the laws of the State of Texas. Exclusive venue for any legal action shall lie in Denton County, Texas.

Town of Flower Mound Bid No. 2017-87 Annual Sidewalk Replacement Program

I. General Information

The Town of Flower Mound is soliciting bids for sidewalk replacement services to be performed within the Town of Flower Mound, as described in the following bid specifications. The successful vendor will be responsible for providing all equipment, materials, and labor necessary to complete services. The successful vendor will enter into a contract with the Town, which will be effective for one (1) year, with four (4) optional one-year renewal periods. A sample contract is available for review in the Purchasing Office. The contract will be awarded to the lowest responsive and responsible bidder meeting specifications. The estimated annual expenditure for this service is \$60,000. Orders will be placed on an as needed basis as determined by the Town.

All bid prices submitted to perform the services as described in this bid will be all inclusive, F.O.B. Destination, Town of Flower.

Each bid shall be accompanied by either a cashier's check, a certified check, or an acceptable bid bond in an amount of not less than five percent (5%) of the total amount of the bid, made payable without conditions to "Town of Flower Mound, Texas", and the amount of the said Bid Bond may be retained by and forfeited to the Town as liquidated damages if the bid covered thereby is accepted and a contract based thereon is awarded and the bidder should fail to enter into a contract in the form prescribed, with legally responsible sureties, within the fifteen (15) days after such award is made by the Town.

II. Technical Specifications for Concrete Materials and Services

The intent of these specifications is to describe the various materials and services that the Town of Flower Mound Street Services Division may require. The Town of Flower Mound Design Criteria and Construction Standards, and the North Central Texas Standard Specifications for Public Works Construction, latest version will be considered as incorporated into these specifications by reference.

A. Materials

1. Sand

Sand shall consist of clean, hard, durable grains, free of lumps and organic material. All particles must pass a No. 8 sieve.

2. Crushed Rock Aggregate

The aggregate shall consist of durable particles of crushed stone, free from frozen material or injurious amounts of salt, alkali, vegetable matter or other material either free or as adherent coating, and its quality shall be reasonably uniform throughout. It shall have a wear of not more than 40 percent when tested in accordance with TEXDOT Test Method Tex-410-A.

When tested by standard laboratory methods, crushed rock shall meet the following requirements for percentage by weight:

a. **Fine Crushed Rock – Aggregate Grade 8**

Retained on the ½ in sieve	0%
Retained on the 3/8 in sieve	0 to 5%
Retained on the No. 4 sieve	35 to 60%
Retained on the No. 8 sieve	90 to 100%

b. **Standard Crushed Rock – Aggregate Grade 4**

Retained on the 1½ in sieve	0%
Retained on the 1 in sieve	0 to 5%
Retained on the ½ in sieve	40 to 75%
Retained on the No. 4 sieve	90 to 100%
Retained on the No. 8 sieve	95 to 100%

c. **Course Crushed Rock**

Passing the 1½ in sieve	100%
Retained on the ¾ in sieve	100%

d. **Rock for Foundation**

Passing the 5 in sieve	100%
Retained on the 2 in sieve	100%

e. **Class “A” Embedment**

The embedment consists of a Type “B” concrete cradle and a cap of select material or granular material.

3. **Backfill**

a. **Types “B” and “C”**

- 1) General. Type “B” backfill is imported sandy gravel material. Type “C” backfill is native material from trench excavation.
- 2) Tests. The liquid limit shall not exceed 35 when tested in accordance with ASTM Designation D 423. The plasticity limit shall not exceed 12 when tested in accordance with ASTM Designation D 424.
- 3) Gradation. Percent of rock volume allowed is 50%. Percent of maximum allowable dimension of rock to total backfill volume is 3%. Greatest dimension of rock allowed in trenches 4 ft. or less in width is 3 in. and in trenches greater than 4 ft. in width, 6 in. Percent of backfill by volume, of clay lumps is 25%. Largest dimension of clay lumps is 6 in. for trenches 4 ft. or less in width and 10 in. for trenches greater than 4 ft. in width.

4) Flowable Backfill

Flowable backfill shall consist of a mixture of native soils or manufactured materials, cement and/or fly ash, and water which produces a material with unconfined compressive strength of between 250 and 450 psi after 28 days. Any material used shall be primarily granular, with a plasticity index <12 and with 100% passing a 3/4 in. sieve. The flowable mixture must be allowed to set prior to the placement of any overlying material.

4. Flexible Base (Crushed Stone)

- a. General. The item shall consist of a foundation course for a surface course or other base courses.
- b. Tests. The soil binder shall meet the following requirements:

The liquid limit shall not exceed 40 when tested in accordance with ASTM Designation D423. The plasticity limit shall be between 4 and 12 when tested in accordance with ASTM Designation D 424. The preparation of samples for testing shall be in accordance with ASTM Designation D 2217. Material retained on the No. 4 sieve shall have a percent wear of not more than 45 when tested in accordance with ASTM Designation C 131. The material when tested under The Wet Ball for Determining the Disintegration of Flexible Base Materials, TXDOT Test Method Tex-116-E, shall not develop more than 50 percent soil binder.

- c. Gradation. The material shall be obtained from approved sources, shall consist of durable particles of stone mixed with approved binding material and shall meet the following requirements:

Passing 1-3/4 in sieve	100%	
Passing No. 4 sieve	35 to 55%	(know as binder)
Passing No. 40 sieve	15 to 40%	(know as soil binder)

5. Concrete

Class Concrete	Min Bags Cement Per C.Y.	Compressive Strength 28 – Day psi	Water Cement Ratio
A	5.0	3000	6.5
B	4.0	2000	8.0
D	3.0	1500	11.0

COARSE AGGREGATE GRADINGGrade No. 2 – Maximum Nominal Size 1-1/2 in.

Sieve	Percentage Passing
2 in.	100%
1-1/2 in.	95 to 100%
3/4 in.	40 to 70%
3/8 in.	10 to 30%
No. 4	0 to 5%

Grade No. 3 – Maximum Nominal Size 1 in.

Sieve	Percentage Passing
1-1/2 in.	95 to 100%
3/4 in.	60 to 90%
1/2 in.	25 to 60%
No. 4	0 to 5%

Grade No. 4 – Maximum Nominal Size 3/8 in.

Sieve	Percentage Passing
1/2 in.	95 to 100%
3/8 in.	70 to 95%
No. 4	0 to 25%

B. Construction Specifications

The specifications for construction are found in Chapter 2 through Chapter 8, North Central Texas Standard Specifications for Public Works Construction, latest version.

III. Insurance

ALL RESPONDENTS must submit, with the bid, proof of insurance coverage as stipulated in Exhibit A. Proof shall be by submission of copies of current policies or current Certificates of Insurance, including the effective dates of coverage. Any provisions outlined in Exhibit A will be required of the successful firm only. Prior to the execution of this contract, the successful firm will supply the Purchasing Office with an original certificate of insurance evidencing the stated requirements. This insurance shall be effective for the contract duration and renewal certificates shall also be supplied upon expiration.

IV. Bonds

The successful vendor shall furnish surety as follows:

- A. Maintenance Bond: A good and sufficient bond in an amount not less than 100 percent (100%) of the total amount of the contract, as evidenced by the proposal tabulation, guaranteeing the work completed for a period of 2-years after its acceptance by the Town of Flower Mound. Work guaranteed shall be work completed in accordance with the plans, specifications and contract documents, including any extensions thereof, for the protection of the Town. The bond shall provide for the repair and/or replacement of all defects due to faulty materials and workmanship within a period of two (2) years from the date of acceptance of the improvement by the Town of Flower Mound.
- B. Payment Bond: A good and sufficient bond in an amount not less than 100 percent (100%) of the total amount of the contract, as evidenced by the proposal tabulation, guaranteeing the full and proper protection of all claimants supplying labor and materials in prosecution of the work provided for in said contract and for the use of each claimant.

No sureties shall be accepted by the Town who are now in default or delinquent on any bonds or who are interested in any litigation against the Town. All bonds shall be made on forms furnished by the Town and shall be executed by not less than one corporate surety authorized to do business in the State of Texas and acceptable to the Town. The sureties shall be listed in the most current Federal Register Treasury List. Each surety shall designate an agent resident in the Town's jurisdictional area acceptable to the Town to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such surety ship. The Town reserves the right to reject any and all sureties. Attorneys-in-fact who sign the bonds must file with each bond a certified and effective dated copy of their power of attorney.

The Town of Flower Mound will furnish bond forms to the successful vendor.

V. Questions Deadline

The Town of Flower Mound requires that all questions relating to this bid be directed via email to Sabrina Zadow, Purchasing Manager, at sabrina.zadow@flower-mound.com by **12:00pm on June 22, 2017**. **No questions will be answered over the phone.** Questions will only be accepted until the stated deadline.

VI. Submittals

In order for your bid to be considered responsive, the following information should be submitted with your bid in the following order:

A. Bid Pricing Worksheet (Attachment A)

B. References

Bidder should provide a minimum of three (3) current references for same or similar services as described in this bid document. Please provide the following information for each reference provided on the References Worksheet (Attachment B):

1. Company Name
2. Contact Name
3. Contact Phone Number
4. Effective Dates
5. Description of Services

C. Additional Forms

1. Proof of Insurance
2. Bid Certification Form

D. Bid Bond

ATTACHMENT A**TOWN OF FLOWER MOUND****ANNUAL SIDEWALK REPLACEMENT PROGRAM****BID NO. 2017-87****BID PRICING WORKSHEET**

No.	Description	Unit	Unit Price
1	Remove 4-5" Concrete Sidewalk, 0-50 SY	SY	
2	Remove 4-5" Concrete Sidewalk, 51-250 SY	SY	
3	Remove 4-5" Concrete Sidewalk, 251-500 SY	SY	
4	Remove 4-5" Concrete Sidewalk, 500+ SY	SY	
5	Install 5" Concrete Sidewalk, 0-50 SY	SY	
6	Install 5" Concrete Sidewalk, 51-250 SY	SY	
7	Install 5" Concrete Sidewalk, 251-500 SY	SY	
8	Install 5" Concrete Sidewalk, 501+ SY	SY	
9	Install Barrier Free Ramp – Double Connection – Intersection	EA	
10	Remove Barrier Free Ramp	EA	
11	Install Barrier Free Ramp at Alleys	EA	
12	Install Barrier Free Ramp at Driveways	EA	
13	Install Barrier Free Ramp at Single Sidewalk – Street	EA	
14	Install Barrier Free Ramp at Single Sidewalk	EA	
15	Install Barrier Free Ramp at Intersections	EA	
16	Remove 6" Reinforced Integral Curb, 0-50 LF	LF	
17	Install 6" Reinforced Integral Curb, 0-50 Lf	LF	
18	Install 6" Wide Retaining Wall with Integral 5" Sidewalk (1-6" Height) (Sidewalk Paid Separately)	LF	
19	Install 6" Wide Retaining Wall with Integral 5" Sidewalk (7-12" Height) (Sidewalk Paid Separately)	LF	
20	Saw Cut Full Depth Concrete Sidewalk	LF	
21	Install Sod, 1-2' Bermuda	SY	
22	Install Sod, 1-2' St. Augustine	SY	
23	Unclassified Excavation, 0-50 CY	CY	
24	Unclassified Excavation, 51-100 CY	CY	

During the term of the contract, the successful vendor will be required to provide an itemized written quote for each miscellaneous concrete replacement job requested by Public Works, utilizing the descriptions as stated herein, and the unit prices submitted on this Bid Pricing Worksheet. Invoices will be submitted in the same manner.

**ATTACHMENT B
REFERENCES WORKSHEET**

1.

COMPANY NAME:

CONTACT NAME:

PHONE NUMBER:

EFFECTIVE DATES:

DESCRIPTION OF SERVICES:

2.

COMPANY NAME:

CONTACT NAME:

PHONE NUMBER:

EFFECTIVE DATES:

DESCRIPTION OF SERVICES:

3.

COMPANY NAME:

CONTACT NAME:

PHONE NUMBER:

EFFECTIVE DATES:

DESCRIPTION OF SERVICES:

EXHIBIT A

INSURANCE REQUIREMENTS CONSTRUCTION SERVICES

Services for construction projects, including but not limited to: General Contractors, Demolition Contractors, Utility Contractors, Building Contractors, Street and Road Contractors, etc.

Contractor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the vendor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the contractor's bid. A certificate of insurance meeting all requirements and provisions outlined herein shall be provided to the Town prior to any services being performed or rendered. Renewal certificates shall also be supplied upon expiration.

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

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

B. MINIMUM LIMITS OF INSURANCE

Contractor shall maintain throughout contract limits not less than:

1. Commercial General Liability: \$1,000,000 per occurrence / \$2,000,000 in the aggregate for third party bodily injury, personal injury and property damage. Policy will include coverage for:
 - a. Premises / Operations
 - b. Broad Form Contractual Liability
 - c. Products and Completed Operations
 - d. Personal Injury
 - e. Broad Form Property Damage
 - f. Explosion Collapse and Underground (XCU) Coverage.
2. Workers Compensation and Employer's Liability: Workers Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability minimum limits of \$100,000 per injury, \$300,000 per occurrence, and \$100,000 per occupational disease.
3. Automobile Liability: \$1,000,000 Combined Single Limit. Limits can only be reduced if approved by the Town. Automobile liability shall apply to all owned, hired and non-owned autos.
4. Builders' Risk Insurance: Completed value form, insurance carried must be equal to the completed value of the structure. Town shall be listed as Loss Payee.
5. \$1,000,000 Umbrella Liability Limit that follows form over underlying Automobile Liability, General Liability, and Employers Liability coverages.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

D. OTHER INSURANCE PROVISIONS

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

1. General Liability and Automobile Liability Coverages:

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

2. Workers Compensation and Employer's Liability Coverage:

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

3. All Coverages:

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

E. ACCEPTABILITY OF INSURERS

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

F. VERIFICATION OF COVERAGE

Contractor shall provide the Town with certificates of insurance indicating coverage's required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates of Insurance similar to the 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.

CONFLICT OF INTEREST QUESTIONNAIRE FORM CIQ For vendor or other person doing business with local governmental entity	
This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 178, Local Government Code by a person who has a business relationship as defined by Section 178.001(1-a) with a local governmental entity and the person meets requirements under Section 178.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 178.006, Local Government Code. A person commits an offense if the person knowingly violates Section 178.006, Local Government Code. An offense under this section is a Class C misdemeanor.	OFFICE USE ONLY Date Received
1 Name of person who has a business relationship with local governmental entity.	
2 Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)	
3 Name of local government officer with whom filer has employment or business relationship. Name of Officer This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 178.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary. A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire? ☐ Yes ☐ No B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity? ☐ Yes ☐ No C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more? ☐ Yes ☐ No D. Describe each employment or business relationship with the local government officer named in this section.	
Signature of person doing business with the governmental entity Date	

Adopted 06/29/2007

Bid Certification Form
Bid No. 2017-87
Annual Sidewalk Replacement Program

Company Information

The following information must be provided in its entirety for your bid

Company Name: _____

Principal Place of Business Address: _____

Principal Place of Business City, State, Zip: _____

Principal Place of Business Phone Number: _____

Principal Place of Business Fax Number: _____

Remittance Address (if different from above): _____

Remittance City, State, Zip: _____

Tax Identification No: _____

Addendums

If an addendum to this bid is issued, acknowledge addendum by initialing beside the addendum number:

Add. No. 1 _____ Add. No. 2 _____ Add. No. 3 _____ Add. No. 4 _____ Add. No. 5 _____

Certification

The undersigned hereby certifies that he/she understands the specifications, has read the document in its entirety and that the prices contained in this bid have been carefully reviewed and are submitted as correct and final. Vendor further certifies and agrees to furnish any or all products/services upon which prices are extended at the price offered, in accordance with the terms and conditions contained herein. Vendor agrees that acceptance of any or all items by the Town of Flower Mound, Texas, within the time frame indicated in this proposal constitutes a contract.

The individual signing this bid certifies that he/she is a legal agent of the company, authorized to submit on behalf of the company, and is legally responsible for the decisions as to the prices and supporting documentation provided.

Authorized Representative: _____

Signature

Date

Printed Name

Title

Email Address



TOWN COUNCIL AGENDA ITEM NO. 16

REGULAR ITEM

DATE: July 17, 2017

FROM: Bryn Meredith, Town Attorney

ITEM: Consider approval of a resolution opposing the legislative curtailment of local control / tree preservation authority; reaffirming home rule control and local governance.

BACKGROUND INFORMATION: During the June 19, 2017, Town Council Meeting, Council asked that a resolution be brought forward opposing any State curtailment of Town authority to regulate and protect trees. In addition, it was requested that the resolution oppose any further eroding of the Town's home rule powers by the Texas Legislature. The resolution is in response to the July 18, 2017, special legislative session called by the Governor.

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

ATTACHMENTS:

1. Draft resolution

DRAFT MOTION: Move to approve a resolution opposing the legislative curtailment of local control / tree preservation authority and reaffirming home rule control and local governance.

TOWN OF FLOWER MOUND, TEXAS**RESOLUTION NO. ____****A RESOLUTION OF THE TOWN OF FLOWER MOUND, TEXAS, OPPOSING THE LEGISLATIVE CURTAILMENT OF LOCAL TREE PRESERVATION AUTHORITY; REAFFIRMING HOME RULE CONTROL AND LOCAL GOVERNANCE; AND PROVIDING AN EFFECTIVE DATE.**

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

WHEREAS, municipal tree preservation ordinances are essential in providing a balance between development and quality of life; and

WHEREAS, trees reduce the urban heat island effect through evaporative cooling and reducing the amount of sunlight that reaches parking lots and buildings, they improve air quality, they reduce the amount of storm water runoff, which reduces erosion and pollution in our waterways and may reduce the effects of flooding, and they provide necessary habitat for wildlife; and

WHEREAS, the Town has collaborated with developer groups and environmental experts to develop a balanced ordinance that promotes tree preservation without being burdensome to developers and landowners; and

WHEREAS, beyond tree preservation ordinances, the Town Council hereby strongly reaffirms home rule control and local governance and opposes any legislative curtailment of same.

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

SECTION 1

For the reasons enumerated above, the Town of Flower Mound hereby expresses its support for continued local control and oversight of tree preservation matters and respectfully petitions to legislature to maintain such authority intact.

SECTION 2

The Town Council of the Town of Flower Mound hereby strongly opposes any curtailment of local control and advocates for the self-evident merits of continued robust local governance and accountability.

In 1912, Texas voters approved the concept of autonomous home rule governance. Article XI, Section 5 of the Texas Constitution affords municipalities the right and opportunity to adopt any regulation not “inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State.” The concept of home rule was developed to address the difficulty faced by the legislature in resolving complex local issues – such as an increasing demand for public services – arising out of non-rural, more dense and geographically remote

RESOLUTION NO. _____**PAGE 2**

areas of the state. Local autonomy allows for truly local representation and accountability; and the concept creates a favorable climate for direct governance of cities by their citizens.

The desire of voters state-wide in approving the constitutional notion of home rule governance through a municipal charter is testament to the fact that the public favors strong local control. Preemption of local control is antithetical to the will of the people, ignores a century of precedent favoring local self-governance and constitutes a rebuke on measures approved by public vote. The erosion of local control has the effect of preventing municipalities from addressing the needs of their citizenry, including the immediate and ongoing need to establish and maintain the public health, safety, morals and general welfare.

SECTION 3

This Resolution shall become effective from and after its passage.

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

APPROVED:

Thomas E. Hayden, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 17

REGULAR ITEM

DATE: July 17, 2017

FROM: Poornima Srinarasi, Senior Planner

ITEM: **Public Hearing to consider a request for rezoning (ZPD17-0001 - Lakeside Crossing) from Agricultural District (A) and a portion of Planned Development District No. 31 (PD-31) to Planned Development District No. 153 (PD-153) for both residential and non-residential uses in compliance with the Campus Commercial land use designation within the Lakeside Business District Area Plan, including a Comprehensive Sign Package, with certain modifications and exceptions to the Code of Ordinances, and with an exception to the Architectural Standards of the Town's Urban Design Plan for meritorious design, and to consider adopting an ordinance providing for said amendment, and acceptance of cash in lieu of land in the amount of \$189,504.00 in place of the otherwise required Park Land dedication and Park Development Fees in the amount of \$20,820.00. The property is generally located south of Lakeside Parkway along and between Long Prairie Road and Northwood Drive. *(The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its May 8, 2017, meeting.)***

BACKGROUND INFORMATION: Attached is the Planning and Zoning Commission (P&Z) report and backup for this item. At the P&Z hearing on [May 8](#), concerns were raised by commissioners related to the utility poles staying overhead, the unique façade materials and contrasting color palette, and lack of connectivity to the north. As a result, some amendments were added as part of their recommendation:

- Moved to recommend approval of ZPD17-0001 – Lakeside Crossing with the requested exceptions and modifications, with the exclusion of not burying the utilities, which P&Z believed should be denied, and furthermore the applicant committed to relooking at the color palette as presented that evening, and furthermore committed to possibly expanding the connectivity into the current Lakeside DFW development.

In response, the applicant has now agreed to bury the overhead utilities and has added pedestrian connectivity to the north; however, the elevations remain unchanged. Although P&Z indicated a desire to lighten the composite wood material in order to soften the contrast between the dark and light colors and to blend better with the adjacent Lakeside DFW color palette, no specifics were determined. The applicant has since reviewed the color selections and walked the site with executives from the neighboring development, and they feel the current colors best complement both the Lakeside DFW and Lakeside Crossing developments (see Attachment 3).

The attached ordinance reflects all updates to the development proposal.

ATTACHMENTS:

1. Planning and Zoning Commission Staff Report
2. Draft Ordinance
3. Letter from Developer

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 (ZPD17-0001 - Lakeside Crossing) from Agricultural District (A) and a portion of Planned Development District No. 31 (PD-31) to Planned Development District No. 153 (PD-153) for both residential and non-residential uses in compliance with the Campus Commercial land use designation within the Lakeside Business District Area Plan, including a Comprehensive Sign Package, with certain modifications and exceptions to the Code of Ordinances, and with an exception to the Architectural Standards of the Town's Urban Design Plan for meritorious design, and adopt an ordinance providing for said amendment, and accept cash in lieu of land in the amount of \$189,504.00 in place of the otherwise required Park Land dedication and Park Development Fees in the amount of \$20,820.00.



PLANNING AND ZONING COMMISSION AGENDA ITEM NO: 4

DATE: May 8, 2017

FROM: Poornima Srinarasi, Senior Planner

ITEM: Public Hearing to consider a request for rezoning (ZPD17-0001 - Lakeside Crossing) from Agricultural District (A) and a portion of Planned Development District No. 31 (PD-31) to Planned Development District No. 153 (PD-153) for both residential and non-residential uses in compliance with the Campus Commercial land use designation within the Lakeside Business District Area Plan, including a Comprehensive Sign Package, with certain modifications and exceptions to the Code of Ordinances, and with an exception to the Architectural Standards of the Town's Urban Design Plan for meritorious design. The property is generally located south of Lakeside Parkway along and between Long Prairie Road and Northwood Drive.

I. ITEM SUMMARY

This application has been reviewed by DRC and, aside from the requested exceptions, has been found to be in conformance with all applicable Town regulations. Specifically, this application has been reviewed under the SMARTGrowth program and has met all applicable criteria.

This application will require final action by the Town Council.

II. APPLICATION ANALYSIS

The purpose of this request is to rezone approximately 12 acres of land in order to create a planned development district which includes a mixture of both residential and non-residential uses, in compliance with the Campus Commercial land use designation within the Lakeside Business District Area Plan.

Section 2, Area Plans, of the Master Plan defines Campus Commercial as:

"Campus Commercial – Campus Commercial means a mixture of uses which includes corporate offices, office parks, hotels, commercial, similar uses, and may include limited residential development. The intent is to create a vibrant area that encourages dynamic economic development focused around live, work, and play opportunities. A mixture of uses is important as well as its design details, amenity quality, and the use of natural areas and open spaces to provide a unique quality of life and sense of place.

Development in the district must demonstrate the following:

1. Compliance with the three elements of the District's Vision:
 - a. Create high quality, regional commercial development;
 - b. Competes in the economic development arena; and
 - c. Develops a balanced tax base to reduce the residential tax burden;
2. Exemplary and enduring quality and design shall be achieved by establishing a high level of development standards;
3. Market factors should ensure a robust mix of uses that are economically viable, support a high quality of life, and provide sustainable fiscal health for the Town;
4. No one single use should be allowed to predominate in the District at build-out;
5. Uses and design shall be in context with the existing environment and adjacent developments; and
6. Residential development should provide a range of residential options that reflect changing lifestyles and demographics, and should be facilitated through the balancing of market demand and community preferences."

The proposed development is bound by Long Prairie Road on the east, Northwood Drive on the west, and Lakeside DFW's non-residential development on the north. A small portion of the southern property is vacant while the remaining property consists of an existing Mobile Home Park.

The subject site is currently undeveloped with an ephemeral stream running through the middle of the property from northeast to southwest. The applicant's letter of intent explains how the buildings have been positioned around the stream to create a design that maximizes the use of the open space and connects the built environment with the natural and manicured open space. The ephemeral stream, which is a defining feature of the property, also acts as a natural divider between the residential and non-residential components of the site. The development provides 16 percent overall open space. The limited residential development is confined to the western portion of this stream and the use seems compatible to the existing Lakeside DFW Phase 3 apartments located directly across from the proposed townhomes. The access to townhomes is provided from Northwood Drive. The non-residential component includes a hotel, retail/restaurant and office buildings. The primary access to the non-residential buildings is from Long Prairie Road with a secondary access provided from the west via Northwood Drive.

The staff report discusses the following elements of the proposed development:

1. Non-residential component
2. Environmental concerns
3. Exceptions to Architectural standards
4. Residential component
5. Modifications
6. Exceptions

Non-residential component

The accompanying concept plan depicts a 66,200-square-foot, five-story hotel, the signature building of this development, occupying the northeast portion of the site. The hotel will include 134 rooms, a lounge, restaurant, outdoor pool, and rooftop terrace. The applicant's letter describes the proposed hotel as a new hospitality concept for the progressive creative traveler, the concept which attracts new generation of hotel guests. This new concept acts as the basis for the meritorious design exception to the Town's Architectural standards which is explained in detail in sections below.

Building numbers 4 and 5, as depicted on the concept plan, are one to two-story retail and restaurant spaces with approximately 18,390 square feet and 20,855 square feet respectively. Both buildings face Long Prairie Road and are connected by a central plaza which provides pedestrian connectivity to the rear located office buildings and the stream. Enhanced landscape, hardscape, outdoor seating and dining are some of the required features of this plaza area. Building 2 is a two-story, 10,854-square-foot retail/office building; Buildings 3, 6, and 7 are office buildings with approximately 11,340 square feet, 15,778 square feet, and 18,068 square feet respectively.

Standards regarding the design of the plaza area between Buildings 4 and 5, as well as outdoor seating and outdoor patio standards for the office buildings (#2, 3, 6, and 7) overlooking the stream, have been written into the development standards of PD-153. To keep up with the intent of creating serene outdoor spaces that blur the connection with indoor spaces, the expanse of transparent display windows and doors have been quantified in the development standards.

Environmental concerns and waivers

The proposed development includes a mixture of uses with varied functionalities. Some of the key design elements, per the applicant's letter of intent, are green urbanism, pedestrian connectivity, serene outdoor spaces, and seamless and natural landscaping. In any development, the requirement for environmental studies and tree survey is completed early in the process to determine the existence of different types of habitats, location of protected and specimen trees, and location of slopes, all of which influence the site design. Per the environmental assessment of the site, all of the 5.8 acres of existing upland habitat is being impacted, out of which only 0.88 acres impacted is located within the residential portion. Since this project has been recognized as an Economic Development project (see Attachment A(4)), the developer is eligible to request a waiver to the Upland Habitat mitigation fee for the non-residential portion and a waiver to the Topographic Slope requirements of the Town's SMARTGrowth program.

The concept plan does show preservation of the open space area and indicates that all 24 specimen trees are to be preserved. Although staff appreciates the intent of the developer to preserve the specimen trees, we have serious concerns about the survivability of many of the trees due to the close proximity to buildings and other site improvements. If many of the specimen trees are

requested to be removed at site plan stage, which is after approval of development entitlement, the objective of achieving the key design elements listed by the developer will be lost.

Since the developer is not requesting removal of specimen trees at this time, the project has not been heard by the Environmental Conservation Commission (ECC).

Exception to Architectural Standards

The Town's Urban Design Plan provides Architectural Standards for non-residential buildings in the Town with the intent of creating developments of "enduring and exemplary quality and design." An applicant can request an exception to certain Architectural Standards if their proposal is determined to have meritorious quality and design.

The proposed architecture for the buildings is a more modern approach that incorporates some natural wood products, fiber cement panels, painted aluminum panels, and metal wall panels that are not listed as permitted building materials in the Town's Urban Design Plan. The applicant has provided links to the product websites.

- Composite Wood Panels:
Prodema Prodex – <http://www.prodema.com/en/prodex>
- Fiber Cement Wall Panels:
Nichiha Roughsawn – <http://www.nichiha.com/commercial/detail/roughsawn>
- Painted Aluminum Panels:
Dri-design Aluminum Panel System - <http://www.dri-design.com/products/painted-aluminum/>
- Metal Wall / Screen Panels:
<http://www.mbc.com/products/roof/exposed-fastening-roof-panels/7-2-panel/>
<http://www.mbc.com/products/roof/soffits/artisan-series/>

The product websites display pictures of buildings that have used these products for external elevation. It is staff's opinion that overall appearance of the building depends on the expanse of the wall on which the product is laid, size of the panels, alignment of the panels, joint details used between the panels, etc. Due to the conceptual nature of the elevations provided, a provision has been included in the development standards that will facilitate staff and the developer to consider the above listed details during site plan application review.

Also, due to the nature of the proposed building materials, staff has requested additional information regarding the durability and long term maintenance of these products to which the applicant has provided a list of developments in the DFW metroplex that have utilized similar products. Staff's presentation will include some pictures of recent developments that have utilized composite wood panels on exterior facades.

Based on the orientation of the buildings, the facades are categorized into four types with highest quality design assigned to 'Type A' or front elevations. Type B and C are side or rear elevations with lesser details. Type D elevations are required for buildings that back up to the stream or open space areas. Also, Type D façades require minimum percentages of glass, covered patio, and enhanced landscaping to encourage employees and shoppers to use outdoor open space areas. Under the meritorious design exception, the applicant is requesting an exception to exceed 50% glass on Type D elevations only.

Residential component

The concept plan depicts 15 townhomes facing Northwood Drive. The garage access is provided from alleyway. Keeping in context with the existing Lakeside DFW apartments across the street, the architectural style, materials, and colors of townhomes shall act as a transitioning piece between the proposed modern Lakeside Crossing and the existing traditional and/or Mediterranean looking Lakeside DFW development.

Elevations for the townhomes are not included as a part of this PD request, but an amendment to PD-153 to add development standards for townhome elevations will be brought forward at a later date.

Parking and exception to street standards

The parking requirement for the entire non-residential portion, including the hotel, is 737 spaces. With the allowable 20 percent deviation, 590 parking spaces would be required. The Town's parking regulations require a parking study for large developments requiring 250 or more spaces. Due to the nature of this project, shared parking is encouraged and the applicant has used the mixed use parking schedule previously utilized by the Town for mixed use developments. Per the mixed use schedule, the most required parking is 527 spaces. The concept plan depicts 517 spaces, out of which 482 spaces are on-site parking spaces and 35 are on-street parallel and angled parking spaces along Northwood Drive.

Parallel spaces provided in front of the townhomes balance existing parallel parking to the west of Northwood Drive. Providing parallel parking spaces also increases the amount of green space between residential and pavement. Angled parking has been provided north of the driveway that separates residential and non-residential entry to provide continuity to the existing angled spaces on the east side of Northwood Drive. However, the current street section requires parallel parking on either side of Northwood Drive. The applicant is requesting an exception to the current street standards to provide angled parking on a portion of Northwood Drive.

Since this project has been recognized as an Economic Development project, it is exempt from preparing a Transportation Analysis (TA) required as a part of SmartGrowth analysis. The developer agreed to put in the necessary turn lanes that would have resulted from the Traffic Impact Analysis (TIA) and hence a TIA was not performed for this project.

Requested Modifications

As part of the proposed PD standards, the applicant is requesting certain modifications to the dimensional regulations listed for Campus Commercial District (CC) in the Town's Code of Ordinances.

Development Standard	Required CC standards	Proposed (PD-153) CC standards
Min. Front Yard	60 ft. with no parking	60ft. with parking
Min. Rear Yard	15 ft.	None
Max. Lot Coverage	50%	None
Min. Floor Area ratio	1:1	None
Min. Landscape Buffer	60 ft.	25ft/15ft
Min. Street yard Landscape	50%	25%

Other Requested Exceptions

A. Compatibility setback and buffer

The residential compatibility standards apply when a non-residential development is proposed adjacent to an existing residential use or zoning, or designated for residential use on the comprehensive master plan. The proposed development shares a majority of the southern boundary with an existing Mobile Home Park. The Master Plan designates this property for Campus Commercial uses within the Lakeside Business District. The applicant is requesting a waiver to:

1. Compatibility Buffer
 - a. A six-foot masonry wall and a 25-foot landscape buffer along the southern property line; and
2. Compatibility Setback
 - a. A 60-foot building setback from the southern property line.

B. Pitch roof design

- 12.1. Roofs of non-residential buildings 15,000 square feet or less are to reflect hip and/or gable styles that replicate residential scale and pitch. In designing a residential scaled roof for non-residential buildings 15,000 square feet or less, the goal shall be a roof that provides for characteristic roof pitches/slopes of residential homes in the Town of Flower Mound (6/12 to 9/12 slope) and high steeply-pitched and/or expansive roof pitches/slopes shall be avoided. The Town Council may

approve, upon recommendation from the Planning and Zoning Commission a waiver to this request for individual projects. Such requests should only be contemplated in areas that are not adjacent to residences, are part of large scale developments and provide architectural detail to soften the appearance of large, tall vertical walls.

The retail/office building called out as Building 2 on the concept plan is less than 15,000 square feet and will require a pitch roof design. In order to achieve a unified development theme and in keeping with the modern architectural style of the proposed development, the applicant is requesting a waiver to the pitched roof requirements for retail/office buildings 15,000 square feet or less within PD-153.

C. Underground Utilities

Overhead utilities along Northwood Drive are primarily located in the Town's Right-of-Way with some poles located on the property line with a portion of the pole in the Right-of-Way and a portion of the pole on the property. The applicant is requesting an exception to Section 90-423, Underground utilities, of the Code of Ordinances to allow the overhead power lines to remain in the existing location.

Comprehensive Sign Package

The Town's Sign Code states that the purpose of a Comprehensive Sign Package is to "allow for a specialized review of signs which may have meritorious design and seek to promote a unique quality for an existing or proposed development, but which require special consideration."

A Comprehensive Sign Package is being proposed for the hotel in order to obtain approval of a wall sign and a roof sign that exceed the size specified in the Town's sign ordinance. The proposed wall sign on the north elevation measures a maximum of 60 inches tall and 30 feet wide. Similarly, the roof sign not to exceed 60 inches x 30 inches is being requested. At this time, the developer anticipates meeting the Town's sign standards for other retail and office buildings.

Parks Board

On April 6, 2017, the Parks Board voted to recommend acceptance of cash in lieu of land in the amount of \$189,504.00 in the place of otherwise required Park Land dedication and Park Development Fees in the amount of \$20,820.00. This recommendation will be forwarded to the Town Council for consideration at the same time as the subject Zoning Planned Development amendment. The following link will provide additional detail related to the Parks Board public meeting:

<http://flowermoundtx.swagit.com/play/04062017-766>

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
4. Letter from Economic Development

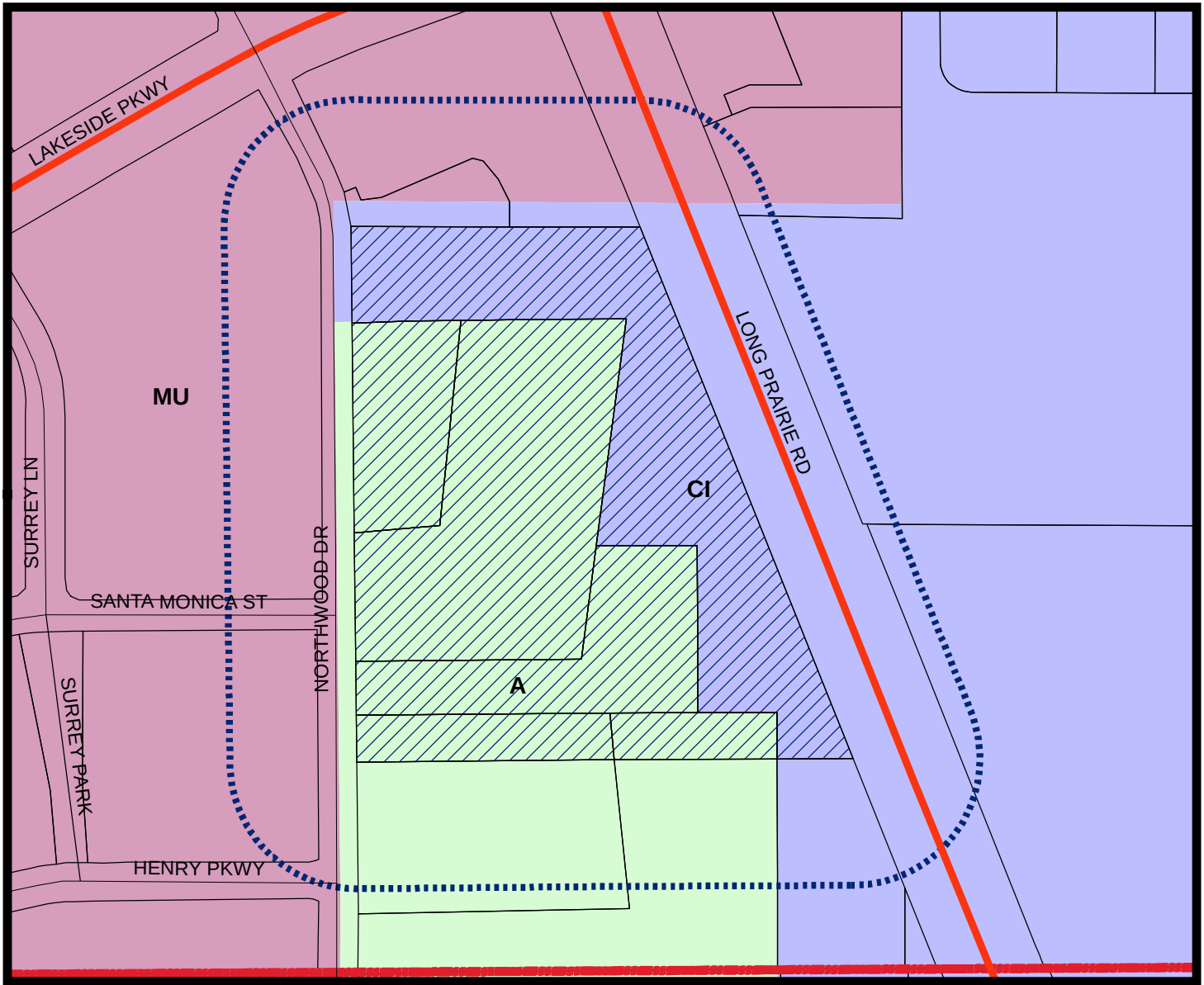
B. Application Details

1. Planned Development Zoning Package
2. Draft Planned Development (PD) Standards



Vicinity Map

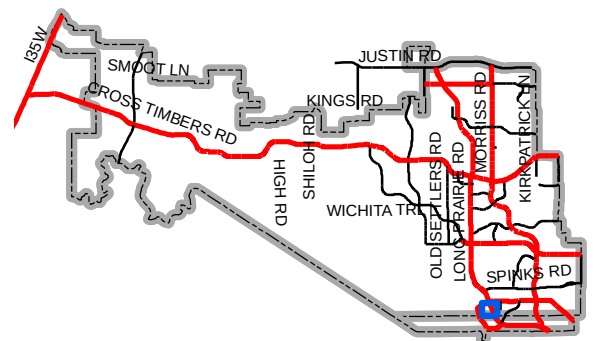
Reference Project: ZPD17-0001



LEGEND

- Agriculture
- Campus Industrial
- Mixed Use

- Subject Property
- 200 ft Notification Buffer around Property



Map Location



April 24, 2017

Mr. Doug Powell
Executive Director of Development Services
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, TX 75028

**RE: Zoning Change Request – Lakeside Crossing Planned Development
Letter of Intent
G&A Job No. 16326**

Mr. Powell:

Please accept this letter, on behalf of the Newstream Commercial, as an explanation of the proposed Zoning Change Request for approximately 12 acres of land located just south of Lakeside DFW along FM 2499 and Northwood Drive. This property is located with the Lakeside Business District with a land use designation of Campus Commercial. The property is currently zoned Agricultural and PD-31 with Campus Commercial uses.

PROJECT DESCRIPTION

Lakeside Crossing is a proposed mixed-use development that integrates serene outdoor spaces with residential, retail, restaurants, offices, and a hotel. A seasonal meandering stream runs down the middle of the property from north to south. This stream provides an opportunity to be the featured amenity of the development. Proposed offices and the hotel have been designed to overlook this feature in order to maximize views and to provide a connection between the built and natural environment. Within the stream area, open space areas will be established, a walking trail and pedestrian bridge will be built, and the existing mature trees will be preserved. The combination of these quality of life elements will create a tranquil setting that seamlessly blends the indoors to the outdoors.

There will also be pedestrian connections to the 15 proposed townhomes along Northwood Drive. Although this residential area of Lakeside Crossing will have its own pocket park, a direct trail connection from the pocket park to the pedestrian bridge is provided in order to promote the live, work, play aspect of the community.

The proposed 5-story upscale “lifestyle” hotel will include 134 rooms, a lounge and restaurant, an outdoor pool, and a rooftop terrace and lounge. Unscripted “is a new hospitality concept for the progressive creative traveler.” This concept was created and designed by the Dream Hotel Group and Newstream Hotels & Resorts to attract the new generation of hotel guests that desire to be connected with other social, informed, vibrant, and forward-thinking people.

Lakeside Crossing strives to balance the harmonious character of the locally built environment with an expression that is both unique and attractive. Primarily, the hotel, office, retail, and restaurants are designed to draw from their natural surroundings: beauty in the land, sky, and views of Lake Grapevine, for the benefit of the local residents. The key design elements of the built environment include:

- Green urbanism – creating a community beneficial to both people and the environment
- Serene outdoor spaces that blur their connection with indoor areas
- A live/work community paired with a stay and play atmosphere
- Pedestrian connections combined with retail and restaurant attractions creating space for social gatherings
- Seamless and natural landscaping

SITE DESIGN COMPONENTS

The retail and restaurant buildings will predominately front onto FM 2499 where there is the most visibility. A central plaza is proposed between the two larger restaurant/retail buildings. This plaza will include enhanced landscape and outdoor dining opportunities for the restaurants. It also has a direct connection to the pedestrian circulation system that runs throughout the development.

The open space area will also serve an important function regarding the storm drainage created by the development. The southern portion of the open space area will be designed to provide storm water detention to detain the additional run-off from the impervious areas. An engineered dam-like structure will be installed at the southern-most point of the stream along the south property line. It will be integrated in an earthen berm. This structure will detain the storm event and will allow storm water to back up into the open space area and be released through the structure over a period of time. It is anticipated that the detained storm water will be released within a 24-hour period. Therefore, the proposed detention area will be not be inundated with water for a prolonged period. Retaining walls of varying heights are planned to outline the detention area in order to maintain the existing 100-year elevation of the stream and as much of the natural grade as possible that is in close proximity to the stream. Buildings can be built above the stream area by using retaining walls and exposed grade beams. In addition, these walls will be installed along some of the edges of the stream bank where erosion is evident. Retaining walls can restore the stream bank by stabilizing it to prevent further erosion and siltation. Prolonged siltation, if left untreated, can cause even more

erosion to stream bank areas downstream. Therefore, by using retaining walls along these banks, erosion can be reduced and the banks will be restored.

We have identified 24 specimen trees on the property. The configuration of the site layout has been designed to preserve them. Buildings and parking areas were strategically placed to avoid impact to the trees and most of them are located within the central open space area.

PROPOSED ZONING

We are requesting to create a Planned Development (PD) with Development Standards that establish two base zoning categories to distinguish the non-residential and residential areas. The base zoning for the non-residential area will be Campus Commercial and the base zoning for the residential area will be Single Family Attached. We are proposing approximately 200,000 square feet of restaurant, retail, office and hotel building space. Building locations were designed to preserve as much of the natural beauty of the site as possible. They are placed in areas to provide a scenic overlook of the existing creek and open space areas to maximize views and connect the built environment to the natural environment. A central plaza between restaurants is also proposed and provides a pedestrian connection to the open space area.

With the base zoning of Campus Commercial in the non-residential section, certain Retail uses have been added as permitted uses in the proposed PD such as restaurants that may be fast food provided that they do not have a drive through. Other retail uses include a wine retail establishment and antique shop. These have been added to provide for an option to attract these types of retailers to Lakeside Crossing.

ARCHITECTURE

Lakeside Crossing proposes an architecturally diverse design. Elements of the design are pulled from the existing material and style pallet currently found in Flower Mound. Including textures, natural stone, metal, colors, composite wood, and glass, this design includes both traditional as well as contemporary architecture. Durable, long-lasting, and weather resistant materials that will contribute to an unforgettable indoor-outdoor concept are detailed as follows:

- Proforma Prodex – A high density natural wood product manufactured at high pressure and temperature. Outstanding resistance to UV light.
- Nichiha Roughsawn – A fiber cement panel with rich texture of wood while providing color stability and withstanding extreme weather elements.
- Coronado Stone Products – A high quality manufactured stone veneer made to resemble natural stone.
- Old Texas Brick – A German style mortar smeared brick.
- Dri-design Aluminum Panel System – A folded metal, origami style, rain-screen system.

We compared the Contemporary Vernacular architectural components with the requirements of the Town's Urban Design Plan (UDP) and found that all of the requirements have been satisfied except for Section 5.3, Façade Materials, and Section 12.1, Pitched Roofs. These are also listed below in the Exceptions section of this Letter of Intent. Besides the use of stone, the other two materials that will be used as a Primary Material are composite wood panels and aluminum panels. These products have excellent durability and are of enduring quality. We are blending the use of traditional and contemporary architectural materials to create an exceptional style.

EXCEPTIONS

Due to the unique site conditions of this property and the highly desirable planned uses, a few exceptions to the Town's Code of Ordinances are being requested as part of the PD. In addition, this project is recognized as an economic development project as defined by the Town's Economic Development Incentive Policy and SMARTGrowth ordinances 98-151 and 98-169. Therefore, certain waivers to SMARTGrowth may be requested such as environmental quality and community character. The following is a list of the exceptions being requested:

1. Meritorious Architecture – Section 1.2, Town's Urban Design Plan

The newly created hotel concept of Unscripted is a timeless brand that strives to provide amazing guest experiences through design and connectedness. There are seven brand pillars that Unscripted is based on: curated, approachable, inspirational, authentic, adaptable, creative, and tasteful. The design of the hotel, both the exterior and interior, was implemented based on these seven pillars. All the pillars work together to establish an innovative guest experience for the progressive, creative traveler. This generation of travelers are more forward thinking, vibrant, social, and informed. They are obsessed with being connected in every sense of the word – through technology, nature, and in real life. The intent of the seven pillars must be embodied in the architectural design of the building in order to create the types of experiences that are Unscripted. *"Life is best lived unscripted."*

Section 1.2 of the UDP states *"In considering conformance to these standards, the Town will evaluate the suitability of meritorious design that might not comply exactly with these standards, but that is of exceptional enough design quality that it would be a desirable addition to the Town."* The architectural style is Contemporary Vernacular that has a sleek and modern look. Shed-like roofs, clean lines, and geometric patterns are reflective of a mid-century look – a time of an explosion of art, culture, commerce and style. A union of form and function dominated the design world. This style merges simplicity with attractiveness, retro with modern, timeless with innovative. The material selection of the exterior facades mix stone with composite wood panels and aluminum panels. The merging of the traditional materials with modern materials is the embodiment of Unscripted – bringing together the old and new to create something exceptional.

2. Façade Materials – Section 5.3, Town’s Urban Design Plan

The proposed materials are described above in more detail. For more information on the composite wood panels, fiber cement wall panels, and aluminum panels, please visit the following websites:

- Composite Wood Panels:
Prodema Prodex – <http://www.prodema.com/en/prodex>
- Fiber Cement Wall Panels:
Nichiha Roughsawn – <http://www.nichiha.com/commercial/detail/roughsawn>
- Painted Aluminum Panels:
Dri-design Aluminum Panel System – <http://www.dri-design.com/products/painted-aluminum/>

Other materials that will be used as either primary or secondary materials are provided below:

- Stone:
Coronado Stone Products – <http://www.coronado.com/>
- Brick:
Old Texas Brick – http://www.oldtexasbrick.com/purple_oak.php
http://www.oldtexasbrick.com/silver_port.php
- Metal Roof Panels:
<http://www.mbc.com/products/roof/standing-seam-roof-systems/superlok-/>
- Metal Wall / Screen Panels:
<http://www.mbc.com/products/roof/exposed-fastening-roof-panels/7-2-panel/>
<http://www.mbc.com/products/roof/soffits/artisan--series/>

3. Pitched Roofs – Section 12.1, Town’s Urban Design Plan

A waiver to the pitched roof requirement of buildings less than 15,000 square feet may be considered by the Town Council provided that said buildings are part of a large scale development, not adjacent to residences, and include architectural detail to soften the appearance of large, tall vertical walls. We meet the requirement to request a waiver and therefore, would like to seek said waiver.

4. Topographic Slope Protection – Environmental Quality, Town’s SMARTGrowth Program

This site has areas that are sloped greater than 12% and we are proposing impact to those areas with retaining walls, a trail, and a portion of an office building. The attached Environmental Protection Plan includes an exhibit that illustrates these sloped areas with the site layout. Due to the Economic Development Incentive Policy of SMARTGrowth, we are requesting a waiver to this requirement.

Lakeside Crossing – PD

April 24, 2017

Page 6 of 6

5. Upland Habitat – Environmental Quality, Town’s SMARTGrowth Program

The property has about 5.8 acres of upland habitat as identified in the EPP. 0.882 Acres of it is located within the residential area which is not included in this waiver request. We are requesting a waiver to impact 4.923 acres of upland habitat since this project qualifies as an ED incentivized project.

6. Overhead Utilities – Section 90-423, Town’s Code of Ordinances

Overhead utilities along Northwood Drive are primarily located in the Town’s Right-of-Way with some poles located on the property line and have a portion of the pole in the Right-of-Way and a portion of the pole in the property. Therefore, we are requesting the requirement to bury overhead utilities underground to be waived since the poles straddle the property and Right-of-Way line.

7. Compatibility Buffer/Setback – Section 82-302 & Section 82-303, Town’s Code of Ordinances

Typically, a 60-foot compatibility setback and 25-foot landscape buffer with a screening wall is required when non-residential is proposed adjacent to residential. This would apply to the southern property line; however, this property is part of the Lakeside Business District. Additionally, our client is in discussion with that property owner to develop another mixed-use style of development that will be an extension of Lakeside Crossing.

CONCLUSION

Lakeside Crossing will contribute an atmosphere of tasteful diversity to Flower Mound, continuing the feeling of community that began so long ago with the Tarwater and Stewart families. Creating buildings with contemporary vernacular architecture and blending natural architectural elements cohesively alongside them, Lakeside Crossing can only serve to enhance the quality of life and beauty of Flower Mound, Texas.

Thank you in advance for your consideration. Please do not hesitate to contact me with any questions or comments regarding this application.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Dollak Jr.", with a stylized flourish at the end.

Robert J. Dollak Jr., P.E.

cc: Tim Nystrom, President, Newstream Commercial
Scott Tarwater, President, Newstream Hotels & Resorts

Lakeside Crossing

Parking Study

Prepared by: Robert J. Dollak, Jr., P.E. # 86898

Summary:

Lakeside Crossing is a 12-acre mixed use development generally located south of Lakeside Boulevard between FM 2499 and Northwood Drive. The site is planned to include residential, retail, restaurant, Hotel and general office uses. The Concept Plan is included as Exhibit "A" of this study. The residential component was not included in this study per the request of the Town.

Base Code Parking Requirements:

The table below represents the base parking required by the Town of Flower Mound Zoning Ordinance, Section 82-79 for the proposed development. In addition, the table also includes the allowed reductions from the base parking requirements.

Bldg. #	Use	Town Code Parking Rate	# of Spaces Required	20% Reduction	# of Spaces Provided
1	Hotel	1 per room	134		
	Restaurant	1 per 75	72		
2	Retail	1 per 250	22		
	Office	1 per 250	22		
3	Office	1 per 250	46		
4	Restaurant	1 per 75	114		
	Retail	1 per 250	11		
	Office	1 per 250	30		
5	Restaurant	1 per 75	92		
	Retail	1 per 250	23		
	Office	1 per 250	34		
6	Office	1 per 250	64		
7	Office	1 per 250	73		
			737	590	517

As illustrated in the table above, the Town of Flower Mound's base parking requirements results in a need for 737 total parking spaces for this site. Per Town standards, large developments require a 20% reduction to the total parking required. Accounting for this reduction, the minimum required number of parking spaces would be 590 spaces.

Shared Parking Requirements:

The proposed PD provides for shared parking. Utilizing the schedule of mixed use parking chart previous utilized by the Town for mixed use developments, the parking breaks down as shown on the following tables:

SCHEDULE OF MIXED USE PARKING - PERCENTAGES					
	Weekday		Weekend		Night
	Daytime 6A-6P	Evening 6P-Mid	Daytime 6A-6P	Evening 6P-Mid	Midnight -6A
Office	100%	10%	10%	5%	5%
Retail	50%	90%	100%	70%	5%
Restaurant	50%	100%	100%	100%	10%
Hotel	70%	100%	70%	100%	70%

SCHEDULE OF MIXED USE PARKING - BLDGS. 1-7					
	Weekday		Weekend		Night
	Daytime 6A-6P	Evening 6P-Mid	Daytime 6A-6P	Evening 6P-Mid	Midnight -6A
Office	266	27	27	14	14
Retail	28	50	55	39	3
Restaurant	139	277	277	277	28
Hotel	94	134	94	134	94
Totals	527	488	453	464	139

This analysis shows that the Weekday Daytime provides the most required parking, 527 spaces plus the residential parking.

Conclusion:

The proposed Concept Plan currently provides 517 spaces, which is marginally below the required parking for the property. The 2% difference in the numbers should not have a negative impact on the development.



February 16, 2017

Mr. L. Scott Tarwater
Newstream Commercial
4613 Windmill Lane
Flower Mound, Texas 75028

Re: Lakeside Crossing

Dear Mr. Tarwater,

Please consider this letter confirmation that the Lakeside Crossing development be recognized as an economic development project as defined by the Town's Economic Development Incentive Policy and SMARTGrowth ordinances 98-151 and 98-169. For projects that qualify for economic development incentives, the sections of SMARTGrowth that you reference allow for: (1) waivers to be requested to environmental quality criteria (98-151) and community character criteria (98-169) and (2) the Town to consider these waiver requests during the development process.

The Town's Economic Development Incentive Policy, approved on August 19, 2013, requires that projects create a minimum \$1M in capital investment to be considered for economic development incentives. The highest level of capital investment resulting in the highest potential economic development incentive is \$35M. The policy also provides for additional economic development incentives for jobs created, average salary, and LEED certified building.

Based on the assumptions you have provided that Lakeside Crossing will include a 125-140 key, full-service hotel, 97,000 square feet of retail/restaurant and professional office, and a construction value of more than \$50,000,000, the development would exceed the value needed to qualify for economic development incentives. Thus, Lakeside Crossing, as specified in sections 98-151 and 98-169 of SMARTGrowth, can be considered for waivers to environmental quality criteria and community character criteria during the development process.

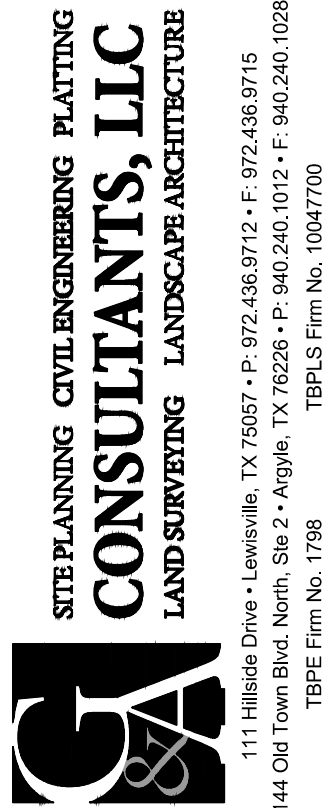
Please note that this letter should not be considered an offer of economic development incentives. A separate application should be completed and returned to my office should you wish to pursue economic development incentives for Lakeside Crossing.

Should there be any additional information that I may be able to provide, please contact me directly at (972) 874-6044 or alora.wachholz@flower-mound.com.

Sincerely,

A handwritten signature in black ink, reading "Alora Wachholz". The signature is written in a cursive, flowing style.

Alora M. Wachholz
Interim Director of Economic Development

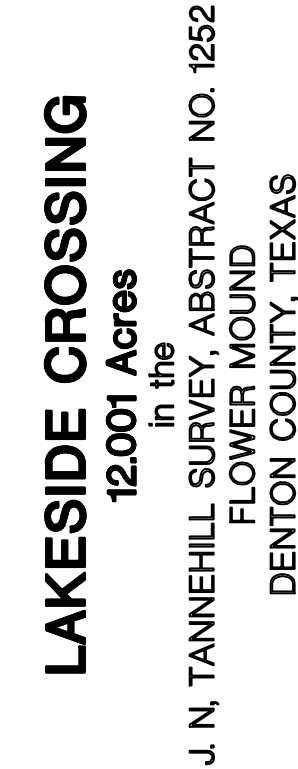


	SCHEDULE OF MIXED USE PARKING - PERCENTAGES				
	Weekday		Weekend		Night
	Daytime 6A- 6P	Evening 6P- Mid	Daytime 6A- 6P	Evening 6P- Mid	Midnight 6A
Office	100%	10%	100%	5%	5%
Retail	50%	90%	100%	70%	5%
Restaurant	50%	100%	100%	100%	10%
Hotel	70%	100%	70%	100%	70%

	SCHEDULE OF MIXED USE PARKING - PERCENTAGES				
	Weekday		Weekend		Night
	Daytime 6A- 6P	Evening 6P- Mid	Daytime 6A- 6P	Evening 6P- Mid	Midnight 6A
Office	100%	10%	100%	5%	5%
Retail	50%	90%	100%	70%	5%
Restaurant	50%	100%	100%	100%	10%
Hotel	70%	100%	70%	100%	70%

1. ALL RETAINING/DETAINING WALLS, TURN-DOWN CURBS, TREE RETAINING WALLS SHALL BE CLAD IN A MATERIAL TO COMPLEMENT THE MATERIALS AND COLORS WITHIN THIS DEVELOPMENT.
2. RETAINING WALL LOCATIONS AND HEIGHTS SHOWN ON THIS PLAN ARE BASED ON A PRELIMINARY GRADING CONCEPT AND ARE SUBJECT TO CHANGE. FINAL RETAINING WALL LOCATIONS AND HEIGHTS WILL BE DETERMINED AT THE SITE PLAN STAGE.
3. 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.
4. ALL ROOF-MOUNTED MECHANICAL UNITS AND/OR EQUIPMENT SHALL BE SCREENED FROM VIEW.
5. DUMPSTER SCREENING WALL SHALL BE CLAD IN A MATERIAL TO MATCH THE MATERIALS ON THE MAIN BUILDING.
6. DUMPSTER SCREENING WALL REQUIRES A SEPARATE BUILDING PERMIT.
7. SIGNS REQUIRE A SEPARATE BUILDING PERMIT. ANY SIGNS DEPICTED ON THE SUBJECT SITE PLAN/ELEVATIONS ARE NOT APPROVED AS A PART OF THIS REVIEW AND MUST COMPLY WITH ALL APPLICABLE TOWN REGULATIONS UNLESS A COMPREHENSIVE SIGN PACKAGE FOR A SPECIFIC SIGN WAS INCLUDED IN THE APPROVED PD.
8. LOCATIONS OF OUTDOOR SEATING AREAS AND OUTDOOR DINING AREAS MAY BE ADJUSTED BASED ON FINAL BUILDING FOOTPRINT. ADDITIONAL DINING AREAS MAY BE INCLUDED AT THE SITE PLAN STAGE. SEATING AREAS MAY BE PATIOS OR DECKS.
9. BUILDING FACADES TYPES A THROUGH D ARE INDICATED ON THE PLAN TO IDENTIFY THE TYPES OF FACADES FOR THE NON-RESIDENTIAL BUILDINGS. THEY ARE ALSO SHOWN ON THE APPROVED CONCEPTUAL ELEVATIONS AND ARE AS FOLLOWS:

TYPE A - FRONT FACADE
TYPE B - SIDE FACADE
TYPE C - REAR FACADE
TYPE D - CREEK FACADE



CONCEPT PLAN

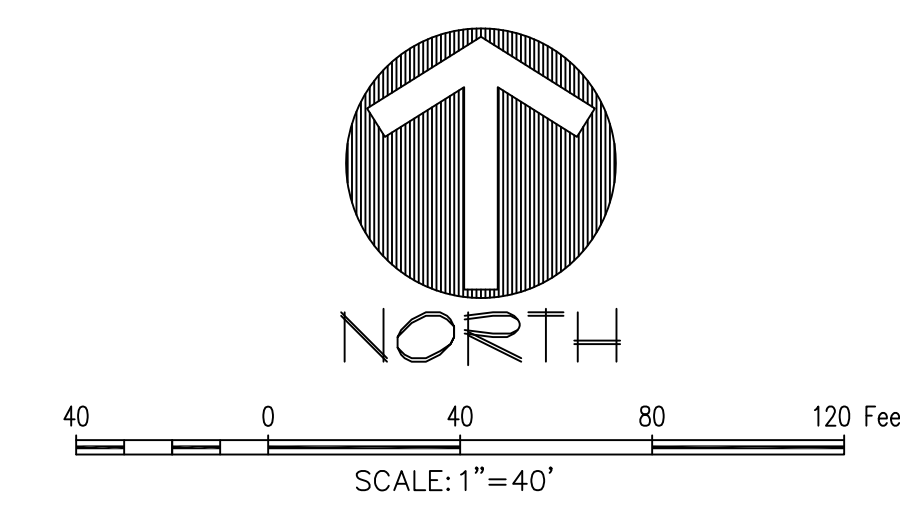
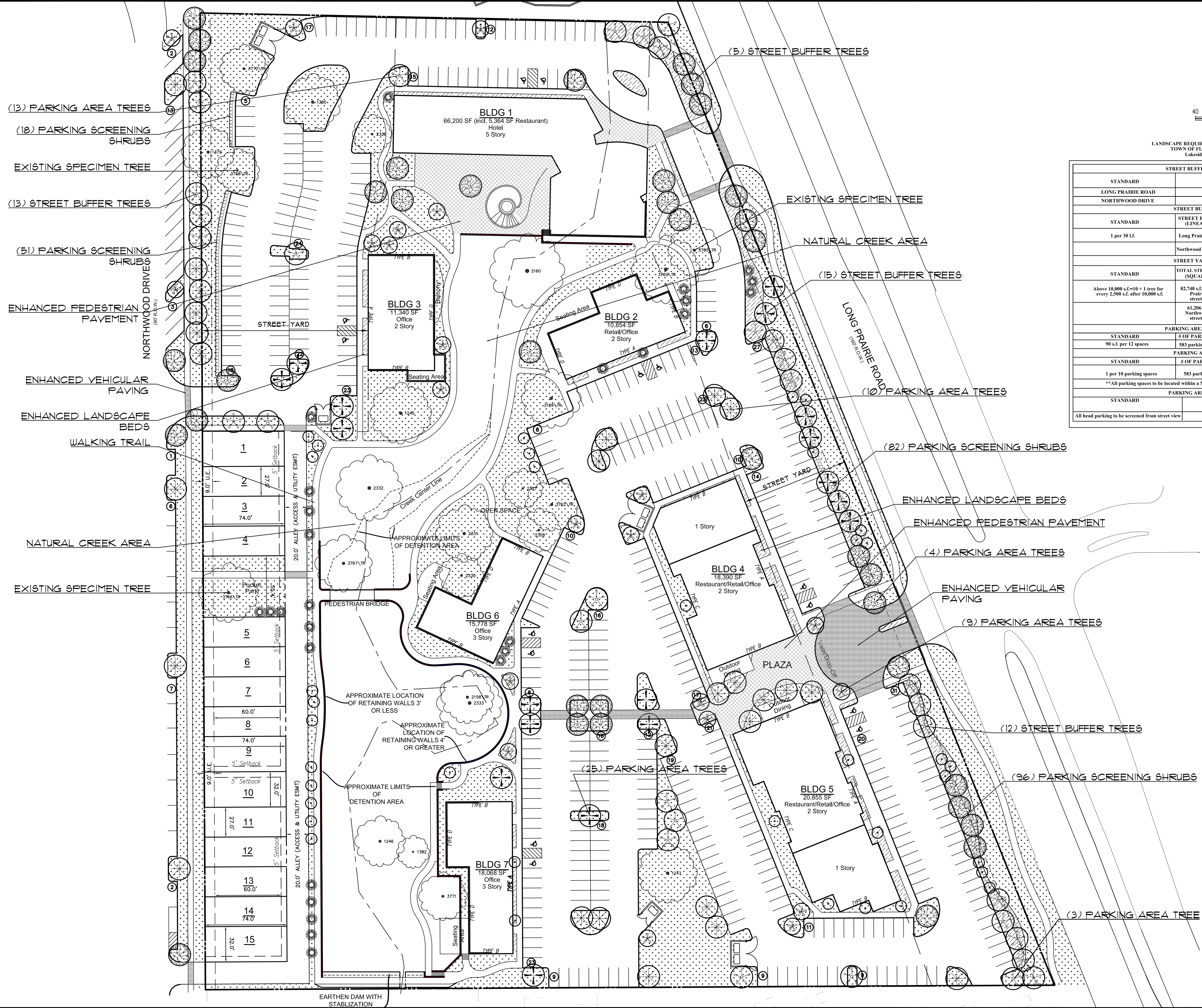
PRELIMINARY PLANS
THIS DOCUMENT IS FOR
INTERIM REVIEW AND IS
NOT INTENDED FOR
CONSTRUCTION, BIDDING,
OR PERMIT PURPOSES.
G&A CONSULTANTS, F-179
ROBERT JOHN DOLLAH, JR.
P.E. #86898
DATE 5/3/2017

Drawn By: SM
Date: 01/09/2017
Scale: 1"=50'
Revisions:
02/24/2017
03/27/2017
04/24/2017
05/01/2017

16326

OWNER/DEVELOPER
NEWSTREAM COMMERCIAL
4200 HERITAGE TRACE PKWY
FORT WORTH, TEXAS
Ph. 8175862252
Contact: Tim Nystrom

C



LANDSCAPE REQUIREMENT COMPLIANCE
TOWN OF FLOWER MOUND
Lakeside Crossing

STREET BUFFER LANDSCAPING			
STANDARD		REQUIRED BUFFER WIDTH	PROVIDED
LONG PRAIRIE ROAD		25 ft.	15-25 ft.
NORTHWOOD DRIVE		15 ft.	15 ft.
STREET BUFFER TREES			
STANDARD	STREET FRONTAGE (LINEAR FEET)	REQUIRED	PROVIDED
1 per 30 LT.	Long Prairie - 939 LT.	32 trees (3" cal.)	32 trees (3" cal.)
	Northwood Dr. - 380 LT.	13 trees (3" cal.)	13 trees (3" cal.)
STREET YARD TREES			
STANDARD	TOTAL STREET YARD (SQUARE FEET)	REQUIRED	PROVIDED
Above 10,000 s.f.=10 + 1 tree for every 2,500 s.f. after 10,000 s.f.	82,740 s.f. of Long Prairie Rd. street yard	39 trees (3" cal.)	48 trees (3" cal.) + 2 existing specimen
	61,206 s.f. of Northwood Dr. street yard	31 trees (3" cal.)	27 trees (3" cal.) + 5 existing specimen
PARKING AREA LANDSCAPING			
STANDARD	# OF PARK SPACES	REQUIRED	PROVIDED
90 s.f. per 12 spaces	583 parking spaces	4,372 s.f.	24,462 s.f.
PARKING AREA TREES			
STANDARD	# OF PARK SPACES	REQUIRED	PROVIDED
1 per 10 parking spaces	583 parking spaces	59 trees (3" cal.)	66 trees (3" cal.) + 7 existing specimen
**All parking spaces to be located within a 50 ft. avg. of parking lot tree.			
PARKING AREA SCREENING			
STANDARD		landscape berm or screening shrubs	PROVIDED
All head parking to be screened from street view		3' ht. screen	screening shrubs (3' ht.)

PRELIMINARY PLANS
THIS DOCUMENT IS FOR INTERIM REVIEW
AND IS NOT INTENDED FOR CONSTRUCTION,
BIDDING, OR PERMIT PURPOSES.
JAMESON PINSON LANDSCAPE ARCHITECTS
DATED 5/3/2017

LANDSCAPE ARCHITECT
CONSULTANTS, LLC
111 Hillside Drive • Lewisville, TX 75057 • P: 972.336.9712 • F: 972.436.9715
144 Old Country Road • Irving, TX 75039 • P: 972.460.2406 • F: 972.460.1028
LAPES Firm No. 1798

LAKESIDE CROSSING
12,001 Acres
in the
J. N. TANNEHILL SURVEY, ABSTRACT NO. 1252
FLOWER MOUND
DENTON COUNTY, TEXAS

CONCEPT LANDSCAPE PLAN

Drawn By: JPP
Date: 01/09/2017
Scale: 1" = 40'
Revisions:
02/24/2017
03/27/2017
04/24/2017
05/01/2017

16326

L1.0

OWNER/DEVELOPER
NEWSTREAM COMMERCIAL
4200 HERITAGE TRACE PKWY
FORT WORTH, TEXAS
Ph. 817.586.2252
Contact: Tim Nystrom

Fig. 2: LAKESIDE CROSSING Concept Landscape Plan
Project: 5/3/2017 2:30 PM by JPP
Revised: 5/3/2017 2:30 PM by JPP



NATURAL ZONE - NATURAL AREAS MEANT TO PRESERVE NATURAL TOPOGRAPHY AND VEGETATION



TRANSITION ZONE - AREAS WHERE GRADING AND RETAINING WALLS MAY OCCUR IN ORDER TO MEND THE NATURAL AND BUILT ENVIRONMENTS



SOUTHERN ZONE - AREA DESIGNATED TO DETAIN 100 YEAR FLOOD AND NATURAL AREA MEANT TO PRESERVE NATURAL TOPOGRAPHY AND VEGETATION



EARTHEN DAM WITH STABILIZATION CONTAINING WEIR STRUCTURE



POSSIBLE AREAS OF EXPOSED GRADE BEAM - 4' MAX



POSSIBLE RETAINING WALL LOCATIONS - 3' MAX



POSSIBLE RETAINING WALL LOCATIONS - 10' MAX



LAKESIDE CROSSING
12.001 Acres
in the
J. N. TANNER HILL SURVEY, ABSTRACT NO. 1252
FLOW MOUND
DENTON COUNTY, TEXAS

EXHIBIT G CONCEPTUAL OPEN SPACE PLAN

PRELIMINARY PLANS
THIS DOCUMENT IS FOR INTERIM REVIEW
AND IS NOT INTENDED FOR CONSTRUCTION,
BIDDING, OR PERMIT PURPOSES.
JAMESON PINSON LANDSCAPE ARCHITECTS
DATED 4/23/2017



Drawn By: JPP
Date: 01/09/2017
Scale: 1"=40'
Revisions:
02/24/2017
03/27/2017

OWNER/DEVELOPER
NEWSTREAM COMMERCIAL
4200 HERITAGE TRACE PKWY
FORT WORTH, TEXAS
Ph. 8175862252
Contact: Tim Nystrom

16326

L1.0

EXPLORING THE DIVERSE ARCHITECTURAL PERSONALITIES OF



WOOD



TRADITIONAL

TEXTURES



NATURAL STONE

COLORS



METAL

GLASS



CONTEMPORARY

OTHER SUCCESSFUL EXAMPLES OF MIXED MATERIALS AND ARCHITECTURAL STYLES



unscripted
HOTELS

NEWSTREAM
COMMERCIAL

DOCUMENTS ARE
INCOMPLETE AND MAY
NOT BE USED FOR
REGULATORY
APPROVAL PERMIT, OR
CONSTRUCTION
MARCUS R. TRIMBLE
TX #2416

SITE IDENTITY



SERENE
SPACE



STAY AND PLAY

LIVE/
WORK



RETAIL
ATTRACTIONS



GREEN URBANISM

PEDESTRIAN CONNECTION



SOCIAL
GATHERING



unscripted
HOTELS

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COMMERCIAL

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APPROVAL, PERMIT, OR
CONSTRUCTION.
MARCUS R. TRIMBLE
TX 824416

PROJECT MATERIALITY



unscripted
HOTELS

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COMMERCIAL

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REGULATORY
APPROVAL PERMIT, OR
CONSTRUCTION
MARCUS R. TREMBLE
TX #24116



unscripted[®]
HOTELS



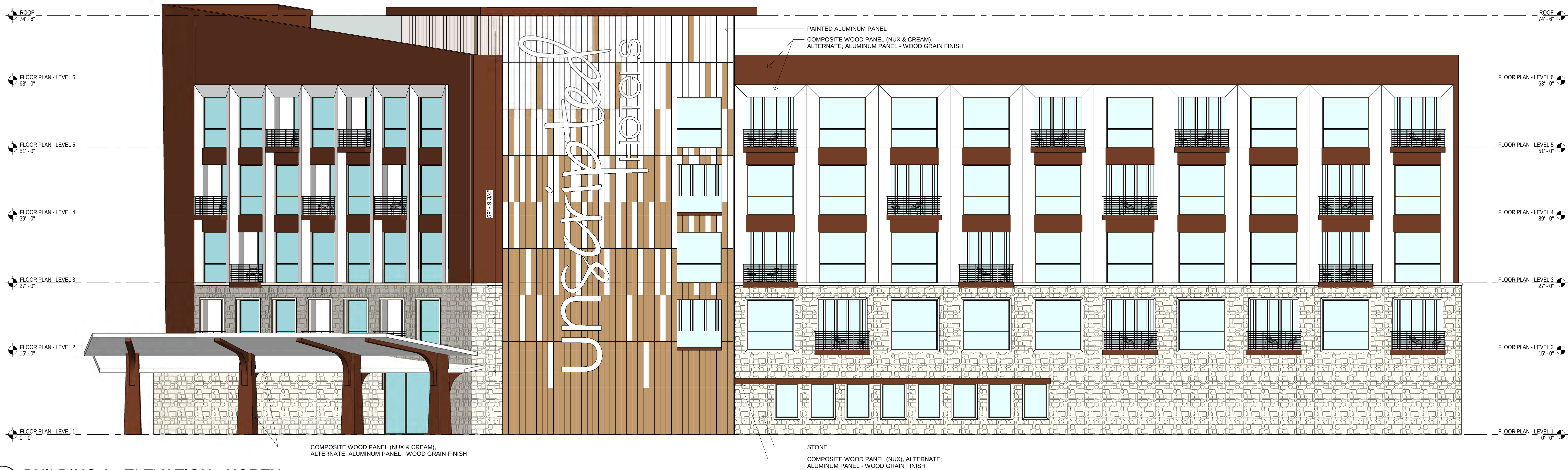
NEWSTREAM
C O M M E R C I A L

DOCUMENTS ARE
INCOMPLETE AND MAY
NOT BE USED FOR
REGULATORY
APPROVAL, PERMIT, OR
CONSTRUCTION.
MARCUS R. TRIMBLE
TX #24416



Bldg 1 - Hotel	East	
	SF	%
Total Façade SF	9195	
Façade SF (excluding Doors & Windows)	7257	
Doors & Windows	1938	21%
Primary Material Totals		
Stone	2217	31%
Composite Wood	4655	64%
Painted Alum. Panels	385	5%

1 BUILDING 1 - ELEVATION - EAST
SCALE: 1/8" = 1'-0"



Bldg 1 - Hotel	North	
	SF	%
Total Façade SF	16340	
Façade SF (excluding Doors & Windows)	11721	
Doors & Windows	4619	28%
Primary Material Totals		
Stone	3748	32%
Composite Wood	5025	43%
Painted Alum. Panels	2948	25%

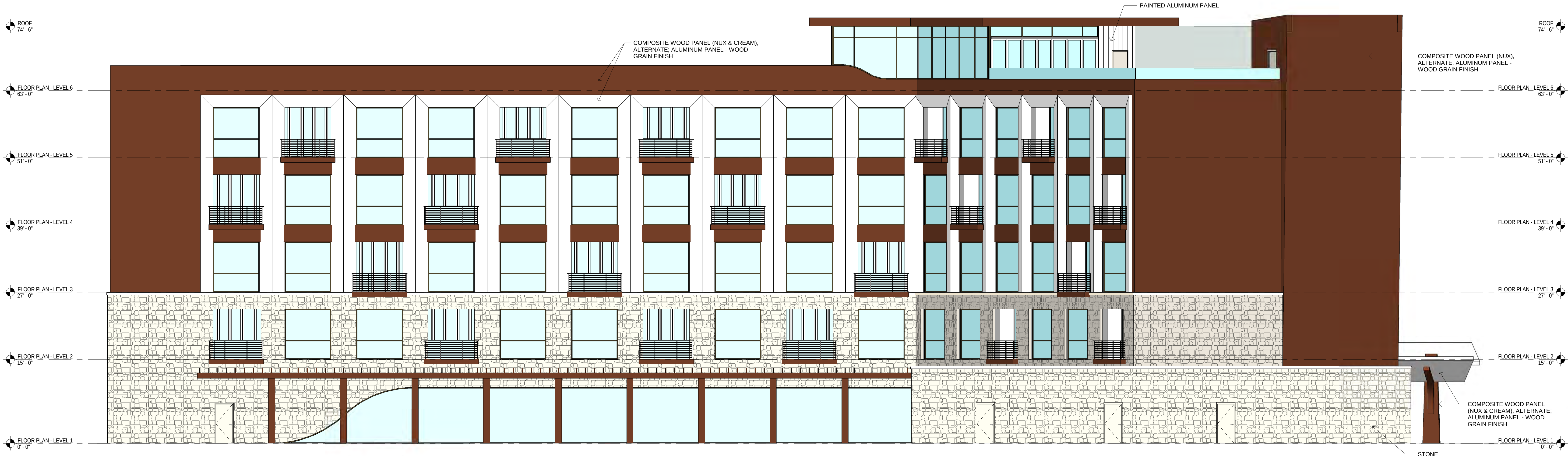
2 BUILDING 1 - ELEVATION - NORTH
SCALE: 1/8" = 1'-0"

SIGNAGE:
The Roof Sign and the Building Sign on the North Elevation shall have maximum dimensions of 30' x 60'



Bldg 1 - Hotel	West	
	SF	%
Total Façade SF	9195	
Façade SF (excluding Doors & Windows)	6944	
Doors & Windows	2251	32%
Primary Material Totals		
Stone	2549	37%
Composite Wood	3746	54%
Painted Alum. Panels	649	9%

1 BUILDING 1 - ELEVATION - WEST
SCALE: 1/8" = 1'-0"



Bldg 1 - Hotel	South	
	SF	%
Total Façade SF	16340	
Façade SF (excluding Doors & Windows)	10795	
Doors & Windows	5545	34%
Primary Material Totals		
Stone	3889	36%
Composite Wood	6710	62%
Painted Alum. Panels	196	2%

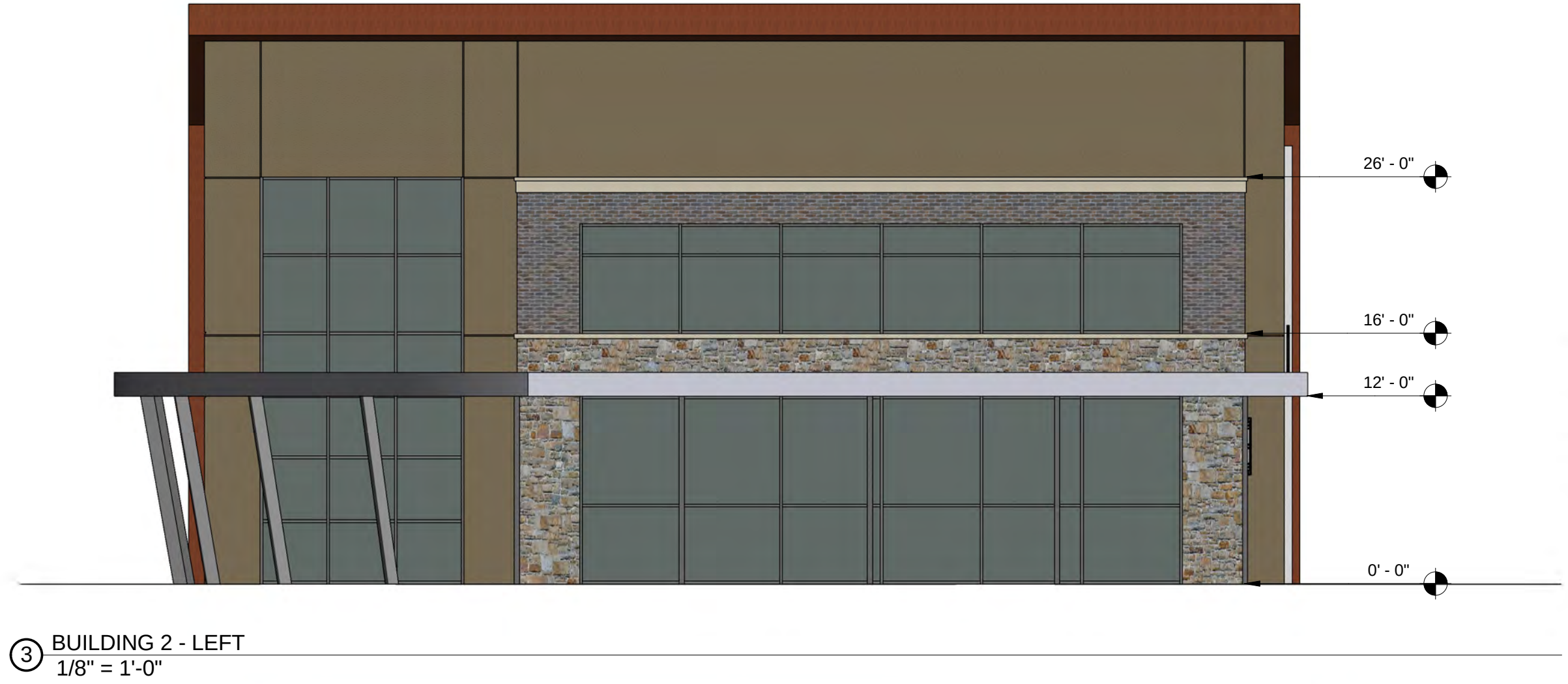
2 BUILDING 1 - ELEVATION - SOUTH
SCALE: 1/8" = 1'-0"



Bldg 2 - Office	Front	
	SF	%
Total Façade SF	3298	
Façade SF (excluding Doors & Windows)	1726	
Doors & Windows	1572	48%
Primary Material Totals		
Stone	543	31%
Brick	365	21%
Composite Wood	388	22%
Stucco/EIFS	370	21%
Painted Alum. Panels	60	3%



Bldg 2 - Office	Back	
	SF	%
Total Façade SF	3298	
Façade SF (excluding Doors & Windows)	1928	
Doors & Windows	1370	42%
Primary Material Totals		
Stone	543	28%
Brick	365	19%
Stucco/EIFS	960	50%
Painted Alum. Panels	60	3%



Bldg 2 - Office	Left	
	SF	%
Total Façade SF	2452	
Façade SF (excluding Doors & Windows)	1383	
Doors & Windows	1069	44%
Primary Material Totals		
Stone	282	20%
Brick	195	14%
Stucco/EIFS	846	61%
Painted Alum. Panels	60	4%

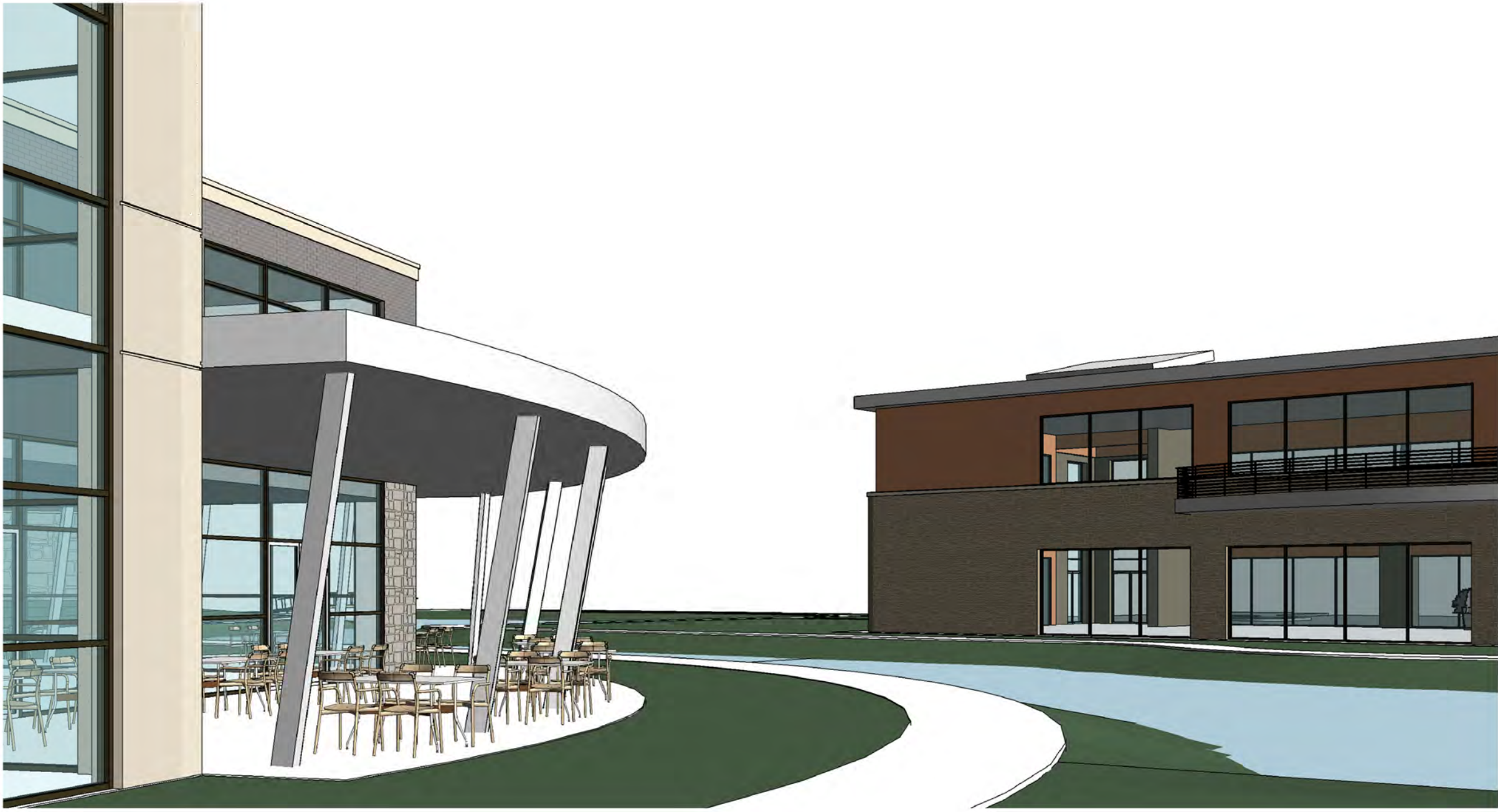


Bldg 2 - Office	Right	
	SF	%
Total Façade SF	2206	
Façade SF (excluding Doors & Windows)	1940	
Doors & Windows	266	12%
Primary Material Totals		
Stone	488	25%
Brick	312	16%
Composite Wood		0%
Stucco/EIFS		0%
Painted Alum. Panels	1140	59%

NOTE:
SIGNS REQUIRE A SEPARATE BUILDING PERMIT. ANY SIGNS EXCEPT THE HOTEL SIGNAGE DEPICTED ON THE SUBJECT SITE PLAN/ELEVATIONS ARE NOT APPROVED AS A PART OF THIS REVIEW AND MUST COMPLY WITH ALL APPLICABLE TOWN REGULATIONS.



② BUILDING 2 - PERSPECTIVE
1/16" = 1'-0"



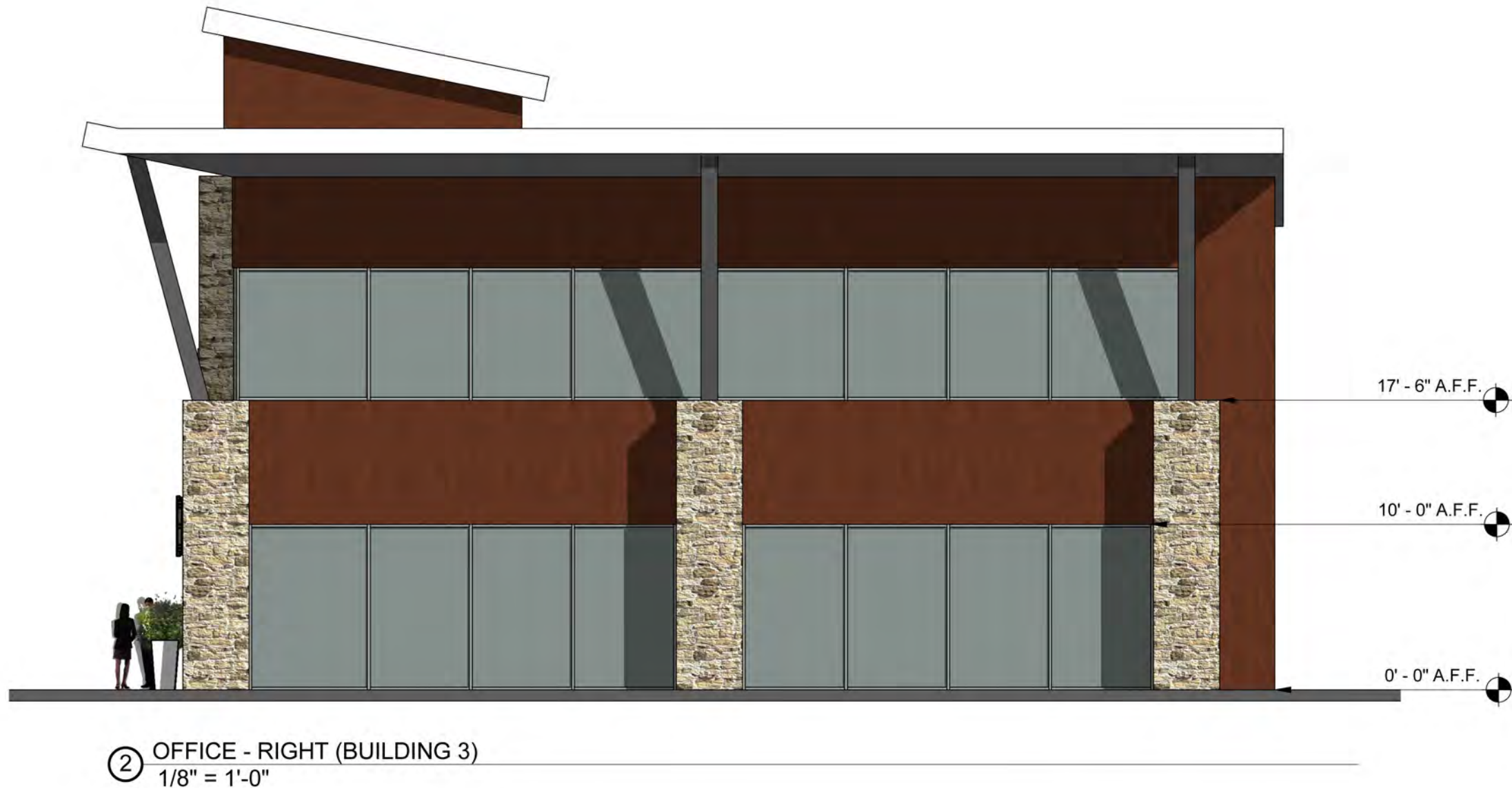
⑥ BUILDING 2 - CREEK SIDE
1/64" = 1'-0"



Bldg 3 - Office	Front	
	SF	%
Total Façade SF	3510	
Façade SF (excluding Doors & Windows)	3510	
Doors & Windows	1594	45%
Primary Material Totals		
Stone	1225	35%
Composite Wood	2285	65%



Bldg 3 - Office	Left	
	SF	%
Total Façade SF	1800	
Façade SF (excluding Doors & Windows)	1800	
Doors & Windows	818	45%
Primary Material Totals		
Stone	628	35%
Composite Wood	1172	65%



Bldg 3 - Office	Right	
	SF	%
Total Façade SF	1800	
Façade SF (excluding Doors & Windows)	1800	
Doors & Windows	818	45%
Primary Material Totals		
Stone	628	35%
Composite Wood	1172	65%

Bldg 3 - Office	Back	
	SF	%
Total Façade SF	3510	
Façade SF (excluding Doors & Windows)	3510	
Doors & Windows	1594	45%
Primary Material Totals		
Stone	1225	35%
Composite Wood	2285	65%

1/8" = 1'-0"

Bldg 4 - Retail	Front	
	SF	%
Total Façade SF	6772	
Façade SF (excluding Doors & Windows)	3352	
Doors & Windows	3420	50%
Primary Material Totals		
Stone	776	23%
Composite Wood	1770	53%
Painted Alum. Panels	806	24%

Bldg 4 - Retail	Right	
	SF	%
Total Façade SF	4190	
Façade SF (excluding Doors & Windows)	4190	
Doors & Windows	0	
Primary Material Totals		
Composite Wood	530	13%
Painted Alum. Panels	3660	87%

Bldg 4 - Retail	Back	
	SF	%
Total Façade SF	6762	
Façade SF (excluding Doors & Windows)	6510	
Doors & Windows	252	4%
Primary Material Totals		
Stone	1810	28%
Composite Wood	2720	42%
Painted Alum. Panels	1980	30%

Bldg 4 - Retail	Left	
	SF	%
Total Façade SF	4190	
Façade SF (excluding Doors & Windows)	4190	
Doors & Windows	0	
Primary Material Totals		
Stone	3660	87%
Composite Wood	530	13%

Bldg 5 - Retail	Front	
	SF	%
Total Façade SF	3381	
Façade SF (excluding Doors & Windows)	3381	
Doors & Windows	1707	50%
Primary Material Totals		
Stone	783	23%
Composite Wood	1785	53%
Painted Alum. Panels	813	24%

Bldg 5 - Retail	Right	
	SF	%
Total Façade SF	2095	
Façade SF (excluding Doors & Windows)	2095	
Doors & Windows		
Primary Material Totals		
Composite Wood	265	13%
Painted Alum. Panels	1830	87%

Bldg 5 - Retail	Back	
	SF	%
Total Façade SF	3381	
Façade SF (excluding Doors & Windows)	3381	
Doors & Windows	126	4%
Primary Material Totals		
Stone	940	28%
Composite Wood	1413	42%
Painted Alum. Panels	1028	30%

Bldg 5 - Retail	Left	
	SF	%
Total Façade SF	2095	
Façade SF (excluding Doors & Windows)	2095	
Doors & Windows		
Primary Material Totals		
Stone	1830	87%
Composite Wood	265	13%

Bldg 7 - Office	Front	
	SF	%
Total Façade SF	5251	
Façade SF (excluding Doors & Windows)	2866	
Doors & Windows	2385	45%
Primary Material Totals		
Stone	1000	35%
Composite Wood	1866	65%

Bldg 7 - Office	Right	
	SF	%
Total Façade SF	1970	
Façade SF (excluding Doors & Windows)	1970	
Doors & Windows	895	45%
Primary Material Totals		
Stone	687	35%
Composite Wood	1283	65%

Bldg 7 - Office	Back	
	SF	%
Total Façade SF	5251	
Façade SF (excluding Doors & Windows)	5251	
Doors & Windows	2385	45%
Primary Material Totals		
Stone	1832	35%
Composite Wood	3419	65%

Bldg 7 - Office	Left	
	SF	%
Total Façade SF	1970	
Façade SF (excluding Doors & Windows)	1970	
Doors & Windows	895	45%
Primary Material Totals		
Stone	687	35%
Composite Wood	1283	65%

NOTE:
SIGNS REQUIRE A SEPARATE BUILDING PERMIT. ANY SIGNS EXCEPT THE HOTEL SIGNAGE DEPICTED ON THE SUBJECT SITE PLAN/ELEVATIONS ARE NOT APPROVED AS A PART OF THIS REVIEW AND MUST COMPLY WITH ALL APPLICABLE TOWN REGULATIONS.



OFFICE LEASE SPACE

NOTE:

SIGNS REQUIRE A SEPARATE BUILDING PERMIT. ANY SIGNS EXCEPT THE HOTEL SIGNAGE DEPICTED ON THE SUBJECT SITE PLAN/ELEVATIONS ARE NOT APPROVED AS A PART OF THIS REVIEW AND MUST COMPLY WITH ALL APPLICABLE TOWN REGULATIONS.



① BUILDING 6 - ELEVATION - EAST
1/8" = 1'-0"

Bldg 6 - Office	East	
	SF	%
Total Façade SF	4369	
Façade SF (excluding Doors & Windows)	2912	
Doors & Windows	1457	33%
Primary Material Totals		
Stone	1481	51%
Brick	728	25%
Composite Wood	703	24%



② BUILDING 6 - ELEVATION - NORTH
1/8" = 1'-0"

Bldg 6 - Office	North	
	SF	%
Total Façade SF	3148	
Façade SF (excluding Doors & Windows)	2278	
Doors & Windows	870	28%
Primary Material Totals		
Stone	794	35%
Brick	490	22%
Composite Wood	994	44%



③ BUILDING 6 - ELEVATION - WEST
1/8" = 1'-0"

Bldg 6 - Office	West	
	SF	%
Total Façade SF	4369	
Façade SF (excluding Doors & Windows)	3069	
Doors & Windows	1300	30%
Primary Material Totals		
Stone	1221	40%
Brick	728	24%
Composite Wood	1120	36%



④ BUILDING 6 - ELEVATION - SOUTH
1/8" = 1'-0"

Bldg 6 - Office	South	
	SF	%
Total Façade SF	3393	
Façade SF (excluding Doors & Windows)	2223	
Doors & Windows	1170	34%
Primary Material Totals		
Stone	844	38%
Brick	145	7%
Composite Wood	1234	56%



⑤ BUILDING 6 - CREEK SIDE
1/16" = 1'-0"

NOTE:

SIGNS REQUIRE A SEPARATE BUILDING PERMIT. ANY SIGNS EXCEPT THE HOTEL SIGNAGE DEPICTED ON THE SUBJECT SITE PLAN/ELEVATIONS ARE NOT APPROVED AS A PART OF THIS REVIEW AND MUST COMPLY WITH ALL APPLICABLE TOWN REGULATIONS.



COMPOSITE WOOD PANEL

PRODEMA - PRODEX

MAINTENANCE FREE NATURAL WOOD
PANEL SYSTEM

- CREAM
- RUSTIK
- DEEP BROWN
- NUX



FIBER CEMENT WALL PANELS

NICHIHA ROUGHSAWN

- ESSPRESSO
- TOBACCO
- SMOKE



STONE

CORONADO STONE PRODUCTS

FRENCH COUNTRY VILLA SERIES

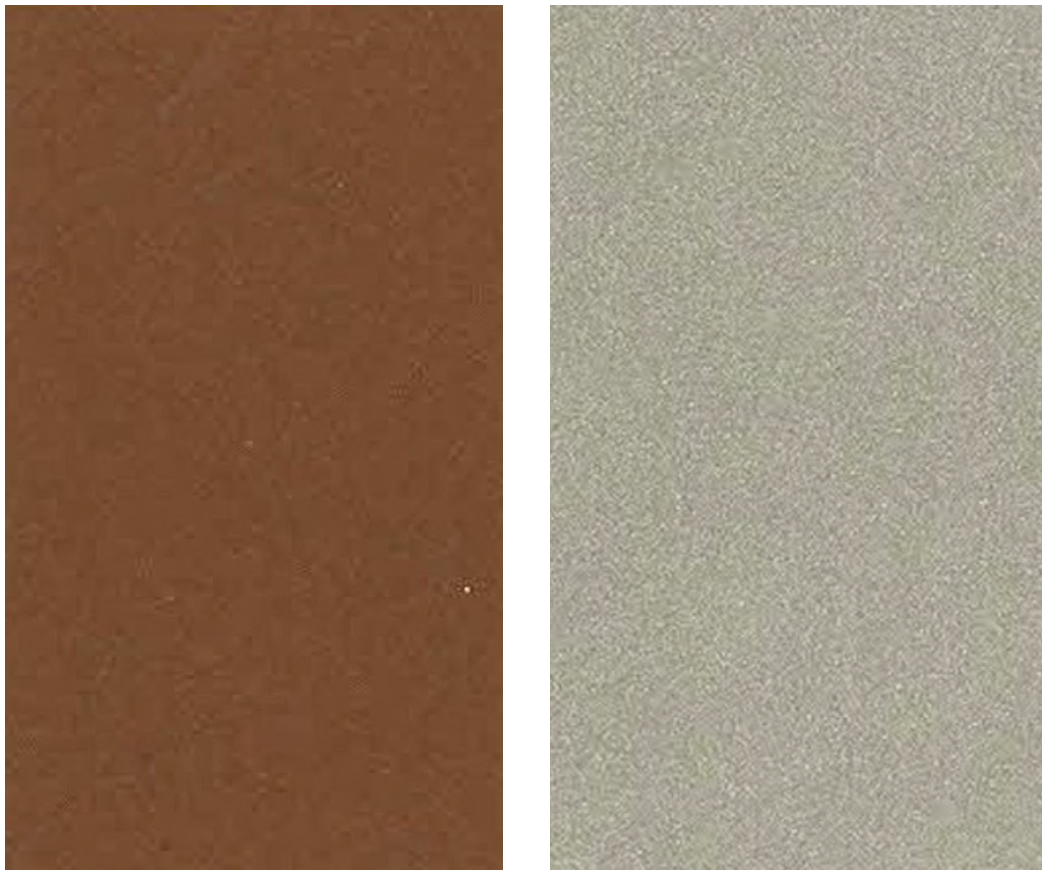
- CHAMPAGNE
- BORDEAUX



BRICK

OLD TEXAS BRICK

- PURPLE OAK
- SILVER PORT



DRI-DESIGN ALUMINUM PANEL SYSTEM

FACTORY PAINTED ALUMINUM PANELS

- COPPER WIRE
- CHAMPAGNE

ALTERNATE

WOOD GRAIN FINISH



STOREFRONT SYSTEM

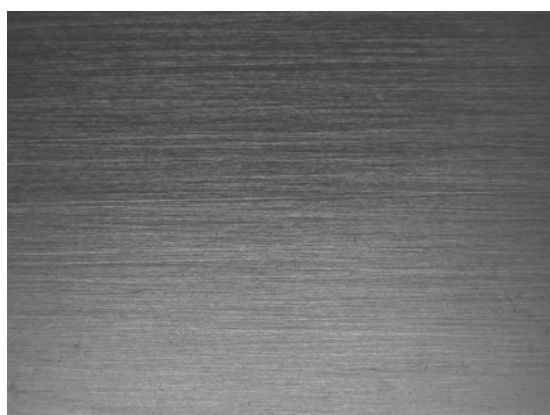
- CLEAR ANODIZED ALUMINUM
- CLEAR GLAZING
- LIGHT GRAY GLAZING



STUCCO / EIFS

PAREX USA

- IVORY
- MOONSTONE
- TUMBLEWEED
- MOUNTAIN
- SWEET GRASS
- CAVERN

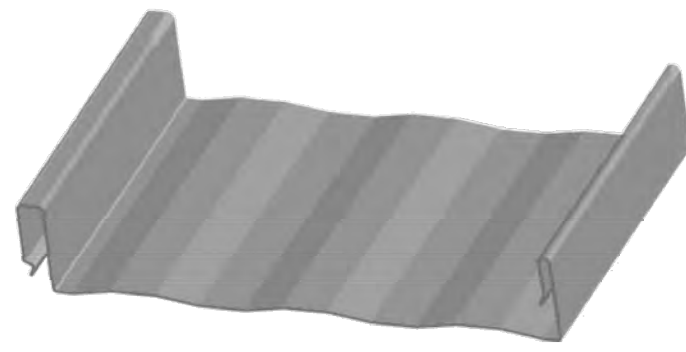


EXPOSED STRUCTURE

- GALVANIZED STEEL



MBCI STANDARD
COLORS



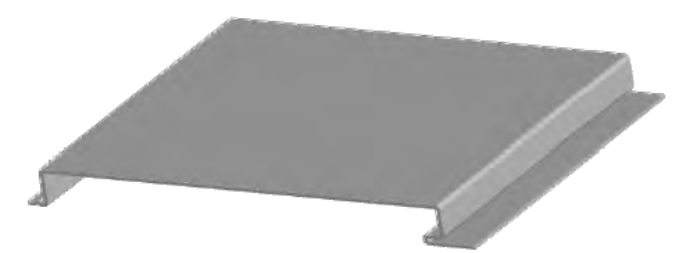
STANDING SEAM ROOF SYSTEM

- MBCI SUPERLOK WITH 2" VERTICAL RIB



SCREENING

- MBCI 7.2 PANEL
- ARTISAN 12" FLAT PANEL





TREE PROTECTION FENCE

EXISTING SPECIMEN TREE

LIST #	TREE #	CAL. "	COMMON NAME	BOTANICAL NAME	PROTECTED	SPECIMEN	REMOVED	CANOPY DIA.	REMARKS
1	1245	26	POST OAK	Quercus stellata	Yes	Yes	No	56'	
2	1246	23	POST OAK	Quercus stellata	Yes	Yes	No	36'	
3	1247	22	POST OAK	Quercus stellata	Yes	Yes	No	44'	
4	1379	22.5	POST OAK	Quercus stellata	Yes	Yes	No	48'	
5	1380	22.5	POST OAK	Quercus stellata	Yes	Yes	No	52'	
6	1382	23	POST OAK	Quercus stellata	Yes	Yes	No	30'	
7	2158	21	CEDAR ELM	Ulmus crassifolia	Yes	Yes	No	48'	
8	2159	30	POST OAK	Quercus stellata	Yes	Yes	No	54'	Health Issue
9	2160	32	POST OAK	Quercus stellata	Yes	Yes	No	68'	
10	2326	25	POST OAK	Quercus stellata	Yes	Yes	No	36'	Cavity/Bee Hive
11	2327	22	POST OAK	Quercus stellata	Yes	Yes	No	36'	
12	2328	22	POST OAK	Quercus stellata	Yes	Yes	No	40'	
13	2330	23	POST OAK	Quercus stellata	Yes	Yes	No	40'	
14	2331	22	POST OAK	Quercus stellata	Yes	Yes	No	52'	
15	2332	28	POST OAK	Quercus stellata	Yes	Yes	No	60'	
16	2333	23	POST OAK	Quercus stellata	Yes	Yes	No	60'	
17	3758	27.5	POST OAK	Quercus stellata	Yes	Yes	No	40'	
18	3760	29	POST OAK	Quercus stellata	Yes	Yes	No	62'	
19	3762	25	POST OAK	Quercus stellata	Yes	Yes	No	48'	Cavity/ Storm Damage
20	3763	31	POST OAK	Quercus stellata	Yes	Yes	No	48'	
21	3765	31	POST OAK	Quercus stellata	Yes	Yes	No	52'	
22	3766	28	POST OAK	Quercus stellata	Yes	Yes	No	56'	
23	3770	29	POST OAK	Quercus stellata	Yes	Yes	No	44'	
24	3771	26	POST OAK	Quercus stellata	Yes	Yes	No	44'	Health Issue

THERE ARE 61 PROTECTED TREES LOCATED OUTSIDE THE UPLAND WOODED HABITAT.

 UPLAND WOODED HABITAT

G&A

SITE PLANNING CIVIL ENGINEERING PLANNING
CONSULTANTS, LLC
LAND SURVEYING LANDSCAPE ARCHITECTURE

1111 Hillside Drive • Lewisville, TX 75057 • P: 972.436.9712 • F: 972.436.9716
44 Old Town Blvd. North, Ste. 2 • Argyle, TX 76228 • P: 940.240.1012 • F: 940.240.1028
TEPLS Firm No. 10047700
TBEPL Firm No. 1798

LAKESIDE CROSSING
12,001 Acres
in the
J. N. TANNEHILL SURVEY, ABSTRACT NO. 1252
FLOWER MOUND
DENTON COUNTY, TEXAS

SPECIMEN TREE SURVEY

PRELIMINARY PLANS
THIS DOCUMENT IS FOR INTERIM REVIEW
AND IS NOT INTENDED FOR CONSTRUCTION,
BIDDING, OR PERMIT PURPOSES.
JAMESON PINSON LANDSCAPE ARCHITECT
DATED 5/3/2017

Drawn By: JPP
Date: 01/09/2017
Scale: 1"=40'
Revisions:
02/24/2017
03/27/2017
04/24/2017
05/01/2017
05/03/2017

16326

T1.0

OWNER/DEVELOPER
NEWSTREAM COMMERCIAL
4200 HERITAGE TRACE PKWY
FORT WORTH, TEXAS
Ph. 8175862252
Contact: Tim Nystrom

Exhibit “B”
Development Standards

Planned Development District - 153 (PD-153)
Lakeside Crossing

The development on the property comprising approximately 12 acres of land within the corporate limits of the Town of Flower Mound (“Town”) shall be in accordance with the Town of Flower Mound *Master Plan* and the Land Development Regulations of the Town of Flower Mound, Texas, as amended, and shall be subject to the following conditions and requirements:

I. Campus Commercial District (CC)

Development of the Campus Commercial District area designated on Exhibit “C”, comprising of approximately 12 acres, shall be in compliance with all regulations applicable to the Campus Commercial District (CC) uses contained in the Town’s Land Development Regulations as amended, except as otherwise provided in this Ordinance.

- A. PERMITTED USES. The uses listed as Permitted Uses in Campus Commercial District (CC) in the Town’s Zoning Ordinance except as otherwise listed herein may be permitted in the areas designated on Exhibit “C” as Campus Commercial District (CC) areas:

1. Railroad track;
2. Recreation Center, public;
3. Telephone equipment station.

In addition to the uses listed as Permitted Uses in Campus Commercial District (CC) in the Town’s Zoning Ordinance, the following Retail uses may also be permitted:

1. Antique Shop;
2. Assembly hall;
3. Church or rectory;
4. Convenience store with beer/wine sales;
5. Pet store;
6. Restaurant, fast food (without drive through);
7. Wine retail and establishment.

- B. SPECIFIC USES. The uses listed as Specific Uses in Campus Commercial District (CC) in the Town’s Zoning Ordinance, except as otherwise listed herein, may be permitted in the areas designated on Exhibit “C” as Campus Commercial District (CC) areas with a Specific Use Permit (SUP) approved by the Town Council:

1. Car wash, automatic;
2. Car wash, full-service;
3. Convenience store with gasoline sales;
4. Electrical energy generating plant;
5. Recycling dropoff center;

- C. TEMPORARY USES. The uses listed as Temporary Uses in the Campus Commercial District (CC) in the Town's Zoning Ordinance may be permitted in areas designated on Exhibit "A" as Campus Commercial District (CC) only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of the Land Development Code, "Temporary Use Permits".
- D. DIMENSIONAL REGULATIONS. The dimensional regulations listed for Campus Commercial District (CC) in the Town's Zoning Ordinance shall be required for this Planned Development except as otherwise listed herein:
1. Minimum front yard. There shall be a minimum front yard of 60 feet along major thoroughfares in the Campus Commercial District (CC) areas and parking may be permitted in the front yard. There shall be no minimum front yard requirement along all other roadways.
 2. Minimum rear yard. There shall be no minimum rear yard requirement in the Campus Commercial District (CC) areas.
 3. Maximum lot coverage. There shall be no maximum lot coverage requirement in the Campus Commercial District (CC) areas.
 4. Maximum floor area ratio. There shall be no maximum floor area ratio requirement in the Campus Commercial District (CC) areas.
- E. LANDSCAPE, HARDSCAPE AND SCREENING. The following landscaping, hardscaping, and screening requirements shall apply to areas designated on Exhibit "A" as Campus Commercial District (CC) areas:
1. There shall be a minimum landscape buffer of 25 feet along FM 2499; however, the landscape buffer may be reduced to 15 feet in the areas shown on Exhibit "D" in order to save specimen trees.
 2. There shall be enhanced landscaping within the street buffer along parking areas.
 3. There shall be a minimum landscape buffer of 10 feet along Northwood Drive
 4. A compatibility landscape buffer along the south property line of the PD boundary shall not be required.
 5. Enhanced pavement, such as patterned or stamped concrete, shall be used at pedestrian crossing in the drive aisles and at the main entrance from FM 2499.
- F. PLAZA AND PEDESTRIAN CONNECTION. The following requirements shall apply to areas designated on Exhibit "A" as Campus Commercial District (CC) areas:
1. There shall be a central plaza between the two buildings that are located at the main entrance from FM 2499 and the central plaza shall include the following elements:
 - a. A drop off area for restaurant patrons or valet;
 - b. Outdoor seating areas;
 - c. Outdoor dining areas/patios;
 - d. Enhanced landscaping;
 - e. Enhanced pavement;
 - f. Pedestrian connection to open space area; and
 - g. String or festoon lighting.
 2. All buildings shall provide or extend pedestrian walkways to connect to the pedestrian circulation system.

G. OPEN SPACE REQUIREMENTS. The following open space requirements shall apply to areas designated on Exhibit "A" as Campus Commercial District (CC) areas:

1. There shall be a minimum of 16% of land area used for open space purposes throughout the entire Planned Development property.
2. There shall be a central open space area that runs north to south along the existing stream as shown on Exhibit "G", the Conceptual Open Space Plan.
3. Detention areas may be either grass sloped edges or hard edges and shall be permitted in the central open space area.
4. At least one pedestrian bridge is required to ensure pedestrian connection between the non-residential and residential areas of this Planned Development.
5. Trails within open space areas shall have a minimum width of five feet and may be stone walkways, concrete, patterned concrete, or decompose granite with binder.
6. The central open space area shall be maintained by the Property Owner's Association.
7. Retaining walls four feet or taller shall be landscaped to relieve the visual effect of the long expanse of the cladded wall.
8. The central open space area shall consist of three zones. These zones are listed below with descriptions and use of each zone. Each shall endeavor to preserve as much of the existing topography and trees of the central open space area as possible.
 - a. Natural Zone
 - i. The existing stream, specimen trees, natural topography, and rock outcroppings shall be preserved.
 - ii. May be selectively cleared and grubbed provided that no heavy machinery is used. May remove trees that are two inches or less in caliper, vines, shrubs, saplings, and undergrowth.
 - iii. Maintenance of this zone may include yearly or biannual clearing.
 - iv. Native and riparian plant material shall be re-established if impacted by clearing and grubbing. Debris/trash in the open space area shall be picked up by the maintenance personnel.
 - b. Southern Zone
 - i. The existing stream, specimen trees, and rock outcroppings shall be preserved.
 - ii. The zone shall be designed to provide storm water detention for the development.
 - iii. May be selectively cleared and grubbed provided that no heavy machinery is used. May remove existing trees that are two inches or less in caliper, vines, shrubs, saplings, and undergrowth.
 - iv. Grading or earthwork shall be used to provide more detention volume if needed and shall be limited for this purpose only.
 - v. Areas disturbed by grading shall be re-established with native and/or riparian plant material.
 - vi. Maintenance of this zone may include yearly or biannual clearing. Debris/trash in the open space area shall be picked up by the maintenance personnel.
 - vii. Portions of the trail may be located within this zone.
 - c. Transition Zone

- i. The zone merges the natural and built environment by means of retaining walls and grading.
 - ii. Purpose of zone is to provide slope/elevation changes to connect the natural and southern zone to the buildings and parking areas.
 - iii. May be selectively cleared and grubbed provided that no heavy machinery is used. May remove existing trees that are two inches or less in caliper, vines, shrubs, saplings, and undergrowth.
 - iv. Native plant material, sod, and landscaping may also be used in areas disturbed by grading, adjacent to buildings, along trails/sidewalks, and adjacent to parking areas.
9. A wetland delineation shall be performed to determine if the existing stream is a Waters of the US and the preparation of a Wetlands Delineation and Jurisdictional Determination Report may be required to obtain the necessary approvals if impact to the stream is proposed.
10. The property owner shall submit a Tree Protection Plan to the Town for any specimen trees where grading activities will encroach under the drip line of the trees prior to any construction related activities commencing onsite. If any specimen trees are removed from this property without a tree removal permit or are injured because of failure to follow required tree protection measures outlines under the Tree Protection Plan, and the tree dies or may reasonably be expected to die, the town shall have the authority to impose one or more of the following administrative and civil penalties on the developer and/or owner of the property:
 - a. A monetary penalty of \$500.00 per-caliper-inch of width of the specimen tree(s) removed or damaged, payable to the town. Funds paid to the town as tree removal penalties shall be deposited in a special account or fund and used by the town to provide and/or support supplemental landscape plantings in public areas of the town, and/or to support the administration and enforcement of the town's tree preservation regulations.
 - b. For each specimen tree that is removed or damaged, replacement with new trees having a total tree caliper width equivalent to ten times that of the removed or damaged tree(s). Replacement trees shall be of a species listed on the town's approved mitigation and replacement tree planting list. Such replacement trees shall be container-grown and have a minimum caliper width of two and one-half inches to three inches. Replacement trees shall have a minimum height of at least six feet, and shall be planted in locations as approved by the tree preservation and enforcement officer or authorized designee.
11. If any of the twenty-four specimen trees dies after final acceptance from the Town for this development, then the tree must be replaced with one, two and one-half to three-inch caliper tree. Replacement trees shall be of a species listed on the town's approved mitigation and replacement tree planting list. Replacement trees shall have a minimum height of at least six feet, and shall be planted in locations approved by the tree preservation and enforcement officer or authorized designee."

12. If any of the specimen trees require a request for authorized removal and permit prior to site plan, development plan, and/or record plat approval, the developer, property owner or applicant shall submit the applicable specimen tree removal request to the Environmental Conservation Commission for recommendation and subsequent Town Council consideration. Any authorized removal of a specimen tree shall result in the minimum of one mitigation tree to be planted in the location where the specimen tree was removed in addition to the required specimen tree mitigation associated with the approved removal as established in Chapter 94 "Trees". The landscape plan shall also reflect any specimen tree removals and additional mitigation trees planted.

H. NON-RESIDENTIAL ARCHITECTURAL STANDARDS. The following architectural standards shall apply to areas designated on Exhibit "A" as Campus Commercial District (CC) areas:

1. There shall be a unified design theme consistent with the attached Architectural Imagery Package, Exhibit "F".
2. Buildings shall use a combination of textures and materials that complement the design theme. Building design shall be a sleek and linear modern look with minimum detailing for simplicity and clarity which is consistent with the theme.
 - a. Entrances to buildings shall be clearly identified to pedestrians and motorists and shall be accentuated by the use of canopies, porticos, recessed wall planes, overhangs or other similar features that are compatible with the architectural style.
3. Building materials shall include the following:
 - a. Primary materials shall consist of a minimum of 80% of each exterior façade and shall consist of the following materials:
 - i. Stone
 - ii. Brick
 - iii. Stucco/EIFS
 - iv. Tilt Wall
 - v. Composite Wood Panels
 - vi. Aluminum Panels
 - vii. Fiber Cement Wall Panels
 - b. Secondary materials shall consist of a maximum of 20% of each exterior façade and may consist of the following materials:
 - i. Prefinished Metal
 - ii. Fiber-reinforced cement siding
4. The use of building materials like composite wood panels, fiber cement wall panels, metal, and fiber-reinforced cement siding is subject to additional staff review at Site Plan application stage. The additional review will be in terms of location of the materials used on any facade, size of the area covered by the materials, design or pattern in which the materials are laid out on any façade.
5. Primary building colors consisting of neutral and earth tones such as brown, olive, gray, black, and white, or shades thereof, shall comprise a minimum of 80% of the building façade including miscellaneous tributary, ancillary architectural elements such as canopies, balconies, trim, etc. Accent colors shall relate to the primary colors and may comprise the remainder.

6. There are four types of building facades identified on Exhibit “C”, the Concept Plan, for Buildings 2 through 7 and they are subject, but not limited, to the following requirements:
 - a. Type A – Front Façade: shall have the highest quality design with majority of the façade as glass and primary materials. Building entrances shall be located at the front façade.
 - b. Type B – Side Façade: shall mostly be comprised of primary materials, with some secondary materials, and minimal glass. Service or secondary entrances may be located at the side façade.
 - c. Type C – Rear Façade: may include secondary materials and minimal to no glass. Service entrances may be located at the rear façade.
 - d. Type D – Stream Façade: shall be designed to take advantage of the stream side view with patios or decks and the use of glass and primary materials on the building façade. Secondary entrances may be located at the stream façade. Type D face shall include the following elements:
 - I. Minimum 200 sf of patio/covered area for employees and shoppers to enjoy the open space.
 - II. Minimum 20 percent of Type D façade shall have transparent windows providing view of the stream/open space area.
 - III. Enhanced landscape, hardscape, seating, potted plants (plants in large decorative containers) or similar in and around the patio/covered area to encourage the use of open space.
7. Exposed grade beams around the buildings shall include details and patterns that provide interest to the concrete beam component. Such detail can be accomplished by patterned scoring, casting, texturing or other finishing treatment.
8. Roofs of buildings shall reinforce the design theme and shall include the following:
 - a. Roof types should be low-sloped or shed-type with a minimum slope of 0.25 inch per foot or roofs may be of undulating curves.
 - b. Parapets or screening are required on flat roofs so that any roof top equipment is not visible from the street right-of-way.
 - c. Roofing materials that are visible from ground level may include metal, aluminum, synthetic slate or tile, or glass fiber shingles. Glaring roofing materials are not allowed.

II. Townhome District - Single Family Attached (SF-A)

Development of the Townhome District area designated on Exhibit “C”, comprising of approximately 12 acres, shall be in compliance with all regulations applicable to the Single Family Attached District (SF-A) uses contained in the Town’s Land Development Regulations as amended, except as otherwise provided in this Ordinance.

- A. PERMITTED USES. The uses listed as Permitted Uses in the Single Family Attached District (SF-A) in the Town’s Zoning Ordinance may be permitted in the areas designated on Exhibit “C” as Townhome District.
- B. SPECIFIC USES. The uses listed as Specific Uses in the Single Family Attached District (SF-A) may be permitted in the areas designated on Exhibit “C” as Townhome District.
- C. TEMPORARY USES. The uses listed as Temporary Uses in the Single Family Attached District (SF-A) in the Town’s Zoning Ordinance may be permitted in the areas

designated on Exhibit "C" as Townhome District areas only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of the Land Development Code, "Temporary Use Permits".

D. DIMENSIONAL REGULATIONS. The dimensional regulations listed for Single Family Attached (SF-A) in the Town's Zoning Ordinance shall be required for areas designated on Exhibit "C" as Townhome District except as otherwise listed herein:

1. Minimum lot area per dwelling. The minimum lot area per dwelling unit shall be 1,800 square feet.
2. Minimum lot width. The minimum lot width shall be 27 feet.
3. Minimum front yard. There shall be no minimum front yard requirement.
4. Minimum side yard. There shall be no minimum side yard requirement.
5. Minimum rear yard. The minimum rear yard shall be five feet.
6. Maximum lot coverage. The maximum lot coverage shall be 90 percent.
7. Maximum floor area ratio. There shall be no maximum floor area ratio requirement.
8. Maximum height. The maximum height of buildings and structures shall be three stories or 35 feet.

E. OPEN SPACE REQUIREMENTS. The following open space requirements shall apply to areas designated on Exhibit "C" as Townhome District:

1. There shall be at least one pocket park within the Townhome District.
2. The pocket park shall be a minimum of 2,500 square feet in size and shall be located as indicated on Exhibit "D".
3. Pedestrian connection from the pocket park to the central open space area in the Campus Commercial District (CC) is required.

F. LANDSCAPE REQUIREMENTS. The following landscape requirements shall apply to the areas designated on Exhibit "D" as Townhome District:

1. There shall be a screening device along the east side of the alley. Said device shall consist of any of the following:
 - a. Vegetation including shrubs, ornamental trees, or shade trees.
 - b. Wrought iron fencing

G. TOWNHOME ELEVATIONS.

Prior to the submittal of a plat application for the residential portion, approval of an amendment to the Townhome District - Single Family Attached (SF-A) section of this Planned Development District shall be required. The said amendment shall provide written standards and conceptual elevations for the Townhomes.

III. **Miscellaneous Standards**

The following standards shall apply to the entire Planned Development.

A. PARKING. This Planned Development shall be subject the following parking standards:

1. The development will be subject to an overall reciprocal easement agreement granting cross-access and cross-parking for the entire development. A copy of said

agreement will be provided to the Town of Flower Mound with the Record Plat for the development.

2. Mixed use parking standards may be used to satisfy the parking requirements in this Planned Development. In applying mixed use parking standards, the following schedule of Mixed Use Parking sets forth the percentage component for the calculation. Please refer to the following table:

Use	Weekday		Weekend		Night
	Daytime 6 a.m.- 6 p.m.	Evening 6 p.m.- midnight	Daytime 6 a.m.- 6 p.m.	Evening 6 p.m.- midnight	Midnight – 6 a.m.
General or Professional Office	100%	10%	10%	5%	5%
Medical or Dental Office	100%	10%	10%	5%	5%
Hotel	70%	100%	70%	100%	70%
Retail	50%	90%	100%	70%	5%
Restaurant	50%	100%	100%	100%	10%

3. On-street, angled parking may be permitted along Northwood Drive as shown on Exhibit "C", the approved Concept Plan.
4. On-street striping shall be maintained by the Hotel or the Property Owners' Association.

B. ADMINISTRATION. There shall be established Lakeside Crossing Property Owners' Association (POA). Said association shall file Covenants, Conditions, and Restrictions (CC&Rs) in the Denton County Real Property Records with the first record plat application and said POA shall be responsible for the maintenance of the following:

1. Open space areas;
2. Trails and pedestrian bridge;
3. Striping of parking spaces along Northwood Drive;
4. Other items as listed in the CC&Rs.

C. ENVIRONMENTAL PROTECTION PLAN. This Planned Development is subject to an approved Environmental Protection Plan.

D. SIGNAGE. The proposed building signs on the hotel shall be permitted as shown on the Architectural Imagery Package, Exhibit "F", specifically, the Conceptual Elevations of the proposed hotel, and shall be subject to the following:

1. This section shall apply to the attached building and roof sign on the hotel only.
2. The hotel signage shall consist of an attached building sign on the front façade and an attached building sign on the roof.
3. Sign lettering shall be individually cut letters that are aluminum or powder-coated aluminum.
4. Letters shall be raised from the wall surface and mounted to the building exterior.

5. Letters shall be backlit with LED lighting.
 6. All other signs for the hotel and other buildings within Lakeside Crossing shall meet the Town's Sign Ordinance, unless a Comprehensive Sign Package is requested in the future for any sign not described above.
- E. SITE GRADING AND RETAINING WALLS. The proposed location of retaining as shown on the Concept Open Space Plan, Exhibit "E", are preliminary and are subject to change once a detailed grading plan has been completed at the site plan stage. The following requirements shall apply to the use of retaining walls within Lakeside Crossing:
1. Walls over four feet in exposed height shall be softened by the use of any of the following:
 - a. vegetation located on the top of the wall hanging down over the face of the wall
 - b. by plantings located in front of the wall
 - c. Wall terrace or ledge that is located at mid height of the wall with a horizontal run length that is proportional to the total length of the wall and includes vegetation within the terrace or ledge.
 2. There may be vertical cut/fill in excess of 10 feet in the open space area south of building six.
- F. PHASING: The first phase of development shall include the detention reservoirs, fire lanes, median cuts/turn lanes to support the first phase, curb cuts, and utilities within Phase 1, perimeter landscaping (Exhibit C), stream area and installation of trails around the stream. A Certificate of Occupancy shall not be issued for the first building until all of the above improvements are complete.
- G. EXCEPTIONS. Upon approval by the Town Council, the following exceptions to the Town's Ordinances shall apply to this Planned Development.
1. Meritorious Architecture – Urban Design Plan, Section 1.2.
The proposed architecture is unique and shall be deemed as 'meritorious'.
 2. Façade Materials – Urban Design Plan, Section 5.1.
Type D facades may have up to 60% doors and windows.
 3. Façade Materials – Urban Design Plan, Section 5.3.
In addition to the materials listed as primary masonry under Section 5.3 of the Urban Design Plan, composite wood panels, aluminum panels, EIFS, and fiber cement wall panels, may be used as primary building materials.
 4. Upland Habitat - SMARTGrowth.
Since this development has been classified as an Economic Development project per the approved 380 Agreement, the Upland Habitat requirements of the Town's SMARTGrowth program, specifically Environmental Quality, shall not apply to the non-residential areas.
 5. Overhead Utilities – Section 90-423.
Overhead utilities along Northwood Drive are primarily located in the Town's Right-of-Way with some poles located on the property line and have a portion of the pole in the Right-of-Way and a portion of the pole in the property. Therefore, the requirement to bury overhead utilities underground shall be waived since the poles straddle the property and Right-of-Way line.
 6. Compatibility Buffer – Section 82-302 and Compatibility Setback – Section 82-303.
A 60-foot compatibility setback and 25-foot landscape buffer with a screening wall, shall not be required along the south property line.

7. Pitched Roofs – Urban Design Plan, Section 12.1.

A waiver to the pitched roof requirement of buildings less than 15,000 square feet may be considered by the Town Council provided that said buildings are part of a large scale development, not adjacent to residences, and include architectural detail to soften the appearance of large, tall vertical walls.

8. Topographic Slope Protection - SMARTGrowth.

Since this development has been classified as an Economic Development project per the approved 380 Agreement, the Topographic Slope requirements of the Town's SMARTGrowth program, specifically Environmental Quality, shall not apply to the non-residential areas.

- a. Restrictions; purpose. No development application or project shall be approved that proposes development on any existing topographical slopes of 12 percent or greater, or that proposes to alter any existing topographical slopes that are less than 12 percent but equal to or greater than five percent then available (other than within five feet of the footprint of the proposed structure or structures). The purpose of this criterion is to ensure that development is respectful of and appropriately integrated with the natural physical geography of the land in Flower Mound by requiring environmentally sensitive development techniques to eliminate "scrape and build."
- b. Exception. An exception to this requirement may be approved by the town council by the affirmative vote of at least three-fourths super majority vote of all members of the town council, for any development that keeps the character of the natural topography, and integrates the development into and maintains the overall integrity of the natural topography. Requests for an exception shall be accompanied by the following submissions:
 - i. Detailed drawings that illustrate the impact of the proposed development on the natural topography and the manner by which the development is integrated into, reflects and maintains the overall integrity of the natural topography.
 - ii. The identification of those specific best management practices (BMPs) that will be used to maintain and responsibly integrate the development into the natural topography together with an explanation regarding their use within the plans for such development. The BMPs to be used shall include, but are not limited to, those BMPs found within the town's engineering design and construction standards.
 - iii. While recognized as a potential BMP, the use of retaining walls should be kept to a minimum. Any retaining wall four-foot or greater in height shall be designed by a professional engineer licensed by the State of Texas. Retaining walls exceeding eight feet in height are discouraged.
- c. In considering an exception to this criterion, the town shall, in addition to the foregoing, consider the effects of granting an exception on other environmental features such as trees, habitats, floodplains, scenic vistas, ridgelines, and other environmental features as well as adjacency to established developments and neighborhoods.

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

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, LAND DEVELOPMENT REGULATIONS, OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY CHANGING THE ZONING ON APPROXIMATELY 12.0 ACRES OF LAND SITUATED IN THE J. N. TANNEHILL SURVEY, ABSTRACT NUMBER 1252, FROM AGRICULTURAL DISTRICT (A) AND A PORTION OF PLANNED DEVELOPMENT DISTRICT NO. 31 (PD-31) TO PLANNED DEVELOPMENT DISTRICT NO. 153 (PD-153) WITH BOTH NON-RESIDENTIAL AND RESIDENTIAL USES, IN ACCORDANCE WITH THE TOWN'S MASTER PLAN AND SPECIFIC REQUIREMENTS AND EXHIBITS INCORPORATED HEREIN; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF IN ACCORDANCE WITH SECTION 1-13 OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; 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 12.0 acres of land situated in the J. N. Tannehill Survey, Abstract Number 1252, have filed an application for a Zoning Planned Development amendment to change the zoning from Agricultural District (A) and a portion of Planned Development District No. 31 (PD-31) to Planned Development District No. 153 (PD-153) with both non-residential and residential uses; and,

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on May 8, 2017, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on July 17, 2017, with respect to the proposed planned development district as described herein; and,

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

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

ORDINANCE NO. _____**Page 2**

SECTION 1

The Land Development Regulations of the Town of Flower Mound, Texas, as amended, are hereby amended on the hereinafter described property and area to establish a planned development district as shown below:

12.0 acres of land situated in the J.N. Tannehill Survey, Abstract Number 1252, Denton County, Texas, and more fully described in Exhibit "A" hereto.

Planned Development District No. 153 (PD-153) with both non-residential and residential uses.

SECTION 2

The development standards, conceptual site plan, conceptual landscape plan, conceptual open space plan, and conceptual elevations of the proposed Planned Development District No. 153 (PD-153), attached hereto as Exhibits "B," "C," "D," "E," and "F," each incorporated herein for all purposes allowed by law, are hereby approved as the development standards, conceptual site plan, conceptual landscape plan, conceptual open space plan, and conceptual elevations for this Planned Development District No. 153 (PD-153).

SECTION 3

The official map of the Town of Flower Mound is amended and the Executive Director of Development Services is directed to revise the official zoning map to reflect the approved Planned Development District No. 153 (PD-153), as set forth above.

SECTION 4

The use of the property described above shall be subject to all restrictions, terms and conditions contained in "B," "C," "D," "E," and "F," attached hereto, as well as the applicable regulations contained in the Land Development Regulations and all other applicable and pertinent ordinances of the Town of Flower Mound.

SECTION 5

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

SECTION 6

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

ORDINANCE NO. _____

Page 3**SECTION 7**

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

SECTION 8

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

SECTION 9

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

SECTION 10

This Ordinance shall 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**

LEGAL DESCRIPTION

12.001 Acres

J. N. Tannehill Survey, Abstract No. 1252

Town of Flower Mound

Denton County, Texas

BEING all that certain lot, tract or parcel of land situated in the J. N. Tannehill Survey, Abstract No. 1252, Town of Flower Mound, Denton County, Texas, and being all that certain tract of land described in deed to FMCC Land, L.P., recorded in Document No. 2010-28290, Official Records, Denton County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2 inch rebar with cap stamped "BRITTIAN & CRAWFORD" found at the southeast corner of Lot 1, Block B, Lakeside DFW, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Document No. 2013-170, Plat Records, Denton County, Texas, same being the northeast corner of said FMCC Land tract, and being in the westerly line of F.M. 2499;

THENCE S 21°51'50" E, with the westerly line of F.M. 2499, a distance of 939.14 feet 1/2 inch rebar found at the southeast corner of said FMCC Land tract, same being the northeast corner of that certain tract of land described in deed to Joe G. Roach, et al, recorded in Instrument No. 2008-120554, Official Records, Denton County, Texas;

THENCE S 89°41'50" W, with the south line of said FMCC Land tract and the north line of said Roach tract, a distance of 768.42 feet to a 1/2 inch rebar with cap stamped "DAA" found at the northwest corner of said Roach tract and being in the east line of Northwood Drive;

THENCE N 00°18'40" W, with the east line of Northwood Drive, a distance of 884.06 feet to a 1/2 inch rebar with cap stamped "G&A CONSULTANTS" set in the south line of Lot 2X of said Block B;

THENCE S 88°51'50" E, with the south line of said Lakeside DFW, a distance of 423.56 feet to the **POINT OF BEGINNING** and containing approximately 12.001 acres of land.

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

Exhibit “B”
Development Standards

Planned Development District - 153 (PD-153)
Lakeside Crossing

The development on the property comprising approximately 12 acres of land within the corporate limits of the Town of Flower Mound (“Town”) shall be in accordance with the Town of Flower Mound *Master Plan* and the Land Development Regulations of the Town of Flower Mound, Texas, as amended, and shall be subject to the following conditions and requirements:

I. Campus Commercial District (CC)

Development of the Campus Commercial District area designated on Exhibit “C”, comprising of approximately 12 acres, shall be in compliance with all regulations applicable to the Campus Commercial District (CC) uses contained in the Town’s Land Development Regulations as amended, except as otherwise provided in this Ordinance.

- A. PERMITTED USES. The uses listed as Permitted Uses in Campus Commercial District (CC) in the Town’s Zoning Ordinance except as otherwise listed herein may be permitted in the areas designated on Exhibit “C” as Campus Commercial District (CC) areas:

1. Railroad track;
2. Recreation Center, public;
3. Telephone equipment station.

In addition to the uses listed as Permitted Uses in Campus Commercial District (CC) in the Town’s Zoning Ordinance, the following Retail uses may also be permitted:

1. Antique Shop;
2. Assembly hall;
3. Church or rectory;
4. Convenience store with beer/wine sales;
5. Pet store;
6. Restaurant, fast food (without drive through);
7. Wine retail and establishment.

- B. SPECIFIC USES. The uses listed as Specific Uses in Campus Commercial District (CC) in the Town’s Zoning Ordinance, except as otherwise listed herein, may be permitted in the areas designated on Exhibit “C” as Campus Commercial District (CC) areas with a Specific Use Permit (SUP) approved by the Town Council:

1. Car wash, automatic;
2. Car wash, full-service;
3. Convenience store with gasoline sales;
4. Electrical energy generating plant;
5. Recycling dropoff center;

- C. TEMPORARY USES. The uses listed as Temporary Uses in the Campus Commercial District (CC) in the Town's Zoning Ordinance may be permitted in areas designated on Exhibit "C" as Campus Commercial District (CC) only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of the Land Development Code, "Temporary Use Permits".
- D. DIMENSIONAL REGULATIONS. The dimensional regulations listed for Campus Commercial District (CC) in the Town's Zoning Ordinance shall be required for this Planned Development except as otherwise listed herein:
1. Minimum front yard. There shall be a minimum front yard of 60 feet along major thoroughfares in the Campus Commercial District (CC) areas and parking may be permitted in the front yard. There shall be no minimum front yard requirement along all other roadways.
 2. Minimum rear yard. There shall be no minimum rear yard requirement in the Campus Commercial District (CC) areas.
 3. Maximum lot coverage. There shall be no maximum lot coverage requirement in the Campus Commercial District (CC) areas.
 4. Maximum floor area ratio. There shall be no maximum floor area ratio requirement in the Campus Commercial District (CC) areas.
- E. LANDSCAPE, HARDSCAPE AND SCREENING. The following landscaping, hardscaping, and screening requirements shall apply to areas designated on Exhibit "C" as Campus Commercial District (CC) areas:
1. There shall be a minimum landscape buffer of 25 feet along FM 2499; however, the landscape buffer may be reduced to 15 feet in the areas shown on Exhibit "D" in order to save specimen trees.
 2. There shall be enhanced landscaping within the street buffer along parking areas.
 3. There shall be a minimum landscape buffer of 10 feet along Northwood Drive
 4. A compatibility landscape buffer along the south property line of the PD boundary shall not be required.
 5. Enhanced pavement, such as patterned or stamped concrete, shall be used at pedestrian crossing in the drive aisles and at the main entrance from FM 2499.
- F. PLAZA AND PEDESTRIAN CONNECTION. The following requirements shall apply to areas designated on Exhibit "C" as Campus Commercial District (CC) areas:
1. There shall be a central plaza between the two buildings that are located at the main entrance from FM 2499 and the central plaza shall include the following elements:
 - a. A drop off area for restaurant patrons or valet;
 - b. Outdoor seating areas;
 - c. Outdoor dining areas/patios;
 - d. Enhanced landscaping;
 - e. Enhanced pavement;
 - f. Pedestrian connection to open space area; and
 - g. String or festoon lighting.
 2. All buildings shall provide or extend pedestrian walkways to connect to the pedestrian circulation system.

G. OPEN SPACE REQUIREMENTS. The following open space requirements shall apply to areas designated on Exhibit "A" as Campus Commercial District (CC) areas:

1. There shall be a minimum of 16% of land area used for open space purposes throughout the entire Planned Development property.
2. There shall be a central open space area that runs north to south along the existing stream as shown on Exhibit "E", the Conceptual Open Space Plan.
3. Detention areas may be either grass sloped edges or hard edges and shall be permitted in the central open space area.
4. At least one pedestrian bridge is required to ensure pedestrian connection between the non-residential and residential areas of this Planned Development.
5. Trails within open space areas shall have a minimum width of five feet and may be stone walkways, concrete, patterned concrete, or decompose granite with binder.
6. The central open space area shall be maintained by the Property Owner's Association.
7. Retaining walls four feet or taller shall be landscaped to relieve the visual effect of the long expanse of the cladded wall.
8. The central open space area shall consist of three zones. These zones are listed below with descriptions and use of each zone. Each shall endeavor to preserve as much of the existing topography and trees of the central open space area as possible.
 - a. Natural Zone
 - i. The existing stream, specimen trees, natural topography, and rock outcroppings shall be preserved.
 - ii. May be selectively cleared and grubbed provided that no heavy machinery is used. May remove trees that are two inches or less in caliper, vines, shrubs, saplings, and undergrowth.
 - iii. Maintenance of this zone may include yearly or biannual clearing.
 - iv. Native and riparian plant material shall be re-established if impacted by clearing and grubbing. Debris/trash in the open space area shall be picked up by the maintenance personnel.
 - b. Southern Zone
 - i. The existing stream, specimen trees, and rock outcroppings shall be preserved.
 - ii. The zone shall be designed to provide storm water detention for the development.
 - iii. May be selectively cleared and grubbed provided that no heavy machinery is used. May remove existing trees that are two inches or less in caliper, vines, shrubs, saplings, and undergrowth.
 - iv. Grading or earthwork shall be used to provide more detention volume if needed and shall be limited for this purpose only.
 - v. Areas disturbed by grading shall be re-established with native and/or riparian plant material.
 - vi. Maintenance of this zone may include yearly or biannual clearing. Debris/trash in the open space area shall be picked up by the maintenance personnel.
 - vii. Portions of the trail may be located within this zone.
 - c. Transition Zone

- i. The zone merges the natural and built environment by means of retaining walls and grading.
 - ii. Purpose of zone is to provide slope/elevation changes to connect the natural and southern zone to the buildings and parking areas.
 - iii. May be selectively cleared and grubbed provided that no heavy machinery is used. May remove existing trees that are two inches or less in caliper, vines, shrubs, saplings, and undergrowth.
 - iv. Native plant material, sod, and landscaping may also be used in areas disturbed by grading, adjacent to buildings, along trails/sidewalks, and adjacent to parking areas.
9. A wetland delineation shall be performed to determine if the existing stream is a Waters of the US and the preparation of a Wetlands Delineation and Jurisdictional Determination Report may be required to obtain the necessary approvals if impact to the stream is proposed.
10. The property owner shall submit a Tree Protection Plan to the Town for any specimen trees where grading activities will encroach under the drip line of the trees prior to any construction related activities commencing onsite. If any specimen trees are removed from this property without a tree removal permit or are injured because of failure to follow required tree protection measures outlines under the Tree Protection Plan, and the tree dies or may reasonably be expected to die, the town shall have the authority to impose one or more of the following administrative and civil penalties on the developer and/or owner of the property:
 - a. A monetary penalty of \$500.00 per-caliper-inch of width of the specimen tree(s) removed or damaged, payable to the town. Funds paid to the town as tree removal penalties shall be deposited in a special account or fund and used by the town to provide and/or support supplemental landscape plantings in public areas of the town, and/or to support the administration and enforcement of the town's tree preservation regulations.
 - b. For each specimen tree that is removed or damaged, replacement with new trees having a total tree caliper width equivalent to ten times that of the removed or damaged tree(s). Replacement trees shall be of a species listed on the town's approved mitigation and replacement tree planting list. Such replacement trees shall be container-grown and have a minimum caliper width of two and one-half inches to three inches. Replacement trees shall have a minimum height of at least six feet, and shall be planted in locations as approved by the tree preservation and enforcement officer or authorized designee.
11. If any of the twenty-four specimen trees dies after final acceptance from the Town for this development, then the tree must be replaced with one, two and one-half to three-inch caliper tree. Replacement trees shall be of a species listed on the town's approved mitigation and replacement tree planting list. Replacement trees shall have a minimum height of at least six feet, and shall be planted in locations approved by the tree preservation and enforcement officer or authorized designee."

12. If any of the specimen trees require a request for authorized removal and permit prior to site plan, development plan, and/or record plat approval, the developer, property owner or applicant shall submit the applicable specimen tree removal request to the Environmental Conservation Commission for recommendation and subsequent Town Council consideration. Any authorized removal of a specimen tree shall result in the minimum of one mitigation tree to be planted in the location where the specimen tree was removed in addition to the required specimen tree mitigation associated with the approved removal as established in Chapter 94 "Trees". The landscape plan shall also reflect any specimen tree removals and additional mitigation trees planted.

H. NON-RESIDENTIAL ARCHITECTURAL STANDARDS. The following architectural standards shall apply to areas designated on Exhibit "C" as Campus Commercial District (CC) areas:

1. There shall be a unified design theme consistent with the attached Architectural Imagery Package, Exhibit "F".
2. Buildings shall use a combination of textures and materials that complement the design theme. Building design shall be a sleek and linear modern look with minimum detailing for simplicity and clarity which is consistent with the theme.
 - a. Entrances to buildings shall be clearly identified to pedestrians and motorists and shall be accentuated by the use of canopies, porticos, recessed wall planes, overhangs or other similar features that are compatible with the architectural style.
3. Building materials shall include the following:
 - a. Primary materials shall consist of a minimum of 80% of each exterior façade and shall consist of the following materials:
 - i. Stone
 - ii. Brick
 - iii. Stucco/EIFS
 - iv. Tilt Wall
 - v. Composite Wood Panels
 - vi. Aluminum Panels
 - vii. Fiber Cement Wall Panels
 - b. Secondary materials shall consist of a maximum of 20% of each exterior façade and may consist of the following materials:
 - i. Prefinished Metal
 - ii. Fiber-reinforced cement siding
4. The use of building materials like composite wood panels, fiber cement wall panels, metal, and fiber-reinforced cement siding is subject to additional staff review at Site Plan application stage. The additional review will be in terms of location of the materials used on any facade, size of the area covered by the materials, design or pattern in which the materials are laid out on any façade.
5. Primary building colors consisting of neutral and earth tones such as brown, olive, gray, black, and white, or shades thereof, shall comprise a minimum of 80% of the building façade including miscellaneous tributary, ancillary architectural elements such as canopies, balconies, trim, etc. Accent colors shall relate to the primary colors and may comprise the remainder.

6. There are four types of building facades identified on Exhibit "C", the Concept Plan, for Buildings 2 through 7 and they are subject, but not limited, to the following requirements:
 - a. Type A – Front Façade: shall have the highest quality design with majority of the façade as glass and primary materials. Building entrances shall be located at the front façade.
 - b. Type B – Side Façade: shall mostly be comprised of primary materials, with some secondary materials, and minimal glass. Service or secondary entrances may be located at the side façade.
 - c. Type C – Rear Façade: may include secondary materials and minimal to no glass. Service entrances may be located at the rear façade.
 - d. Type D – Stream Façade: shall be designed to take advantage of the stream side view with patios or decks and the use of glass and primary materials on the building façade. Secondary entrances may be located at the stream façade. Type D face shall include the following elements:
 - I. Minimum 200 sf of patio/covered area for employees and shoppers to enjoy the open space.
 - II. Minimum 20 percent of Type D façade shall have transparent windows providing view of the stream/open space area.
 - III. Enhanced landscape, hardscape, seating, potted plants (plants in large decorative containers) or similar in and around the patio/covered area to encourage the use of open space.
7. Exposed grade beams around the buildings shall include details and patterns that provide interest to the concrete beam component. Such detail can be accomplished by patterned scoring, casting, texturing or other finishing treatment.
8. Roofs of buildings shall reinforce the design theme and shall include the following:
 - a. Roof types should be low-sloped or shed-type with a minimum slope of 0.25 inch per foot or roofs may be of undulating curves.
 - b. Parapets or screening are required on flat roofs so that any roof top equipment is not visible from the street right-of-way.
 - c. Roofing materials that are visible from ground level may include metal, aluminum, synthetic slate or tile, or glass fiber shingles. Glaring roofing materials are not allowed.

II. Townhome District - Single Family Attached (SF-A)

Development of the Townhome District area designated on Exhibit "C", comprising of approximately 12 acres, shall be in compliance with all regulations applicable to the Single Family Attached District (SF-A) uses contained in the Town's Land Development Regulations as amended, except as otherwise provided in this Ordinance.

- A. PERMITTED USES. The uses listed as Permitted Uses in the Single Family Attached District (SF-A) in the Town's Zoning Ordinance may be permitted in the areas designated on Exhibit "C" as Townhome District.
- B. SPECIFIC USES. The uses listed as Specific Uses in the Single Family Attached District (SF-A) may be permitted in the areas designated on Exhibit "C" as Townhome District.
- C. TEMPORARY USES. The uses listed as Temporary Uses in the Single Family Attached District (SF-A) in the Town's Zoning Ordinance may be permitted in the areas

designated on Exhibit "C" as Townhome District areas only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of the Land Development Code, "Temporary Use Permits".

D. DIMENSIONAL REGULATIONS. The dimensional regulations listed for Single Family Attached (SF-A) in the Town's Zoning Ordinance shall be required for areas designated on Exhibit "C" as Townhome District except as otherwise listed herein:

1. Minimum lot area per dwelling. The minimum lot area per dwelling unit shall be 1,800 square feet.
2. Minimum lot width. The minimum lot width shall be 27 feet.
3. Minimum front yard. There shall be no minimum front yard requirement.
4. Minimum side yard. There shall be no minimum side yard requirement.
5. Minimum rear yard. The minimum rear yard shall be five feet.
6. Maximum lot coverage. The maximum lot coverage shall be 90 percent.
7. Maximum floor area ratio. There shall be no maximum floor area ratio requirement.
8. Maximum height. The maximum height of buildings and structures shall be three stories or 35 feet.

E. OPEN SPACE REQUIREMENTS. The following open space requirements shall apply to areas designated on Exhibit "C" as Townhome District:

1. There shall be at least one pocket park within the Townhome District.
2. The pocket park shall be a minimum of 2,500 square feet in size and shall be located as indicated on Exhibit "D".
3. Pedestrian connection from the pocket park to the central open space area in the Campus Commercial District (CC) is required.

F. LANDSCAPE REQUIREMENTS. The following landscape requirements shall apply to the areas designated on Exhibit "D" as Townhome District:

1. There shall be a screening device along the east side of the alley. Said device shall consist of any of the following:
 - a. Vegetation including shrubs, ornamental trees, or shade trees.
 - b. Wrought iron fencing

G. TOWNHOME ELEVATIONS.

Prior to the submittal of a plat application for the residential portion, approval of an amendment to the Townhome District - Single Family Attached (SF-A) section of this Planned Development District shall be required. The said amendment shall provide written standards and conceptual elevations for the Townhomes.

III. **Miscellaneous Standards**

The following standards shall apply to the entire Planned Development.

A. PARKING. This Planned Development shall be subject the following parking standards:

1. The development will be subject to an overall reciprocal easement agreement granting cross-access and cross-parking for the entire development. A copy of said

agreement will be provided to the Town of Flower Mound with the Record Plat for the development.

2. Mixed use parking standards may be used to satisfy the parking requirements in this Planned Development. In applying mixed use parking standards, the following schedule of Mixed Use Parking sets forth the percentage component for the calculation. Please refer to the following table:

Use	Weekday		Weekend		Night
	Daytime 6 a.m.- 6 p.m.	Evening 6 p.m.- midnight	Daytime 6 a.m.- 6 p.m.	Evening 6 p.m.- midnight	Midnight – 6 a.m.
General or Professional Office	100%	10%	10%	5%	5%
Medical or Dental Office	100%	10%	10%	5%	5%
Hotel	70%	100%	70%	100%	70%
Retail	50%	90%	100%	70%	5%
Restaurant	50%	100%	100%	100%	10%

3. On-street, angled parking may be permitted along Northwood Drive as shown on Exhibit "C", the approved Concept Plan.
 4. On-street striping shall be maintained by the Hotel or the Property Owners' Association.
- B. ADMINISTRATION. There shall be established Lakeside Crossing Property Owners' Association (POA). Said association shall file Covenants, Conditions, and Restrictions (CC&Rs) in the Denton County Real Property Records with the first record plat application and said POA shall be responsible for the maintenance of the following:
1. Open space areas;
 2. Trails and pedestrian bridge;
 3. Striping of parking spaces along Northwood Drive;
 4. Other items as listed in the CC&Rs.
- C. ENVIRONMENTAL PROTECTION PLAN. This Planned Development is subject to an approved Environmental Protection Plan.
- D. SIGNAGE. The proposed building signs on the hotel shall be permitted as shown on the Architectural Imagery Package, Exhibit "F", specifically, the Conceptual Elevations of the proposed hotel, and shall be subject to the following:
1. This section shall apply to the attached building and roof sign on the hotel only.
 2. The hotel signage shall consist of an attached building sign on the front façade and an attached building sign on the roof.
 3. Sign lettering shall be individually cut letters that are aluminum or powder-coated aluminum.
 4. Letters shall be raised from the wall surface and mounted to the building exterior.

5. Letters shall be backlit with LED lighting.
 6. All other signs for the hotel and other buildings within Lakeside Crossing shall meet the Town's Sign Ordinance, unless a Comprehensive Sign Package is requested in the future for any sign not described above.
- E. SITE GRADING AND RETAINING WALLS. The proposed location of retaining as shown on the Concept Open Space Plan, Exhibit "E", are preliminary and are subject to change once a detailed grading plan has been completed at the site plan stage. The following requirements shall apply to the use of retaining walls within Lakeside Crossing:
1. Walls over four feet in exposed height shall be softened by the use of any of the following:
 - a. vegetation located on the top of the wall hanging down over the face of the wall
 - b. by plantings located in front of the wall
 - c. Wall terrace or ledge that is located at mid height of the wall with a horizontal run length that is proportional to the total length of the wall and includes vegetation within the terrace or ledge.
 2. There may be vertical cut/fill in excess of 10 feet in the open space area south of building six.
- F. PHASING: The first phase of development shall include the detention reservoirs, fire lanes, median cuts/turn lanes to support the first phase, curb cuts, and utilities within Phase 1, perimeter landscaping (Exhibit C), stream area and installation of trails around the stream. A Certificate of Occupancy shall not be issued for the first building until all of the above improvements are complete.
- G. EXCEPTIONS. Upon approval by the Town Council, the following exceptions to the Town's Ordinances shall apply to this Planned Development.
1. Meritorious Architecture – Urban Design Plan, Section 1.2.
The proposed architecture is unique and shall be deemed as 'meritorious'.
 2. Façade Materials – Urban Design Plan, Section 5.1.
Type D facades may have up to 60% doors and windows.
 3. Façade Materials – Urban Design Plan, Section 5.3.
In addition to the materials listed as primary masonry under Section 5.3 of the Urban Design Plan, composite wood panels, aluminum panels, EIFS, and fiber cement wall panels, may be used as primary building materials.
 4. Upland Habitat - SMARTGrowth.
Since this development has been classified as an Economic Development project per the approved 380 Agreement, the Upland Habitat requirements of the Town's SMARTGrowth program, specifically Environmental Quality, shall not apply to the non-residential areas.
 5. Compatibility Buffer – Section 82-302 and Compatibility Setback – Section 82-303.
A 60-foot compatibility setback and 25-foot landscape buffer with a screening wall, shall not be required along the south property line.
 6. Pitched Roofs – Urban Design Plan, Section 12.1.
A waiver to the pitched roof requirement of buildings less than 15,000 square feet may be considered by the Town Council provided that said buildings are part of a large scale development, not adjacent to residences, and include architectural detail to soften the appearance of large, tall vertical walls.
 7. Topographic Slope Protection - SMARTGrowth.

Since this development has been classified as an Economic Development project per the approved 380 Agreement, the Topographic Slope requirements of the Town's SMARTGrowth program, specifically Environmental Quality, shall not apply to the non-residential areas.

- a. Restrictions; purpose. No development application or project shall be approved that proposes development on any existing topographical slopes of 12 percent or greater, or that proposes to alter any existing topographical slopes that are less than 12 percent but equal to or greater than five percent then available (other than within five feet of the footprint of the proposed structure or structures). The purpose of this criterion is to ensure that development is respectful of and appropriately integrated with the natural physical geography of the land in Flower Mound by requiring environmentally sensitive development techniques to eliminate "scrape and build."
- b. Exception. An exception to this requirement may be approved by the town council by the affirmative vote of at least three-fourths super majority vote of all members of the town council, for any development that keeps the character of the natural topography, and integrates the development into and maintains the overall integrity of the natural topography. Requests for an exception shall be accompanied by the following submissions:
 - i. Detailed drawings that illustrate the impact of the proposed development on the natural topography and the manner by which the development is integrated into, reflects and maintains the overall integrity of the natural topography.
 - ii. The identification of those specific best management practices (BMPs) that will be used to maintain and responsibly integrate the development into the natural topography together with an explanation regarding their use within the plans for such development. The BMPs to be used shall include, but are not limited to, those BMPs found within the town's engineering design and construction standards.
 - iii. While recognized as a potential BMP, the use of retaining walls should be kept to a minimum. Any retaining wall four-foot or greater in height shall be designed by a professional engineer licensed by the State of Texas. Retaining walls exceeding eight feet in height are discouraged.
- c. In considering an exception to this criterion, the town shall, in addition to the foregoing, consider the effects of granting an exception on other environmental features such as trees, habitats, floodplains, scenic vistas, ridgelines, and other environmental features as well as adjacency to established developments and neighborhoods.

CONSULTANTS, LLC
1511 Hildebrand Drive • Lubbock, TX 79402 • P: 807.436.0712 • F: 807.436.0720
Toll Free: 1-800-436-0712 • E: info@hildebrand.com

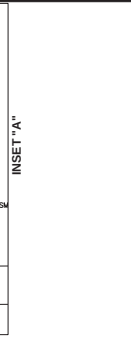
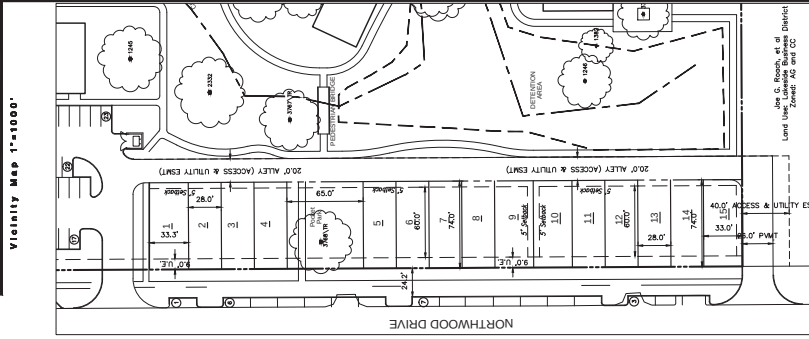
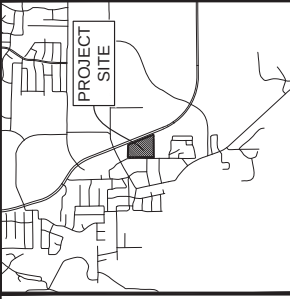
LAKE SIDE CROSSING
12,001 Acres
in the
ANNEHILL SURVEY, ABSTRACT NO. 1252
FLOWER MOUND
DENTON COUNTY, TEXAS

CONCEPT PLAN

PRELIMINARY PLANS
THIS DOCUMENT IS FOR
INTERIM REVIEW AND IS
NOT INTENDED FOR
CONSTRUCTION, BIDDING,
OR PERMIT PURPOSES.
G&A CONSULTANTS, F-1799
ROBERT JOHN DR., BLAK, JR.

2 • Draft On

OWNER/DEVELOPER
MIDSTREAM COMMERCIAL
1300 HERITAGE TRACE PKWY
PORT WORTH, TEXAS
PA. 575522302
Contact: Tim Nyström

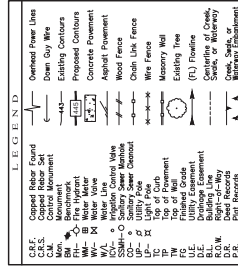


Building Summary		
Blgd	Square Feet (SF)	# of Stories
1	60,836	5
	5,364	134 Rooms
	2	1
	5,427	2
	5,427	2
3	11,340	2
	8,514	2
4	7,356	2
	2,520	2
	6,641	2
5	8,242	2
	15,270	3
6	15,270	3
7	16,640	3
	163,465	

SCHEDULE OF MARINE VESSEL WORKHOURS, 1-2						
	Weekday		Weekend		Night	
	Daytime (06-18) hr: min	Evening (18-06) hr: min	Daytime (06-18) hr: min	Evening (18-06) hr: min	Daytime (06-18) hr: min	Night (18-06) hr: min
Officer	508	271	271	184	316	
Deck Officer	508	271	271	184	316	
Deck Assistant	508	271	271	184	316	
Helmsman	508	271	271	184	316	
Engineer	508	271	271	184	316	
Engine Assistant	508	271	271	184	316	
Boat	508	271	271	184	316	
Results	527	688	452	344	316	

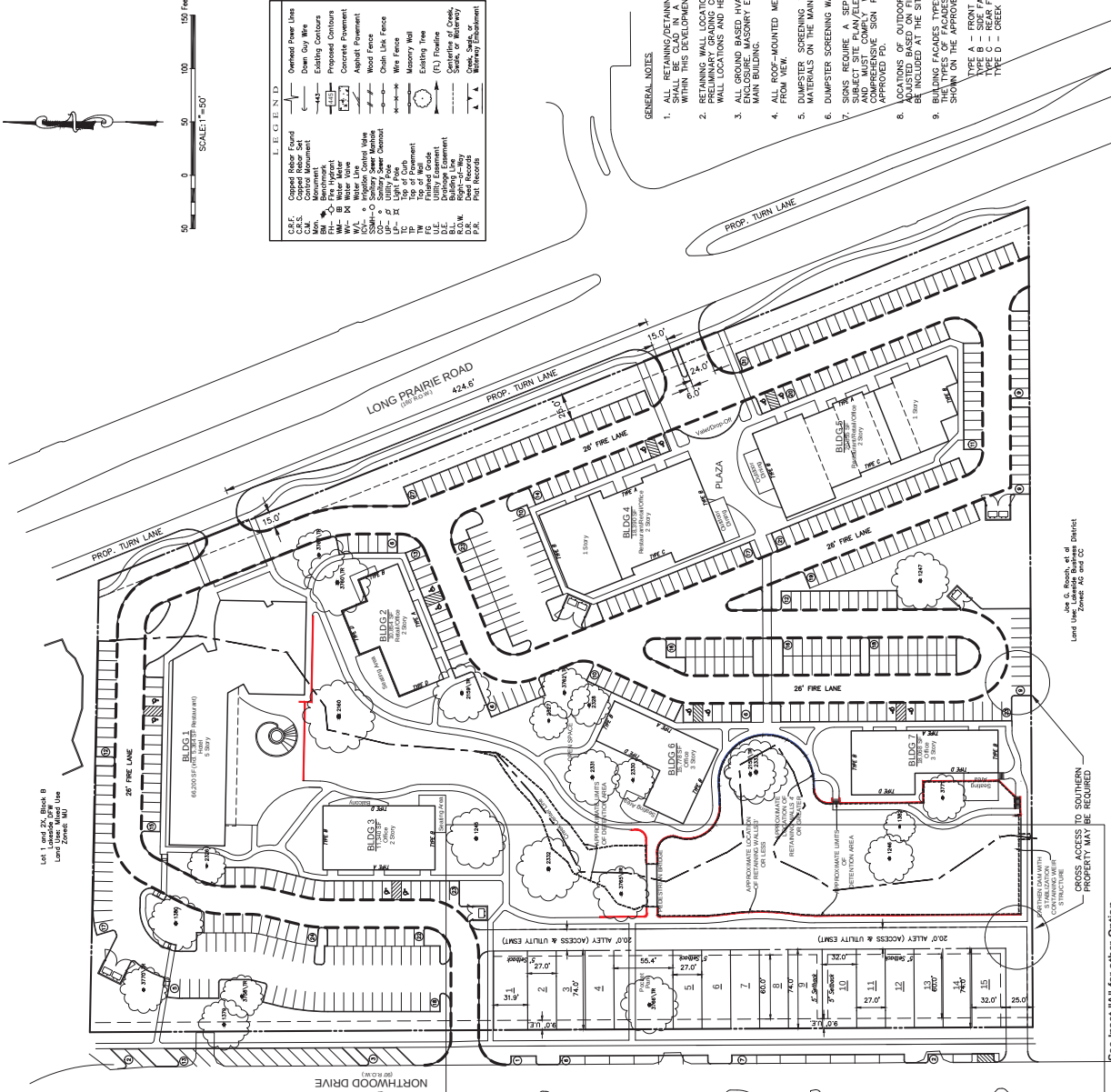
* 1/2 Parting-Spin-Provided

SCHEDULE OF MARINE VESSEL WORKHOURS, 3-4						
	Weekday		Weekend		Night	
	Daytime (06-18) hr: min	Evening (18-06) hr: min	Daytime (06-18) hr: min	Evening (18-06) hr: min	Daytime (06-18) hr: min	Night (18-06) hr: min
Officer	508	271	508	5%	5%	
Deck Officer	508	271	508	5%	5%	
Deck Assistant	508	271	508	5%	5%	
Helmsman	508	271	508	5%	5%	
Engineer	508	271	508	5%	5%	
Engine Assistant	508	271	508	5%	5%	
Boat	508	271	508	5%	5%	
Results	527	688	452	344	316	



GENERAL NOTE

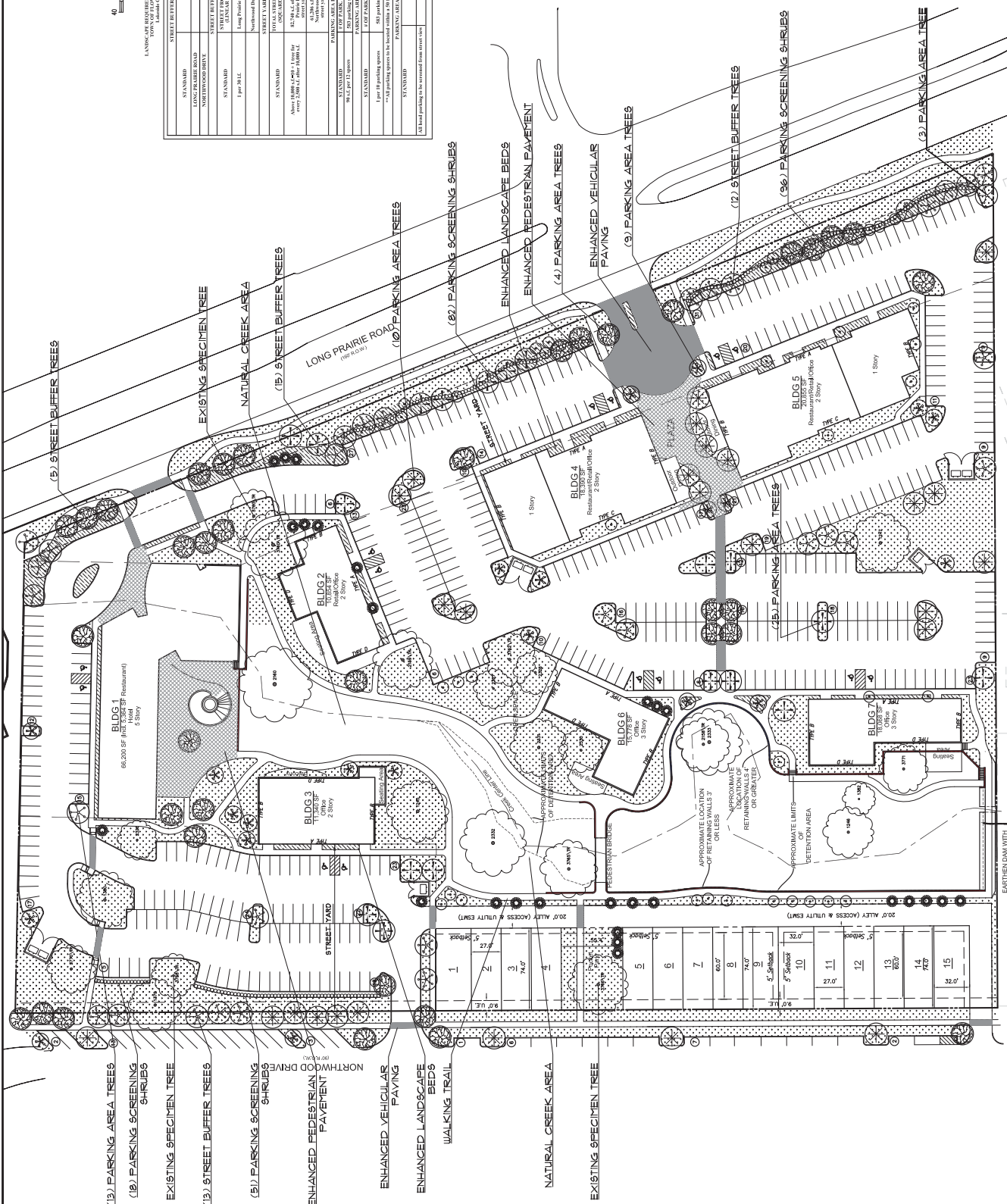
1. RETAINING/RETAINMENTS, TOP OF SLOPE OTHER THAN 1:1, SHALL BE PROTECTED WITH A MATERIAL TO COMPLEMENT THE MATERIALS AND COLORS WITH THIS DEVELOPMENT.
2. RETAINING WALL LOCATIONS AND HEIGHTS SHOWN ON THIS PLAN ARE BASED ON A REVIEW OF THE RECORD PLANS AND FIELD SURVEY DATA. THE EXACT LOCATION, HEIGHT, WALL LOCATIONS AND HEIGHTS WILL BE DETERMINED AT THE SITE PLAN STAGE.
3. ALL GROUND-TO-ROOF HVAC SHALL BE SCREENED WITH LIVE SCREENING OR MASONRY ENCLOSURE. MASONRY ENCLOSURE SHALL BE CLAD IN THE SAME MATERIAL AS THE BUILDING.
4. MAIN BUILDING ENCLOSURE SHALL BE CLAD IN THE SAME MATERIAL AS THE BUILDING.
5. UNMOUNTED MECHANICAL UNITS AND/OR EQUIPMENT SHALL BE SCREENED FROM VIEW.
6. DUMPTER SCREENING WALL SHALL BE CLAD IN A MATERIAL TO MATCH THE MATERIALS ON THE MAIN BUILDING.
7. DUMPTER SCREENING WALL REQUIRES A SEPARATE BUILDING PERMIT. THE SCREENING WALL SHALL BE CONSIDERED A SEPARATE BUILDING. THE PERMIT SUBJECT SITE PLANS, ELEVATIONS ARE NOT APPROVED AS A PART OF THIS REVIEW. THE SCREENING WALL SHALL BE CONSIDERED A SEPARATE BUILDING. A COMPREHENSIVE SITE PACKAGE FOR A SPECIFIC SIGN WAS INCLUDED IN THE APPROVED PD.
8. OUTDOOR SEATING AREAS AND OUTDOOR DINING AREAS MAY BE LOCATED BASED ON FINAL BUILDING FOOTPRINT. ADDITIONAL DINING AREAS MAY BE ACQUIRED AT THE SITE PLAN STAGE. SEATING AREAS MAY BE PATIO OR DECKS.
9. BUILDING FACADES WITH A THROUGH D OR INDICATED ON THE PLAN TO IDENTIFY AREAS OF CONCERN FOR ELEVATION VARIATION. ELEVATION VARIATION SHALL ALSO BE SHOWN ON THE APPROVED CONCEPTUAL ELEVATIONS AND ARE AS FOLLOWS:



See Inset "A" for other Option



DESIGNER/DEVELOPER
TITREAN COMMERCIAL
HERITAGE TRACE PKWY
FORT WORTH, TEXAS
PH. 817/800282

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HOTELS

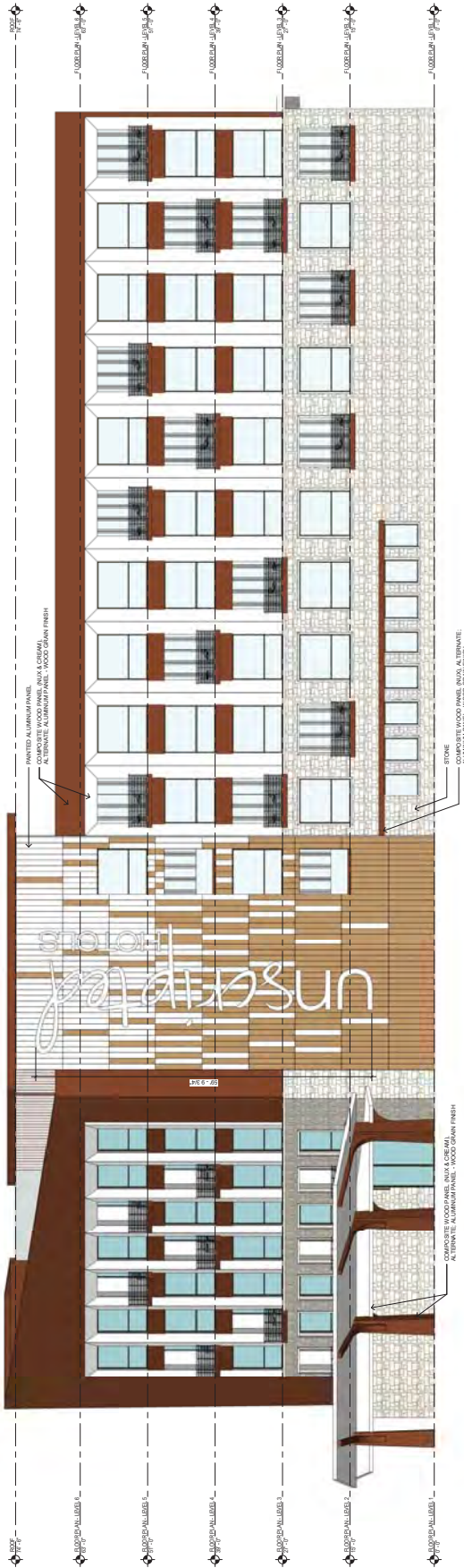


NEWSTREAM
COMMERCIAL



Panel	Area	%
Painted Aluminum Panel	1,250	10%
Composite Wood Panel (Red & Cream)	7,500	60%
Composite Wood Panel (Wood Grain Finish)	3,750	30%
Stone	2,500	20%
Total	15,000	100%

1 BUILDING 1 - ELEVATION - EAST
SCALE: 1/8" = 1'-0"



2 BUILDING 1 - ELEVATION - NORTH
SCALE: 1/8" = 1'-0"

Panel	Area	%
Painted Aluminum Panel	1,250	10%
Composite Wood Panel (Red & Cream)	7,500	60%
Composite Wood Panel (Wood Grain Finish)	3,750	30%
Stone	2,500	20%
Total	15,000	100%

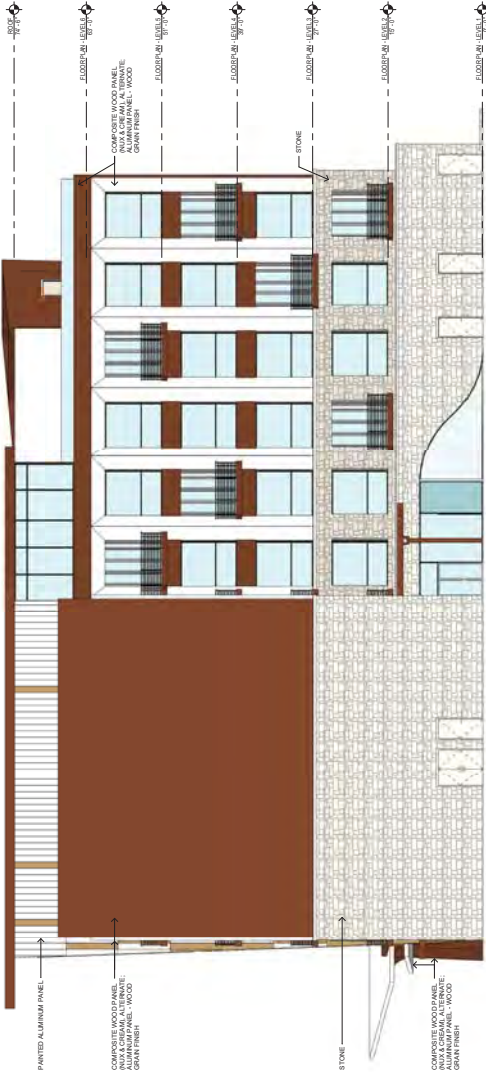
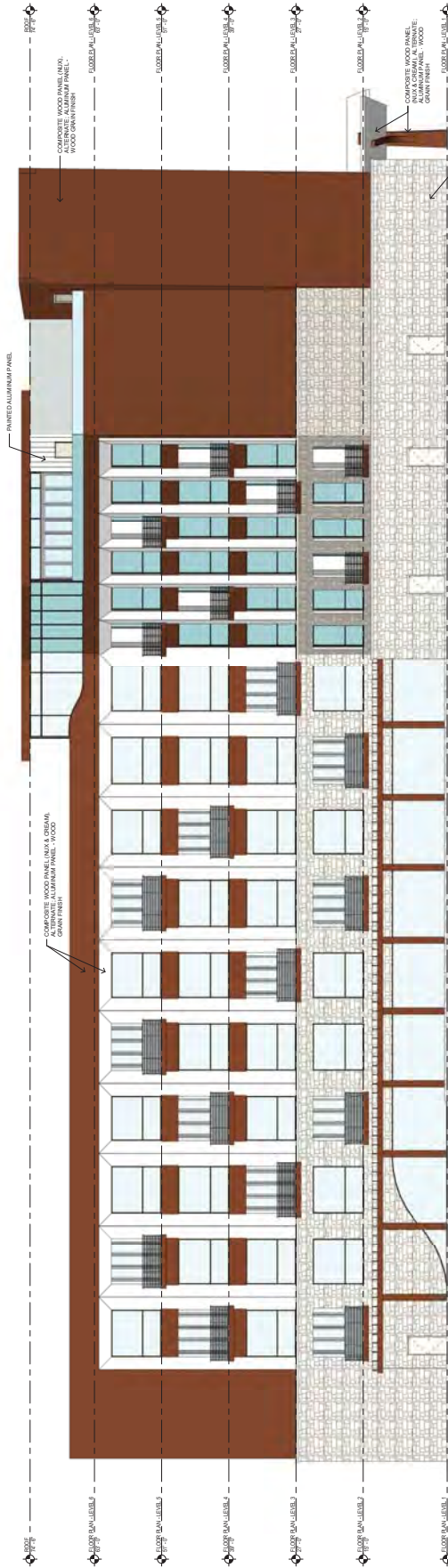


Fig 1 - Model	Area	%
PAINTED ALUMINUM PANEL	1,175	15%
COMPOSITE WOOD PANEL (MIX & CRISAL)	6,644	87%
ALUMINUM PANEL - WOOD GRAIN FINISH	2,213	28%
STONE	2,428	31%
PAINTED ALUMINUM PANEL	1,140	14%
COMPOSITE WOOD PANEL (MIX & CRISAL)	4,428	57%

1 BUILDING 1 - ELEVATION - WEST
SCALE: 1/8" = 1'-0"



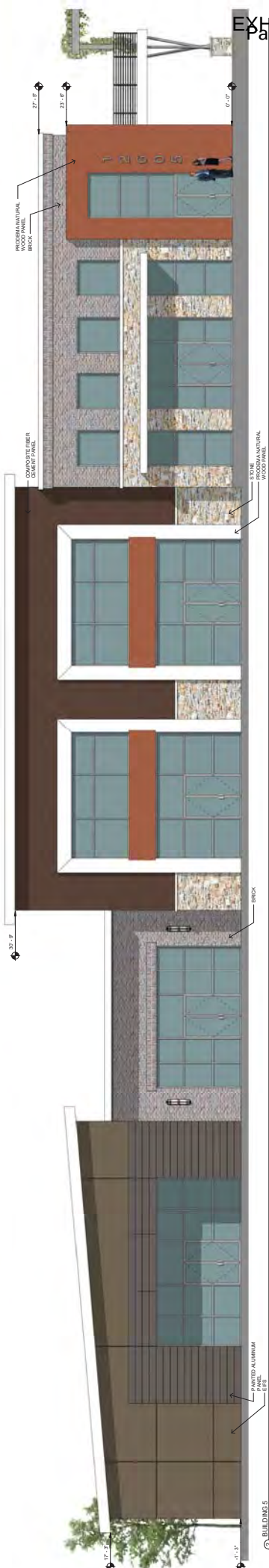
2 BUILDING 1 - ELEVATION - SOUTH
SCALE: 1/8" = 1'-0"

Fig 1 - Model	Area	%
PAINTED ALUMINUM PANEL	1,175	15%
COMPOSITE WOOD PANEL (MIX & CRISAL)	6,644	87%
ALUMINUM PANEL - WOOD GRAIN FINISH	2,213	28%
STONE	2,428	31%
PAINTED ALUMINUM PANEL	1,140	14%
COMPOSITE WOOD PANEL (MIX & CRISAL)	4,428	57%

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HOTELS

NEWSTREAM
COMMERCIAL

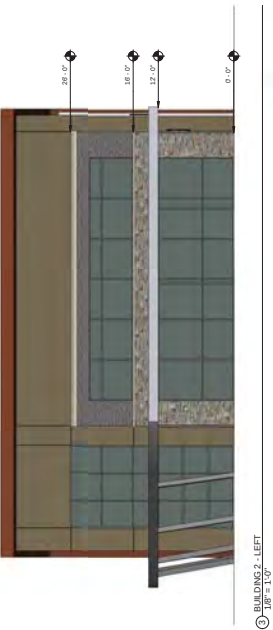
DOCUMENT IS A
NOT BE USED FOR
APPROVAL. PERMANENT
RECORDS SECTION
MARCUS R. TOLAN
TX 60410



BUILDING 4 316' x 100'			
Area	Area	Area	%
Front	316	316	100%
Side	100	100	100%
Roof	316	316	100%
Windows	1,100	1,100	35%
Doors	100	100	3%
Signage	100	100	3%
Other	100	100	3%
Composite Fiber Cement Panel	1,100	1,100	35%
Stone	100	100	3%
Wood/Natural Wood Panel	100	100	3%



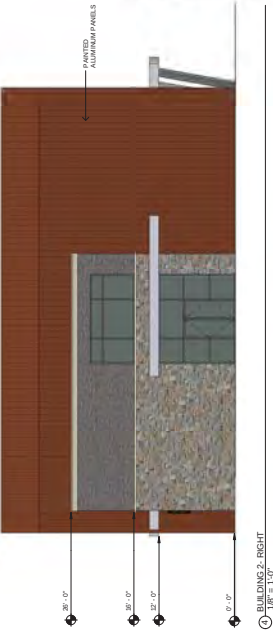
BUILDING 4 316' x 100'			
Area	Area	Area	%
Front	316	316	100%
Side	100	100	100%
Roof	316	316	100%
Windows	1,100	1,100	35%
Doors	100	100	3%
Signage	100	100	3%
Other	100	100	3%
Composite Fiber Cement Panel	1,100	1,100	35%
Stone	100	100	3%
Wood/Natural Wood Panel	100	100	3%



① BUILDING 2 - LEFT
1/8" = 1'-0"

Item #	Quantity	Unit	Material	%
1	1	Sq. Ft.	EIFS	100%
2	1	Sq. Ft.	EIFS	100%
3	1	Sq. Ft.	EIFS	100%
4	1	Sq. Ft.	EIFS	100%
5	1	Sq. Ft.	EIFS	100%
6	1	Sq. Ft.	EIFS	100%
7	1	Sq. Ft.	EIFS	100%
8	1	Sq. Ft.	EIFS	100%
9	1	Sq. Ft.	EIFS	100%
10	1	Sq. Ft.	EIFS	100%
11	1	Sq. Ft.	EIFS	100%
12	1	Sq. Ft.	EIFS	100%
13	1	Sq. Ft.	EIFS	100%
14	1	Sq. Ft.	EIFS	100%
15	1	Sq. Ft.	EIFS	100%
16	1	Sq. Ft.	EIFS	100%
17	1	Sq. Ft.	EIFS	100%
18	1	Sq. Ft.	EIFS	100%
19	1	Sq. Ft.	EIFS	100%
20	1	Sq. Ft.	EIFS	100%
21	1	Sq. Ft.	EIFS	100%
22	1	Sq. Ft.	EIFS	100%
23	1	Sq. Ft.	EIFS	100%
24	1	Sq. Ft.	EIFS	100%
25	1	Sq. Ft.	EIFS	100%
26	1	Sq. Ft.	EIFS	100%
27	1	Sq. Ft.	EIFS	100%
28	1	Sq. Ft.	EIFS	100%
29	1	Sq. Ft.	EIFS	100%
30	1	Sq. Ft.	EIFS	100%
31	1	Sq. Ft.	EIFS	100%
32	1	Sq. Ft.	EIFS	100%
33	1	Sq. Ft.	EIFS	100%
34	1	Sq. Ft.	EIFS	100%
35	1	Sq. Ft.	EIFS	100%
36	1	Sq. Ft.	EIFS	100%
37	1	Sq. Ft.	EIFS	100%
38	1	Sq. Ft.	EIFS	100%
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73	1	Sq. Ft.	EIFS	100%
74	1	Sq. Ft.	EIFS	100%
75	1	Sq. Ft.	EIFS	100%
76	1	Sq. Ft.	EIFS	100%
77	1	Sq. Ft.	EIFS	100%
78	1	Sq. Ft.	EIFS	100%
79	1	Sq. Ft.	EIFS	100%
80	1	Sq. Ft.	EIFS	100%
81	1	Sq. Ft.	EIFS	100%
82	1	Sq. Ft.	EIFS	100%
83	1	Sq. Ft.	EIFS	100%
84	1	Sq. Ft.	EIFS	100%
85	1	Sq. Ft.	EIFS	100%
86	1	Sq. Ft.	EIFS	100%
87	1	Sq. Ft.	EIFS	100%
88	1	Sq. Ft.	EIFS	100%
89	1	Sq. Ft.	EIFS	100%
90	1	Sq. Ft.	EIFS	100%
91	1	Sq. Ft.	EIFS	100%
92	1	Sq. Ft.	EIFS	100%
93	1	Sq. Ft.	EIFS	100%
94	1	Sq. Ft.	EIFS	100%
95	1	Sq. Ft.	EIFS	100%
96	1	Sq. Ft.	EIFS	100%
97	1	Sq. Ft.	EIFS	100%
98	1	Sq. Ft.	EIFS	100%
99	1	Sq. Ft.	EIFS	100%
100	1	Sq. Ft.	EIFS	100%

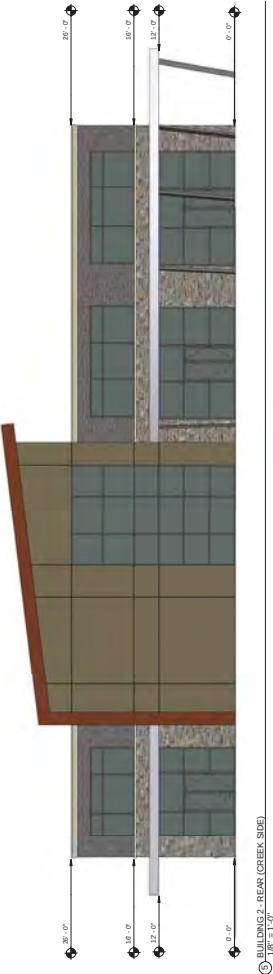
① BUILDING 2 - FRONT
1/8" = 1'-0"



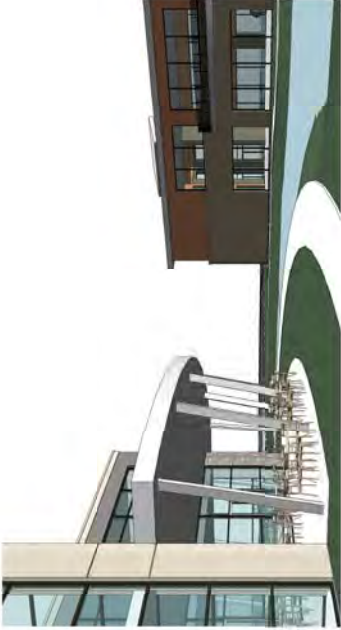
① BUILDING 2 - RIGHT
1/8" = 1'-0"

Item #	Quantity	Unit	Material	%
1	1	Sq. Ft.	EIFS	100%
2	1	Sq. Ft.	EIFS	100%
3	1	Sq. Ft.	EIFS	100%
4	1	Sq. Ft.	EIFS	100%
5	1	Sq. Ft.	EIFS	100%
6	1	Sq. Ft.	EIFS	100%
7	1	Sq. Ft.	EIFS	100%
8	1	Sq. Ft.	EIFS	100%
9	1	Sq. Ft.	EIFS	100%
10	1	Sq. Ft.	EIFS	100%
11	1	Sq. Ft.	EIFS	100%
12	1	Sq. Ft.	EIFS	100%
13	1	Sq. Ft.	EIFS	100%
14	1	Sq. Ft.	EIFS	100%
15	1	Sq. Ft.	EIFS	100%
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97	1	Sq. Ft.	EIFS	100%
98	1	Sq. Ft.	EIFS	100%
99	1	Sq. Ft.	EIFS	100%
100	1	Sq. Ft.	EIFS	100%

① BUILDING 2 - REAR (CREEK SIDE)
1/8" = 1'-0"



② BUILDING 2 - PERSPECTIVE
1/8" = 1'-0"



③ BUILDING 2 - CREEK SIDE
1/8" = 1'-0"



① OFFICE - FRONT (BUILDING 3)
1/8" = 1'-0"

Building 3 - Office	Area	Percent	%
Total Facade SF	11,112	100%	
Impervious (including Doors)	2,112	19%	
Non-Impervious	9,000	81%	
Primary Material Costs	1,112	10%	
Stone	1,112	10%	
Composite Wood	2,224	20%	



② OFFICE - FRONT (BUILDING 3)
1/8" = 1'-0"

Building 3 - Office	Area	Percent	%
Total Facade SF	11,112	100%	
Impervious (including Doors)	2,112	19%	
Non-Impervious	9,000	81%	
Primary Material Costs	1,112	10%	
Stone	1,112	10%	
Composite Wood	2,224	20%	

Building 3 - Office	Area	Percent	%
Total Facade SF	11,112	100%	
Impervious (including Doors)	2,112	19%	
Non-Impervious	9,000	81%	
Primary Material Costs	1,112	10%	
Stone	1,112	10%	
Composite Wood	2,224	20%	

Building 4 - Retail	Area	Percent	%
Total Facade SF	4,112	100%	
Impervious (including Doors)	1,112	27%	
Non-Impervious	3,000	73%	
Primary Material Costs	1,112	27%	
Stone	1,112	27%	
Composite Wood	2,224	54%	

Building 4 - Retail	Area	Percent	%
Total Facade SF	4,112	100%	
Impervious (including Doors)	1,112	27%	
Non-Impervious	3,000	73%	
Primary Material Costs	1,112	27%	
Stone	1,112	27%	
Composite Wood	2,224	54%	

Building 4 - Retail	Area	Percent	%
Total Facade SF	4,112	100%	
Impervious (including Doors)	1,112	27%	
Non-Impervious	3,000	73%	
Primary Material Costs	1,112	27%	
Stone	1,112	27%	
Composite Wood	2,224	54%	

Building 4 - Retail	Area	Percent	%
Total Facade SF	4,112	100%	
Impervious (including Doors)	1,112	27%	
Non-Impervious	3,000	73%	
Primary Material Costs	1,112	27%	
Stone	1,112	27%	
Composite Wood	2,224	54%	

Building 5 - Retail	Area	Percent	%
Total Facade SF	2,112	100%	
Impervious (including Doors)	1,112	53%	
Non-Impervious	1,000	47%	
Primary Material Costs	1,112	53%	
Stone	1,112	53%	
Composite Wood	2,224	106%	

Building 5 - Retail	Area	Percent	%
Total Facade SF	2,112	100%	
Impervious (including Doors)	1,112	53%	
Non-Impervious	1,000	47%	
Primary Material Costs	1,112	53%	
Stone	1,112	53%	
Composite Wood	2,224	106%	

Building 5 - Retail	Area	Percent	%
Total Facade SF	2,112	100%	
Impervious (including Doors)	1,112	53%	
Non-Impervious	1,000	47%	
Primary Material Costs	1,112	53%	
Stone	1,112	53%	
Composite Wood	2,224	106%	

Building 5 - Retail	Area	Percent	%
Total Facade SF	2,112	100%	
Impervious (including Doors)	1,112	53%	
Non-Impervious	1,000	47%	
Primary Material Costs	1,112	53%	
Stone	1,112	53%	
Composite Wood	2,224	106%	

Building 6 - Office	Area	Percent	%
Total Facade SF	1,112	100%	
Impervious (including Doors)	1,112	100%	
Non-Impervious	0	0%	
Primary Material Costs	1,112	100%	
Stone	1,112	100%	
Composite Wood	2,224	200%	

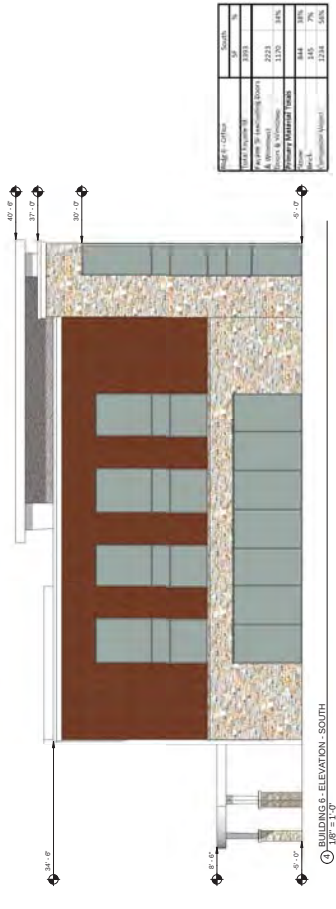
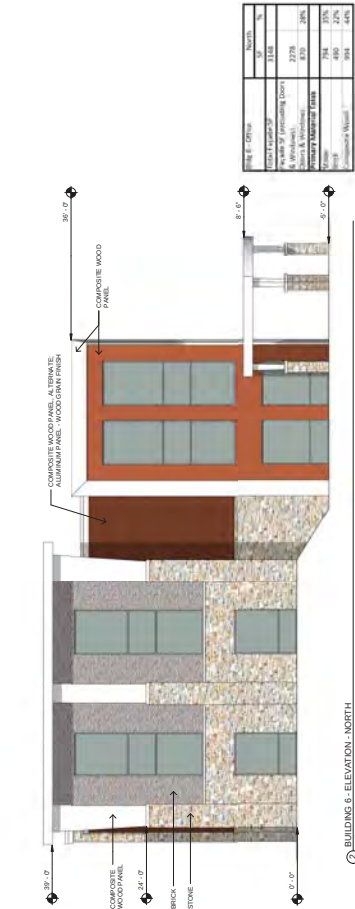
Building 6 - Office	Area	Percent	%
Total Facade SF	1,112	100%	
Impervious (including Doors)	1,112	100%	
Non-Impervious	0	0%	
Primary Material Costs	1,112	100%	
Stone	1,112	100%	
Composite Wood	2,224	200%	

Building 6 - Office	Area	Percent	%
Total Facade SF	1,112	100%	
Impervious (including Doors)	1,112	100%	
Non-Impervious	0	0%	
Primary Material Costs	1,112	100%	
Stone	1,112	100%	
Composite Wood	2,224	200%	

Building 6 - Office	Area	Percent	%
Total Facade SF	1,112	100%	
Impervious (including Doors)	1,112	100%	
Non-Impervious	0	0%	
Primary Material Costs	1,112	100%	
Stone	1,112	100%	
Composite Wood	2,224	200%	



OFFICE LEASE SPACE



① BUILDING 6 - CREEK SIDE
1/8" = 1'-0"

Exhibit F

Attachment 2: Draft Ordinance

COMPOSITE WOOD PANEL

- PRODEMA - PRODEX
- MAINTENANCE FREE NATURAL WOOD PANEL SYSTEM
- CREAM
 - RUSTIK
 - DEEP BROWN
 - NUX



FIBER CEMENT WALL PANELS

- NICHIHA ROUGHSAWN
- ESSPRESSO
 - TOBACCO
 - SMOKE



STONE

- CORONADO STONE PRODUCTS
- FRENCH COUNTRY VILLA SERIES
- CHAMPAGNE
 - BORDEAUX

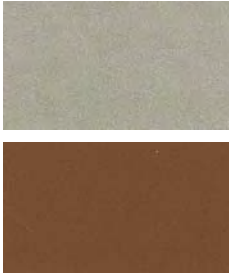


DRI-DESIGN ALUMINUM PANEL SYSTEM

- FABRICATED PAINTED ALUMINUM PANELS
- COPPER WIRE
 - CHAMPAGNE

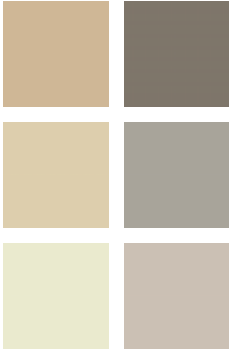
ALTERNATE

- WOOD GRAIN FINISH



STUCCO / EIFS

- PAREX USA
- IVORY
 - MOONSTONE
 - TUMBLEWEED
 - MOUNTAIN
 - SWEET GRASS
 - CAVERN



EXPOSED STRUCTURE

- GALVANIZED STEEL



STOREFRONT SYSTEM

- CLEAR ANODIZED ALUMINUM
- CLEAR GLAZING
- LIGHT GRAY GLAZING

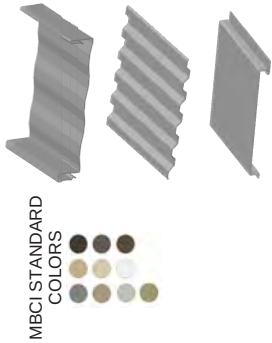


STANDING SEAM ROOF SYSTEM

- MBCI SUPERLOK WITH 2" VERTICAL RIB

SCREENING

- MBCI 7.2 PANEL
- ARTISAN 12" FLAT PANEL





June 30, 2017

Mr. Doug Powell
Executive Director-Development Services
1001 Cross Timbers Road
Suite 3030
Flower Mound, TX 75028

Dear Mr. Powell,

The purpose of this letter is to address the three (3) recommendations from the recent TOFM P&Z commission meeting relating to our Lakeside Crossing development.

- **1. P & Z Recommendation:** To bury the Overhead Power Lines along the Northern border and Western border (along Northwood Drive) of our Lakeside Crossing development: **Newstream Reply:** We have held numerous meeting with Oncor and Coserv and we are committed to burying the overhead power lines on both the Northern and Western property borders.
- **2. P & Z Recommendation:** Provide pedestrian connection from Lakeside Crossing to Lakeside DFW: **Newstream Reply:** We have designed and our consulting group, G&A Consultants, has provided you with our pedestrian connection recommendation between our Lakeside Crossing and the Lakeside DFW developments.
- **3. P & Z Recommendation:** Adjust the color of the Hotel to be lighter/more complementary to Lakeside DFW: **Newstream Reply:** After meeting with and walking the site with the executives of Realty Capital and Lakeside DFW development and our Architectural and Design teams we feel our current color selection best complements both the Lakeside DFW and Lakeside Crossing developments.

Thank you for the opportunity to work with you and your team to bring this exciting Lakeside Crossing development to our Town.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Tarwater", is written over a horizontal line.

Scott Tarwater
Principal
Newstream Commercial

Cc: Mr. Jimmy Stahatos
Mr. Tommy Dalton
Mr. Tim Nystrom
Mrs. Randi Rivera



TOWN COUNCIL AGENDA ITEM NO. 18

REGULAR ITEM

DATE: July 17, 2017

FROM: Andrea Roy, Director of Economic Development

ITEM: **Public Hearing to consider approval of a Chapter 380 Agreement between the Town of Flower Mound and Newstream Hotels & Resorts, LLC, and authorization for the Mayor to execute same on behalf of the town.**

BACKGROUND INFORMATION: This item is for approval of a Chapter 380 Agreement with Newstream Hotels & Resorts, LLC for the development of a 12-acre site on the west side of Long Prairie Road, at the intersection of Lake Forest Blvd. and Long Prairie Road, to be known as Lakeside Crossing. Lakeside Crossing will include: a 5-story, full-service, approximately 60,000 sq. ft. hotel with 125-140 rooms and suites; a full service restaurant providing 24-hour room service; and, approximately 4,000 sq. ft. of meeting space. The hotel will be branded an Unscripted hotel, operated by the Dream Hotel Group; this will be Unscripted's first ground-up construction project.

Also in Lakeside Crossing, Newstream will construct approximately 90,000 sq. ft. of restaurant, retail, and office space, as well as approximately 15 townhomes. For the purposes of the proposed Chapter 380 Agreement, the residential townhomes are not considered part of the agreement and are therefore not eligible to receive incentives. Employment at full development is estimated at approx. 250-300 FTE's. Total build out construction value is estimated at \$55 million.

The proposed Chapter 380 agreement will provide for: a grant equal to 50% of real and business personal property taxes paid over a seven-year period; a grant equal to 50% of the City's 1% sales and use taxes received from purchases in the Town for all start-up/construction purchases, as well as initial furniture, fixtures, and equipment purchases for the Hotel; a waiver of building permit fees; a 50% rebate of impact fees paid; and, a Hotel Occupancy Tax (HOT) rebate of 75% for years 1-5 and 50% rebate for years 6-10.

In exchange for the noted incentives, Newstream Hotels & Resorts, LLC will construct, in accordance with the approved zoning, all noted improvements (hotel, office, restaurant, retail, and related infrastructure, drives, landscaping, etc.), including the building elevations, materials, etc. Building permits for the hotel must be obtained no later than December 31, 2018, and construction must be completed no later than June 31, 2020, with the remaining buildings completed no later than June 31, 2021. The applicant must provide the Town with sufficient evidence indicating a capital investment of at least \$20,000,000 for the hotel. If at any point during the development, construction activity lapses and the applicant fails to obtain approval of required inspections within 180 days of one another, the agreement will be terminated.

The applicant will also be required to submit an annual plan and budget to the Town, outlining the intended use for the hotel occupancy tax grant funds, to ensure expenditures comply with eligible uses of HOT funds for the promotion of tourism and the convention and hotel industry.

Newstream will commence construction on the Hotel first, to be followed almost immediately by the office, townhomes and retail buildings respectively. Current proposed tenants are Prototype IT, Salons of Volterra, and Premier Pigments, with several other leases currently in negotiation. Prototype IT, an existing Flower Mound business providing information technology managed services, will be constructing new office space in Lakeside Crossing to accommodate their growing business. The addition of this office space into our market, which might otherwise not exist, allows the Town to retain Prototype IT.

The companion zoning request (ZPD 17-0001-Lakeside Crossing) is being considered on this same agenda (7-17-17), requesting a rezoning from Agricultural District and a portion of Planning Development District No. 31 (PD-31) to Planned Development District No. 153 (PD-153).

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

Proposed Expenditure:

Account Number(s):

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



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

ATTACHMENTS:

1. Newstream Hotels & Resorts, LLC Chapter 380 Agreement
 - Exhibit A-Survey/Legal Description
 - Exhibit B-Concept Plan
 - Exhibit C-Elevations and Materials
2. Newstream Hotels & Resorts, LLC Cost-Benefit
3. Newstream Hotels & Resorts, LLC Site Map

DRAFT MOTION: Move to approve a Chapter 380 Agreement between the Town of Flower Mound and Newstream Hotels & Resorts, LLC, and authorize the Mayor to execute same on behalf of the Town.

**CHAPTER 380 AGREEMENT
BETWEEN THE TOWN OF FLOWER MOUND
AND
NEWSTREAM HOTELS & RESORTS, LLC**

This Chapter 380 Agreement (“**Agreement**”) is made and entered into by and between the Town of Flower Mound, Texas (“**Town**”), and Newstream Hotels & Resorts, LLC a Texas limited liability company (“**Company**”), for the purposes and considerations stated below. Town and Company may sometimes hereafter be referred to individually as a “**Party**” or collectively as the “**Parties**.”

WITNESSETH:

WHEREAS, Company owns an approximate 12-acre tract located within the Town; and

WHEREAS, Company intends to construct a mixed-use development consisting of hotel, restaurant, retail shopping, and office uses; and

WHEREAS, the Town seeks to incentivize the development; and

WHEREAS, the Town possesses the legal and statutory authority under Chapter 380 of the Texas Local Government Code to create programs to promote local economic development and to stimulate business and commercial activity within the Town; and

WHEREAS, the Town has determined that the incentives set forth in this Agreement will serve the public purpose of promoting local economic development, will diversify the economy of the state and Town, will eliminate unemployment and underemployment in the state and Town, and will enhance business and commercial activity within the Town; and

WHEREAS, the Town has concluded and hereby finds that this Agreement promotes economic development in the Town of Flower Mound, Texas, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution, by assisting in the development and diversification of the economy of the State, by eliminating unemployment or underemployment in the State, and by the development or expansion of commerce within the State.

NOW THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1
DEFINITIONS**

The following words shall have the following meanings when used in this Agreement:

The terms “Agreement”, “Town”, “Company”, “Parties”, and “Party” shall have the meanings provided above.

“Building Final” means the approval of the final inspection issued by the Town certifying a building’s compliance with applicable building codes and other laws, and indicating it to be in condition suitable for further construction of interior finish out for a specific tenant.

“Capital Investment” means the actual costs attributable to the construction of the Hotel and related infrastructure, including the actual construction costs of all buildings, site preparation, structures, infrastructure, utilities, landscaping and on-site improvements, including labor and materials, engineering costs, surveying costs, fees of consultants, permit and inspection fees. It does not include insurance costs, marketing costs or any interest paid to finance the cost of Capital Investment.

“Certificate of Occupancy” means the document issued by the Town certifying a building’s compliance with applicable building codes and other laws, and indicating it to be in a condition suitable for occupation.

“Cessation in Construction” means the amount of time between two approved Town required inspections has lapsed 180 days or more.

“CO Date” means the date the Hotel receives a Certificate of Occupancy.

“Commencement of Construction” means that: (i) the construction plans for the Hotel has been prepared and all approvals thereof required by applicable governmental authorities have been obtained; (ii) all necessary permits permitting construction of the Hotel have been issued by all applicable governmental authorities; and (iii) mobilization and grading or excavation of the Property has begun.

“Company Records” has the meaning as described in Section 3.7.

“Completion of Construction” means that the Town has issued a Certificate of Occupancy.

“Development” means the development as shown on the attached Exhibit “B”. The Development does not include any residential lots or structures.

“Effective Date” shall mean the last date this Agreement is executed by the parties.

“Expiration Date” shall mean the date of payment of the last of the Grants, unless sooner terminated as provided herein.

“Event of Bankruptcy or Insolvency” means the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any part of such Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such Party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“FFE” means movable furniture, fixtures, or other equipment that have no permanent connection to the structure of a building, and which are purchased after the Effective Date and prior to the Opening Date of Hotel.

“Force Majeure” means any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the Party), fires, explosions, floods, strikes, slowdowns or work stoppages.

“Grant Year Taxes” means the ad valorem taxes assessed by Town against the Property and collected by Town for the applicable Tax Year which are attributable to the construction of the Improvements. The term excludes taxes which are attributable to the land value of the Property and revenue attributable to minerals, including, but not limited to oil and gas.

“Grants” shall collectively mean the TPP Grants, Real Property Grants, Sales Tax Grants, Impact Fee Grants, and HOT Grants.

“Hotel” means an approximately 60,000 square feet, five story full-service lifestyle hotel consisting of 125-140 rooms and suites, with full service restaurant, providing 24-hour room service, and approximately 4,000 square feet of meeting space to be built on the Property by Company.

“HOT Grants” means the grants described in Section 4.3.

“HOT Revenue” means the amounts collected by the Town as a result of the hotel occupancy taxes imposed by the Town pursuant to Chapter 351 of the Texas Tax Code, as amended.

“Impact Fee Grants” means the grants from Town in an amount equal to 50% of the Town impact fees (water, wastewater, and road) paid by Company and received by Town, which are attributable to the construction of the buildings within the Development.

“Impositions” means all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Company or any property or any business owned by the Company within the Town.

“Improvements” means the Hotel, office, retail, and restaurant buildings identified as Buildings 1-7 on Exhibit B, and the infrastructure, driveways, parking, landscaping and other improvements reasonably required to be constructed on the Property. Improvements does not include any residential buildings.

“Opening Date” means the first day a person pays for the use or possession of or for the right to the use or possession of a room or space at the Hotel.

“Payment Request” means a written request from Company to Town for payment of the TPP Grants, Real Property Grants, Sales Tax Grants, Impact Fee Grant, and HOT Grants, as the case may be, which request shall be accompanied by evidence reasonably satisfactory to Town to establish that Company is in compliance with this Agreement. The Payment Request must be submitted in accordance with the notice provisions of this Agreement.

“Property” means the approximate 12-acre tract more particularly described on the attached Exhibit A. The term does not include (i) the areas designated as residential on the site plan attached as Exhibit B; or (ii) any real property within the Development on which residential structures have been built.

“Qualified Expenditure” means an expenditure which (i) promotes tourism and the convention and hotel industry, and (ii) is authorized by Section 351.101 of the Texas Tax Code, as amended, and Section 62.107 of the Town’s code of ordinances, as amended.

“Real Property Grants” shall mean seven (7) consecutive annual economic development grants to be provided by Town to Company, each in an amount equal to fifty percent (50%) of the Grant Year Taxes.

“Related Agreement” means any agreement (other than this Agreement) by and between Town and Company.

“Sales Tax Grants” means the grants as described in Section 4.4.

“Sales Tax Report” has the meaning as set forth in Section 3.6.

“Sales and Use Tax” means the Town’s municipal sales and use tax, currently at the rate of one percent (1.0%) pursuant to Chapter 321 of the Texas Tax Code, as amended; provided, however, should the electors of the City reallocate the Sales and Use Tax or should the Texas Legislature amend the applicable tax code provision to increase or decrease the amount of allowed municipal sales and use tax, then in the event of a decrease, Sales and Use Tax shall mean the actual amount of sales and use tax received by the Town, and in the event of an increase, the Sales and Use Tax shall mean one percent (1.0%).

“Tangible Personal Property” shall have the same meaning assigned by Texas Tax Code, Section 1.04, and shall mean Tangible Personal Property owned by Company and added to the Property after the Effective Date of this Agreement. Tangible Personal Property does not include inventory, supplies, Freeport Goods or Goods in Transit.

“Tax Year” shall have the meaning assigned to such term in Section 1.04 of the Texas Tax Code (i.e., the calendar year).

“Taxable Value” shall mean the appraised value as certified by the Denton County Appraisal District, or its successor, for a given year.

“Term” means the term as defined in Section 2.2.

“TPP Grants” shall mean seven (7) consecutive annual economic development grants to be provided by Town to Company, each in an amount equal to fifty percent (50%) of the TPP Tax. Each annual individual grant shall be referred to hereafter as a “TPP Grant.”

“TPP Tax” shall mean the ad valorem taxes assessed by Town against the Tangible Personal Property located at the Property and collected by Town for the applicable Tax Year.

ARTICLE 2 PROGRAM AND TERM

2.1 Program. A program authorized under Chapter 380 of the Texas Local Government Code is hereby established to bring the Development to the Town. The terms of this Agreement shall implement the Program.

2.2 Term. The Term of this Agreement will commence on the Effective Date and will continue until the Expiration Date, unless sooner terminated as provided herein.

ARTICLE 3 COMPANY OBLIGATIONS

The Parties acknowledge and agree that Company is not obligated to build the Development or the Improvements; provided, however, that Company must satisfy the obligations set forth in this Article 3 and in this Agreement in order to receive the Grants.

3.1 Construction of Improvements.

(a) Company must (i) receive all necessary permits permitting construction of the Hotel from all applicable governmental authorities no later than December 31, 2018; and (ii) subject to events of Force Majeure, achieve Completion of Construction of Hotel on or before June 31, 2020.

(b) Subject to events of Force Majeure, Company must achieve Completion of Construction of remaining Improvements, identified as Buildings 2-7 on the site plan attached as Exhibit B on or before June 31, 2021.

3.2 Compliance with Laws. Company agrees to construct the Development and the Improvements in accordance with the site plan attached hereto as Exhibit B, the elevations and materials shown on the attached Exhibit C, and all applicable federal, state and local laws, codes, and regulations (or valid waiver thereof).

3.3 Continuous Operation. Company agrees that from the CO Date and throughout the Term of this Agreement, Company will continuously use and operate the Hotel (subject, however, to any temporary cessations due to causes or events of Force Majeure or due to Hotel remodeling, renovation or casualty/condemnation repairs and replacements), and the Hotel shall not be used

for any purpose other than as a hotel and related amenities, open to the public and serving visitors, the adjacent business community, and the citizens of the Town.

3.4 Impositions. Company shall make timely payment of all Impositions during the Term of this Agreement.

3.5 Good Standing. Company shall not have an uncured breach or default of this Agreement or a Related Agreement.

3.6 Sales Tax Reports. Company will provide Town, on a monthly basis, a copy of the financial report it submits to the State Comptroller relating to the remission of Sales and Use Taxes collected in the Town as a result of the operation of the Development ("**Sales Tax Report**"). Additionally, Company hereby grants consent for the State Comptroller's office to release the monthly reported figures along with any State audit adjustments to the Town. The Parties designate this Agreement as a revenue sharing agreement entitling the Town to request sales tax information from the Comptroller, pursuant to section 321.3022, Texas Tax Code, as amended. Company further agrees to provide Town any other reasonable documentation in a form acceptable to Town that establishes and proves amounts necessary for Town to make the Sales Tax Grants as provided in this Agreement.

3.7 Audit. Company shall grant access to Town, or such other persons or entities designated by Town for the purposes of inspecting, at Company's office, during Company's normal business hours, paper and electronic records, books, documents, tangible accounting procedures, tangible practices or any other items related to Company's performance of this Agreement ("**Company Records**"), provided that Town has provided five (5) business days prior notice, and Town or its representatives shall not unduly disrupt Company's operations. The foregoing notwithstanding, all records, books, documents, accounting procedures, practices or any other items relevant to the performance of this Agreement shall be subject to examination or audit by Town, or such other persons or entities designated by Town in accordance with state and federal laws, regulations or directives applicable to Company's performance of this Agreement. Town agrees, to the extent allowed by law, to maintain the confidentiality of the Company Records.

ARTICLE 4 TOWN OBLIGATIONS

Subject to Company's continued satisfaction of its obligations as required by this Agreement, and subject to the provisions of this section, Town will be obligated to do the following:

4.1 Real Property Grants. For a period of seven (7) years commencing on January 1 following the CO Date, the Town will provide an annual Real Property Grant to Company. Each annual Real Property Grant is due and payable by the Town forty-five (45) days after the Town receives the latter of (i) payment of the Grant Year Taxes; and (ii) a Payment Request.

4.2 TPP Grants. For a term of seven (7) consecutive years commencing on January 1 following the CO Date, the Town will provide an annual TPP Grant to Company. Each annual TPP Grant is

due and payable by the Town forty-five (45) days after the Town receives the latter of: (i) payment of the TPP Tax; and (ii) a Payment Request.

4.3 HOT Grants. The Town agrees to reimburse Company for Company's Qualified Expenditures as follows:

(a) Years 1-5. The Town agrees to pay Company an amount equal to seventy-five percent (75%) of the HOT Revenue collected and remitted to the Town from the Hotel each calendar quarter during a period beginning on the Opening Date and continuing thereafter for five (5) years.

(b) Years 6-10. The Town agrees to pay Company an amount equal to fifty percent (50%) of the HOT Revenue collected and remitted to the Town from the Hotel each calendar quarter beginning on the sixth year after the Opening Date and continuing thereafter for four (4) years.

(c) Annual Plan and Budget.

(i) Plan and Grant Year. On an annual basis, the Company shall prepare and submit to the Town a proposed annual plan and budget ("**Annual Plan and Budget**") setting forth and itemizing Company's intended use of HOT Grants for the upcoming "**HOT Grant Year**", which for the first year will be from the Opening Date until December 31, and every HOT Grant Year thereafter will be a one-year period from January 1 through December 31. The proposed Annual Plan and Budget must be submitted to the Town Manager no later than 30 days prior to commencement of the upcoming HOT Grant Year. Failure to submit the Annual Plan and Budget will constitute an event of default, and may, at the sole discretion of the Town, and notwithstanding Section 5 of this Agreement, result in the Company's forfeiture of any HOT Grants for the upcoming HOT Grant Year.

(ii) Contents of Plan. The proposed Annual Plan and Budget must include, at a minimum, a line item budget detailing the use of the HOT Grant for the upcoming HOT Grant Year, the amount of the expenditure for each item and a description of the item indicating how it complies with the requirements of 351.101 of the Texas Tax Code, as amended.

(iii) Approval and Amendments. The Town Manager must, after finding that all of the proposed expenditures are Qualified Expenditures, approve the Annual Plan and Budget before Company receives any HOT Grant for the upcoming HOT Grant Year. The Company may, at any time, submit an amendment to the Annual Plan and Budget; provided, however, that any amendment does not become effective until it has been approved by the Town Manager.

(d) Time of Payments. Payments to Company will be made on a quarterly basis on or before forty-five (45) days following the receipt by the Town of the latter of: (i) the HOT Revenue from the Hotel for the applicable quarter; and (ii) a Payment Request with sufficient documentation from Company that it has made Qualified Expenditures in accordance with the Annual Plan and Budget in a form acceptable to the Town Manager or his designee. The Town is not obligated to pay Company for an expenditure that was not a Qualified Expenditure already approved in the Annual Plan and Budget. Additionally, as a condition to receiving the first HOT Grant payment, Company must provide sufficient evidence to the Town Manager, in a manner suitable to the Town Manager in his or her sole discretion, that Company made a Capital Investment in amount of at least \$20,000,000.

(e) Limitations on Funding. In no event will any quarterly payment under this section 4.3 exceed 75% of the HOT Revenue collected by the Hotel and remitted to Town for any given quarter in Years 1-5 as described in 4.3(a), nor will any quarterly payment under this section exceed 50% of the HOT Revenue collected by the Hotel and remitted to Town for any given quarter in Years 6-10 as described in 4.3(b). Town is obligated to make the payments under this section only from the HOT Revenue collected from the Hotel, and Town is not obligated to make such payments from any other funds or revenues of Town. Company will have no right to any unexpended HOT Grant funds in any given HOT Tax Year, and such funds will remain with the Town.

(f) Improper Expenditures. Should any expenditure of HOT Grants by Company be for a use that is found to be improper or illegal, the Town shall have no liability in connection thereof, and Company agrees to indemnify and hold harmless the Town for such amounts. Company further agrees that no later than 30 days after receipt of written notification from the Town, it will reimburse the Town in an amount equal to the improper expenditure, plus interest at the rate of the prime rate per annum.

4.4 Sales Tax Grants.

(a) Sales at the Hotel. Town agrees to pay Company an amount equal to fifty percent (50%) of the Sales and Use Tax received by Town and attributed solely to the sale of taxable items within the Hotel during a period beginning on the first eligible sales tax purchase at the Hotel and continuing thereafter for seven (7) years.

(b) FFE for Hotel. The Town agrees to pay Company an amount equal to fifty percent (50%) of the Sales and Use Tax received by the Town attributable to Company's purchase of FFE to furnish and equip the Hotel prior to the Opening Date.

(c) Construction Purchases. The Town agrees that it shall pay to Company an amount equal to fifty percent (50%) of the Sales and Use Tax received by the Town attributable to the purchase of construction materials by Company or contractors retained by Company in connection with the construction of the Hotel and the commercial buildings identified as Buildings 2-7 on Exhibit B. The grants under this section 4.4(c) are limited to purchases made during a period beginning on the Effective Date and continuing thereafter for five (5) years.

(d) Timing of Payments. The Sales Tax Grants will be paid on a quarterly basis. The Town covenants and agrees to make quarterly payments to Company within forty-five (45) days following its receipt of the latter of: (i) the Sales Tax Reports each month of the applicable calendar quarter; (ii) the reports or other information establishing the amounts of received Sales and Use Tax from the Comptroller's office for each month in the applicable calendar quarter; (iii) the Town's receipt of the Sales and Use Tax from the Comptroller's office for each month of the applicable calendar quarter; and (iv) a Payment Request.

(e) Erroneously Paid Sales Tax. In the event the Comptroller determines, for any reason, that any Sales and Use Taxes were erroneously paid to Town from the sales provided for herein and Town is required to rebate or repay any portion of such taxes, the amount of such rebate or repayment shall be deducted from the calculation of the Sales and Use Taxes received by Town under this Agreement, and in the event the calculation of Sales and Use Taxes paid for a Sales Tax Grant shall reflect an overpayment by Town to Company, Company agrees to reimburse Town the amount of such overpayment. Notification of any such required adjustment will be provided to Company at the earliest practical date. This section will survive termination of this Agreement.

4.5 Impact Fee Grants. The Town agrees to pay Company an Impact Fee Grant for each building within the Development within 45 days after: (i) the building receives a Certificate of Occupancy or Building Final; and (ii) the Town's receipt of a Payment Request.

4.6 Permit Fee Waiver. The Town agrees to waive the following permit and related fees for initial construction of the Development: building permit fees, electrical permit fees, mechanical permit fees, plumbing permit fees, plan review fees and lighting plan review fees. Any fees not referenced herein as being waived are specifically deemed not to be waived by the Town.

ARTICLE 5 TERMINATION; REPAYMENT; OFFSET

5.1 Termination. This Agreement terminates on the Expiration Date, and may, prior to the Expiration Date, be terminated upon any one or more of the following:

- (a) by mutual written agreement of the parties;
- (b) upon written notice by either Party, if the other Party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof;
- (c) upon written notice by Town, if any Impositions owed to Town or the State of Texas by Company shall have become delinquent (provided, however, Company retains the right to timely and properly protest and contest any such taxes or Impositions);

- (d) upon written notice by Town, if Company suffers an event of Bankruptcy or Insolvency;
- (e) upon written notice by Town, if after Commencement of Construction, a Cessation in Construction of any element or component of the Improvements occurs; or
- (f) upon written notice by either Party if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

5.2 Repayment. In the event this Agreement is terminated by Town pursuant to Section 5.1 (b), (c), (d), or (e), Company shall immediately refund to Town an amount equal to the amount of all of the Grants that have been provided by Town to Company prior to the date of such termination, plus interest at the rate of interest periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by Town) as its prime or base commercial lending rate, from the Effective Date until paid. The repayment obligation of Company set forth in this Section 5.2 hereof shall survive termination of this Agreement.

5.3 Offsets. Town may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to Town from Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement or otherwise, and regardless of whether or not the debt due Town has been reduced to judgment by a court.

ARTICLE 6 MISCELLANEOUS

6.1 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and assigns of the Parties. This Agreement may not be assigned by Company without the prior written consent of the Town's Town Manager.

6.2 Limitation on Liability. It is understood and agreed between the Parties that Company, in satisfying the conditions of this Agreement, is deemed to have acted independently, and Town assumes no responsibilities or liabilities to third parties in connection with these actions. Company agrees to indemnify and hold harmless Town from all such claims, suits, and causes of actions, liabilities and expenses, including reasonable attorney's fees, of any nature whatsoever by a third party arising out of Company's performance of this Agreement.

6.3 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.

6.4 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.5 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter if sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or on the day actually received if sent by courier or otherwise hand delivered.

If intended for Town, to: Town of Flower Mound, Texas
Attn: Economic Development Director
2121 Cross Timbers Rd.
Flower Mound, TX 75028

With a copy to: Flower Mound Town Attorney
Taylor, Olson, Adkins, Sralla & Elam, LLP
6000 Western Place, Suite 200
Fort Worth, Texas 76107

If intended for Company, to: Newstream Commercial
Attn: CFO
311 South Oak Street, Suite 200
Roanoke, TX 76262
RE: Newstream Hotels & Resorts, LLC

6.6 Entire Agreement. This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the Parties that in any manner relates to the subject matter of this Agreement, except as provided in any exhibits attached hereto.

6.7 Governing Law. The Agreement shall be governed by the laws of the State of Texas, and exclusive venue for any action concerning this Agreement shall be in a State District Court of Denton County, Texas.

6.8 Amendment. This Agreement may only be amended by the mutual written agreement of the Parties.

6.9 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.10 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.11 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

6.12 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.13 Limitation of Damages. The Parties agree that no Party will be liable to the other under this Agreement for consequential damages (including lost profits) or exemplary damages.

6.14 Legislative or Judicial Changes. In the event of any legislative or judicial interpretation that limits or restricts Town's ability to pay the Grants or otherwise extracts or imposes any penalty or other restriction upon the payment of same, such payments will cease as of the effective date of such limitation or restriction and be of no further force, effect, or consequence in which event Town shall be under no further obligation to Company as of the effective date of such limitation or restriction.

6.15 Undocumented Workers. Company certifies that Company, and its branches, divisions and departments, do not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Company or any of its branches, divisions or departments is convicted of a violation under 8 U.S.C. § 1324a(f), Company shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of six percent (6%), not later than the 120th day after the date Town notifies Company of the violation.

6.16 Governmental Function. The Parties agree that this Agreement serves the public purpose of assisting in the development and diversification of the economy of the Town and the State of Texas, eliminating unemployment or underemployment of the State, and developing and expanding commerce in the State, and is for all purposes a governmental function of Town for the benefit of the citizens of Town and the State of Texas. The Parties further agree that this Agreement is entered into for the purpose of carrying out governmental functions which are enjoined on the Town by law and given to it by the State of Texas as part of the State's sovereignty.

[Signatures on following page]

TOWN OF FLOWER MOUND, TEXAS

Tom Hayden, Mayor

Date: _____

NEWSTREAM HOTEL & RESORTS, LLC
a Texas limited liability company

By: _____

Name: _____

Title: _____

Date: _____

LEGEND

- 1. BUILDING FOOTPRINT
- 2. PARKING SPACE
- 3. LANDSCAPING
- 4. DRIVEWAY
- 5. WALKWAY
- 6. FENCE
- 7. SIGN
- 8. LIGHT FIXTURE
- 9. UTILITY
- 10. TREE
- 11. SHRUB
- 12. GRASS
- 13. PAVEMENT
- 14. CURB
- 15. GROUND COVER
- 16. FURNITURE
- 17. EROSION CONTROL
- 18. FLOOD CONTROL
- 19. FLOOD WALL
- 20. FLOOD GATE
- 21. FLOOD VALVE
- 22. FLOOD PLATE
- 23. FLOOD BARRIER
- 24. FLOOD PROTECTION
- 25. FLOOD MITIGATION
- 26. FLOOD RESISTANT
- 27. FLOOD TOLERANT
- 28. FLOOD RESILIENT
- 29. FLOOD ADAPTIVE
- 30. FLOOD RESILIENT
- 31. FLOOD TOLERANT
- 32. FLOOD RESILIENT
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- 46. FLOOD RESILIENT
- 47. FLOOD TOLERANT
- 48. FLOOD RESILIENT
- 49. FLOOD TOLERANT
- 50. FLOOD RESILIENT

Item	Quantity	Unit	Total
1. BUILDING FOOTPRINT	1	Sq. Ft.	120,000
2. PARKING SPACE	120	Spaces	120
3. LANDSCAPING	100	Sq. Ft.	100,000
4. DRIVEWAY	100	Sq. Ft.	100,000
5. WALKWAY	100	Sq. Ft.	100,000
6. FENCE	100	Sq. Ft.	100,000
7. SIGN	100	Sq. Ft.	100,000
8. LIGHT FIXTURE	100	Sq. Ft.	100,000
9. UTILITY	100	Sq. Ft.	100,000
10. TREE	100	Sq. Ft.	100,000
11. SHRUB	100	Sq. Ft.	100,000
12. GRASS	100	Sq. Ft.	100,000
13. PAVEMENT	100	Sq. Ft.	100,000
14. CURB	100	Sq. Ft.	100,000
15. GROUND COVER	100	Sq. Ft.	100,000
16. FURNITURE	100	Sq. Ft.	100,000
17. EROSION CONTROL	100	Sq. Ft.	100,000
18. FLOOD CONTROL	100	Sq. Ft.	100,000
19. FLOOD WALL	100	Sq. Ft.	100,000
20. FLOOD GATE	100	Sq. Ft.	100,000
21. FLOOD VALVE	100	Sq. Ft.	100,000
22. FLOOD PLATE	100	Sq. Ft.	100,000
23. FLOOD BARRIER	100	Sq. Ft.	100,000
24. FLOOD PROTECTION	100	Sq. Ft.	100,000
25. FLOOD MITIGATION	100	Sq. Ft.	100,000
26. FLOOD RESISTANT	100	Sq. Ft.	100,000
27. FLOOD TOLERANT	100	Sq. Ft.	100,000
28. FLOOD RESILIENT	100	Sq. Ft.	100,000
29. FLOOD ADAPTIVE	100	Sq. Ft.	100,000
30. FLOOD RESILIENT	100	Sq. Ft.	100,000
31. FLOOD TOLERANT	100	Sq. Ft.	100,000
32. FLOOD RESILIENT	100	Sq. Ft.	100,000
33. FLOOD TOLERANT	100	Sq. Ft.	100,000
34. FLOOD RESILIENT	100	Sq. Ft.	100,000
35. FLOOD TOLERANT	100	Sq. Ft.	100,000
36. FLOOD RESILIENT	100	Sq. Ft.	100,000
37. FLOOD TOLERANT	100	Sq. Ft.	100,000
38. FLOOD RESILIENT	100	Sq. Ft.	100,000
39. FLOOD TOLERANT	100	Sq. Ft.	100,000
40. FLOOD RESILIENT	100	Sq. Ft.	100,000
41. FLOOD TOLERANT	100	Sq. Ft.	100,000
42. FLOOD RESILIENT	100	Sq. Ft.	100,000
43. FLOOD TOLERANT	100	Sq. Ft.	100,000
44. FLOOD RESILIENT	100	Sq. Ft.	100,000
45. FLOOD TOLERANT	100	Sq. Ft.	100,000
46. FLOOD RESILIENT	100	Sq. Ft.	100,000
47. FLOOD TOLERANT	100	Sq. Ft.	100,000
48. FLOOD RESILIENT	100	Sq. Ft.	100,000
49. FLOOD TOLERANT	100	Sq. Ft.	100,000
50. FLOOD RESILIENT	100	Sq. Ft.	100,000

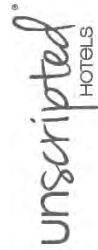
EXHIBIT “C”

Building Elevations and Materials

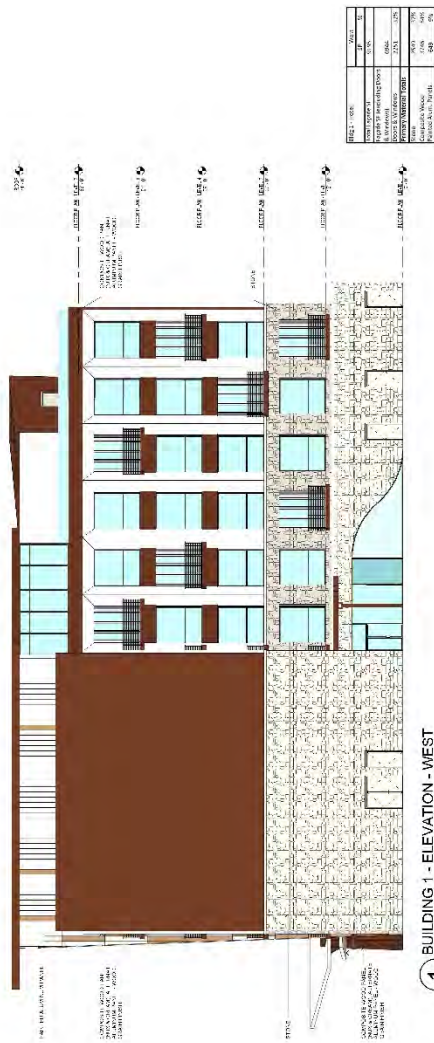


DOCUMENTS ARE
INCOMPLETE AND MAY
NOT BE USED FOR
REGULATORY
APPROVAL. PLEASE
CONSULT THE
MARCUS & TRIMMER
TX-241-6

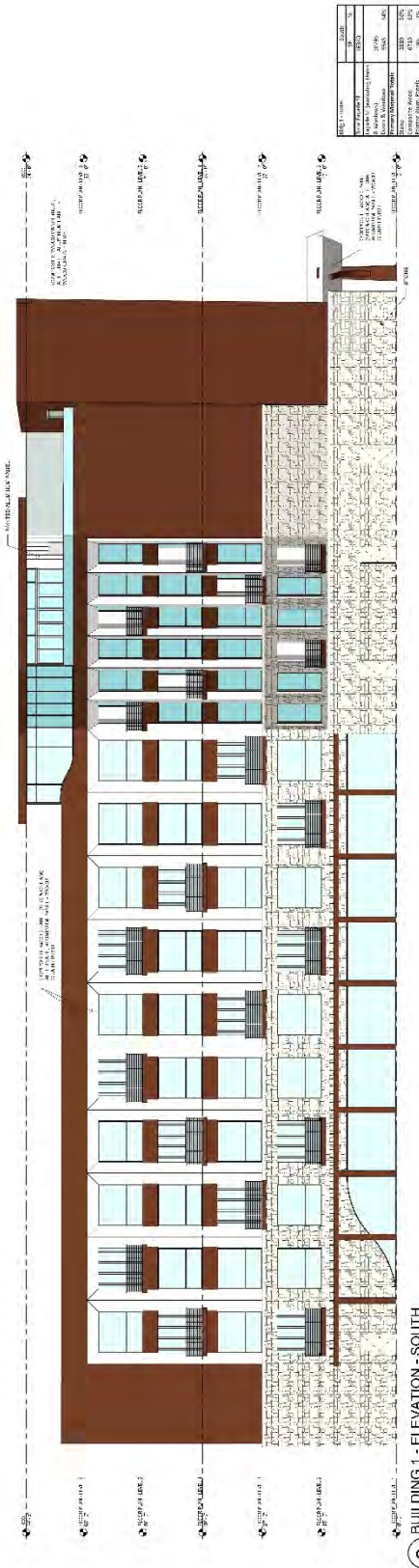
unscripted[®] HOTELS



Attachment B(1) Zoning Planned Development Package



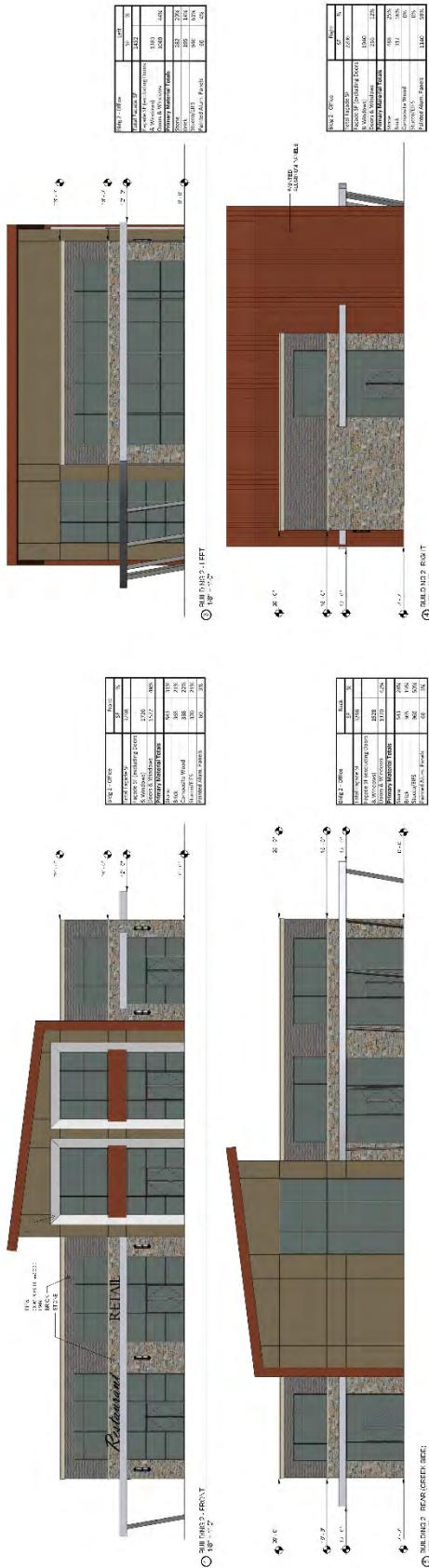
1 BUILDING 1 - ELEVATION - WEST
6/24/81 10:25:17



2 BUILDING 1 - ELEVATION - SOUTH
SCALE: 1/4" = 1'-0"



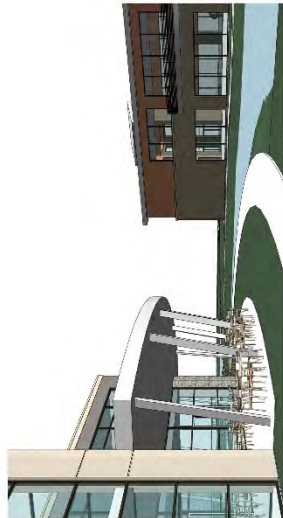
Attachment B(1): Zoning Planned Development Package



NOTE:
SIGNS REQUIRE A SEPARATE BUILDING PERMIT. ANY SIGNS EXCEPT THE HOTEL SIGNAGE DERIVED ON THE SUBJECT SITE PLANS/ELEVATIONS ARE NOT APPROVED AS A PART OF THIS REVIEW AND MUST COMPLY WITH ALL APPLICABLE TOWN REGULATIONS.



VIEW 2: PERSPECTIVE
100% OFFER 10/21/21

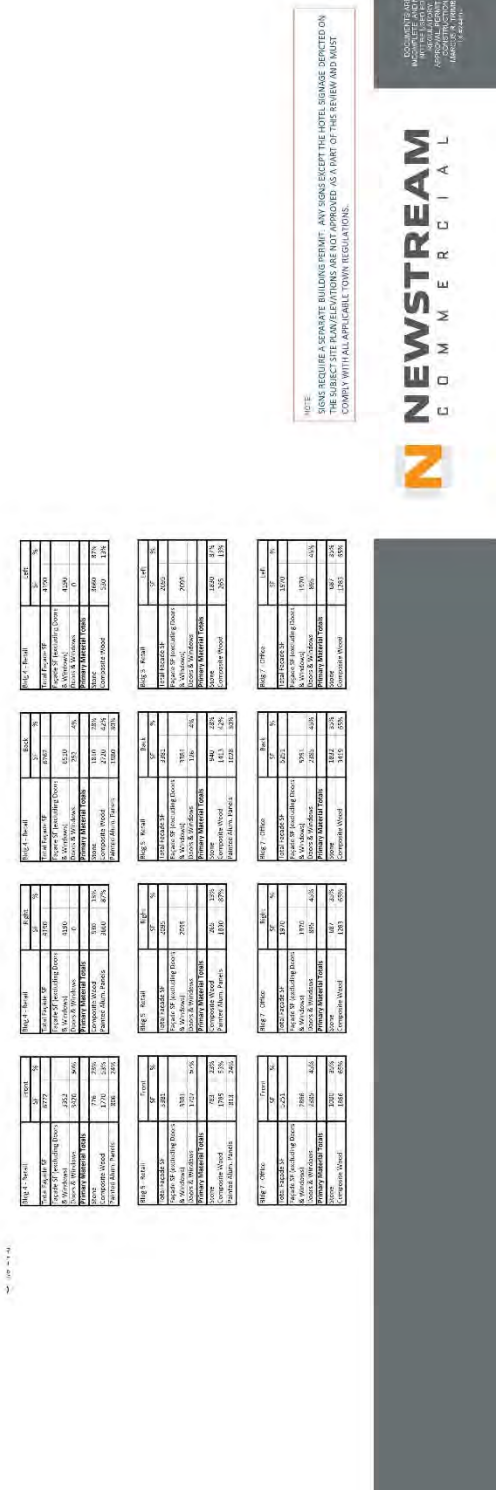
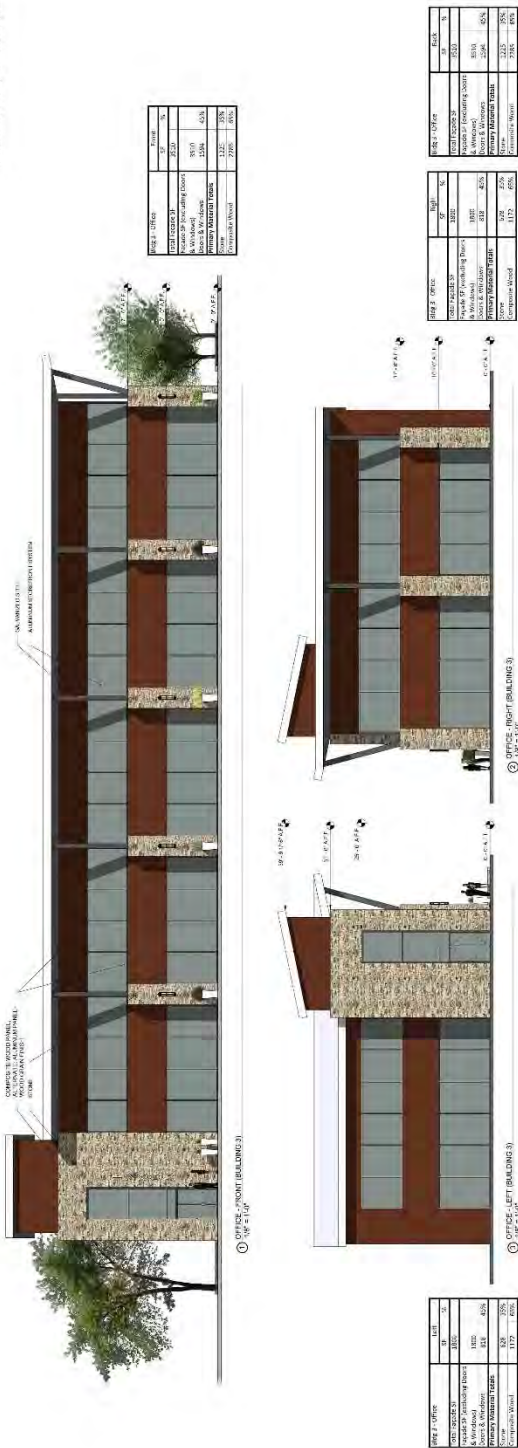


VIEW 3: PERSPECTIVE
100% OFFER 10/21/21

NEWSTREAM
COMMERCIAL

FOR ANY QUESTIONS
REGARDING THIS PROJECT,
CONTACT THE ARCHITECT
AT 800.555.5555 OR
WWW.NEWSOURCE.COM

Attachment B(1): Zoning Planned Development Package



Attachment B(1): Zoning Planned Development Package



OFFICE LEASE SPACE

NOTE:
SIGNS REQUIRE A SEPARATE BUILDING PERMIT - ANY SIGNS EXCEPT THE HOTEL SIGNAGE DEPICTED ON THE ARCHITECTURAL RENDERING MUST BE APPROVED AS A PART OF THIS REVIEW AND MUST COMPLY WITH ALL APPLICABLE TOWN REGULATIONS.

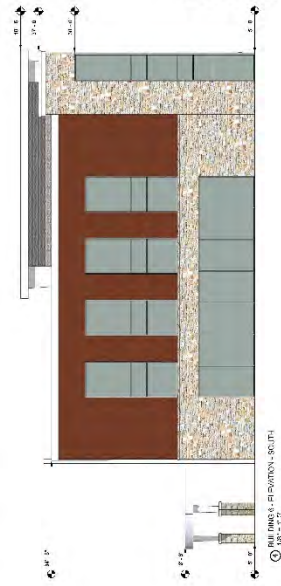


NEWSTREAM
COMMERCIAL





Value	Score
Score 1	1.00
Score 2	1.00
Score 3	1.00
Score 4	1.00
Score 5	1.00
Score 6	1.00
Score 7	1.00
Score 8	1.00
Score 9	1.00
Score 10	1.00
Score 11	1.00
Score 12	1.00
Score 13	1.00
Score 14	1.00
Score 15	1.00
Score 16	1.00
Score 17	1.00
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Score 92	1.00
Score 93	1.00
Score 94	1.00
Score 95	1.00
Score 96	1.00
Score 97	1.00
Score 98	1.00
Score 99	1.00
Score 100	1.00



Building - Office	Year	Seals
1980 - 1985	1980	1980
1986 - 1990	1986	1986
1991 - 1995	1991	1991
1996 - 2000	1996	1996
2001 - 2005	2001	2001
2006 - 2010	2006	2006
2011 - 2015	2011	2011
2016 - 2020	2016	2016
2021 - 2025	2021	2021
2026 - 2030	2026	2026
2031 - 2035	2031	2031
2036 - 2040	2036	2036
2041 - 2045	2041	2041
2046 - 2050	2046	2046
2051 - 2055	2051	2051
2056 - 2060	2056	2056
2061 - 2065	2061	2061
2066 - 2070	2066	2066
2071 - 2075	2071	2071
2076 - 2080	2076	2076
2081 - 2085	2081	2081
2086 - 2090	2086	2086
2091 - 2095	2091	2091
2096 - 2100	2096	2096
2101 - 2105	2101	2101
2106 - 2110	2106	2106
2111 - 2115	2111	2111
2116 - 2120	2116	2116
2121 - 2125	2121	2121
2126 - 2130	2126	2126
2131 - 2135	2131	2131
2136 - 2140	2136	2136
2141 - 2145	2141	2141
2146 - 2150	2146	2146
2151 - 2155	2151	2151
2156 - 2160	2156	2156
2161 - 2165	2161	2161
2166 - 2170	2166	2166
2171 - 2175	2171	2171
2176 - 2180	2176	2176
2181 - 2185	2181	2181
2186 - 2190	2186	2186
2191 - 2195	2191	2191
2196 - 2200	2196	2196
2201 - 2205	2201	2201
2206 - 2210	2206	2206
2211 - 2215	2211	2211
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2226 - 2230	2226	2226
2231 - 2235	2231	2231
2236 - 2240	2236	2236
2241 - 2245	2241	2241
2246 - 2250	2246	2246
2251 - 2255	2251	2251
2256 - 2260	2256	2256
2261 - 2265	2261	2261
2266 - 2270	2266	2266
2271 - 2275	2271	2271
2276 - 2280	2276	2276
2281 - 2285	2281	2281
2286 - 2290	2286	2286
2291 - 2295	2291	2291
2296 - 2300	2296	2296
2301 - 2305	2301	2301
2306 - 2310	2306	2306
2311 - 2315	2311	2311
2316 - 2320	2316	2316
2321 - 2325	2321	2321
2326 - 2330	2326	2326
2331 - 2335	2331	2331
2336 - 2340	2336	2336
2341 - 2345	2341	2341
2346 - 2350	2346	2346
2351 - 2355	2351	2351
2356 - 2360	2356	2356
2361 - 2365	2361	2361
2366 - 2370	2366	2366
2371 - 2375	2371	2371
2376 - 2380	2376	2376
2381 - 2385	2381	2381
2386 - 2390	2386	2386
2391 - 2395	2391	2391
2396 - 2400	2396	2396
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2466 - 2470	2466	2466
2471 - 2475	2471	2471
2476 - 2480	2476	2476
2481 - 2485	2481	2481
2486 - 2490	2486	2486
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2496 - 2500	2496	2496
2501 - 2505	2501	2501
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2571 - 2575	2571	2571
2576 - 2580	2576	2576
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2586 - 2590	2586	2586
2591 - 2595	2591	2591
2596 - 2600	2596	2596
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2636 - 2640	2636	2636
2641 - 2645	2641	2641
2646 - 2650	2646	2646
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2666 - 2670	2666	2666
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2981 - 2985	2981	2981
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3011 - 3015	3011	3011
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3136 - 3140	3136	3136
3141 - 3145	3141	3141
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3386 - 3390	3386	3386
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3466 - 3470	3466	3466
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3491 - 3495	3491	3491
3496 - 3500	3496	3496
3501 - 3505	3501	3501
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3546 - 3550	3546	3546
3551 - 3555	3551	3551
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3561 - 3565	3561	3561
3566 - 3570	3566	3566
3571 - 3575	3571	3571
3576 - 3580	3576	3576
3581 - 3585	3581	3581
3586 - 3590	3586	3586
3591 - 3595	3591	3591
3596 - 3600	3596	3596
3601 - 3605	3601	3601
3606 - 3610	3606	3606
3611 - 3615	3611	3611
3616 - 3620	3616	3616
3621 - 3625	3621	3621
3626 - 3630	3626	3626
3631 - 3635	3631	3631
3636 - 3640	3636	3636
3641 - 3645	3641	3641
3646 - 3650	3646	3646

NOTE: SIGNS REQUIRE A SEPARATE BUILDING PERMIT. ANY SIGNS EXCEPT THE HOTEL SIGNAGE DEPICTED ON THE SUBJECT SITE PLAN/ELEVATIONS ARE NOT APPROVED AS A PART OF THIS REVIEW AND MUST COMPLY WITH ALL APPLICABLE TOWN REGULATIONS.

[illegible]

Usage & Criteria	Wheat	
	SP	%
new 1-crop/2-crop	4,100	
replace 25 existing 2-crop (5 windows)	30,000	
2-crop & windows	1,100	9.6%
Primary Material Totals		
Wheat	1,200	40%
Barley	920	24%
nonwheat (wheat)	11,800	64%



5 KILLINGB-CHICK SUITE

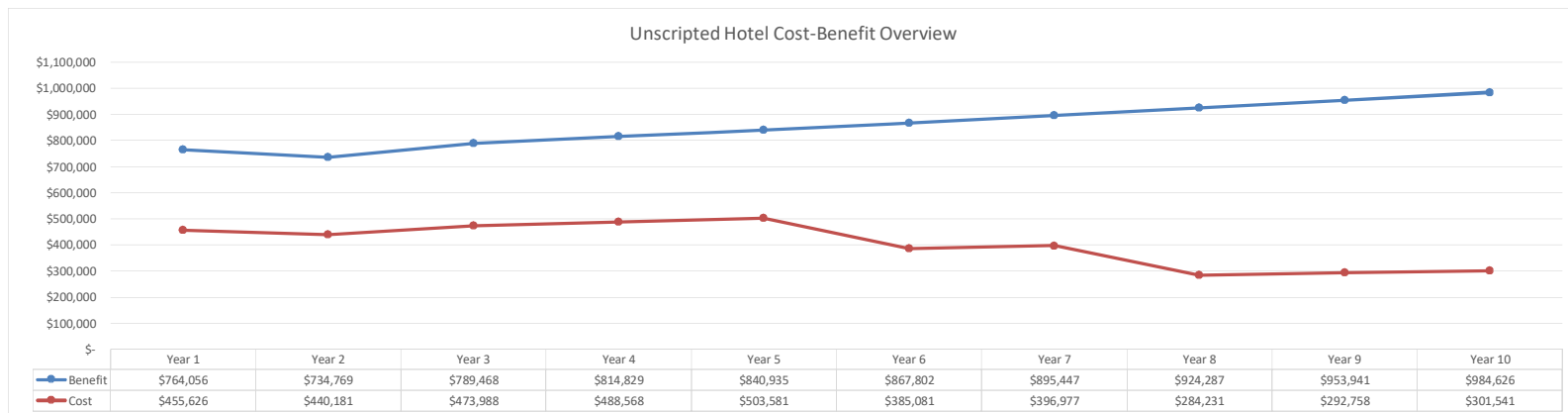


DOCUMENTS ARE
NOT FOR SALE
NOTICE TO THE
REGULATORY
A PERMIT TO CONSTRUCT
MARCUS P. TRIMBLE
TX 42-46

Altierford B11, Zoning Planets Development Package

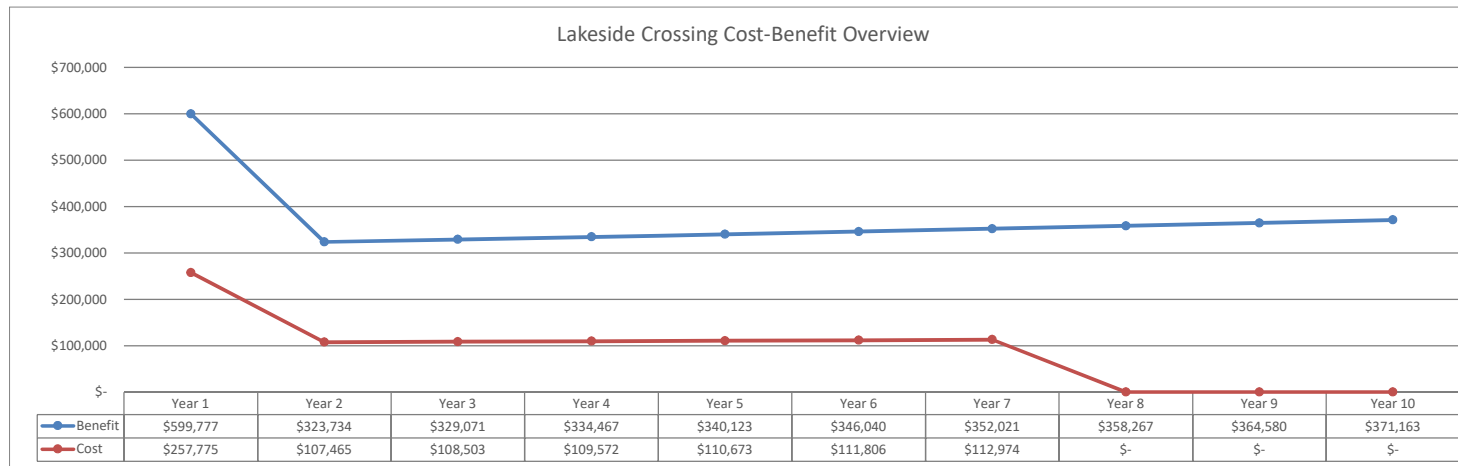
Unscripted Hotel Cost-Benefit

Existing Value		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
+3% rate	Real Property Value (2.55 acres)	\$ 306,632	\$ 315,831	\$ 325,306	\$ 335,065	\$ 345,117	\$ 355,471	\$ 366,135	\$ 377,119	\$ 388,432	\$ 400,085	
	Real Property Tax Revenue	\$ 1,346	\$ 1,386	\$ 1,428	\$ 1,471	\$ 1,515	\$ 1,561	\$ 1,607	\$ 1,656	\$ 1,705	\$ 1,756	\$ 15,432
Added Benefit		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
+3% rate	Real Property Value (Land & Improv.)	\$ 25,000,000	\$ 25,750,000	\$ 26,522,500	\$ 27,318,175	\$ 28,137,720	\$ 28,981,852	\$ 29,851,307	\$ 30,746,847	\$ 31,669,252	\$ 32,619,330	
	Real Property Tax Revenue	\$ 109,750	\$ 113,043	\$ 116,434	\$ 119,927	\$ 123,525	\$ 127,230	\$ 131,047	\$ 134,979	\$ 139,028	\$ 143,199	\$ 1,258,161
+0% rate	Business Personal Property Value	\$ 1,800,000	\$ 1,800,000	\$ 1,800,000	\$ 1,800,000	\$ 1,800,000	\$ 1,800,000	\$ 1,800,000	\$ 1,800,000	\$ 1,800,000	\$ 1,800,000	
	Business Personal Property Tax Revenue	\$ 7,902	\$ 7,902	\$ 7,902	\$ 7,902	\$ 7,902	\$ 7,902	\$ 7,902	\$ 7,902	\$ 7,902	\$ 7,902	\$ 79,020
	Annual Taxable Sales	\$ 7,630,000	\$ 8,170,000	\$ 8,810,000	\$ 9,170,000	\$ 9,540,000	\$ 9,920,000	\$ 10,310,000	\$ 10,730,000	\$ 11,160,000	\$ 11,610,000	
	Annual Taxable Sales Revenue	\$ 152,600	\$ 163,400	\$ 176,200	\$ 183,400	\$ 190,800	\$ 198,400	\$ 206,200	\$ 214,600	\$ 223,200	\$ 232,200	\$ 1,941,000
	Construction/FFE Sales Tax Revenue		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	Development Fee Estimate	\$ 15,089	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 15,089
	Impact Fee Estimate	\$ 65,940	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 65,940
Annual Hotel Sales												
	Estimated Occupancy Rate	0.746	0.766	0.791	0.791	0.791	0.791	0.791	0.791	0.791	0.791	
	Daily Rooms	97	100	103	103	103	103	103	103	103	103	
	Daily Rate	\$ 167	\$ 178	\$ 187	\$ 192	\$ 198	\$ 204	\$ 210	\$ 216	\$ 223	\$ 230	
	Daily HOT Revenues	\$ 1,135	\$ 1,238	\$ 1,343	\$ 1,384	\$ 1,425	\$ 1,468	\$ 1,512	\$ 1,557	\$ 1,604	\$ 1,652	
	Annual HOT Revenues	\$ 414,121	\$ 451,811	\$ 490,360	\$ 505,071	\$ 520,223	\$ 535,830	\$ 551,905	\$ 568,462	\$ 585,516	\$ 603,082	\$ 5,226,383
Cost		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
50%	Real Property Rebate	\$ 54,875	\$ 56,521.25	\$ 58,216.89	\$ 59,963.39	\$ 61,762.30	\$ 63,615.16	\$ 65,523.62	\$ -	\$ -	\$ -	\$ 420,478
50%	Business Personal Property Rebate	\$ 3,951	\$ 3,951.00	\$ 3,951.00	\$ 3,951.00	\$ 3,951.00	\$ 3,951.00	\$ 3,951.00	\$ -	\$ -	\$ -	\$ 27,657
50% of 1%	Sales Tax Rebate	\$ 38,150	\$ 40,850	\$ 44,050	\$ 45,850	\$ 47,700	\$ 49,600	\$ 51,550	\$ -	\$ -	\$ -	\$ 317,750
100%	Development Fee Waiver	\$ 15,089	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 15,089
50%	Impact Fee Waiver	\$ 32,970	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 32,970
75% / 50%	HOT Rebate	\$ 310,591	\$ 338,858	\$ 367,770	\$ 378,803	\$ 390,168	\$ 267,915	\$ 275,953	\$ 284,231	\$ 292,758	\$ 301,541	\$ 3,208,588
50% of 1%	Construction/FFE Sales Tax Rebate		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Analysis		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
Benefit		\$ 764,056	\$ 734,769	\$ 789,468	\$ 814,829	\$ 840,935	\$ 867,802	\$ 895,447	\$ 924,287	\$ 953,941	\$ 984,626	\$ 8,570,161
Cost		\$ 455,626	\$ 440,181	\$ 473,988	\$ 488,568	\$ 503,581	\$ 385,081	\$ 396,977	\$ 284,231	\$ 292,758	\$ 301,541	\$ 4,022,532
Net Benefit		\$ 308,430	\$ 294,589	\$ 315,480	\$ 326,261	\$ 337,354	\$ 482,721	\$ 498,470	\$ 640,056	\$ 661,183	\$ 683,085	\$ 4,547,629



Lakeside Crossing (Commercial Only) Cost-Benefit

Existing Value		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
+3% rate	Real Property Value (8.45 acres)	\$ 1,016,470	\$ 1,046,964	\$ 1,078,373	\$ 1,110,725	\$ 1,144,046	\$ 1,178,368	\$ 1,213,719	\$ 1,250,130	\$ 1,287,634	\$ 1,326,263	
	Real Property Tax Revenue	\$ 4,462	\$ 4,596	\$ 4,734	\$ 4,876	\$ 5,022	\$ 5,173	\$ 5,328	\$ 5,488	\$ 5,653	\$ 5,822	\$ 51,155
Benefit		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
+3% rate	Real Property Value	\$ 15,300,000	\$ 15,759,000	\$ 16,231,770	\$ 16,718,723	\$ 17,220,285	\$ 17,736,893	\$ 18,269,000	\$ 18,817,070	\$ 19,381,582	\$ 19,963,030	
	Real Property Tax Revenue	\$ 67,167	\$ 69,182	\$ 71,257	\$ 73,395	\$ 75,597	\$ 77,865	\$ 80,201	\$ 82,607	\$ 85,085	\$ 87,638	\$ 769,994
+0% rate	Business Personal Property Value											
	Restaurant	\$ 13,000,000	\$ 13,000,000	\$ 13,000,000	\$ 13,000,000	\$ 13,000,000	\$ 13,000,000	\$ 13,000,000	\$ 13,000,000	\$ 13,000,000	\$ 13,000,000	
	Retail	\$ 5,200,000	\$ 5,200,000	\$ 5,200,000	\$ 5,200,000	\$ 5,200,000	\$ 5,200,000	\$ 5,200,000	\$ 5,200,000	\$ 5,200,000	\$ 5,200,000	
	Office	\$ 15,000,000	\$ 15,000,000	\$ 15,000,000	\$ 15,000,000	\$ 15,000,000	\$ 15,000,000	\$ 15,000,000	\$ 15,000,000	\$ 15,000,000	\$ 15,000,000	
	Total	\$ 33,200,000	\$ 33,200,000	\$ 33,200,000	\$ 33,200,000	\$ 33,200,000	\$ 33,200,000	\$ 33,200,000	\$ 33,200,000	\$ 33,200,000	\$ 33,200,000	
	Business Personal Property Tax Revenue	\$ 145,748	\$ 145,748	\$ 145,748	\$ 145,748	\$ 145,748	\$ 145,748	\$ 145,748	\$ 145,748	\$ 145,748	\$ 145,748	\$ 1,457,480
	Annual Taxable Sales	\$ 5,500,000	\$ 5,670,000	\$ 5,840,000	\$ 6,010,000	\$ 6,190,000	\$ 6,380,000	\$ 6,570,000	\$ 6,770,000	\$ 6,970,000	\$ 7,180,000	
	Annual Taxable Sales Revenue	\$ 110,000	\$ 113,400	\$ 116,800	\$ 120,200	\$ 123,800	\$ 127,600	\$ 131,400	\$ 135,400	\$ 139,400	\$ 143,600	\$ 1,261,600
	Construction/FFE Sales Tax Revenue		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	Development Fee Estimate	\$ 21,309	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 21,309
	Impact Fee Estimate	\$ 260,015	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 260,015
Cost		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
50%	Real Property Abatement	\$ 33,583.50	\$ 34,591	\$ 35,629	\$ 36,698	\$ 37,799	\$ 38,932	\$ 40,100	\$ -	\$ -	\$ -	\$ 257,332
50%	Business Personal Property Abatement	\$ 72,874	\$ 72,874.00	\$ 72,874	\$ 72,874	\$ 72,874	\$ 72,874.00	\$ 72,874.00	\$ -	\$ -	\$ -	\$ 510,118
100%	Development Fee Waiver	\$ 21,309	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 21,309
50%	Impact Fee Waiver	\$ 130,007.59	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 130,008
50% of 1%	Construction/FFE Sales Tax Rebate		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Analysis		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
Benefit		\$ 599,777	\$ 323,734	\$ 329,071	\$ 334,467	\$ 340,123	\$ 346,040	\$ 352,021	\$ 358,267	\$ 364,580	\$ 371,163	\$ 3,719,244
Cost		\$ 257,775	\$ 107,465	\$ 108,503	\$ 109,572	\$ 110,673	\$ 111,806	\$ 112,974	\$ -	\$ -	\$ -	\$ 918,767
Net Benefit		\$ 342,003	\$ 216,269	\$ 220,569	\$ 224,896	\$ 229,450	\$ 234,233	\$ 239,046	\$ 358,267	\$ 364,580	\$ 371,163	\$ 2,800,476







TOWN COUNCIL AGENDA ITEM NO. 19

REGULAR ITEM

DATE: July 17, 2017

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

ITEM: Consider approval of an ordinance authorizing the issuance of the Town of Flower Mound, Texas, Certificates of Obligation, Series 2017A, establishing parameters for the sale and issuance of such bonds, delegating certain matters to an authorized official of the Town and resolving all matters incident and related thereto.

BACKGROUND INFORMATION: The Financial Services staff and Hilltop Securities, the Town's financial advisor, request the Town Council's approval of an ordinance authorizing the potential issuance of Certificates of Obligation, Series 2017A, ("the Certificates").

In order to efficiently complete the sale, the attached ordinance establishes the following parameters, giving the Town Manager and Assistant Town Manager/CFO the authority to approve all necessary documents and finalize the sale.

Maximum Principal Amount	\$24,400,000
Maximum True Interest Cost	4.75%
Final Maturity Date	March 1, 2037

The Town Manager and Deputy Town Manager/CFO's authorization to complete the sale of the Certificates will expire 180 days after passage of the ordinance.

The Certificates will pay for the contractual obligations incurred for projects approved on the FY 16-17 Five-Year Capital Improvement Program ("CIP") as listed on Attachment 1. On October 3, 2016, the Town Council approved a reimbursement resolution for an amount not to exceed \$20,540,000 to fund improvements in accordance with the FY 16-17 CIP. The Town also issued the following reimbursement resolutions: August 16, 2016, in the amount of \$1,700,000, for preconstruction and demolition of Town Hall; November 7, 2016, in the amount of \$1,100,000 for the purchase of 3.29 acres of land located at 3600 Old Settlers Road; and March 20, 2017, in the amount of \$9,000,000 related to the construction and equipment of a new Town Hall, including the demolition of the existing Town Hall. CIP Amendments during the fiscal year have modified funding sources and move project start dates to future years, thus reducing the proposed debt issuance from \$31,240,000 to \$24,400,000. The proposed principal amount of \$24,400,000 includes \$288,000 for estimated financial closing costs.

At the Town Council meeting on June 5, 2017, the Town Council authorized the publication of notice to issue Certificates of Obligation, Series 2017A, (the "Certificates") in the principal amount not to exceed \$24,400,000.

The issuance will be conducted as a negotiated sale with the planned pricing to occur on July 18, 2017. The Certificates will begin accruing interest on August 1, 2017 (the Dated Date), which the Town will receive upon delivery of the funds on August 17. The Bank of New York Trust Company, N.A., will serve as the Paying Agent/Registrar for the Certificates. The preliminary official statement, which discloses details related to issuance of the Certificates and the Town, is available in the Financial Services Department for review.

FISCAL IMPACT: Approximate amount of \$24,400,000

Proposed Expenditure:	Account Number(s):
A maximum of \$24,400,000 in certificates.	Ad valorem taxes will fund the general capital project, while the utilities system will fund the waterworks and sewer system improvements.

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

LEGAL REVIEW: The Town's Bond Counsel, Norton Rose Fulbright US LLP, prepared the proposed ordinance. No alteration to the legal content of this ordinance, which was originally approved by Taylor, Olson, Adkins, Sralla, & Elam L.L.P, was made.

ATTACHMENTS:

1. Proposed Projects
2. Draft of Ordinance authorizing the issuance of Certificates of Obligation, Series 2017A
3. Draft Paying Agent/Registrar Agreement

DRAFT MOTION: Move to approve an ordinance authorizing the issuance of the Town of Flower Mound, Texas, Certificates of Obligation, Series 2017A, establishing parameters for the sale and issuance of such bonds, delegating certain matters to an authorized official of the Town and resolving all matters incident and related thereto.

Certificates of Obligation, Series 2017A**General Capital Projects****Street Projects:**

Aberdeen Drive Phase I (2 Lanes FM 2499 to Lake Forest)	\$	650,000
ADA Transition Plan and Implementation		170,000
Roadway Amenities		90,000
Stonecrest Road (500 ft. North of Canyon Falls Dr. to Town Limit)		200,000
Waketon Road		600,000
		<u>\$ 1,710,000</u>

Signal Projects:

Traffic Detection Rehabilitation		<u>\$ 125,000</u>
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Facilities:

Fire Station No. 1 Facility Upgrades	\$	980,000
Land (Old Settlers/Peters Colony and Log Cabin)		1,100,000
Police and Courts Facility Upgrades		1,760,000
Town Hall		8,800,000
		<u>\$ 12,640,000</u>

Park Project

Community Activity Center Improvements		<u>\$ 257,000</u>
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Total General \$ 14,732,000

Utility Capital Projects**Water**

Aberdeen Water Line (FM 2499 to Lake Forest)	\$	110,000
Bruton Orand Elevated Storage Tank Rehabilitation		1,700,000
Canyon Falls 20-Inch Water Line		650,000
High Road Water Line Replacement Phase I		350,000
Pintail Pump Station (Auxiliary Power & Upgrades)		270,000
Rippy Road Water line Improvements (FM 2499-Waketon)		400,000
Shady Point Acres Water Line Replacement		1,000,000
Water System Leak Detection & Repair		50,000
Western Operations and Maintenance Facility (Temporaty FS #6)		250,000
Yucca Drive Utilities (Sagebrush to 700 ft South of FM 1171)		650,000
		<u>\$ 5,430,000</u>

Wastewater

Inflow-Infiltration/Evaluation and Repair	\$	250,000
Lift Station Improvements and Decommissioning		1,400,000
Upper Timber Creek Interceptor Phase III (FM 1171 to Hidden Forest Drive)		550,000
Upper Timber Creek Interceptor Phase IV (Hidden Forest Drive to Oak Street Lift Station)		350,000
Wastewater Treatment Plant Rehabilitation Phase V (Sludge Holding and Thickening)		800,000
Woodbine Street Sewer Line		600,000
		<u>\$ 3,950,000</u>

Total Utility \$ 9,380,000

Estimated financing costs

\$ 288,000

Grand Total of Debt Issuance

\$ 24,400,000

TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO. ____-17

AN ORDINANCE authorizing the issuance of "TOWN OF FLOWER MOUND, TEXAS, CERTIFICATES OF OBLIGATION, SERIES 2017A"; providing for the payment of said certificates of obligation by the levy of an ad valorem tax upon all taxable property within the Town and a limited pledge of the net revenues derived from the operation of the Town's waterworks and sewer system; providing the terms and conditions of such certificates and resolving other matters incident and relating to the issuance, payment, security and delivery of said certificates of obligation; delegating matters relating to the sale and issuance of said certificates to an authorized Town official; and providing an effective date.

WHEREAS, the Town Council of the Town of Flower Mound, Texas, has heretofore determined that certificates of obligation should be issued in the maximum principal amount not to exceed \$24,400,000 for the purpose of paying contractual obligations to be incurred for authorized needs and purposes, to wit: (i) constructing street improvements, including drainage, landscaping, curbs, gutters, sidewalks, signage and traffic signalization incidental thereto and the acquisition of land and rights-of-way therefor, (ii) constructing, improving and equipping police, fire, park and recreational facilities, including the acquisition of land, (iii) constructing and equipping a new Town Hall and the demolition of the current Town Hall, (iv) constructing waterworks and sewer system improvements and extensions, including the acquisition of land and rights-of-way therefor and (v) professional services rendered in connection therewith; and

WHEREAS, a "Notice of Intention to Issue Town of Flower Mound, Texas, Certificates of Obligation" was duly published in *The Denton Record-Chronicle*, a newspaper hereby found and determined to be of general circulation in the Town of Flower Mound, Texas, on June 8, 2017, June 22, 2017 and June 29, 2017, the date of the first publication of such notice being not less than thirty-one (31) days prior to the tentative date stated therein for the passage and adoption of this Ordinance; and

WHEREAS, no petition protesting the issuance of such certificates of obligation and bearing valid petition signatures of at least 5% of the qualified voters of the Town, has been presented to or filed with the Mayor, Town Secretary or any other official of the Town on or prior to the date of the passage of this Ordinance; and

WHEREAS, the Town Council hereby finds and determines that all of the certificates of obligation described in such notice should be issued and sold at this time in the amount and manner as hereinafter provided; and

WHEREAS, the Town Council by this Ordinance, in accordance with the provisions of Texas Government Code, Chapter 1371, as amended ("Chapter 1371"), delegates to a Pricing Officer (hereinafter designated) the authority to determine the principal amount of the Certificates to be issued and to negotiate the terms of sale thereof; and

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

SECTION 1: Authorization – Designation – Principal Amount – Purpose. Certificates of obligation of the Town shall be and are hereby authorized to be issued in an amount not to exceed the aggregate original principal amount hereinafter set forth to be designated and bear the title “TOWN OF FLOWER MOUND, TEXAS, CERTIFICATES OF OBLIGATION, SERIES 2017A” or such other designation as specified in the Pricing Certificate (hereinafter referred to as the “Certificates”), for the purpose of paying contractual obligations to be incurred for authorized needs and purposes, to wit: (i) constructing street improvements, including drainage, landscaping, curbs, gutters, sidewalks, signage and traffic signalization incidental thereto and the acquisition of land and rights-of-way therefor, (ii) constructing, improving and equipping police, fire, park and recreational facilities, including the acquisition of land, (iii) constructing and equipping a new Town Hall and the demolition of the current Town Hall, (iv) constructing waterworks and sewer system improvements and extensions, including the acquisition of land and rights-of-way therefor and (v) professional services rendered in connection therewith, pursuant to authority conferred by and in conformity with the Constitution and laws of the State of Texas, including Texas Local Government Code, Subchapter C of Chapter 271, as amended and Chapter 1371.

SECTION 2: Fully Registered Obligations - Authorized Denominations - Stated Maturities - Interest Rates - Date. The Certificates are issuable in fully registered form only; shall be dated as provided in the Pricing Certificate (the “Certificate Date”) and shall be in denominations of \$5,000 or any integral multiple thereof (within a Stated Maturity) and the Certificates shall become due and payable on a date certain in each of the years and in principal amounts (the “Stated Maturities”) and bear interest at the per annum rates in accordance with the details of the Certificates as provided in the Pricing Certificate.

The Certificates shall bear interest on the unpaid principal amounts from the date specified in the Pricing Certificate (calculated on the basis of a 360-day year of twelve 30-day months) and shall be payable in each year, on the dates and commencing on the date, set forth in the Pricing Certificate.

SECTION 3: Delegation of Authority to Pricing Officer. (a) As authorized by Texas Government Code, Section 1371.053, as amended, the Town Manager or the Deputy Town Manager/CFO of the Town (either a “Pricing Officer”) is hereby authorized to act on behalf of the Town in selling and delivering the Certificates and carrying out the other procedures specified in this Ordinance determining the aggregate principal amount of the Certificates, the date of the Certificates, any additional or different designation or title by which the Certificates shall be known, the price at which the Certificates will be sold, the manner of sale (negotiated, privately placed or competitively bid), the years in which the Certificates will mature, the principal amount to mature in each of such years, the rate of interest to be borne by each such maturity, the date from which interest on the Certificates will accrue, the interest payment dates, the record date, the price and terms upon and at which the Certificates shall be subject to redemption prior to maturity at the option of the Town, as well as any mandatory sinking fund redemption provisions, determination of the use of a book-entry-only securities clearance, settlement and transfer system, the terms of any bond insurance applicable to the Certificates, including any modification of the continuing disclosure undertaking contained in Section 32 hereof as may be required by the purchasers of the Certificates in connection with any amendments to Rule 15c2-12, and all other matters relating to the issuance, sale and delivery of the Certificates, all of which shall be specified in the Pricing Certificate, provided that:

(i) the aggregate original principal amount of the Certificates shall not exceed \$24,400,000;

- (ii) the maximum true interest cost for the Certificates shall not exceed 4.75%; and
- (iii) the maximum maturity date of the Certificates shall not exceed September 1, 2037.

The execution of the Pricing Certificate shall evidence the sale date of the Certificates by the Town to the Purchasers (hereinafter defined).

If the Pricing Officer determines that bond insurance results in a net reduction of the Town's interest costs associated with the Certificates, then the Pricing Officer is authorized, in connection with effecting the sale of the Certificates, to make the selection of the municipal bond insurance company for the Certificates (the "Insurer") and to obtain from the Insurer a municipal bond insurance policy in support of the Certificates. The Pricing Officer shall have the authority to determine the provisions of the commitment for any such policy and to execute any documents to affect the issuance of said policy by the Insurer.

(b) In establishing the aggregate principal amount of the Certificates, the Pricing Officer shall establish an amount not exceeding the amount authorized in subsection (a)(i) above, which shall be sufficient in amount to provide for the purposes for which the Certificates are authorized and to pay costs of issuing the Certificates. The delegation made hereby shall expire if not exercised by the Pricing Officer within one (1) year of the date of the adoption of this Ordinance. The Certificates shall be sold to the purchaser(s)/underwriter(s) named in the Pricing Certificate (the "Purchasers"), at such price and with and subject to such terms as set forth in the Pricing Certificate and the Purchase Contract (hereinafter defined), and may be sold by negotiated or competitive sale or by private placement. The Pricing Officer is hereby delegated the authority to designate the Purchasers, which delegation shall be evidenced by the execution of the Pricing Certificate.

SECTION 4: Terms of Payment-Paying Agent/Registrar. The principal of, premium, if any, and the interest on the Certificates, due and payable by reason of maturity, redemption or otherwise, shall be payable only to the registered owners or holders of the Certificates (hereinafter called the "Holders") appearing on the registration and transfer books maintained by the Paying Agent/Registrar and the payment thereof shall be in any coin or currency of the United States of America, which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

The selection and appointment of The Bank of New York Mellon Trust Company, N.A., Dallas, Texas, to serve as Paying Agent/Registrar for the Certificates is hereby approved and confirmed. Books and records relating to the registration, payment, exchange and transfer of the Certificates (the "Security Register") shall at all times be kept and maintained on behalf of the Town by the Paying Agent/Registrar, all as provided herein, in accordance with the terms and provisions of a "Paying Agent/Registrar Agreement," substantially in the form attached hereto as **Exhibit A** and such reasonable rules and regulations as the Paying Agent/Registrar and the Town may prescribe. The Mayor or Mayor Pro Tem and Town Secretary are hereby authorized to execute and deliver such Paying Agent/Registrar Agreement in connection with the delivery of the Certificates. The Town covenants to maintain and provide a Paying Agent/Registrar at all times until the Certificates are paid and discharged, and any successor Paying Agent/Registrar shall be a commercial bank, trust company, financial institution, or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Certificates, the Town agrees to promptly cause a written notice thereof to be sent to each Holder by United

States Mail, first class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

Principal of and premium, if any, on the Certificates, shall be payable at the Stated Maturities or the redemption thereof only upon presentation and surrender of the Certificates to the Paying Agent/Registrar at its designated offices initially in East Syracuse, New York, or, with respect to a successor Paying Agent/Registrar, at the designated offices of such successor (the "Designated Payment/Transfer Office"). Interest on the Certificates shall be paid to the Holder whose name appears in the Security Register at the close of business on the Record Date (the record date specified in the Pricing Certificate) and shall be paid by the Paying Agent/Registrar (i) by check sent United States Mail, first class postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder. If the date for the payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

In the event of a non-payment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

SECTION 5: Registration - Transfer - Exchange of Certificates Predecessor Certificates. The Paying Agent/Registrar shall obtain, record and maintain in the Security Register the name and address of each and every owner of the Certificates issued under and pursuant to the provisions of this Ordinance or, if appropriate, the nominee thereof. Any Certificate may be transferred or exchanged for Certificates of other authorized denominations by the Holder, in person or by his duly authorized agent, upon surrender of such Certificate to the Paying Agent/Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender of any Certificate (other than the Initial Certificate authorized in Section 8 hereof) for transfer at the Designated Payment/Transfer Office of the Paying Agent/Registrar, the Paying Agent/Registrar shall register and deliver, in the name of the designated transferee or transferees, one or more new Certificates, executed on behalf of, and furnished by, the Town, of authorized denominations and having the same Stated Maturity and of a like aggregate principal amount as the Certificate or Certificates surrendered for transfer.

At the option of the Holders, Certificates (other than the Initial Certificate authorized in Section 8 hereof) may be exchanged for other Certificates of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate

principal amount as the Certificates surrendered for exchange upon surrender of the Certificates to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Certificates are so surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Certificates, executed on behalf of, and furnished by the Town, to the Holder requesting the exchange.

All Certificates issued upon any transfer or exchange of Certificates shall be delivered at the Designated Payment/Transfer Office of the Paying Agent/Registrar, or sent by United States mail, first class postage prepaid, to the Holder and, upon the registration and delivery thereof, the same shall be valid obligations of the Town, evidencing the same obligation to pay, and entitled to the same benefits under this Ordinance, as the Certificates surrendered in such transfer or exchange.

All transfers or exchanges of Certificates pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Certificates canceled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Certificates," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the new Certificate or Certificates registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Certificates" shall include any mutilated, lost, destroyed, or stolen Certificate for which a replacement Certificate has been issued, registered and delivered in lieu thereof pursuant to Section 25 hereof and such new replacement Certificate shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Certificate.

Neither the Town nor the Paying Agent/Registrar shall be required to issue or transfer to an assignee of a Holder any Certificate called for redemption, in whole or in part, within 45 days of the date fixed for the redemption of such Certificate; provided, however, such limitation on transferability shall not be applicable to an exchange by the Holder of the unredeemed balance of a Certificate called for redemption in part.

SECTION 6: Book-Entry-Only Transfers and Transactions. Notwithstanding the provisions contained herein relating to the payment and transfer/exchange of the Certificates, the Town hereby approves and authorizes the use of "Book-Entry-Only" securities clearance, settlement and transfer system provided by The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York ("DTC"), in accordance with the operational arrangements referenced in the Blanket Issuer Letter of Representations by and between the Town and DTC (the "Depository Agreement").

In the event the Pricing Officer elects to utilize DTC's "Book-Entry-Only" System, which election shall be made by the Pricing Officer in the Pricing Certificate, pursuant to the Depository Agreement and the rules of DTC, the Certificates shall be deposited with DTC who shall hold said Certificates for its participants (the "DTC Participants"). While the Certificates are held by DTC under the Depository Agreement, the Holder of the Certificates on the Security Register for all purposes, including payment and notices, shall be Cede & Co., as nominee of DTC, notwithstanding the ownership of each actual purchaser or owner of each Certificate (the "Beneficial Owners") being recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Certificates or otherwise ceases to provide book-entry clearance and settlement of securities transactions in general, or in the event the Town decides to discontinue use of the system of book entry transfers through DTC, the Town covenants and agrees with the Holders of the Certificates to cause Certificates to be printed in definitive form and issued and delivered to DTC Participants and Beneficial Owners, as the case may be. Thereafter, the Certificates in definitive form shall be assigned, transferred and exchanged on the Security Register maintained by the Paying Agent/Registrar and payment of such Certificates shall be made in accordance with the provisions of Sections 4 and 5 hereof.

SECTION 7: Execution - Registration. The Certificates shall be executed on behalf of the Town by the Mayor or the Mayor Pro tem under its seal reproduced or impressed thereon and countersigned by the Town Secretary. The signature of said officers on the Certificates may be manual or facsimile. Certificates bearing the manual or facsimile signatures of said individuals who are or were the proper officers of the Town on the Certificate Date shall be deemed to be duly executed on behalf of the Town, notwithstanding that such individuals or any of them shall cease to hold such offices prior to the delivery of the Certificates to the initial purchaser(s), and with respect to Certificates delivered in subsequent exchanges and transfers, all as authorized and provided by Texas Government Code, Chapter 1201, as amended.

No Certificate shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Certificate either a certificate of registration substantially in the form provided in Section 9(c), manually executed by the Comptroller of Public Accounts of the State of Texas or his or her duly authorized agent, or a certificate of registration substantially in the form provided in Section 9(d), manually executed by an authorized officer, employee or representative of the Paying Agent/Registrar, and either such certificate duly signed upon any Certificate shall be conclusive evidence, and the only evidence, that such Certificate has been duly certified, registered and delivered.

SECTION 8: Initial Certificate. The Certificates herein authorized shall be initially issued as a single fully registered certificate in the total principal amount with principal installments to become due and payable as provided in the Pricing Certificate and numbered T-1 (hereinafter called the "Initial Certificate") and the Initial Certificate shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Certificate shall be the Certificate submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s). Any time after the delivery of the Initial Certificate, the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Certificate delivered hereunder and exchange therefor definitive Certificates of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 9: Forms.

(a) Forms Generally. The Certificates, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of Paying Agent/Registrar, and the form of Assignment to be printed on the Certificates, shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions,

ORDINANCE NO. __-17

PAGE 7

substitutions, and other variations as are permitted or required by this Ordinance and to be completed and modified with the information set forth in the Pricing Certificate may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including insurance legends in the event the Certificates, or any maturities thereof, are purchased with bond insurance and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the Town or determined by the Pricing Officer. The Pricing Officer shall set forth the final and controlling forms and terms of the Certificates. Any portion of the text of any Certificates may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Certificate.

The Certificates, including the Initial Certificate, shall be typewritten, printed, lithographed, or photocopied, or produced in any other similar manner, all as determined by the officers executing such Certificates as evidenced by their execution.

(b) Form of Definitive Certificate.

REGISTERED
NO. _____

REGISTERED
\$ _____

UNITED STATES OF AMERICA
STATE OF TEXAS
TOWN OF FLOWER MOUND, TEXAS
CERTIFICATE OF OBLIGATION
SERIES 2017A

Certificate Date:
_____, 2017

Interest Rate:
_____ %

Stated Maturity:
_____, ____

CUSIP No.:

Registered Owner:

Principal Amount: _____ DOLLARS

The Town of Flower Mound (hereinafter referred to as the "Town"), a body corporate and municipal corporation in the Counties of Denton and Tarrant, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, on the Stated Maturity date specified above the Principal Amount stated above [(without right of prior redemption)] [(or so much thereof as shall not have been paid upon prior redemption)] and to pay interest on the unpaid principal amount hereof from the interest payment date next preceding the "Registration Date" of this Certificate appearing below (unless this Certificate bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of this Certificate is prior to the initial interest payment date, in which case it shall bear interest from _____) at the per annum rate of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on March 1 and September 1 of each year, commencing _____ 1, 20____, until maturity [or prior redemption] of this Certificate. Principal of this Certificate is payable at its Stated Maturity or redemption to the registered owner hereof upon presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar executing the registration certificate appearing hereon, or its successor; provided, however, while the Certificate is registered to Cede & Co., the payment of principal upon a partial redemption of the principal amount may be accomplished without

presentation and surrender of this Certificate. Interest is payable to the registered owner of this Certificate (or one or more Predecessor Certificates, as defined in the Ordinance hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the fifteenth day of the month next preceding each interest payment date and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Certificate shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Certificate is one of the series specified in its title issued in the aggregate principal amount of \$_____ to be designated and bear the title "TOWN OF FLOWER MOUND, TEXAS, CERTIFICATES OF OBLIGATION, SERIES 2017A" (hereinafter referred to as the "Certificates"), for the purpose of paying contractual obligations to be incurred for authorized needs and purposes, to wit: (i) constructing street improvements, including drainage, landscaping, curbs, gutters, sidewalks, signage and traffic signalization incidental thereto and the acquisition of land and rights-of-way therefor, (ii) constructing, improving and equipping police, fire, park and recreational facilities, including the acquisition of land, (iii) constructing and equipping a new Town Hall and the demolition of the current Town Hall, (iv) constructing waterworks and sewer system improvements and extensions, including the acquisition of land and rights-of-way therefor and (v) professional services rendered in connection therewith, under and in strict conformity with the Constitution and laws of the State of Texas, particularly Texas Local Government Code, Subchapter C of Chapter 271, as amended, and pursuant to an ordinance adopted by the Town Council of the Town (herein referred to as the "Ordinance").

[The Certificates having Stated Maturities on and after ____ 1, 20__ may be redeemed prior to their Stated Maturities, at the option of the Town, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on ____ 1, 20____, or on any date thereafter, at the redemption price of par, together with accrued interest to the date of redemption.

At least thirty (30) days prior to a redemption date, the Town shall cause a written notice of such redemption to be sent by United States Mail, first class postage prepaid, to the registered owners of each Certificate to be redeemed at the address shown on the Security Register and subject to the terms and provisions relating thereto contained in the Ordinance. If a Certificate (or any portion of its principal sum) shall have been duly called for redemption and notice of such redemption duly given, then upon the redemption date such Certificate (or the portion of its principal sum to be redeemed) shall become due and payable, and, if moneys for the payment of the redemption price and the interest accrued on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar, interest shall cease to accrue and be payable from and after the redemption date on the principal amount redeemed.

In the event a portion of the principal amount of a Certificate is to be redeemed and the registered owner is someone other than Cede & Co., payment of the redemption price of such principal amount shall be made to the registered owner only upon presentation and surrender of such Certificate to the Designated Payment/Transfer Office of the Paying Agent/Registrar, and a new Certificate or Certificates of like maturity and interest rate in any authorized denominations provided by the Ordinance for the then unredeemed balance of the principal sum thereof will be issued to the registered owner, without charge. If a Certificate is selected for redemption, in whole or in part, the Town and the Paying Agent/Registrar shall not be required to transfer such Certificate to an assignee of the registered owner within forty-five (45) days of the redemption date therefor; provided, however, such limitation on transferability shall not be applicable to an exchange by the registered owner of the unredeemed balance of a Certificate redeemed in part.

With respect to any optional redemption of the Certificates, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Certificates to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption may, at the option of the Town, be conditional upon the receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon the satisfaction of any prerequisites set forth in such notice of redemption; and, if sufficient moneys are not received, such notice shall be of no force and effect, the Town shall not redeem such Certificates and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Certificates have not been redeemed.]

The Certificates are payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the Town and are additionally payable from and secured by a lien on and limited pledge of the Net Revenues (as defined in the Ordinance) of the Town's combined waterworks and sewer system (the "System"), such lien and pledge being limited to the amount of \$1,000 and being junior and subordinate to the lien on and pledge of the Net Revenues of the System securing the payment of "Prior Lien Bonds" (identified and defined in the Ordinance) now outstanding and hereafter issued by the Town. In the Ordinance, the Town reserves and retains the right to issue Prior Lien Bonds while the Certificates are outstanding without limitation as to principal amount but subject to any terms, conditions or restrictions as may be applicable thereto under law or otherwise, as well as the right to issue additional obligations payable from the same sources as the Certificates and, together with the Certificates, equally and ratably secured by a parity lien on and pledge of the Net Revenues of the System.

Reference is hereby made to the Ordinance, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all the provisions of which the Holder by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of the Certificates; the Net Revenues of the System pledged to the payment of the principal of and interest on the Certificates; the nature and extent and manner of enforcement of the limited pledge; the terms and conditions relating to the transfer or exchange of this Certificate; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the Town and the Paying Agent/Registrar; the terms and provisions upon which the tax levy and the liens, pledges, charges and covenants made therein may be discharged at or prior to the maturity of this Certificate, and this Certificate deemed to be no longer Outstanding thereunder; and for the other terms and provisions contained therein. Capitalized terms used herein and not otherwise defined have the meanings assigned in the Ordinance.

This Certificate, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the registered owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Certificates of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The Town and the Paying Agent/Registrar, and any agent of either, may treat the registered owner hereof whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Certificate as the owner entitled to payment of principal hereof at its Stated Maturity or its redemption, in whole or in part, and (iii) on any other date as the owner for all other purposes, and neither the Town nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of a non-payment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented and covenanted that the Town is duly organized and legally incorporated under and by virtue of the Constitution and laws of the State of Texas; that the issuance of the Certificates is duly authorized by law; that all acts, conditions and things required to exist and be done precedent to and in the issuance of the Certificates to render the same lawful and valid obligations of the Town have been properly done, have happened and have been performed in regular and due time, form and manner as required by the Constitution and laws of the State of Texas, and the Ordinance; that the Certificates do not exceed any constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Certificates by the levy of a tax and a pledge of the Net Revenues of the System as aforestated. In case any provision in this Certificate or any application thereof shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions and applications shall not in any way be affected or impaired thereby. The terms and provisions of this Certificate and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the Town Council of the Town has caused this Certificate to be duly executed under the official seal of the Town as of the Certificate Date.

TOWN OF FLOWER MOUND, TEXAS

[Mayor][Mayor Pro Tem]

COUNTERSIGNED:

Town Secretary

(TOWN SEAL)

(c) Form of Registration Certificate of Comptroller of Public Accounts to appear on the Initial Certificate only.

REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER	(	
OF PUBLIC ACCOUNTS	(	
	(	REGISTER NO. _____
THE STATE OF TEXAS	(	

I HEREBY CERTIFY that this Certificate has been examined, certified as to validity and approved by the Attorney General of the State of Texas and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this _____ .

Comptroller of Public Accounts
of the State of Texas

(SEAL)

(d) Form of Certificate of Paying Agent/Registrar to appear on Definitive Certificates only.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Certificate has been duly issued and registered under the provisions of the within-mentioned Ordinance; the certificate or certificates of the above entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

The designated office of the Paying Agent/Registrar located in East Syracuse, New York is the Designated Payment/Transfer Office for this Certificate.

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., Dallas, Texas,
as Paying Agent/Registrar

Registration Date:

By: _____
Authorized Signature

(e) Form of Assignment.ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto
(Print or typewrite name, address, and zip code of transferee:)

(Social Security or other identifying number: _____)
the within Certificate and all rights thereunder, and hereby irrevocably constitutes and appoints
_____ attorney to transfer the within Certificate on the books kept
for registration thereof, with full power of substitution in the premises.

DATED: _____

Signature guaranteed:

NOTICE: The signature on this
assignment must correspond with the
name of the registered owner as it
appears on the face of the within
Certificate in every particular.

(f) The Initial Certificate shall be in the form set forth in paragraph (b) of this
Section, except that the heading and first paragraph shall be modified as follows:

REGISTERED:
NO. T-1

REGISTERED:
\$ _____

UNITED STATES OF AMERICA
STATE OF TEXAS
TOWN OF FLOWER MOUND, TEXAS,
CERTIFICATE OF OBLIGATION
SERIES 2017A

Certificate Date: _____, 2017

Registered Owner:

Principal Amount: _____ DOLLARS

The Town of Flower Mound (hereinafter referred to as the "Town"), a body corporate and municipal corporation in the Counties of Denton and Tarrant, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, the above stated Principal Amount on _____ 1 in each of the years and in principal installments in accordance with the following schedule:

	PRINCIPAL	INTEREST
<u>YEAR</u>	<u>INSTALLMENTS</u>	<u>RATE</u>

(Information to be inserted from the Pricing Certificate).

[(or so much thereof as shall not have been redeemed prior to maturity)][(without right of prior redemption)] and to pay interest on the unpaid Principal Amount from the interest payment date next preceding the "Registration Date" of this Certificate appearing below (unless this Certificate bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of this Certificate is prior to the initial interest payment date, in which case it shall bear interest from the _____) at the per annum rate(s) of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on March 1 and September 1 of each year, commencing _____ 1, 20____, until maturity [or prior redemption] of this Certificate. Principal installments of this Certificate are payable at the year of maturity or on a redemption date to the registered owner hereof by The Bank of New York Mellon Trust Company, N.A., Dallas, Texas (the "Paying Agent/Registrar"), upon presentation and surrender at its designated offices in East Syracuse, New York, or, with respect to a successor paying agent/registrar, at the designated office of such successor (the "Designated Payment/Transfer Office"). Interest is payable to the registered owner of this Certificate whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the fifteenth day of the month next preceding each interest payment date hereof and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Certificate shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

SECTION 10: Definitions. For purposes of this Ordinance and for clarity with respect to the issuance of the Certificates herein authorized, and the levy of taxes and appropriation of Net Revenues therefor, the following words or terms, whenever the same appear herein without qualifying language, are defined to mean as follows:

(a) The term "Additional Certificates" shall mean tax and revenue obligations hereafter issued under and pursuant to the provisions of Texas Local Government Code, Subchapter C of Chapter 271, or other law and payable from ad valorem taxes and additionally payable from and secured by a lien on and pledge of the Net Revenues of the System on a parity with and of equal rank and dignity with the lien and pledge securing the payment of the Certificates.

(b) The term "Certificate Fund" shall mean the special Fund created and established under the provisions of Section 11 of this Ordinance.

(c) The term "Certificates" shall mean the "Town of Flower Mound, Texas, Certificates of Obligation, Series 2017A" authorized by this Ordinance.

(d) The term "Collection Date" shall mean, when reference is being made to the levy and collection of annual ad valorem taxes, the date the annual ad valorem taxes levied each year by the Town become delinquent.

(e) The term "Fiscal Year" shall mean the twelve month period ending on September 30 of each year.

(f) The term "Net Revenues" shall mean the gross revenues of the System, less the expense of operation and maintenance, including all salaries, labor, materials, interest, repairs and extensions necessary to render efficient service; provided, however, that only such repairs and extensions, as in the judgment of the Town Council, reasonably and fairly exercised, are necessary to keep the System in operation and render adequate service to the Town and the inhabitants thereof, or such as might be necessary to meet some physical accident or condition which would otherwise impair the security of any obligations payable from and secured by a lien on the Net Revenues of the System, shall be deducted in determining "Net Revenues".

(g) The term "Outstanding" when used in this Ordinance with respect to Certificates means, as of the date of determination, all Certificates theretofore issued and delivered under this Ordinance, except:

(1) those Certificates canceled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;

(2) those Certificates deemed to be duly paid by the Town in accordance with the provisions of Section 24 hereof; and

(3) those Certificates that have been mutilated, destroyed, lost, or stolen and replacement Certificates have been registered and delivered in lieu thereof as provided in Section 25 hereof.

(h) The term "Prior Lien Bonds" shall mean all bonds or other similar obligations now outstanding and hereafter issued that are payable from and secured by a lien on and pledge of the Net Revenues of the System, which is prior in right and claim to the lien on and pledge of the Net Revenues securing the payment of the Certificates.

(i) The term "System" shall mean the Town's combined waterworks and sewer system, including all properties (real, personal or mixed and tangible or intangible) owned, operated, maintained and vested in the Town for the supply, treatment and distribution of treated water for domestic commercial, industrial and other uses and the together with all future additions, extensions replacements and improvements thereto.

SECTION 11: Certificate Fund. For the purpose of paying the interest on and to provide a sinking fund for the payment, redemption and retirement of the Certificates, there shall be and is hereby created a special account on the books of the Town to be designated "SPECIAL 2017A TAX AND REVENUE CERTIFICATE OF OBLIGATION FUND," and all moneys deposited to the credit of such account shall be kept and maintained in a banking fund maintained at the Town's depository. The Mayor, Mayor Pro Tem, Deputy Mayor Pro Tem,

Town Manager, Deputy Town Manager/CFO or Town Secretary, individually or collectively, are hereby authorized and directed to make withdrawals from the Certificate Fund sufficient to pay the principal of and interest on the Certificates as the same become due and payable, and, shall cause to be transferred to the Paying Agent/Registrar from moneys on deposit in the Certificate Fund an amount sufficient to pay the amount of principal and/or interest falling due on the Certificates, such transfer of funds to the Paying Agent/Registrar to be made in such manner as will cause immediately available funds to be deposited with the Paying Agent/Registrar on or before the last business day next preceding each interest and principal payment date for the Certificates.

Pending the transfer of funds to the Paying Agent/Registrar, money in the Certificate Fund may, at the option of the Town, be invested in obligations identified in, and in accordance with the provisions of the Town's Investment Policy as the same may be amended from time to time and the "Public Funds Investment Act" relating to the investment of "bond proceeds"; provided that all such investments shall be made in such a manner that the money required to be expended from said Fund will be available at the proper time or times. All interest and income derived from deposits and investments in said Certificate Fund shall be credited to, and any losses debited to, the said Certificate Fund. All such investments shall be sold promptly when necessary to prevent any default in connection with the Certificates.

SECTION 12: Tax Levy. To provide for the payment of the "Debt Service Requirements" on the Certificates being (i) the interest on said Certificates and (ii) a sinking fund for their redemption at maturity or a sinking fund of 2% (whichever amount shall be the greater), there shall be and there is hereby levied, within the limitations prescribed by law, for the current year and each succeeding year thereafter while said Certificates or any interest thereon shall remain Outstanding, a sufficient tax on each one hundred dollars' valuation of taxable property in said Town, adequate to pay such Debt Service Requirements, full allowance being made for delinquencies and costs of collection; said tax shall be assessed and collected each year and applied to the payment of the Debt Service Requirements, and the same shall not be diverted to any other purpose. The taxes so levied and collected shall be paid into the Certificate Fund. The Town Council hereby declares its purpose and intent to provide and levy a tax legally and fully sufficient to pay the said Debt Service Requirements, it having been determined that the existing and available taxing authority of the Town for such purpose is adequate to permit a legally sufficient tax in consideration of all other outstanding indebtedness.

The amount of taxes to be provided annually for the payment of the principal of and interest on the Certificates shall be determined and accomplished in the following manner:

(a) Prior to the date the Town Council establishes the annual tax rate and passes an ordinance levying ad valorem taxes each year, the Town Council shall determine:

(1) The amount on deposit in the Certificate Fund after (a) deducting therefrom the total amount of Debt Service Requirements to become due on Certificates prior to the Collection Date for the ad valorem taxes to be levied and (b) adding thereto the amount of the Net Revenues of the System appropriated and allocated to pay such Debt Service Requirements prior to the Collection Date for the ad valorem taxes to be levied.

(2) The amount of Net Revenues of the System, and any other lawfully available revenues which are appropriated and to be set aside for the payment of the Debt Service Requirements on the Certificates between the

Collection Date for the taxes then to be levied and the Collection Date for the taxes to be levied during the next succeeding calendar year.

(3) The amount of Debt Service Requirements to become due and payable on the Certificates between the Collection Date for the taxes then to be levied and the Collection Date for the taxes to be levied during the next succeeding calendar year.

(b) The amount of taxes to be levied annually each year to pay the Debt Service Requirements on the Certificates shall be the amount established in paragraph (3) above less the sum total of the amounts established in paragraphs (1) and (2), after taking into consideration delinquencies and costs of collecting such annual taxes.

SECTION 13: Limited Pledge of Net Revenues. The Town hereby covenants and agrees that, subject to the prior lien on and pledge of the Net Revenues of the System to the payment and security of Prior Lien Bonds, the Net Revenues of the System in the amount of \$1,000 are hereby irrevocably pledged, equally and ratably, to the payment of the principal of and interest on the Certificates, and the limited pledge of \$1,000 of the Net Revenues of the System herein made for the payment of the Certificates shall constitute a lien on the Net Revenues of the System until such time as the Town shall pay all of such \$1,000, after which time the pledge shall cease. Furthermore, such lien on and pledge of the Net Revenues securing the payment of the Certificates shall be valid and binding and fully perfected from and after the date of adoption of this Ordinance without physical delivery or transfer or transfer of control of the Net Revenues, the filing of this Ordinance or any other act; all as provided in Texas Government Code, Chapter 1208, as amended.

Texas Government Code, Section 1208, as amended, applies to the issuance of the Certificates and the pledge of the Net Revenues of the System granted by the Town under this Section 13, and such pledge is therefore valid, effective and perfected. If Texas law is amended at any time while the Certificates are Outstanding such that the pledge of the Net Revenues of the System granted by the Town under this Section 13 is to be subject to the filing requirements of Texas Business and Commerce Code, Chapter 9, as amended, then in order to preserve to the registered owners of the Certificates the perfection of the security interest in said pledge, the Town agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Texas Business and Commerce Code, Chapter 9, as amended, and enable a filing to perfect the security interest in said pledge to occur.

SECTION 14: Revenue Fund. The Town hereby covenants and agrees that so long as the pledge of the Net Revenues is made to the payment of the Certificates all revenues derived from the operation of the System shall be kept separate and apart from all other funds, accounts and moneys of the Town, and all such revenues shall be deposited as collected into the "Town of Flower Mound, Texas, Waterworks and Sewer System Revenue Fund" (heretofore created and established and hereinafter called the "Revenue Fund"). All moneys deposited to the credit of the Revenue Fund shall be pledged and appropriated to the extent required for the following purposes and in the order of priority shown, to wit:

First: To the payment of the reasonable and proper operating and maintenance expenses as defined herein or required by statute to be a first charge on and claim against the gross revenues of the System.

Second: To the payment of all amounts required to be deposited in the special Funds created and established for the payment, security and benefit of Prior Lien Bonds in accordance with the terms and provisions of any ordinance authorizing the issuance of Prior Lien Bonds.

Third: To the payment, equally and ratably, of the limited amounts required to be deposited in the special funds and accounts created and established for the payment of the debt service requirements of the Certificates (the Certificate Fund), the "Town of Flower Mound, Texas Certificates of Obligation, Series 2017" dated March 15, 2017 (the "Series 2017 Certificates") and Additional Certificates.

Any Net Revenues remaining in the Revenue Fund after satisfying the foregoing payments, or making adequate and sufficient provision for the payment thereof, may be appropriated and used for any other Town purpose now or hereafter permitted by law.

SECTION 15: Deposits to Certificate Fund. Subject to the provisions of Section 13 hereof, the Town hereby covenants and agrees to cause to be deposited in the Certificate Fund from the pledged Net Revenues of the System in the Revenue Fund, the amount of Net Revenues of the System pledged to the payment of the Certificates.

The Town covenants and agrees that the amount of pledged Net Revenues of the System (\$1,000), together with other lawfully available revenues appropriated by the Town for payment of the debt service requirements on the Certificates and ad valorem taxes levied, collected, and deposited in the Certificate Fund for and on behalf of the Certificates, will be an amount equal to one hundred percent (100%) of the amount required to fully pay the interest and principal due and payable on the Certificates. In addition, any surplus proceeds from the sale of the Certificates not expended for authorized purposes shall be deposited in the Certificate Fund, and such amounts so deposited shall reduce the sums otherwise required to be deposited in said Fund from ad valorem taxes and the Net Revenues of the System.

SECTION 16: Security of Funds. All moneys on deposit in the Funds for which this Ordinance makes provision (except any portion thereof as may be at any time properly invested) shall be secured in the manner and to the fullest extent required by the laws of Texas for the security of public funds, and moneys on deposit in such Funds shall be used only for the purposes permitted by this Ordinance.

SECTION 17: Special Covenants. The Town hereby further covenants as follows:

(1) It has the lawful power to pledge the Net Revenues of the System supporting this issue of Certificates and has lawfully exercised said powers under the Constitution and laws of the State of Texas, including said power existing under Texas Government Code, Chapter 1502, as amended, and Texas Local Government Code, Sections 271.041, et seq., as amended.

(2) Other than for the payment of the Prior Lien Bonds, the Series 2017 Certificates and the Certificates, the Net Revenues of the System are not pledged to the payment of any debt or obligation of the Town or of the System.

SECTION 18: Issuance of Prior Lien Bonds and Additional Certificates. The Town hereby expressly reserves the right to hereafter issue Prior Lien Bonds, without limitation as to principal amount but subject to any terms, conditions or restrictions applicable thereto under law or otherwise, and also reserves the right to issue Additional Certificates which, together with the Certificates, shall be secured by a parity lien on and pledge of the Net Revenues of the System.

SECTION 19: Application of Prior Lien Bonds Covenants and Agreements. It is the intention of this governing body and accordingly hereby recognized and stipulated that the provisions, agreements and covenants contained herein bearing upon the management and operations of the System, and the administering and application of revenues derived from the operation thereof, shall to the extent possible be harmonized with like provisions, agreements and covenants contained in the ordinances authorizing the issuance of the Prior Lien Bonds, and to the extent of any irreconcilable conflict between the provisions contained herein and in the ordinances authorizing the issuance of the Prior Lien Bonds, the provisions, agreements and covenants contained therein shall prevail to the extent of such conflict and be applicable to this Ordinance but in all respects subject to the priority of rights and benefits, if any, conferred thereby to the holders of the Prior Lien Bonds. Notwithstanding the above, any change or modification affecting the application of revenues derived from the operation of the System shall not impair the obligation of contract with respect to the pledge of revenues herein made for the payment and security for the Certificates.

SECTION 20: Further Procedures. Any one or more of the Mayor, Mayor Pro Tem, Deputy Mayor Pro Tem, Town Manager, Deputy Town Manager/CFO and Town Secretary are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of the Town all agreements, instruments, certificates or other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the issuance of the Certificates. In addition, prior to the initial delivery of the Certificates, the Mayor, Mayor Pro Tem, Deputy Mayor Pro Tem, Town Manager, Deputy Town Manager/CFO, or Bond Counsel to the Town are each hereby authorized and directed to approve any changes or corrections to this Ordinance or to any of the documents authorized and approved by this Ordinance: (i) in order to cure any ambiguity, formal defect, or omission in the Ordinance or such other document; or (ii) as requested by the Attorney General of the State of Texas or his representative to obtain the approval of the Certificates by the Attorney General and if such officer or counsel determines that such changes are consistent with the intent and purpose of the Ordinance, which determination shall be final. In the event that any officer of the Town whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 21: Notices to Holders Waiver. Wherever this Ordinance provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States Mail, first class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the business day next preceding the mailing of such notice.

In any case where notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Certificates. Where this Ordinance provides for notice in any manner, such notice may be waived in writing by the Holder entitled to

receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 22: Cancellation. All Certificates surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly canceled by it and, if surrendered to the Town, shall be delivered to the Paying Agent/Registrar and, if not already canceled, shall be promptly canceled by the Paying Agent/Registrar. The Town may at any time deliver to the Paying Agent/Registrar for cancellation any Certificates previously certified or registered and delivered which the Town may have acquired in any manner whatsoever, and all Certificates so delivered shall be promptly canceled by the Paying Agent/Registrar. All canceled Certificates held by the Paying Agent/Registrar shall be returned to the Town.

SECTION 23: Covenants to Maintain Tax-Exempt Status.

(a) Definitions. When used in this Section, the following terms have the following meanings:

"Closing Date" means the date on which the Certificates are first authenticated and delivered to the initial purchasers against payment therefor.

"Code" means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

"Computation Date" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Gross Proceeds" means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Certificates.

"Investment" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Nonpurpose Investment" means any investment property, as defined in Section 148(b) of the Code, in which Gross Proceeds of the Certificates are invested and which is not acquired to carry out the governmental purposes of the Certificates.

"Rebate Amount" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Regulations" means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Certificates. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

"Yield" of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Certificates has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The Town shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Certificate to become includable in the gross income, as defined in Section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the Town receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Certificate, the Town shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, the Town shall at all times prior to the last Stated Maturity of Certificates:

(1) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Certificates, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(2) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Certificates or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the Town or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by Section 141 of the Code and the Regulations and rulings thereunder, the Town shall not use Gross Proceeds of the Certificates to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the Town shall not at any time

prior to the final Stated Maturity of the Certificates directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Certificates.

(f) Not Federally Guaranteed. Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the Town shall not take or omit to take any action which would cause the Certificates to be federally guaranteed within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The Town shall timely file the information required by Section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in Section 148(f) of the Code and the Regulations and rulings thereunder:

(1) The Town shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last outstanding Certificate is discharged. However, to the extent permitted by law, the Town may commingle Gross Proceeds of the Certificates with other money of the Town, provided that the Town separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the Town shall calculate the Rebate Amount in accordance with rules set forth in Section 148(f) of the Code and the Regulations and rulings thereunder. The Town shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Certificates until six years after the final Computation Date.

(3) As additional consideration for the purchase of the Certificates by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the Town shall pay to the United States from the general fund, other appropriate fund, or if permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State of Texas, the Certificate Fund, the amount that when added to the future value of previous rebate payments made for the Certificates equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(4) The Town shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the Issuer shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Certificates, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Certificates not been relevant to either party.

(j) Elections. The Town hereby directs and authorizes the Mayor, Mayor Pro Tem, Deputy Mayor Pro Tem, Town Manager and Deputy Town Manager/CFO, either or any combination of them to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Certificates, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document.

(k) Qualified Tax-Exempt Obligations. The Pricing Officer is hereby authorized to designate in the Pricing Certificate the designation of the Certificates as "qualified tax-exempt obligations" in accordance with the provisions of the paragraph (3) of subsection (b) of Section 265 of the Code in the event the Certificates qualify for such designation and confirm that the Certificates are not "private activity bonds" as defined in the Code and confirm the amount of "tax-exempt obligations" to be issued by the Town (including all subordinate entities of the Town) for the calendar year in which the Certificates are issued will not exceed the applicable limitation.

SECTION 24: Satisfaction of Obligations of Town. If the Town shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Certificates, at the times and in the manner stipulated in this Ordinance, then the pledge of taxes levied under this Ordinance and the Net Revenues of the System (to the extent such limited pledge of Net Revenues shall not have been discharged or terminated by prior payment of principal of or interest on the Certificates) and all covenants, agreements, and other obligations of the Town to the Holders shall thereupon cease, terminate, and be discharged and satisfied.

Certificates or any principal amount(s) thereof shall be deemed to have been paid within the meaning and with the effect expressed above in this Section ("Defeased Certificates") when (i) money sufficient to pay in full such Certificates or the principal amount(s) thereof at maturity or the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (ii) Government Securities shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Securities have been certified by an independent accounting firm to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any moneys deposited therewith, if any, to pay when due the principal of

and interest on such Certificates, or the principal amount(s) thereof, on and prior to the Stated Maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/ Registrar have been made) the redemption date thereof. At such time as Certificates shall be deemed to be Defeased Certificates hereunder, as aforesaid, such Certificates and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of, the taxes or revenues levied and pledged as provided in this Ordinance, and such principal and interest shall be payable solely from such money or Government Securities. Notwithstanding any other provision of this Ordinance to the contrary, it is hereby provided that any determination not to redeem the Defeased Certificates that is made in conjunction with the payment arrangements specified in (i) or (ii) above in this paragraph shall not be irrevocable, provided that in the proceedings providing for such payment arrangements, the Town: (1) expressly reserves the right to call the Defeased Certificates for redemption; (2) gives notice of the reservation of that right to the registered owners of the Defeased Certificates immediately following the making of the payment arrangements; and (3) directs that notice of the reservation be included in any redemption notices that it authorizes. The Town covenants that no deposit of moneys or Government Securities will be made under this Section and no use made of any such deposit which would cause the Certificates to be treated as "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, or regulations adopted pursuant thereto.

Any moneys so deposited with the Paying Agent/Registrar, or an authorized escrow agent, and all income from Government Securities held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Certificates, or any principal amount(s) thereof, or interest thereon with respect to which such moneys have been so deposited shall be remitted to the Town or deposited as directed by the Town. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Certificates and remaining unclaimed for a period of three (3) years after the Stated Maturity, or applicable redemption date, of the Certificates such moneys were deposited and are held in trust to pay shall upon the request of the Town be remitted to the Town against a written receipt therefor. Notwithstanding the above and foregoing, any remittance of funds from the Paying Agent/Registrar to the Town shall be subject to any applicable unclaimed property laws of the State of Texas.

Unless otherwise modified by the Pricing Officer, the term "Government Securities" as used herein, means (i) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations unconditionally guaranteed or insured by the agency or instrumentality and on the date of their acquisition or purchase by the Town are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and on the date of their acquisition or purchase by the Town, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, and (iv) any other then authorized securities or obligations that may be used to defease obligations such as the Certificates under the then applicable laws of the State of Texas.

SECTION 25: Mutilated, Destroyed, Lost, and Stolen Certificates. In case any Certificate shall be mutilated, or destroyed, lost or stolen, the Paying Agent/Registrar may execute and deliver a replacement Certificate of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and

substitution for such mutilated Certificate, or in lieu of and in substitution for such destroyed, lost or stolen Certificate, only upon the approval of the Town and after (i) the filing by the Holder thereof with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss or theft of such Certificate, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying Agent/Registrar of indemnification in an amount satisfactory to hold the Town and the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Certificate shall be borne by the Holder of the Certificate mutilated, or destroyed, lost or stolen.

Every replacement Certificate issued pursuant to this Section shall be a valid and binding obligation, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Certificates; notwithstanding the enforceability of payment by anyone of the destroyed, lost, or stolen Certificates.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost or stolen Certificates.

SECTION 26: Ordinance a Contract - Amendments. This Ordinance shall constitute a contract with the Holders from time to time, be binding on the Town, and shall not be amended or repealed by the Town so long as any Certificate remains Outstanding except as permitted in this Section and Section 32 hereof. The Town, may, without the consent of or notice to any Holders, from time to time and at any time, amend this Ordinance in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the Town may, with the written consent of Holders holding a majority in aggregate principal amount of the Certificates and Additional Certificates then Outstanding, amend, add to, or rescind any of the provisions of this Ordinance; provided that, without the consent of all Holders of Outstanding Certificates, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of, premium, if any, and interest on the Certificates, reduce the principal amount thereof, the redemption price, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of, premium, if any, or interest on the Certificates, (2) give any preference to any Certificate over any other Certificate, or (3) reduce the aggregate principal amount of Certificates required to be held by Holders for consent to any such amendment, addition, or rescission.

SECTION 27: Sale of the Certificates – Official Statement. The Certificates authorized by this Ordinance are to be sold by the Town to the Purchasers in accordance with a bond purchase agreement in the event of a negotiated sale, letter agreement to purchase in the event of a private placement, or the successful bid form in the event of a competitive sale, as applicable (the "Purchase Contract"), the terms and provisions of which Purchase Contract are to be determined by the Pricing Officer in accordance with Section 3 hereof. The Pricing Officer is hereby authorized and directed to execute the Purchase Contract for and on behalf of the Town, as the act and deed of this Council, and to make a determination as to whether the terms are in the Town's best interests, which determination shall be final.

With regard to such terms and provisions of the Purchase Contract, the Pricing Officer is hereby authorized to come to an agreement with the Purchasers on the following, among other matters:

1. The details of the purchase and sale of the Certificates;
2. The details of any public offering of the Certificates by the Purchasers, if any;
3. The details of any Official Statement or similar disclosure document (and, if appropriate, any Preliminary Official Statement) relating to the Certificates and the Town's Rule 15c2-12 compliance, if applicable;
4. A security deposit for the Certificates, if any;
5. The representations and warranties of the Town to the Purchasers;
6. The details of the delivery of, and payment for, the Certificates;
7. The Purchasers' obligations under the Purchase Contract;
8. The certain conditions to the obligations of the Town under the Purchase Contract;
9. Termination of the Purchase Contract;
10. Particular covenants of the Town;
11. The survival of representations made in the Purchase Contract;
12. The payment of any expenses relating to the Purchase Contract;
13. Notices; and
14. Any and all such other details that are found by the Pricing Officer to be necessary and advisable for the purchase and sale of the Certificates.

The Mayor or Mayor Pro Tem and Town Secretary of the Town and the Pricing Officer are each further authorized and directed to deliver for and on behalf of the Town copies of a Preliminary Official Statement and Official Statement prepared in connection with the offering of the Certificates by the Purchasers, in final form as may be required by the Purchasers, and such final Official Statement as delivered by said officials shall constitute the Official Statement authorized for distribution and use by the Purchasers.

SECTION 28: Proceeds of Sale. The proceeds of sale of the Certificates excluding accrued interest, if any, received from the Purchasers, and amounts to pay costs of issuance and any additional proceeds to be deposited to the Certificate Fund as specified in the Pricing Certificate, shall be deposited in a fund maintained at a Town depository bank (the "Construction Fund"). Pending expenditure for authorized projects and purposes, such proceeds of sale may be invested in authorized investments in accordance with the provisions of Texas Government Code, Chapter 2256, as amended, including specifically guaranteed investment contracts permitted by Texas Government Code, Section 2256.015, et seq., and the Town's investment policies and guidelines, and any investment earnings realized may be expended for such authorized projects and purposes or deposited in the Certificate Fund as shall be determined by the Town Council. Accrued interest, if any, received from the Purchasers as well as proceeds of sale, including investment earnings thereon, remaining after completion of all authorized projects or purposes shall be deposited to the credit of the Certificate Fund.

SECTION 29: Control and Custody of Certificates. The Mayor or Mayor Pro Tem of the Town shall be and is hereby authorized to take and have charge of all necessary orders and records pending the sale of the Certificates, the investigation by the Attorney General of the

State of Texas, including the printing and supply of definitive Certificates, and shall take and have charge and control of the Initial Certificate pending the approval thereof by the Attorney General and its registration thereof by the Comptroller of Public Accounts.

Furthermore, the Mayor, Mayor Pro Tem, Deputy Mayor Pro Tem, Town Manager, Deputy Town Manager/CFO and Town Secretary individually or collectively, are hereby authorized and directed to furnish and execute such documents and certifications relating to the Town and the issuance of the Certificates, including a certification as to facts, estimates, circumstances and reasonable expectations pertaining to the use and expenditure and investment of the proceeds of the Certificates as may be necessary for the approval of the Attorney General and their registration by the Comptroller of Public Accounts. In addition, such officials, together with the Town's financial advisor, bond counsel and the Paying Agent/Registrar, are authorized and directed to make the necessary arrangements for the delivery of the Initial Certificate to the initial purchasers.

SECTION 30: Bond Counsel's Opinion. The Purchasers' obligation to accept delivery of the Certificates is subject to being furnished a final opinion of Norton Rose Fulbright US LLP, Dallas, Texas, Bond Counsel to the Town, approving the Certificates as to their validity, said opinion to be dated and delivered as of the date of delivery and payment for the Certificates. An executed counterpart of said opinion shall accompany the global certificates deposited with The Depository Trust Company or a reproduction thereof shall be printed on the definitive Certificates in the event the book-entry-only system shall be discontinued.

SECTION 31: CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Certificates. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Certificates shall be of no significance or effect as regards the legality thereof and neither the Town nor attorneys approving said Certificates as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Certificates.

SECTION 32: Continuing Disclosure Undertaking. This Section shall apply unless the Pricing Officer determines in the Pricing Certificate that an undertaking is not required pursuant to the Rule (defined below).

(a) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

"MSRB" means the Municipal Securities Rulemaking Board.

"Rule" means SEC Rule 15c2-12, as amended from time to time.

"SEC" means the United States Securities and Exchange Commission.

(b) Annual Reports.

The Town shall provide annually to the MSRB (1) within six months after the end of each fiscal year, beginning with the year stated in the Pricing Certificate, financial information and operating data with respect to the Town of the general type included in the Official Statement approved by the Pricing Officer and described in the Pricing Certificate, and (2) if not provided as part of such financial information and operating data, audited financial statements of the Town within twelve months after the end of each fiscal year, when and if available. Any financial statements so provided shall be prepared in accordance with the accounting principles

described in the Pricing Certificate, or such other accounting principles as the Town may be required to employ from time to time pursuant to state law or regulation, and audited, if the Town commissions an audit of such statements and the audit is completed within the period during which they must be provided. If audited financial statements are not available by the required time, the Town will file unaudited financial statements within such twelve-month period and audited financial statements when and if such audited financial statements become available.

If the Town changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the Town otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any documents available to the public on the MSRB's internet web site or filed with the SEC.

(c) Notice of Certain Events.

The Town shall provide notice of any of the following events with respect to the Certificates to the MSRB in a timely manner and not more than ten (10) business days after occurrence of the event:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Certificates, or other material events affecting the tax status of the Certificates;
- (7) Modifications to rights of holders of the Certificates, if material;
- (8) Certificate calls, if material, and tender offers;
- (9) Defeasances;
- (10) Release, substitution, or sale of property securing repayment of the Certificates, if material;
- (11) Rating changes;
- (12) Bankruptcy, insolvency, receivership, or similar event of the Town, which shall occur as described below;
- (13) The consummation of a merger, consolidation, or acquisition involving the Town or the sale of all or substantially all of its assets, other than in

the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and

(14) Appointment of a successor or additional trustee or the change of name of a trustee, if material.

For these purposes, any event described in the immediately preceding subsection (c)(12) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the Town in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Town, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Town.

The Town shall notify the MSRB, in a timely manner, of any failure by the Town to provide financial information or operating data in accordance with Subsection (b) of this Section of this Ordinance by the time required by such Section.

(d) Filings with the MSRB.

All financial information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Section shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

(e) Limitations, Disclaimers, and Amendments.

The Town shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the Town remains an “obligated person” with respect to the Certificates within the meaning of the Rule, except that the Town in any event will give the notice required by Subsection (c) of this Section of any Certificate calls and defeasance that cause the Town to be no longer such an “obligated person.”

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Certificates; and, nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The Town undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section. Except as expressly provided within this Section, the Town does not undertake to provide any other information, whether or not it may be relevant or material to a complete presentation of the Town’s financial results, condition, or prospects; nor does the Town undertake to update any information provided in accordance with this Section or otherwise. Furthermore, the Town does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Certificates at any future date.

UNDER NO CIRCUMSTANCES SHALL THE TOWN BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY CERTIFICATE OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE

TOWN, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the Town in observing or performing its obligations under this Section shall constitute a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the Town under federal and state securities laws.

Notwithstanding anything herein to the contrary, the provisions of this Section may be amended by the Town from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Town, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Certificates in the primary offering of the Certificates in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Certificates consent to such amendment or (b) a Person that is unaffiliated with the Town (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Certificates. The provisions of this Section may also be amended from time to time or repealed by the Town if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the Town's right to do so would not prevent underwriters of the initial public offering of the Certificates from lawfully purchasing or selling Certificates in such offering. If the Town so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided pursuant to subsection (b) of this Section an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

SECTION 33: Benefits of Ordinance. Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon any person other than the Town, the Paying Agent/Registrar, and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof, this Ordinance and all its provisions being intended to be and being for the sole and exclusive benefit of the Town, the Paying Agent/Registrar and the Holders.

SECTION 34: Inconsistent Provisions. All ordinances, orders, or resolutions, or parts thereof which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict and the provisions of this Ordinance shall be and remain controlling as to the matters contained herein.

SECTION 35: Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 36: Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 37: Severability. If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance or the application thereof to other circumstances shall nevertheless be valid, and this governing body hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 38: Construction of Terms. If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

SECTION 39: Incorporation of Findings and Determinations. The findings and determinations of the Town Council contained in the preamble hereof are hereby incorporated by reference and made a part of this Ordinance for all purposes as if the same were restated in full in this Section.

SECTION 40: Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 41: Effective Date. In accordance with the provisions of Texas Government Code, Section 1201.028, as amended, this Ordinance shall be in force and effect from and after its passage on the date shown below and it is so ordained.

[Remainder of page intentionally left blank]

ORDINANCE NO. ____-17

PAGE S-1

DULY PASSED AND APPROVED BY THE TOWN COUNCIL ON JULY 17, 2017.

TOWN OF FLOWER MOUND, TEXAS

(Town Seal)

Thomas E. Hayden, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

EXHIBIT A

PAYING AGENT/REGISTRAR AGREEMENT

PAYING AGENT/REGISTRAR AGREEMENT

THIS AGREEMENT is entered into as of _____, 2017 (this "Agreement"), by and between The Bank of New York Mellon Trust Company, N.A., a banking association duly organized and existing under the laws of the United States of America (the "Bank") and the Town of Flower Mound, Texas (the "Issuer"),

RECITALS

WHEREAS, the Issuer has duly authorized and provided for the issuance of its "Town of Flower Mound, Texas, Certificates of Obligation, Series 2017A (the "Securities"), dated _____, 2017, such Securities scheduled to be delivered to the initial purchasers thereof on or about _____, 2017; and

WHEREAS, the Issuer has selected the Bank to serve as Paying Agent/Registrar in connection with the payment of the principal of, premium, if any, and interest on said Securities and with respect to the registration, transfer and exchange thereof by the registered owners thereof; and

WHEREAS, the Bank has agreed to serve in such capacities for and on behalf of the Issuer and has full power and authority to perform and serve as Paying Agent/Registrar for the Securities;

NOW, THEREFORE, it is mutually agreed as follows:

ARTICLE ONE**APPOINTMENT OF BANK AS PAYING AGENT AND REGISTRAR**

Section 1.01 Appointment. The Issuer hereby appoints the Bank to serve as Paying Agent with respect to the Securities, and, as Paying Agent for the Securities, the Bank shall be responsible for paying on behalf of the Issuer the principal, premium (if any), and interest on the Securities as the same become due and payable to the registered owners thereof; all in accordance with this Agreement and the "Authorizing Document" (hereinafter defined). The Issuer hereby appoints the Bank as Registrar with respect to the Securities and, as Registrar for the Securities, the Bank shall keep and maintain for and on behalf of the Issuer books and records as to the ownership of said Securities and with respect to the transfer and exchange thereof as provided herein and in the Authorizing Document.

The Bank hereby accepts its appointment, and agrees to serve as the Paying Agent and Registrar for the Securities.

Section 1.02 Compensation. As compensation for the Bank's services as Paying Agent/Registrar, the Issuer hereby agrees to pay the Bank the fees and amounts set forth in **Annex A** attached hereto.

In addition, the Issuer agrees to reimburse the Bank upon its request for all reasonable expenses, disbursements and advances incurred or made by the Bank in accordance with any of the provisions hereof (including the reasonable compensation and the expenses and disbursements of its agents and counsel).

ARTICLE TWO DEFINITIONS

Section 2.01 Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

“Acceleration Date” on any Security means the date, if any, on and after which the principal or any or all installments of interest, or both, are due and payable on any Security which has become accelerated pursuant to the terms of the Security.

“Authorizing Document” means the resolution, order, or ordinance of the governing body of the Issuer pursuant to which the Securities are issued, as the same may be amended or modified, including any pricing certificate related thereto, certified by the secretary or any other officer of the Issuer and delivered to the Bank.

“Bank Office” means the designated office of the Bank at the address shown in Section 3.01 hereof. The Bank will notify the Issuer in writing of any change in location of the Bank Office.

“Financial Advisor” means Hilltop Securities Inc.

“Holder” and “Security Holder” each means the Person in whose name a Security is registered in the Security Register.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision of a government.

“Predecessor Securities” of any particular Security means every previous Security evidencing all or a portion of the same obligation as that evidenced by such particular Security (and, for the purposes of this definition, any mutilated, lost, destroyed, or stolen Security for which a replacement Security has been registered and delivered in lieu thereof pursuant to Section 4.06 hereof and the Authorizing Document).

“Redemption Date”, when used with respect to any Security to be redeemed, means the date fixed for such redemption pursuant to the terms of the Authorizing Document.

“Responsible Officer”, when used with respect to the Bank, means the Chairman or Vice-Chairman of the Board of Directors, the Chairman or Vice-Chairman of the Executive Committee of the Board of Directors, the President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer, any Assistant Treasurer, the Cashier, any Assistant Cashier, any Trust Officer or Assistant Trust Officer, or any other officer of the Bank customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

“Security Register” means a register maintained by the Bank on behalf of the Issuer providing for the registration and transfers of Securities.

“Stated Maturity” means the date specified in the Authorizing Document the principal of a Security is scheduled to be due and payable.

Section 2.02 Other Definitions. The terms “Bank,” “Issuer,” and “Securities (Security)” have the meanings assigned to them in the recital paragraphs of this Agreement.

The term “Paying Agent/Registrar” refers to the Bank in the performance of the duties and functions of this Agreement.

ARTICLE THREE PAYING AGENT

Section 3.01 Duties of Paying Agent. As Paying Agent, the Bank shall pay, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, on behalf of the Issuer the principal of each Security at its Stated Maturity, Redemption Date or Acceleration Date, to the Holder upon surrender of the Security to the Bank at the following address:

<u>First Class/Registered/Certified</u>	<u>Express Delivery/Courier</u>	<u>By Hand Only</u>
The Bank of New York Mellon Trust Company, N.A. Global Corporate Trust P.O. Box 396 East Syracuse, NY 13057	The Bank of New York Mellon Trust Company, N.A. Global Corporate Trust 111 Sanders Creek Pkwy. East Syracuse, NY 13057	The Bank of New York Mellon Trust Company, N.A. Global Corporate Trust Corporate Trust Window 101 Barclay Street, 1st Floor East New York, NY 10286

As Paying Agent, the Bank shall, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, pay on behalf of the Issuer the interest on each Security when due, by computing the amount of interest to be paid each Holder and making payment thereof to the Holders of the Securities (or their Predecessor Securities) on the Record Date (as defined in the Authorizing Document). All payments of principal and/or interest on the Securities to the registered owners shall be accomplished (1) by the issuance of checks, payable to the registered owners, drawn on the paying agent account provided in Section 5.05 hereof, sent by United States mail, first class postage prepaid, to the address appearing on the Security Register or (2) by such other method, acceptable to the Bank, requested in writing by the Holder at the Holder’s risk and expense.

Section 3.02 Payment Dates. The Issuer hereby instructs the Bank to pay the principal of and interest on the Securities on the dates specified in the Authorizing Document.

ARTICLE FOUR REGISTRAR

Section 4.01 Security Register - Transfers and Exchanges. The Bank agrees to keep and maintain for and on behalf of the Issuer at the Bank Office books and records (herein sometimes referred to as the “Security Register”) for recording the names and addresses of the Holders of the Securities, the transfer, exchange and replacement of the Securities and the payment of the principal of and interest on the Securities to the Holders and containing such

other information as may be reasonably required by the Issuer and subject to such reasonable regulations as the Issuer and the Bank may prescribe. All transfers, exchanges and replacements of Securities shall be noted in the Security Register.

Every Security surrendered for transfer or exchange shall be duly endorsed or be accompanied by a written instrument of transfer, the signature on which has been guaranteed by an officer of a federal or state bank or a member of the National Association of Securities Dealers, such written instrument to be in a form satisfactory to the Bank and duly executed by the Holder thereof or his agent duly authorized in writing.

The Bank may request any supporting documentation it feels necessary to effect a re-registration, transfer or exchange of the Securities.

To the extent possible and under reasonable circumstances, the Bank agrees that, in relation to an exchange or transfer of Securities, the exchange or transfer by the Holders thereof will be completed and new Securities delivered to the Holder or the assignee of the Holder in not more than three (3) business days after the receipt of the Securities to be cancelled in an exchange or transfer and the written instrument of transfer or request for exchange duly executed by the Holder, or his duly authorized agent, in form and manner satisfactory to the Paying Agent/Registrar.

Section 4.02 Securities. The Issuer shall provide additional Securities when needed to facilitate transfers or exchanges thereof. The Bank covenants that such additional Securities, if and when provided, will be kept in safekeeping pending their use and reasonable care will be exercised by the Bank in maintaining such Securities in safekeeping, which shall be not less than the care maintained by the Bank for debt securities of other governments or corporations for which it serves as registrar, or that is maintained for its own securities.

Section 4.03 Form of Security Register. The Bank, as Registrar, will maintain the Security Register relating to the registration, payment, transfer and exchange of the Securities in accordance with the Bank's general practices and procedures in effect from time to time. The Bank shall not be obligated to maintain such Security Register in any form other than those which the Bank has currently available and currently utilizes at the time.

The Security Register may be maintained in written form or in any other form capable of being converted into written form within a reasonable time.

Section 4.04 List of Security Holders. The Bank will provide the Issuer at any time requested by the Issuer, upon payment of the required fee, a copy of the information contained in the Security Register. The Issuer may also inspect the information contained in the Security Register at any time the Bank is customarily open for business, provided that reasonable time is allowed the Bank to provide an up-to-date listing or to convert the information into written form.

The Bank will not release or disclose the contents of the Security Register to any person other than to, or at the written request of, an authorized officer or employee of the Issuer, except upon receipt of a court order or as otherwise required by law. Upon receipt of a court order and prior to the release or disclosure of the contents of the Security Register, the Bank will notify the Issuer so that the Issuer may contest the court order or such release or disclosure of the contents of the Security Register.

Section 4.05 Return of Cancelled Securities. The Bank will, at such reasonable intervals as it determines, surrender to the Issuer, all Securities in lieu of which or in exchange for which other Securities have been issued, or which have been paid.

Section 4.06 Mutilated, Destroyed, Lost or Stolen Securities. The Issuer hereby instructs the Bank, subject to the provisions of the Authorizing Document, to deliver and issue Securities in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities as long as the same does not result in an overissuance.

In case any Security shall be mutilated, destroyed, lost or stolen, the Bank may execute and deliver a replacement Security of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Security, or in lieu of and in substitution for such mutilated, destroyed, lost or stolen Security, only upon the approval of the Issuer and after (i) the filing by the Holder thereof with the Bank of evidence satisfactory to the Bank of the destruction, loss or theft of such Security, and of the authenticity of the ownership thereof and (ii) the furnishing to the Bank of indemnification in an amount satisfactory to hold the Issuer and the Bank harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Security shall be borne by the Holder of the Security mutilated, destroyed, lost or stolen.

Section 4.07 Transaction Information to Issuer. The Bank will, within a reasonable time after receipt of written request from the Issuer, furnish the Issuer information as to the Securities it has paid pursuant to Section 3.01, Securities it has delivered upon the transfer or exchange of any Securities pursuant to Section 4.01, and Securities it has delivered in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities pursuant to Section 4.06.

ARTICLE FIVE THE BANK

Section 5.01 Duties of Bank. The Bank undertakes to perform the duties set forth herein and agrees to use reasonable care in the performance thereof.

Section 5.02 Reliance on Documents, Etc.

(a) The Bank may conclusively rely, as to the truth of the statements and correctness of the opinions expressed therein, on certificates or opinions furnished to the Bank.

(b) The Bank shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Bank was negligent in ascertaining the pertinent facts.

(c) No provisions of this Agreement shall require the Bank to expend or risk its own funds or otherwise incur any financial liability for performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity satisfactory to it against such risks or liability is not assured to it.

(d) The Bank may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction,

consent, order, bond, note, security or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. Without limiting the generality of the foregoing statement, the Bank need not examine the ownership of any Securities, but is protected in acting upon receipt of Securities containing an endorsement or instruction of transfer or power of transfer which appears on its face to be signed by the Holder or an agent of the Holder. The Bank shall not be bound to make any investigation into the facts or matters stated in a resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document supplied by the Issuer.

(e) The Bank may consult with counsel, and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection with respect to any action taken, suffered, or omitted by it hereunder in good faith and in reliance thereon.

(f) The Bank may exercise any of the powers hereunder and perform any duties hereunder either directly or by or through agents or attorneys of the Bank.

(g) The Bank is also authorized to transfer funds relating to the closing and initial delivery of the Securities in the manner disclosed in the closing memorandum or letter as prepared by the Issuer, the Financial Advisor or other agent. The Bank may act on a facsimile or e-mail transmission of the closing memorandum or letter acknowledged by the Issuer, the Issuer's financial advisor or other agent as the final closing memorandum or letter. The Bank shall not be liable for any losses, costs or expenses arising directly or indirectly from the Bank's reliance upon and compliance with such instructions.

Section 5.03 Recitals of Issuer. The recitals contained herein with respect to the Issuer and in the Securities shall be taken as the statements of the Issuer, and the Bank assumes no responsibility for their correctness.

The Bank shall in no event be liable to the Issuer, any Holder or Holders of any Security, or any other Person for any amount due on any Security from its own funds.

Section 5.04 May Hold Securities. The Bank, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Issuer with the same rights it would have if it were not the Paying Agent/Registrar, or any other agent.

Section 5.05 Moneys Held by Bank - Paying Agent Account/Collateralization. A paying agent account shall at all times be kept and maintained by the Bank for the receipt, safekeeping, and disbursement of moneys received from the Issuer under this Agreement for the payment of the Securities, and money deposited to the credit of such account until paid to the Holders of the Securities shall be continuously collateralized by securities or obligations which qualify and are eligible under both the laws of the State of Texas and the laws of the United States of America to secure and be pledged as collateral for paying agent accounts to the extent such money is not insured by the Federal Deposit Insurance Corporation. Payments made from such paying agent account shall be made by check drawn on such account unless the owner of the Securities shall, at its own expense and risk, request an alternative method of payment.

Subject to the applicable unclaimed property laws of the State of Texas, any money deposited with the Bank for the payment of the principal of, premium (if any), or interest on any Security and remaining unclaimed for three years after final maturity of the Security has become

due and payable will be held by the Bank and disposed of only in accordance with Title 6 of the Texas Property Code, as amended. The Bank shall have no liability by virtue of actions taken in compliance with this provision.

The Bank is not obligated to pay interest on any money received by it under this Agreement.

This Agreement relates solely to money deposited for the purposes described herein, and the parties agree that the Bank may serve as depository for other funds of the Issuer, act as trustee under indentures authorizing other bond transactions of the Issuer, or act in any other capacity not in conflict with its duties hereunder.

Section 5.06 Indemnification. To the extent permitted by law, the Issuer agrees to indemnify the Bank for, and hold it harmless against, any loss, liability, or expense incurred without negligence or bad faith on its part, arising out of or in connection with its acceptance or administration of its duties hereunder, including the cost and expense against any claim or liability in connection with the exercise or performance of any of its powers or duties under this Agreement.

Section 5.07 Interpleader. The Issuer and the Bank agree that the Bank may seek adjudication of any adverse claim, demand, or controversy over its person as well as funds on deposit, in either a Federal or State District Court located in the state and county where the administrative office of the Issuer is located, and agree that service of process by certified or registered mail, return receipt requested, to the address referred to in Section 6.03 of this Agreement shall constitute adequate service. The Issuer and the Bank further agree that the Bank has the right to file a Bill of Interpleader in any court of competent jurisdiction in the State of Texas to determine the rights of any Person claiming any interest herein.

In the event the Bank becomes involved in litigation in connection with this Section, the Issuer, to the extent permitted by law, agrees to indemnify and save the Bank harmless from all loss, cost, damages, expenses, and attorney fees suffered or incurred by the Bank as a result. The obligations of the Bank under this Agreement shall be performable at the principal corporate office of the Bank in the City of Dallas, Texas.

Section 5.08 DTC Services. It is hereby represented and warranted that, in the event the Securities are otherwise qualified and accepted for "Depository Trust Company" services or equivalent depository trust services by other organizations, the Bank has the capability and, to the extent within its control, will comply with the "Operational Arrangements", which establishes requirements for securities to be eligible for such type depository trust services, including, but not limited to, requirements for the timeliness of payments and funds availability, transfer turnaround time, and notification of redemptions and calls.

ARTICLE SIX MISCELLANEOUS PROVISIONS

Section 6.01 Amendment. This Agreement may be amended only by an agreement in writing signed by both of the parties hereto.

Section 6.02 Assignment. This Agreement may not be assigned by either party without the prior written consent of the other.

Section 6.03 Notices. Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted hereby to be given or furnished to the Issuer or the Bank shall be mailed or delivered to the Issuer or the Bank, respectively, at the addresses shown on the signature page(s) hereof.

Section 6.04 Effect of Headings. The Article and Section headings herein are for convenience of reference only and shall not affect the construction hereof.

Section 6.05 Successors and Assigns. All covenants and agreements herein by the Issuer shall bind its successors and assigns, whether so expressed or not.

Section 6.06 Severability. In case any provision herein shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 6.07 Merger, Conversion, Consolidation, or Succession. Any corporation or association into which the Bank may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion, or consolidation to which the Bank shall be a party, or any corporation or association succeeding to all or substantially all of the corporate trust business of the Bank shall be the successor of the Bank as Paying Agent under this Agreement without the execution or filing of any paper or any further act on the part of either parties hereto.

Section 6.08 Benefits of Agreement. Nothing herein, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any benefit or any legal or equitable right, remedy, or claim hereunder.

Section 6.09 Entire Agreement. This Agreement and the Authorizing Document constitute the entire agreement between the parties hereto relative to the Bank acting as Paying Agent/Registrar and if any conflict exists between this Agreement and the Authorizing Document, the Authorizing Document shall govern.

Section 6.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

Section 6.11 Termination. This Agreement will terminate (i) on the date of final payment of the principal of and interest on the Securities to the Holders thereof or (ii) may be earlier terminated by either party upon sixty (60) days written notice; provided, however, an early termination of this Agreement by either party shall not be effective until (a) a successor Paying Agent/Registrar has been appointed by the Issuer and such appointment accepted and (b) notice has been given to the Holders of the Securities of the appointment of a successor Paying Agent/Registrar. However, if the Issuer fails to appoint a successor Paying Agent/Registrar within a reasonable time, the Bank may petition a court of competent jurisdiction within the State of Texas to appoint a successor. Furthermore, the Bank and the Issuer mutually agree that the effective date of an early termination of this Agreement shall not occur at any time which would disrupt, delay or otherwise adversely affect the payment of the Securities.

Upon an early termination of this Agreement, the Bank agrees to promptly transfer and deliver the Security Register (or a copy thereof), together with the other pertinent books and records relating to the Securities, to the successor Paying Agent/Registrar designated and appointed by the Issuer.

The provisions of Section 1.02 and of Article Five shall survive and remain in full force and effect following the termination of this Agreement.

Section 6.12 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas.

[Remainder of page left blank intentionally.]

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

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A.

By:_____

Title:_____

Attest:

Address: 2001 Bryan Street, 10th Floor
Dallas, Texas 75201

Title: _____

[signature page to Paying Agent/Registrar Agreement – signatures continue on next page]

TOWN OF FLOWER MOUND, TEXAS

By: _____
Mayor

Address: 2121 Cross Timbers Road
Flower Mound, Texas 75028

ATTEST:

Town Secretary

[signature page to Paying Agent/Registrar Agreement]

ANNEX A



TOWN COUNCIL AGENDA ITEM NO. 20

REGULAR ITEM

DATE: July 17, 2017

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

ITEM: Consider approval of an ordinance authorizing the issuance of the Town of Flower Mound, Texas, General Obligation Refunding Bonds, Series 2017, establishing parameters for the sale and issuance of such bonds, delegating certain matters to an authorized official of the Town and resolving all matters incident and related thereto.

BACKGROUND INFORMATION: The Financial Services staff and Hilltop Securities Inc., the Town's financial advisor, request the Town Council's approval of an ordinance authorizing the potential issuance of General Obligation Refunding Bonds, Series 2017, ("the Bonds").

A refunding opportunity has been identified which would prepay or refund a portion of the Town's outstanding tax-supported issues, lowering the overall debt service requirements of the Town. In accordance with the Town's Financial Policies, "an advance refunding of outstanding debt shall only be considered when present value savings of at least 3.50% of the principal amount of the refunded bonds is produced." Please note that all debt refunded with the Bonds will be structured to maintain the existing maturity pattern to ensure no debt will be extended as a result of the refunding. Based on volatility in the municipal bond market and the interest rate levels at the time of pricing, the amount of bonds refunded may be decreased.

Refunded Issue	Refunded Bonds	Current Interest Rates	Refunded Years
Waterworks and Sewer System Revenue Refunding Bonds, Series 2008	\$6,685,000	4.000% - 4.250%	2018-2021

In order to efficiently complete the refunding, the attached ordinance establishes the following parameters, giving the Town Manager and Deputy Town Manager/CFO the authority to approve all necessary documents and finalize the sale.

Maximum Principal Amount	\$7,000,000
Minimum Present Value Savings	3.50%
Maximum True Interest Cost	2.00%
Final Maturity Date	September 1, 2021

The Town Manager and Deputy Town Manager/CFO's authorization to complete the sale of the Bonds will expire 180 days after passage of the ordinance. The parameters state the issuance can be conducted as either a competitive or negotiated sale or by private placement.

FISCAL IMPACT: Approximate amount of \$7,000,000

Proposed Expenditure:	Account Number(s):
A maximum of \$7,000,000 in refunding bonds.	Secured by a pledge of ad valorem taxes.

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

LEGAL REVIEW: The Town's Bond Counsel, Norton Rose Fulbright US LLP, prepared the proposed ordinance. No alteration to the legal content of this ordinance, which was originally approved by Taylor, Olson, Adkins, Sralla, & Elam L.L.P, was made.

ATTACHMENTS:

1. Draft of Ordinance
2. Draft Paying Agent/Registrar Agreement

DRAFT MOTION: Move to approve an ordinance authorizing the issuance of the Town of Flower Mound, Texas, General Obligation Refunding Bonds, Series 2017, establishing parameters for the sale and issuance of such bonds, delegating certain matters to an authorized official of the Town and resolving all matters incident and related thereto.

TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO. __-17

AN ORDINANCE authorizing the issuance of "TOWN OF FLOWER MOUND, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2017"; levying a continuing direct annual ad valorem tax for the payment of said Bonds; resolving other matters incident and related to the issuance, sale, payment and delivery of said Bonds; establishing procedures for the sale and delivery of said Bonds; and delegating matters relating to the sale and issuance of said Bonds to an authorized Town official.

WHEREAS, the Town of Flower Mound, Texas (the "Town") currently has outstanding obligations of the Town of the following issue or series: Town of Flower Mound, Texas, Combination Tax and Revenue Refunding Bonds, Series 2008, dated December 1, 2007 (hereinafter called the "Refunded Obligations"); and

WHEREAS, pursuant to the provisions of Texas Government Code, Chapter 1207, as amended ("Chapter 1207"), the Town Council of the Town (the "Council") is authorized to issue refunding bonds and deposit the proceeds of sale directly with any place of payment for the Refunded Obligations, or other authorized depository, and such deposit, when made in accordance with Chapter 1207 and the ordinances authorizing the issuance of the Refunded Obligations, shall constitute the making of firm banking and financial arrangements for the discharge and final payment of the Refunded Obligations; and

WHEREAS, the Town shall by this Ordinance, in accordance with the provisions of Section 1207.007, Texas Government Code, as amended, delegate to a Pricing Officer (hereinafter designated) the authority to determine the principal amount and certain other specified terms of the Bonds to be issued, negotiate the terms of sale thereof and select the specific maturities, in whole or in part, of the Refunded Obligations to be refunded; and

WHEREAS, the Council hereby finds and determines that it is a public purpose and in the best interests of the Town to refund the Refunded Obligations in order to achieve a present value debt service savings, with such savings, among other information and terms, to be included in a pricing certificate (the "Pricing Certificate") to be executed by the Pricing Officer, all in accordance with the provisions of Texas Government Code, Section 1207.007, as amended; now, therefore

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

SECTION 1. Authorization - Series Designation - Principal Amount - Purpose - Bond Date. General obligation refunding bonds of the Town shall be and are hereby authorized to be issued in the maximum aggregate principal amount hereinafter set forth to be designated and bear the title "TOWN OF FLOWER MOUND, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2017", or such other designation as specified in the Pricing Certificate (herein referred to as the "Bonds"), for the purpose of providing funds for the discharge and final payment of certain obligations of the Town (described in the preamble hereof and finally identified in the Pricing Certificate and referred to herein as the "Refunded Obligations") and to pay the costs and expenses of issuance, in accordance with the authority conferred by and in conformity with the Constitution and laws of the State of Texas, including Chapter 1207 and

Texas Government Code, Chapter 1371, as amended ("Chapter 1371"). The Bonds shall be dated (the "Bond Date") as provided in the Pricing Certificate.

SECTION 2. Fully Registered Obligations - Terms. The Bonds shall be issued as fully registered obligations, without coupons, and (other than the Initial Bonds referenced in Section 8 hereof) shall be in denominations of \$5,000 or any integral multiple (within a Stated Maturity) thereof, shall be lettered "R" and numbered consecutively from one (1) upward and principal shall become due and payable on a date certain in each of the years (the "Stated Maturities") and in amounts and bear interest at the rate(s) per annum in accordance with the details of the Bonds as set forth in the Pricing Certificate.

The Bonds shall bear interest on the unpaid principal amounts from the date specified in the Pricing Certificate at the rate(s) per annum shown in the Pricing Certificate (calculated on the basis of a 360-day year consisting of twelve 30-day months). Interest on the Bonds shall be payable in each year, on the dates, and commencing on the date, set forth in the Pricing Certificate.

SECTION 3. Delegation of Authority to Pricing Officer. (a) As authorized by Texas Government Code, Section 1207.007, as amended, and Chapter 1371 the Town Manager or the Deputy Town Manager/CFO of the Town (either, the "Pricing Officer") is hereby authorized to act on behalf of the Town in selling and delivering the Bonds and carrying out the other procedures specified in this Ordinance, including selection of the specific maturities or series, in whole or in part, of the Refunded Obligations to be refunded, determining the aggregate principal amount of the Bonds, the date of the Bonds, any additional or different designation or title by which the Bonds shall be known, the price at which the Bonds will be sold, the manner of sale (negotiated, privately placed or competitively bid), the years in which the Bonds will mature, the principal amount to mature in each of such years, the rate of interest to be borne by each such maturity, the date from which interest on the Bonds will accrue, the interest payment dates, the record date, the compounding dates, the price and terms upon and at which the Bonds shall be subject to redemption prior to maturity at the option of the Town, as well as any mandatory sinking fund redemption provisions, determination of the use of a book-entry-only securities clearance, settlement and transfer system, the designation of an escrow agent satisfying the requirements of Chapter 1207, the terms of any bond insurance applicable to the Bonds, including any modification of the continuing disclosure undertaking contained in Section 31 hereof as may be required by the purchasers of the Bonds in connection with any amendments to Rule 15c2-12, and all other matters relating to the issuance, sale and delivery of the Bonds, all of which shall be specified in the Pricing Certificate, provided that:

(i) the aggregate original principal amount of the Bonds shall not exceed \$7,000,000;

(ii) the refunding must produce a net present value debt service savings of at least 3.50%, net of any Town contribution;

(iii) the maximum true interest cost for the Bonds shall not exceed 2.00%;

(iv) the maximum maturity date of the Bonds shall not exceed March 1, 2021.

The execution of the Pricing Certificate shall evidence the sale date of the Bonds by the Town to the Purchasers (hereinafter defined).

If the Pricing Officer determines that bond insurance results in a net reduction of the Town's interest costs associated with the Bonds, then the Pricing Officer is authorized, in connection with effecting the sale of the Bonds, to make the selection of the municipal bond insurance company for the Bonds (the "Insurer") and to obtain from the Insurer a municipal bond insurance policy in support of the Bonds. The Pricing Officer shall have the authority to determine the provisions of the commitment for any such policy and to execute any documents to effect the issuance of said policy by the Insurer.

(b) In establishing the aggregate principal amount of the Bonds, the Pricing Officer shall establish an amount for the Bonds not exceeding the amount authorized in subsection (a)(i) above, which shall be sufficient in amount to provide for the purposes for which the Bonds are authorized and to pay costs of issuing the Bonds. The delegation made hereby shall expire if not exercised by the Pricing Officer within one (1) year of the date hereof. The Bonds shall be sold to the purchaser(s)/underwriter(s) named in the Pricing Certificate (the "Purchasers"), at such price and with and subject to such terms as set forth in the Pricing Certificate and the Purchase Contract (hereinafter defined), and may be sold by negotiated or competitive sale or by private placement. The Pricing Officer is hereby delegated the authority to designate the Purchasers, which delegation shall be evidenced by the execution of the Pricing Certificate.

SECTION 4. Terms of Payment - Paying Agent/Registrar. The principal of, premium, if any, and the interest on the Bonds, due and payable by reason of maturity, redemption or otherwise, shall be payable only to the registered owners or holders of the Bonds (hereinafter called the "Holders") appearing on the registration and transfer books maintained by the Paying Agent/Registrar (as defined below), and the payment thereof shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

The selection and appointment of The Bank of New York Mellon Trust Company, N.A., Dallas, Texas, to serve as Paying Agent/Registrar for the Bonds is hereby approved and confirmed. Books and records relating to the registration, payment, exchange and transfer of the Bonds (the "Security Register") shall at all times be kept and maintained on behalf of the Town by the Paying Agent/Registrar, all as provided herein, in accordance with the terms and provisions of a "Paying Agent/Registrar Agreement," substantially in the form attached hereto as **Exhibit A** and such reasonable rules and regulations as the Paying Agent/Registrar and the Town may prescribe. The Mayor or Mayor Pro Tem and Town Secretary are hereby authorized to execute and deliver such Paying Agent/Registrar Agreement in connection with the delivery of the Bonds. The Town covenants to maintain and provide a Paying Agent/Registrar at all times until the Bonds are paid and discharged, and any successor Paying Agent/Registrar shall be a commercial bank, trust company, financial institution, or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Bonds, the Town agrees to promptly cause a written notice thereof to be sent to each Holder by United States Mail, first class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

The Bonds shall be payable at their Stated Maturities or upon their earlier redemption, only upon the presentation and surrender of the Bonds to the Paying Agent/Registrar at its designated offices, initially in East Syracuse, New York, or, with respect to a successor Paying

Agent/Registrar, at the designated offices of such successor (the "Designated Payment/Transfer Office"); provided, however, while a Bond is registered to Cede & Co., the payment thereof upon a partial redemption of the principal amount thereof may be accomplished without presentation and surrender of such Bond. Interest on a Bond shall be paid by the Paying Agent/Registrar to the Holders whose names appears in the Security Register at the close of business on the Record Date (which shall be set forth in the Pricing Certificate) and such interest payments shall be made (i) by check sent United States Mail, first class postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to be closed; and payment on such date shall have the same force and effect as if made on the original date payment was due.

In the event of a non-payment of interest on one or more maturities of the Bonds on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such past due interest have been received from the Town. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder of the Bonds appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

SECTION 5. Registration - Transfer - Exchange of Bonds - Predecessor Bonds. The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each and every Holder of the Bonds issued under and pursuant to the provisions of this Ordinance, or if appropriate, the nominee thereof. Any Bond may be transferred or exchanged for Bonds of like maturity and amount and in authorized denominations upon the Security Register by the Holder, in person or by his duly authorized agent, upon surrender of such Bond to the Paying Agent/Registrar at its Designated Payment/Transfer Office for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender for assignment or transfer of any Bond (other than the Initial Bonds authorized in Section 8 hereof) for transfer at the Designated Payment/Transfer Office of the Paying Agent/Registrar, one or more new Bonds, executed on behalf of and furnished by the Town, shall be registered and issued to the assignee or transferee of the previous Holder; such Bonds to be of authorized denominations, of like Stated Maturity, and of a like aggregate principal amount as the Bond or Bonds surrendered for transfer.

At the option of the Holder, Bonds (other than the Initial Bonds authorized in Section 8 hereof) may be exchanged for other Bonds of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Bonds surrendered for exchange, upon surrender of the Bonds to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Bonds are

surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Bonds, executed on behalf of and furnished by the Town, to the Holder requesting the exchange.

All Bonds issued upon any such transfer or exchange of Bonds shall be delivered to the Holders at the Designated Payment/Transfer Office of the Paying Agent/Registrar or sent by United States Mail, first class postage prepaid, to the Holders, and, upon the registration and delivery thereof, the same shall be the valid obligations of the Town, evidencing the same obligation to pay and entitled to the same benefits under this Ordinance, as the Bonds surrendered in such transfer or exchange.

All transfers or exchanges of Bonds pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Bonds canceled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Bonds," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the new Bond or Bonds registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Bonds" shall include any mutilated, lost, destroyed, or stolen Bond for which a replacement Bond has been issued, registered, and delivered in lieu thereof pursuant to the provisions of Section 11 hereof, and such new replacement Bond shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Bond.

Neither the Town nor the Paying Agent/Registrar shall be required to transfer or exchange any Bond called for redemption, in whole or in part, within forty-five (45) days of the date fixed for the redemption of such Bond; provided, however, such limitation on transferability shall not be applicable to an exchange by the Holder of the unredeemed balance of a Bond called for redemption in part.

SECTION 6. Book-Entry-Only Transfers and Transactions. Notwithstanding the provisions contained in Sections 4 and 5 hereof relating to the payment and transfer/exchange of the Bonds, the Town hereby approves and authorizes the use of "Book-Entry-Only" securities clearance, settlement, and transfer system provided by The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York ("DTC"), in accordance with the requirements and procedures identified in the current DTC Operational Arrangements memorandum, as amended, the Blanket Issuer Letter of Representations, by and between the Town and DTC, and the Letter of Representations from the Paying Agent/Registrar to DTC (collectively, the "Depository Agreement") relating to the Bonds.

In the event the Pricing Officer elects to utilize DTC's "Book-Entry-Only" System, which election shall be made by the Pricing Officer in the Pricing Certificate, pursuant to the Depository Agreement and the rules of DTC, the Bonds shall be deposited with DTC and who shall hold said Bonds for its participants (the "DTC Participants"). While the Bonds are held by DTC under the Depository Agreement, the Holder of the Bonds on the Security Register for all purposes, including payment and notices, shall be Cede & Co., as nominee of DTC, notwithstanding the ownership of each actual purchaser or owner of each Bond (the "Beneficial Owners") being recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Bonds or otherwise ceases to provide book-entry clearance and settlement of securities transactions in general or the Town determines that DTC is incapable of properly discharging its duties as securities depository for the Bonds, the Town covenants and agrees with the Holders of the Bonds to cause Bonds to be printed in definitive form and provide for the Bond certificates to be issued and delivered to DTC Participants and Beneficial Owners, as the case may be. Thereafter, the Bonds in definitive form shall be assigned, transferred and exchanged on the Security Register maintained by the Paying Agent/Registrar and payment of such Bonds shall be made in accordance with the provisions of Sections 4 and 5 hereof.

SECTION 7. Execution - Registration. The Bonds shall be executed on behalf of the Town by the Mayor or Mayor Pro Tem under the Town's seal reproduced or impressed thereon and attested by the Town Secretary. The signature of said officials on the Bonds may be manual or facsimile. Bonds bearing the manual or facsimile signatures of individuals who are or were the proper officials of the Town on the date of the adoption of this Ordinance shall be deemed to be duly executed on behalf of the Town, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Bonds to the initial purchaser(s) and with respect to Bonds delivered in subsequent exchanges and transfers, all as authorized and provided in Texas Government Code, Chapter 1201, as amended.

No Bond shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Bond either a certificate of registration substantially in the form provided in Section 9(c), manually executed by the Comptroller of Public Accounts of the State of Texas, or his or her duly authorized agent, or a certificate of registration substantially in the form provided in Section 9(d), manually executed by an authorized officer, employee or representative of the Paying Agent/Registrar, and either such certificate duly signed upon any Bond shall be conclusive evidence, and the only evidence, that such Bond has been duly certified, registered, and delivered.

SECTION 8. Initial Bonds. The Bonds herein authorized shall be initially issued as fully registered Bonds as specified in the Pricing Certificate, being a single, fully registered Bond in the aggregate principal amount noted and principal installments to become due and payable as provided in the Pricing Certificate and numbered T-1, (hereinafter called the "Initial Bond") and the Initial Bond shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Bond shall be the Bond submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s). Any time after the delivery of the Initial Bond, the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Bond delivered hereunder and exchange therefor definitive Bonds and of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 9. Forms.

(a) Forms Generally. The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of Paying Agent/Registrar, and the form of Assignment to be printed on each of the Bonds, shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and

ORDINANCE NO. ____-17

PAGE 7

other variations as are permitted or required by this Ordinance and, with the Bonds to be completed and modified with the information set forth in the Pricing Certificate, may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including insurance legends on insured Bonds and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the Town or determined by the Pricing Officer. The Pricing Certificate shall set forth the final and controlling forms and terms of the Bonds. Any portion of the text of any Bonds may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond.

The definitive Bonds and the Initial Bond shall be printed, lithographed, engraved, typewritten, photocopied or otherwise reproduced in any other similar manner, all as determined by the officers executing such Bonds as evidenced by their execution thereof.

(b) Form of Definitive Bonds.

REGISTERED
NO. R-_____

PRINCIPAL AMOUNT
\$ _____

UNITED STATES OF AMERICA
STATE OF TEXAS
TOWN OF FLOWER MOUND
GENERAL OBLIGATION REFUNDING BOND
SERIES 2017

Bond Date: _____, 20__ Interest Rate: _____% Stated Maturity: _____, 20__ CUSIP No.: _____

Registered Owner:

Principal Amount: _____ DOLLARS

The Town of Flower Mound (hereinafter referred to as the "Town"), a body corporate and political subdivision in the Counties of Denton and Tarrant, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, on the Stated Maturity date specified above the Principal Amount hereinabove stated (or so much thereof as shall not have been paid upon prior redemption), and to pay interest on the unpaid principal amount hereof from the interest payment date next preceding the "Registration Date" of this Bond appearing below (unless this Bond bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of this Bond is prior to the initial interest payment date in which case it shall bear interest from the _____) at the per annum rate of interest specified above computed on the basis of a 360 day year of twelve 30 day months; such interest being payable on _____ and _____ in each year, commencing _____, 20__, until maturity or prior redemption. Principal of this Bond is payable at its Stated Maturity or upon its prior redemption to the registered owner hereof, upon presentation and surrender, at the designated offices of the Paying Agent/Registrar executing the registration certificate appearing hereon, initially in East Syracuse, New York, or, with respect to a successor Paying Agent/Registrar, at the designated offices of such successor (the "Designated Payment/Transfer Office"); provided, however, while this Bond is registered to Cede & Co., the payment of principal upon a partial redemption of the principal amount hereof

may be accomplished without presentation and surrender of this Bond. Interest is payable to the registered owner of this Bond (or one or more Predecessor Bonds, as defined in the Ordinance hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the _____ day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Bond is one of the series specified in its title issued in the aggregate principal amount of \$_____ (herein referred to as the "Bonds") for the purpose of providing funds for the discharge and final payment of certain outstanding obligations of the Town and to pay the costs and expenses of issuance, under and in strict conformity with the Constitution and laws of the State of Texas, including Texas Government Code, Chapters 1207 and 1371, as amended, and pursuant to an Ordinance adopted by the Town Council of the Town (herein referred to as the "Ordinance").

[The Bonds maturing on the dates hereinafter identified (the "Term Bonds") are subject to mandatory redemption prior to maturity with funds on deposit in the Interest and Sinking Fund established and maintained for the payment thereof in the Ordinance, and shall be redeemed in part prior to maturity at the price of par and accrued interest thereon to the date of redemption, and without premium, on the dates and in the principal amounts as follows:

Term Bonds due _____, 20__	
<u>Redemption Date</u>	<u>Principal Amount</u>
_____, 20__	
_____, 20__*	

Term Bonds due _____, 20__	
<u>Redemption Date</u>	<u>Principal Amount</u>
_____, 20__	
_____, 20__*	

* Stated maturity.

The particular Term Bonds of a Stated Maturity to be redeemed on each redemption date shall be chosen by lot by the Paying Agent/Registrar; provided, however, that the principal amount of Term Bonds for a Stated Maturity required to be redeemed on a mandatory redemption date may be reduced, at the option of the Town, by the principal amount of Term Bonds of like Stated Maturity which, at least fifty (50) days prior to a mandatory redemption date, (1) shall have been acquired by the Town at a price not exceeding the principal amount of such Term Bonds plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation or (2) shall have been redeemed pursuant to the optional redemption provisions appearing below and not theretofore credited against a mandatory redemption requirement.]

The Bonds maturing on and after _____, 20__, may be redeemed prior to their Stated Maturities, at the option of the Town, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on _____, 20__, or on any date thereafter, at the redemption price of par, together with accrued interest to the date of redemption.

At least thirty (30) days prior to the date fixed for any redemption of Bonds, the Town shall cause a written notice of such redemption to be sent by United States Mail, first class postage prepaid, to the registered owners of each Bond to be redeemed, in whole or in part, at the address shown on the Security Register and subject to the terms and provisions relating thereto contained in the Ordinance. If a Bond (or any portion of its principal sum) shall have been duly called for redemption and notice of such redemption duly given, then upon such redemption date such Bond (or the portion of its principal sum to be redeemed) shall become due and payable, and interest thereon shall cease to accrue from and after the redemption date therefor; provided moneys for the payment of the redemption price and the interest on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar.

In the event a portion of the principal amount of a Bond is to be redeemed and the registered owner is someone other than Cede & Co., payment of the redemption price of such principal amount shall be made to the registered owner only upon presentation and surrender of such Bond to the Designated Payment/Transfer Office of the Paying Agent/Registrar, and a new Bond or Bonds of like maturity and interest rate in any authorized denominations provided by the Ordinance for the then unredeemed balance of the principal sum thereof will be issued to the registered owner, without charge. If a Bond is selected for redemption, in whole or in part, the Town and the Paying Agent/Registrar shall not be required to transfer such Bond to an assignee of the registered owner within forty-five (45) days of the redemption date therefor; provided, however, such limitation on transferability shall not be applicable to an exchange by the registered owner of the unredeemed balance of a Bond redeemed in part.

With respect to any optional redemption of the Bonds, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption is conditional upon the receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon the satisfaction of any prerequisites set forth in such notice of redemption; and, if sufficient moneys are not received, such notice shall be of no force and effect, the Town shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

The Bonds are payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the Town. Reference is hereby made to the Ordinance, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all of the provisions of which the owner or holder of this Bond by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of the Bonds; the terms and conditions relating to the transfer or exchange of this Bond; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the Town and the Paying Agent/Registrar; the terms and provisions upon which this Bond may be discharged at or prior to its maturity or redemption, and deemed to be no longer Outstanding thereunder; and for other terms and provisions contained therein.

Capitalized terms used herein and not otherwise defined have the meanings assigned in the Ordinance.

This Bond, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the registered owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Bonds of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The Town and the Paying Agent/Registrar, and any agent of either, shall treat the registered owner whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Bond as the owner entitled to payment of principal at the Stated Maturity, or its redemption, in whole or in part, and (iii) on any other date as the owner for all other purposes, and neither the Town nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of nonpayment of interest on a Bond on a scheduled payment date and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the Town. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each registered owner of a Bond appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented, and declared that the Town is a body corporate and political subdivision duly organized and legally existing under and by virtue of the Constitution and laws of the State of Texas; that the issuance of the Bonds is duly authorized by law; that all acts, conditions, and things required to exist and be done precedent to and in the issuance of the Bonds to render the same lawful and valid obligations of the Town have been properly done, have happened, and have been performed in regular and due time, form, and manner as required by the Constitution and laws of the State of Texas, and the Ordinance; that the Bonds do not exceed any Constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Bonds by the levy of a tax as aforesated. In case any provision in this Bond shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The terms and provisions of this Bond and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the Town Council of the Town has caused this Bond to be duly executed under the official seal of the Town.

TOWN OF FLOWER MOUND, TEXAS

ATTEST:

[Mayor][Mayor Pro Tem]

Town Secretary

ORDINANCE NO. ____-17

PAGE 11

(Town Seal)

(c) Form of Registration Certificate of Comptroller of Public Accounts to appear on Initial Bond only.

REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER (
OF PUBLIC ACCOUNTS (REGISTER NO. _____
THE STATE OF TEXAS (

I HEREBY CERTIFY that this Bond has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this _____.

Comptroller of Public Accounts
of the State of Texas

(Seal)

(d) Form of Certificate of Paying Agent/Registrar to appear on Definitive Bonds only.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Bond has been duly issued and registered in the name of the Registered Owner shown above under the provisions of the within-mentioned Ordinance; the bond or bonds of the above entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas, as shown by the records of the Paying Agent/Registrar.

The designated office of the Paying Agent/Registrar in East Syracuse, New York, is the Designated Payment/Transfer Office for this Bond.

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., Dallas, Texas

as Paying Agent/Registrar

Registration Date:

By: _____
Authorized Signature

ORDINANCE NO. ____-17

PAGE 12

(e) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto
(Print or typewrite name, address, and zip code of transferee): _____

(Social Security or other identifying number: _____
_____) the within Bond and all rights thereunder, and hereby
irrevocably constitutes and appoints _____
attorney to transfer the within Bond on the books kept for registration thereof, with full power of
substitution in the premises.

DATED: _____

Signature guaranteed:

NOTICE: The signature on this assignment
must correspond with the name of the
registered owner as it appears on the face
of the within Bond in every particular.

(f) The Initial Bond shall be in the form set forth therefor in subsection (b) of this
Section, except the heading and paragraph one shall be amended to read as follows:

NO. T-1

\$ _____

UNITED STATES OF AMERICA
STATE OF TEXAS
TOWN OF FLOWER MOUND
GENERAL OBLIGATION REFUNDING BOND
SERIES 2017

Bond Date: _____, 20__

Registered Owner:

Principal Amount:

DOLLARS

The Town of Flower Mound (hereinafter referred to as the "Town"), a body corporate and
political subdivision in the Counties of Denton and Tarrant, State of Texas, for value received,
acknowledges itself indebted to and hereby promises to pay to the registered owner named
above, or the registered assigns thereof, the Principal Amount hereinabove stated on
_____ in the years and in principal installments in accordance with the
following schedule:

STATED
MATURITY

PRINCIPAL
AMOUNT

INTEREST
RATE(S)

(Information to be inserted from Pricing Certificate)

(or so much principal thereof as shall not have been redeemed prior to maturity) and to pay
interest on the unpaid principal installments hereof from the _____ at the per annum rates
of interest specified above computed on the basis of a 360-day year of twelve 30-day months;
such interest being payable on _____, 20__, and each _____ and
_____ thereafter, until maturity or prior redemption. Principal installments of this

Bond are payable in the year of maturity or on a redemption date to the registered owner hereof by The Bank of New York Mellon Trust Company, N.A., Dallas, Texas (the "Paying Agent/Registrar"), upon presentation and surrender at its designated offices, initially in East Syracuse, New York, or, with respect to a successor paying agent/registrar, at the designated office of such successor (the "Designated Payment/Transfer Office"). Interest is payable to the registered owner of this Bond whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date," which is the _____ day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the registered owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to be closed; and payment on such date shall have the same force and effect as if made on the original date payment was due.

SECTION 10. Levy of Taxes. To provide for the payment of the "Debt Service Requirements" of the Bonds, being (i) the interest on the Bonds and (ii) a sinking fund for their redemption at maturity or a sinking fund of 2% (whichever amount is the greater) there is hereby levied, and there shall be annually assessed and collected in due time, form, and manner, a tax on all taxable property in the Town, within the limitations by law prescribed, sufficient to pay the Debt Service Requirements on the Bonds as the same becomes due and payable; and such tax hereby levied on each one hundred dollars' valuation of taxable property in the Town for the payment of the Debt Service Requirements of the Bonds shall be at a rate from year to year as will be ample and sufficient to provide funds each year to pay the principal of and interest on said Bonds while Outstanding; full allowance being made for delinquencies and costs of collection; the taxes levied, assessed, and collected for and on account of the Bonds shall be accounted for separate and apart from all other funds of the Town and shall be deposited in the "SPECIAL SERIES 2017 GENERAL OBLIGATION REFUNDING BOND FUND", or such other fund designation as specified in the Pricing Certificate (the "Interest and Sinking Fund") to be maintained at an official depository of the Town's funds; and such tax hereby levied, and to be assessed and collected annually, is hereby pledged to the payment of the Bonds.

PROVIDED, however, with regard to any payment to become due on the Bonds prior to the tax delinquency date next following the annual assessment of taxes levied which next follows the Bond Date, if any, sufficient current funds will be available and are hereby appropriated to make such payments; and the Mayor, Mayor Pro Tem, Town Manager, Deputy Town Manager/CFO and Town Secretary of the Town, individually or jointly, are hereby authorized and directed to transfer and deposit in the Interest and Sinking Fund such current funds which, together with the accrued interest received from the initial purchasers, will be sufficient to pay the payments due on the Bonds prior to the tax delinquency date next following the annual assessment of taxes levied which next follows the Bond Date.

The Mayor, Mayor Pro Tem, Town Manager, Deputy Town Manager/CFO and Town Secretary of the Town, individually or jointly, are hereby authorized and directed to cause to be

transferred to the Paying Agent/Registrar for the Bonds, from funds on deposit in the Interest and Sinking Fund, amounts sufficient to fully pay and discharge promptly each installment of interest and principal of the Bonds as the same accrues or matures or comes due by reason of redemption prior to maturity; such transfers of funds to be made in such manner as will cause collected funds to be deposited with the Paying Agent/Registrar on or before each principal and interest payment date for the Bonds.

SECTION 11. Mutilated - Destroyed - Lost and Stolen Bonds. In case any Bond shall be mutilated, or destroyed, lost, or stolen, the Paying Agent/Registrar may execute and deliver a replacement Bond of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Bond; and with respect to a lost, destroyed, or stolen Bond, a replacement Bond may be issued only upon the approval of the Town and after (i) the filing by the Holder with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss, or theft of such Bond, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying Agent/Registrar of indemnification in an amount satisfactory to hold the Town and the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Bond shall be borne by the Holder of the Bond mutilated, or destroyed, lost, or stolen.

Every replacement Bond issued pursuant to this Section shall be a valid and binding obligation of the Town, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Bonds; notwithstanding the enforceability of payment by anyone of the destroyed, lost, or stolen Bonds.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost, or stolen Bonds.

SECTION 12. Satisfaction of Obligation of Town. If the Town shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Bonds, at the times and in the manner stipulated in this Ordinance and the Pricing Certificate, then the pledge of taxes levied under this Ordinance and all covenants, agreements, and other obligations of the Town to the Holders shall thereupon cease, terminate, and be discharged and satisfied.

Bonds or any principal amount(s) thereof shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Bonds or the principal amount(s) thereof at maturity or to the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (ii) Government Securities shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Securities have been certified by an independent accounting firm to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any moneys deposited therewith, if any, to pay when due the principal of and interest on such Bonds, or the principal amount(s) thereof, on and prior to the Stated Maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/Registrar have been made) the redemption date thereof. The Town covenants that no deposit of moneys or Government Securities will be made under this Section and no use made of any such deposit which would cause the Bonds to be treated as "arbitrage

bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, or regulations adopted pursuant thereto.

Any moneys so deposited with the Paying Agent/Registrar, or an authorized escrow agent, and all income from Government Securities held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Bonds, or any principal amount(s) thereof, or interest thereon with respect to which such moneys have been so deposited shall be remitted to the Town or deposited as directed by the Town. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Bonds and remaining unclaimed for a period of three (3) years after the Stated Maturity, or applicable redemption date, of the Bonds such moneys were deposited and are held in trust to pay shall upon the request of the Town be remitted to the Town against a written receipt therefor. Notwithstanding the above and foregoing, any remittance of funds from the Paying Agent/Registrar to the Town shall be subject to any applicable unclaimed property laws of the State of Texas, including the provisions of Title 6 of the Texas Property Code, as amended.

Unless otherwise modified by the Pricing Officer, the term “Government Securities” shall mean (i) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States of America, including obligations unconditionally guaranteed or insured by the agency or instrumentality and, on the date of their acquisition or purchase by the Town, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date of their acquisition or purchase by the Town, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent and (iv) any other then authorized securities or obligations that may be used to defease obligations such as the Bonds under the then applicable laws of the State of Texas.

The Town reserves the right, subject to satisfying the requirements of (i) and (ii) above, to substitute other Government Securities for the Government Securities originally deposited, to reinvest the uninvested moneys on deposit for such defeasance and to withdraw for the benefit of the Town moneys in excess of the amount required for such defeasance.

Upon such deposit as described above, such Bonds shall no longer be regarded to be outstanding or unpaid. Provided, however, the Town has reserved the option, to be exercised at the time of the defeasance of the Bonds, to call for redemption, at an earlier date, those Bonds which have been defeased to their maturity date, if the Town: (i) in the proceedings providing for the firm banking and financial arrangements, expressly reserves the right to call the Bonds for redemption; (ii) gives notice of the reservation of that right to the Holders of the Bonds immediately following the making of the firm banking and financial arrangements; and (iii) directs that notice of the reservation be included in any redemption notices that it authorizes.

SECTION 13. Ordinance a Contract - Amendments - Outstanding Bonds. This Ordinance, together with the Pricing Certificate, shall constitute a contract with the Holders from time to time, be binding on the Town, and shall not be amended or repealed by the Town so long as any Bond remains Outstanding except as permitted in this Section and in Section 31 hereof. The Town may, without the consent of or notice to any Holders, from time to time and at any time, amend this Ordinance or any provision in the Pricing Certificate in any manner not

detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the Town may, with the consent of Holders who own a majority of the aggregate of the principal amount of the Bonds then Outstanding, amend, add to, or rescind any of the provisions of this Ordinance or any provision in the Pricing Certificate; provided that, without the consent of all Holders of Outstanding Bonds, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of and interest on the Bonds, reduce the principal amount thereof, the redemption price, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of or interest on the Bonds, (2) give any preference to any Bond over any other Bond, or (3) reduce the aggregate principal amount of Bonds required to be held by Holders for consent to any such amendment, addition, or rescission.

The term "Outstanding" when used in this Ordinance with respect to Bonds means, as of the date of determination, all Bonds theretofore issued and delivered under this Ordinance, except:

- (1) those Bonds cancelled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;
- (2) those Bonds deemed to be duly paid by the Town in accordance with the provisions of Section 12 hereof; and
- (3) those mutilated, destroyed, lost, or stolen Bonds which have been replaced with Bonds registered and delivered in lieu thereof as provided in Section 11 hereof.

SECTION 14. Covenants to Maintain Tax-Exempt Status.

(a) Definitions. When used in this Section, the following terms have the following meanings:

"*Closing Date*" means the date on which the Bonds are first authenticated and delivered to the initial purchasers against payment therefor.

"*Code*" means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

"*Computation Date*" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"*Gross Proceeds*" means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Bonds.

"*Investment*" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"*Nonpurpose Investment*" means any investment property, as defined in Section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and which is not acquired to carry out the governmental purposes of the Bonds.

"Rebate Amount" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Regulations" means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

"Yield" of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The Town shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction, or improvement of which is to be financed (or refinanced) directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in Section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the Town receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the Town shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, the Town shall at all times prior to the last Stated Maturity of Bonds:

(i) exclusively own, operate, and possess all property the acquisition, construction, or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Bonds (including property financed with Gross Proceeds of the Refunded Obligations), and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed, or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department, and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(ii) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Bonds or any property the acquisition, construction, or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds (including property financed with Gross Proceeds of the Refunded Obligations), other than taxes of general application within the Town or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by Section 141 of the Code and the Regulations and rulings thereunder, the Town shall not use Gross Proceeds of the Bonds to

make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (1) property acquired, constructed, or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output, or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed, or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the Town shall not at any time prior to the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Bonds.

(f) Not Federally Guaranteed. Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the Town shall not take or omit to take any action which would cause the Bonds to be federally guaranteed within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The Town shall timely file the information required by Section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in Section 148(f) of the Code and the Regulations and rulings thereunder:

(i) The Town shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six (6) years after the day on which the last outstanding Bond is discharged. However, to the extent permitted by law, the Town may commingle Gross Proceeds of the Bonds with other money of the Town, provided that the Town separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(ii) Not less frequently than each Computation Date, the Town shall calculate the Rebate Amount in accordance with rules set forth in Section 148(f) of the Code and the Regulations and rulings thereunder. The Town shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(iii) As additional consideration for the purchase of the Bonds by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the Holders thereof for federal income tax purposes, the Town shall pay to the United States out of the general fund, other appropriate fund, or, if permitted by applicable Texas statute, regulation, or

opinion of the Attorney General of the State of Texas, the Interest and Sinking Fund, the amount that when added to the future value of previous rebate payments made for the Bonds equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place, and in the manner as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(iv) The Town shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the Town shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Bonds not been relevant to either party.

(j) Elections. The Town hereby directs and authorizes the Mayor, Mayor Pro Tem, Town Manager and Deputy Town Manager/CFO of the Town, individually or jointly, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as one or more of such persons deems necessary or appropriate in connection with the Bonds, in the Certificate as to Tax Exemption, or similar or other appropriate certificate, form, or document.

(k) Bonds Not Hedge Bonds. At the time the original obligations refunded by the Bonds were issued, the Town reasonably expected to spend at least 85% of the spendable proceeds of such obligations within three years after such obligations were issued and (2) not more than 50% of the proceeds of the original obligations refunded by the Bonds were invested in Nonpurpose Investments having a substantially guaranteed Yield for a period of 4 years or more.

(l) Current Refunding. The Bonds are being issued to pay and discharge in full the Refunded Obligations and such payment of the Refunded Obligations will occur within ninety (90) days after the issuance of the Bonds.

(m) Qualified Tax-Exempt Obligations. The Pricing Officer is hereby authorized to designate in the Pricing Certificate the designation of the Bonds as "qualified tax-exempt obligations" in accordance with the provisions of the paragraph (3) of subsection (b) of Section 265 of the Code in the event the Bonds qualify for such designation and confirm that the Bonds are not "private activity bonds" as defined in the Code and confirm the amount of "tax-exempt

obligations" to be issued by the Town (including all subordinate entities of the Town) for the calendar year in which the Bonds are issued will not exceed the applicable limitation.

SECTION 15. Sale of Bonds - Official Statement. The Bonds authorized by this Ordinance are to be sold by the Town to the Purchasers in accordance with a bond purchase agreement in the event of a negotiated sale, letter agreement to purchase in the event of a private placement, or the successful bid form in the event of a competitive sale, as applicable (the "Purchase Contract"), the terms and provisions of which Purchase Contract are to be determined by the Pricing Officer in accordance with Section 3 hereof. The Pricing Officer is hereby authorized and directed to execute the Purchase Contract for and on behalf of the Town, as the act and deed of this Council, and to make a determination as to whether the terms are in the Town's best interests, which determination shall be final.

With regard to such terms and provisions of the Purchase Contract, the Pricing Officer is hereby authorized to come to an agreement with the Purchasers on the following, among other matters:

1. The details of the purchase and sale of the Bonds;
2. The details of any public offering of the Bonds by the Purchasers, if any;
3. The details of any Official Statement or similar disclosure document (and, if appropriate, any Preliminary Official Statement) relating to the Bonds and the Town's Rule 15c2-12 compliance, if applicable;
4. A security deposit for the Bonds, if any;
5. The representations and warranties of the Town to the Purchasers;
6. The details of the delivery of, and payment for, the Bonds;
7. The Purchasers' obligations under the Purchase Contract;
8. The certain conditions to the obligations of the Town under the Purchase Contract;
9. Termination of the Purchase Contract;
10. Particular covenants of the Town;
11. The survival of representations made in the Purchase Contract;
12. The payment of any expenses relating to the Purchase Contract;
13. Notices; and
14. Any and all such other details that are found by the Pricing Officer to be necessary and advisable for the purchase and sale of the Bonds.

The Mayor or Mayor Pro Tem and Town Secretary of the Town are further authorized and directed to deliver for and on behalf of the Town copies of a Preliminary Official Statement and Official Statement prepared in connection with the offering of the Bonds by the Purchasers, in final form as may be required by the Purchasers, and such final Official Statement as delivered by said officials shall constitute the Official Statement authorized for distribution and use by the Purchasers.

SECTION 16. Escrow Agreement. An "Escrow Agreement" or "Special Escrow Agreement" (either, the "Escrow Agreement") by and between the Town and an authorized

escrow agent (the "Escrow Agent"), if any such agreement is required in connection with the issuance of the Bonds, shall be attached to and approved in the Pricing Certificate. Such Escrow Agreement is hereby authorized to be finalized and executed by the Pricing Officer for and on behalf of the Town and as the act and deed of this Council; and such Escrow Agreement as executed by said Pricing Officer shall be deemed approved by this Council and constitute the Escrow Agreement herein approved. With regard to the finalization of certain terms and provisions of any Escrow Agreement, a Pricing Officer is hereby authorized to come to an agreement with the Escrow Agent on the following details, among other matters:

1. The identification of the Refunded Obligations;
2. The creation and funding of the Escrow Fund or Funds; and
3. The Escrow Agent's compensation, administration of the Escrow Fund or Funds, and the settlement of any paying agents' charges relating to the Refunded Obligations.

Furthermore, appropriate officials of the Town in cooperation with the Escrow Agent are hereby authorized and directed to make the necessary arrangements for the purchase of the escrowed securities referenced in the Escrow Agreement, if any, and the delivery thereof to the Escrow Agent on the day of delivery of the Bonds to the Purchasers for deposit to the credit of the "TOWN OF FLOWER MOUND, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2017 ESCROW FUND" (referred to herein as the "Escrow Fund"), or such other designation as specified in the Pricing Certificate; all as contemplated and provided in Chapter 1207, the Ordinance, the Pricing Certificate and the Escrow Agreement.

On or immediately prior to the date of the delivery of the Bonds to the Purchasers, the Pricing Officer, or other authorized Town official listed in Section 33 hereof, shall also cause to be deposited (and is hereby authorized to cause to be deposited) with the Escrow Agent or the paying agent for the Refunded Obligations from moneys on deposit in the debt service fund(s) maintained for the payment of the Refunded Obligations an amount which, together with the proceeds of sale of the Bonds, and the investment earnings thereon, will be sufficient to pay in full the Refunded Obligations (or the amount of accrued interest due thereon) scheduled to mature and authorized to be redeemed on the earliest date established in the Pricing Certificate for the redemption of any of the Refunded Obligations (or the earliest date of payment, to be made from moneys in the Escrow Fund(s), as established in the Pricing Certificate, of the amount of accrued interest due thereon).

SECTION 17. Refunded Obligations. (a) In order to provide for the refunding, discharge, and retirement of the Refunded Obligations as selected by the Pricing Officer, the Refunded Obligations, identified, described, and in the amount set forth in the Pricing Certificate, are called for redemption on the first date such Refunded Obligations are subject to redemption or such other date specified by the Pricing Officer in the Pricing Certificate at the price of par plus accrued interest to the redemption date, and a notice of such redemption shall be given in accordance with the applicable provisions of the ordinance adopted by this Council, which authorized the issuance of the Refunded Obligations. The Pricing Officer is hereby authorized and directed to issue or cause to be issued a Notice of Redemption for the Refunded Obligations, in substantially the form set forth as an exhibit to the Pricing Certificate, to the paying agent/registrar for the Refunded Obligations, in accordance with the redemption provisions applicable to the Refunded Obligations.

(b) The paying agent/registrar for Refunded Obligations is hereby directed to provide the appropriate notice of redemption as required by the ordinance authorizing the issuance of

the Refunded Obligations and is hereby directed to make appropriate arrangements so that the Refunded Obligations may be redeemed on the redemption date specified in the Pricing Certificate.

(c) The source of funds for payment of the principal of and interest on the Refunded Obligations on their respective maturity or redemption dates shall be from the funds deposited with the Escrow Agent, pursuant to the Escrow Agreement, if any, or with the paying agent/registrar for the Refunded Obligations pursuant the provisions of Chapter 1207, this Ordinance and the Pricing Certificate finalized by the Pricing Officer.

SECTION 18. Control and Custody of Bonds. The Mayor or Mayor Pro Tem of the Town shall be and is hereby authorized to take and have charge of all necessary ordinances, resolutions, orders and records, including the definitive Bonds and the Initial Bonds, pending the investigation and approval of the Initial Bonds by the Attorney General of the State of Texas, and the registration of the Initial Bonds to the Comptroller of Public Accounts and the delivery thereof to the Purchasers.

SECTION 19. Proceeds of Sale. Immediately following the delivery of the Bonds, the proceeds of sale (less those proceeds of sale designated to pay costs of issuance and any accrued interest received from the Purchasers of the Bonds or additional proceeds being deposited to the Interest and Sinking Fund) shall be deposited with the Escrow Agent for application and disbursement in accordance with the provisions of the Escrow Agreement or deposited with the paying agent/registrar for the Refunded Obligations for the payment and redemption of the Refunded Obligations. The proceeds of sale of the Bonds not so deposited with the Escrow Agent (or the paying agent/registrar for the Refunded Obligations) for the refunding of the Refunded Obligations shall be disbursed for payment of costs of issuance, or deposited in the Interest and Sinking Fund for the Bonds, all in accordance with written instructions from the Town or its financial advisor. Such proceeds of sale may be invested in authorized investments and any investment earnings realized may be (with respect to the accrued interest received from the Purchasers) deposited in the Interest and Sinking Fund as shall be determined by this Council.

Additionally, the Pricing Officer shall determine the amount of any Town contribution to the refunding from moneys on deposit in the interest and sinking fund maintained for the payment of the Refunded Obligations.

SECTION 20. Notices to Holders - Waiver. Wherever this Ordinance or the Pricing Certificate provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States Mail, first class postage prepaid, to the address of each Holder appearing in the Security Register at the close of business on the business day next preceding the mailing of such notice.

In any case in which notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Bonds. Where this Ordinance or the Pricing Certificate provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 21. Cancellation. All Bonds surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly cancelled by it and, if surrendered to the Town, shall be delivered to the Paying Agent/Registrar and, if not already cancelled, shall be promptly cancelled by the Paying Agent/Registrar. The Town may at any time deliver to the Paying Agent/Registrar for cancellation any Bonds previously certified or registered and delivered which the Town may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly cancelled by the Paying Agent/Registrar. All cancelled Bonds held by the Paying Agent/Registrar shall be returned to the Town.

SECTION 22. Bond Counsel Opinion. The obligation of the Purchasers to accept delivery of the Bonds is subject to being furnished a final opinion of Norton Rose Fulbright US LLP, Attorneys, Dallas, Texas, Bond Counsel to the Town, approving the Bonds as to their validity, said opinion to be dated and delivered as of the date of delivery and payment for the Bonds. A true and correct reproduction of said opinion is hereby authorized to be printed on the Bonds, or an executed counterpart thereof is hereby authorized to be either printed on definitive printed obligations or deposited with DTC along with the global certificates for the implementation and use of the Book-Entry-Only System used in the settlement and transfer of the Bonds.

SECTION 23. CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Bonds shall be of no significance or effect as regards the legality thereof, and neither the Town nor attorneys approving the Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Bonds.

SECTION 24. Benefits of Ordinance. Nothing in this Ordinance or the Pricing Certificate, expressed or implied, is intended or shall be construed to confer upon any person other than the Town, the Paying Agent/Registrar and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof or the Pricing Certificate, this Ordinance and all of its provisions and the Pricing Certificate being intended to be and being for the sole and exclusive benefit of the Town, the Paying Agent/Registrar, and the Holders.

SECTION 25. Inconsistent Provisions. All ordinances or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance or the Pricing Certificate are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters contained herein.

SECTION 26. Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 27. Effect of Headings. The Section headings herein are for convenience of reference only and shall not affect the construction hereof.

SECTION 28. Construction of Terms. If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine, or neuter gender shall be considered to include the other genders.

SECTION 29. Severability. If any provision of this Ordinance or the Pricing Certificate or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the Pricing Certificate and the application thereof to other circumstances shall nevertheless be valid, and this Council hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 30. Incorporation of Findings and Determinations. The findings and determinations of this Council contained in the preamble hereof are hereby incorporated by reference and made a part of this Ordinance for all purposes as if the same were restated in full in this Section.

SECTION 31. Continuing Disclosure Undertaking. This Section shall apply unless the Pricing Officer determines in the Pricing Certificate that an undertaking is not required pursuant to the Rule (defined below).

(a) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

“MSRB” means the Municipal Securities Rulemaking Board.

“Rule” means SEC Rule 15c2-12, as amended from time to time or officially interpreted by the SEC.

“SEC” means the United States Securities and Exchange Commission.

(b) Annual Reports. The Town shall provide annually to the MSRB (1) within six months after the end of each fiscal year, beginning with the year stated in the Pricing Certificate, financial information and operating data with respect to the Town of the general type included in the final Official Statement approved by the Pricing Officer and described in the Pricing Certificate and (2) if not provided as part of such financial information and operating data, audited financial statements of the Town within twelve months after the end of each fiscal year, when and if available. Any financial statements so provided shall be prepared in accordance with the accounting principles described in the Pricing Certificate, or such other accounting principles as the Town may be required to employ from time to time pursuant to state law or regulation, and audited, if the Town commissions an audit of such statements and the audit is completed within the period during which they must be provided. If audited financial statements are not available by the required time, the Town will file unaudited financial statements within such twelve-month period and audited financial statements when and if such audited financial statements become available.

If the Town changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the Town otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document available to the public on the MSRB’s Internet Web site or filed with the SEC.

(c) Notice of Certain Events. The Town shall provide notice of any of the following events with respect to the Bonds to the MSRB in a timely manner and not more than 10 business days after occurrence of the event:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
7. Modifications to rights of holders of the Bonds, if material;
8. Bond calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Bonds, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership, or similar event of the Town, which shall occur as described below;
13. The consummation of a merger, consolidation, or acquisition involving the Town or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

For these purposes, any event described in the immediately preceding subsection (c)12 is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the Town in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Town, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Town.

The Town shall notify the MSRB, in a timely manner, of any failure by the Town to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such Section.

(d) Filings with the MSRB. All financial information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Section shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

(e) Limitations, Disclaimers and Amendments. The Town shall be obligated to observe and perform the covenants specified in this Section while, but only while, the Town

remains an “obligated person” with respect to the Bonds within the meaning of the Rule, except that the Town in any event will give the notice required by subsection (c) hereof of any Bond calls and defeasance that cause the Town to be no longer such an “obligated person.”

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The Town undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the Town’s financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The Town does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE TOWN BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE TOWN, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the Town in observing or performing its obligations under this Section shall constitute a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the Town under federal and state securities laws.

Notwithstanding anything to the contrary in this Ordinance, the provisions of this Section may be amended by the Town from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Town, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Bonds consent to such amendment or (b) a person that is unaffiliated with the Town (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Bonds. The provisions of this Section may also be amended from time to time or repealed by the Town if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the Town’s right to do so would not prevent an underwriter of the initial public offering of the Bonds from lawfully purchasing or selling Bonds in such offering. If the Town so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided pursuant to subsection (b) of this Section an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

SECTION 32. Municipal Bond Insurance. The Bonds may be sold with the principal of and interest thereon being insured by a municipal bond insurance provider authorized to transact business in the State of Texas. The Pricing Officer is hereby authorized to make the selection of municipal bond insurance (if any) for the Bonds and make the determination of the provisions of any commitment therefor.

SECTION 33. Further Procedures. Any one or more of the Mayor, Mayor Pro Tem, Town Manager, Deputy Town Manager/CFO and Town Secretary are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of the Town all agreements, instruments, certificates or other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the issuance of the Bonds. In addition, prior to the initial delivery of the Bonds, the Mayor, Mayor Pro Tem, Town Manager, Deputy Town Manager/CFO or Bond Counsel to the Town are each hereby authorized and directed to approve any changes or corrections to this Ordinance or to any of the documents authorized and approved by this Ordinance, including the Pricing Certificate: (i) in order to cure any ambiguity, formal defect or omission in this Ordinance or such other document; or (ii) as requested by the Attorney General of the State of Texas or his representative to obtain the approval of the Bonds by the Attorney General and if such officer or counsel determines that such changes are consistent with the intent and purpose of this Ordinance, which determination shall be final. In the event that any officer of the Town whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 34. Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 35. Effective Date. In accordance with the provisions of Texas Government Code, Section 1201.028, as amended, this Ordinance shall be in force and effect from and after its passage on the date shown below and it is so ordained.

[Remainder of page left blank intentionally]

ORDINANCE NO. ____-17

PAGE S-1

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ON THIS 17th DAY OF JULY, 2017.

APPROVED:

Thomas E. Hayden, MAYOR

(Town Seal)

ATTEST:

Theresa Scott, TOWN SECRETARY

ORDINANCE NO. __-17

PAGE A-1

EXHIBIT A

PAYING AGENT/REGISTRAR AGREEMENT

PAYING AGENT/REGISTRAR AGREEMENT

THIS AGREEMENT is entered into as of _____, 2017 (this "Agreement"), by and between The Bank of New York Mellon Trust Company, N.A., a banking association duly organized and existing under the laws of the United States of America (the "Bank") and the Town of Flower Mound, Texas (the "Issuer"),

RECITALS

WHEREAS, the Issuer has duly authorized and provided for the issuance of its "Town of Flower Mound, Texas, General Obligation Refunding Bonds, Series 2017 (the "Securities"), dated _____, 2017, such Securities scheduled to be delivered to the initial purchasers thereof on or about _____, 2017; and

WHEREAS, the Issuer has selected the Bank to serve as Paying Agent/Registrar in connection with the payment of the principal of, premium, if any, and interest on said Securities and with respect to the registration, transfer and exchange thereof by the registered owners thereof; and

WHEREAS, the Bank has agreed to serve in such capacities for and on behalf of the Issuer and has full power and authority to perform and serve as Paying Agent/Registrar for the Securities;

NOW, THEREFORE, it is mutually agreed as follows:

ARTICLE ONE APPOINTMENT OF BANK AS PAYING AGENT AND REGISTRAR

Section 1.01 Appointment. The Issuer hereby appoints the Bank to serve as Paying Agent with respect to the Securities, and, as Paying Agent for the Securities, the Bank shall be responsible for paying on behalf of the Issuer the principal, premium (if any), and interest on the Securities as the same become due and payable to the registered owners thereof; all in accordance with this Agreement and the "Authorizing Document" (hereinafter defined). The Issuer hereby appoints the Bank as Registrar with respect to the Securities and, as Registrar for the Securities, the Bank shall keep and maintain for and on behalf of the Issuer books and records as to the ownership of said Securities and with respect to the transfer and exchange thereof as provided herein and in the Authorizing Document.

The Bank hereby accepts its appointment, and agrees to serve as the Paying Agent and Registrar for the Securities.

Section 1.02 Compensation. As compensation for the Bank's services as Paying Agent/Registrar, the Issuer hereby agrees to pay the Bank the fees and amounts set forth in **Annex A** attached hereto.

In addition, the Issuer agrees to reimburse the Bank upon its request for all reasonable expenses, disbursements and advances incurred or made by the Bank in accordance with any of the provisions hereof (including the reasonable compensation and the expenses and disbursements of its agents and counsel).

ARTICLE TWO DEFINITIONS

Section 2.01 Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

“Acceleration Date” on any Security means the date, if any, on and after which the principal or any or all installments of interest, or both, are due and payable on any Security which has become accelerated pursuant to the terms of the Security.

“Authorizing Document” means the resolution, order, or ordinance of the governing body of the Issuer pursuant to which the Securities are issued, as the same may be amended or modified, including any pricing certificate related thereto, certified by the secretary or any other officer of the Issuer and delivered to the Bank.

“Bank Office” means the designated office of the Bank at the address shown in Section 3.01 hereof. The Bank will notify the Issuer in writing of any change in location of the Bank Office.

“Financial Advisor” means Hilltop Securities Inc.

“Holder” and “Security Holder” each means the Person in whose name a Security is registered in the Security Register.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision of a government.

“Predecessor Securities” of any particular Security means every previous Security evidencing all or a portion of the same obligation as that evidenced by such particular Security (and, for the purposes of this definition, any mutilated, lost, destroyed, or stolen Security for which a replacement Security has been registered and delivered in lieu thereof pursuant to Section 4.06 hereof and the Authorizing Document).

“Redemption Date”, when used with respect to any Security to be redeemed, means the date fixed for such redemption pursuant to the terms of the Authorizing Document.

“Responsible Officer”, when used with respect to the Bank, means the Chairman or Vice-Chairman of the Board of Directors, the Chairman or Vice-Chairman of the Executive Committee of the Board of Directors, the President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer, any Assistant Treasurer, the Cashier, any Assistant Cashier, any Trust Officer or Assistant Trust Officer, or any other officer of the Bank customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

“Security Register” means a register maintained by the Bank on behalf of the Issuer providing for the registration and transfers of Securities.

“Stated Maturity” means the date specified in the Authorizing Document the principal of a Security is scheduled to be due and payable.

Section 2.02 Other Definitions. The terms “Bank,” “Issuer,” and “Securities (Security)” have the meanings assigned to them in the recital paragraphs of this Agreement.

The term “Paying Agent/Registrar” refers to the Bank in the performance of the duties and functions of this Agreement.

ARTICLE THREE PAYING AGENT

Section 3.01 Duties of Paying Agent. As Paying Agent, the Bank shall pay, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, on behalf of the Issuer the principal of each Security at its Stated Maturity, Redemption Date or Acceleration Date, to the Holder upon surrender of the Security to the Bank at the following address:

<u>First Class/Registered/Certified</u>	<u>Express Delivery/Courier</u>	<u>By Hand Only</u>
The Bank of New York Mellon Trust Company, N.A. Global Corporate Trust P.O. Box 396 East Syracuse, NY 13057	The Bank of New York Mellon Trust Company, N.A. Global Corporate Trust 111 Sanders Creek Pkwy. East Syracuse, NY 13057	The Bank of New York Mellon Trust Company, N.A. Global Corporate Trust Corporate Trust Window 101 Barclay Street, 1st Floor East New York, NY 10286

As Paying Agent, the Bank shall, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, pay on behalf of the Issuer the interest on each Security when due, by computing the amount of interest to be paid each Holder and making payment thereof to the Holders of the Securities (or their Predecessor Securities) on the Record Date (as defined in the Authorizing Document). All payments of principal and/or interest on the Securities to the registered owners shall be accomplished (1) by the issuance of checks, payable to the registered owners, drawn on the paying agent account provided in Section 5.05 hereof, sent by United States mail, first class postage prepaid, to the address appearing on the Security Register or (2) by such other method, acceptable to the Bank, requested in writing by the Holder at the Holder’s risk and expense.

Section 3.02 Payment Dates. The Issuer hereby instructs the Bank to pay the principal of and interest on the Securities on the dates specified in the Authorizing Document.

ARTICLE FOUR REGISTRAR

Section 4.01 Security Register - Transfers and Exchanges. The Bank agrees to keep and maintain for and on behalf of the Issuer at the Bank Office books and records (herein sometimes referred to as the “Security Register”) for recording the names and addresses of the Holders of the Securities, the transfer, exchange and replacement of the Securities and the payment of the principal of and interest on the Securities to the Holders and containing such

other information as may be reasonably required by the Issuer and subject to such reasonable regulations as the Issuer and the Bank may prescribe. All transfers, exchanges and replacements of Securities shall be noted in the Security Register.

Every Security surrendered for transfer or exchange shall be duly endorsed or be accompanied by a written instrument of transfer, the signature on which has been guaranteed by an officer of a federal or state bank or a member of the National Association of Securities Dealers, such written instrument to be in a form satisfactory to the Bank and duly executed by the Holder thereof or his agent duly authorized in writing.

The Bank may request any supporting documentation it feels necessary to effect a re-registration, transfer or exchange of the Securities.

To the extent possible and under reasonable circumstances, the Bank agrees that, in relation to an exchange or transfer of Securities, the exchange or transfer by the Holders thereof will be completed and new Securities delivered to the Holder or the assignee of the Holder in not more than three (3) business days after the receipt of the Securities to be cancelled in an exchange or transfer and the written instrument of transfer or request for exchange duly executed by the Holder, or his duly authorized agent, in form and manner satisfactory to the Paying Agent/Registrar.

Section 4.02 Securities. The Issuer shall provide additional Securities when needed to facilitate transfers or exchanges thereof. The Bank covenants that such additional Securities, if and when provided, will be kept in safekeeping pending their use and reasonable care will be exercised by the Bank in maintaining such Securities in safekeeping, which shall be not less than the care maintained by the Bank for debt securities of other governments or corporations for which it serves as registrar, or that is maintained for its own securities.

Section 4.03 Form of Security Register. The Bank, as Registrar, will maintain the Security Register relating to the registration, payment, transfer and exchange of the Securities in accordance with the Bank's general practices and procedures in effect from time to time. The Bank shall not be obligated to maintain such Security Register in any form other than those which the Bank has currently available and currently utilizes at the time.

The Security Register may be maintained in written form or in any other form capable of being converted into written form within a reasonable time.

Section 4.04 List of Security Holders. The Bank will provide the Issuer at any time requested by the Issuer, upon payment of the required fee, a copy of the information contained in the Security Register. The Issuer may also inspect the information contained in the Security Register at any time the Bank is customarily open for business, provided that reasonable time is allowed the Bank to provide an up-to-date listing or to convert the information into written form.

The Bank will not release or disclose the contents of the Security Register to any person other than to, or at the written request of, an authorized officer or employee of the Issuer, except upon receipt of a court order or as otherwise required by law. Upon receipt of a court order and prior to the release or disclosure of the contents of the Security Register, the Bank will notify the Issuer so that the Issuer may contest the court order or such release or disclosure of the contents of the Security Register.

Section 4.05 Return of Cancelled Securities. The Bank will, at such reasonable intervals as it determines, surrender to the Issuer, all Securities in lieu of which or in exchange for which other Securities have been issued, or which have been paid.

Section 4.06 Mutilated, Destroyed, Lost or Stolen Securities. The Issuer hereby instructs the Bank, subject to the provisions of the Authorizing Document, to deliver and issue Securities in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities as long as the same does not result in an overissuance.

In case any Security shall be mutilated, destroyed, lost or stolen, the Bank may execute and deliver a replacement Security of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Security, or in lieu of and in substitution for such mutilated, destroyed, lost or stolen Security, only upon the approval of the Issuer and after (i) the filing by the Holder thereof with the Bank of evidence satisfactory to the Bank of the destruction, loss or theft of such Security, and of the authenticity of the ownership thereof and (ii) the furnishing to the Bank of indemnification in an amount satisfactory to hold the Issuer and the Bank harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Security shall be borne by the Holder of the Security mutilated, destroyed, lost or stolen.

Section 4.07 Transaction Information to Issuer. The Bank will, within a reasonable time after receipt of written request from the Issuer, furnish the Issuer information as to the Securities it has paid pursuant to Section 3.01, Securities it has delivered upon the transfer or exchange of any Securities pursuant to Section 4.01, and Securities it has delivered in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities pursuant to Section 4.06.

ARTICLE FIVE THE BANK

Section 5.01 Duties of Bank. The Bank undertakes to perform the duties set forth herein and agrees to use reasonable care in the performance thereof.

Section 5.02 Reliance on Documents, Etc.

(a) The Bank may conclusively rely, as to the truth of the statements and correctness of the opinions expressed therein, on certificates or opinions furnished to the Bank.

(b) The Bank shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Bank was negligent in ascertaining the pertinent facts.

(c) No provisions of this Agreement shall require the Bank to expend or risk its own funds or otherwise incur any financial liability for performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity satisfactory to it against such risks or liability is not assured to it.

(d) The Bank may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction,

consent, order, bond, note, security or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. Without limiting the generality of the foregoing statement, the Bank need not examine the ownership of any Securities, but is protected in acting upon receipt of Securities containing an endorsement or instruction of transfer or power of transfer which appears on its face to be signed by the Holder or an agent of the Holder. The Bank shall not be bound to make any investigation into the facts or matters stated in a resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document supplied by the Issuer.

(e) The Bank may consult with counsel, and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection with respect to any action taken, suffered, or omitted by it hereunder in good faith and in reliance thereon.

(f) The Bank may exercise any of the powers hereunder and perform any duties hereunder either directly or by or through agents or attorneys of the Bank.

(g) The Bank is also authorized to transfer funds relating to the closing and initial delivery of the Securities in the manner disclosed in the closing memorandum or letter as prepared by the Issuer, the Financial Advisor or other agent. The Bank may act on a facsimile or e-mail transmission of the closing memorandum or letter acknowledged by the Issuer, the Issuer's financial advisor or other agent as the final closing memorandum or letter. The Bank shall not be liable for any losses, costs or expenses arising directly or indirectly from the Bank's reliance upon and compliance with such instructions.

Section 5.03 Recitals of Issuer. The recitals contained herein with respect to the Issuer and in the Securities shall be taken as the statements of the Issuer, and the Bank assumes no responsibility for their correctness.

The Bank shall in no event be liable to the Issuer, any Holder or Holders of any Security, or any other Person for any amount due on any Security from its own funds.

Section 5.04 May Hold Securities. The Bank, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Issuer with the same rights it would have if it were not the Paying Agent/Registrar, or any other agent.

Section 5.05 Moneys Held by Bank - Paying Agent Account/Collateralization. A paying agent account shall at all times be kept and maintained by the Bank for the receipt, safekeeping, and disbursement of moneys received from the Issuer under this Agreement for the payment of the Securities, and money deposited to the credit of such account until paid to the Holders of the Securities shall be continuously collateralized by securities or obligations which qualify and are eligible under both the laws of the State of Texas and the laws of the United States of America to secure and be pledged as collateral for paying agent accounts to the extent such money is not insured by the Federal Deposit Insurance Corporation. Payments made from such paying agent account shall be made by check drawn on such account unless the owner of the Securities shall, at its own expense and risk, request an alternative method of payment.

Subject to the applicable unclaimed property laws of the State of Texas, any money deposited with the Bank for the payment of the principal of, premium (if any), or interest on any Security and remaining unclaimed for three years after final maturity of the Security has become

due and payable will be held by the Bank and disposed of only in accordance with Title 6 of the Texas Property Code, as amended. The Bank shall have no liability by virtue of actions taken in compliance with this provision.

The Bank is not obligated to pay interest on any money received by it under this Agreement.

This Agreement relates solely to money deposited for the purposes described herein, and the parties agree that the Bank may serve as depository for other funds of the Issuer, act as trustee under indentures authorizing other bond transactions of the Issuer, or act in any other capacity not in conflict with its duties hereunder.

Section 5.06 Indemnification. To the extent permitted by law, the Issuer agrees to indemnify the Bank for, and hold it harmless against, any loss, liability, or expense incurred without negligence or bad faith on its part, arising out of or in connection with its acceptance or administration of its duties hereunder, including the cost and expense against any claim or liability in connection with the exercise or performance of any of its powers or duties under this Agreement.

Section 5.07 Interpleader. The Issuer and the Bank agree that the Bank may seek adjudication of any adverse claim, demand, or controversy over its person as well as funds on deposit, in either a Federal or State District Court located in the state and county where the administrative office of the Issuer is located, and agree that service of process by certified or registered mail, return receipt requested, to the address referred to in Section 6.03 of this Agreement shall constitute adequate service. The Issuer and the Bank further agree that the Bank has the right to file a Bill of Interpleader in any court of competent jurisdiction in the State of Texas to determine the rights of any Person claiming any interest herein.

In the event the Bank becomes involved in litigation in connection with this Section, the Issuer, to the extent permitted by law, agrees to indemnify and save the Bank harmless from all loss, cost, damages, expenses, and attorney fees suffered or incurred by the Bank as a result. The obligations of the Bank under this Agreement shall be performable at the principal corporate office of the Bank in the City of Dallas, Texas.

Section 5.08 DTC Services. It is hereby represented and warranted that, in the event the Securities are otherwise qualified and accepted for "Depository Trust Company" services or equivalent depository trust services by other organizations, the Bank has the capability and, to the extent within its control, will comply with the "Operational Arrangements", which establishes requirements for securities to be eligible for such type depository trust services, including, but not limited to, requirements for the timeliness of payments and funds availability, transfer turnaround time, and notification of redemptions and calls.

ARTICLE SIX MISCELLANEOUS PROVISIONS

Section 6.01 Amendment. This Agreement may be amended only by an agreement in writing signed by both of the parties hereto.

Section 6.02 Assignment. This Agreement may not be assigned by either party without the prior written consent of the other.

Section 6.03 Notices. Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted hereby to be given or furnished to the Issuer or the Bank shall be mailed or delivered to the Issuer or the Bank, respectively, at the addresses shown on the signature page(s) hereof.

Section 6.04 Effect of Headings. The Article and Section headings herein are for convenience of reference only and shall not affect the construction hereof.

Section 6.05 Successors and Assigns. All covenants and agreements herein by the Issuer shall bind its successors and assigns, whether so expressed or not.

Section 6.06 Severability. In case any provision herein shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 6.07 Merger, Conversion, Consolidation, or Succession. Any corporation or association into which the Bank may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion, or consolidation to which the Bank shall be a party, or any corporation or association succeeding to all or substantially all of the corporate trust business of the Bank shall be the successor of the Bank as Paying Agent under this Agreement without the execution or filing of any paper or any further act on the part of either parties hereto.

Section 6.08 Benefits of Agreement. Nothing herein, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any benefit or any legal or equitable right, remedy, or claim hereunder.

Section 6.09 Entire Agreement. This Agreement and the Authorizing Document constitute the entire agreement between the parties hereto relative to the Bank acting as Paying Agent/Registrar and if any conflict exists between this Agreement and the Authorizing Document, the Authorizing Document shall govern.

Section 6.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

Section 6.11 Termination. This Agreement will terminate (i) on the date of final payment of the principal of and interest on the Securities to the Holders thereof or (ii) may be earlier terminated by either party upon sixty (60) days written notice; provided, however, an early termination of this Agreement by either party shall not be effective until (a) a successor Paying Agent/Registrar has been appointed by the Issuer and such appointment accepted and (b) notice has been given to the Holders of the Securities of the appointment of a successor Paying Agent/Registrar. However, if the Issuer fails to appoint a successor Paying Agent/Registrar within a reasonable time, the Bank may petition a court of competent jurisdiction within the State of Texas to appoint a successor. Furthermore, the Bank and the Issuer mutually agree that the effective date of an early termination of this Agreement shall not occur at any time which would disrupt, delay or otherwise adversely affect the payment of the Securities.

Upon an early termination of this Agreement, the Bank agrees to promptly transfer and deliver the Security Register (or a copy thereof), together with the other pertinent books and records relating to the Securities, to the successor Paying Agent/Registrar designated and appointed by the Issuer.

The provisions of Section 1.02 and of Article Five shall survive and remain in full force and effect following the termination of this Agreement.

Section 6.12 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas.

[Remainder of page left blank intentionally.]

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

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A.

By:_____

Title:_____

Attest:

Address: 2001 Bryan Street, 10th Floor
Dallas, Texas 75201

Title: _____

[signature page to Paying Agent/Registrar Agreement – signatures continue on next page]

TOWN OF FLOWER MOUND, TEXAS

By: _____
Mayor

Address: 2121 Cross Timbers Road
Flower Mound, Texas 75028

ATTEST:

Town Secretary

[signature page to Paying Agent/Registrar Agreement]

ANNEX A



TOWN COUNCIL AGENDA ITEM NO. 21

REGULAR ITEM

DATE: July 17, 2017

FROM: Clay Riggs, Senior Project Engineer

ITEM: Consider approval to award Bid No. 2017-81 to Shirley and Sons Construction Co., Inc., for the Rheudasil, Wilkerson, and Cortadera Park Pond Improvements project, in the amount of \$2,606,566.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On June 21, 2017, bids were received and opened (Bid No. 2017-81) for the Rheudasil, Wilkerson, and Cortadera Park Pond Dredging and Bank Stabilization project. Shirley and Sons Construction Co., Inc. submitted the lowest qualified bid of the three responding bidders, for a total base bid plus optional bid item, of \$2,606,566.00.

The project will restore the ponds to a healthy aquatic environment by dredging accumulated sediment material from the pond bottoms. The Rheudasil pond construction will include improvements to the pond's fountain and bank stabilization. A new fountain will be installed at the Cortadera pond, along with a water service to maintain a constant water surface.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

FISCAL IMPACT: \$2,606,566.00

Proposed Expenditure:	Account Number(s):
\$1,154,922.64	317-110-90814
1,451,643.36	532-110-90814

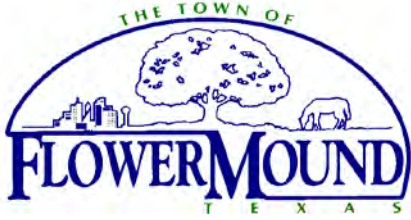
Finance Review by: Debra Wallace, Deputy Town Manager/CFO *DW*

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

ATTACHMENTS:

1. Bid Tab
2. Construction Agreement

DRAFT MOTION: Move to award Bid No. 2017-81 to Shirley and Sons Construction Co., Inc, for the Rheudasil, Wilkerson, and Cortadera Park Pond Dredging and Bank Stabilization project, in the amount of \$2,606,566.00; and authorize the Mayor to execute same on behalf of the Town.



Town of Flower
Mound
Bid Tabulation

Bid No: 2017-81 - Rheudasil, Wilkerson, and Cortadera Pond Restoration

Bid Opening: June 21, 2017 at 11:00am

Company	Project A Total Bid	Project B Total Bid
Shirley & Sons Construction Co, Inc	\$ 2,394,446.00	\$ 212,120.00
ARK Contracting Services	\$ 2,568,250.00	\$ 314,000.00
FNH Construction, LLC	\$ 2,746,450.00	\$ 475,135.75

******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	06/21/2017
	Purchasing Manager	
	Town of Flower Mound, Texas	

TOWN OF FLOWER MOUND**RHEUDASIL, WILKERSON, AND CORTADERA PARK POND
IMPROVEMENTS****Bid # 2017-81****CONSTRUCTION AGREEMENT**

THIS CONSTRUCTION AGREEMENT (the "Agreement"), made and entered into this _____ day of _____, 20____, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the "Town," and Shirley and Sons Construction Co., 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:

**RHEUDASIL, WILKERSON, AND CORTADERA PARK POND
IMPROVEMENTS****Bid # 2017-81**

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 Million, Six Hundred Six Thousand, Five Hundred Sixty-Six Dollars, and No Cents (\$2,606,566.00)** taking into consideration additions to or deductions from the Total Bid through properly executed change orders by reason of alterations or modifications of the original quantities or by reason of “Extra Work” authorized under this Agreement in accordance with the provisions of the Contract Documents. It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the Contractor by the Town, the said Contractor shall furnish all labor, equipment, and material (except as otherwise specified above) and shall perform all work necessary to complete the improvements in a good and workmanlike manner, ready for use, within the specified time for substantial completion of

PROJECT A-RHEUDASIL AND WILKERSON PARK PONDS,

TIME FOR SUBSTANTIAL COMPLETION	270 CALENDAR DAYS
TIME FOR FINAL COMPLETION	300 CALENDAR DAYS

PROJECT B-CORTADERA PARK POND

TIME FOR SUBSTANTIAL COMPLETION	120 CALENDAR DAYS
TIME FOR FINAL COMPLETION	150 CALENDAR DAYS

as measured from the Effective Start Date shown in the Notice to Proceed. The work shall be in strict accordance with this Agreement, a copy of which is filed pursuant to law in the office of the legal representative of the Town.

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

ARTICLE 4. The Contractor shall procure and pay for performance and payment bonds applicable to the work in the amount of the total bid price. The Contractor shall also procure and pay for a maintenance bond applicable to the work in the amount of one

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

The performance, payment, and maintenance bonds shall be issued by a corporate surety, acceptable to and approved by the Town, authorized to do business in the State of Texas, pursuant to Chapter 2253 of the Texas Government Code. Further, the Contractor shall supply capital and surplus information concerning the surety and reinsurance information concerning the performance, payment, and maintenance bonds upon Town request. In addition to the foregoing requirements if the amount of the bond exceeds One Hundred Thousand and Zero/One Hundredths Dollars (\$100,000.00) the bond must be issued by a surety that is qualified as a surety on obligations permitted or required under federal law as indicated by publication of the surety's name in the current U.S. Treasury Department Circular 570. In the alternative, an otherwise acceptable surety company (not qualified on federal obligations) that is authorized and admitted to write surety bonds in Texas must obtain reinsurance on any amounts in excess of One Hundred Thousand and Zero/One Hundredths Dollars (\$100,000.00) from a reinsurer that is authorized and admitted as a reinsurer in Texas who also qualifies as a surety or reinsurer on federal obligations as indicated by publication of the surety's or reinsurer's name in the current U.S. Treasury Department Circular 570.

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

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

1. copies of documents reasonably necessary to aid the Town in preparing an estimate of the value of Work properly completed;
2. full releases of liens, including releases from subcontractors providing materials or delivery services relating to the Work, in a form acceptable to

the Town releasing all liens or claims relating to goods and services provided up to the date of the most recent previous progress payment;

3. an updated and current schedule clearly detailing the project's critical path elements; and
4. any other documents required under the Contract Documents.

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

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

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

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

Retainage shall be withheld and may be paid to:

1. ensure proper completion of the Work. The Town may use retained funds to pay replacement or substitute contractors to complete unfinished or defective work;
2. ensure timely completion of the Work. The Town may use retained funds to pay liquidated damages; and

3. provide an additional source of funds to pay claims for which the Town is entitled to indemnification from Contractor under the Contract Documents.

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

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

The Town may withhold payment of some or all of any progress or final payment that would otherwise be due if the Town determines, in its discretion, that it is necessary and proper to provide an additional source of funds to pay claims for which the Town is entitled to indemnification from Contractor under the Contract Documents. Amounts withheld under this section shall be in addition to any retainage.

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

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

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

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

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

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

Final payment to the Contractor shall not be due until the Contractor provides original full releases of liens, or other evidence satisfactory to the Town to show that all sums due for labor, services, and materials furnished for or used in connection with the Work have been paid or shall be paid with the final payment. To ensure this result, Contractor consents to the issuance of the final payment in the form of joint checks made payable to Contractor and others. The Town may, but is not obligated to, issue final payment using joint checks.

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

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

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

WHICH CONTRACTOR IS LEGALLY RESPONSIBLE (THE "INDEMNIFIED ITEMS").

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

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

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

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

ARTICLE 11. The Contractor understands and agrees that time is of the essence in performing and completing the Work. The Town and Contractor acknowledge that the actual damages the Town may sustain if the Contractor fails to complete the Work on time are uncertain and will be difficult to ascertain. The Contractor agrees that the sum of **Two Hundred Fifty and Zero/One Hundredths Dollars (\$250.00)** per day or portion of a day in Liquidated Damages will be deducted from the Contract price by the Town for each calendar day or portion thereof that the work is not substantially complete beyond the Substantially Complete Contract time, or within such extra time as may have been allowed by an extension approved by the Town. The Contractor also agrees that the sum of **Five Hundred and Zero/One Hundredths Dollars (\$500.00)** per day or portion of a day in Liquidated Damages for each calendar day or portion thereof the work has not been finally completed by the Contractor beyond the Contract time for final completion, or within such extra time as may have been allowed by an extension approved by the Town. The Town and the Contractor agree that this amount is payable as reasonable and just compensation for failure to complete the Work on time. This amount is payable as liquidated damages and not as a penalty.

ARTICLE 12. For a two-year period after the date specified in a written notice of acceptance of Work and authorization to make final payment by the Flower Mound Town Council, Contractor shall provide and pay for all labor and materials that the Town

determines are necessary to correct all defects in the Work arising because of defective materials or workmanship supplied or provided by Contractor or any subcontractor. This shall also include areas of vegetation that did meet TPDES General Construction Permit during final close out but have since become noncompliant.

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

The Contractor shall begin the remedial work within ten (10) calendar days after receiving the written notice from the Town. If the Contractor does not begin the remedial work timely or prosecute it diligently, then the Town may pay for necessary labor and materials to effect repairs and these expenses shall be paid by the Contractor, the 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 day of , 20 .

TOWN OF FLOWER MOUND

CONTRACTOR

Thomas E. Hayden, MAYOR

_____ (Signature)

_____ (Printed Name)

_____ (Position)

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST:_____
Theresa Scott, TOWN SECRETARY

ATTEST:_____ (Signature)

_____ (Position)



TOWN COUNCIL AGENDA ITEM NO. 22

REGULAR ITEM

DATE: July 17, 2017

FROM: Theresa Scott, Town Secretary

ITEM: Discuss and consider a process to use for board & commission appointments, including current members, and new/past applicants.

BACKGROUND INFORMATION: Flower Mound's fourteen (14) boards, commissions, committees, or representative organizations are comprised of eighty-one (81) resident volunteers who advise the Town on current issues, assist the Council in policy development and administration of services, or serve as the Town's representative on area boards. Most positions are for two years with an end of September term expiration date.

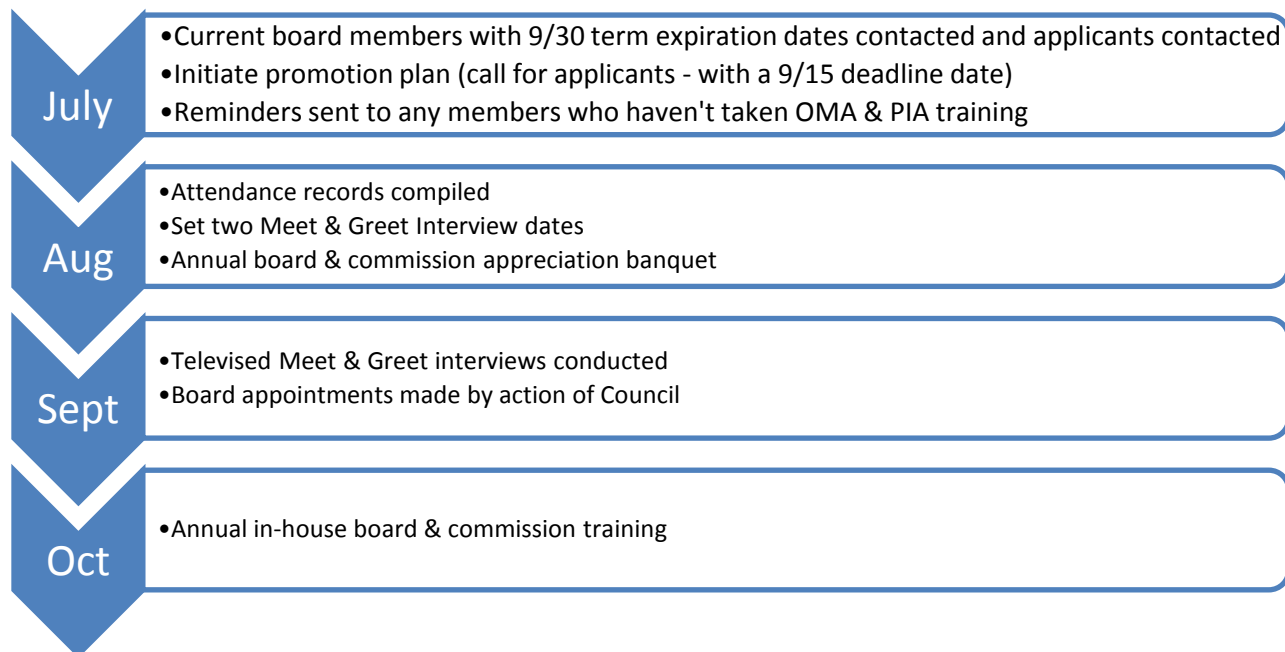
Currently there are 33 positions with a 9/30/17 term expiration date, and five (5) with a 12/31/17 term expiration date. There are four (4) vacant positions and 37 applications on file.

Historically the Town Secretary's Office (TSO) has reached out to individuals with 9/30 term expiration dates to confirm they remain interested in continuing their service. The TSO will also contact the board liaisons for attendance records from the past year for all board positions, which are later provided to Council for consideration. In addition, board members are reminded to take the required Open Meetings Act (OMA) or Public Information Act (PIA) training, as applicable.

The TSO also contacts individuals with an application on file to confirm they are still interested in serving, and a request to reapply is made for any applications that are greater than two years.

Televised Meet & Greet interview dates are set based on Council feedback, and typically will take place mid-September.

Board & commission member process summarized:



FEEDBACK REQUESTED: Prior to proceeding with these steps staff is seeking Council input relative to interest in continuing this process or if alternative options should be explored, and particularly whether or not existing members with 9/30 term expiration dates should be included in the interview process.