

## AGENDA

### FLOWER MOUND TOWN COUNCIL REGULAR MEETING

3/5/2018

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](http://www.flower-mound.com/AgendaCenter)  
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*Please silence or turn off all electronic devices in the Council Chambers.*

A. **CALL MEETING TO ORDER**

B. **INVOCATION**

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

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

D. **PRESENTATIONS**

1. Girl Scout Jillian Milton will present the Town with an AED unit to be used at Twin Coves Park
2. Certificate of Appreciation for reporter Chris Roark of the Flower Mound Leader

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. Use of synthetic grass in commercial landscaping

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).

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### **I. COORDINATION OF CALENDARS**

1. Consider canceling the March 15 work session due to LISD spring break holiday.
2. A regular meeting is a scheduled for Monday, March 19.
3. A special joint work session with Council and the Transportation Commission is scheduled for Tuesday, March 27, to discuss Morriss Road designation and safety improvements.

### **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 2/19-** Consider approval of the minutes from a regular meeting of the Town Council held on February 19, 2018.
2. **Minutes 2/24-** Consider approval of the minutes from a special meeting of the Town Council held on February 24, 2018.
3. **Vehicle purchase - Pickup Trucks-** Consider approval of the purchase of three (3) 2018 Ford F150 Pickup Trucks per Town of Flower Mound Specifications from Sam Pack's Five Star Ford in the amount of \$81,960.00.
4. **Senior Center After Hour Rental Policy-** Consider approval of an ordinance amending section 54-2 "Fees," of Chapter 54 "Parks and Recreation," of the Code of Ordinances to add an after hour rental policy for the Town Senior Center and amending Appendix A "Fee Schedule," of the Code of Ordinances to establish the rental fees for usage of the Town Senior Center.
5. **Atmos Tariff and RRM-** Consider approval of an ordinance approving a tariff authorizing an annual rate review mechanism ("RRM") as a substitution for the annual interim rate adjustment process defined be section 104.301 of the Texas utilities code, and as negotiated between Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or "Company") and the Steering Committee of Cities Served by Atmos; requiring the company to reimburse cities' reasonable ratemaking expenses; adopting a savings clause; determining that this ordinance was passed in accordance with the requirements of the open meetings act; declaring an effective date; and requiring delivery of this ordinance to the company and legal counsel for the Steering Committee.
6. **FM 2499 @ Lakeside Design Award-** Consider approval of a Professional Services Agreement with Stantec Consulting Services, Inc., to provide professional engineering services, for the FM 2499 at Lakeside Northbound Right Turn Lane project, in the amount of \$69,800.00; and authorization for the Mayor to execute same on behalf of the Town.
7. **Public Works Mutual Aid Agreement-** Consider approval for the Flower Mound Public Works Department to become a Member City in the North Central Texas Public Works Emergency Response Team (PWERT) and enter in to the North Central Texas Public Works Mutual Aid Agreement; and authorize the Mayor to execute same on behalf of the Town.
8. **CAC Outdoor Pool Deck Resurfacing-** Consider approval of a proposal from DCC Inc., for the resurface of the outdoor pool, and color tile band, at the Community Activity Center in the amount of \$133,929.28.

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9. **Floodplain Ordinance Administrative Changes-** Consider approval of an ordinance amending the Town's Code of Ordinances by adding a Chapter 33 entitled "Flood Damage Prevention" and removing references to previous Flood Damage Prevention Ordinance 42-09.
10. **Fire Station #7 Geotechnical Study-** Consider approval of a Professional Services Agreement with Kleinfelder Inc., to provide geotechnical engineering and testing services associated with the Fire Station No. 7 project, in the amount of \$19,400.00; and authorization for the Mayor to execute same on behalf of the Town.

**K. REGULAR ITEMS**

11. **Morriss Road Speed Limit Reduction-** Consider approval of an ordinance amending Chapter 66, Article V, Section 66-214 of the Code of Ordinances of the Town of Flower Mound relating to prima facie speed limits for specific streets by lowering the prima facie speed limits for Morriss Road between Lake Bluff Drive and approximately 650 feet south of Cross Timbers Road to 35 mph. (Transportation Commission recommended approval between Lake Bluff and approximately 650 feet south of Cross Timbers Road (FM 1171) by a vote of 6 to 0 at their February 13, 2018, meeting.)
12. **Gibson-Grant Log House Master Plan-** Consider approval of the Gibson-Grant Log House at the Longprairie Homestead master plan.
13. **Heritage Park Ph. IV Construction Award-** Consider the approval of award of Bid No. 2018-60-B, to North Rock Construction, LLC., for the Heritage Park Phase IV project, for the base bid amount of \$1,309,937.41, and selected bid options totaling \$187,835.54, for a not to exceed amount of \$1,497,772.95; and authorization for the Mayor to execute same on behalf of the Town.

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

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.

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- 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. Town Officer development activity.

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

#### **N. RECONVENE TO REGULAR MEETING**

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

#### **O. ADJOURN MEETING**

I do hereby certify that the Notice of Meeting was posted on the bulletin board at the Town Hall for the Town of Flower Mound, Texas, in a place convenient and readily accessible to the general public at all times and said Notice was also posted on the Town's website in accordance with GC Section 551.056 on the following date and time: March 2, 2018, at 10:50 a.m., at least 72 hours prior to the scheduled time of said meeting.

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**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

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**DATE:** March 5, 2018

**FROM:** Theresa Scott, Town Secretary

**ITEM:** Consider approval of the minutes from a regular meeting of the Town Council held on February 19, 2018.

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**BACKGROUND INFORMATION:** The Town Council held a regular meeting on February 19, 2018.

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

**ALTERNATIVES/OPTIONS:** N/A

**FISCAL IMPACT:** N/A

**Proposed Expenditure:**

**Account Number(s):**

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**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 February 19, 2018.

## FLOWER MOUND TOWN COUNCIL MEETING OF FEBRUARY 19, 2018

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THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 19<sup>TH</sup> DAY OF FEBRUARY 2018, 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.

[Click here](#) for meeting video link (subject to change)

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

|                |                         |
|----------------|-------------------------|
| Tom Hayden     | Mayor (arrived at 6:10) |
| Don McDaniel   | Mayor Pro Tem           |
| Jason Webb     | Councilmember Place 1   |
| Kevin Bryant   | Deputy Mayor Pro Tem    |
| Bryan Webb     | Councilmember Place 2   |
| Claudio Forest | Councilmember Place 5   |

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

|                 |                              |
|-----------------|------------------------------|
| Theresa Scott   | Town Secretary               |
| Bryn Meredith   | Town Attorney                |
| Jimmy Stathatos | Town Manager                 |
| Debra Wallace   | Deputy Town Manager/CFO      |
| Tommy Dalton    | Assistant Town Manager       |
| Chuck Russell   | Town Planner                 |
| Tiffany Bruce   | Engineering Manager          |
| Sue Ridnour     | Director of Library Services |
| Andy Kancel     | Police Chief                 |

**A. CALL REGULAR MEETING TO ORDER**

Mayor Pro Tem McDaniel called the regular meeting to order at 6:00 p.m.

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

Councilmember Jason Webb gave the invocation and Mayor Pro Tem McDaniel led the pledges.

**D. PRESENTATIONS**

1. Proclamation for Parent Teacher Association (PTA) Founders Day.

Julie Kluthe Communications Chair of Lewisville ISD Council of PTAs and Lauren Johnson accepted the proclamation and provided background information on the PTA program.

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

|     | <b>Speaker names and address</b>        | <b>Subject (as written on the form)</b> |
|-----|-----------------------------------------|-----------------------------------------|
| 1.  | Paul Stone, 4100 Broadway               | Announcement                            |
| 2.  | Tanner Wilson, 4925 Creekwood Dr        | Soccer                                  |
| 3.  | Elena Johnson, 1314 Blairwood           | Morriss Rd                              |
| 4.  | Larry Ford, 1921 Shenandoah Ln          | Morriss Rd                              |
| 5.  | Kim Berg, 2012 Barton Creek Ln          | Public Participation                    |
| 6.  | Mary Strickland, 3204 Springwood Rd     | Morriss Rd Expansion/Designation        |
| 7.  | Patsy Mizeur, 1821 Castle Ct            | Issues                                  |
| 8.  | Sandeep Sharma, 2504 Stillwater Ct      | Morriss – thoroughfare enhancement      |
| 9.  | Katie Mayer, 3612 Burlington            | FloMoTA                                 |
| 10. | Scott Voolkel, 12900 Preston Rd, Dallas | Town Landscaping Requirements           |
| 11. | Brian Campbell, 2905 Woodway Dr         | School Safety Improvements              |
| 12. | Mary Kay Walker, 3229 Oak Meadow        | Mental Health                           |

Chief Kancel provided statements of fact in response to Mayor Hayden's request to clarify the police department's role relative to safety in schools given the recent school shooting incident in Florida, and as brought up during public participation.

**F. ANNOUNCEMENTS**

Councilmember Forest announced the Summit Club annual Western Saloon Night fundraiser.

Several members of Council expressed appreciation for the Fire Department and the awards presented at their annual banquet this past Saturday.

Councilmember Bryan Webb announced the voting schedule for the upcoming Primary Election.

Mayor Hayden announced the Special Meeting and Mornings with the Mayor and Council event scheduled for Saturday, February 24<sup>th</sup>.

**G. TOWN MANAGER'S REPORT**

Mr. Stathatos provided an update on the following topics:

1. Capital improvement projects
  - Waketon/Rippy Road project delay
2. Economic Development projects
  - Results from the 2017 retail and restaurant survey
  - Prototype IT workforce expansion
  - Courtyard Marriott rating report

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## 3. Obtain feedback on the Thoroughfare Plan Amendment for Silveron

Mr. Stathatos provided background information relative to the areas where feedback is needed, and he pointed out various options for Council to consider.

There was Council direction to have this discussion moved to P & Z.

## 4. Receive direction about the Thoroughfare Plan Amendment for Morriss

There was Council discussion as follows:

- Option of a work session with just the Transportation Commission in a brainstorming format, where the public could contribute ideas, and then Council would have the joint meeting with the Transportation Commission afterwards
- Concerns that the Transportation Commission did not have enough information at their last meeting and that Council's goals and intent may not have clear; noting that some of the things being looked at is the road designation, and possibilities for improvement of traffic mobility and safety
- Possibly of a joint work session with the Transportation Commission, and include members of the public for input
- How a lot of people have asked for a committee of residents to meet and consider various ideas and it was noted that the Transportation Commission serves in this capacity

There was Council consensus to proceed with a joint work session with the Transportation Commission, and with the understanding it would be in a controlled setting such as with time limits for public input. This work session would also include staff proposals such as turn lanes, lighting, etc. In addition, a building official from LISD should be invited given the school is a component of the discussion. The date and location is to be determined.

## 5. Receive direction about the Roadway enhancement safety program

Ms. Bruce outlined options for Council consideration in conjunction with roadway enhancements, particularly as it relates to lighting.

and she or Ms. Wallace responded to questions from Council as follows:

- Can CoServ retrofit a light to LED at a later time or would they need to replace the light entirely
- How many different styles of light fixtures are there currently in Town
- Was a heat map gathered from the Police Department to have an incident overlay to understand where the lights are needed most
- Clarification regarding the process for putting lights in TxDot right of ways
- How would the lights be funded
- How bright are the lights
- What is the variable cost per unit and who pays for it

There was Council discussion as follows:

- The box light style is not attractive
- Concerns that LED lights is not an option
- Old English style

- Liked the lighting option for the medians, and darker color poles
- Lights in a median and at an intersection should be the standard practice for lighting
- How the type of street dictates the amount of lights, as the more intense the traffic the more lights are needed
- Liked the cobra style as it puts more light on the road itself, and the example of Coppell was given
- Lights in the medians would be ideal; however, some roads may require more than that
- Interest in having transportation commission provide feedback before it comes back to Council
- How some streets do have lights but they are more of a neighborhood style light and it should be replaced (or another light added) if it is on a roadway because it is not sufficiently illuminating the intersection
- Safety factor of the lights; however, recognizing that many people prefer less lights overall
- How the discussion is not about illuminating the whole Town; however, more about focusing on key locations, such as around schools where lighting does not exist (i.e. Forest Vista, Garden Ridge, Halsey)
- How going forward lighting needs to be part of the discussion any time there is a road project underway and to include that cost into the overall roadway repair
- The possibility of putting in a few lights to get resident feedback
- How installing the lights should be an annual program and there will be competing demands for additional resources, which are limited

There was Council consensus and direction to:

- Get feedback from the Transportation Commission, and include the heat map from the Police Department to have an incident overlay for the purpose of understanding where the lights are needed most to help prioritize which locations get lights first
- Use Cobra head light style with the darker poles, and for placement in median locations, with a focus on key locations, such as around schools where lighting does not exist

6. Receive direction regarding the Town's landscape requirements for commercial properties

Mr. Stathatos provided background information regarding why this item is on the agenda, and he noted there are still some businesses that are not in compliance with the Town's landscaping regulations. He indicated that staff needs to know if there is interest by Council to amend the ordinance to allow for landscape materials such as synthetic grass.

There was Council discussion as follows:

- How the ordinance needs to be enforced
- Possible exceptions for some types of businesses should there be health and safety factors for having a landscape material such as synthetic grass

- How technology advances have come so far there may be a need to review it and be open minded about the opportunity and possibility, and how it might be appropriate in some places

There was Council direction to:

- Have staff come back with an update at the next meeting regarding specifics as it relates to the use of synthetic grass in commercial landscaping

#### **H. FUTURE AGENDA ITEMS**

1. There were no items requested for a future agenda.

#### **I. COORDINATION OF CALENDARS**

Mayor Hayden confirmed Councilmember attendance at the next regular Town Council meeting scheduled for Monday, March 5.

#### **J. CONSENT ITEMS**

1. Consider approval of the minutes from a regular meeting of the Town Council held on February 5, 2018.

**DRAFT MOTION:** Move to approve the minutes from a regular meeting of the Town Council held on February 5, 2018.

2. Consider approval of the award of Request for Proposal 2018-16 for the Annual Fireworks Display to Pyrotecnico, in the annual amount of \$27,500.

**DRAFT MOTION:** Move to approve the award of Request for Proposal 2018-16 for the Annual Fireworks Display to Pyrotecnico, in the annual amount of \$27,500.

3. Consider approval of the purchase of an ARRI-ALEXA mini camera and accessories from Innocinema in the amount of \$56,137.03.

**DRAFT MOTION:** Move to approve the purchase of an ARRI-ALEXA mini camera and accessories from Innocinema in the amount of \$56,137.03.

4. Consider approval of the purchase of one (1) Case 580N 4WD T4 Final Extendahoe Backhoe/Loader for the Public Works Stormwater Department in the amount of \$61,700.00 and one (1) Case 590SN 4WD T4 Final Extendahoe Backhoe/Loader for the Public Works Utility Line Maintenance Department in the amount of \$82,470.00 from ASCO Associated Supply Co, Inc for a grand total amount of \$144,170.00.

**DRAFT MOTION:** Move to approve the purchase of one (1) Case 580N 4WD T4 Final Extendahoe Backhoe/Loader for the Public Works Stormwater Department in the amount of \$61,700.00 and one (1) Case 590SN 4WD T4 Final Extendahoe Backhoe/Loader for the Public Works Utility Line Maintenance Department in the amount of \$82,470.00 from ASCO Associated Supply Co, Inc for a grand total amount of \$144,170.00.

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5. Consider approval of the purchase of one (1) new Custom Armored Rescue/Response Van for Police Services from Roshel Inc, the lowest responsible bidder in the amount of \$98,500.00.

**DRAFT MOTION:** Move to approve the purchase of one (1) new Custom Armored Rescue/Response Van for Police Services from Roshel Inc, the lowest responsible bidder in the amount of \$98,500.00.

6. Consider approval of the purchase of one (1) 2019 Freightliner Chassis and Pro-Patch Pothole Patcher for the Public Works Street Services Department from Freightliner of Austin in the amount of \$150,470.00.

**DRAFT MOTION:** Move to approve the purchase of one (1) 2019 Freightliner Chassis and Pro-Patch Pothole Patcher for the Public Works Street Services Department from Freightliner of Austin in the amount of \$150,470.00.

7. Consider approval of a resolution to enter into an Interlocal Agreement with the Texas Department of Motor Vehicles (TxDMV) for the continuation of the Scofflaw program, and authorization for the Mayor to execute same on behalf of the Town.

**DRAFT MOTION:** Move to approve a resolution to enter into an Interlocal Agreement with the Texas Department of Motor Vehicles (TxDMV) for the continuation of the Scofflaw program, and authorization for the Mayor to execute same on behalf of the Town.

**RESOLUTION NO. 04-18**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER, TX, APPROVING AN INTERLOCAL GOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF FLOWER MOUND AND THE TEXAS DEPARTMENT OF MOTOR VEHICLES RELATING TO MOTOR VEHICLE REGISTRATION REFUSAL PURSUANT TO SECTION 702.003 OF THE TEXAS TRANSPORTATION CODE.**

8. Consider approval of a resolution confirming a relationship with JPMorgan Chase Bank; designating and appointing authorized agents; authorizing the Mayor to sign all accompanying agreements; providing for the operation of the Town's accounts with said Bank; and declaring an effective date.

**DRAFT MOTION:** Move to approve a resolution confirming a relationship with JPMorgan Chase Bank; designating and appointing authorized agents; authorizing the Mayor to sign all accompanying agreements; providing for the operation of the Town's accounts with said Bank; and declaring an effective date.

**RESOLUTION NO. 05-18**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND CONFIRMING A RELATIONSHIP WITH JPMORGAN CHASE BANK; DESIGNATING AND APPOINTING AUTHORIZED AGENTS; AUTHORIZING THE MAYOR TO SIGN ALL ACCOMPANYING AGREEMENTS; PROVIDING FOR THE OPERATION OF THE TOWN'S ACCOUNTS WITH SAID BANK; AND DECLARING AN EFFECTIVE DATE.**

9. Consider approval of Amendment No. 3, to the Fiscal Year 2017-2018 Capital Improvement Program.

**DRAFT MOTION:** Move to approve Amendment No. 3, to the Fiscal Year 2017-2018 Capital Improvement Program.

10. Consider approval of Change Order No. 1 for the construction of the Woodbine Street Reconstruction project, amending the contract with Tiseo Paving Company, to provide for additional substantial and final completion days, and an increase to the contract in the amount of \$392,015.03 to replace the water line; and authorization for the Mayor to execute the same on behalf of the Town.

**DRAFT MOTION:** Move to approve Change Order No. 1 for the construction of the Woodbine Street Reconstruction project, amending the contract with Tiseo Paving Company, to provide for additional substantial and final completion days, and an increase to the contract in the amount of \$392,015.03 to replace the water line; and authorization for the Mayor to execute the same on behalf of the Town.

Mayor Pro Tem McDaniel moved to approve by consent Items 1 – 10. Councilmember Jason Webb seconded the motion. Each item, as approved by consent, is restated above along with the approved draft motion, and if applicable, the Ordinance or Resolution caption for each, for the record.

**VOTE ON MOTION:**

Motion passed

**AYES: FOREST, J. WEBB, BRYANT, MCDANIEL, B. WEBB**

**NAYS: NONE**

**K. REGULAR ITEMS**

11. Public Hearing to consider a request for rezoning (ZPD17-0019 - Lakeside Crossing) to amend Planned Development District No. 153 (PD-153) by modifying the minimum building setback for the Hotel and by adding conceptual elevations and development standards for the townhomes, and to consider adopting an ordinance providing for said amendment. 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 February 12, 2018, meeting.)*

**Staff Presentation**

Mr. Russell gave a presentation identifying or noting:

- General location
- Detailed location
- Land use and zoning
- Photos of the subject property
- Approved concept plan, and what is being requested as part of the amendment
- PD 153 development standards and additional language that would be added to the Ordinance

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- Setback modification and proposed new language

and he responded to questions from Council as follows:

- Whether or not there will be any additional changes to the hotel as a result of this amendment

### **Applicant Presentation**

The applicant did not have a presentation.

Mayor Hayden opened the Public Hearing at 7:46 p.m.

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

| <b>Support:<br/>Comments/Questions</b> | <b>Opposition:<br/>Comments/Questions</b> | <b>Question(s)/Comments Only</b> |
|----------------------------------------|-------------------------------------------|----------------------------------|
| Jim Engel, 5110 Bayberry St            | None                                      | None                             |

Mayor Hayden closed the Public Hearing at 7:47 p.m.

Mayor Pro Tem Don McDaniel moved to approve a request for rezoning (ZPD17-0019 – Lakeside Crossing) to amend Planned Development District No. 153 (PD-153) by modifying the minimum building setback for the Hotel and by adding conceptual elevations and development standards for the townhomes, and adopt an ordinance providing for said amendment. Councilmember Forest seconded the motion.

### **ORDINANCE NO. 03-18**

**AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING ORDINANCE NO. 25-17, WHICH ESTABLISHED PLANNED DEVELOPMENT DISTRICT NO. 153 (PD-153) ON CERTAIN PROPERTY DESCRIBED AS APPROXIMATELY 12.0 ACRES OF LAND SITUATED IN THE J. N. TANNEHILL SURVEY, ABSTRACT NUMBER 1252; BY MODIFYING THE MINIMUM BUILDING SETBACK FOR THE HOTEL; AND BY ADDING CONCEPTUAL ELEVATIONS AND DEVELOPMENT STANDARDS FOR THE TOWNHOMES, IN ACCORDANCE WITH SPECIFIC REQUIREMENTS STATED HEREIN AND EXHIBITS ATTACHED HERETO; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF IN ACCORDANCE WITH SECTION 1-13 OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.**

### **VOTE ON MOTION:**

**AYES: B. WEBB, MCDANIEL, BRYANT, J. WEBB, FOREST**  
**NAYS: NONE**

Motion passed

## 12. Reapplication Waiver – Serenity

Consider approval of a request (MISC17-0008) for a waiver to the one-year waiting period required after denial of a rezoning request by the Town Council in order to allow acceptance of a new zoning application for the same property, as outlined in Section 78-154, "Action by town council," of the Code of Ordinances. The property is generally located south of FM 1171 and west of High Road. (The Planning and Zoning Commission denied the request by a vote of 6 to 0 at its January 8, 2018, meeting.)

**Staff Presentation**

Mayor Hayden announced that the applicant submitted a written withdraw regarding this request. (See *Exhibit A at the end of this document.*)

Mr. Dalton or Mr. Russell responded to questions from Council as follows:

- What steps could the applicant take relative to this project based on how the property is currently situated, and associated timing

## 13. Consider approval of a Consulting Agreement with The Cultural Planning Group to develop a Cultural Arts Master Plan for the Town

**Staff Presentation**

Ms. Ridnour gave a presentation identifying or noting:

- Introduced Cultural Arts Commission member present in the audience
- Why a Cultural Arts Master Plan is needed
- Timeline
- Rankings for the six applications received
- The Cultural Planning Group (CPG)
- Methodology: Phase I

and she responded to questions from Council as follows:

- How would the public meetings be publicized
- Is there a *Friends of the Public Arts* organization, and how the creation of one would be helpful in gathering contributions
- Given it is a virtual company has there been an interface with a person in the company

There was Council discussion regarding:

- How there have been past discussions about having a cultural arts center in Lakeside
- Interest in understanding best practices from other municipalities
- How can the Town get artistic value from things we already do
- Interest in figuring out sooner than later what type of park will be next to the Library

Councilmember Bryan Webb moved to approve a Consulting Agreement with The Cultural Planning Group to develop a Cultural Arts Master Plan for the Town (and for the full amount of \$58,155). Deputy Mayor Pro Tem Bryant seconded the motion.

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## VOTE ON MOTION:

Motion passed

AYES: FOREST, J. WEBB, BRYANT, MCDANIEL, B. WEBB

NAYS: NONE

**L. BOARDS/COMMISSIONS (Executive Conference Room -ECR)***For item L, discussions took place in the Council Chambers and not in the ECR.*

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.

14. Discuss and consider amending the organization of the Gibson-Grant Cabin committee (Resolution No. 23-17) to also include one citizen at large, and the appointment thereof.

Mayor Hayden provided background information that led to this being an agenda item, noting past commitments he or some members of Council made to Mr. Grant relative to his involvement.

Mayor Pro Tem McDaniel moved to approve an amendment to the organization of the Gibson-Grant Cabin committee (Resolution No 23-17) to also include one citizen at large, and to appoint Curtis Grant to serve in that position effective immediately. Councilmember Forest seconded the motion.

## VOTE ON MOTION:

Motion passed

AYES: B. WEBB, MCDANIEL, BRYANT, J. WEBB, FOREST

NAYS: NONE

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

The Town Council convened into a closed meeting at 8:07 p.m. on February 19, 2018, 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 9:26 p.m. on February 19, 2018, to take action on the items as follows:

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

No action taken

- 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

**FLOWER MOUND TOWN COUNCIL MEETING OF FEBRUARY 19, 2018****PAGE 11**

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

Councilmember Bryan Webb moved to authorize staff to purchase the right-of-way property, in association with the Waketon Road project, and to negotiate for the purchase of the right-of-way property up to the proposed settlement amount described in this document and authorize the Town Manager, or his designee, to close on the right-of-way property should a settlement be reached, to pay all costs associated with said closing in addition to the purchase of the right-of-way property, and to execute all necessary documents at closing on behalf of the Town. Mayor Pro Tem McDaniel seconded the motion.

**VOTE ON MOTION:**

Motion passed

**AYES: FOREST, J. WEBB, BRYANT, MCDANIEL, B. WEBB****NAYS: NONE**

- d. Consultation with Attorney.

No action taken

**O. ADJOURN REGULAR MEETING**

Mayor Hayden adjourned the meeting at 9:28 p.m. on Monday, February 19, 2018, and all were in favor.

**TOWN OF FLOWER MOUND, TEXAS**

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**THOMAS E. HAYDEN, MAYOR****ATTEST:**

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**THERESA SCOTT, TOWN SECRETARY**



## TOWN COUNCIL AGENDA ITEM NO. 2

### CONSENT ITEM

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**DATE:** March 5, 2018

**FROM:** Theresa Scott, Town Secretary

**ITEM:** Consider approval of the minutes from a special meeting of the Town Council held on February 24, 2018.

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**BACKGROUND INFORMATION:** The Town Council held a special meeting on February 24, 2018.

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

**ALTERNATIVES/OPTIONS:** N/A

**FISCAL IMPACT:** N/A

**Proposed Expenditure:**

**Account Number(s):**

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**Finance Review by:** N/A

**LEGAL REVIEW:** N/A

**ATTACHMENTS:**

1. Draft minutes

**DRAFT MOTION:** Move to approve the minutes from a special meeting of the Town Council held on February 24, 2018.

**THE FLOWER MOUND TOWN COUNCIL SPECIAL MEETING HELD ON THE 24<sup>TH</sup> DAY OF FEBRUARY 2018, IN THE FLOWER MOUND SENIOR CENTER, LOCATED AT 2701 W WINDSOR DR IN THE TOWN OF FLOWER MOUND, COUNTY OF DENTON, TEXAS AT 10:00 A.M.**

This special meeting was not recorded; therefore there is no audio or video from this meeting.

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

|                |                       |
|----------------|-----------------------|
| Tom Hayden     | Mayor                 |
| Don McDaniel   | Mayor Pro Tem         |
| Jason Webb     | Councilmember Place 1 |
| Kevin Bryant   | Deputy Mayor Pro Tem  |
| Bryan Webb     | Councilmember Place 2 |
| Claudio Forest | Councilmember Place 5 |

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

|               |                |
|---------------|----------------|
| Theresa Scott | Town Secretary |
|---------------|----------------|

Mayor Hayden opened the meeting at 10:16 a.m., and he, and each member of Council, introduced themselves, followed by responding to questions, comments, suggestions, or concerns from the audience on the following topics:

- New Town Hall (construction update and what is planned for the Atrium facility)
- Car break ins at the dog park
- In light of the school shooting in Florida recently, what is the Town's role in making sure the schools are safe
- Upstate on the retail progress at the Riverwalk and the possibility of senior housing options
- Flooding on Waketon Rd - every time it rains (stated for several years)
- The amount and appearance of four-story apartments in River Walk, and the potential of crime due to that kind of density, particularly in future years when they get older
- Rental home trends, including protecting property values, and is there a differentiation in the tax rate for residential and commercial property
- Process to get liquor stores
- Morriss Road classification, and the history as it relates to the back yard set-backs on Morriss
- Along with all the other accolades the Town has received, interest in seeing something about being a healthy community
- Traffic updates or concerns:
  - o Traffic signal planned at FM 2499 and College Parkway
  - o Interest in seeing a traffic signal at FM 2499 and Chaparral
  - o Concerns regarding people violating the no turn on red at Windsor and FM 2499 in front of the senior center, and how the signs indicating such are not visible at night

- Concerns regarding the lateness of the meeting and how sometimes it's a factor where people don't have an opportunity to be heard

Mayor Hayden gave a presentation, and he and/or members of Council, responded to questions, comments, concerns or suggestions on the following topics:

- Overall economic development update:
  - o River Walk and the Courtyard hotel, including the parking garage
  - o Lakeside Business District
  - o Parker Square
    - Concerns regarding the items being sold at the Farmer's Market are more on the lines of arts and crafts, or other goods and services, and not fresh market produce food items
  - o Children's Learning Center permit status (across from Sonic)
- New Town Hall
- Senior Center:
  - o Funding source
  - o Future public use of the facility
- Temporary Fire Station No. 6
- Library Expansion
- Parks and trails improvements

Mayor Hayden acknowledged the Town's 57<sup>th</sup> anniversary.

Mayor Hayden adjourned the special meeting at 12:10 p.m. on Saturday, February 24, 2018, and all were in favor.

**TOWN OF FLOWER MOUND, TEXAS**

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**THOMAS E. HAYDEN, MAYOR**

**ATTEST:**

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**THERESA SCOTT, TOWN SECRETARY**



## TOWN COUNCIL AGENDA ITEM NO. 3

### CONSENT ITEM

**DATE:** March 5, 2018

**FROM:** Sabrina Zadow, Purchasing Manager

**ITEM:** Consider approval of the purchase of three (3) 2018 Ford F150 Pickup Trucks per Town of Flower Mound Specifications from Sam Pack's Five Star Ford in the amount of \$81,960.00.

**BACKGROUND INFORMATION:** The Engineering – Capital Projects Division is requesting the purchase of one (1) 2018 Ford F-150, Extended Cab Pickup Truck per Town of Flower Mound Specifications in the amount of \$27,268.00 through State of Texas Contract #072-A1 (TexasSmartBuy CoOp Contract). This vehicle is a new addition and part of an approved Fiscal Year 2017-2018 Decision Package.

The Environmental Services Division is requesting the purchase of two (2) 2018 Ford F150 Pickup Trucks in the amount of \$54,692.00 through State of Texas Contract #072-A1 (TexasSmartBuy CoOp Contract). These vehicles are part of the approved Fiscal Year 2017-2018 Vehicle Equipment Replacement Fund (VERF) budget and replace units #96050-06 and #96050-07.

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

**ALTERNATIVES/OPTIONS:** N/A

**FISCAL IMPACT:** \$81,960.00

| Proposed Expenditure: | Account Number(s):                    |
|-----------------------|---------------------------------------|
| \$27,268.00           | 200-690-93000-6130 (Capital Projects) |
| \$54,692.00           | 565-450-84500-6110 (VERF)             |

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

**LEGAL REVIEW:** N/A

#### ATTACHMENTS:

1. Fleet Manager's Bid Award Recommendation
2. Quote for New Unit and Replacement of Unit 96050-06
3. Town of Flower Mound Specifications for New Unit and Replacement of Unit 96050-06
4. Quote for Replacement of Unit 96050-07
5. Town of Flower Mound Specifications for Replacement of Unit 96050-07

**DRAFT MOTION:** Move to approve the purchase of three (3) 2018 Ford F150 Pickup Trucks per Town of Flower Mound Specifications from Sam Pack's Five Star Ford in the amount of \$81,960.00.



## Bid Award Recommendation

### Co-op Contract: Smart buy 072-A1

Date: 02-5-2018

**Description:** Qty 2: New 2018 Ford F-150 Extd. Cab, Short Bed Pickup  
Qty 1: New 2018 Ford F-150 Extd. Cab, Long Bed Pickup

**Item #1: Qty: two (2)**

1 unit replaces: unit #96050-06  
1 unit is NEW add to Fleet

**Item #2: Qty: one (1)**

Replaces unit #96050-07 **(This unit is the Illegal Dumping Grant truck, there are no replacement funds available).**

**Bidder: Sam Pack's 5-Star Ford, Carrollton, Tx.**

**Item #1: bid: New 2018 Ford F-150 Extd cab Short bed pickup \$25,143.00**

**\*Per TOFM specifications**

|      |                                                                                                                                        |                 |
|------|----------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| Add: | 1. HD Rawson Koenig across-the-bed locking tool box                                                                                    | <u>\$625.00</u> |
|      | 2. 6-way socket mounted next to 7-way socket in bumper<br>(this is in addition to the 7-way socket included in<br>Trailer tow package) | <u>\$100.00</u> |
|      | 3. HD in-the-bed, over-the top-rail mounted locking<br>side boxes. Priced per pair (qty 2)                                             | <u>\$975.00</u> |
|      | 4. HD Rawson Koenig Louvered headache rack                                                                                             | <u>\$425.00</u> |

Unit #1 Sub Total: **\$27,268.00 ea**

**Unit #1 TOTAL (Qty: 2): \$54,536.00**

**Item #2: bid: New 2018 Ford F-150 Extd cab Long bed pickup \$25,299.00**

**\*Per TOFM specifications**

|      |                                                                                                                                        |                 |
|------|----------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| Add: | 1. HD Rawson Koenig across-the-bed locking tool box                                                                                    | <u>\$625.00</u> |
|      | 2. 6-way socket mounted next to 7-way socket in bumper<br>(this is in addition to the 7-way socket included in<br>Trailer tow package) | <u>\$100.00</u> |

- |                                                                 |                         |                 |
|-----------------------------------------------------------------|-------------------------|-----------------|
| 3. HD in-the-bed, over-the top-rail mounted locking side boxes. | Priced per pair (qty 2) | <u>\$975.00</u> |
| 4. HD Rawson Koenig Louvered headache rack                      |                         | <u>\$425.00</u> |

**Unit #2 Total (Qty 1): \$ 27,424.00**

---

**\*\* TOTAL ( ALL THREE UNITS): \$ 81,960.00**

It is Fleet Services recommendation to award the bid to Sam Pack 5-Star Ford as the lowest responsible bidder in the amount of \$ 81,960.00 .

H. Deats Stewart

Fleet Services Manager

02-5-2018

Date,

[illegible]

**Town of Flower Mound**  
**Request for Quote No.**  
**Purchase of One (1) Full Size, Extended Cab, ½ Ton Pick-Up,**  
**Minimum Regular 6' bed**

**I. General Information**

The Town of Flower Mound is soliciting quotes for one (1) full size, extended cab, ½ ton pick-up, minimum regular 6' bed, in accordance with the specifications herein. The equipment must be new, of current production model, and available to the commercial market. This is a one time purchase and will be awarded based on the lowest quote received meeting specifications.

**II. General Specifications**

It is the intent of the Town of Flower Mound to satisfy the requirements set forth by the EPA (Environmental Protection Agency) whenever purchasing new vehicles and/or equipment. Therefore, bidders are required to indicate below if the units bid, 'Are' or 'Are Not' EPA LEV (Low Emission Vehicle) certified. The Town reserves the right to purchase a LEV unit, or a non-LEV unit, based upon availability of funds.

*(Indicate by placing a check in the appropriate box):*

- ☒ Yes ☐ No      1.      Unit offered is an E-85 Flex-Fuel vehicle (if available)  
☒ Yes ☐ No      2.      Unit offered is EPA LEV certified (or greater).

Respondents MUST place a checkmark in the appropriate box to indicate: 'Yes' unit offered meets or exceeds the minimum required specification, or 'No' unit offered does not meet or exceed the minimum required specification listed. Failure to do so could result in disqualification of quote. The Town of Flower Mound reserves the right to waive minor irregularities as determined by the Town due to changes in industry standards. Minor irregularities will not affect the end product/performance intended by the specifications. Respondent agrees that as a condition of this quote, all options available on standard base unit, whether explicit or implied in this specification, will be included on the unit at no additional cost to the Town of Flower Mound.

**Drive Train**

☒ Yes \_\_\_ No 1. Engine: 5.0L V-8 minimum, gasoline

\*\*State engine size bid:

Engine: 5.0  
H.P: 395  
Torque: 400

☒ Yes \_\_\_ No 2. Automatic Transmission

☒ Yes \_\_\_ No 3. Fuel tank: standard equipment capacity

☒ Yes \_\_\_ No 4. Heavy duty battery

☒ Yes \_\_\_ No 5. GVWR : Minimum ~~8200~~ lbs. (approx.) *6.700 Like speed 7600 Long Wheel Base + Heavy Duty Payload.*

\_\_\_ Yes \_\_\_ No 6. Power brakes

\_\_\_ Yes \_\_\_ No 7. Wheelbase: to accommodate bed length requested

\_\_\_ Yes \_\_\_ No 8. H.D. Trailer Towing Package w/ 7-way socket

**Tires and Wheels**

☒ Yes \_\_\_ No 1. Tires: Radial highway tread

☒ Yes \_\_\_ No 2. Full size spare tire with jack

☒ Yes \_\_\_ No 3. Standard hub covers

**Cab and Equipment**

☒ Yes \_\_\_ No 1. Power Steering

☒ Yes \_\_\_ No 2. Intermittent wipers

☒ Yes \_\_\_ No 3. Exterior Paint: O.E.M. Fleet White

☒ Yes \_\_\_ No 4. O.E.M. Factory Tinted glass (All)

☒ Yes \_\_\_ No 5. Seats: Bench type with vinyl covering, blue interior (if available)

☒ Yes \_\_\_ No 6. Air Conditioning

- ☒ Yes \_\_\_ No    7. Rear Step Bumper  
☒ Yes \_\_\_ No    8. Radio: Standard AM / FM Plus  
☒ Yes \_\_\_ No    9. Power windows  
\_\_\_ Yes \_\_\_ No    10. Power door locks

**Inspection**

- ☒ Yes \_\_\_ No    1. Current Texas Vehicle State Inspection when delivered  
(2 year certificate-if available)

**Other**

- ☒ Yes \_\_\_ No    1. Full Floor Covering  
☒ Yes \_\_\_ No    2. Heavy duty floor mats to match covering  
☒ Yes \_\_\_ No    3. Three (3) sets of keys/FOB's (door, ignition, trunk as  
applicable)  
☒ Yes \_\_\_ No    4. Spray-in bed liner, to include tailgate and over the sides of  
rear quarter panels.

**Options**

(Do not include option costs in above pick-up total price)

Include installation in price. The Town reserves the right to include any or all optional items at the time of award.

| Item                                                                    | Price (per each)       |
|-------------------------------------------------------------------------|------------------------|
| 1. Heavy Duty in-the-bed, over-the-top-rail mounted, locking side boxes | \$ <u>975 for Pair</u> |
| 2. 6-way socket wired & mounted in bumper recess                        | \$ <u>160</u>          |
| 3. Heavy Duty cross-the-bed locking tool box (Rawson-Koenig)            | \$ <u>425</u>          |
| 4. Heavy Duty Louvered headache rack (Rawson-Koenig)                    | \$ <u>425</u>          |

**Warranty**

Please state warranty term:

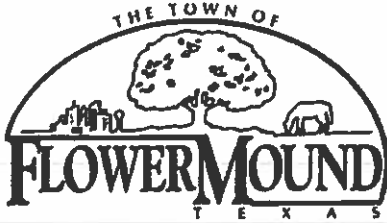
754 36K mile Bumper To Bumper  
5 yr 100K Powertrain.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Comments**

Any exceptions to these specifications must be noted in this section:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[illegible]



**PURCHASING SPECIFICATIONS      SPECIFICATION #070-63-006208**

**ITEM:**      New , Full Size, Extended Cab, 1/2 Ton Pick-Up, Long Bed

**APPLICATION:**    Field application

**Revised:** 05/21/2009

**REQUIREMENTS:**

The vehicle **MUST** be complete, to include **ALL** options and bid requirements per awarded bidder specifications at time of unit delivery.

Failure to do so could result in refusal of unit delivery and/or payment refusal until such time that all items and specifications are met and delivered to the Town of Flower Mound.

**\*\*\*ATTENTION !!!:**

It is the intent of the Town of Flower Mound to satisfy the requirements set forth by the EPA (Environmental Protection Agency) whenever purchasing new vehicles and/or equipment.

☐ Yes ☐ No    1. Unit(s) bid are EPA LEV (or greater) certified.

☒ Yes ☐ No    2. Unit(s) bid are E-85 Flex-Fuel Vehicles (if available)

**DRIVE TRAIN**

☒ Yes ☐ No    1. \*\*Engine: Gasoline, approx. 231 hp. @4750 rpm

Example:      GM: Vortec 4800 V8

Ford: 5.0 L V8

\*\* (state engine size and horse-power bid)

Engine bid: 5.0 395

☒ Yes ☐ No    2. Automatic Transmission

☒ Yes ☐ No    3. Fuel tank: standard equipment capacity

☒ Yes ☐ No    4. Heavy duty battery

☒ Yes ☐ No    5. GVWR #6200 minimum (approx.)

☒ Yes \_\_\_ No 6. Power Brakes

☒ Yes \_\_\_ No 7. H.D. Trailer Towing Package

### **TIRES AND WHEELS**

☒ Yes \_\_\_ No 1. Tires: Radial highway tread

☒ Yes \_\_\_ No 2. Full size spare tire with jack

☒ Yes \_\_\_ No 3. Standard hub covers

### **CAB & EQUIPMENT**

☒ Yes \_\_\_ No 1. Power Steering

☒ Yes \_\_\_ No 2. OEM Factory Tinted glass (All)

☒ Yes \_\_\_ No 3. Intermittent wipers

☒ Yes \_\_\_ No 4. Exterior paint: OEM Fleet White

☒ Yes \_\_\_ No 5. Seats: Bench type with vinyl covering, blue interior (if available).

☒ Yes \_\_\_ No 6. Air Conditioning

☒ Yes \_\_\_ No 7. Rear Step Bumper

☒ Yes \_\_\_ No 8. Radio: Standard AM / FM plus

☒ Yes \_\_\_ No 9. Power windows

☒ Yes \_\_\_ No 10. Power door locks

### **INSPECTION**

☒ Yes \_\_\_ No 1. Current Texas Vehicle State Inspection when delivered  
(2 year certificate)

### **OTHER**

☒ Yes \_\_\_ No 1. Full Floor Covering

☒ Yes \_\_\_ No 2. Heavy duty floor mats to match covering

☒ Yes ☐ No 3. Three (3) sets of keys. (door, ignition, trunk as applicable)

☒ Yes ☐ No 4. Spray-in bed liner, to include tailgate as well as the inside and top rail of bed.

**OPTIONS** (Include installation in price)

|                                                                         | <b><u>Qty</u></b> | <b><u>Price (ea.)</u></b> |
|-------------------------------------------------------------------------|-------------------|---------------------------|
| 1. Heavy Duty in-the-bed, over-the-top-rail mounted, locking side boxes | <u>2</u>          | \$ <u>995</u> <i>each</i> |
| 2. Min. Class III receiver hitch w/drawbar and 2" ball, installed       | <u>1</u>          | \$ <u>125</u>             |
| 3. 6-way socket wired and mounted in bumper recess                      | <u>1</u>          | \$ <u>100</u>             |
| 4. Rawson/Koenig heavy duty across-the-bed locking toolbox.             | <u>1</u>          | \$ <u>425</u>             |
| 5. Rawson/Koenig heavy duty louvered headache rack                      | <u>1</u>          | \$ <u>425</u>             |

**WARRANTY:**

State warranty terms and conditions below:

3yr 56k bumper/bumper  
5yr 100k power windows  
 \_\_\_\_\_  
 \_\_\_\_\_

**COMMENTS:**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_



## TOWN COUNCIL AGENDA ITEM NO. 4

### CONSENT ITEM

**DATE:** March 5, 2018

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

**ITEM:** Consider approval of an ordinance amending section 54-2 "Fees," of Chapter 54 "Parks and Recreation," of the Code of Ordinances to add an after hour rental policy for the Town Senior Center and amending Appendix A "Fee Schedule," of the Code of Ordinances to establish the rental fees for usage of the Town Senior Center.

**BACKGROUND INFORMATION:** Staff was asked to bring forward an item to update or modify the Town's policy that would allow resident groups to use the Shirley Voirin banquet room(s) at the Flower Mound Senior Center (FMSC). Just like at the Community Activity Center (CAC), the room can be divided into three multipurpose rooms dependent on the needs/number of people. The first room has the stage in it and access to the kitchen. Staff looked at the current policies and rates at the CAC, as well as the current policy at the FMSC.

The current policy at the FMSC does not specify rentals during operational hours; and the intent, based on senior center operations at other surveyed cities, was to not have rentals during operating hours. Additionally when the FMSC opened, the staffing wasn't adequate for after hour rentals to the public. The current policy also doesn't specify the amount for after hour events to Town Sponsored events.

Staff looked at an option to allow rentals during operational hours. However for the following reasons, staff recommends rentals only after hours:

1. Limited availability during operational hours due to large FMSC membership and programs
2. Parking conflicts due to membership and shared parking agreement with Mi Dia.
3. Currently rooms are used frequently for programming as well as programming overflow from other rooms when needed.

With the addition of staffing this year at the FMSC, we now have staff available to supervise the after hour rentals. The recommended rates are based on those that are currently charged at the CAC for the multipurpose rooms and use of the kitchen with resident rate for public and member rate for Town Sponsored events.

| Hourly Rates        |           |             | Flat fee |
|---------------------|-----------|-------------|----------|
| Room 1 (stage only) | Two rooms | Three rooms | Kitchen  |

**After Hours**

Public (resident):                      \$65                      \$95                      \$135                      \$20

\*Town sponsored events:              \$60                      \$87                      \$123                      \$20

Town events:                      Scheduled with FMSC Manager/ Dept provides supervision

\* requires advance TMO approval

The attached draft policy contains additional rules and requirements (again based on the CAC policy).

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

**ALTERNATIVES/OPTIONS:** N/A

**FISCAL IMPACT:** Revenue dependent on use

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

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

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

**ATTACHMENTS:**

1. Ordinance
2. Draft policy

**DRAFT MOTION:** Move to approve the ordinance amending section 54-2 "Fees," of Chapter 54 "Parks and Recreation," of the Code of Ordinances to add an after hour rental policy for the Town Senior Center and amending Appendix A "Fee Schedule," of the Code of Ordinances to establish the rental fees for usage of the Town Senior Center.

**TOWN OF FLOWER MOUND, TEXAS****ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING SECTION 54-2 “FEES,” OF CHAPTER 54 “PARKS AND RECREATION,” OF THE CODE OF ORDINANCES TO ADD A RENTAL POLICY FOR THE TOWN SENIOR CENTER; AMENDING APPENDIX A “FEE SCHEDULE,” OF THE CODE OF ORDINANCES TO ESTABLISH THE RENTAL FEES FOR USAGE OF THE TOWN SENIOR CENTER; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; 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 has determined it is in the best interest of the Town of Flower Mound to permit the after-hours rental of banquet rooms in the Senior Center; and

**WHEREAS**, the Town Council wishes to establish hourly fees based on the number of rooms rented for public use and Town sponsored events.

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

**SECTION 1**

That Section 54-2 “Fees,” of Chapter 54 “Parks and Recreation” of the Code of Ordinances, Town of Flower Mound, Texas is hereby amended by adding Section 54-2(f) “Flower Mound Senior Center Banquet Rooms: Rental Policy” to read as follows:

*(f) Flower Mound Senior Center Banquet Rooms: Rental Policy*

*(1) Definitions*

*Nonresident* means a person who lives outside the territorial jurisdiction of the town.

*Operating hours* mean those hours the Flower Mound Senior Center is open for normal use. Operating hours are as follows: 8 am to 5 pm Monday, Wednesday, and Friday and 8 am to 8 pm Tuesday and Thursday.

*Resident* means a person who lives in the territorial jurisdiction of the town.

*Rental fees* mean those fees that are charged to persons desiring to rent the Flower Mound Senior Center. Such rental fees shall be established for hourly use.

*(2) Availability*

- a. The Flower Mound Senior Center Banquet Rooms are available for rental use by Town residents outside of normal operating hours.

(3) *Fees and Refunds*

a. *Fees*

- i. Rental fees for the Flower Mound Senior Center are hereby established. Such rental fees are set forth in Appendix A of this Code.

b. *Deposits*

- i. A deposit for the rental of all or a portion of the Flower Mound Senior Center is required. Applicable deposits are set forth in Appendix A of this Code.
- ii. Refundable deposit is required on Senior Center rentals, and on an entire Senior Center rental, along with completion of a rental agreement and full payment. The deposit will be refunded if the area used has been left in good order and all conditions of the rental agreement have been met. Refundable deposits may be reduced due to any and all damage caused by user or user's guests or invitees.

c. *Refunds*

- i. In order to receive a full refund for a Senior Center rental, notice must be given no less than 14 days prior to the date of the rental. If notice is not given 14 days prior to the rental date, the full amount of the rental will be retained; however the deposit will be refunded in full.

d. *Reservations*

- i. Reservations will be accepted on a first come, first serve basis based on availability and will be limited to one reservation per day.

e. *Kitchen*

- i. Rental fees for the use of the Flower Mound Senior Center Kitchen are hereby established. Applicable fees are set forth in Appendix A of this Code.
- ii. Use of the Flower Mound Senior Center Kitchen is limited to catering, warming and/or staging.

**SECTION 2**

That Appendix A of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended by adding the schedule of fees corresponding to Section 54-2(f) "*Flower Mound Senior Center Banquet Rooms: Rental Policy*" to read as follows:

| Code Section Number | Description                                           |
|---------------------|-------------------------------------------------------|
| 54-2(f)             | Flower Mound Senior Center Banquet Rooms: Rental Fees |

| Hourly Rates                            | Deposit | Room One<br>(Stage Only) | Two Rooms | Three Rooms | Kitchen Usage |
|-----------------------------------------|---------|--------------------------|-----------|-------------|---------------|
| Public<br>(Resident)                    | \$200   | \$65                     | \$95      | \$135       | \$20          |
| Town<br>Sponsored<br>Event <sup>1</sup> | \$200   | \$60                     | \$87      | \$123       | \$20          |
| Town<br>Events <sup>2</sup>             | N/A     | N/A                      | N/A       | N/A         | N/A           |

1. Requires advanced TMO approval.
2. Must be scheduled with Flower Mound Senior Center Manager. The Town department hosting the event shall provide supervision.

### **SECTION 3**

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

### **SECTION 4**

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

### **SECTION 5**

This Ordinance shall be in full force and effect from and after the date of its passage and publication as required by law, and it is so ordained.

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF \_\_\_\_ TO \_\_\_\_, ON THIS THE \_\_\_\_ DAY OF MARCH, 2018.**

**APPROVED:**

---

**Thomas E. Hayden, MAYOR**

**ATTEST:**

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**Theresa Scott, TOWN SECRETARY**

**APPROVED AS TO FORM AND LEGALITY:**

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**Bryn Meredith, TOWN ATTORNEY**

## DRAFT

### Town of Flower Mound Flower Mound Senior Center Banquet Room(s) Rental Policy

#### Availability

Rentals are based on availability and limited to one per day.

#### Deposits

A \$200 deposit for the rental of one or all three rooms is required along with rental agreement and full payment. The deposit will be refunded if the area used has been left in good order and all conditions of the rental permit have been met. Deposits may be reduced due to any and all damage caused by user or user's guests. Staff is available at the conclusion of your rental to help you receive your full deposit. They will fill out the facility check-out form and process the refund of the deposit. Deposits will be refunded by the Town via check in 3 to 4 weeks or credited back to the credit card that was used.

#### Cancellation

In order to receive a full refund for a facility rental, notice must be given no less than 14 days prior to the date of the rental. If notice is not given 14 days prior to the rental date the full amount of the rental will be retained; however, the deposit will be refunded in full.

#### Kitchen

The kitchen is available for a flat fee. The kitchen may only be used for catering, warming and/or staging.

#### Alcohol

No alcoholic beverages are allowed in the FMSC at any time per Town ordinance.

#### Music

Music is allowed during rental hours provided that this has been previously agreed and noted in the rental permit. Noise level has to be kept down. Music and amplified sound should not be heard in other rooms in the FMSC.

#### Security

In addition to the deposit, lessee may be required by Town staff to secure the services of one or more off-duty Flower Mound Police Officers for the duration of the event, at lessee's expense. Police staffing levels shall be determined by the Chief of Police or his/her designee. The minimum contract for an off-duty officer, as required by FMPD, is four (4) hours. All required police officers shall be present in the designated area prior to the event and throughout the event, until all guests have left the Town's facility. Additionally, FMSC staff reserves the right to terminate an event if it is believed that the building is unsafe or the event has exceeded the anticipated number of attendees. In the event that a rental is terminated, the entire party will be asked to leave the FMSC premises immediately. The entire deposit and all fees paid will be forfeited for violations of this policy.

#### Liability

All lessees agree to pay for any damage done to the facility, grounds, or furnishings by themselves, their guests, caterers, decorators, planners, florists, and/or delivery company during or pertaining to their rentals. Notification will be given to the lessee as soon as damages have been assessed. Lessee will be financially responsible for cost of repairs not covered by the deposit.

#### Fire

Due to fire regulations, room capacity set by the Fire Marshall will be strictly enforced.

- o Smoking is not allowed inside the building or outdoor patio area.
- o Candles are prohibited.

- o Fog machines are not allowed.
- o Entrance and exit doors may not be obstructed.
- o Fireworks and explosive liquids are not allowed.
- o Only UL approved appliances and outlets are allowed.

#### Decoration

Use of nails, tacks, staples, or duck tape is prohibited on walls or furnishings. Use of confetti, glitter, silly string, sequins, or birdseeds inside the FMSC or within 25 feet of building entryway is prohibited. Bubbles can be used outside the building only. All decorations must be taken down before lessee vacates the room(s).

#### Rental Hours

Rental hours include set-up and clean-up time. Lessee and/or other members of the lessee's party, caterers, florists, etc., will not be allowed in the assigned room(s) until the time specified on the rental permit. All decorations, food, and rental items must be removed from FMSC premises at the end of the specified rental time. Any overage time will be prorated at the regular price and deducted from the deposit.

#### Set up

Tables and chairs are included with the rental fee. Lessee will be responsible for room set up if needed.

#### Clean up

Lessee is responsible for all necessary clean up during the scheduled reservation time. If needed, cleaning supplies will be made available for use by notifying a front desk staff member. All decorations, litter, and other debris must be disposed of properly in the trash receptacles provided. The kitchen must be cleaned after the rental including appliances, countertops, and sinks. User is responsible for contacting staff on duty in order to sign appropriate sign-out form.

#### Functions allowed

Room(s) only available for meetings and approved programs; not for social functions (i.e. birthdays, showers, receptions or similar celebrations), exercise classes, dance classes, or similar type functions

Licensee Signature \_\_\_\_\_

Print Name \_\_\_\_\_

Date \_\_\_\_\_



## TOWN COUNCIL AGENDA ITEM NO. 5

### CONSENT ITEM

**DATE:** March 5, 2018

**FROM:** Kay Wilkinson, Budget Officer

**ITEM:** Consider approval of an ordinance approving a tariff authorizing an annual rate review mechanism ("RRM") as a substitution for the annual interim rate adjustment process defined by section 104.301 of the Texas utilities code, and as negotiated between Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or "Company") and the Steering Committee of Cities Served by Atmos; requiring the company to reimburse cities' reasonable ratemaking expenses; adopting a savings clause; determining that this ordinance was passed in accordance with the requirements of the open meetings act; declaring an effective date; and requiring delivery of this ordinance to the company and legal counsel for the Steering Committee.

**BACKGROUND INFORMATION:** The Town, along with 171 other Mid-Texas Cities Served by Atmos Energy Corporation, Mid-Tex Division ("Atmos Mid-Tex" or "Company"), is a member of the Steering Committee of Cities Served by Atmos ("Cities"). In 2007, the Cities and Atmos Mid-Tex settled a rate application filed by the Company pursuant to Section 104.301 of the Texas Utilities Code for an interim rate adjustment commonly referred to as Gas Reliability Infrastructure Program ("GRIP") filing. That settlement created a substitute rate review process, referred to as Rate Review Mechanism ("RRM"), as a substitute for future filings under the GRIP statute.

Since 2007, there have been several modifications to the original RRM Tariff. The Ordinance that resolved the Company's application under the RRM Tariff in 2017 also terminated the existing RRM Tariff and required a renegotiation of the terms of that tariff. Negotiations have taken place over the past several months, and have resulted in a revised RRM Tariff that has been agreed to by the Company. The Cities' Executive Committee has recommended acceptance of the revised RRM Tariff, which is attached to the Ordinance.

Cities strongly opposed the GRIP process because it constitutes piecemeal ratemaking by ignoring declining expenses and increasing revenues and rewarding the Company for increasing capital investment. The GRIP process does not allow any review of the reasonableness of capital investment and does not allow cities to participate in the Railroad Commission's review of annual GRIP filings or recover their rate case expenses. The Railroad Commission undertakes a mere administrative review of GRIP filings (instead of a full hearing) and rate increases go into effect without any material adjustments. In the Steering Committee's view, the GRIP process unfairly raises customers' rates without any regulatory oversight. In contrast, the RRM process has allowed for a more comprehensive rate review and annual evaluation of expenses and revenues, as well as capital investment.

The RRM Tariff on which the 2017 rates were based allowed a rate of return on equity of 10.50%. The revised RRM Tariff reduces that to 9.8%. The revised RRM Tariff also captures the reduction in federal income tax rates from 35% to 21%, and should result in a rate reduction effective by mid-March, 2018. Prior RRM tariffs allowed Cities only three months to review the Company's filing. The new revised Tariff expands that time period by two months. New applications by the Company should be made on or about April 1 of each year, with new rates effective October 1. A rate order from the Railroad Commission in an Atmos Texas Pipeline rate case adopted the position of Cities with regard to incentive compensation related to Atmos' Shared Services Unit that reduced allowed expenses, and that reduced level of expenses will be applicable under the new RRM Tariff.

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

**ALTERNATIVES/OPTIONS:** N/A

**FISCAL IMPACT:** N/A

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

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

**ATTACHMENTS:**

1. Proposed Ordinance
2. RRM Tariff

**DRAFT MOTION:** Move to approve an ordinance approving a tariff authorizing an annual rate review mechanism ("RRM") as a substitution for the annual interim rate adjustment process defined be section 104.301 of the Texas utilities code, and as negotiated between Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or "Company") and the Steering Committee of Cities Served by Atmos; requiring the company to reimburse cities' reasonable ratemaking expenses; adopting a savings clause; determining that this ordinance was passed in accordance with the requirements of the open meetings act; declaring an effective date; and requiring delivery of this ordinance to the company and legal counsel for the Steering Committee.

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

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, APPROVING A TARIFF AUTHORIZING AN ANNUAL RATE REVIEW MECHANISM (“RRM”) AS A SUBSTITUTION FOR THE ANNUAL INTERIM RATE ADJUSTMENT PROCESS DEFINED BY SECTION 104.301 OF THE TEXAS UTILITIES CODE, AND AS NEGOTIATED BETWEEN ATMOS ENERGY CORP., MID-TEX DIVISION (“ATMOS MID-TEX” OR “COMPANY”) AND THE STEERING COMMITTEE OF CITIES SERVED BY ATMOS; REQUIRING THE COMPANY TO REIMBURSE CITIES’ REASONABLE RATEMAKING EXPENSES; ADOPTING A SAVINGS CLAUSE; DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE OPEN MEETINGS ACT; DECLARING AN EFFECTIVE DATE; AND REQUIRING DELIVERY OF THIS ORDINANCE TO THE COMPANY AND LEGAL COUNSEL FOR THE STEERING COMMITTEE.**

WHEREAS, the Town of Flower Mound, Texas (“Town”) is a gas utility customer of Atmos Energy Corp., Mid-Tex Division (“Atmos Mid-Tex” or “Company”), and a regulatory authority with an interest in the rates and charges of Atmos Mid-Tex; and

WHEREAS, the Town and similarly-situated Mid-Tex municipalities created the Steering Committee of Cities Served by Atmos to efficiently address all rate and service matters associated with delivery of natural gas; and

WHEREAS, the Steering Committee formed an Executive Committee to direct legal counsel and to recommend certain specific actions to all aligned Mid-Tex Cities through resolution or ordinance; and

WHEREAS, pursuant to the terms of a November 2007 agreement between the Steering Committee and Atmos Mid-Tex that settled the Company’s interim rate filing under Section 104.301 of the Texas Utilities Code (a “GRIP” rate case), the Steering Committee and the Company collaboratively developed a Rate Review Mechanism (“RRM”) Tariff, ultimately authorized by the Town in 2008, that allows for an expedited rate review process as a substitute for the GRIP process; and

WHEREAS, the Town has kept some form of a RRM Tariff in place until 2017 when it adopted an ordinance approving an RRM Tariff filing settlement and specifically calling for termination of the existing RRM Tariff and negotiation of a replacement RRM Tariff following the Railroad Commission's decision in a then-pending Atmos Texas Pipeline case (GUD No. 10580); and

WHEREAS, the Steering Committee's Executive Committee has recently approved a settlement with the Company on the attached RRM Tariff that contains certain notable improvements, from a consumer perspective, over the prior RRM Tariff, including a reduced rate of return on equity, acceptance of certain expense adjustments made by the Railroad Commission in the Order in GUD No. 10580, and the addition of two months to the time for processing a RRM Tariff application; and

WHEREAS, the RRM Tariff contemplates reimbursement of Cities' reasonable expenses associated with RRM Tariff applications; and

WHEREAS, the Steering Committee's Executive Committee recommends that all Steering Committee member cities adopt this ordinance and the attached RRM Tariff; and

WHEREAS, the attached RRM Tariff is just, reasonable and in the public interest,

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

**Section 1.** That the findings set forth in this Ordinance are hereby in all things approved.

**Section 2.** That the attached RRM Tariff re-establishing a form of Rate Review Mechanism is just and reasonable and in the public interest, and is hereby adopted.

**Section 3.** That Atmos Mid-Tex shall reimburse the Cities' reasonable expenses associated with adoption of this Ordinance and the attached RRM Tariff and in processing future RRM Tariff applications filed pursuant to the attached tariff.

**Section 4.** That to the extent any resolution or ordinance previously adopted by the Town is inconsistent with this Ordinance, it is hereby repealed.

**Section 5.** That the meeting at which this Ordinance was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

**Section 6.** That if any one or more sections or clauses of this Ordinance is adjudged to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance , and the remaining provisions of this Ordinance shall be interpreted as if the offending section or clause never existed.

**Section 7.** That this Ordinance shall become effective from and after its passage.

**Section 8.** That a copy of this Ordinance shall be sent to Atmos Mid-Tex, care of Chris Felan, Vice President of Rates and Regulatory Affairs, Atmos Energy Corporation, Mid-Tex Division, 5420 LBJ Freeway, Suite 1862, Dallas, Texas 75240, and to Geoffrey Gay, General Counsel to Mid-Tex Cities, at Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701.

PASSED AND APPROVED this 5 day of March, 2018.

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Thomas E. Hayden, Mayor

ATTEST:

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Theresa Scott, Town Secretary

**ATMOS ENERGY CORPORATION**  
**MID-TEX DIVISION**

|                        |                                                                                            |                |
|------------------------|--------------------------------------------------------------------------------------------|----------------|
| <b>RATE SCHEDULE:</b>  | <b>RRM – Rate Review Mechanism</b>                                                         |                |
| <b>APPLICABLE TO:</b>  | <b>ALL CITIES IN THE MID-TEX DIVISION AS IDENTIFIED IN EXHIBIT A TO THIS RATE SCHEDULE</b> |                |
| <b>EFFECTIVE DATE:</b> | <b>Bills Rendered on and after 04/01/2018</b>                                              | <b>PAGE: 1</b> |

## **I. Applicability**

Applicable to Residential, Commercial, Industrial, and Transportation tariff customers within the city limits of cities identified in Exhibit A that receive service from the Mid-Tex Division of Atmos Energy Corporation (“Company”). This Rate Review Mechanism (“RRM”) provides for an annual adjustment to the Company’s Rate Schedules R, C, I and T (“Applicable Rate Schedules”). Rate calculations and adjustments required by this tariff shall be determined on a System-Wide cost basis.

## **II. Definitions**

“Test Period” is defined as the twelve months ending December 31 of each preceding calendar year.

The “Effective Date” is the date that adjustments required by this tariff are applied to customer bills. The annual Effective Date is October 1.

Unless otherwise provided in this tariff the term Final Order refers to the final order issued by the Railroad Commission of Texas in GUD No. 10170 and elements of GUD No. 10580 as specified in Section III below.

The term “System-Wide” means all incorporated and unincorporated areas served by the Company.

“Review Period” is defined as the period from the Filing Date until the Effective Date.

The “Filing Date” is as early as practicable, but no later than April 1 of each year.

## **III. Calculation**

The RRM shall calculate an annual, System-Wide cost of service (“COS”) that will be used to adjust applicable rate schedules prospectively as of the Effective Date. The Company may request recovery of its total cost of service but will include schedules showing the computation of any adjustments. The annual cost of service will be calculated according to the following formula:

$$\text{COS} = \text{OM} + \text{DEP} + \text{RI} + \text{TAX} + \text{CD}$$

Where:

OM = all reasonable and necessary operation and maintenance expenses from the Test Period adjusted for known and measurable items and prepared

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consistent with the rate making treatments approved in the Final Order. Incentive compensation (Management Incentive Plan, Variable Pay Plan and Long Term Incentive Plan) related to Atmos' Shared Services Unit will be applied consistent with treatment approved in GUD 10580. Additionally, O&M adjustments will be incorporated and applied as modified by a final order, not subject to appeal, issued by the Railroad Commission of Texas in subsequent rate cases involving the Atmos Mid-Tex or West Texas divisions. Known and measurable adjustments shall be limited to those changes that have occurred prior to the Filing Date. OM may be adjusted for atypical and non-recurring items. Shared Services allocation factors shall be recalculated each year based on the latest component factors used during the Test Period, but the methodology used will be that approved in the Final Order in GUD 10580.

**DEP** = depreciation expense calculated at depreciation rates approved by the Final Order. Additionally, if depreciation rates are approved in a subsequent final order, not subject to appeal, issued by the Railroad Commission of Texas for the Mid-Tex division those rates would be applicable for subsequent RRM filings.

**RI** = return on prudently incurred investment calculated as the Company's pretax return multiplied by rate base at Test Period end. Rate base is prepared consistent with the rate making treatments approved in the Final Order, and as in GUD 10580 as specifically related to capitalized incentive compensation (Management Incentive Plan, Variable Pay Plan and Long Term Incentive Plan) for Atmos' Shared Services Unit. However, no post Test Period adjustments will be permitted. Additionally, adjustments will be incorporated and applied as modified by a final order, not subject to appeal, issued by the Railroad Commission of Texas in subsequent rate cases involving the Atmos Mid-Tex or West Texas divisions. Pretax return is the Company's weighted average cost of capital before income taxes. The Company's weighted average cost of capital is calculated using the methodology from the Final Order including the Company's actual capital structure and long term cost of debt as of the Test Period end (adjusted for any known and measurable changes that have occurred prior to the filing date) and the return on equity of 9.8%. However, in no event will the percentage of equity exceed 58%. Regulatory adjustments due to prior regulatory rate base adjustment disallowances will be maintained. Cash working capital will be calculated using the lead/lag days approved in the Final Order. With respect to pension and other postemployment benefits, the Company will record a regulatory asset or liability for these costs until the amounts are included in the next annual rate adjustment implemented under this tariff. Each year, the Company's filing under this Rider RRM will clearly state the level of pension

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| <b>APPLICABLE TO:</b>  | <b>ALL CITIES IN THE MID-TEX DIVISION AS IDENTIFIED IN EXHIBIT A TO THIS RATE SCHEDULE</b> |                |
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and other postemployment benefits recovered in rates.

**TAX** = income tax and taxes other than income tax from the Test Period adjusted for known and measurable changes occurring after the Test Period and before the Filing Date, and prepared consistent with the rate making treatments approved in the Final Order. Atmos Energy shall comprehensively account for, including establishing a regulatory liability to account for, any statutory change in tax expense that is applicable to months during the Test Period in the calculation to ensure recovery of tax expense under new and old income tax rates.

**CD** = interest on customer deposits.

#### **IV. Annual Rate Adjustment**

The Company shall provide schedules and work papers supporting the Filing's revenue deficiency/sufficiency calculations using the methodology accepted in the Final Order. The result shall be reflected in the proposed new rates to be established for the effective period. The Revenue Requirement will be apportioned to customer classes in the same manner that Company's Revenue Requirement was apportioned in the Final Order. For the Residential Class, 50% of the increase may be recovered in the customer charge. However, the increase to the Residential customer charge shall not exceed \$0.60 per month in the initial filing and \$0.70 per month in any subsequent year. The remainder of the Residential Class increase not collected in the customer charge will be recovered in the usage charge. For all other classes, the change in rates will be apportioned between the customer charge and the usage charge, consistent with the Final Order. Test Period billing determinants shall be adjusted and normalized according to the methodology utilized in the Final Order.

#### **V. Filing**

The Company shall file schedules annually with the regulatory authority having original jurisdiction over the Company's rates on or before the Filing Date that support the proposed rate adjustments. The schedules shall be in the same general format as the cost of service model and relied-upon files upon which the Final Order was based. A proof of rates and a copy of current and proposed tariffs shall also be included with the filing. The filing shall be made in electronic form where practical. The Company's filing shall conform to Minimum Filing Requirements (to be agreed upon by the parties), which will contain a minimum amount of information that will assist the regulatory authority in its review and analysis of the filing. The Company and regulatory authority will endeavor to hold a technical conference regarding the filing within twenty (20) calendar days after the Filing Date.

**ATMOS ENERGY CORPORATION**  
**MID-TEX DIVISION**

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| <b>RATE SCHEDULE:</b>  | <b>RRM – Rate Review Mechanism</b>                                                         |                |
| <b>APPLICABLE TO:</b>  | <b>ALL CITIES IN THE MID-TEX DIVISION AS IDENTIFIED IN EXHIBIT A TO THIS RATE SCHEDULE</b> |                |
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A sworn statement shall be filed by an Officer of the Company affirming that the filed schedules are in compliance with the provisions of this Rate Review Mechanism and are true and correct to the best of his/her knowledge, information, and belief. No testimony shall be filed, but a brief narrative explanation shall be provided of any changes to corporate structure, accounting methodologies, allocation of common costs, or atypical or non- recurring items included in the filing.

## **VI. Evaluation Procedures**

The regulatory authority having original jurisdiction over the Company's rates shall review and render a decision on the Company's proposed rate adjustment prior to the Effective Date. The Company shall provide all supplemental information requested to ensure an opportunity for adequate review by the relevant regulatory authority. The Company shall not unilaterally impose any limits upon the provision of supplemental information and such information shall be provided within seven (7) working days of the original request. The regulatory authority may propose any adjustments it determines to be required to bring the proposed rate adjustment into compliance with the provisions of this tariff.

The regulatory authority may disallow any net plant investment that is not shown to be prudently incurred. Approval by the regulatory authority of net plant investment pursuant to the provisions of this tariff shall constitute a finding that such net plant investment was prudently incurred. Such finding of prudence shall not be subject to further review in a subsequent RRM or Statement of Intent filing.

During the Review Period, the Company and the regulatory authority will work collaboratively and seek agreement on the level of rate adjustments. If, at the end of the Review Period, the Company and the regulatory authority have not reached agreement, the regulatory authority shall take action to modify or deny the proposed rate adjustments. The Company shall have the right to appeal the regulatory authority's action to the Railroad Commission of Texas. Upon the filing of an appeal of the regulatory authority's order relating to an annual RRM filing with the Railroad Commission of Texas, the regulatory authority having original jurisdiction over the Company's rates shall not oppose the implementation of the Company's proposed rates subject to refund, nor will the regulatory authority advocate for the imposition of a third party surety bond by the Company. Any refund shall be limited to and determined based on the resolution of the disputed adjustment(s) in a final, non-appealable order issued in the appeal filed by the Company at the Railroad Commission of Texas.

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| <b>RATE SCHEDULE:</b>  | <b>RRM – Rate Review Mechanism</b>                                                         |                |
| <b>APPLICABLE TO:</b>  | <b>ALL CITIES IN THE MID-TEX DIVISION AS IDENTIFIED IN EXHIBIT A TO THIS RATE SCHEDULE</b> |                |
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In the event that the regulatory authority and Company agree to a rate adjustment(s) that is different from the adjustment(s) requested in the Company's filing, the Company shall file compliance tariffs consistent with the agreement. No action on the part of the regulatory authority shall be required to allow the rate adjustment(s) to become effective on October 1. To the extent that the regulatory authority does not take action on the Company's RRM filing by September 30, the rates proposed in the Company's filing shall be deemed approved effective October 1. Notwithstanding the preceding sentence, a regulatory authority may choose to take affirmative action to approve a rate adjustment under this tariff. In those instances where such approval cannot reasonably occur by September 30, the rates finally approved by the regulatory authority shall be deemed effective as of October 1.

To defray the cost, if any, of regulatory authorities conducting a review of the Company's annual RRM filing, the Company shall reimburse the regulatory authorities on a monthly basis for their reasonable expenses incurred upon submission of invoices for such review. Any reimbursement contemplated hereunder shall be deemed a reasonable and necessary operating expense of the Company in the year in which the reimbursement is made. A regulatory authority seeking reimbursement under this provision shall submit its request for reimbursement to the Company no later than December 1 of the year in which the RRM filing is made and the Company shall reimburse regulatory authorities in accordance with this provision on or before December 31 of the year the RRM filing is made.

To the extent possible, the provisions of the Final Order shall be applied by the regulatory authority in determining whether to approve or disapprove of Company's proposed rate adjustment.

This Rider RRM does not limit the legal rights and duties of a regulatory authority. Nothing herein shall abrogate the jurisdiction of the regulatory authority to initiate a rate proceeding at any time to review whether rates charged are just and reasonable. Similarly, the Company retains its right to utilize the provisions of Texas Utilities Code, Chapter 104, Subchapter C to request a change in rates. The provisions of this Rider RRM are implemented in harmony with the Gas Utility Regulatory Act (Texas Utilities Code, Chapters 101-105).

The annual rate adjustment process set forth in this tariff shall remain in effect during the pendency of any Statement of Intent rate filing.

**ATMOS ENERGY CORPORATION  
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| <b>RATE SCHEDULE:</b>  | <b>RRM – Rate Review Mechanism</b>                                                         |                |
| <b>APPLICABLE TO:</b>  | <b>ALL CITIES IN THE MID-TEX DIVISION AS IDENTIFIED IN EXHIBIT A TO THIS RATE SCHEDULE</b> |                |
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## **VII. Reconsideration, Appeal and Unresolved Items**

Orders issued pursuant to this mechanism are ratemaking orders and shall be subject to appeal under Sections 102.001(b) and 103.021, et seq., of the Texas Utilities Code (Vernon 2007).

## **VIII. Notice**

Notice of each annual RRM filing shall be provided by including the notice, in conspicuous form, in the bill of each directly affected customer no later than forty-five (45) days after the Company makes its annual filing pursuant to this tariff. The notice to customers shall include the following information:

- a) a description of the proposed revision of rates and schedules;
- b) the effect the proposed revision of rates is expected to have on the rates applicable to each customer class and on an average bill for each affected customer;
- c) the service area or areas in which the proposed rates would apply;
- d) the date the annual RRM filing was made with the regulatory authority; and
- e) the Company's address, telephone number and website where information concerning the proposed rate adjustment can be obtained.

**ATMOS ENERGY CORPORATION**  
**MID-TEX DIVISION**

## Attachment 2

|                        |                                                                                            |                |
|------------------------|--------------------------------------------------------------------------------------------|----------------|
| <b>RATE SCHEDULE:</b>  | <b>RRM – Rate Review Mechanism</b>                                                         |                |
| <b>APPLICABLE TO:</b>  | <b>ALL CITIES IN THE MID-TEX DIVISION AS IDENTIFIED IN EXHIBIT A TO THIS RATE SCHEDULE</b> |                |
| <b>EFFECTIVE DATE:</b> | <b>Bills Rendered on and after 04/01/2018</b>                                              | <b>PAGE: 7</b> |

## Exhibit A

### ACSC Cities

|               |                        |                  |                      |
|---------------|------------------------|------------------|----------------------|
| Abilene       | Cleburne               | Frost            | Lincoln Park         |
| Addison       | Clyde                  | Gainesville      | Little Elm           |
| Albany        | College Station        | Garland          | Lorena               |
| Allen         | Colleyville            | Garrett          | Madisonville         |
| Alvarado      | Colorado City          | Grand Prairie    | Malakoff             |
| Angus         | Comanche               | Grapevine        | Mansfield            |
| Anna          | Commerce               | Groesbeck        | Mckinney             |
| Argyle        | Coolidge               | Gunter           | Melissa              |
| Arlington     | Coppell                | Haltom City      | Mesquite             |
| Aubrey        | Copperas Cove          | Harker Heights   | Midlothian           |
| Azle          | Corinth                | Haskell          | Murphy               |
| Bedford       | Crandall               | Haslet           | Newark               |
| Bellmead      | Crowley                | Hewitt           | Nocona               |
| Benbrook      | Dalworthington Gardens | Highland Park    | North Richland Hills |
| Beverly Hills | Denison                | Highland Village | Northlake            |
| Blossom       | Denton                 | Honey Grove      | Oak Leaf             |
| Blue Ridge    | Desoto                 | Hurst            | Ovilla               |
| Bowie         | Draper                 | Hutto            | Palestine            |
| Boyd          | Duncanville            | Iowa Park        | Pantego              |
| Bridgeport    | Eastland               | Irving           | Paris                |
| Brownwood     | Edgecliff Village      | Justin           | Parker               |
| Buffalo       | Emory                  | Kaufman          | Pecan Hill           |
| Burkburnett   | Ennis                  | Keene            | Petrolia             |
| Burleson      | Eules                  | Keller           | Plano                |
| Caddo Mills   | Everman                | Kemp             | Ponder               |
| Canton        | Fairview               | Kennedale        | Pottsboro            |
| Carrollton    | Farmers Branch         | Kerens           | Prosper              |
| Cedar Hill    | Farmersville           | Kerrville        | Quitman              |
| Celeste       | Fate                   | Killeen          | Red Oak              |
| Celina        | Flower Mound           | Krum             | Reno (Parker County) |
| Centerville   | Forest Hill            | Lake Worth       | Rhome                |
| Cisco         | Forney                 | Lakeside         | Richardson           |
| Clarksville   | Fort Worth             | Lancaster        | Richland             |
|               | Frisco                 | Lewisville       | Richland Hills       |

**ATMOS ENERGY CORPORATION**  
**MID-TEX DIVISION**

## Attachment 2

|                        |                                                                                            |                |
|------------------------|--------------------------------------------------------------------------------------------|----------------|
| <b>RATE SCHEDULE:</b>  | <b>RRM – Rate Review Mechanism</b>                                                         |                |
| <b>APPLICABLE TO:</b>  | <b>ALL CITIES IN THE MID-TEX DIVISION AS IDENTIFIED IN EXHIBIT A TO THIS RATE SCHEDULE</b> |                |
| <b>EFFECTIVE DATE:</b> | <b>Bills Rendered on and after 04/01/2018</b>                                              | <b>PAGE: 8</b> |

|                 |                   |
|-----------------|-------------------|
| River Oaks      | Temple            |
| Roanoke         | Terrell           |
| Robinson        | The Colony        |
| Rockwall        | Trophy Club       |
| Roscoe          | Tyler             |
| Rowlett         | University Park   |
| Royse City      | Venus             |
| Sachse          | Vernon            |
| Saginaw         | Waco              |
| Sansom Park     | Watauga           |
| Seagoville      | Waxahachie        |
| Sherman         | Westlake          |
| Snyder          | Westover Hills    |
| Southlake       | Westworth Village |
| Springtown      | White Settlement  |
| Stamford        | Whitesboro        |
| Stephenville    | Wichita Falls     |
| Sulphur Springs | Woodway           |
| Sweetwater      | Wylie             |



## TOWN COUNCIL AGENDA ITEM NO. 6

### CONSENT ITEM

**DATE:** March 5, 2018

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

**ITEM:** Consider approval of a Professional Services Agreement with Stantec Consulting Services, Inc., to provide professional engineering services, for the FM 2499 at Lakeside Northbound Right Turn Lane project, in the amount of \$69,800.00; and authorization for the Mayor to execute same on behalf of the Town.

**BACKGROUND INFORMATION:** The FM 2499 at Lakeside Northbound Right Turn Lane project will provide a right turn lane for northbound traffic to turn east on Lakeside Parkway. The project will also include relocation of the signal pole and pedestrian facilities at the southeast corner of FM 2499 and Lakeside Parkway. The scope of the professional services agreement includes the preparation of design plans, specifications, cost estimating, easement preparation, and contract documents for bidding.

**FISCAL IMPACT:** \$69,800.00

| Proposed Expenditure: | Account Number(s): |
|-----------------------|--------------------|
| \$69,800.00           | 531-220-70628      |

**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 a Professional Services Agreement with Stantec Consulting Services, Inc., to provide professional engineering services, for the FM 2499 at Lakeside Northbound Right Turn Lane project, in the amount of \$69,800.00; and authorize the Mayor to execute same on behalf of the Town.

THE STATE OF TEXAS §  
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH  
STANTEC CONSULTING SERVICES, INC.**

This contract is entered into on this 5<sup>th</sup> day of March, 2018, 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 **Stantec Consulting Services, Inc.**, (“hereinafter referred to as “CONSULTANT”) whose address is 2435 N. Central Expressway, Suite 750, Richardson, Texas 75080.

**RECITALS**

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to surveying, design, easement preparation, and providing construction documents for the FM 2499 at Lakeside Northbound Right Turn Lane project; and

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

**TERMS OF AGREEMENT**

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

**I.**

**Employment of Consultant**

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

## **II.**

### **Scope of Services**

CONSULTANT shall perform such services as are necessary to provide services for the FM 2499 at Lakeside Northbound Right Turn Lane 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 Sixty-Nine Thousand Eight Hundred and No/100 Dollars (\$69,800.00). 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](mailto: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:

Clay Riggs, PE, CFM  
Senior Project Engineer  
Town of Flower Mound  
2121 Cross Timbers Road  
Flower Mound, Texas 75028  
972-874-6302 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**

**THE PROVISIONS OF THIS SECTION ARE SUBJECT TO THE LIMITATIONS OF TEXAS LOCAL GOVERNMENT CODE SECTION 271.904 AND SHALL BE CONSTRUED TO THAT EFFECT. THE CONSULTANT AS ALLOWED BY TEXAS LOCAL GOVERNMENT CODE SECTION 271.904 WILL STILL NAME TOWN AS ADDITIONAL INSURED IN ITS GENERAL LIABILITY POLICY AND PROVIDE ANY DEFENSE AS ALLOWED BY THE POLICY. 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 XVIII 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:

Clay Riggs, PE, CFM  
Senior Project Engineer  
Town of Flower Mound  
2121 Cross Timbers Road  
Flower Mound, Texas 75028  
972-874-6302 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:

Kari Ward, PE, ENV SP  
Project Manager  
Stantec Consulting Services, Inc.  
2435 N. Central Expressway, Suite 750  
Richardson, Texas 75080  
817-887-8185 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.

*[The remainder of this page is left blank intentionally]*

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

**THE TOWN OF FLOWER MOUND,  
TEXAS**

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

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

Attest:

\_\_\_\_\_  
Town Secretary

**CONSULTANT:**  
**Stantec Consulting Services, Inc.**

By: Kari Ward  
 Name: Kari Ward  
 Title: Senior Associate

Date Signed: January 31, 2018

State of Texas           §  
                                   §  
 County of Tarrant   §

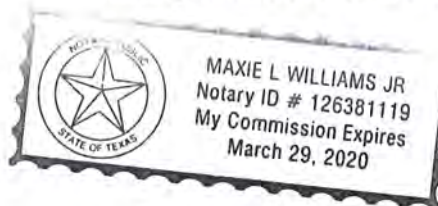
This instrument was acknowledged before me on the 31st day of January, 2018, by Kari Ward in his capacity as Senior Associate of Stantec Consulting Services, Inc., a New York Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of Stantec Consulting Services, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 31<sup>st</sup>  
 DAY OF January 2018.

[Signature]  
 Notary Public, State of Texas

My Commission Expires:

03/29/2020



**ATTACHMENT A****SCOPE OF SERVICES**

**PROJECT NAME: FM 2499 at Lakeside Parkway  
Northbound Right-Turn Lane and Traffic Signal Design**

**PROJECT UNDERSTANDING**

This project consists of the design of a Northbound right-turn lane along FM 2499 at Lakeside Parkway and traffic signal design.

The following Scope of Professional Services includes Data Collection and Survey, Design (Right-Turn Lane), Bidding Phase Services, and Record Drawings. If required and authorized by the Town, Design (Traffic Signal), ROW/Easement Instruments of Conveyance, and SUE (Level A) may also be performed.

**SCOPE OF PROFESSIONAL SERVICES****TASK 1: DATA COLLECTION AND SURVEY****A. Data Collection and Survey**

Gather existing record drawings, including roadway, utility, and traffic signal plans, and plats adjacent to the right-turn lane.

Perform field survey to identify and locate existing topographic elements within the right-turn lane limits (approximately 600' South on FM 2499 and 100' in all other direction at the intersection, within the apparent Right of Way) including, but not limited to, the following:

- Property pins
- Existing pavement, curbs, sidewalks, and barrier free ramps
- Lane striping
- Driveway(s)
- Existing storm sewer inlets, manholes, and junction boxes
- Utility manholes, vaults, water valves, water meters, sprinkler heads, telephone poles, power poles, utility markers, other public utilities, and franchise utilities (will contact Texas 811 to flag existing franchise utilities prior to survey)
- Traffic signal poles, cabinets, and other signal equipment
- Signs (excluding temporary signs)

- Retaining walls
- Fence limits and material types
- Landscaping
- Other applicable physical features that may impact design

Review the final topographic drawing in digital format (including one foot contours and breaklines) showing the features located in the field as well as right-of-way and easement information.

Prepare a base map utilizing the survey information and record drawings.

#### B. Services Provided by the Town

Provide existing record drawings, including roadway, utility, and traffic signal plans, and plats adjacent to the right-turn lane.

### **TASK 2: DESIGN (RIGHT-TURN LANE)**

#### A. Design

Conduct kick-off meeting with the Town

Prepare 30% design identifying limits of proposed right-turn lane, typical sections, striping, sidewalk and wall limits, grading limits, impacts to existing utilities, impacts to adjacent property, impacts to existing traffic signal, and right-of-way and easement needs. If required and authorized by the Town, Design (Traffic Signal), ROW/Easement Instruments of Conveyance, and SUE (Level A) may also be performed via separate Tasks.

Upon Town and TxDOT approval of the 30% design, prepare plan and profile sheets of the proposed improvements. Plan sheets will consist of a 11"x17" sheet at a scale of 1"=40' horizontal. Plan set is anticipated to include the following plan sheets:

- Cover
- Sheet Index
- General Notes
- Paving Plan with Typical Sections. Paving Plan will also identify storm drain, sidewalk, and ADA ramps improvements adjacent to the new right-turn lane.
- Wall Improvements. Wall will be limited to 3-ft in height and anticipated to be integral with the sidewalk utilizing applicable Standard Details. Structural design is not included.
- Water Line adjustments (lowering), if necessary
- Signing and Marking
- Traffic Control Plan (as required by TxDOT)
- Erosion Control
- Town Standards
- TxDOT Standards

Prepare Construction Specifications and Contract Documents, which include applicable technical specifications. The Town will provide the latest approved front-end documents to use as a template.

Submit to the Town 95% plans, specifications, contract documents, and opinion of probable construction cost for review and comments.

Submit to the franchise utility companies 95% complete plans for review and comment.

Conduct meeting with Town to review 95% plans during monthly progress meetings

Make revisions based on the Town's review of the 95% submittal

Town to submit final plans to TxDOT for review and final permitting.

B. Design Deliverables

Three (3) copies of the 30% Design Roll Plot

Three (3) copies of the 95% Construction Plans

Three (3) copies of the 95% Construction Specifications and Contract Documents

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

C. Final Design

Make revisions based on the Town's review of the 95% submittal

D. Final Design Deliverables

Five (5) copies of the Final Construction Plans

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

One (1) copy of Bidding Documents (Plans) in digital format (PDF)

One (1) copy of Bidding Documents (Final Construction Specifications and Contract Documents) in digital format (PDF)

E. Meetings

Kick-off meeting with the Town

Meet with Town to review 30% plans

Meet with Town to review 95% plans

F. Services provided by the Town

Review and comment on 30% and 95% plans, specifications, contract documents, and opinion of probable construction cost

Submit final plans to TxDOT for permitting

**TASK 3: BIDDING PHASE SERVICES**

A. Print and issue seven (7) sets of bidding documents. Additional sets of bidding documents shall be printed, only upon the Town's authorization, as Additional Professional Services. Bidding documents will be issued to potential bidders upon the payment of a non-refundable fee to cover the cost of printing those documents.

B. Issue addenda as required.

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

Notice to Bidders for Advertising by the Town

Addenda as required

Print and deliver to the Town up to seven (7) sets of bid documents

**TASK 4: RECORD DRAWINGS**

A. Record Drawing Preparation

Prepare record drawings from contractor's marks showing changes made during construction. Transfer contractor's marks to digital format. The Consultant will be provided the contractor's revisions and shall not be responsible for verifying their completeness or accuracy. The record drawings will not be signed and sealed, but will bear a stamp to denote that they are for record purposes.

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

**TASK 5: DESIGN (TRAFFIC SIGNAL), if necessary**

Traffic Signal improvements will be identified at the 30% design milestone. If required and authorized by the Town, design of the Traffic Signal improvements will be performed under this Task. The Traffic Signal improvements will be incorporated into the deliverables identified under Task 2.

Consultant will create signal modification documents for the intersection of FM 2499 at Lakeside Parkway. Consultant will conduct a field review to verify previously designed signal pole locations and review design locations for the new signal designs. Roadway and above-ground utility information will be verified during the field visit. The information verified will include the lane configurations, any existing traffic control devices, and existing signal equipment such as ground box locations.

Consultant will coordinate with Town engineers to discuss signal design requirements. The signal will be designed per Town of Flower Mound and/or TxDOT standards.

After construction of the ADA ramps and installation of the pavement marking, Consultant engineers will take field measurements to calculate the correct yellow and red change intervals as well as the pedestrian walk and pedestrian flashing don't walk time. The calculations will be based on the MUTCD and NCHRP report 731. The data to be programmed into the controller by the contractor will be included in a technical memorandum written to the Town for use by the contractor.

After construction is completed, Consultant will receive redline markups from the Contractor and/or the Town, to be delivered electronically in PDF format. Consultant will generate a set of record drawing plans which will incorporate the Contractor's field change markups. The record drawings will not be signed and sealed, instead, they will bear a stamp explaining that the plans were constructed per the 100% design plans, except as otherwise noted. Consultant will not perform a field visit to verify the redline markups. The record drawings will be delivered to the Town in electronic format, with up to three (3) half-size (11"x17") hard copy sets included, if requested by the Town.

The following plan sheets will be incorporated into the plan set:

- Traffic Signal Layout

- Summary Charts
- TxDOT and/or Town Standard Details

**TASK 6: ROW AND EASEMENTS, if necessary**

ROW and Easement needs will be identified at the 30% design milestone. If required and authorized by the Town, preparation of the ROW and Easement Instruments of Conveyance will be performed under this Task (via a subconsultant), \$2,500/each

Individual parcel exhibits shall be on 8 ½" x 11" paper, shall be sealed, dated, and signed by a Registered Professional Land Surveyor.

The Town will obtain the affected landowners' approval and signatures on the Instruments of Conveyance.

**TASK 7: SUE – LEVEL A, if necessary**

Approximate location of utilities will be identified during Tasks 1 and 2. If required and authorized by the Town, perform SUE (Subsurface Utility Engineering) Quality Level "A" to identify existing Town and franchise utility at critical locations within the limits of the construction by exposing specific utilities, \$2,000/each. Non-destructive vacuum excavation equipment may be used to expose the utilities at specific points which will then be field surveyed.

Evaluate the SUE results and provide a summary of potential utility conflicts to the Town.

### **ADDITIONAL SERVICES**

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

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

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

**ATTACHMENT B****COMPENSATION**

The Consultant will provide Tasks 1-7 for a lump sum fee:

|                                          |                  |
|------------------------------------------|------------------|
| TASK 1 – Data Collection and Survey      | \$ 6,580         |
| TASK 2 – Design (Right-Turn Lane)        | \$ 38,630        |
| TASK 3 – Bidding Phase Services          | \$ 2,720         |
| TASK 4 – Record Drawings                 | \$ 2,580         |
| TASK 5 – Design (Traffic Signal)         | \$ 10,290        |
| TASK 6 – ROW and Easements (2 @ \$2,500) | \$ 5,000         |
| TASK 7 – SUE – Level A (2 @ \$2,000)     | \$ 4,000         |
| <b>TOTAL</b>                             | <b>\$ 69,800</b> |

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



## TOWN COUNCIL AGENDA ITEM NO. 7

### CONSENT ITEM

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**DATE:** March 5, 2018

**FROM:** Doug Stevens, CPM, Assistant Director of Public Works

**ITEM:** Consider approval for the Flower Mound Public Works Department to become a Member City in the North Central Texas Public Works Emergency Response Team (PWERT) and enter in to the North Central Texas Public Works Mutual Aid Agreement; and authorize the Mayor to execute same on behalf of the Town.

---

**BACKGROUND INFORMATION:** Lessons learned from past disasters have revealed the needs and benefits of an organized, local public works support capability. In response, the North Central Texas Public Works Emergency Response Team (PWERT) was created to facilitate critical public works assistance when an emergency or disaster overwhelms the local resources of a jurisdiction within the north central Texas area. The North Central Texas PWERT was formed by and for local governments and operates on a voluntary quid pro quo basis. The North Central Texas PWERT first deployed during the April 3, 2012 tornado outbreak and has since grown to a more robust capacity better able to meet regional need. Entering this agreement allows the Town of Flower Mound to join 53 other member cities comprising the North Central Texas PWERT, and through the framework of the agreement provides for access to their public works manpower and equipment during an emergency. The Public Works Mutual Aid Agreement, required to be approved by local city/town councils or county commissioners prior to membership, is attached.

**FISCAL IMPACT:** N/A

**LEGAL REVIEW:** N/A

**ATTACHMENTS:**

1. North Central Texas Public Works Mutual Aid Agreement
2. PWERT member jurisdictions

**DRAFT MOTION:** Move to approve the Flower Mound Public Works Department to become a Member City in the North Central Texas Public Works Emergency Response Team (PWERT) and enter into the North Central Texas Public Works Mutual Aid Agreement; and authorize the Mayor to execute same on behalf of the Town.

**NORTH CENTRAL TEXAS PUBLIC WORKS  
MUTUAL AID AGREEMENT**

This mutual aid agreement ("Agreement") is entered into by, between, and among the North Central Texas Participating Local Governments and/or Public/Political Sub-Divisions located wholly or partially within the State of Texas acting by and through their duly authorized officials. The undersigned Participating Local Governments and any and/or Public/Political Sub-Divisions of the State of Texas adopting this agreement upon a formal order of their respective governing bodies as provided therein may be referred to in this Agreement individually as "Party" and collectively as "Parties." By signing this document, and sending it to the Public Works Emergency Response Team, at an address maintained by the NCTCOG, the agency has indicated that it consents to be a party to this emergency mutual aid agreement, and acknowledges that it is not necessary to receive copies of the agreement from other agencies that are party to such agreement.

**RECITALS**

**WHEREAS**, the Parties recognize the vulnerability of the people and communities located within local governments and public subdivisions to damage, injury, and loss of life and property resulting in emergencies, disasters or civil emergencies and recognize that such incidents may present equipment and personnel requirements beyond the capacity of each individual (governmental entity) (Party); and

**WHEREAS**, the governing officials of the Parties desire to secure for each Party the benefits of Mutual Aid for the protection of life and property in the event of an emergency, disaster or civil emergency or public works emergency; and

**WHEREAS**, the Parties *that* wish to make suitable arrangements to provide Mutual Aid are so authorized, and make this Agreement pursuant to *all governmental power inherent in home rule and other municipalities and all statutory authority, including, but not limited to, the Interlocal Cooperation Act Chapter 791 of the Texas Government Code); the Texas Disaster Act of 1975 as amended Chapter 418 of the Texas Government Code including the Texas Statewide Mutual Aid System of the Emergency Management Chapter, set out in Subchapter E-1 of Texas Government Code, Section 418.111 et seq, and any amendments to that authority or other authority that may be set out in the constitution of laws of the State of Texas;*

**WHEREAS**, it is understood that the creation of this Agreement and the Texas Statewide Mutual Aid System (SB11) under Chapter 418 E-1 does not replace or supersede existing mutual aid agreements or interfere with the ability of municipalities to enter into written mutual aid agreements in the future. It is understood that if a written agreement is entered into by governmental entities or municipalities requesting resources, then the terms of that agreement control the rights and responsibilities of the participating parties to the extent the agreement provides terms that differ from the Texas Statewide Mutual Aid System.

**WHEREAS**, it is expressly understood that any mutual aid extended under this Agreement and the operational plan adopted pursuant thereto, is furnished in accordance with the "Texas Disaster Act" and other applicable provision of law and except as otherwise provided by law, that the responsible local official in whose jurisdiction an incident requiring Mutual Aid has occurred shall remain in charge at such incident including the direction of such personnel and equipment provided him/her through the operation of such Mutual Aid Plans;

**NORTH CENTRAL TEXAS PUBLIC WORKS  
MUTUAL AID AGREEMENT**

NOW, THEREFORE, the Parties agree as follows:

Section 1: Incorporation: The above whereas provisions and statements are incorporated as if written word for word below.

Section 2: Purpose: This Agreement is hereby established to provide planning and operating procedures whereby public works related Agencies may request aid and assistance in the form of personnel, equipment, materials and/or other associated services from other public works related agencies. This agreement allows for better coordination of efforts, identifies available resources and helps ensure that timely aid can be provided.

Section 3: Definitions

- A. "Agency" means any municipal public works agency, township road district, county highway departments, or any Public/Political sub-division that performs a public works function that abides by the provisions as found in this Agreement.
- B. "Administrative Agency" means the entity designated by the Parties to be responsible for maintaining the documents associated with this Agreement including distributing Point of Contact and Resource Inventory information.
- C. "Assisting Party" or "Responding Party" means the agency or organization which has received a request to furnish aid and assistance from another Party and has agreed to provide the same.
- D. "Civil Emergency" means an unforeseen combination of circumstances or the resulting consequences thereof within the geographic limits of a given jurisdiction that calls for immediate action or for which there is an urgent need for assistance or relief to protect the general citizenry.
- E. "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause, including but not limited to fire, flood, earthquake, wind, storm, wave action, winter storm, biological or health hazards, dam or levee break, drought, explosion, riot,, acts of terrorism and other public calamity requiring emergency action or requiring homeland security activity (as that term is defined in Chapter 421 of the Texas Government Code entitled Homeland Security) that is or likely to be, beyond the control of the services personnel equipment and facilities of a Party that requires assistance under this Agreement, but must be coordinated through the appropriate local accredited/certified Emergency Management Agency coordinator.
- F. "Emergency" means any occurrence or threat thereof, whether natural or caused by man, in war or in peace, which results in substantial injury or harm to the population, or substantial damage to or loss of property.
- G. "Homeland security activity" means any activity related to the prevention or discovery of, response to, or recovery from a terrorist attack, natural or man-made disaster, hostile military or paramilitary action, or extraordinary law enforcement emergency.
- H. "Mutual Aid" means providing resources such as personnel, equipment, services and supplies. These resources support typical public works missions or tasks such as: removal of debris, restoration of water/wastewater operations, flood control, infrastructure system repairs, standby power, and damage assessment.

**NORTH CENTRAL TEXAS PUBLIC WORKS  
MUTUAL AID AGREEMENT**

- I. "National Incident Management System (NIMS)" means a Presidential directive that provides a consistent nationwide approach that allows federal, state, local and tribal governments as well as private sector and nongovernmental organizations to work together to manage incidents and disasters of all kinds.
- J. "Operational Period" shall mean a period of time beginning at the time of the request for Mutual Aid and lasting no longer than thirty six (36) hours. Typically assistance would be given in Twelve (12) hour shifts for operational efficiencies. It is the intention of this mutual aid to be for assistance in the initial response to the emergency and not part of the long term recovery. If assistance is requested beyond the initial 36 hours, then the Requesting Party must work with the Responding Party directly and put in place a mutual agreeable contract and payment for services rendered. It is also understood that any agency responding under this mutual aid agreement will not receive any reimbursement for their mutual aid assistance up to the first 36 hours, even if the event becomes a declared emergency by the President. After the first 36 hours repayment shall be provided. It is also understood that any agency for any reason may decline to assist or recall their mutual aid at any time.
- K. "Point of Contact" means a person and/or an agency's department/office serving as the coordinator or focal point of information dealing with public works emergency response activities.
- L. "Public Works Emergency Response Team" (PWERT) means a working group of Public Works Officials representing their agencies; whose mission is to develop and maintain a region wide network of public works' related agencies. This teams' principal purpose is to provide mutual aid response and recovery assistance, to each other, when confronted with natural or man-made emergencies or disasters. This Group is designated as the Administrative Agency to manage this Agreement.
- M. "Requesting Party" means the agency or organization receiving aid and assistance from an Assisting Party.
- N. Public/Political Sub-Division means a basic level of independent local government or quasi-government authorized by Section 52 of the Texas Constitution that typically have a specific or limited purpose including Dallas Fort Worth International Airport, Toll Authorities, independent school districts, water or wastewater districts and improvement and economic development districts and exist separately from general purpose local governments such as county, city or townships.

#### Section 4: Term

This Agreement shall become effective as to each Party on date of adoption as indicated on the signature page for each Party and shall continue in force and remaining binding on each and every Party for twelve (12) months from the effective date. This Agreement shall renew automatically for a period of one year upon the completion of the initial term and each subsequent term unless such time as the governing body of a Party terminates its participation in this Agreement pursuant to Section 5 of this Agreement. Termination of participation in this Agreement by a Party or Parties shall not affect the continued operation of this Agreement between and among the remaining Parties

**NORTH CENTRAL TEXAS PUBLIC WORKS  
MUTUAL AID AGREEMENT**

**Section 5: Termination**

Any Party may at any time by resolution or notice given to all the other Parties decline to participate in the provision of Public Works Mutual Aid. The Governing Body of a Party shall, by Resolution, give notice of termination of participation in this Agreement and submit a copy of such resolution to the Administrative Agency and all other Parties. Such termination shall become effective thirty (30) days after filing of such notice. The termination by one or more of the Parties of its participation in this Agreement shall not affect the operation of this Agreement as between the other Parties hereto.

**Section 6: Responsibility of Parties**

**Provision of Aid:** Each Party recognizes that it may be requested to provide aid and assistance at a time when it is necessary to provide similar aid and assistance to the Party's own constituents. This Agreement shall not be construed to impose any unconditional obligation on any Party to provide aid and assistance. A Party may choose not to render aid and assistance at any time for any reason, or to recall aid that has been deployed at any time.

**Section 7: Request for Assistance:** The request for assistance will:

- A. Be made only with a Declaration of a state of Local Civil Emergency or Declaration of Disaster by a Requesting Party pursuant to Section 418.108, Texas Government Code or after a proclamation of a State of Emergency under Section 433.001, Texas Government Code,
- B. Be made only without a Declaration of a state of Local Civil Emergency or Declaration of Disaster if the Requesting Party expects to use the resource(s) for less than one Operational Period or if the declaration of emergency is expected to be issued during the first Operational Period.
- C. Be made by the highest ranking authority of Requesting Party available at the time of need,
- D. Be made to the highest ranking authority of the Responding Party available at the time of need, and
- E. Specify to the greatest extent possible the nature of the problem requiring assistance and the resources requested.

**Section 8: Procedures for Requests and Provision of Mutual Aid:** See Attachment 1

**Section 9: Cost Limitation**

A Requesting Party shall not be required to reimburse a Responding Party for costs incurred during the first Operational Period as defined in Section 3 of this Agreement. A Requesting Party shall be required to reimburse a Responding Party for costs incurred after the first Operational Period.

**NORTH CENTRAL TEXAS PUBLIC WORKS  
MUTUAL AID AGREEMENT**

Section 10: Expending Funds:

A Responding Party that performs services or furnishes aid pursuant to this Agreement shall do so with their own current funds. No Party shall have any liability for the failure to expend funds to provide aid hereunder.

Section 11: Insurance

- A. Worker's Compensation Coverage: Each Party shall be responsible for its own actions and those of its employees and is responsible for complying with the Texas Workers' Compensation Act.
- B. Automobile Liability Coverage: Each Party shall be responsible for its own actions and is responsible for complying with the Texas motor vehicle financial responsibility laws.
- C. To the extent permitted by law and without waiving sovereign immunity, each Party shall be responsible for any and all claims, demands, suits, actions, damages, and causes of action related to or arising out of or in any way connected with its own actions and the actions of its personnel in providing Mutual Aid assistance rendered or performed pursuant to the terms and conditions of this Agreement. Each party agrees to obtain general liability and public official's liability insurance, if applicable, or maintain a comparable self-insurance program.

Section 12: Miscellaneous

- A. Entirety: This Agreement contains all commitments and agreements of the Parties with respect to the Mutual Aid to be rendered hereunder during or in connection with an Emergency, Disaster and/or Civil Emergency. No other oral or written commitments of the Parties with respect to mutual aid under this Agreement shall have any force or effect if not contained herein, except as provided in Section 12E below.
- B. Other Mutual Aid Agreements: This Agreement is not intended to replace or conflict with - local mutual aid agreements for other emergency response needs such as fire and police or for the other purposes
- C. Severability: If a provision contained in this Agreement is held invalid for any reason, the invalidity does not affect other provision of the Agreement that can be given effect without the invalid provision, and to this end the provisions of the Agreement are severable.
- D. Validity and Enforceability: If any current or future legal limitations affect the validity or enforceability of a provision of this Agreement, then the legal limitations are made as part of the Agreement and shall operate to amend this Agreement to the minimum extent necessary to bring this Agreement into conformity with the requirement of the limitations, and so modified, this Agreement shall continue in full force and affect.
- E. Amendment: This Agreement may be amended only by the mutual written consent of the Parties.
- F. Governing Law and Venue: The Laws of the State of Texas shall govern this Agreement. In the event of an Emergency or Disaster physically occurring within the geographical limits of only one county that is a Party hereto, venue shall lie in the county in which the Emergency or Disaster occurred. In the event an Emergency or Disaster physically occurring in more

**NORTH CENTRAL TEXAS PUBLIC WORKS  
MUTUAL AID AGREEMENT**

than one county that is a Party thereto, venue shall be determined in accordance with the Texas Rules of Civil Procedure.

- G. Signatories: The PWERT shall be the official repository of original pages of the Parties to this Agreement and will maintain an up-to-date list of those Parties. Each Party will retain a copy of their own originally signed document with an additional individual signature page from their Agency to be filed with the PWERT under this Agreement. *PWERT will maintain contact information from all of the parties and provide for a means of communication whenever there is a need to call for mutual aid. This agreement may be signed in multiple copies, and it is only necessary for the agencies to notify the PWERT and keep them informed of the contact information.*
- H. PWERT – the Administrative Agency, managing this agreement, provides for one membership seat for each participating agency and one alternate seat. The primary seat should be held by a Public Works Official or designee. The alternate seat should be held by a member of the jurisdiction of the Emergency Management Division or designee. The jurisdiction is not required to fill the seats, but, it is strongly recommended, in order to receive information and training for emergency response.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_  
Town of Flower Mound, Texas  
(Local Jurisdiction)

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

Printed Name: Thomas E. Hayden

Title: Mayor

**Attachment 1**

**PROCEDURES TO USE FOR THE NORTH CENTRAL TEXAS  
PUBLIC WORKS MUTUAL AID AGREEMENT**

Here are the suggested steps for your agency to follow when using the Agreement. Generally if the Emergency Operations Center for your city is activated follow the incident command system and associated communications operations plan to request resources.

**1. Requesting Party Steps to Follow:**

- A. Assess the situation and determine the resources needed.
- B. Fill out the REQUESTING PARTY Checklist (Form 1).
- C. Locate agencies included in the agreement **OR** Contact the Public Works Emergency Response Team (PWERT) standby point of contact for assistance to complete the remaining steps.
- D. Call one or more agencies that may have the resources you need.
- E. Fill out a REQUESTING PARTY MUTUAL AID INFORMATION Form (Form 2).
- F. Send copy of the form to the RESPONDING PARTY as soon as possible.

**2. Responding Party Steps to Follow:**

- A. Make sure you can fulfill the request before providing an answer. Notes: 1) obtain required local authority to deploy the resources 2) providing assistance is voluntary and an agency is not required to fulfill the request if you determine the resources are critical to your operational needs.
- B. Analyze the risk level of the request.
- C. Complete the RESPONDING PARTY Checklist (Form 3) with the information given by the REQUESTING PARTY.
- D. Brief your employees and prepare the equipment.
- E. Complete the Employee & Equipment Information Form (Form 4). Provide copies to your responding staff and to the REQUESTING PARTY.
- F. Dispatch staff to the REQUESTING PARTY for assistance.

**3. Supervision and Control:** The responding personnel, equipment and other resources will be under the operational control of the Requesting Party. These response operations shall be NIMS compliant as well as organized and functioning within an Incident Command System (ICS), Unified Control System (UCS). Direct supervision and control of responding party's resources shall remain with their designated supervisor(s). The designated supervisor(s) shall: maintain personnel time records, material records and a log of equipment hours and report work progress to the Requesting Party. The Responding Party's personnel and other resources remain subject to recall by the Responding Party's authority at any time, subject to reasonable notice to the Requesting Party.

**4. Food, Housing and Self Sufficiency:** Unless specifically instructed otherwise, the Responding Party will have the ability to be self-sufficient as practicable from the time of arrival to their designated staging area location to the time of their arrival back at the Responding Party's home department. However, the requesting agency may need to provide resources for tasks extending normal supplies. For example, if the required tasks require significant mobile activities and fuel, the Requesting Party should be prepared to augment their gas/diesel supplies.

**Attachment 1**

**PROCEDURES TO USE FOR THE NORTH CENTRAL TEXAS  
PUBLIC WORKS MUTUAL AID AGREEMENT**

**5. Communications:** Unless specifically instructed otherwise, the Requesting Party shall have the responsibility for coordinating communications between the personnel of the Responding Party and the Requesting Party. Responding Party should be prepared to furnish their own internal communications equipment sufficient to only maintain communications among their respective operating units.

| <b>PWERT Member Jurisdictions</b> |                |
|-----------------------------------|----------------|
| 1                                 | Addison        |
| 2                                 | Aledo          |
| 3                                 | Allen          |
| 4                                 | Anna           |
| 5                                 | Arlington      |
| 6                                 | Balch Springs  |
| 7                                 | Carrollton     |
| 8                                 | Cedar Hill     |
| 9                                 | Celina         |
| 10                                | City of Denton |
| 11                                | Colleyville    |
| 12                                | Collin County  |
| 13                                | Coppell        |
| 14                                | City of Dallas |
| 15                                | Decatur        |
| 16                                | DeSoto         |
| 17                                | Duncanville    |
| 18                                | Ellis County   |
| 19                                | Euless         |
| 20                                | Farmers Branch |
| 21                                | Ferris         |
| 23                                | Frisco         |
| 24                                | Glenn Heights  |
| 25                                | Granbury       |
| 26                                | Grand Prairie  |
| 27                                | Haltom City    |
| 28                                | Hickory Creek  |
| 29                                | Hutchins       |
| 30                                | Kaufman County |
| 31                                | Lancaster      |
| 32                                | Lewisville     |
| 33                                | Little Elm     |

|    |                      |
|----|----------------------|
| 34 | Lucas                |
| 35 | McKinney             |
| 36 | Mesquite             |
| 37 | Midlothian           |
| 38 | Murphy               |
| 39 | North Richland Hills |
| 40 | Plano                |
| 41 | Princeton            |
| 42 | Red Oak              |
| 43 | Richardson           |
| 44 | Richland Hills       |
| 45 | City of Rockwall     |
| 46 | Rockwall County      |
| 47 | Rowlett              |
| 48 | Sachse               |
| 49 | Springtown           |
| 50 | Tarrant County       |
| 51 | Terrell              |
| 52 | University Park      |
| 53 | Weatherford          |
| 53 | Westworth Village    |

Updated 1/31/18



## TOWN COUNCIL AGENDA ITEM NO. 8

### CONSENT ITEM

**DATE:** March 5, 2018

**FROM:** Jeff Garner, Director of Facilities Management

**ITEM:** Consider approval of a proposal from DCC Inc., for the resurface of the outdoor pool, and color tile band, at the Community Activity Center in the amount of \$133,929.28.

**BACKGROUND INFORMATION:** The Town of Flower Mound has received a proposal from DCC Inc. to resurface the outdoor pool deck and tile color band at the Community Activity Center (CAC) located at 1200 Gerault Road in Flower Mound, Texas, 75028. The project is quoted under Texas Buyboard Contract 533-17, DCC Inc., Vendor ID 1753.

Due to budget constraints during the initial construction the outdoor pool deck did not receive a deck treatment on the concrete deck. The concrete deck during the summer months can become very hot and cause visitors feet to be very uncomfortable. The resurface of the concrete deck will include a material to help reduce the deck temperature and add an appealing color to the deck surface. This will result in a much more pleasant experience for visitors and a significant improvement to the CAC outdoor pool.

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

**FISCAL IMPACT:** \$133,929.28

| Proposed Expenditure: | Account Number(s): |
|-----------------------|--------------------|
| \$40,900.64           | 100-655-59200-5110 |
| \$93,028.64           | 532-110-90816-6210 |

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

**LEGAL REVIEW:** N/A.

**ATTACHMENTS:**

1. Quote – DCC Inc. Texas Buyboard Contract 533-17

**DRAFT MOTION:** Move to approve a proposal from DCC Inc., for the resurface of the outdoor pool, and color tile band, at the Community Activity Center in the amount of \$133,929.28.

**QUOTE - SERVICE & PARTS & SUPPLIES** Attachment 1**MAIL INVOICES**

D C C. Inc.  
2929 Storey Lane  
Dallas, TX 75220  
Office 972-224-1669  
Fax 214-352-1049



Quote # 3801  
Order Date 02/01/18  
Requested Date 02/02/18  
Promised Date 02/02/18  
Delivery Date 02/02/18

TOWN OF FLOWER MOUND-ACTIVITY CE  
1200 GERAULT ROAD

OUTDOOR POOL DECK RESURFACE  
DOUG DEAN

FLOWER MOUND, TX 75028  
972-874-6300

Fax: 972-874-6471

972-874-6283

**QUOTE****COMMENTS:**

SCOPE OF WORK:

- \* RESURFACE OF OUTDOOR POOL DECK, CAC ENTRY & TILE CLEANING
- \* PROJECT AVAILABLE THROUGH TEXAS BUY-BOARD / CONTRACT 533-17 / DCC VENDOR ID # 1753
- \* PROJECT DATES WILL BE SCHEDULED AND CONFIRMED UPON RECEIPT OF PURCHASE ORDER
- \* PROJECT TOTAL: \$133,929.28

Qty Unit \$ Total Item \$

**REMODEL - POOL/SPA L.P.S.****LABOR, PARTS, SUPPLIES**

- DECK RENOVATIONS/ OUTDOOR POOL
- \* OUTDOOR DECK 20,448 SQ FT
  - \* GRIND TO REMOVE SKIM COAT WHERE REQUIRED
  - \* WASH AREA AND MASK OFF SURROUNDINGS TO PROTECT AREA
  - \* STABILIZE UP TO 230 LINEAR FT OF CRACKS IN POOL DECK - INCLUDES APPLICATION OF BONDING AGENT TO KEEP MOISTURE OUT
  - \* FILL IN GOUGES BY STEPS AND 13 POLES AT FENCE LINE
  - \* REMOVE MASTIC FROM APPROXIMATELY 4500-6000 LINEAR FT OF COLD JOINTS
  - \* APPLY BOND COAT
  - \* **APPLY CLASSIC TEXTURE/ CUSTOMER TO SELECT TEXTURE COLOR FROM SAMPLE BOARDS**
  - \* RE-OPEN COLD JOINTS TO EXPOSE PATTERN
  - \* REMOVE & REPLACE BROKEN DEPTH MARKERS IN DECK - INCLUDES UP TO (20) 6" TILES
  - \* REMOVE AND REPLACE 1650 LINEAR FT MASTIC AT COPING, EXPANSION JOINTS &

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### QUOTE

BUILDING JOINTS  
\* CLEAN UP - REMOVE ALL MASKING PRODUCTS  
AND CONSTRUCTION DEBRIS  
INCLUDED IN PRICE

#### REMODEL - POOL/SPA L.P.S.

LABOR, PARTS, SUPPLIES

OTHER PROJECTS - ACCENT APPLICATION  
\* APPLY TERRA COTTA COLOR BAND AROUND  
CONCESSION STAND/ UP TO 30 LINEAR FT  
\* APPLY TERRA COTTA TEXTURE ACCENTS AT  
CANOPIES/ UP TO 205 LINEAR FT  
\* APPLY TERRA COTTA TEXTURE ON BEACH  
ENTRY/ 527 SQ FT  
INCLUDED IN PRICE

#### REMODEL - POOL/SPA L.P.S.

LABOR, PARTS, SUPPLIES

OTHER PROJECTS - COPING AND ISLAND  
\* APPLY TERRA COTTA TEXTURE TO COPING  
AND RIVER ISLAND - 1582 SQ FT / ISLAND DECK TO HAVE  
INCLUDED IN PRICE BASE TEXTURE - COPING TERRA COTTA

#### REMODEL - POOL/SPA L.P.S.

LABOR, PARTS, SUPPLIES

DECK RENOVATIONS/ FACILITY ENTRANCE:  
\* ENTRY WAY 1424 SQ FT  
\* GRIND TO REMOVE SKIM COAT WHERE  
REQUIRED  
\* WASH AREA AND MASK OFF SURROUNDINGS  
TO PROTECT AREA  
\* STABILIZE UP TP 216 LINEAR FT OF  
CRACKS - INCLUDES APPLICATION OF  
BONDING AGENT TO KEEP MOISTURE OUT  
\* APPLY BOND COAT  
\* APPLY CLASSIC TEXTURE/ FRANCISCAN TAN  
\* APPLICATION OF AGGREGATE COLOR TO  
TEXTURE/ BRICK RED, CUMBERLAND AND BONE  
WHITE  
\* CLEAN UP - REMOVE ALL MASKING PRODUCTS  
AND CONSTRUCTION DEBRIS  
INCLUDED IN PRICE

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### QUOTE

#### REMODEL - POOL/SPA L.P.S.

#### LABOR, PARTS, SUPPLIES

OTHER PROJECTS - TILE CLEANING/ OUTDOOR  
POOL

\* CLEANING OF WATERLINE TILE AND END CAP  
TILE AT BEACH ENTRY/ 1039 LINEAR FT

\* TILE TO BE CLEANED WITH BEAD BLASTING  
PROCEDURE USING GLASS MEDIA

\* ALL WATERLINE TILE INCLUDING DEPTH  
MARKERS TO BE CLEANED AND TILE SEALANT  
ADDED UPON COMPLETION

\* CUSTOMER TO DRAIN POOL 6" BELOW TILE  
LINE PRIOR TO START - ALL TILE WILL BE  
CLEANED AND SEALED

\* CLEAN UP OF AREA UPON COMPLETION -  
TILE SHOULD BE COMPLETED PRIOR TO DECK  
RESURFACING

\* PROJECT INCLUDES ALLOWANCE FOR ANY  
REPLACEMENT TILE AND GROUT UP TO 50  
LINEAR FT.

INCLUDED IN PRICE

#### REMODEL - POOL/SPA

#### SUPPORT

\* PROJECT MOBILIZATION

\* TECHNICIAN SUPPORT

INCLUDED IN PRICE

#### COMMENTS:

PROJECT COMMENTS:

\* CUSTOMER IS RESPONSIBLE FOR REMOVAL  
AND REPLACEMENT OF ALL PROPERTY ON THE  
AREA OF WORK

\* ENTIRE WORK AREA MUST BE DRY BEFORE  
START OF PROJECT

\* CUSTOMER RESPONSIBLE TO PROVIDE  
SUPPORT IN BLOCKING WORK AREA FROM  
PEDESTRIAN TRAFFIC AND ALL OTHER TRADES  
DURING PROJECT

\* CUSTOMER TO PROVIDE ACCESS TO WATER

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### QUOTE

SOURCE AND ELECTRICAL (220V). IF 220V  
NOT AVAILABLE, CUSTOMER TO INFORM DCC  
SO ARRANGEMENTS MAY BE MADE TO  
ACCOMMODATE EQUIPMENT REQUIRED IN PREP  
STAGE

\* APPLICATION PROCESS REQUIRES SURFACE  
TEMPERATURE OF 40 DEGREES FAHRENHEIT OR  
HIGHER TO APPLY TEXTURE TO SURFACE

\* TEXTURE REQUIRES MINIMUM OF 24 HOURS  
OF CURE TIME BEFORE ANY FOOT TRAFFIC  
TO BE ALLOWED NEWLY TEXTURED SURFACE.  
DCC RECOMMENDS ADDITIONAL 48 HOURS  
BEFORE REPLACING ANY DECK FURNITURE OR  
EQUIPMENT

\* COLORS MAY SHOW A SLIGHT DIFFERENT-  
IATION OF COLOR WHEN TRANSITIONED TO  
TEXTURED MATERIAL. COLOR SELECTION IS  
SOLELY THE RESPONSIBILITY OF THE  
CUSTOMER

---

### COMMENTS:

WARRANTY COMMENTS:

CONTRACTOR WARRANTS THE WORK FOR A  
PERIOD OF 2 YEARS FROM DATE OF  
COMPLETION OF WORK, AGAINST DEFECTIVE  
MATERIAL OR WORKMANSHIP INCLUDING  
BONDING FAILURE, CHIPPING, OR PEELING  
OF THE APPLICATION.

\* DUE TO INHERENT MOVEMENT IN SURFACES  
TO WHICH PRODUCT MAY BE APPLIED, NO  
WARRANTY, EXPRESSED OR IMPLIED IS MADE  
CONCERNING CRACKS THAT MAY APPEAR IN THE  
WORK.

\* ALL GUARANTEES APPLYING TO THIS  
PROJECT SHALL BE VOID, IF DURING LIFE OF  
SAID GUARANTEE, ANY WORK IS DONE ON THE  
APPLIED COATING BY OTHERS THAN DCC AND  
ITS CONTRACTORS.

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## QUOTE

### QUOTE TOTAL

**\$133,929.28**

Note: Changes to Scope of Work: DCC Inc. will notify the customer and submit a proposal if there is a required labor or material change not included in the scope of work highlighted in page one of the quote that will require DCC Inc to expend more monies than budgeted. The customer agrees to pay DCC Inc. for such expenses plus reasonable profit and overhead (10%) if the customer desires to continue under the changed scope of work. Material pricing is for normal, stock delivery. Expediting charges, if necessary, are to be added to the proposal amount.

The following price is good for 30 days. All of the above work to be completed in a substantial and workmanlike manner according to standard and code practices for the sum of : \$ 133,929.28 plus applicable sales tax.

DCC recommends that all pool and spa owners or operators contact (1) the pool and spa health inspector or similar code enforcement officer or their local regulatory authority (e.g. city or county government), or (2) a certified-registered professional inspector to verify pool and spa requirements and compliance.

Therefore DCC. Inc., is acting solely as an installer, and makes no representation that the services and materials specified herein will insure that customer's pool or spa complies with local (municipal and/or county) ordinances, state regulations or federal regulations.

Customers is solely responsible to insure that customer's pool or spa complies with such regulations and releases DCC, Inc. from any claim related to the compliance with such regulations.

The customer agrees to defend and indemnify DCC Inc. and its employees, agents, representatives, officers, directors, parents and subsidiaries from and against any and all claims, actions, causes of action, lawsuits, losses, damages, expenses, fees (including but not limited to attorney fees, expert fees and costs), judgments and awards (collectively the "Indemnified Claims") arising from or relating to DCC work and products under this Agreement or the Scope of Work under this Agreement or under any Proposal, to the proportionate extent such Indemnified Claims are caused, in whole or in part, by fault, negligence, or wrongdoing of the customer (including its agents, employees, and/or subcontractors) or any third party.

DCC Inc. will warrant labor for thirty (30) days. Also, installed equipment and parts are based on each manufactures warranty however labor will be charged for their warranty replacement requirements. Therefore DCC does not warrant labor, equipment or any items directly or indirectly that is not included in the scope of work.

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### QUOTE

#### TERMS

The attached DCC Inc. standard terms and conditions on page four (4) of this proposal apply and are incorporated by reference. The parties agree that all disputes in anyway related to, arising out of, or connected with the sale of goods and /or services provided by DCC Inc. shall be litigated if at all, exclusively in Dallas County, Texas. Furthermore, the parties agree that Texas law shall govern all such disputes.

The customer agrees to pay: 0% down, and balance at completion of our work. Service charges listed below become effective on all accounts 30 days after invoice date. Charges are computed at the lower of 1.5% per month or the maximum allowed by law.

Notice to Buyer: - do not sign the agreement before you read it, or if it contains blank spaces. You are entitled to a copy of the agreement you sign. Keep this agreement to protect your legal rights.

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

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

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

PO#: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

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

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

# DCC INC. STANDARD TERMS AND CONDITIONS

## 1. Engagement of Services:

Once work is authorized by the customer, DCC Inc. is committed to certain "ramp up" expenses, both direct and indirect (travel, parts, materials, supplies, etc.) which are generally priced into the entire scope of the project. If the project is canceled, delayed, terminated or significantly changed through no fault of DCC Inc. these expenses will be due and payable to DCC Inc. on a pro-rata basis. Any requests for reimbursement of these expenses will be itemized and defined.

## 2. Changes to Scope of Work:

DCC Inc. will notify the customer and submit a proposal if there is a required labor or material change not included in the scope of work highlighted on page one of the quote that will require DCC Inc. to expend more monies than budgeted. The customer agrees to pay DCC Inc. for such expenses plus reasonable profit and overhead (10%) if the customer desires to continue under the changed scope of work.

## 3. Permits and Taxes:

Permits are not included unless specifically noted otherwise. Permits, inspection fees, drawings, etc. will be provided by DCC Inc. at the cost of obtaining them. Taxes are not included in the proposal price unless specifically noted otherwise.

## 4. DCC Inc. Employees:

The customer agrees that they shall not hire or sub contract any DCC employee currently working on a project for the customer, or any employee of DCC Inc. who has worked on a service call or project for the customer within the last twelve (12) months.

## 5. Payment Terms:

Standard payment terms are net due in ten days from invoice date unless stated differently on the front of this proposal. A service charge may be charged on all past due amounts. Amounts will be considered past due 30 days after date of invoice. You may avoid a service charge or additional service charges upon payment at any time of the unpaid balance.

## 6. Warranty:

DCC Inc. will warranty labor for thirty (30) days. Also, installed equipment and parts are based on each manufacturer's warranty, however, labor will be charged for their warranty replacement requirements. However, DCC does not warranty labor, equipment or any items directly or indirectly that is not included in the original scope of work.

## 7. Indemnity:

The customer agrees to defend and indemnify DCC Inc. and its employees, agents, representatives, officers, directors, parents and subsidiaries from and against any and all claims, actions, causes of action, lawsuits, losses, damages, expenses, fees (including but not limited to attorney fees, expert fees and costs), judgments and awards (collectively the "Indemnified Claims") arising from or relating to DCC work under this Agreement or the Scope of Work under this Agreement or under any Proposal, to the proportionate extent such Indemnified Claims are caused, in whole or in part, by fault, negligence, or wrongdoing of the customer (including its agents, employees, and/or subcontractors) or any third party.

## 8. Limitation of DCC Liability:

With respect to any of its work performed under this Agreement or the Scope of Work or any Proposal, DCC's liability shall be limited to repairing and replacing any defective work, regardless of whether it arises from a breach of warranty, a breach of contract or DCC's negligence. This "repair and replace" remedy shall be the customer's exclusive remedy for any claims or damages arising from or relating to any defective work performed by DCC, regardless of the reason, and the customer shall not be entitled to pursue or recover any other claim, remedy or damages arising from or relating to DCC's work, including but not limited to consequential damages. Customer agrees that this limitation of liability provision is commercially responsible in light of the risks involved in DCC performing the work.

## 9. Force Majeure:

No party shall be liable for any failure to perform its obligations in connection with any action described in the Agreement, if such failure results from any act of God, riot, war, civil unrest, flood, earthquake, fire or other cause beyond such party's reasonable control (including any mechanical, electronic, or communication failure, but excluding failure caused by a party's financial condition or negligence).

## 10. Attorney Fees:

If DCC Inc. is required to hire attorneys to collect amounts owed under this agreement, the customer agrees to reimburse DCC Inc. for all attorney fees, expert fees and other legal expenses that may incur to collect such amount.

## 11. Incorporation by Reference:

Unless expressly agreed in writing otherwise, these standard terms and conditions are part of, and hereby incorporated by reference, all proposals submitted by DCC Inc. to the customer or credit agreement signed by the customer, and all terms and conditions of any such proposal or credit agreements.

## 12. Fully Integrated Contract:

The party's hereby agree that this Agreement is an integrated contract that fully sets forth each and every term and condition to which the parties have agreed regarding the subject matter of the Agreement. The parties agree that they fully set forth all of the terms and conditions of the Agreement within the four corners of the Agreement, and that no other prior or contemporaneous writings or oral promises or representations shall be admissible to prove the terms of this Agreement for any reason. This Agreement may be modified or amended only by a writing signed by both parties.

By signing the proposal the signatures of the agreement warrant that they have the authority to enter into this contract or agreement and have read the standard terms and conditions and agree to abide by them:

DATE: \_\_\_\_\_

ACCEPTED BY: \_\_\_\_\_



## TOWN COUNCIL AGENDA ITEM NO. 9

### CONSENT ITEM

**DATE:** March 5, 2018

**FROM:** Clay Riggs, Floodplain Manager, Senior Project Engineer

**ITEM:** Consider approval of an ordinance amending the Town's Code of Ordinances by adding a Chapter 33 entitled "Flood Damage Prevention" and removing references to previous Flood Damage Prevention Ordinance 42-09.

**BACKGROUND INFORMATION:** The National Flood Insurance Program (NFIP) was created due to the volatility in the private flood insurance market. Many private insurance companies stopped writing flood policies and/or could not pay claims as the result of losses suffered. For this reason many lenders require flood insurance be through the NFIP. Under federal law, the purchase of flood insurance is mandatory for all federally or federally related financial assistance for the acquisition and/or construction of buildings in the floodplain. By participating in the NFIP residents and business owners are able to purchase federally backed flood insurance. To participate in the NFIP the Town is required to adopt a Flood Damage Prevention ordinance following the requirements of the NFIP.

Town Council approved staff to apply to the FEMA Community Rating System (CRS). By participating in the CRS program residents and business owners will receive flood insurance premium discounts. Depending upon the CRS rating, flood insurance premium rates for policyholders can be reduced up to 45%. Current Town regulations and activities qualify for enrollment in the CRS.

Before the Town can be rated by CRS, FEMA must perform a Community Assisted Visit (CAV). During the CAV, FEMA will review the Town's ordinances, permits, and policies to ensure the Town is in compliance with NFIP regulations. Town staff expects FEMA to perform the CAV in the spring of 2018.

The current Flood Damage Prevention ordinance (42-09) was adopted in October 2009. Town staff reviewed the current Flood Damage Prevention ordinance and identified a few administrative corrections needed to bring the Flood Damage Prevention ordinance into NFIP compliance. This new ordinance will make the following administrative corrections so the Town's Flood Damage Prevention Ordinance will be in compliance with NFIP regulations:

- Replace Town Engineer with the Town Floodplain Manager as the designated Floodplain Administrator
- Adopt the current Flood Insurance Rate Maps for Denton County
- Codify the Flood Damage Prevention ordinance
- Remove reference to the previous ordinance from the Flower Mound Design Standards.

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

**FISCAL IMPACT:** N/A

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

**ATTACHMENTS:**

1. Flood Damage Prevention Ordinance

**DRAFT MOTION:** Move to approve an ordinance amending the Town's Code of Ordinances by adding a Chapter 33 entitled "Flood Damage Prevention" and removing references to previous Flood Damage Prevention Ordinance 42-09.

**TOWN OF FLOWER MOUND, TEXAS****ORDINANCE NO. \_\_-18**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY ADDING A NEW CHAPTER 33 TO BE ENTITLED FLOOD DAMAGE PREVENTION REGARDING THE ADOPTION OF CERTAIN REQUIREMENTS INTENDED TO REDUCE FLOOD LOSSES CONSISTENT WITH THE REQUIREMENTS OF THE NATIONAL FLOOD INSURANCE PROGRAM; REPEALING ALL CONFLICTING ORDINANCES, ORDERS, AND RESOLUTIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, as a condition of the continued eligibility of the Town of Flower Mound, Texas ("Town") to participate in the National Flood Insurance Program ("NFIP"), the Town's floodplain management regulations must equal or exceed the minimum criteria stated in the NFIP Regulations; and

**WHEREAS**, the Federal Emergency Management Agency ("FEMA") has promulgated a model ordinance to meet the minimum standards of the NFIP Regulations; and

**WHEREAS**, the Town Council of the Town of Flower Mound, Texas, has determined that it is in the public's best interest and in furtherance of the health, safety, morals, and general welfare of the citizens of the Town to amend the Town Code of Ordinances as set forth herein;

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

**SECTION 1**

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

**SECTION 2**

The Code of Ordinances of the Town of Flower Mound, Texas, is hereby amended by and through the adoption of a new Chapter 33 to be entitled Flood Damage Prevention to read as follows:

"Chapter 33 – FLOOD DAMAGE PREVENTION

**Sec. 33-1     Statutory Authorization, Findings of Fact, Purpose and Methods**

(1) Statutory Authorization

The Texas Legislature has in the Flood Control Insurance Act, Texas Water Code Section 16.315, delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses

(2) Findings of Fact

- (a) The flood hazard areas of Flower Mound, Texas are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.
- (b) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, flood-proofed or otherwise protected from flood damage.

(3) Statement of Purpose

It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (a) Protect human life and health;
- (b) Minimize expenditure of public money for costly flood control projects;
- (c) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (d) Minimize prolonged business interruptions;
- (e) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (f) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and
- (g) Insure that potential buyers are notified that property is in a flood area.

(4) Methods of Reducing Flood Losses

In order to accomplish its purposes, this Chapter uses the following methods:

- (a) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
- (b) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (c) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
- (d) Control filling, grading, dredging and other development which may increase flood damage; and
- (e) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

**Sec. 33-2. Definitions**

Unless specifically defined below, words or phrases used in this Chapter shall be interpreted to give them the meaning they have in common usage and to give this chapter its most reasonable application.

**ALLUVIAL FAN FLOODING** - means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

**APEX** - means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

**APPEAL BOARD** – means the Town Council

**APPURTENANT STRUCTURE** - means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

**AREA OF FUTURE CONDITIONS FLOOD HAZARD** - means the land area that would be inundated by the 1-percent-annual chance (100 year) flood based on future conditions hydrology.

**AREA OF SHALLOW FLOODING** - means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map ("FIRM") with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**AREA OF SPECIAL FLOOD HAZARD** - is the land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map ("FHBM"). After detailed rate making has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE or V.

**BASE FLOOD** - means the flood having a 1 percent chance of being equaled or exceeded in any given year.

**BASEMENT** - means any area of the building having its floor subgrade (below ground level) on all sides.

**BREAKAWAY WALL** - means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

**CRITICAL FEATURE** - means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

**DEVELOPMENT** - means any man-made change to improved and unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

**ELEVATED BUILDING** - means, for insurance purposes, a non-basement building, which has its lowest elevated floor, raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

**EXISTING CONSTRUCTION** - means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRM's effective

before that date. "Existing construction" may also be referred to as "existing structures."

**EXISTING MANUFACTURED HOME PARK OR SUBDIVISION** - means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

**EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION** - means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**FLOOD OR FLOODING** - means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland or tidal waters.
- (2) the unusual and rapid accumulation or runoff of surface waters from any source.

**FLOOD ELEVATION STUDY** – means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

**FLOOD INSURANCE RATE MAP ("FIRM")** - means an official map of a community, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY ("FIS")** – is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, water surface elevation of the base flood, as well as the Flood Boundary-Floodway Map.

**FLOODPLAIN OR FLOOD-PRONE AREA** - means any land area susceptible to being inundated by water from any source (see definition of flooding).

**FLOODPLAIN MANAGEMENT** - means the operation of an overall program of corrective and preventive measures for reducing flood damage, including

but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

**FLOODPLAIN MANAGEMENT REGULATIONS** - means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

**FLOOD PROTECTION SYSTEM** - means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

**FLOOD PROOFING** - means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate Flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**FLOODWAY** – see *Regulatory Floodway*.

**FUNCTIONALLY DEPENDENT USE** - means a use, which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**HIGHEST ADJACENT GRADE** - means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**HISTORIC STRUCTURE** - means any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district

or a district preliminarily determined by the Secretary to qualify as a registered historic district;

- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - (a) By an approved state program as determined by the Secretary of the Interior or;
  - (b) Directly by the Secretary of the Interior in states without approved programs.

**LEVEE** - means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

**LEVEE SYSTEM** - means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

**LOWEST FLOOR** - means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; **provided** that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.

**MANUFACTURED HOME** - means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

**MANUFACTURED HOME PARK OR SUBDIVISION** - means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**MEAN SEA LEVEL** - means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum ("NGVD") of 1929 or other

datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

**NEW CONSTRUCTION** - means, for the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

**NEW MANUFACTURED HOME PARK OR SUBDIVISION** - means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

**RECREATIONAL VEHICLE** - means a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**REGULATORY FLOODWAY** - means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

**RIVERINE** – means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

**SPECIAL FLOOD HAZARD AREA** – see *Area of Special Flood Hazard*

**START OF CONSTRUCTION** - (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a

manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**STRUCTURE** – means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

**SUBSTANTIAL DAMAGE** - means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**SUBSTANTIAL IMPROVEMENT** - means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either: (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure."

**VARIANCE** – means a grant of relief by a community from the terms of a floodplain management regulation. (For full requirements see Section 60.6 of the National Flood Insurance Program regulations.)

**VIOLATION** - means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

**WATER SURFACE ELEVATION** - means the height, in relation to the National Geodetic Vertical Datum ("NGVD") of 1929 (or other datum, where

specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

### **Sec. 33-3 General Provisions**

(1) Lands To Which This Chapter Applies

This Chapter shall apply to all areas of special flood hazard within the jurisdiction of the Town of Flower Mound, Texas.

(2) Basis for Establishing the Areas of Special Flood Hazard

The areas of special flood hazard identified by FEMA in the current scientific and engineering report entitled, "The Flood Insurance Study (FIS) for Tarrant County, Texas and Incorporated areas," dated September 25, 2009, with accompanying Flood Insurance Rate Maps (FIRM) dated September 25, 2009, and "The Flood Insurance Study (FIS) for Denton County, Texas and Incorporated areas," dated April 18, 2011, with accompanying Flood Insurance Rate Maps (FIRM) dated April 18, 2011 and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance.

(3) Establishment of Development Permit

A Floodplain Development Permit shall be required to ensure conformance with the provisions of this Chapter.

(4) Compliance

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this Chapter and other applicable regulations.

(5) Abrogation and Greater Restrictions

This Chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(6) Interpretation

In the interpretation and application of this Chapter, all provisions shall be; (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit nor repeal any other powers granted under State statutes.

(7) Warning and Disclaimer or Liability

The degree of flood protection required by this Chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes. This Chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Chapter shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this Chapter or any administrative decision lawfully made hereunder.

**Sec. 33-4    Administration**(1) Designation of the Floodplain Administrator

The Town Floodplain Manager is hereby appointed the Floodplain Administrator to administer and implement the provisions of this Chapter and other appropriate sections of 44 CFR (Emergency Management and Assistance - National Flood Insurance Program Regulations) pertaining to floodplain management.

(2) Duties & Responsibilities of the Floodplain Administrator

Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

- (a) Maintain and hold open for public inspection all records pertaining to the provisions of this Chapter.
- (b) Review permit application to determine whether to ensure that the proposed building site project, including the placement of manufactured homes, will be reasonably safe from flooding.
- (c) Review, approve or deny all applications for development permits required by adoption of this Chapter.
- (d) Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.

- (e) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.
  - (f) Notify, in Riverine situations, adjacent communities and the State Coordinating Agency which is the Texas Water Development Board ("TWDB") and also the Texas Commission on Environmental Quality ("TCEQ"), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA.
  - (g) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
  - (h) When base flood elevation data has not been provided in accordance with Section 33-3(2) the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source, in order to administer the provisions of Section 33-4.
  - (i) When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
  - (j) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than 1 foot, provided that the community **first** completes all of the provisions required by Section 65.12.
- (3) Permit Procedures
- (a) Application for a Floodplain Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing

the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

- (i) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
  - (ii) Elevation in relation to mean sea level to which any nonresidential structure shall be flood-proofed;
  - (iii) A certificate from a registered professional engineer or architect that the nonresidential flood-proofed structure shall meet the flood-proofing criteria of Paragraph d.ii)(b);
  - (iv) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development;
  - (v) Maintain a record of all such information in accordance with Paragraph d.(ii)(a);
- (b) Approval or denial of a Floodplain Development Permit by the Floodplain Administrator shall be based on all of the provisions of this Chapter and the following relevant factors:
- (i) The danger to life and property due to flooding or erosion damage;
  - (ii) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (iii) The danger that materials may be swept onto other lands to the injury of others;
  - (iv) The compatibility of the proposed use with existing and anticipated development;

- (v) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (vi) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
- (vii) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
- (viii) The necessity to the facility of a waterfront location, where applicable;
- (ix) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.
- (x) The relationship of the proposed use to the comprehensive plan for that area.

(4) Variance Procedures

- (a) The Appeal Board, as established by the community, shall hear and render judgment on requests for variances from the requirements of this Chapter.
- (b) The Appeal Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this Chapter.
- (c) Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.
- (d) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

- (e) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Chapter.
- (f) Variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Subparagraph iii)(b) of this Paragraph have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.
- (g) Upon consideration of the factors noted above and the intent of this Chapter, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Chapter .
- (h) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (i) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (j) Prerequisites for granting variances:
  - (i) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - (ii) Variances shall only be issued upon: (1) showing a good and sufficient cause; (2) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (3) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

- (iii) Any application to which a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (k) Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (i) the criteria outlined in Section 33-4 (a)-(i) are met, and (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

### **Sec. 33-5     Provisions for Flood Hazard Reduction**

#### **(1)     General Standards**

In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements:

- (a) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (b) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (c) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;
- (d) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (e) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

- (f) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,
- (g) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(2) Specific Standards

In all areas of special flood hazards where base flood elevation data has been provided as set forth in (i) Section 33-3 c.2), (ii) Section 33-4(2)(h), or (3) Section 33-5 3c), the following provisions are required:

- (a) Residential Construction - new construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated 18" above the 100-year flood elevation established by a fully developed watershed, or the FEMA elevation, using whichever is higher. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in Section 33-4.(3)(a)(i), is satisfied.
- (b) Nonresidential Construction - new construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated 18" above the 100-year flood elevation established by a fully developed watershed, or the FEMA elevation, using whichever is higher or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are flood-proofed shall be maintained by the Floodplain Administrator.
- (c) Enclosures - new construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking

of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

- (i) A minimum of two openings on separate walls having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding shall be provided.
  - (ii) The bottom of all openings shall be no higher than 1 foot above grade.
  - (iii) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- (d) Manufactured Homes
- (i) Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
  - (ii) Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(iii) Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of paragraph (4) of this section be elevated so that either:

- (1) the lowest floor of the manufactured home is elevated 18" above the 100-year flood elevation established by a fully developed watershed, or the FEMA elevation, using whichever is higher, or
- (2) the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(e) Recreational Vehicles - Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either (i) be on the site for fewer than 180 consecutive days, or (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements of Paragraph d.(iii)(a), and the elevation and anchoring requirements for "manufactured homes" in Subparagraph (d) of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

(3) Standards for Subdivision Proposals

- (a) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Sections 33-1 (2) through (4) of this chapter.
- (b) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Floodplain Development Permit requirements of Sec. 33-3 (c); Sec 33-4(3); and the provisions of Section 33-5.
- (c) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of

manufactured home parks and subdivisions which is greater than 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to Sections 33-3(b) or Sections 33-4(2) h).

- (d) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
- (e) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

(4) Standards For Areas Of Shallow Flooding (Ao/Ah Zones)

Located within the areas of special flood hazard established in Section 33-3(2), are areas designated as shallow flooding. These areas have special flood hazards associated with flood depths of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

- (a) All new construction and substantial improvements of **residential** structures have the lowest floor (including basement) elevated 18" above the 100-year flood elevation established by a fully developed watershed, or the FEMA elevation, using whichever is higher or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least 2 feet if no depth number is specified).
- (b) All new construction and substantial improvements of non-residential structures;
  - (i) have the lowest floor (including basement) elevated 18" above the 100-year flood elevation established by a fully developed watershed, or the FEMA elevation, using whichever is higher or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least 2 feet if no depth number is specified), or
  - (ii) together with attendant utility and sanitary facilities be designed so that below the base specified flood depth in an AO Zone, or

below the Base Flood Elevation in an AH Zone, level the Structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

- (c) A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in Paragraph d.iii) are satisfied.
- (d) Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.

(5) Floodways

Floodways - located within areas of special flood hazard established in Section 33-3(2), are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

- (a) Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- (b) If Section 33-5(5) a) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 33-5.
- (c) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community **first** completes all of the provisions required by Section 65.12.

### **SECTION 3**

Paragraph D2 of Paragraph IV of Volume 1 of the Flower Mound Design Standards concerning Flood Damage Prevention Ordinance 42-09 is hereby repealed.

### **SECTION 4**

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

### **SECTION 5**

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

### **SECTION 6**

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

### **SECTION 7**

This Ordinance shall take effect and be in full force from and after its passage and publication, as provided by the Revised Civil Statutes of the State of Texas and the Home Rule Charter of the Town of Flower Mound, Texas.

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF \_ TO \_, ON THIS THE 5<sup>th</sup> OF MARCH, 2018.**

Ordinance No. \_\_-18

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**APPROVED:**

\_\_\_\_\_  
Tom Hayden, MAYOR

**ATTEST:**

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



## TOWN COUNCIL AGENDA ITEM NO. 10

### CONSENT ITEM

**DATE:** March 5, 2018

**FROM:** David Bauer, Construction Manager

**ITEM:** Consider approval of a Professional Services Agreement with Kleinfelder Inc., to provide geotechnical engineering and testing services associated with the Fire Station No. 7 project, in the amount of \$19,400.00; and authorization for the Mayor to execute same on behalf of the Town.

**BACKGROUND INFORMATION:** During a regular session on May 3, 1993, the Town Council approved the preliminary plat of the River Oaks Estates Addition, subject to several terms and conditions of the developer, Herman Smith, to include: Dedication to the Town of a one-acre site with frontage on Skillern Road for the construction of a fire substation, as the current (1985) Master Plan provides for such a substation site in the general vicinity of the intersection of Wichita Trail and Skillern Road.

On December 11, 2000, a Special Warranty Deed was granted to the Town of Flower Mound that included Lot 40, Block F as described and depicted on the final plat of the River Oaks Estates Addition in the Town of Flower Mound. This conveyance was made by the Grantor to the Town for the sole purpose of the Town's construction and operation of a fire substation with emergency medical services and to be used for no other purposes.

Following a June 2000 Insurance Services Office evaluation, the site on Skillern was confirmed as a preferred site for a future fire station. In 2017, an additional regrading of the Town's fire protection reconfirmed an ongoing gap in coverage and service delivery. The recognized response time standard is to be able to arrive on scene and begin operations 4-6 minutes from the time of the alarm. Flower Mound Fire and Emergency Services response time studies confirm that the organization is unable to meet this standard without the requested Station No. 7.

**FISCAL IMPACT:** \$19,400.00

| Proposed Expenditure: | Account Number(s): |
|-----------------------|--------------------|
| \$19,400.00           | 533-111-50082-6070 |

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

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

#### ATTACHMENTS:

1. Professional Services Agreement

**DRAFT MOTION:** Move to approve a Professional Services Agreement with Kleinfelder Inc., to provide geotechnical engineering and testing services, associated with the Fire Station No. 7 project, in the amount of \$19,400.00; and authorize the Mayor to execute same on behalf of the Town.

THE STATE OF TEXAS   §  
COUNTY OF DENTON   §

**PROFESSIONAL SERVICES AGREEMENT WITH  
KLEINFLEDER INC.**

This contract is entered into on this 5th day of March, 2018, 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 **KLEINFELDER INC.**, ("hereinafter referred to as "CONSULTANT") whose address is 7805 Mesquite Bend Drive, Suite 100, Irving, TX 75063

**RECITALS**

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to construction materials engineering and testing and other services for Fire Station #7; 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 Fire Station #7 Construction Materials Engineering and Testing 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 Nineteen Thousand four Hundred and No/100 Dollars (\$19,400.00). 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 "B"; provided however that this Contract shall control in the event of any conflict between the language in Attachment "B" and the language in this Contract. If additional services, trips or expenses are requested, CONSULTANT will not provide such additional services until authorized by TOWN in writing to proceed. The scope of services shall be strictly limited. TOWN shall not be required to pay any amount in excess of the amount identified in the preceding paragraph unless TOWN shall have approved in writing in advance (prior to the performance of additional work) the payment of additional amounts.

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

Assuming that TOWN agrees with the invoice, that TOWN has not determined any of the work to be unsatisfactory, or that TOWN otherwise does not dispute any of the amounts billed, 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:

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

THE PROVISIONS OF THIS SECTION ARE SUBJECT TO THE LIMITATIONS OF TEXAS LOCAL GOVERNMENT CODE SECTION 271.904 AND SHALL BE CONSTRUED TO THAT EFFECT. THE CONSULTANT AS ALLOWED BY TEXAS LOCAL GOVERNMENT CODE SECTION 271.904 WILL STILL NAME TOWN AS ADDITIONAL INSURED IN ITS GENERAL LIABILITY POLICY AND PROVIDE ANY DEFENSE AS ALLOWED BY THE POLICY. 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 XVIII entitled Confidential Information shall survive termination of this Contract.

#### **XVI.**

#### **Changes**

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

#### **XVII.**

#### **Conflicts of Interest**

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

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

#### **XVIII.**

#### **Confidential Information**

CONSULTANT hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations

in accordance with this Contract, which is of a confidential, non-public or proprietary nature. CONSULTANT shall treat any such information received in full confidence and will not disclose or appropriate such Confidential Information for its own use or the use of any third party at any time during or subsequent to this Contract. As used herein, "Confidential Information" means all oral and written information concerning TOWN, its affiliates and subsidiaries, and all oral and written information concerning TOWN or its activities, that is of a non-public, proprietary or confidential nature including, without limitation, information pertaining to customer lists, services, methods, processes and operating procedures, together with all analyses, compilation, studies or other documents, whether prepared by CONSULTANT or others, which contain or otherwise reflect such information. The term "Confidential Information" shall not include such materials that are or become generally available to the public other than as a result of disclosure of CONSULTANT, or are required to be disclosed by a governmental authority or by law, as determined by TOWN's attorney.

**XIX.**  
**Notice Information**

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

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

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:

David Boes, P.E.  
Kleinfelder Inc.  
7805 Mesquite Bend Drive  
Irving, TX 75063  
972 868-5900 Telephone  
972 409-0008 Facsimile

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:  
KLEINFELDER, INC.

By: [Signature]  
Name: David Boes, P.E.  
Title: Branch Manager  
Date Signed: 02.01.18

State of Texas §

County of Dallas §  
§

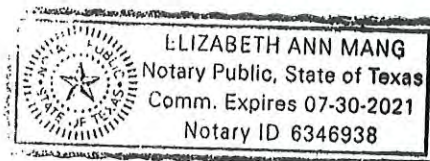
This instrument was acknowledged before me on the 1st day of February, 2018, by David Boes in his capacity as Area Manager of Kleinfelder, Inc., a California Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of Area Manager.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE First DAY OF February, 2018.

[Signature]  
Notary Public, State of Texas

My Commission Expires:

July 30, 2021





December 26, 2017  
Proposal No.: LOCALMKT.WEOH

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

Attention: Mr. David Bauer

**Subject: Geotechnical Engineering Services Proposal  
Proposed Fire Station No. 7  
Skillern Road & Dominion Court  
Flower Mound, Texas**

Dear Mr. Bauer:

Kleinfelder is pleased to submit this proposal to perform geotechnical engineering services for the proposed Fire Station No. 7 to be located west of the intersection of Skillern Road and Dominion Court in Flower Mound, Texas. The following sections provide our understanding of the project and our proposed scope of services.

Kleinfelder is committed to providing quality service to its clients, commensurate with their wants, needs, and desired level of risk. If a portion of this proposal does not meet your needs, or if those needs have changed, Kleinfelder will consider appropriate modifications, subject to the standards of care to which we adhere as professionals.

Modifications such as scope, methodology, scheduling, and contract terms may result in changes to the risks assumed by the Client as well as adjustments to our fees.

## **PROJECT INFORMATION**

Based on the River Oaks Subdivision plat provided by you, the proposed fire station will be located on an approximate 1-acre lot in the southeast corner of the subdivision, along Skillern Road, opposite Dominion Court. A site visit performed on December 12 indicated the site is heavily wooded and will require clearing activities prior to our field investigation. Fill, up to approximately 10 feet is anticipated on the west side of the lot. We understand the proposed fire station will be a one-story structure with high bays with a mezzanine. Based on information provided by Click Engineering, the building will be located in the middle of the lot with a retaining wall with a maximum height of 15 feet, along the south property line. Maximum column loads on the order of 100 to 200 kips is anticipated

### Anticipated Subsurface Conditions

The site is underlain by the subsurface materials of the Woodbine Geological formation, which is of Cretaceous age (evolved about 60 million years ago). The subsurface materials of this formation consist of sands and clays that are underlain by either shale or sandstone. These materials are highly variable and can change significantly over distances of about 50 to 100 feet. Based on our recent experience in the vicinity of the project, we anticipate that the shale or sandstone bedrock would be present at depths of about 10 to 20 feet.

### **PURPOSE AND SCOPE OF BASIC SERVICES**

The purpose of the proposed study will be to perform a subsurface exploration and provide geotechnical recommendations for design and construction of the proposed fire station.

The proposed *Scope of Services* includes exploring subsurface soil conditions, obtaining physical soil properties by laboratory testing, and providing recommendations for use during the design and construction of the proposed project. This scope is discussed in detail below.

### Field Exploration

- Coordinate field activities with the Town of Flower Mound.
- Locate the proposed borings using a site plan and measurements from existing landmarks. These locations will be recorded in the field using a hand-held GPS device with an accuracy of about 15 feet.
- The site is heavily wooded and partial site clearing will be required prior to field activities. Kleinfelder will prepare a site clearing plan for Town approval and subcontract with a local contractor to perform clearing activities. Small trees and shrubs will be removed with a bulldozer and pushed to the side. No material will be removed from the site. We will make every attempt to work around larger trees. Contact Texas One Call and appropriate local agencies to locate buried utilities within existing easements and right-of-ways and notify the town that the locations are laid out in order for the town to provide further clearance on the town property.
- Mobilize a truck-mounted drilling rig to drill 4 borings to a maximum depth of 35 feet below existing grade, or 15 feet into bedrock, whichever is less, within the proposed building footprint area, and 2 borings to a depth 30 feet below existing grade for the retaining wall. Two additional borings will be advanced to a maximum depth of 10 feet below existing grade in proposed pavement areas.
- Sample the subsurface soil continuously to a depth of 10 feet, and then every 5 feet thereafter; samples will be collected using either a tube sampler or a split spoon sampler in conjunction with the standard penetration test.
- Evaluate rock and rock-like materials in-place using the TxDOT cone penetration test.
- Observe for groundwater seepage during drilling and at completion; observations may also be made 24 hours after completion.
- Backfill boreholes with soil/rock cuttings upon completion.
- The ground surface elevations of the top of the borings will be approximated utilizing a hand-held GPS device in conjunction with online mapping tools. If a greater degree of accuracy is required, the borings should be surveyed by the project civil engineer.

As a quality control measure, the access and drilling of the borings will be supervised and coordinated in the field by a Kleinfelder professional.

### Laboratory Testing

Select laboratory testing will be conducted on samples that are representative of materials obtained during the field exploration. The tests will be used to evaluate and classify the soils, identify subsurface site characteristics, and provide data for analysis. These tests include

- Moisture content
- Atterberg limits (liquid and plastic limits)
- Percent passing No. 200 sieve
- Unit dry weight
- One-dimensional swell
- Unconfined compression
- Soluble sulfates
- Eades and Grim lime series
- Suite of corrosion potential tests

Kleinfelder will retain soil and rock samples for 30 days after submission of the final report. Further storage or transfer of samples can be made at owner expense upon written request.

### Engineering Analysis and Report

An engineering analysis and evaluation of the field and laboratory data will be performed for the project, based on available project concepts. We will provide the design recommendations requested in the aforementioned scope of service. This information will be provided in the report and includes the following items.

- Plan of borings to scale illustrating the approximate location of each boring.
- A log of each boring indicating the boring number, depth of each stratum, soil classification and description, and groundwater information.
- A subsurface profile.
- Description of the field exploration and laboratory testing.
- Summary of laboratory test results.
- Discussion of subsurface soil and groundwater conditions.
- General discussion of the site geology.
- Discussion of potential soil movements, including calculated potential vertical rise (PVR).
- Recommendations for subgrade improvements to reduce PVR movements to make on-grade slabs feasible.
- Recommendations for the construction of drilled shaft foundations.
- Estimates of the uplift skin friction on drilled shafts due to expansive soils.
- Estimates of total and differential settlement.
- Design parameters for lateral load analysis of foundations including L-pile parameters.
- Seismic geotechnical criteria per International Building Code (2009).
- Recommendations for preparation of the pavement subgrade.
- Recommendations for pavement thickness based on traffic loads to be supplied by the architect.
- Foundation recommendations, lateral load recommendations and sliding friction coefficient for retaining walls

- Earthwork recommendations, including backfill requirements for subgrades and retaining walls.
- Recommendations for perimeter drains if groundwater is encountered at shallow depths.
- Special construction details for foundations and structural elements exposed to corrosive soils.

The report will be presented in electronic format.

#### **INFORMATION/SERVICES TO BE PROVIDED BY THE TOWN OF FLOWER MOUND**

- Identify, and mark subsurface utilities/structures that are not located by Texas One Call or other local agencies that could be damaged during the field exploration program.
- Obtain rights-of-entry, permits, easements, landowner permission, or other access authorization required to perform the services described in this proposal.
- The authorization to hire a licensed surveyor to survey the borings (if that degree of accuracy is required).
- Provide site plan(s) indicating the proposed structures.
- Provide current topographic map indicating existing grades and proposed grades and/or cross sections indicating proposed cut/fill.
- Provide loading conditions and tolerance for differential movement for structures.
- Provide available/estimated traffic, including vehicle types, loads and volumes.
- Perform site clearing activities sufficient for access with truck mounted drilling equipment.

#### **ADDITIONAL SERVICES**

The following services are not included in the *Scope of Services* and will be considered as *Additional Services*, if and when they are required or requested:

- The services of specialty sub-consultants or other special outside services other than those described in the above Scope.
- Corrosion engineering.
- Costs, including equipment replacement, associated with decontamination of personnel/equipment as a result of encountering hazardous/toxic materials at site.
- Traffic control services and signage for fieldwork.
- Costs associated with encountering hazardous materials/ disposal.
- Meeting attendance. We are available to meet and provide consultation on a mutually agreeable basis.
- Additional report copies or submittals; report revisions after final submission, or report revisions resulting from changed regulations or design.
- Additional or increased insurance coverage (if available) other than described in the Services Agreement.
- Coordination with regulatory agencies.
- Sales or use taxes imposed and due on the professional services described in the above Scope after the date of this proposal.
- Any other services not specifically included in the above Scope.

## COMPENSATION

We have prepared this proposal to comply with the scope identified by the town and the architect and in order to facilitate the commencement of drilling at the earliest date available. Our services, as defined in the Scope of Services will be performed for a **lump sum fee of \$19,400** summarized as follows:

|                                    |                 |
|------------------------------------|-----------------|
| Site Clearing                      | \$3,400         |
| Field Services                     | \$7,300         |
| Laboratory Testing                 | \$3,400         |
| Engineering / Project Management   | \$4,800         |
| Post Report Consultation (3 hours) | <u>\$ 500</u>   |
| <b>TOTAL FEE</b>                   | <b>\$19,400</b> |

Invoices will be submitted on a monthly basis and at the completion of the project.

## ANTICIPATED SCHEDULE

Clearing activities can be performed within about one week after receipt of notice to proceed from the Tower of Flower Mound. Site drilling can be performed within one week after completion of site clearing. Drilling will be completed in two working days, weather permitting. Laboratory testing can be completed within approximately 10 working days after completion of drilling. The geotechnical report will be submitted within 4 weeks after completion of drilling activities. If desired, preliminary data and recommendations can be provided to assist with your design efforts.

## LIMITATIONS

Our service will be performed in a manner consistent with that level of care and skill ordinarily exercised by other members of Kleinfelder's profession practicing in the same locality, under similar conditions and at the date the services are provided. Our conclusions, opinions and recommendations will be based on a limited number of observations and data. It is possible that conditions could vary between or beyond the data evaluated. Kleinfelder makes no guarantee or warranty, express or implied, regarding the services, communication (oral or written), report, opinion, or instrument of service provided.

This proposal is valid for a period of 45 days from the date of this proposal, unless a longer period is specifically required by the town in which case that time frame, within a reasonable period of time, will apply. This proposal was prepared specifically for the client and its designated representatives and may not be provided to others without Kleinfelder's express permission. This is to verify that third-party readers fully understand the assumptions underpinning this proposal.

**TERMS OF ENGAGEMENT**

We plan to execute our services in accordance with the Town of Flower Mound's Professional Services Agreement (PSA). Our scope and fee is based on the assumptions and terms and conditions included in our Agreement. If other terms are required, we may need to adjust our scope and fee.

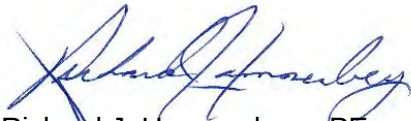
We appreciate the opportunity to provide you with this proposal, and look forward to working with you on this project.

If you have any questions or wish to discuss this proposal, please contact Rick Hammerberg at (972) 868-5900.

Sincerely,

**KLEINFELDER, INC.**

Texas Registered Engineering Firm F-16438



Richard J. Hammerberg, PE  
Associate



Sri Dinakaran, PE, DGE  
Associate



## TOWN COUNCIL AGENDA ITEM NO. 11

### REGULAR ITEM

**DATE:** March 5, 2018

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

**ITEM:** Consider approval of an ordinance amending Chapter 66, Article V, Section 66-224 of the Code of Ordinances of the Town of Flower Mound, Texas, relating to the prima facie speed limit for Morriss Road between Flower Mound Road (FM 3040) to Cross Timbers Road (FM 1171) from 40 mph to 35 mph. (Transportation Commission recommended approval between Lake Bluff and approximately 650 feet south of Cross Timbers Road (FM 1171) by a vote of 6 to 0 at their February 13, 2018, meeting.)

**BACKGROUND INFORMATION:** The Transportation Commission (TRC) packet for this item as associated attachment is included with this item (Attachment 1). Additional information that was not available at the time that the TRC packet was posted include the following tables:

85<sup>th</sup> percentile speed (Speed at which 85% of traffic travels at or less)

| Location      | Northbound (mph) | Southbound (mph) |
|---------------|------------------|------------------|
| Lake Bluff    | 43               | 44               |
| Golden Arrow  | 43               | 44               |
| Timber Meadow | 41               | 41               |
| Milford       | 40               | 42               |

Pace Speed (10 mph range which the largest majority of drivers are driving)

| Location      | Northbound (mph) | % in pace | Southbound (mph) | % in pace |
|---------------|------------------|-----------|------------------|-----------|
| Lake Bluff    | 36 – 45          | 90.6      | 37 – 46          | 87.1      |
| Golden Arrow  | 36 – 45          | 88.8      | 36 – 45          | 87.2      |
| Timber Meadow | 34 – 43          | 90.4      | 34 – 43          | 96.8      |
| Milford       | 33 – 42          | 95.2      | 33 – 42          | 87.2      |

**BOARD REVIEW/CITIZEN FEEDBACK:** The TRC recommended that the limits of the speed limit change be from Lake Bluff Drive to approximately 650 feet south of Cross Timbers Road (FM 1171). Several citizens at the TRC spoke in favor of the speed limit reduction. The video from the February 13, 2018, TRC meeting can be viewed at: <http://flowermoundtx.swagit.com/play/02132018-1397>. Item F3. Both the Morriss Road speed limit and Thoroughfare Plan items were opened together and the speed limit was voted on first.

**ALTERNATIVES/OPTIONS:** Leave as is.

**FISCAL IMPACT:** N/A

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

**ATTACHMENTS:**

1. TRC Agenda Item from February 13, 2018
2. Draft Ordinance

**DRAFT MOTION:** Move to approve an ordinance amending Chapter 66, Article V, Section 66-224 of the Code of Ordinances of the Town of Flower Mound, Texas, relating to the prima facie speed limit for Morriss Road between Lake Bluff Drive and approximately 650 feet south of Cross Timbers Road (FM 1171) from 40 mph to 35 mph.

**TRANSPORTATION COMMISSION AGENDA ITEM NO. 4****REGULAR ITEM**

---

**DATE:** February 13, 2018

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

**ITEM:** **Consider a recommendation for a permanent speed limit reduction on Morriss Road between Flower Mound Road (FM 3040) to Cross Timbers Road (FM 1171) from 40 mph to 35 mph.**

---

**BACKGROUND INFORMATION:** This item is a regular item to allow the Transportation Commission the opportunity to provide input and recommendation to the Town Council regarding a speed limit reduction on Morriss Road between FM 3040 and FM 1171.

**ENGINEERING STUDY:** An engineering study to determine the speed limit of a local street consists of the following information:

- 85<sup>th</sup> percentile speed
- Road characteristics, shoulder condition, grade, alignment, and sight distance
- Pace speed
- Roadside development and environment
- Parking practices and pedestrian activity
- Reported crash experience for at least a 12-month period

The 85<sup>th</sup> percentile speed is the speed at which 85% of the traffic travels at or below. The speed limit for a particular street is generally set within +/- 5 mph of the 85<sup>th</sup> percentile speed. The 85<sup>th</sup> percentile speed for this section of Morriss Road will be provided at the meeting for both northbound and southbound at various locations along Morriss Road.

Staff has determined the road characteristics, shoulder condition, grade, alignment and sight distance for the streets along Morriss Road. The roadway in this section of Morriss is generally built with 11 foot wide lanes, arterial concrete street and is curvilinear. It does not have a shoulder, and generally has good sight distance. The Fuqua Drive intersection meets the minimum standards for visibility at the current speed limit but would be improved with a lower speed limit. No intersections within this section of Morriss Road are controlled by an all way stop condition. Including both Flower Mound Road (FM 3040) and Cross Timbers (FM 1171), 6 intersections are controlled by traffic signals. Two reduced speed school zones are located within this stretch of Morriss Road

The pace speed is the 10 mph range of speed which the largest majority of drivers are driving. The pace speed within the subject area will be provided at the meeting for both northbound and southbound at various locations along Morriss Road.

The roadside development for Morriss Road between Lake Bluff Drive and approximately 650 feet south of Cross Timbers Road (FM 1171) is primarily residential. Outside of these two limits, the roadside development changes to primarily commercial/institutional. The exception would be in the vicinity of Garden Road with the Forestwood Middle School and the adjacent commercial/institutional development on the west side of Morriss Road across from the school and the northwest corner of Morriss Road and Forest Vista with an institutional use.

Regarding parking practices and pedestrian activity, pedestrian activity for this area is primarily related to the residential homes and the school. Parking practices is off street parking and illegal to park within Morriss Road itself.

Research of reported crash experience for the past 12 months for just the area outside of the commercial areas, reveals that 22 reported accidents have occurred. Of those 22 accidents, 5 cause factors involving speed were reported. Accidents took place primarily at intersections. Other cause factors involved changing lanes when unsafe, disregarding stop and go signal, driver inattention/distraction/texting, failing to yield ROW, impaired visibility, faulty evasive action and driving under the influence of alcohol.

The natural break points for the speed limits along Morriss Road, if not consistent throughout the corridor, would be where the land use changes. If the speed limit is changed; staff recommends that the location of the reduced speed limit be from approximately 650 feet south of Cross Timbers Road (FM 1171) to Lake Bluff Drive.

**FISCAL IMPACT:** N/A

**LEGAL REVIEW:** N/A

**ATTACHMENTS:**

1. Vicinity Map of Morriss Road.

**DRAFT RECOMMENDATIONS:** Move to recommend approval of a permanent speed limit reduction on Morriss Road between Lake Bluff Drive and approximately 650 feet south of Cross Timbers Road (FM 1171) to the Town Council.

Move to recommend no speed limit change on Morriss Road between Lake Bluff Drive and approximately 650 feet south of Cross Timbers Road (FM 1171) to the Town Council.

# Vicinity Map - Morriss Rd



Vicinity Map

Legend

 MorrissRd

Project  
Location(s)

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

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

**WHEREAS**, Section 545.356 of the Texas Transportation Code authorizes a municipality to establish prima facie maximum reasonable and prudent speeds for vehicles on streets and highways within its corporate boundaries; and,

**WHEREAS**, the Town of Flower Mound has conducted an engineering and traffic investigation and study to determine a prima facie maximum speed limit which is reasonable and safe on certain portions of Morriss Road that are the subject of this ordinance; and,

**WHEREAS**, the Town Council hereby finds and determines based upon said engineering and traffic investigation and study that the existing speed limits on said portions of Morriss Road are unreasonable and unsafe and the Town Council hereby declares that the speed limits in those areas should be changed as set forth in this Ordinance; and

**WHEREAS**, the Town Council finds that an amendment to the speed limits on Morriss Road as set out herein is in the best interest of the Town of Flower Mound and will promote the health, safety and general welfare of the citizens of the Town of Flower Mound and the general public;

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

**SECTION 1**

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

**SECTION 2**

That Chapter 66, "Traffic and Vehicles," Article V, "Speed Limits," Section 66-214 "Enumeration for Specific Streets" of the Code of Ordinances, Town of Flower Mound, Texas is hereby amended by deleting the following maximum prima facie speed limit for Morriss Road:

| Location                                                                                            | Speed (mph) |
|-----------------------------------------------------------------------------------------------------|-------------|
| Morriss Road from FM Highway 407, to FM Highway 3040, except as otherwise provided in this section. | 40          |

**ORDINANCE NO.****PAGE 2****SECTION 3**

That Chapter 66, "Traffic and Vehicles," Article V, "Speed Limits," Section 66-214 "Enumeration for Specific Streets" of the Code of Ordinances, Town of Flower Mound, Texas is hereby amended by adopting the maximum prima facie speed limits for certain portions of Morriss Road, as follows:

| Location                                                                                                                                                          | Speed (mph) |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| Morriss Road from Flower Mound Road to Lake Bluff                                                                                                                 | 40          |
| Morriss Road from Lake Bluff to approximately 650 feet south of Cross Timbers Road                                                                                | 35          |
| Morriss Road from approximately 650 feet south of Cross Timbers Road to Justin Road                                                                               | 40          |
| Morriss Road from approximately 200 feet north of Garden Road to approximately 210 feet south of Moorefield Drive from 7:45 – 9:00 AM and 3:45 – 4:45 PM          | 20          |
| All other times it shall be:                                                                                                                                      | 35          |
| Morriss Road from approximately 235 feet north of Forest Vista Drive to approximately 700 feet south of Forest Vista Drive from 7:45 – 9:00 AM and 3:45 – 4:45 PM | 20          |
| All other times it shall be:                                                                                                                                      | 35          |

**SECTION 4**

The speed limits set forth in Section 2 above, are effective when the Town Manager, or his designee, erects signs giving notice of the new speed limits. The Town Manager is directed to take such action necessary to ensure that such new speed limit signs are erected and installed.

**SECTION 5**

Any person, firm or corporation violating any term or provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed \$200.

**SECTION 6**

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 7**

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

**ORDINANCE NO.**

**PAGE 3**

unconstitutional phrase, clause, sentence, paragraph, or section, and said remaining portions shall remain in full force and effect.

**SECTION 8**

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

**SECTION 9**

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

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF TO , ON THIS THE 5TH DAY OF MARCH, 2018.**

**APPROVED:**

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

**ATTEST:**

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



## TOWN COUNCIL AGENDA ITEM NO. 12

### REGULAR ITEM

**DATE:** March 5, 2018

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

**ITEM:** Consider approval of the Gibson-Grant Log House at the Longprairie Homestead master plan.

**BACKGROUND INFORMATION:** In July 2017, the Town Council approved hiring Quimby McCoy Preservation architects to complete a Historic Structure report for the cabin and a draft Master Plan for the site. Their services were partially paid for by a matching grant from the Texas Historic Commission (THC). In late November 2017, selective demolition was done to uncover historic layering and fully understand the house's evolution over time. It was determined at that time that the cabin is actually a log house.

The purpose of the Historic Structure report and the Master Plan are to serve as a guide in the restoration of the Gibson-Grant Log House. Both reports are tools to document the conditions, as well as planning how to use the house and site. The Historic Structure report includes treatment recommendations which include a further study section. The Master Plan includes a preferred option, proposed site plan and floor plan, probable costs, phasing options and future maintenance plan.

Upon approval of the Master Plan, the architects will submit the final report to THC. Based on feedback received from Town Council, staff will include the project in the CIP budget for future implementation.

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

**ALTERNATIVES/OPTIONS:** N/A

**FISCAL IMPACT:** N/A

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

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

**LEGAL REVIEW:** N/A

**ATTACHMENTS:**

1. Historic Structure report
2. Master Plan

**DRAFT MOTION:** Move to approve the Gibson-Grant Log House at the Longprairie Homestead master plan.



**GIBSON-GRANT LOG HOUSE  
TOWN OF FLOWER MOUND, TEXAS  
HISTORIC STRUCTURE REPORT**

**Prepared for  
The Town of Flower Mound  
Flower Mound, Texas**



**Quimby McCoy Preservation Architecture, LLP  
3200 Main Street #3.6  
Dallas, Texas 75226**

**February 19, 2018**

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## Executive Summary

The Gibson-Grant Log House, constructed between 1860-1861, is of exceptional historical significance as one of the few remaining log structures of the mid-nineteenth century still standing on its original site in Denton County. The house is historically significant for two reasons, for its association with William Gibson, a Peters Colonist and because it exemplifies the evolution of early homesteads on the Texas frontier.

The log construction discovered within the walls of the house at Quail Run and Flower Mound Road has been tree-ring dated as having been built between 1860-1861 from logs cut between 1857 and 1860. The log house was built out of hewn timbers, with carefully notched corners and flush ends, with stone chimneys and wood plank floors.

The Gibson-Grant Log House does not retain a great degree of historic integrity, due to the multiple additions that converted the house from a single-pen log house to a double-pen and later a triple-pen "T" configuration house, causing the removal of the original log house roof and cutting openings in the original log walls. As it was typical with log houses from that era, as the family gained wealth or their family needs expanded, additional rooms were added on to the log houses, called "pens". Originally the Gibson log house was a 16'x16' one-pen log house, with the entrance facing south and likely with a second floor sleeping loft. Despite this lack of integrity of the log house itself, the Gibson-Grant homestead - including its early additions - is significant as a whole, as it exemplifies the evolution of early settlers' homesteads in Texas, as their family needs changed or their wealth increased over time.

Both the house and the site have evolved over time with most of the property being sold off at various times throughout history. The remaining portion of the property associated with the Gibson-Grant Log House is located at the intersection of Flower Mound Road and Quail Run, facing north (Quail Run). The house is situated on the highest portion of the site. On Quail run, the site slopes steeply up from the sidewalk. The existing elevations are mostly clad in non-historic board and batten siding. At the east and west elevations, non-historic additions have been removed prior to the start of this project and the resulting openings covered with plywood and painted to match the rest of the siding.

The Town of Flower Mound acquired the property from Curtis Grant with the intent of restoring the historic log house. The house was named by the Town of Flower Mound in recognition of the original owner, William Gibson and Curtis Grant who donated the house to the town. QMc was contracted to prepare the Historic Structure Report and Master Plan to guide the restoration of the historic house. The HSR and Master Plan reports are coordinated and work together; therefore both should be referenced for planning efforts for the Gibson-Grant Log House. This project will not only preserve an exceptional historic house but the public will have the opportunity to get a glimpse into the lives of some of Denton County's earliest settlers, and learn the story of how they lived and their dwellings evolved over time.

## Introduction

In 2017 Quimby McCoy was contracted by the Town of Flower Mound to prepare a Historic Structure Report and a Master Plan for the Gibson-Grant Log House. The log house, dating from 1860, was discovered inside the walls of a seemingly modern-day residence in the Town of Flower Mound, Denton County.

In 2015, Curtis Grant, a Flower Mound developer who bought the subject property with the intent of demolishing the existing house and subdividing the lot for residential development, discovered the

historic log house inside the living room walls, with newer construction built around it in stages. He immediately contacted the Denton County Office of History and Culture to report his findings and seek information and guidance. Further investigation by the Denton County Office of History and Culture revealed that this was likely an early log house built by settlers who came to Texas as part of the Peters Colony, the earliest settlement in Denton County.

The Town of Flower Mound acquired the property the same year with the intent of restoring the historic log house. Further research and testing was undertaken by the University of Arkansas Tree-Ring Laboratory; by taking core samples of the logs and remaining chinking and analyzing them, the Tree-Ring Laboratory team determined that the logs had been cut between 1857 and 1860 and stockpiled on site awaiting construction, which was undertaken between 1860-1861.

The recommendations provided herein are intended as part of a plan for the restoration of the historic log house and surrounding historic additions and to serve the owner's goals for the use of the building and property.

## **Statement of Goals and Purpose**

The purpose of this report is to serve as a guide in the restoration of the Gibson-Grant Log House. The report serves as a tool to document the conditions of the site and house, and to plan for the overall utilization of the site and house. This framework will preserve the historic features of the house while enabling the introduction of improvements, allowing the public to benefit from the interpretation of the evolution of the building, and providing a greater understanding of life as an early settler in the region. The recommendations provided herein are intended to protect and prolong the existence of the building and site features, by retaining as much of the original materials as possible through stabilization and preservation efforts. A goal of the report is to provide understanding of the site's history, existing conditions, and the owner's desires for the site, study potential improvements, and make recommendations for the restoration of the historic log house for future use.

## **Methodology**

The QMc team conducted a multi-phased analysis beginning in the summer of 2017 in order to develop a Historic Structure Report for the Gibson-Grant Log House. The first phase included a visual investigation and evaluation of existing conditions of the historic log house and later additions. Photographs and measurements were taken, and general conditions were noted. The investigation was performed from both the exterior and interior. Access to some of the construction elements such as foundations and roof structure, as well as access to some of the historic fabric that had been covered over time by newer construction, was limited.

The second phase included historic research, and was concurrent with the physical analysis of the log house and site. As prior historic research had been completed by the Town of Flower Mound and the Denton County Office of History and Culture, this information provided an initial understanding of the property's early history and its first owners. The QMc team conducted additional research to gain a broader understanding of the family's history and the evolution of the structure and site. This included research into historic records online through the Denton County Clerk's office, Denton CAD, Census Records, and the Denton Public Library. Additional research into log buildings was obtained from *Texas Log Buildings, A Folk Architecture* by Terry G. Jordan.

QMc then analyzed the information gathered in the first two phases in an effort to peel back the many layers of alterations that have occurred over time, develop a chronology of changes, and create diagrams to visually chart these changes. QMc prepared interpretation options and presented them at a preliminary draft meeting to the Town of Flower Mound. At this meeting QMc discussed the evolution of the house over time and the need for selective demolition in an effort to provide greater understanding. QMc was directed to refine the *Triple-Pen House with extension form* as the preferred option of interpretation.

The third phase of analysis was the visual investigation and evaluation of the selective demolition locations. The investigation provided further insight into the evolution of the form of the house as well as a better understanding of the layers of exterior siding; providing a clearer picture of appearance of the house during the *Triple-Pen House* period. However, much of the exterior of the house remains obscured because of later additions and layers of siding. The later additions and siding should be kept in place until the Town is prepared to begin the demolition and renovation of the house. It is difficult to accurately discern any particular period of evolution for the interior at this time due to extensive alterations. QMc recommends that a preservation architect be involved throughout the demolition phase to document the obscured facades and for further analysis and investigation of the interior.

As stated above, the first phase of the project involved an analysis of the physical conditions. This was undertaken by a team of two preservation architects. Testing of materials was not conducted in this effort by QMc; however, prior to QMc's work, a tree-ring dating of logs from the log house was conducted by David W. Stahle at the University of Arkansas Tree-Ring Laboratory and is included in the appendix. The analysis of the physical conditions by QMc was undertaken to establish the existing construction materials and general conditions, and to define preliminary recommendations for addressing each of the conditions and future needs resulting in the Historic Structure Report (HSR). The Historic Building Master Plan is a complimentary document which incorporates and builds upon the recommendations of the HSR. The HSR and Master Plan reports are coordinated and work together; therefore both should be referenced for planning efforts for the Gibson-Grant Log House.

The organization of the HSR is based on a format that was established by the National Park Service and has been utilized as a standard system of inspecting and evaluating conditions for historic structures. The format establishes the Description of an element, followed by the existing Condition of that element and finally, the Recommendation.

The **Description** establishes the materials and other physical characteristics of the element.

The **Condition** of elements may be classified as follows:

*Good:*

The element is structurally sound and performing its intended purpose, and there are few cosmetic imperfections. Repair is not needed and only minor maintenance work is required to maintain the element in good condition.

*Fair:*

The element exhibits signs of wear, failure or deterioration but remains structurally sound and is performing or is able with minor repair, to perform its intended purpose. Failure of a sub-component may have occurred. Repair or replacement of up to 25% of the element or sub-component may be required.

*Poor:*

The element is not structurally sound and/or is not performing its intended purpose. Failure of the element has occurred. Repair or replacement of more than 25% of the element or sub-component is required.

The **Recommendations** are based upon the analysis of existing conditions.

**Historic Structure Report Participants**

Denton County Office of History and Culture

Peggy Riddle - Director

Kim Cupit - Curator of Collections

Quimby McCoy Preservation Architecture

Nancy McCoy, FAIA, FAPT

Justin Curtsinger, AIA

Andreea Hamilton, AIA

## Historical and Architectural Development

### Historical Background and Context

The site of this historic log house was originally owned by William Gibson, a Peters colonist who immigrated to the Republic of Texas with his family in 1844, and settled in an area that is now part of the Town of Flower Mound in Denton County, in a region known at the time as Long Prairie.<sup>1</sup> Upon arrival in Texas, the Gibson family received 640 acres of land as part of the Peters Colony, of which the subject property is part of. Remaining today on this property is the log house with several of its early and modern additions; while some of the most recent additions have been removed by others prior to the start of this project in an effort to uncover the earliest historic fabric still remaining.

Denton County was established in 1846, shortly after Texas joined the Union. Settlement in the area was scarce at first and predominantly located along the Trinity River, until the Peters Colony brought in new settlers, many of them from states like Tennessee, Missouri and Kentucky. Settlement continued to occur near the rivers and creeks in the area, such as Hickory Creek, Timber Creek, Denton Creek and the Elm Fork of the Trinity River.<sup>2</sup> The first mention of the name Flower Mound was in 1854 when the Flower Mound Presbyterian Church was established. In the 1860s the Chisholm Trail passed through Flower Mound.<sup>3</sup>

#### *Peters Colony*

In the tradition of the Midwest, “colonies” for settlement were established in the Republic of Texas to attract families to immigrate to and populate the Republic. The Peters Colony refers to the empresario land grant made in 1841 by William Smalling Peters (an Englishman living in Pittsburgh, Pennsylvania, who located the headquarters of Peters Colony in Louisville, Kentucky), his partners, and the Republic of Texas, to colonize a significant area of North Texas. Four separate contracts were signed for the Peters Colony, of which the first signed on August 30, 1841, with the requirement of bringing 600 families to Texas to settle. Upon realization that there was not enough unclaimed land available in the portion allotted under the first contract, a second contract was signed very shortly after, on November 9, 1841, expanding the area of land allotted for the colony. The third contract was signed on July 26, 1842. Each contract further expanded the area of the colony, and with that the number of families that had to be settled in Texas per the respective contract grew as well. The fourth and last contract was signed on January 20, 1843. With this contract the Peters Colony extended over 17,000 square miles in 5 North Texas counties (26 present day counties), including the land that would become Denton County.<sup>4</sup>

The eastern half of present day Denton County was located at the south-easternmost portion of the first contract of the colony, and this included the subject property. The Peters Colonists were provided with land allotments of 640 acres per head of family and 320 acres per single man over the age of 17, with requirements that they must reside on and improve the land. The first settlers in the Peters Colony arrived in North Texas in early 1842, and settlement continued until 1848, when the colony’s contract (then with the State of Texas) expired. The first Federal Census for Denton County was taken in 1850, and it counted 89% of the population of the county as being Peters Colonists.<sup>5</sup>

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<sup>1</sup> The Greene Group, *Historical/ Cultural Report Flower Mound New Town Area*, The Greene Group, 1972

<sup>2</sup> “A Brief History of Denton County”, Denton County History, accessed Sept. 28, 2017, <http://www.dentonhistory.net/page16/>

<sup>3</sup> “History”, About Flower Mound, accessed Oct. 4, 2017, <https://www.flower-mound.com/1281/History>

<sup>4</sup> “Chapter Four. The Peters Colony”, Denton County History, accessed Sept. 28, 2017, <http://www.dentonhistory.net/page16/styled/styled-6/>

<sup>5</sup> Flower Mound Historical Commission, *Sweet Flower Mound Land*, Wolfe City, TX : Hennington Pub. Co., 1995.

*William Gibson and Family*

William Gibson was born in Tennessee in 1801, to parents William Gibson Sr. and Margaret Armstrong. He was the youngest of three sons; his older brothers were Jesse, born in 1796, and James, born in 1797. The William Gibson Sr. family moved from North Carolina to Tennessee in 1796-1797, after the birth of their first son, Jesse; both James and William were born in Tennessee.<sup>6</sup>

William Gibson married Rebecca Wallis (c.1810-c.1885), also from Tennessee, in 1826. The family's first three children were born in Tennessee: Margaret Jane (1828-1914), John Merritt (1830-1875) and George S. (1832-1881). Sometime after George's birth, in the early to mid 1830s, the young Gibson family left Tennessee, along with William's brothers Jesse and James Gibson and other Tennessee families, and settled in Platte County, Missouri. Four of their children were born in Missouri: Nancy Ann (1835-1933), Mary Ann (1837-1885), Martha C. "Mattie" (1840-1934), and Ludecia L. E. "Ludicy" (1843-1860).<sup>7</sup>

The family uprooted and moved again in 1844, as many families from Missouri and Tennessee did in that time period, attracted by the land grants given to new settlers in the Republic of Texas. The Gibson family with their children, and William's brothers Jesse and James Gibson, were among the 16 families from Platte County, Missouri who made the long journey to Texas and settled in the southern part of what would become Denton County, as part of Peters Colony. Other families in this group were the Holfords, the Medlins, the Eads and the Allens. Some of the men from this group subsequently returned to Missouri in 1845 to recruit other relatives and new families to join them in these settlements in Texas. The colonists from Platte County, Missouri established the Lonesome Dove Baptist Church, of which the Gibsons were part of, in February 1846 in the Crosstimbers area - now known as Grapevine-Southlake.<sup>8</sup>

William and Rebecca Gibson's youngest son, Thomas Benton (1848-1892), was born in Texas. Some accounts mention another son, William III (b.1850), but he does not appear in the 1850 or 1860 Census records; if the Gibsons had another child named William III, he must have died very young.<sup>9</sup>

The historical context in Texas at the time of the Gibson family's arrival was tumultuous. In the mid 1840s, Texas was in governmental flux. By 1845, the Republic of Texas was in discussion with the United States about admission to the union. This was formalized effective December 29, 1845, when Texas's became the 29th state of the United States. The state of Texas then modified several counties which had been established by the Republic and on April 11, 1846, Fannin County was divided into several smaller counties – including Denton County.<sup>10</sup>

Upon arriving in Texas as a Peters Colonist, William Gibson received 640 acres of land as a married man/ head of family. This was recorded in the State of Texas, County of Denton as No. 200 - Vol. 2 on April 15, 1850. The Peters Colony administrators experienced difficulties with assigning legal titles to the colonists' property prior to the dissolution of the Peter Colony's contract with the State of Texas in 1848. The State Legislature became involved with this ongoing problem following an incident in 1852 between the colonists, members of the Dallas community and the Peters Colony's local administrator,

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<sup>6</sup> Denton County Historical Commission, *Pre- Eligibility Request for a Texas Historical Commission Recorded Texas Historic Landmark Designation for the Gibson Cabin*, Unpublished

<sup>7</sup> Ibid

<sup>8</sup> Ibid

<sup>9</sup> "United States Census, 1850", "United States Census, 1860", accessed Sept. 30, 2017, <https://www.familysearch.org>

<sup>10</sup> "A Brief History of Denton County", Denton County History, accessed Sept. 28, 2017, <http://www.dentonhistory.net/page16/>

Henry Hedgecoxe. It would take another twenty years for many land titles to be fully resolved. Fortunately, the Gibson family appears to have not been adversely affected by this title dispute.

The 1850 Denton County Census lists the Gibson family residing in Denton County with their children: John M., George S., Nancy A., Mary Ann, Martha C., Thomas and Ludicy L. E. The oldest daughter, Margaret, was already married when the families moved to Texas from Missouri, so she would have lived with her husband in 1850. The 1850 Agriculture Schedule lists William Gibson as owning 15 acres of improved land, 625 acres of unimproved land, 150 cash value of land, 4 cash value of farm implements, 1 horse, 1 milk cow, 2 other cattle, 50 swine, 60 value of livestock, 200 bushels on Indian Corn, 5 pounds of tobacco, 10 bushels of sweet potatoes, 50 pounds of butter, 30 value of homemade manufacturing, and 20 value of animals slaughtered.<sup>11</sup> By the 1860 Denton County Census, George S. and Nancy A. no longer lived with their parents, and Ludicy must have passed away earlier that year, leaving only John, Mary Ann, Martha and Thomas in the home of their parents, William and Rebecca Gibson.<sup>12</sup> These would have likely been the first occupants of the subject log house when it was built in 1860-1861.

#### *Log Cabin versus Log House*

It is not clear where the Gibson family first lived after settling in Denton County, but it is assumed that they would have built a small and basic log cabin on their property as soon as feasible after arriving, to serve as shelter. The log construction discovered within the walls of the house at Quail Run and Flower Mound Road has been tree-ring dated as having been built between 1860-1861 from logs cut between 1857-1860. Since the Gibson family arrived in Texas in 1844, they would have had to have an earlier dwelling or shelter somewhere on the property (which did not survive), suggesting that the present log construction is actually a second generation dwelling. Further site investigation and historical research determined that this second generation dwelling is actually what is referred to as a log "house". Additional evidence to support this finding is illustrated in Terry G. Jordan's Book *Texas Log Buildings*, which emphasizes the differences between a log cabin and a log house. A log cabin would have been built in a hurry and intended to provide temporary shelter, therefore the logs would still have bark on them, with ends poorly notched and projecting beyond the corner, with stick and mud chimneys and dirt floors. By contrast, a log house would be built out of hewn timbers, with carefully notched corners and flush ends, with stone chimneys and wood plank floors. While there are other differences between log cabins and log houses, those listed above are only the ones we can observe and compare today in the remaining historic fabric of the Gibson-Grant Log House: rough hewn log walls with half-dovetail notches and flush ends, plank wood floors, and stone chimney. Therefore the subject log construction is classified as a log "house" and not a log "cabin".

#### *History of the Site after 1860*

The Gibson family log house was built between 1860-1861, according to tree-ring dating analysis performed by the University of Arkansas Tree-Ring Laboratory. Its current front entrance is on the north side of the house, however according to Terry G. Jordan, who performed an in-depth analysis of log houses in the East Cross Timbers of Denton and Cooke counties, where the Gibson log house is located, 53% of the front entrances faced south versus only 8% that faced north. Also from Jordan's analysis, the entrance was always located on the side gable and the fireplace centered on the gable, therefore the entrance to the Gibson log house would not have been on the east or west side. Therefore it is most likely that the entrance to the Gibson log house was on the south elevation.

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<sup>11</sup> Kim Cupit Research, Denton County Office of History and Culture

<sup>12</sup> "United States Census, 1850", "United States Census, 1860", accessed Sept. 30, 2017, <https://www.familysearch.org>

William Gibson, the patriarch of the family, did not get to enjoy this residence for very long, as he passed away in 1865. He was buried at the Medlin Cemetery in Trophy Club, Denton County, where many of his family members would subsequently be buried (as well as many members of other Platte County, Missouri families that the Gibsons moved to Texas with).<sup>13</sup> It is not likely that William Gibson built any of the additions to the log house.

As it was typical with log houses from that era, as the family gained wealth or their family needs expanded, additional rooms were added on to the log houses, called "pens". Originally the Gibson log house was a 16'x16' one-pen log house, with the entrance facing south and likely with a second floor sleeping loft. A ghost of what was likely a ladder leading to this loft is visible on the east wall of the log house, next to the fireplace, consistent with Terry G. Jordan's description that log houses and cabins usually had a second story loft for the children to sleep, accessible by a ladder usually tucked away in a corner adjacent to the fireplace. The first addition to the Gibson log house, about equal in size to the original house, was constructed of wood frame and attached to the west of the log house, making the Gibson log house a double-pen configuration. An opening centrally located on the log house's west wall provided an interior connection between the two pens. Each pen would have had an entrance on the south elevation, centrally located within each pen. One single side gabled roof was added over this two-pen house. At this time, the entire house was clad in horizontal clapboard siding, which remains to this day. This was done for practical reasons, since the second pen was frame construction, recladding the entire house unified the facades. Jordan also notes that horizontal siding was more expensive and became an early symbol of economic success while board and batten siding was viewed as a being from a lower socioeconomic status.

The second addition is at the south elevation of the Gibson house, creating a triple-pen "T" configuration. Typically these "T" shaped additions were built at the back of the building, generally to accommodate a kitchen; however, we had determined that the south elevation was likely the front of the building. It is possible that changes happened as the town developed that made the family decide to reorient the front facade to the north, and build the kitchen "T" addition to the south, at the new back of the house. The double-pen and triple-pen additions were likely built between the end of the nineteenth century and the first decade of the twentieth century. Two more early additions extended the "T" at the back of the house and added a small room (possibly a bathroom) to the south of the second addition. Several more modern-day additions were constructed in the twentieth century. The "T" was clad with board and batten siding which remains to this day.

Sometime after William Gibson's passing in 1865, Rebecca Gibson and her children, John, Mary Ann, Martha and Thomas, sold the property to John H. and Narcissa Curtner, who did not live in Denton County and only owned the property briefly before selling to Amanda Gay in 1870. Rebecca Gibson continued to live with her children, John, Mary Ann, Martha and Thomas Gibson, and their spouses and children, until her death in 1885.<sup>14</sup>

Amanda Gay (1837-1889) was born in Alabama, the daughter of Presbyterian minister James Smith Guthrie, and Lethe Burns. Amanda married John Hunter Gay, from Ohio, in the 1850s. They had three sons: Robert Burns, Thomas Miles, and John Hunter Jr., and lived in Denton County. John Hunter Gay died in 1868, and never lived in the subject log house. The 1880 Denton County Census lists Amanda Gay, widowed, with sons Robert and John, living in what would have been the subject log house. The 1880 Agriculture Schedule lists Robert B. Gay owning a farm, 80 acres of tilled land, 15 acres of woodland, \$800 value of farm, \$100 value of farm implements, \$300 value of livestock, 3 horses, 1 milk

<sup>13</sup> Medlin Cemetery, Trophy Club, Denton County, Texas, Find A Grave, accessed Sept. 30, 2017, <https://www.findagrave.com/cemetery/5183/medlin-cemetery>

<sup>14</sup> "United States Census, 1870", "United States Census, 1880", accessed Sept. 30, 2017, <https://www.familysearch.org>

cow, 7 other cattle, 1 calf dropped in 1879, 8 cattle sold living in 1879, 11 swine on hand, 90 barnyard poultry on hand, 180 dozen eggs produced in 1879, 70 acres and 195 bushels of Indian Corn, 4 acres and 60 bushels of oats, and 20 acres and 7 bushels of cotton.<sup>15</sup> Note that this only amounts to 95 acres of land out of the 640 acres that William Gibson owned in 1850. It is unclear how many acres were dedicated as pasture for livestock but this suggests that Rebecca Gibson and her children only sold a portion of the 640 acre property to the Curtners. Perhaps the Gibson family continued to live on the remaining portion of the land, or either the Curtners or the Gays subdivided the land and by 1880 the Gays only owned approximately 95 acres of the Gibson original 640 acre lot. Following Amanda Gay's passing in 1889, her sons, Robert and Thomas, sold the property to W. W. Kerr in 1890.<sup>16</sup>

William Ward Kerr (1833-1911), born in Tennessee, married Martha Frances (Fanny) Wallace (1835-1925) in Mississippi in 1856. The Kerr family lived in Mississippi until moving to Waco, Texas around 1872, then to Hood County in 1883, and Denton County in 1887. In 1890 they purchased the subject property. The Kerrs had 11 children: Anna L., Jane, Frances "Fannie", William Wallace, James Carson, Emma, David Ward, Birdie, Wallace, T. Clarence, and Itasca "Tassie".<sup>17</sup> William Wallace Kerr married Catherine Geneva (Jenny) McCombs in September 1889 in Flower Mound. Their son, Lee Olin Kerr, was born "in a log cabin set among trees on the west side of the George McCombs farm about three miles west of the Flower Mound Church". William Ward and William Wallace Kerr were working for McCombs at the time.<sup>18</sup> After William Ward Kerr's passing, the property passed to his youngest son, T. Clarence Kerr, and his wife Myrtle, with the understanding that his mother, Fanny Kerr, and youngest sister, Tassie, would continue to live there. T. Clarence Kerr sold the property after his mother's passing in 1925 (Tassie died years earlier) to Marion M. and Wilna M. Hackler.<sup>19</sup>

Marion Monroe Hackler (1875-1961) married Wilna Mae Gunter (1885-1944) in 1907. They were originally from the Wiley area of Collin County, then later moved to Dallas, and by 1920 moved to Denton County. They purchased the subject property in 1925, and the 1930 Denton County Census lists them with seven of their children: F. Burns, Iona, Barney, Ruth, Viney, Veo and George. Their oldest daughter, Wilna Marion, did not live in the subject house. In January 1932, their three youngest children, Viney (10), Veo (8) and George (5) all died from diphtheria. The family would have lived in the subject house at the time. In 1937 the Hacklers sold the house to G. M. and D. C. Warren, and in 1940 they are listed as living in Collin County with their two youngest living children, Barney (24) and Ruth (21).<sup>20</sup>

Only four families owned the subject property for the first 77 years of its existence, between 1860-1937. Then, in the 41 years that followed, 1937-1978, the ownership of the property changed hands 11 times - until Charles E. and Mary M. King purchased it in 1978 and maintained ownership until 2015, when they sold to Curtis Grant. The frequent change in ownership over those four decades stands to reason why knowledge of the log house's existence inside the walls of the house was lost over time.

#### *History of the Site 2015-2017*

By 2015, the house at the corner of Quail Run and Flower Mound Road was a sprawling suburban ranch house. Developer Curtis Grant with Vaquero Development purchased the house from the previous owner, Mary King, with the intent of demolishing it and converting the sizable lot into a residential development. However, before starting demolition, he decided to open up the living room walls,

<sup>15</sup> Kim Cupit Research, Denton County Office of History and Culture

<sup>16</sup> Kim Cupit Research, Denton County Office of History and Culture

<sup>17</sup> Ibid

<sup>18</sup> Denton County Historical Commission, *Pre- Eligibility Request for a Texas Historical Commission Recorded Texas Historic Landmark Designation for the Gibson Cabin*, Unpublished

<sup>19</sup> Kim Cupit Research, Denton County Office of History and Culture

<sup>20</sup> Kim Cupit Research, Denton County Office of History and Culture

remembering the previous owner mentioning finding a piece of a 1903 newspaper inside the wall. To his surprise, he discovered the log house, long forgotten, incased within the multiple additions of this house; as ownership of the property changed many times over the years, knowledge of the log house within the walls had been lost. Realizing the historical significance of this discovery, Curtis Grant contacted the Denton County Office of History and Culture and the Town of Flower Mound. The Town acquired the property the same year, with the intent of rehabilitating this piece of history and displaying it as an educational opportunity for current and future generations.

In 2017, Quimby McCoy was contracted to develop a Historic Structure Report and a Master Plan for the restoration of the Gibson-Grant Log House.

## Log House Building Type

A scholar of Texas log architecture, Terry G. Jordan, notes that log dwellings were originally introduced to America by Swedish and predominately German immigrants and were soon adopted by other immigrants (including the English and Scotch-Irish), primarily in the Middle Atlantic colonies.<sup>21</sup> These other ethnic groups, that did not have experience with log construction, adopted the German methods and construction techniques because they were perfectly suited for life on the frontier. The log dwelling construction materials were easily available in forested environments, making it the preferred building type as migration began to the west - to Appalachia, then west and southwest to Illinois, Indiana, Tennessee, Kentucky, Missouri, Mississippi and Arkansas.

Log dwellings differ greatly in terms of the ethnic group, floor plan, quality of craftsmanship, time period and the ways the settlers addressed the region's climate. Later characteristics of log dwellings are due to Scotch-Irish and English immigrants, and included "single-pen," or room, single-storied, rectangular floor plan design, "side-facing gables," "a gable-end chimney and a centered front door."<sup>22</sup> Based on these traditions, the features listed above are integrated into a "square single-pen" design, usually conforming to the standard of a 16' square space.<sup>23</sup>

By the early nineteenth century, another wave of settlers to the new Republic of Texas (and following 1846, the State of Texas) brought with them this log dwelling tradition. However, these log dwellings bore little resemblance to the cabins constructed centuries before by the German immigrants in the Middle Atlantic area, as they had evolved to reflect the 'diverse ancestry and mixed heritage' of its builders as well as the different climates and cultures of the new locations.<sup>24</sup>

The greatest contrast in log dwellings is between the Log Cabin Building Type and Log House Building Type. The Log Cabin Building Type is an early and primitive generation of log dwellings built as a temporary shelter by a group of neighbors. The characteristics of a cabin are small and windowless spaces with bare-earth floors and constructed using crudely notched logs with intact bark.<sup>25</sup> By contrast, the dwellings that fall within the Log House Building Type were generally second generation constructions by traveling craftsmen. Jordan quotes an anonymous 1837 Texas traveler in *Texas Log Buildings* that "Construction of a log house is what might be called the second step of the pioneer toward a comfortable habitation." The characteristics of the Log House Building Type are: carefully

<sup>21</sup> Terry G. Jordan, author, Bettie A. Regester, Sheldon A. Wallace, catalogue, Elina Wilkinson, photography, Log Cabin Village: A Historic and Guide; Austin: Texas State Historical Association in cooperation with Tarrant County Historical Society, 1980. pgs 2-4.

<sup>22</sup> Terry G. Jordan, Texas Log Buildings: A Folk Architecture, Austin: University of Texas Press, 1978.

<sup>23</sup>Ibid., 111. Jordan notes that the standard of 16' derives from the English "rod measurement" or sixteen feet.

<sup>24</sup>Ibid, 4.

<sup>25</sup>Ibid, 105.

hewn timbers, neatly notched at the corners and sawn off flush, tightly chinked with a wood floor, windows, and a stone (or brick) chimney.

### Chronology of Site Development and Use

|                        |                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1801                   | William Gibson born in Tennessee.                                                                                                                                                                                                                                                                                                                                                                                               |
| 1826                   | William Gibson marries Rebecca Wallis in Tennessee.                                                                                                                                                                                                                                                                                                                                                                             |
| 1828-1832              | William and Rebecca's first three children, Margaret Jane, John Merritt and George S. are born in Tennessee.                                                                                                                                                                                                                                                                                                                    |
| After 1832/before 1835 | William and Rebecca Gibson relocate their young family from Tennessee to Platte County, Missouri, along with William's two older brothers, Jesse and James, and other families.                                                                                                                                                                                                                                                 |
| 1835-1843              | William and Rebecca have four more children, Nancy Ann, Mary Ann, Martha C "Mattie" and Ludecia L. E. "Ludicy", born in Platte County, Missouri.                                                                                                                                                                                                                                                                                |
| 1836                   | Republic of Texas established.                                                                                                                                                                                                                                                                                                                                                                                                  |
| February 4, 1841       | Peters Colony empresario grant established by the Republic of Texas, with the stipulations that 200 families were to be recruited every three years. The colonists were granted 320 acres per single man and up to 640 acres per family. <sup>26</sup>                                                                                                                                                                          |
| 1844                   | William and Rebecca Gibson and their 7 children relocate to Texas from Platte County, Missouri, with a group of 16 families (among which were William's brothers Jesse and James), as part of Peters Colony. It is assumed they received their 640 acres of land that year, and built a small log dwelling or shelter on that land shortly upon arrival.                                                                        |
| December 29, 1845      | Texas admitted to the Union as the 29th U.S. State.                                                                                                                                                                                                                                                                                                                                                                             |
| April 11, 1846         | Denton County is established by Texas Legislature.                                                                                                                                                                                                                                                                                                                                                                              |
| 1850                   | First U.S. Federal Census of Denton County.                                                                                                                                                                                                                                                                                                                                                                                     |
| April 15, 1850         | William Gibson receives Peters Colony Certificate No. 200, Vol. 2 for 640 acres of land in Denton County. <sup>27</sup>                                                                                                                                                                                                                                                                                                         |
| November 13, 1852      | William Gibson sells 320 acres of land (1/2 of his Certificate) to Jesse Loving of Denton County for the sum of one hundred dollars; located in Denton County on the waters of Hickory Creek.                                                                                                                                                                                                                                   |
| 1857-1860              | William Gibson cuts logs over a period of time and stores them on site with the intent of building a log house to serve as a residence for his family and himself.                                                                                                                                                                                                                                                              |
| 1860-1861              | William Gibson builds a one-pen log house on this property.                                                                                                                                                                                                                                                                                                                                                                     |
| 1865                   | William Gibson dies (no obituary found as of this time) and is buried in Medlin Cemetery in Trophy Club, Denton County.                                                                                                                                                                                                                                                                                                         |
| 1865-1870              | Sometime during this time period Rebecca Gibson sells the house to John H. and Narcissa Curtner. They did not live in Denton County, but owned the land for a brief period of time. The deed records from this sale, along with the greater part of county records, were lost in the fire of Dec. 24, 1875, which destroyed the Denton County courthouse. John H. and Narcissa Curtner sold the property to Amanda Gay in 1870. |
| 1870-1890              | Property is owned by Amanda Gay (d. 1889) and heirs T.M. Gay and E.J. Gay, R.B. Gay and E.A. Gay.                                                                                                                                                                                                                                                                                                                               |

<sup>26</sup> *Handbook of Texas Online*, Harry E. Wade, "Peters Colony," accessed September 26, 2017, <http://www.tshaonline.org/handbook/online/articles/uep02>.

<sup>27</sup> Texas General Land Office, Land Grant Search. File Number 211467.

|           |                                                                                                                                                                                                                                                                            |
|-----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1890-1925 | Property is owned by the Kerr family. W.W. Kerr purchased the property in 1890. Later owners in the Kerr family are Fannie Kerr, and T. Clarence and Myrtle Kerr. It is likely that the early additions to the Gibson-Grant log house date from the Kerr family ownership. |
| 1925-1937 | Property is owned by Wilna Hackler.                                                                                                                                                                                                                                        |
| 1937-1942 | Property is owned by G. M. and D. C. Warren.                                                                                                                                                                                                                               |
| 1942-1944 | Property is owned by Hubert Griffin and Jennie Griffin.                                                                                                                                                                                                                    |
| 1959-1965 | Property is owned by Macon and Lila Mae Warlick, who are responsible for some of the modern additions to the house such as the breezeway, garage, bathroom and central HVAC (as evident from mechanics liens filed with the city).                                         |
| 1965-1978 | Property is owned by Billy J. and Peggy J. Totten.                                                                                                                                                                                                                         |
| 1978-2015 | Property is owned by Charles and Mary King.                                                                                                                                                                                                                                |
| 2015      | Developer Curtis Grant of Flower Mound purchases the property from Mary King. He discovers the log house inside the living room walls of a modern-day house he had purchased with the intent of demolishing it and subdividing the land for residential development.       |
| 2015      | The town of Flower Mound acquires the Gibson-Grant Log House and the remaining property.                                                                                                                                                                                   |
| 2017      | Quimby McCoy was hired to develop a Historic Structure Report and Master Plan for the Gibson-Grant Log House.                                                                                                                                                              |

## Evaluation of Significance

The Gibson-Grant Log House, constructed in 1860-1861, is of exceptional historical significance as one of the few remaining log structures of mid-nineteenth century still standing on its original site in Denton County.

The Gibson-Grant Log House is also historically significant for its association with William Gibson, a Peters Colonist, originally from Tennessee, who immigrated to the Republic of Texas from Platte County, Missouri in 1844. Peters Colonists were among the early settlers of present day Denton County, starting to arrive in the early to mid-1840s, while Texas was still a Republic, and continuing through the first few years of Texas' U.S. statehood. Few structures built by these early colonists remain in Denton County and the North Texas area, and the vast majority of those that do are log houses similar to this. The Gibson-Grant Log House was constructed of roughhewn wood logs with half dovetail notching, a technique that was characteristic to those settlers coming from Missouri. The half-dovetail notch, called by some Texas residents a "Missouri notch", is prevalent in Texas log construction.

The Gibson-Grant Log House does not retain a great degree of historic integrity, due to the multiple additions that converted the house from a single-pen log house to a double-pen and later a triple-pen "T" configuration house, causing the removal of the original log house roof and cutting openings in the original log walls. Despite the lack of integrity of the log house itself, the Gibson-Grant homestead - including its early additions - is significant as a whole, as it exemplifies the evolution of early settlers' homesteads in Texas, as their family needs changed or their wealth increased over time. This is a significant glimpse into the lives of some of Denton County's earliest settlers, which tells the story of how they lived and evolved over time.

*Analysis of Integrity*

*Location* - remains in its original location.

*Setting* - site and the house has evolved over time. The size of the property has dwindled as the portions of the property were sold off by the various owners of the house. The surrounding property has been subdivided and is currently being redeveloped as single family residences.

*Design* - the house has evolved over time beginning in the 1870s and up to 2015. Due to the later additions, much of the form of the house is obscured from view. In its current form, the house does not retain any specific period of design. The current form of the house is a result of halting the demolition when the earlier portions of the house were discovered. The house will be restored to the third phase of evolution, the Triple-Pen period.

*Materials* - retains the majority of materials from the Triple-Pen period. However, due to the later additions, many of the materials are obscured from view and the condition is unknown.

*Workmanship* - retains the original workmanship.

*Feeling* - despite the changes to the site over time and the redevelopment of adjacent properties, the site retains a rural feel. In the present form and condition, the feeling of the earlier historic house has been lost as a result of the many layers of alterations.

*Association* – the house retains its association with William Gibson and the Peters Colony and the early settlement of Denton County.

## Architectural Condition Assessment

### Site

#### *Description*

The remaining portion of the property associated with the Gibson-Grant Log House consists of 1.03 acres of land and is located in the Town of Flower Mound at the intersection of Flower Mound Road and Quail Run, facing north (Quail Run). The house is situated on the highest portion of the site. On Quail run, the site slopes steeply up from the sidewalk. A new concrete driveway goes up the slope from the sidewalk and terminates into a gravel circular driveway at the flat portion of the property. This graveled circular driveway continues with an older concrete curb; new gravel covers old dirt and gravel on this circular driveway. There is one tree in the center of the circle and one tree between the circle and sidewalk. The steeply sloping portion of the site toward Quail Run is eroding and dirt is being washed away by rain and wind, exposing red sandstone (part of which has been broken up by the elements), and tree roots. Another area where the dirt is being washed away is around the east elevation. The remainder of the site is relatively flat around the house and slopes gently towards the sides and back of the property, and is grassy with a few trees (although grass is sporadic around the house).

There is a drain inlet with steel grate and sloped concrete perimeter near the Flower Mound/ Quail Run intersection, which at the time of the survey had metal stakes and metal mesh with plastic cover around the perimeter to prevent sedimentation runoff.

#### *Condition*

Fair. Surface drainage appears to be relatively adequate. There is an area of potential water ponding at the end of the concrete driveway, another against the house at the east and south sides of the fireplace, and another at the southwest corner of the site. The portion of the site along Quail Run seems to slope toward the drain inlet, but the side along Flower Mound Road appears to slope the opposite direction. Site is eroding at some locations.

#### *Recommendation*

Remove concrete driveway and gravel circular driveway. Remove one Bradford Pear tree and one Pine tree. Consult with an arborist for the Live Oak trees on site regarding the general health of trees and to perform any suggested tree trimming. Regrade site as required to improve drainage away from the house around the fireplace. Slope all sides of the site toward drain inlet. Remedy areas where site is eroding by planting grass or regrading. Construct approximately 200 square foot restroom building (total of 2 water closets, 2 sinks and 2 drinking fountains) in grove of trees located to the southwest of the Gibson-Grant Log House. The restroom building will be designed to look like a "Wood Shed" or other small agricultural building. Construct 12 concrete parking spaces which include 2 ADA van accessible spaces. Construct meandering sidewalks with metal edging from parking area to the front door of the house and to the "Wood Shed" (restroom) building. Construct a sloped sidewalk from the ADA parking spaces to the front porch. Site signage to include one monument sign, parking signage, directional signage and interpretative signage of site.



*Site and sandstone erosion*



*Drain inlet near corner of Quail Run and Flower Mound Rd.*

## Security

### *Description*

The property is protected by a steel pipe fence with steel mesh on the Quail Run (partial) and Flower Mound sides, and by steel mesh on stakes on the remaining sides. The steel pipe fence with steel mesh continues up the sides of the driveway, and ends with a swinging steel pipe gate at the top of the driveway, which locks. This property sits within a new residential development and across the street from an elementary school, so a fire hydrant is available nearby and the house is readily accessible by modern roads.

### *Condition*

Good. The fencing has been installed recently, and is intact. The doors of the existing house are locked.

### *Recommendation*

Provide temporary site signage, lighting and security cameras, and fire detection devices since the property has been vacated and the sides partially demolished and boarded up, the site is more vulnerable to vandalism. The opportunity for further damage or for razing by fire is possible. Construct a permanent historically appropriate fence as part of the restoration project for the Gibson-Grant Log House. Use hand split wood stile and rail construction with mortise and tenon joints to match fence at the Flower Mound site.



*Fence and gate at Quail Run*



*Fence at Quail Run and Flower Mound Road*

## Foundation and Building Framing

### *Description*

The structure was not evaluated in this report for structural integrity. A structural engineer should be consulted prior to the preparation construction documents. The foundation and crawl space of the house are only visible at the west elevation, where a newer addition was removed. Between the various additions that were built over time there are various types of foundations visible: stacked sandstone, stacked brick, wood blocking, wood studs, concrete pier and concrete trench footing. The foundation of the log house was not visible at the time of the survey. Framing of the log house (Room no. 001) consists of hewn timbers stacked vertically and joined together at the corners with half-dove tail notches. Framing for each addition consists of wood frame construction.

### *Condition*

Fair. The later concrete pier and concrete trench footing are in good condition. The stacked stone and brick and wood do not appear to provide adequate support.

### *Recommendation*

Consult with structural engineer to investigate the historic foundations and building framing. Reinforce foundations and building framing as required.

## Exterior Walls

### *Description*

The existing elevations are mostly clad in non-historic board and batten siding. At the east and west elevations, non-historic additions have been removed prior to the start of this project and the resulting openings covered with plywood and painted to match the rest of the siding. At the west elevation there is one section of board and batten siding returning from the front elevation, adjacent to several layers of historic siding that were uncovered in the removal of the additions, including "teardrop" wood horizontal siding, and wood planks covering previous window openings. Painted plywood also covers large portions of this elevation. The existing windows are non-historic aluminum double hung or picture windows, and the existing doors are also non-historic.

### *Condition*

Fair to poor. The non-historic board and batten siding at the front elevation is in good condition, but on the other elevations is deteriorated - mainly due to direct contact with the ground in many places where it suffered water damage. The condition of the historic wood siding under the plywood siding or board and batten siding is unknown.

### *Recommendation*

Remove non-historic board and batten siding, and plywood. The majority of the exposed exterior envelope of the house is not original and covers historic siding. Repair existing historic siding and replace missing portions as required to provide watertight building envelope. Paint siding to match original paint scheme. Remove non-historic windows and doors.



Front (north) elevation



West elevation showing various layers of siding

## Porches

### *Description*

The front (north) porch of the house is non-historic, and composed of an earlier (ca. 1950) center gable supported by wood columns, and shed roof additions on either side of gable extending the entire width of the house, supported by matching columns. The porch has a wood floor and is elevated from grade with wood structure at front of the porch and concrete grade beam at the two sides. The rear (south) porch is located at an inside corner, has a small shed roof and a wood floor supported by two sets of concrete steps along both sides of this corner. A tree located between these two sets of steps is encroaching into this porch and looks to be supporting the corner of the porch floor. The floor is sloped toward the house, likely due to the tree growth over time. During the selective demolition, evidence of an east side porch was uncovered in Room no 007. It is possible that the rear porch continued the length of the east elevation of the third pen. When the ceiling in Room no. 007 was partially removed, paint ghosts were found at the eve of the third pen (located at the wall between Rooms 003 and 007). These paint ghosts are regularly spaced and of similar size to the roof framing of the existing rear porch. It is highly probable that an east side porch existed in this location. No porch is located on the west elevation; however, concrete steps lead to a door, servicing the utility room (Room no. 008).

### *Condition*

Poor. The front porch wood floor has sections of wood missing. Railing posts that have been cut are still visible in the porch floor. The wood column bases are rotten. The porch column to the east looks to have had a damaged base that has been cut and the column is now supported by a piece of wood blocking; the support is inadequate and the column is shorter than the others, causing the roof over that side of the porch to lean, which causes a gap between this portion of the porch ceiling and the central portion of the porch ceiling. The concrete stair stoop at the west elevation is in good condition. The rear porch is in poor condition, the wood floor is damaged and the tree pushes against the wood floor causing it to slope toward the house. The concrete steps are leaning toward the house.

### *Recommendation*

The existing porches are not original to the house, and likely not part of the early additions. Remove non historic wood front porch and concrete utility room stairs. Temporally retain the

rear porch until after Room no. 007 is demolished for further study. Consult with a preservation architect during the demolition phase to document the obscured facades and for further analysis and investigation to determine the location and size of the porch(es). Porches are a typical feature for vernacular dwellings in this region so it is unlikely the house would not have had a porch. Construct a wood front porch and one wood side porch with handrails and guardrails. Design to meet the Preservation Standards and Treatment Objectives noted in the Master Plan Report.



East portion of front porch leaning, column and floor damage



Rear porch leaning toward the house and tree encroaching

## Roof

### *Description*

The existing exposed roof is asphalt composition shingles and is non-historic. In two locations a second roof was constructed over an existing lower roof. Above Room no. 007 a gable roof was constructed over a non-historic low sloped roof with asphalt composition shingles. Above Rooms 002 and 006 a gable roof was constructed over the historic wood shingle roof on the south side of Room no 002 and the west side of Room no 003. The wood shingles were visible though a small hole in the ceiling of Room no 006. QMc was unable to physically investigate the wood shingles during the survey, however they appear to be either painted or stained a dark color.

### *Condition*

Poor. Roofing material is held down by pieces of wood or sheets of other material covering roof damage or missing shingles. The condition of the historic wood shingle is unknown as visibility and access was limited.

### *Recommendation*

Remove the existing non-historic roofing materials and framing obscuring the historic wood decking or wood shingles. Consult with a preservation architect during the demolition phase to document the obscured roofs and for further analysis and investigation to determine the historic color of the roof and type of wood shingles used. Salvage historic wood shingles for further testing and for archival purposes. Consult with a structural engineer to investigate the structural integrity of the historic roof framing. Reinforce the roof structure as required. Install a wood shingle roof to match the historic roof.



*Existing roofing held down by wood and other materials.*



*Existing roofing held down by wood and other materials.*

## Chimney

### *Description*

The historic chimney is constructed of red sandstone. The chimney is widest at the base steps in on the north and south side to transition to the narrower top two-thirds. The mortar color is tan with various inappropriate repairs in different colors.

### *Condition*

Poor. There is a large vertical crack at the lower portion of the chimney, which appears to have been repaired once and then cracked again, indicating further movement of the structure after the repair. The stone and mortar exhibit widespread biological growth and environmental staining. The top portion of the chimney, shaded by a large tree, is covered in lichen. The sandstone is eroded in many areas. Many campaigns of inappropriate mortar repair appear to have been undertaken over time, some with different mortar color, and some with cement mortar.

### *Recommendation*

Consult with a structural engineer to structurally stabilize the chimney. Consult with a preservation architect to determine the original mortar color and material. Remove non-historic mortar and repaint as required. Remove biological growth and lichen with gentlest means possible. Dutchman stone repair should be performed where necessary.



*Existing chimney built of red sandstone, presumably quarried locally*

## Log House/ Living Room (Room no. 001)

### *Description*

The interior of the log house is comprised of the historic log walls with very little chinking remaining, with newer wood furring strips that previously held the plaster or possibly later drywall wall finish that covered the log walls. The selective demolition completed in November 2017, removed the wood laminate floor to reveal a second layer of wood floor that most likely dates to the 1940s or 1950s. A small cut opening in the floor of the room reveals a third wood floor with boards 3 1/2" wide under the mid-century period floor, because of limited visibility it was unable to be determined if this floor is a finish wood floor or a wood subfloor installed as part of the later floor installation. A log joist was visible through the floor opening which further verifies that the dwelling was a log house and not a log cabin because it originally had a wood floor and not a dirt floor. No ceiling exists, and the wood structure of the second generation historic roof is exposed. Note the original log roof structure was removed when the second-pen (Room no. 002) was constructed. The fireplace has a stone surrounding with brick inside the opening, and has dark staining from fire over time.

### *Condition*

Poor. Most of the east and west walls remain with some of the logs cut to provide access to the first addition and accommodate a recessed book shelf. A significant number of the logs in the north and south walls have been cut out or removed entirely to accommodate late 20<sup>th</sup> century renovation efforts by previous owners. There is very little chinking left. The condition and period of the wood floor under underneath mid-century floor is unknown. The ceiling has been removed exposing the second generation roof. The original roof of the log house has been removed in its entirety.

### *Recommendation*

Infill north wall as required to reframe exterior openings and install shiplap to close in wall. In the north wall replace front entry door and picture window with historically sensitive wood door and wood double hung window. Final location and size to be determined during the demolition phase of the project. Install shiplap on the east and south wall; leave logs exposed between fireplace and southeast corner to show the ghost of the peg staircase. Remove bookcase and install shiplap on the west wall and frame door opening with molding. Install historically sensitive door in this door opening. Install period appropriate wood molding around all door and windows in this room. Remove the mid-century period wood floor to investigate the condition of wood flooring underneath. Repair any damaged areas. If any original wood floor boards are beyond repair and need replacing, use salvaged wood to match the historic wood floor boards in dimension; grain pattern and profile employ the same means of attachment as original floor. Refinish wood flooring after investigating the original finish. Install wood shiplap ceiling to match ceiling in Room no. 002. Install historically sensitive wallpaper on the walls and ceiling.



*Interior view of east wall of the log house*



*Interior view of west and north walls with current entry (north)*



*Interior view of south wall where historic entry would have been located*



*Interior view of newer ceiling structure and east wall*

## **Bedroom (Room no. 002)**

### *Description*

This room was the first addition to the historic log house, which converted the house from a single-pen log house to a double-pen house. The non-historic wood paneling on the walls was removed during the November 2017 selective demolition. Three layers of wallpaper were discovered on the inside surface of the exterior sheathing (siding) running behind the wall studs. The closet walls consist of shiplap, with one layer of wallpaper, consisting of feed sacks, directly adhered to the wood, and a second layer of muslin wallpaper over the feed sacks. In some locations remnants of newspapers can be found adhered to the walls. The wood laminate on the floor was removed during the selective demolition and a second layer of wood floor that most likely dates to the 1940s or 1950s was uncovered. It is believed that this floor covers an earlier floor based on the observations made in Room no. 001. The ceiling, much like the closet walls, has historic shiplap with wallpaper adhered to the surface.

### *Condition*

Poor. The majority of the historic fabric is covered with plywood wall covering and with laminate flooring, and is therefore not visible. The remnants of historic material that are visible are in poor condition. There is a large cut-out in the closet wall wood planks and wallpaper to allow view to the log house walls. The remaining wood planks in the closet and the ceiling wood planks are in fair condition; however the wallpaper is severely deteriorated or missing.

*Recommendation*

Infill north wall as required to reframe two window openings and install shiplap to close in wall. At this wall install historically sensitive double hung wood windows, final location and size to be determined during the demolition phase of the project when the exterior siding can be removed. Conserve existing wallpaper on east wall. Install shiplap at the south and west walls to close in wall and install two historically sensitive double hung wood windows. Install period appropriate wood molding around all door and windows in this room. Remove the mid-century period wood floor to investigate the condition of wood flooring underneath. Repair any damaged areas. If any original wood floor boards are beyond repair and need replacing, use salvaged wood to match the historic wood floor boards in dimension; grain pattern and profile and employ the same means of attachment as original floor. Refinish wood flooring after investigating the original finish. Install historically sensitive wallpaper on the walls. Conserve wallpaper on the ceiling, re-wallpaper ceiling leaving a 2'x2' exposure of historic paper.



*Interior view of south wall where historic entry would have been*



*Interior view of east wall with opening to log house*



*Interior view of closet wall with historic wood planks and historic wallpaper, with cut-out to log house wall*



*Interior view of ceiling wood planks and historic wallpaper*

## Dining Room (Room no. 003)

### *Description*

This room was part of the second addition to the historic log house, which converted the house from a double-pen to a triple-pen "T" shaped house. The non-historic wood paneling on the walls was removed during the November 2017 selective demolition. Three layers of wallpaper were discovered on the inside surface of the exterior sheathing (siding) running behind the wall studs. The west wall of the Dining Room, originally an exterior wall, was removed when a later addition was built. The wall between the Dining Room and the log house/ Living Room has also been removed, but its footprint remains on the floor; this wall had an opening at the center of the dining room side of the wall, and was removed after the installation of the wood laminate floor glued over a previous wood floor. The wood laminate on the floor was removed during the selective demolition and a second layer of wood floor that most likely dates to the 1940s or 1950s was uncovered. It is believed that this floor covers an earlier floor based on the observations made in Room no. 001. There is 4" wood base on part of the east wall, and the ghost of 4" wood base on the remaining walls. The ceiling is wood beadboard, painted; at the north end of the room, the beadboard ends are of multiple colors, they could have possibly been recycled.

### *Condition*

Poor. The remnants of historic material are visible, such as pieces of wallpaper over wood construction, but are in poor shape (only a few small pieces of wallpaper left). The beadboard ceiling is in fair condition.

### *Recommendation*

Consult with a preservation architect to investigate the location where the north wall of this room would have been located. Investigate the floor in this location (between Rooms 001 and 003) to determine the possible openings of an earlier wall. Reconstruct wall based on any additional findings from the investigation. Install shiplap at the east wall to close in wall and install historically sensitive wood door. Install historically sensitive wood door in south wall. Reconstruct west wall to match adjacent exterior board and batten wall. The number of windows to be determined during the demolition phase. Install maximum of two double hung wood windows. Install period appropriate wood molding around doors and windows. Remove the mid-century period wood floor to investigate the condition of wood flooring underneath. Repair any damaged areas. If any original wood floor boards are beyond repair and need replacing, use salvaged wood to match the historic wood floor boards in dimension; grain pattern and profile and employ the same means of attachment as original floor. Refinish wood flooring after investigating the original finish. Perform paint analysis to determine original paint color of beadboard ceiling.



*Interior view of Dining Room looking south from log house*



*Interior view of Dining Room ceiling looking south*

### **Kitchen (Room no. 004)**

#### *Description*

This room was part of the second addition to the historic log house along with the Dining Room. Non-historic lower kitchen cabinets are located on the north, east and west walls have been partially removed, no upper cabinets remain. The non-historic wood paneling on the walls was removed and a portion of the faux-brick finish was removed during the November 2017 selective demolition. Three layers of wallpaper were discovered on the inside surface of the exterior sheathing (siding) running behind the wall studs. The wood laminate on the floor was removed during the selective demolition and a layer of plywood floor was uncovered. A small cut opening in the plywood floor of the room reveals a third wood floor with boards 3 1/2" wide under the plywood. The ceiling is wood beadboard, painted. On one corner of this ceiling, muslin wallpaper is still present over the beadboard.

#### *Condition*

Poor. The muslin wallpaper on the ceiling is mostly gone, with the exception of one corner remaining, which is severely deteriorated. Most of the flooring is covered by a plywood subfloor, the condition is unknown.

#### *Recommendation*

Remove non-historic kitchen cabinets and remaining faux-brick from walls. Install shiplap to close in north wall. Install shiplap to close in east wall, install historically sensitive double hung wood windows. Reconstruct wall between Room no. 004 and 005, install shiplap to match adjacent walls. Install shiplap to close in west wall, install historically sensitive double hung wood windows. Final location and size of windows in the east and west walls are to be determined during the demolition phase of the project when the exterior siding can be removed. Install maximum of two double hung wood windows. Install period appropriate wood molding around doors and windows. Remove the plywood floor to investigate the condition of wood flooring underneath. Repair any damaged areas. If any original wood floor boards are beyond repair and need replacing, use salvaged wood to match the historic wood floor boards in dimension; grain pattern and profile and employ the same means of attachment as original floor. Refinish wood flooring after investigating the original finish. Perform paint analysis to determine original paint color of beadboard ceiling. Install historically sensitive wallpaper on the walls.



*Interior view of the Kitchen looking north*



*Interior view of the Kitchen ceiling looking north*

## **Breakfast Room (Room no. 005)**

### *Description*

This room was built after the second addition to the historic log house, extending the "T" (either to extend the kitchen or to add an additional room at the back of the house). The non-historic wood paneling on the walls and wood laminate on the floor was removed during the November 2017 selective demolition. There are no visible historic elements in this room.

### *Condition*

Poor. If any historic fabric still exists in this room, it is covered with wood plywood flooring and is not visible.

### *Recommendation*

This space will be repurposed as an office space or workroom. Remove insulation to determine if any historic fabric exists. Install shiplap to close in north wall. Install shiplap to close in east wall, install historically sensitive double hung wood windows. Reconstruct wall between Room no. 004 and 005, install shiplap to match adjacent walls. Install shiplap to close in west wall, install historically sensitive double hung wood windows. Final location and size of windows in the east, south and west walls are to be determined during the demolition phase of the project when the exterior siding can be removed. Install maximum of three double hung wood windows. Install period appropriate wood molding around doors and windows. Remove the plywood floor to investigate the condition of wood flooring underneath. This investigation would assist in determining the period of construction. Repair any damaged areas. If any original wood floor boards are beyond repair and need replacing, use salvaged wood to match the historic wood floor boards in dimension; grain pattern and profile and employ the same means of attachment as original floor. Refinish wood flooring after investigating the original finish. Perform paint analysis to determine original paint color of beadboard ceiling. Install historically sensitive wallpaper on the walls.



*Interior view of the Breakfast Room looking south*



*Interior view of the Breakfast Room ceiling looking south*

## **Dining Room Addition (Room no. 006)**

### *Description*

This room was part of the first modern addition to the house, assumed to have expanded the dining room to the west. The exterior west wall of the "T" addition at the Dining Room would have likely been demolished when this addition was built. Currently no finishes remain in this room, only exposed wood framing. However, above the opening to the Dining Room, historic board and batten siding is visible (the battens have been removed but the ghost of the batten is still visible), suggesting this was the original exterior siding of the "T" addition. Another layer is visible to the right of the board and batten siding, where teardrop horizontal wood siding appears to overlap the board and batten. Furthermore, teardrop horizontal wood siding is also visible on a portion of the wall in the Hallway (the wall between Hallway and Bedroom), which was the exterior wall of the first addition to the house. Board and batten may have been the exterior siding on both first two additions, which later may have been covered with teardrop siding.

### *Condition*

Poor. No finishes remain in this room, only exposed wood framing, and some historic exterior siding above the large opening cut into what was once an exterior wall.

### *Recommendation*

Prior to the demolition of this room, consult with a structural engineer to structurally stabilize the wall and roof between Room no 003 and 006. Consult with a preservation architect to investigate and document the wall between the two rooms during demolition. Remove outer layer of siding on the face of wall between Room no 003 and 006 and protect encapsulated historic board and batten siding.

Room no 006 was the location for an earlier addition (room) that had been demolished when the present room was constructed. Evidence of the earlier addition is currently visible. Consult a preservation architect during demolition study the period of construction for the missing room and to determine if it fits into the period of restoration. If the room was built during the period of restoration, the room would be reconstructed and utilized for museum storage.



*Interior view of the Kitchen looking north*



*Interior view of the Kitchen looking east*

## **Family Room (Room no. 007)**

### *Description*

This room is also assumed to have been part of the first modern addition to the house. The walls are covered with non-historic wood paneling, and the floor is covered with laminate except for the fireplace hearth, which is ceramic tile. On some of the walls the paneling has been removed, revealing the wood framing and insulation in the walls. The ceiling has exposed rafters. One of the closets adjacent to the log house has had an opening cut at the back of it to allow visibility to the log house. The only remnants of historic elements in this room are above the openings to the Kitchen and Dining Room on the west elevation, where historic board and batten siding is visible (the battens have been removed but the ghost of the batten is still visible), suggesting this was the original exterior siding of the "T" addition (same as on the other exterior side wall of the "T" in the Dining Room Addition).

### *Condition*

Poor. The room is partially demolished, with insulation and flexible ducts hanging from the wall cavity and ceiling rafters. On some walls where wood paneling is still present, this paneling is in good condition.

### *Recommendation*

Prior to the demolition of this room, consult with a structural engineer to structurally stabilize the wall and roof between Room no 003 and 007. Consult with a preservation architect to investigate and document the wall between the two rooms during demolition. Remove outer layer of siding on the face of wall between Room no 003 and 007 and protect encapsulated historic board and batten siding.



*Interior view of the Family room looking north*



*Interior view of the Family Room looking south*

### **Utility Room (Room no. 008)**

#### *Description*

This room is assumed to have been the second modern addition to the house. The walls are covered with non-historic wood paneling, and the floor is covered with laminate. The only visible historic fabric in this room is in the wall to the Kitchen, where through selective demolition an area of exterior wall of the "T" addition was uncovered. This wall is clad in horizontal teardrop siding, reinforcing the assumption that while board and batten may have been the original exterior siding on the "T" addition, this may have been covered later with teardrop siding.

#### *Condition*

Fair. The wood paneling covers the historic siding of the "T" addition, and its condition is unknown.

#### *Recommendation*

Prior to the demolition of this room, consult with a structural engineer to structurally stabilize the wall and roof between Room no 004 and 008. Consult with a preservation architect to investigate and document the wall between the two rooms during demolition. Remove outer layer of siding on the face of wall between Room no 004 and 008 and protect encapsulated historic board and batten siding.



*Interior view of the Utility room looking south*

## Treatment Recommendations

### Preservation Objectives

While this is typically a component of a Historic Structures Report (HSR), this task was completed in the Master Plan Report. Reference the Preservation Objectives in the Master Plan Recommendations section.

### Treatment Standard

While this is typically a component of a Historic Structures Report (HSR), this task was completed in the Master Plan Report. Reference the Treatment Standard in the Master Plan Recommendations section.

### Further Analysis

Suggested items for further analysis and testing have been prioritized and are listed below. These items are not required but may be useful to expand on the data uncovered through researching the history of the site and the selective demolition.

#### Priority One - Paint Analysis:

During the third phase of investigation, interior finishes were removed which revealed exterior siding and wood roof shingles which had been encapsulated through a succession of additions. QMc recommends an analysis of the clapboard siding installed during the Double-Pen period, and the board and batten siding installed during the Triple-Pen period to identify paint color and age of paint layers. Additionally, an analysis of any exterior wood trim would identify if the house details were painted a different color. The potential to date the age of construction for the additions could be achieved through identifying the age of paint layers.

#### Priority One - Mortar Analysis:

An analysis of the mortar used in the construction of the stone chimney would reveal the original mortar used. Earlier settlers often used mud between layers of stone instead of lime or cement mortar. This testing would determine if any of the original mortar remains and the composition of the material used.

#### Priority Two - Wallpaper Analysis:

Wallpaper was uncovered during the third phase of investigation after wood paneling was removed from several of the rooms. Denton County Office of History and Culture was present during the selective demolition and removed several large samples of the wallpaper for archival purposes. It may be useful to further investigate the wallpaper in an effort to date the construction of the additions through researching the patterns, type of paper used or separating the layers of paper. In Room no. 002, newspaper was used as one of the base layers of wallpaper and could include a date.

#### Priority Three - Wood dating and identification:

As noted in the methodology, samples were taken of the logs and dated by the University of Arkansas. Additional wood dating and identification could be useful in determining the age and type of wood used in the construction of the additions by collecting samples from the clapboard siding, board and batten siding, as well as the roof rafters.

## **Appendix A: Tree-Ring Dating of the Gibson Log Cabin, Flower Mound, Texas**

## **Appendix B: Gibson-Grant Log House Existing Drawings**

Note that the site plan is not a site survey and was drawn using Google Earth. The approximate location and size of site features are depicted.

A0.I Existing Site Plan

A1.I Existing Floor Plan

Replace this page with the drawings in the PDF.



**GIBSON-GRANT LOG HOUSE  
TOWN OF FLOWER MOUND, TEXAS  
MASTER PLAN**

**Prepared for  
The Town of Flower Mound  
Flower Mound, Texas**



**Quimby McCoy Preservation Architecture, LLP  
3200 Main Street #3.6  
Dallas, Texas 75226**

**February 19, 2018**

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## Executive Summary

The Gibson-Grant Log House, constructed in 1860-1861, is of exceptional historical significance as one of the few remaining log structures of mid-nineteenth century still standing on its original site in Denton County. The house is historically significant for two reasons, for its association with William Gibson, a Peters Colonist and because it exemplifies the evolution of early homesteads on the Texas frontier.

The Gibson-Grant Log House does not retain a great degree of historic integrity, due to the multiple additions that converted the house from a single-pen log house to a double-pen and later a triple-pen "T" configuration house, causing the removal of the original log house roof and cutting openings in the original log walls. As it was typical with log houses from that era, as the family gained wealth or their family needs expanded, additional rooms were added on to the log houses, called "pens". Originally the Gibson log house was a 16'x16' one-pen log house, with the entrance facing south and likely with a second floor sleeping loft. Despite this lack of integrity of the log house itself, the Gibson-Grant homestead - including its early additions - is significant as a whole, as it exemplifies the evolution of early settlers' homesteads in Texas, as their family needs changed or their wealth increased over time.

Both the house and the site have evolved over time with most of the property being sold off at various times throughout history. The remaining portion of the property associated with the Gibson-Grant Log House is located at the intersection of Flower Mound Road and Quail Run, facing north (Quail Run). The house is situated on the highest portion of the site. On Quail run, the site slopes steeply up from the sidewalk. The existing elevations are mostly clad in non-historic board and batten siding. At the east and west elevations, non-historic additions have been removed prior to the start of this project and the resulting openings covered with plywood and painted to match the rest of the siding.

The Town of Flower Mound acquired the property from Curtis Grant with the intent of restoring the historic house. The house was named by the Town of Flower Mound in recognition of the original owner, William Gibson and Curtis Grant who donated the house to the town. QMc was contracted to prepare the Historic Structure Report and Master Plan to guide the restoration of the historic house. The HSR and Master Plan reports are coordinated and work together; therefore both should be referenced for planning efforts for the Gibson-Grant Log House.

This report serves as a tool to planning the next phase of the house's evolution by establishing Preservation Objectives, Treatment Standards and recommendations. The recommendations are based on the site's history, the Secretary of the Interior Standards and the building's existing conditions. The general intent of this restoration project is to preserve the elements of the house from the Phase 3 period (Triple-Pen form with extension) while removing the later additions and modifications. The missing elements will be replaced and based on physical or historic documentation.

The Phase 3 period is selected as the preferred period of restoration. This period retains the early historic changes that occurred to the original Single-Pen House. It includes the original log house, two additions (creating the Triple-pen) and a small extension at the rear. The period also retains a large portion of the original siding and paint layers which can be used to restore the exterior of the house with little conjecture.

This project will not only preserve an exceptional historic house but the public will have the opportunity to get a glimpse into the lives of some of Denton County's earliest settlers, and learn the story of how they lived and how their dwellings evolved over time.

## Introduction

In 2017 Quimby McCoy was contracted by the Town of Flower Mound to prepare a Historic Structure Report and a Master Plan for the Gibson-Grant Log House. The log house, dating from 1860, was discovered inside the walls of a seemingly modern-day residence in the Town of Flower Mound, Denton County.

In 2015, Curtis Grant, a Flower Mound developer who bought the subject property with the intent of demolishing the existing house and subdividing the lot for residential development, discovered the historic log house inside the living room walls, with newer construction built around it in stages. He immediately contacted the Denton County Office of History and Culture to report his findings and seek information and guidance. Further investigation by the Denton County Office of History and Culture revealed that this was likely an early log house built by settlers who came to Texas as part of the Peters Colony, the earliest settlement in Denton County.

The Town of Flower Mound acquired the property the same year with the intent of restoring the historic log house. Further research and testing was undertaken by the University of Arkansas Tree-Ring Laboratory; by taking core samples of the logs and remaining chinking and analyzing them, the Tree-Ring Laboratory team determined that the logs had been cut between 1857 and 1860 and stockpiled on site awaiting construction, which was undertaken between 1860-1861.

The recommendations provided herein are intended as part of a plan for the restoration of the historic log house and surrounding historic additions and to serve the owner's goals for the use of the building and property.

## Statement of Goals and Purpose

The purpose of this report is to serve as a guide in the restoration of the Gibson-Grant Log House. The report serves as a tool to document the conditions of the site and house, and to plan for the overall utilization of the site and house. This framework will preserve the historic features of the house while enabling the introduction of improvements, allowing the public to benefit from the interpretation of the evolution of the building, and providing a greater understanding of life as an early settler in the region. The recommendations provided herein are intended to protect and prolong the existence of the building and site features, by retaining as much of the original materials as possible through stabilization and preservation efforts. A goal of the report is to provide understanding of the site's history, existing conditions, and the owner's desires for the site, study potential improvements, and make recommendations for the restoration of the historic log house for future use.

## Methodology

The QMc team conducted a multi-phased analysis beginning in the summer of 2017 in order to develop a Historic Structure Report for the Gibson-Grant Log House. The first phase included a visual investigation and evaluation of existing conditions of the historic log house and later additions. Photographs and measurements were taken, and general conditions were noted. The investigation was performed from both the exterior and interior. Access to some of the construction elements such as foundations and roof structure, as well as access to some of the historic fabric that had been covered over time by newer construction, was limited.

The second phase included historic research, and was concurrent with the physical analysis of the log house and site. As prior historic research had been completed by the Town of Flower Mound and the Denton County Office of History and Culture, this information provided an initial understanding of the property's early history and its first owners. The QMc team conducted additional research to gain a broader understanding of the family's history and the evolution of the structure and site. This included research into historic records online through the Denton County Clerk's office, Denton CAD, Census Records, and the Denton Public Library. Additional research into log buildings was obtained from *Texas Log Buildings, A Folk Architecture* by Terry G. Jordan.

QMc then analyzed the information gathered in the first two phases in an effort to peel back the many layers of alterations that have occurred over time, develop a chronology of changes, and create diagrams to visually chart these changes. QMc prepared interpretation options and presented them at a preliminary draft meeting to the Town of Flower Mound. At this meeting QMc discussed the evolution of the house over time and the need for selective demolition in an effort to provide greater understanding. QMc was directed to refine the *Triple-Pen House with extension form* as the preferred option of interpretation.

The third phase of analysis was the visual investigation and evaluation of the selective demolition locations. The investigation provided further insight into the evolution of the form of the house as well as a better understanding of the layers of exterior siding; providing a clearer picture of appearance of the house during the *Triple-Pen House* period. However, much of the exterior of the house remains obscured because of later additions and layers of siding. The later additions and siding should be kept in place until the Town is prepared to begin the demolition and renovation of the house. It is difficult to accurately discern any particular period of evolution for the interior at this time due to extensive alterations. QMc recommends that a preservation architect be involved throughout the demolition phase to document the obscured facades and for further analysis and investigation of the interior.

As stated above, the first phase of the project involved an analysis of the physical conditions. This was undertaken by a team of two preservation architects. Testing of materials was not conducted in this effort by QMc; however, prior to QMc's work a tree-ring dating of logs from the log house was conducted by David W. Stahle at the University of Arkansas Tree-Ring Laboratory and is included in the appendix. The analysis of the physical conditions by QMc was undertaken to establish the existing construction materials and general conditions, and to define preliminary recommendations for addressing each of the conditions and future needs resulting in the Historic Structure Report (HSR). The Historic Building Master Plan is a complimentary document which incorporates and builds upon the recommendations of the HSR. The HSR and Master Plan reports are coordinated and work together; therefore both should be referenced for planning efforts for the Gibson-Grant Log House.

## **Master Plan Participants**

### **Town of Flower Mound**

Debra Wallace - Deputy Town Manager / Chief Financial Officer

Gary Simms - Community Services Executive Director

### **Denton County Office of History and Culture**

Peggy Riddle - Director

Kim Cupit - Curator of Collections

### **Quimby McCoy Preservation Architecture**

Nancy McCoy, FAIA, FAPT

Justin Curtsinger, AIA

Andreea Hamilton, AIA

## **Historical and Architectural Development**

While this is typically a component of a Master Plan Report, this task was completed in the Historic Structures Report (HSR). Reference the Historical and Architectural Development section in the HSR.

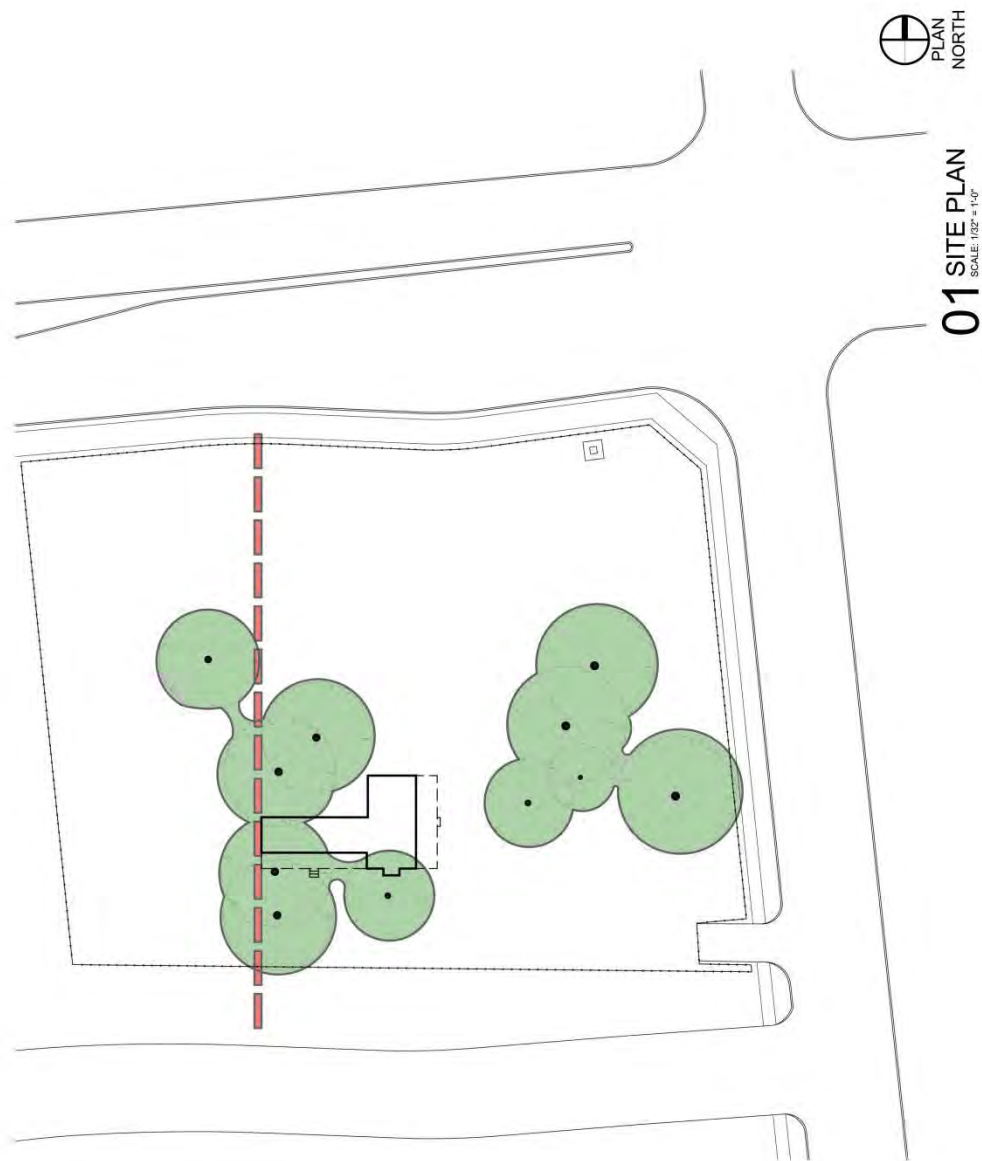
## **Architectural Condition Assessment**

### **Evaluation of Existing Conditions**

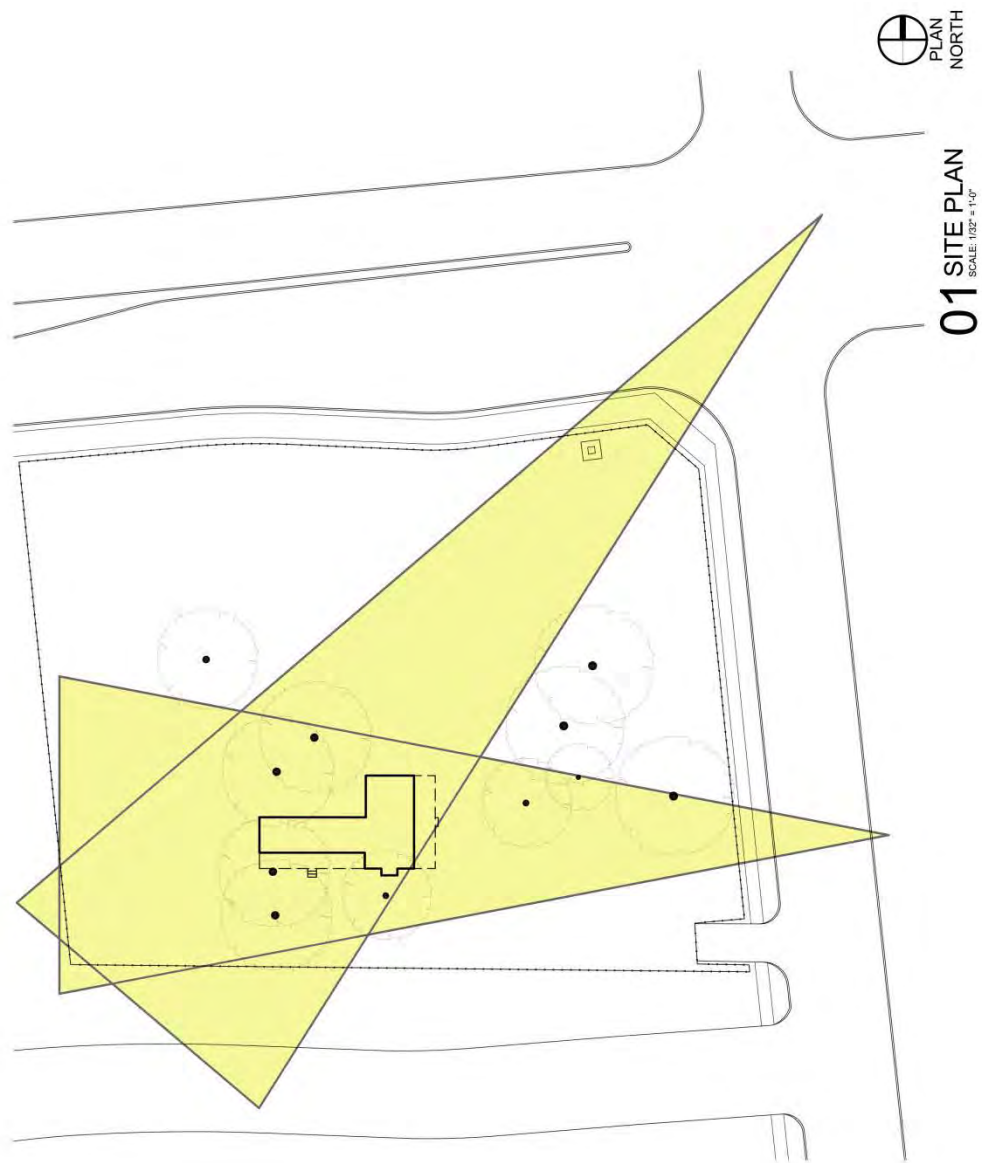
While this is typically a component of a Master Plan Report, this task was completed in the Historic Structures Report (HSR). Reference the Architectural Condition Assessment section in the HSR.

## Site Analysis

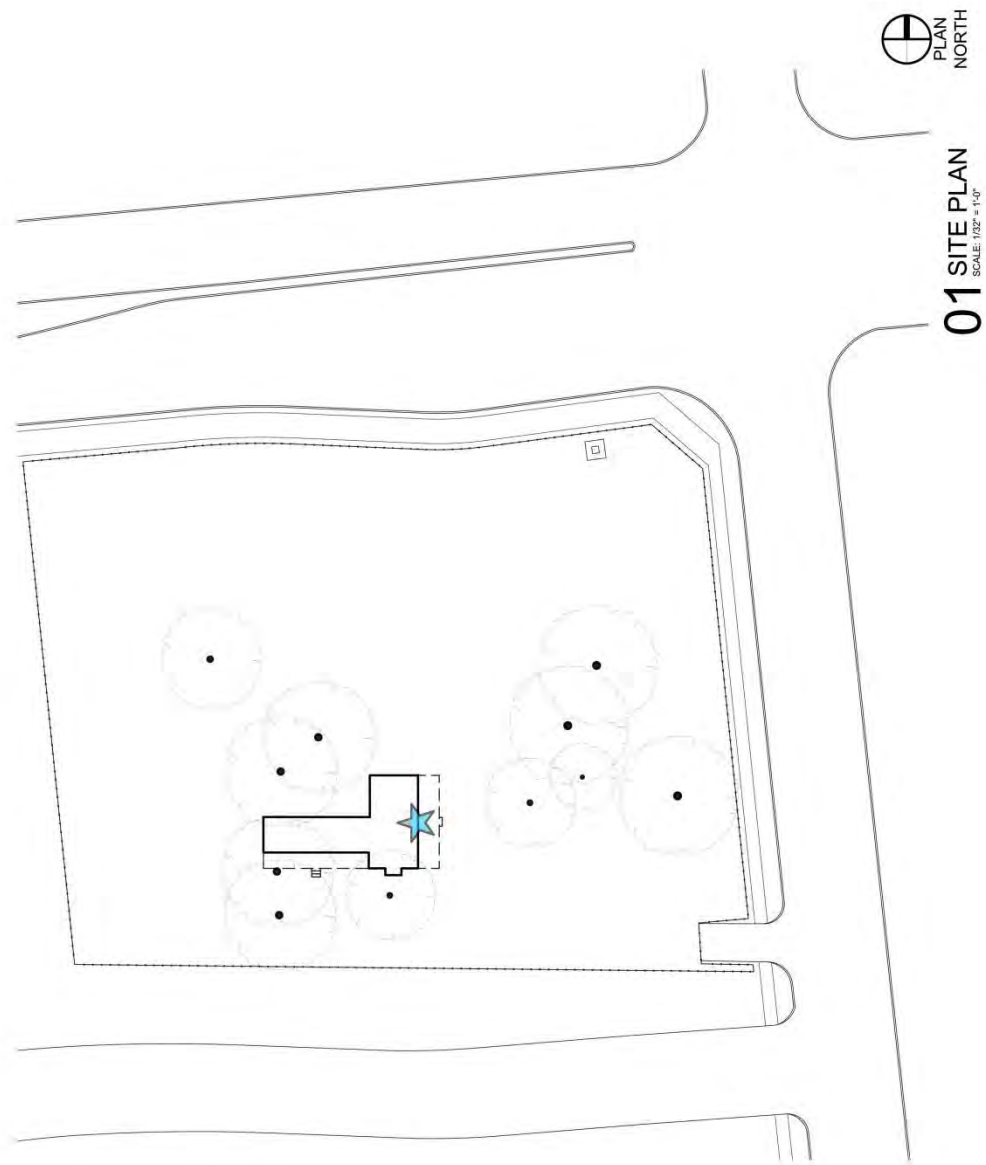
Maintain rural feel by protecting trees and locate new construction behind house.



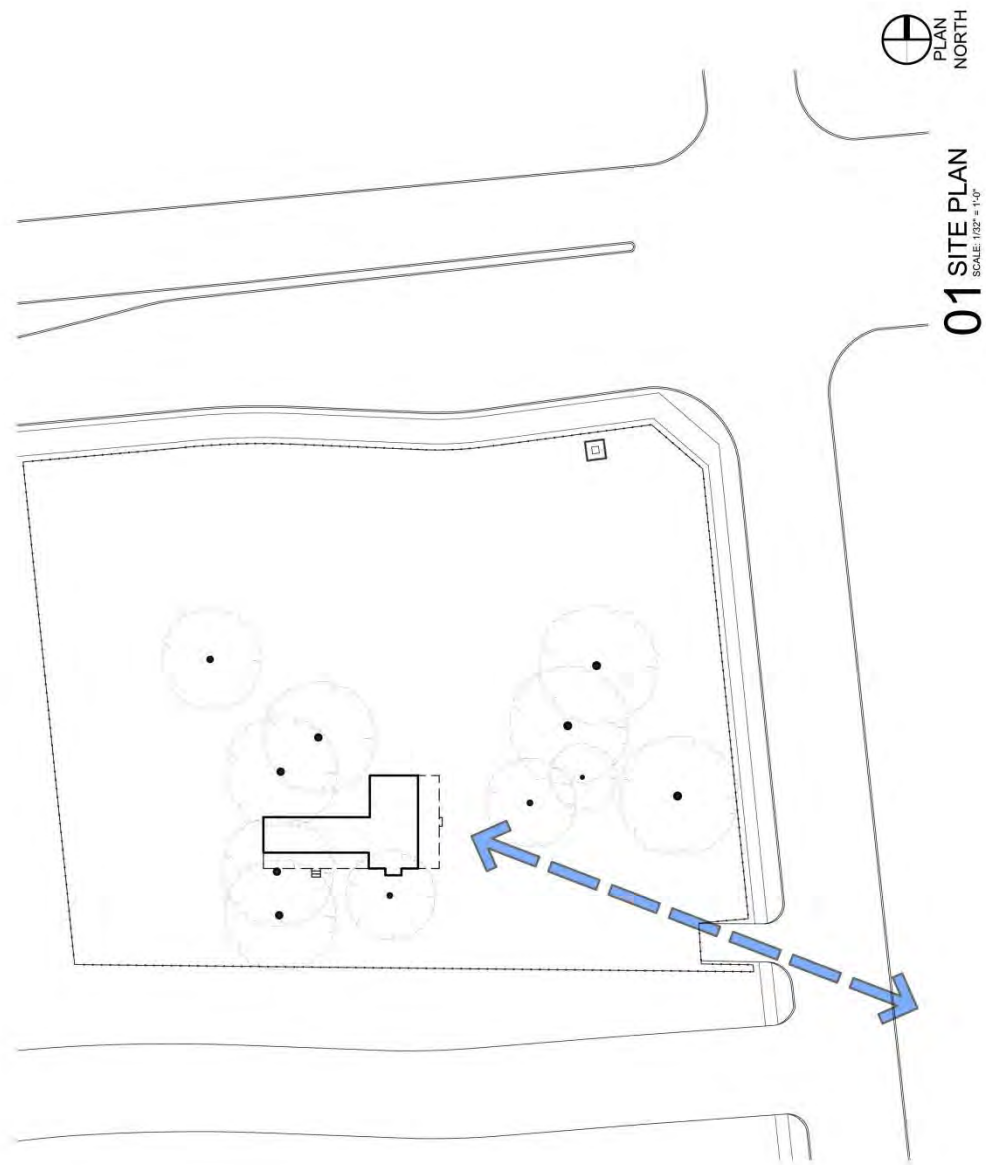
Preserve primary sight lines from intersection of Flower Mound Road/Quail Run and the front of property.



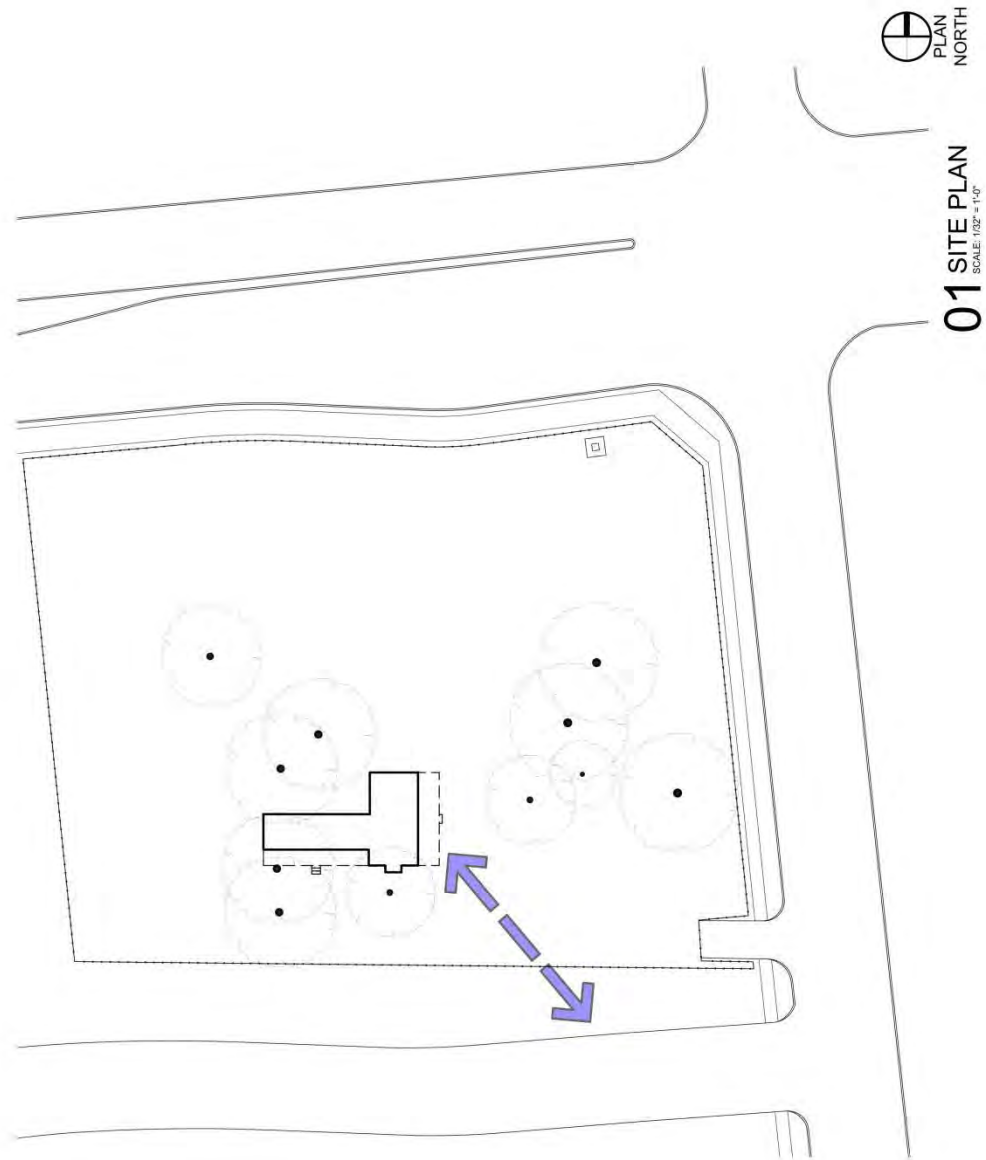
Use front entrance of house.



Provide pedestrian access from street.

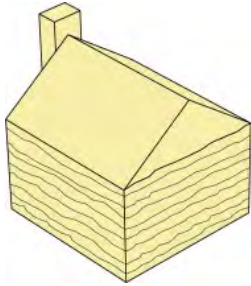


Provide ADA access to front door from parking.



## Form and Exterior Evolution

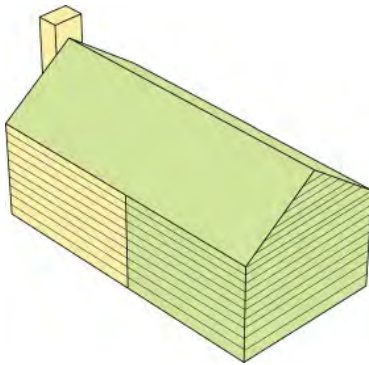
The following diagrams and photographs depict the evolution of the house exterior:



*Single-Pen – Log Exterior*



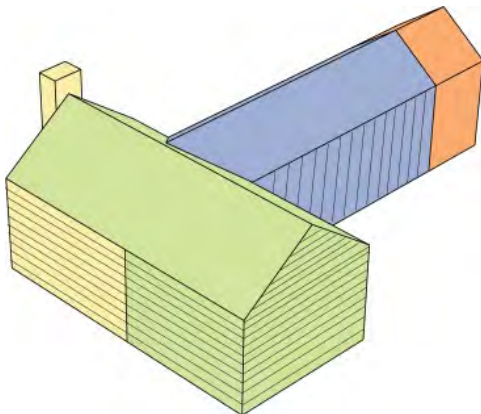
*Log house visible from interior of house. Constructed between 1860 and 1861 is one pen measuring 16' x 16'.*



*Double-Pen – Clapboard Siding*



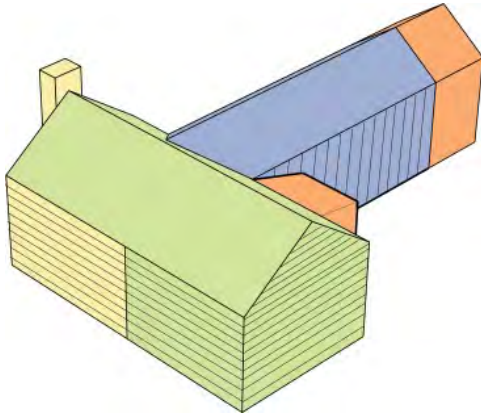
*When the second pen was added to the west of the log house, the entire house was clad in clapboard siding. This siding can be found within the east and west walls of the house.*



*Triple-Pen with extension –  
Clapboard, and Board and Batten*



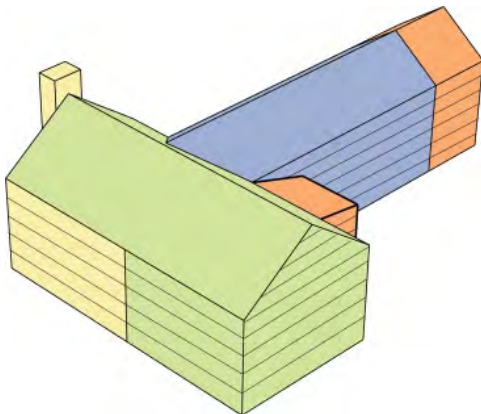
*The third pen was constructed in clad with board and batten siding. The earlier two pens remained clad with clapboard siding.*



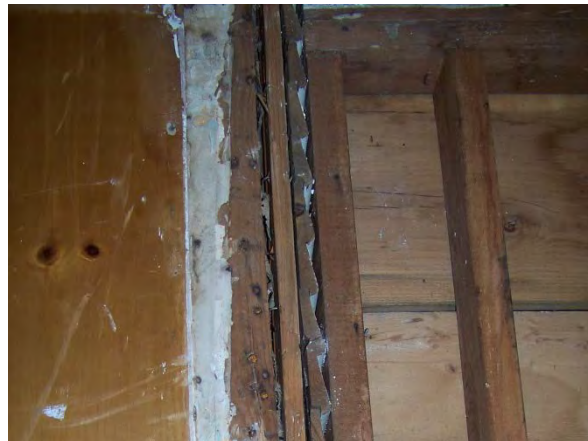
*Triple-Pen with Corner Room –  
Clapboard, and Board and Batten*



*Small additions to the house occurred prior to the addition of the tear-drop siding. Photograph above shows the tear-drop siding cut at the angle of one of the roofs and remnants of asphalt shingles.*



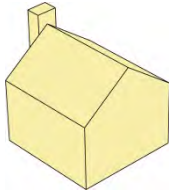
*Triple-Pen with Corner Room –  
Teardrop Siding*



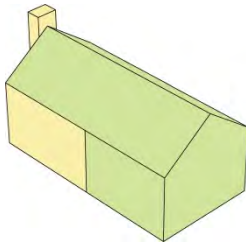
*Tear-drop siding was installed over the previous house sidings. Photograph above a section through the third pen wall showing the tear-drop siding covering the board and batten siding.*

## House Restoration Options

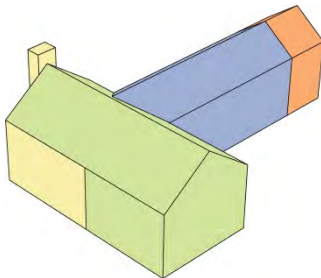
The following options for interpretation and restoration of the structure were explored:



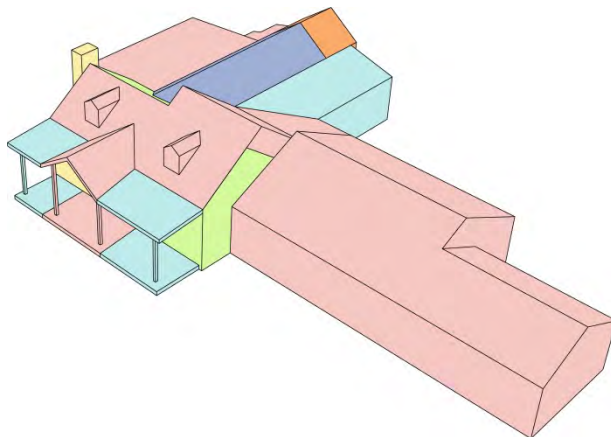
Phase 1 - Single-Pen House form



Phase 2 - Double-Pen House form



Phase 3 - Triple-Pen House with extension form



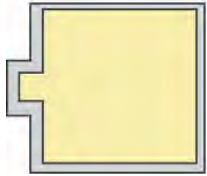
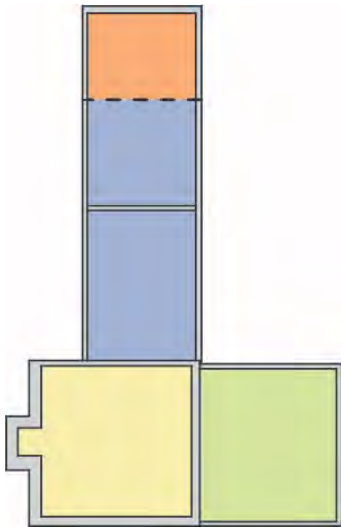
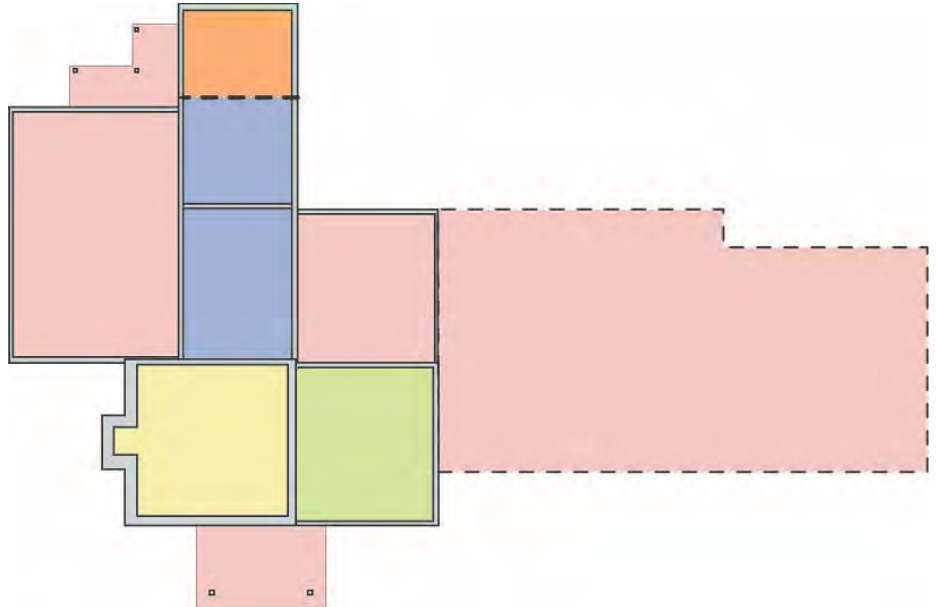
c. 1950 form

*Single-Pen House form:* not enough historic material remains in its original location to make this option true to the house's original interior or exterior; it would require conjecture and the reconstruction of a substantial amount of material. In addition, it could not serve as a functional building, but appear more like an artifact.

*Double-Pen House form:* same problems as noted for the Single-Pen form. While two rooms are more functional than one, functional requirements (like back of house spaces) would require the construction of additional structures to accommodate these functions.

*Triple-Pen House with extension form:* This form retains the early historic changes that have occurred to the original Single-Pen House. It includes the original log house, two additions (creating the Triple-pen) and a small extension at the rear. Some conjecture would be required for the reconstruction of missing features. However, enough historic material exists and is visible behind later additions and modifications to inform design decisions. The benefit to this form is that it could accommodate space for back of house spaces and displays the evolution of early Texas houses on the frontier.

*c. 1950 form:* This form retains the historic changes that have occurred to the original Single-Pen House and has the added benefit of photographic documentation. However, the period is an arbitrary one to restore to and the level of demolition that has occurred makes this impractical. The west addition and much of the interior finishes have been removed.

*Single-Pen House form plan**Double-Pen House form plan**Triple-Pen House with extension form plan**c. 1950 form plan*

## Master Plan Recommendations

### Preservation Objectives

In the process of site analysis and evaluating building's existing constraints and opportunities, the following design principles were developed.

#### Site

- Maintain rural feel of site.
- Preserve primary sight lines of house.
- Locate new construction in sympathetic locations on site.
- Use front door as primary entrance.
- Provide pedestrian access.
- Provide handicapped access to site.

#### Building

- Preserve evolution and restore house to the Phase 3 period.
- Distinguish modern interventions from the historic fabric of the house, unless evidence exists for original element.
- Distinguish new restroom building from historic house while providing a sympathetic design.
- Desired designations to include: listing on the National Register of Historic Places, Texas Historical Commission Subject Marker, Denton County Subject Marker, Town of Flower Mound Historical Marker.

### Treatment Standard

As stated in the Statement of Goals and Purpose, this report serves as a guide in the restoration of the Gibson-Grant Log House. The recommendations are based on the Secretary of the Interior Standards, the building's existing conditions, and QMc's understanding of the owner's goals.

The Secretary of the Interior Standards provide four approaches (or treatments) for sensitively altering historic buildings. These standards promote historic preservation best practices to protect the character of historic buildings. The four treatments of historic buildings are: preservation, rehabilitation, restoration and reconstruction. Because of the uniqueness of the Gibson-Grant Log House and the intended future use, QMc recommends the restoration of the building. The general intent of the restoration treatment is to preserve elements from a particular period of time while removing evidence of other periods. Missing elements from the "restoration period" should be replaced and with the new element based on physical or historic documentation.

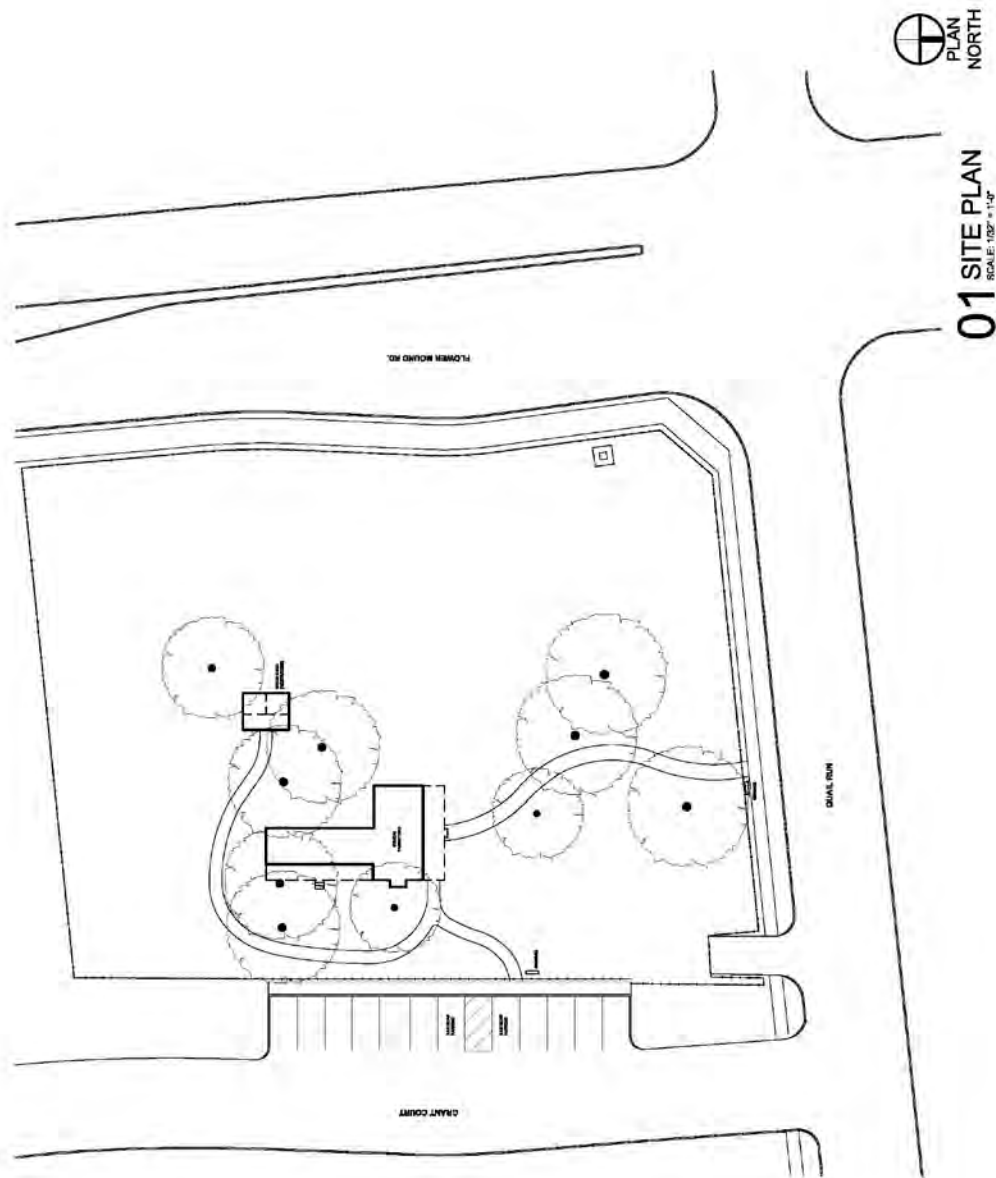
### Preferred Option

*Triple-Pen House with Corner Room – Clapboard, and Board and Batten*

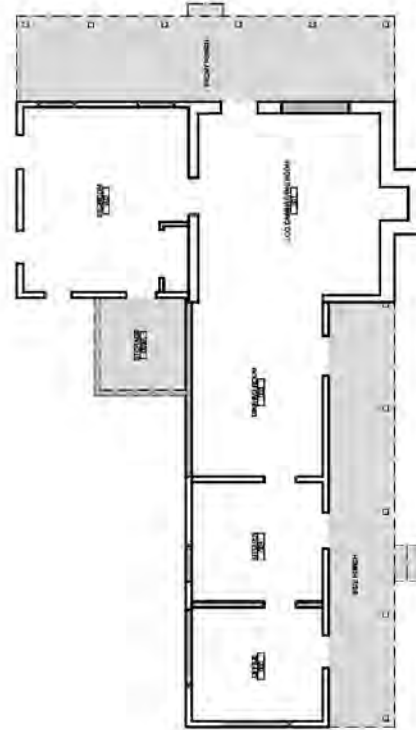
This period was selected and the preferred period of restoration at the October 2017 meeting. This form retains the early historic changes that have occurred to the original Single-Pen House. It includes the original log house, two additions (creating the Triple-pen) and a small extension at the rear. The period also retains a large portion of the original siding and paint layers which can be used to restore the exterior of the house with little conjecture. Additionally, the size can accommodate some space for back of house functions.

## Proposed Site Plan

Note that the site plan is not a site survey and was drawn using Google Earth. The approximate location and size of site features are depicted.



## Proposed Floor Plan



**01 FLOOR PLAN**  
SCALE: 1/8" = 1'-0"

### LEGEND

- EXISTING WALLS TO REMAIN
- WALL OR PARTITION
- ELEMENT TO BE DETERMINED DURING DEMOLITION PHASE

## Phasing Plan

The recommendations provided in the Master Plan Report and the Historic Structure Report for the Gibson-Grant Log House can be prioritized and implemented in a variety of ways depending on the needs of the Town of Flower Mound. The following are the two options that QMc recommends the Town chooses from based on the uniqueness of the project.

### Option 1: One phase construction

With this option, the project would be completed in one phase of construction beginning with selective partial demolition for additional study and then continue through exterior and interior renovations and site work. The selected partial demolition would occur at the conclusion of the design development submission to allow for further analysis of the existing conditions. The existing conditions would be addressed during preparation of the construction documents. At the completion of the construction documents the exterior and interior work to the house and the site work would be bid as one project.

This is the preferred option if funding is available. Option 1 would have a shorter completion schedule and in the long run lower project costs because the work would not be divided into two phases of construction.

### Option 2: Two phase construction

With this option, the process would remain the same as Option 1, but the construction work would be broken into two phases. At the conclusion of the design development submission the selective partial demolition would occur. The existing conditions uncovered during the selective partial demolition would be addressed during the preparation of the construction documents and the contractor would bid Phase One.

#### *Phase One - Exterior house work and site work*

This phase would include the work required to restore the exterior of the house, provide a weathertight building envelope, and structural work discovered during the selective partial demolition and all site work.

#### *Phase Two - Interior house work*

This phase would include the mechanical, electrical, plumbing work and the restoration of interior finishes.

This option would benefit the Town if funding for the project needed to be phased. By grouping all exterior work together into the first phase, the Town could address those items in the report visible to the public and wait to address the items not visible to the public when other sources of funding becomes available. However, by breaking the project into two phases, the construction costs and the project schedule would be increased.

## Probable Costs – Option I

A preliminary budget is established for this project. Preliminary construction costs are based on an order of magnitude of the proposed scope of work outlined in this report. These numbers include construction in 2018 dollars, along with contractor general conditions, overhead and profit. Added to the construction cost are soft costs such as professional fees and owner contingency, for a total project budget. A breakdown of the costs as follows:

### CONSTRUCTION BUDGET:

|                                                            | TOTAL               |
|------------------------------------------------------------|---------------------|
| Site Improvements                                          | \$ 235,000          |
| Structural Modifications <sup>3</sup>                      | \$ 60,000           |
| Exterior Modifications                                     | \$ 265,000          |
| Roof                                                       | \$ 65,000           |
| Interior Modifications and Specialties                     | \$ 130,000          |
| Mechanical, Electrical and Plumbing Allowance <sup>4</sup> | \$ 180,000          |
| Restroom Building <sup>5</sup>                             | \$ 250,000          |
| <b>TOTAL Construction Budget</b>                           | <b>\$ 1,185,000</b> |
| <b>SOFT BUDGET (fees and contingency) 25%</b>              | <b>\$ 296,000</b>   |
| <b>TOTAL Project Budget</b>                                | <b>\$ 1,481,000</b> |

### Notes:

1. Construction budget figures do not include escalation, special conditions such as overtime work or an extended construction schedule.
2. Soft costs include anticipated A/E fees, owner costs and a construction contingency.
3. The building's structural condition has not been evaluated as part of this report. An allowance is included for budgeting purposes for stabilization of the chimney and roof framing repairs.
4. Mechanical, Electrical and Plumbing systems were not included as part of this report. An allowance is included for budgeting purposes for new mechanical and electrical systems.
5. The allowance for the Restroom Building is based on new construction of a similar building type.

## Probable Costs – Option 2

A preliminary budget is established for this project. Preliminary construction costs are based on an order of magnitude of the proposed scope of work outlined in this report. These numbers include construction in 2018 dollars, along with contractor general conditions, overhead and profit. Added to the construction cost are soft costs such as professional fees and owner contingency, for a total project budget. A breakdown of the costs as follows:

### CONSTRUCTION BUDGET:

|                                                                      | TOTAL      |
|----------------------------------------------------------------------|------------|
| Phase I - Site Improvements                                          | \$ 235,000 |
| Phase I - Structural Modifications <sup>3</sup>                      | \$ 60,000  |
| Phase I - Exterior Modifications                                     | \$ 265,000 |
| Phase I - Roof                                                       | \$ 65,000  |
| Phase I - TOTAL Construction Budget                                  | \$ 625,000 |
| Phase I - SOFT BUDGET (fees and contingency) 25%                     | \$ 157,000 |
| TOTAL Project Budget – Phase I                                       | \$ 782,000 |
| Phase 2 - Interior Modifications and Specialties                     | \$ 130,000 |
| Phase 2 - Mechanical, Electrical and Plumbing Allowance <sup>4</sup> | \$ 180,000 |
| Phase 2 - Restroom Building <sup>5</sup>                             | \$ 250,000 |
| Phase 2 - TOTAL Construction Budget                                  | \$ 560,000 |
| Phase 2 - SOFT BUDGET (fees and contingency) 25%                     | \$ 140,000 |
| TOTAL Project Budget – Phase 2                                       | \$ 700,000 |

### Notes:

1. Construction budget figures do not include escalation, special conditions such as overtime work or an extended construction schedule.
2. Soft costs include anticipated A/E fees, owner costs and a construction contingency.
3. The building's structural condition has not been evaluated as part of this report. An allowance is included for budgeting purposes for stabilization of the chimney and roof framing repairs.
4. Mechanical, Electrical and Plumbing systems were not included as part of this report. An allowance is included for budgeting purposes for new mechanical and electrical systems.
5. The allowance for the Restroom Building is based on new construction of a similar building type.

**Further Study**

While this is typically a component of a Master Plan Report, this task was completed in the Historic Structures Report (HSR). Reference the Further Study section in the Treatment Recommendations.

**Maintenance Plan**

Once restored, regular interior and exterior cleaning, maintenance of the building shell and systems, and periodic repairs and inspections will be required.

**Wood Siding**

Visually inspect clapboard and board and batten siding for signs of rot or decay. Replace or repair deteriorated, broken or warped siding, and repair loose or cracked boards. Repaint when appropriate to prevent deterioration.

**Wood Shingles**

Visually inspect from the ground roof every two months. Remove all organic materials and other debris as needed to maintain a clean roof. Clean out gutters. Have a certified arborist trim trees as needed to prevent limbs from touching the roof. Replace any missing or dislodged wood shingles as required with matching painted wood shingles. Visually inspect from the ground painted shingles to determine condition of and repaint when appropriate to prevent deterioration.

**Wood Windows**

Inspect for proper operation, loose handles, screws or latches. Inspect sealant at intersection of window frame and exterior finish. Verify entire window system is functioning properly to prevent the infiltration of water and outside air. Repaint when appropriate to prevent deterioration.

**Wood Doors**

Visually inspect for proper operation, loose hinges and hardware, door sagging or misalignment and lost or damaged seals. Repaint when appropriate to prevent deterioration.



## TOWN COUNCIL AGENDA ITEM NO. 13

### REGULAR ITEM

**DATE:** March 5, 2018

**FROM:** David Bauer, Construction Manager

**ITEM:** Consider the approval of award of Bid No. 2018-60-B, to North Rock Construction, LLC., for the Heritage Park Phase IV project, for the base bid amount of \$1,309,937.41, and selected bid options totaling \$187,835.54, for a not to exceed amount of \$1,497,772.95; and authorization for the Mayor to execute same on behalf of the Town.

**BACKGROUND INFORMATION:** On February 7, 2018, bids were received and opened for the Heritage Park Phase IV project. North Rock Construction, LLC submitted the lowest qualified bid of the eight responding bidders at a base bid of \$1,309,937.41, with bid options totaling \$187,835.54, for a grand total of \$1,497,772.95.

Heritage Park Phase IV includes a Trellis Shade Structure, Bed Preparation and Soil Amendments with 3" of Mulch, Wildflower Mix Seeding Areas, Nature Observation Platform, Entry Sign, Sundial Entry Circle, five (1-5) Wildlife Encounter Stations with Interpretive Signage, an 18 Basket Disc Golf Course with Trash Receptacles and Benches, a Disc Golf Map and Frame, Three Culvert Crossings and a Low Water Crossing along the Trail, over 6200 feet of Eight Foot Trail, Irrigation and Landscaping.

Bid Option One provides for an additional Entry Sign, Wildflower Mix Seeding with additional Irrigation and an allowance of \$125,000.00 for an additional five (6-10) Wildlife Encounter Sculptures.

**BOARD REVIEW/CITIZEN FEEDBACK:** The Park, Arts and Library Services (PALS) board unanimously approved the Heritage Park of Flower Mound phasing plan to adjust from 5 phases to 4 phases on December 1, 2014. The Community Development Corporation (CDC) met on September 15, 2015 to recommend additional funding required to be able to build this project and approved it unanimously.

**FISCAL IMPACT:** \$1,497,772.95

| Proposed Expenditure: | Account Number(s): |
|-----------------------|--------------------|
| \$1,497,772.95        | 317-110-90708      |

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

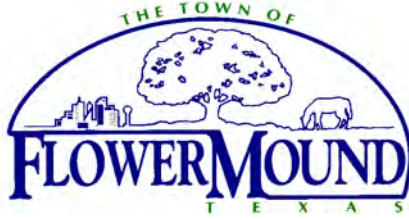
**LEGAL REVIEW:** The Town's standard construction contract agreement form documents, prepared by Taylor, Olson, Adkins, Sralla, & Elam L.L.P., were used to draft this agreement. No alteration to the legal content of this form document was made in preparation of this Construction Agreement.

#### ATTACHMENTS:

1. Bid Tab
2. Construction Agreement

**DRAFT MOTION:** Move to approve award of Bid No. 2018-60-B, to North Rock Construction, LLC., for the Heritage Park Phase IV project, for the base bid amount of \$1,309,937.41, and selected bid options totaling \$187,835.54, for a not to exceed amount of \$1,497,772.95; and authorize the Mayor to execute same on behalf of the Town.

**Town of Flower  
Mound  
Bid Tabulation**



**Bid No: 2018-60-B - Heritage Park Phase IV**

**Bid Opening: 2/7/2018 at 11:00am**

| Company                       | Total Base Bid  | Total Bid Options | Grand Total     |
|-------------------------------|-----------------|-------------------|-----------------|
| Schmoldt Construction         | \$ 1,606,595.20 | \$ 200,388.80     | \$ 1,806,984.00 |
| Cole Construction Inc         | \$ 1,463,007.50 | \$ 173,400.00     | \$ 1,636,407.50 |
| LMC Corporation               | \$ 1,920,555.00 | \$ 186,440.00     | \$ 2,106,995.00 |
| Fort Worth Civil Constructors | \$ 2,287,931.87 | \$ 233,275.00     | \$ 2,521,206.87 |
| North Rock Construction       | \$ 1,309,937.41 | \$ 187,835.54     | \$ 1,497,772.95 |
| 2L Construction               | \$ 1,643,143.00 | \$ 205,000.00     | \$ 1,848,143.00 |
| Denco Construction Specialist | \$ 1,522,578.00 | \$ 206,945.00     | \$ 1,729,523.00 |
| Northstar Construction        | \$ 1,556,568.70 | \$ 201,000.00     | \$ 1,757,568.70 |

**\*\*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  
Purchasing Manager  
Town of Flower Mound, Texas

Date: February 7, 2018

**TOWN OF FLOWER MOUND**  
**HERITAGE PARK OF FLOWER MOUND**  
**PHASE IV**

**Bid # 2018-60-B**

**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 North Rock Construction, a Limited Liability 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:

HERITAGE PARK OF FLOWER MOUND - PHASE IV  
Bid #2018-60-B

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

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

- A. The Construction Agreement;
- B. Properly executed Change Orders and Field Orders in writing and executed by the Town, the last in time being first in precedence;
- C. Any listed and numbered addenda;
- D. Special Provisions;

- E. Supplementary Conditions;
- F. Construction Drawings or Plans;
- G. Technical Specifications;
- H. Town's Standard Construction Details;
- I. The most current edition of the *Town of Flower Mound Design Criteria and Construction Standards* (by reference);
- J. *Occupational Safety and Health Standards – Excavation*, 20 CFR Part 1926 (by reference);
- K. *Texas Manual on Uniform Traffic Control Devices (TMUTCD)* (by reference);
- L. The General Conditions;
- M. *Public Works Construction Standards - North Central Texas, as amended* (by reference);
- N. Notice to Bidders;
- O. Instructions to Bidders;
- P. The Town's written notice to proceed to Contractor;
- Q. The Contractor's Bid Proposal;
- R. The Performance Bond, Payment Bond and Maintenance Bond; and
- S. Bid materials distributed by the Town that relate to the Project.

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

ARTICLE 2. For performance of the Work in accordance with the Contract Documents, the Town shall pay the Contractor in current funds an amount not to exceed **One Million, Four Hundred Ninety-Seven Thousand, Seven Hundred, Seventy-Two Dollars, and Ninety-Five Cents (\$1,497,772.95)** taking into consideration additions to or deductions from the Total Bid through properly executed change orders by reason of alterations or modifications of the original quantities or by reason of “Extra Work” authorized under this Agreement in accordance with the provisions of the Contract Documents. It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the Contractor by the Town, the said Contractor shall furnish all labor, equipment, and material (except as otherwise specified above) and shall perform all work necessary to complete the improvements in a good and workmanlike manner, ready for use, within the specified time for substantial completion of one hundred eighty (180) calendar days, and final completion of two hundred ten (210) 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 Future Agenda Items



|                  |                  |         |                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------|------------------|---------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>SCHEDULED</b> | <b>3/19/2018</b> | Consent | Consider approval of a Professional Services Agreement for the design phase services of the Justin Road Lift Station Outfall project, with Alan Plummer Associates, Inc., for \$88,900.00; and authorization for the Mayor to execute same on behalf of the Town.                                                                                                                                                         |
|                  |                  | Consent | FM 2499 Roadway, Traffic Signal & Drainage Improvements Change Order 1                                                                                                                                                                                                                                                                                                                                                    |
|                  |                  | Consent | Consider approval of a Professional Services Agreement with Alliance Geotechnical Group, for construction testing of materials and methods, for the Heritage Park Phase IV project, in the not to exceed amount of \$38,069.00; and authorization for the Mayor to execute same on behalf of the Town.                                                                                                                    |
|                  |                  | Consent | Consider approval of a Professional Services Agreement for the design phase services for the Wastewater Treatment Plant Rehabilitation Phase V project, with Alan Plummer Associates, Inc., for \$55,694.00; and authorization for the Mayor to execute same on behalf of the Town.                                                                                                                                       |
|                  |                  | Consent | Consider approval of Change Order No. 1 and final acceptance of the Canterbury Lane & Superior Place Reconstruction projects, amending the contract with 3D Paving and Contracting LLC, for a decrease to the contract in the amount of \$27,350.90, and authorizing final payment to 3D Paving and Contracting LLC, in the amount of \$57,336.03; and authorization for the Mayor to execute same on behalf of the Town. |
|                  |                  | Consent | Consider approval of the Comprehensive Annual Financial Report for the fiscal year ended September 30, 2017                                                                                                                                                                                                                                                                                                               |
|                  |                  | Consent | Consider approval of a Development Agreement with Jerry's Carwash II, Ltd. for the construction of Town infrastructure associated with the Jerry's Carwash commercial development; and authorization for the Mayor to execute same on behalf of the Town.                                                                                                                                                                 |
|                  |                  | Consent | Consider approval of Change Order No. 1 for creek bank stabilization and erosion control, associated with 3100 River Hill Court, to Knight Erosion Control, Inc., a sole source provider, in the amount of \$77,972.00; and authorization for the Mayor to execute the same on behalf of the Town.                                                                                                                        |
|                  |                  | Consent | Consider approval to renew the Town's three year Enterprise Enrollment Agreement with Microsoft to provide the town with Licensing for Office 365 , Servers, Sharepoint, Advanced Threat Protection and Desktop Operating Systems from Software One in the amount of \$176,462.49.                                                                                                                                        |

|                  |           |         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|------------------|-----------|---------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>SCHEDULED</b> | 3/19/2018 | Consent | Consider approval of the purchase of forty-four sets of bunker gear from NAFECO, Inc. through BuyBoard Purchasing Contract No. 542-17 in the total amount of \$111,524.16; and authorization for the Mayor to approve same on behalf of the Town.                                                                                                                                                                                                                                                                                                                                                                                           |
|                  |           | Consent | Consider approval of the minutes from a regular meeting of the Town Council held on March 5, 2018.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|                  |           | Regular | Consider approval of the award of Bid No. 2018-33-B to Fort Worth Civil Constructors, LLC, for phase one of the Lift Station Improvements and Decommissioning project, in the amount of \$1,492,656.00; and authorization for the Mayor to execute same on behalf of the Town.                                                                                                                                                                                                                                                                                                                                                              |
|                  |           | Regular | Public Hearing to consider a request for a Specific Use Permit No. 451 (SUP17-0008 - Wichita Trail Cell Tower) to permit a communication tower, and to consider adopting an ordinance providing for said amendment. The property is generally located north of Wichita Trail and east of Skillern Road. (The Planning and Zoning Commission recommended by a vote of to at its March 12, 2018, meeting.)                                                                                                                                                                                                                                    |
|                  |           | Regular | Public Hearing to consider a request for rezoning (MU17-0002 – Lakeside DFW/Lakeside Village) to amend Mixed Use District-1 (MU-1) to include additional land, amend certain conceptual plans and development standards in the Lakeside DFW Development Code, and request certain exceptions and modifications to the Code of Ordinances, and to consider adopting an ordinance providing for said amendment. The property is generally located west of Long Prairie Road along both sides of Lakeside Parkway. (The Planning and Zoning Commission recommended by a vote of to at its March 12, 2018, meeting.)                            |
|                  |           | Regular | Consider an adoption of a Resolution to become a partner with the North Texas Airbag Recall Coalition to disseminate information to the Community. (Transportation Commission recommended 6 to 0 to become a partner at the January 9, 2018, meeting.)                                                                                                                                                                                                                                                                                                                                                                                      |
|                  |           | Regular | Public Hearing to consider a request for a Master Plan Amendment (MPA18-0001 - Silveron Boulevard Thoroughfare Plan Amendment) to amend Section 7.0, Thoroughfare Plan, for the section of Silveron Boulevard from approximately 400 feet northeast of Long Prairie Road (FM 2499) to approximately 500 feet northeast of the Tarrant/Denton County Line, and to consider adopting an ordinance providing for said amendment. (The Planning and Zoning Commission recommended by a vote of X to X at its March 12, 2018, meeting; the Transportation Commission voted 6-0 to keep Silveron status quo at their February 13, 2018, meeting). |

|                  |                  |              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|------------------|------------------|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>SCHEDULED</b> | <b>3/19/2018</b> | Regular      | Public Hearing to consider a request for a Master Plan Amendment (MPA17-0010 – Lakeside Village) to amend Section 1.0, Land Use Plan, and Section 2.0, Area Plans, of the Master Plan to change the current land use designation from Campus Commercial use within the Lakeside Business District Area Plan to Mixed Use, and to consider adopting an ordinance providing for said amendment. The property is generally located west of Lakeside Parkway and south of Lakeside Village Boulevard. (The Planning and Zoning Commission recommended by a vote of to at its March 12, 2018, meeting.) |
|                  |                  | Regular      | PLACEHOLDER: Tree Removal Permit for QT Gas Station.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|                  |                  | Regular      | PLACEHOLDER: Tree Removal Permit for Rocky Hill Famrs                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|                  | <b>3/27/2018</b> | Work Session | Discuss Morriss Road designation and safety improvements.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|                  | <b>4/2/2018</b>  | Consent      | Bruton Elevated Storage Tank Change Order No. 1 and Final Acceptance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|                  |                  | Consent      | Consider approval of a Professional Services Agreement for the design phase services of the Denton Creek Boulevard Bridge and Water Line project, with Burns & McDonnell, for \$302,276.80; and authorization for the Mayor to execute same on behalf of the Town.                                                                                                                                                                                                                                                                                                                                 |
|                  |                  | Consent      | Consider approval of the 2018 US Army Corps of Engineer (USACe) Solicitation No. XXXX for Contract with the Town of Flower Mound for law enforcement services at Lake Grapevine; and authorization for the mayor to execute same on behalf of the Town.                                                                                                                                                                                                                                                                                                                                            |
|                  |                  | Consent      | Denton County Interlocal Agreement for Denton Creek Bridge TRIP-08 funds                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|                  |                  | Consent      | ADA - Changes to Chapters 2, 14, & 58                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|                  |                  | Consent      | 2013 Street Reconstruction - Sheffield Court and Colonial Drive Change Order No. 1 and Final Acceptance.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|                  |                  | Consent      | Consider approval of the minutes from a regular meeting of the Town Council held on March 19, 2018.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|                  | <b>4/16/2018</b> | Consent      | Lakeside Lift Station and Force Main Change Order 3 and Final Acceptance.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|                  |                  | Consent      | Lake Forest Boulevard Water Line Testing Award.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|                  |                  | Consent      | Lake Forest Boulevard Roadway Improvements and 12-Inch Water Line Construction Award.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|                  | <b>5/8/2018</b>  | Consent      | Heritage Park Phase III Change Order No.1 and Final Acceptance.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|                  |                  | Consent      | Shady Point Acres Water Line Change Order 2 & Final Acceptance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

**SCHEDULED** 5/8/2018 Regular

Consider approval of an ordinance canvassing and declaring the results of a general election held May 5, 2018, for the purpose of electing the offices of Mayor, Town Council Place 2, and Town Council Place 4; establishing procedures for those elections; and providing an effective date (subject to change depending on any outstanding ballots & EVBB)