

## AGENDA

### FLOWER MOUND TOWN COUNCIL REGULAR MEETING

11/19/2018

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. Small Business Saturday (November 24, 2018) Proclamation
2. Discuss and consider the Outstanding Citizen Award Program and adding a new Lifetime Achievement category.

**E. PUBLIC COMMENT**

To speak to Council during public comment, please fill out a [comment form](#).

- Turn in form by 6:10 p.m. to Town Secretary
- Speakers are limited to 3 minutes, a tone will sound at 30 seconds left and when time has expired
- Please state your name and address when speaking

The purpose of this item is to allow the public an opportunity to address the Town Council on issues that are not indicated as a "Public Hearing" on this agenda. Issues regarding daily operational or administrative matters should first be dealt with 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

**H. FUTURE AGENDA ITEMS**

The purpose of this item is to allow the Mayor and members of Council an opportunity to bring forward items they wish to discuss at a future meeting, with the understanding a consensus of Council is needed in order for that item to be placed on a future agenda and in accordance with the Town Council Agenda Setting Policy (Ord. 65-15).

**Town Council Meeting Agenda****November 19, 2018****Page 2****I. COORDINATION OF CALENDARS**

1. A regular meeting is scheduled for Monday, December 3
2. There will not be a work session on Thursday, December 20

**J. CONSENT ITEMS**

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

1. Minutes 11/5- Consider approval of the minutes from a regular meeting of the Town Council held on November 5, 2018.
2. 2018-2019 Strategic Plan- Consider adoption of the Town Council Strategic Plan for Fiscal Year 2018-2019.
3. Taser Purchase- Consider approval of the lease of 24 Taser X2 units from Axon Enterprise, Inc., in the amount of \$55,285.20 and authorization for the Mayor to execute same on behalf of the Town.
4. 2018 Water Model Update Agreement- Consider approval of a Professional Services Agreement for the 2018 Water and Wastewater Model Update project, with Kimley-Horn, for \$31,450.00; and authorization for the Mayor to execute same on behalf of the Town.
5. Bella Lago Master Plan Agreement- Consider approval of the Professional Services Agreement with MHS Design & Planning, LLC, for the design services associated with the Bella Lago Master Plan project, in the amount of \$33,975.00; and authorization for the Mayor to execute same on behalf of the Town.

**K. REGULAR ITEMS**

**Applicant  
requests  
to  
postpone  
this item**

6. ZPD18-0008-Magnolia Court- **Public Hearing** to consider a request for rezoning (ZPD18-0008 – Magnolia Court) from Agricultural District (A) to Planned Development District No. 168 (PD-168) with Single-Family District-10 (SF-10) and Agricultural District (A) uses, with certain exceptions and modifications to the Code of Ordinances, and to consider adopting an ordinance providing for said amendment, and acceptance of cash in lieu of land in the amount of \$263,088 in place of the otherwise required Park Land dedication and Park Development Fees in the amount of \$80,504\*. The property is generally located on the northwest corner of the intersection of Gerault Road and Spinks Road. (The Planning and Zoning Commission recommended approval with conditions by a vote of 6 to 0 at its November 12, 2018, meeting.)
7. Texas Enterprise Zone Project Program- **Public Hearing** to consider approval of an ordinance to participate in the Texas Enterprise Zone Program and nominate Thirty-One Gifts, LLC.
8. Firefighters Deployment- Discussion and possible ratification of effort to deploy Flower Mound firefighters to help combat the California wildfires. **(No packet content)**

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**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 551.071, 551.072, 551.074, and 551.087 for consultation with attorney, and to discuss matters relating to real property, personnel, and economic development negotiations, as follows:

a. Consultation with Attorney.

1. All matters related to Cause No. 18-9622-431; EagleRidge Operating, LLC v. Town of Flower Mound, et al.; gas well inspection fees

**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.**

- b. Discuss and consider purchase, exchange, lease or value of real property for parks and/or other municipal purposes and all matters incident and related thereto.
- c. Discuss and consider resignations, appointments, or evaluations for the following boards or commissions: Board of Adjustment/Oil & Gas Board of Appeals, Community Development Corporation, and Planning and Zoning Commission.
- d. Discuss and consider economic development incentives, including retail centers, corporate relocation/expansion/retention, senior housing, hospitality projects, and performance related to certain incentive agreements.

**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: November 16, 2018, at 2:50 p.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:** November 19, 2018

**FROM:** Theresa Scott, Town Secretary

**ITEM:** Consider approval of the minutes from a regular meeting of the Town Council held on November 5, 2018.

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**BACKGROUND INFORMATION:** The Town Council held a regular meeting on November 5, 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 as presented in the agenda caption.



**FLOWER MOUND TOWN COUNCIL MEETING OF NOVEMBER 5, 2018****PAGE 1**

**THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 5<sup>TH</sup> DAY OF NOVEMBER 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:

|                |                       |
|----------------|-----------------------|
| Steve Dixon    | Mayor                 |
| Jason Webb     | Mayor Pro Tem         |
| Claudio Forest | Deputy Mayor Pro Tem  |
| Sandeep Sharma | Councilmember Place 2 |
| Kevin Bryant   | Councilmember Place 3 |
| Jim Engel      | Councilmember Place 4 |

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   | Executive Director of Public Works |

**A. CALL REGULAR MEETING TO ORDER**

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

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

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

**D. PRESENTATIONS**

1. Presentation by Owens & Minor about "A Soldier's Child Event"

Mr. David Smith, General Manager, Owens & Minor, provided background information about the Soldier's Child Event and encouraged Flower Mound citizens and the Flower Mound Mayor/Town Council to participate in the gift wrapping on Saturday, November 17.

2. National Night Out neighborhood and poster contest winners

Officer Buck presented the various neighborhood winners with their neighborhood sign. He also announced the poster contest winners.

3. Proclamation to designate November as Arts Month in Flower Mound

**FLOWER MOUND TOWN COUNCIL MEETING OF NOVEMBER 5, 2018****PAGE 2**

Mayor Dixon presented the November Arts Month Proclamation to Cultural Arts Commission members.

4. Recycling – 'Overcoming Today's Challenges' presented by Republic Services

Robert Sloan and Jeri Harwell, Republic Services

Mr. Sloan and Ms. Harwell gave a presentation identifying or noting:

- Changes taking place in recycling, particularly as it relates to China and new restrictions and what it means to the industry as a whole
- Next steps

and they responded to the following questions or comments from Council regarding:

- What educational information regarding what is and isn't considered recyclables is available for the public, including the schools
- What are the material processing centers opportunities

**E. PUBLIC COMMENT**

*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. | Anuraq Sharma, 3604 (street name unclear) | Hindu Festival of Lights                |
| 2. | Paul Stone, 4100 Broadway                 | Community                               |
| 3. | Bryan Webb, 4112 High Rd                  | Election                                |
| 4. | Al Picardi, 1525 Lindby Dr                | Mound Foundation                        |

**F. ANNOUNCEMENTS**

Mayor Pro Tem Webb had the following announcements:

- Birthday wishes for his wife
- Wild About Flower Mound event at the Library on Nov 8
- Acknowledgement of the Town's positive business environment and the importance of getting involved

Councilmember Bryant had the following announcements:

- Expressed thanks to the Parks Department and their work on the Veterans Day Parade
- The Veterans flag relay is taking place this Friday
- Various recent accomplishments in area schools

Councilmember Engel had the following announcements:

- Various recent athletic accomplishments in area schools
- Success of the recent Art Party and noted there is a lot of talent in the community

Deputy Mayor Pro Tem Forest had the following announcements:

- Encouraged everyone to vote

**FLOWER MOUND TOWN COUNCIL MEETING OF NOVEMBER 5, 2018****PAGE 3**

Mayor Dixon had the following announcements:

- Thirty-One Gifts business coming to Flower Mound and what it means for the community
- Kudos to the Flower Mound Chamber of Commerce for another great Fiesta event
- Registration now open for the 2019 Flower Mound Citizens Academy

**G. TOWN MANAGER'S REPORT**

Mr. Stathatos gave an update on the following topics:

1. Capital improvement projects
  - Town Hall update
2. Economic Development projects
  - Thirty-One Gifts business coming to Flower Mound
  - Visio and Frontier Marketing companies new to Flower Mound
  - Two new leases coming to Lakeside, with the business name to be announced soon
  - Jerry's Car Wash soon to be opening
3. Public correspondence addressed to board members

Mr. Stathatos, Ms. Scott, and Mr. Dalton provided background information about the process previously used to distribute public email communication to board members, and summarized the new process.

There was some discussion as to whether or not that communication should or should not be included in the board agenda packet as it has been in the past.

There was consensus by a majority of Council members that going forward staff should continue with the new process of getting public email directly to board members, and to follow the same model of Town Council, where correspondence is not included in the packet.

**H. FUTURE AGENDA ITEMS**

1. Councilmember Bryant indicated he would like the Environmental Conservation Commission (ECC) to review landscaping requirements as it relates to Town properties such as right of ways and medians. In addition, he would like them to discuss ideas that would encourage HOA's to use more native grasses and drought tolerant plantings throughout the Town.

There was Council consensus to have a future agenda item in the Spring of next year to discuss it.

**FLOWER MOUND TOWN COUNCIL MEETING OF NOVEMBER 5, 2018****PAGE 4****I. COORDINATION OF CALENDARS**

Mayor Dixon announced:

- There will not be a work session on Thursday, November 15
- The next regular meeting is scheduled for Monday, November 19

**J. CONSENT ITEMS**

1. Consider approval of the minutes from a regular meeting of the Town Council held on October 15, 2018.
2. Consider approval of Town of Flower Mound EcoStruxure and AS-P upgrades including Inet Access Control.
3. Consider approval to award the installation of a Bi-Directional Antenna System for Public Safety Communications in the new Town Hall, to Crosspoint Communications LLC., in the amount of \$53,115.39.
4. Consider approval of the annual firefighter physical examinations with Huguley Memorial Medical Center through contract No. 2018-A in the total amount of \$52,520.00 and authorization for the Mayor to approve same on behalf of the Town.
5. Consider approval of the purchase of fifty sets of bunker gear from NAFECO, Inc. through BuyBoard Purchasing Contract No. 524-17 in the total amount of \$126,732.00 and authorization for the Mayor to approve same on behalf of the Town.
6. Consider approval of a Quote from Axon Enterprises, Inc. for the purchase of body worn camera products and authorization for the Mayor to execute same on behalf of the Town.
7. Consider acceptance of grant funds from the Department of Justice's Office of Justice Programs for the purchase of bulletproof vests for the Police Department as part of the FY 2018 Bulletproof Vest Partnership.

**RESOLUTION NO. 22-18**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, PROVIDING FOR THE ADOPTION OF THE PROGRAM YEAR 2018 ACTION PLAN UNDER THE TOWN'S COMMUNITY DEVELOPMENT BLOCK GRANT; AUTHORIZING THE MAYOR TO EXECUTE THE ACTION PLAN ON BEHALF OF THE TOWN AND SUBMIT IT TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; AND PROVIDING AN EFFECTIVE DATE.**

**FLOWER MOUND TOWN COUNCIL MEETING OF NOVEMBER 5, 2018****PAGE 5**

8. Consider approval of Change Order No. 1 for the construction of the Lake Forest Boulevard Roadway Improvements and 12-Inch Waterline projects, amending the contract with Joe Funk Construction, Inc., to provide for an increase to the contract in the amount of \$38,393.65; and authorization for the Mayor to execute same on behalf of the Town.
9. Consider approval of a professional service agreement with Kimley Horn and Associates Inc., to provide surveying, design, and construction documents, for the Bakersfield Restroom and Concrete Walkway project, in the amount of \$55,300.00; and authorization for the Mayor to execute same on behalf of the Town.
10. Consider approval of Change Order No. 2 for the construction of the FM 2499 Roadway, Drainage, and Traffic Signal Improvements project, amending the contract with Mario Sinacola & Sons Excavating, Inc., to provide for an increase to the contract in the amount of \$40,037.60; and authorization for the Mayor to execute same on behalf of the Town.

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

**VOTE ON MOTION:***Motion passed***AYES: FOREST, ENGEL, BRYANT, WEBB, SHARMA****NAYS: NONE****K. REGULAR ITEMS**

11. Public Hearing to consider a request for rezoning (ZPD17-0003 - NEM Senior Living) from Retail District-1 (R-1) to Planned Development District No. 154 (PD-154) with age-restricted, high-density residential use, and with certain modifications and exceptions to the Code of Ordinances, and to consider adopting an ordinance providing for said amendment. The property is generally located south of Rippy Road and east of Long Prairie Road. (Planning and Zoning recommended approval by a vote of 5 to 1 at its September 24, 2018, meeting.) (The Town Council postponed the item at its October 1, 2018, meeting, and at its October 15, 2018, meeting.)

**Staff Presentation**

Mr. Dalton gave a presentation identifying or noting:

- General and detailed location
- Photos of the subject site
- Senior housing overlay map
- Concept Plan and Elevations
- Revisions since the P & Z meeting
- Exceptions
- Development Agreement
- Park Fees
- Discussion points at the P & Z meeting

**FLOWER MOUND TOWN COUNCIL MEETING OF NOVEMBER 5, 2018****PAGE 6****Applicant Presentation**

Bobby Dollak, G & A Consultants/McAdams, 111 Hillside Drive, Lewisville

Mr. Dollak gave a presentation identifying or noting:

- Map location
- NE Construction background information
- Concept Plan
- Courtyard area (approximately 183 units)
- 55+ senior living market
- Exceptions
- Trail map
- Elevations (4 stories)
- Adjacency

and he, or Mr. Dalton, responded to the following questions from Council:

- Interest in having the developer build the bridge to Gaston Park and making the trail connection, as it would cost less for them to do it with all the available resources at the time of development than for the Town later on
- What is the need for the additional height for the project if it's going to remain four stories
- What was the cap on the units prior to the revision
- Will the trail planned be a dead end

Mayor Dixon opened the Public Hearing at 7:51 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<br/>Only</b> |
|-------------------------------------------------|-------------------------------------------|--------------------------------------|
| Ara Minassian, 115 Tanglewood Ln,<br>Double Oak | None                                      | None                                 |

Mayor Dixon closed the Public Hearing at 7:56 p.m.

There was Council discussion regarding:

- How this is the type of project Council was looking for when the senior overlay was brought forward (the need for active senior living)
- Some concerns regarding the bridge and trail connections and the park land dedication since it is a change
- Park fee reductions and how the developer is bringing forward amenities within the development that values around \$1 million
- Senior housing has been an issue in the Town a long time and this is a good step to get senior housing in the community
- The lack of the bridge (Gaston Park) is disappointing but hopefully the Town can get there in another way in the future

Councilmember Bryant moved to approve as presented in the agenda caption. Deputy Mayor Pro Tem Forest seconded the motion.

### ORDINANCE NO. 35-18

**AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, LAND DEVELOPMENT REGULATIONS, OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY CHANGING THE ZONING ON APPROXIMATELY 9.149 ACRES OF LAND SITUATED IN THE C. CHACON SURVEY, ABSTRACT NO. 299, FROM RETAIL DISTRICT-1 (R-1) TO PLANNED DEVELOPMENT DISTRICT NO. 154 (PD-154) WITH AGE-RESTRICTED, HIGH-DENSITY RESIDENTIAL USES, IN ACCORDANCE WITH THE TOWN'S MASTER PLAN AND SPECIFIC REQUIREMENTS AND EXHIBITS INCORPORATED HEREIN; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF IN ACCORDANCE WITH SECTION 1-13 OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

**VOTE ON MOTION:**

*Motion passed*

**AYES: WEBB, BRYANT, ENGEL, FOREST**

**NAYS: SHARMA**

12. Public Hearing to consider a request for a Master Plan Amendment (MPA18-0004 – Balekian Addition / CVS) to amend Section 1.0, Land Use Plan, of the Master Plan to change the current land use designation from Estate Residential to Retail use on approximately 2.48 acres of land within the Cross Timbers Protection Area, and to consider adopting an ordinance providing for said amendment. The property is generally located north of Cross Timbers Road and east of Lusk Lane. (Planning and Zoning Commission recommended denial by a vote of 6 to 0 at its October 22, 2018, meeting.)
13. Public Hearing to consider a request for rezoning (ZPD18-0004 – Balekian Addition / CVS) from Agricultural District (A) to Planned Development District No. 164 (PD-164) with Single-Family Estate District (SF-E) and Retail District-1 (R-1) uses, with certain modifications and exceptions to the Code of Ordinances, and to consider adopting an ordinance providing for said amendment. The property is generally located north of Cross Timbers Road and east of Lusk Lane. (Planning and Zoning Commission recommended denial by a vote of 6 to 0 at its October 22, 2018, meeting.)

Mayor Dixon opened items 12 and 13 and announced that the applicant has requested to postpone this item. There was Council discussion as to whether or not to take action on the item itself and make a decision, or to postpone it.

There was Council Discussion regarding:

- How it is not uncommon for Council to table an item to allow a development to make modifications to a plan
- If the plan isn't changing the Council knows what the proposal is

and Mr. Meredith, Mr. Dalton, or Mr. Dollak (G & A Consultants/McAdams - applicant) responded to the following questions from Council:

- Legal options Council has in considering this project
- What is the end objective associated with the request to postpone

**FLOWER MOUND TOWN COUNCIL MEETING OF NOVEMBER 5, 2018****PAGE 8**

- Did the applicant have meetings with the neighbors
- Whether or not there was a substantial change submitted and whether the application would need to refile

The Public Hearing was not conducted for items 12 and 13 given the subsequent Council action to postpone until December 3, 2018; however, at the request of Mayor Dixon, the speaker cards that were submitted for this purpose are included below for the record.

| <b>Support:<br/>Comments/Questions</b> | <b>Opposition:<br/>Comments/Questions</b>    | <b>Question(s)/Comments<br/>Only</b> |
|----------------------------------------|----------------------------------------------|--------------------------------------|
|                                        | Willy Sullivan, 4701 Clydesdale              |                                      |
|                                        | Jay Estabrook, 4700 Hampshire                |                                      |
|                                        | Kris Wise, 4724 Amble Way                    |                                      |
|                                        | Roy Plhak, 4720 Clydesdale Dr                |                                      |
|                                        | Lawrence Prvett, 4705 Clydesdale Dr          |                                      |
|                                        | Carolyn Costanza, 4500 Saddlewood Dr         |                                      |
|                                        | Dawn Bir, 4716 Clydesdale Dr                 |                                      |
|                                        | Kathy Blair, 5113 Forest Hill                |                                      |
|                                        | Donna Sullivan, 4701 Clydesdale Dr           |                                      |
|                                        | Larry Narrell, 4800 Fairbank Ln              |                                      |
|                                        | Laura Blair, 5113 Forest Hill*               |                                      |
|                                        | Jesse Turnan, 5113 Forest Hill*              |                                      |
|                                        | Kevin Stoner, 4728 Amble Way*                |                                      |
|                                        | Annette Plhak, 4720 Clydesdale Dr*           |                                      |
|                                        | Nat Pope, 4720 Amble Way*                    |                                      |
|                                        | Dorene Pruett, 4705 Clydesdale Dr*           |                                      |
|                                        | Michael Bir, 4716 Clydesdale Dr*             |                                      |
|                                        | Ronald Blair, 5113 Forest Hill*              |                                      |
|                                        | Ken Nunn, 4909 Kingswood                     |                                      |
|                                        | Yu-Luen May, 4720 Amble Way                  |                                      |
|                                        | Sydney Stagner, 5001 Joshua Dr               |                                      |
|                                        | Corie Stagner, 5001 Johshua Dr               |                                      |
|                                        | Katherine Grote, 165 Double Oaks, Double Oak |                                      |

\*Do not wish to speak but to record their opposition

\*\*Do not wish to speak but to record their support

Councilmember Bryant moved to postpone items 12 and 13, including the public hearing, to December 3, 2018. Deputy Mayor Pro Tem Forest seconded the motion.

**VOTE ON MOTION:***Motion passed***AYES: FOREST, BRYANT, WEBB****NAYS: ENGEL, SHARMA**

14. Consider approval to award Bid No. 2018-123-B, Flower Mound Central Fire Station Phase II, to Schmoldt Construction Inc., in the amount of \$1,457,000.00; and authorization for the Mayor to execute on behalf of the Town.



**Staff Presentation**

Ms. Wallace provided background information regarding the scope of work, including the two phases.

Councilmember Sharma moved to approve as presented in the agenda caption. Mayor Pro Tem Webb seconded the motion.

**VOTE ON MOTION:***Motion passed***AYES: SHARMA, WEBB, BRYANT, ENGEL, FOREST****NAYS: NONE****L./M. CLOSED/OPEN MEETING**

The Town Council convened into a closed meeting at 8:30 p.m. on November 5, 2018, pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.071, 551.072, and 551.087 for consultation with attorney, and to discuss matters relating to real property, and economic development negotiations, and reconvened into an open meeting at 8:41 p.m. on November 5, 2018, to take action on the items as follows:

a. Consultation with Attorney.

1. EagleRidge Operating application for variance, appeal of administrative interpretation of the gas well regulations and preemption determination appeal.

No action taken.

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

Councilmember Bryant moved to authorize staff to purchase the property in association with the FM 1171 and River Walk Drive intersection improvement project and to negotiate for the purchase of the property up to the settlement amounts as discussed in closed session; and authorize the Town Manager or his designee to close on the property should a settlement be reached and to pay all costs of said closing, in addition to the purchase price of the property, and to execute all necessary documents at closing on behalf of the Town. Mayor Pro Tem Webb seconded the motion.

**VOTE ON MOTION:***Motion passed***AYES: FOREST, ENGEL, BRYANT, WEBB, SHARMA****NAYS: NONE**

**FLOWER MOUND TOWN COUNCIL MEETING OF NOVEMBER 5, 2018****PAGE 10**

- c. 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

**O. ADJOURN REGULAR MEETING**

Mayor Dixon adjourned the meeting at 8:42 p.m. on Monday, November 5, 2018, and all were in favor.

**TOWN OF FLOWER MOUND, TEXAS**

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**STEVE DIXON, MAYOR**

**ATTEST:**

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**THERESA SCOTT, TOWN SECRETARY**



## TOWN COUNCIL AGENDA ITEM NO. 2

### CONSENT ITEM

**DATE:** November 19, 2018

**FROM:** JP Walton, Assistant to the Town Manager

**ITEM:** Consider adoption of the Town Council Strategic Plan for Fiscal Year 2018-2019.

**BACKGROUND INFORMATION:** The Town is guided by its vision statement: “The vision of Flower Mound is to preserve our unique country atmosphere, heritage, and quality of life while cultivating a dynamic economic environment.” This vision statement is embraced by the Town Council, Town Manager, and Executive Team, and underpins the Town’s strategic planning and daily operations. The Town’s strategic plan to achieve this vision is set by the Town Council during long-term planning sessions held annually. The Town has conducted strategic planning since 1997 when it first adopted its vision statement.

Goals and objectives agreed upon during previous Town Council Strategic Planning Sessions have historically been incorporated into the Town’s budget (<http://www.flower-mound.com/index.aspx?nid=314>). Separate adoption of the Town Council Strategic Plan provides clear direction on the Town Council’s goals and objectives while continuing to be incorporated into the Town’s budget.

This is the fifth year the Town has elevated its strategic planning process with documentation and adoption separate of the budget. The purpose is to raise awareness of the Town’s strategic planning efforts as well as strengthen the connection between the Town’s performance and the Town Council goals.

Upon adoption, staff will monitor the targets and provide updates to the Council as needed or as requested.

**BOARD REVIEW/CITIZEN FEEDBACK:** It is vital to the Town’s strategic planning and communication efforts to solicit Board and Commission (“Board”) input on various programs and initiatives. It is equally important that the various programs and initiatives created, reviewed, recommended, and acted on by the Town’s Boards are consistent with Town Council goals and strategic planning efforts. Ensuring consistency provides for the most effective use of the Town’s collective resources. In 2014, the Town created an input process that established guidelines to collect feedback in a consistent manner from the Town’s various Boards.

The Town’s Transportation Commission conducted an input session on January 9, 2018. The Town’s Planning and Zoning Commission conducted an input session on February 26, 2018. The Town’s Parks Board conducted an input session on April 5, 2018. The Town Council held the Strategic Planning Session on July 20, 2018, and adopted the Town Council 2018 Strategic Planning Session Summary Report on August 6, 2018.

**ALTERNATIVES/OPTIONS:** N/A

**FISCAL IMPACT:** N/A

**LEGAL REVIEW:** N/A

**ATTACHMENTS:**

1. Town Council Strategic Plan for FY 2018-2019

**DRAFT MOTION:** Move to approve as presented in the agenda caption.



# Town of Flower Mound



**2018 - 2019**

**Strategic  
Plan**





## Town Council



**Steve Dixon**  
Mayor



**Jason Webb**  
Mayor Pro Tem, Place 1



**Sandeep Sharma**  
Place 2



**Kevin Bryant**  
Place 3



**Jim Engel**  
Place 4



**Claudio Forest**  
Deputy Mayor Pro Tem, Place 5

# Vision

Established in 1997, the vision of Flower Mound is "to preserve our unique country atmosphere, heritage, and quality of life while cultivating a dynamic economic environment."

The Town of Flower Mound is guided by its vision statement: "To preserve our unique country atmosphere, heritage, and quality of life while cultivating a dynamic economic environment." This vision statement is embraced by the Town Council, Town Manager, and Executive Team, and underpins the Town's strategic planning and daily operations. The Town's strategic plan to achieve this vision is set by the Town Council during long-term planning sessions held annually. The Town has conducted strategic planning since 1997 when it adopted its current vision statement, and is designed to achieve that vision.

The following Strategic Goals were unanimously established by the Town Council during the 2015 strategic planning cycle, and remain for Fiscal Year 2018-2019:

1. Safety and Security
2. First Rate Infrastructure
3. Financial Soundness, and Operational Excellence
4. Superior Quality of Life
5. Dynamic Economic Environment
6. Regional Cooperation
7. Community Engagement
8. Quality Workforce



In order to effectively achieve the Town vision, the goals must fit into an overall coherent plan that reflects the Town's adopted vision, its purpose, the community's values, the Town's Master Plan, and the real and perceived needs of residents and businesses.

## Purpose and Core Values

The Town's purpose is to provide a healthy and safe community with essential infrastructure and vital services. This is done while protecting property values and the welfare of residents through fair and effective ordinances supported by fiscal responsibility. The community's core values are a reflection of the Town's established vision that translates into a high quality of life. Elements of the Town's vision include country atmosphere, heritage, and dynamic economic development. Those life qualities include: safety, good schools, excellent customer service, great neighborhoods, enduring development, and superior leisure opportunities among others. Residents also value open space; scenic views and corridors; trees and habitat; the ability to live, work, and play in Town; being regionally competitive to encourage employment and quality development; and having a balanced tax base.

### **Community Core Values:**

High Quality of Life: Safety, good schools, excellent customer service, great neighborhoods, enduring development, superior leisure opportunities, open space, scenic views and corridors, trees and habitat, the ability to live, work, and play in Town, regionally competitive, and a balanced tax base.

## Master Plan

With vision, purpose, and core values in mind, any strategic plan must align with the community's Master Plan. A Master Plan is a statement of a community's current and future goals and objectives. Used as a guide to direct future growth, development, and redevelopment of a community, a Master Plan plays an important role in a community's decision-making process. The plan is comprehensive in that it links the different geographic and functional components of a Town to each other in such a way that the community's goals and objectives can be achieved, issues resolved, and opportunities for improved quality of life realized. The Master Plan is a document that sets the framework for the physical development of the Town over a 20-year period. The plan includes sections devoted to land use, parks, trails, open space, roadways, water, wastewater, and economic development.

The Master Plan is also an important policy tool that sets a vision for the orderly growth and development of the Town and provides the framework for many of Flower Mound's governing policies, specifically zoning regulations. Zoning regulations provide the method of implementing the Master Plan by prescribing the use, density, and development standards for each parcel of land.



## Master Plan (cont.)

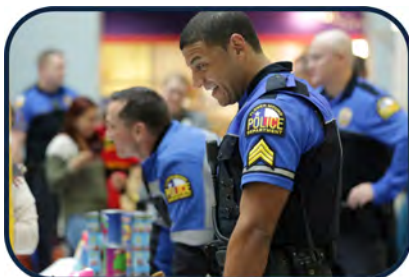
Since the adoption of the Master Plan in 2001, there have been several major updates to the document with the latest occurring in 2010-2011 to address the Urban Design Plan component. Generally, Master Plans are evaluated every 5 to 10 years which can include minor updates or comprehensive review. The Town completed a focused update of the Town's Master Plan in 2013 to ensure its stated goals are in alignment with the Town's vision, and the community's core values. The vision of the Master Plan is to further the established community-based vision to:

- Preserve the country atmosphere and natural environment that makes Flower Mound a unique and desirable community.
- Mitigate the ill effects of rapid and intense urbanization.
- Create a balanced tax base to ensure the Town's long-term economic health and prosperity.
- Ensure all development is of enduring and exemplary quality and design.

## Resident and Business Needs

The Town has several different categories of customers. Taxpayers are considered our largest and most valuable customers. Taxpayers are identified as residents and businesses within the Town's geographic borders as well as those who receive police, fire, and emergency services; infrastructure repairs and improvements; water, sewer, and trash services; recreational services; and development services. Visitors to Flower Mound are also valued customers, and considered, but not limited to, individuals who live outside the geographic borders and travel Flower Mound's roads; shop within Flower Mound's commercial districts; and utilize Town parks, trails, and other recreational venues. Visitors are also recognized as potential customers who are individuals or companies considering Flower Mound as a place of establishment for their home or business. These potential customers are identified through community surveys, input at public hearings, requests for information, and marketing efforts by our Economic Development staff.

Understanding customers' real and perceived needs is critical in developing a responsive strategic plan to bring forward the Town's vision. Over time, the Town has identified these needs.





## Strategic Planning

The desire for a high quality of life is the common link between the Town's vision, community core values, Master Plan, and needs of the community. The quality of life the Town provides places it as one of the most desirable communities in the North Texas area. Sustaining that quality of life requires discipline, obtainable and measurable goals, and commitment. Strategic planning provides a systematic approach to evaluate the Town's vision and goals, as well as make decisions and actions to guide the organization.

Developing and prioritizing the strategic goals is the first step toward making decisions. Priorities are determined by the Town Council once staff has been able to articulate budget and operational impacts, policy implications, and timing. Measurement of the goals is equally important and provided in the following performance targets.

The following is a list of the Town's strategic goals and definitions, followed by a description of the Strategic Planning process and an implementation plan outlining objectives, action items, and performance targets.

1. **Safety and Security:** Ensure the safety and security of individuals and property for those who live, work, and play in Flower Mound.
2. **First Rate Infrastructure:** Provide high-quality water, wastewater, transportation, drainage systems and facilities to meet the current and future needs of the Town.
3. **Financial Soundness and Operational Excellence:** Ensure Flower Mound's long-term financial viability and organizational success through reliable financial controls, work systems, and processes.
4. **Superior Quality of Life:** Provide opportunities for a superior quality of life expected by Flower Mound residents through high development standards, protection of public health, vibrant and sustainable neighborhoods, and ample leisure opportunities.
5. **Dynamic Economic Environment:** Cultivate a dynamic and diverse economic development environment to strengthen the local economy and ensure the long-term success of Flower Mound.
6. **Regional Cooperation:** Provide leadership and influence to promote the success of the region and ensure cooperation with other area entities.
7. **Community Engagement:** Promote open communication, transparency, and partnerships with residents and businesses.
8. **Quality Workforce:** Ensure Flower Mound's long-term success by attracting, retaining, and empowering a workforce that delivers excellent service for an excellent value.

## The Process

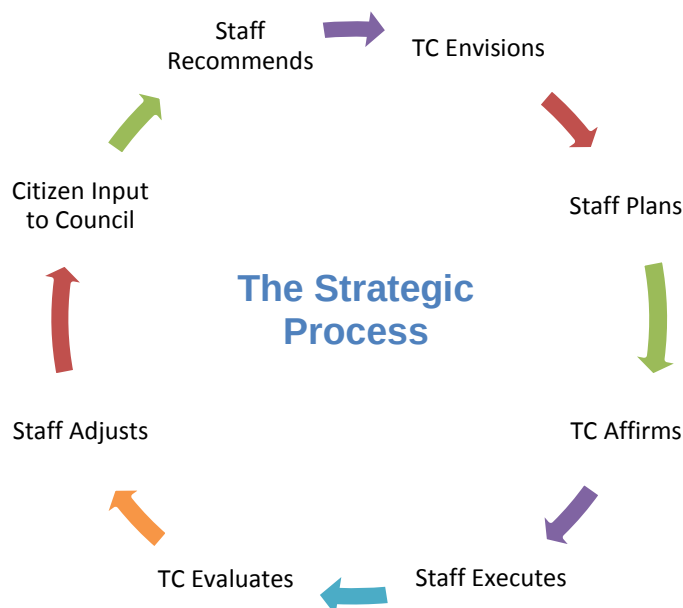
At its core, the Town uses strategic planning as a communication tool to provide a reliable system for feedback and adjustments. Below is a visual representation of the process. The process begins with the Town Council thinking about the future and developing a vision to establish the direction for the Town moving forward. This part of this process is typically accomplished during Town Council Strategic Planning Sessions.

Staff is responsible for developing and executing a plan to achieve the Council's vision. The plan is developed in concert with the Council, so there is clear understanding of the Council's vision, mutually agreed upon goals, and the plan to accomplish those goals.

The vision must be in alignment with the Town's purpose, core values, Master Plan, and the real and perceived needs of citizens. In turn, the goals, objectives, and action items must be in alignment with the vision. Creating alignment with the annual budget and the vision is critical to empower the Town to accomplish the vision. Once alignment is achieved, leaders must be diligent to maintain alignment, including continuous adjustment of the vision based on new information, changing situations, and new insights.

Communication and feedback must be maintained between Council and staff in order to preserve alignment, evaluate performance, and make adjustments due to changing factors. This enables leadership to keep the vision relevant, empowering, and achievable. To keep the communication loop open, staff presents updates to the Town Council on a regular basis to report status and performance, and to discuss necessary adjustment in real time.

During budget preparation the Town Council and staff use the plan as a guide for budget decisions, specifically to compare the priorities of the plan versus the budget priorities. The plan does not assume budget



## Goal 1: Safety and Security

### 1.1 Implement 5-year Police Staffing Plan

**Department:** Police

**Target:** Hire 3 Police Officers by September 2019

### 1.2 Create FMPD Community Service Unit that focuses on Programmatic Community Engagement

**Department:** Police

**Target:** Reorganize existing staff and hire 2 Community Service Officers by September 2019

### 1.3 Provide Police (SRO) Coverage for all LISD Middle School and High Schools in Flower Mound

**Department:** Police

**Target:** Hire 3 School Resource Officers by April 2019

### 1.4 Implement Digital Body Camera Program

**Department:** Police

**Target:** Completed by April 2019

### 1.5 Update Station Alerting

**Department:** Police/Fire

**Target:** Completed by September 2019



## Goal 1: Safety and Security (cont.)

### 1.6 Water Rescue Equipment Implementation Plan (Year 2 of 4)

**Department:** Fire

**Target:** Completed by September 2019

### 1.7 Perform Benchmark Minimum Housing Survey

**Department:** Environmental Services

**Target:** Completed by February 2019

### 1.8 Add a 107' Pierce Ascendant Ladder Truck

**Department:** Fire

**Target:** Purchased by September 2019

### 1.9 High Rise Firefighting Equipment and Training

**Department:** Fire

**Target:** Equipment by September 2019, 6 Firefighters to attend training

### 1.10 Continue Fire Personal Protective Equipment Replacement Program

**Department:** Fire

**Target:** Completed by September 2019



## Goal 2: First Rate Infrastructure

### 2.1 Implement Street Light Program

**Department:** Public Works

**Target:** 10 Street Lights



### 2.2 Continue Sanitary Sewer Overflow Initiative (Year 5 of 10)

**Department:** Public Works

**Target:** 125,000' of linear pipe inspected, 400 manholes inspected

### 2.3 Construct Fire Station 7

**Department:** CIP/Fire/Facilities

**Target:** Construction awarded by February 2019, Complete construction by January 2021

### 2.4 Construct Town Hall

**Department:** CIP/Facilities

**Target:** Grand Opening by December 2018, Final Completion by July 2019

### 2.5 Morriss Road Improvements - North of 1171

**Department:** Public Works

**Target:** Kirkpatrick Pedestrian crossing complete by April 2019,  
Dixon Intersection Improvements complete by September 2019





## Goal 2: First Rate Infrastructure (cont.)

### 2.6 Complete Library Expansion

**Department:** CIP/Facilities/Library Services

**Target:** Construction awarded by May 2019, Complete construction by December 2020

### 2.7 Perform Overhead Utilities Benchmark City Survey

**Department:** Development Services

**Target:** Completed by February 2019

### 2.8 Monitor New Technology to Improve Traffic Flow

**Department:** Public Works

**Target:** Attend 3 Conferences/Meetings regarding traffic flow solutions

### 2.9 Master Plan for Peters Colony Memorial Park

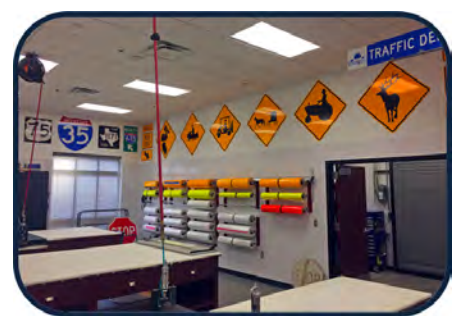
**Department:** Parks and Recreation/CIP

**Target:** Completed by August 2019

### 2.10 Master Plan for Bella Lago Park

**Department:** Parks and Recreation/CIP

**Target:** Completed by August 2019



## **Goal 3: Financial Soundness and Operational Excellence**

### **3.1 Convert Town Documents to Laserfiche**

**Department:** TSO

**Target:** Convert 10 boxes



### **3.2 Maintain the Town's unassigned fund balance in the General Fund per the Town's adopted financial policies**

**Department:** Financial Services

**Target:** Minimum 20% of annual General Fund expenditures

### **3.3 Maintain the Town's fund balance in the Debt Service Fund per the Town's adopted financial policies**

**Department:** Financial Services

**Target:** Minimum 4% of Debt Service Fund expenditures

### **3.4 Maintain the Town's debt service tax rate at the lower level outlined in the Town's adopted Financial Policies**

**Department:** Financial Services

**Target:** 12 cents or lower

### **3.5 Implement a Homestead Exemption for FY19-20**

**Department:** Financial Services

**Target:** Ordinance approved October 2018 with implementation FY19-20

## Goal 4: Superior Quality of Life

### 4.1 Development Process Review

**Department:** Development Services

**Target:** Begin by April 2019



### 4.2 Implement Cultural Arts Master Plan

**Department:** Library Services/Parks and Recreation/Economic Development

**Target:** Begin implementing immediate priorities

### 4.3 Review Town Development Code and bring forward necessary amendments

**Department:** Development Services

**Target:** Bring forward code amendments by September 2019

### 4.4 Conduct SWEEP inspections in designated areas

**Department:** Environmental Services

**Target:** Perform Quarterly Inspections



## Goal 4: Superior Quality of Life (cont.)

### 4.5 Establish Multi-family and Senior Housing designation for park land dedication

**Department:** Development Services/Parks and Recreation/CIP

**Target:** Present options by February 2019

### 4.6 Define “limited residential” in the Lakeside Business District

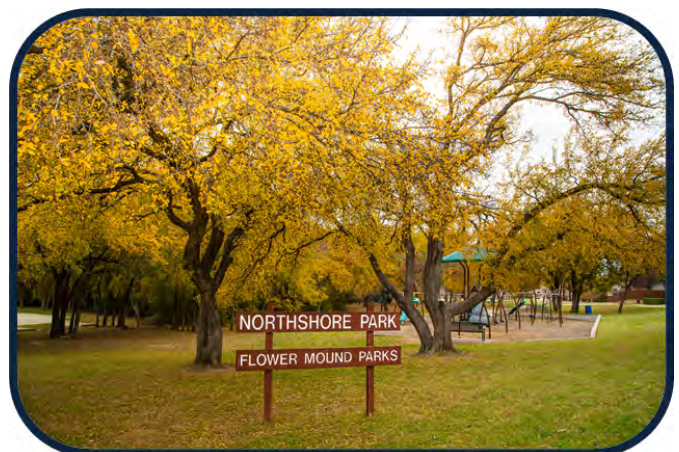
**Department:** Development Services

**Target:** Present options by March 2019

### 4.7 Create a Programs Coordinator Position for Special Events and Cultural Arts

**Department:** Parks and Recreation/Library Services

**Target:** Create and hire new position by February 2019





## Goal 5: Dynamic Economic Environment

### 5.1 Conduct a feasibility study for a TIRZ district in Lakeside Village

**Department:** Economic Development

**Target:** Completed by January 2019

### 5.2 Develop evaluation scorecards for all current incentive agreements to evaluate the compliance of agreement terms

**Department:** Economic Development

**Target:** Completed by July 2019

### 5.3 Work with the Flower Mound Chamber of Commerce on programs, including those outlined in the 2018-19 approved MOU

**Department:** Economic Development

**Target:** Host Leadercast and 6 ED Forums by September 2019

### 5.4 Publish the Economic Development Annual Incentives Report

**Department:** Economic Development

**Target:** July 2019





## Goal 6: Regional Cooperation

### 6.1 Continue Town participation in Leadership Flower Mound

**Department:** All

**Target:** Retain at least 2 town representatives annually

### 6.2 Continue staff involvement in professional organizations

**Department:** All

**Target:** Percent of travel budget spent

### 6.3 Identify opportunities for elected officials through TML and other resources

**Department:** TSO

**Target:** Six regional events per calendar year



## Goal 7: Community Engagement

### 7.1 Create an Interactive Development Map

**Department:** TMO/GIS/Communications/Development Services

**Target:** Completed by January 2019

### 7.2 Create an Interactive CIP Map

**Department:** TMO/Communications/CIP

**Target:** Completed by September 2019



### 7.3 Implement Citibot

**Department:** Communications

**Target:** Completed by March 2019

### 7.4 Continue implementation of the Town's 3 - year Comprehensive Communication Plan

**Department:** Communications

**Target:** Completed by January 2020

### 7.5 Perform the 2019 Resident Survey

**Department:** TMO

**Target:** Completed by July 2019



## Goal 8: Quality Workforce

### 8.1 Implement an Electronic Performance Appraisal System

**Department:** Human Resources

**Target:** Completed by May 2019

### 8.2 Increase Building & Inspections staff training and development hours

**Department:** Development Services

**Target:** 96 hours per person for Plan Reviewers, Inspectors, and Management

### 8.3 Continue Town Manager Tour & Talks to discuss issues faced by the Town and ones important to employees

**Department:** TMO

**Target:** Completed by April 2019

### 8.4 Continue organization-wide team building events

**Department:** TMO/Human Resources

**Target:** Completed by May 2019





## TOWN COUNCIL AGENDA ITEM NO. 3

### CONSENT ITEM

**DATE:** November 19, 2018

**FROM:** Andy Kancel, Chief of Police *AK*

**ITEM:** Consider approval of the lease of 24 Taser X2 units from Axon Enterprise, Inc., in the amount of \$55,285.20 and authorization for the Mayor to execute same on behalf of the Town.

**BACKGROUND INFORMATION:** In order to equip all officers with TASER capability, the Police Department is requesting approval of a purchase agreement of 24 TASER X2 units from Axon Enterprise, Inc. This will replace existing TASER units that have expired. The agreement would result in an expenditure of \$9,137.04 the first year and \$11,537.04 the following four years. This is a sole source purchase; the required paperwork has been approved and is on file with the purchasing office.

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

**ALTERNATIVES/OPTIONS:** N/A

**FISCAL IMPACT:** \$55,285.20

| Proposed Expenditure: | Account Number(s): |
|-----------------------|--------------------|
| \$9,137.04            | 100-640-43500-5020 |

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

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

**ATTACHMENTS:**

1. Axon Enterprise, Inc. Quote
2. Taser 60 Terms

**DRAFT MOTION:** Move to approve as presented in the agenda caption.

**Q-145873-43371.579JM**

Issued: 09/28/2018



Quote Expiration: 10/31/2018

Account Number: 157674

Start Date: 01/16/2018

Payment Terms: Net 30

Delivery Method: Fedex - Ground

**SALES REPRESENTATIVE**

Colin Fine

Phone: 480-463-2167

Email: cfine@taser.com

Fax:

**PRIMARY CONTACT**

Paul Boon

Phone: (972) 874-3304

Email: paul.boon@flower-mound.com

**Axon Enterprise, Inc.**

17800 N 85th St.

Scottsdale, Arizona 85255

United States

Phone: (800) 978-2737

**SHIP TO**

Paul Boon

Flower Mound Police Dept. - TX

4150 KIRKPATRICK LN

FLOWER MOUND, TX 75028

US

**BILL TO**

Flower Mound Police Dept. - TX

4150 KIRKPATRICK LN

FLOWER MOUND, TX 75028

US

**TAP 60 Basic Year 1**

| Item                             | Description                                 | Quantity | List Unit Price | Net Unit Price | Total (USD) |
|----------------------------------|---------------------------------------------|----------|-----------------|----------------|-------------|
| <b>Axon Plans &amp; Packages</b> |                                             |          |                 |                |             |
| 85176                            | TASER 60 YEAR 1 PAYMENT: X2 BASIC           | 24       | 331.00          | 248.71         | 5,969.04    |
| 85049                            | TASER ASSURANCE PLAN CEW ANNUAL PAYMENT, X2 | 24       | 232.00          | 132.00         | 3,168.00    |
| <b>Hardware</b>                  |                                             |          |                 |                |             |
| 22003                            | HANDLE, YELLOW, CLASS III, X2               | 24       | 0.00            | 0.00           | 0.00        |
| 70116                            | PPM, SIGNAL                                 | 24       | 0.00            | 0.00           | 0.00        |
| 22151                            | CARTRIDGE, PERFORMANCE, SMART, 25'          | 48       | 0.00            | 0.00           | 0.00        |
| 85047                            | TASER ASSURANCE PLAN CEW, X2                | 24       | 0.00            | 0.00           | 0.00        |
| Subtotal                         |                                             |          |                 |                | 9,137.04    |
| Estimated Shipping               |                                             |          |                 |                | 0.00        |
| Estimated Tax                    |                                             |          |                 |                | 0.00        |
| Total                            |                                             |          |                 |                | 9,137.04    |

**Year 2 Due 2019**

| Item                             | Description                                 | Quantity | List Unit Price | Net Unit Price | Total (USD) |
|----------------------------------|---------------------------------------------|----------|-----------------|----------------|-------------|
| <b>Axon Plans &amp; Packages</b> |                                             |          |                 |                |             |
| 85177                            | TASER 60 YEAR 2 PAYMENT: X2 BASIC           | 24       | 331.00          | 248.71         | 5,969.04    |
| 85049                            | TASER ASSURANCE PLAN CEW ANNUAL PAYMENT, X2 | 24       | 232.00          | 232.00         | 5,568.00    |
| Subtotal                         |                                             |          |                 |                | 11,537.04   |
| Estimated Tax                    |                                             |          |                 |                | 0.00        |
| Total                            |                                             |          |                 |                | 11,537.04   |



**Year 3 Due 2020**

| Item                             | Description                                 | Quantity | List Unit Price | Net Unit Price | Total (USD) |
|----------------------------------|---------------------------------------------|----------|-----------------|----------------|-------------|
| <b>Axon Plans &amp; Packages</b> |                                             |          |                 |                |             |
| 85178                            | TASER 60 YEAR 3 PAYMENT: X2 BASIC           | 24       | 331.00          | 248.71         | 5,969.04    |
| 85049                            | TASER ASSURANCE PLAN CEW ANNUAL PAYMENT, X2 | 24       | 232.00          | 232.00         | 5,568.00    |
|                                  |                                             |          |                 | Subtotal       | 11,537.04   |
|                                  |                                             |          |                 | Estimated Tax  | 0.00        |
|                                  |                                             |          |                 | Total          | 11,537.04   |

**Year 4 Due 2021**

| Item                             | Description                                 | Quantity | List Unit Price | Net Unit Price | Total (USD) |
|----------------------------------|---------------------------------------------|----------|-----------------|----------------|-------------|
| <b>Axon Plans &amp; Packages</b> |                                             |          |                 |                |             |
| 85179                            | TASER 60 YEAR 4 PAYMENT: X2 BASIC           | 24       | 331.00          | 248.71         | 5,969.04    |
| 85049                            | TASER ASSURANCE PLAN CEW ANNUAL PAYMENT, X2 | 24       | 232.00          | 232.00         | 5,568.00    |
|                                  |                                             |          |                 | Subtotal       | 11,537.04   |
|                                  |                                             |          |                 | Estimated Tax  | 0.00        |
|                                  |                                             |          |                 | Total          | 11,537.04   |

**Year 5 Due 2022**

| Item                             | Description                                 | Quantity | List Unit Price | Net Unit Price | Total (USD)      |
|----------------------------------|---------------------------------------------|----------|-----------------|----------------|------------------|
| <b>Axon Plans &amp; Packages</b> |                                             |          |                 |                |                  |
| 85180                            | TASER 60 YEAR 5 PAYMENT: X2 BASIC           | 24       | 331.00          | 248.71         | 5,969.04         |
| 85049                            | TASER ASSURANCE PLAN CEW ANNUAL PAYMENT, X2 | 24       | 232.00          | 232.00         | 5,568.00         |
|                                  |                                             |          |                 | Subtotal       | 11,537.04        |
|                                  |                                             |          |                 | Estimated Tax  | 0.00             |
|                                  |                                             |          |                 | Total          | 11,537.04        |
| <b>Grand Total</b>               |                                             |          |                 |                | <b>55,285.20</b> |



## Discounts (USD)

Quote Expiration: 10/31/2018

|              |                  |
|--------------|------------------|
| List Amount  | 67,560.00        |
| Discounts    | 12,274.80        |
| <b>Total</b> | <b>55,285.20</b> |

*\*Total excludes applicable taxes and shipping*

## Summary of Payments

| Payment             | Amount (USD)     |
|---------------------|------------------|
| TAP 60 Basic Year 1 | 9,137.04         |
| Year 2 Due 2019     | 11,537.04        |
| Year 3 Due 2020     | 11,537.04        |
| Year 4 Due 2021     | 11,537.04        |
| Year 5 Due 2022     | 11,537.04        |
| <b>Grand Total</b>  | <b>55,285.20</b> |

TASER60 Terms and Conditions: This quote contains a purchase under the TASER 60 Plan. If your purchase only includes the TASER 60 Plan, CEWs, and CEW accessories, then this purchase is solely governed by the TASER 60 Terms and Conditions posted at: <https://www.axon.com/legal/sales-terms-and-conditions>, and the terms and conditions of Axon's Master Services and Purchasing Agreement do not apply to this order. You represent that you are lawfully able to enter into contracts and if you are entering into this agreement for an entity, such as the company, municipality, or government agency you work for, you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, do not sign this Quote.

### Axon's Sales Terms and Conditions

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at [www.axon.com/legal/sales-terms-and-conditions](http://www.axon.com/legal/sales-terms-and-conditions)), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

|                            |       |               |       |
|----------------------------|-------|---------------|-------|
| <b>Signature:</b>          | _____ | <b>Date:</b>  | _____ |
| <b>Name (Print):</b>       | _____ | <b>Title:</b> | _____ |
| <b>PO# (Or write N/A):</b> | _____ |               |       |

Please sign and email to Colin Fine at [cfine@taser.com](mailto:cfine@taser.com) or fax to

Thank you for being a valued Axon customer. For your convenience on your next order, please check out our online store [buy.axon.com](http://buy.axon.com)

Quote: Q-145873-43371.579JM

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# Certificate of Destruction

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## IMPORTANT

Customer certifies that all Products will be removed from service to be destroyed and/or rendered permanently nonfunctional. Products must not be resold or redistributed. Destruction of Products should be performed according to Customer's policy. Axon is not responsible for Product warranty or any liability related to Products certified as destroyed, and reserves the right to require verification that destruction has been performed.

The undersigned represents and warrants that he/she is duly authorized and has legal capacity to execute and deliver this Certificate of Destruction on behalf of the Agency.

---

## Flower Mound Police Dept. - TX

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| Product(s) to be Destroyed | Quantity |
|----------------------------|----------|
|----------------------------|----------|

---

| Signature | Date |
|-----------|------|
|-----------|------|

---

| Name (Print) | Title |
|--------------|-------|
|--------------|-------|

**Return this signed form, and your purchase order/quote (if applicable) to your sales representative and our returned materials authorization department at [rma@axon.com](mailto:rma@axon.com).**

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The undersigned represents and warrants that he/she is duly authorized and has legal capacity to execute and deliver this Certificate of Destruction on behalf of the Agency.

## Flower Mound Police Dept. - TX

TASER X2

Product(s) to be Destroyed

24

Quantity

Signature

10-1-18

Date

Paul Boan

Name (Print)

Training Coordinator

Title

**Return this signed form, and your purchase order/quote (if applicable) to your sales representative and our returned materials authorization department at [rma@axon.com](mailto:rma@axon.com).**

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## Axon Enterprise, Inc.'s TASER 60 Terms and Conditions

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These TASER 60 Terms and Conditions (**Agreement**) apply to the Town of Flower Mound's ("Agency") purchase from Axon Enterprise, Inc. (**Axon**) under the TASER 60 Plan. TASER 60 provides CEW hardware extended warranty coverage, CEW Products, and CEW accessories. TASER 60 only applies to the TASER CEW Product and accessories listed in the Quote.

1. **TASER 60 Term.** TASER 60 Term start date is based upon the shipment date of the hardware covered under TASER 60 (**Start Date**). The TASER 60 Term will end 5 years after the Start Date (**Term**).
2. **Payment Terms.** Axon invoices for the TASER 60 plan on an annual basis. Agency will be invoiced upon the Start Date and then upon the anniversary of the Start Date for the remainder of the Term. Invoices are due to be paid within 30 days of the date of invoice. Invoices are due to be paid within 30 days of the date of invoice. Payment obligations are non-cancelable and fees paid are non-refundable and all amounts payable will be made without setoff, deduction, or withholding.
3. **Taxes.** Unless the Agency provides a valid and correct tax exemption certificate applicable to the purchase and ship-to location, the Agency is responsible for sales and other taxes associated with the order.
4. **Shipping; Title; Risk of Loss; Rejection.** Axon reserves the right to make partial shipments and products may ship from multiple locations. All shipments are FOB Destination and title and risk of loss pass to the Agency upon delivery to the Agency. The Agency is responsible for all freight charges. Shipping dates are estimates only.
5. **Returns.** All sales are final and no refunds or exchanges are allowed, except for warranty returns or as provided by state or federal law.
6. **Hardware Limited Warranty.** Axon warrants that its law enforcement hardware products are free from defects in workmanship and materials for a period of ONE (1) YEAR from the date of receipt. Extended warranties run from the date of purchase of the extended warranty through the balance of the 1-year limited warranty term plus the term of the extended warranty measured after the expiration of the 1-year limited warranty. CEW cartridges and Smart cartridges that are expended are deemed to have operated properly. Axon-Manufactured Accessories are covered under a limited 90-DAY warranty from the date of receipt. Non-Axon manufactured accessories are covered under the manufacturer's warranty. If Axon determines that a valid warranty claim is received within the warranty period, Axon agrees to repair or replace the Product. Axon's sole responsibility under this warranty is to either repair or replace with the same or like Product, at Axon's option.
7. **Warranty Limitations.** The warranties do not apply and Axon will not be responsible for any loss, damage, or other liabilities arising from: (a) damage from failure to follow instructions relating to the Product's use; (b) damage caused by use with non-Axon products or from the use of cartridges, batteries or other parts, components or accessories that are not manufactured or recommended by Axon; (c) damage caused by abuse, misuse, intentional or deliberate damage to the product, or force majeure; (d) damage to a Product or part that has been repaired or modified by persons other than Axon authorized personnel or without the written permission of Axon; or (e) if any Axon serial number has been removed or defaced.



## Axon Enterprise, Inc.'s TASER 60 Terms and Conditions

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

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

8. **Warranty Returns.** If a valid warranty claim is received by Axon within the warranty period, Axon agrees to repair or replace the Product which Axon determines in its sole discretion to be defective under normal use, as defined in the Product instructions. Axon's sole responsibility under this warranty is to either repair or replace with the same or like Product, at Axon's option. For warranty return and repair procedures, including troubleshooting guides, please go to Axon's website [www.axon.com/support](http://www.axon.com/support).

A replacement product will be new or like new and have the remaining warranty period of the original product or 90 days from the date of replacement or repair, whichever period is longer. Any replacement item becomes Purchaser's property and the replaced item becomes Axon's property.

9. **TASER 60 Warranty Coverage.** TASER 60 includes extended warranty coverage for TASER CEW hardware specifically identified in the Quote and as described in the Hardware Limited Warranty. TASER 60 warranty coverage starts at the beginning of the Term and continues as long as the Agency continues to pay the required annual fees for TASER 60 during the Term. The Agency may not have both an optional extended warranty and TASER 60 on the TASER CEW product.
10. **Spare Product.** For orders of more than 30 units, Axon will provide a predetermined number of Spare Product for the TASER CEW hardware listed in the Quote (**Spare Products**) to keep at the Agency location to replace broken or non-functioning units in order to improve the availability of the units to officers in the field. The Agency must return to Axon, through Axon's RMA process, any broken or non-functioning units for which a Spare Product is utilized, and Axon will repair or replace the non-functioning unit with a replacement product. Axon warrants it will repair or replace the unit which fails to function for any reason not excluded by the warranty coverage, during the Term with the same product or a like product, at Axon's sole option. Within 30 days of the end of the Term, the Agency must return to Axon all Spare Products. The Agency will be invoiced for and are obligated to pay to Axon the MSRP then in effect for all Spare Products not returned to Axon.
11. **Product Warnings.** See our website at [www.axon.com](http://www.axon.com) for the most current product warnings.
12. **Design Changes.** Axon reserves the right to make changes in the design of any of Axon's products and services without incurring any obligation to notify the Agency or to make the same change to products and



## Axon Enterprise, Inc.'s TASER 60 Terms and Conditions

services previously purchased. Axon may replace end of life products with the next generation of that product without notifying the Agency.

### 13. TASER 60 Termination.

The Agency is obligated to pay the fees under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during the Agency's then current fiscal year. In the event that sufficient funds will not be appropriated or are not otherwise legally available to pay the fees required under this Agreement, this Agreement may be terminated by the Agency. The Agency agrees to deliver notice of termination under this Section at least 90 days prior to the end of the Agency's then current fiscal year, or as soon as reasonably practicable under the circumstances.

If an invoice for TASER 60 is more than 30 days past due, then Axon may terminate TASER 60. Axon will provide notification that TASER 60 coverage is terminated. Once TASER 60 coverage is terminated for any reason, then:

13.1 TASER 60 coverage will terminate as of the date of termination and no refunds will be given.

13.2 The Agency will be invoiced and obligated to pay for the remainder of the MSRP for TASER 60 Products received before the termination date. In the case of termination for non-appropriations, Axon will not invoice the Agency if the Agency returns the CEW, battery, holster, and unused cartridges to Axon within 30 days of the date of termination.

13.3 The Agency will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future TASER 60 plan.

14. Excusable Delays. Axon will use commercially reasonable efforts to deliver all products and services ordered as soon as reasonably practicable. In the event of interruption of any delivery due to causes beyond Axon's reasonable control Axon has the right to delay or terminate the delivery with reasonable notice.

15. Proprietary Information. The Agency agrees that Axon has and claims various proprietary rights in the hardware, firmware, software, and the integration of ancillary materials, knowledge, and designs that constitute Axon products and services, and that the Agency will not directly or indirectly cause any proprietary rights to be violated.

16. Import and Export Compliance. In connection with this Agreement, each Party will comply with all applicable import, re-import, export, and re-export control laws and regulations.

17. Assignment. The Agency may not may assign or otherwise transfer this Agreement without the prior written approval of Axon.

18. Severability. This Agreement is contractual and not a mere recital. If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect.

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



## Axon Enterprise, Inc.'s TASER 60 Terms and Conditions

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**20. Entire Agreement.** This Agreement and the quote provided by Axon, represents the entire agreement between the Parties. This Agreement supersedes all prior or contemporaneous representations, understandings, agreements, or communications between the Parties, whether written or verbal, regarding the subject matter of this Agreement. No modification or amendment of any portion of this Agreement will be effective unless in writing and signed by the Parties to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed. Each Party warrants and represents that its respective signatories whose signatures appear below have been and are, on the date of signature, duly authorized to execute this Agreement.

**Axon Enterprise, Inc.**

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

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

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

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

**Town of Flower Mound**

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

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

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

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



# Axon Enterprise, Inc.'s TASER 60 Terms and Conditions

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## TASER Assurance Plan (Purchased with TASER 60 Only) Appendix

If The TASER Assurance Plan or "TAP" has been purchased in addition to the TASER 60 plan, this Appendix will apply to the Agency's purchase. TAP provides Upgrade Models at the end of the TAP Term. TAP only applies to the Axon Product listed in the Quote with the exception of any initial hardware or any software services offered for, by, or through the Evidence.com website. The Agency may not buy more than one TAP for any one covered Product.

- 1 **TAP Term.** The TAP Term start date is based upon the shipment date of the hardware covered under TAP. If the shipment of the hardware occurred in the first half of the month, then the Term starts on the 1st of the following month. If the shipment of the hardware occurred in the second half of the month, then the Term starts on the 15th of the following month. TAP for CEWs is a 5 year term.
- 2 **TAP Upgrade Models.** Any Products replaced within 6 months prior to the scheduled upgrade will be deemed the upgrade. Within 30 days of receiving an upgrade, the Agency must return the original Products to Axon or destroy the Products locally and provide a certificate of destruction to Axon that includes the serial numbers for the destroyed Products. If the Agency does not return the Products to Axon or destroy the Products, Axon will deactivate the serial numbers for the Products received by the Agency.

If the Agency makes all TAP CEW payments, 5 years after the start of the TAP Term, Axon will provide the Agency with a new CEW that is the same Product or a like Product, in the same weapon class (**CEW Upgrade Model**), as well as a battery. The Agency may elect to receive the CEW Upgrade Model anytime in the 5th year of the TAP term as long as the final payment has been made.

- 3 **TAP Termination.** If an invoice for TAP is more than 30 days past due or the Agency defaults on its payments for the Evidence.com Services, then Axon may terminate TAP and all outstanding Product related TAPs. Axon will provide notification that TAP coverage is terminated. Once TAP coverage is terminated for any reason, then:
  - 3.1. TAP coverage will terminate as of the date of termination and no refunds will be given.
  - 3.2. Axon will not and has no obligation to provide the free upgrades.
  - 3.3. The Agency will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future TAP.
  - 3.4. If the Agency received a credit towards the first TAP payment as part of a trade-in promotion, then upon cancellation/termination the Agency will be assessed a \$100 cancellation fee for each covered





## Axon Enterprise, Inc.'s TASER 60 Terms and Conditions

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product.

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## TOWN COUNCIL AGENDA ITEM NO. 4

### CONSENT ITEM

**DATE:** November 19, 2018

**FROM:** Robert Pegg, P.E., Engineering Manager

**ITEM:** Consider approval of a Professional Services Agreement for the 2018 Water and Wastewater Model Update project, with Kimley-Horn, for \$31,450.00; and authorization for the Mayor to execute same on behalf of the Town.

**BACKGROUND INFORMATION:** The 2018 Water and Wastewater Model Update project is used to keep the Town's water and wastewater models up to date. The scope included with this agreement includes commercial, residential and CIP projects that impact the Town's water and wastewater systems. By keeping the models up to date, the Town is able to ensure that future developments will meet the requirements of SmartGrowth and that the Town is able to adequately plan for future CIP projects.

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

**ALTERNATIVES/OPTIONS:** N/A

**FISCAL IMPACT:** \$ 31,450.00

| Proposed Expenditure: | Account Number(s): |
|-----------------------|--------------------|
| \$ 21,450.00          | 100-2382           |
| \$ 5,000.00           | 601-900-95040-6070 |
| \$ 5,000.00           | 600-900-95050-6070 |

**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 as presented in the agenda caption.

THE STATE OF TEXAS §  
COUNTY OF DENTON §

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

This contract is entered into on this 19th day of November, 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 **Kimley-Horn and Associates, Inc.**, (“hereinafter referred to as “CONSULTANT”) whose address is 13455 Noel Road, Two Galleria Office Tower, Suite 700, Dallas, TX 75240.

**RECITALS**

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to water and wastewater modeling services for the 2018 Water and Wastewater Model Update 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 2018 Water and Wastewater Model Update 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 Thirty One Thousand Four Hundred Fifty and No/100 Dollars (\$31,450.00). 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:

Robert Pegg, P.E.,  
Engineering Manager  
Town of Flower Mound  
2121 Cross Timbers Road  
Flower Mound, Texas 75028  
972-874-6312 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 subcontractor 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:

Robert Pegg, P.E.,  
Engineering Manager  
Town of Flower Mound  
2121 Cross Timbers Road  
Flower Mound, Texas 75028  
972-874-6312 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:

Anthony Samarripas, P.E.  
Vice President  
Kimley-Horn and Associates, Inc.  
13455 Noel Road, Two Galleria Office Tower, Suite 700  
Dallas, TX 75240.  
972-770-1314 Telephone

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

**XX.**  
**Applicable Law**

The Contract is entered into subject to the Flower Mound Town Charter and ordinances of TOWN, as same may be amended from time to time, and is subject to and

is to be construed, governed and enforced under all applicable State of Texas and federal laws. CONSULTANT will make any and all reports required per federal, state or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with CONSULTANT's income.

**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 Steve Dixon  
Mayor, Town of Flower Mound

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

Attest:

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



CONSULTANT:  
Kimley-Horn and Associates, Inc.

By: [Signature]  
Name: ERIC Z. SMITH  
Title: ASSISTANT SECRETARY  
Date Signed: 10/24/18

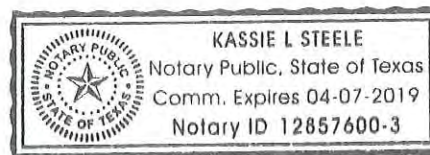
State of Texas           §  
                                  §  
County of Dallas       §

This instrument was acknowledged before me on the 24 day of October, 2018, by Eric Smith in his capacity as Assistant Secretary of Kimley-Horn and Associates, a North Carolina Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of Kimley-Horn and Associates.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 24 DAY OF October, 2018.

[Signature]  
Notary Public, State of Texas

My Commission Expires:  
4-7-19



## **ATTACHMENT A**

### **SCOPE OF SERVICES**

#### **PROJECT NAME: 2018 Water and Wastewater Model Updates**

#### **PROJECT UNDERSTANDING**

The Town has asked Kimley-Horn and Associates, Inc. (Kimley-Horn) to assist in updating the current water and wastewater models. Two major tasks are included with model updates: adding new developments and their associated demands to the water and wastewater models, and adding new Capital Improvement infrastructure to the models. Kimley-Horn will add developments and infrastructure to account for changes since the prior model update in October/November of 2017. Kimley-Horn will revise and evaluate system capacities, update Capital Improvement Project Maps, and prepare a technical memorandum detailing the model updates.

#### **SCOPE OF PROFESSIONAL SERVICES**

##### **A. Demand (Development) Update**

This task includes adjusting the percent developed for land use parcels in the model to reflect the current amount and type of development in the Town. The Town provided the following list of developments that will be included in the update:

1. Canyon Falls – Village 5
2. Edgewood
3. Trailwood – Phase I
4. Crossfire
5. Riverwalk – Lakeshore Terrace
6. Oakbridge at Flower Mound Phase I
7. Denton County Court House
8. Brighton Place
9. Overture Flower Mound – Lakeside Greystar Phase III
10. Terracina – Phase III
11. Lakeside Center 7-Eleven
12. Advantage Storage
13. Liberty Park
14. 100 Parker Square
15. Prairie Commons
16. Coram Deo Academy – Phase 2B Site Improvements
17. North Point Center Office Building
18. Bank of the West
19. Elan Greystar Phase II
20. Creekside at Heritage Park Phase III
21. Townlake, Phase I

The cost associated with adding a development to the model is \$550 for water and \$550 for wastewater for each development. Developments located in the Denton Creek and Prairie Vista sewer service areas are not included in the Town's wastewater model because they are served by Trinity River Authority (TRA); the percent developed and projected wastewater flows for these developments will be updated in GIS and wastewater tracking spreadsheets. Townlake, Phase I is not served by the Town's or TRA's wastewater systems; therefore, the \$550 wastewater fee is not applied to this development.

Fee for adding the Trailwood Phase I development was included in last year's 2017 Water and Wastewater Model Updates project under the name Trailwood Terrace. During that project, the Town clarified that only the Trailwood Terrace 12-inch Water Line was intended to be included in the update. Since the development fee was already included in 2017, Kimley-Horn will add the Trailwood Phase I development as part of these model updates for no additional fee.

#### B. CIP Infrastructure Update

This task includes adding water and wastewater infrastructure to the existing models which has been constructed since the last model update. This task also includes calibration of the water and wastewater models as necessary to include new operational changes due to pumping modifications and new pipeline. Infrastructure to be added to the model includes:

1. Long Prairie 12-inch Water Line Section 2
2. FM 2499 Phase III 12-inch Water Line Section 2
3. Oak Street Lift Station and Force Main Phase III
4. Shady Point Acres Water Line Replacement
5. Lakeside Lift Station & Force Main Improvements
6. Heritage Park Phase III

As part of this task, Kimley-Horn will update the Capital Improvements Project maps for water and wastewater projects which were prepared as part of the 2015 Master Plan Updates and revised for the 2016 and 2017 model updates. The revised maps will show current aerial photography as available, existing infrastructure, projects under design or construction, and future capital improvement projects. Kimley-Horn will also provide a revised Manhole Connection Map for the Town.

#### C. Deliverables

1. Kimley-Horn will prepare a technical memorandum describing the model update, including the above lists of developments and infrastructure added to the model. The memo will also include updated water demand and wastewater load projections. Kimley-Horn will provide one PDF copy of the draft memorandum prior to the project review meeting (see task D) and one PDF of copy of the final memorandum.

2. Kimley-Horn will provide one PDF copy of the updated Water CIP map.
3. Kimley-Horn will provide one PDF copy of the updated Wastewater CIP map.
4. Kimley-Horn will provide one PDF copy of the updated Wastewater Manhole Connection map.

#### D. Meetings

Kimley-Horn will attend one project review meeting with the Town.

#### E. Future Developments

Below is a list of current proposed developments which are not included in this model update but are anticipated to be included in a future update:

1. Lakeside Crossing
2. Lakeside Crossing Townhomes
3. LG River Walk Apartments
4. River Walk Retail
5. Bradford Park, Phase I
6. Bradford Park, Phase II
7. Legacy Salon & Day Spa
8. Lakeside Tower
9. Jerry's Express Carwash
10. Oakbridge, Phase II
11. Rocky Hill Farms (water only)
12. The Villas at Southgate, Phase I
13. The Villas at Southgate, Phase II
14. Townlake, Phase II
15. Townlake, Phase III
16. Hillside of Flower Mound (water only)

#### **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:

- Providing surveying and engineering design of future Capital Improvement Projects.
- Providing presentations to the Town Council.
- Attending additional public meetings during the project.
- Preparing an Opinion of Probable Construction Cost for improvement projects.
- Assisting Town or Contractor in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, shall be furnished by Kimley-Horn on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
- 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.
- Reviewing Contractor's References.
- Any services not listed in the Scope of Services.

**ATTACHMENT B****COMPENSATION**

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

|                                    |                        |
|------------------------------------|------------------------|
| Demand Update                      | \$21,450               |
| Infrastructure Update (Water)      | \$5,000                |
| Infrastructure Update (Wastewater) | \$5,000                |
| <b><u>TOTAL</u></b>                | <b><u>\$31,450</u></b> |

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

## **ATTACHMENT C**

### **TIME OF COMPLETION**

We are prepared to begin our services immediately upon authorization. Upon receipt of a notice to proceed, we anticipate performing the model updates and preparing a draft memorandum within 35 calendar days.





## TOWN COUNCIL AGENDA ITEM NO. 5

### CONSENT ITEM

**DATE:** November 19, 2018

**FROM:** Kari Biddix, Park Development Manager

**ITEM:** Consider approval of the Professional Services Agreement with MHS Design & Planning, LLC, for the design services associated with the Bella Lago Master Plan project, in the amount of \$33,975.00; and authorization for the Mayor to execute same on behalf of the Town.

**BACKGROUND INFORMATION:** Consider the approval of a Professional Services Agreement (PSA) with MHS Planning & Design, LLC, for design services associated with the Bella Lago Park Master Plan project in the amount of \$33,975.00.

**FISCAL IMPACT:** \$33,975.00

| Proposed Expenditure: | Account Number(s): |
|-----------------------|--------------------|
| \$33,975.00           | 317-110-90730      |

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

**LEGAL REVIEW:** The Town's standard professional service 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 these documents.

**ATTACHMENTS:**

1. Professional Services Agreement

**DRAFT MOTION:** Move to approve as presented in the agenda caption.

THE STATE OF TEXAS §  
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH  
MHS PLANNING & DESIGN, LLC**

This contract is entered into on this 19th day of November, 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 **MHS Planning & Design, LLC**, (“hereinafter referred to as “CONSULTANT”) whose address is 212 West 9<sup>th</sup> Street, Tyler, TX 75701.

**RECITALS**

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to surveying, landscape architecture, and engineering design services for the Bella Lago Park Master Plan project; and

WHEREAS, CONSULTANT is a planning and design 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 Bella Lago Park Master Plan project specifically including, but not necessarily limited to, the tasks enumerated more fully in Attachment "A" hereto entitled "Scope of Work" (hereafter referred to as the "Project"). Attachment "A" is hereby incorporated herein by reference and made a part hereof as if written word for word. However, in case of conflict in the language of Attachment "A" and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.

## **III.**

### **Payment for Services**

Total payment for services described herein shall be a sum not to exceed Thirty-Three Thousand Nine Hundred Seventy-Five and No/100 Dollars (\$33,975.00). 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:

Kari Biddix  
Park Development Manager  
Town of Flower Mound  
2121 Cross Timbers Road  
Flower Mound, Texas 75028  
972-874-6278 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:

Kari Biddix  
Park Development Manager  
Town of Flower Mound  
2121 Cross Timbers Road  
Flower Mound, Texas 75028  
972-874-6278 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:

William Spencer, PE  
MHS Planning & Design, LLC  
212 West 9<sup>th</sup> Street  
Tyler, Texas 75701  
903-597-6606 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 Steve Dixon  
Mayor, Town of Flower Mound

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

Attest:

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

**CONSULTANT:  
MHS Planning & Design, LLC**

By: [Signature]  
Name: William Spencer  
Title: Managing Partner  
Date Signed: 10/22/18

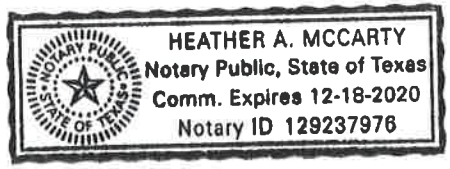
State of Texas                   §  
                                          §  
County of Smith           §

This instrument was acknowledged before me on the 22<sup>nd</sup> day of October, 2018, by William Spencer, in his capacity as Partner of MHS Planning & Design, a Limited Liability 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 Partner.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 22<sup>nd</sup> DAY OF Oct., 2018.

[Signature: Heather A. McCarty]  
Notary Public, State of Texas

My Commission Expires:  
12-18-2020





## **ATTACHMENT A**

### **SCOPE OF SERVICES – BELLA LAGO PARK MASTER PLAN**

**Agreement by and between the Town of Flower Mound and MHS Planning & Design, LLC** for professional design services for the Town of Flower Mound for developing a park master plan for Bella Lago Park in Flower Mound, Texas. This scope of work includes surveying, landscape architecture, and engineering design services.

#### **1. Task 1 – Topographic Boundary Survey**

- a. Research and sketching of the subject and adjoining property deeds and plats. Locate, mark and flag the major break property corners for the subject lots. White Line property for a utility locate request and submit a 8-1-1 utility locate request to Texas One Call System. Submit a locate request to Town of Flower Mound for marking their lines on or near the site.
- b. Establish conventional surveying control points and loop on or near the project site. Tie in and verification of all property corners located for purposes of this survey. Tie in existing improvements, and the visible, apparent and marked utilities on or near the subject property site.
- c. Setting of at least two to four temporary benchmarks and/or base control points near the subject property.
- d. Perform a topographic boundary survey of the agreed upon areas noted on Exhibit “A”. Tie in the location of all trees with a DBH of six (6”) inches or larger within the subject property.
- e. Prepare Topographic (1-foot contour interval) Boundary Survey plat showing all improvements and individual trees located; any visible, apparent or marked utilities and other features established during the survey. Underlay current FEMA GIS line work, 2-foot lidar data set if available and current aerial photography that is publicly available.
- f. Furnish client with digital PDF of Survey, AutoCAD file of the survey, XML & TIN files and ASC points’ text file of all survey points collected (Etransmit file).

**2. Task 2 – Meetings**

- a. Meet with Town Staff to discuss initial thoughts for proposed park and visit the site. Conduct a public input meeting with surrounding neighbors to discuss the needs and desires of the residents.
- b. Present the two preliminary site plans to the Town for review and comments via a conference call and revise preliminary site plans based on Town comments.
- c. Present preliminary plans to the public for review and comments.
- d. Present final plan to the Parks Board
- e. Present final plan to Town Council.

**3. Task 3 – Park Master Plan**

- a. Develop two preliminary site plans (hand sketched) based on the site visit, public input and discussions with Town Staff.
- b. Modify the two preliminary site plans per comments from Town Staff.
- c. Prepare a final Illustrative Master Plan (digital) with two (2) 3D perspective drawings & cost estimate based on the public input and Town comments.

**4. Reimbursable Expenses**

- a. Mileage, Reproduction, etc.

**5. Assumptions**

- a. Additional Services, not included in this Scope of Services, will be negotiated with the Town as necessary. Compensation will be based upon either a mutually agreed lump sum fee or on an hourly basis. Items which would be considered Additional Services could include: additional meetings with Town Staff and/or presentation to other groups, additional site visits, etc.
- b. Design and development of construction documents and specifications are not included in this contract.
- c. Hydrologic and/or hydraulic analysis are not included in this contract.
- d. The Town will provide all readily available base information necessary to complete the scope of services described.



## ATTACHMENT B

**Agreement by and between the Town of Flower Mound and MHS Planning & Design, LLC**

### COMPENSATION – BELLA LAGO PARK

|                                                  |                          |
|--------------------------------------------------|--------------------------|
| <b>1. Task 1 – Topographic Boundary Survey</b>   | <b>\$14,850.00</b>       |
| <b>2. Task 2 – Meetings</b>                      | <b>\$7,800.00</b>        |
| a. Meeting w/ Town, Public Input, and Site Visit | \$2,700.00               |
| b. Plan Review Conference Call                   | \$600.00                 |
| c. Public Presentation of Plan                   | \$1,500.00               |
| d. Present Plan to Parks Board                   | \$1,500.00               |
| e. Present Plan to Town Council                  | \$1,500.00               |
| <b>3. Task 3 – Park Master Plan</b>              | <b>\$9,925.00</b>        |
| a. Two (2) Preliminary Layouts                   | \$2,250.00               |
| b. Modifications to Plan                         | \$1,350.00               |
| c. Final Illustrative Master Plan and Renderings | \$6,325.00               |
| <b>4. Reimbursable Expenses</b>                  | <b><u>\$1,400.00</u></b> |
| <b>TOTAL</b>                                     | <b>\$33,975.00</b>       |



# Town of Flower Mound, TX



10/12/2018, 7:02 16 AM

2017 AERIAL PHOTOGRAPHY

- Red Band\_1
- Green Band\_2
- Blue Band\_3

Trails

- Existing Shared Lane
- Existing Bicycle Lane
- Existing Multi Use - General
- Existing Corp of Engineers
- Existing Equestrian
- Existing Bluebonnet Trail
- Existing Indian Blanket Trail
- Existing Pink Evening Primrose Trail
- Existing Purple Coneflower Trail
- Existing Texas Yellow Star Trail
- Existing White Lazy Daisy Trail
- Existing Connector
- Proposed Shared Lane
- Proposed Multi use - General
- Proposed Bicycle Lane
- Proposed Equestrian
- Proposed Bluebonnet Trail
- Proposed Indian Blanket Trail
- Proposed Pink Evening Primrose Trail
- Proposed Texas Yellow Star Trail
- Below Grade Crossings
- Trail Heads
- Future Multi-Use

- Existing Multi-Use
- Future Equestrian
- Existing Equestrian
- Parcel
- County Line
- Town Limits
- 2 Contours (2007)
- Index
- Intermediate
- LOMR
- 2011 Floodplain
- A
- AE
- AE FLOODWAY

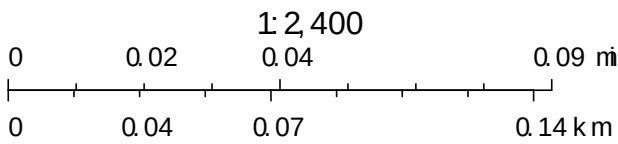


EXHIBIT "A"

Town of Flower Mound & NCTCOG  
Town of Flower Mound, DCAD, TAD  
Source: Esri, Digital Globe, GeoEye, Earthstar Geographics, CNES/  
Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User





## TOWN COUNCIL AGENDA ITEM NO. 6

### REGULAR ITEM

**DATE:** November 19, 2018

**FROM:** Richard Brown, Senior Planner

**ITEM:** **Public Hearing to consider a request for rezoning (ZPD18-0008 – Magnolia Court) from Agricultural District (A) to Planned Development District No. 168 (PD-168) with Single-Family District-10 (SF-10) and Agricultural District (A) uses, with certain exceptions and modifications to the Code of Ordinances, and to consider adopting an ordinance providing for said amendment, and acceptance of cash in lieu of land in the amount of \$263,088 in place of the otherwise required Park Land dedication and Park Development Fees in the amount of \$80,504\*. The property is generally located on the northwest corner of the intersection of Gerault Road and Spinks Road. *(The Planning and Zoning Commission recommended approval with conditions by a vote of 6 to 0 at its November 12, 2018, meeting.)***

**BACKGROUND INFORMATION:** Attached is the Planning and Zoning Commission (P&Z) report and backup for this item. The Applicant requested this item be postponed to the December 3, 2018, Town Council public hearing [see Attachment A(3)]. Since receiving Attachment A(3), the applicant has also requested additional time to consider an alternate proposal to their parks fee waiver request. The updated postponement date is now **December 17, 2018**.

During the staff presentation, the permitted number of stories noted in the table on Page 3 for the proposed Tract 1 and Tract 2 was clarified. In preparing the table, staff inadvertently noted two, however permitted the number of stories should be three.

\*As noted in the attached P&Z report, the previous zoning request for this property was based on a higher density (58 buildable lots compared to the current 29 buildable lots), and a larger assemblage of land area (15.759 acres compared to the current 14.802 acres). The following represents required dedication and/or fees as generated by the current application:

#### Park Land Dedication

- 3.36 acres of land per 100 dwelling units=0.0336 acres per dwelling unit
- 0.9744 acres required

#### Payment in lieu of Park Land Dedication

- \$135,000.00 per acre is the fair market value of land within the development as determined by the Fair Market Value
- \$131,544 required based on 29 lots

#### Park Development Fees

- \$1,388 per dwelling unit
- \$40,252 required based on 29 lots

At this time, the applicant is requesting that the Town Council waive payment in lieu of Park Land Dedication and Park Development Fees. The Planning and Zoning Commission recommended denial of the applicant's request to waive park fees.



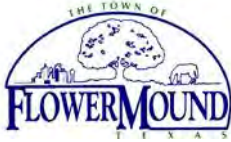
Further, based on the applicant's stated reasons for the waiver (reimbursement for the required Town trails), staff, along with the Town Attorney, have determined that pursuant to the Town's park ordinance (Sections 90-445, and 90-446), credit cannot be given for extensions of the Town's trail network depicted in the Parks and Trails Master Plan.

**ATTACHMENTS:**

1. Planning and Zoning Commission Staff Report
2. Draft Ordinance
3. Applicant's request to postpone

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

**DRAFT MOTION:** Move to approve as presented including acceptance of payment in lieu of park land dedication and park development fees.



## PLANNING AND ZONING COMMISSION AGENDA ITEM NO: 5

---

**DATE:** November 12, 2018

**FROM:** Richard Brown, Senior Planner

**ITEM:** Public Hearing to consider a request for rezoning (ZPD18-0008 – Magnolia Court) from Agricultural District (A) to Planned Development District No. 168 (PD-168) with Single-Family District-10 (SF-10) and Agricultural District (A) uses, with certain exceptions and modifications to the Code of Ordinances. The property is generally located on the northwest corner of the intersection of Gerault Road and Spinks Road.

---

### I. ITEM SUMMARY

This application has been reviewed by DRC and determined to be ready for consideration by the Planning and Zoning Commission.

This application will require final action by the Town Council.

### II. APPLICATION ANALYSIS

*As a matter of reference, an application for a Master Plan Amendment from Medium Density to High Density Single-Family Detached and an application for a Zoning Planned Development with Single-Family District-5 (SF-5) uses were considered by the Planning and Zoning Commission on [March 26, 2018](#), and by the Town Council on [April 16, 2018](#). During the Town Council hearing, the applicant requested to be remanded back to the Planning and Zoning Commission on April 23, 2018, so as to present a revised application that revised density and various development standards related to the proposed residential development. Furthermore, the Town Council stated that the application could return on the May 21, 2018 Town Council agenda, assuming a recommendation from the Planning and Zoning Commission.*

*The applicant presented the revised application to the Planning and Zoning Commission on [April 23, 2018](#). Following the Planning and Zoning Commission's recommendation, the applicant submitted a written request on May 11, 2018 to postpone indefinitely the May 21, 2018 Town Council public hearing. The applicant subsequently withdrew the applications, thus making way for this Zoning Planned Development request.*

*The above referenced links to the respective public hearings may be accessed to review the details.*

The purpose of this request is to rezone approximately 14.802 acres of land and creating two tracts to accommodate the proposed residential subdivision:

Tract 1 - 29 buildable lots to be developed under the Single-Family-10 District (SF-10), with three x-lots (see x-lot detail below)

Tract 2 - This tract will serve infrastructure to provide for drainage and utilities, retaining the existing Agricultural District zoning (see table below). It should be noted any proposed development within this tract will require an amendment to the Zoning Planned Development.

The existing Agricultural zoning requires residential lots containing a minimum two acres in size. The entire acreage is largely undeveloped with the exception of residential/accessory structures within the northwest quadrant, all of which will be removed to provide for the applicant's development vision.

The property is located along the north line of Spinks Road, the west line of Gerault Road, and the south line of Sweetwater Lane. The development will provide for one point of ingress/egress along Sweetwater Lane. Internal circulation will be provided by internal streets possessing 31 feet of pavement within a 50 foot-wide right-of-way. The property is diagonally encumbered by various overlapping easements and required building setbacks (from the electric easement) within an approximate 270-foot-wide area:

- 70 foot-wide Brazos Electric Power easement
- 75 foot-wide Lone Star Gas Company easement
- 15 foot-wide Verizon easement
- 100 foot-wide building setback area from the electric easement

The accompanying conceptual site plan [Attachment B(1)] provides for a one-phase residential development consisting of a maximum of 29 buildable lots with a minimum lot size of 10,000-square-feet. There are also three open space/x-lots that will function as follows:

- 1) required landscape buffer and perimeter screening wall;
- 2) open space lot on the west side of the ingress/egress point along Sweetwater Lane that will accommodate the subdivision signage and possible future amenities for residents; and
- 3) The Tract 2 portion of the site will accommodate infrastructure to capture stormwater runoff from Tract 1, with the balance being left as unimproved

### **III. REQUESTED MODIFICATION**

As a component of the proposed PD standards, the applicant is requesting the following modification to the minimum and maximum dimensional regulations of the SF-10 zoning district; see *Minimum Lot Width*:

| TOWN STANDARD                                                                                                                                                                                                                                                                                                                                                                                               | EXISTING<br>AGRICULTURAL<br>DISTRICT | TOWN<br>STANDARDS FOR<br>SF-10 DISTRICT | PROPOSED                               |                                     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|-----------------------------------------|----------------------------------------|-------------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                             |                                      |                                         | TRACT 1<br>SF-10 DISTRICT<br>(29 LOTS) | TRACT 2<br>AGRICULTURAL<br>DISTRICT |
| MINIMUM LOT<br>AREA                                                                                                                                                                                                                                                                                                                                                                                         | TWO ACRES                            | 10,000 SF                               | 10,000 SF                              | TWO ACRES                           |
| MINIMUM LOT<br>WIDTH                                                                                                                                                                                                                                                                                                                                                                                        | 200 FEET                             | 70 FEET                                 | 80 FEET                                | 200 FEET                            |
| MINIMUM FLOOR<br>AREA/DWELLING<br>UNIT                                                                                                                                                                                                                                                                                                                                                                      | 1,800 SF                             | 1,800 SF                                | 1,800 SF                               | 1,800 SF                            |
| MINIMUM FRONT<br>YARD                                                                                                                                                                                                                                                                                                                                                                                       | 40 FEET                              | 25 FEET                                 | 25 FEET                                | 40 FEET                             |
| MINIMUM SIDE<br>YARD                                                                                                                                                                                                                                                                                                                                                                                        | 25 FEET                              | 10 FEET                                 | 10 FEET                                | 25 FEET                             |
| MINIMUM REAR<br>YARD                                                                                                                                                                                                                                                                                                                                                                                        | 20 FEET                              | 25 FEET                                 | 25 FEET                                | 20 FEET                             |
| MAXIMUM LOT<br>COVERAGE                                                                                                                                                                                                                                                                                                                                                                                     | 25 PERCENT                           | 40 PERCENT                              | 40 PERCENT                             | 25 PERCENT                          |
| MAXIMUM FLOOR<br>AREA RATIO                                                                                                                                                                                                                                                                                                                                                                                 | NO MAXIMUM                           | NO MAXIMUM                              | NO MAXIMUM                             | NO MAXIMUM                          |
| MAXIMUM<br>STORIES/<br>STRUCTURE<br>HEIGHT                                                                                                                                                                                                                                                                                                                                                                  | 3 STORIES/<br>35 FEET                | 3 STORIES/<br>35 FEET                   | 2 STORIES/<br>35 FEET                  | 2 STORIES/<br>35 FEET               |
| <b>MISCELLANEOUS STANDARDS FOR THE PROPOSED TRACT 1 PORTION OF THE RESIDENTIAL SUBDIVISION</b> <ul style="list-style-type: none"> <li>• PORCHES MAY ENCROACH INTO THE REQUIRED FRONT YARD A MAXIMUM OF EIGHT FEET</li> <li>• CORNER LOTS - SETBACKS MATCH FRONT YARD SETBACK FOR KEY LOTS; 15 FEET FOR NON-KEY LOTS</li> <li>• FENCES MAY NOT EXTEND INTO THE FRONT YARD BEYOND THE FRONT FAÇADE</li> </ul> |                                      |                                         |                                        |                                     |

The site possesses one specimen tree (19 inch Cedar Elm) which will be retained. It is located along the Sweetwater Lane frontage within the proposed Lot 1, Block A.

On [March 1, 2018](#), the Parks Board voted to recommend acceptance of cash in lieu of land in the amount of \$263,088, in the place of otherwise required Park Land dedication and Park Development Fees in the amount of \$80,504. It should be noted this recommendation was based on the previously requested 58 buildable lots. The Town Council's action will be based on 29 buildable lots, and as such, the dedication and fees will be recalculated to this reduced number of buildable lots.

The revised calculations (land dedication and fees) will be presented to the Town Council for consideration at the same time as the subject Zoning Planned Development is considered.

#### **IV. UNRESOLVED ITEM**

This application was submitted to the Town on July 13, 2018. During this time, there has been a significant amount of effort expended by Town Staff and the applicant's development team to ensure the application complies with all relevant components of the Master Plan as well as possessing sensitivity of the development's impact on the residential developments abutting the site's western and northern property lines.

As this report has addressed all aspects of the applicant's development vision, there does remain one item that staff does not support.

##### Park Land Dedication

As noted above, the Parks Board considered this application and the proposed development standards on March 1, 2018, and the site possesses an approximate 270-foot-wide area that is unbuildable. The electrical easement has overhead lines while the gas easement locates their lines underground. On the south side of the easement area, Tract 2 will be platted as an x-lot that will serve to capture stormwater runoff as well as anticipated amenity areas for the residents of the subdivision. It is not uncommon for private development to improve retention/detention areas with amenities to serve its residents (or tenants/employees/visitors for nonresidential development).

While working with the applicant during this process, staff had taken a position that due to the characteristics of the land area identified for dedication, it would be difficult to utilize for public park purposes. It should be noted the Parks and Trails Master Plan denotes a trail section that traverses across the property on the north side of the easement area from Gerault Road. This portion of the trail will be installed between the roadway and its western property line during construction of the residential subdivision. Furthermore, a sidewalk connection will be provided from the cul-de-sac to the trail extension, thereby providing future residents a convenient pathway to the trail.

As the applicant is requesting alternate park land dedication and fees [see Attachment B2)], Staff has included subject matter in this section of the report. The Town Council will consider this during its public hearing of the request.

## **V. CORRESPONDENCE**

The Town Code requires both public notice in a newspaper of general circulation (Denton Record Chronicle) and notification of the property owners within 200 feet of the subject property for all rezoning requests. At the time this report was written, the Town had received 0 pieces of correspondence in support and 0 pieces of correspondence in opposition to the request. All correspondence was sent directly to the Planning and Zoning Commission according to the new public communication process.

## **VI. ATTACHMENTS**

### **A. Background Information**

1. Vicinity Map
2. Letter of Intent

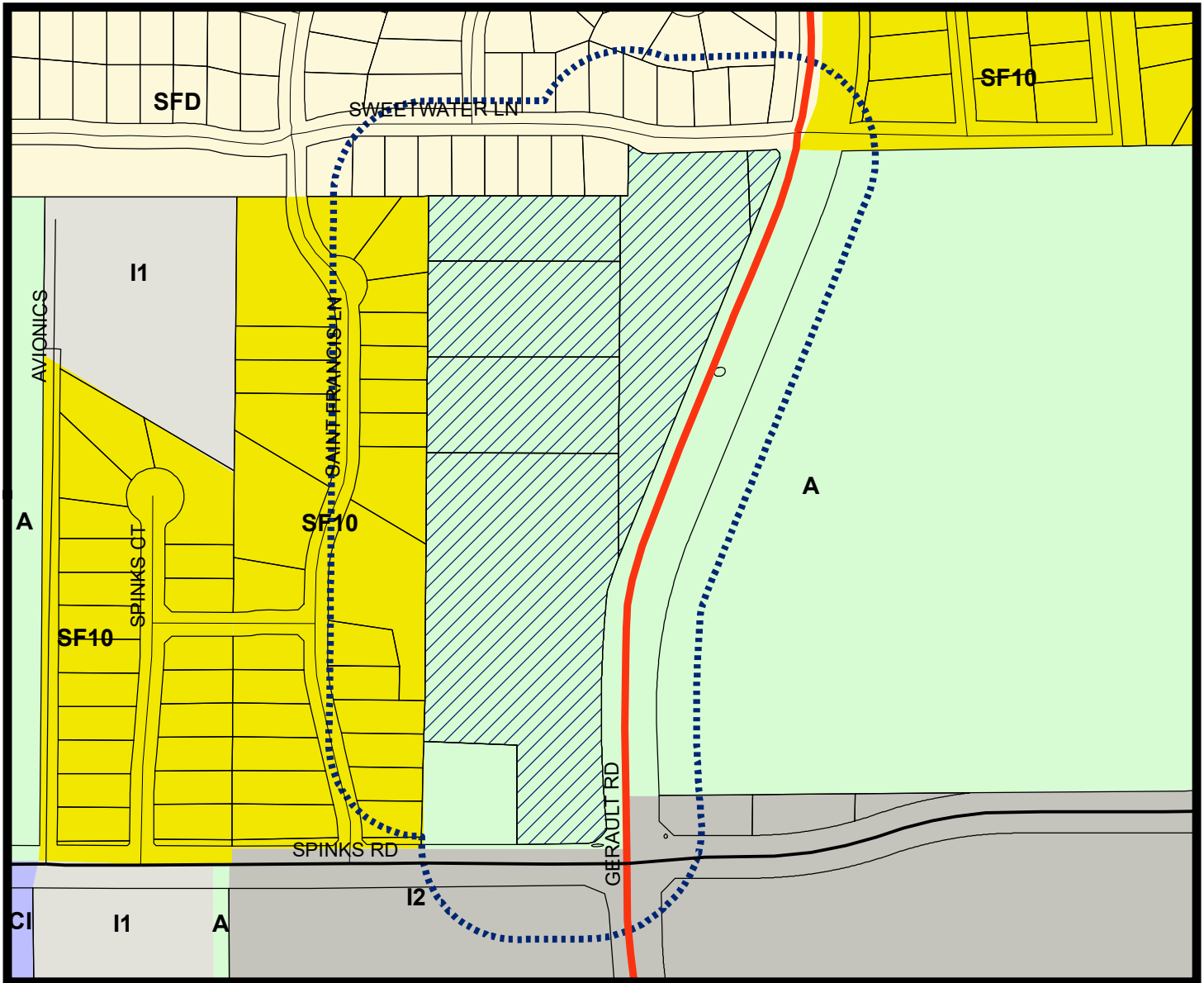
### **B. Application Details**

1. Planned Development Zoning Package
2. Draft Planned Development (PD) Standards

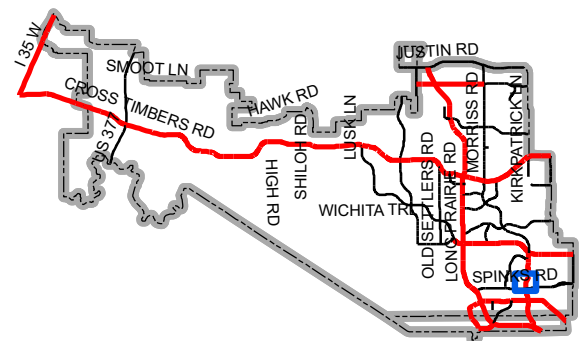
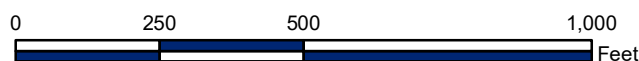
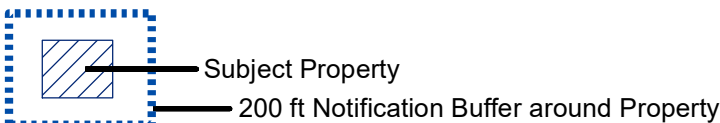
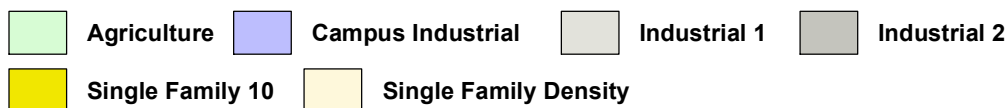


# Vicinity Map

Reference Project: ZPD18-0008



## LEGEND



Map Location





October 12, 2018

Richard Brown, Senior Planner  
Town of Flower Mound  
2121 Cross Timbers Road  
Flower Mound, TX 75028

Mr. Brown,

LandDesign, Inc. has submitted an application on behalf of Contour Real Estate & Development, LLC (herein referred to as "Applicant") for a Zoning Planned Development and Master Plan Amendment for Magnolia Court (herein referred to as the "site" or "property"). The application is for approximately 14.802 acres of land located at the southwest corner of the intersection of Gerault Road and Sweetwater Lane.

#### **Existing Zoning and Land Uses**

The property is currently zoned Agricultural (A) and listed as "Medium Density" under the Town of Flower Mound's Master Plan. The existing uses on the property include three single-family residences, two of which are currently vacant and primary used for storage.

To the west and north, the property is bordered by the Bella Strada neighborhood (SF-10 zoning, Medium Density Residential) and the Cedar Bluff neighborhood (SFD PD-58 zoning, Medium Density Residential). To the east of the property is the Town of Flower Mound's Community Activity Center (Agricultural zoning, Park). To the south of the property is the northern boundary of the Lakeside Business District (I2 PD-44 zoning) and uses are primarily comprised of warehouse with limited office.

#### **Proposed Zoning and Land Use**

The Applicant is requesting a Zoning Planned Development to allow for twenty-nine (29) single-family residential lots and it is anticipated that construction of the property shall be developed as one phase. The Zoning Planned Development request will allow for two tracts within the property with "Tract 1" allowing for Single Family District 10 (SF-10) zoning in accordance with the Town of Flower Mound Master Plan and "Tract 2" retaining existing Agricultural District (A) zoning. Tract 2 shall be utilized for storm water management purposes as part of this proposed zoning.

As shown on the Conceptual Site Plan, of the 14.802 acres within the development area, a collective 4.408 acres (29%) of Common Area X Lots have been provided.

**Special Considerations**

The following items include special considerations that are unique to the property that the Applicant has taken into consideration:

1. The following easements extend along the southern limits of the zoning request area from the Gerault Road right-of-way limits and continue toward the northwest into the Bella Strada neighborhood:
  - A 70-foot wide Brazos Electric Power Cooperative Easement which contains a high voltage electrical transmission line.
  - A 15-foot wide Verizon Easement.
  - A 75-foot Lonestar Gas Company Easement

As required by Section 98-979 of the Code of Ordinances, no residential building may be constructed within 100-feet of the edge of the right-of-way or easement for a high voltage electrical transmission line, also known as the Building Free Area. As a result of this requirement, no residential building may be constructed within a 270-foot wide area of property extending from the eastern right-of-way limits along Gerault Road and continue toward the northwest into the Bella Strada neighborhood.

2. The property includes several existing and proposed trails as identified within the Town of Flower Mound's Parks and Trail Master Plan. These include:
  - Along Gerault Road, an 8-foot wide meandering multi-use trail is proposed within the 25-foot street buffer and Gerault Road right-of-way. This trail will connect from the existing trail along to Spinks Road and extend to the north to the intersection with Sweetwater Lane.
  - Along Sweetwater Lane, an 8-foot wide meandering multi-use trail is proposed within the 15-foot street buffer and Sweetwater Lane right-of-way. This trail shall connect to the existing 4-foot wide sidewalk to the west. This trail will connect from the existing sidewalk and extend to the east to the intersection with Sweetwater Lane and Gerault Road.
  - Along Spinks Road, the Town of Flower Mound has constructed the extension of the Bluebonnet Trail. The existing trail is an 8-foot wide multi-use trail located at the back of curb along Spinks Road and it is the intent of the Applicant to maintain this existing trail. A 25-foot street buffer has been proposed along the Spinks Road right-of-way.
  - Within the utility easement extending from the eastern right-of-way limits along Gerault Road and continuing toward the northwest into the Bella Strada neighborhood, an 8-foot wide multi-use trail is proposed to connect from the multi-use trail along Gerault Road and to extend the western property line adjacent to the Bella Strada neighborhood.
3. Street access to the property is proposed to be from Sweetwater Lane to the north. This access point will allow for minimal disruption of the trail network along Gerault Road and potential access conflicts with the existing median break at the entrance to the Town of Flower Mound's Community Activity Center.

**Proposed Exceptions**

There are no proposed exceptions to the Single-Family District-10 (SF-10) or Agricultural (A) zoning districts. Additionally, no exceptions to the Town of Flower Mound's Master Plan are proposed with this application.

**Community Outreach and Due Diligence**

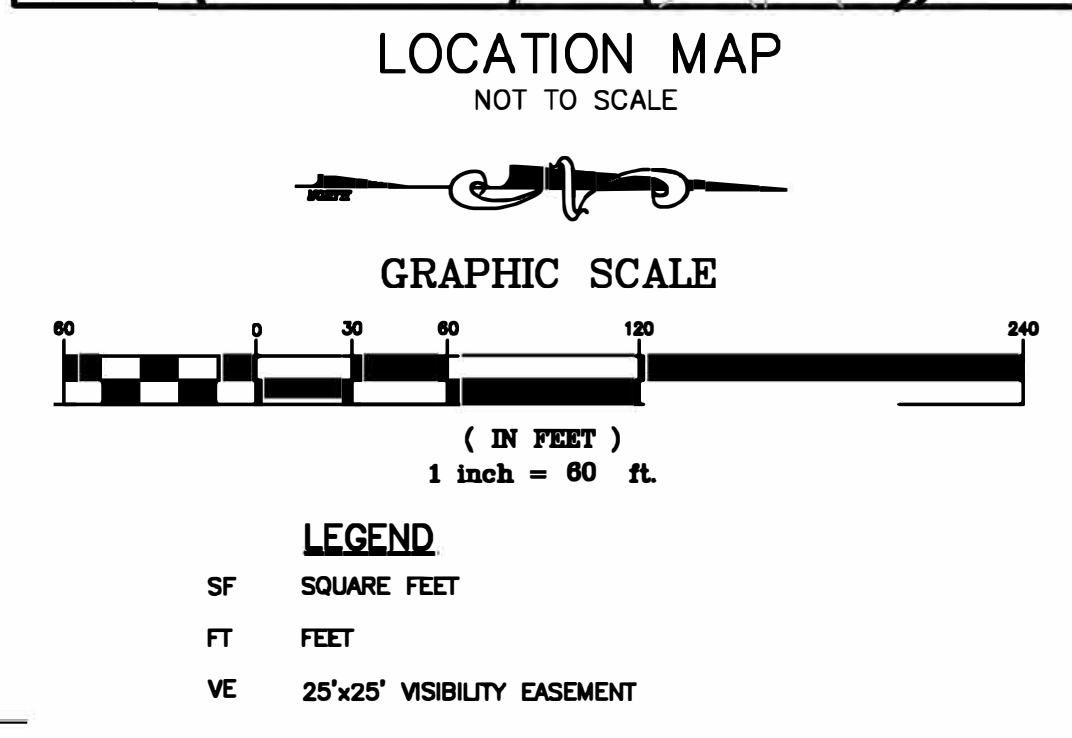
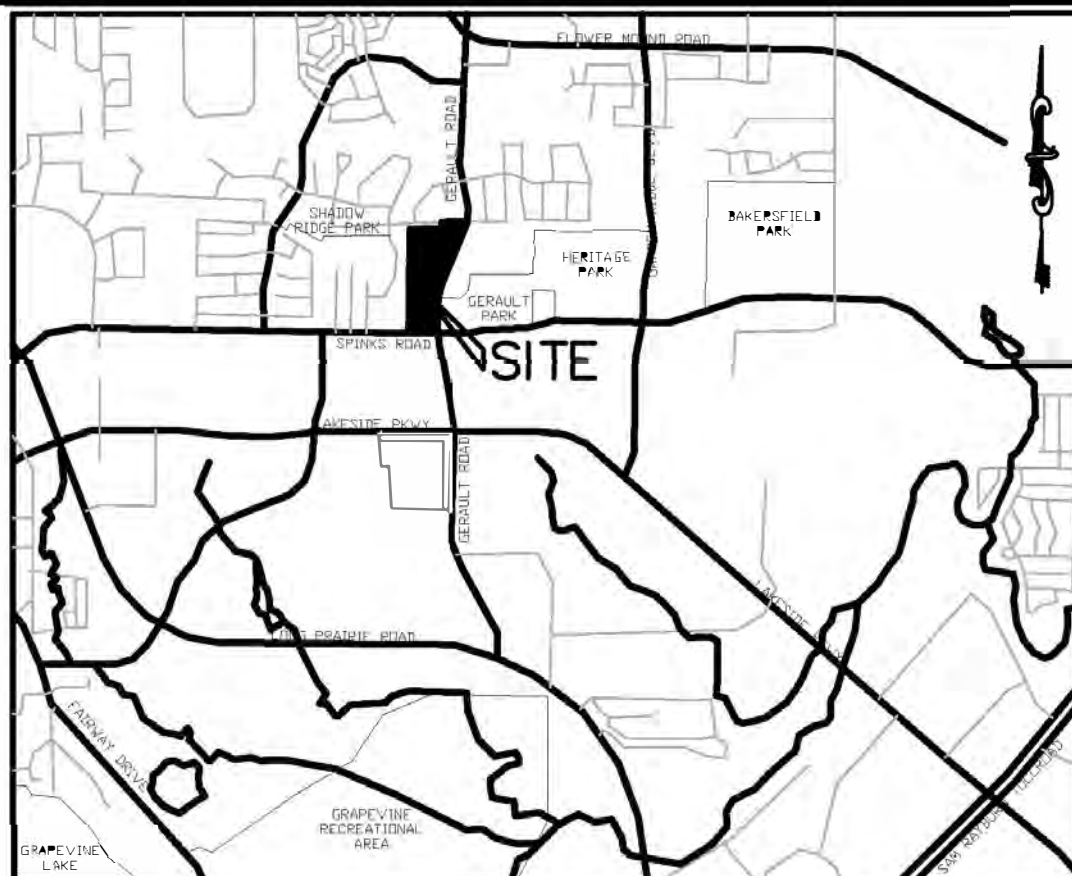
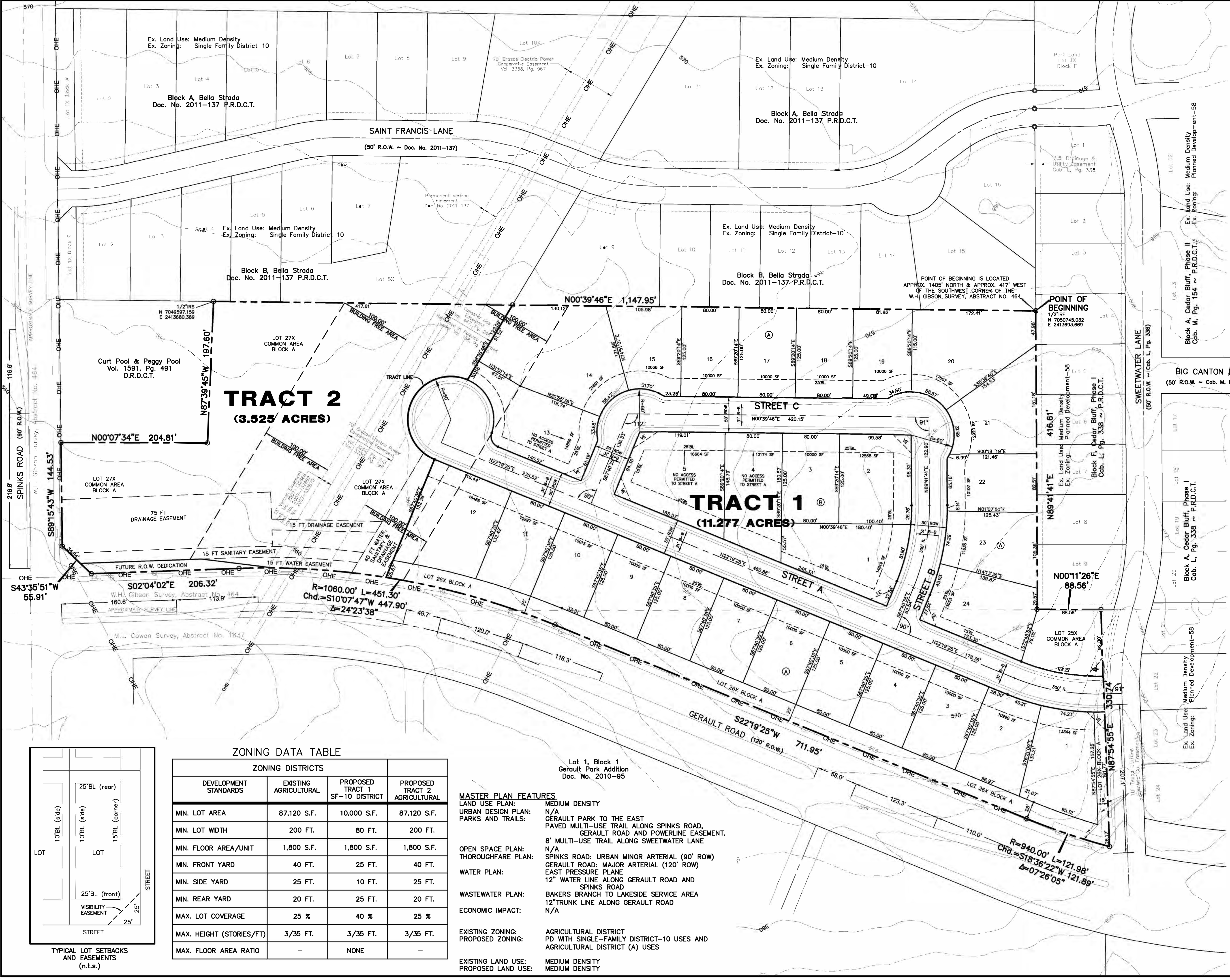
The Applicant participated in a Design Review Committee meeting with Town Staff on July 10, 2018 to receive preliminary feedback based on the proposed zoning and conceptual site plan. On December 11, 2017, the Applicant walked the property with the Town of Flower Mound's Environmental Review Analyst to identify any specimen trees that may be located on the property.

Please let me know if you have any questions or need any further information.



Sincerely,  
Heth Kendrick, PLA  
Principal for LandDesign, Inc.





- NOTES:
1. "NOTICE: SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS IS A VIOLATION OF TOWN ORDINANCE AND STATE LAW AND IS SUBJECT TO FINES AND WITHHOLDING OF UTILITIES AND BUILDING PERMITS."
  2. PROPOSED DEVELOPMENT SHALL BE ONE PHASE.
  3. STORMWATER DRAINAGE WILL BE CONVEYED FROM THE LOTS TO THE STREETS. ONCE WITHIN THE STREETS DRAINAGE WILL BE COLLECTED IN INLETS AND THEN CONVEYED THROUGH STORM SEWER PIPES UNTIL THEY REACH THE DETENTION BASIN (LOT 36X, BLOCK A). THE DETENTION BASIN WILL RELEASE STORM WATER FLOWS AT OR BELOW EXISTING CONDITIONS UNLESS THE CITY AND EXISTING INFRASTRUCTURE ALLOW FOR HIGHER RELEASES.
  4. ALL RIGHTS-OF-WAY ARE 50' UNLESS OTHERWISE INDICATED HEREON.
  5. ALL COMMON AREAS ARE TO BE OWNED AND MAINTAINED BY THE HOMEOWNER'S ASSOCIATION.
  6. FINAL UTILITY EASEMENTS TO BE DETERMINED AT THE TIME OF FINAL PLATTING.
  7. THIS PROPERTY IS OUT OF THE 100-YEAR FLOODPLAIN.

CONCEPTUAL SITE PLAN

MAGNOLIA COURT

29 SINGLE FAMILY LOTS;  
AND 3 COMMON AREA X LOTS;  
LOT 25X, BLOCK A - 0.206 ACRES;  
LOT 26X, BLOCK A - 0.671 ACRES;  
LOT 27X, BLOCK C - 3.454 ACRES;

644,768 SQUARE FEET OR  
14.802 ACRES OUT OF THE  
W.H. GIBSON, ABSTRACT NUMBER 464  
AND  
M.L.COWAN SURVEY, ABSTRACT NO. 1637

TOWN OF FLOWER MOUND  
DENTON COUNTY, TEXAS

**MICHAEL F. HENSLEY** OWNER  
115 Ashley Place  
Ocean Springs, MS 39564-5322  
Contact: Michael Hensley

**PATTI COLWELL** OWNER  
1213 Gerault Road  
Flower Mound, Texas 75028-3407  
Contact: Patti Colwell

**CONTOUR, LTD.** APPLICANT  
14275 Midway Road, Suite 215  
Addison, Texas 75001  
Contact: Jim Tchoukaleff (214) 986-5009

**JBI PARTNERS, INC.** SURVEYOR/ENGINEER  
2121 Midway Road, Suite 300  
Carrollton, Texas 75006  
Contact: Chris Wall, P.E. (972)248-7676  
T&PE No. F-438 T&PLS No. 10076000

REVISED: OCTOBER 12, 2016  
REVISED: SEPTEMBER 24, 2018  
DATE: JULY 11, 2018  
Sheet 1 of 1

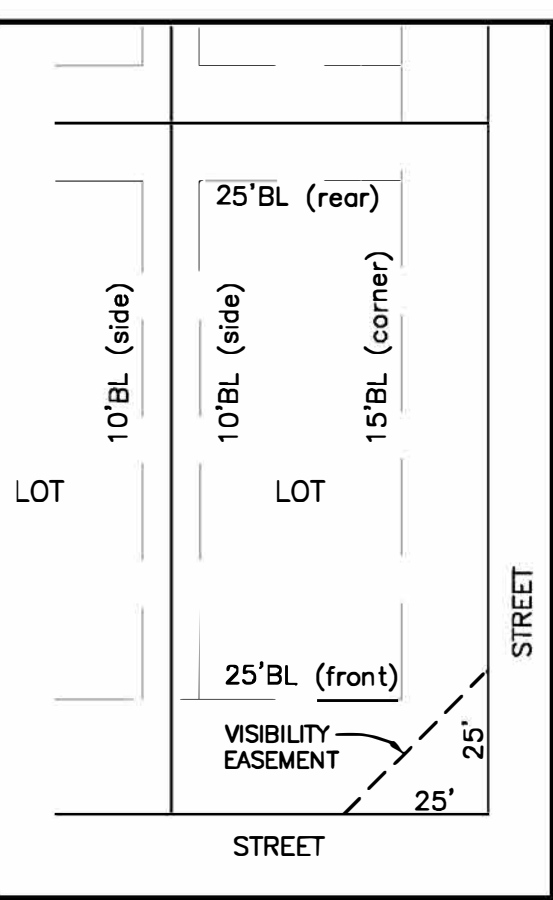
ZONING DATA TABLE

| DEVELOPMENT STANDARDS    | ZONING DISTRICTS      |                                 |                               |
|--------------------------|-----------------------|---------------------------------|-------------------------------|
|                          | EXISTING AGRICULTURAL | PROPOSED TRACT 1 SF-10 DISTRICT | PROPOSED TRACT 2 AGRICULTURAL |
| MIN. LOT AREA            | 87,120 S.F.           | 10,000 S.F.                     | 87,120 S.F.                   |
| MIN. LOT WIDTH           | 200 FT.               | 80 FT.                          | 200 FT.                       |
| MIN. FLOOR AREA/UNIT     | 1,800 S.F.            | 1,800 S.F.                      | 1,800 S.F.                    |
| MIN. FRONT YARD          | 40 FT.                | 25 FT.                          | 40 FT.                        |
| MIN. SIDE YARD           | 25 FT.                | 10 FT.                          | 25 FT.                        |
| MIN. REAR YARD           | 20 FT.                | 25 FT.                          | 20 FT.                        |
| MAX. LOT COVERAGE        | 25 %                  | 40 %                            | 25 %                          |
| MAX. HEIGHT (STORIES/FT) | 3/35 FT.              | 3/35 FT.                        | 3/35 FT.                      |
| MAX. FLOOR AREA RATIO    | -                     | NONE                            | -                             |

MASTER PLAN FEATURES

LAND USE PLAN: MEDIUM DENSITY  
URBAN DESIGN PLAN: N/A  
PARKS AND TRAILS: GERAULT PARK TO THE EAST  
PAVED MULTI-USE TRAIL ALONG SPINKS ROAD,  
GERAULT ROAD AND POWERLINE EASEMENT,  
8' MULTI-USE TRAIL ALONG SWEETWATER LANE  
OPEN SPACE PLAN: N/A  
THOROUGHFARE PLAN: SPINKS ROAD: URBAN MINOR ARTERIAL (90' ROW)  
GERAULT ROAD: MAJOR ARTERIAL (120' ROW)  
EAST PRESSURE PLANE  
WATER PLAN: 12" WATER LINE ALONG GERAULT ROAD AND  
SPINKS ROAD  
WASTEWATER PLAN: BAKERS BRANCH TO LAKESIDE SERVICE AREA  
12" TRUNK LINE ALONG GERAULT ROAD  
ECONOMIC IMPACT: N/A  
EXISTING ZONING: AGRICULTURAL DISTRICT  
PD WITH SINGLE-FAMILY DISTRICT-10 USES AND  
AGRICULTURAL DISTRICT (A) USES  
EXISTING LAND USE: MEDIUM DENSITY  
PROPOSED ZONING: MEDIUM DENSITY  
PROPOSED LAND USE: MEDIUM DENSITY

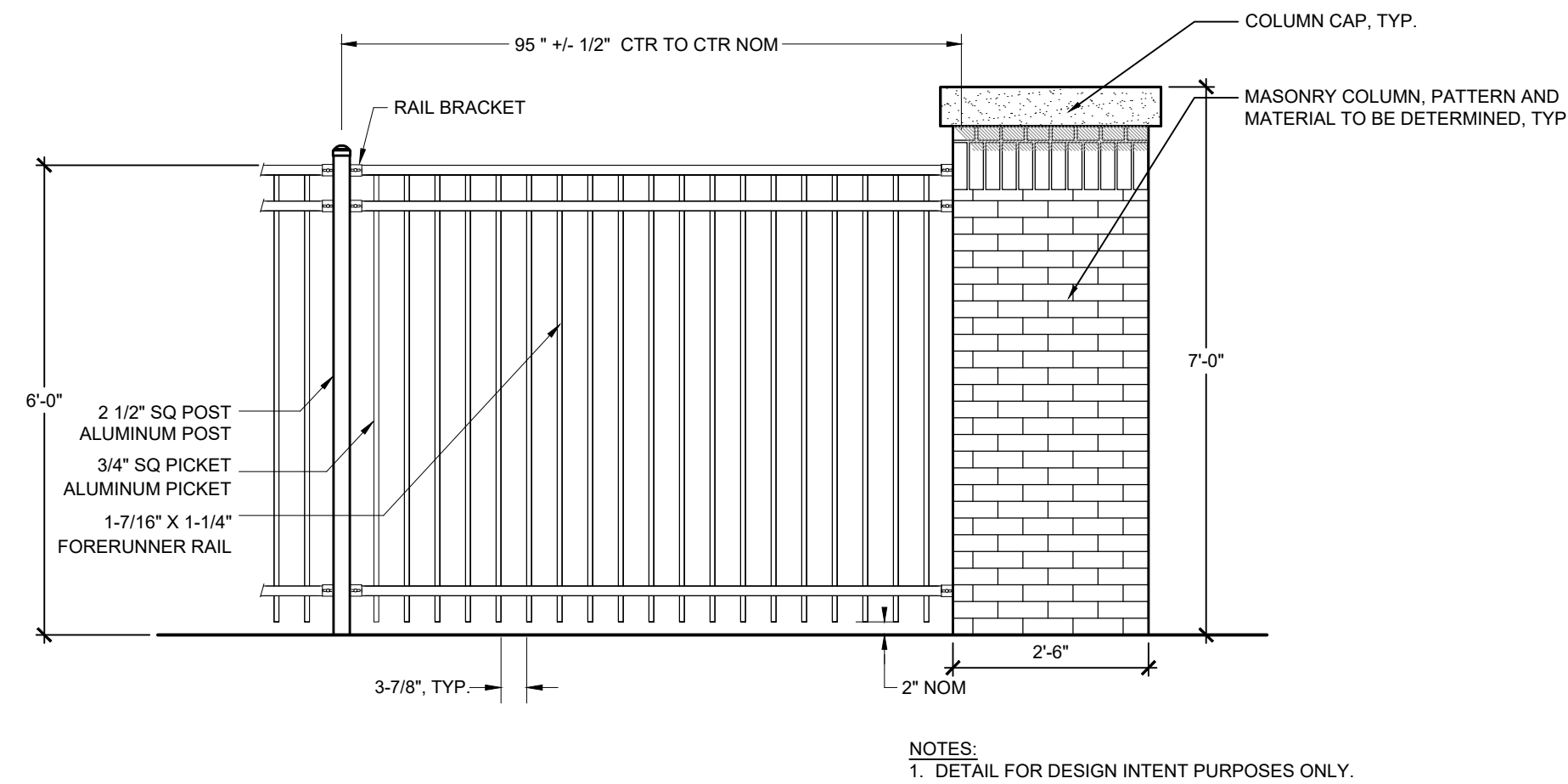
Lot 1, Block 1  
Gerault Park Addition  
Doc. No. 2010-95











## 2 DECORATIVE FENCE



3 PRIMARY MONUMENT SIGN  
R22.0 ELEVATION

RZ2.0

**Exhibit “B”****Development Standards****Planned Development District No. 168 (PD-168)****Magnolia Court**

The development on the property comprising approximately 14.802 acres of land within the corporate limits of the Town of Flower Mound (“Town”) and as described on Exhibit “A” to this Zoning Ordinance adopting PD-168 shall be in accordance with the Town of Flower Mound *Master Plan* and the Land Development Regulations of the Town of Flower Mound, Texas, as amended, and shall be subject to the following conditions and requirements.

**A. Exhibits.**

The following exhibits are incorporated into this Planned Development District:

1. Exhibit C: Conceptual Site Plan.
2. Exhibit D: Conceptual Landscape Plan.

**B. Uses.**

Development of Magnolia Court, comprising approximately 14.802 acres of land, shall comply with all regulations applicable to the Single Family Residential District-10 (SF-10) and the Agricultural District (A) contained in the Town’s Land Development Regulations, as amended, except as otherwise provided and/or limited herein.

1. Permitted Uses-Tract 1 and Tract 2. Only the following permitted uses shall be allowed, subject to compliance with all applicable conditions and provisions of the Town’s Land Development Regulations, as amended:
  - a. Dwelling, single-family detached;
  - b. Accessory use, general, subject to section 98-972;
  - c. Garage Sale, subject to section 98-982;
  - d. Home occupation, subject to section 98-984;
  - e. Model home (Tract 1, only); and,
  - f. Swimming pool, private.
2. Specific Uses-Tract 1 and Tract 2. No specific uses requiring the issuance of a specific use permit shall be allowed.
3. Temporary Uses-Tract 1 and Tract 2. Only the following temporary uses shall be allowed subject to approval of a temporary use permit in accordance with the procedures and standards of section 78-87 of the Code, “Temporary Use Permits”:



- a. Asphalt/concrete batch plant, temporary, subject to section 98-974;
- b. Field office, temporary;
- c. Sales trailer, temporary, subject to section 98-993 (Tract 1, only); and,
- d. Temporary special event, subject to section 98-976.

C. Minimum and maximum dimensions.

1. Tract 1.

- a. Minimum lot area per dwelling. The minimum lot area shall be 10,000 square feet, subject to section 98-1023.
- b. Minimum lot width. The minimum lot width shall be 80 feet, subject to section 98-1024.
- c. Minimum floor area per unit. The minimum floor area per dwelling unit shall be 1,800 square feet, subject to section 98-1025.
- d. Minimum front yard.
  - i. Except as provided in this paragraph, the minimum front yard setback shall be 25 feet, subject to section 98-1026. Minimum setback for corner lots must match the front yard setback for key lots. Minimum setback for non-key lots is 15 feet.
  - ii. A front entry garage shall be set back a minimum of 25 feet from the front property line.
  - iii. Porches may encroach a maximum of eight feet into the front yard.
  - iv. Fences shall not extend into the front yard beyond the front façade of the residential dwelling.
- e. Minimum side yard. The minimum side yard shall be ten feet, subject to section 98-1027.
- f. Minimum rear yard. The minimum rear yard shall be 25 feet, subject to section 98-1028.
- g. Maximum lot coverage. The maximum lot coverage shall be 40 percent, subject to section 98-1029.
- h. Maximum floor area ratio. There shall be no maximum floor area requirement.
- i. Maximum height. The maximum height of buildings and structures shall be three stories or 35 feet, subject to section 98-1031.

## 2. Tract 2.

- a. Minimum lot area per dwelling. The minimum lot area shall be two acres (87,120 square feet), subject to section 98-1023.
- b. Minimum lot width. The minimum lot width shall be 200 feet, subject to section 98-1024.
- c. Minimum floor area per unit. The minimum floor area per dwelling unit shall be 1,800 square feet, subject to section 98-1025.
- d. Minimum front yard.
  - i. Except as provided in this paragraph, the minimum front yard setback shall be 40 feet, subject to section 98-1026. Minimum setback for corner lots must match the front yard setback for key lots. Minimum setback for non-key lots is fifteen feet 15 feet.
- e. Minimum side yard. The minimum side yard shall be 25 feet, subject to section 98-1027.
- f. Minimum rear yard. The minimum rear yard shall be 20 feet, subject to section 98-1028.
- g. Maximum lot coverage. The maximum lot coverage shall be 25 percent, subject to section 98-1029.
- h. Maximum floor area ratio. There shall be no maximum floor area requirement.
- i. Maximum height. The maximum height of buildings and structures shall be three stories or 35 feet, subject to section 98-1031.

## D. Landscape Standards.

Landscaping shall be in accordance with the Town's landscape ordinance as amended, and the Town's Urban Design Plan except as otherwise provided and/or limited herein.

### 1. Tract 1-Front Yard Trees.

- a. At least one canopy street tree shall be required in the front yard of each lot. The tree shall be located within five feet of street right-of-way and be placed within the property boundary area of the lot, subject to compliance with Division 3-Visual Clearances, Section 82-161 of the Town Code. No trees are permitted within the parkway.
- b. Front yard trees shall be a minimum three and one-half inches in diameter, measured 12 inches from the root ball, when planted. The planting of said tree shall take place in conjunction with the construction of the single family dwelling.

- c. The following trees shall be the only trees allowed to be used as street trees due to their tap root structure versus a horizontal root structure. Southern Live Oak, Shumard Oak, Texas Red Oak, Cedar Elm, Lace Bark Elm, Bald Cypress, and Texas Ash.

2. Tract 1-Front Yard Landscaping.

- a. A minimum of 75 percent of the permeable area within the front yard shall be planted with grass.
- b. A minimum of 25 percent of the permeable area within the front yard shall be planted with other materials such as groundcovers, shrubs, perennial and/or annual plantings, or other similar landscape plantings.

E. Trail Requirements.

1. Gerault Road Trail. There shall be a minimum eight-foot-wide multi-purpose trail along the Gerault Road frontage as required by the *Parks & Trails Master Plan*.
2. Sweetwater Lane Trail.
  - a. There shall be a minimum eight-foot-wide (tapering to four-foot-wide to connect with existing off-site sidewalk) multi-purpose trail along the Sweetwater Lane frontage as required by the *Parks & Trails Master Plan*.
3. Spinks Road Trail. The existing eight-foot-wide multi-purpose trail along the Spinks Road frontage shall be maintained as required by the *Parks & Trails Master Plan*.

F. Park Land Dedication.

1. Fees in lieu of park land dedication shall be waived.

G. Park Development Fees.

1. Park development fees shall be waived.

H. Supplemental Standards.

1. Tract 1. Maximum number of buildable lots shall be 29.
2. Tract 1. Alleys shall not be required.
3. Minimum unobstructed sidewalk width is four feet.
4. All landscaping and common area shall be in general conformance with Exhibit "D".
5. Required fencing where a residential lot abuts an open space area shall be installed in general conformance with Exhibit "D".
6. All landscaping and common area/open space shall be in general conformance with the conceptual landscape plan with Exhibit "D".

7. Development shall include all of the improvements as depicted on Exhibit "C". Such improvements together with all other improvements necessary to serve the development shall be installed prior to the Town's acceptance of the subdivision.

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

Page 1

## TOWN OF FLOWER MOUND, TEXAS

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

**AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, LAND DEVELOPMENT REGULATIONS, OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY CHANGING THE ZONING ON APPROXIMATELY 14.802 ACRES OF LAND SITUATED IN THE W. H. GIBSON SURVEY, ABSTRACT NO. 464, AND THE M. L. COWAN SURVEY, ABSTRACT NO. 1637, FROM AGRICULTURAL DISTRICT (A) TO PLANNED DEVELOPMENT DISTRICT NO. 168 (PD-168) WITH SINGLE-FAMILY DISTRICT-10 (SF-10) USES AND AGRICULTURAL DISTRICT (A) USES, 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; AND PROVIDING AN EFFECTIVE DATE.**

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

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

**WHEREAS**, in accordance with Chapter 78 of the Land Development Regulations, the owners of the property described as approximately 14.802 acres of land situated in the W. H. Gibson Survey, Abstract No. 464, and the M. L. Cowan Survey, Abstract No. 1637, have filed an application for a Zoning Planned Development amendment to change the zoning from Agricultural District (A) to Planned Development District No. 168 (PD-168) with Single-Family District-10 (SF-10) uses and Agricultural District (A) uses; and,

**WHEREAS**, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on November 12, 2018, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on November 19, 2018, with respect to the planned development district described herein; and,

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

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

**ORDINANCE NO. \_\_\_\_\_****Page 2**

### **SECTION 1**

The Land Development Regulations of the Town of Flower Mound, Texas, as amended, are hereby amended on the hereinafter described property and area as shown below:

Approximately 14.802 acres of land situated in the W. H. Gibson Survey, Abstract No. 464, and the M. L. Cowan Survey, Abstract No. 1637, Denton County, Texas, and more fully described in Exhibit "A" hereto.

Planned Development District No. 168 (PD-168) with Single-Family District-10 (SF-10) uses and Agricultural District (A) uses.

### **SECTION 2**

The development standards, conceptual site plan, and conceptual landscape plan of the proposed Planned Development District No. 168 (PD-168), attached hereto as Exhibits "B," "C," and "D," each incorporated herein for all purposes allowed by law, are hereby approved as the development standards, conceptual site plan, and conceptual landscape plan for this Planned Development District No. 168 (PD-168).

### **SECTION 3**

The official map of the Town of Flower Mound is amended and the Executive Director of Development Services is directed to revise the official zoning map to reflect the approved planned development district, as set forth above.

### **SECTION 4**

The use of the property described above shall be subject to all restrictions, terms and conditions contained in Exhibits "B," "C," and "D," attached hereto, as well as the applicable regulations contained in the Land Development Regulations and all other applicable and pertinent ordinances of the Town of Flower Mound.

### **SECTION 5**

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

### **SECTION 6**

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



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

**Page 3****SECTION 7**

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

**SECTION 8**

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

**SECTION 9**

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

**SECTION 10**

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

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

**APPROVED:**\_\_\_\_\_  
**STEVE DIXON, MAYOR****ATTEST:**\_\_\_\_\_  
**Theresa Scott, TOWN SECRETARY**

## EXHIBIT A

## LEGAL DESCRIPTION - ZONING

BEING that parcel of land located in the Town of Flower Mound, Denton County, Texas, a part of the W. H. Gibson Survey, Abstract Number 464, a part of the M. L. Cowan Survey, Abstract Number 1637, being an undivided 50% interest in the remainder of a called 10.1097 acre tract of land described in a deed to Patti Colwell, as recorded in Document Number 2014-2165, Deed Records of Denton County, Texas, (D.R.D.C.T.), being an undivided 50% interest in the remainder of a called 10.1097 acre tract of land described in a deed to Michael F. Hensley, as recorded in Document Number 2014-2164, (D.R.D.C.T.), being all of that called 2.00 acre tract of land described in a deed to Michael F. Hensley, as recorded in Volume 1239, Page 682, (D.R.D.C.T.), being all of that called 2.00 acre tract of land described in a deed to Pattie Colwell McLendon, as recorded in Volume 1239, Page 686, (D.R.D.C.T.), and being further described as follows:

BEGINNING at a one-half inch iron rod found at the northwest corner of said 10.1097 acre tract of land, said point being the northeast corner of Lot 15, Block B of Belle Strada Addition, an addition to the Town of Flower Mound, as recorded in Document Number 2011-137, Plat Records of Denton County, Texas, (P.R.D.C.T.) and said point being in the south line of Lot 4, Block F of Cedar Bluff, Phase I Addition, an addition to the Town of Flower Mound, as recorded in Cabinet L, Page 338, (P.R.D.C.T.);

THENCE North 89 degrees 41 minutes 41 seconds East, 416.61 feet with the south line of said Block F to the southeast corner of Lot 9 of said Block F;

THENCE North 00 degrees 11 minutes 26 seconds East, 88.56 feet with the east line of said Lot 9 to a one-half inch iron rod with cap stamped "ASC" found in the south right-of-way line of Sweetwater Lane (a variable width right-of-way at this point);

THENCE North 87 degrees 54 minutes 55 seconds East, 330.74 feet with the south right-of-way line of Sweetwater Lane to a one-half inch iron rod with cap stamped "ASC" found at the northeast corner of said 10.1097 acre tract of land, said point being in the west right-of-way line of Gerault Road (a 120 foot wide right-of-way);

THENCE with the west right-of-way line of Gerault Road as follows:

Southwesterly, 121.98 feet along a non-tangent curve to the right having a central angle of 07 degrees 26 minutes 05 seconds, a radius of 940.00 feet, a tangent of 61.07 feet, and whose chord bears South 18 degrees 36 minutes 22 seconds West, 121.89 feet to a one-half inch iron rod with cap stamped "ASC" found for corner;

South 22 degrees 19 minutes 25 seconds West, 711.95 feet to a one-half inch iron rod with cap stamped "ASC" found for corner;

Southwesterly, 451.30 feet along a curve to the left having a central angle of 24 degrees 23 minutes 38 seconds, a radius of 1,060.00 feet, a tangent of 229.12 feet, and whose chord bears South 10 degrees 07 minutes 47 seconds West, 447.90 feet to a nail found for corner;

South 02 degrees 04 minutes 02 seconds East, 206.32 feet to a one-half inch iron rod with cap stamped "ASC" found in the north line of a called 0.276 acre tract of land described in a deed to the Town of Flower Mound, as recorded in Document Number 2006-140647, (D.R.D.C.T.), said point being in the north right-of-way line of Spinks Road (a variable width right-of-way at this point);

THENCE with the north right-of-way line of Spinks Road as follows:

South 43 degrees 35 minutes 51 seconds West, 55.91 feet to a one-half inch iron rod with cap stamped "ASC" found in the north right-of-way line of Spinks Road (a 90 foot wide right-of-way at this point);

South 89 degrees 15 minutes 43 seconds West, 144.53 feet with the north right-of-way line of Spinks Road to a one-half inch iron with cap stamped "ASC" found for corner in the east line a called 0.982 acre tract of land described in a deed to Curt and Peggy Pool, as recorded in Volume 1591, Page 491, (D.R.D.C.T.);

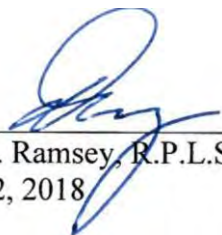
THENCE North 00 degrees 07 minutes 34 seconds East, 204.81 feet to the northeast corner of said Pool tract of land;

THENCE North 87 degrees 39 minutes 45 seconds West , 197 .60 feet to a one-half inch iron with cap stamped " ASC" found at the northwest corner of said Pool tract of land , said point being in the east line of said Bella Strada Addition;

THENCE North 00 degrees 39 minutes 46 seconds East, 1,147.95 feet with the east line of said Bella Strada Addition to the POINT OF BEGINNING and containing 644,768 square feet or 14.802 acres of land.

The bearings shown hereon are based on Texas State Plane Coordinate System, North Central Zone (NAD 83, U.S. Feet with a combined scale factor of 1.00015063.

"This document was prepared under 22 TAC 663.23, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared."

  
\_\_\_\_\_  
Dan B. Ramsey, R.P.L.S. No. 4172  
July 12, 2018



**Exhibit “B”****Development Standards****Planned Development District No. 168 (PD-168)****Magnolia Court**

The development on the property comprising approximately 14.802 acres of land within the corporate limits of the Town of Flower Mound (“Town”) and as described on Exhibit “A” to this Zoning Ordinance adopting PD-168 shall be in accordance with the Town of Flower Mound *Master Plan* and the Land Development Regulations of the Town of Flower Mound, Texas, as amended, and shall be subject to the following conditions and requirements.

**A. Exhibits.**

The following exhibits are incorporated into this Planned Development District:

1. Exhibit C: Conceptual Site Plan.
2. Exhibit D: Conceptual Landscape Plan.

**B. Uses.**

Development of Magnolia Court, comprising approximately 14.802 acres of land, shall comply with all regulations applicable to the Single Family Residential District-10 (SF-10) and the Agricultural District (A) contained in the Town’s Land Development Regulations, as amended, except as otherwise provided and/or limited herein.

1. Permitted Uses-Tract 1 and Tract 2. Only the following permitted uses shall be allowed, subject to compliance with all applicable conditions and provisions of the Town’s Land Development Regulations, as amended:
  - a. Dwelling, single-family detached;
  - b. Accessory use, general, subject to section 98-972;
  - c. Garage Sale, subject to section 98-982;
  - d. Home occupation, subject to section 98-984;
  - e. Model home (Tract 1, only); and,
  - f. Swimming pool, private.
2. Specific Uses-Tract 1 and Tract 2. No specific uses requiring the issuance of a specific use permit shall be allowed.
3. Temporary Uses-Tract 1 and Tract 2. Only the following temporary uses shall be allowed subject to approval of a temporary use permit in accordance with the procedures and standards of section 78-87 of the Code, “Temporary Use Permits”:

- a. Asphalt/concrete batch plant, temporary, subject to section 98-974;
- b. Field office, temporary;
- c. Sales trailer, temporary, subject to section 98-993 (Tract 1, only); and,
- d. Temporary special event, subject to section 98-976.

C. Minimum and maximum dimensions.

1. Tract 1.

- a. Minimum lot area per dwelling. The minimum lot area shall be 10,000 square feet, subject to section 98-1023.
- b. Minimum lot width. The minimum lot width shall be 80 feet, subject to section 98-1024.
- c. Minimum floor area per unit. The minimum floor area per dwelling unit shall be 1,800 square feet, subject to section 98-1025.
- d. Minimum front yard.
  - i. Except as provided in this paragraph, the minimum front yard setback shall be 25 feet, subject to section 98-1026. Minimum setback for corner lots must match the front yard setback for key lots. Minimum setback for non-key lots is 15 feet.
  - ii. A front entry garage shall be set back a minimum of 25 feet from the front property line.
  - iii. Porches may encroach a maximum of eight feet into the front yard.
  - iv. Fences shall not extend into the front yard beyond the front façade of the residential dwelling.
- e. Minimum side yard. The minimum side yard shall be ten feet, subject to section 98-1027.
- f. Minimum rear yard. The minimum rear yard shall be 25 feet, subject to section 98-1028.
- g. Maximum lot coverage. The maximum lot coverage shall be 40 percent, subject to section 98-1029.
- h. Maximum floor area ratio. There shall be no maximum floor area requirement.
- i. Maximum height. The maximum height of buildings and structures shall be three stories or 35 feet, subject to section 98-1031.

2. Tract 2.

- a. Minimum lot area per dwelling. The minimum lot area shall be two acres (87,120 square feet), subject to section 98-1023.
- b. Minimum lot width. The minimum lot width shall be 200 feet, subject to section 98-1024.
- c. Minimum floor area per unit. The minimum floor area per dwelling unit shall be 1,800 square feet, subject to section 98-1025.
- d. Minimum front yard.
  - i. Except as provided in this paragraph, the minimum front yard setback shall be 40 feet, subject to section 98-1026. Minimum setback for corner lots must match the front yard setback for key lots. Minimum setback for non-key lots is fifteen feet 15 feet.
- e. Minimum side yard. The minimum side yard shall be 25 feet, subject to section 98-1027.
- f. Minimum rear yard. The minimum rear yard shall be 20 feet, subject to section 98-1028.
- g. Maximum lot coverage. The maximum lot coverage shall be 25 percent, subject to section 98-1029.
- h. Maximum floor area ratio. There shall be no maximum floor area requirement.
- i. Maximum height. The maximum height of buildings and structures shall be three stories or 35 feet, subject to section 98-1031.

## D. Landscape Standards.

Landscaping shall be in accordance with the Town's landscape ordinance as amended, and the Town's Urban Design Plan except as otherwise provided and/or limited herein.

## 1. Tract 1-Front Yard Trees.

- a. At least one canopy street tree shall be required in the front yard of each lot. The tree shall be located within five feet of street right-of-way and be placed within the property boundary area of the lot, subject to compliance with Division 3-Visual Clearances, Section 82-161 of the Town Code. No trees are permitted within the parkway.
- b. Front yard trees shall be a minimum three and one-half inches in diameter, measured 12 inches from the root ball, when planted. The planting of said tree shall take place in conjunction with the construction of the single family dwelling.

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Page 9

- c. The following trees shall be the only trees allowed to be used as street trees due to their tap root structure versus a horizontal root structure. Southern Live Oak, Shumard Oak, Texas Red Oak, Cedar Elm, Lace Bark Elm, Bald Cypress, and Texas Ash.
2. Tract 1-Front Yard Landscaping.
  - a. A minimum of 75 percent of the permeable area within the front yard shall be planted with grass.
  - b. A minimum of 25 percent of the permeable area within the front yard shall be planted with other materials such as groundcovers, shrubs, perennial and/or annual plantings, or other similar landscape plantings.
- E. Trail Requirements.
  1. Gerault Road Trail. There shall be a minimum eight-foot-wide multi-purpose trail along the Gerault Road frontage as required by the *Parks & Trails Master Plan*.
  2. Sweetwater Lane Trail.
    - a. There shall be a minimum eight-foot-wide (tapering to four-foot-wide to connect with existing off-site sidewalk) multi-purpose trail along the Sweetwater Lane frontage as required by the *Parks & Trails Master Plan*.
  3. Spinks Road Trail. The existing eight-foot-wide multi-purpose trail along the Spinks Road frontage shall be maintained as required by the *Parks & Trails Master Plan*.
- F. Supplemental Standards.
  1. Tract 1. Maximum number of buildable lots shall be 29.
  2. Tract 1. Alleys shall not be required.
  3. Minimum unobstructed sidewalk width is four feet.
  4. All landscaping and common area shall be in general conformance with Exhibit "D".
  5. Required fencing where a residential lot abuts an open space area shall be installed in general conformance with Exhibit "D".
  6. All landscaping and common area/open space shall be in general conformance with the conceptual landscape plan with Exhibit "D".
  7. Development shall include all of the improvements as depicted on Exhibit "C". Such improvements together with all other improvements necessary to serve the development shall be installed prior to the Town's acceptance of the subdivision.







PLANTING NOTES:

1. ALL PLANTINGS SHALL COMPLY WITH CURRENT LOCAL ORDINANCES AND GUIDELINES FOR THE TOWN OF FLOWER MOUND.
2. REFER TO R23.0 FOR ADDITIONAL NOTES AND INFORMATION PERTAINING TO TREE SURVEY AND MITIGATION.
3. THIS PLAN IS FOR PLANTING LOCATIONS ONLY AND ALL PLANT MATERIAL SHALL BE SPACED AND LOCATED PER PLAN.
4. THE PROPERTY OWNER AND/OR LESSEE SHALL MAINTAIN ALL LANDSCAPE MATERIALS AND LANDSCAPE AREAS IN ACCORDANCE WITH THE APPROVED LANDSCAPE PLAN. MAINTENANCE SHALL INCLUDE WATERING, WEEDING, MOWING, FERTILIZING, TREATING, MULDING, PRUNING, REMOVAL AND REPLACEMENT OF DEAD OR DISEASED TREES AND SHRUBS. MAINTENANCE SHALL BE PERFORMED AT A REASONABLE FREQUENCY IN ORDER TO MAINTAIN PLANT VIGOR AND STABILITY AND TO PRESENT A NEAT AND WELL-KEPT APPEARANCE AT ALL TIMES.
5. FINAL TREE SPECIES AND LOCATIONS TO BE DETERMINED DURING FINAL PLAN.
6. ALL PROPOSED TREE LOCATIONS TO BE FIELD VERIFIED BY TOWN OF FLOWER MOUND PARKS, TRAILS, AND LANDSCAPE SPECIALIST PRIOR TO PLANTING AND INSTALLATION TO AVOID CONFLICTS WITH EXISTING UTILITY AND SPECIMEN TREE CANOPIES THAT ARE BEING PRESERVED.

**KEY MAP**

SEAL

**PRELIMINARY**  
FOR REVIEW PURPOSES ONLY  
AND SHALL NOT BE USED FOR  
BIDDING, PERMITTING, OR  
CONSTRUCTION.

**Matthew S. Vinten**  
Registered Landscape Architect of the  
State of TEXAS

Registration Number: 2946

PROJECT

**MAGNOLIA  
COURT**

CONTOUR REAL ESTATE &  
DEVELOPMENT LLC

14275 MIDWAY ROAD, SUITE 215

ADDISON, TX 75001

LANDDESIGN PROJ.# 8517032

## REVISION / ISSUANCE

[illegible]

DESIGNED BY: LDI  
DRAWN BY: LDI  
CHECKED BY: LDI

SCALE

VERT: N/A  
HORZ: 1"=60'

SHEET TITLE

CONCEPTUAL LANDSCAPE  
PLAN (SHEET 1 OF 2)

SHEET NUMBER:

# RZ1.0



TEXAS811  
CALL BEFORE YOU DIG!  
TEXAS ONE-CALL CENTER  
IT'S THE LAW!

THIS PLAN IS CONCEPTUAL IN NATURE AND  
SUBJECT TO CHANGE. PLAN WILL BE FINALIZED  
DURING THE PERMITTING PROCESS BASED ON  
SITE PLAN AND GRADING PLAN APPROVAL.

| LANDSCAPE REQUIREMENT COMPLIANCE |                          |                    |                    |
|----------------------------------|--------------------------|--------------------|--------------------|
| TOWN OF FLOWER MOUND, TEXAS      |                          |                    |                    |
| STREET BUFFER WIDTH              |                          |                    |                    |
|                                  | REQUIRED WIDTH           | PROVIDED WIDTH     |                    |
| Gerault Road                     | 25ft buffer width        | 25ft buffer width  |                    |
| Spinks Road                      | 25ft buffer width        | 25ft buffer width  |                    |
| Sweetwater Lane                  | 15ft buffer width        | 15ft buffer width  |                    |
| STREET BUFFER TREES              |                          |                    |                    |
| STANDARD                         | STREET FRONTAGE          | REQUIRED           | PROVIDED           |
| 1 per 30lf                       | Gerault Road = 1,492 lf  | 50 trees (3" cal.) | 50 trees (3" cal.) |
| 1 per 30lf                       | Spinks Road = 172 lf     | 6 trees (3" cal.)  | 6 trees (3" cal.)  |
| 1 per 30lf                       | Sweetwater Lane = 300 lf | 10 trees (3" cal.) | 10 trees (3" cal.) |

existing trees within street buffer to help fulfill street buffer tree requirements

| STREET BUFFER MITIGATION TREE CREDITS               |                 |                 |              |
|-----------------------------------------------------|-----------------|-----------------|--------------|
| STANDARD                                            | STREET FRONTAGE | PRESERVED TREES | TREE CREDITS |
| 1 preserved protected/specimen tree = 1 tree credit | Gerault Road    | tbd             | tbd          |
|                                                     | Spinks Road     | tbd             | tbd          |
|                                                     | Sweetwater Lane | tbd             | tbd          |

## PLANT SCHEDULE

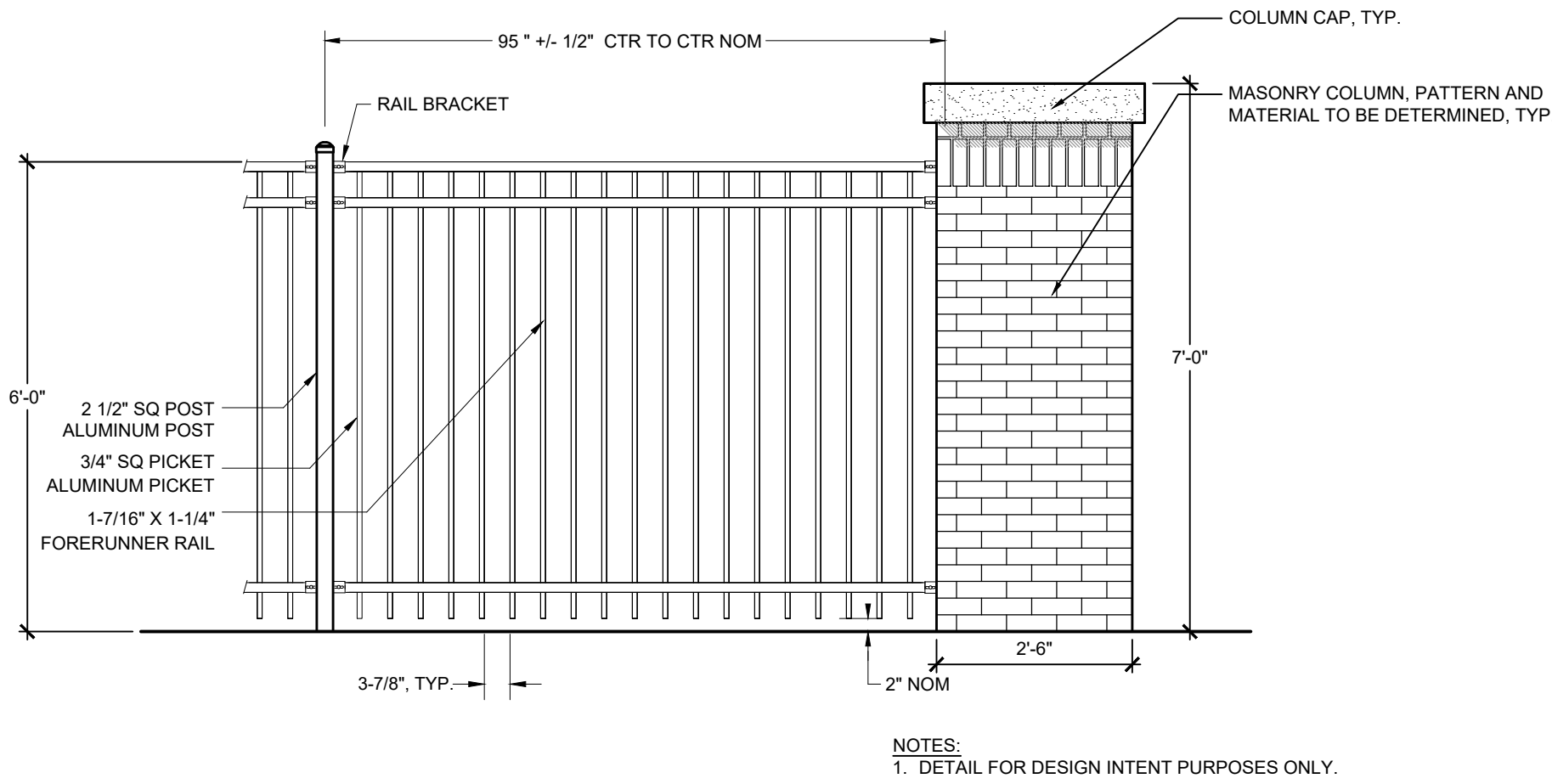
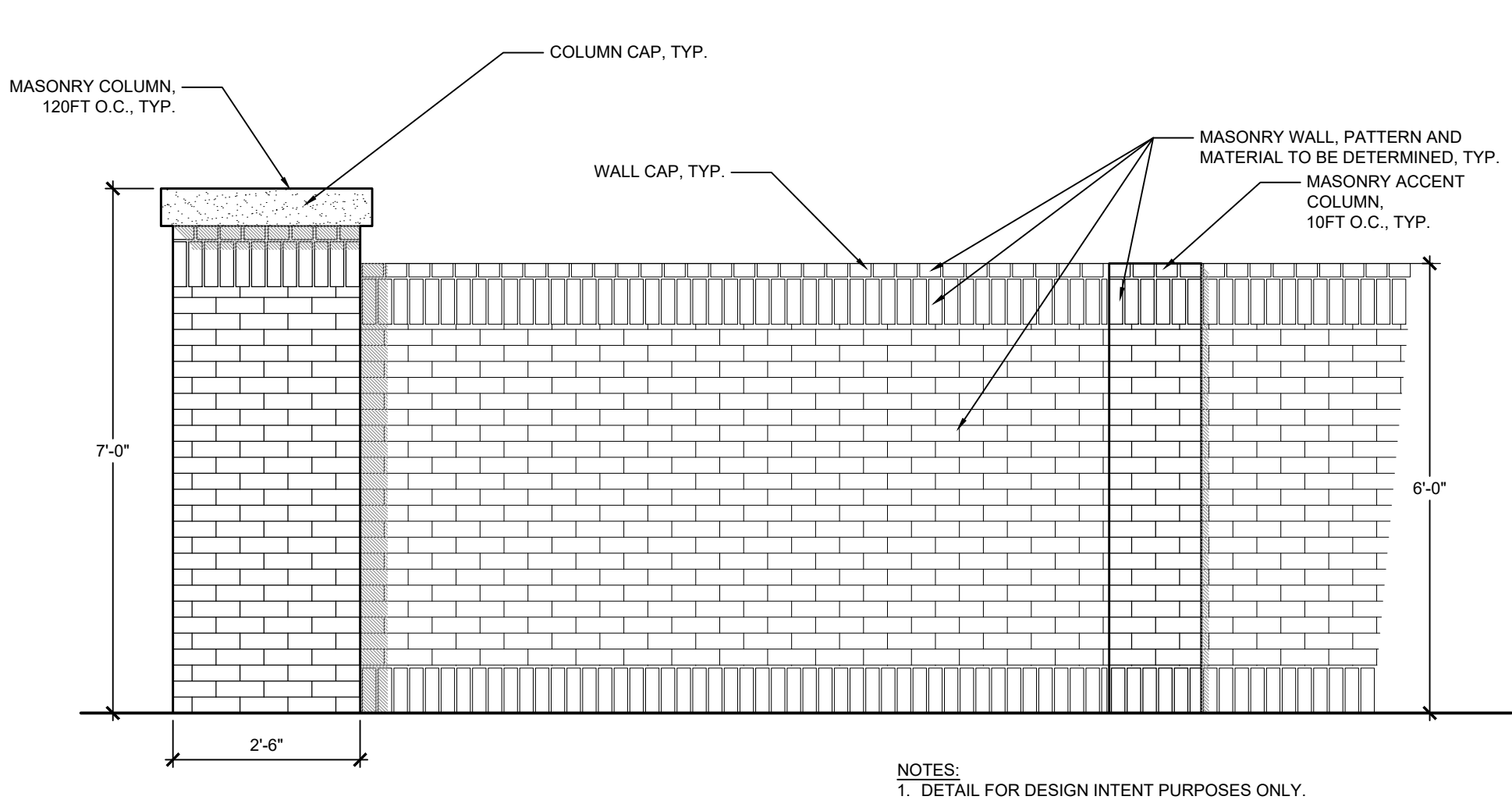
## TREES

BOTANICAL NAME / COMMON NAME

Proposed Tree - Large

Proposed Tree - Small



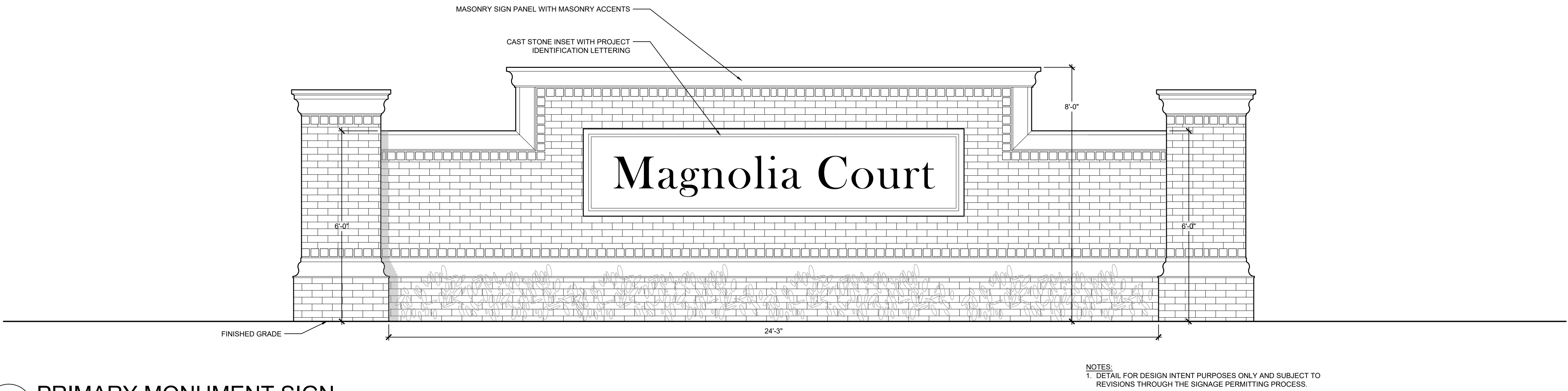


1 SCREENWALL AND COLUMN  
RZ2.0 ELEVATION

NTS

2 DECORATIVE FENCE  
RZ2.0 SECTION

NTS



3 PRIMARY MONUMENT SIGN  
RZ2.0 ELEVATION

NTS

KEY MAP

SEAL

**PRELIMINARY**  
FOR REVIEW PURPOSES ONLY  
AND SHALL NOT BE USED FOR  
BIDDING, PERMITTING, OR  
CONSTRUCTION.

**Matthew S. Vinten**  
Registered Landscape Architect of the  
State of TEXAS  
Registration Number: 2946

PROJECT

**MAGNOLIA  
COURT**

CONTOUR REAL ESTATE &  
DEVELOPMENT LLC  
14275 MIDWAY ROAD, SUITE 215  
ADDISON, TX 75001

LANDDESIGN PROJ.# 8517032

| REVISION / ISSUANCE |               |            |
|---------------------|---------------|------------|
| NO.                 | DESCRIPTION   | DATE       |
| 1                   | 1ST SUBMITTAL | 07.XX.2018 |
|                     |               |            |
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|                     |               |            |
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|                     |               |            |
|                     |               |            |

DESIGNED BY: LDI  
DRAWN BY: LDI  
CHECKED BY: LDI

SCALE NORTH  
VERT: N/A  
HORZ: NTS  
(NOT TO SCALE)

SHEET TITLE  
CONCEPTUAL LANDSCAPE  
PLAN (SHEET 2 OF 2)

SHEET NUMBER  
RZ2.0

**From:** Heth Kendrick [mailto:HKendrick@landdesign.com]  
**Sent:** Monday, November 12, 2018 8:33 PM  
**To:** Richard Brown <richard.brown@flower-mound.com>  
**Cc:** Chuck Russell <chuck.russell@flower-mound.com>; Jim Tchoukaleff <jim@contourdev.com>  
**Subject:** ZPD18-0008 deferral request

Richard,

Our team for Magnolia Court learned tonight that several of our members (myself included) will be out of town for the week of Thanksgiving, including next Monday evening, and will be unable to attend the Town Council hearing for ZPD18-0008 on November 19th. We would respectfully request a deferral to the next Town Council hearing scheduled for Monday, December 3rd. Please let me know if you have any questions regarding this request.

**HETH KENDRICK**

**Principal | Dallas**

(o) [214.842.6980](tel:214.842.6980) | (m) [214.316.5022](tel:214.316.5022)

[LandDesign.com](http://LandDesign.com) | [@LandDesignInc](https://www.instagram.com/LandDesignInc)



## TOWN COUNCIL AGENDA ITEM NO. 7

### REGULAR ITEM

**DATE:** November 19, 2018

**FROM:** Andrea Roy, Economic Development Director

**ITEM:** **Public Hearing to consider an ordinance to participate in the Texas Enterprise Zone Program and nominate Thirty-One Gifts, LLC.**

**BACKGROUND INFORMATION:** Thirty-One Gifts, LLC is a direct-sales company offering totes and accessories that desires to relocate its warehouse and distribution center to 951 S. Garden Ridge Blvd., in Flower Mound in 2019. Thirty-One Gifts would make an estimated \$17.5 million in capital investment, bringing 650 jobs and additional sales tax revenue. The company intends on occupying the entire 651,000 sq. ft. facility, which formerly served as the Kohler distribution center.

The Town has been in negotiations with Thirty-One Gifts, LLC since spring 2018, as local, county, and state incentives were sought in an effort to offset the company's extensive relocation costs. As part of the negotiations, the company has asked that the Town support the company's efforts to seek assistance through the State's Enterprise Zone Project Program, which is a state sales and use tax rebate program based on the number of employees and the company's taxable purchases.

The subject request relates only to the company's application for Texas Enterprise Zone Project Program assistance. In order for the company to seek benefits through the Texas Enterprise Zone Project Program, the municipality in which it is located must conduct a public hearing and pass an ordinance nominating the project to the Governor's Office. Passage of the subject Ordinance will formally nominate Thirty-One Gifts, LLC as an Enterprise Zone Project. If the state approves the project, the state may provide a state sales and use tax refund for taxes paid on machinery and equipment, building materials, labor for rehabilitation of existing building, electricity, and natural gas purchases.

The level and amount of the refund is related to the capital investment and jobs created at the site. Thirty-One Gifts capital investment is approx. \$17.5 million, providing a maximum potential refund of \$1,250,000. In exchange for the refund, the company must commit that at least 35% of their new employees will meet economically disadvantaged, enterprise zone residency requirements, or be a veteran.

| Level of Capital Investment                            | Maximum number of jobs allocated | Maximum potential refund | Maximum refund per job allocated |
|--------------------------------------------------------|----------------------------------|--------------------------|----------------------------------|
| \$40,000 to \$399,999                                  | 10                               | \$25,000                 | \$2,500                          |
| \$400,000 to \$999,999                                 | 25                               | \$62,500                 | \$2,500                          |
| \$1,000,000 to \$4,999,999                             | 125                              | \$312,500                | \$2,500                          |
| <b>\$5,000,000 to \$149,999,999</b>                    | <b>500</b>                       | <b>\$1,250,000</b>       | <b>\$2,500</b>                   |
| Double Jumbo Project<br>\$150,000,000 to \$249,999,999 | 500                              | \$2,500,000              | \$5,000                          |
| Triple Jumbo Project<br>\$250,000,000 or more          | 500*                             | \$3,750,000              | \$7,500                          |

In accordance with the 10 TEX. ADMIN. Code Sec. 176.2 (1)(A), public notice of the public hearing was posted on the bulletin board at the Flower Mound Town Hall on November 9, 2018. Additionally, public notice was also published on November 9, 2018, in the Denton Record-Chronicle.

The attached nominating ordinance includes (as Exhibit A) a list of possible incentives that could be provided to the company and coincides with the list of potential incentives noted within the Texas Enterprise Project Application. Specific mention of these incentives is required as part of the nominating ordinance.

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

**ALTERNATIVES/OPTIONS:** N/A

**FISCAL IMPACT:** There is no fiscal impact to the Town related to the subject request. Local incentives for Thirty-One Gifts will be considered at a future Town Council Meeting.

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

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

**ATTACHMENTS:**

1. Ordinance

**DRAFT MOTION:** Move to approve as presented in the agenda caption.



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

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AUTHORIZING THE TOWN TO PARTICIPATE IN THE TEXAS ENTERPRISE ZONE PROGRAM UNDER THE TEXAS ENTERPRISE ZONE ACT, CHAPTER 2303, TEXAS GOVERNMENT CODE; PROVIDING TAX INCENTIVES; NOMINATING THIRTY-ONE GIFTS, LLC TO THE OFFICE OF THE GOVERNOR ECONOMIC DEVELOPMENT AND TOURISM THROUGH THE ECONOMIC DEVELOPMENT BANK (THE "BANK") FOR DESIGNATION AS AN ENTERPRISE PROJECT UNDER THE ACT; AND DESIGNATING A LIAISON FOR OVERSEEING ENTERPRISE PROJECTS AND COMMUNICATING WITH INTERESTED PARTIES.**

**WHEREAS**, the Town Council of the Town of Flower Mound, Texas (sometimes hereinafter referred to as the "Town") desires to create the proper economic and social environment to induce the investment of private resources in productive business enterprises located in severely distressed areas of the Town and to provide employment to residents of those areas; and

**WHEREAS**, the project or activity is not located in an area designated as an enterprise zone; and

**WHEREAS**, pursuant to Chapter 2303, Subchapter F of the Act, Thirty-One Gifts, LLC has applied to the Town for designation as an enterprise project; and

**WHEREAS**, with proper notice to the public, a public hearing to consider this Ordinance was held on November 19, 2018, during a meeting of the Town Council, in the Town Council's Chambers in the Town Hall Building, at which all interested persons were allowed to appear and be heard; and

**WHEREAS**, the Town Council has determined that passage of this ordinance would best serve public health, necessity, and convenience and the general welfare of the Town and its citizens.

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

**SECTION 1**

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

**SECTION 2**

As required by Section 2303.4051(b) of the Act, the local incentives identified and summarized briefly in the attached Exhibit "A", at the election of the governing body, are or will be made available to the nominated Project or activity of the qualified business.



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

Page 2

**SECTION 3**

The Town finds that Thirty-One Gifts, LLC meets the criteria for designation as an enterprise project under the Act on the following grounds:

- (a) Thirty-One Gifts, LLC is a “qualified business” under Section 2303.402 of the Act because it is engaged in the active conduct of a trade or business at a qualified business site within the governing body’s jurisdiction located outside of an enterprise zone and at least thirty-five (35%) percent of its new employees at the qualified business site will be residents of an enterprise zone in this state, economically disadvantaged individuals, or veterans;
- (b) There has been and will continue to be a high level of cooperation between public, private, and neighborhood entities within the jurisdiction of the Town; and
- (c) The designation of Thirty-One Gifts, LLC as an enterprise project will contribute significantly to the achievement of the plans of the Town for development and revitalization of the area in which the enterprise project will be located.

**SECTION 4**

The Town nominates Thirty-One Gifts, LLC as an Enterprise Project under the Act and designates the Director of Flower Mound’s Office of Economic Development or his/her designee as liaison to oversee enterprise projects nominated by the Town and to perform the other duties described in Section 2303.204 of the Act. The Town authorizes the Director of Flower Mound’s Office of Economic Development or his/her designee to file an application requesting designation of Thirty-One Gifts, LLC as an Enterprise Project with the Bank, and to execute all documents and agreements necessary to process the application. Further, the Town directs the Director of Flower Mound’s Office of Economic Development or his/her designee to submit to the Bank the information required by Section 2303.4052 of the Act.

**SECTION 5**

That the enterprise zone project shall take effect on the date of designation of the enterprise project by the Office of the Governor and terminate five years after date of designation.

This Ordinance shall become effective immediately upon its passage.

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS BY A VOTE OF \_\_ TO \_\_, ON THIS THE 19TH DAY OF NOVEMBER, 2018.**

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

**Page 3**

**APPROVED:**

\_\_\_\_\_  
**STEVE DIXON, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**THERESA SCOTT, TOWN SECRETARY**

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

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**Exhibit A**

|    | Name of Incentive                                    | Description of Incentive                                                                                                        | Availability  |
|----|------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|---------------|
| 1  | Local Sales Tax Refund                               | The Town may provide refunds of local sales tax.                                                                                | Town-wide     |
| 2  | Tax Abatement                                        | The Town may provide property tax reductions.                                                                                   | Town-wide     |
| 3  | Tax Increment Financing                              | Tax Increment Reinvestment Zones have been established in the Town.                                                             | Town-wide     |
| 4  | Freeport Exemption                                   | Freeport Exemptions may be offered within the Town                                                                              | Town-wide     |
| 5  | Economic Development Sales Tax (Type 4) Contribution | The Town may provide tax incentives via the contributions collected by the Town's Economic Development Department.              | Not Available |
| 7  | Chapter 380                                          | The Town may offer incentives under a Chapter 380 Agreement.                                                                    | Town-wide     |
| 8  | Other Tax Deferrals, Tax Refunds or Tax Incentives   | The Town may offer other incentives.                                                                                            | Town-wide     |
| 9  | Zoning Changes/Variances                             | The Town may provide regulatory relief to businesses, including variances.                                                      | Town-wide     |
| 10 | Building Code Exemptions                             | The Town may provide regulatory relief to businesses, including justifiable exemptions from certain building code requirements. | Town-wide     |
| 11 | Impact/ Inspection Fee Relief                        | The Town may provide financial/regulatory relief to businesses, including impact fees or inspection fees.                       | Town-wide     |
| 12 | Streamlined Permitting                               | The Town may establish simplified, accelerated or other special permit procedures.                                              | Town-wide     |
| 13 | Improved Fire and/or Police Protection               | The Town may provide enhanced municipal services to businesses, including improved police and/or fire protection.               | Town-wide     |
| 14 | Community Crime Prevention Programs                  | The Town may provide enhanced municipal services to businesses, including institution of community crime prevention programs.   | Town-wide     |

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

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## Exhibit A (cont.)

|    | Name of Incentive                                                 | Description of Incentive                                                                                                                             | Availability  |
|----|-------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| 15 | Special Public Transportation Routes or Reduced Fares             | The Town may provide enhanced municipal services to businesses, including special public transportation routes or reduced fares.                     | Town-wide     |
| 16 | Capital Improvements In Water and Sewer Facilities                | The Town can provide improvements in community facilities, including capital improvements in water and sewer facilities.                             | Town-wide     |
| 17 | Road Repair                                                       | The Town can provide improvements in community facilities, including road repair                                                                     | Town-wide     |
| 18 | Creation or Improvement of Parks                                  | The Town can provide improvements in community facilities, including creation or improvement of parks.                                               | Town-wide     |
| 19 | Low-Interest Loans for Housing Rehabilitation or New Construction | The Town may provide improvements to housing, including low-interest loans for housing rehabilitation or new construction.                           | Town-wide     |
| 20 | Transfer Abandoned Housing to Individuals or Community Groups     | The Town may provide abandoned housing to individuals or community groups.                                                                           | Town-wide     |
| 21 | Low-Interest Loans for Business                                   | The Town may provide low-interest loans to business.                                                                                                 | Town-wide     |
| 22 | Use of Surplus School Buildings for Incubators                    | The Town may use surplus school buildings for incubators as facilities may be available from the ISD or Community College.                           | Not available |
| 23 | Provision of Publicly Owned Land for Development Purposes         | The Town may provide publicly owned land for development purposes.                                                                                   | Town-wide     |
| 24 | One-Stop Permitting, Problem Resolution Center                    | The Town may provide business and industrial development services, including creation of special one-stop permitting and problem resolution centers. | Town-wide     |
| 25 | Promotion and Marketing Services                                  | The Town may provide business and industrial development services, including promotion and marketing services.                                       | Town-wide     |

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

Page 6

**Exhibit A (cont.)**

|    | Name of Incentive                       | Description of Incentive                                      | Availability |
|----|-----------------------------------------|---------------------------------------------------------------|--------------|
| 26 | Job Training and Employment Services    | The Town may provide training and employment services.        | Town-wide    |
| 27 | Retraining Program                      | The Town may provide retraining programs.                     | Town-wide    |
| 28 | Literacy and Employment Skills Services | The Town may provide literacy and employment skills programs. | Town-wide    |
| 29 | Vocational Education                    | The Town may provide vocational education.                    | Town-wide    |
| 30 | Customized Job Training                 | The Town may provide customized job training.                 | Town-wide    |

## Town Council Future Agenda Items



|           |           |         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-----------|-----------|---------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SCHEDULED | 12/3/2018 | Consent | Consider approval of the sale and consumption of alcoholic beverages (beer and wine) at Bakersfield Park, during the 2019 Independence Fest.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|           |           | Consent | Consider approval of a Reimbursement Agreement between the Town of Flower Mound and Red Rock Water Supply Corporation and authorize the Mayor to execute on same behalf of the Town.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|           |           | Consent | Consider approval of a Professional Services Agreement with Innovative Transportation Solutions, Inc., to provide professional transportation services in the amount of \$75,000.00 annually, with a one year renewal option; and authorization for the Mayor to execute same on behalf of the Town.                                                                                                                                                                                                                                                                                                                                                                |
|           |           | Consent | Consider approval of Standards of Care for Youth Recreation Programs operated by the Town, in accordance with the Texas Human Resources Code - Section 42.041 and to adopt an ordinance providing for said Standards.                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|           |           | Consent | Consider approval of an Interlocal Cooperative Agreement with Denton County for the construction of Denton Creek Boulevard Bridge; and authorization for the Mayor to execute same on behalf of the Town.                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|           |           | Consent | Consider approval of a resolution authorizing the adoption of the Program Year 2017 Consolidated Annual Performance & Evaluation Report for the Community Development Block Grant; and authorization for the Mayor to execute same on behalf of the Town and submit to the U.S. Department of Housing and Urban Development.                                                                                                                                                                                                                                                                                                                                        |
|           |           | Consent | Consider approval of the minutes from a regular meeting of the Town Council held on November 19, 2018.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|           |           | Regular | Public Hearing to consider a request for rezoning (ZPD18-0004 – Balekian Addition / CVS) from Agricultural District (A) to Planned Development District No. 164 (PD-164) with Single-Family Estate District (SF-E) and Retail District-1 (R-1) uses, with certain modifications and exceptions to the Code of Ordinances, and to consider adopting an ordinance providing for said amendment. The property is generally located north of Cross Timbers Road and east of Lusk Lane. (Planning and Zoning Commission recommended denial by a vote of 6 to 0 at its October 22, 2018, meeting.)(The Town Council postponed the item at its November 5, 2018, meeting.) |
|           |           | Regular | Public Hearing to consider approval of a Tax Abatement and Chapter 380 Agreement with Thirty-One Gifts, LLC and Prologis, Inc., for the economic development of Flower Mound, and authorization for the Mayor to execute same on behalf of Town.                                                                                                                                                                                                                                                                                                                                                                                                                    |
|           |           | Regular | Public Hearing to consider approval of an ordinance establishing a Tax Abatement Reinvestment Zone for commercial-warehouse tax abatement at 951 S Garden Ridge Blvd.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |



|                  |                   |              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|------------------|-------------------|--------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>SCHEDULED</b> | <b>12/3/2018</b>  | Regular      | Consider approval of the purchase of a 2019 Pierce 107' Ascendant Ladder truck for the Fire and Emergency Services Department from Siddons-Martin Emergency Group, through the Houston-Galveston Area Council of Governments (H-GAC) cooperative purchasing program, in the total amount of \$1,399,416.00; and authorization for the Mayor to execute same on behalf of the                                                                                                                                                                                                                                                                                             |
|                  |                   | Regular      | Public Hearing to consider a request for a Master Plan Amendment (MPA18-0004 – Balekian Addition / CVS) to amend Section 1.0, Land Use Plan, of the Master Plan to change the current land use designation from Estate Residential to Retail use on approximately 2.48 acres of land within the Cross Timbers Protection Area, and to consider adopting an ordinance providing for said amendment. The property is generally located north of Cross Timbers Road and east of Lusk Lane. (Planning and Zoning Commission recommended denial by a vote of 6 to 0 at its October 22, 2018, meeting.)(The Town Council postponed the item at its November 5, 2018, meeting.) |
|                  | <b>12/17/2018</b> | Presentation | Certificate of Achievement, Gold Award, Girl Scout Service Unit 408                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|                  |                   | Presentation | Announcement and Presentation of 2018 Outstanding Citizenship Award(s)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|                  |                   | Consent      | Consider approval of a Professional Services Agreement for the design phase services of the High Road Water Line Phase II project, with Kimley-Horn and Associates, Inc., for \$340,000.00; and authorization for the Mayor to execute same on behalf of the Town.                                                                                                                                                                                                                                                                                                                                                                                                       |
|                  |                   | Consent      | Consider approval of the minutes from a regular meeting of the Town Council held on December 3, 2018.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|                  |                   | Consent      | Consider approval of a Professional Services Agreement for monthly gas well pad site air monitoring by Modern Geosciences, LLC, in the amount of \$XXXXXX; and authorization for the Mayor to execute same on behalf of the Town.                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|                  |                   | Consent      | Consider approval of an ordinance amending the Town of Flower Mound's Annual Budget for the fiscal year beginning October 1, 2017 and ending on September 30, 2018, as adopted by Ordinance No. 33-17 and amended by Ordinance No. 46-17, 20-18, 22-18 and 29-18 for adjustments to the _____, _____, _____, _____ and the _____.                                                                                                                                                                                                                                                                                                                                        |
|                  |                   | Consent      | Consider approval of an ordinance amending the Town of Flower Mound's Annual Budget for the fiscal year beginning October 1, 2018 and ending on September 30, 2019, as adopted by Ordinance No. 30-18 for adjustments to the _____, _____, _____, _____ and _____.                                                                                                                                                                                                                                                                                                                                                                                                       |
|                  |                   | Consent      | Consider approval of an Interlocal Agreement with Lewisville Independent School District for additional School Resource Officers, and provisions for equal contributions from LISD and Town to cover the cost of salary and benefits for the current and additional officers; and authorization for the Mayor to execute same on behalf of the Town.                                                                                                                                                                                                                                                                                                                     |
|                  |                   | Consent      | Transportation Update & LOS Mapping.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|                  |                   | Consent      | Peters Colony Road Roundabout & Windsor Drive Roundabout Connection Design Award.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

|                  |                   |         |                                                                                                                                                                                                                                                                                                                                                                                         |
|------------------|-------------------|---------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>SCHEDULED</b> | <b>12/17/2018</b> | Consent | Valley Ridge Blvd @ Morriss Road AND Garden Ridge Blvd @ FM 3040 Design Award.                                                                                                                                                                                                                                                                                                          |
|                  |                   | Consent | Consider approval of a Construction Agreement with PM Construction & Rehab LLC, dba IPR South Central, for the Justin Road Lift Station Outfall project, in the amount of \$199,974.50; and authorization for the Mayor to execute same on behalf of the Town.                                                                                                                          |
|                  |                   | Consent | East Waketon Road Drainage Design Award.                                                                                                                                                                                                                                                                                                                                                |
|                  |                   | Regular | PLACEHOLDER: 5PM START - RIBBON CUTTING                                                                                                                                                                                                                                                                                                                                                 |
|                  |                   | Regular | Public Hearing to consider a request for rezoning (Z18-0001-Whyburn Medical Offices) from Agricultural District-A (A) to Office (O), and to consider adopting an ordinance providing for said amendment. The property is generally located north of Waketon, west of Long Prairie Road. (Planning and Zoning Commission recommended by a vote of to at its December 12, 2018, meeting.) |
|                  | <b>1/7/2019</b>   | Consent | FM 2499 @ 407 Intersection Design Award.                                                                                                                                                                                                                                                                                                                                                |
|                  |                   | Consent | Bruton Orand EST Chloramine Design Award.                                                                                                                                                                                                                                                                                                                                               |
|                  |                   | Consent | Pintail Pump Station Auxiliary Power & Upgrades Construction Award.                                                                                                                                                                                                                                                                                                                     |
|                  |                   | Consent | Fire Station #7 Construction Award                                                                                                                                                                                                                                                                                                                                                      |
|                  |                   | Consent | 2019 ADA Trans Plan - PSA                                                                                                                                                                                                                                                                                                                                                               |
|                  |                   | Consent | Rippy Road Phase II Design Award.                                                                                                                                                                                                                                                                                                                                                       |
|                  |                   | Consent | Old Gerault Road 12-Inch Water Line Development Agreement.                                                                                                                                                                                                                                                                                                                              |
|                  |                   | Consent | Fire Station #7 Testing Award.                                                                                                                                                                                                                                                                                                                                                          |
|                  |                   | Consent | Justin Road Lift Station Outfall Testing Award.                                                                                                                                                                                                                                                                                                                                         |
|                  |                   | Consent | Flower Mound Storage Warehouse - Construction Award.                                                                                                                                                                                                                                                                                                                                    |
|                  | <b>1/21/2019</b>  | Regular | Discuss and consider appointment of Chair to the Tax Increment Reinvestment Zone (TIRZ).                                                                                                                                                                                                                                                                                                |
|                  | <b>2/4/2019</b>   | Consent | Library Expansion Construction Award (GMP).                                                                                                                                                                                                                                                                                                                                             |
|                  |                   | Consent | Placeholder: calling May 4, 2019 Election                                                                                                                                                                                                                                                                                                                                               |
|                  |                   | Consent | Heritage Park Phase IV Change Order 3.                                                                                                                                                                                                                                                                                                                                                  |
|                  | <b>2/18/2019</b>  | Consent | Library Expansion Testing Award.                                                                                                                                                                                                                                                                                                                                                        |

|           |           |         |                                                                                      |
|-----------|-----------|---------|--------------------------------------------------------------------------------------|
| SCHEDULED | 2/18/2019 | Consent | FM 2499 12-Inch Water Line Phase I (Dixon to South of FM 1171) - Testing Award.      |
|           |           | Consent | FM 1171 @ Riverwalk Drive - Testing Award                                            |
|           |           | Consent | FM 2499 12-Inch Water Line Phase I (Dixon to South of FM 1171) - Construction Award. |
|           | 3/18/2019 | Consent | FM 2499 at Lakeside Parkway NB Right Turn Lane - Construction Award                  |
|           |           | Consent | FM 2499 @ Lakeside Parkway NB Right Turn Lane - Testing Award.                       |